



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Market Review - Wholesale Dedicated Capacity (WDC) Market

Non-Confidential Responses to Consultation

Reference:

ComReg 26/50a

Date:

31 July 2026

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alto

alternative operators in the communications market

**Consultation: Market Review - Wholesale Dedicated Capacity
(WDC) Market - Ref: 24/92**

Submission By ALTO

Date: January 31st 2025

ALTO is pleased to respond to the Consultation: Market Review – Wholesale Dedicated Capacity (WDC) Market. Response to Consultation– Ref: 24/92.

ALTO welcomes this opportunity to comment on this important Market Review.

Preliminary Remarks

ALTO generally supports the effort and work ComReg has put into this Wholesale Dedicated Capacity (WDC) Market Review.

ALTO is generally positively disposed to ComReg's conclusions in this consultation, with some small exceptions, and we make brief reference to those exceptions below where it has been possible for ALTO to express a view on the matter in question.

We also remark that the WDC or formerly known as Leased Line market remains an important market to the new entrant community and wider industry in Ireland. We note that for the first time it appears that dark fibre has been counted by ComReg in the Market Review, marking a change from previous market reviews in this area, and we note that ComReg appears to have stuck with the required and desirable mechanisms of economic market analysis and remedies anticipated by ALTO and the wider industry.

As ALTO is a representative body, we have limited capacity in relation to supplying ComReg with reasons and evidence in order to submit answers to the Consultation questions in the manner requested. We acknowledge that ComReg appears for the most part to have maintained strong positioning and compliance with the anticipated and standard remedies arising on the WDC markets in Ireland. We note that certain issues arise in relation to Q. 1 – Q. 6 that may require more careful consideration and to that end we have simply noted ComReg's position and made some high-level suggestions.

Response to Consultation Questions:

Q.1. Do you agree that the main developments identified in the provision of retail LL market are those which are most relevant in informing the assessment of the Relevant Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual/empirical evidence supporting your views.

A. 1. ALTO notes the main developments identified in the provision of retail LL are those which are most relevant in informing the assessment of the Relevant Markets.

ALTO submits that it would be preferable if ComReg could consider customer requirements more within the review to cater for more granularity and potential product differentiation. Additionally, ComReg should also take note of evolving technological requirements in order to assess substitution effect and impacts over time.

Q. 2. Do you agree with ComReg's proposed definition of the relevant retail LL market? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

A. 2. ALTO notes ComReg's proposed definition of the relevant retail LL market subject to the issues mentioned in the answer to Question 1, whereby substitution, differentiation and customer requirements should be analysed to more robustly capture the position on the market.

Q. 3. Do you agree with ComReg's product market assessment for the Relevant WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views

A. 3. ALTO notes ComReg's product market assessment for the Relevant WDC Markets. ALTO would prefer to see further assessment criteria handling substitution between legacy and contemporaneous technologies, in addition to analysis based on bandwidth and bandwidth categories. ALTO has concerns that the Market Review is not necessarily in an optimum position to capture all forms of potential market abuse in its current form.

Q. 4. Do you agree with ComReg's geographic market assessment for the Relevant WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

A. 4. ALTO notes ComReg's geographic market assessment for the Relevant WDC Markets. In general terms ALTO would prefer to see analysis of switching and service parameters, in addition to a more granular or much more strict approach to oversight of the peripheral parts of Zone B. Currently, the position pertaining to Zone B may make it difficult for alternative operators to install fibre in areas that are no longer regulated.

Q. 5. Do you agree with ComReg's assessment of the Trunk – Terminating Boundaries of the MI WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

A. 5. ALTO notes ComReg's assessment of the Trunk – Terminating Boundaries of the MI WDC Markets. ALTO would like to see ComReg implementing further measures to analyse costing criteria for boundary definitions, in addition to assessment based upon geographic competitive pressures. Assessment of approaches to Trunk Terminating segments appears to also be necessary based on technology availability and customer driven solutions.

Q. 6. Do you agree with ComReg's assessment of SMP on the Relevant WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

A. 6. ALTO notes ComReg's assessment of SMP on the Relevant WDC Markets.

ALTO submits that ComReg should refine its analysis to consider a more detailed or granular approach to analysing Zone A in order to properly assess residual market power dynamics, in addition to assessing properly self-supply and its impacts on the market, if any. ALTO remains concerned about geographic variations that could arise in Zone B and ComReg should place itself in a position to readily assess any needs for regulatory interventions at a later time.

Q. 7. Do you agree that the competition problems and the associated impacts on competition end users identified are those that could potentially arise in the Zone B MI WDC Markets (and related markets)? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

A. 7. ALTO agrees that the competition problems and the associated impacts on competition end users identified are those that could potentially arise in the Zone B MI WDC Markets (and related markets).

ALTO remains concerned about self-supply, information asymmetry between dominant and new entrant providers, intra-zone competition variants, and properly considering the role of small to medium enterprises within Zone B in particular as key issues for additional focus.

Q. 8. Do you agree with ComReg's proposals in respect of non-pricing remedies in the Zone B MI WDC Markets? Please explain the reasons for your

answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

A. 8. ALTO agrees with ComReg's proposals in respect of non-pricing remedies in the Zone B MI WDC Markets.

ALTO submits that it would like to see a greater emphasis on enforcement and transparency on the market and a renewed focus on adopting and strengthening EOI versus EOO criteria which is something ALTO has called for previously. Service Level Agreement – SLA, frameworks should also come under renewed review and proper scrutiny to enable enforcement action should such action be required.

Q. 9. Do you agree with ComReg's view that a differentiated pricing remedy (of no price control) should apply to Eircom with respect to MI WDC products and services in the IA in the Zone B MI WDC Markets, while the obligations of access, non-discrimination and transparency will continue to apply to the MI WDC products and services in the IA? Please provide reasons for your response.

A. 9. ALTO does not agree with ComReg's view that a differentiated pricing remedy (of no price control) should apply to Eircom with respect to MI WDC products and services in the IA in the Zone B MI WDC Markets, while the obligations of access, non-discrimination and transparency will continue to apply to the MI WDC products and services in the IA. It remains a requirement that NBI's position on the market be kept under review by ComReg as a matter of course. ALTO cannot in good conscience agree with an apparent inconsistent regulatory approach based on Zones, and we believe that cost orientation obligations should be maintained on Eircom as a result. The position of NBI is evolving and limited at this time, and the NBI offerings are indexed to Eircom's as a matter of fact and application on the market.

ALTO submits that ComReg's proposal may give rise to unnecessary competitive market risks in addition to a risk of exploitative practices in the absence of proper

cost orientation remedies. ALTO's experience on the market is that the remedies of transparency and non-discrimination do not operate to prevent anti-competitive or abusive pricing strategies potentially targeting maturing competitive or competitive pressure zones.

In summary, ALTO believes that the remedies proposed - in the absence of price control, are insufficient to protect against future inappropriate behaviour on the market.

Q. 10. Do you agree with ComReg's view that a cost orientation price control obligation should be maintained for Eircom's MI WDC products, services and associated facilities, including WDM services, outside the IA in Zone B of the MI WDC Markets? Please provide reasons for your response.

A. 10. ALTO agrees with ComReg's view that a cost orientation price control obligation should be maintained for Eircom's MI WDC products, services and associated facilities, including WDM services, outside the IA in Zone B of the MI WDC Markets.

ALTO submits that maintaining this remedy is necessary to mitigate against future anti-competitive risks and will serve to provide additional medium to long term benefits to end-users and investment on the market by new entrant operators such as some ALTO members. This should arise by virtue of fair pricing, better network facilities and certainty of return on investment over time.

Q. 11. Do you agree with ComReg's view that Eircom should charge the current Zone B rental prices in the LLRO price list (i.e., the pricing continuity approach), as fixed price points, for Eircom's MI WDC products and services, including WDM services, outside the IA in Zone B of the MI WDC Markets, and the current rental prices in the LLRO price list for the associated Eircom interconnection services? Please provide reasons for your response

A. 11. ALTO agrees with ComReg's view that Eircom should charge the current Zone

B rental prices in the LLRO price list (i.e., the pricing continuity approach), as fixed price points, for Eircom's MI WDC products and services, including WDM services, outside the IA in Zone B of the MI WDC Markets, and the current rental prices in the LLRO price list for the associated Eircom interconnection services.

ALTO submits that this approach should foster market stability and a predictable and fair environment for new entrants and all stakeholders to the benefit of attracting investment on the market. This in-turn should positively impact the end-user and consumer.

Q. 12. Do you agree with ComReg's view that the charges for co-location services and the upfront (non-recurring) charges for connections should reflect no more than the actual efficient costs incurred by Eircom plus a reasonable rate of return? Please provide reasons for your response

A. 12. ALTO agrees with ComReg's view that the charges for co-location services and the upfront (non-recurring) charges for connections should reflect no more than the actual efficient costs incurred by Eircom plus a reasonable rate of return.

ALTO submits that this approach should enable a fair or reasonable rate of return on Eircom's investments and prevent anticompetitive behaviours. This approach should support and promote a balance of competition, investment, and ultimately the end-user by fostering fairness in all offerings priced on the market.

Q. 13. Do you agree with ComReg's view that Eircom should maintain its cost accounting obligation in relation to its Modern Interface Wholesale Dedicated Capacity products, services and associated facilities? Please provide reasons for your response.

A. 13. ALTO agrees with ComReg's view that Eircom should maintain its cost accounting obligation in relation to its Modern Interface Wholesale Dedicated Capacity products, services and associated facilities.

ALTO submits that maintenance of this obligation is very important for the promotion

of transparency, non-discrimination, and the enabling of effective regulatory oversight on the market to the ultimately benefit of both competition and end-users.

Q. 14. Do you agree with ComReg's view that Eircom should continue to maintain its accounting separation obligation in relation to its Modern Interface Wholesale Dedicated Capacity products, services and associated facilities, and for the avoidance of doubt this means the inclusion of dark fibre in the MI WDC HCA statements and AFI statements? Please provide reasons for your response

A. 14. ALTO agrees with ComReg's view that Eircom should continue to maintain its accounting separation obligation in relation to its Modern Interface Wholesale Dedicated Capacity products, services and associated facilities, and for the avoidance of doubt this means the inclusion of dark fibre in the MI WDC HCA statements and AFI statements.

ALTO submits that this approach aligns perfectly with European regulatory standards as prescribed under the EECC Regulation in order to foster fair competition on the market. Furthermore, this remedy should prevent unfair practices and protect against market abuse and foster transparency on the market to the benefit of competition, new entrant investment and ultimately the end-user.

Q. 15. Do you agree with ComReg's view that Eircom should continue to maintain its statement of compliance obligation in relation to its MI WDC products, services and associated facilities in the WDC market? Please provide reasons for your response.

A. 15. ALTO agrees with ComReg's view that Eircom should continue to maintain its statement of compliance obligation in relation to its MI WDC products, services and associated facilities in the WDC market.

ALTO submits that this approach aligns perfectly with European regulatory standards as prescribed under the EECC Regulation in order to foster fair

competition on the market. Furthermore, this remedy should prevent unfair practices and protect against market abuse and foster transparency on the market to the benefit of competition, new entrant investment and ultimately the end-user.

Q. 16. Do you agree with ComReg's proposals on the withdrawal of SMP remedies on Eircom in the LB TI WDC Market and in WPZs that have moved from Zone B MI WHQA Markets in the 2020 Decision to Zone A MI WDC Markets in this Consultation? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views

A. 16. ALTO partially agrees with ComReg's proposals on the withdrawal of SMP remedies on Eircom in the LB TI WDC Market and in WPZs that have moved from Zone B MI WHQA Markets in the 2020 Decision to Zone A MI WDC Markets in this Consultation.

ALTO submits that this proposal must be approached with extreme caution by ComReg. ComReg will need to actively monitor the market to assess the position of sustainable

ALTO

31st January 2025

BT Communications Ireland Response to ComReg's: Market Review – Wholesale Dedicated Capacity (WDC) Market Consultation and Draft Decision

Issue 1: 31 January 2024

1.0 Introduction

We welcome the opportunity to comment to this important consultation and would offer a summary of our key points followed by our detailed responses to the questions. We acknowledge the detail work to review this market and recognise its importance to the establishment of competition in Ireland. We are disappointed that data collection issues are still a problem.

Key Issues

A) Significant Change of Market

In 2020 ComReg designated a geographic part of the market accounting for over 60% of the market as “sufficiently competitive” and deregulated the supply of MI LL from the eircom network.

In 2023, ComReg again analysed the market, and found that Eircom have maintained (or grown) their market share above 40% nationally and have maintained (or grown) their market share at a level double that of their nearest competitor, in both regulated and deregulated sections of the market.

Eircom's market share in 2018 clearly suggested possible SMP, ComReg's analysis in 2023 again demonstrates a high market share has been maintained in parts of the market (or quite possibly grown but unfortunately a like-for-like comparison).

ComReg's own data strongly suggests that Eircom in fact have SMP in some or all of the geographies already deregulated, and that the methodology used in 2020 overestimated the level of competition. There is insufficient evidence that Comreg have attempted to understand or explain the Eircom's sustained and overwhelming market leadership in the

provision of MI LLs in both the retail and wholesale markets – for example analysis of actual price trends in retail and wholesale markets.

Given this harmful outcome, we therefore do not understand or agree with ComReg's proposal to reduce the thresholds of the algorithm used in this methodology.

B) ComReg's decision to change the definition of the services in scope for the MI LL Wholesale market prevents an assessment of true competition for MI LL services. In tables 15,16 and 17, we ask that ComReg publish a like-for-like version of Tables 15, 16 and 17 to exclude Dark Fibre not used to build MI LLs for sale and contended GPON services. It would also be helpful if ComReg could provide the same tables including these services for all years. We do not agree that dark fibre or GPON services can be considered part of the market.

We do not agree that GPON/Broadband based Ethernet services should be assessed as part of the WDC market for MI LL, as they are delivered over a shared and contended access network and are therefore excluded - "...the distinguishing product characteristics of LLs are their ability to provide dedicated and uncontended connections and symmetrical speed". All leased lines have a dedicated (exclusive) use of the network access. All GPON based services share their network access with up to 64 other users. Various techniques can be used to improve performance to an individual endpoint, e.g. QoS on some percentage of the customers usage, reducing downstream speed to make the service design "look" symmetric, these techniques can also be employed in radio connections, but radio leased lines have been properly recognized as not meeting the definition. These mitigations (whether applied to a broadband or ethernet GPON endpoint cannot change the contended nature of the network service.

We agree with ComReg's characterization of GPON LL as an intermediate option as it presents to end users between broadband and MI LL. For regulatory purposes we see that it is far more closely aligned with the WLA for regulatory purposes.

SIRO have been providing ethernet over broadband (Siro "Lightburst") services for many years, as have Eircom with their VEA offering. Siro have not "grown from 0% to 0-10%, by including them in the market analysis Comreg have underreported eircom's MI LL market share.

We do not agree that dark fibre should be considered as part of the market for MI LLs service.

WDC defines MI LL as a "dedicated transmission capacity". Dark fibre has a length and a diameter and a variety of physical properties, it does not have a data capacity, it is layer 1 passive infrastructure that has the potential to carry data signals at various capacities depending on connected equipment. It does not meet the definition.

Dark fibre is of course relevant to the market for MI LL. Operators use their own dark fibres to connect parts of their network, operators use 3rd party dark fibres to connect parts of their network, end users use their own equipment to connect parts of their network instead of paying someone else to do so.

Where an end user self-provides their own transmission capacity by acquiring some fibre or radio spectrum or copper paths and complementing it with their own equipment, management platform and personnel, they have avoided the MI LL market. They are not part of that market, because they do not buy or sell MI LLs. We agree with ComReg's conclusion that despite the widespread use of dark fibres by end users like HEANet, Government and Google, dark fibre is not part of the retail market.

We do not agree that it is part of the wholesale market for the exact same reason. Any SP with a need for dedicated transmission capacity can choose to build it from their own inputs, buy in the inputs they need, or simply buy a 3rd party MI LL. In each case the resultant MI LL certainly IS part of the market, but the 3rd party component inputs (like equipment, layer 1 media, support and management) that may or may not be needed is not.

Wholesale or retail supply of dark fibre helps another party to build an MI LL. If that party is an end user, this activity is not part of the market for MI LL.

If that party is an SP building dedicated transmission capacity for own use (e.g. connecting a mobile high site), then that is not part of the market for MI LL, unless Comreg designate self-provided fibre connections to mobile high sites as also part of the market.

If that party is an SP building dedicated transmission capacity for sale to an end user or another SP, then that dedicated transmission capacity service is part of the market for MI LL, but the Layer 1 component is not. We note that dark fibre is already provided for in Ireland's PIA market remedy.

Comreg should exclude dark fibre from both the retail and wholesale market analysis, but always include MI LLs that are created for sale in the wholesale market using own or 3rd party fibre

C) Maintaining Interconnects in Ireland

Wholesale managed bandwidth is an insufficient remedy to Eircom's proliferation of interconnect nodes needed to consume regulated MI LL services.

The cost of maintaining interconnect presence is becoming prohibitive now that eircom are free to price backhaul as they see fit in deregulated areas (set to grow again based on an expanded list of Trunk Nodes/new adds to Zone A WPZs). In confidence &

&

We see merit in the Ofcom approach of mandating inter-exchange dark fibre offer as a remedy to allow operators to maintain their coverage from a node in the same area without forcing the supply of unnecessary equipment, power and management services. We reference the Ofcom rationalization for that remedy¹.

D) Change of Sensitivity to Test A1

We believe the predominant volume of migrations from Zone A to Zone B of commercially viable areas (i.e. those areas with customers and not covered by NBI under state aid) is most likely due to the change in the sensitivity test of 75% to 60% of two access networks available within 50m of the customer premises. See Table 1 below for the count of WPZs that shift between areas, and the addition of 517 WPZs to the count of 2024 A1 WPZs. This is material. In A2.1, this parameter change adds approx. 1,000 connected premises into Zone A, of a total of only approx. 14,000. This is a substantial largely unsupported shift.

The justification for this appears to be a comment by the European Commission with no detailed supporting analysis and high-level benchmarking of a few countries without any actual analysis to similarity of the market situations in those countries. Whilst we agree benchmarking can be helpful, it must be used with caution, and we note the comment of the Irish High Court in its work to resolve the Vodafone vs ComReg appeal concerning Termination rates (ComReg 13/80). Whilst this comment was related to cost comparisons not being considered, the actual detail of different network/commercial and regulatory environments is equally complex.

¹ <https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/148271-review-of-physical-infrastructure-and-business-connectivity-markets/associated-documents/pimr-bcmr-llcc-final-statement-introduction.pdf?v=324045>

Table 1

Zone A/B Change		1										
2024 Area												
Count of 2024 Zone		Column Labels										
Row Labels		A1	A2	A3	A4	A5	A6	A7	B1	B2	Grand Total	
A1										65	65	
A2										9	9	
A3										20	20	
2020 Area A4										270	14	284
A5										2	1	3
B1		428	96	44	109	3	32	20				732
B2		89	13	10	232	3	15	196				558
Grand Total		517	109	54	341	6	47	216	366	15		1,671

For example, in the UK the development and openness of the regulated PI market is many years ahead of Ireland and now being widely used. We do not even have certainty of prompt genuine in-life repair (i.e. after successful installation, service in a successful operation state and then a fault) for PI in the Irish market. For such a crucial change to the level of de-regulation in the WDC market we consider ComReg have not properly evidenced this substantial change.

E) Potential for Margin Squeeze between Zone A and B including into the NBI IA.

Firstly, we do not agree with ComReg regarding no price control in the Intervention Area. We consider the greater incentive for the incumbent is the cross cross-subsidy of prices for multi-site deals between Zone A into Zone B (including for the NBI IA region) in the form of a type of margin squeeze where prices can be dropped to such a point in Zone A to cross subsidise for regulated prices in Zone B. We note ComReg touch on this concern at clause 5.23. We consider it is then difficult for other providers (and potentially NBI) to compete. We would invite ComReg to monitor the market in the both Zone A and Zone B (including, and we know this is not easy for both Comreg and the Operators) actual bid pricing through Statutory Information Requests) to watch for excessive but more importantly margin squeeze issues between Zone A and Zone B including the NBI IA linked to multi-site bids and deals or any variation that is not called a multi-site deal but has the characteristics of such.

F) The Impact of Deregulation

In confidence &&

2.0 Response to the detailed questions

Q. 1 Do you agree that the main developments identified in the provision of retail LL market are those which are most relevant in informing the assessment of the

Relevant Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual/empirical evidence supporting your views.

BT Response R.1

We would like to offer the following comments:

a. GPON

BT considers that some flaws have been introduced into this market review that negatively impact on ComReg's analysis of the market and the potential need for regulation.

Comreg have expanded the retail market definition to include GPON services as viable WDC network planforms, and therefore the fast-growing GPON coverage as relevant to the competitiveness of the retail market for WDC services.

BT does not agree that "GPON LL" services meet the product characteristics of a leased line, as proposed by ComReg at clause 2.16.

The danger of casually including them is to inflate to notional total market and dilute Eircom's market share, while overstating the competitive pressure on Eircom's leased line offering.

ComReg at clause 2.14 identifies ethernet connections effected over a GPON access network as "point-to-multipoint" services. This is incorrect, such connections are E-Line connections delivered as either "half" or full leased line connections to meet a customer need. Multiple instances of such E-lines could be combined by a service provider in an "E-LAN" or VPLS to provide a point-to-multipoint Ethernet service to an end user.

Ethernet services over GPON are distinguished as 1:1 as opposed to N:1, that is to say they present at the handoff to the SP with a service VLAN identifier of their own instead of many customer endpoints being mapped to a common service VLAN (N:1) and therefore needing to establish a unique connection dynamically using IPoE or PPPoE.

In 2.16, ComReg suggest that such 1:1 Ethernet connections, when configured with a symmetric bandwidth, traffic CoS, "guaranteed high-quality service availability (based on active network management, where required) and business class SLAs, meet the product characteristics of a Leased Line.

GPON Ethernet connections are not "dedicated transmission capacity", they are contended at the access layer with all connections of then GPON tree contending for upstream and downstream capacity from their shared interface to the OLT.

While BT agree that it is theoretically possible to equip and resource a GPON network service model to offer a limited emulation of the WDC definition, we note that only one Irish operator offers an optional upgrade to business class SLA parameters, and we question whether there is any evidence that this offering is competing effectively in the WDC market.

Assigning a dedicated VLAN to a GPON endpoint is a minor technical development. It has the effect of making the connection more convenient to consume for the end user (by removing the

dependency on the customer establishing the network connection dynamically from their router. It does NOT change the nature of the service or confer additional benefits beyond those available to broadband connections on the same GPON tree.

Configuring this connection with a symmetric bandwidth is a tactical degradation of the service, intended to make the service specification look more like a genuine WDC.

Is the supply of Ethernet over NGA part of the WDC market or the WLA Market?

Both Siro and NBI do offer WDC services over dedicated fibre, “SES” supplied by NBI and “Lightflame” as offered by SIRO. Both also offer GPON symmetric services – “Business Bitstream 1.1” from NBI and “Lightburst” from SIRO.

In characterizing “GPON LL” as a WDC service, ComReg appear to be assign unwarranted significance to SIROs decision to revise their Lightburst services and reduce the downstream speed to match the upstream speed – and insufficient significance to the fact that all three providers assure the service identically to mainstream consumer broadband as standard.

It is instructive to compare the wholesale service pricing when understanding Ethernet over GPON – both NBI and Eircom already price the service much closer to the broadband WLA equivalent than the truly dedicated WDC equivalent.

In confidence ☞ ☞

The reason leased line services continue to command such a high (400%+) premium is because they offer a superior service in the following ways

SLA. Service providers design delivery and service management processes appropriate to the network platform. GPON networks offer impressive bandwidths but are fundamentally designed to make efficient use of access fibre to minimise asymmetric connection costs per user. All three GPON providers above support their Ethernet over Broadband service with a Broadband class SLA. That is why the offered price points are very close to the equivalent broadband offer, and a fraction of their dedicated connection price.

Technically, because leased line access is truly dedicated, it can be relied upon as an input to a service specification without depending on the supplier's non-transparent management of traffic QoS or (in the case of GPON) unpublished and non-transparent GEM profile specifications. The SP and end user knows exactly what their paying for.

High Capacity. Dedicated access offers maximum symmetric scalability, from 1Gb to 100Gb. An end user who invests in dedicated p2p fibre delivery to their premises knows that from that point their bandwidth needs can be readily met now and into the future.

Ethernet services delivered over broadband connections are not part of the market for Retail or wholesale WDC services, as they do not offer dedicated, nor uncontended, nor natively symmetric nor “leased line class” elevated service levels. They can mimic a symmetric leased line service, but even the addition of a proactively managed terminating device cannot support leased line service level commitments.

They are more properly understood as a useful improvement to broadband service options for the Business market and so part of the retail and wholesale WLA market.

The inclusion of GPON services in the retail market definition associated with the WDC market creates a significant distortion – the 2020 market leader shares are largely stable while we see extraordinary apparent growth from operators like Magnet, Digiweb and other OLOs. This is deceptive, they are simply actively marketing broadband services into the SME market and opting for the Ethernet service variants while doing so. Where the market definition excluded these broadband class and wireless service variants, it seems likely that Eircom's market share has not fallen and may even have grown.

Further deregulation should be based on validation of the assumptions that led to the 2020 deregulation of over half the market. In those geographies, did Eircom's market share grow, hold or decrease? Comreg's analysis was that the presence of multiple competitor networks should have created sufficient competitive pressure to reduce Eircom's market share in the geographies designated as "Zone A". Comreg does not appear to have analysed this.

b. Dark Fibre

We do not agree with the inclusion of dark fibre in the WDC MI LL market. Please see our comments in the introductory "Key Points" section of this response.

c. Low bandwidth traditional interface services –

We agree this is now a legacy market segment which is declining as customers migrate to fibre broadband or higher speed technology. However, we also note some customers, including some offering critical national services & have displayed a dependence on legacy technology with extensive lead-times/dual running periods required before any cancellation. The lack of published information and notifications about the withdrawal of copper is creating a vacuum for customers to make their upgrade decisions.

Hence whilst we understand and accept ComReg's proposed de-regulation for new TI supply, we consider ComReg should pay close attention to some of the critical services still using this technology which are largely beyond the control of most of industry for the withdrawal of copper. From direct experience we are aware in Ireland that some customers are not easily able to accept alternative fibre solutions in the short to medium term. We consider a sunset of 2 years minimum should be provided for the support of existing customers running critical infrastructure services.

d. Business Parks

We remain concerned that ComReg appear to continue the view that once an operator enters the gate of a business park all premises are available. For many business parks, this status is simply not true, and we reference our recent submission to the ComReg Call for Input consultation (24/47)² to ComReg on problems encountered. Hence, even for the retail market we believe ComReg should focus on a list of business parks where open access is not available and adjust the model on page 116 of the consultation to accurately reflect sites available and sites not

² ComReg, Call for Input, facilitating network deployment through infrastructure sharing. ComReg 24/47, 17/06/2024. [Facilitating network deployment through infrastructure sharing | Commission for Communications Regulation](#)

available. For example, can ComReg confirm that the list of business parks in their defined list of Business Parks (Annex 3, page 282) all allow operators reasonable access?

e. SD WANs

We agree with ComReg's description of SD WANs at clause 3.4.5 onwards. We agree that the retail service provides bandwidth flexibly to end users as variable access non-dedicated access over the internet can be mixed with dedicated fixed bandwidth services using traditional WDC products.

f. NBI

Please see our earlier comments at clause a.

Q. 2 Do you agree with ComReg's proposed definition of the relevant retail LL market? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

BT Response R2

We would like to offer the following comments to the retail assessment.

a. GPON

Please see our earlier comments to question 1 (at part a) as to our concerns that GPON is not an appropriate inclusion within the WDC retail market.

b. Wireless Services.

We agree with ComReg's analysis at 3.105 that not enough retail customers would consider wireless Ethernet LLs to be an effective substitute for fibre LLs. We also note ComReg's observation in clause 3.106 that highlights the largest consumer group, multi-site customers, show a distinct preference for fibre LL products. Also, ComReg note this is most explicitly evident in HEAnet's 20% premium scoring for tender submissions for fibre over other mediums for LLs.

Separately we consider high and constant reliability is important to customers of leased lines service given most are prepared to pay a premium for 24/7 service assurance as can be seen by many products offerings. Using wireless increases the exposure of transient reliability during adverse weather conditions that can largely be avoided with fibre services.

c. Broadband Services

We would support ComReg's observations in clauses 3.113. We would agree that a key differentiator remains with the wide difference in service assurance SLAs with leased lines being offered with actively managed Layer 2 NTUs supporting high-quality SLAs – some of which are 24/7/356 with constant service assurance based on automatic service alarms into an appropriately resourced Network Operations Centre. Such SLAs can demand a radically different service design and resourcing by the operator to support and are a key differentiator to leased line services.

d. Dark fibre Services

BT agree with ComReg's conclusion in clause 3.136 and 3.147c that Dark Fibre should not be considered as part of the Retail market for WDC services. ComReg's analysis identifies a relatively large number of instances where end users like HEAnet, GovNet and large multinationals effectively self-provide WDC-class services by buying dark fibre as an infrastructure input to meet the same need, that is an example of substitution where one of the inputs being used is passive infrastructure – which is not part of the retail market for WDC.

e. Bandwidth breaks

For some retail aspects we would agree with ComReg concerning no bandwidth break, however, with services that are more dependent on GPON/Fibre broadband solutions a customer would need to make a risk assessment on using lower service assurance broadband SLAs for business-critical high bandwidth dedicated capacity services. We consider a bandwidth break is needed for some of the bandwidth options concerning whether the risk is acceptable for certain product types.

f. Overall Conclusion on Retail Product Market Definition.

As discussed above and our response to question 1 we summarise our views above and from Q1:

- GPON is not in the same relevant market.
- Wireless Ethernet is not in the same relevant market.
- Broadband is not in the same relevant market.
- Dark Fibre is not in the same relevant market.
- We consider a bandwidth break concerning service assurance needs to be reviewed as to run business critical services over very high bandwidth solutions without an appropriate level of service assurance is questionable.

g. Retail Geographic Market Assessment

We generally agree with the ComReg approach of assessing the geographic approach which appears in accordance with European Commission guidance.

With reference to Demand Side as discussed at ComReg clause 3.155 and as ComReg indicated the nature of contracts indicated this market is national in scope. We would also note that the national nature of end customers combined with regulated and de-regulated locations of their multi-site raised the risk of vertical integration abuse as noted by ComReg in section 5 clause 5.23. We have addressed this in our summary and in question 9.

Q. 3 Do you agree with ComReg’s product market assessment for the Relevant WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

BT response R3

We would like to offer the following Comments to the product market assessment for the Relevant WDC Markets.

- a. Firstly, we note ComReg have made a most significant definition change to the WDC market since its 2020 Decision by including Dark Fibre. This has significantly altered what is included in the market and the associated market shares that we were previously led to believe were correct. In many ways such masks whether the previous regulation worked successfully.
- b. We acknowledge ComReg in its review of the Retail market considered Dark fibre not to be in that Market but to exist. However, we note that ComReg consider it to be in the Wholesale Dedicated Capacity Market. We do not agree that dark fibre is in the Wholesale market for WDC. Like the retail market, it is used by end users and service providers to build their own WDC service, it does not constitute a WDC service.
- c. We would note that dark fibre is not a communication service but merely an input that can allow an SP or end user to build their own dedicated capacity for internal use or (in the case of an SP) for sale. We note this Layer1 medium (like a fibre, or a wavelength or a radio frequency) would need to be complemented with many other inputs to complete a leased line (equipment, optics, service management platform and personnel. Therefore, dark fibre is more correctly defined as passive infrastructure like ducts within the Passive Infrastructure (PI) regulated market. We

note at 5.51 that ComReg indicate it's too early to judge the competitiveness of PI on the WDC market. We note that ComReg have dark fibre as a supply remedy where duct/sub-duct capacity is not available.

- d. We note Ofcom (the UK Communications Regulator) in its 2019 Business Connectivity Market Review commonly called the BCMR³ (akin to the ComReg and European Commission WDC market) found that a market problem existed to reduce the costs for operators connecting to the incumbent's network exchange. Ofcom concluded and determined that competitors to the incumbent should be offered a dark fibre exchange to exchange connection facility between the incumbents' exchanges to assist with reaching the trunk boundaries. The key reason given is this would significantly reduce the costs of Access Seekers connection costs to reach the exchanges as they could simply connect the fibres to the incumbent's network and avoid the costs of providing their own additional and costly electronics at the end of the fibre. For Ireland this would directly improve competition for access seekers to reach trunk nodes which is addressed in question Q5 of the consultation. Today the costs of reaching the end user exchanges are considerable and is limiting the market. We therefore consider this remedy is required in the market. ComReg should seriously consider the Ofcom solution.
- e. Given the work of the last Decision, we acknowledge market segmentation into Markets 1,2,3 and 4 and as per the model at Figure 15 on page 116 but are concerned around the values of the splits as we will address further in our response.
- f. Price List – we observe that the price list in de-regulated markets should be treated with caution and as a starting guide rather than the actual applied prices, particularly for multi-site deals we are often bids.

Q. 4 Do you agree with ComReg's geographic market assessment for the Relevant WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views. ... 119

BT response R4.

We would like to offer the following comments to Q4. Our comments to this question generally follow the order of ComReg's discussion.

³ <https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/148271-review-of-physical-infrastructure-and-business-connectivity-markets/associated-documents/pimr-bcmr-llcc-final-statement-introduction.pdf?v=324045>

- i. We note that ComReg's initial position at ref 4.60 that there is a single market for fibre MI WDC of all bandwidths.
- ii. We agree with ComReg at 4.73 with the use of Workplace Zones – WPZs as a reasonable scale of measurement and based on the 2016 census. It's also consistent with the previous Decision.
- iii. We agree with ComReg's Criterion 1 that that there should be 3 Access Network Operators including the incumbent for competition given the various references such as the Dutch NRA and the UK Cat appeal reference at 4.84(d) provided.
- iv. We do not agree with ComReg's changes to Criterion 2 within this consultation. There has been a significant shift from B1/B2 to A1 and we expect much of this arises from the change in the criterion (see Table 1 and when we look at the commercial impact of changes from B to A, they seem to be largely a result of this change of sensitivity (see earlier comments and BT's Table 1). We find that many of the other changes are commercially moot for various reasons such as there are no customers to be impacted as they are on the right side of the model figure 15 (e.g. areas A4 & A5)) on page 116. We also consider that ComReg has not provided any actual evidence for the change, more a finger in the air benchmark to other countries that likely have other characteristics not considered – such as upstream Passive Infrastructure (PI) products that are fit to support leased lines services – i.e. for Ireland there is no certainty that faulty in-life-duct ducts can be repaired in a reasonable prompt time or even repaired at all. ComReg addresses this need in its definition of the WDC market – i.e. higher quality SLAs. Facilities are available in the UK to address the in-life repair issue hence providing wholesale customer an additional alternative to another operator. The approach also seems to again disregard the comments from the previous consultation that ComReg provide at clause 4.88 that distance is expensive and often difficult to close in practice. In effect changing the sensitivity means more customers will have to cover a longer distance to reach another network. We consider that ComReg need to reconsider this area as a matter of urgency as the proposal has not sought to understand or explain why sensitivities maybe different in other countries. We note the comments of the Irish High Court⁴ some years ago concerning Termination Rates (ComReg Decision D11/12)⁵ and raising serious concerns for bench marking without the underlying analysis.
- v. With reference to clause 4.89 BT is agreeable to the 50-metre distance given distance would be experienced in accordance the practical route such as having to follow the layout of streets and corners rather than as the crow flies. We would also disagree with Eircom at reference 4.90 as the PI product (formerly called CEI)

⁴ https://www.comreg.ie/media/dlm_uploads/2015/12/ComRegHCO1397a1.pdf

⁵ ComReg Decision D11/12 as available on the ComReg Site.

is not yet fit for purpose for the WDC market as we have no certainty of in-life repair once the service has been deployed and was working. Whilst this can be problematic for the Broadband market, prompt repair is a key requirement for WDC service assurance.

- vi. With reference to clause 4.95 we would like to see the analysis for the conservative view and the work in schedule 2. All that is shown is a top-level reduction against percentage without any analysis of the actual commercial impact.

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- vii. With reference clause 4.102 and the above points we cannot agree with ComReg agree with ComReg's view that 60% is fair and reasonable.

- viii. Business Parks Test – We consider that ComReg need to add a further criterion to this test as follows:

- a. A business park for consideration in the test must be genuinely open to 3 access Seeker being able to access. We welcome that ComReg is seeking to regulate this area (reference ComReg Doc Ref 24/47) but anticipate it will be many years before such is effective and likely into the next WDC market review if it is to happen. Our experience is some are reasonable open, but many are not hence there is no value to competition if open access is not available. Even the PI process has difficulties as owner permission must be sought – and it can be even difficult to identify the owners, and then difficult to secure their support. We have found ourselves mostly dealing with property management companies acting on behalf of non-resident owners. In these instances, for us, it has been impossible to identify who the owners are to enable a direct discussion. To quote some business park managers - 'there's nothing in it for them'. We would like to reference our submission to ComReg 24/47 as supporting evidence.

- ix. Treatment of National Broadband Ireland in Geographic Market Assessment
We acknowledge ComReg's approach that NBI has an obligation to meet leased line requests in any part of the IA now. However, in a realistic world we consider whether NBI could meet a customer installation request in a reasonable period where NBI has not yet rolled out network. In our view the request for service would likely be lost to a competitor if the delay was too long. Hence, we consider ComReg should add a period criterion for those LLs that have no realistic opportunity for provision with the IA. Say <6 months.

- x. Comments to figure 15 – Flowchart of the Algorithm

Please see our comments above.

- xi. Views of the geographic Markets

In conclusions we agree with the geographic market area titles in 4.128, however there are details that we have addressed in our comments above that we consider need modification.

Q. 5 Do you agree with ComReg’s assessment of the Trunk – Terminating Boundaries of the MI WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

BT Response R5

We agree with the need for the continuation of ComReg’s assessment of the Trunk – terminating Boundaries of the MI WDC Markets. We consider these an important junction for access of other operators to reach the Eircom terminating segments whilst being able to manage their own trunk costs.

The increase in the declared number of nodes means less Zone B commercials. Based on our experience, this leads to higher operational costs it becomes more expensive for competitors to deliver services from the customer site to the say, Dublin hand-off. We are therefore requesting that ComReg include the regulatory remedy developed by the regulator Ofcom and introduce an Eircom to Eircom Exchange dark fibre remedy to assist operators to compete in Eircom only exchanges. This would benefit both the WDC and the WLA regulated markets and extend the reach of operators into a wider range of more remote customers.

Q. 6 Do you agree with ComReg’s assessment of SMP on the Relevant WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

BT Response R6

We would like to offer the following comments:

- a. General

- i. Firstly, we would like to indicate that ComReg is presenting a different overall market today compared to the 2020 Decision as the inclusion of Dark Fibre and GPON based services into the market account has a significant impact on the size of the market. This complicates an analysis as to whether the previous 2020 regulation was successful.
 - ii. Comreg appear to be deviating from European Commission Guidelines which stipulate “According to established case-law, a large market share held by an undertaking for some time — more than 50 % — is, save in exceptional circumstances, evidence of the existence of a dominant position. Experience suggests that the higher the market share and the longer the period over which it is held, the more likely it is that it constitutes an important preliminary indication of SMP.” In 5.15 Comreg acknowledge Eircom is by far the largest operator connecting these premises, accounting for 40% to 50% of the overall market. Eircom’s market shares almost double its closest competitor (and that competitors share has been inflated by counting dark fibre and GPON services as part of the WDC market. While the Comreg analysis precludes an apples-for-apples comparison it seems highly likely that Eircom’s total market share was high in 2020 and has not materially reduced as would be expected in competitive districts. Rather it recognises the “high likelihood” guided from the Commission that this makes it much more likely that Eircom’s SMP has persisted or even increased since the last analysis. BT suggest that a comparison of 2020 market shares with current will indicate that Eircom’s market share has indeed increased because of the deregulation of 2020 and that this is harmful.
- b. SMP Assessment in MI WDC Market 1
- i. We do not agree with ComReg’s SMP assessment in MI WDC Market 1 because we do not agree with the sensitivity change from 75% to 60% as this alone appears to make a material change to the market. Most of the other changes to the model appear to lead to a moot outcome (as often there are little or no customers in these other areas) hence the main commercial change in this whole market review is being driven by a change in the sensitivity setting in the market 1 test – yet the evidence to support is weak as we explain in our response to question 4.
 - ii. Vertical Integration – Ref clause 5.23 we would agree with ComReg concerning potential incentives for high value multi-site sales. We consider ComReg need to consider the opportunity for a margin squeeze between Zone A and Zone B including the NBI IA Zone B. A Net Revenue Test⁶ as applied to mixing multi-site

⁶ ComReg 18/96a https://www.comreg.ie/media/dlm_uploads/2018/11/ComReg-1896a.pdf

sales that cover both regulated and de-regulated WDC areas. We are concerned that in large multi-site deals there are strong incentives to create a margin squeeze by reducing Zone A prices to cross subsidise zone B pricing and thereby win the bid. A problem is that Zone A is governed by Competition Law which appears to permit a much low real cost floor that is difficult for entrant operators to commercially achieve given lack of economies of scale etc.

- iii. Overall conclusion on SMP Assessment in MI WDC Market 1. We do not agree with the change from 75% to 60% as this has a major impact on the transfer of B's to the A market and ComReg have not provided empirical evidence supporting. Separately we are concerned to ensure that ComReg also address the incentive to link Zone A and Zone B for multi-site deals to the detriment of competition. We would refer ComReg to the above text in ii for margin squeeze issues and a Net Revenue Test NRT.

c. SMP Assessment in MI WDC Market 2

- i. We would generally agree with ComReg concerning the lack of competition against Eircom in Market 2 given their very large and sustained market share (as per consultation foot note this is between 60% and 70%) and there is a high barrier of building actual physical networks. We would also take issue with ComReg at clause 5.43 as the offering of WDC requires a high standard service assurance and this is unfortunately missing from the 2024 PIA Decision. Such maybe be possible over poles as more rural alternative networks would likely have access to poles, but we find at this time there is no certainty for prompt in-life-repair for more urban PI duct-based services. We would fully agree with the sentiment of the last sentence of clause 5.43 to monitor the upstream market for progress.
- ii. We also agree with ComReg at clause 5.38 that test 1 highlights that a high degree of CPs is not within 50 meters of at least two alternative networks.
- iii. Vertical Integration – we agree with ComReg at clause 5.39 that Eircom has a ubiquitous network whereas other providers are more localised as determined by the M1 test. We would also strongly highlight that the eircom's upstream PI falls far short in supplying a standard of service assurance to support the SLAs required for WDC services.
- iv. With regards to clause 5.43 ComReg note the low usage of PIA for alternative network operators, and we would request that ComReg start to investigate in detail why this is the case. For example, the poor service assurance SLAs (that were not agreed through negotiation) that hinder the ability for others to meet the key high SLAs demanded in the WDC market.

- v. Conclusion on existing Competition in the Market 2 MI WDC Market.
Based on the assessments discussed above we agree with ComReg at clause 5.44 that Eircom could act independently of competitors, customers and consumers.

- d. SMP Assessment in MI WDC Market 3
We agree with ComReg's assessment of Market 3, and the analysis concerns the potential for customers in this area rather than existing competition.

- d. SMP Assessment in MI WDC Market 4
We agree with ComReg's assessment of Market 4, and the analysis concerns the potential for customers in this area rather than existing competition.

Q. 7 Do you agree that the competition problems and the associated impacts on competition end users identified are those that could potentially arise in the Zone B MI WDC Markets (and related markets)? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

BT Response R7

We agree with ComReg's assessment of the potential competition problems in Zone B. The approach using counterfactual analysis enables the review of the market should it not be regulated and efficiently highlight the competition problems to be addressed through Regulation.

a) Exclusionary and exploitative practices

Access to the wholesale WDC is essential for Access Seekers when their networks do not reach their customers. As such, they may rely on wholesale input from Eircom. Reliance on Eircom at a wholesale level for WDC is prevalent due to the characteristics of Leased Lines whereby the end-customers requires all their sites to be connected by a single provider. As Eircom has a ubiquitous network and dominance in Zone B, obstacles to Access becomes a competition problem as it has potential to distort the market in favour of the SMP Provider. The consequence of such a refusal for the Access Seeker is significant as it can prevent the provision of services to their customers. Similarly, the revocation of Access is disruptive to the Access Seeker as it prevents them from continuing to provide service to their customers. Access is likely to put Service Providers at a competitive disadvantage if sufficient safeguards to ensure its transparency, non-discriminatory, fair and timely provision are not in place. Eircom as a provider having

dominance in the area has the assets and incentives to create obstacles to Access. As a vertically integrated organisation, Eircom may have additional incentive to obstruct Access. Indeed, as it competes at the retail level with Access Seekers, preventing Access at the wholesale level would create a competitive advantage at the retail level.

Eircom in Zone B may also have an incentive to artificially inflate or deflate the prices for competitive advantage. For instance, Eircom deciding to raise the costs of access to the wholesale input for MI WDC would likely in turn raise the prices at the downstream level. End-users could deem the Access Seeker not competitive enough and decide to switch operators as the result of the wholesale price increase.

As the Access Seeker has in practice little options for their wholesale input other than Eircom, raising the costs at the wholesale level creates a competitive disadvantage, especially vis-à-vis the retail arm of Eircom. Equally, they could decide to drop their price significantly as a short-term strategy to force another access provider out of the market or preventing entry to gain more market power, putting the Access Seeker at an economic and competitive disadvantage. The reduction of prices may be appealing to end-customers that will decide to switch providers. This would distort competition and increase market power for Eircom, at the expense of Access Seekers and options for end-users. They may also decide to both increase prices at the wholesale level and decrease their prices at the retail level, creating an environment where the Access Seeker is forced out of the market due lack of profitability.

b) Non-pricing practices

An SMP Service Provider could engage in delaying tactics in a manner where it appears Access has been granted but the process is slow and inefficient, to the extent that in effect, the Access Seeker is impeded from successfully providing service to their customs. As ComReg points out, delaying tactics could also manifest in the form of inefficient order management systems where placing orders is particularly inefficient or cumbersome, or where the support to the Access Seeker is not efficient enough so that it affects its ability to serve their own customers. Delaying tactics could also be regarding negotiations whereby an SMP provider may engage in lengthy negotiations to prevent an Access Seekers to get Access in a timely manner, thus, putting them at a competitive disadvantage. Cumbersome administrative could also be a delaying tactic to slow down operations for competitors.

To efficiently avail of the wholesale input, the Access Seekers need to be provided relevant information, such as information on product development, launches, technical information, product availability etc. Withholding such information is likely to create a competitive disadvantage for the Access Seeker as they cannot avail to the service to its full extent. For SMP provider, particularly when vertically integrated this asymmetrical

provision of information may provide to the retail arm of the SMP provider or any other provider they would have shared information with a competitive advantage at the retail level. This could also result in difference in the quality of service or availability of products provided to Access Seekers, as they do not hold all relevant information, they may be unaware, other (and better) options are available.

As discussed earlier, revocation of access can also create a competitive disadvantage as in its intent and effect, it obstructs the ability for the Access Seeker to provide its Leased Lines service. An SMP Access Provider may have the incentive to revoke Access unreasonably, especially when competing through its retail arm in the downstream market.

In conclusion we concur with ComReg determination that in Zone B, “Eircom would have the ability and incentive to influence competition through effects on prices, innovation, output and the variety or quality of services provided”.

c) We experience issues with Eircom’s pricing, zoning, timing of Zone B discounts, billing descriptions and inventory details. We’ve raised billing issues with ComReg – say, related to Provincial O that so far remain unresolved. We are aware Eircom plan to address some issues as part of Project Alpha – for 2026. This is six years post deregulation.

Q. 8 Do you agree with ComReg’s proposals in respect of non-pricing remedies in the Zone B MI WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

BT Response R8

Considering the competition problems identified in Zone B, we agree that pricing remedies only are not sufficient. We agree with the principle of combining those with non-pricing remedies.

a) Regarding Access

It has been demonstrated that SMP Providers, especially those who are vertically integrated and competing at the retail level have the means and incentive to impede Access.

Access Seekers may seek to rely on Eircom’s ubiquitous network as an input to serve their customers. This is particularly the case for WDC as it often involves multi-site contracts. Zone B is defined as an area where Eircom has dominance due inter alia to a lack of infrastructure-based competition. Ensuring reasonable, fair and transparent access is a sine qua non for the Access Seekers needing wholesale input to efficiently compete and

attend to customers. We believe that the decision to maintain Access obligations is necessary to avoid distortion of the market and proportionate.

We would agree that Access obligations under PIA decision is insufficient to assume Access under WDC is met. Access Seekers need access to Eircom products to compete, as access to Duct and Poles only cannot meet their needs in Zone B particularly the key need for high quality service assurance. We consider that the PI Duct in-life-repair available to Access Seekers (i.e. to deal with service faults once the service has been installed and was worked successfully) does not give certainty for a prompt repair of the service.

We concur that the Access obligations apply to Access to OSS and other relevant systems as they are essential to place orders. Obstacle to avail of these services could be a delaying tactic which poses competition issues. We believe that metrics is needed to monitor their performance as their unavailability have direct impact on Access Seekers' ability to provide service to end-users.

Eircom should meet all reasonable requests for Access; and there should be an assumption that all Access requests are reasonable unless proven otherwise by the Access Provider. Access should be provided under fair, transparent reasonable conditions and in a timely manner. We concur that refusal should be exceptional and solely based on technical or network integrity considerations. The grounds for refusal should be clearly outlined in writing for transparency reasons but also to enable the Access Seeker to address the issue. We agree with the need to monitor the Access requests and categorise them. This could act as a deterrent and ensure there is no abuse in refusing access.

We support ComReg's initiative to subject withdrawal to prior notification the disruption it may cause to Access Seeker's operations. We would also recommend that ComReg systematically engages with the relevant Access Seeker that the Access Provider seeks to withdraw Access from. This would ensure both parties have an opportunity to address the issue and may reduce risks of further escalation.

b) On negotiation: good faith

It is likely that there exists power imbalance between some Access Seekers and Eircom especially in Zone B where Eircom has dominance and assets that the Access Seekers needs for their operations. There may also be a knowledge gap since Eircom is best placed to know their own product and service. It is therefore essential that the obligation to negotiate in good faith is supplemented by a transparency obligation to ensure that relevant information is provided to the Access Seekers and not withheld by the SMP Provider as to create a competitive benefit to them.

Delaying tactics, asymmetrical information can also be used by SMP Providers during negotiation of terms which is why negotiating in good faith is critical to ensure parties can negotiate on a more levelled playing field.

c) Product development

Information on product development is critical for Access Seekers to plan and drive innovation. It is particularly important when the Access Provider is vertically integrated as at the downstream level, absence of product development and engagement could provide a competitive advantage. We concur with the requirement to maintain and observe product development processes. (as recently as December 2024, we witnessed Eircom publishing launch information for a GEA service they assert has been available for sale since August). We also consider that the information should be communicated properly, clearly and openly to the industry such as at the PDW as sometimes new written product proposals on the PCRL are not always well described and even to experienced people in the industry it is difficult to decode what is being proposed. Hence such should be properly explained at the Product Development Workshops with the need for industry to make requests.

d) SLA

MI WDC is inter alia defined by the heightened service level associated with them. As an Access Seeker relying on wholesale input, the delivery and the performance of the product is a key priority in providing LL to their end-customers. Due to the position of dominance in Zone B, it appears essential that there are some requirements as to a) conduct during negotiation, due to the asymmetrical negotiation power b) the content of the SLA. Our direct experience has proven SLAs to be particularly difficult and lengthy to negotiate. In an area such as Zone B, where there is dominance, obligations regarding SLA appears important to ensure competition is not distorted.⁷

e) Non-discrimination and Transparency

As a vertically integrated organisation, Eircom has the incentive to favour its own retail arm while competing downstream. This could be in terms of information provision, product availability, SLA etc. It is therefore critical that Access Seekers benefit from the

⁷ From ComReg Site - Case 850 – Service Level Agreement Dispute – Information Notice 17/36. Posted: 11th May 2017

Reference Number:

17/36

same terms and conditions as Eircom's own retail arm to compete or potentially between Access Seeker's themselves. For example, despite having active managed devices on all SEAs and having thousands of SEAs in service, eircom have not yet made it possible for an access seeker to conduct a live check on the service status of an SEA (as they can with much lower cost unmanaged broadband services).

Non-discrimination obligations cannot be efficient without transparency and available documentation to the access seekers forms a key part of transparency.

f) Documentation

Documentation is a key aspect for Access Seeker. It ensures that the non-discrimination requirement is in place, it permits them to access relevant information for their planning or the in-life performance of the product. It further ensures the quality and consistency of the information provided, thus avoiding any information asymmetries or poor-quality information. Detailed documentation is also needed in case of disputes, so both parties can rely on the same information. Consequently, changes on this documentation must be accurately tracked. Maintaining marked and unmarked versions of the documents and appropriate version control is essential for transparency purposes and to ensure terms are not changed without the knowledge of all relevant parties. Version controls should further include the content of the changes.

Price differences between Zones A and B is significant so transparency on the bills is critical, especially since Access Seekers tend to buy both regulated and unregulated (Zone A) service from Eircom. Transparency in this regard would mean billing with sufficient details for the Access Seeker to review the charges applied. In turn, this reduces the potential for dispute or make dispute process more efficient as the relevant information is detailed enough.

G) KPIs

For Access Seeker, performance assurance and equality of performance is essential as they are reliant on Access Provider input. We agree that the KPI are an efficient means to compare performance against the agreed SLA. As ComReg pointed out it is also a means to monitor non-discrimination.

Q. 9 Do you agree with ComReg's view that a differentiated pricing remedy (of no price control) should apply to Eircom with respect to MI WDC products and services in the IA in the Zone B MI WDC Markets, while the obligations of access, non-discrimination and transparency will continue to apply to the MI WDC products and services in the IA? Please provide reasons for your response.

BT Response R9

Firstly, we do not agree with ComReg regarding no price control in the Intervention Area. We consider the greater incentive for the incumbent is the cross cross-subsidy of prices for multi-site deals between Zone A into Zone B (including for the NBI IA region) in the form of a type of margin squeeze where prices can be dropped to such a point in Zone A to cross subsidise for regulated prices in Zone B. We note ComReg touch on this concern at clause 5.23. We consider it is then difficult for other providers (and potentially NBI) to compete. We would invite ComReg to monitor the market in the both Zone A and Zone B (including, and we know this is not easy for both Comreg and the Operators) actual bid pricing through Statutory Information Requests) to watch for excessive but more importantly margin squeeze issues between Zone A and Zone B including the NBI IA linked to multi-site bids and deals or any variation that is not called a multi-site deal but has the characteristics of such.

We would ask that ComReg review/update its Net Revenue Test (NRT) that it had Oxera develop.⁸ and bring forward a more relevant price control in the for a margin squeeze test / net revenue test between Zone A, Zone B and any other incentives within a bid.

Pricing is not the only the competition problem possible in Zone B and the presence of NBI solely is unlikely to fix these problems. Therefore, we agree that other non-pricing remedies should be maintained in Zone B portions that are in the IA.

We consider that ComReg should actively monitor the operation of the Intervention Area going forward as regards the interaction and competition between the key providers. The rollout of NBI is progressing based on published information so significant issues and interactions at boundary areas with the Commercial Area are no doubt starting to occur. We would be concerned there is a potential for under-pricing without any pricing obligation.

Q. 10 Do you agree with ComReg's view that a cost orientation price control obligation should be maintained for Eircom's MI WDC products, services and associated facilities, including WDM services, outside the IA in Zone B of the MI WDC Markets? Please provide reasons for your response. ... 198

BT Response R10

Pricing obligations remain necessary regarding the competition problem of the Zone B area as there is an incentive to practice excessive pricing or even under-pricing to win multi-site bids thus potentially reducing competition.

We would agree with maintaining the cost orientation price control. It creates a consistent and predicable regulatory environment. This, in turn, creates an incentive to

⁸ https://www.comreg.ie/media/dlm_uploads/2018/11/ComReg-1896a.pdf

invest as it enables players to have a long-term investment vision with greater confidence without fearing market conditions will change.

It further does not destabilise the market, as the framework remains, this further enhances predictability for end-users and alternative operators.

This model also guarantees a return on investment and reasonable rate of return for the SMP providers, which ensures the measure is proportionate.

We are of the view that the Cost Orientation alone is not sufficient given the operation of the market and large multi-site customers. We would ask ComReg to look at actual pricing (not price lists) which we consider will far better inform ComReg of how the market works today. In our view the combining of Zone A and Zone B pricing in bids needs serious consideration by ComReg.

We consider that given prevalence of multi-site customers, that in addition to the cost orientation regulation, there should also be a regulatory remedy to prevent the incentive where pricing within Zone A could be used to enhance the ability for the incumbent to effectively subsidise Zone B pricing within a multi-site bid. We consider this so important that we request ComReg to conduct a deeper review or further consultation into Zone A with Zone B multi-site pricing. We note ComReg considered the combining of regulated and non-regulated pricing in the past for another market with Oxera⁹ supporting ComReg's work in this area. We understand the regulatory control is a net Revenue test and strongly consider this is needed in Ireland within the WDC market.

Q. 11 Do you agree with ComReg's view that Eircom should charge the current Zone B rental prices in the LLRO price list (i.e., the pricing continuity approach), as fixed price points, for Eircom's MI WDC products and services, including WDM services, outside the IA in Zone B of the MI WDC Markets, and the current rental prices in the LLRO price list for the associated Eircom interconnection services? Please provide reasons for your response.

BT Response R11

With the introduction of a Net Revenue mechanism discussed in our response to question 10, we would agree with price continuity approach as it enables predictability and does not disrupt the market as the framework remains. It encourages investment with confidence as the regulatory landscape is stable. Maintaining a fixed price point prevents excessive price drops. As demonstrated earlier, this could be an exclusionary practice to drive alternative operators out of the market by impede their profitability in the downstream market. Dropping prices excessively would incentivise customers to switch

⁹ https://www.comreg.ie/media/dlm_uploads/2018/11/ComReg-1896a.pdf

operators, thus, hindering the alternative's operator to have a return on investment or make profit. Without the Net Revenue Test, it's not clear whether the price list is the effective price within bids. We consider ComReg should look at actual pricing and pricing mechanisms in this market.

We note that logical connections are included in the circuit charge for GEA access, and we again suggest this should be the case for logical connections from SEAs handed off "same node".

We consider the obligation of price transparency for the regulated products acts to discourage an SMP operator from discriminatory practices where regulated prices are required, however where regulated and non-regulated Zones are combined the situation is not so clear cut as discussed above and in our response to Q10. Such a price list should also be required to publish any product variations or product options that can be purchased. We would agree with ComReg's concern at 5.23 that the strong existence of multi-site deals creates an environment vulnerable to pricing issues.

A price floor is a necessary measure considering these potential competition issues. As wholesale price also influences retail prices, it creates stable pricing at the retail level.

This approach also allows a return on investment for Eircom as evidenced by ComReg's information on revenue increase for Eircom (paragraph 7.188).

Cost continuity would fulfil the objectives of enhancing investment by creating a favourable and predictable landscape for long term investment and promoting competition by putting in place safeguards against excessive price drops.

Q. 12 Do you agree with ComReg's view that the charges for co-location services and the upfront (non-recurring) charges for connections should reflect no more than the actual efficient costs incurred by Eircom plus a reasonable rate of return? Please provide reasons for your response.

BT Response R12

Firstly, we agree with ComReg in 7.196 that cost orientation should be applied to support a level playing field for efficient operators to compete.

We also agree with ComReg's position in clause 7.203 to charge for co-location based on an HCA basis given this should represent the costs eir paid for the location of its own equivalent facilities, but we believe ComReg do need to establish safeguards to ensure other non-essential components are not included in the price. In addition, we would consider the charges for power and cooling should align with eir's own efficient costs. A further safeguard is ComReg should determine whether HCA costs are efficient and not payment for inflated internal upstream facilities.

We also note Ofcom in its 28 June 2019 Business Connectivity Market Review (BCMR) Statement introduced a regulated exchange to exchange dark fibre service in the UK to further limit the costs to other parties interconnecting with the incumbent. The rationale was such would avoid unnecessary equipment costs to the entrant operators – i.e. connect in a similar way that the incumbent would inter-connect its own network and avoid many additional expensive pieces of interface equipment.

Q. 13 Do you agree with ComReg’s view that Eircom should maintain its cost accounting obligation in relation to its Modern Interface Wholesale Dedicated Capacity products, services and associated facilities? Please provide reasons for your response.

BT Response R13

We would agree with ComReg maintaining the cost obligation for the following reasons:

- The incurred cost is the basis of price-related obligations which are safeguards against artificially inflating/deflating prices, therefore it is critical Eircom provides these costs and justifies them to ensure successful pricing remedies.
- The methodologies used also ensures that Eircom recovers its costs therefore it is essential to have a record of these costs.
- Cost accounting is also a transparent mechanism to monitor to other related non-price remedies such as non-discrimination, accounting separation etc.

Q. 14 Do you agree with ComReg’s view that Eircom should continue to maintain its accounting separation obligation in relation to its Modern Interface Wholesale Dedicated Capacity products, services and associated facilities, and for the avoidance of doubt this means the inclusion of dark fibre in the MI WDC HCA statements and AFI statements? Please provide reasons for your response.

BT Response R14

As Eircom proposes different products and services, it is only through accounting separation that we can obtain granular financial information related to WDC MI.

This also enables the monitoring of compliance with price-related on non-price-related obligations due to the potential negative impact Zone B could be subjected to. Accounting separation is also a deterrent as it provides transparency of financial information which can be used to measure compliance.

We would agree that TI should be excluded from accounting separation as this legacy technology-based market is declining for new supply and with existing customers migrating out of this version of the product. However, to ensure compliance during the transition we consider prices should continue to a sunset period, we would advise that the TI WDC remains including during that period.

Q. 15 Do you agree with ComReg’s view that Eircom should continue to maintain its statement of compliance obligation in relation to its MI WDC products, services and associated facilities in the WDC market? Please provide reasons for your response.

BT Response R15

We believe the obligation to maintain a SoC should continue.

ComReg has demonstrated that Zone B is subject to competition risks and bar regulation, Eircom may have incentive, assets and institutional knowledge to put in place anti-competitive practices. ComReg further outlined different remedies to address these competition problems. To improve the effectiveness of these measures, by requirement statements of compliance by senior managers, we believe a SoC is both a necessary and proportionate requirement. The purpose is for Eircom to outline what measures are in place internally to comply with SMP regulations as well as the controls and a high-level company sign-off.

We believe such a public document is a safeguard and participates in ensuring compliance. It further builds trust within industry as Access Seekers can rely on the document to understand Eircom’s compliance.

Q. 16 Do you agree with ComReg’s proposals on the withdrawal of SMP remedies on Eircom in the LB TI WDC Market and in WPZs that have moved from Zone B MI WHQA Markets in the 2020 Decision to Zone A MI WDC Markets ComReg Document 24/92 Page 313 of 319 in this Consultation? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

BT Response R16

We would like to offer the following comments:

a. Withdrawal of obligations in the LB TI WDC Market

We agree with the withdrawal of regulation for the new supply of LB TI WDC as demand for these legacy services continues to decline with trends showing a preference for MI WDC.

However, whilst we have no issue with the de-regulation of new supply of TI services, we are concerned that some Critical Network Infrastructure (CNI) customers appear unable to migrate from TI based services to MI services within the next 1 to 2 years. Given the vacuum in Ireland around dates for the closure of copper we are concerned that such CNI could be put at risk beyond the control of industry and potentially such could only be addressed by the incumbent who controls the copper supply. Hence, whilst we don't have an issue with the de-regulation of TI with an appropriate sunset for existing customers, there is an issue that once appropriately and publicly notified, we are seeking for ComReg to further consider the special case of CNI and that a longer sunset maybe required for this specific category of customer.

b. Withdrawal of obligations in WPZs transferring from the Zone B MI WDC Markets to the Zone A MI WDC Markets.

Subject to our position of what is included in the market and what should be regulated and not regulated, we agree with the removal of obligations from Zone B MI WDC to Zone A.

c. Re-instatement of regulatory obligations in WPZs transferring from the Zone A MI Markets to the Zone B MI WDC Markets.

We note from our review of the movement of WPZs from Zone A to B and vice versa that some Zone A WPZs have transferred to Zone B, and we consider it important to point out that ComReg should also re-establish obligations where Zone A WPZs are now in Zone B. I.e. as ComReg have determined that regulation is required in the Zone B WPZs this should also be re-applied to WPZs transferring from Zone A to Zone B.

Other Remarks – To the Draft Decision Instrument

Reference Clause 5.1 of the Draft Decision Instrument

We believe ComReg need to consider the issue of Critical Network Infrastructure CNI given we are aware of CNI customers that are not able to migrate from copper-based TI services prior to the likely removal of TI regulation. We believe these are a special case for a longer sunset period than would normally be allow. The general vacuum around copper withdrawal is becoming an increasing concern.

eir's Response to ComReg Consultation on:

Market Review Wholesale Dedicated Capacity (WDC) Market

ComReg Document: ComReg 24/92



31 January 2025

DOCUMENT CONTROL

Document name	eir response to ComReg Consultation 24/92
Document Owner	eir
Status	Non Confidential

The comments submitted in response to this consultation document are those of Eircom Limited (trading as 'eir' and 'open eir'), collectively referred to as 'eir Group' or 'eir'.

Executive Summary

1. ComReg's failure to conduct a sufficiently detailed market definition and properly assess the closeness of competition has led to a flawed analysis. As a result, its SMP analysis is, at best, misdirected and, at worst, deeply misleading. ComReg's consultation is fundamentally flawed due to critical errors in both product and geographic market definition. These missteps undermine the entire basis of its SMP assessment and the remedies it proposes.
2. **Product Market Definition Issues:** ComReg fails to properly assess supply-side competition, incorrectly dismisses PIA as a viable alternative, and ignores the role of WDC wireless services and FTTP broadband services. This results in a product market definition that does not reflect actual competitive conditions. ComReg relies on light touch qualitative evidence without empirical support, failing to conduct both qualitative and quantitative analysis using cogent reasoning. This approach weakens the analysis and mirrors the flaws highlighted in the Ofcom Judgment, where unsubstantiated assumptions by the telecoms regulator led to flawed conclusions.
3. **Geographic Market Definition Issues:** ComReg's reliance on the rule of three network operators to signify competition is untested and unjustified in an Irish context. ComReg has not conducted an analysis specific to the characteristics of the Irish market to determine the number of operators required for a competitive environment.¹ Similarly, ComReg fails to determine why WPZs which on average have 2 connected premises (or fewer) needs to be as competitive as WPZs with three operators. It also fails to undertake analysis of PIA feasibility versus dig costs and has misclassified the trunk segment (placing it in the wrong location), leading to a distorted view of competitive conditions. ComReg has made certain assumptions and at times placed undue weight on untested (and outdated) operator responses to justify its use of the 3 months or the 50 metre rule. As we will demonstrate, ComReg has not sought any empirical evidence to validate these thresholds,

¹ CAT Judgment, Case 1260/3/3/16, 10 November 2017

nor has it examined whether a longer time or distance — more aligned with actual tendering requirements or network deployment practices — would be more appropriate.

4. **Methodological Failures:** ComReg’s approach is based on overly high level and simplified qualitative analysis that lacks empirical depth. This is insufficient for a regulatory decision of this magnitude. The assessment does not properly test the assumptions it makes nor that of (significantly outdated) operator responses and incorrectly discounts potential competitive pressures. The analysis lacks the robustness required to justify significant regulatory intervention.
5. **Bishop and Walker:** The authoritative framework for analysing competition issues. Bishop and Walker identifies several common fallacies that lead to flawed market analysis and misinterpretations of dominance. These same errors are evident in ComReg’s approach, meaning that if the market definition is incorrect, SMP findings and their associated remedies require reassessment. The regulation of eir under these flawed assumptions cannot stand.
6. **Pricing Remedies:** ComReg’s approach to pricing regulation is inconsistent. In IA Zone B, ComReg proposes and justifies “no price control”. Yet, ComReg then proposes that Eircom must implement a uniform pricing structure across all such areas. ComReg cannot propose a “no price control” but seek to simultaneously impose a pricing restriction/behaviour on Eircom. Similarly, in Zone B, ComReg claims to support pricing continuity (which eir agrees is correct). However, ComReg also simultaneously introduces a parallel pricing remedy that could be triggered at any point, creating regulatory uncertainty and instability. The lack of justification for these contradictions raises serious concerns to the regulatory certainty created by ComReg’s pricing framework.
7. Given these fundamental legal and procedural flaws, ComReg must re consult. The current Consultation does not align with established regulatory principles and fails to account for real world market conditions. If left

uncorrected, the proposed regulation risks distorting rather than promoting competition, leading to disproportionate and unjustified interventions.

8. ComReg's continued failure to justify its approach, its inconsistency in pricing regulation, and its reliance on flawed market definitions render this consultation procedurally unsound. A full reassessment is required.

eir's response to consultation 24/92

9. eir welcomes the opportunity to contribute to the WDC Market review.
10. eir notes that this review is late. ComReg sought a 9 month extension from the European Commission (EC) to the market review deadline in April 2024² with a new target completion date no later than 24 October 2025. The extension request was on the basis that operators had struggled to provide 'precise geographic locations' which ComReg considers to be 'critical' to the completion of the WDC market analysis.
11. It is disappointing that ComReg has not used its information gathering powers to collect other meaningful information, in the additional time it has had, that would allow a proper economic market assessment to be undertaken rather than just a proximity test. We comment on market assessment matters further in this response.
12. eir notes that in its April letter to the EC ComReg planned to consult in October and the timing of this consultation suggests further delay on the part of ComReg. ComReg must improve its market review capability so that they are completed on time.
13. ComReg makes reference to views offered by eir in October 2022 in response to a ComReg request for information. Other operators offered views at that time and ComReg appears to present these views as if they were from a consultation and where it chooses selectively relies on them, often with little or no other evidence, to support its preliminary conclusions.
14. ComReg has erred to rely on such views from 2022, over two years ago. eir's position on some matters in this response differs from the view offered in 2022. This is because, put simply, the world moves on. eir's position in this response is based on current and anticipated market developments based on eir's detailed understanding of the market.

² ComReg 24/36 refers

15. It should be noted from the outset that eir's national share of Connected Premises (CP) is less than 50% (per the table below) which does not support a presumption of market power.
[✂✂]
16. As we highlight throughout this response there are a number of material flaws in ComReg's assumptions and analysis which have led to incorrect conclusions in respect of eir's Significant Market Power (SMP).
17. eir has commissioned a report by economic experts Through Line Advisors (TLA) which is submitted as part of this response. Please see Appendix 1.

Q.1 Do you agree that the main developments identified in the provision of retail LL market are those which are most relevant in informing the assessment of the Relevant Markets?

18. ComReg considers there are three main observable trends in the retail market.
- Continued increase in bandwidth requirements of MI services;
 - Increasing adoption of software defined wide area network ('SD WAN') solutions; and
 - Continued ongoing and planned rollouts and/or network upgrades, by several Network Operators ('NO(s)'), including Eircom, SIRO, NBI and Virgin Media.
19. eir agrees that these are relevant considerations however we disagree with ComReg's interpretation of some of the trends in its market analysis.
20. While eir agrees the regulation of the TI market cannot be justified, eir considers that ComReg has underplayed developments in the MI market. It is notable that ComReg does not appear to have undertaken market research among MI users other than to speak with 'super users' such as HEAnet who are not representative of the majority of MI users.
21. Regarding increasing bandwidth, this may be the case for some MI consumers but the vast majority of circuits are for bandwidths of 100Mb/s and lower and the speed requirements for a number of user types may have plateaued. For example, some user groups such as retail operators of national retail store networks are exhibiting a trend towards meeting their needs for dedicated capacity using Broadband for their store connectivity, sometimes in conjunction with SD WAN and sometimes not. These include [REDACTED]. See Appendix 4 for details. ComReg appears to acknowledge the relevance of these alternative technologies but incorrectly dismisses such technologies in its market analysis.

Q.2 Do you agree with ComReg's proposed definition of the relevant retail LL market?

22. eir's views on ComReg's approach to market assessment, both retail and wholesale are set out in response to Question 3. As is further explained ComReg's assessments are superficial and not grounded on evidence which has resulted in ComReg proposing erroneous conclusions which if left uncorrected will result in the over regulation of the WDC market.
23. eir does not agree with ComReg's proposal that wireless leased lines should be excluded from the retail and wholesale market assessment. Nor do we agree with ComReg's proposed dismissal of broadband as a relevant substitute. There are a growing number of businesses operating retail chains that consider broadband to be right for their branch connectivity. This calls into question ComReg's over emphasis on national tenders when considering market definition.
24. eir agrees with ComReg's preliminary conclusion that Dark Fibre is not in the retail market. However, eir disagrees that Dark Fibre should be included in the WDC market. Dark Fibre is not a dedicated capacity service in itself. It is in fact a passive facility that can enable the provision of Dedicated Capacity services. In D03/24 ComReg squarely places Dark Fibre alongside PIA mandating it as a contingent remedy when there is insufficient space in PI for duct or pole access.
25. ComReg seeks to rely on the views expressed by some parties including eir two years ago to support a conclusion that there is no bandwidth break. ComReg has failed to assess market developments and trends which may call this preliminary conclusion into question. We expand on this point further in response to Question 3 and the TLA Report.

Q.3 Do you agree with ComReg's product market assessment for the Relevant WDC Markets?

26. eir has significant concerns regarding the methodology employed, particularly the market definition framework, the assumptions underlying the SSNIP test, and the inadequate consideration of forward looking market developments. Our response highlights these deficiencies, drawing on established principles in competition economics and insights from the Ofcom judgment.
27. The Ofcom Judgment serves as a pivotal reference for this critique. It provides a detailed account of flaws in market definition and SSNIP execution, many of which are evident in ComReg's analysis. Specifically, the Ofcom Judgment for the same wholesale market, albeit in the UK, highlights the risks of relying on qualitative evidence without empirical support, the dangers of unsubstantiated assumptions, and the critical importance of forward looking market assessments. These lessons directly apply to ComReg's approach, which falls short in several key areas.
28. Simon Bishop and Mike Walker's "The Economics of EC Competition Law" further provides an authoritative framework for analysing competition issues. This text emphasizes the necessity of systematic, evidence based approaches to market definition, highlighting common fallacies and the dangers of incorrectly defining the market. They caution that *"errors in market definition can lead to material errors in competition policy, including overestimation of market power and misidentification of competitive constraints"*. Their insights underpin much of our critique and offer relevant guidance for improving ComReg's methodology.

Importance of Systematic Market Definition

29. Simon Bishop and Mike Walker underscore the critical role of market definition as a foundation for competition analysis. They state: *"Market definition is a tool to identify the boundaries of competition between firms. It serves to establish the framework within which competition policy is applied"*. This highlights that a poorly defined market undermines the

validity of subsequent assessments, such as the evaluation of dominance or competitive constraints.

30. ComReg's light touch approach on market definition fails to systematically evaluate the competitive constraints posed by alternative technologies and market developments. This approach overlooks key substitutes, such as wireless services and Fibre to the Home (FTTH) services, which will become increasingly relevant during the market review period. As a result, ComReg's conclusions are incomplete and fail to reflect the evolving competitive landscape. Such an oversight represents a material error, as it distorts the understanding of market power and competition dynamics.

Common Fallacies in Market Definition

31. The Relevant Market Notice on the definition of the relevant market for the purposes of Community competition law states: *"The main purpose of market definition is to identify in a systematic way the competitive constraints that the undertakings involved face. The objective of defining a market in both its product and geographic dimension is to identify those actual competitors...capable of constraining those undertakings' behaviour and of preventing them from behaving independently of effective competitive pressure"*.
32. Bishop and Walker identify several common fallacies in market definition, many of which are evident in ComReg's analysis:
 - i. **Over reliance on the Hypothetical Monopolist Test (HMT or SSNIP Test):** Bishop and Walker note that *"While the SSNIP test is a useful conceptual framework, it is not without limitations. Its application requires robust empirical evidence, and unsubstantiated assumptions can lead to significant errors"*. ComReg's qualitative SSNIP analysis lacks the empirical rigor necessary to support its preliminary conclusions. Drawing on the Ofcom Judgment, it is clear that reliance on unsubstantiated assumptions in the SSNIP analysis risks significant errors in market definition.

The Ofcom Judgment further clarifies in paragraph 162: *"Although a very wide range of evidence may be relevant, the critical question in*

conducting the HMT remains the same: whether or not a SSNIP in relation to the focal product would be unprofitable”. This underscores the necessity of grounding market definition in evidence that directly addresses the profitability of a SSNIP, a critical test that ComReg has failed to execute systematically.

While the Ofcom Judgment emphasizes that a SSNIP analysis does not require both qualitative and quantitative evidence, it underscores that whichever approach is chosen must be robust and based on actual evidence. In Ofcom’s case, extensive market surveys and feedback were used to supplement qualitative conclusions. However, Ofcom later erred in failing to fully consider chain substitution effects, a point highly relevant for ComReg’s similar oversight. In stark contrast, ComReg has undertaken no such surveys or substantial analysis. ComReg’s light touch approach merely infers SSNIP positions based on dated and high level questionnaire responses from operators and from a meeting(s) with HEAnet and the Office of the Government Chief Information Officer. ComReg has refused to share the relevant minutes of these meetings with eir and therefore has prevented any assessment by interested parties on those meetings. Given that there were only two parties ComReg met, such a refusal infers not only limitations in its breadth but also scope.

The absence of any robust evidence—qualitative or quantitative—renders ComReg’s SSNIP analysis speculative. Moreover, ComReg could have utilized eir’s published prices to conduct a quantitative SSNIP test. As a regulator, ComReg appears to avoid generating evidence that could potentially undermine its conclusions, which are already based on a flawed qualitative analysis.

Without robust qualitative and quantitative evidence of switching behaviour, ComReg cannot conclusively define the focal product. In its current approach, ComReg has prematurely assumed the relevant market is confined to leased lines, mirroring an error identified in the Ofcom Judgment where insufficient empirical evidence undermined conclusions about market boundaries.

- ii. **Focus on Marginal Consumers Rather Than Average Consumers:** Bishop and Walker caution that “a reliance on atypical customers when defining the relevant market can distort the competitive dynamics and lead to incorrect market delineation”. They further note that “[w]hether the increase in relative prices hypothesises in applying the Hypothetical

Monopolist Test is profitable or not depends on how many consumers would switch to alternative products....for a relative price increase to unprofitable does not require that the majority of consumers would switch, but only that sufficient numbers would do so. In other words, when examining the likely responses of consumers, it is the response of the marginal consumer and not that of the average consumer that is important". ComReg's reliance on limited customer feedback, particularly from HEAnet, is problematic. HEAnet's unique purchasing characteristics do not represent the broader market and make it an unsuitable tenet for a market wide SSNIP analysis. HEAnet is a "super-user" of WDC and other communications services to operate its own national network.

Even if HEAnet was a representative of a marginal consumer, its tender process explicitly allows for the use of wireless technology as a viable option. Although lower marks may be assigned to wireless in its tenders, this demonstrates that HEAnet itself nevertheless considers wireless a substitute. In its recent National School tender HEAnet selected wireless WDC solutions for almost 10% of the in scope premises and some of these appear to be in Zone A per ComReg's proposed designation of WPZs. For the avoidance of doubt, it is important to note here that HEAnet has not stated its views as to how it would respond to a SSNIP which is an important omission on ComReg's part. Instead, ComReg simply assumes that the SSNIP would be profitable "*up to 20% in the case of retail customers like HEAnet*". Having failed to undertake any meaningful qualitative or quantitative analysis this is just conjecture on the part of ComReg and cannot be substantiated or relied upon. ComReg fails to properly assess whether wireless technology would be a substitute for marginal customers and, critically, whether including wireless as a substitute would render the SSNIP unprofitable. This is a material oversight in ComReg's analysis. It is clear from data published by ComReg in respect of wireless point to point usage that ANs who use wireless tails to provide Ethernet services are showing year on year growth. The ANs in particular utilising wireless are Leeson Telecom t/a Elio Networks, Viatel, Enet and Virgin Media.

- iii. **Physical Characteristics as Market Boundaries:** ComReg's list of comparative characteristics in Table 4 of the Consultation between FTTH and Fibre Ethernet Leased Lines is biased based on ComReg's own beliefs as to whether such comparators are important for marginal customers. ComReg has undertaken no surveys and gathered no evidence to

determine whether such characteristics are important to customers and/or whether the full set of characteristics are of equal importance or just nice to have etc. Bishop and Walker explain that *“Differences in physical characteristics do not necessarily imply separate relevant markets. The chain of substitution must be examined to determine competitive constraints” [emphasis added]*. ComReg’s assertion that Fibre Ethernet Leased Lines form a single focal product ignores the potential chain of substitution based on high level evidence at hand rather than historic viewpoints and cogent evidence.

Similar to Ofcom’s oversight in the Ofcom Judgement, ComReg’s narrow definition excludes key substitutes, such as broadband at lower speeds. By disregarding the substitutability of FTTH products, ComReg has failed to account for the broader competitive constraints that would emerge under realistic market conditions. In this context, ComReg has failed to mention or consider the introduction of 5 Gb/s FTTH profile speeds and the potential of FTTH to support speeds of up to 10 Gb/s. ComReg’s analysis is therefore incomplete and without cogent consideration and consultation on such points its market analysis is flawed in principle and by design.

The Ofcom Judgment is clear that Ofcom failed to consider with sufficient care whether there was, in fact, a chain substitution transmission effect or whether there were one or more sub groups within this overall chain that formed distinct relevant markets. Paragraph 336 of the Ofcom Judgement states:

“Ofcom could not safely reach the view that there is a single market spanning the CISBO spectrum without considering carefully whether indirect constraints do exist across the chain or whether sub-groups within the overall chain themselves form relevant markets, disrupting such transmission.”

This oversight is analogous to ComReg’s failure to examine how different technologies, such as wireless or in this case FTTH, might constrain leased lines through substitution or subgroup interactions.

The Ofcom Judgment struck out Ofcom’s market definition due to its failure to adequately assess the role of chain substitution. Ofcom assumed a cohesive market without conducting a rigorous evaluation of whether transmission effects existed between adjacent products or

whether distinct subgroups within the chain formed separate relevant markets. The Ofcom Judgement emphasised that identifying a chain of substitution requires systematic consideration of indirect constraints — specifically, whether the inclusion of certain products impacts the price elasticity of demand for others through substitution effects. This oversight led to a flawed market definition that could not serve as a reliable foundation for regulatory decisions. Ofcom Judgement’s ruling highlights the critical importance of empirical evidence and thorough analysis in defining markets and reinforces that regulatory authorities (like Ofcom and ComReg) cannot rely on assumptions or incomplete methodologies. ComReg’s approach exhibits similar flaws, including a failure to evaluate substitution effects and a reliance on qualitative evidence unsupported by empirical data, thereby risking a similarly invalid market definition.

Finally, ComReg’s comparator between FTTH and Fibre Ethernet Leased Lines is materially incorrect. For example, ComReg fails to consider eir’s regulated FTTH GEA product which allows for symmetrical high speed access. D05/24 imposed an obligation on Eircom to offer VLAN tagging and class of service options for FTTH VUA. Eircom’s GEA product was launched in August 2024. This product allows Wholesale Customers to offer dedicated capacity to businesses over the FTTH network and is therefore directly relevant to this market review. Whilst it has only recently been launched ComReg is required to take a forward looking view over the next 5 years including a view on the impact of regulation in other markets. There is clear evidence from tenders for business connectivity over the last few years that a number of end users now consider FTTH broadband to be of sufficient reliability and quality for requirements. As such the assumption that all users require ‘business grade’ SLAs is flawed as these users do not appear to hold SLAs as a material factor in their decision making. See Appendix 4

Overlooking Competitive Constraints from Supply-Side Substitution and Potential Competition

33. The European Commission’s Market Definition Notice emphasises that firms face competitive constraints from three sources: demand side substitution, supply side substitution, and potential competition. ComReg’s analysis narrowly focuses on demand side substitution while largely dismissing supply side substitution and potential competition. This oversight is significant, particularly in light of regulated Physical Infrastructure Access

(PIA), which allows competitors to access eir's ducts and poles. PIA provides an essential pathway for new entrants to build their own networks and compete effectively with eir in delivering leased line services.

34. ComReg's dismissal of PIA as a source of competitive constraint constitutes a material error. By enabling competitors to leverage existing infrastructure, PIA reduces barriers to entry and facilitates supply side substitution. This mechanism allows new or existing operators to enter the market and/or extend their network presence thereby exerting downward pressure on prices, constraining the pricing power of a hypothetical monopolist. Additionally, PIA is supported by a robust regulatory framework, ensuring fair access and promoting competitive dynamics. It is also worth noting at this stage that both Siro and VM are extensively rolling out their FTTP networks using access to their own respective duct and pole infrastructure (i.e., their own PIA), which underlines the fact that eir's PIA may not be essential for their deployments
35. eir has undertaken comparative analysis of the costs for an operator of consuming PIA (Eircom duct access) compared to civil engineering dig to connect business premises to their networks. eir has also considered the comparative cost for an Alternative Network ("AN") operator to rent a WSEA to connect a business premises versus the use of duct access. The details are contained in confidential Appendix 2.
36. The comparative analysis clearly demonstrates that Eircom duct access is more economic than own dig (on distances over 20 metres) or Eircom WSEA rental in order for an AN to connect their network and access business premises.
37. ComReg does not appear to have undertaken any analysis of the consumption of Eircom's duct access products since D03/24. Instead ComReg simply states (at para. 5.43) "*there is limited evidence of LL delivery based on PIA at scale as of yet (with the exception of NBI using PIA to build its network)*" and (at para. 5.51) "*the PIA access products are at their early*

stage of the deployment and the take-up is still relatively low”. However, this entirely misses the point of what ComReg is required to assess.

38. To the point that take up is relatively low, there have been [X<X] duct access orders (other than NBI) since the product set was launched a number of years ago. Notably two thirds of these have occurred since the start of 2024 and the issuance of D03/25. There is clearly a rapidly growing acceptance of Eircom’s duct access as a useful product.
39. Eircom cannot know the purpose for which the Access Seekers are putting the duct access too. Some operators such as [X<X] are clearly using duct access for the purpose of providing leased lines as evidenced by their consultation responses and the fact that many A end / B end addresses are to business premises / business parks. The average distance of duct routes for these operator is 520 metres with individual routes ranging from tens of metres to over 2 kilometres. Business addresses can also be observed with the other major consumers of duct access [X<X] although a lot of A end / B end locations appear to be in residential areas. Either way, they are using PIA duct access for local access to premises as well as network infill to support their network rollouts.
40. Current use of PIA demonstrates that duct access is being used to support local access and to support leased line services to business premises and business parks. As can be seen from the HEAnet example, see Appendix 3, [X<X] are growing their presence in the provision of WDC services including in Zone B. The above analysis, which ComReg should have undertaken prior to this Consultation, confirms that PIA duct access is economically and technically viable to substitute for Eircom MI leased lines.
41. Potential competition arising from existing and future entrants leveraging PIA should have been explicitly considered as part of the market definition exercise. Failure to account for this results in an overly narrow market definition that overstates the market power of existing providers. Moreover, as technological advancements lower the costs of network deployment, the

importance of PIA in fostering competition is expected to grow, making its omission from ComReg's analysis particularly concerning.

42. By ignoring supply side substitution and potential competition facilitated by PIA, ComReg's market definition fails to reflect the dynamic nature of the telecommunications sector. This omission undermines the robustness of the regulatory framework and risks distorting policy decisions based on incomplete competitive assessments.

Critique of SSNIP Test Execution

43. The SSNIP test is a critical tool for market definition, yet its execution by ComReg suffers from significant shortcomings, particularly in the absence of empirical evidence. This deficiency has led to unsubstantiated biases in ComReg's conclusions, undermining the robustness of its analysis.

Unsubstantiated Assumptions in the SSNIP Analysis

44. Drawing on the Ofcom Judgment, it is evident that reliance on unsubstantiated assumptions in the SSNIP test introduces significant risks of error. The following assumptions in ComReg's analysis are particularly problematic and represent material errors:
 - a. **Switching Costs Are Insurmountable:** ComReg assumes that customers face prohibitive switching costs when migrating from Fibre Ethernet Leased Lines to alternative technologies such as FTTH. This assumption is speculative and unsupported by evidence. Many businesses are actively migrating to FTTH as it offers competitive pricing and adequate performance. See Appendix 4 for some examples.
 - b. **FTTH and Broadband Are Not Viable Substitutes:** ComReg's exclusion of FTTH and broadband at lower speeds from the relevant market is based on the unsubstantiated assumption that these technologies cannot serve the same customer needs as Fibre Ethernet Leased Lines. This ignores the rapid advancements in FTTH technology and the growing adoption of broadband for business use. FTTH providers currently support broadband speed profiles up to 2Gb/s. Eircom has announced plans to introduce a 5Gb/s service later this year and other FTTH operators are likely to follow suit. From a forward looking perspective PON technology in use in Ireland is capable of supporting services up to 10Gb/s. FTTH is a viable substitute.

- c. **HEAnet as a Representative Customer:** ComReg’s reliance on HEAnet as a focal customer assumes that its purchasing behaviour is representative of the broader market. Importantly, again here for the purposes of the reader, HEAnet were not questioned on how it would respond to a SSNIP. In addition, HEAnet’s unique characteristics are not reflective of typical business customers in terms of their choice of technology. That said, as we discuss shortly, the recent national tender competition by HEAnet provides valuable insight into the actual competitive conditions evident in the market (see Appendix 3).
- d. **Static Market Conditions:** ComReg’s SSNIP analysis appears to assume static market conditions, disregarding significant forward looking developments such as eir’s FTTH upgrades, SIRO’s FTTH network expansion, and Virgin Media’s FTTH overbuild of cable. These advancements will introduce competitive constraints that invalidate the SSNIP test’s conclusions over the review period.

Limited Empirical Evidence

- 45. The Ofcom Judgment highlights the importance of empirical evidence in executing a SSNIP test. Without robust empirical data, qualitative approaches are prone to unsubstantiated assumptions and biases. ComReg’s reliance on qualitative evidence—with minimal empirical testing—renders its SSNIP analysis unreliable. For example:
 - No critical loss analysis (CLA) was conducted to determine the thresholds for substitution behaviour. The Ofcom Judgment noted: *“To decide whether a SSNIP would be unprofitable requires an assessment of what would happen if the hypothetical price rise were implemented. In particular, to answer the central question of whether the SSNIP would be unprofitable, the authority would need to consider: (i) how many purchasers would cease their purchases of the focal product... and (ii) how much money the hypothetical monopolist would save by serving only the reduced pool of purchasers”*.
 - ComReg failed to consider switching patterns or price sensitivities comprehensively. For instance, published price data from eir could have been used to conduct a quantitative SSNIP test. As a regulator, ComReg appears to avoid generating empirical evidence, likely to prevent undermining its light touch qualitative conclusions.

Duration of the SSNIP Test

46. The Ofcom Judgment emphasised the importance of aligning the duration of the SSNIP test with the market review period to ensure that competitive constraints and market dynamics are fully captured. This is a critical consideration that ComReg has overlooked in its analysis. Indeed, no consideration is given by ComReg regarding the duration of a potential SSNIP.
47. ComReg's SSNIP analysis fails to account for significant forward looking developments, including:
- **eir's FTTH Upgrades:** On 1 July 2025, eir's FTTH product will include the launch of speeds of up to 5 Gbps, with eir's underlying XGS PON technology enabling speeds of up to 10 Gbps in future periods. These advancements position FTTH as a viable substitute for Fibre Ethernet Leased Lines at lower profile speeds and must be considered by ComReg in regards to the chain of substitution.
 - **Competitive Rollouts:** SIRO's ongoing FTTH network expansion and Virgin Media's FTTH upgrades will introduce additional competitive constraints during the review period.
 - **Technology Advancements:** The ability of wireless technologies and other emerging platforms such as XGSPON to serve as substitutes during the market review period should also have been cogently considered.
 - **Use of PIA:** by other operators to supply Fibre Ethernet Leased Lines or competing substitute products such as FTTH. Access Seekers are already consuming PIA to support local access and there is clear evidence of duct access being used to serve business locations. In other cases, such as Siro and VM, operators have direct access to their own ducts and poles and therefore are not reliant on eir's PIA.
48. By failing to evaluate these forward looking constraints, ComReg's SSNIP test does not adequately reflect the dynamics of the market over the review period. This omission undermines the validity of the conclusions drawn from the SSNIP test and, by extension, the market definition exercise.

Conclusion on SSNIP Execution

49. ComReg's SSNIP analysis lacks both the empirical rigor and qualitative breadth necessary for robust market definition. Without a critical loss analysis, comprehensive substitution data, or adequate forward looking assessments, ComReg's conclusions about the focal product and the market definition remain speculative and unreliable.
50. ComReg's narrow approach to the focal product definition fails to capture these dynamic elements. For instance, defining the market solely around Fibre Ethernet Leased Lines ignores the substitutability of FTTH and other technologies (such as wireless), which will likely increase during the review period. This failure to consider the forward looking competitive landscape is a material error that weakens the credibility of the analysis.

Conclusion and Recommendations

51. We urge ComReg to adopt a more rigorous, evidence based approach to market definition, aligned with established principles in competition economics and forward looking market realities. Specifically, we recommend the following:
 - i. **Broader Definition of the Focal Product:** ComReg should incorporate FTTH products, wireless technologies, and other potential substitutes into its focal product definition to accurately reflect market dynamics. At a very minimum, it should conduct a further and more detailed qualitative and/or quantitative assessment to determine the correct Focal Product,
 - ii. **Empirical SSNIP Analysis:** ComReg must supplement its qualitative SSNIP analysis with robust empirical testing, including critical loss analysis, to ensure the validity of its conclusions.
 - iii. **Forward Looking Market Assessment:** ComReg's market analysis should account for anticipated technological advancements and competitive developments during the review period, including its FTTH upgrades, SIRO's network expansion, and Virgin Media's FTTH rollout.
 - iv. **Appropriately consider PIA:** and the upstream regulation of this market in regards to supply-side substitution and potential competition facilitated by PIA.

52. By addressing these deficiencies, ComReg can ensure a more accurate and robust regulatory framework that reflects the realities of the market and promotes fair competition.
53. eir remains committed to constructive engagement with ComReg and looks forward to further discussions through the necessary re consultation on these critical issues.

Q.4 Do you agree with ComReg's geographic market assessment for the Relevant WDC Markets?

54. ir does not agree with ComReg's geographic assessment, as it has incorrectly applied the same methodology as it did in the 2020 Decision, with only one minor adjustment concerning the proximity proportion. This approach fails to address the significant changes in market conditions and competitive dynamics that have occurred since the last review.
55. The European Commission previously commented on ComReg's market analysis in the WDC market in 2019, stating:
- "It also urges ComReg, in its next market review, to review the methodological approach to the choice of criteria and thresholds, to better reflect NRAs' regulatory practice, the common position of BEREC, and technological and market developments."*
56. Despite this clear direction, ComReg attempts to justify its continued reliance on the same methodology and criteria without conducting a proper assessment of market changes over the past five years. Furthermore, ComReg has made no effort to adopt the forward looking perspective that it is legally obliged to take. This failure to adapt its approach contradicts both the European Commission's guidance and the broader regulatory framework.
57. The parallels between ComReg's approach and the criticisms raised in the Ofcom Judgment are striking. In the Ofcom case, it was found that Ofcom had failed to take "utmost account" of the European Commission's comments, as required by Article 7(5) of the Framework Directive. Instead, Ofcom essentially doubled down on its original position, failing to reflect granular competitive dynamics in its geographic market assessment. Similarly, ComReg's decision to maintain its existing methodology—despite the European Commission's explicit guidance to review its criteria and thresholds—demonstrates a similar failure to take "utmost account" of regulatory feedback.

58. This resistance to adapting its approach undermines the credibility of ComReg's market analysis and raises serious concerns about compliance with the legal and procedural requirements of the Framework Directive.
59. By doubling down on its 2020 methodology and failing to align with the European Commission's recommendations, ComReg has not only neglected its legal obligation to adopt a forward looking perspective but has also risked reinforcing a flawed approach that does not adequately reflect evolving market realities. This failure to account for meaningful market changes and the guidance of the European Commission must be addressed to ensure a robust and compliant regulatory framework.
60. ComReg's proposed geographic analysis is based on two main criteria:
- i. **Criterion 1:** A Work Place Zone (WPZ) has two or more ANs present including Eircom (i.e., the rule of three); and
 - ii. **Criterion 2:** 60% of current demand (Connect Premises, CPs) must be within 50 metres of two or more ANs.

eir has the following comments on the proposed methodology.

Work Place Zones (WPZ) and Connected Premises (CP)

61. ComReg proposes to use WPZs, defined by the CSO, as the geographic unit of assessment and to use Connect Premises (CPs) as market demand.
62. WPZs are defined by reference to business activity and at first glance appear relevant to the consideration of the WDC market. There are 7,219 WPZ in Ireland. However they may be too small in the context of the population of CPs used by ComReg which is 14,811. This means there is an overall average 2 CPs per WPZ and as ComReg notes the density per WPZ is 3.5 in Zone A and 2.1 in Zone B, with many WPZs containing no CPs.
63. This leads to doubts as to whether WPZs are representative of homogenous competitive conditions.

64. ComReg's proposed use of CPs as a proxy for demand is flawed as it only measures demand expressed at the point of analysis and does not cater for prospective demand. The use of CPs is also limited as it only counts premises served by wired Ethernet services and ignores those businesses that have chosen to use alternative technologies. Consequently there would need to be a mechanism built into the Decision Instrument requiring the analysis to be conducted by ComReg at least annually and the re designation of Zone B to Zone A as appropriate. This would not be unduly burdensome as ComReg collects the relevant information regularly and will have an established model to run the tests.
65. Additionally, ComReg could build a mechanism into the Decision Instrument which would allow WPZs, individual premises, and campuses to be declared competitive if an operator can demonstrate the pass the proximity test (as ultimately defined in the Decision).

Two or more ANs present in a WPZ

66. ComReg proposes a rule that at least 2 ANs must be present (in addition to Eircom i.e., creating a "rule of three") in a WPZ for the proximity test to be run.
67. ComReg's proposal to mandate the presence of three operators in each WPZ, while seemingly grounded in traditional competition theory, fails to account for critical elements of market dynamics that are essential in the context of a modern and rapidly evolving market like Ireland's. The examples cited by ComReg in paragraph 4.84, which are intended to support its position, do not reflect the characteristics of the Irish WDC market. In fact, many of these examples are either outdated or irrelevant—some even refer to sectors outside of telecoms entirely. For instance, ComReg relies on decisions from as far back as 2006, with regulatory bodies like the Dutch Authority for Consumers and Markets (ACM) having since revised their stance on similar issues. More importantly, these references typically reflect decisions made by national regulators based on the specific circumstances and competitive dynamics of their respective markets. In this case, ComReg

seeks to apply reasoning developed for different national contexts to the Irish market, without sufficiently addressing the unique features and competitive conditions within Ireland itself. A critical review of ComReg's approach, especially in light of similar challenges to Ofcom's position in the UK (which was successfully legally challenged by BT), highlights significant flaws in both its economic justification and its legal framework for imposing such a requirement. As Bishop and Walker notes "*the number of competitors in a market does not always provide a good indication of the level of competition in a market*".

Insufficient Justification for the Need of Three Operators

68. ComReg's argument for the necessity of three operators in the Irish market is strikingly similar to the approach taken by Ofcom in the UK in 2016. Both regulators rely heavily on the theoretical assumption that a minimum number of competitors—three, in this case—would guarantee effective competition in the wholesale telecom market. This position fails to address the practical realities of the Irish market, which does not necessarily require the presence of three operators to foster competition.
69. Legal precedent in the Ofcom Judgment suggests that regulatory authorities must justify their market interventions with robust economic evidence. The Ofcom Judgement emphasized that regulatory interventions must be based on more than just a simplistic assumption about the number of operators required. It critiqued Ofcom for failing to provide a sufficient economic justification for its reliance on the "three operator" model, noting that assumptions without proper substantiation cannot serve as a valid foundation for regulatory action. The European Commission has similarly pushed back against NRAs simply assuming a magic number, as in the case of Malta's recent market analysis (Case MT/2024/2484). ComReg's proposal suffers from the same flaw, assuming that a fixed number of operators is necessary without providing sufficient evidence to substantiate why three operators are preferable to two or even a smaller number of entities in each WPZ.

70. Eir considers that analysis of the recent HEAnet tender is very relevant in this regard. The outcome of national tender for WDC to over 500 locations (see Appendix 3 for details). The outcome of the tender in 2024 demonstrates that Eircom won less than 50% [§<§<] of circuits in Zone B which confirms even the presence of 1 AN is sufficient for competitive outcomes.

Over-Reliance on Theoretical Models and Under-Consideration of Irish Market Characteristics

71. ComReg's justification for three operators is rooted in an economic theory of market competition that fails to reflect the specific characteristics of the Irish telecom market. In particular, ComReg's proposal overlooks critical factors such as the existing market concentration, technological advancements, and the potential for substitution effects.
72. The Ofcom Judgement found that Ofcom's reliance on static competition models, which assumed that three operators would automatically lead to better outcomes, was a significant error. The Ofcom Judgement emphasized that regulatory authorities must carefully consider whether their assumptions are supported by the actual conditions of the market and whether market conditions might evolve in ways that could impact the necessity for regulatory interventions.
73. The Irish market, like the UK market, is subject to complex substitution effects, where changes in one part of the market—such as pricing or service quality—can lead to adjustments by other operators, thereby reducing the need for a fixed number of market players. The Ofcom Judgement criticized the regulator for not adequately considering how market forces could create competitive outcomes without the need for a third operator: "it would obviously not have been correct for Ofcom simply to conclude that no other area in the UK could be effectively competitive unless it was as competitive as the CLA." This is also important in the context of Ireland and in particular more so where the average number of CPs in ComReg's proposal to use WPZ is 2 premises.

74. Since April 2024 there is strong Commission support regarding two operators being sufficient for effective competition this being its over ruling of BEREC with regards to Case MT/2024/2484.
75. Analysis undertaken by eir and included in confidential Appendix 2 demonstrates that the use of PIA is economically feasible for an AN as an alternative to an Eircom leased line and as an alternative to dig from an AN to a customer premises for all distances in excess of 20 metres. As highlighted above there is evidence of ANs using PIA to connect business premises. Consequently, the proximity test should be amended so that no more than 1 AN should be within the final distance chosen. The final distance should be significantly increased from 50 metres, noting that the average distance of duct routes of [X<X] is in the region of 00 metres.
76. eir does not agree that the AN(s) must be present in a WPZ as part of the proximity test. It is likely in a number of cases that a CP could be within the distance criterion chosen from an AN in a neighbouring WPZ. Analysis undertaken by eir has identified a number of CPs in Zone B that are within 50 metres of Siro and Virgin Media in a different WPZ. By way of example CW0001, CW0002, CW0019 (which are also almost Islands), and KK0093, KK0095, and KK0105. Given that WPZs are defined by reference to businesses and not network topology there is no reason why the AN has to be in the same WPZ as the CP.
77. In the 2018 consultation eir raised concerns that certain large hospital campuses were designated as Zone B. ComReg responded in the 2020 response to consultation that eir did not have access to the location of other CPs in the WPZ. eir remains concerned that ComReg's proposed mapping does not equitably deal with large campuses such as St. James's Hospital. It is not clear what other businesses are in the area, as the WPZ is dominated by the hospital campus. Whilst the hospital campus when viewed on a mapping app has a number of different units listed they all appear to be health related and under the stewardship of the HSE. There is only a small amount of residential premises at the top right of the WPZ. There is no obvious reason why this WPZ, dominated by the St James' campus should

be deemed Zone B. If there are other CPs, not related to the hospital campus then this reinforces the need to have a mechanism to allow large WDC consumer sites to be deemed competitive on application.

78. There are also potential similarities of St James' campus that could equally apply to large multi national/or large corporate customers which are akin to Business Park customers. It is not clear to eir, why where WPZs have none or less than 1 CP and in particular where that 1 CP is a large multi national or large corporate customer (e.g., DELL, META, Data centres etc.) why under the current ComReg criterion that it would be classified as Zone B. Again, ComReg could have identified such CPs in WPZ and conducted questionnaires/surveys to ascertain whether in tendering or other procurement processes those customers were satisfied by the number of interested parties to their process etc.

60% of current demand (CPs) must be within 50 metres of AN(s)

79. ComReg proposes to set the proximity proportion at 60% (reduced from 75% in the 2020 Decision). ComReg refers to this as the 'Proportionality Criterion' although there is a lot more to the proportionality of its proposed approach than just this aspect.
80. As ComReg demonstrates with sensitivity analysis this reduction has little practical effect and as such is somewhat meaningless in demonstrating that the proposed approach is in any way more proportionate or less conservative. The insensitivity of this criterion is a product of the major flaw in the overall approach which is the minimal concentration of CPs in each WPZ.

Distance criterion

81. ComReg proposes to maintain the distance criterion at 50 metres as per the 2020 Decision. The first rationale for ComReg's proposed distance is based on the exclusion of PIA as a consideration without any evidential reasoning

"ComReg is of the view that the CEI access products are at their early stage of the deployment and the take-up is still low, with the exception of NBI."

82. As already noted above, ComReg has failed to consider the economic and technical viability of using PIA to support WDC connectivity.
83. eir has demonstrated the economic feasibility of using PIA as an alternative to digging with the wholesale rental prices imposed by ComReg in D03/24. It is surprising that ComReg has not undertaken such analysis but has simply dismissed PIA due to a perception of low take up with the exception of NBI.
84. There has been a significant uptake in the use of PIA duct access since D03/24 was issued with approximately 1,000 orders placed in the intervening year. Whilst Eircom does not know what use the duct access is being put to, it is clear from A end and or B end information that a number of these are close to premises / business parks that would consume WDC as already highlighted in this response. The total volume of these instances is largely irrelevant, as even a small number clearly demonstrate that it is technically feasible to use PIA duct access to enable WDC connectivity.
85. Equally the consumption of eir PIA by NBI to develop its network is informative as NBI will be using its network to provide a range of services including WDC. The simple fact is that operators can, and do, use eir PIA access to support WDC services. ANs are increasingly involved in providing WDC services, with operators like Siro and VM often relying on their own PIA to support service delivery within their footprint. Additionally, there is clear evidence that they can leverage eir's PIA for local access to residential and business premises, further expanding their deployment capabilities.
86. Many of the observed and likely WDC duct access route lengths are multiples of 100 metres and some are in excess of kilometres. ComReg's proposed 50 metre rule is unjustified and fails to consider market and regulatory developments.
87. The second rationale for ComReg's proposed distance is based on an unevidenced and unsupported statement that the economics for an AN to dig to connect a new premises for WDC is significantly less than 100m

“SPs also claimed that civil engineering costs associated with excavation for laying duct was prohibitive, making the “economic dig distance” far shorter than 100 metres.”

88. The quoted text from ComReg 24/92 refers back to AN views expressed during the 2018 consultation. By including this text in 2024, ComReg implies that it still considers these views to be valid. However, ComReg has provided no evidence to substantiate its conclusion regarding the economics of digging as the primary method for connecting an AN to premises requiring WDC. This lack of substantiation is concerning, particularly given our own evidence, which demonstrates that using Eircom’s PIA is a highly viable and cost effective alternative to digging.
89. This aligns with the direction of travel under the European Regulatory Framework, which explicitly promotes the reuse of existing passive infrastructure for the cost effective rollout of fibre networks and services (e.g., the Gigabit Infrastructure Act). The failure to properly consider PIA as an alternative is inconsistent with these regulatory objectives and undermines the push for efficient network deployment.
90. ComReg's reliance on outdated operator views mirrors a critical issue identified in the Ofcom Judgment, where Ofcom relied on an operator’s assertions without adequately testing or verifying their validity. In that case, Ofcom’s failure to independently assess claims made by an operator was deemed a significant procedural flaw. Similarly, ComReg’s decision to continue prioritizing digging—without presenting any new evidence or testing the feasibility of PIA—raises questions about the robustness of its analysis and its adherence to evidence based regulatory standards.
91. It is entirely unclear why ComReg remains wedded to digging as the sole method for connecting an AN to premises requiring WDC when viable, cost-effective, and regulatory endorsed alternatives like PIA are available. This approach not only disregards evidence to the contrary but also risks perpetuating inefficiencies that contradict the broader goals of the European Regulatory Framework.

92. The third rationale for ComReg's proposed distance is its unsubstantiated belief that circuits must be delivered to end-users within three months of the conclusion of a tender process. ComReg claims that the three month window, which it considers the time required to apply for a wayleave for digs over 100 meters, is the deciding factor:

"Distances over 100 linear metres automatically require a 3-month notice period, which would exclude SPs from being able to bid for many retail contracts."

93. However, this assertion is unsupported by evidence. ComReg has failed to conduct any survey or analysis to determine how important connection times are to customers after tendering processes or whether three months is a necessary or sufficient threshold. Eir's extensive experience in wholesale and retail bidding demonstrates that longer delivery windows are routinely accommodated. For instance, in the recent HEAnet National Schools competition, the minimum delivery time exceeded three months.
94. Furthermore, the rationale that longer connection times would exclude SPs from bidding ignores viable alternatives to digging. Notably, lengthy wayleaves are unnecessary when accessing WDC premises using Eir's PIA. ComReg's failure to consider this alternative is inconsistent with the European Regulatory Framework's push for efficient deployment through the reuse of passive infrastructure, such as the provisions of the Gigabit Infrastructure Act.
95. This issue directly parallels a procedural flaw identified in the Ofcom Judgment. In that case, Ofcom assumed that connection times were critical to retail contracts but failed to provide evidence or analysis to support this view. The court found that longer connection times were, in fact, frequently accommodated in retail contracts, and Ofcom's assumption undermined its reasoning. Similarly, ComReg has relied on an untested assumption about connection time requirements, without engaging in the necessary research or consultation to validate its claim. This approach undermines the credibility

of its analysis and risks distorting the market by relying on outdated or inaccurate premises.

96. ComReg's insistence on using digging as the primary method for connecting an AN to premises requiring WDC, while disregarding modern and efficient alternatives like PIA, is both impractical and misaligned with regulatory best practices. By failing to assess connection time requirements comprehensively or consider alternative approaches, ComReg risks introducing inefficiencies and creating barriers that contradict the objectives of the European Regulatory Framework. To ensure a robust and evidence based regulatory framework, ComReg must reassess its assumptions, prioritize evidence driven policy, and embrace practical alternatives consistent with evolving market needs.

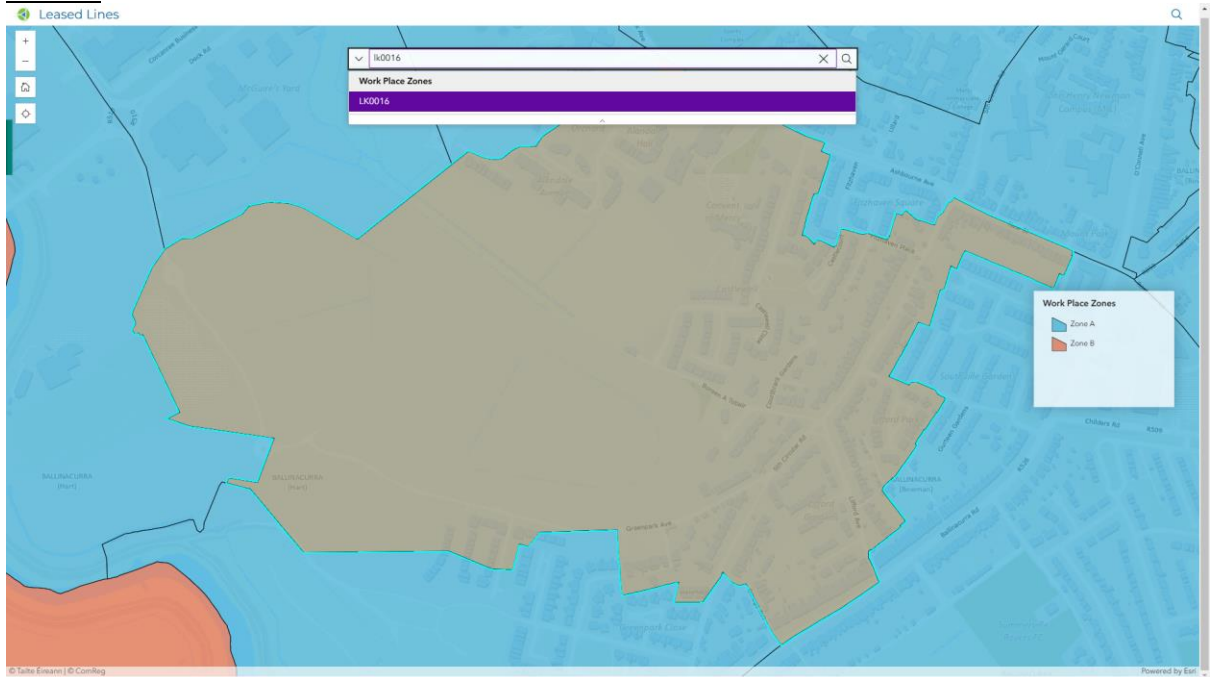
Business Parks test

97. eir notes the proposed Business Park test. eir has evidenced a number of PIA orders to access Business Parks suggesting that such access is economically attractive to ANs and consequentially WPZs with Business Parks should be treated as Zone A. As noted already, if ComReg proposes to continue to use WPZs there will need to be an additional mechanism to allow operators to request a premises or new Business Parks to be deemed competitive in light of specific circumstances (based on the existing or future presence of sufficient ANs) or the construction of a new site for a major consumer of WDC during the period of the Decision, such as a new Data Centre. Allowance should also be made for Eircom exchanges located in Zone B (based on the existing or future presence of sufficient ANs).

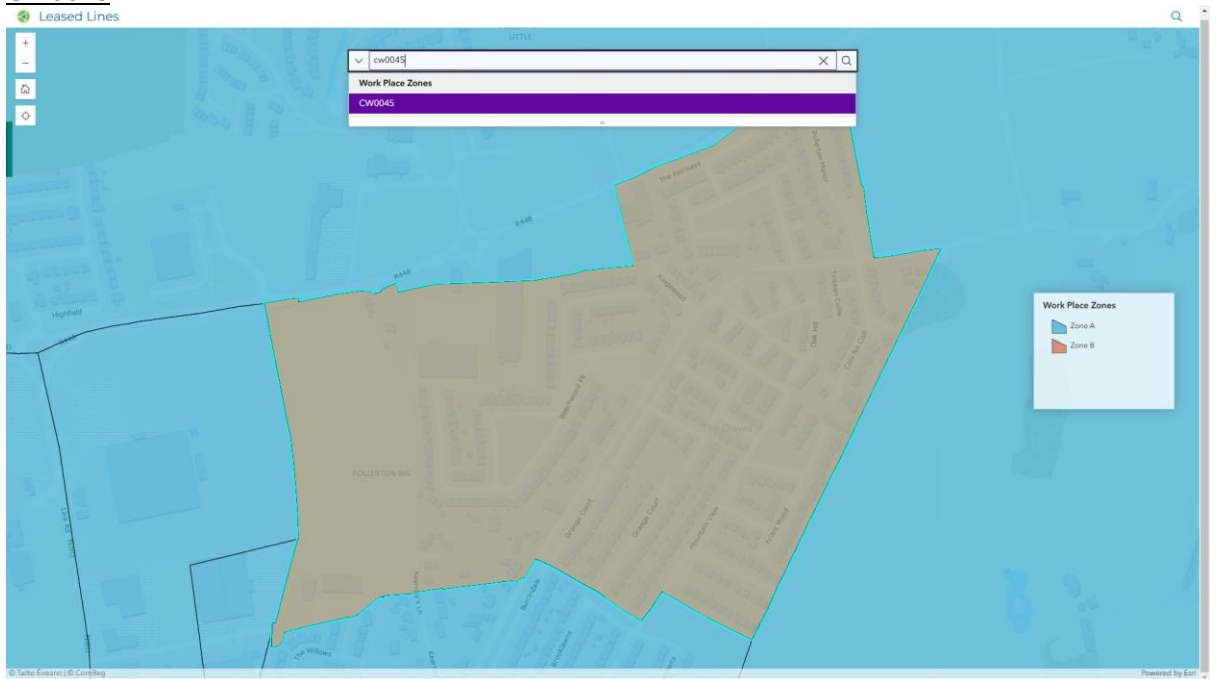
Islands test

98. eir agrees with the logic of having an Island test. However it is not clear how it is applied in practice. The following are some examples (by no means an exhaustive list) of WPZ deemed to be Zone B despite being surrounded by Zone A WPZ.

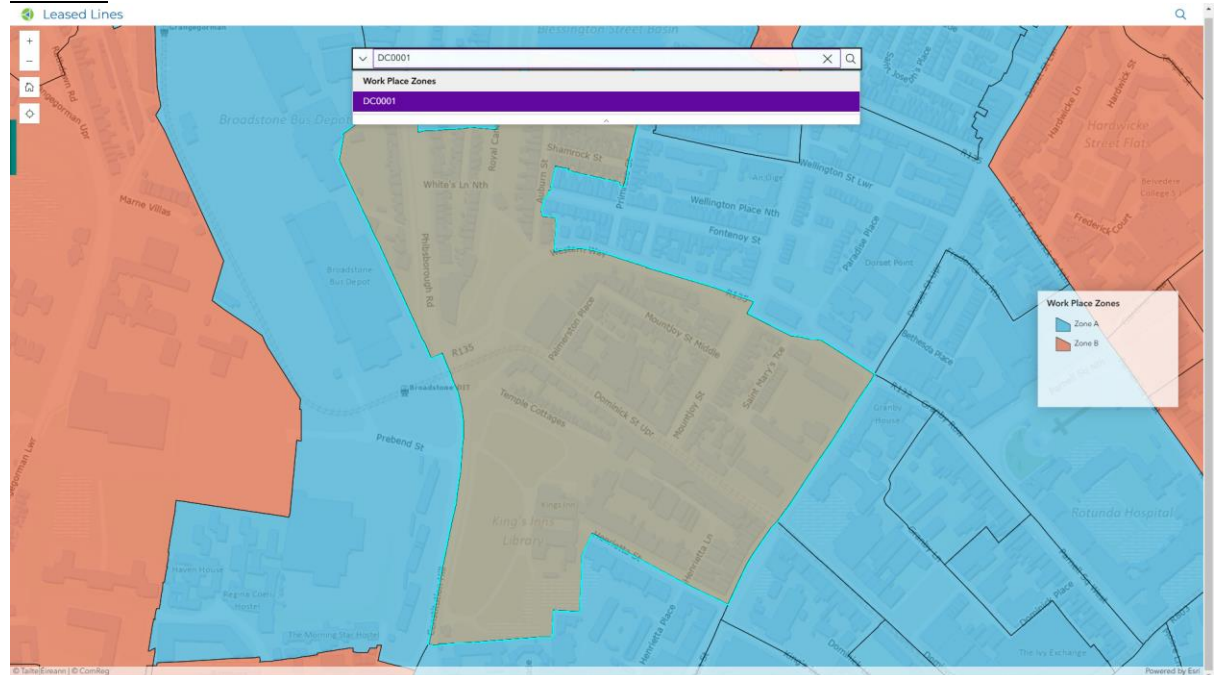
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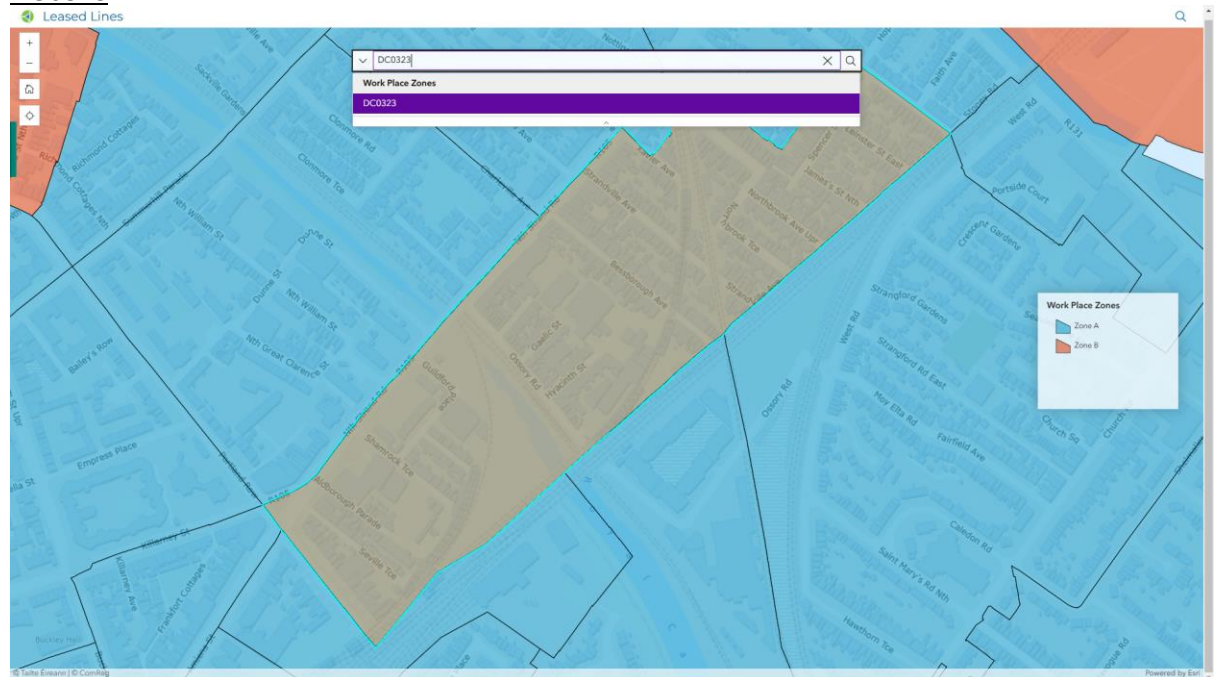
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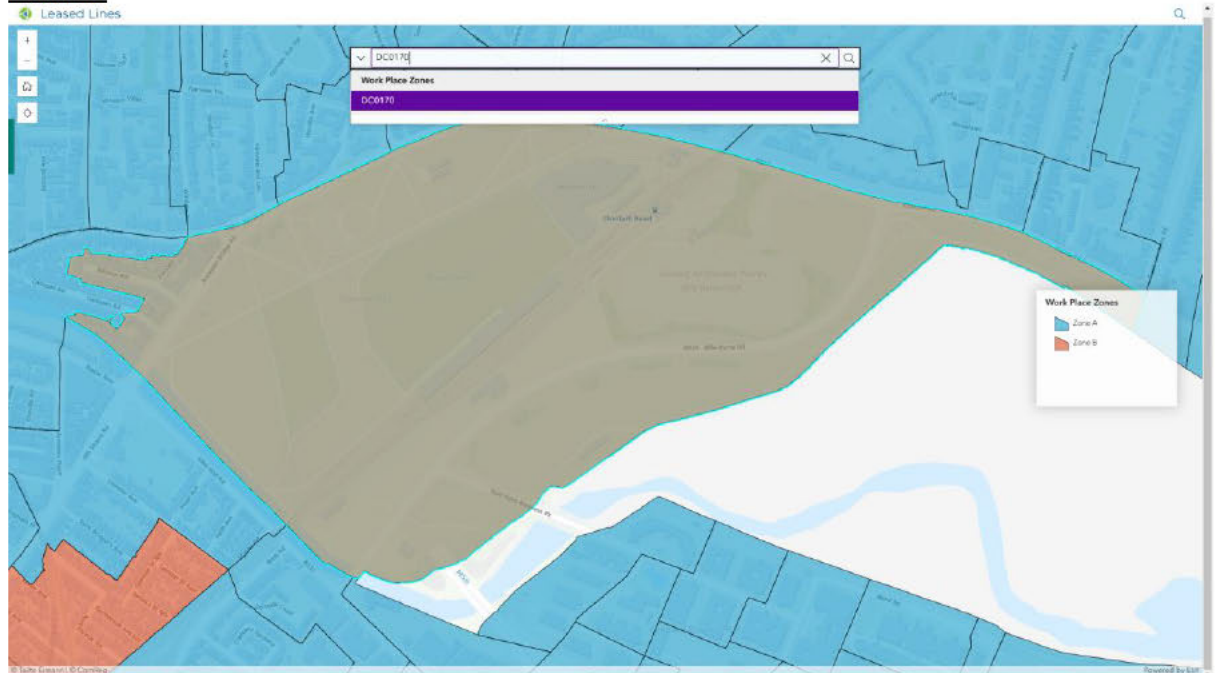
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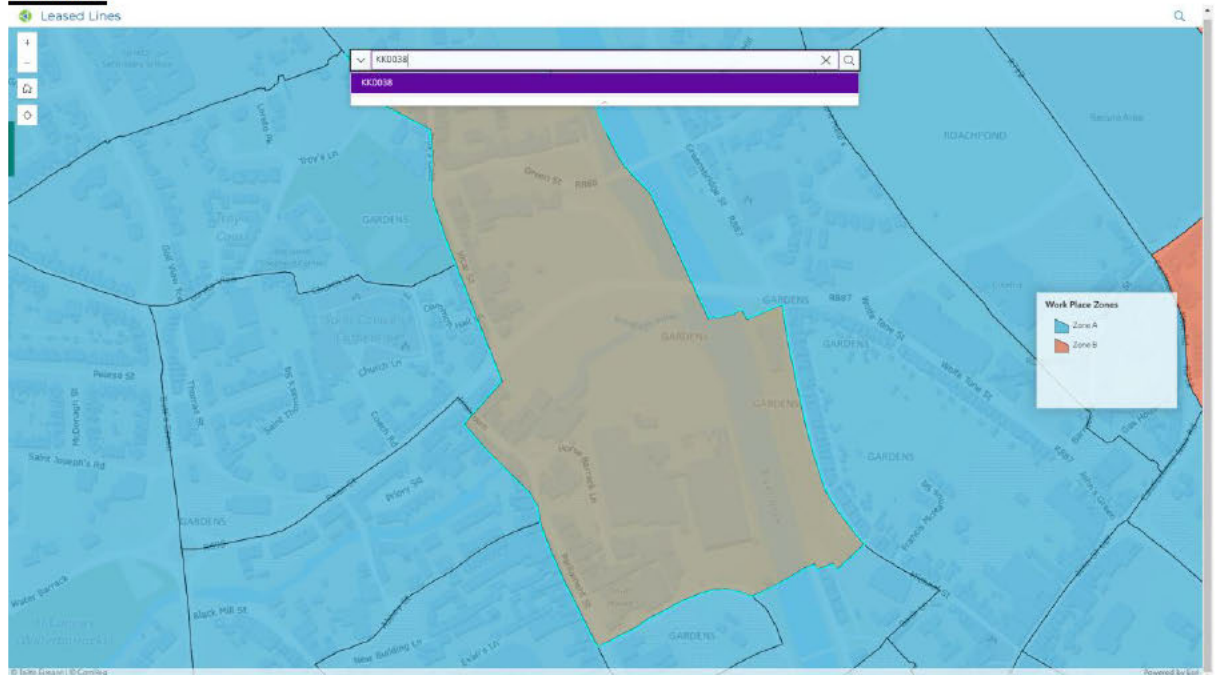
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Mapping of networks

99. In section 4.4.4 ComReg provides a very brief description of its mapping exercise. It appears that ComReg has only mapped the current networks of each of the ANs listed with the exception of Siro — which may be based on out of date information. This is not consistent with the requirement for ComReg to take a forward looking view. A forward looking view which is

required for the market review period should include network rollout plans particularly in the cases of Siro and Virgin Media (VM) who are both rolling out fibre PON networks which are accepted as capable of delivering WDC services. ComReg must include a forward looking view of network deployment in its analysis. In the case of VM, their overbuild is directly overbuilding their cable network and therefore ComReg can easily model this roll out. Equally, Siro's programme is 81% complete as at December 2024. ComReg could request the roll out plans of Siro. If no Such plans are known, then it is highly probable that they will not overbuild VM' cable network. This is due to the quasi reciprocal wholesale agreement between the operators. The wholesale agreements between Siro and VM, alongside the influence of Vodafone (50% JV owner of Siro) who has wholesale relationships with both Siro and VM, making a quasi reciprocal agreement between the parties, creates a classic telco "Build/Buy" dilemma for both Siro and VM regarding future overbuild incentives. Equally, Siro is highly unlikely to build in the IA or the "300k". By elimination of these areas alone allows for a reasonably estimate of the areas where Siro will complete their roll out. There is also NRA precedent by the Dutch regulator who used potential roll out plans and attached probabilities to network roll out in Case NL/2023/2464 to deregulate the broadband market. Siro provides open access to its network will be open access at commercial rates (therefore the binding voluntary commitments that were also received in The Netherlands are not relevant to ComReg's consideration).

100. eir requests ComReg to provide fuller details on how it has mapped the networks of Siro and VM. As noted earlier, our own analysis illustrates Siro and / or VM in close proximity to CPs in Zone B areas. Has ComReg mapped / assessed network proximity for these operators using the Eircode of premises passed? Notably, the HEAnet tender study highlights that these operators successfully secured contracts for schools, some of which do not appear as serviced premises in the operators' current Eircode checker tools. It is not unsurprising or unexpected that operators expand their networks to serve leased lines, and that ComReg itself recognizes this, can be found in:

- i. **Paragraph 3.33** Notes a significant increase in demand for fibre-based leased lines (LLs), with FTTH infrastructure playing a role in supporting LL expansion.
- ii. **Paragraph 3.50** States that fibre based network deployment impacts the leased line market by providing operators with greater levels of infrastructure, allowing them to extend LL services to a broader range of premises.
- iii. **Paragraph 3.51** Mentions that Eircom's FTTP rollout is expanding significantly, suggesting that its continued deployment may contribute to supporting leased lines.

These paragraphs confirm ComReg's recognition of FTTP expansion being leveraged for leased line services.

- 101. ComReg proposes to maintain a 20 metre mapping thickness to allow for inaccuracies in network maps and to attempt to address, in part, the location determined from the Eircode relative to the curtilage of the premises. If network mapping is to be used then a 20 metre thickness appears to be appropriate to address some of the inaccuracies in the approach. However, it may not be sufficient to address WPZs defined predominately by a single business, such as hospital campuses.
- 102. ComReg states that operator maps have been refined to exclude core network elements. It further identifies infrastructure that may present significant challenges for network breakout, such as railway lines, high-tension electricity routes, and pressurized gas pipelines. While eir acknowledges that certain physical constraints may make it impractical to break out of the PI carrying fibres, it remains unclear whether ComReg's classification of core network elements is based on the inherent characteristics of the PI or simply the designation of a route as a trunk link. Given that routes between core nodes typically feature access points at regular intervals—potentially allowing for access fibre deployment—eir requests greater clarity on the criteria ComReg uses to determine which network elements are excluded.

103. ComReg's exclusion of leased line infrastructure along national primary roads (N routes) on the basis of a three month wayleave delay improperly eliminates viable supply side substitutes from its market analysis. National roads are key economic corridors supporting major multinational businesses in close proximity (e.g., Intel, Apple, Medtronic, Johnson & Johnson), retail hubs (Junction 14 Mayfield, Barack Obama Plaza), and industrial estates, all of which rely on high quality connectivity. The infrastructure along these routes is not inherently unsuitable for leased line deployment, and its removal distorts the assessment of market supply.
104. A three month permitting process is a short term administrative requirement, not a fundamental constraint on infrastructure availability. As highlighted previously, ComReg has not established using surveyed evidence whether a 3 month period is necessary. Excluding such infrastructure ignores real world network expansion trends, where providers regularly extend services from core networks to meet demand. ComReg's approach overstates market concentration and misrepresents the availability of supply-side alternatives, leading to an incomplete picture of competition.
105. Finally we note ComReg's view that there is no need to map Eircom's network *"as it considers Eircom to have a ubiquitous network due to its extensive duct and pole network. As such Eircom can reach most premises in the State within a reasonable timeframe."* All operators have access to eir's PI networks in accordance with ComReg Decision D03/24 and eir has no advantage in this regard. Therefore all ANs have ubiquity.

Treatment of NBI

106. ComReg proposed that premises listed in the IA should be tested considering the proximity of 1 AN. i.e. NBI plus 1 AN. The proposed approach, maintaining ComReg's rule of three is inconsistent with the WLA decision where the presence of NBI alone was considered sufficient for an area to be considered competitive on the basis that NBI is a wholesale only operator funded through State Intervention. As such all CPs in the IA should be considered competitive and must be fully deregulated.

Treatment of dark fibre

107. Whilst eir does not agree that Dark Fibre is a service that should be included in the MI WDC market, we agree that premises served with MI WDC facilitated by Dark Fibre should be included as CPs. The same principle applies for any premises served with MI WDC facilitated by PIA. The mapping of ANs should also include Dark Fibre and PIA rentals and we request ComReg to confirm this is the case.

Conclusion on geographic assessment

108. There are substantial flaws in ComReg's methodology for geographic assessment:
- WPZ may not be the appropriate geographic unit. Whilst they are defined with reference to business activities they are not representative of the location of business consuming Dedicated Capacity, nor are they representative of network deployment.
 - The use of CPs is questionable as they are based on a static view of demand for a particular set of communications services. This is not representative of the community of potential consumers of WDC services on a forward looking basis.
 - ComReg has failed to justify the proposed rule of 3 (2 ANs + Eircom) which is out of step with modern economic thinking. The HEAnet case study demonstrates that Eircom won less than 50% of circuits in Zone B. ComReg has not analysed win / loss ratios in Zone B.
 - The low density of CPs per WPZ (2 to 3 on average) renders the proportionality criterion useless.
 - The proximity test ignores the actual and potential impact of PIA and is therefore unduly restricted.
 - The output of ComReg's geographic assessment contains many anomalies in terms of how large campuses are treated, how islands are determined, and the re designation of some Zones as evidenced in the HEAnet example does not support some of ComReg's key assumptions.

109. ComReg must re consult as it has failed to justify the rule of three in the context of the Irish market. It has provided no substantive analysis to support its assumption that two alternative networks (ANs) plus eir are required to ensure competitive conditions. This omission is particularly concerning given that ComReg itself previously deemed NBI alone sufficient for a competitive designation in the WLA decision.
110. Furthermore, ComReg has undertaken no assessment comparing the feasibility of using PIA versus direct dig costs, despite this being a critical factor in network expansion. Similarly, its decision to exclude infrastructure along national roads is based solely on an arbitrary three month wayleave period, without any supporting evidence that this delay renders such infrastructure unviable as a supply side substitute.
111. Critically, the number and nature of ComReg's errors mirror the issues identified in BT's successful appeal against Ofcom in the Ofcom Judgement. ComReg has repeated many of the same methodological flaws, including failing to assess competitive conditions properly, misclassifying infrastructure, and relying on rigid, unjustified assumptions. Given the material and serious nature of these errors, ComReg must re consult to address these deficiencies and ensure that its geographic market assessment is accurate, evidence based, and legally robust.

Q.5 Do you agree with ComReg's assessment of the Trunk – Terminating Boundaries of the MI WDC Markets?

112. ComReg's continued reliance on the 100m proximity, and the rule of three from the 2020 Decision is unjustified and outdated. The Irish market has evolved significantly, yet ComReg has provided no new analysis to support maintaining this approach. Given the availability of PIA and network expansion trends, a more appropriate criterion would be the presence of 1 AN plus consideration of viable physical infrastructure access. ComReg must publish an evidenced assessment of why its approach remains valid rather than simply carrying forward an old framework.

Arbitrary and Distorted Definition of Terminating Boundaries

113. Eir strongly objects to ComReg's approach of placing the terminating boundary at the PE Node rather than the first Trunk Exchange. This artificially extends the trunk segment, misrepresenting market conditions and distorting competition assessments.

114. ComReg itself acknowledges in **paragraph 7.17** that:

"For the Zone B locations served by one of the 60 Non-Trunk Nodes, while SNH will be available to an Access Seeker, the relevant boundary between trunk and terminating segments is at a level higher in the core network, which in practice will be determined by reference to the location of the Provider Edge ('PE') Nodes connecting (directly or indirectly) to the Non-Trunk Node".

115. By pushing more network elements into the trunk classification, ComReg misrepresents the level of competition in the terminating segment. In reality, if the terminating boundary were set at the first Trunk Exchange, a greater portion of the network would fall within the access segment, where more alternative providers already compete. This inflates the apparent level of market power held by eir, justifying an unnecessary expansion of regulation.
116. ComReg has provided no objective basis for this decision, which contradicts regulatory principles that require market definitions to reflect actual

competitive conditions. The logical and evidence based approach would be to set the terminating boundary at the first Trunk Exchange, as this is the natural handover point in the network architecture.

ComReg's Framework is Already Obsolete

117. ir's migration to an all IP core network within three years will make PE Nodes entirely redundant. ComReg was briefed on this issue by Eircom. Yet, ComReg is basing its regulatory framework on network elements that will no longer exist during the market review period. This approach is fundamentally flawed and unsustainable, and ComReg must explain why it is enforcing outdated definitions that will soon have no relevance in Ireland's telecoms infrastructure.

118. eir notes ComReg's view at paragraph 7.22 that it is the physical location of PE Nodes that defines Regions rather than network architecture. ComReg's view is at odds with ComReg's requirement that regulated pricing for WDC must be cost oriented which requires that prices reflect the network elements consumed. ComReg's view will further artificially distort the definition of the regulated market. As noted above the concept of PE Nodes will become redundant during the period of this market review.

Q.6 Do you agree with ComReg's assessment of SMP on the Relevant WDC Markets?

119. No, eir does not agree with ComReg's assessment of SMP. ComReg's dismissal of PIA creates an artificial barrier to entry, effectively undermining competition. ComReg cannot disregard the impact of its own regulatory decisions in downstream markets, particularly when PIA has been explicitly designed to lower barriers and facilitate infrastructure based competition. By failing to account for PIA's role, ComReg is distorting the market analysis, misrepresenting the availability of competitive alternatives, and unjustifiably reinforcing regulatory intervention where it may no longer be warranted.
120. ComReg's assessment of Significant Market Power (SMP) in MI WDC Market 2 and Market 4 is built on a flawed foundation, as it is based on an incorrect product and geographic market definition.
121. If the underlying market definition is incorrect, then all SMP findings and subsequent remedies relying on this framework must be inaccurate, unjustified, and legally unsound.
122. By incorrectly restricting the scope of competitive assessment, ComReg has inflated its SMP findings in Market 2 and Market 4, leading to an overstatement of Eircom's market power. If PIA and alternative network deployments were properly considered, ComReg would not be able to justify its current SMP designations.
123. eir's national share of Connected Premises (CP) is less than 50% (per the table below) which does not support a presumption of market power.

[REDACTED]

Q.7 Do you agree that the competition problems and the associated impacts on competition end users identified are those that could potentially arise in the Zone B MI WDC Markets (and related markets)?

124. eir does not agree that the competition problems and the associated impacts on competition and end users identified by ComReg are those that could potentially arise in WDC market. ComReg has failed to properly assess the

product and geographic market and failed to appropriately assess the level of competition that eir faces in terms of both direct and indirect constraints including the use of PIA to facilitate the delivery of WDC services by ANs.

125. ComReg is of the preliminary view that, absent regulation, eir has the ability and incentive to engage in exclusionary practices, leveraging behaviour, and exploitative practices. ComReg has not produced any concrete evidence that the examples of anti competitive effects and concerns discussed in a text book manner by ComReg in this Consultation are actually likely to occur in this market.
126. As we have clearly demonstrated throughout this response, including in Appendix 2 and 3, barriers to entry in the WDC market are low, enabling ANs to easily switch to alternative access solutions such as PIA or substitute WDC such as FFTP and wireless leased lines. This fundamentally undermines ComReg's speculation that Eircom could engage in anti competitive practices, as viable alternatives are readily available to mitigate any potential market distortions. ComReg has provided no substantive evidence to justify the extensive and disproportionate regulation it proposes. In reality, ComReg's intervention is misaligned with actual market conditions. Its analysis narrowly focuses on demand side substitution while largely dismissing supply side substitution and potential competition. As a result, ComReg imposes unnecessary regulatory burdens in a market where natural competitive forces are already at play.

Q.8 Do you agree with ComReg's proposals in respect of non pricing remedies in the Zone B MI WDC Markets?

127. eir has the following comments in respect to the proposed non pricing remedies, without prejudice to eir's position that the requirement for remedies has not been properly demonstrated or articulated by the market assessment set out in this consultation.
128. ComReg proposes to define 'Aggregation Region' by reference to PE Nodes. As highlighted earlier in this response, PE Nodes will cease to be a feature of eir's core network during the period of this market review. Furthermore, the concept of Aggregation Region is not necessary as the boundary should be defined by reference to Trunk Nodes only.
129. ComReg proposes to define Dark Fibre in the draft WDC decision as '*an unlit optical fibre strand(s) between two designated points*'. Whilst eir does not agree that a definition of Dark Fibre is needed in this Decision, for the reasons explained earlier in this response, if ComReg deems it necessary there should be consistency between Decisions. In D03/24 Dark Fibre is defined as '*optical fibre that is installed but not in use*'. ComReg offers no explanation as to why a different definition is proposed. It is important that common things, such as Dark Fibre, are treated consistently in relevant markets.
130. In section 7.5 ComReg proposes conditions of Access regarding:

"requirements imposed in respect of accreditation, audits and supervision".

Given that the Access remedies relate to active services installed by Eircom technicians eir requests ComReg to explain why the proposed section 7.5 is considered relevant or necessary. This is also the case for the proposal in respect of the requirement of 9.4.5(g) for Eircom to describe the '*specification of cables and equipment to be used on the network*'. Again, this does not appear to be relevant in the context of active services.

131. In section 8.2 of the Consultation ComReg proposes a presumption of Equivalence of Inputs for any new WDC services implemented. eir has no objection to this approach. As ComReg is aware, eir will be in a position to implement Eol for new products in this market in December 2025 under Project Alpha. This is based on the timeline of eir IT Transformation which ComReg is kept informed of, most recently in December 2024. eir requests that the effective date of the implementation of Eol for new products acknowledges and allows for this.
132. In section 9.14 of the Consultation ComReg proposes to impose a parallel running period of 3 months for the WDC Rollout Plan and the D03/20 Rollout Plan. Given that the contents of these plans are identical we would be grateful if ComReg can clarify why a parallel running obligation is considered necessary.
133. eir notes the consistency and alignment of timelines with other regulated markets set out in this draft Decision, in relation to transparency obligations, product development and SLA requirements.
134. With regard to Equivalence KPI metrics, we note that the metrics in this consultation have been aligned to the requirements in D04/22. Given low order volumes within this market, there is potential for these metrics to result in misleading statistical relevance.

Q. 9 Do you agree with ComReg's view that a differentiated pricing remedy (of no price control) should apply to Eircom with respect to MI WDC products and services in the IA in the Zone B MI WDC Markets, while the obligations of access, non discrimination and transparency will continue to apply to the MI WDC products and services in the IA?

135. eir agrees that there should be no price control imposed in IA Zone B areas. However, eir does not agree that ComReg's proposal is consistent with its stated position/question.

136. ComReg has accepted and stated that the presence of NBI in IA Zone B areas will constrain eir's pricing behaviour and that no price control obligation is therefore required. Yet, ComReg does propose a regulatory pricing remedy. This is not justifiable. Either there should be price control regulation (for which ComReg has stated there is no justification for in the IA Zone B) or there shouldn't. eir request that ComReg recognise this and that no differentiated price remedy should apply.

137. Question 9 misrepresents ComReg's position by suggesting that 'no price control' is proposed for this area and implying that *'[t]his means that Eircom will have pricing freedom in this area.'* In fact, ComReg's proposal in paragraph 7.161 imposes a price control obligation, albeit indirectly, by requiring eir to charge the same price to all operators accessing its MI WDC products and services in the IA Zone B MI WDC Markets.

138. In order to justify a pricing remedy ComReg must identify a regulatory pricing concern. However, ComReg clearly states in paragraph 7.158 that:

"ComReg considers that other forms of price control are not appropriate in the IA. A price control obligation of cost orientation (similar to the one proposed below for the remaining areas of Zone B) might not be proportionate or justified on the basis that there is a reduced risk of excessive pricing by Eircom in the IA for the reasons discussed above".

139. This statement clearly contradicts ComReg's proposal to impose a pricing obligation that effectively sets a price floor or ceiling (the same price across

all operators]). On one hand, ComReg dismisses the need for a pricing remedy by noting that there is no substantial risk of excessive pricing in the IA, yet on the other hand, it seeks to implement a regulatory pricing framework that assumes such a risk exists. This inconsistency undermines the rationale behind the proposed remedy, as the absence of a pricing concern would not justify the imposition of such regulatory constraints.

140. ComReg is quite clear that there is no reason for any price control regulation in IA Zone B and therefore its proposal is clearly ultra vires to require Eircom to “charge the same price to all operators accessing its MI WDC products and services in the IA in Zone B MI WDC Markets including Eircom itself”. In practical terms, ComReg’s proposal is a form of price control regulation, this being price benchmarking which ComReg itself discounts as a pricing remedy in paragraphs 7.173 7.174.

“7.173 ComReg considers that the other forms of price control, including benchmarking, retail minus or margin squeeze tests, are not sufficient to ensure that prices for MI WDC products, services and associated facilities outside the IA in Zone B MI WDC Markets are not excessive and are set in a way that supports efficient investment incentives. This is consistent with ComReg’s position taken in the 2020 Decision.

7.174 Benchmarking is not considered appropriate given the complexity to establish a like-for-like benchmarked price for WDC services. There can be differences in price due to underlying differences in local access and transmission networks’ technologies (e.g. Ethernet, XGS PON), demand density and geographical distances across the leased lines network, as well as differences that arise due to the choices made regarding the adopted pricing models. Furthermore, the fact that Eircom offers a large suite of WDC products and services also makes it difficult to establish and maintain with a reasonable degree of predictability a price benchmark for all MI WDC products and services”

141. The arguments in paragraphs 7.173 and 7.174 provide a clear rationale for why ComReg rejects certain forms of price control, including benchmarking.

ComReg states that benchmarking is not appropriate due to the complex factors that influence pricing, such as technological differences, demand density, and the broad range of WDC products and services eir offers. Yet, despite these complexities and its own rejection of benchmarking as an adequate remedy, ComReg's proposed pricing obligation—requiring eir to charge the same price to all operators in the IA Zone B MI WDC Markets—essentially sets a price benchmark. This creates a fundamental contradiction: on the one hand, ComReg dismisses price benchmarking as unfeasible due to the many variables involved, but on the other hand, its proposed remedy imposes an equivalent form of benchmarking by mandating uniform pricing across operators.

142. This contradiction highlights the inconsistency in ComReg's stance. The Consultation acknowledges the impracticality of price control mechanisms like benchmarking while simultaneously proposing a regulatory remedy that, in effect, imposes similar constraints. The logical consequence of this is that the proposed remedy lacks a clear, justifiable basis in ComReg's own analysis.
143. In respect to the de facto pricing obligation itself, the reasons put forward as to the unsuitability of benchmarking is similarly present in ComReg's proposal. It is unclear and the Consultation doesn't stipulate the basis upon which it should be applied e.g. whether it applies to the entire IA Zone B area or on a circuit by circuit basis As identified by ComReg:

"There can be differences in price due to underlying differences in local access and transmission networks' technologies (e.g. Ethernet, XGS PON), demand density and geographical distances across the leased lines network, as well as differences that arise due to the choices made regarding the adopted pricing models. Furthermore, the fact that Eircom offers a large suite of WDC products and services also makes it difficult to establish and maintain with a reasonable degree of predictability a price benchmark for all MI WDC products and services"

144. As a consequence ComReg's proposal means that eir would have to implement systems and processes for pricing in IA areas in Zone B (and

somehow these would have to be mapped and verified), that may differ from eir pricing in IA areas in Zone A, as well as in non IA Zone B areas. Moreover, where eir may not be selling leased lines in various IA Zone B areas, it is unclear what pricing eir should offer at the WDC level (from the regulatory perspective). As this will drive specific, and additional, costs for eir, there is a question as to how should such costs be recovered from Access Seekers.

145. More importantly, ComReg has, in its consultation, failed to ask and assess, whether, such a remedy is actually justifiable at the cost and operational level.

Q.10 Do you agree with ComReg’s view that a cost orientation price control obligation should be maintained for Eircom’s MI WDC products, services and associated facilities, including WDM services, outside the IA in Zone B of the MI WDC Markets?

146. In paragraphs 7.163 to 7.177 of the Consultation, ComReg attempts to justify maintaining a cost orientation price control obligation, but this explanation is vague and does not specify the actual details of how the cost orientation should be applied. As a result, Question 10, in isolation, cannot provide a conclusive basis for stakeholders to assess whether it is appropriate to maintain such an obligation, since the key details of how it would be implemented are missing.
147. The list of purported benefits attributed to cost orientation is not justifiable at this stage, as ComReg has yet — in this part of the Consultation — to specify the details of the general cost orientation pricing remedy. Without this critical information, it is impossible to assess whether the claimed benefits will materialize in practice.
148. For instance, ComReg claims that cost orientation will encourage network roll out. However, this claim hinges on how the cost orientation obligation is defined (e.g., whether it follows HCA, BU LRAIC, or another model). Similarly, the assertion that cost orientation ensures the recovery of efficiently incurred costs depends entirely on the assumptions used in ComReg’s pricing model, not the cost orientation concept itself. Consistency is another supposed advantage of cost orientation, yet any true consistency will only emerge once the specifics of the price control remedy are defined. Finally, ComReg points to the complexities of margin squeeze tests—such as the presence of multiple locations and multi circuits in Zone A and Zone B—as a challenge. However, these complexities are not unique to margin squeeze analysis; ComReg itself acknowledges these same challenges (see paragraph 7.192) in relation to the modelling difficulties associated with cost-orientation.
149. In summary, eir does not consider that interested parties can address this question in isolation without also considering Question 11.

Q.11 Do you agree with ComReg's view that Eircom should charge the current Zone B rental prices in the LLRO price list (i.e., the pricing continuity approach), as fixed price points, for Eircom's MI WDC products and services, including WDM services, outside the IA in Zone B of the MI WDC Markets, and the current rental prices in the LLRO price list for the associated Eircom interconnection services?

150. eir understands and agrees with the need for a period of pricing continuity in the WDC market (assuming SMP is justified) and agrees with ComReg's reasoning regarding the need to safeguard the investments of current network operators who have recently deployed or are about to deploy infrastructure. eir agrees in principle that it is appropriate to charge the current rental prices in Zone B.
151. However, eir does not agree with the manner in which ComReg's proposed pricing continuity obligation would be implemented concurrently with a further pricing obligation. ComReg must clarify the basis upon which it would expect eir to comply with a pricing continuity obligation, given the uncertainty created by its concurrent proposal to have the right to issue a direction on eir (at some future point), to justify those prices on the basis of a yet to be completed (by ComReg) fibre cost model or some form of BU LRAIC+ principles/model.
152. eir acknowledges that, through its proposed regulation of the WDC market, ComReg aims to ensure stability via pricing continuity, thus avoiding any sudden shifts in market conditions in Zone B areas. By maintaining pricing continuity, ComReg sends an important signal to investors, demonstrating its commitment to setting wholesale prices that support long term investment. This approach helps create a more stable and predictable environment for investment over the medium term.
153. However, ComReg's statement in paragraph 7.193 directly conflicts with its proposed decision to allow eir to price on a "pricing continuity basis" using the 2020 Price List and legacy based copper network costs (as outlined in section 7.143). While eir is required to maintain pricing continuity, it also faces the risk that, at any time, ComReg may issue a direction requiring eir

to provide full justification for its prices, potentially forcing price adjustments. In any such assessment, ComReg would rely on BU LRAIC+ costing principles, aligning with its objective of encouraging investment, and applying them across the entire set of MI WDC services in the Zone B MI WDC Markets.

“ComReg may issue a direction requiring an undertaking [eir] to provide full justification for its prices and may where appropriate require prices to be adjusted. In any such costing assessment, ComReg will rely on BU-LRAIC+ costing principles, consistent with ComReg’s objective of encouraging investment, which should apply across the complete set of MI WDC services offered in the Zone B MI WDC Markets.”

154. ComReg’s proposed approach is completely at odds with the draft Decision instrument which clearly states in section 14.3.2, *“The annual rental charges applicable to the NGN Ethernet and WDM wholesale dedicated capacity product suites as set out in the LLRO Price List on the Effective Date shall be deemed to be cost-oriented”*. It is entirely irrational for ComReg to state in a legally binding instrument that current prices are cost oriented whilst also proposing in the body of the text a mechanism for eir to justify those prices using a completely different pricing methodology.
155. Irrationality aside, a shift from the proposed pricing continuity approach back to cost based pricing through a ComReg direction would undermine the incentives for telecom providers to build new networks. This contradicts the very rationale behind ComReg’s decision not to update the pricing model, including the acknowledged modelling difficulties (as discussed in paragraph 7.192 of the Consultation).
156. We have previously highlighted the inconsistency between ComReg’s reasoning and its actions, as seen in the “no price control” stance for IA Zone B in Question 9. Similarly, in this instance, the Consultation clearly justifies a pricing continuity remedy and at the same time providing cogent reasoning in discounting and eliminating two further other options in paragraph 7.180: (b) Updated BU LRAIC+ prices set by reference to a ComReg model, and (c)

Updated BU LRAIC+ prices set by reference to an Eircom model. Nevertheless, and in clear contradiction to those stated reasons, in paragraph 7.193, ComReg states that it may, at any time, direct eir to justify its prices using BU-LRAIC+ pricing principles based on a fibre cost model (yet to be completed by ComReg).

157. Several regulators, including Ofcom in the UK, have started moving away from traditional investment ladder pricing models in favour of pricing continuity across various markets. However, eir has not encountered any regulator that justifies and imposes a pricing continuity remedy while also introducing an additional trigger that allows, during the same market review period, for those very prices to be adjusted by direction (i.e., through a regulatory decision) using an alternative price control model, such as BU-LRAIC+.
158. In summary, eir agrees with a pricing continuity approach. However, eir does not agree that it is appropriate or justified to have a concurrent text in the body of a document that directly contradicts this approach and that allows ComReg at any time to require Eircom to justify prices using effectively a BU-LRAIC+ pricing model/principles. This is not only in clear contradiction to ComReg's own justification for not imposing such a remedy but it also creates clear regulatory uncertainty for industry and Eircom.

Q.12 Do you agree with ComReg's view that the charges for co location services and the upfront (non-recurring) charges for connections should reflect no more than the actual efficient costs incurred by Eircom plus a reasonable rate of return?

160. eir notes that ComReg's approach is consistent with equivalent obligations in D03/24 and D05/24.

Q.13 Do you agree with ComReg’s view that Eircom should maintain its cost accounting obligation in relation to its Modern Interface Wholesale Dedicated Capacity products, services and associated facilities? (205)

Q.14 Do you agree with ComReg’s view that Eircom should continue to maintain its accounting separation obligation in relation to its Modern Interface Wholesale Dedicated Capacity products, services and associated facilities, and for the avoidance of doubt this means the inclusion of dark fibre in the MI WDC HCA statements and AFI statements? (209)

161. For the reasons set out above eir does not believe that Dark Fibre can be reasonably defined to be in the WDC market. Dark Fibre is a passive service that that can be used to support WDC services in the same manner as PIA. There is no basis for Dark Fibre to be included in a WDC accounting obligation.
162. Taking Question 13 and Question 14 together, eir does not agree with ComReg’s proposal that Eircom should maintain its cost accounting obligation in relation to its Modern Interface Wholesale Dedicated Capacity (MI WDC) products, services, and associated facilities. While cost accounting obligations ensure that fair, objective, and transparent cost allocations are maintained, particularly when an SMP operator is subject to price control, these obligations must be evaluated in light of their justifications and evidence to ensure proportionality and necessity. Our response outlines two primary areas of concern:
- Mismatch of Geographic Units; and
 - Inappropriateness of Cost Accounting Framework for Pricing Continuity

Mismatch of Geographic Units

163. ComReg’s geographic analysis introduces a significant mismatch between the boundaries of WPZs and Eircom’s exchange footprint—the unit to which costs are allocated. This inconsistency creates substantial challenges for accurately assigning costs and revenues across Zone A and Zone B markets

this creates an additional issue for the regulatory Auditor's ability to sign off the accounts. This has previously been flagged to ComReg.

164. Similar complexities exist for ComReg's proposed AFI to allocate revenues between Zone A and Zone B circuits. In respect to ComReg's inference in paragraph 7.226 that Eircom should have the capability to do this, eir notes that, first, the fact that ca. 5 years have passed since ComReg's previous market analysis decision is irrelevant to those complexities. Second, the AFI as worded by extant regulation, made such an AFI requirement conditional on ComReg's request which ComReg has never requested in accordance with the extant market analysis decision and/or ComReg D08/10. In addition, looking at eir's revenues between Zone A and Zone B in isolation provides no meaningful indicators as to the competitiveness of either Zone A or Zone B – it merely gives an indication of revenues without any background or context. Bishop and Walker caution against over reliance on revenue data because revenues are often influenced by factors unrelated to market power. Bishop and Walker also note that in bidding markets, prices and market outcomes are determined by the interaction of suppliers and large buyers through competitive bidding processes which is not visible by merely looking at revenues in each Zone. Given that bidding markets are also typical for multi sited locations the dispersion of revenues across the Zones is also not visible. Finally, as ComReg is aware, the end customer location is not always provided by eir's wholesale customers and is missing for 40% of eir's wholesale circuits based on the information available.

Granularity and Speculation

165. ComReg's paragraph 7.208 states:

“In particular, ComReg requires Eircom to maintain appropriate cost accounting systems to justify its costs (and prices) for MI WDC products, services, and associated facilities, in particular in Zone B of the MI WDC Markets. As a result, Eircom should ensure that its cost accounting systems are capable of providing the level of granularity and transparency necessary to demonstrate compliance with its obligations arising from a finding of SMP for MI WDC products, services and associated facilities in the

Zone B MI WDC Markets, including its price control and accounting separation obligations and in particular ComReg Decision D08/10.”

166. While granularity is a desirable goal, the geographic mismatch between WPZs and exchange footprints makes any sub geographic allocation speculative. This challenge is exacerbated by the complex contracts that span multiple zones. Any allocation requirement would result in:

- Significant difficulties in assigning revenues and costs.
- Increased compliance burdens that fail to reflect the reality of how Eircom’s services are delivered and consumed.

ComReg’s Own Admission

167. ComReg acknowledges the disproportionate complexity of modelling costs in paragraph 7.192:

“...there is the added complexity and burden of modelling a subset of regulated leased lines that are scattered across the area outside the IA in Zone B, which seems disproportionate at this time.”

168. Despite this admission, ComReg’s proposal would require Eircom to maintain cost accounting systems capable of addressing these complexities, which is neither proportionate nor justified.

Inappropriateness of Cost Accounting Framework for Pricing Continuity

169. eir agrees that pricing continuity is important for market stability, however, this pricing remedy principle is not supported by maintaining a HCA cost accounting remedy.

Historical Cost Accounting (HCA) Basis

170. ComReg’s reliance on accounts prepared on an HCA basis undermines their applicability for pricing continuity.

171. The HCA framework does not align with a pricing continuity approach or a BU LRAIC+ approach, creating inconsistencies in cost allocation and

regulatory enforcement. This is recognised by ComReg itself in paragraph 7.189:

“the price control adopted in the 2020 Decision is predominantly based on a BU-LRAIC+ costing methodology, with assets valued at their current replacement cost, to reflect the objective of encouraging efficient investment by alternative network operators, and not at their historic cost, which is the approach adopted in Eircom’s HCAs. It is also the case that these differences can be accentuated when the invested capital is not maintained and Eircom sweat their assets.”

172. The additional cost accounting remedy is therefore unjustified and unnecessary. ComReg has recognised that the HCA has no relevance to a price control set on a BU LRAIC+ basis and therefore also by implication it provides no relevance to pricing continuity.

Regulatory Framework and Burden of Proof

173. ComReg relies on Regulation 56(6) of the ECC Regulations to justify Eircom's cost accounting obligations. While this regulation places the burden of proof on the SMP operator, ComReg must ensure its methodology aligns with objectives such as promoting competition and encouraging efficient infrastructure investment. Although ComReg acknowledges this broader requirement in paragraph 7.191, the citation is misplaced. The HCA has no role in a BU LRAIC+ model or pricing continuity and, therefore, does not justify imposing an HCA cost accounting remedy on Eircom:

“While ComReg recognises that updating the BU-LRAIC+ prices for MI WDC services may in principle better reflect current efficient costs, any changes to prices may affect price stability and predictability, which is not consistent with Regulation 56(4) of the ECC Regulations. Updating the prices to reflect current BU-LRAIC+ costs may lead to uncertainty for market players who are investing or considering investing, and so this could impact the investment decisions of alternative operators who may want to build their own network (or rely on Eircom’s regulated PIA) and compete with Eircom.”

Proportionality and Justification

174. ComReg's assertion that these obligations are "justified and proportionate" lacks adequate empirical backing. For instance, ComReg must demonstrate the extent to which the existing obligations have addressed inefficiencies or unfair pricing in the market, as opposed to relying on hypothetical scenarios and in particular, when ComReg has itself admitted to the disconnect between the HCAs and the extant pricing remedy.
175. ComReg's current proposal fails to establish how these obligations meaningfully enhance regulatory oversight or market outcomes.

Conclusion

176. The requirement to maintain cost accounting obligations, including AFI for sub geographic allocation of revenues or costs, is neither proportionate nor justified. ComReg's approach imposes undue complexity without clear regulatory benefits, particularly given:
- The geographic mismatch between WPZs and exchange footprints.
 - The lack of alignment between the HCA basis and pricing continuity principles.
 - The absence of empirical evidence demonstrating proportionality or necessity.
177. eir recommends that ComReg reconsider its proposal, focusing on ensuring that obligations are both evidence based and proportionate. A balanced approach that avoids duplicative requirements will better promote market stability and regulatory transparency. eir does not believe that a price control remedy based on a pricing continuity approach and/or a BU LRAIC+ pricing model justifies the regulatory burden of imposing a HCA cost accounting remedy.

Q.15 Do you agree with ComReg's view that Eircom should continue to maintain its statement of compliance obligation in relation to its MI WDC products, services and associated facilities in the WDC market?

178. eir notes that the proposed remedy is consistent with the regulatory governance remedies imposed under D03/24 and D05/24.

Q.16 Do you agree with ComReg’s proposals on the withdrawal of SMP remedies on Eircom in the LB TI WDC Market and in WPZs that have moved from Zone B MI WHQA Markets in the 2020 Decision to Zone A MI WDC Markets in this Consultation?

Stability and regulatory certainty

179. ComReg’s proposed designation of WPZs as either Zone A or B is essentially an update of its 2020 analysis and Decision as it uses the same methodology and criteria with only one largely irrelevant reduction of the proximity proportion. The output of ComReg’s updated analysis re designates a number of 2020 Zone B as Zone A and ComReg proposes that these WPZ be subject to a 9 month sunset period.
180. ComReg’s updated analysis also outputs some WPZ that were Zone A in 2020 as Zone B. The Consultation is silent on how these WPZ would be treated. The potential re designation of some WPZ as Zone B (i.e. regulated) when ComReg had previously been deregulated in 2020 is very problematic. Eir notes that there is ComReg precedent eliminating the ‘re mapping’ of zones including in previous ComReg decisions regarding the Larger Exchange Area where exchanges with lighter touch regulation were not subsequently re mapped. Without regulatory consistency and certainty existing contractual obligations and business certainty will be impacted. It is notable that ComReg does not comment on the treatment of these WPZ and does not identify any consequential market distortions.
181. A similar anomalous situation could have arisen when ComReg undertook its mid term assessment of the WCA market in 2021. However, ComReg limited its analysis to assessing whether conditions had changed in the Regional WCA market where Eircom was designated with SMP. In other words, focusing just on changes (i.e., deregulation) to regulated areas. In support of its approach ComReg stated³ that it:

“must, however, also have regard to the need to provide stability and regulatory certainty to all SPs. ComReg considers that the Mid-term

³ ComReg 18/94, 9.264

Assessment would allow for the dynamic appraisal of any material differences in competitive conditions at Exchange Areas falling within the Regional WCA Market, while continuing to provide stability and regulatory certainty”.

182. eir believes that the same principle should apply in respect of the WDC market such that changes should only be made in respect of the regulatory status of WPZs identified in the 2020 Decision as Zone B.

Supporting dynamic regulation

183. As already noted in this response, mechanisms should be built into the Decision Instrument for an annual review of the status of Zone B WPZ and/or a mechanism for operators to request individual premises or WPZs to be re-designated as competitive.

Appendix 1: Through Line Advisors critique of ComReg's WDC market assessment

Submitted as a separate pdf document.

Appendix 2: Comparative Costs to connect business premises to ANs

Section 1: Use of Eircom PIA by Wholesale Customers to deliver leased line tails

Summary Conclusion

Since 2021 in Provincial cities and towns contractor charges for building new duct have increased substantially. At the same time ComReg has directed substantially lower prices for wholesale access to Eircom ducts through PIA. The combined result is that the break even point for own build versus renting Eircom duct has fallen from about 50 metres to 20 metres. This outcome is confirmed by increased orders for access to short duct routes in Provincial cities and towns to extend Wholesale Customers duct and serve additional business and residential customers. In the medium term this will likely reduce wholesale demand for all but the longest leased line tails in the same Provincial cities and towns.

Background

Since ComReg 24/05 set new prices for access to Eircom poles and ducts there is a requirement to update our analysis of the options for Wholesale Customers to deliver leased line services using one of –

- A: their own access fibre reach supplemented by building additional duct,
- B: their own access fibre reach supplemented renting Eircom duct, or
- C: Symmetric Ethernet Access (SEA) services purchased from Eircom

The choice of the most economic option for the Wholesale Customer has been influenced by changes – the increases in contractor charges for building additional duct, reductions in annual rental charges for Eircom duct, and changes to the price control for SEA services in Zone A Work Place Zones (WPZs). We will first describe the relevance of each of these factors in turn.

ComReg first set prices for duct access using the Revised CAM cost model.

Contractor charges for ducting and associated costs

Contractor charges for digging new trenches and installing duct to carry cables have generally increased since 2016. However the main contractor for Eircom civil engineering has removed the premium charged for works carried out in exchange areas in and around Dublin. The result is that the increases have been greatest in Provincial cities and towns.

Duct Price Changes

Between the duct rental prices set in 2016 and those set in 2024 there are a number of key structural changes. D03/16 set prices by three surface types with the highest for duct under carriageway, the lowest price for duct under grass verge, and an intermediate rate for duct under footway. There was also a geographic distinction between duct rental for Dublin and surrounds (on the basis of higher contractor charges) and Provincial exchanges where lower rates applied.

Up to 2024 the key duct rental prices for delivering leased lines in business parks were the footway rates of €2.12 per metre per annum for Dublin and €1.45 per metre per annum for Provincial areas. After the recent Decision the rate for the Urban Commercial footprint (that covers all sites of significant demand for leased lines) is now €0.56 per metre per annum.

SEA Price controls

A key aspect of the price control for Eircom wholesale Ethernet implemented in 2020 is that the market was found to be competitive in Zone A WPZs. These are located in Dublin, the five provincial cities, and larger towns particularly those where eNet have points of presence (PoPs) serving access fibre metropolitan area networks (MANs) that generally reach the main business parks in that town.

Other costs of leased line self provision by the Wholesale Customers

When comparing the returns available from using a wholesale service from Eircom or providing their own leased line service the Wholesale Customers must consider up front costs for the fibre tail and the Network Termination Unit. In the case of the

Eircom wholesale Ethernet access these costs are incurred by Eircom at connection but recovered from the Wholesale Customers through SEA rental revenues charged over the service life.

Comparison of Option A and Option B

Whether the Wholesale Customers rent duct from Eircom or build their own duct to serve leased line demand they will incur the same fibre cable and NTU costs so the level of these does not affect the decision. When looking at the economic decision for the Wholesale Customers the decision will be based on a comparison of the costs of purchasing duct access from Eircom or building their own duct extension for use over the life of the leased line service.

Life of the leased line service

Despite the fact that most contracts with customers for a data service are typically 3 to 5 years the average retail life of the service is closer to ten years. This is in part because the customer is likely to occupy the premises served for considerably longer than the contract term; it is also because where the customer proposes to end the service or change supplier the provider will often offer an upgrade or a price discount for extending the contract. For the purposes of this analysis we treat the commercial life of the leased line service as ten years and the upfront costs are recovered over that length of period.

Costs of using Eircom duct

Where Wholesale Customers opt to use Eircom public and lead in duct to extend their own access network to serve a new business they will face up front costs and recurring costs. The upfront costs are those of building a new manhole close to the ingress UUB for the Eircom duct route sought. Related to that cost is cost of connecting the two manholes with sub duct and cable so that the cable delivering the service can provide a path from the Wholesale Customers PoP to the customer lead in duct. To model this cost we will assume that the Wholesale Customers manholes are JB4A boxes located in footway. The contractor charge for installing this type is [£250] and the materials costs are [£150] for the channel (frame) plus

[REDACTED] for the cover. This gives a total of [REDACTED] plus an estimate of [REDACTED] for the service to break through from the Wholesale Customers manhole to the Eircom ingress manhole. The only other incremental cost that Wholesale Customers incur by opting to use Eircom duct is duct rental at €0.56 per metre per annum.

Costs of building new duct

For the purposes of this analysis we will assume that the Wholesale Customers existing ducts are sufficiently close to the customer site that they do not need to build additional manholes. We will also assume that their civil engineering contractor will deliver duct under footway for the same rate as the Eircom contractor [REDACTED] per metre. This rate was [REDACTED] per metre for Provincial towns and cities in 2021.

Result

When the up front and recurring costs of own build and duct rental options are compared by route length the result is that own build is now only more economic for routes **less than 20 metres**. Effectively this means that it is always more economic for Wholesale Customers to seek access to Eircom duct than to build their own duct for the delivery of customer service. This particularly applies to eNet when the wish to see customers not currently reached by their MAN fibre in Provincial cities and towns. Throughout 2024 there has been strong demand from eNet for duct access used to extend their MAN reach. This demand is probably utilised to serve new leased line customers.

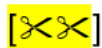
Section 2: WSEA Physical Tail versus Eircom Duct Access

Context

This section is a brief review of the relative costs to a Wholesale Customer of providing a leased line tail to a customer using either a WSEA service or Eircom duct access with their own cable.

[✂ ✂]

Appendix 3: HEAnet Case Study



Appendix 4: Broadband as a substitute

As noted in the main body of this response eir is seeing increasing evidence the trend for businesses operating branch networks to use broadband within their connectivity. In some cases the customer has requested enhanced SLAs (e.g. as are available for eir evo's IP Express product) and in other cases the customer is content with the standard broadband offering. The trend towards broadband based solutions is a combination of lower costs, higher speeds, better performance and reliability of FTTP, and the great availability of the connectivity both geographically and from alternative suppliers in the same location. Combining connectivity from different suppliers greatly enhances resilience meaning that there is less emphasis on enhanced SLAs. The following are some examples experienced by open eir Wholesale and eir evo:

[REDACTED]

**Report on ComReg 27 November 2024 “Market
Review - Wholesale Dedicated Capacity (WDC)
Market: Consultation and Draft Decision”**

31 January 2025



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1. Executive summary

1.1 ComReg's Consultation and Draft Decision reaches the conclusion that eir will have Significant Market Power ("SMP") in the Wholesale Dedicated Capacity ("WDC") market for the foreseeable future in a significant part of the country. It then goes on to apply a price control which severely limits eir's ability to compete in a rapidly changing market that is subject to extensive entry and competition from alternative networks.

1.2 However, ComReg's analysis does not support this conclusion:

- a) It has ignored the competitive constraint of other technologies such as broadband and Ethernet over wireless on Modern Interface ("MI") fibre Ethernet Leased Lines. When considered – correctly – from the perspective of current and prospective users, it is clear that these alternative technologies are in the same product market.
- b) It has failed to understand or even attempt to properly analyse the implications of market trends over recent years. These show that eir is facing competition in many more Workplace Zones ("WPZs") than was the case when ComReg reached its previous regulatory decision. These trends will continue and will accelerate as a result of the ongoing rollout of alternative networks and changes in technology – notably the improvements in the quality of fixed broadband and the adoption of Software-Defined Wide Area Network ("SD-WAN") solutions.
- c) This market entry and expansion by competing networks will be accelerated through the use of regulated Physical Infrastructure Access ("PIA"), particularly the newer Sub-Duct Self-Install product variants (together with associated product and process changes) introduced in April 2024 and arising from ComReg Decision 03/24.

1.3 The WDC market over the forthcoming price control period will therefore be much more competitive than the previous period.

1.4 ComReg's conclusions on SMP and the regulatory measures that flow from it are largely a function of the assumptions that it has made on product and geographical market definition. These assumptions should have been, but have apparently not been, tested against evidence either available to or easily obtainable by ComReg. For example, evidence undermining any of the following assumptions adopted by ComReg, would invalidate its conclusions on the appropriate regulatory measures:

- a) broadband is not considered a competitive constraint on MI fibre Ethernet leased lines ("MI LLs") and is therefore excluded from the product market definition (and/or not considered as the cause of a difference between competitive conditions at lower and higher bandwidths), despite the fact that (i) the technical specifications of broadband are converging on those of leased lines, and (ii) that there are three times as many businesses connections via broadband as there are via leased lines;
- b) wireless Ethernet leased lines are not considered a competitive constraint on MI LLs, despite the fact that they constitute a significant percentage of total leased line connections and clearly compete in some circumstances;

- c) the proximity of a minimum of two Alternative Networks (“ANs”) (in addition to eir) is required to provide effective competition, despite the fact that, contrary to advice from the European Commission (“EC”), no analysis has been undertaken of competitive conditions where there is proximity to one AN; and
 - d) if an AN’s network is further than 50 metres from an end-user’s premises, it is not considered to be a viable alternative supplier, despite the impact of PIA that has already been seen and that will develop rapidly over the course of the regulatory period.
- 1.5 If ComReg had researched and analysed the evidence relating to these issues, it would have reached a different conclusion about each of these issues.
- 1.6 ComReg has adopted what is essentially a backward-looking historical perspective on competition in the market. It has updated its analysis from 2020 using the same methodology and a similar set of parameter assumptions. Much of the evidence it has relied on (in particular its questionnaires) is several years old and out of date, and fails to seek a representative view from customers. The result is a proposal for a regulatory decision that is very similar to the previous one, with some adjustments to the WPZs that are classified into the different zones. If ComReg had looked forward to take account of the impact of well-established trends in the market and the implications of PIA, it would have arrived at different conclusions about the extent of competition in the market.
- 1.7 ComReg’s failure to undertake such an analysis means that it has reached erroneous conclusions about how the market should be regulated. It has underestimated the competitive constraints on eir and has therefore proposed an overly restrictive regulatory outcome.
- 1.8 We consider that:
 - a) The retail product market should include fibre broadband and wireless leased lines. This product market definition should also apply at the wholesale level. Dark Fibre, however, should not be included, even at the wholesale level.
 - b) ComReg should undertake analysis to determine whether the threshold used to define zones should be one or two ANs. This is likely to show – consistent with recommendations by the EC - that market conditions in WPZs with one AN may be materially different from those with none. On the basis of this further analysis, ComReg should consider if the threshold should be lowered to one AN or perhaps three categories of WPZ should be defined.
 - c) The impact of the new variant of PIA should be properly evaluated and incorporated into the distance analysis undertaken by ComReg. The evidence to date of demand for PIA, the dramatic difference in AN network deployment costs between self-dig and using PIA, and the operational benefits of PIA, all clearly indicate that PIA will have a growing impact on the market over the forthcoming regulatory period.
- 1.9 More generally, in our view it is incumbent on ComReg to undertake a more rigorous evidence-based analysis of the market, using a more comprehensive and recent set of data. In doing so, we expect that ComReg would arrive at a materially different conclusion.

2. Introduction

- 2.1 On 27 November 2024, ComReg issued a Consultation and Draft Decision on its market review of the WDC Market (the “Consultation”). This report provides the views of Through Line Advisors Ltd (“TLA”) on selected specific issues in the Consultation. Omission of an issue from this report does not imply that TLA agrees with Comreg’s treatment of that issue in the document.

3. Retail Market Review and Assessment

A. The product market

- 3.1 ComReg chooses MI LLs as the focal product in the Retail Market. It then discusses the extent to which related products are in the same economic market. It concludes that Wavelength-Division Multiplexing variants (“xWDM”) over fibre is in the same economic market but wireless leased lines and fibre broadband are not. We discuss ComReg’s analysis of these latter two candidate products.

Wireless LLs

- 3.2 ComReg concludes that wireless Ethernet leased lines are not an effective substitute for MI LLs or xWDM leased lines, on the grounds of differences in functionality, pricing, and consumer usage, and the lack of supply side substitutability.¹
- 3.3 Wireless Ethernet leased lines are an alternative technology that some connected premises (“CPs”) use in preference to fibre-based solutions. Evidence from eir’s commercial teams at both wholesale and retail levels indicates that wireless solutions are effective in particular situations such as when a connection is needed very quickly, or in rural areas where fibre is not available. In some cases, wireless connections are used as a back-up for fibre-based solutions.
- 3.4 ComReg’s rationale for excluding wireless technology from the MI LL market is primarily based on the use of the majority of wireless connections purchased by major retailers as back-up links to provide redundancy to the primary link via fibre. This conclusion is not supported by this evidence:
- a) Firstly, it is based only on the purchases of large retailers. These do not represent the entire MI LL market, particularly when Small and Medium-Sized Enterprises (“SMEs”) that are currently using broadband are taken into account. Other types of end-users, particularly SMEs, are likely to see wireless-based leased lines substitutes for fibre-based leased lines.
 - b) Secondly, the fact that a portion of the wireless links sold to end-users are used as back-up connections is not evidence that they do not offer a similar product to the primary link. Such customers often have high bandwidth leased lines and require a back-up to high-demand sites. Wireless leased lines could therefore be much closer substitutes for other segments of the MI LL market such as the lower bandwidth links (see below for more details on the bandwidth break).
- 3.5 This indicates that, while not being a perfect substitute for fibre-based solutions, wireless connections do provide some degree of competitive constraint. It is also important to note that wireless connections still constitute a significant percentage of total leased line connections. Comreg’s own data indicates that wireless is used for 17% of total connections provided to major retailers.²

¹ 3.93 to 3.112, Consultation

² Para 3.99, Figure 11, Consultation

- 3.6 By ignoring them, ComReg has therefore left out a significant competitive force within the market.

Broadband

- 3.7 ComReg concludes that broadband (including business broadband) is not an effective substitute for MI LLs and MI xWDM LLs. ComReg justifies this primarily on technical grounds such as differences in product characteristics, Service Level Agreements (“SLAs”), pricing, and intended use by customers. It also claims that there is a lack of migration from MI LL to broadband products at the retail level, despite the increased availability of higher bandwidth broadband services.³
- 3.8 This reflects ComReg’s general approach to product market definition which concentrates on the technology, rather than the nature of demand and the way in which customers are using the products. This is contrary to the recommendations of the EC and ComReg’s own stated methodology. It also reflects ComReg’s failure to collect and analyse relevant evidence from the market.

Technology

- 3.9 Fibre broadband is developing rapidly. The differences in product characteristics and intended use that ComReg draws attention to are diminishing and, looking forward, the substitution and migration between MI LL and broadband is likely to accelerate as fibre broadband products develop further:
- a) eir already offers broadband services of up to 2Gbps⁴, including a ethernet access (“GEA”) product over its Fibre To The Premises (“FTTP”) network with Virtual Local Area Network (“VLAN”) tagging and class of service which effectively provides symmetrical download and upload speeds of up to 200Mbps together with a range of value-added services targeted at business users;⁵ and
 - b) eir is planning to launch a 5Gbps broadband product during 2025.

This trend further blurs any technical distinction between business connectivity delivered via broadband versus other types of networks.

- 3.10 There is variation between Service Providers (“SPs”) in the technical characteristics of the products that they market under the term “broadband”. Although eir does not offer a business grade SLA for its broadband services, we note that other SPs such as SIRO do. This is further evidence that technical and operational considerations do not support broadband and MI LL being in separate markets.
- 3.11 We note also that Ofcom recognised migration from MI LL to fibre broadband in its 2021 wholesale market review and suggested that this would accelerate as fibre networks expanded.⁶
- 3.12 ComReg’s arbitrary distinction between technical features of MI LL and broadband therefore does not reflect the current characteristics of the products. Looking ahead over the

³ 3.113 to 3.125 and 4.29 to 4.33, Consultation

⁴ open eir, 3 November 2024, Access Reference Offer Price List

⁵ open eir, 22 August 2024, Product Description, NGA VUA Products

⁶ 2.104, Wholesale Fixed Telecoms Market Review 2021-2026, Ofcom, 18 March 2021

forthcoming regulatory period, the technical features of broadband are likely to converge even further with those of MI LL products.

End-user demand

- 3.13 Up to date evidence from end-users about their use of the different business connectivity products is essential to making a critical decision about the substitutability between broadband and MI LL. We note in that context that the SP questionnaires that ComReg relies on are over two years out of date and so do not reflect latest developments in broadband technology and product offerings. They do not reflect end-users' evolving connectivity requirements and the extent to which broadband is an effective substitute for MI LL from the end-users' perspective. The responses to ComReg's questionnaire therefore do not provide a reliable basis on which to reach a conclusion on product market definition.
- 3.14 ComReg discusses and accepts the significance of other technology developments in the market, particularly the adoption of SD-WAN.⁷ Despite discussing some of the key features of SD-WAN, including the ability to deliver high quality connectivity through shared media, including the public internet, it fails to analyse the implications of this for the MI LL market. One clear implication is that end-users who would previously have purchased private networks from SPs comprised mainly of MI LL are able to use a mix of different access technologies, depending on the requirements of individual premises. This particularly applies to multi-site contracts such as retail end-users which combine a few sites with high bandwidth requirements (e.g. data centres, head offices etc.) with a larger number of sites (e.g. shops) with lower bandwidth and quality requirements. Such end-users are able to make considerable cost savings by using broadband access links for as many of the sites as possible.
- 3.15 eir's experience is that, in addition to the impact of SD-WAN, many smaller business users, who have lower requirements for guaranteed bandwidths and service levels, see broadband as a direct substitute for MI LL. This is also true for large business customers wishing to connect multiple sites that have a range of service levels. Large retail customers are an example of this. They often issue tenders for a large number of sites, some of which have high service level requirements (e.g. head offices or data centres) while others have much lower service level requirements (e.g. retail outlets).
- 3.16 In deciding to exclude broadband from the market, ComReg has almost exclusively relied on its own internal assumptions about the relevance of technical characteristics of MI LL compared with broadband. It has very limited insight into the current views of end-users on this issue or attempted to understand how these products could be substitutes for each other.
- 3.17 This is important because, as the EC has stated, an national regulatory authority should *"...take account of all relevant competitive constraints (both at the wholesale and retail levels) which have an effect on the relevant market analysed. The effect on the market is the key indicator for the relevance of these constraints irrespective of whether the products or services, which exercise these constraints are part of the relevant market."*⁸
- 3.18 ComReg is in a position to ask end-users about their preferences and behaviour and to obtain their views about how they would respond if the relative prices of different products changed.

⁷ 3.45-3.49, Consultation

⁸ European Commission, 2020, Explanatory Note Accompanying the document Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code, page 11

As we note above, ComReg has not done so, and therefore has failed to collect the factual evidence that is required to support its conclusions on market definition, market power, and remedies.

Quantitative evidence

3.19 ComReg has stated that the quantitative evidence on the volumes of orders of broadband and MI LL supports its decision to exclude broadband from the market. In particular, it claims that there is no significant migration from MI LL to fibre broadband products, but the only evidence it cites for this is that MI LL volumes continue to increase.⁹ This does not provide any insight into the extent to which broadband is a substitute for MI LL, either historically, or on a forward-looking basis:

- a) Firstly, demand for business connectivity overall is growing as the economy grows and as businesses increasingly integrate connectivity into their operations. Some of this demand is being met by MI LLs but part of it is being met by broadband. The fact that the number of MI LL connections is growing therefore does not provide any information about the degree of substitutability between broadband and MI LL, nor does it provide any information about the amount of switching between them.
- b) Secondly, the amount of switching between the two types of product would not provide any reliable information about substitutability because business customers tend to have contracts that last for multiple years and there are significant switching costs. We would therefore not expect the level of migration or switching to be high relative to the size of the market overall. Notwithstanding this, ComReg's claim that migration is not taking place is directly contradicted by eir's own experience of tenders from business customers, which indicates that customers are switching from MI LLs to fibre broadband at bandwidths below 1Gbps. Recent examples of migration from MI LLs to broadband include Aldi (165 sites) and New Look (27 sites).

3.20 A more informative way to consider broadband substitutability is to compare the number of business subscriptions to the products supplying comparable business demand:

- a) There were 56,108 businesses broadband subscriber lines with speeds of 100Mbps and above in Q3 2024, 22,830 of which had speeds of 1Gbps and above, according to data published by ComReg.¹⁰ Even accounting for differences in technical features of broadband vs MI LL, this range of broadband services offers a connectivity service that is comparable with lower speeds of leased lines (e.g. 500Mbps and below).
- b) There were 15,559 wired MI LL connections and an additional 3,530 wireless leased line connections in 2023.¹¹
- c) There were therefore approximately three times as many broadband connections as there were MI LL connections supplying connectivity to businesses. If only the lower bandwidth MI LL (e.g. up to 500Mbps) are considered, this ratio is even higher.
- d) These are all business customers who have a choice between getting their connectivity services via broadband or via leased lines. Their choice is determined by a range of factors including speeds, quality of service and the availability of SLAs. Clearly a large proportion of them choose broadband instead of leased lines. ComReg's

⁹ 3.117, Consultation

¹⁰ All-Data-Q3-2024_v2.xlsx, ComReg data portal

¹¹ Table 3, Consultation

conclusion that broadband is not in the same market as MI LL is therefore directly contradicted by its own market subscriber data.

Marketing

- 3.21 ComReg makes several further arguments to support its conclusion that broadband is not an effective competitive constraint on MI LL. For example, it states that eir only appears to market broadband to small businesses.¹² SPs vary in the way that they target specific business customer groups with different products. ComReg suggests that eir's website targets broadband at small businesses whereas it targets leased lines at larger businesses. This is inaccurate. The "Communications" page aimed at larger business promotes both broadband and MI LLs (under the category "Connectivity").¹³ Moreover, within the "Connectivity" category, eir promotes both MI LL and SD-WAN.¹⁴ We note that other companies also promote alternatives to MI LL. For example, the "Corporate" page of BT Business's website, aimed at large businesses, lists both broadband and "dedicated internet access" (i.e. MI LL) under the heading "Connectivity".¹⁵
- 3.22 ComReg's observation about eir's marketing strategy does not support its view that broadband is not a substitute for MI LL. The fact that smaller businesses are more likely to buy broadband than MI LL would not be evidence that they are not substitutes for each other, at least at lower bandwidths of leased lines. If broadband was not available, many of those smaller businesses would buy MI LLs instead which indicates that they are, in fact, substitutes. ComReg has not attempted to collect and analyse evidence on end-user preferences in any meaningful way and therefore has very little factual basis on which to reach its conclusions.

Supply side substitution

- 3.23 In its analysis of supply-side substitution, ComReg also suggests that broadband network operators would only be able to compete in the MI LL market either by purchasing wholesale inputs from other SPs or by building their own networks. This argument adopts as a starting assumption the very conclusion it is claiming to support (i.e. that broadband and MI LL are in separate markets). In fact, the easiest way that broadband SPs can compete with MI LL SPs for business customers is to market their broadband services to business users, increase the speeds provided by their networks and offer customers a business grade SLA, as SIRO already does.

Conclusion on product market definition

- 3.24 ComReg's approach to product market definition:
- a) adopts an excessive and backward-looking focus on the technological characteristics of different products;
 - b) fails to consider how different types of networking technology such as SD-WAN are affecting the demand for underlying connectivity solutions;
 - c) almost completely ignores the views of end-users; and

¹² 3.119, Consultation

¹³ <https://eirevo.ie/communications/>

¹⁴ <https://eirevo.ie/communications/connectivity-networking/>

¹⁵ <https://business.bt.com/corporate/>

- d) misinterprets the evidence from recent tenders, including trends in the volume of sales of MI LLs.
- 3.25 The evidence that ComReg has cited, together with the experience of eir's commercial teams, indicates that both wireless and broadband provide competitive constraints to MI LL, particularly in certain segments of the business connectivity market.
- 3.26 Many business customers already use broadband instead of MI LL to provide their connectivity needs either on a standalone basis or as part of multi-site contracts. This trend is increasing as broadband performance improves and the nature of demand changes.
- 3.27 It is fair to say that broadband is not a substitute for high bandwidth MI LL, and this is likely to remain the case throughout the forthcoming regulatory period. However, the value of contracts for high bandwidth MI LLs are generally higher, with higher Average Revenues Per User ("ARPU") and larger contract sizes. We would therefore expect there to be more intensive competition for such products from other ANs, including a greater willingness to extend networks further to connect to premises. We understand from eir that they believe they have a low share of the market for this type of product, which would support this view.
- 3.28 ComReg's approach to product market definition should be adjusted to reflect these considerations. There are two alternative approaches that could be taken:
- define two separate MI LL product markets with a break at around 500Mbps and include broadband and wireless leased lines in the market below this break; or
 - define one MI LL product market but include broadband and wireless leased lines in it.
- 3.29 The approach reflects the fact that the profile of demand for sub 500Mbps connectivity services is materially different from those of higher bandwidths and that the presence of broadband means that the supply side of the market is also different. ComReg's evaluation of whether there should be a bandwidth break within the MI LL market is very limited and does not adequately reflect either the demand or the supply side of the market. A more robust analysis of both quantitative and qualitative market data would demonstrate that there are indeed two separate product markets and that broadband should be included in the second.
- 3.30 The second approach reflects the fact that the majority of MI LLs fall below the 500Mbps mark. They therefore represent the bulk of the market and should be the focus on regulatory scrutiny.

4. WDC Market Definition

A. The product market

Wholesale fibre broadband and wireless leased lines

- 4.1 ComReg concludes that wholesale broadband (including fibre broadband) is not an effective substitute for fibre Ethernet and xWDM WDC for much the same reasons as advanced in relation to retail broadband.¹⁶ ComReg reaches the same conclusion for wireless leased lines.
- 4.2 For the reasons set out above, we consider that broadband and wireless leased lines should be included in the product market definition at the wholesale level. As we note above, this could be done either considering the WDC market as whole or splitting it into two separate product markets for higher and lower bandwidths.

Dark fibre

- 4.3 ComReg concludes that Dark Fibre (“DF”) is an effective substitute for wholesale wired Ethernet leased lines (comprising the focal product Fibre Ethernet WDC plus the previously identified substitute of wired xWDM WDC), on the grounds that:
- a) DF can, if supplemented by additional components, be used to provide high-capacity symmetric and dedicated connections; and
 - b) most SPs have the expertise and ability to install and manage such additional components.¹⁷
- 4.4 While both of those observations are valid, they are not sufficient to warrant inclusion of DF in the same product market as WDC. To reach this conclusion, it would be necessary to undertake a Small but Significant Non-transitory Increase in Price (“SSNIP”) test. It is understood that ComReg does not have access to sufficient data to do such a test in detail. However, it is important to ask the question at least in principle/qualitatively to understand the extent to which DF is a substitute for WDC. If the price of WDC was increased by 5-10%, would there be a significant shift by SPs to purchasing DF? The answer is that it is unlikely, in which case, DF should not be in the same market as WDC.
- 4.5 The weakness of ComReg’s conclusion on the inclusion of DF in the product market can also be shown by following it to its logical conclusion. Both of the observations that ComReg makes regarding DF would also be valid for PIA. Most SPs have the expertise and ability to install and manage the principal additional component required to close the gap with DF: that is, the fibre itself. And yet, ComReg does not claim that PIA should also be treated as an effective substitute, and the product market expanded to include it.
- 4.6 The reality is that DF and PIA are not substitutes for WDC; they are products upstream from WDC that could in principle be used to provide services similar to WDC, but with substantial technical and price differences. As indicated by ComReg, it may be appropriate to consider the

¹⁶ 4.29 to 4.33, Consultation

¹⁷ 4.34 to 4.50, Consultation

relationship between WDC and upstream products in terms of the economic space for additional components¹⁸; but this is very different from treating upstream products as substitutes for downstream products.

B. Geographic scope of WDC markets

Criterion that a WPZ has two or more ANs present

- 4.7 ComReg’s first criterion for assessing differences in conditions of competition is that a WPZ must have two or more ANs present (i.e. a minimum of three networks in total). This implies that conditions of competition are similar whether a WPZ has one network or two networks, with a clear break point at three networks.¹⁹ ComReg lists a number of precedents for this criterion. However, in our view the strongest relevant precedent, notably omitted from this list, is the EC’s December 2023 response to ComReg’s notified draft measures on WLA, where the Commission stated:

“The Commission notes that, with respect to the geographic differentiation of competitive conditions in the WLA market, ComReg is taking into account the existence of sufficiently established and stable differences in network deployment. In particular, ComReg considers the presence of at least three VHCNs in a given modified exchange area as the decisive factor to lift regulation.

In this respect, the Commission notes 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. Second, 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, and regulation in the upstream physical infrastructure access market)...

In the Commission’s view and due to the emergence of infrastructure-based competition in the wholesale local market in Ireland, solely regulating physical infrastructure in the areas where fibre investments are expected could be considered in the next market review period. ComReg should consider whether the deployment of VHCNs may be dependent on access to physical infrastructure in the areas where fibre investments are expected could be considered in the next market review period. ComReg should consider whether the deployment of VHCNs may be dependent on access to physical infrastructure of the former incumbent operator.”²⁰

- 4.8 The EC reiterated similar views in its March 2024 decision on the Malta Communications Authority’s review of the wholesale physical and virtual infrastructure access market²¹:

¹⁸ 7.184, Consultation

¹⁹ 4.82 to 4.85, Consultation

²⁰ A copy of the EC’s letter is at Annex 3, of ComReg’s final decision of 18 January 2024

²¹ Para 85, EC decision in MT/2024/2484

"Wholesale regulation is not justified if effective retail competition is ensured. In the recent years, the Commission has been indicating that the presence of three networks as one of the conditions for deregulation seems to be conservative, while the criteria identified should be appropriate to reflect the competitive conditions in a given settlement with a sufficient forward-looking approach. On this point, the Commission disagrees with BEREC's opinion which suggests that the presence of at least three networks is conducive to effective competition. Such a high threshold for deregulation, in particular in the national circumstances of Malta, could lead to the continuing regulation instead of progressively reduce ex ante sector-specific rules, if justified by the level of effective competition in the market. Indeed, an efficient level of infrastructure-based competition is the extent of infrastructure duplication at which investors can reasonably be expected to make a fair return based on reasonable expectations about the evolution of market shares."

- 4.9 The views expressed by the EC in relation these very recent decisions are directly relevant to the current consultation process. It is therefore incumbent on ComReg to take this into account when it is considering issues such as the geographic scope of markets.
- 4.10 ComReg does not appear to have undertaken any analysis of how competitive conditions vary between WPZs with one additional AN and those with two additional ANs. This could have been done – for example – by obtaining the views of customers at the wholesale level and at the retail level. This is a significant omission in ComReg's analysis since much of the outcome of the analysis depends on this criterion.
- 4.11 The implications of this omission are very significant for Comreg's conclusion in this process. If WPZs with one or more ANs are deemed to be competitive, then the number of WPZs falling within this category will be much greater than ComReg's current approach of requiring two. A key outcome of this regulatory process is therefore dependent on an arbitrary threshold for which ComReg has provided no supporting evidence and which has been questioned by the EC.
- 4.12 ComReg should undertake this analysis and determine if the threshold should be reduced to one AN in order to categorise a WPZ as belonging to Zone A.
- 4.13 In doing so, ComReg should also investigate whether a more appropriate approach is to classify WPZ into three groups: those with no ANs, those with only one AN and those with more than one AN. This would provide for the possibility of different regulatory rules applying to the three categories of WPZs according to the level of potential competition.

Impact of PIA on competition

- 4.14 PIA has the potential to transform the nature of competition in the WDC market, given the scale of cost advantage of PIA over self-dig network extension (potentially delivering savings of around 80%, as detailed below), and the relevance of PIA to solving bottlenecks in bids for multi-site contracts.
- 4.15 The PIA market is developing rapidly since the establishment of the new regime in April 2024 that included the Sub-Duct Self-Install product. This has significantly lower prices and is operationally much quicker and easier for an SP to use than the previous PIA arrangements. Last year, the number of non-National Broadband Plan ("NBP") PIA orders for duct more than

tripled, from fewer than [REDACTED] connections in 2023, to more than [REDACTED] connections in 2024 ([REDACTED] Figure 1).

[REDACTED] FIGURE 1: VOLUME OF NON-NBP PIA ORDERS

[REDACTED]

- 4.16 In addition to the extensive use of PIA over increasingly short distances, eir has also seen ANs use PIA for much longer network extensions. We understand that PIA has been used for links as long as 5km. This indicates the impact of PIA on the economics of ANs connecting premises to provide business connectivity. Self-digging a network connection for 5km would have been prohibitively expensive for an AN and would have prevented it from competing for the business. PIA has transformed this and a company in this position is now able to compete effectively. Comreg's geographical analysis has completely ignored this which means that it significantly underestimates the degree of competitiveness in much of the WDC market.
- 4.17 The National Broadband Ireland ("NBI") experience of network rollout is also instructive. NBI's extensive use of PIA for both general network build and specifically to provide LL services is also relevant to ComReg's assessment of the WDC market, since it clearly establishes the economic and operational attractiveness of PIA as a solution for ANs extending their networks.
- 4.18 Despite this evidence, ComReg has dismissed any reasoned assessment of its potential impact on the grounds that PIA is at an "early stage of the deployment and the take-up is still low, with the exception of NBI".²² ComReg explicitly discounts the future impact of PIA, saying that "ComReg believes that over the period of this market review, the extent to which ANs expansion using upstream inputs would effectively constrain Eircom's SMP position in MI WDC Marke 2 is likely to be limited." There does not appear to be any analysis to support this belief or any attempt to consider the evidence presented here.
- 4.19 This dismissal is contrary to the views expressed clearly by the EC in relation to the recent WLA decision, as quoted above in paragraph 4.7. These highlighted the significance of PIA in the competitive dynamics of fixed markets and noted how expected growth in the use of PIA should be factored into a forward-looking view of market developments during regulatory reviews.
- 4.20 We also note that in the UK, Ofcom has drawn attention to the rapid growth in PIA, noting:

*"Significant investment and engineering resources are required to deploy new networks. Many providers reduce the cost and timeframes for deployment if they roll out parts of their network using Openreach's network, which is made up of approximately 496,000 km of duct and 4.1 million poles. Since 2019, our rules have allowed easier access to Openreach's physical infrastructure (PIA). As of the end of September 2024, 172 providers had registered with Openreach as customers of PIA, and 140 of these had already built network using PIA or had placed orders to do so. Providers have ordered around 176,000 km of duct routes (101,000 km of which has been delivered) and approximately 1.2 million attachments to poles (750,000 of which have been delivered) to deploy networks."*²³

²² 4.90, Consultation

²³ Page 25, *Connected Nations – UK Report 2024*, Ofcom, 5 December 2024

- 4.21 Given the major impact that PIA is having on the economics of the fixed market in Ireland, which is likely to deepen over the forthcoming regulatory period, ComReg's simple dismissal of PIA without any reasoning is a critical omission in its assessment of the market, and undermines its conclusions on both market power and remedies.

Criterion that 60% or current or potential demand is within 50 metres or 2 or more ANs

Distance criterion

- 4.22 Comreg established a radial distance criterion of 50 metres in 2020. The rationale for this was that this corresponded to approximately 100 metre route length. Beyond this, any new network build would automatically require a wayleave which would require a minimum of 3 months.²⁴ At the time, ComReg assumed that this delay constituted a significant obstacle for ANs wishing to build extensions to connect end-users. Under this assumption, any AN whose network was further than this distance away from the premises of a prospective end-user would be unable or unwilling to compete for its business.
- 4.23 The use of PIA - particularly in its post April 2024 form - avoids the need to obtain extensive wayleaves resulting in much faster installation of network connections.²⁵ ComReg's justification of its 50 metre assumption therefore no longer holds, and it is not clear on what basis the assumption can be retained.
- 4.24 In addition to substantially removing the impact of wayleaves on network extension, PIA has also transformed the cost of network extension. Although ComReg's 50 metre assumption is not explicitly based on the costs of network extension, such costs are clearly a relevant criterion in considering the ability of ANs to extend their networks and compete for business at a CP. We note that:
- a) The capital cost of an AN digging its own duct amounts to over [X X] for the 100 metre 'dog walks' distance that ComReg assumes corresponds to a 50 metre radial distance.²⁶
 - b) The capital-equivalent cost of the same 100 metre 'dog walks' distance using PIA is less than [X X] – around 20% of the self-dig cost.²⁷ Indeed, since the majority of that cost is fixed regardless of connection distance, a PIA-based extension of even 1,000 metres (equivalent to a radial distance of 500 metres using ComReg's assumed 2:1 ratio) would still be substantially cheaper than a 100 metre self-dig.²⁸
- 4.25 By retaining the 50 metre criterion in its distance analysis in the current consultation, and failing to consider the impact of PIA on either wayleave delays or network extension costs,

²⁴ 4.88, Consultation

²⁵ We understand from eir that wayleaves are only required if remediation work is needed to clear blockages. This means that the extent to which an AN is required to obtain wayleaves is much lower when using PIA than when digging and laying their own ducts and other network infrastructure.

²⁶ As advised by eir

²⁷ [X X]

²⁸ [X X]

ComReg has completely ignored the impact of PIA - particularly the newer Sub-Duct Self-Install products - on competitive constraints to eir in the WDC market.

4.26 ComReg cites two factors to support ignoring the impact of PIA on its distance criterion:

- a) that PIA is at an early stage of development, with take-up other than NBI being low²⁹; and
- b) that the distance criterion: *“relates primarily to the ease with which the ANs in close proximity to the end-user’s premises could extend their own networks”* and not *“whether an access seeker (such as Enet) could extend its network using the PI of another SP”*.³⁰

4.27 As noted above, we do not believe that the first factor is supported by the evidence to date. We further do not think that it is an adequate basis to make a forward-looking regulatory decision, particularly when the financial and operational implications of the new PIA product are so significant.

4.28 The second factor appears to be an unreasonably narrow interpretation of the distance criterion. If it were to be established that PIA was having a material impact on the ability of ANs to extend their networks and compete for CPs, it would be unreasonable to ignore these competitive effects in considering the nature of competition in a WPZ.

4.29 We further note that:

- a) ComReg explicitly identified leased line connectivity as an application of PIA in its PIA review;³¹ and
- b) Ofcom recognised in its 2021 market review (nearly four years ago) that PIA could, in due course, justify a longer dig distance than the self-dig based 50 metres it had adopted.³²

4.30 In our view therefore:

- a) the retention of a 50 metre distance criterion, which entirely fails to consider the impact of PIA, would undermine the definition of geographic markets, the assessment of market power, and the choice of remedies; and
- b) the criterion should be replaced with one that reflects the impact of PIA, which from a wayleaves perspective would appear to place no clear upper limit on distance, and from a cost perspective would support a distance of at least 500 metres. If a separate high bandwidth market were to be defined, then as noted above, higher ARPUs would likely justify an even longer distance.

Business park and islands tests

4.31 The list of Business Parks and other commercial areas at Annex 3 of the Consultation is incomplete. As noted in the 2018 TERA report³³, an important part of the rationale for including sites in this list is that large privately owned sites which - by their nature and location - are likely to have demand for MI LL connections will tend to manage network connections

²⁹ 4.90, 5.50 to 5.51, Consultation

³⁰ 4.92, Consultation

³¹ 1.10 2.20, 3.62-3.63, Jan 24 PIA Review

³² 7.184 to 7.185, Wholesale Fixed Telecoms Market Review 2021-2026, Ofcom, 18 March 2021

³³ s3.3, 2018 TERA report

within their sites privately. However, Annex 3 omits sites that appear to meet these criteria, including:

- a) CityWest Shopping Centre, Fortunestown;
- b) Clane Business Park;
- c) County Buildings, Tralee;
- d) Department of Education on Marlborough Street, Dublin;
- e) Dundrum Business Park, Farranboley;
- f) Fairgreen Shopping Centre, Carlow;
- g) Farranshoneen Retail Park, Waterford;
- h) Magna Business Park, Fortunestown;
- i) Saint Vincent's University Hospital, Dublin;
- j) Showgrounds Shopping Centre, Clonmel; and
- k) University Hospital Kerry, Tralee.

4.32 The Islands test also appears to be operating incorrectly and in need of revision. A number of Zone WPZs are surrounded on all sides by Zone A WPZs that appear to be, on average, larger. For example:

- a) Ballyhanna (WPZ DL0040)
- b) CityWest Shopping Centre (WPZ SD0288);
- c) Magna Business Park, Fortunestown (WPZs SD0299 and SD0300);
- d) Clane Business Park (WPZ KE0202)
- e) East Prosperous (WPZ KE0208)
- f) North East Athy (WPZ KE0004)

4.33 We also note some unexpected results in urban areas, which may indicate the need to amend either the Business Park or Islands test, or introduce an additional test, with looser criteria appropriate for cities and large towns. For example, a material number of WPZs in central Dublin, where AN networks are likely to be present, are identified as Zone B, including a string of WPZs along the North bank of the Liffey between Father Matthew Bridge and O'Connell Bridge (WPZs DC0238, DC0239, DC0322, DC0290, DC0288, DC0287 and DC0283), which include the Four Courts building and the Capel Building.

Source data used for mapping process

4.34 ComReg's AN data is based on data requests issued in July 2022 (or April 2024 in the case of SIRO)³⁴. However, this fails to capture rollouts since those dates, and rollout plans during the market review period that can be predicted with a high degree of confidence. For example:

- a) SIRO is expanding its network to reach between 700,000 and 770,000 premises during the market review period, but as of early 2024, it had reached between 515,000 and

³⁴ 4.109, Consultation

560,000 premises³⁵, leaving around 20% to 30% of SIRO's forward-looking network footprint omitted from ComReg's analysis; and

- b) Virgin Media overbuilding its entire Cable Access Television ("CATV") network with FTTP³⁶, which is highly likely to expand the reach of that part of its network from which MI LL extensions are possible.

4.35 As noted in January 2024 by ComReg in its WLA market review, FTTP network rollouts are unlikely to slow down.³⁷ Even where these are aimed at residential customers, they will nevertheless expand the reach of network nodes from which MI LLs can be connected.

4.36 ComReg's Connected Premises data:³⁸

- a) for MI LL-connected premises is based on a 2023 dataset, while ComReg acknowledges that *"a complete dataset, including reliable geolocation information, has only been available to ComReg since April 2024"*³⁹; and
- b) for DF-connected premises is based on a 2022 dataset, while ComReg acknowledges that has quality issues and it is awaiting more detailed and accurate data for H1 2024.

4.37 It would be inappropriate for ComReg to rely on data that it has acknowledged as unreliable, when more reliable data is or will very soon be available. ComReg indicates that updated data sources for Connected Premises will be used in its decision – but the updates clearly have the potential to significantly affect the geographical analysis, and it is not clear what opportunity ComReg plans to allow for adequate consultation on the updated analysis.

³⁵ 3.23, *Market Reviews – Wholesale Local Access provided at a fixed location, Wholesale Central Access provided at a fixed location for mass-market product, Response to Consultation and Final Decision*, ComReg, 18 January 2024

³⁶ *Kingscourt Latest Cavan Town To Secure SIRO's 100% Fibre Broadband*, SIRO press release, 4 April 2024; and para 3.46, *Market Reviews – Wholesale Local Access provided at a fixed location, Wholesale Central Access provided at a fixed location for mass-market product, Response to Consultation and Final Decision*, ComReg, 18 January 2024

³⁷ 3.26, *Market Reviews – Wholesale Local Access provided at a fixed location, Wholesale Central Access provided at a fixed location for mass-market product, Response to Consultation and Final Decision*, ComReg, 18 January 2024

³⁸ 4.116, Consultation

³⁹ 4.116, Consultation

5. Competition Analysis – SMP Assessment

A. SMP assessment in Market 2

Market share trend

- 5.1 ComReg notes that eir’s market share in Market 2 (WPZs with CPs that do not meet the AN criteria) is largely unchanged since 2020, and that it is unlikely that ANs would enter or significantly expand their networks in the remedies period⁴⁰, in support of the designation of SMP. However:
- a) the composition of Market 2 has changed – it is a different set of WPZs - so this is a spurious conclusion: it provides no reliable support for any conclusion on the likely trend in eir’s market share in the set of WPZs now designated as Market 2 in this review;
 - b) in fact, the data provided indicates that of the 2,000 WPZs in SMP-designated Market 2 in 2020, over 700 (37%) are now in Markets 1 or 3, designated as non-SMP – and a like-for-like analysis of the trend in eir’s market share in the set of WPZs designated as Market 2 in 2020 is highly likely to show a significant fall; and
 - c) the rollout of PIA means that the improvement in competitive conditions over the next market review period is likely to be even more significant.

This undermines the SMP designation and suggests that the competition criteria used (which are not materially different from those employed in 2020) are poorly suited for identifying SMP WPZs (both in Market 2 and Market 4). In our view, they should be revisited and revised to reflect current market conditions.

Countervailing Buyer Power

- 5.2 ComReg considers Countervailing Buyer Power (“CBP”) in Market 2, which it defines as *“the bargaining strength that the buyer has in relation to the seller in commercial negotiations “due to its size, its commercial significance to the seller and its ability to switch to alternative suppliers”*.⁴¹ It concludes that CBP is relatively weak in Market 2 WPZs, largely due to the limited network reach of ANs in those WPZs.
- 5.3 However, this fails to take account of:
- a) The fact that the retail market is dominated by multi-site bids, and that CBP must therefore also be analysed at the level of such bids, together with the consequent impact of CBP at that level on WDC CBP at individual WPZs in Market 2. This may be significant where, for example, buyers have access to ANs at most of the sites in the bid, leaving only a small number of sites in Market 2.

⁴⁰ 5.52, Consultation

⁴¹ 5.30, Consultation

- b) The likelihood that a degree of the CBP that ComReg acknowledges WDC customers have in Market 1 by virtue of the scale of their purchases⁴², extending into Market 2. ComReg's rationale for dismissing this extension⁴³ is unclear.

Vertical integration

- 5.4 ComReg concludes that eir's vertically integrated structure could enhance its position in Market 2. However, the only argument advanced in support of this conclusion is that ANs have limited network presence in these WPZs⁴⁴. It is therefore not clear how ComReg can rely on vertical integration as an additional reason, above and beyond network presence, in its conclusion on existing competition in Market 2⁴⁵:

"Based on the assessment of the market shares and the network presence ANs, vertical integration and barriers to entry, ComReg's position is that, absent regulation in MI WDC Market 2, it is unlikely that Eircom would be sufficiently constrained by existing competition such that it would prevent Eircom from behaving, to an appreciable extent, independently of competitors, customers and consumers."

B. SMP assessment in Market 4

Evolution of Market 4

- 5.5 The data provided shows that of the 2,500 WPZs (WPZs without CPs that do not meet the AN criteria) in SMP-designated Market 4 in 2020, 550 (22%) are now in Markets 1 or 3, designated as non-SMP and 900 (37%) are now in SMP-designated Market 2. These changes are indicative of very substantial changes taking place through the growth of alternative networks and the increasingly competitive nature of the market. The continued rollout of the alternative networks, enhanced by the use of PIA, will ensure that these trends continue throughout the forthcoming regulatory period. Despite this, ComReg has failed to take this into account in either the methodology that it has deployed or the conclusions that it has reached.

⁴² 5.33, Consultation

⁴³ 5.57, Consultation

⁴⁴ 5.39 to 5.40, Consultation

⁴⁵ 5.44, Consultation

eir

Supplemental Response to ComReg Consultation:

Market Review – Wholesale Dedicated Capacity (WDC) Market

ComReg Document 24/92



September 2025

DOCUMENT CONTROL

Document name	eir supplemental response to ComReg 24/92
Document Owner	eir
Status	Confidential

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Accordingly, you are requested to contact a member of eir Group's Regulatory Strategy Team where there is a request by any party to have access to records which may contain any of the information herein and not to furnish any information before the eir Group has had an opportunity to consider the matter.

Introduction

1. This submission is made further to eir's response of 31 January 2025 to ComReg's consultation and draft decision for the Market Review Wholesale Dedicated Capacity (WDC) Market (ComReg 24/92). It provides additional evidence and analysis that materially undermines ComReg's market definition, SMP assessment, and proposed remedies.
2. In its consultation, ComReg failed to *inter alia* properly assess the role of Physical Infrastructure Access (PIA) as a supply side substitute in the WDC market. It has failed to do so since the Consultation. This omission, amongst others, undermines the validity of ComReg's market definition and its conclusions on market power.
3. Since the close of the consultation, further developments have reinforced the importance of PIA as a competitive constraint, including:
 - A significant increase in targeted and selective PIA usage by alternative operators, substantially reducing their network deployment costs. This targeted PIA usage is enabling alternative operators to exert a disproportionate impact on the WDC market by pricing at highly competitive levels—particularly when benchmarked against self build or regulated leased line pricing;
 - The launch of new PIA processes that reduce deployment costs and timelines; and
 - The merger of BT Ireland and enet, approved by the CCPC without competition concerns.
4. Despite these developments, ComReg has not indicated any intention to re consult or revise its analysis. This is a serious procedural flaw. Under Article 23 and 68 of the EECC, ComReg is required to consult stakeholders on draft measures where material changes in market conditions have occurred.
5. The omission of PIA analysis and the failure to account for the BT/enet merger are precisely such changes. eir would emphasise that any PIA usage (whether regulated or operator own use) in the WDC market is material to ComReg's assessment of the market and SMP, and its relevance does not depend on volume of usage. By its nature the WDC market is one of relatively low client volumes,

compared to the mass FTTH market. Therefore, competition is based on the ability of alternative operators to target and select potential clients and price competitively (and win bids). This is exactly what PIA usage by ANs is enabling (and will increasingly do so). Furthermore, the merger of BT and enet, two significant operators in the WDC market, both utilising PIA, re enforces this competitive dynamic. Accordingly, ComReg must re consult on the WDC market.

6. A failure to re consult will breach ComReg's obligations under Article 67 of the EECC to conduct a forward looking market assessment based on current and anticipated competitive dynamics.
7. This submission focuses on three core issues:
 - (i) ComReg's failure to assess PIA as a substitute and competitive constraint in the WDC market;
 - (ii) The implications of the BT/enet merger for ComReg's geographic market definition and the validity of its "rule of three" framework; and
 - (iii) Regulatory Failure.

I. ComReg's Failure to Assess PIA as a Competitive Constraint

8. In its January 2025 consultation response (paras 33-42), eir highlighted inter alia ComReg's failure to assess the role of PIA in the supply of WDC and retail leased lines. ComReg's market definition excluded PIA as a substitute, despite clear evidence that PIA enables alternative operators to deploy fibre at scale and compete directly with eir.
9. Since the consultation closed, ComReg had the opportunity to provide a current and forward looking market analysis of PIA usage in its March Market Monitoring report (ComReg 25/15). It failed to do so and relied upon PIA data from 2023. This is despite the fact that the evidence base has strengthened considerably. Between March 2024 and August 2025, BT Ireland and enet — two of the largest alternative operators — have ordered and used over 52,000 metres of eir PIA duct (see Annex A). This is not marginal or incidental usage: 55% of deployments were for distances over 300 metres, and only 19% were below 100 metres. This confirms that eir's PIA is

being used for substantial and selective network extensions, not just infill or short hop connectivity.

10. As detailed in Annex A, this usage is not hypothetical or anecdotal — it is based on actual deployment orders placed by BT Ireland and enet between March 2024 and August 2025.
11. ComReg's assumption that competitive presence must be within 50 metres radial distance is therefore empirically invalid. As eir noted in paras 81-96 of its consultation response, the 50m threshold is arbitrary, unsupported by deployment economics, and fails to reflect the operational reality of PIA based competition. The data now shows that over 80% of BT/enet deployments occur at distances greater than 100 metres — double ComReg's threshold.
12. Related to this is the now near completion of Siro's FTTH programme and VMI's FTTH network roll out being 55% complete with targeted completion early next year. Both operators have access to their own physical infrastructure and therefore make only limited use of eir's PIA product. This further underscores the need for ComReg to assess the actual deployment strategies of alternative operators when evaluating competitive constraints in the WDC market.
13. ComReg continues to misdirect itself in its analysis of the PIA market. Rather than focusing solely on the volume of PIA orders outside of NBI—which, as eir noted in its original submission, confirms that eir's PIA can be used at scale—ComReg must properly assess the strategic use of PIA by alternative operators. This includes evaluating the extent of operator's self supplied infrastructure and the specific locations of deployments. As demonstrated in Annex B, such availability and ability to use eir's PIA in commercially attractive locations undermines ComReg's theoretical theory of harm in the WDC market — irrespective of the number of operators currently present. ComReg's failure to conduct this analysis has led to arbitrary conclusions and a mischaracterisation of competitive constraints in the WDC market.
14. The cost economics of PIA reinforce its role as a substitute. eir estimates that if BT/enet had relied on self build for these deployments, the cost would have exceeded €3.6 million. By contrast, the capital and rental cost of PIA over five years

is approximately 25% of the cost of self build. This cost differential creates a strong economic incentive for ANs to use PIA to compete in the WDC and retail leased lines markets.

15. Annex B sets out a detailed confidential business case demonstrating that operators using PIA [REDACTED] [REDACTED]. While hypothetical, the scenario is grounded in realistic assumptions and reflects actual pricing structures. It demonstrates that PIA based competition is not only viable but can be strategically deployed to target high value sites.
16. ComReg's failure to incorporate this evidence into its market definition and SMP assessment constitutes a breach of its obligations under Article 67 of the EECC, which requires national regulatory authorities to conduct a forward looking analysis of market dynamics, including supply side substitution and infrastructure-based competition.
17. In addition, eir has launched new PIA processes (effective 1 September 2025) that further reduce deployment costs and timelines. These include programme management services, automated ordering, and subcontracting options for duct installation and fibre deployment. These enhancements will accelerate PIA usage and deepen competitive pressure in the WDC market.

[REDACTED]

[REDACTED]

[REDACTED]

II. BT/enet Merger and Geographic Market Definition

18. There has been a material development in the structure of the market: the merger of BT Ireland and enet, approved by the Competition and Consumer Protection Commission [CCPC] without conditions. This transaction combines two of the largest users of PIA in the WDC and retail leased lines markets, and creates a vertically integrated operator with national reach and significant scale.
19. The CCPC's clearance of the merger — despite the reduction in the number of independent operators — is based on a finding that the transaction does not result in a substantial lessening of competition. This directly contradicts ComReg's continued reliance on the "rule of three" as a threshold for effective competition in geographic market definition.
20. As eir noted in its original submission [paras 66–78], ComReg's "rule of three" is not grounded in empirical analysis of the Irish market. It is derived from academic literature and regulatory precedents in other jurisdictions, which are not directly applicable to the structure, density, or investment patterns of the Irish WDC market. The EC itself has criticised this approach as overly conservative and insufficiently forward looking — most recently in its response to ComReg's WLA market review.
21. The merger of BT and enet — and the CCPC's approval of it — demonstrates that if ComReg's framework were correct, the merger would have raised serious competition concerns. Instead, the opposite conclusion was reached: that the merged entity would enhance competition.
22. This contradiction exposes a fundamental flaw in ComReg's geographic market definition and SMP assessment. It also reinforces the need for ComReg to re consult and revise its analysis in light of actual market developments, consistent with its obligations under Article 67 EECC.

III. Regulatory Failure

23. The omissions and errors outlined above give rise to two distinct regulatory failures, both of which undermine the integrity of ComReg's market review and its compliance with the European Electronic Communications Code (EECC).
24. First, ComReg's proposed regulation of the WDC market is unjustified. As eir noted in its original submission (paras 33–42), the presence of regulated upstream access via PIA materially alters competitive dynamics. Where alternative operators can deploy fibre using PIA at a fraction of the cost of self build — and do so at scale — the case for downstream regulation is significantly weakened. ComReg has failed to assess this properly, in breach of its obligation under Articles 67 and 68 EECC to ensure that any regulatory intervention is proportionate, justified, and targeted only where necessary. Annex B illustrates this point: PIA based competition is economically replicable and sustainable, enabling ANs to replicate leased line services and undercut WSEA pricing in commercially attractive areas. ComReg's failure to account for this behaviour renders its SMP assessment and remedies unsound.
25. Second, ComReg's pricing framework creates a structural cost asymmetry that distorts competition in both wholesale and retail markets. By requiring eir to price wholesale and retail tenders based on regulated WDC inputs while allowing ANs to compete using regulated PIA inputs, ComReg enables operators to cherry pick high-value areas—an opportunity expanding as Siro and VMI extend their fibre networks from existing footprints—and undercut eir's nationally averaged regulated WSEA prices. This arbitrage is not efficiency driven; it is a direct consequence of regulatory design, which imposes cost orientation and compliance obligations solely on eir while granting PIA based operators pricing flexibility and selective deployment. Such potential market behaviour does not require the presence of three operators, contrary to ComReg's assertion. Its effect is to materially alter competitive dynamics in a manner that calls into question the necessity of finding SMP in the WDC market, and raises concerns regarding the proportionality of regulatory intervention under the EECC.

26. These failures are compounded by ComReg's decision to proceed directly to a final decision without re consultation, despite material flaws in its original market definition and SMP assessment and significant subsequent developments, including increased PIA usage and the BT/enet merger. This approach is inconsistent with ComReg's obligations under Articles 67 and 23 EECC to conduct a forward looking market assessment and ensure proper stakeholder consultation.
27. ComReg's proposed regulation of the WDC market is disproportionate and unjustified. As eir noted in its original submission (paras 33-42), the presence of regulated upstream access via PIA materially alters competitive dynamics. Where alternative operators can deploy fibre using PIA at a fraction of the cost of self build — and do so at scale — the case for downstream regulation is significantly weakened. ComReg has failed to assess this properly, in breach of its obligation under Article 68 EECC to ensure that any regulatory intervention is proportionate, justified, and targeted only where necessary. Annex B illustrates this point: PIA-based competition is economically replicable and sustainable, enabling ANs to replicate leased line services and undercut WSEA pricing in commercially attractive areas. ComReg's failure to account for this behaviour renders its SMP assessment and remedies unsound.

These failures are compounded by ComReg's decision — as indicated in its work plan — to proceed directly to a final decision without re consultation. This is a serious procedural error. As eir set out in its original submission, ComReg's market definition and SMP assessment contained material flaws that warranted further consultation.

These supplemental submission highlights that, in addition to those flaws, further market developments have occurred — including increased PIA usage and the BT/enet merger — which materially alter the competitive landscape. ComReg's refusal to consult in light of both the original deficiencies and subsequent developments is inconsistent with its obligations under Article 67 of the EECC to conduct a forward looking market assessment, and under Article 23 to ensure stakeholders are properly consulted and are given the opportunity to comment on draft measures. It cannot be the case that ComReg introduces new material in

moving to a final decision without giving interested parties an opportunity to consult and submit views.

[X

[REDACTED]

[REDACTED]

X]

1

[REDACTED]

[REDACTED]

Annex B: Business Case for using PIA for Retail Leased Line provision

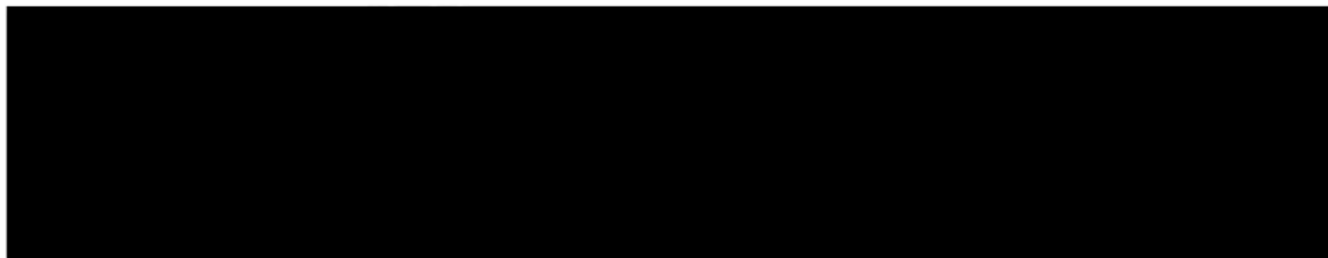
Context

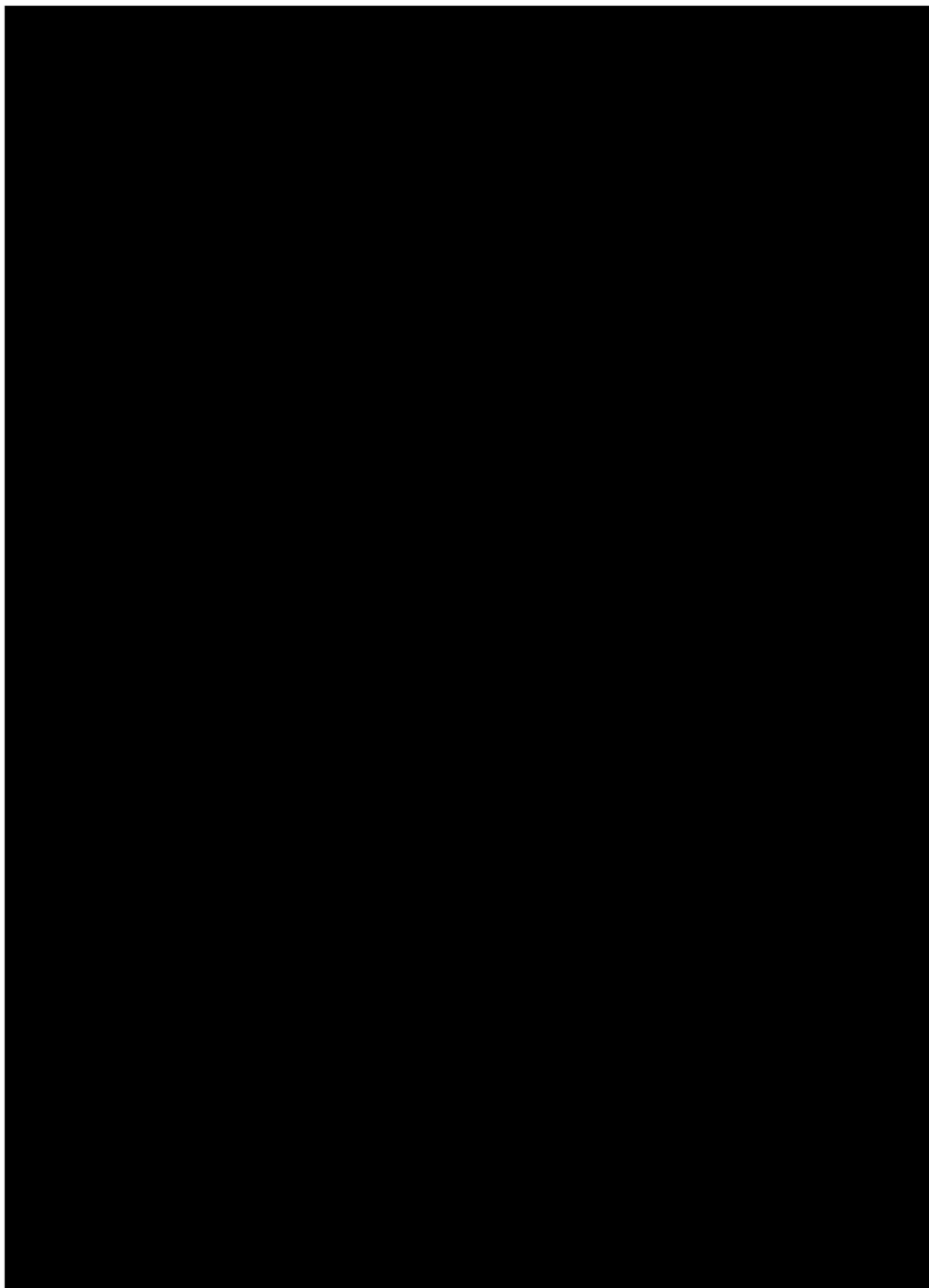
Since the introduction of ComReg's Decision D03/24 in January 2024, there have been three main developments in the PIA market:

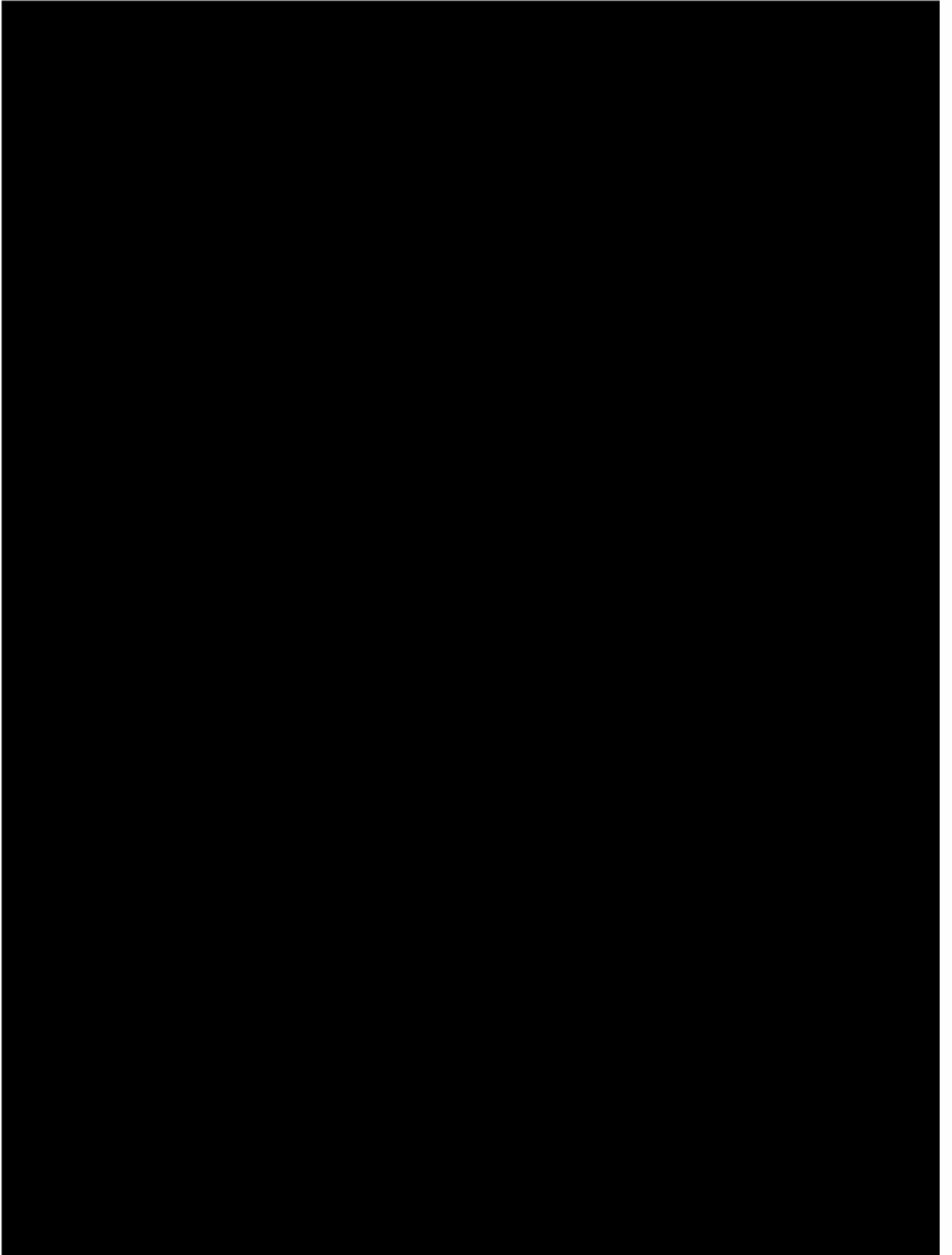
- A. A significant reduction in the rental price for ducts and poles (and a general simplification of the structure of those charges where the annual rental level charge per metre no longer varies with surface type).
- B. eir introduced automated ordering and easy to use Sub Duct Self Install product enhancements in September 2024.
- C. Further to ComReg assessment, in September 2025 eir is introducing PIA processes (and related prices) for programme management, authorised contractor services and enhanced ordering.

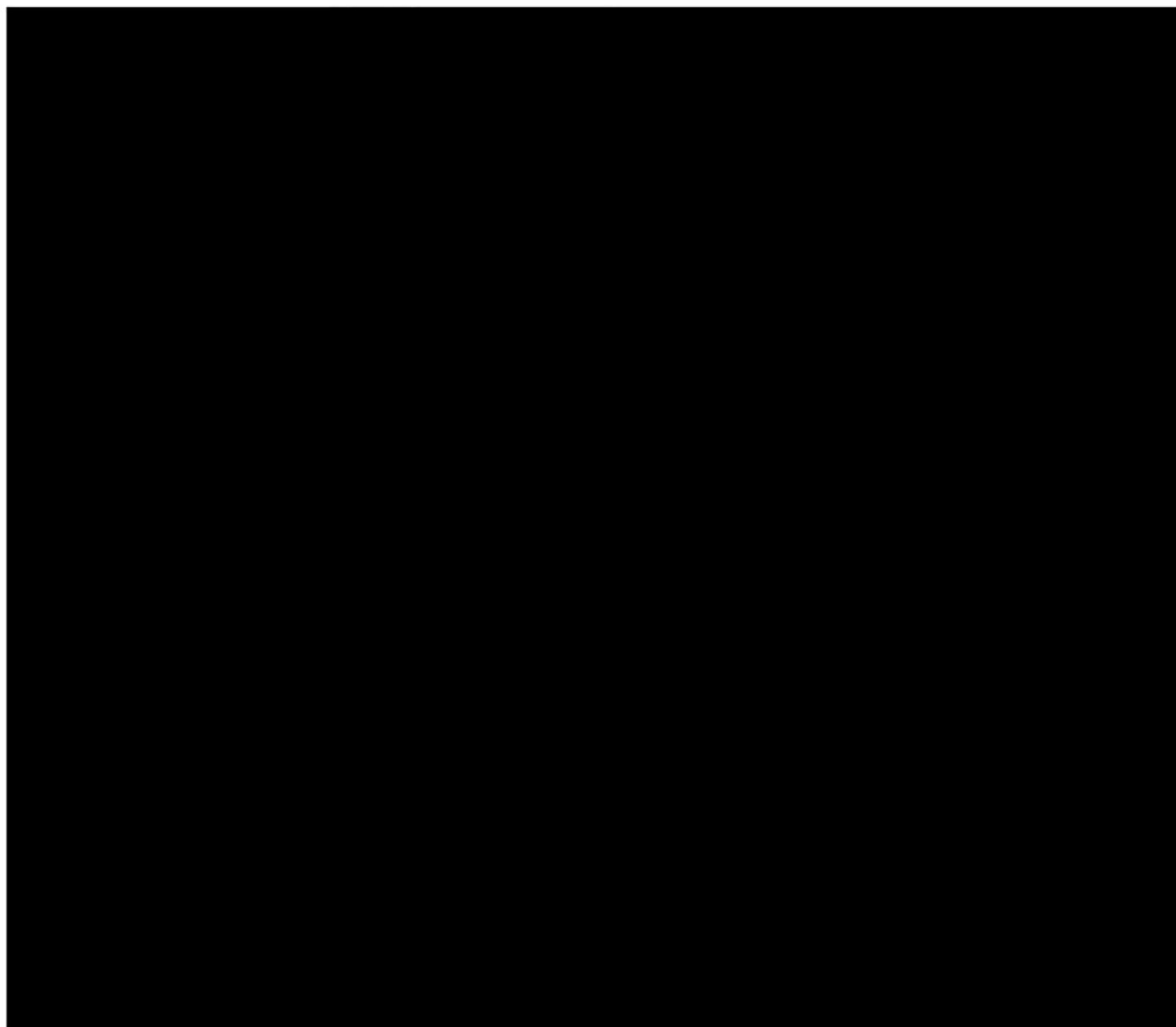
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✂]

FAO: Tommy Burke
One Dockland Central
Guild Street
Dublin 1

BY EMAIL ONLY: [REDACTED]

31/01/2025

Re: Response to ComReg Consultation Document 24/92

Dear Mr Burke,

Enet has undertaken a detailed review of ComReg's Consultation Document 24/92 (the 'consultation document') regarding the market for wholesale dedicated capacity (WDC). Enet is supportive of many aspects of ComReg's approach (as indicated in the responses to ComReg's consultation questions enclosed).

However, Enet does have concerns with respect to the algorithm used by ComReg to define whether each Workplace Zone (WPZ) in the State is to be regulated or unregulated with respect to modern interface (MI) WDC services. The algorithm used by ComReg, as defined in Figure 15 of its consultation document, classifies all WPZs in the State as either to be regulated ('Zone B') or to be deregulated ('Zone A'). Enet considers too many WPZs are being allocated to Zone A and therefore set to be deregulated. Enet has suggested several refinements of its approach (see the response to consultation Q04 in particular).

Whilst Enet notes that the design of the algorithm has been largely retained by ComReg from its Decision D3/20, the available data is now of considerably better quality (both the locations of connected premises and the network routes of Irish operators). Therefore, Enet finds that the algorithm should be refined to better leverage this data.

Enet is concerned that the criteria within the algorithm becomes increasingly lenient as a WPZ passes through the algorithm. The first test in the algorithm (Step 2) has a clearly defined minimum proximity requirement of the alternative networks (which must be within 50 metres of the connected premises). In contrast, the next step in the algorithm (Step 3, the Business Parks test) requires only minimal overlap between both (i) the WPZ and Business Park and (ii) the alternative networks and the Business Park. The Islands test (Step 4) also does not require any minimum proximity to the nearby alternative networks. These steps seem to be very inconsistent in their view as to what infrastructure competition in these WPZs should look like.

In Enet's opinion, it is reasonable that a WPZ can be deregulated once sufficient infrastructure competition has been demonstrated. However, the approach to determining that a WPZ has sufficient infrastructure competition should be robust and reliable.

Moreover, since infrastructure should not "disappear", an indication that ComReg's algorithm is making sensible decisions with regards to infrastructure competition would be that once a WPZ is deregulated due to sufficient infrastructure competition, it should remain deregulated going forward. This is not the case however, with 5% of all WPZs (381) moving from Zone A to Zone B between the 2020 and 2024 market reviews i.e. regulation is set to be re-imposed in these WPZs.

A key factor underlying this issue is the part of the algorithm that considers WPZs without any connected premises present (i.e. no current WDC demand). This part (steps 5, 6 and 8 in Figure 15 of the consultation document) should be conservative in its forward-looking assessment of such areas given

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the absence of current WDC demand. Enet has concerns that its forward-looking assessment is in fact fundamentally flawed.

Enet observes that 272 WPZs were found to have zero connected premises in the 2020 decision and were allocated to Zone A for deregulation. Almost all of these cases were due to Step 5 of the algorithm (group A4), by virtue of two alternative networks being present in the WPZs. However, since 2020 they have gained one or more connected premises, but now fail Steps 2, 3, 4 and 7 of the algorithm in 2024 and are allocated to Group B1. This means that regulation has been removed in 2020 but now needs to be reinstated in 2024.

To Enet, this is a strong indication that the parts of the algorithm testing WPZs without connected premises were too lenient when allocating WPZs to Zone A in 2020. In other words, ComReg is concluding that in WPZs that were Zone A and have now moved to Zone B, that at least one connected premises was in fact not within range of the alternative networks, but did subscribe and could have suffered ill effects from Eircom's significant market power during the previous regulatory period.

On a similar theme, Enet considers that the Business Park test is also too lenient, with WPZs that barely overlap a Business Park being subject to deregulation as a result of the test. In Appendix B, Enet provides multiple examples (using maps) that clearly demonstrate where this lenience is occurring in ComReg's algorithm. The Islands test is also too lenient and, in Enet's view, is wholly inconsistent with the close-proximity distance criterion used in Step 2 of the algorithm.

Enet has previously communicated to ComReg that the mere presence of alternative networks in a WPZ is not a sufficient condition for infrastructure competition (though ComReg deems it sufficient in steps 3, 5 and 8 of their algorithm, as per Figure 15 of the consultation document). Instead, what is actually a sufficient condition is the presence of break-out points (chambers/manholes) in the network routes close enough to current or potential future connected premises. ComReg should refine the algorithm as Enet recommends below to better approximate this sufficient condition.

Enet also supports ComReg's references in its consultation document (e.g. in paragraph 1.24) to "decide whether to commence a fresh market review earlier than planned" based on continued close monitoring of the MI WDC markets. A good opportunity for revisiting the market review would be in 2027, at which time NBI should have completed its main network rollout and operators such as SIRO/Eircom will also have completed more of their network rollouts.

Enet strongly advises that ComReg revisit its approach to its algorithm and not maintain it for consistency with the 2020 Decision. The Irish telecoms sector and the quality of data now underpinning it has evolved considerably since the 2020 Decision and the findings set out in this consultation response demonstrate clear issues in the outcomes of the algorithm. ComReg should make refinements to the steps within the algorithm based on the evidence-based feedback contained herein.

Enet has recommended a number of changes to the algorithm. Enet has produced a revised version of Figure 15 from the consultation document, reflecting all of these changes. This revised flowchart is shown overleaf.

Enet would welcome the opportunity to discuss this document with ComReg if that would assist in fully understanding these findings and recommendations.

Yours sincerely

[E-Nasc Éireann Teoranta / Cormac Ryan]

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Recommended revisions of ComReg's algorithm

Based on feedback in this response, Enet has composed a revised algorithm for ComReg to apply. Figure 1 below compares ComReg's approach and Enet's revision. In our proposed revision, there is no requirement for the 20 metre buffer around the alternative network routes.

Figure 1: Comparison of ComReg's approach and Enet's revision

Step	ComReg approach	Enet's revision
2 (to A1)	WPZ contains ≥ 1 connected premises (CP), with $\geq 60\%$ of them within 50m of ≥ 2 alternative networks (ANs), excluding NBI	WPZ contains ≥ 1 CP, with $\geq 60\%$ of these CPs satisfying the following: (i) map the CP location to its nearest road (ii) calculate the crow-flies distance from this point to the access network routes of each AN ($D_1, D_2, \dots, D_n$), but excluding NBI (as per the current methodology used by ComReg) (iii) add an on-property final drop length L (say 10 metres) (iv) there are at least two ANs, excluding NBI, where the sum of D and L is less than 20m)
3 (to A2)	WPZ contains ≥ 1 CP, and touches a Business Park that touches ≥ 2 ANs, excluding NBI	Remove this test, or as an alternative, require that the WPZ contains ≥ 1 CP, and: (i) at least 20% of the area of a WPZ overlaps with the Business Park (ii) the access network routes of at least two ANs (not NBI) are present in the overlap of the Business Park and the WPZ
4 (to A3)	WPZ contains ≥ 1 CP, and is surrounded by WPZs already allocated to Zone A	Remove this test, or as an alternative, require that the WPZ contains ≥ 1 CP, and is: (i) surrounded by WPZs allocated to groups A1/A2 (ii) has the access network routes of two ANs (excluding NBI) in or within 20m of the WPZ
5 (to A4)	WPZ contains 0 CPs and touches ≥ 2 ANs, excluding NBI	WPZ contains 0 CPs, and has two ANs within it (not NBI) where $[\text{AN access network route km}] \div [\text{Eircom route km}] \geq 15\%$
6 (to A5)	WPZ contains 0 CPs, and is surrounded by WPZs already allocated to Zone A	Remove this test, or as an alternative, require that the WPZ contains 0 CPs, and is: (i) surrounded by WPZs allocated to groups A1/A2 (ii) has the access network routes of two ANs (excluding NBI) in or within 20m of the WPZ
7 (to A6)	WPZ contains ≥ 1 CP that is from NBI list of premises, with $\geq 60\%$ of all CPs within 50m of ≥ 2 AN (or ≥ 1 AN other than NBI)	Remove this test, or as an alternative, WPZ contains ≥ 1 CP that is from NBI list of premises, with $\geq 60\%$ of all CPs satisfying the following: (i) map the CP location to its nearest point on the road (ii) calculate the crow-flies distance from this point to the access routes of each AN ($D_1, D_2, \dots, D_n$), including NBI (iii) add a final drop length L (say 10 metres) (iv) there are at least two ANs (including NBI) where the sum of D and L is less than 20m)
8 (to A7)	WPZ contains ≥ 1 business premises from the NBI list, and touches two ANs (including NBI)	Remove this test

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A revised version of Figure 15 of the consultation document is provided below. Where the diamond in our diagram is a paler colour than ComReg's original diagram, Enet's default position is that the test should be removed, but in some cases Enet suggests an alternative refinement to tighten the test should ComReg conclude that the test should be retained.

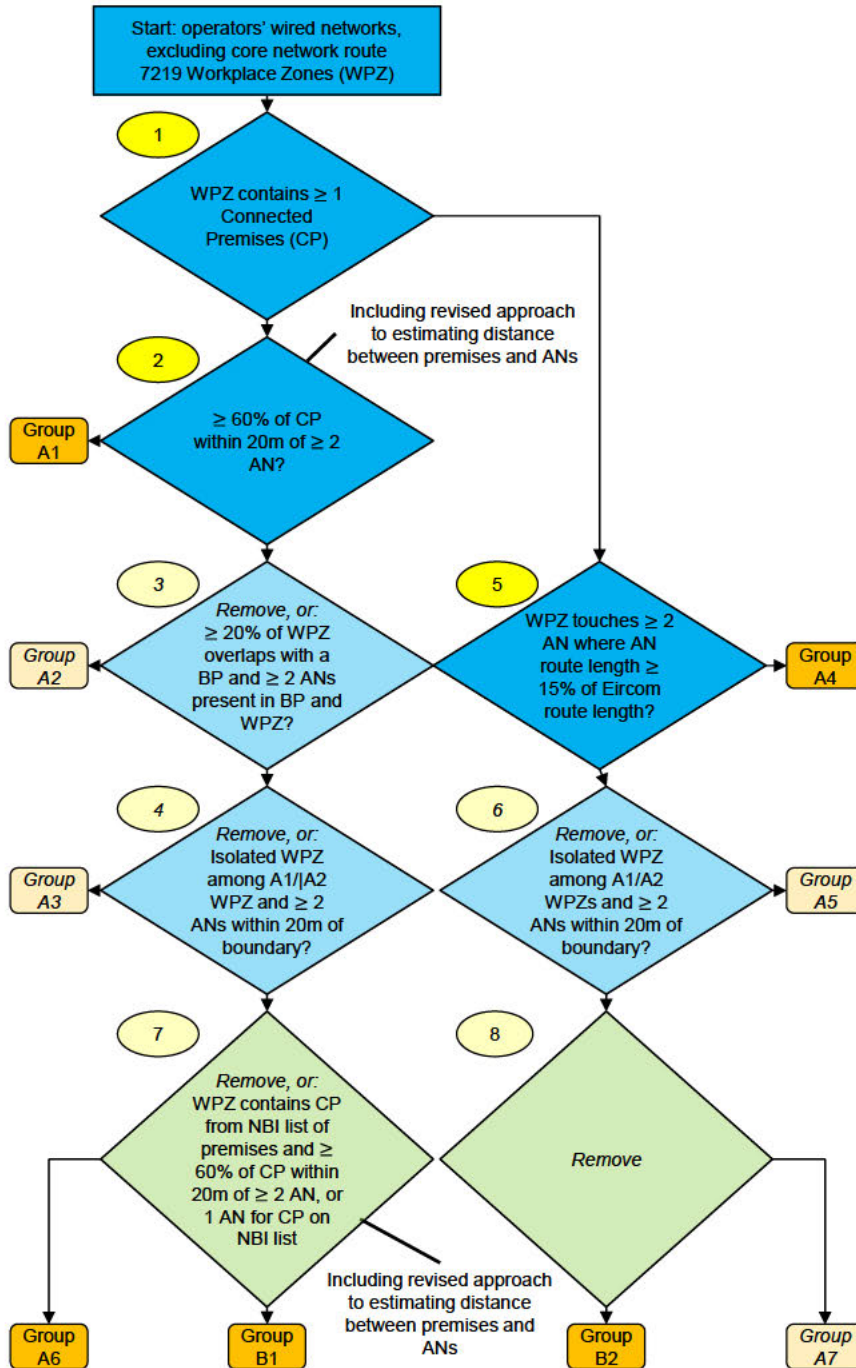


Figure 2: Overview of Enet's revised algorithm, based on Enet's review of ComReg's geographic market assessment

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Consultation Question 01 (Q01)

Do you agree that the main developments identified in the provision of retail LL market are those which are most relevant in informing the assessment of the Relevant Markets?

Enet response to Q01

ComReg has identified many of the main developments in the country that are relevant to the WDC market assessment.

Enet would make the following comments on ComReg's analysis in Section 3:

- In paragraph 3.50, ComReg is correct to note that multiple operators are deploying new fibre network (including Eircom, SIRO, Virgin and NBI) but "that much of the Fibre to the premises ('FTTP') rollout has occurred primarily in residential areas rather than commercial areas". This is an important observation for the WDC market, whose demand will inevitably be more focused on a subset of commercial premises rather than residential premises. Even though some residential premises will be also used for commercial purposes (such as for home offices), these purposes are less likely to purchase services that fall within the WDC product market. However it is also important to stress that in more recent times GPON solutions for schools and business have been winning tenders at the expense of traditional Enet Fibre solutions.
- Enet agrees with ComReg's conclusion on the effective irrelevance of traditional interface services within the WDC market, given their low and rapidly falling demand
- Enet notes ComReg's point in paragraph 1.23 of the consultation document, where developments in the Irish market such as the change in the ownership of service providers could impact ComReg's final decision. It is clear that ComReg's algorithm does classify WPZs depending on how many ANs are present. Should multiple ANs consolidate their operations, then this could affect this classification to a limited extent (only in those WPZs where the consolidating ANs are the only ANs present).
- Regarding the influence of NBI on the WDC market, Enet considers that ComReg should be cautious in terms of deregulating Eircom based on infrastructure competition that is planned to appear in the Irish market from NBI, as well as future deployment plans from other operators. ComReg should make conclusions regarding infrastructure competition based on infrastructure that is actually deployed as of today, rather than infrastructure that has not yet been (and may not yet be) realised.

One issue that ComReg does not appear to mention is the current availability and cost-effectiveness of digging in the State. This is highly relevant since ComReg's measurements of infrastructure competition in WPZs are predicated on the hypothesis that extending existing fibre networks to connect new premises to provide services built on WDC products has a low barrier to entry. This is not the case. Enet is experiencing significant increases in digging costs due to a combination of higher contractor costs and more onerous reinstatement conditions imposed by local authorities. Enet provides examples in Appendix A that highlight that the cost of digging has increased massively since the 2020 decision.

In the 2020 decision, ComReg used a distance criterion of 50 metres as a measure of sufficient proximity to alternative networks for realistic infrastructure competition in the WDC market, which ComReg is proposing to use in the latest decision.

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As shown in Appendix A, the digging cost for road crossings have increased by up to a factor of 6.5 between 2019 and 2024. In this context, the distance criterion could be argued to be much smaller given the significantly higher digging cost. Enet would propose a revised distance criterion of 20 metres (as well as mapping connected premises co-ordinates to the nearest road).

Consultation Q02

Do you agree with ComReg's proposed definition of the relevant retail LL market?

Enet response to Q02

Enet's understanding is that ComReg finds that the relevant retail market for modern interface leased lines is national. Enet currently finds no issue with that conclusion.

Enet agrees within ComReg's position in Section 3.5.7 of the consultation document that wireless services do not fall within the relevant retail leased lines market.

Consultation Q03

Do you agree with ComReg's product market assessment for the Relevant WDC Markets?

Enet response to Q03

Enet's understanding is that the relevant WDC product market is concluded by ComReg to consist of the provision of wholesale dedicated capacity over a fibre medium (including both point-to-point and passive optical network configurations) using modern interfaces. ComReg indicates that modern interfaces include (but are not limited to) Ethernet and xWDM.

ComReg further considers that this market includes all bandwidths i.e. there is no bandwidth break. The same conclusion was reached in ComReg's 2020 decision (D3-20).

Enet considers that there should be consideration for a bandwidth break, for example at 10Gbit/s. From a supply perspective, the submarket for 10Gbit/s and above allows connection of premises at greater distances from the AN (given the higher service revenue for faster speeds). This could be characterised by assuming a different (longer) distance criterion for services with a bandwidth of 10Gbit/s and above for Steps 2 and 7 of the algorithm. ComReg's algorithm could then be run separately with the two different distance criteria, leading to a larger Zone A for services at or above 10Gbit/s compared to services below 10Gbit/s.

Consultation Q04

Do you agree with ComReg's geographic market assessment for the Relevant WDC Markets?

Enet response to Q04

Enet has undertaken a detailed review of ComReg's approach to the geographic market using the Workplace Zones (WPZ) available from the Central Statistics Office (CSO). This review highlights

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several material concerns regarding the algorithm employed by ComReg, which is set out in Figure 15 of the consultation document. This figure is reproduced below for reference.

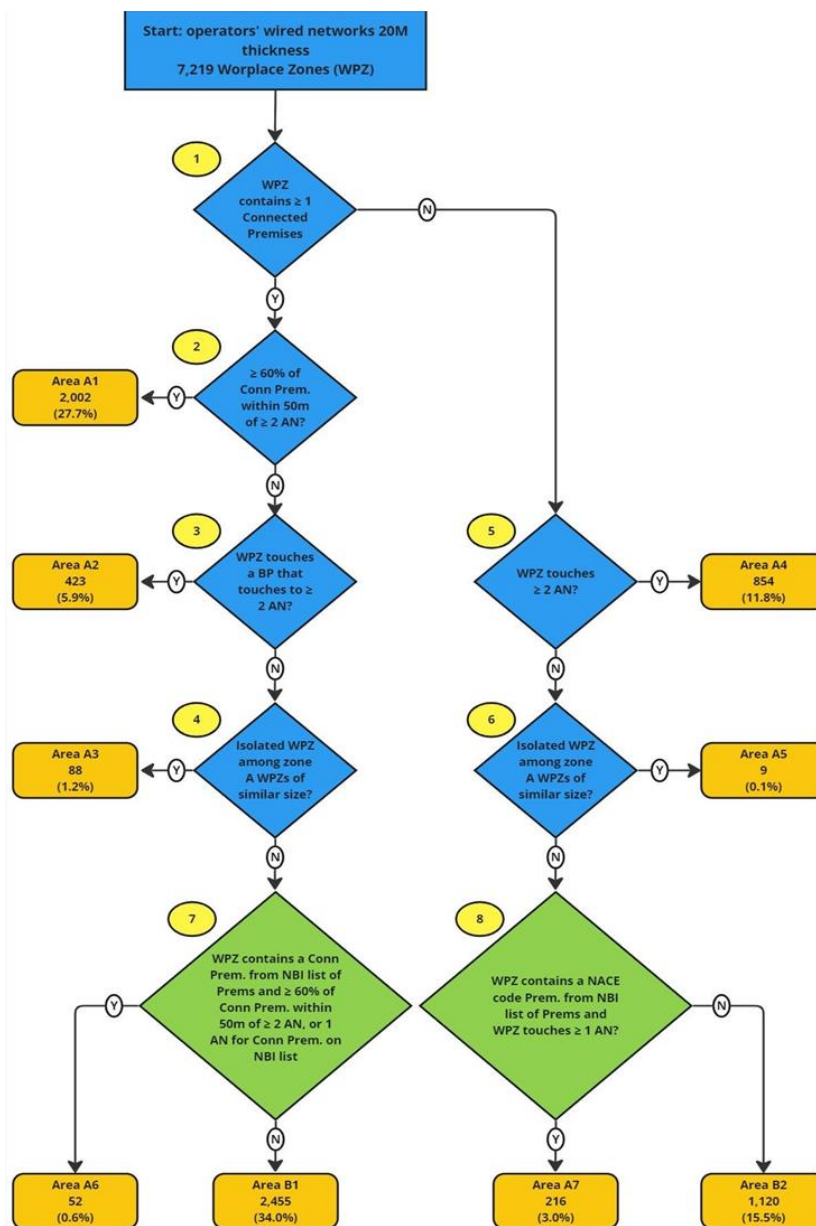


Figure 3: Overview of algorithm used by ComReg in its geographic market assessment (sourced from Figure 15 of the consultation document)

Enet sets out these concerns below in six issues (numbered 1–6), with supplementary information provided in Appendices B–F. The issues identified are, in outline, as follows:

1. If the base data is updated, then industry must have a supplementary consultation for review
2. The Business Park areas used by ComReg should be provided to industry for transparency
3. Enet has identified at least some WPZs where ComReg has identified zero CPs as of 2H 2023, when Enet has identified at least one of its own CP in the dataset it provided by ComReg
4. The steps in the algorithm are too lenient, meaning too many WPZs are allocated to Zone A

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5. Enet is concerned that although core network routes have been excluded from the analysis according to ComReg, there are cases where core network routes appear to be the only presence of alternative networks
6. The approach to calculating the proximity of access network routes to CPs in steps 2 and 7 of ComReg's algorithm is flawed.

Wherever possible, Enet has attempted to recommend a correction using the data available.

[Issue 1]: Prospective update of the base data

ComReg notes in several places of the consultation document (including paragraph 4.116, footnote 5 and footnote 171) that ComReg may update its analysis with more recent demand data and WPZ boundaries.

Enet agrees that more recent demand and WPZ boundary data should be used as this will improve the accuracy of the analysis.

Enet notes that given new analysis will change the outcomes, industry would expect to have the opportunity to review the outcomes from ComReg using the revised data (assuming that, as in this case, ComReg indicates the date of the submission applying to the demand input data used and that the WPZs used are in the public domain). For the avoidance of doubt, should such a major refresh of the base input data be undertaken by ComReg, Enet expects a supplementary industry consultation to be organized by ComReg.

[Issue 2]: Transparency of the business park areas used

Although the Business Parks assumed by ComReg are listed by name in Annex 3 of the consultation document, Enet notes that ComReg's analysis (to derive the WPZs in Zone A2) uses geographic boundaries for these areas. Their overlap with WPZs plays a significant role in many WPZs ending up in Zone A (as group A2) and ComReg should therefore disclose these geographic boundaries as part of the consultation materials (in a digital shapefile format). This should not be an issue since the dataset should not be commercially sensitive. In future consultations, Enet requests that ComReg provide the Business Park boundaries it has used.

As described below, Enet has had to estimate the boundaries of Business Park for its own analysis. The results of this analysis raise concerns with regard to the derivation of Zone A2, as discussed below under Issue 4b.

[Issue 3]: Omissions in the set of connected premises used by ComReg

Based on Figure 15 of the consultation document, all WPZs allocated to Zones A4/A5/A7/B2 have no connected premises (CPs) according to ComReg. According to paragraph 4.116 of the consultation document, the CP data for second-half 2023 was used in ComReg's analysis (except for dark fibre CP locations, which were for Q3 2023). Enet has checked the CPs provided to ComReg for this submission and identified the WPZ that each CP is within.

Using only Enet's CPs (noting that this set of CPs should be only a subset of those used by ComReg), Enet has identified 8 WPZs that are allocated to groups A4/A5/A7/B2 and contain Enet CPs present as of second-half 2023, when by ComReg's definition they should not contain any CPs.¹

As an example, Enet's CP in WPZ WH0014 (✕) is shown in a map in Figure 4 below and provided in the supplementary file WH0014.pdf.

¹ These are WPZs ✕.



This subscriber was included in Enet's 2H 2023 submission to ComReg, but this WPZ is designated as group A4.

Enet summarises the data for all the CPs from Enet's 2H 2023 demand submission that appear to not be captured by ComReg in Appendix C.

Enet notes that, in all of the cases, the missing Enet CPs are off-net connections. Therefore, Enet hypothesises that ComReg removed all off-net connections, assuming that these were on-net connections for another operator (noting that in this case, even the CPs served by Eircom would be relevant to the analysis). However, in fact, if the corresponding other operator did not include the locations in its submission, it appears that they were omitted completely.

This casts doubt as to how ComReg has filtered the data provided by operators as part of their calculations and has removed too many connected premises.

Enet is of the view that it is important for all CPs provided by operators to be represented in the final dataset used in ComReg's analysis.

[Issue 4]: Excessively lenient definitions of the steps in ComReg's algorithm, meaning that too many WPZs are being allocated to Zone A

ComReg's approach to the algorithm is indicated in Figure 15 of the consultation document. The algorithm uses eight steps (numbered 1–8 in yellow ovals in the figure) to ultimately allocate each WPZ to either Zone A or Zone B.

Steps 2 and 7 are tightly defined and use the local geographic data (of both the actual demand CP locations and actual network routes) in a specific way. Whilst the parameter values used by the steps can be debated, Enet considers that both steps are a reasonable way to assess infrastructure competition. However, many of the other steps within ComReg's algorithm are too lenient to provide a meaningful assessment of infrastructure competition. As a result, it is Enet's view that too many WPZs are being allocated to Zone A (and therefore being deregulated) when sufficient infrastructure competition is not in fact present.

Enet sets out concerns across each of the steps in Issues 4a–4e below.

[Issue 4a]: Step 5 (leading to group A4)

In Enet's view, this step has a very low requirement to be passed, namely that the WPZ is touched by 2 or more ANs. 2199 WPZs are tested for this criteria by ComReg, with 854 passing the test and being deregulated (by being determined as being part of group A4 and therefore Zone A).

Enet has access to geographic data concerning network routes for a dozen ANs (including Eircom and all the major ANs in the State). Enet has found some examples that appear to be very suspect, such as WPZ MH0030. This WPZ is 26km² in size, but according to data available has negligible AN route length within it. Enet is aware of no significant infrastructure in that area, as shown below in Figure 5 and provided in the supplementary file MH0030.pdf. Therefore, the allocation of this WPZ to group A4 appears erroneous.

Figure 5: Map of MH0030



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Enet has analysed the 2199 WPZs, in terms of the network route length by AN within each WPZ. Enet has also calculated this route length as a proportion of Eircom route length, as a proxy of AN coverage of the WPZ. Enet has calculated how many of these WPZs are found to have 2 or more ANs for different minimum proportions of AN coverage (ComReg's version of the test effectively corresponds to the first row of the table i.e. any presence by 2 or more ANs is sufficient). These are shown below in Figure 6.

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Figure 6: Sensitivity testing of Step 5 using AN route data available to Enet

Minimum AN route length as a proportion of Eircom route length for AN presence in WPZ	Number of WPZs with 2 or more ANs (excluding Eircom/NBI) with presence
0.0001%	691
0.1%	682
1%	659
5%	575
10%	446
15%	336
20%	263
30%	168
50%	74

Enet notes that ComReg identifies more WPZs using its data (854 versus 691), presumably since ComReg has more recent network route information across all operators compared to the data Enet has available.

Enet considers that there should be a non-trivial minimum threshold of AN presence in the WPZ for the purposes of this step.

In order to determine a reasonable minimum proportion to use, Enet has considered its own network, specifically those WPZs where Enet has 2 or more on-net CPs (and therefore is likely to have a material network presence). There are 502 WPZs where Enet has 2 or more on-net CPs in second-half 2023. For over 80% of those WPZs, Enet's route length as a proportion of Eircom route length is at least 15%.

Therefore, Enet suggests that Step 5 should be revised to the tighter criterion that a WPZ is only allocated to group A4 where at least 2 ANs have access network routes within that WPZ and that the AN route lengths are both at least 15% of Eircom's route length in that WPZ.

To avoid reliance on Eircom's data, ComReg could use road length instead. Enet has identified a digital road network of the entire country from OpenStreetMap² that can be used to calculate road lengths by WPZ and by road type. As an alternative, ComReg could consider using this dataset as the basis for determining this concept of minimum WPZ AN coverage.

[Issue 4b]: Step 3 (leading to group A2)

Paragraph 4.103 of the consultation document explains that the rationale for this test is that business parks, data centres and campuses of 3rd level educational establishments (together referred to by ComReg as "Business Parks") are areas likely to hold high concentrations of AN infrastructure due to higher demand. Enet notes that, to the extent that this is true and connected premises in the Business Park are close to 2 or more ANs, then the WPZ should already be likely to pass Step 1.

Step 3 (the "Business Parks test") applies to WPZs that have at least one CP but where less than 60% of CPs are located within 50 metres of two or more ANs. This step allocates a WPZ to group A2 of Zone A (for deregulation) if it touches a Business Park in which there are two or more ANs present.

² © OpenStreetMap contributors, License <http://www.openstreetmap.org/copyright>

The description in paragraph 4.103 is inconsistent with the description in paragraph 1.9(c), which states that if

a WPZ overlaps with a business park which is intersected or passed by two or more ANs; then all premises within a business park are deemed to be passed by such networks.

Enet assumes that paragraph 4.103 is the correct description of ComReg's approach (since it agrees with Figure 15 of the consultation document) and that paragraph 1.9(c) should read that if

*a WPZ overlaps with a business park which is intersected or passed by two or more ANs; then **that WPZ is assumed to be allocated to Zone A.***³

Enet agrees with ComReg's view that Business Parks will have a high concentration of ANs and therefore could have sufficient infrastructure competition to allow deregulation.⁴ However, ComReg's assumption that any presence of routes by 2 ANs in a Business Park leads to sufficient infrastructure competition in not just the Business Park, but any overlapping WPZ is far too broad.

Enet's observation is that the current application of the Business Park test gives rise to a significant number of cases where WPZs are inappropriately allocated to group A2 since there is no significant infrastructure competition. Enet provides numerous examples in Appendix B.

For example, the WPZ GC0012 has, according to Enet's data, only one AN present (3<), and yet the WPZ is assumed to have infrastructure competition from two or more ANs as it touches a Business Park where multiple ANs are present (even though this AN presence is not within the boundaries of GC0012).

Enet recommends that Step 3 be either omitted completely, and instead Business Parks with two or more ANs present are treated in a similar way to the Intervention Area, as described in Consultation question 9. Specifically, the WPZs that overlap such Business Parks remain in Zone B, but the price control is lifted in those areas within the boundaries of the Business Parks where two or more ANs are present.

If ComReg seeks to retain the Business Parks test, then as an alternative Enet strongly recommends that it is tightened such that it only applies where the Business Park area is a material part of the WPZ. In this instance, Enet recommends that for each Business Park where there are two or more ANs present, the WPZ can be allocated to group A2 if (i) at least 20% of a WPZ overlaps with the Business Park in area terms and (ii) at least two ANs present in the Business Park are also present in the WPZ.

Enet's considers both potential amendments to Step 3 in more detail in Appendix F.

[Issue 4c] Step 4/6 (leading to groups A3 and A5)

In general, Enet has significant reservations with respect to the applicability of the Islands test. In general, if ComReg considers that "≥60% of CP being within 50 metres of ≥2 AN" is the correct test for sufficient infrastructure competition, then being surrounded by adjacent WPZs in Zone A is effectively irrelevant because the AN in those adjacent WPZs are too far away by ComReg's own definition.

Even if ComReg decides to retain the Islands test, Enet has identified at least two issues in how it is being implemented.

³ Correction is highlighted in red.

⁴ As stated in paragraph 5.14, "most network operators do not have national coverage, and smaller network operators mostly focus on major business parks, urban or commercial areas"

- (i) Enet has identified nine WPZs that should pass the Island test as per the algorithm but have not, implying that ComReg's Island test is mechanically unsound in some way (certain cases are being missed⁵)
- (ii) there are some instances where Enet finds the result of the Island test to be inappropriate, since the AN routes in the adjacent WPZs are in fact distant from the WPZ, such as Figure 7 below.

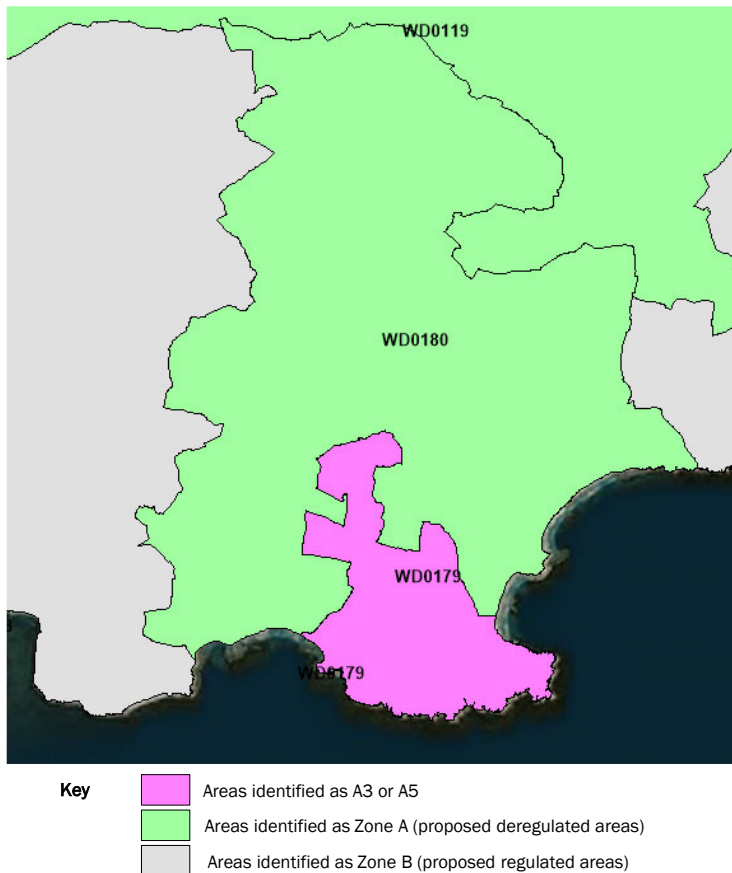


Figure 7: Example of a questionable result from the Island test (WPZ WD0179)

This is a coastal WPZ adjacent to one deregulated WPZ (WD0180, which is in Group A4, meaning no CPs are present but there are at least 2 ANs touching the WPZ) and otherwise surrounded by the sea. However, based on the data available to Enet, both WD0179 and WD0180 have little presence by only one AN, as shown in the supplemental file WD0179WD0180.pdf. Therefore, in this case, the network in the adjacent WPZ is too distant to serve WD0179 in any reasonable fashion, since WD0179 is approximately 4km long from north to south, with the other AN only present in the northernmost tip. By implication, the "sea" is being assumed to be in Zone A, which is incorrect.

Whilst Enet believes the Islands test should be dropped entirely, if it is retained then it must use stricter criteria to ensure ANs are genuinely in proximity to the WPZ in question. Enet therefore recommends adding further sub-criteria for the Island test, which are that:

1. the WPZ must be surrounded by WPZs allocated to groups A1/A2

⁵ The WPZ in question are ><

2. at least 2 ANs must have access network routes within the WPZ or within 20 metres of the WPZ (this can be tested using a 20 metre buffer zone around each candidate WPZ for the Island test)⁶

[Issue 4d]: Steps 7 and 8 (leading to groups A6 and A7)

According to the algorithm indicated in Figure 15 of the consultation document, the requirement for a WPZ to be allocated to group A7 under Step 8 is that:

1. there are fewer than two ANs in the WPZ (not including NBI's network)
2. the WPZ is not isolated among Zone A WPZs
3. the WPZ contains at least one commercial premises from the NBI Intervention Area (IA) list of premises (based on a NACE⁷ code) and touches at least one other AN.

In effect, this means that the WPZ contains at least one NACE code premises from the NBI Intervention Area (IA) plus one AN (that is not NBI). For Step 7, the requirement similarly includes CPs within the NBI IA.

Enet agrees with ComReg's statement in paragraph 4.121 that it is not appropriate "to map NBI's network the same way as it maps other networks given that NBI is only permitted to provide LL services to premises included on the NBI IA list of premises". That is, premises may be located nearby to NBI's network, but contractually they cannot be served by NBI unless they are on the NBI IA list. It therefore appears appropriate to exclude these premises when considering competition within a WPZ.

It is noted that the purpose of the National Broadband Plan is to deliver high-speed broadband services to "those parts of the country where private companies have no plans to invest"⁸. In practice this is implemented via a defined geographic region in which NBI is authorised to offer services. Therefore, it may be suggested that there should be a very limited number of instances where commercial ANs might serve premises in the NBI IA list, whilst it is not possible that NBI would serve premises not on the NBI IA list, as this would be against the State Aid Decision allowing the National Broadband Plan to be subsidised. This would then suggest that in WPZs containing a commercial AN as well as a premises from the NBI IA list with a NACE code, there will be very few, if any, premises where two ANs are in a position to offer leased line services to such premises. Enet provides examples illustrating where this may lead to an inconsistency in Appendix E.

Enet would further query whether the use of NACE code premises in this context is appropriate. Enet's understanding is that all companies registered in the State have a NACE code, including home-based businesses that are unlikely to require a leased line and therefore should not be used on this basis for large-scale deregulation.

Enet also notes that this test is also taking into account NBI's eventual rollout which has not all yet been built. Therefore, any WPZ deregulated on this basis may in fact not have any infrastructure competition, since NBI is only approximately halfway through its network build. Whilst Enet appreciates ComReg is undertaking forward-looking regulation, ComReg is effectively deregulating

⁶ The distance criterion should be stricter (i.e. smaller) than the 50 metres used in other steps of the algorithm, as this is related to routes potentially outside of the WPZ. The network 'thickness' or effective width of 20 metres referenced by ComReg in paragraph 4.111 of the consultation document is an appropriate substitute.

⁷ Nomenclature of Economic Activities (NACE) is a classification of economic activities developed by the EU.

⁸ Department of the Environment, Climate and Communications (2020). National Broadband Plan. URL: www.gov.ie/en/publication/c1b0c9-national-broadband-plan/

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areas with potential future demand based on potential future infrastructure competition. This is too speculative in Enet's opinion.

Given these issues concerning the specific attributes of the NBI rollout, Enet therefore recommends removing both Step 8 and Step 7 altogether from the algorithm.

[Issue 5]: Removal of duplicated routes and core network routes in the analysis

In paragraph 4.112 of the consultation document, ComReg indicates that core network routes are not used for the analysis since "ComReg considers that it is unlikely that local network access break-out from those locations is possible".

Enet strongly agrees with this assumption, since the presence of a break-out point (such as a manhole or chamber) is a technical necessity to using existing network routes to serve nearby premises.

However, based on a review of several WPZs, Enet is not convinced that all core network routes have been removed. This is because these WPZs are indicated by ComReg's analysis to have more than one AN, but Enet's available data indicates that ANs are clearly only present as core network routes. Enet has provided examples in Appendix D.

In Enet's view ComReg should review the route information received from all operators and ensure that core network routes are not included.

Similarly, Enet is concerned that network routes are being duplicated in ComReg's analysis.

For example, if one AN is leasing fibres from the same cable as another for its network deployment, then this could be argued to not be considered as two infrastructures, as the same asset is being used by both ANs. Certainly, if one AN is renting bandwidth from another AN along a specific route, then these should not be considered separate infrastructures.

ComReg must ensure that it receives data from operators so that they can distinguish as much own fibre cable access network routes from the leased fibre access network routes as possible. This will minimize the chance that more than two ANs are being found to be present in a WPZ, when in fact two or more ANs are in fact using the same cable infrastructure.

[Issue 6]: Uncertain definition of Steps 2 and 7 in ComReg's algorithm

Steps 2 and 7 both require at least 60% of CPs in the WPZ to be within 50 metres of the routes of at least 2 ANs.

However, the implementation of these steps is clouded by paragraph 4.111, as quoted below.

"ComReg notes it is not feasible to distinguish which side of the road the network was running on, and indeed many networks are routed along the centre of roadways. For this reason, ComReg considers that it is appropriate to allocate a 'thickness' or effective width of 20 metres to the SPs' networks. This also takes into account the fact that the majority of Eircodes (which can be used to derive the location of a connected premises) use the centroid of premises rather than their perimeter for their location coordinates."

Enet notes that these assumptions are conflating two effects on a highly localised level and this could lead to incorrect decisions by the algorithm. Two examples are illustrated below in Figure 8.

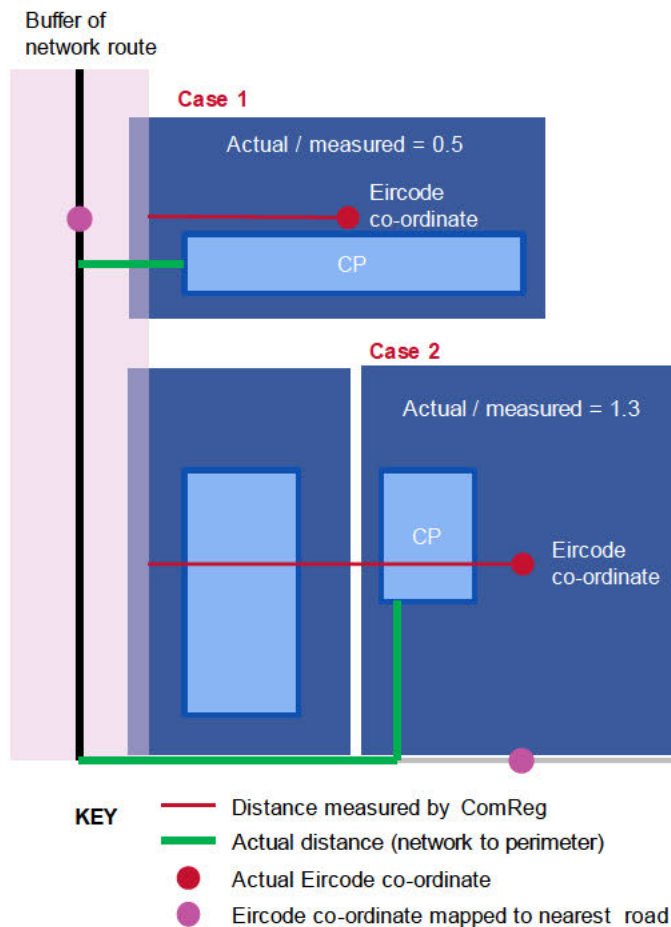
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Figure 8: Illustration of issues in ComReg's approach



In Case 1, the Eircode location is nowhere near to the edge of the building, meaning that the distance measured is far greater than the actual distance required.

In Case 2, using the Eircode location means that the approach assumes a final drop is far shorter by going through an intervening building, which is clearly not realistic.

Enet has identified two instances of Enet connected premises where ComReg's approach would lead to the inconsistencies described in case 1 and case 2 above.

Figure 9 illustrates case 1 where an Eircode's geographic location is contained within a building, suggesting a longer drop distance than actually required to reach the front of the building.

Figure 10 illustrates case 2 where a 50 metre buffer around the Eircode suggests that it is possible to serve the building from an AN passing along the main road, whereas in reality the AN operator would be required to build a new drop along a minor road that is estimated to be over 100 metres in length (and therefore beyond the 50 metre cutoff length).

Figure 9: Example of case 1 (✗)

Figure 10: Example of case 2 (✗)



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Based on these examples, Enet recommends ComReg use a more realistic approach, which should be done for each CP location considered in Step 2 and Step 7 of the algorithm:

- map the CP location onto the nearest road (using a digital road dataset, such as that from OpenStreetMap: this is a simple step for most geographic information software (GIS) systems)⁹
- map the resulting location to the routes of each AN separately (giving lengths of $L_1, L_2, \dots, L_N$)
- this tests the proximity of existing AN routes to the locations in terms of street distance.
- Add a final drop (on-property) as a separate length (D , say 10 metres).
- Calculate the total associated distance to each AN as $L_1+D, L_2+D, \dots, L_N+D$.
- Apply the distance criterion and proportionality criterion to these distances, but using the access network routes directly (with no need for the 20 metre buffer).

The distance criterion has to be conservative since proximity to a cable route is not sufficient to extend the network of an AN to a CP location. Rather, access to a breakout point is essential for such a connection to the existing network to be technically feasible. The “ideal” test for CP (or premises) locations in ComReg’s algorithm would be for proximity to break-out points of the ANs (manholes/chambers). Enet recognizes that this data may not be available from enough ANs, but therefore must insist to ComReg that the distance criterion is conservative for the algorithm to produce results that are a good approximation of the “ideal” test.

Another reason for a conservative assumption is that, as ComReg itself acknowledges in footnote 212 of the consultation document, what is being used “is the radial distance, or the ‘crow flies’ distance. Network dig distances will not typically follow the ‘crow flies’ route, but the ‘dog walks’ distance, which is usually longer than the former”. Therefore, the assumed crow-flies threshold of 50 metres will actually correspond to a dig distance of more than 50 metres. As described in our response to Q01 regarding the significant changes in digging costs in the State since 2019/2020, Enet considers that a distance criterion of 20 metres would be more appropriate.

Consultation Q05

Do you agree with ComReg’s assessment of the Trunk – Terminating Boundaries of the MI WDC Markets?

Enet response to Q05

As indicated in paragraph 4.139, ComReg should monitor the situation of service provider ownership in the context of determining the number of trunk nodes ahead of their final decision.

Enet considers that ComReg’s justification (in paragraphs 4.134/4.135) of using a 100 metre boundary specifically for determining the trunk nodes is reasonable, since such nodes will form a centralised part of a service provider’s network.

⁹ In the cases in Figure 8, mapping the Eircode location to the nearest road corresponds to the pink dots.

Consultation Q06

Do you agree with ComReg's assessment of SMP on the Relevant WDC Markets?

Enet response to Q06

Enet agrees with ComReg's assessment of SMP on the relevant WDC markets (Zones A and B), but disagrees with ComReg's definition of Zones A and B.

Extensive comments on ComReg's definition are provided in the response to Q04.

Consultation Q07

Do you agree that the competition problems and the associated impacts on competition end users identified are those that could potentially arise in the Zone B MI WDC Markets (and related markets)?

Enet response to Q07

As described in paragraph 6.4 of the consultation document, ComReg has considered the following competition problems that could arise in the Zone B MI WDC markets due to the presence of an operator with significant market power (SMP):

1. Exclusionary practices (including refusal to supply, unreasonable/discriminatory terms of access, creation of information asymmetries, contract exclusivity, increasing wholesale costs)
2. Exploitative practices by an SMP operator, such as excessive wholesale pricing
3. Leveraging of SMP into vertically/horizontally adjacent markets with a view to weakening competition.

Enet considers that ComReg adequately understands the potential competition problems in Zone B in the absence of regulation of the SMP operator.

Consultation Q08

Do you agree with ComReg's proposals in respect of non-pricing remedies in the Zone B MI WDC Markets?

Enet response to Q08

Enet agrees with ComReg's proposal to introduce the full set of remedies in the Zone B MI WDC Markets as this will promote competition and align with the best practice adopted by other European countries.

According to BEREC in its most recent release of Regulatory Accounting in Practice, most regulators tend to apply the full set of remedies when SMP regulation is imposed on a specific product or market.¹⁰ Figure 11 summarises the remedies imposed on SMP operators for the WDC market or its equivalent in other countries, based on the cases cited by BEREC in its most recent release of

¹⁰ See [here](#), page 8

Regulatory Accounting in Practice (limited to those cases where the decision was finalised in the last five years, plus the UK).¹¹ Across these examples, the full suite of remedies is applied in most cases, consistent with ComReg's proposal.

Figure 11: Benchmark of remedies imposed by regulators in other (or former) EU Member States where SMP is found

Country	Case number / source (page number)	Year	Remedies imposed by regulator					
			Reasonable access	Non-discrimination	Transparency	Price control	Cost accounting	Accounting separation
Ireland		2024	✓	✓	✓	✓	✓	✓
Germany	DE/2024/2512 (p3-4)	2024	✓	✓	✓	✓	✗	✗
Italy	IT/2024/2497 (p13-18)	2024	✓	✓	✓	✓	✓	✓
Greece	EL/2023/2427 ¹² (p2)	2023	✓	✓	✓	✓	✓	✓
Austria	AT/2023/2446 (p2)	2023	✓	✓	✓	✓	✓	✓
France	FR/2023/2465-2466-2467 (p10-15)	2023	✓	✓	✓	✓	✓	✓
Cyprus	CY/2023/2456 (p3)	2023	✓	✓	✓	✓	✓	✓
Portugal	PT/2023/2481 (p3)	2023	✓	✓	✓	✓	✓	✓
Spain	ES/2022/2361 (p2-5)	2022	✓	✓	✓	✓	✓	✓
UK	2021 WFTMR Volume 3 ¹³	2021	✓	✓	✓	✓	✓	✓
Croatia	HR/2020/2247-2248 (p6)	2020	✓	✓	✓	✓	✓	✓
Luxembourg	LU/2020/2282 (p2)	2020	✓	✓	✓	✓	✗	✗

Consultation Q09

Do you agree with ComReg's view that a differentiated pricing remedy (of no price control) should apply to Eircom with respect to MI WDC products and services in the IA in the Zone B MI WDC Markets, while the obligations of access, non-discrimination and transparency will continue to apply to the MI WDC products and services in the IA?

Enet response to Q09

Enet understands the principles behind this proposal to lift the price control on Eircom in the Intervention Area, but disagrees with how the NBI network footprint is incorporated into ComReg's algorithm (as described in the response to Q04).

¹¹ See [here](#), page 21

¹² Most remedies were notified in 2019 (see [here](#), page 7)

¹³ See paragraphs 1.18.

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As set out earlier, in Enet's view Step 8 should be removed from the algorithm, meaning that any WPZ currently allocated to group A7 should be moved back to group B2.

However, Enet would recommend that this remedy only be applied to the Intervention Area once NBI has been confirmed to have completed its network build. Otherwise, the price control will be lifted in Zone B before the infrastructure competition has actually materialised.

Were these two points to both be addressed by ComReg, then ComReg's proposed differentiated pricing remedy is broadly acceptable, since the price control is lifted in Zone B solely where NBI is guaranteed to provide infrastructure competition to Eircom (based on its contract with the Irish government).

Consultation Q10

Do you agree with ComReg's view that a cost orientation price control obligation should be maintained for Eircom's MI WDC products, services and associated facilities, including WDM services, outside the IA in Zone B of the MI WDC Markets?

Enet response to Q10

Enet agrees with ComReg's view that cost-orientation is a proportionate remedy to apply to Eircom. Figure 12 below sets out different forms of price control remedies imposed in different European markets in the WDC relevant market (or nearest equivalent), with cost-oriented price control adopted by most Member States.

Figure 12: Benchmark of price controls applied in other (or former) EU Member States

Country	Case number / source (page number)	Year of decision	Form of price control
Ireland		2024	Cost-orientation
Germany	DE/2024/2512 (p3)	2024	Cost-oriented prices subject to approval by the regulator
Italy	IT/2024/2497 (p17)	2024	Fair and reasonable pricing
Greece	EL/2023/2427 ¹⁴ (p2)	2023	Cost-orientated prices based on bottom-up LRIC model
Austria	AT/2023/2446 (p4)	2023	Price set by the regulator based on regulatory accounts and WACC
France	FR/2023/2465-2466-2467 (p13-15)	2023	Different pricing remedies based on services, including cost-orientation, price replicability test, and defined price range
Cyprus	CY/2023/2456 (p3)	2023	Cost-orientated prices based on bottom-up LRIC model
Portugal	PT/2023/2481 (p3)	2023	Cost-orientation
Spain	ES/2022/2361 (p5)	2022	Reasonable pricing or retail-minus, based on product

¹⁴ Most remedies were notified in 2019 (see [here](#), page 7)

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Country	Case number / source (page number)	Year of decision	Form of price control
UK	2021 WFTMR Volume 3 (p4-6)	2021	Geographically differentiated remedies (price cap or fair pricing)
Croatia	HR/2020/2247-2248 (p6)	2020	Cost-orientated prices based on bottom-up LRIC+ model
Luxembourg	LU/2020/2282 (p3)	2020	Cost-orientated prices based on bottom-up LRIC+ model

Consultation Q11

Do you agree with ComReg's view that Eircom should charge the current Zone B rental prices in the LLRO price list (i.e., the pricing continuity approach), as fixed price points, for Eircom's MI WDC products and services, including WDM services, outside the IA in Zone B of the MI WDC Markets, and the current rental prices in the LLRO price list for the associated Eircom interconnection services?

Enet response to Q11

Enet agrees with ComReg's price continuity proposal, in the interest of regulatory certainty and pricing predictability/stability. If Eircom has previously accepted and sold services with these prices, then they should continue to be able to do so. ComReg has established that Eircom is still able to recover its costs using these prices, based on its description in paragraph 7.188 of the consultation document.

Consultation Q12

Do you agree with ComReg's view that the charges for co-location services and the upfront (non-recurring) charges for connections should reflect no more than the actual efficient costs incurred by Eircom plus a reasonable rate of return?

Enet response to Q12

Enet agrees with ComReg's proposal.

As indicated by ComReg in paragraph 7.196 of the consultation document, the existing price control for ancillary services and facilities in the 2020 Decision was in the form of a cost orientation obligation, where Eircom could recover no more than its efficient costs plus a reasonable rate of return for co-location services and connection fees. Therefore, ComReg's proposal is broadly consistent with the 2020 Decision.

This approach has also been taken in other jurisdictions. For example, the Danish regulator required TDC NET to require similar types of charges were priced using a historic costs approach (and would periodically assess TDC NET's charges to ensure they were consistent with a historic costs approach).¹⁵

¹⁵ The DBA's most recent cost review was in 2019 and can be found [here](#)

Consultation Q13

Do you agree with ComReg's view that Eircom should maintain its cost accounting obligation in relation to its Modern Interface Wholesale Dedicated Capacity products, services and associated facilities?

Enet response to Q13

Enet agrees with ComReg's view that accounting separation is a proportionate remedy to continue to apply to Eircom for MI WDC services. Enet notes that Eircom should already have the ability to distinguish revenues between Zone A and Zone B, based on ComReg's statements in paragraph 7.226 of the consultation document.

However, Enet is not clear as to whether Eircom must also provide costs split between Zone A and Zone B, and if this is not the case, how an assessment of Eircom's profitability in the regulated Zone B is possible. ComReg should indicate how it can use the separated accounts to assess Eircom's profitability in the regulated Zone B.

Consultation Q14

Do you agree with ComReg's view that Eircom should continue to maintain its accounting separation obligation in relation to its Modern Interface Wholesale Dedicated Capacity products, services and associated facilities, and for the avoidance of doubt this means the inclusion of dark fibre in the MI WDC HCA statements and AFI statements?

Enet response to Q14

Enet agrees with ComReg's view that this is a proportionate remedy to apply to Eircom.

Consultation Q15

Do you agree with ComReg's view that Eircom should continue to maintain its statement of compliance obligation in relation to its MI WDC products, services and associated facilities in the WDC market?

Enet response to Q15

Enet agrees with ComReg's view that this is a proportionate remedy to apply to Eircom.

Consultation Q16

Do you agree with ComReg's proposals on the withdrawal of SMP remedies on Eircom in the LB TI WDC Market and in WPZs that have moved from Zone B MI WHQA Markets in the 2020 Decision to Zone A MI WDC Markets in this Consultation?

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Enet response to Q16

Enet accepts ComReg's conclusion that low bandwidth traditional interface ('LB TI') leased lines are sufficiently marginal in the Irish market that there is no need for continued regulation.

Similarly, provided ComReg can define Zone A sufficiently carefully and it can be properly demonstrated that there is sufficient infrastructure competition within the WPZs within this zone, then Enet accepts ComReg's conclusion that this zone can be deregulated in principle with respect to modern interface (MI) WDC services.

However, as noted in the responses to Q04 and Q06, Enet has material concerns that Zone A contains too many WPZs, since some of the steps used to allocate WPZs to Zone A deregulate in an inconsistent and overly broad manner.

Enet does however question the sunset period proposed for the withdrawal of regulations imposed on Eircom (of six months and nine months for the LB TI and MI WDC respectively), and thinks that these are too short for wholesale customers to seek out alternative arrangements if necessary. Deregulation in the wholesale dedicated capacity market has been observed in other European markets in the past as a result of finding effective competition in the relevant market: a benchmark of these cases (in terms of the remedies withdrawn and the sunset period for the withdrawal) is set out in Figure 13 below.

There are several cases where longer sunset periods than those proposed by ComReg have been used. In fact, in its 2020 Decision, ComReg itself used a 12-month sunset period for the MI deregulated services.

Figure 13: Benchmark of sunset periods imposed by the national regulatory authority

Country	Case number / source (page number)	Remedies removed by NRAs							Sunset period (months)
		Access	Transparency	Non-discrimination	Cost accounting	Accounting separation	Cost-oriented pricing	Cost-based pricing	
Ireland (proposed for LB TI)	ComReg 24/92 (p218)	✓	✓	✓	✓	✓		✓	9.0 (price control) 0.0 (other)
Ireland (proposed for MI in Zone A)	ComReg 24/92 (p218)	✓	✓	✓	✓	✓		✓	6.0 (price control) 0.0 (other)
Portugal (Zone B)	PT/2023/2481 (p7)	✓	✓	✓	✓	✓	✓		24.0 (all)
Portugal (Zone A)	PT/2023/2481 (p7)	✓	✓	✓	✓	✓	✓		18.0 (all)
Italy	IT/2020/2252 (p5)	✓	✓	✓	✓	✓	✓		12.0 (regulated prices for active subscriptions) 0.0 (other)
Malta	MT/2022/2420 (p5)	✓	✓	✓	✓	✓		✓	3.0 (all)

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Country	Case number / source (page number)	Remedies removed by NRAs						Sunset period (months)
		Access	Transparency	Non-discrimination	Cost accounting	Accounting separation	Cost-oriented pricing	
Czech Republic	CZ/2022/2380 (p2)	✓	✓	✓	✓	✓		0.5 (all) ¹⁶

¹⁶ No sunset period has been indicated while the decision came into force 15 days after the publication.

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Appendix A: Evidence of increased digging costs experienced by Enet between 2019 and 2024 in the State

Enet has observed an increase in market rates for deploying new ducts in trenches, particularly in the case of road crossings. In the scenario illustrated in Figure 14, a trench is required to cross an 8 metre road:

In 2019, this would have required a 1 metre reinstatement either side of the trench (i.e. a reinstatement area of 16m²).

By 2024, this requirement has now increased for roads that have been resurfaced in the previous 5 years, or are in relatively good condition. In these cases, a 5 metre reinstatement is required on either side of the road crossing trench (i.e. a reinstatement area of 80m²), as shown in Figure 14 below.¹⁷

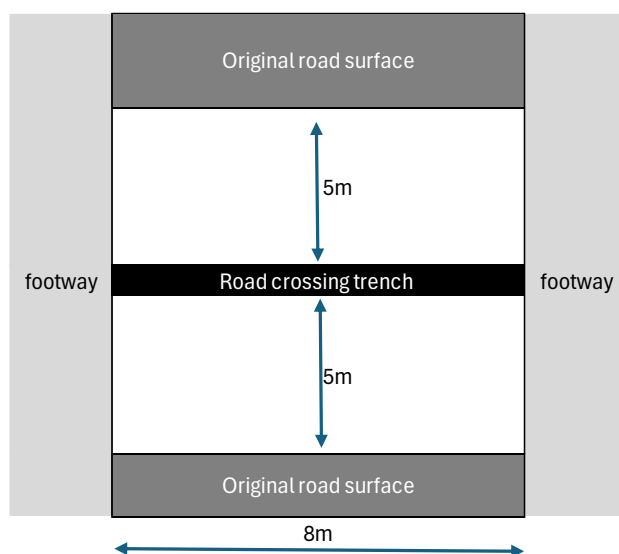


Figure 14: Illustration of road crossing scenario

Beyond reinstatement regulations, many local authorities, such as those in built up areas or cities, apply restrictions on when work may be carried out. For example, many local authorities require work to be carried out between 7pm and 11pm, which incurs an uplift of 30% on the regular unit price (since contractors cannot accomplish as much work in the restricted 4-hour window). Overall, Enet's experience is that an uplift is applied in over 30% of civils work with an uplift of approximately 30%. Enet's insurers also insist that only contractors with professional indemnity insurance are used, which limits the available pool of contractors to the larger contractors operating in the State.¹⁸

The table below illustrates the impact of increasing labour rates, reinstatement regulations and the uplifted labour costs due to restricted working hours in a specific example for South Dublin County Council (who require the 10 metre reinstatement in all cases, and there is a possibility that other local authorities will follow suit). Overall, as shown in Figure 15, Enet estimates that an 8 metre road crossing which would have cost EUR30k in 2019 (assuming no uplift required) would cost EUR30k in 2024 (assuming no uplifts: an increase of over 300%) and EUR30k in 2024 (assuming the work had to be done between 7pm and 11pm: an increase of almost 550%).

¹⁷ This requirement can be found in the 'Purple book', Section 4.4.2 (page 38).

¹⁸ This requirement can be found in the 'Purple book', Section 3.2 (page 24).

Figure 15: Indicative dig costs for road crossings

✂ Cost item	Volume		Unit cost			Total cost		
	2019	2024	2019	2024 ¹⁹	Uplifted 2024	2019	2024	Uplifted 2024
Dig and lay ducts (carriageway) (m)								
Dig and lay ducts (road crossing) (m)								
Traffic management crew								
Reinstatement (< 50m ²)								
Reinstatement (50-100m ²)								
Reinstatement (100-250m ²)								
Reinstatement (≥ 250m ²)								
Total								
Total cost as a proportion of 2019 cost						1.0	4.0	6.4

Enet's expectation is that labour and material rates will continue to rise in 2025, further exacerbating this challenge which affects Enet's, and likely other operators', ability to compete effectively.

This material increase in deployment costs affects Enet's ability to compete with other operators, as extending existing fibre networks to connect new premises to provide services using WDC products can have high associated costs that make such connections commercially unviable.

Whilst use of physical infrastructure access (PIA) can mitigate these cost increases, use of this service is still of considerable cost to ANs such as Enet, and over-reliance on existing infrastructure is also goes against increased infrastructure competition, which is also an important issue for ComReg.

¹⁹ This rate card applied from 2022 to the present

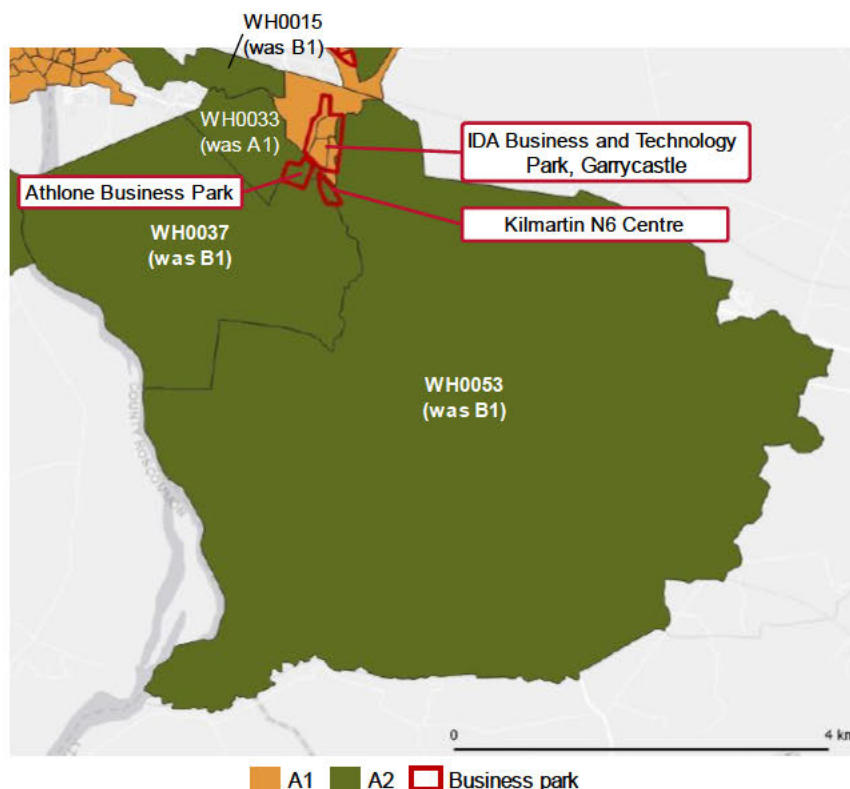
²⁰ There was previously not a requirement for a dedicated traffic management crew, as traffic management was handle by the civils contractors. This therefore represents a new cost item.

Appendix B: WPZs being erroneously allocated to Zone A (A2) via the Business Park test

In this appendix, Enet provides maps and describe examples where WPZs have been erroneously allocated to Zone A via the Business Park test (to group A2). For the avoidance of doubt, the Business Park boundaries are Enet's own estimations, but the extent of overlap with the WPZs in question are so small that ComReg's own boundaries would have to be significantly larger to affect Enet's findings.

Example 1: WH0053 and WH0037

Figure 16: Map of WPZ WH0053 and WH0037



Enet provides maps with network routes in the supplemental files WH0037.pdf and WH0053.pdf.

- WH0037.pdf shows that ☒ have network present in the WPZ, though in different areas, and ☒ network appears to be only backhaul network. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be a slight overlap with Athlone Business Park and Kilmartin N6 Centre (<1% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.
- WH0053.pdf shows that ☒ have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be a slight overlap with IDA Business and Technology Park, Garrycastle and Kilmartin N6 Centre (<1% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.

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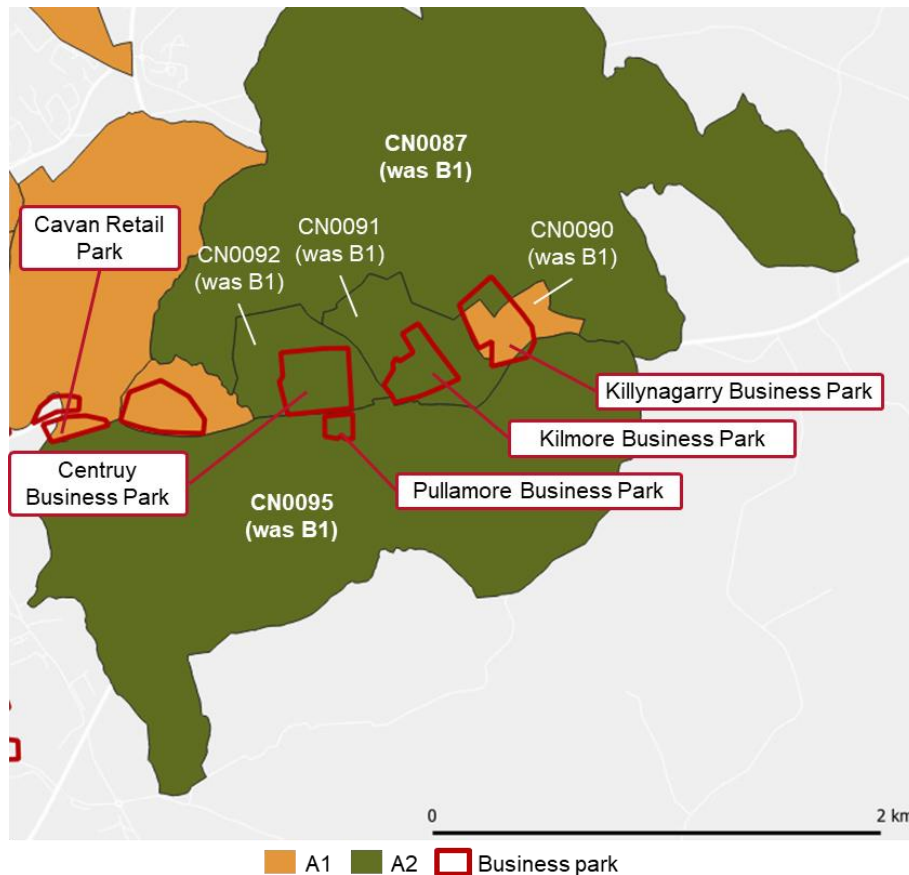
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Example 2: CN0087 and CN0095

Figure 17: Map of WPZ CN0087 and CN0095



Enet provides maps with network routes in the supplemental files CN0087.pdf and CN0095.pdf.

- CN0087.pdf shows that 3G have network present in the WPZ, though in different areas, and 3G network appears to be only backhaul network. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be a slight overlap with Killynagarry Business Park (<1% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.
- CN0095.pdf shows that 3G have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be a slight overlap with Cavan Retail Park, Killynagarry Business Park and Pullamore Business Park (<1% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.

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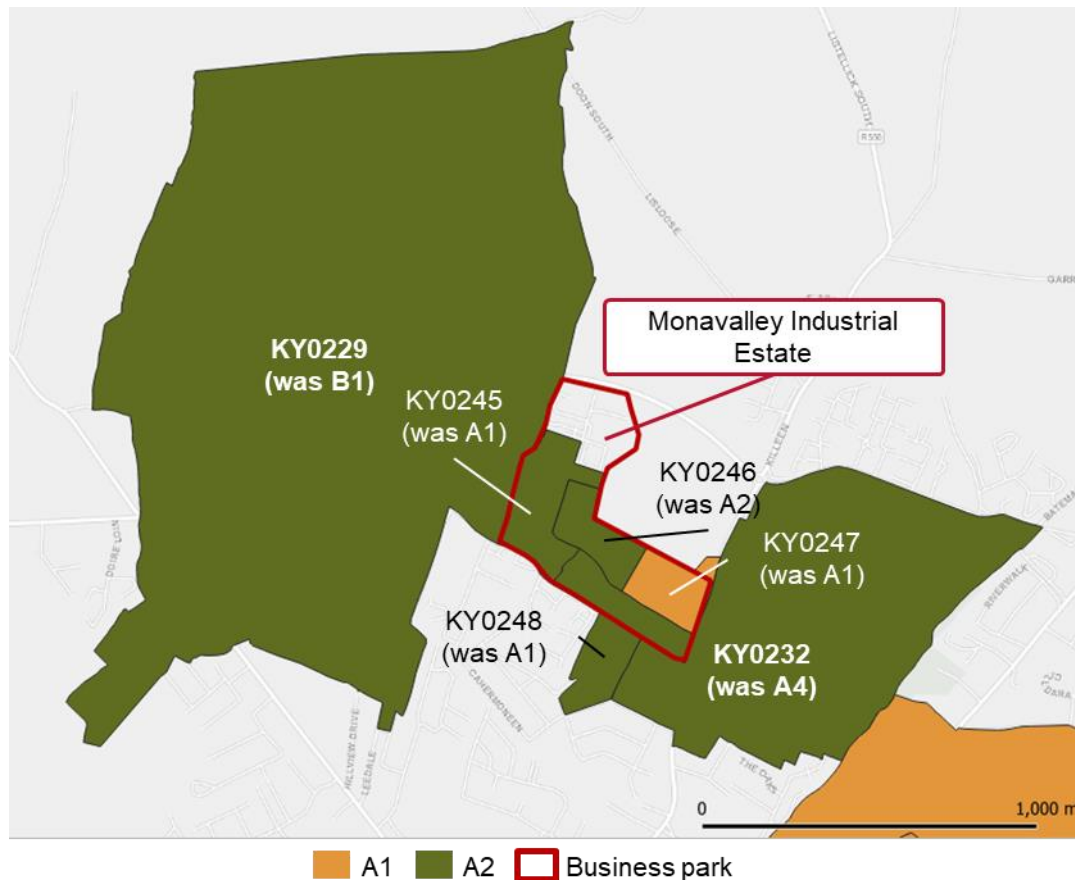
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Example 3: KY0229 and KY0232

Figure 18: Map of WPZ KY0229 and KY0232



Enet also provides maps including network routes in the supplemental files KY0229.pdf and KY0232.pdf.

- KY0229.pdf shows that $\propto$ have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be a slight overlap with Monavalley Industrial Estate (<1% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.
- KY0232.pdf shows that $\propto$ have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be a slight overlap with Monavalley Industrial Estate (<1% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.

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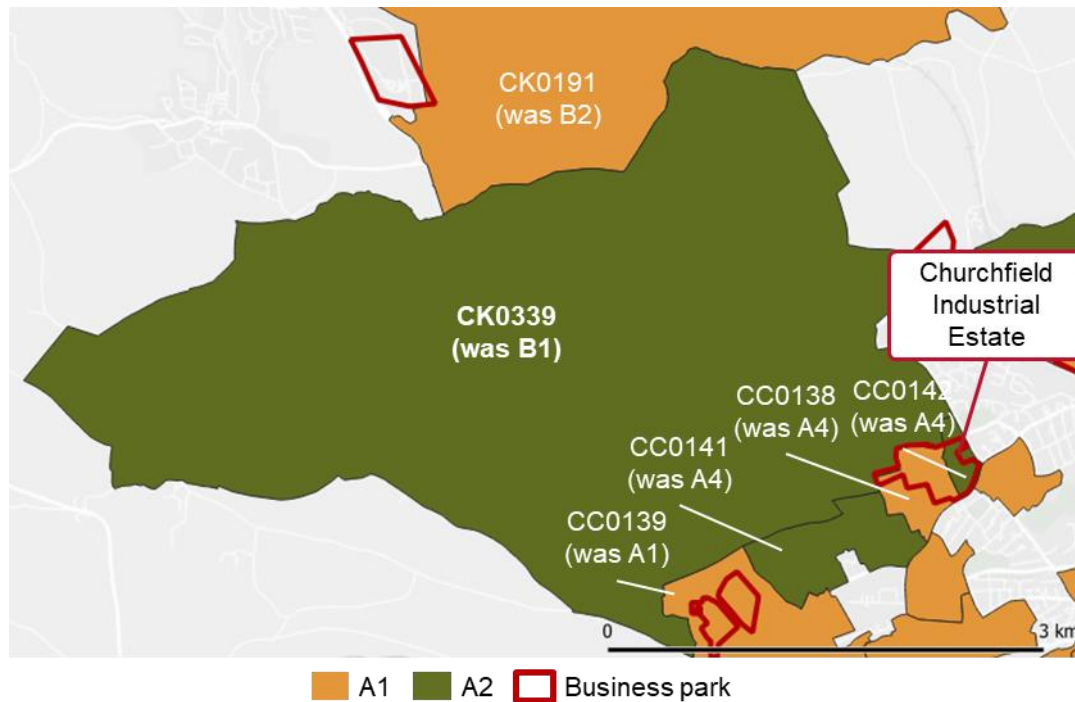
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Example 4: CK0339

Figure 19: Map of WPZ CK0339



Enet also provides a map including network routes in the supplemental file CK0339.pdf, which shows that $\propto$ have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be a slight overlap with Churchfield Industrial Estate (<1% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.

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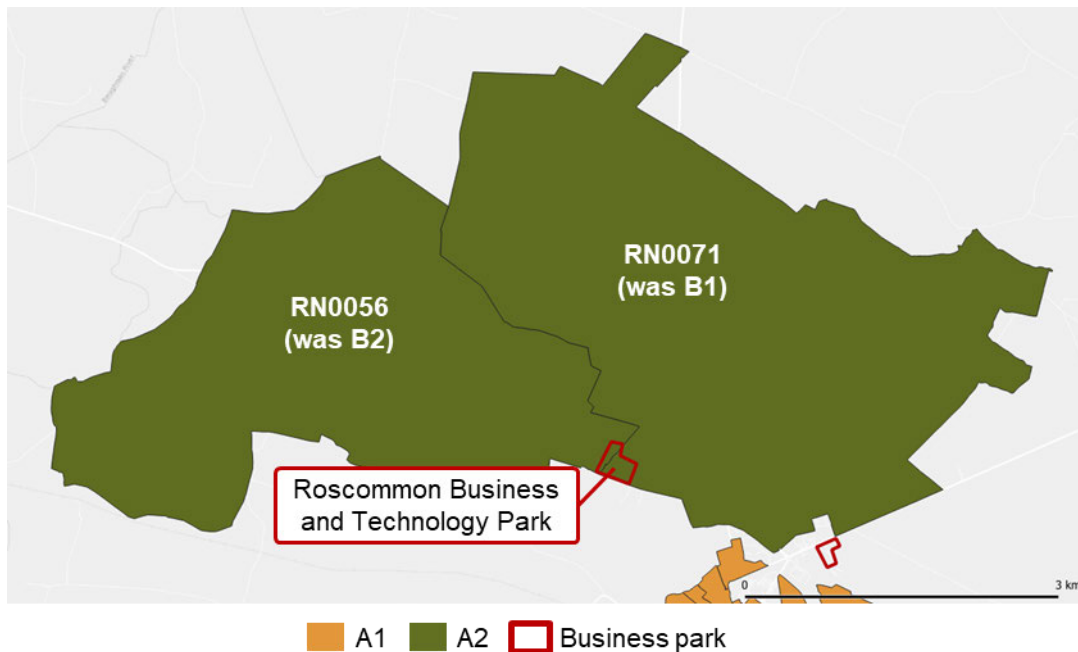
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Example 5: RN0056 and RN0071

Figure 20: Map of WPZ RN0056 and RN0071



Enet also provides maps including network routes in the supplemental files RN0056.pdf and RN0071.pdf.

- RN0056.pdf shows that 30% have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be a slight overlap with Roscommon Business and Technology Park (<1% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.
- RN0071.pdf shows that 30% have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be a slight overlap with Roscommon Business and Technology Park (<1% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.

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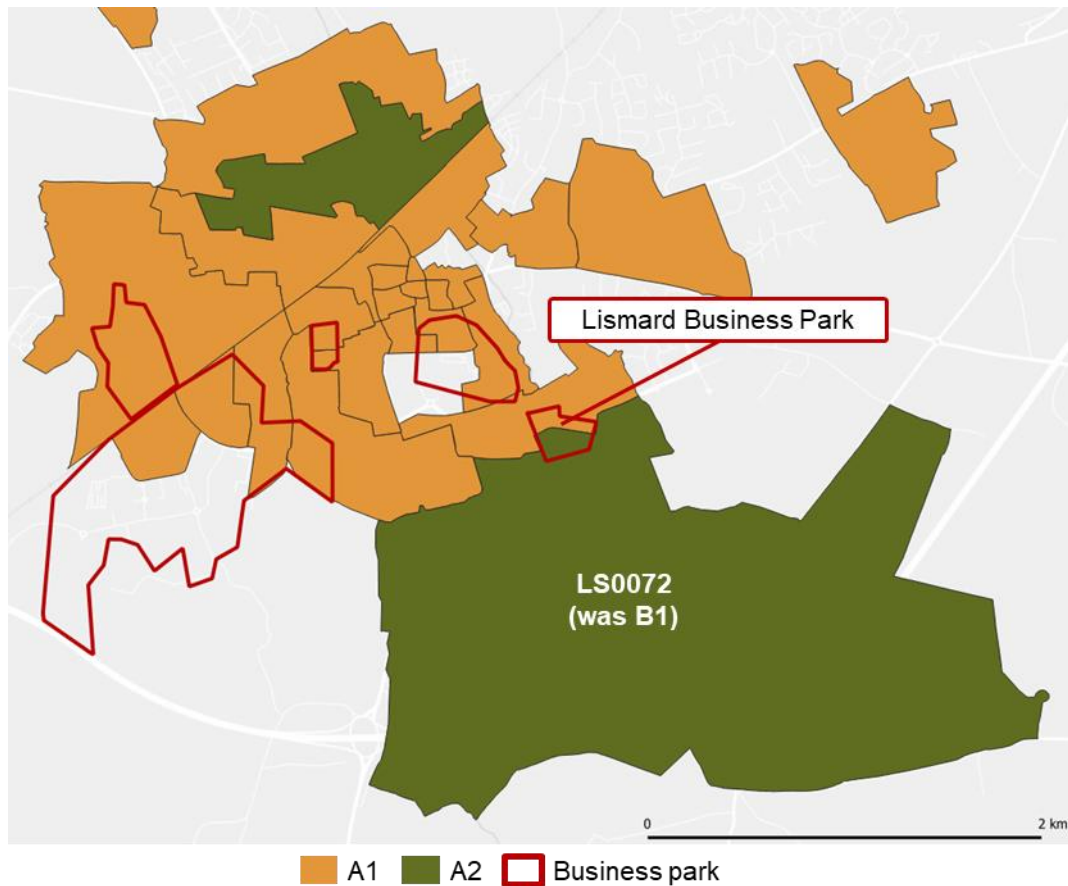
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Example 6: LS0072

Figure 21: Map of WPZ LS0072



Enet also provides a map including network routes in the supplemental file LS0072.pdf, which shows that 3% have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be a slight overlap with Lismard Business Park (<1% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.

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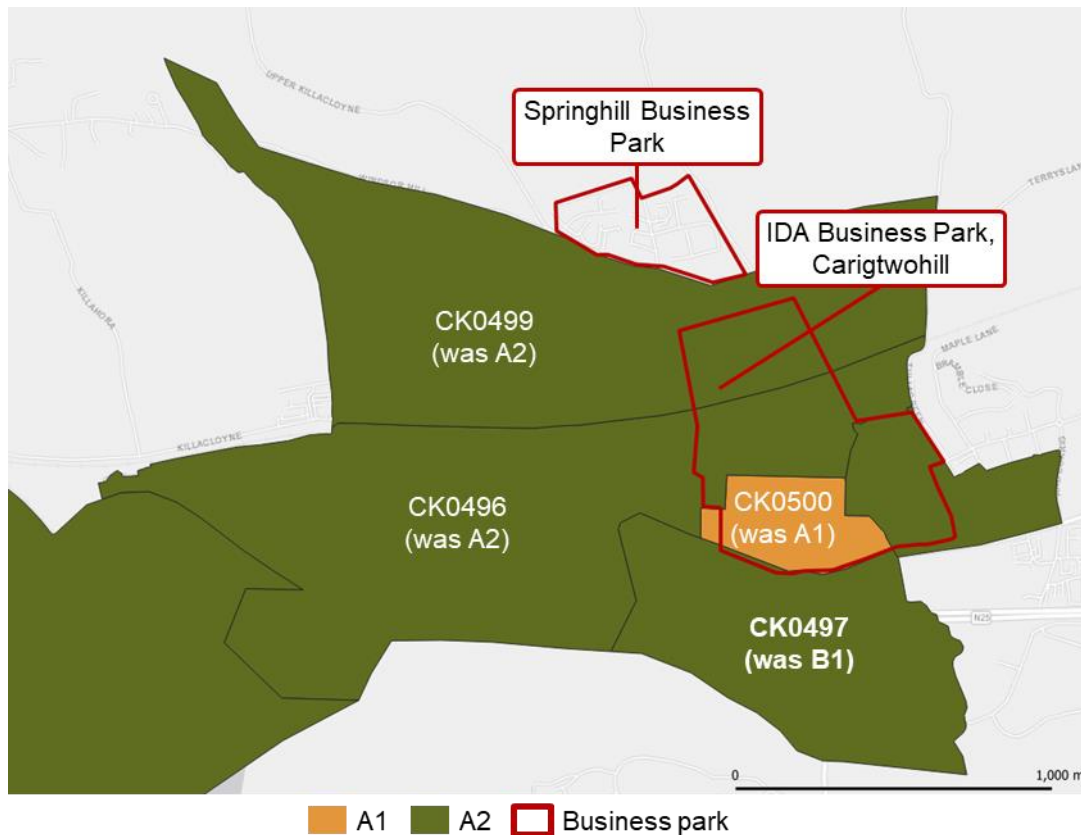
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Example 7: CK0497

Figure 22: Map of WPZ CK0497



Enet also provides a map including network routes in the supplemental file CK0497.pdf, which shows that $\propto$ have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be a slight overlap with IDA Business Park, Carigtwohill (<1% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.

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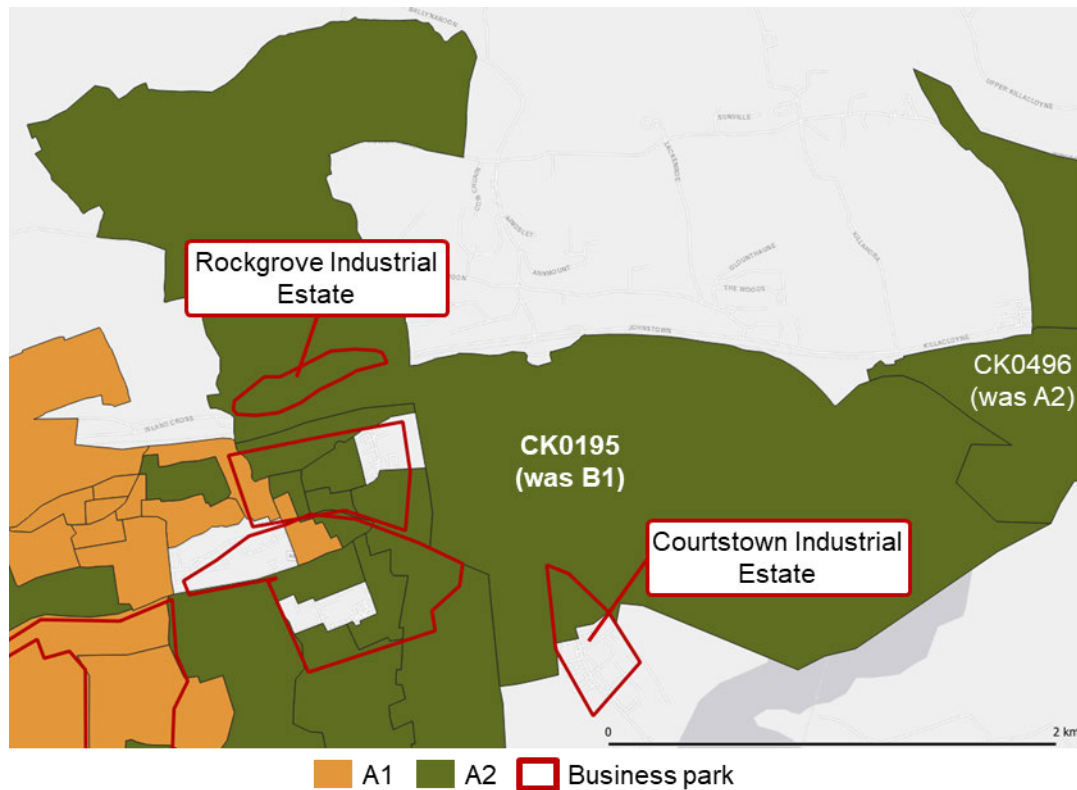
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Example 8: CK0195

Figure 23: Map of WPZ CK0195



Enet also provides a map including network routes in the supplemental file CK0195.pdf, which shows that $\propto$ have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be an overlap with Courtstown Industrial Estate and Rockgrove Industrial Estate (<5% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.

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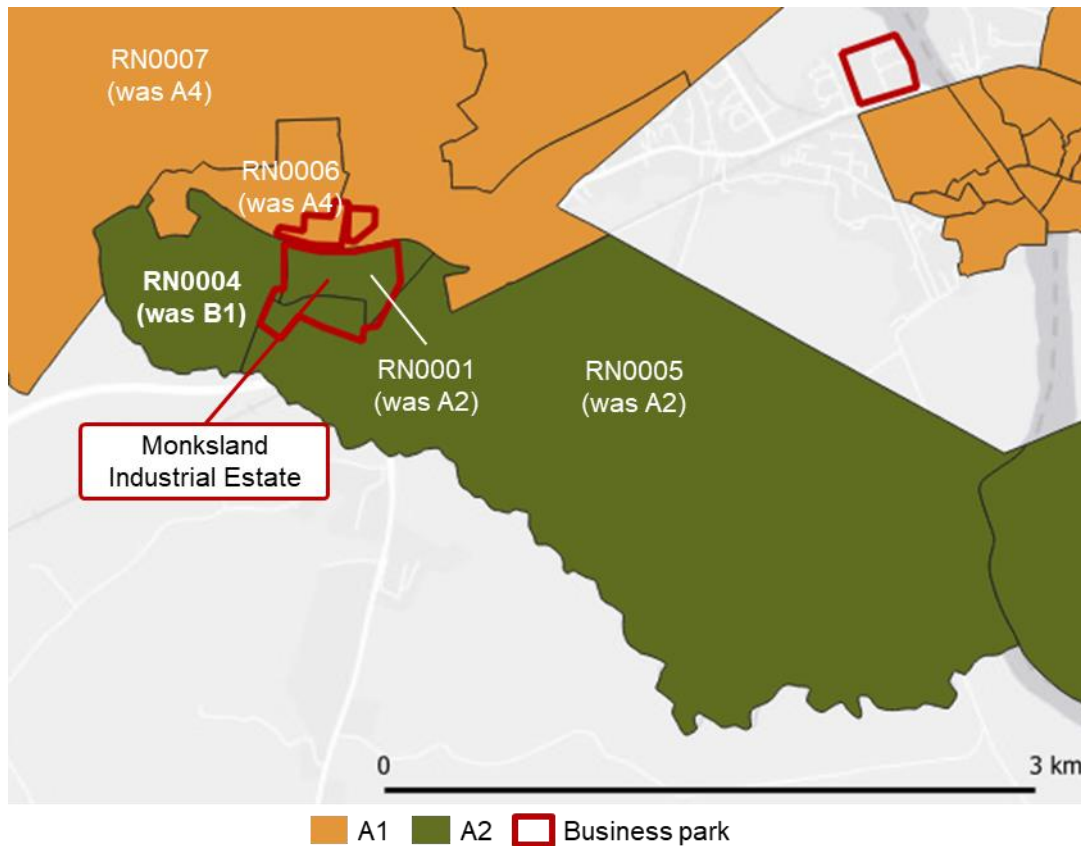
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Example 9: RN0004

Figure 24: Map of WPZ RN0004



Enet also provides a map including network routes in the supplemental file RN0004.pdf, which shows that $\propto$ have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be a slight overlap with Monksland Industrial Estate (<5% of the WPZ total area), which leads to the entire WPZ being allocated to group A2. This is similarly true for WPZ RH0005.

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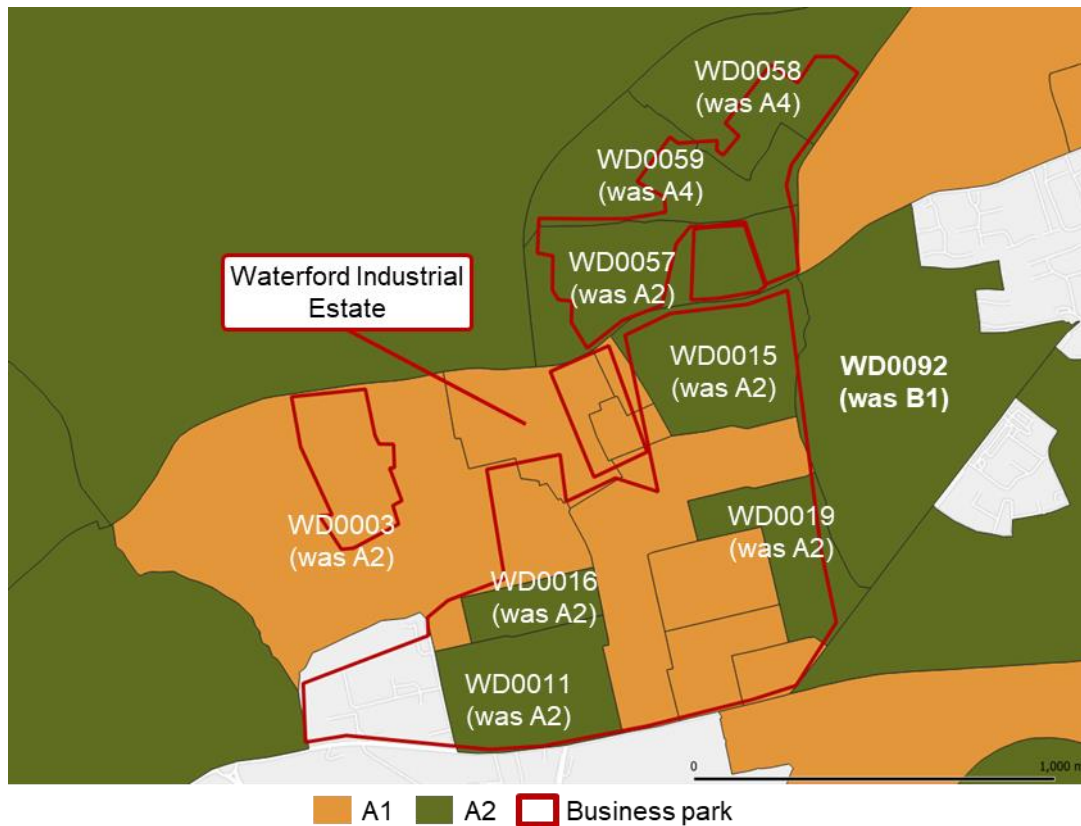
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Example 10: WD0092

Figure 25: Map of WPZ WD0092



Enet also provides a map including network routes in the supplemental file WD0092.pdf, which shows that $\propto$ have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be a slight overlap with Waterford Industrial Estate (<1% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.

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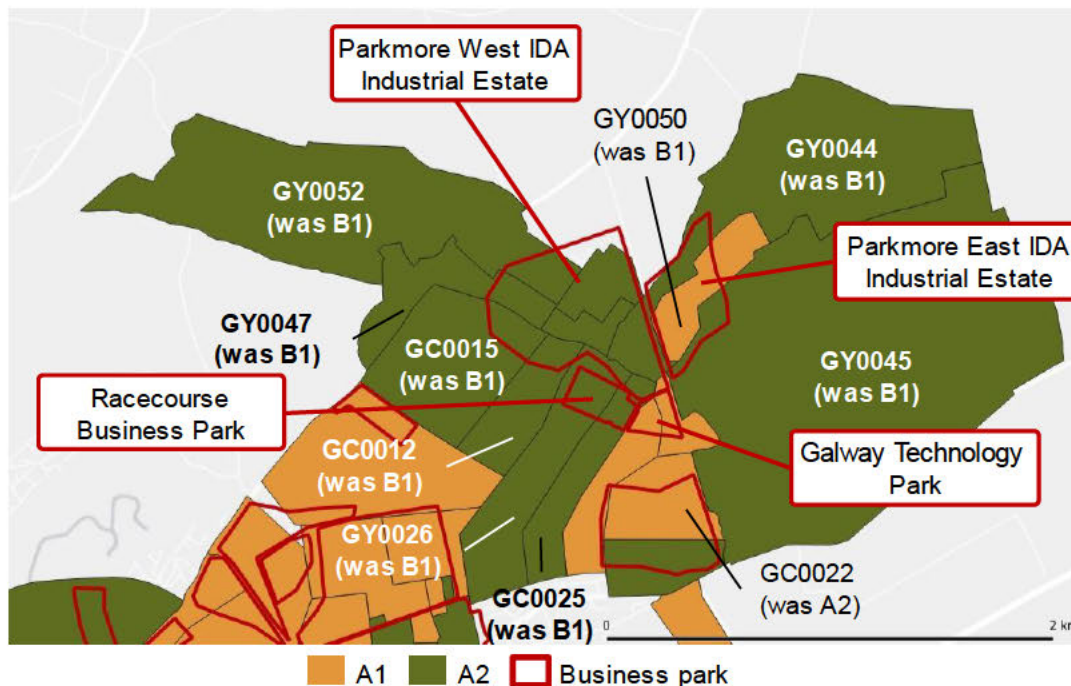
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Example 11: GY0052, GY0044, GY0045, GC0025, GY0026, GC0012, GC0015 and GY0047

Figure 26: Map of WPZ GY0052, GY0044, GY0045, GC0025, GY0026, GC0012, GC0015 and GY0047



Enet also provides maps including network routes in the supplemental files GY0052.pdf, GY0044.pdf, GY0045.pdf, GC0025.pdf, GY0026.pdf, GC0012.pdf, GC0015.pdf and GY0047.pdf.

- GY0052.pdf shows that $\propto$ have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be an overlap with Parkmore West IDA Industrial Estate (approximately 5% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.
- GY0044.pdf shows that $\propto$ have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be an overlap with Parkmore East IDA Industrial Estate and Parkmore West IDA Industrial Estate (approximately 12% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.
- GY0045.pdf shows that $\propto$ have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be a slight overlap with Parkmore East IDA Industrial Estate

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(approximately 2% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.

- GC0025.pdf shows that 3< have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be an overlap with Galway Technology Park, Parkmore West IDA Industrial Estate and Racecourse Business Park (approximately 20% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.
- GY0026.pdf shows that 3< have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be an overlap with Parkmore West IDA Industrial Estate and Racecourse Business Park (approximately 16% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.
- GC0012.pdf shows that only 3< appears to have network present in the WPZ (though ComReg believes there is a second operator present in the Business Park). The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be an overlap with Parkmore West IDA Industrial Estate (17% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.
- GC0015.pdf shows that 3< have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be an overlap with Parkmore West IDA Industrial Estate (11% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.
- GY0047.pdf shows that 3< have network present in the WPZ. The majority of connected premises are passed by only one AN, meaning the WPZ does not qualify for group A1. However, there appears to be an overlap with Parkmore West IDA Industrial Estate (approximately 23% of the WPZ total area), which leads to the entire WPZ being allocated to group A2.

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Appendix C: Enet subscribers that appear to be missing from ComReg's analysis

These are Enet subscribers from their 2H 2023 submission to ComReg that are located in WPZs that are marked as being groups A4, A5, A7 or B2 and therefore are found by ComReg to have no CPs.

Enet code ✂	Eircode ✂	Type ✂	WPZ ✂
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Appendix D: Example of WPZs where ComReg has found 2 or more AN, but in Enet's view these must be arising from core network routes

Example 1: WPZ WD0179

This example is also considered as part of the Islands Test in our response to Q04. However, this is also an example of where Enet thinks it is likely that some of the routes considered are in fact core network routes. Based on the data available to Enet, WD0180 (which as part of group A4 should have two ANs present) appears to have only one AN present (as shown in Figure 27 below, with the red route below indicated by the red line representing a route for 3<), but this route looks more like core network rather than access network. Therefore, Enet doubts whether WD0180 should in fact be allocated to group A4 (and therefore, by extension, whether WD0179 should in fact be allocated to group A5).

Figure 27: Map of WPZ WD0179 and WD0180

3<

Appendix E: Examples of WPZs allocated to Zone A (A7) via Step 8 but which may be better allocated to Zone B (B2)

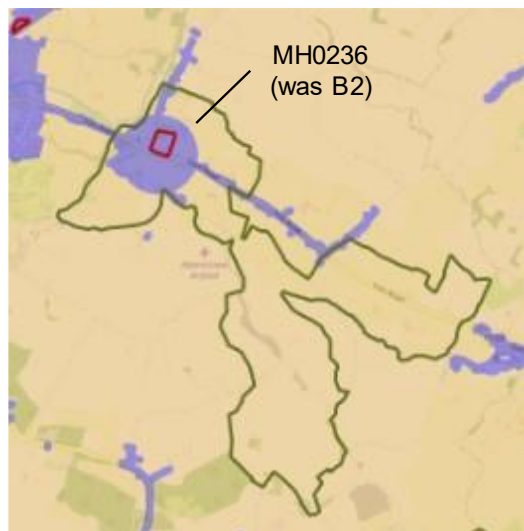
Enet provides maps and describe examples where WPZs have been allocated to Zone A inappropriately via Step 8, where they would be better allocated to Zone B.

These maps include the NBI Intervention Area (IA), which is complementary to the Commercial Area (i.e. together, the IA and Commercial Area cover the whole of the State).

Example 1: MH0236

Step 8 is applied to WPZ MH0236, resulting in it being deregulated despite a low level of competition. The Scurlockstown Business Park is located in the north-west of the WPZ, and is served by Enet as part of the State-owned metropolitan access network (MAN) in Trim (as visible on the Enet coverage map). This network extends along the Trim Road, crossing a portion of the IA to the east of the WPZ.

Figure 28: View of MH0236, Scurlockstown Business Park and the NBI IA



- Scurlockstown Business Park
- WPZ
- NBI IA
- Commercial area

Figure 29: State-owned MAN serving the Scurlockstown Business Park and Trim Road



- Enet State-owned MAN

Given this WPZ has reached Step 8 of the algorithm, this means that no other AN is present within the commercial area of the WPZ, and NBI is specifically not permitted to serve premises within that commercial area. However, the application of Step 8 makes the implicit assumption that there is competition between Enet and NBI throughout the WPZ, including within the Scurlockstown Business Park. In reality, competition between Enet and NBI might only exist along the Trim Road to the east of the WPZ. This in turn leads to the WPZ being deregulated despite a very limited proportion of its area being open to infrastructure competition.

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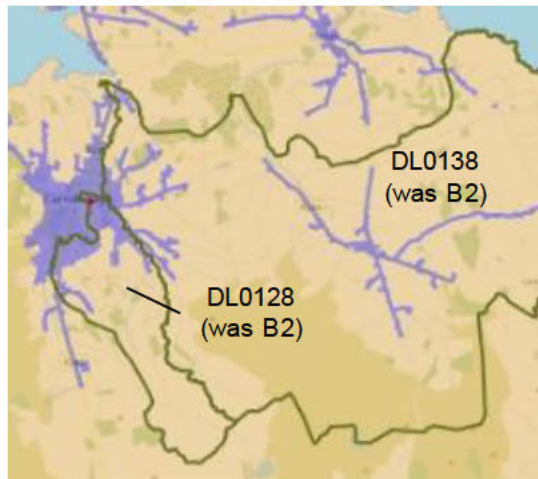
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Example 2: DL0128

Step 8 is applied to WPZ DL0128 and DL0138, resulting in the WPZs being deregulated despite a low level of competition. The town centre of Carndonagh and the Pound Street Business Park are located in the north-west of WPZ DL0128, and are served by Enet as part of the State-owned MAN in Carndonagh (as visible on the Enet coverage map).

Figure 30: View of DL0128 and Pound Street Business Park



- Pound Street Business Park
- WPZ
- NBI IA
- Commercial area

Figure 31: State-owned MAN in the town centre of Carndonagh and the Pound Street Business Park



- Enet State-owned MAN

Given the two WPZs have reached Step 8 of the algorithm, this means that no other AN is present within the commercial area of the WPZs, and NBI is specifically not permitted to serve premises in that area. Given the distance between the existing MAN and any part of the IA, Enet considers that it is highly unlikely that it will serve any premises on the NBI list of premises as to do so would be commercially challenging.

However, the application of Step 8 makes the implicit assumption that there is competition between Enet and NBI throughout the WPZs, including within the town centre of Carndonagh. In reality, it is highly unlikely that there will be any competition between Enet and NBI at any address within either WPZ. The application of the rule in this case leads to the WPZs being deregulated despite a lack of likely infrastructure competition.

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Example 3: 12 WPZs near to Gorey

Step 8 is applied to WPZs WX0046, WX0085, WX0086, WX0087, WX0091, WX0092, WX0093, WX0096, WX0097, WX0100, WX0117 and WX0118 resulting in all 12 WPZs being deregulated despite a low level of competition. Several towns and commercially served areas are visible in the form of the commercial area in Figure 32.

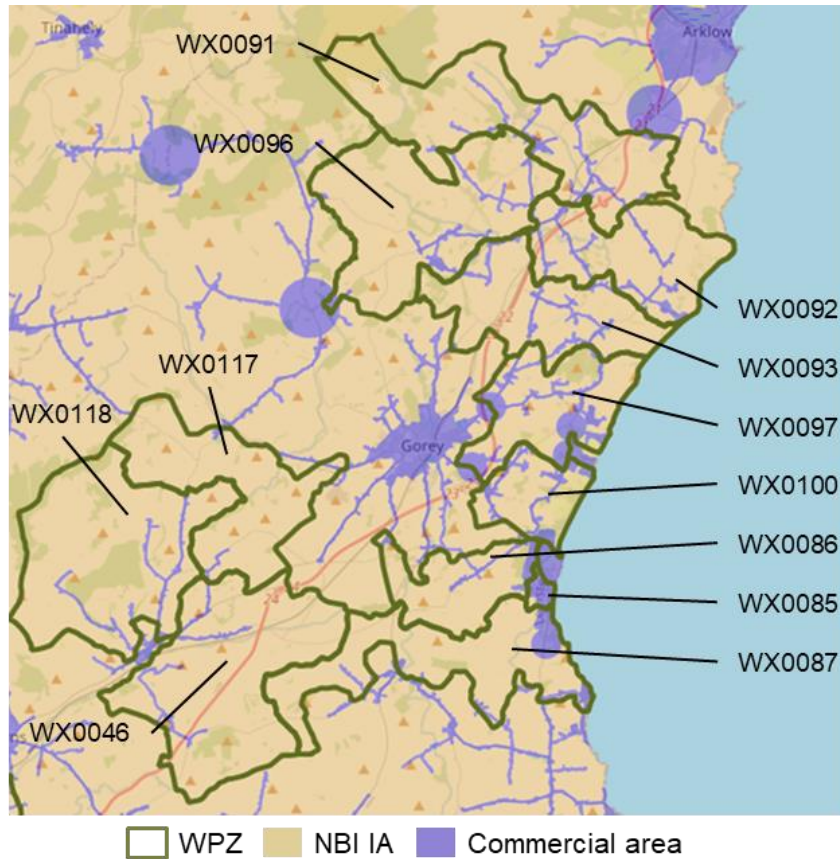


Figure 32: View of WPZs near to Gorey and the NBI IA

Given these WPZs have reached Step 8, this means that there is a maximum of one AN present within the commercial area of the WPZs, and NBI is specifically not permitted to serve premises within that area. However, the application of Step 8 makes the implicit assumption that there is competition between NBI and another AN throughout the WPZs. In reality, competition between NBI and another AN might only exist in the NBI IA within the WPZs. This in turn leads to the WPZs being deregulated despite a limited proportion of their area being open to competition.

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Appendix F: Analysis of a minimum overlap requirement between a Business Park and a WPZ for Step 3 of the algorithm

Based on Enet's own estimation of business park shapefiles, we have recreated part of the analysis undertaken by ComReg to examine WPZs in group A2 (categorised based on an overlap with a Business Park in which at least two ANs are present). Based on these shapefiles, we have found an overlap in 186 WPZs within group A2, just under half of the 423 identified by ComReg. This discrepancy is due to differences between the Business Park areas used by ComReg and estimated by Enet. However, we believe that this still represents a representative sample to understand the implications of ComReg's approach.

We have analysed the impact of introducing a minimum overlap requirement in Step 3, as seen in Figure 34. This provides an indicative measure of the likely proportion of group A2 WPZs (as derived by ComReg) retained in group A2 should a specific minimum overlap be implemented.

For example, Figure 34 shows that assuming that at least 20% of a WPZ must overlap a Business Park (with ≥ 2 ANs) leads to just under half of WPZs currently in group A2 being retained in group A2. The remaining WPZs from group A2 would then proceed to Steps 4 and 7 of the algorithm.

Figure 34: Impact of including a minimum overlap requirement in step 3 (group A2)

Min overlap of WPZ area (%)	Equivalent number of WPZs from group A2 identified using Enet geodata	Proportion of these group A2 WPZs retained using this minimum overlap
0%	186	100%
10%	119	64%
20%	89	48%
30%	78	42%
40%	68	37%
50%	59	32%
60%	46	25%
70%	40	22%
80%	34	18%
90%	24	13%
100%	0	0%

20% would, in our view be a suitable minimum overlap if one was to be assumed. We consider this from two perspectives in turn below:

- Proportion of number of WPZs retained within group A2 assuming a minimum overlap
- Proportion of Business Park area retained within group A2 assuming a minimum overlap.

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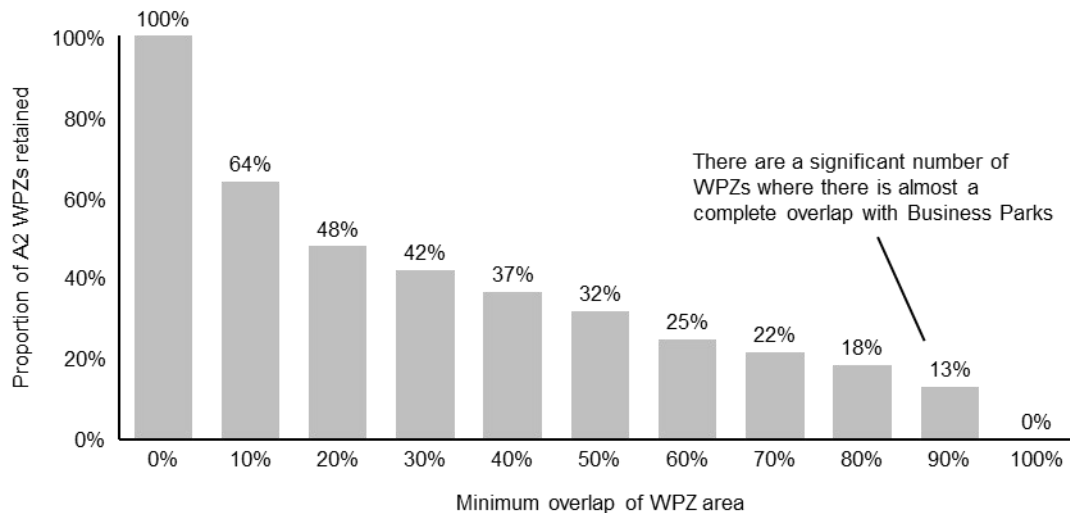
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Impact of minimum overlap on WPZs retained in group A2

Figure 35 below shows that a significant number of overlapping WPZs are removed when increasing the minimum overlap from 0% (ComReg's assumption) to 20%, whereas for subsequent increases in minimum overlap, there are fewer removals. Enet would consider these smaller overlaps (below 20%) as incidental. We believe that deregulating these WPZs based on infrastructure competition in a small proportion of its area would be inappropriate.

Figure 35: Estimated percentage of WPZs in group A2 retained with the minimum overlap of Business Parks with WPZs



We also observe that there is a material number of WPZs that almost completely overlap Business Parks. Therefore, conclusions on infrastructure competition at the Business Park level are far more likely to be applicable to these WPZs.

One option, which we have also suggested in our response, would be to remove the Business Park test altogether, and instead deregulate Business Parks that have at least 2 ANs present, in a similar way that ComReg is proposing to deregulate the Intervention Area within Zone B WPZs. ComReg should strongly consider this option.

However, if ComReg wishes to retain the Business Park test in some form, then we believe a minimum overlap requirement of 20% will still allow for a large proportion of Business Park area to remain deregulated.

Impact of minimum overlap on Business Park area retained in groups A1 and A2

We have carried out a separate analysis of Business Park area retained within groups A1 and A2 as the minimum overlap is scaled up from 0–100%, as illustrated in Figure 36 below.

This is based on the assumption that all Business Parks are currently contained entirely within groups A1 and A2 unless (1) there are less than 2 ANs in the BP, or (2) there are no connected premises in the BP.

Our finding is that if the proposed 20% minimum overlap is applied, whilst only 48% of WPZs in group A2 are retained (as shown in Figure 35 above), 78% of the Business Park Area found to have infrastructure competition will be retained in this (to be deregulated) group.

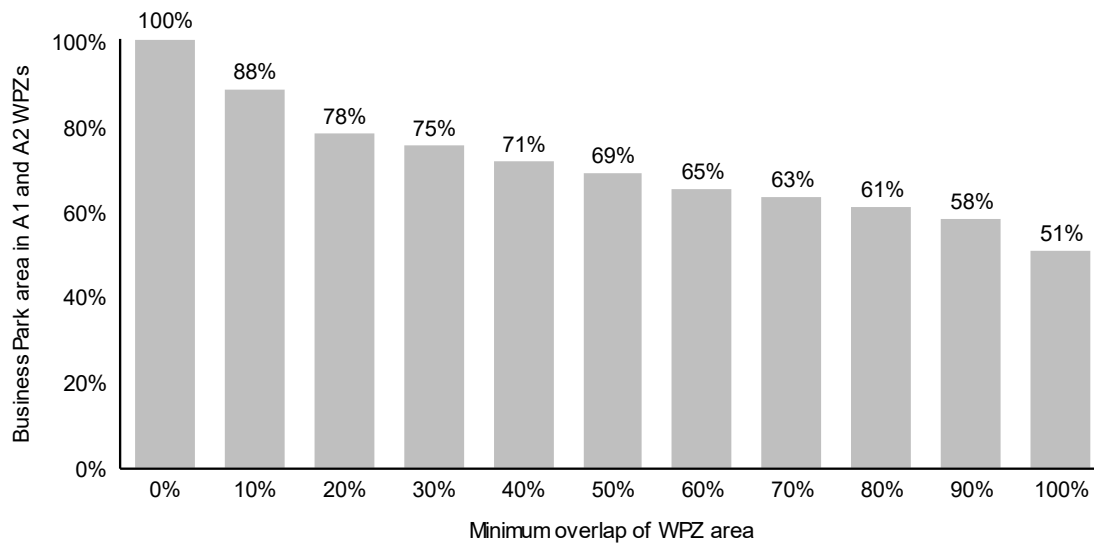
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Figure 36: Estimated percentage of Business Park area in groups A1/A2 retained with the minimum overlap of Business Parks with WPZs



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Q. 3 Do you agree with ComReg's product market assessment for the Relevant WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

Enet is strongly in disagreement with the inclusion of dark fibre in the WDC market. This was a view that Enet raised in our response to Q17 (and Q11) of ComReg's Wholesale Dedicated Capacity (WDC) Market Review: Service Provider Questionnaire (issued in September 2022).

Enet maintains its' opinion that dark fibre is largely purchased to support carrier backhaul networks and very sophisticated end user large networks on long contract terms such as Government networks. It is certainly not an alternative to leased lines for connectivity to connected premises in the WDC market.

The reasons put forward by ComReg in the 2020 Decision and as outlined in the 2024 consultation for why these services should not be included in the product market definitions remain valid in today's WDC market. There are significant costs and challenges to turning passive fibre into a usable and effective leased line service.

- Dark fibre is passive infrastructure and is therefore more akin to physical duct infrastructure than a leased line service. It is a piece of unlit fibre in the ground from one location to another. Without equipment on either end and the associated colocation space required as well as all the provisioning and in-life management systems, processes and people, it is no more advantageous than duct. Like duct, it is not an effective leased line substitute.
- As part of ComReg's final decision on the physical infrastructure access (PIA) Market Review in November 2023, dark fibre is to be offered as a substitute to Civil Engineering Infrastructure (CEI) where CEI is not available.¹ Therefore, ComReg also viewed dark fibre to be more akin to duct in that decision as a leased line was not proposed to be offered as an alternative in such circumstance.
- Service providers require significant expertise, physical colocation space and network to light and manage dark fibre. Those service providers that have this capability, in our experience, generally do not utilise it for connecting premises in the WDC market, other than for the small proportion of connected premises housing (i) data centres or (ii) a mobile radio site.

¹ See <https://www.comreg.ie/media/2023/11/ComReg-23105.pdf>, paragraph 6.104.

- The majority of service providers neither have the expertise nor desire to undertake the complexity of lighting dark fibre due to the cost and complexity of having to procure, light and manage this physical infrastructure in-life on a national basis given the widespread geographic spread of their target end customers and the proven ability of those customers to easily churn away to other a different service provider given relatively short contract terms (typically 1 to 3 years) of leased lines in the market. This is the very reason these service providers purchase leased lines in the first instance.
- In large sophisticated networks such as Government networks, there are much longer contract terms (typically 7+ years) and volume of connected premises available to help such a complex network offset the associated costs for the sophisticated end user who themselves are more akin to a network operator than an end customer of a leased line service.
- Most service providers do not have the required equipment, co-location space, management systems nor service assurance personnel and processes along with equipment storage locations to light and effectively manage passive infrastructure connections to connected premises.
- Dark fibre is generally used by network operators and larger service providers (who happen to also be network operators) for building their own telecoms networks for backhauling traffic and/or extending their networks to specific locations/datacentres.

For the reasons stated above, we think that dark fibre is not a substitute for a large part of the demand side of the WDC market (given the limited range of dark fibre services; dark fibre prices; the requirement for ancillary infrastructure in order for a dark fibre to be a viable substitute, the requirement for investment to use a dark fibre service in such cases and the creation of resultant barriers to adoption/switching). At best, dark fibre is a substitute for only a small subset of end-users within the WDC market and therefore should not be included by ComReg in the WDC market.

An alternative approach would be for ComReg to segment the WDC market. In our consultation response of 31st January, Enet proposed a bandwidth break of 10Gbit/s, giving a “sub-10Gbit/s” segment and a “10Gbit/s and above” segment. Dark fibre would be included within the 10Gbit/s and above segment. ComReg’s market tests could then be applied to each segment separately.

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Private & Confidential

Mr Donal Leavy,
Commission for Communications Regulation ("ComReg"),
One Dockland Central,
Guild Street,
Dublin 1,
D01 E4X0.

21 August 2025

Dear Mr. Leavy,

We refer to ComReg's Market Review – **Wholesale Dedicated Capacity (WDC) Market (24/92)**. As you will be aware enet submitted a substantial response to this consultation in January 2025 highlighting a range of important issues including detailed evidence of flaws in the proposed algorithm that could distort the identification of competitive conditions.

Since the consultation was issued, ComReg will also be aware that the Speed Fibre Group (SFG) acquisition of BT Communications Ireland Ltd, has been cleared by the Competition and Consumer Protection Commission (CCPC) which concluded that "*the proposed acquisition...will not substantially lessen competition in any market for goods or services in the State*". In this regard it is important to note that CCPC assessed the proposed transaction in each of the relevant potential product markets by reference to "the State".

This geographic definition of the market differs from the approach taken by ComReg in the context of the ex-ante regulation of the WDC markets. Specifically, while competition will not be substantially lessened at the State level due to the transaction it has clear implications for whether particular Work Place Zones (WPZ) fall into Zone A (unregulated) or Zone B (regulated) markets.

In consultation 24/92 ComReg noted as follows:

ComReg is aware that developments in the Irish market such as the change in the ownership of SPs could impact the assessment of the MI WDC Market and the trunk market. ComReg will monitor the situation closely and reflect any relevant developments in its final decision.

The implication of the acquisition is that both BT Ireland and Enet will be under the common control of Speed Fibre Group and should be treated as the same undertaking for the purposes of calculating market shares in the context of market analysis and SMP assessments. This means where enet and BT Ireland are present in a WPZ they can no longer be regarded as "2 Alternative Networks" for the competitive conditions assessment of WPZs. This approach is also consistent with SMP Guidelines

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and other European competition law precedents¹ and guidance² and also with ComReg precedent (e.g. treatment of FNI in the context of the PIA market review).

The implication is clear that certain WPZs identified as being in Zone A in the original consultation should now be designated as Zone B.

Enet consider that it is now important that ComReg share it's assessment of how the acquisition impacts on their analysis of the MI WDC and trunk markets and in particular publish an updated list of WPZs classified as Zone A and Zone B as originally set out in Annex 6 to the consultation.

We request that ComReg advise enet, in a timely manner, if it intends to publish this assessment prior to notification of a final decision on the WDC market to the European Commission. It is important that stakeholders have an opportunity to review this information and in particular given flaws associated with the proposed algorithm already identified by enet in our response in January.

Implications of the Gigabit Infrastructure Act (GIA)

Consultation 24/92 gives no consideration³ to the implications of the enactment of the EU Gigabit Infrastructure Act (GIA) on the MI WDC market. It is reasonable to assume that a full appreciation of the implications of GIA were not well understood by any stakeholders, including ComReg, when 24/92 was published. When the qualitative questionnaires (QQ) were issued the first draft of the GIA had not even been circulated by the European Commission. The Act, which takes direct effect under European law, entered into force in May 2024 and will be fully applicable (with the exception of a limited number of provisions⁴) on 12 November, 2025.

The Department of Culture Communications and Sport (CCS) is responsible for the implementation of GIA and has convened a GIA Steering Group (GIA SG) of industry stakeholders to assist in that task. Enet understand ComReg is a member of the GIA SG. Among the tasks undertaken by the GIA SG is to consider a range of Member State discretionary provisions. These are provisions that "may" be applied by a Member State depending on the national circumstances.

The CCS has indicated that giving effect to any of these provisions is likely to require primary and/or secondary legislation. In advance of this the CCS will also be required under law to publicly consult on certain proposals before their adoption. Enet understand that the GIA SG has not met since May 2025 and no public consultations have been issued on any of the discretionary issues or indeed on any proposed draft legislation. As such where Member States "may" adopt certain provisions or apply exceptions, it is highly improbable that any of these will apply in Ireland once with the GIA becomes

¹ e.g. Akzo Nobel (Case C – 97/08 P)

² e.g. Guidelines on the applicability of Article 101 of TFEU to horizontal co-operation agreements

³ The draft Decision Instrument indicates that ComReg has taken up utmost account of the Gigabit Connectivity Recommendation (2024/539), Recital 18 of that Recommendation requires that NRAs take account of all relevant regulation (including a reference to GIA in fn 11) in its market analyses and the impact of associated measures. However, a review of the consultation document indicates that GIA has not been considered in this context.

⁴ All provisions will be applicable from May 2026.

applicable in less than 3 months' time. Consequently, in enet's view it is imperative that ComReg take account of its requirements and the implications of GIA for competitive conditions in a WPZ (which are considerable) and whether it is even appropriate to retain this geographic unit for regulatory purposes.

Civil Works Transparency requirement under GIA

Under Article 6 (1) of GIA network operators are required to provide detailed information on any planned civil works, where a permit is required, ***"not later than two months before the first submission of the application for a permit to a competent authority"***.

The ComReg distance criterion in its algorithm to identify Zone A and Zone B WPZs – 50m radial distance from the customer premises – was originally arrived at *"on the basis of the wayleave notification period required for carrying out civil engineering excavations on public roadways by local authorities"*. The 50m radial distance was chosen to reflect that *"network digs are conducted "as the dog walks" and not "as the crow flies"*. As such the 50m radial distance was considered to be a good proxy⁵ for representing wayleave applications under 100m which require a **3 month** notification period to local authorities and which ComReg (correctly) considered ***"excluded SPs from being able to bid for many retail customers"***⁶ [emphasis added]. The exclusionary factor here is clearly associated with lead times in getting a permit to facilitate a connection.

The introduction of a two month "pre-permit-application notification" (PPAN) as prescribed by GIA on all civil works undertaken by network operators means that even for distances of less than 100m, **every application** will now take a **minimum** of 2 months PPAN **plus** whatever time it takes to process applications. ComReg, has consistently recognised that this sort of timeframe will materially impact on Alternative Networks' ability to compete in the MI WDC market due to the time factor discussed above⁷.

What if any exemptions apply is unclear in terms of detail and timing

Article 6 (2) of GIA affords discretion to Member States to identify, based on *"duly justified and proportionate reasons"*, civil works considered to be *"limited in scope"* that should be exempt from, among other things, the two month PPAN. Without prejudice to the fact that no formal decision has been made to invoke this discretionary provision to date, and that any such decision would likely require primary and/or secondary legislation to give effect to that decision and that it would be wholly inappropriate for ComReg to speculate on when such legislation would apply if at all, the CCS has indicated via the GIA WG that it is considering scenarios where this discretionary provision might be applied.

⁵ See fn 272 of ComReg 24/92

⁶ As noted by ComReg in para 4.134 these "lengthier lead-times can more readily be absorbed as part of network expansions" as opposed to bids for connections to customer premises.

⁷ Unless there is an in-situ connection to the premises already which means a permit is not required – as the incumbent Eir will have a material advantage in this area.

In this regard, CCS has indicated that even where exemptions are applied pursuant to Article 6 (2) these are unlikely to include the majority of scenarios covered by **T1 Licence Parameters** as outlined in the “*Guidelines for Managing Openings in Public Roads*” (the “**Purple Book**”). Crucially, those parameters extend beyond the scenario of road openings in excess of 100m total length. See Table 1 for full details.

Table 1

Parameter	Urban Roads	Rural Roads	Remarks
Total Length (m)	> 100	> 1,000	This will typically include one opening or combination of openings across the area affected by the works.
Total Area (m ²)	> 100	> 1,000	
Duration of works (days)	> 30	> 30	These are site works days, and not the validity period of the licence.
Number of openings	Varies	Varies	See T2 Application.
Presence of Special Engineering Difficulty	Yes	Yes	See 4.4.3
Works affecting the structure of a bridge	Yes	Yes	See 4.4.4
Number of roads or streets affected	> 1	N/A	The number indicated represents typical urban streets. This number may be relaxed for rural roads.
Works affecting signalised junctions	Yes	No	

T1 consultation period is generally a maximum of 90 days. Approval of a T1 notification by the road authority/TII is not a licence to proceed with the works. Subject to agreement with the road authority/TII (and in accordance with the bullet points above) a T2 licence application may be submitted during the course of the T1 consultation period.

If all the above scenarios are not exempted from the GIA 2 month PPAN process under Article 6 (1), then Alternative Networks’ ability to compete via “new digs” will be severely curtailed in multiple scenarios and not just confined to distances of 100m/50m (radial) from the customer premises. For example, if the dig involves the “*Presence of Special Engineering Difficulty*”, as defined by the local authorities or works affects signalling junctions or impacts more than 1 road, then even if the dig is under 100m (or 50m radial), a 2 month PPAN will be required.

The implications of GIA raises fundamental questions about current market analysis

It is now critical that ComReg take stock of what the implications of GIA has for the MI WDC market analysis considered in 24/92. It is possible that a consequence of GIA, even if unintended, will help reestablish Eir’s market power in many WPZs that would otherwise classified as Zone A. The reality is that if all civils works undertaken by network operators are required to meet the 2 month PPAN, **which is the default position** under the GIA absent the enactment of legislation by the Irish Government that identifies exemptions, then entities that do not have in-situ connections to premises (thus requiring permits) simply will not be able to compete for retail customers.

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It has been ComReg's position up to now that where it takes up to 3 months to secure permits an Alternative Network's ability to compete is compromised and that logic holds even if it fundamentally alters the foundations on which the WDC market analysis has been presented to date. A **Modified Greenfield Approach** (MGA) in market analysis must take account of the impact of GIA.

Based on the implications of GIA, it is questionable whether regulation at the WPZ geographic level is even appropriate and whether an assessment of market power on a premises by premises basis or purely on a national basis would now be more appropriate and focuses on existing connections (including in-situ inactive connections). Under the current approach it is only WPZs in which there are no connected premises (including no inactive in-situ connections) can operators compete on an equal footing in a WPZ.

The problem is exacerbated by the fact that there is no regulatory protection (currently or proposed) from Eir leveraging its market power for Zone B to Zone A. Where tenders from the retail market cover both Zones (which is very common), there is no regulatory oversight of Eir's behaviour, no prohibition on bundling, no margin squeeze assessment etc, so that Eir can cross subsidise between lines from either Zone without detection. In a scenario where competitors face now greater challenges (due to civil works time constraints) as a consequence of GIA, Eir's ability to exploit this regulatory forbearance is materially enhanced. If ComReg is unwilling to amend its approach to market analysis notwithstanding the impact of GIA, (which in enet's view would be irrational) at the very least it must consider how it addresses this issue in this new environment e.g. reintroduction of a margin squeeze test on combined Zone A, Zone B contract bids might provide some protection.

Ignoring GIA 'default' means speculating about content and timing of exemptions

If ComReg ignore the **GIA default** position as outlined above and assume CCS will oversee the implementation of legislation identifying certain exemptions from the 2 month PPAN this would be likely unprecedented; basing an ex-ante decision on legislation that may or may not materialise, with no certainty on timing. However, even in this scenario a view must be taken of all scenarios where the 2 month PPAN would continue to apply (post exemptions legislation). This would require a clear steer from the CCS as to precise nature of the exemptions to be tabled for enactment. Based on the preliminary views of the CCS, any such list is unlikely to include any/the majority of T1 Parameter scenarios outlined in Table 1 above. However, it would pose a significant risk to the market for ComReg to take this approach and it should be reminded that the Electronic Communications Code Directive (EECC) was transposed into Irish law 4 years after it was supposed to take effect. Making ex-ante regulatory decisions on the basis "anticipated legislation" where the timelines are unknown would be an approach that is unsound in practice and in law.

The "purple book" T1 Parameters need to be considered beyond the GIA implications

Independent of the implications of GIA itself as discussed above, what the work of the GIA SG has brought to light is the fact that ComReg's 'time constraint' assessment with respect to new connections only considers the "100m parameter/(50 radial)" parameter of all the T1 Parameters outlined above. This oversight must now be addressed because any of those other parameters applying to a permit application will impact on an Alternative Networks ability to compete (due to the time constraints) in precisely the same way that **ComReg accepts** it would occur in instances for digs

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greater than 100m (up to 3 month permit process). Following a review of instances of each scenario – which ComReg should establish in collaboration with local authorities through interviews/questionnaires – a significant update to the existing algorithm may be required.

Summary of main issues

In summary there are number of important developments that needs to be considered in the context of WDC market review which have not been considered or had not come to light prior to Consultation 24/92 previously:

1. The acquisition of BT Ireland by Speed Fibre Group has implications for the current proposals around Zone A/Zone B WPZs. An updated list of both should be shared with stakeholders as soon as possible so that they can assess the output of the algorithm in the context of these two entities becoming one for the purposes of market analysis.
2. The GIA takes effect on 12 November, 2025. The default position of the GIA is that all civil works undertaken by network operators are subject to a minimum 2 month ‘pre-permit application notification’ (PPAN) **plus** the time it takes to process the permit thereafter. The practical implication of this is that whether or not an Alternative Network is present in a WPZ, it will not be in a position to compete with one that is already connected to a premises. This raises fundamental concerns about whether WPZs remains an appropriate/relevant geographic unit in the market analysis, and whether an alternative definition (e.g. national or premises-based) may now be required. At the very least, greater protection via a margin squeeze test (MST) covering combined Zone A/Zone B bids should be considered given the more onerous trading environment faced by unconnected providers under the GIA provisions.
3. While Member States are permitted to identify exceptions to the 2 month PPAN requirement, this is likely to require primary and/or secondary legislation. The timelines for the implementation of any such legislation is unknown and the details of what it might contain has not been settled. The CCS has indicated that the majority of scenarios covered by the T1 Notification process outlined in the ‘Purple Book’ are unlikely to be exempt. Even if ComReg were to take the view that all other scenarios were to be exempt (at some stage), this still requires consideration to be given to broad range of scenarios beyond the 100m distance criterion (which is the only one considered to date) in its updated analysis.
4. The GIA WG has highlighted that there are multiple scenarios where operators are unable to compete in the MI WDC market due to permitting timelines beyond the 100m distance parameter. These scenarios need to be considered independent of the points raised on GIA above around the PPAN process because they will still have a 3 month notification period regardless and analysis to date has not taken account of this.

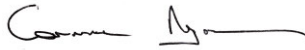
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We look forward to your earliest engagement on these issues and would request that ComReg advises as to how it plans to address these issues in advance of any notification to the European Commission.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Cormac Ryan", positioned above a horizontal line.

Cormac Ryan
Chief Commercial Officer

cc: Florence Loric, Head of Legal, Wholesale at Commission for Communications Regulation

[REDACTED] >
Sent: Monday 1 September 2025 11:10
To: Donal Leavy <[REDACTED]>
Subject: South Dublin County Council - One Dig Policy

Hi Donal

[REDACTED]
[REDACTED] details in relation to [South Dublin County Councils “One Dig Policy”](#) which it recently implemented – published 1 March 2025.

Under the new policy SDCC has introduced a new wayleave notification classification “T0” (this is distinct from classification T1-T5 in the current “purple book” used by other Local Authorities (LAs). The implications of the new notification process is summarised on the ‘Roadworks’ page of the Authority’s website (link above) as follows:

*“Companies who propose to undertake work **of 50m or more in length and/or include construction of an access chamber** must apply to South Dublin for permission to install services. Applications should be **made a minimum of one year** in advance of the works commencing through the submission of a [T0 form](#)” [Emphasis added]*

This new policy raises 2 primary concerns for Enet in the context of the WDC market review:

1. As outlined, the provision applies to **any scenario** that requires the construction of an access chamber **regardless of distance** – this means even for networks within 25m of the relevant premises, if a chamber needs to be “dropped” in order to provide service to that premises a minimum licence application period of one year is required. In enet’s response to the WDC consultation in January 2025, it strongly advocated for an assessment across all WPZs based on **proximity to chambers** as opposed to trunks. While enet maintains this is the correct approach and should be applied nationally, at least in the context of South Dublin WPZs competitive assessments it is now the only appropriate mechanism for carrying out such an exercise. In addition, ComReg’s proposed approach to assessing competitive conditions in a WPZ is centred around a 50m radial proximity (“as the crow flies”) from a connected premises assumption. The basis for the 50m Radial assumption is predicated on a proxy for a 100m “as the dog walks” assumption. In turn network distances beyond this 100m (“dog walk”) from a connected premises are assumed too far to impact on the competitive conditions due to the time it takes to process from a permitting perspective (i.e. circa 3 months). By logical extension, in enet’s view, given that SDCC are now requiring a minimum 1 year application for 50m “dog walk” openings (to existing chambers) this means a 25m Radial assumption must now be used to assess competitive conditions in all SDCC WPZs if a consistent approach to competitive assessments of WPZs is to be applied. As already noted that 25m Radial assumption should be applied on a ‘proximity to

the chamber’ basis rather than ‘proximity to the network’ basis. Based on Enet’s analysis the new SDCC policy will materially impact on the competitive conditions in 233 (proposed Zone A) of 413 SDCC WPZs when the algorithm is updated with a ‘proximity to the chamber’ **and/or** a 25m radial distance criteria (both should apply).

- 2. Enet are also concerned that the approach taken by SDCC may be one adopted by other local authorities over the course of the next market review period i.e. other LAs adopt a new T0 process particularly in urban areas experiencing traffic congestion issues. Given this risk we consider it is critical any final Decision in the WDC Market makes a contingency for such an eventually that can be quickly reflected in an amended Zone A/Zone B lists from when any new T0 (or equivalent) provision takes effect.

The above concerns are in addition and without prejudice to enet’s letter of 21 August which outlined material implications of the Gigabit Infrastructure Act (GIA), which will be applicable from 12 November, 2025, for the current WDC market analysis.

Regards



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New evidence in the context ComReg's WDC Draft Decision (25/69) published on 13 October 2025

Based on new and material evidence, SFG submit that the WDC market review should be subject to further consultation before any final decision is adopted. While neither the EECC nor the Article 32 procedure prescribe a specific deadline for adoption of a final measure following receipt of European Commission (EC) comments, the passage of time and the emergence of material new evidence raise legitimate questions as to whether the consultation and notification record remains sufficiently current to support a final decision. The public consultation on the review concluded in early 2025, the draft decision was notified to the EC in October 2025 after which it provided "comments" on 12 November 2025 which are themselves important in the context of the aforementioned new evidence.

SFG are cognisant of the fact that issuance of a final decision was appropriately delayed by ComReg for reasons laid out in ComReg **Information Notice 26/07** on 30 January 2026. Nevertheless, at the time of writing, more than eighteen months have elapsed since the WDC public consultation and more than seven months have elapsed since the EC's comments. During that period a number of key developments have arisen which were not considered either by respondents to the consultation, by ComReg in formulating its Draft Decision, or by the EC in providing its comments.

In particular, important evidence has emerged since the publication of Draft Decision that raises serious concerns about the conclusions therein and/or the methodology underpinning its proposals, in particular:

1. **Significant increases in Zone A SEA pricing highlights Eir's ability to act independently of the market and its customers** - Eir has announced very substantial price increases ([REDACTED]) for the majority of its Zone A circuits which belie the conclusion that Eir cannot act independently of its customers or competitors in the WDC market in this footprint. Eir began applying these significant price increases to invoices in [REDACTED] [REDACTED].
2. **The quantity of circuits impacted by Zone A SEA price increases points to the need for a holistic approach to competitive assessment** - the significant volume of circuits ([REDACTED]) impacted by the Zone A price increases warrants a fresh competitive assessment of whether the presence of ANs in a WPZ is a sufficient competitive constraint to what is unquestionably a national pricing strategy by Eir.

¹ [REDACTED]

3. **Ongoing location data uncertainty on connected premises** - Eir itself has cast serious doubts about the validity of its data supplied to ComReg which was central to the market analysis, claiming (albeit without explanation or evidence) to now have “*more accurate*” data associated with a large percentage of connected premises. Information Notice 26/07 was issued as a consequence of this development².
4. **Statistical analysis indicates the WPZ classification criteria is not operating as intended** – analysis conducted by SFG with respect to ComReg’s A1 Criterion raises serious concerns about the application of the algorithm it has adopted to identify the competitive conditions in Work Place Zones (WPZs). In this regard, SFG adds its voice to that of the EC “comments” in raising concerns about the methodology adopted in identifying competitive WPZs.
5. **New evidence on increasing ‘civil work’ costs from State sources** - SFG consider that Eir Zone A price increases for already connected premises have been made possible, at least in part, due to the increasing cost of civil works face Alternative Networks. SFG are of the view that insufficient consideration was given to this point in the Draft Decision. Further independent evidence is provided to support this view.
6. **Sampling of proposed Zonal redesignation highlights the gap between theory and reality** - SFG has sought price quotes from Alternative Networks (ANs) for a sample³ of existing Zone B circuits that are earmarked for Zone A redesignation under the Draft Decision. The results offer a worrying portend for developments in the market if further deregulation is to go ahead as proposed.
7. **The Irish government has not implemented key legislation as anticipated in the Draft Decision** - The DCCS has not adopted important ‘exceptions’ permissible to member states under the GIA which means publicly or partially publicly funded connections are obliged to adopt a 2-month Pre-Permit Application Notification (PPAN) if they are to comply with the Gigabit Infrastructure Act (GIA). This rules out those entities (including potentially [REDACTED] [REDACTED]) ability to compete with Eir as anticipated by the Draft Decision until such time as exceptions are enacted.
8. **Need to reexamine the introduction of Economic Replicability Test (ERT) in light of significant Zone A price increases** – in light of Eir’s significant Zone A price increases and scope (and probable intention) to do the same with proposed redesignated Zone B to Zone A circuits ComReg ought to reconsider the implementation of an ERT in accordance with the Gigabit Recommendations.

² At the time the Information Notice was published Eir had only published implications for Zone B circuits. Since the publication implications for Zone A circuits has also been released.

³ Just under [REDACTED] [REDACTED] are at risk of being redesignated as Zone A based on the Draft Decision.

1. Significant Increases In Zone A SEA Pricing Highlights Eir's Ability To Act Independently Of The Market And Its Customers

On 28 November, 2025 and subsequent to notification of ComReg's Draft WDC Decision to the EC, Eir notified wholesale customers of price increases across a broad range of Zone A services that were to take effect from [REDACTED]. The increases ranged from [REDACTED], with an average increase [REDACTED] for SFG entities. Such increases are difficult to reconcile with the proposition that effective competitive constraints exist across this footprint i.e. Zone A WPZs. Rather it is indicative of an entity that possesses market power, whether that market power had always been there or has been reestablished by Eir since the 2020 WHQA Decision (D03/20).

This is particularly relevant given that the EC itself questioned aspects of ComReg's methodology and the extent to which the proposed WPZ classifications accurately reflected competitive conditions on the ground. In particular, the EC referred back to its comments in 2020 that stressed the importance of a '*forward-looking and dynamic analysis*' and urged ComReg to review its methodological approach to the choice of criteria thresholds. A forward-looking and dynamic analysis **is bound to take stock of this significant market development.**

The ability of the incumbent operator to introduce material price increases shortly after the proposed expansion of deregulated areas was notified raises legitimate questions as to whether the competitive constraints relied upon by ComReg are sufficiently robust and whether the proposed Zone A designations continue to reflect market realities. At a minimum, given the materiality of the price increases these developments warrant further examination before any final decision is adopted.

In seeking to materially raise the price of existing connections (where initial connection costs have been completely or substantially recovered), SFG are of the view that Eir are likely exploiting the fact that would-be competitors face significant barriers due to the high and increasing cost of civil works in Ireland in recent years. This issue was, in SFGs view, not given sufficient consideration in the Draft Decision. The scale of the Zone A price increases implemented by Eir now warrants reconsideration of this key variable. SFG provide further evidence on this point below including why using a combination of self-build and PIA (via accessing Eir chambers) does not offer a viable/workable alternative (as suggested by ComReg in the Draft Decision).

In the communication to SFG entities on 28 November, 2025 Eir indicated the price increases were being implemented due to "[REDACTED]"

_____”. The explanation lacks credibility. In this regard Eir has not sought to increase the price of Zone B circuits which has a **cost orientation obligation**. If we can assume that Eir are not conceding that Zone B circuits are being sold below cost, then it is not credible that they would not also seek regulatory approval to increase the price of these circuits **if they were capable of demonstrating a price increase were justified**.

In reality the opposite is almost certainly the case i.e. Eir’s Zone B circuit prices are likely to be above cost and so it would be self-defeating for Eir to open itself to any interrogation by ComReg of its cost orientation obligation on this front. Eir’s pay and non-pay costs (as evidenced in its statutory accounts) since the 2016 Access Pricing Decision⁵ has been in decline. Since that time there has also been a significant reduction in Eir’s cost of capital (WACC). As such ComReg must question and assess whether Eir’s material Zone A price increases are really reflective of a higher cost base (that apparently does not impact on its Zone B circuits) or rather is simply reflective an operator acting independently of the market and its customers i.e. an operator with market power. **One or the other must be true**. In SFG’s view the latter is the only credible explanation and highlights the need for a complete re-examination of the approach to competitive assessments of all WPZs as encouraged by the EC in 2020 and again in November 2025.

2. The Quantity Of Circuits Impacted By Zone A SEA Price Increases Points To Need For Holistic Approach To Competitive Assessment

The impact of Eir's Zone A price increases extends to _____ currently _____ alone. Even assuming that alternative suppliers were available in each affected WPZ (which SFG would dispute) the practical reality is that wholesale customers do not purchase or manage leased line services on an isolated circuit-by-circuit basis. The migration of _____ to alternative providers _____
_____. Such an exercise would be measured in _____ and, in many cases, m _____.
_____. Eir is acutely aware of these practical constraints and of the limited ability of customers to respond quickly to widespread price increases affecting large portfolios of circuits.

This dynamic is highly relevant to ComReg’s assessment of competitive conditions. The question ComReg must address, is not simply whether an alternative operator may be present within an individual WPZ, **but whether that presence gives rise to a sufficiently effective competitive constraint in practice**. SFG are strongly of the view the new evidence overwhelmingly suggests such a competitive constraint does not exist. Where _____ is affected simultaneously, the theoretical ability to migrate

⁵ ComReg has not conducted a thorough review of Eir’s leased lines cost inputs since this time.

individual circuits does not necessarily translate into an effective competitive response⁶. Accordingly, the impact of Eir's December 2025 price increases should be assessed not only at the level of individual WPZs but also in the context of the wider customer portfolios through which leased line services are purchased and supplied. This is particularly relevant given ComReg's acknowledgement that multi-site procurement represents the predominant means by which enterprise customers purchase WDC services in Ireland

3. Ongoing Location Data Uncertainty On Connected Premises

In ComReg Information Notice 26/07, published on 30 January 2026, ComReg noted that it became aware of potential issues concerning Eircom's wholesale leased lines data, in particular as regards the location data associated with Connected Premises (CPs). For the entities owned by SFG uncertainty around those issues has exacerbated rather than subsided over the last 6 months.

ComReg will be aware that the prolonged period of engagement between Eir and its wholesale customers in the context of its so-called "Project Alpha" is ongoing since September 2025. While the industry were aware that Eir was moving to a new billing system for some time, at no stage prior to this had it ever been flagged to operators that moving to a new billing system would/could result in material price changes to existing WDC circuits⁷.

Since that time the process has seen Eir share no less than 8 different versions of data (under the banner of 3 "Tranches") to support making a case for changing the distance coordinates of existing connected premises. It has communicated the proposed changes as rectifying "*billing errors*" and has maintained that position while rejecting the substance of ComReg Information Notice of 19 December, 2025 without any explanation as to why it disagrees with the position laid out therein⁸. The proposed changes to location data has been as a result of changes to the geocoordinates of connected premises, the geocoordinates of the relevant exchanges or both. Despite multiple requests for clarification as to the reason for the changes to this data from SFG entities (and other operators in public fora), no coherent explanation has ever been given by Eir.

⁶

[REDACTED]

⁷ At the Eir June PDW it in fact advised customers that NGN billing will **remain** on the Opencell billing platform (where it has been since 2022). This came as a surprise to attendees and raises a question as to how NGN circuits formed any part of Project Alpha in the first instance.

⁸ Eir has since denied [REDACTED] that any member of its team disagreed with the ComReg Information Notice. SFG maintain its position based on contemporaneous notes.

Rather bald assertions with no supporting evidence that the data is “*more accurate*” is all that has been offered by way of explanation. In June 2026 Eir indicated that it had gone ahead with proposed changes to the location data and uploading this into its billing systems. SFG are unclear if this development has ComReg’s explicit or tacit approval.

When queried about the extent to which operators could rely on Eir’s Pricing Tool to provide accurate quotation information in light of these developments SFG have been advised both, that it could be relied upon by certain stakeholders in Eir while others have openly advised at Eir’s PDW that it could not be relied upon in this regard. When we sought clarification in writing as to which position was correct we did not receive a response. Issues such as these need to be addressed unequivocally prior to issuance of any final WDC decision in the context of Eir’s transparency obligations⁹. An updated draft Decision needs to clarify the extent to which operators can rely on the tools provided by Eir to quote prices and clearly articulate Eir’s obligations in this regard.

When SFG requested access to the same tools Eir was using to inform it of the new distance locations (as would be required under Eir’s non-discrimination obligation), Eir indicated that it was using the same tools that was available to all operators i.e. we assume this to be the Eir Pricing Tool. When Eir were challenged that the Pricing Tool was not generating the results produced by Eir in its various “Tranche files” no explanation has been provided as to the reason for the anomalies (assuming it has been using the same tool available to all operators). At different stages during the process staff from SFG entities have identified and notified Eir of scenarios where there have been problems with the data shared. These included:

- Information being provided on circuits that are no longer with SFG (i.e. cancelled).
- Data files that wrongly identified circuits as having been purchased by Enet rather than ECL/Magnet.
- Duplication of circuits of being part of Zone A **and** Zone B for billing purposes.
- Duplication of circuits being assigned to more than one SFG entity.
- Examples of circuits where purported distance changes were several thousand kms out from what was expected and must obviously have been mistaken (these anomalies continue to be presented in the latest tranche/version).
- Circuits that had been corrected (and credits issued) in a lengthy billing reconciliation exercises conducted with Eir, now indicated as charging incorrectly with no regard to reconciliation exercises.
- No attempt to quantify the scale of purported billing errors from a cost perspective contrary to the provisions of the LLRO (this relevant in the context of Eir’s claim that the changes are due to a billing error).

4. Statistical Analysis Indicates the WPZ Classification Criteria May Not Be Operating as Intended

SFG has conducted a review of the existing Zone B WPZs that ComReg has proposed should be redesignated as Zone A. We have assessed the portion of this category of services that are being redesignated under criteria A1 i.e. redesignations from Zone B to Zone A on the basis that 60% or more of connected premises in the WPZ has 2 or more alternative operators in that WPZ within a 50m radial distance. The summary of services currently consumed by ECL and Enet+Magnet impacted by the proposed change are outlined in the table below:

SFG Entities	# of Connections impacted	# as a result of A1 criteria	# A1s with 2 or > AN within 50m radial dist.	# A1s with <2 AN within 50m radial dist.
■■■■■	■■■■■	■■■■■	■■■■■	■■■■■
■■■■■	■■■■■	■■■■■	■■■■■	■■■■■
■■■■■	■■■■■	■■■■■	■■■■■	■■■■■

As can be seen in the table above based on ComReg's analysis of WPZs, of ■■■■■ connections where ECL are currently purchasing Zone B WDC from Eir, ■■■■■ are proposed for redesignation under ComReg criteria A1. The relevant figure for Enet+Magnet is 106 and ■■■■■, respectively. Notably however, when SFG assessed proximity of ANs to these connected premises only ■■■■■ Zone B Eir CPs were within 50m radial proximity of 2 or more ANs.

While the sample sizes differ, both are sufficiently large to support meaningful statistical analysis. At a 95% confidence level, the ECL sample of ■■■■■ yields a margin of error (from 60%) of approximately ■■■■■¹⁰, while the ■■■■■ sample of ■■■■■ observations yields a margin of error of approximately ■■■■■. In both cases, the observed proportions of connections meeting the "2+ AN within 50 metres" criterion (■■■■■) fall materially below ComReg's 60% threshold. Importantly, even after allowing for normal sampling variation (i.e. margin of error), the results remain inconsistent with the proposition that the affected WPZs satisfy the competitive conditions underpinning their proposed designation. The fact that two independently assessed samples, drawn from separate SFG entities, produce substantially similar outcomes further strengthens confidence that the findings reflect a broader concern with the underlying WPZ classifications rather than random statistical variation.

¹⁰ Confidence intervals were calculated at the 95% confidence level using the standard formula for a sample proportion, $\hat{p} \pm 1.96 \sqrt{\frac{\hat{p}(1-\hat{p})}{n}}$. For the ECL sample ($n = \text{■■■■■}$, $\hat{p} = \text{■■■■■}$), this yields a confidence interval of approximately ■■■■■ %

The findings are further supported by an **exact binomial statistical analysis**. An exact binomial analysis is a statistical test used to assess whether an observed outcome is consistent with an **expected probability**. It is particularly useful where each observation has only two possible outcomes such as in this case i.e. whether or not a connection satisfies the "2+ AN" criterion.

Taking the [REDACTED] sample as an example, if ComReg's methodology is correct that for A1 criterion that at least 60% of connections within the affected WPZs genuinely satisfied the "2+ AN" criterion, one would expect approximately [REDACTED] sampled connections to meet that threshold. In practice, only [REDACTED] satisfied the criterion. Applying a one-sided exact binomial test, the probability of observing a result this low, or lower, assuming a true underlying rate of 60% or more, is approximately [REDACTED]¹¹ (or put another way, around [REDACTED]). The same figure for the [REDACTED] sample is around [REDACTED] of observing a result as low [REDACTED]. In both cases the observed outcome is statistically inconsistent with the proposition that the sampled WPZs satisfy the 60% threshold and suggests that the divergence is highly unlikely to be attributable to random sampling variation alone.

In conclusion the statistical evidence is impossible to reconcile with the proposition that the assessed WPZs satisfy ComReg's 60% "2+ AN" criterion for proposed B to A redesignations. The confidence interval analysis demonstrates that the sample sizes are sufficiently robust to support reliable conclusions, while the exact binomial analysis shows that the observed outcomes would be highly unlikely to occur **if** the underlying classifications were correct. The consistency of the findings across two independent samples further strengthens this conclusion. Taken together, the results raise serious questions regarding the accuracy of the proposed WPZ classifications and warrant further scrutiny of the methodology and underlying data used to support them.

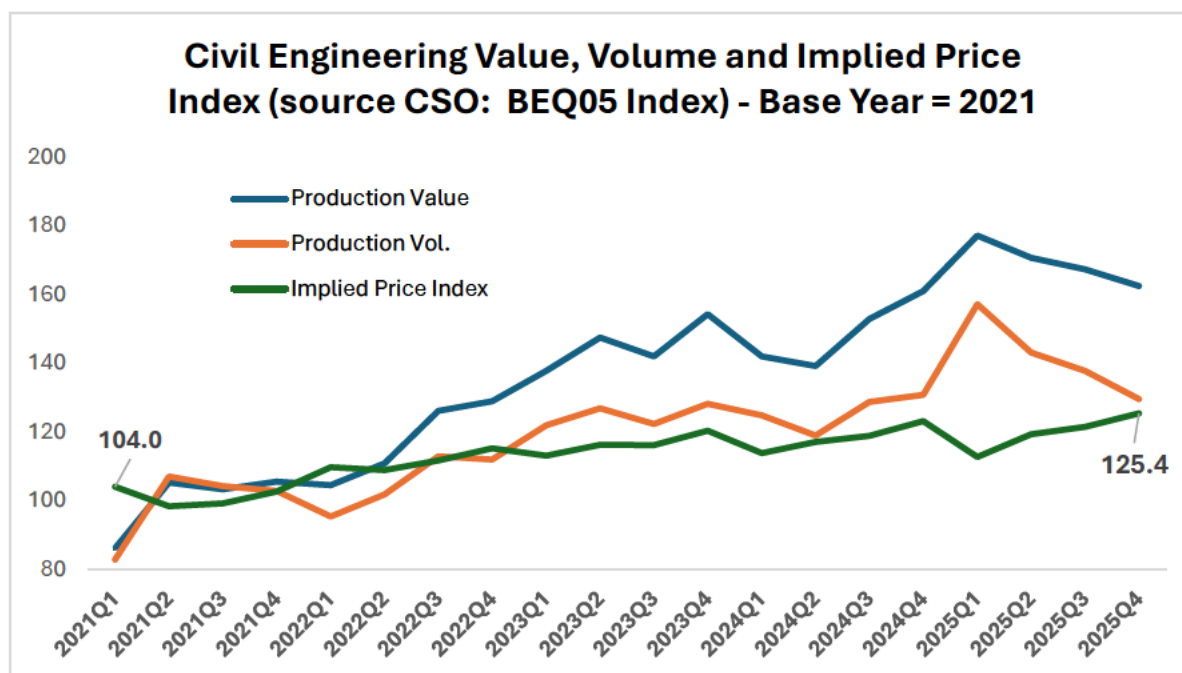
5. New evidence On Increasing Civil Works Costs From State Source

As noted above, on 28 November, 2025 Eir announced significant price increases for Zone A circuits to all SFG entities. While it is SFG's position that Eir has [REDACTED] [REDACTED], a [REDACTED] [REDACTED] is nothing that prevents Eir from making such significant increases generally. The scale of the increases, [REDACTED] for many Zone A SEA circuits is in SFG's view the clear manifestation of Eir's enduring market power (or alternatively the reestablishment of its market power in Zone A). SFG has long argued that the approach to the competitive assessment of WPZs is **too simplistic** in assuming that access to Alternative Networks (ANs) is possible simply because a network passes within 50 radial meters of a connected premises. That concern has been

¹¹ Exact binomial tests were conducted using $P(X \leq x)$, where X is the number of connections satisfying the "2+ AN" criterion, assuming a true underlying probability of 60%. The resulting p-values were [REDACTED] sample and [REDACTED] sample.

exacerbated by the high cost of civil works that has increased significantly since the last market review – a fact that received little or no attention in the current Draft Decision¹².

Based on the latest data published by **CSO** on **Production and Building Cost Indices**, taking account of the **Production Value** of civil engineering works relative to the **Production Volume** of civil engineering works we can estimate the average increase in civil works costs from Q1 2021¹³ – Q4 2025 to be in excess of 20%.



The **National Transport Authority** (NRA) annual Inflation Report puts civil engineering cost increases over the three year period 2021-2024 at 24.1%¹⁴. Based on these sources it is reasonable to assume that since the last WDC market review was completed (Jan 2020) until now, operators looking to compete with Eir on leased lines via new drop connections faces between (at a minimum) 25 and 30% higher costs associated with civil works alone.

In its January 2025 submission Enet provided evidence that the cost of ‘**road crossing civil works**’ has in fact increased by [REDACTED]. The ComReg draft proposal noted the evidence provided and commented no further on it. It is apparent no weight was placed on the evidence and/or was not taken account of beyond referencing it. This combined with the NRA’s evidence of the significant increase in civil costs generally as outlined above should be properly considered in terms of assessing an AN’s ability to compete with Eir’s **ubiquitous network and already connected base**.

¹² No consideration has been given to higher technical standards for reinstatement demanded by local authorities, increased traffic management costs, increase in input prices such as fuel, asphalt and labour all of which are up significantly since the last market review.

¹³ CSO data is only available for this category from Q1 2021.

¹⁴ NTA 2025 Inflation Report Update May 2025 produced by ChanlderKBS/Grant Thornton

Establishing new connections in an inflationary civil works environment to a premises where Eir has long recovered sunk connection costs (from a time when civil works were considerably cheaper) becomes increasingly difficult. This is an clear **barrier to competition/switching**. It is apparent from ComReg's Draft Decision that insufficient consideration has been given to this key variable, particularly in light of Eir's recent significant Zone A price increases.

ComReg should establish a reliable estimate of the **incremental cost** (ideally from different locations around the country) to an AN (within a 50m radial distance) of connecting an **already connected Eir premises** and establish whether a viable business case for making that connection can be made at the prevailing Eir prices in those locations. If it cannot then it is irrelevant whether or not 2 ANs are within a 50m radial distance of a connected premises. ComReg settled on the **50m radial distance criterion** owing to the fact that a permit will generally be granted that allows works to be completed within a 30 day timeframe for this category of work. This is an important consideration but of equal, and possibly of greater importance is the **current level and trend of costs** in executing these connections. ComReg has considered the '*time factor*' but has ignored the '*cost factor*' in its Draft Decision. One could argue (setting aside the GIA for the moment) the '*time factor*' has been held constant since the 2020 Review but the '*cost factor*' has not (it has moved in Eir's favour creating a barrier to switching) and this has helped to reinforce or reestablish Eir's market power in Zone A WPZs.

Furthermore, ComReg dismissed SFGs argument that network proximity to a premises ought to be considered in the context of **distance from network chambers**. ComReg were of the view that SPs "*could reasonably dig and extend their own network to serve a customer's premises. A SP can access the customer premises from an existing chamber and has the option to install an additional access chamber, the cost of which is far lower than that of digging the entire distance to the customer premises*"¹⁵.

Aside from the fact that no cost analysis was carried out in assessing the economic viability of this approach versus an already connected premises, the assumption **ignores the reality of how such a scenario would work in practice**. In the first instance a 'way leave' would be required to build the connection to the Eir chamber. In tandem a **PIA access request** would need to be accepted and delivered by Eir within a time period that was acceptable to the prospective customer. In the best case scenario Eir's own duct access reference offer targets a 5 week delivery (25 working days) for 'standard' sub-duct orders. However, a large portion of Enet's sub-duct orders go 'non-standard' and there is no backstop on when such orders are deliverable. Based on the most recent data submitted to ComReg, more than 58% of duct orders submitted by Enet to Eir since [REDACTED] were not delivered within [REDACTED] with almost [REDACTED] of

¹⁵ Paragraph 4.166 of Draft Decision

going non-standard. Most concerning, is that just [REDACTED] % of standard orders were delivered within a [REDACTED] period.

As such, the time and uncertainty associated with the coordinating a ‘wayleave’ for the partial self-build of a connection together with uncertainty around duct access requests to Eir entirely rules out this option as a feasible competitive alternative. Based on Eir’s published KPIs, less than 60% of sub-duct orders received in Q4 2025 were accepted and of these only 30% were completed¹⁶. That is less than 20% of duct orders received in quarter that were actually delivered within the same quarter.

It is therefore reasonable to conclude, **combining self-build** to chambers with **PIA orders** is not realistic or economically feasible independent of civil works cost implications. This is because an operator could build from its network to an Eir chamber within a one month period, incurring the associated cost, but ultimately could have the customer order cancelled because the PIA element is not delivered 2, 3 or 4 months later or worse they are ultimately advised by Eir that the order is undeliverable¹⁷ **after** SFG has already incurred the costs of the self-build element¹⁸. [REDACTED]

[REDACTED]. By contrast delaying delivery by 2, 3 or 4 months is in Eir’s commercial interest which exacerbates the overall risk. As such ComReg’s basis for disagreeing with SFG’s argument “*that network proximity should be measured only in terms of the distance from the CP to the SP’s nearest chamber on its network*” as outlined at paragraph 4.166 of the Draft Decision does not stand up to scrutiny when considered in the context of real-world KPIs and logistical challenges. ComReg cannot rely on something that could work theoretically when the evidence against it working in reality is overwhelming running counter to the validity of that theory.

The combination of increasing civil works (and associated) costs and the lack of PIA alternatives **in a timely manner** are key variables that need to be reconsidered in the context of whether proximity to network chambers is the correct basis on which competitive WPZs should be conducted. **All operators are capable of providing ComReg with chamber location data** and building a more appropriate algorithm against this criteria would not be a difficult task. At the very least ComReg ought to examine how the competitive assessment of WPZs would change taking this approach. The significant increase in Zone A prices alone warrants a reconsideration of this point.

¹⁶ Page 28 of Eir PIA KPIs.

¹⁷ Based on Eir’s PIA KPI data for Q1 2026 8% of orders are categories as ‘undeliverable’.

¹⁸ [REDACTED]

6. Sampling of Proposed Zonal Redesignations Highlights Gap Between Theory And Reality

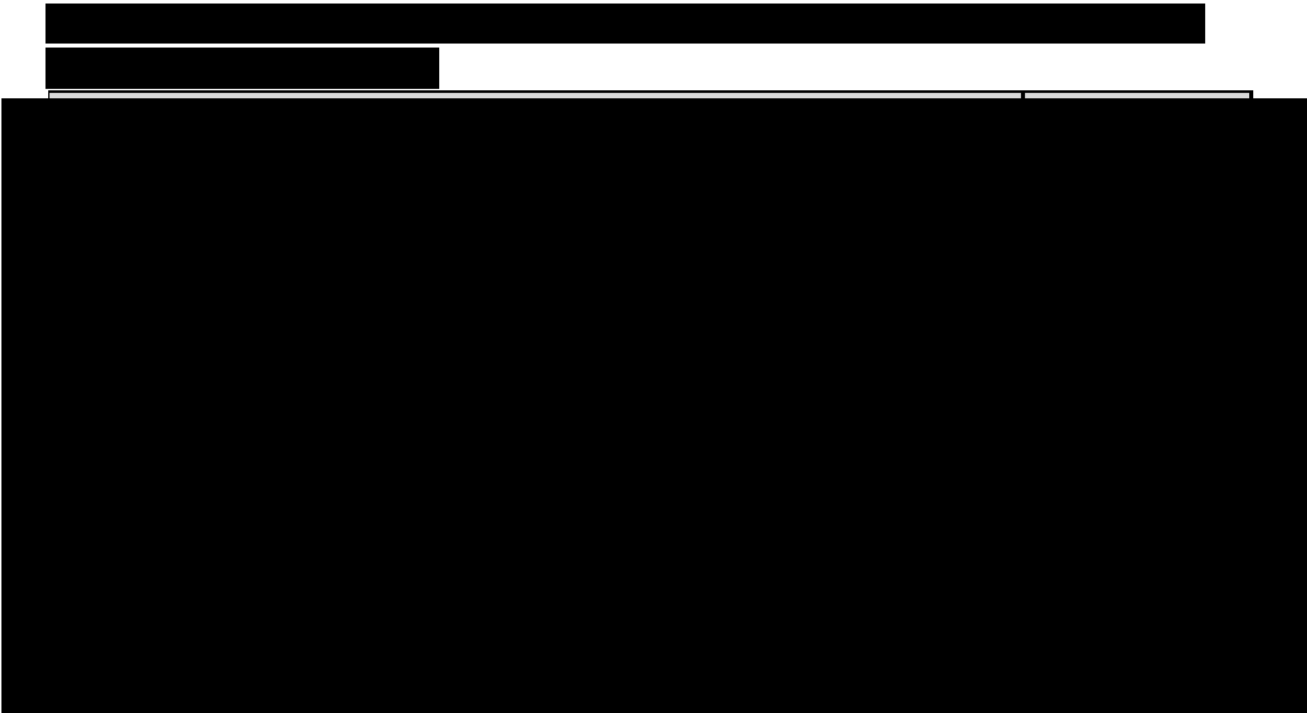
Further compounding SFG's case that proximity to chambers is what is important for ANs, Enet explored the possibility of switching from Eir to [REDACTED] for a range of circuits that sit in WPZs that ComReg has proposed for redesignation from Zone B to Zone A. In the table below in all cases [REDACTED] been identified as an AN within a 50m radial distance of the connected premises. In all cases, despite the close proximity of the [REDACTED], it is unwilling/unable to connect to the premises and advised Enet that "*it is actually off-net in all three locations...there will be quite a bit of digging involved and it is likely to be quite costly...*". A provisional figure of [REDACTED] per connection was ultimately quoted for all three locations.

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Proximity to a network exhibited on a map for [REDACTED] gives no indication as to those [REDACTED] actual ability or willingness to grant such a connection. The problem however is not confined to entities whose primary activity [REDACTED]. As can be seen from the table below for a range of customers where SFG are currently using Eir circuits that are earmarked for redesignation to Zone A, those AN are either unable to offer competitive prices or are reporting they can't deliver service to those locations even in scenarios where the network is within [REDACTED].

In all cases where service can be delivered a connection charge is being quoted, in and of itself a barrier to switching. [REDACTED]

[REDACTED]
[REDACTED], [REDACTED] [REDACTED]
[REDACTED]. This is an environment conducive to Eir exercising its market power and [REDACTED] of these circuits as soon as the relevant sunset period expires with operators having no alternative options being the likely outcome under the current Draft Decision proposals. ComReg must recognise this should not be the outcome in a competitive market and has a duty to ensure it does not materialise as a consequence of further deregulation of the WDC market.



7. The Irish Government Has Not Implemented Key Legislation As Anticipated in The Draft Decision

In its draft Decision ComReg considered concerns raised by SFG that no account had been taken during the consultation process of the implications of the Gigabit Infrastructure Act (GIA) and how it might impact on the WDC market. In particular, SFG raised concerns in August 2025, about the competitive risk posed to the WDC market where Ireland had failed to enact legislation to apply exceptions/exemptions to the ‘pre-permit application notification’ (**‘PPAN’**) requirements of that legislation¹⁹. ComReg took the view that this did not impact on its analysis for the following reasons:

1. ComReg had been informed via meetings and correspondence with DCCS that the Department expected to have enacted such exceptions in to law **by 12 May 2026**.
2. That PPAN only applied to networks that were *“fully or partially financed by public means”*.

SFG note that 12 May 2026 has now passed and the legislation DCCS had ‘intended’ to see passed, an assurance that ComReg has explicitly placed some weight on its draft Decision, has not occurred. In its supplemental submission on 21 August 2025, SFG cautioned that *“making ex-ante regulatory decisions on the basis of “anticipated legislation” where the timelines are unknown would be an approach that is unsound in practice and in law”*. Underpinning the point, SFG reminded ComReg that Ireland had

¹⁹ See paragraphs 4.167 – 4.177.

been 4 years late in transposing the Electronic Communications Code (EECC). However, in its draft Decision ComReg appears to have relied on the assurances of the DCCS and in so doing, speculated that the relevant legislation would be in place.

Furthermore, as we approach the summer parliamentary recess (mid-July to mid-September), there is no evidence that the required legislation will be passed any time soon. The DCCS last consulted on this matter as recently as 27 February 2026 when it sought the views of GIA Steering Group members on a fresh set of proposals. The upshot of the delay in implementing legislation is that **that as of today PPAN applies without exception under law**. In simple terms that means any civil works that are fully or partially financed by public means are subject to the 2 month PPAN. **It is only through non-compliance with the GIA can this timeline be circumvented.**

This leads on to the second reason why ComReg considered that its analysis was unaltered in giving consideration to the GIA.

ComReg noted that as PPAN would only apply to civil works fully or partially financed by public funds *“its impact on civil works across the majority of market participants would be limited”*. ComReg has not presented any evidence to support that assertion. [REDACTED]

[REDACTED]

[REDACTED]²⁰. The extent to which any of these entities are present as an Alternative Network (AN) in ComReg’s competitive assessment of WPZs is therefore compromised **until such time as the relevant PPAN exceptions are enacted**. The implications of this is not just relevant to the draft Decision **but also** to existing Zone A WPZ that these networks currently traverse and were assumed to be competitive under the 2020 WDC decision. It is therefore a matter of fact, that the competitive conditions of many Zone A WPZs altered on 12 May, 2026 if the GIA is being complied with.

Finally, we note ComReg has presented a chart as evidence in the Draft Decision that indicates that the ‘*overwhelming majority*’ of road opening licence applications fall into the T2 or T3 category. However, ComReg’s reliance on this data is questionable for two reasons.

In the first instance the data refers to all road opening licences and may not be representative of the relevant subset of applications associated with civil works related

to building of telecommunications infrastructure. For example for new leased line connections it is improbable any more than a small percentage would be delivered via a T3 licences [REDACTED]).

Secondly, ComReg appear to ignore the fact that large portion of licences represented in the chart are referred to as “T2’” as distinct from “T2” licences. These are T2 licences that are granted **only after** going through the T1 Notification process and that accounted for [REDACTED] applications in 2025. As such “T2’” applications in most, if not all cases fall into the PPAN category for those ANs that are fully or partially funded by public means even with exceptions i.e the exceptions/exemptions legislation, whenever it is passed will not capture such instances and shield it from PPAN.

The combination of the these factors means that ComReg is likely to have materially underestimated the impact of the PPAN in both the pre and post enactment of exceptions legislation being passed into law and should gather information²¹ from the relevant public service bodies impacted by GIA in both scenarios to establish the true impact of PPAN on all WPZs.

8. Need To Reexamine Introduction of ERT in Light Of Significant Zone A Price Increases

Following on from the Eir’s notification of significant Zone A price increases for SFG (but unlikely for its own retail arm), a fundamental concern with the draft decision remains the absence of any effective *ex-ante* safeguard to address the manner in which leased line services **are actually purchased in Ireland**. ComReg's own analysis recognises that enterprise customers predominantly procure **multi-site leased line solutions** and that this channel accounts for the majority of retail WDC demand. In practice, customers do not purchase individual Zone A or Zone B circuits in isolation. Rather, they purchase portfolios of sites that typically span both regulated and deregulated areas. Any assessment of the effectiveness of the proposed remedies must therefore be undertaken in the context of how services are purchased in practice.

The draft decision confines pricing remedies to Zone B inputs notwithstanding that the majority of customer tenders involve mixed-zone portfolios. While ComReg proposes to retain pricing constraints in respect of Zone B circuits, Eir will continue to enjoy pricing freedom in respect of Zone A circuits and the extent of that freedom will increase materially as a result of the proposed expansion of deregulated areas. The significance of this issue has **been compounded in recent months** by Eir's notification of substantial increases to Zone A pricing from January 2026. This underlines the importance of Zone A pricing within the overall customer proposition and the degree to which the competitiveness of a multi-site solution can be influenced through pricing decisions

²¹ [REDACTED]

relating to deregulated circuits. A regulatory remedy directed solely at individual Zone B inputs does not, of itself, address whether the overall portfolio purchased by customers **remains economically replicable** for Eir's competitors.

The 2013 Non-Discrimination Recommendation and the Gigabit Recommendation provide a framework **specifically designed to address such circumstances**. The Recommendations recognise that Economic Replicability Tests may be applied to bundles, portfolios and geographically differentiated offers and are therefore well suited to addressing the mixed-zone nature of the Irish WDC market. Indeed, the Irish market presents a particularly compelling case for such an approach given ComReg's finding that the market is **national in scope** precisely because of the prevalence of multi-site procurement.

Notwithstanding the central importance of multi-site procurement to its market definition and competitive assessment, ComReg's draft decision gives only cursory consideration to an Economic Replicability Test (ERT) before dismissing it on grounds of '*implementation difficulty and administrative burden*'. In SFG's view, this fails to engage with the substance of the concern being raised. The issue is not whether individual regulated circuits remain subject to a pricing obligation, but whether a wholesale operator relying on those regulated inputs can replicate the overall customer solution that enterprise customers actually purchase. **The proposed remedies do not address that question**. Accordingly, SFG remains of the view that the draft decision should be amended to include an appropriate *ex-ante* ERT safeguard for mixed-zone portfolios or, at a minimum, provide a detailed and evidence-based justification for departing from the approach contemplated by the relevant European Recommendations – the existing Draft Decision does not do this but merely states that utmost account has been taken.

It is incumbent on ComReg to reconsider this matter in light of developments since it notified the EC of its Draft Decision. The **Wholesale Central Access** (WCA - bitstream) market in Ireland provides a cautionary tale in this regard. The WCA market has reverted to a virtual monopoly in recent years primarily as a consequence of the relaxation of margin squeeze obligations in the **Wholesale Local Access** (WLA) market. The relevant **Margin Squeeze Test** (MST) that had protected the WCA market was a regulatory obligation imposed on Eir due to its SMP in the WLA market. It sought to prevent Eir squeezing out competition in the theoretically competitive WCA market where WLA (regulated) and WCA (deregulated) services were sold in a bundle. That bundle is entirely analogous to Zone B (regulated) and Zone A (deregulated) bundles that is a common feature of the WDC market in Ireland today.

It is not an answer to dismiss an ERT on grounds of practical difficulty. The Recommendations themselves are expressly directed at complex bundling and portfolio

scenarios and anticipate the challenges associated with their implementation²². Indeed, applying an ERT to “mixed-zone” leased line portfolios (same products) carried over the same network would appear **considerably less complex** than many of the bundled product scenarios expressly contemplated by the European framework e.g. quad play bundles which includes multiple products over multiple different types of networks.

SFG would strongly urge ComReg to reconsider the implementation of a replicability test **in light of Eir’s significant price increases for Zone A circuits**. Through Eir’s ability to discriminate on Zone A pricing and its demonstrable ability to price independent of competition in this footprint, Eir is capable of materially affecting the competitiveness of mixed-zone customer portfolios. This reinforces the need for an ex-ante ERT to ensure that wholesale customers relying on regulated Zone B inputs remains capable of replicating the **overall solutions** demanded by customers.

Summary

In summary, the evidence that has emerged since completion of the consultation and notification processes raises serious and legitimate questions regarding the continued validity of the Draft Decision and the assumptions upon which it is based. Significant Zone A price increases, uncertainty surrounding the location data underpinning the competitive assessment, statistical evidence calling into question proposed WPZ redesignations, increasing civil works costs, the absence of anticipated GIA exemptions, and the need to reconsider an Economic Replicability Test in light of the Zone A price increases each represent material developments that should properly be considered by respondents, ComReg and the European Commission. Viewed collectively, these developments point to a market that differs materially from that assessed in the Draft Decision. In those circumstances, it would be inconsistent with the forward-looking and dynamic approach advocated by the European Commission to proceed directly to a final decision without first consulting on this new evidence and affording stakeholders an opportunity to comment upon its implications.

²² The purported regulatory burden placed on Eir ought to be considered in the context of the significant downsizing of Eir’s regulatory team in recent years (and months even).

SIRO response to ComReg Consultation 24/92

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Introduction

SIRO welcomes the opportunity to respond to ComReg's consultation on the Wholesale Dedicated Connectivity (WDC) market as set out in ComReg 24/92. This consultation represents a critical step in ensuring that Ireland's telecommunications sector remains competitive, transparent, and well-regulated to deliver high-quality services to businesses and end-users across the country.

We commend ComReg for the extensive preparatory work undertaken in this market review, which provides a comprehensive and evidence-based analysis of the WDC market. The consultation demonstrates a clear understanding of the persistent competition challenges in this market, particularly the entrenched dominance of Eircom and the associated risks to fair competition and innovation.

SIRO strongly supports the objectives outlined in ComReg 24/92, particularly the emphasis on maintaining effective regulation to address significant market power (SMP) and the associated competition problems identified. As a new entrant striving to deliver innovative and competitive wholesale solutions, SIRO firmly believes that continued and robust regulation of Eircom is essential to prevent anti-competitive practices, promote investment, and safeguard consumer interests.

The WDC market is a critical component of Ireland's telecommunications infrastructure, underpinning the connectivity needs of medium-to-large businesses, public institutions, and other service providers. Without effective regulatory safeguards, there is a clear risk that competition in this market could stagnate, impeding Ireland's digital transformation and economic growth.

In this response, SIRO will outline its full support for ComReg's proposed remedies while making the case for enhancing certain obligations where necessary to ensure a level playing field. This consultation represents an important opportunity to address longstanding issues in the WDC market and to future-proof Ireland's connectivity landscape for the benefit of all stakeholders.

Response to Consultation

1. Do you agree that the main developments identified in the provision of retail LL market are those which are most relevant in informing the assessment of the Relevant Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual/empirical evidence supporting your views.

The consultation document identifies significant developments in the retail leased lines (LL) market, including technology shifts, changes in customer demand, and the competitive landscape, as core inputs for assessing the relevant markets. These include:

1. **Technological Transition:** A noted migration from legacy technologies like TDM to modern interfaces (e.g., Ethernet and xWDM). This has implications for the definition and competitive assessment of markets.
2. **Market Structure and Competition:** Evidence of competitive pressures, particularly in geographic areas with multiple service providers, and trends like the entry of new players, and consolidation of existing players, are used to gauge market health.
3. **Customer Preferences and Needs:** The increasing requirement for higher bandwidth Modern Interface circuits, driven by digital transformation across businesses, particularly in the medium to large-sized enterprise segment, is highlighted as a critical driver of market developments.

Response:

Yes, the developments identified are relevant for assessing the relevant wholesale dedicated connectivity markets for the following reasons:

1. **Foundation for Market Definition:**
 - The shift from legacy TDM to Ethernet and xWDM impacts how products are grouped for market definition. These developments ensure that the analysis reflects current and future demand patterns and supply capabilities.
2. **Indicators of Competition:**
 - Geographic disparities in competition, where some regions (like Zone A) exhibit multiple competitive players while others (Zone B) remain less competitive, are critical for a nuanced market analysis. This aligns with the European Commission's guidance on assessing significant market power (SMP).
3. **Regulatory Objectives:**
 - The ongoing need for high-capacity, reliable connectivity, especially as residential broadband often cannot meet business demands, underscores the importance of continuing regulatory oversight to prevent distortions such as market foreclosure or excessive pricing.

Supporting Evidence:

- Historical trends from the 2018 and 2020 reviews highlight the progressive nature of market technological upgrades.
- Data on customer demand shifts and competitive pressures supports the notion that retail developments directly inform wholesale market dynamics.



This framework confirms that the outlined developments are both timely and material for ComReg's review. However, vigilance is needed to ensure that nuanced aspects, like the unique conditions in less competitive zones or the role of alternative technologies such as Dark Fiber, are comprehensively addressed. SIRO recommends maintaining and potentially enhancing regulatory measures where competitive pressures remain weak.

2. Do you agree with ComReg's proposed definition of the relevant retail LL market? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

Response to ComReg's Proposed Definition of the Relevant Retail Leased Line (LL) Market

Based on the review of **ComReg Document 24/92** (2492), SIRO recognises the importance of accurately defining the retail LL market as it serves as a foundational element in determining the scope of wholesale regulation. ComReg's proposed definition considers technological, competitive, and geographic factors that influence market conditions. However, there are areas where SIRO agrees, partially agrees, or recommends refinements.

Agreement with Key Aspects of ComReg's Definition

1. Inclusion of Modern Interface (MI) and Traditional Interface (TI) Products:

- ComReg's approach to defining retail LL markets includes both TI and MI products based on demand-side and supply-side substitutability, reflecting the ongoing transition from legacy TDM circuits to Ethernet and other modern technologies (Section 3.4 and 3.5).
- SIRO supports this approach, as it aligns with current market trends where modern interfaces dominate, yet legacy systems persist for certain niche applications.

2. Emphasis on Business Connectivity Needs:

- ComReg acknowledges the critical role of leased lines in serving medium to large enterprises and public service organisations (Section 1.3). These segments require high-quality, dedicated connectivity services that cannot be replaced by residential broadband.

3. Recognition of Geographic Market Variations:

- SIRO agrees with the segmentation between competitive (Zone A) and non-competitive (Zone B) areas. This distinction is essential for tailoring regulatory measures to specific market dynamics.

Concerns and Recommendations

1. Insufficient Granularity in Product Differentiation:

- ComReg's grouping of TI and MI products may overlook distinct customer requirements for high-bandwidth services versus low-bandwidth legacy applications (Section 4.4). For instance, some customers rely on legacy TDM circuits due to specific compatibility needs, which may not be fully addressed in the current definition.
- **Recommendation:** Introduce sub-markets or clear delineations within the retail LL market to account for differing end-user needs, particularly between low- and high-bandwidth services.

2. Omission of Future Technological Developments:

- The definition appears static, focusing on current technologies without adequately addressing future developments like widespread 10Gbps+ Ethernet adoption or emerging network architectures (e.g., SD-WAN).
- **Recommendation:** Incorporate a forward-looking element into the market definition to ensure it remains relevant as technology evolves, and competition frameworks adapt accordingly.

3. Market Share Analysis for Zone B:

- ComReg highlights competitive dynamics in Zone A but underrepresents the unique challenges in Zone B, where competitive pressures remain weak, and alternatives are limited. For example, the reliance on Eircom's infrastructure significantly impacts competition in these areas.
- **Recommendation:** Strengthen the analysis of Zone B by considering alternative metrics, such as entry barriers and the cost of deploying infrastructure, to refine market boundaries.

Empirical Evidence Supporting SIRO's Views

- **Technology Transition Trends:** Data from Section 3.4 shows a steady migration from TDM to Ethernet-based services, necessitating explicit recognition of sub-markets.
- **Geographic Disparities:** ComReg's own findings demonstrate a lack of effective competition in Zone B (Sections 4.5 and 6), emphasising the need for tailored regulatory oversight.
- **Customer Usage Profiles:** Reports indicate that certain sectors, such as financial services and public institutions, continue to rely on legacy systems for specific applications, supporting a nuanced approach to market definition.

Conclusion

SIRO partially agrees with ComReg's proposed definition of the relevant retail LL market, acknowledging its strengths in addressing current technological and competitive conditions. However, we recommend enhancements to ensure the definition is forward-looking, reflects customer segmentation, and accounts for evolving substitution patterns. By refining the definition in these areas, ComReg can establish a more robust framework for assessing competition and implementing effective regulatory measures.

3. Do you agree with ComReg's product market assessment for the Relevant WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

ComReg's product market assessment for the Wholesale Dedicated Connectivity (WDC) markets in **Document 24/92** aims to delineate the boundaries of relevant product markets based on supply and demand substitutability and to ensure regulatory measures address competition concerns appropriately. SIRO broadly agrees with ComReg's framework, but certain elements warrant refinement to better reflect market realities.

Agreement with Key Aspects

1. Focus on Technological Transition:

- ComReg's assessment highlights the shift from legacy technologies (e.g., TDM) to modern interfaces such as Ethernet and xWDM (Section 4.3). SIRO agrees with this recognition, as Ethernet-based services dominate customer demand, driven by the need for high-capacity, scalable solutions.

2. Segmentation Between Terminating and Trunk Segments:

- The segmentation of WDC markets into terminating and trunk segments is logical and reflects the differing competitive dynamics between these segments (Section 4.5). The terminating segment often faces less competition, especially in Zone B, while the trunk segment benefits from greater provider presence.

3. Inclusion of Self-Supply:

- ComReg's inclusion of self-supply in the WDC market assessment (Section 4.3) appropriately captures the full scope of market activity and competitive dynamics, as vertically integrated operators can impact wholesale market conditions.

Areas of Concern and Recommendations

1. Product Substitution Between Legacy and Modern Interfaces:

- ComReg concludes that TDM and Ethernet services are part of the same market based on supply-side substitutability. However, SIRO believes this overstates substitutability. Many users reliant on legacy TDM circuits (e.g., for regulatory compliance or specialised systems) face high switching costs to migrate to Ethernet (Section 4.3).
- **Recommendation:** Consider defining separate sub-markets for TDM and Ethernet services to reflect the practical constraints on substitution, particularly in non-competitive areas.

2. Bandwidth Differentiation:

- ComReg appears to group all bandwidths into a single product market without explicitly recognising potential discontinuities (e.g., around 1Gbps or higher). Evidence from Oxera suggests that price differentials and customer segmentation may indicate separate demand-side preferences for high-capacity circuits.

- **Recommendation:** Reassess bandwidth segmentation to determine if services above a certain threshold, such as 1Gbps, constitute a separate product market.

3. Geographic Variations and Competitive Intensity:

- ComReg's product market assessment does not sufficiently emphasise the impact of geographic variations in competition. While the zonal segmentation (Zone A vs. Zone B) is considered in later sections, it could be explicitly integrated into the product market definition.
- **Recommendation:** Incorporate geographic-specific considerations into the product market definition, as services may face different competitive conditions based on location.

Empirical Evidence Supporting SIRO's Position

1. Technological Transition Data:

- ComReg's findings in Section 4.3 indicate significant migration from TDM to Ethernet, but legacy systems still represent a meaningful share of the market in certain segments.

2. Customer Segmentation Evidence:

- ComReg's Section 4.3 discusses varying customer requirements for bandwidth and technology but fails to fully explore whether demand-side preferences justify market segmentation.

3. Zone B Competition Challenges:

- Data in Sections 5.4 and 6 demonstrate limited competition in Zone B, underscoring the importance of considering localised market conditions in product market assessments.

Conclusion

SIRO partially agrees with ComReg's product market assessment for the WDC markets. While the overall framework appropriately captures many key dynamics, refinements are needed to account for:

- The limited substitutability between legacy and modern technologies.
- Potential segmentation based on bandwidth thresholds.
- The role of wireless alternatives in less competitive areas.
- Greater integration of geographic-specific factors into the product market definition.

Adopting these enhancements will ensure a more precise and effective regulatory approach, aligned with the realities of the Irish WDC market.

4. Do you agree with ComReg's geographic market assessment for the Relevant WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

ComReg's geographic market assessment for the Wholesale Dedicated Connectivity (WDC) markets in **Document 24/92** aims to define the scope of geographic markets based on competitive conditions and service availability. SIRO agrees with several aspects of the assessment, but there are concerns about some elements that require further refinement.

Agreement with Key Aspects

1. Use of Geographic Segmentation:

- ComReg's assessment splits the WDC markets into **Zone A** (areas with effective competition) and **Zone B** (areas with weak or no competition) based on factors like infrastructure presence, market shares, and competitive dynamics (Section 4.4). This approach aligns with regulatory best practices, ensuring that remedies are proportionate to local market conditions.
- SIRO supports this segmentation, as it reflects significant disparities in competition between urban centers and rural areas.

2. Focus on Infrastructure Availability:

- ComReg evaluates the availability of alternative infrastructure, such as the presence of multiple operators, to define competitive and non-competitive areas (Section 4.5). This is an important factor, as competition in the WDC market heavily depends on physical network access.

3. Inclusion of Sub-National Geographic Units:

- The use of granular geographic units, such as Workplace Zones (WPZs), allows for a more precise identification of competitive differences. This method ensures that regulation is neither overextended nor unnecessarily removed from areas requiring oversight.

Concerns and Recommendations

1. Criteria for Determining Zone A and Zone B:

- ComReg's methodology places significant emphasis on infrastructure metrics, such as the presence of alternative networks within a defined radial distance. However, this may overlook other key aspects like:
 - **Ease of switching providers:** Availability alone does not guarantee competition if barriers to switching exist.
 - **Quality of alternatives:** Not all infrastructure providers offer comparable quality or service-level agreements (SLAs).

- **Recommendation:** ComReg should include additional criteria, such as customer behavior (e.g., switching rates) and service quality, in assessing competition between geographic areas.

2. Granularity in Zone Boundaries:

- While WPZs provide a useful level of detail, there may be situations where competitive conditions vary within a single WPZ. For example, suburban areas near urban centres might exhibit competitive characteristics more akin to Zone A, even though they are classified under Zone B.
- **Recommendation:** Introduce mechanisms to re-evaluate WPZ boundaries regularly and allow for flexibility in transitioning areas between zones based on evolving market conditions.

3. Underserved and Peripheral Areas:

- In many rural parts of Zone B, SIRO has observed limited infrastructure investment from incumbent operators due to high deployment costs. These areas are particularly vulnerable to excessive pricing and lack of service innovation.
- **Recommendation:** Establish stricter regulatory safeguards in areas of Zone B with minimal or no competition. This could include mandatory infrastructure-sharing obligations or investment incentives for new entrants like SIRO.

4. Exclusion of Wireless Alternatives:

- ComReg's geographic market analysis excludes wireless services as substitutes for wired WDC services, reasoning those wireless lacks comparable capacity and reliability (Section 4.4). While this may be true in Zone A, wireless services are often viable substitutes in Zone B, particularly where deploying fixed-line infrastructure is cost-prohibitive.
- **Recommendation:** Reassess the exclusion of wireless solutions, especially in Zone B. Including wireless services in specific areas could enhance competition and reduce over-reliance on dominant providers.

5. Treatment of Self-Supply by Incumbents:

- The assessment does not explicitly account for the impact of self-supply by vertically integrated incumbents like Eircom, which may distort competition in both Zones A and B. This could lead to market foreclosure if the incumbent limits access to its infrastructure.
- **Recommendation:** Explicitly analyse self-supply practices and their geographic impact, particularly in Zone B, where reliance on incumbent infrastructure is high.

Empirical Evidence Supporting SIRO's Views

1. Infrastructure Gaps in Zone B:

- Data from Section 4.5 demonstrates limited alternative infrastructure in many rural areas, underscoring the need for stricter regulatory oversight in Zone B.

2. Role of Wireless in Rural Areas:

- Evidence from industry reports and SIRO's experience shows that wireless services are a practical alternative in rural and underserved regions, contradicting their blanket exclusion from the geographic market assessment.

3. Dynamic Market Conditions:

- ComReg's previous findings (e.g., ComReg 20/06) illustrate how geographic market conditions evolve over time, reinforcing the need for periodic reviews of market boundaries.

Conclusion

SIRO partially agrees with ComReg's geographic market assessment for the WDC markets. The zonal segmentation and use of granular geographic units are positive steps, but refinements are necessary to address overlooked factors such as:

- The role of wireless solutions in underserved areas.
- Switching barriers and service quality in determining competition.
- The need for stricter oversight in peripheral parts of Zone B.

By incorporating these considerations, ComReg can establish a more accurate and comprehensive geographic market assessment that better addresses the specific challenges of both competitive and non-competitive areas.

5. Do you agree with ComReg's assessment of the Trunk –Terminating Boundaries of the MI WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

ComReg's assessment of the trunk-terminating boundaries in the Modern Interface (MI) Wholesale Dedicated Connectivity (WDC) markets, as outlined in **Document 24/92**, seeks to distinguish between the competitive trunk segment and the less competitive terminating segment. While SIRO acknowledges the rationale behind this distinction, certain elements of the assessment warrant closer scrutiny and potential refinement.

Agreement with Key Aspects of ComReg's Assessment

1. Rationale for Differentiation Between Trunk and Terminating Segments:

- ComReg distinguishes between trunk and terminating segments based on infrastructure characteristics and competitive conditions. The trunk segment is typically competitive due to the presence of multiple service providers, while the terminating segment often exhibits limited competition, especially in less urbanized areas (Section 4.5).
- SIRO agrees with this distinction, as the economic feasibility of deploying infrastructure varies significantly between these segments.

2. Use of Node Proximity to Define Boundaries:

- ComReg employs a proximity-based approach, considering the distance between premises and major network nodes to delineate trunk and terminating segments. This methodology reflects the geographic nature of competition and aligns with established regulatory principles.

3. Recognition of Competition in Trunk Segments:

- The assessment acknowledges that trunk segments are often characterized by higher levels of competition due to shared infrastructure and interconnection points, which reduces the need for regulatory oversight in these areas.

Concerns and Recommendations

1. Challenges with Fixed Radial Distances for Boundaries:

- ComReg uses a fixed radial distance (e.g., 100 meters) from network nodes to define trunk-terminating boundaries. However, this approach may oversimplify boundary delineation, as competitive conditions are influenced by factors such as:
 - **Cost of extending connections:** Short radial distances may exclude areas where connection costs are prohibitively high, even near trunk nodes.
 - **Service quality variations:** Proximity to a trunk node does not guarantee equivalent service quality for terminating segments.
- **Recommendation:** Use dynamic criteria, such as cost thresholds or network topology complexity, in addition to fixed radial distances to better define boundaries.

2. Geographic Variations in Competitive Intensity:

- The assessment assumes uniform conditions for trunk segments across geographic areas. However, competition within trunk segments may vary significantly based on urbanisation, population density, and infrastructure investments (e.g., rural trunk routes vs. urban trunk routes).
- **Recommendation:** Conduct a more granular analysis to account for geographic variations in trunk competitiveness, particularly in rural areas, where even trunk segments may face limited competition.

3. Potential Overlap Between Trunk and Terminating Segments:

- The assessment does not fully account for overlap or hybrid scenarios where some parts of the network may function as both trunk and terminating segments (e.g., in semi-urban areas). These cases may create ambiguity in the competitive analysis and regulatory obligations.
- **Recommendation:** Incorporate hybrid scenarios into the boundary assessment and clarify regulatory treatment for such cases.

4. Exclusion of Wireless Alternatives in Trunk-Terminology Analysis:

- ComReg excludes wireless alternatives in defining trunk-terminating boundaries. While this exclusion may be valid for high-capacity services, wireless technologies (e.g., microwave links) often supplement or replace fixed trunk infrastructure in rural or remote areas.
- **Recommendation:** Reassess the exclusion of wireless alternatives, particularly in areas with limited fixed-line infrastructure, to ensure a complete understanding of competitive dynamics.

5. Impact of Eircom's Dominance on Trunk Segments:

- While ComReg identifies competitive dynamics in trunk segments, the dominance of incumbent operators like Eircom in providing key interconnection points could distort competition. This aspect is not adequately addressed in the assessment.
- **Recommendation:** Examine the role of Eircom's trunk network in potentially leveraging dominance into terminating segments, which could hinder competition.

Empirical Evidence Supporting SIRO's Views

1. Cost Challenges in Terminating Segments:

- Evidence from Section 4.5 highlights the higher costs associated with extending connections in terminating segments compared to trunk segments. However, proximity-based criteria alone may not fully capture these cost dynamics.

2. Geographic Disparities in Competition:

- Data in Sections 4.5 and 5.4 demonstrate significant competitive differences between urban and rural areas, reinforcing the need for more localised criteria in defining boundaries.

3. Supplementary Role of Wireless:

- SIRO's experience indicates that wireless technologies often supplement trunk segments in rural areas, a factor overlooked in ComReg's current approach.

Conclusion

SIRO partially agrees with ComReg's assessment of the trunk-terminating boundaries for the MI WDC markets. While the distinction between trunk and terminating segments is valid, refinements are necessary to ensure the assessment reflects real-world conditions. Specific areas of improvement include:

- Incorporating dynamic and cost-based criteria for boundary delineation.
- Addressing geographic variations in competitive intensity.
- Reassessing the exclusion of wireless alternatives in trunk analysis in rural areas.
- Examining the potential overlap and hybrid scenarios between trunk and terminating segments.

By addressing these concerns, ComReg can ensure its boundary assessment is more precise and better supports effective regulatory measures.

6. Do you agree with ComReg's assessment of SMP on the Relevant WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

ComReg's assessment of Significant Market Power (SMP) in the Relevant Wholesale Dedicated Connectivity (WDC) Markets, as detailed in **Document 24/92**, focuses on identifying market dominance and its impact on competition. While SIRO agrees with several aspects of ComReg's analysis, there are key areas requiring further refinement to ensure regulatory outcomes effectively promote competition and address existing market imbalances.

Agreement with Key Aspects of ComReg's SMP Assessment

1. SMP Designation in Non-Competitive Zones:

- ComReg's designation of Eircom as having SMP in non-competitive areas (e.g., Zone B) is well-founded. The assessment highlights Eircom's dominant position in infrastructure availability and market share, especially in areas where alternative providers are absent or limited (Sections 5.4 and 5.8).
- SIRO supports this designation, as it reflects the economic realities in less competitive regions, where Eircom's dominance creates barriers to market entry and competition.

2. Use of Market Share and Barriers to Entry:

- ComReg uses market share as a key indicator of SMP, with evidence showing Eircom's overwhelming share in the WDC market in certain areas. Additionally, barriers to entry, such as high infrastructure costs and access to essential facilities, are appropriately considered (Sections 5.3 and 5.4).
- This approach aligns with European Commission guidelines on SMP assessment and provides a solid foundation for regulatory intervention.

3. Assessment of Vertical Integration:

- ComReg recognises the role of vertical integration in enabling Eircom to leverage its wholesale dominance into downstream markets, potentially foreclosing competition. This assessment is critical to addressing anti-competitive behaviour (Section 5.5).

Concerns and Recommendations

1. Market Dynamics in Zone A:

- While ComReg acknowledges competition in Zone A, the SMP assessment may understate Eircom's residual market power in this zone. For example, Eircom's role in providing essential backhaul services could allow it to exert influence even in areas with multiple providers (Sections 5.4 and 5.6).
- **Recommendation:** Perform a more granular analysis of Zone A to identify areas where Eircom's dominance persists despite nominal competition, focusing on factors such as infrastructure dependency and market share stability.

2. Self-Supply and Vertical Leveraging:

- ComReg's analysis of self-supply by vertically integrated providers is incomplete. While it acknowledges the potential for leveraging wholesale dominance into downstream markets, the full impact of self-supply on competition is not explored in depth (Section 5.3).
- **Recommendation:** Include a detailed examination of self-supply practices and their impact on wholesale competition, especially in Zone B, where reliance on Eircom's infrastructure is significant.

3. Geographic-Specific Remedies:

- While ComReg proposes tailored remedies for Zones A and B, the SMP assessment does not explicitly account for varying competitive conditions within Zone B itself. For example, competition may vary between rural areas and regional towns.
- **Recommendation:** Refine the SMP assessment to reflect intra-zone variations in Zone B, enabling more targeted regulatory interventions.

Empirical Evidence Supporting SIRO's Views

1. Eircom's Market Share Dominance:

- ComReg's data shows Eircom's high market share in Zone B, with little evidence of meaningful competition (Section 5.4). This supports the need for continued regulation to address SMP.

2. Impact of Infrastructure Dependence:

- Evidence from Section 5.3 highlights the reliance of alternative providers on Eircom's wholesale inputs, reinforcing the need for stricter regulation to ensure fair access.

Conclusion

SIRO partially agrees with ComReg's SMP assessment for the relevant WDC markets. The analysis is robust in identifying Eircom's dominance in Zone B and its potential for leveraging wholesale dominance into downstream markets. However, the assessment could be strengthened by:

- Conducting a more granular analysis of Zone A to identify residual market power.
- Expanding the evaluation of self-supply and its impact on competition.
- Addressing geographic variations within Zone B to refine regulatory interventions.

These refinements will ensure the SMP assessment fully captures market realities and supports proportionate and effective regulatory measures.

7. Do you agree that the competition problems and the associated impacts on competition end users identified are those that could potentially arise in the Zone B MI WDC Markets (and related markets)? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

ComReg's assessment of the competition problems and their impacts in the Zone B Modern Interface (MI) Wholesale Dedicated Connectivity (WDC) markets highlights significant challenges for competition and end users. While SIRO agrees with many of the identified issues, additional insights and recommendations are needed to fully capture the market dynamics in Zone B and address the associated impacts effectively.

Agreement with Key Aspects of ComReg's Assessment

1. Excessive Pricing by Dominant Players:

- ComReg identifies excessive pricing as a key competition problem in Zone B, where Eircom holds significant market power (Section 6.2). This is a valid concern, as limited infrastructure competition in these areas enables dominant players to charge higher prices.
- SIRO agrees with this assessment, as businesses in Zone B are often forced to rely on Eircom's infrastructure, resulting in reduced bargaining power and higher costs.

2. Vertical Leveraging:

- ComReg highlights the potential for vertical leveraging by Eircom, where its wholesale dominance could be used to distort competition in downstream markets. For example, Eircom's control over key inputs may allow it to favour its retail arm over competitors (Section 6.2).
- SIRO concurs, as this behaviour can lead to market foreclosure and limit alternative providers' ability to compete effectively.

3. Barriers to Entry:

- ComReg recognises high infrastructure deployment costs and lack of access to essential facilities (e.g., ducts and poles) as significant barriers to entry in Zone B (Section 6.2). These barriers limit new entrants' ability to challenge the incumbent's position.
- SIRO agrees, as these barriers not only reduce competition but also discourage investment in underserved areas.

4. Quality of Service Concerns:

- ComReg identifies the risk of poor service quality in Zone B, where the lack of competition allows the dominant player to deprioritise investment or reduce service standards (Section 6.3).
- This concern aligns with SIRO's observations of uneven service quality in rural and underserved areas.

Concerns and Recommendations

1. Insufficient Attention to Small and Medium Enterprises (SMEs):

- The assessment does not explicitly address the disproportionate impact of competition problems on SMEs in Zone B. These businesses are often more sensitive to price increases and service quality issues due to limited resources.
- **Recommendation:** Include a focused analysis of the impact on SMEs and consider tailored remedies, such as targeted subsidies or access guarantees, to support their connectivity needs.

2. Intra-Zone Variations in Competition:

- ComReg treats Zone B as a homogenous area, but competitive dynamics may vary significantly within Zone B. For example, competition in regional towns may differ from that in remote rural areas.
- **Recommendation:** Perform a more granular analysis of Zone B to identify sub-areas with varying competitive conditions, allowing for more targeted regulatory interventions.

3. Limited Focus on Information Asymmetries:

- ComReg's assessment underemphasises the role of information asymmetries between the dominant player and competitors, particularly regarding infrastructure availability and pricing. This asymmetry can hinder smaller providers' ability to plan and compete effectively.
- **Recommendation:** Mandate greater transparency in pricing and infrastructure data to address information asymmetries and promote fair competition.

4. Impact of Self-Supply by Vertically Integrated Players:

- While ComReg acknowledges vertical leveraging, it does not sufficiently examine the impact of self-supply practices by Eircom on wholesale competition. This could limit market access for alternative providers, particularly in Zone B.
- **Recommendation:** Analyse self-supply practices and impose stricter regulatory measures, such as equivalence of inputs (EOI), to ensure fair access to wholesale inputs.

Empirical Evidence Supporting SIRO's Views

1. Market Share Dominance:

- ComReg's data shows Eircom's overwhelming market share in Zone B, which aligns with the concerns about excessive pricing and limited competition (Section 6.2).

2. Barriers to Entry:

- Evidence from Sections 6.2 and 6.3 highlights significant barriers to entry in Zone B, with high costs for deploying infrastructure and accessing essential facilities.

3. Service Quality Issues:

- The identification of poor service quality in Zone B due to limited competition reflects real-world conditions where investment by dominant providers is deprioritised.

Conclusion

SIRO agrees with ComReg's assessment that the identified competition problems and associated impacts could potentially arise in Zone B MI WDC markets. However, additional considerations, such as the specific challenges faced by SMEs, and intra-zone variations in competition, should be incorporated into the analysis. These refinements will provide a more comprehensive understanding of market dynamics and support the implementation of effective remedies to enhance competition and end-user outcomes in Zone B.

8. Do you agree with ComReg's proposals in respect of non-pricing remedies in the Zone B MI WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

In response to ComReg's proposals concerning non-pricing remedies in the Zone B MI WDC markets as outlined in ComReg Document 24/92, here are considerations based on the analysis of relevant sections of the document:

Agreement with ComReg's Proposals

Support for Non-Pricing Remedies: ComReg's proposals for non-pricing remedies, such as non-discrimination, transparency obligations, and equivalence of inputs (EOI), are critical to ensuring a level playing field in the Zone B MI WDC market. These measures prevent anti-competitive practices, such as discrimination in service quality or access terms, which could otherwise deter market entry and innovation.

Key provisions such as non-discrimination (Section 7.3) and transparency (Section 7.4) help address competition problems like vertical leveraging and information asymmetries, particularly in markets with entrenched incumbents like Eircom. Such remedies have been effective in similar contexts, as noted in prior regulatory decisions by ComReg.

Challenges with ComReg's Framework: However, while the framework is comprehensive, certain areas may require stronger enforcement mechanisms. The effectiveness of non-discrimination remedies depends on robust monitoring, as identified in previous consultations. For example, industry feedback highlighted gaps in the enforcement of SLAs and delays in implementation of EOI.

Reasons for Support and Suggested Improvements

1. **Addressing Market Power:** The designation of Eircom as having Significant Market Power (SMP) in Zone B MI WDC is well-justified given the evidence of competition problems (e.g., limited alternative infrastructure in these areas). Non-pricing remedies are essential for countering SMP exploitation, such as input foreclosure.
2. **Transparency as a Cornerstone:** Enhanced transparency requirements ensure smaller players have the necessary information to compete effectively. This is particularly important in high-cost, low-margin markets like WDC, where incumbents can leverage superior market intelligence.
3. **Equivalence of Inputs (EOI):** Industry participants, including ALTO, have emphasised the importance of shifting from Equivalence of Output (EOO) to EOI standards to address issues like preferential treatment by incumbents.
4. **Regulatory Oversight:** While ComReg's approach is solid, stakeholders have repeatedly called for stronger enforcement. This includes more stringent timelines for SLA enforcement and quicker resolution of disputes.

Evidence and References

Key data points supporting the necessity of these remedies include:

- **Market Share Data:** Eircom's dominance in Zone B MI WDC markets is reflected in high market share data presented in ComReg's analysis.



- **Historical Challenges with Remedies:** Previous consultations (e.g., ComReg 18/08) highlighted challenges with incumbent compliance with EOO and SLA terms.
- **Geographic Limitations:** The geographic dispersion of alternative providers is insufficient to create effective competition without regulatory safeguards.

Conclusion

Overall, SIRO should broadly support ComReg's non-pricing remedies for the Zone B MI WDC markets, with emphasis on the need for rigorous enforcement and transparency. Proposals to strengthen SLA frameworks, adopt EOI instead of EOO, and enhance monitoring mechanisms will further bolster the effectiveness of these remedies and ensure a fair competitive environment.

9. Do you agree with ComReg's view that a differentiated pricing remedy (of no price control) should apply to Eircom with respect to MI WDC products and services in the IA in the Zone B MI WDC Markets, while the obligations of access, non-discrimination and transparency will continue to apply to the MI WDC products and services in the IA? Please provide reasons for your response.

SIRO does not agree with ComReg's proposal that a differentiated pricing remedy (of no price control) should apply to Eircom in the NBP Intervention Area (IA) of the Zone B MI WDC Markets, while obligations of access, non-discrimination, and transparency continue to apply. Below are the reasons supporting this stance:

Key Issues with ComReg's Proposal

1. **Potential Anti-Competitive Risks:** ComReg acknowledges Eircom's Significant Market Power (SMP) and vertical integration, which provides it with the ability and incentive to engage in anti-competitive behaviours like excessive pricing or price squeezing. While ComReg assumes that the presence of NBI as an alternative provider may constrain Eircom's pricing behaviour in the IA, the competition from NBI is still nascent and limited in volume. Without a price control obligation, Eircom could leverage its position to self-supply at preferential rates or use discriminatory pricing to disadvantage competitors, which could distort competition and harm downstream markets.
2. **Transparency and Non-Discrimination Are Insufficient:** Transparency and non-discrimination obligations alone cannot adequately address the risks of excessive pricing or subtle anti-competitive strategies such as predatory pricing or delayed access. ComReg itself has previously emphasised that these obligations alone are insufficient to mitigate competition problems, particularly where pricing flexibility exists.
3. **Market Maturity of NBI:** NBI's competitive presence is limited, and its pricing is benchmarked against Eircom's regulated rates. This creates a dependency on Eircom's pricing structure, effectively neutralizing NBI's ability to act as a strong competitive constraint. Additionally, the small volume of MI WDC services currently sold by NBI exacerbates concerns about its ability to exert sufficient market pressure.
4. **Risk of Exploitative Practices in the Absence of Cost Orientation:** Cost orientation obligations serve as a critical safeguard against excessive pricing. Removing such obligations in the IA opens the door for Eircom to charge excessive prices, particularly given the higher cost-to-serve in the IA relative to other parts of Zone B. This could lead to inflated input costs for competitors and reduce their ability to compete effectively.
5. **Inconsistent Regulatory Approach:** Maintaining cost orientation in the rest of Zone B while removing it in the IA creates a fragmented regulatory framework that could lead to confusion and exploitation. Uniform price controls across Zone B would ensure consistency and fairness in regulatory oversight.

Recommendations

- ComReg should maintain cost orientation obligations for Eircom in the IA of Zone B MI WDC Markets to address the risks of excessive pricing and ensure a level playing field for competitors.

- The role of NBI as a competitor should be reviewed regularly, but until it achieves significant scale and competitive presence, full reliance on NBI to constrain Eircom is premature and risks undermining market competition.

In conclusion, while access, transparency, and non-discrimination obligations are necessary, they are not sufficient to mitigate the risks posed by Eircom's SMP in the absence of price control. The removal of cost orientation in the IA may lead to anti-competitive outcomes, ultimately harming both competition and consumers in the MI WDC market.

10. Do you agree with ComReg's view that a cost orientation price control obligation should be maintained for Eircom's MI WDC products, services and associated facilities, including WDM services, outside the IA in Zone B of the MI WDC Markets? Please provide reasons for your response.

Yes, SIRO agrees with ComReg's proposal to maintain the cost orientation price control obligation for Eircom's MI WDC products, services, and associated facilities, including WDM services, outside the IA in Zone B of the MI WDC Markets. Below are the reasons for this agreement:

Key Reasons for Support

1. **Addressing Excessive Pricing Concerns:** ComReg has identified potential competition problems related to excessive pricing in Zone B of the MI WDC markets. A cost orientation obligation ensures that Eircom cannot exploit its Significant Market Power (SMP) by charging excessive prices, which would increase input costs for alternative operators and harm competition.
2. **Promoting Efficient Investment:** By aligning wholesale prices with efficient costs, the cost orientation remedy provides alternative operators with "build-or-buy" investment signals, encouraging them to roll out their own infrastructure. This fosters long-term competition and reduces dependency on Eircom's infrastructure.
3. **Regulatory Predictability and Stability:** Maintaining the cost orientation obligation aligns with the 2020 Decision, ensuring consistency in regulation. This stability is critical for alternative operators, allowing them to plan their investments and operations with greater certainty.
4. **Encouraging Infrastructure-Based Competition:** Cost orientation supports the development of infrastructure-based competition by providing alternative operators with access to WDC services at fair prices. This competition leads to greater service differentiation and better offerings for end-users.
5. **Limitations of Alternative Price Control Approaches:** Other price control methods, such as benchmarking, retail-minus, or margin squeeze tests, have been deemed unsuitable due to practical implementation challenges, lack of predictability, and difficulty in determining comparable pricing. Cost orientation remains the most effective approach.
6. **Compliance with Regulatory Objectives:** The obligation aligns with ComReg's statutory objectives to promote competition, protect consumers, and ensure efficient investment and innovation in telecommunications markets.

Implementation Approach

ComReg's approach to pricing continuity—where Eircom continues to charge existing regulated prices as fixed price points—is practical and reduces administrative complexity. This approach ensures immediate protection for operators and consumers while further cost modelling or adjustments can be evaluated over time.

Conclusion

Maintaining the cost orientation price control obligation is necessary to mitigate the risks of anti-competitive behaviour by Eircom and to promote sustainable competition in the Zone B MI WDC Markets.



It ensures fair pricing, facilitates investment by alternative operators, and ultimately benefits end-users through improved services and competitive pricing.

11. Do you agree with ComReg's view that Eircom should charge the current Zone B rental prices in the LLRO price list (i.e., the pricing continuity approach), as fixed price points, for Eircom's MI WDC products and services, including WDM services, outside the IA in Zone B of the MI WDC Markets, and the current rental prices in the LLRO price list for the associated Eircom interconnection services? Please provide reasons for your response.

SIRO agrees with ComReg's view that Eircom should continue to charge the current Zone B rental prices in the LLRO price list (i.e., the pricing continuity approach) as fixed price points for its MI WDC products and services, including WDM services, outside the IA in Zone B. Here are the reasons supporting this position:

1. Market Stability and Predictability

- ComReg emphasizes that the pricing continuity approach provides market stability and price predictability, which is critical for fostering investment by alternative operators and ensuring confidence in the regulatory framework. Such stability is essential to support long-term planning and decision-making for operators.
- Predictable pricing helps alternative operators avoid uncertainties that might deter infrastructure investments, ensuring more robust competition in the long term.

2. Safeguarding Competition

- Fixed price points ensure that Eircom cannot lower prices strategically to undercut competitors or raise them to exploit its Significant Market Power (SMP). This approach maintains a balanced competitive environment in Zone B.
- This pricing strategy is particularly important in non-competitive areas where alternative operators rely heavily on regulated access to Eircom's MI WDC products and services.

3. Alignment with Regulatory Objectives

- ComReg's approach aligns with its objective of promoting efficient investments and fostering a level playing field for operators. By maintaining existing price points, the regulatory framework ensures that Eircom's charges remain justifiable while protecting operators from excessive costs.
- The continuity approach is also consistent with Regulation 56(4) of the European Electronic Communications Code (ECC), which emphasizes the importance of ensuring reasonable wholesale charges that reflect efficient costs.

4. Avoidance of Implementation Challenges

- While cost orientation is the broader price control mechanism, transitioning to entirely new pricing methodologies, such as updated cost models, could introduce complexities and implementation delays. The continuity approach avoids these difficulties while maintaining compliance with regulatory principles.

5. Eircom's Financial Sustainability



- ComReg has assessed that the existing pricing does not undermine Eircom's ability to recover its efficient costs, including a reasonable rate of return. Based on financial data provided by Eircom, current revenue and profitability levels indicate that these price points are sustainable.

6. Benefits for Business Consumers

- Wholesale pricing certainty underpins retail price stability, which benefits end-users, including businesses relying on high-quality leased lines for their operations. Stable retail pricing can drive greater trust and demand in downstream markets.

Conclusion

The pricing continuity approach represents a balanced, pragmatic solution that achieves market stability, supports competition, and ensures fair pricing without imposing undue burdens on Eircom or alternative operators. By continuing with the current Zone B rental prices in the LLRO price list, ComReg addresses key competition concerns while fostering a predictable and fair regulatory environment for all stakeholders.

12. Do you agree with ComReg's view that the charges for co-location services and the upfront (non-recurring) charges for connections should reflect no more than the actual efficient costs incurred by Eircom plus a reasonable rate of return? Please provide reasons for your response.

Yes, SIRO agrees with ComReg's view that the charges for co-location services and the upfront (non-recurring) charges for connections should reflect no more than the actual efficient costs incurred by Eircom, plus a reasonable rate of return. Below are the reasons for this agreement:

1. Preventing Excessive Charges

- Eircom's designation as having Significant Market Power (SMP) in the MI WDC markets indicates a risk that it could impose excessive upfront or co-location charges. Such charges could create a barrier to entry or expansion for alternative operators, distorting competition and leading to inefficient market outcomes.
- Ensuring charges reflect only efficient costs, plus a reasonable return, prevents such exploitative practices, fostering a fairer competitive landscape.

2. Facilitating Market Entry

- Upfront charges, such as connection fees and co-location costs, represent significant one-time investments for alternative operators. If these charges are inflated beyond efficient costs, they deter smaller operators from entering the market or expanding their operations, particularly in less competitive areas.
- By requiring cost-reflective pricing, ComReg ensures that operators can access necessary infrastructure on fair and reasonable terms, lowering the barriers to entry.

3. Incentivising Efficient Investment

- A cost-oriented pricing approach ensures that Eircom can recover the actual costs of providing services, including a reasonable return on capital, without over-rewarding inefficiencies. This incentivizes Eircom to maintain and improve its infrastructure while ensuring competitive conditions for access.
- Such a policy is in line with ComReg's regulatory objectives under the European Electronic Communications Code (EECC), which aims to balance fair returns for incumbents with the promotion of competition.

4. Alignment with International Best Practices

- Cost-reflective pricing for co-location and connection services is a standard regulatory approach in many jurisdictions where dominant operators are required to provide access to their facilities. This ensures that incumbents cannot leverage their control over essential infrastructure to impose unreasonable costs.

5. Promoting Downstream Competition

- Fair and efficient upfront charges lower the costs of wholesale inputs for alternative operators, enabling them to offer competitive retail prices to end-users. This enhances consumer choice and drives innovation in downstream markets.

6. Practical Implementation

- Cost-based pricing is measurable and enforceable through regular cost audits, ensuring transparency and regulatory compliance. ComReg can monitor Eircom's charges to ensure alignment with its cost-orientation obligations, minimizing the risk of disputes.

Conclusion

Requiring Eircom's co-location and connection charges to reflect actual efficient costs, plus a reasonable rate of return, strikes a fair balance between enabling Eircom to recover its investments and preventing anti-competitive pricing practices. This approach supports competition, encourages efficient investment, and ultimately benefits end-users by fostering fair pricing and innovation in the MI WDC markets.

13. Do you agree with ComReg's view that Eircom should maintain its cost accounting obligation in relation to its Modern Interface Wholesale Dedicated Capacity products, services and associated facilities? Please provide reasons for your response.

Yes, SIRO agrees with ComReg's view that Eircom should maintain its cost accounting obligation in relation to its Modern Interface (MI) Wholesale Dedicated Capacity (WDC) products, services, and associated facilities. Below are the reasons for this agreement:

1. Promoting Transparency

- Cost accounting obligations provide critical transparency in how Eircom calculates the costs of its MI WDC products and services. This ensures that charges for wholesale services are aligned with efficient costs and prevents Eircom from inflating costs to disadvantage competitors.
- Transparency also fosters trust among stakeholders and provides ComReg with the necessary data to assess compliance with regulatory obligations.

2. Ensuring Non-Discrimination

- Eircom's designation as having Significant Market Power (SMP) means there is a risk of discriminatory pricing or margin squeezes, particularly against competitors reliant on its wholesale inputs. Cost accounting ensures that prices are set in a non-discriminatory manner by making the cost structures visible and enforceable.

3. Preventing Anti-Competitive Practices

- Without cost accounting obligations, Eircom could obscure its cost structures, making it difficult for ComReg or competitors to detect practices like cross-subsidization or predatory pricing. Maintaining these obligations mitigates this risk.
- For example, if costs are not transparent, Eircom could allocate disproportionate costs to certain services or facilities, justifying higher charges or engaging in exclusionary behaviour.

4. Enabling Effective Price Control

- Cost accounting supports the implementation and monitoring of cost-oriented price controls, which are essential for addressing excessive pricing in markets where competition is weak, such as Zone B of the MI WDC markets.
- This ensures that charges for MI WDC products and services remain competitive and fair, benefiting both wholesale operators and end-users.

5. Facilitating Regulatory Oversight

- Maintaining a cost accounting obligation provides ComReg with detailed information to verify compliance with regulatory requirements and to ensure that Eircom is not engaging in anti-competitive pricing strategies.
- Regular audits of Eircom's cost accounting can help identify inefficiencies and ensure alignment with regulatory objectives.

6. Alignment with EU Regulatory Principles

- Cost accounting obligations align with the principles of the European Electronic Communications Code (EECC), which emphasizes the importance of cost transparency and efficient pricing for regulated entities with SMP.
- These obligations are a cornerstone of effective regulatory frameworks across the EU and provide a benchmark for fair competition in wholesale markets.

Conclusion

The continuation of Eircom's cost accounting obligation is critical for promoting transparency, preventing anti-competitive practices, and enabling effective regulatory oversight. These obligations ensure that Eircom's MI WDC products and services are priced fairly and aligned with efficient costs, fostering competition and protecting end-users in the MI WDC markets.

14. Do you agree with ComReg's view that Eircom should continue to maintain its accounting separation obligation in relation to its Modern Interface Wholesale Dedicated Capacity products, services and associated facilities, and for the avoidance of doubt this means the inclusion of dark fibre in the MI WDC HCA statements and AFI statements? Please provide reasons for your response.

Yes, SIRO agrees with ComReg's view that Eircom should continue to maintain its accounting separation obligation in relation to its Modern Interface (MI) Wholesale Dedicated Capacity (WDC) products, services, and associated facilities, including the inclusion of dark fibre in the Historical Cost Accounting (HCA) and Additional Financial Information (AFI) statements. Here are the reasons supporting this view:

1. Ensuring Transparency

- Accounting separation provides clear visibility into Eircom's cost structures and revenues for MI WDC products and services, helping to ensure that pricing reflects the true costs of providing these services. Including dark fibre in the HCA and AFI statements enhances transparency in a market where infrastructure costs are a significant factor.

2. Preventing Cross-Subsidization

- With accounting separation, it becomes easier for ComReg to detect whether Eircom is engaging in cross-subsidization between its wholesale and retail businesses. For instance, Eircom could otherwise allocate disproportionate costs to its wholesale business to inflate prices or reduce profits in its retail arm, disadvantaging competitors who rely on wholesale services.
- The inclusion of dark fibre, which is a critical input for alternative operators, ensures that its costs and revenues are fully accounted for, reducing the risk of distortive practices.

3. Supporting Non-Discrimination

- Eircom's SMP in the MI WDC market gives it the ability to discriminate between its downstream retail operations and other wholesale customers. Accounting separation ensures that Eircom treats all parties equally by providing transparent data that can be scrutinized for evidence of discriminatory practices.

4. Monitoring Dark Fibre Use

- Dark fibre is increasingly important in the context of high-capacity and future-proof connectivity. By including dark fibre in the HCA and AFI statements, ComReg ensures that this critical asset is fully transparent in Eircom's reporting. This is essential for monitoring its use, pricing, and impact on the competitive landscape.

5. Alignment with Regulatory Objectives

- ComReg's obligation to promote competition, protect consumers, and ensure non-discriminatory access to essential wholesale inputs aligns with the requirement for accounting separation. Including dark fibre in financial statements strengthens compliance with these objectives.

6. Avoidance of Market Distortions

- Without accounting separation, Eircom's dominant position could lead to pricing distortions, such as bundling strategies that obscure the cost of specific services like dark fibre. Accounting separation ensures that such risks are mitigated, and the financial treatment of all inputs is clear

7. Alignment with European Standards

- Accounting separation, including specific reporting for dark fibre, aligns with best practices outlined under the European Electronic Communications Code (EECC). This ensures that Eircom complies with both national and EU regulatory frameworks designed to foster fair competition and transparency in wholesale markets.

Conclusion

Maintaining Eircom's accounting separation obligations, with the explicit inclusion of dark fibre in HCA and AFI statements, is essential for ensuring transparency, preventing anti-competitive practices, and supporting fair competition in the MI WDC market. This approach enables effective regulatory oversight, protects alternative operators from potential abuse of SMP, and aligns with both national and European regulatory objectives.

15. Do you agree with ComReg's view that Eircom should continue to maintain its statement of compliance obligation in relation to its MI WDC products, services and associated facilities in the WDC market? Please provide reasons for your response.

Yes, SIRO agrees with ComReg's view that Eircom should continue to maintain its statement of compliance (SoC) obligation in relation to its Modern Interface (MI) Wholesale Dedicated Capacity (WDC) products, services, and associated facilities in the WDC market. Below are the reasons supporting this position:

1. Ensuring Regulatory Oversight and Accountability

- The SoC obligation provides a formal mechanism for Eircom to demonstrate compliance with its regulatory obligations, including access, transparency, non-discrimination, and cost orientation. This is particularly important given Eircom's designation as having Significant Market Power (SMP) in the WDC market.
- By maintaining the SoC, ComReg and stakeholders gain visibility into Eircom's adherence to its obligations, ensuring effective regulatory oversight and accountability.

2. Preventing Anti-Competitive Practices

- The SoC ensures that Eircom is held to account for its commitments to fair and non-discriminatory behaviour. Given its vertical integration and SMP, there is a risk of anti-competitive practices, such as preferential treatment for its own downstream businesses. A maintained SoC serves as a safeguard against these risks.

3. Enhancing Transparency

- A publicly available SoC increases transparency in Eircom's operations, reassuring alternative operators that Eircom is compliant with its regulatory obligations. This transparency fosters trust among market participants and encourages competition in the WDC market.

4. Facilitating Dispute Resolution

- The SoC provides a clear record of compliance that can be used to assess disputes or investigate complaints about Eircom's conduct in the WDC market. This ensures that any concerns raised by competitors or customers can be resolved based on documented evidence.

5. Supporting Non-Discrimination

- Given the importance of non-discrimination obligations in ensuring a level playing field, the SoC acts as an important tool to verify that Eircom is treating all access seekers equally. This is critical for promoting effective competition and ensuring that smaller operators are not disadvantaged.

6. Alignment with EU and National Regulatory Frameworks

- The SoC obligation aligns with the European Electronic Communications Code (EECC) and Irish regulatory frameworks, which emphasize the importance of transparency and compliance for operators with SMP. This obligation ensures that Eircom continues to operate in accordance with best practices and regulatory principles.

7. Promoting Market Confidence

- Maintaining an SoC obligation signals to market participants that Eircom is committed to complying with its regulatory obligations. This builds confidence among alternative operators and encourages them to invest in the market, ultimately benefiting consumers through greater competition and improved services.

Conclusion

The continuation of Eircom's SoC obligation is essential to ensuring compliance, promoting transparency, and preventing anti-competitive practices in the MI WDC market. It supports effective regulatory oversight, aligns with EU and national frameworks, and reassures market participants of fair treatment, fostering competition and consumer benefits.

16. Do you agree with ComReg's proposals on the withdrawal of SMP remedies on Eircom in the LB TI WDC Market and in WPZs that have moved from Zone B MI WHQA Markets in the 2020 Decision to Zone A MI WDC Markets in this Consultation? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

SIRO partially agrees with ComReg's proposals to withdraw SMP remedies on Eircom in the Low Bandwidth Traditional Interface (LB TI) WDC Market and in Workplace Zones (WPZs) transferring from Zone B MI WHQA to Zone A MI WDC markets. However, this agreement is conditional upon adequate safeguards being implemented to ensure competition and prevent market distortions. Below are detailed reasons and concerns:

Agreement with the Withdrawal of Remedies in the LB TI WDC Market

1. Declining Market Relevance:

- The LB TI WDC Market is diminishing in importance due to the migration to modern interfaces (MI), such as Ethernet and WDM. ComReg's analysis has indicated that the number of active LB TI circuits has dropped significantly, suggesting the market is no longer critical for competition.
- Given the negligible demand for these legacy services, continued regulation may not be proportionate.

2. Sunset Provisions Ensure a Smooth Transition:

- The proposed six-month sunset period provides sufficient time for Eircom's wholesale customers to transition to alternative arrangements.
- Eircom will be required to maintain access at current prices during this period, ensuring service continuity for existing customers.

Concerns Regarding the Withdrawal of Remedies in WPZs Transferring from Zone B to Zone A MI WDC Markets

1. Premature Deregulation Risks:

- While ComReg's geographic market analysis indicates that WPZs moving to Zone A are now sufficiently competitive, this transition relies on the assumption of effective competition from alternative networks. However, the robustness of competition in these areas requires close monitoring to prevent potential anti-competitive practices by Eircom.

2. Market Dynamics Post-Transition:

- In deregulated WPZs, Eircom will not be subject to obligations such as non-discrimination and transparency for new access requests. This could create opportunities for anti-competitive behaviour, particularly in areas where alternative providers have only recently established a presence.

- ComReg should ensure that its updated assessment of competition conditions, such as infrastructure deployments and connected premises, is accurate and reflective of on-the-ground realities.

Recommendations for Mitigating Potential Risks

1. Monitoring Post-Deregulation:

- ComReg should establish a mechanism to monitor market dynamics in deregulated WPZs, ensuring that alternative operators can sustain competition without ex-ante remedies.
- Any signs of Eircom leveraging its dominance in adjacent markets (e.g., by bundling or discriminatory practices) should trigger immediate regulatory intervention.

2. Addressing Market Power Concerns:

- In cases where alternative providers struggle to compete, ComReg should be prepared to reintroduce targeted remedies to address specific competition concerns, such as access barriers or pricing distortions.

3. Extended Sunset Periods for Critical Markets:

- For WPZs transitioning to Zone A, a longer sunset period (e.g., nine months) would provide stakeholders with additional time to adjust and avoid service disruptions.

Conclusion

The withdrawal of SMP remedies in the LB TI WDC Market is reasonable given its declining relevance and the safeguards provided by the sunset period. However, the deregulation of WPZs transitioning from Zone B MI WHQA to Zone A MI WDC markets must be approached with caution. ComReg should adopt a proactive monitoring and intervention framework to ensure that competition develops sustainably in these areas. These measures will help mitigate risks of market distortions and protect end-users from potential anti-competitive practices.

Conclusion

SIRO strongly supports the need for continued—and in certain cases, more stringent—regulation of Eircom in the Wholesale Dedicated Connectivity (WDC) market as proposed in ComReg 24/92. The evidence presented in this consultation unequivocally highlights Eircom's entrenched position as the dominant provider in key market segments, particularly in Zone B MI WDC markets, where Significant Market Power (SMP) remains a substantial barrier to effective competition.

ComReg's detailed analysis has identified persistent competition problems, including the risks of excessive pricing, discriminatory practices, and vertical leveraging by Eircom. These risks, if left unaddressed or mitigated insufficiently, would undermine the growth and sustainability of competition, inhibit innovation, and ultimately harm end-users by limiting choice and increasing costs.

SIRO believes that the regulatory remedies proposed by ComReg, including obligations on access, transparency, non-discrimination, cost orientation, accounting separation, and statements of compliance, are critical to preserving a level playing field in the WDC market. Furthermore, given the evolving nature of the market and the reliance of smaller operators on regulated wholesale inputs, it is essential to ensure that these remedies are not only maintained but also enhanced where necessary to reflect the current and future market realities.

SIRO's Call for Enhanced Regulation:

1. **Strengthened Oversight:** ComReg should introduce more robust mechanisms for monitoring compliance with obligations such as equivalence of input (EOI) and transparency, ensuring that Eircom's behaviour is subject to closer scrutiny.
2. **Retention of Cost-Oriented Pricing:** Cost orientation remains indispensable in preventing excessive pricing and fostering fair competition. SIRO fully supports the continued imposition of this obligation on Eircom for its WDC products and services.
3. **Long-Term Safeguards:** In areas where geographic market conditions appear to justify deregulation, ComReg must adopt a cautious approach, supported by ongoing market surveillance to identify and address potential anti-competitive practices before they arise.
4. **Inclusion of Dark Fibre:** Ensuring the inclusion of dark fibre in Eircom's accounting separation and financial reporting is crucial for maintaining transparency and ensuring fair pricing for a critical wholesale input.

Final Position

In a market where Eircom continues to dominate, the risk of distortion and harm to competition remains significant. SIRO urges ComReg to proceed with its proposed regulatory measures while adopting an even more vigilant stance in enforcing these remedies. Continued regulation is not only necessary but must evolve to ensure that the WDC market develops in a way that encourages investment, supports innovation, and delivers high-quality, cost-effective services to businesses and end-users in Ireland. SIRO is committed to working collaboratively with ComReg to achieve these objectives and to ensure a competitive, transparent, and equitable telecommunications market.



Virgin Media response to:

“Market Review - Wholesale Dedicated Capacity (WDC) Market - Consultation and Draft Decision” - ComReg Doc 24/92, published 27 November 2024

Date of submission: 31 January 2025

Non-Confidential

Introduction

1. Virgin Media Ireland ("**Virgin Media**") welcomes the opportunity to respond to Consultation 24/92 published by the Commission for Communications Regulation ("**ComReg**") on 27 November 2024 and titled *"Market Review - Wholesale Dedicated Capacity (WDC) Market -Consultation and Draft Decision"* ("**the Consultation**").
2. The terms used in this response have the same defined meanings as set out in the Consultation. All references to sections and paragraphs in this response are references to sections and paragraphs of the Consultation, unless otherwise indicated.
3. **No part of this response is considered confidential.**
4. By reference to Table 1 below, we note that ComReg proposes to make a decision that is, in large part, very similar to its 2020 Decision, subject to certain changes in terminology and methodology and adjustments to relevant figures.
5. In 2020, the relevant wholesale markets were described as Wholesale High Quality Access ('**WHQA**'). They are now described as Wholesale Dedicated Capacity ('**WDC**'). Both are commonly known as wholesale Leased Lines ("**LLs**"). This term describes the supply of dedicated data connectivity between fixed locations, with uncontended connections and symmetrical speeds and an emphasis on quality, reliability, and redundancy. We agree with ComReg that retail LLs are generally used by medium to large businesses to support a range of ICT applications and to build Wide Area Networks ("**WANS**") and support Virtual Private Networks ("**VPNs**"). We agree with the overall description of WDC set out in section 2.2, including this key point in paragraph 2.6 - *"Wholesale LL services allow SPs to provide retail LL services (and other associated services) that they would not otherwise be capable of providing through the use of their own network."*
6. We further note that the 2020 decision and the 2025 draft decision are both based on the Workplace Zone ('**WPZ**') as the relevant geographic unit. In the Consultation, competition in each WPZ is assessed using the following criteria (the "**Criteria**"):
 - a) **Criterion 1:** A WPZ has two or more alternative networks ("**ANs**") present (3 networks including Eircom);
 - b) **Criterion 2:** at least 60% of connected premises ("**CPs**") within a WPZ are within 50 metres of two or more ANs;
 - c) **Business Parks Test:** A WPZ overlaps with a business park which is intersected or passed by two or more ANs; then all premises within a business park are deemed to be passed by such networks; and
 - d) **Island Test:** If a WPZ fails the above criteria but is surrounded by WPZs that have met the above criteria, the WPZ is deemed to pass the Criteria.

7. Table 1 below captures the overall situation as between the 2020 Decision and 2025 draft Decision:

2020 Decision		2025 draft Decision	
WHQA markets	SMP designation	WDC markets	SMP Designation
a) National LB TI	Eircom has SMP	a) National LB TI	No longer regulated (25.8% fall in demand since 2020)
b) National HB TI	No SMP	b) National HB TI	No SMP
4 geographic MI WHQA markets - for wired LLs of any bandwidth		4 geographic MI WDC markets - for wired LLs of any bandwidth	
Area 1 – 1,582 WPZs covering approx. 58.4% (4,950) of wired CPs	No SMP	Market 1 – 2,565 WPZs - each contains CPs and meets the Criteria	No SMP
Area 2 – 1,998 WPZs - covering approx. 41.6% (3,523) of wired CPs	Eircom has SMP	Market 2 – 2,455 WPZs - each contains CPs and does not meet the Criteria	Eircom has SMP
Area 3 – 1,153 WPZs	No SMP	Market 3 – 1,079 WPZs - each contains no CPs and meets the Criteria	No SMP
Area 4 – 2,486 WPZs	Eircom has SMP	Market 4 - 1,120 WPZs - each contains no CPs and does not meet the Criteria	Eircom has SMP

8. In the 2020 Decision, ComReg amalgamated the Area 1 and Area 3 markets and the Area 2 and Area 4 markets. ComReg determined that Eircom had SMP in the amalgamated Area 2 and Area 4 markets and imposed a range of appropriate obligations. On this occasion, ComReg has amalgamated Markets 1 and 3 and Markets 2 and 4 and its overall conclusion is as follows:
- a) No Undertaking has SMP in Markets 1 and 3 (**'Zone A MI WDC Markets'**); and
 - b) Eircom has SMP in Markets 2 and 4 (**'Zone B MI WDC Markets'**).
9. We agree with ComReg that Eircom has SMP in the Zone B MI WDC Markets (and related markets) for reasons that ComReg summarises as follows: *"[as] a vertically-integrated SP that competes at both the retail and wholesale level ... Eircom has the ability and incentive to potentially engage in anti-competitive behaviours, ultimately to the detriment of retail competition. These behaviours include*

the ability and incentive for Eircom to deny or delay other SPs access to its network and to engage in pricing and other behaviours which could restrict or distort competition by actual or potential competitors.” (paragraph 1.15). For the reasons set out in the Consultation, and summarised below in our responses to the fifteen questions, we also agree that it is necessary and justified for ComReg to impose essentially the same set of ex ante obligations for the Zone B MI WDC Markets as were imposed under the 2020 Decision. Those obligations relate to the following: Access; Non-discrimination; Transparency; Price Control and Cost Accounting; Accounting Separation; and Statement of Compliance (**‘SoC’**). We note that the non-pricing obligations are largely maintained from the 2020 Decision while, for the Price Control obligation, ComReg will maintain the obligation of cost orientation as applied in the 2020 Decision. Our responses to the fifteen questions in the Consultation are set out below.

Q.1 - Do you agree that the main developments identified in the provision of retail LL market are those which are most relevant in informing the assessment of the Relevant Markets?

10. We agree with ComReg that the main developments in retail LL are most relevant in assessing the Relevant Markets. We also note and agree with ComReg as to the current overall state of the retail LL market, as set out in section 3.3 and summarised in paragraph 3.25. We particularly note the following:
 - a) The retail market is characterised by many LL SPs that vary in size. There are now 18 retail LL SPs, up from 16 in 2020, and 14 of the 18 also operate in a relevant upstream wholesale WDC market.
 - b) Retail LL SPs fall into three broad categories: “Own network SPs” (which includes Eircom and Virgin Media); “Wholesale LL purchasers”; and “Resale retail LL SPs”.
 - c) The total number of wired retail LLs increased by 3,362, or 27.5%, between 2020 and H2 2023. Eircom’s market share has stayed relatively stable, Magnet had the largest increase, and Other Operators’ market shares increased as did that of Digiweb (figures in the Consultation are redacted).
11. We agree with ComReg as to how the retail LL market has developed on the demand-side and supply-side, as set out in section 3.4 and summarised in paragraph 3.28. We note that there has been:
 - a) a continued decline in TI LL (over copper) with demand having effectively collapsed and a continued migration to MI LL (over fibre) (as shown in Fig. 10 in paragraph 3.32, MI LL increased by 28.5% between 2020 and 2023 while TI LL fell by 53.4%, and MI LL made up 91.4% of all retail fixed LLs in 2023 compared to 79.5% in 2020);
 - b) a continued increase in bandwidth requirements over MI LL;
 - c) more adoption of software-defined wide area network (**‘SD-WAN’**); and
 - d) ongoing and planned rollouts and/or network upgrades by several Network Operators (**‘NOS’**) including Eircom, SIRO, NBI and Virgin Media.
12. Given the above, we agree with ComReg that continued regulation of the LB TI market is no longer necessary as LB TI volumes have shrunk and will continue to shrink, just as the HB LL market has expanded and will continue to expand.

Q.2 - Do you agree with ComReg's proposed definition of the relevant retail LL market?

13. Noting ComReg's view that it need not precisely define the retail market, we nevertheless agree with ComReg that the Retail MI Product Market consists of MI Retail LLs composed of fibre Ethernet LLs, xWDM LLs and other modern interface LLs and we agree with ComReg's overall conclusions as set out in section 3.5.12:
- a) Wireless Ethernet LLs are not an effective substitute for fibre Ethernet and/or xWDM LLs and are therefore not in the same retail market.
 - b) Broadband, including business broadband, is not an effective substitute for Ethernet or xWDM LLs and is therefore not in the same retail market.
 - c) Dark fibre services are not an effective substitute for fibre LL services, at a retail level, and are therefore not in the same retail market.
 - d) There is no bandwidth break in the retail MI LL market.
14. We also agree that the geographic scope of the Retail MI Product Market is national, as conditions of competition are sufficiently homogenous throughout the country, and we agree that this is not the case for the wholesale level, as there are regional differences in supply and demand which create sub-national wholesale markets.

Q.3 - Do you agree with ComReg's product market assessment for the Relevant WDC Markets?

15. We agree with ComReg's assessment of the wholesale product market and with its division into four geographic markets, as described in section 4.2 and captured in Table 1 above. We further agree with ComReg's positions on the following points:
- a) The relevant focal product is wholesale Ethernet LL services provided over fibre ("**Fibre Ethernet WDC**") as this is the main technology used to provide WDC services.
 - b) Wired xWDM WDC falls within the same product market as Fibre Ethernet WDC, as they are effective substitutes with similar characteristics. Both technologies can be used to provide dedicated connections, symmetric speeds, and high-quality services, and SPs purchase both, for own network use and for downstream supply of retail and wholesale LL services. (section 4.3.1)
 - c) The wholesale product market should exclude P2P wireless Ethernet as this is not an effective substitute. The different characteristics of P2P wireless Ethernet restrict it from being used to provide services of equivalent quality as those provided over fibre LLs, a fact reflected in multi-site customers' distinct preference for wired Ethernet WDC and/or wired xWDM WDC. (section 4.3.2)
 - d) The wholesale product market should exclude wholesale broadband for essentially the same reasons as apply to P2P wireless Ethernet. It is not an effective substitute. (section 4.3.3)
 - e) The wholesale product market should include dark fibre ("**DF**"). DF involves an SP renting a fibre optic cable from the network owner and installing its own electronic equipment to "light the fibre" and transmit data. We agree that wholesale DF is, on balance, an effective substitute for wholesale wired ethernet LLs as DF can provide high capacity symmetric and dedicated

connections (though the DF purchaser must install and manage its own electronic equipment). We further note that other countries include DF in the WDC product market including Austria, Iceland, the Netherlands, and the UK. (section 4.3.4)

- f) The MI WDC product market should not be differentiated by bandwidths based on the “chain of substitution” analysis set out in section 4.3.5.

Q.4 - Do you agree with ComReg’s geographic market assessment for the Relevant WDC Markets?

16. ComReg identifies four MI WDC geographic markets as described in paragraph 1.10 & 4.128 and tabulated below:

MI WDC Geographic Markets					
Markets	Number of areas	WPZs	Contains CPs	Satisfies the Criteria	SMP
Market 1	Four - A1, A2, A3, and A6	2,565	Yes	Yes	No SMP
Market 2	One - B1	2,455	Yes	No	Eircom SMP
Market 3	Three -A4, A5 and A7	1,079	No	Yes	No SMP
Market 4	One - B2	1,120	No	No	Eircom SMP

17. We agree with the Workplace Zone (“**WPZ**”) being adopted as the appropriate geographic unit from which to define the geographic scope of each business-focussed WDC market, as was done in the 2020 decision. We note ComReg’s views that a WPZ is an appropriate size to allow for detailed analysis while avoiding burdensome micro-analysis, that Eircom exchanges are less useful geographic units than WPZs because exchanges are not as relevant to the location of businesses using LLs, and that Eircom exchange areas vary greatly in size such that conditions of competition are much less likely to be homogenous within them. We also have no objections to the four Criteria used by ComReg to assess the conditions of competition in each WPZ, as briefly outlined below:

- **Criterion 1 - A WPZ has two or more ANs present (3 networks including Eircom)** - we note that this is supported by the European Commission’s Explanatory Note to the 2020 Recommendation and by the BEREC Common Position. It is reasonable to state that the more networks are in a WPZ, the more competitive it is likely to be, and that a 3-player WPZ is likely to be sufficiently competitive whereas a 1-player or 2-player WPZ is not.
- **Criterion 2 - 60% of current or potential demand must be within 50 metres of two or more ANs** - this captures the ability of an Alternative Network to extend its network to serve an end-user. We remain of the view, as expressed in our response to ComReg’s Qualitative Questionnaire in 2022, that 50 metres is an appropriate distance.
- **Proportionality Criterion** - this is a measure of how many premises an Alternative Network must cover in a WPZ (by meeting the 50-metre distance criterion) as to constitute a competitive

constraint. We agree with ComReg that 60% is a fair and reasonable threshold. We agree that if an Alternative Network covers the majority of premises, it indicates sufficiently distinct competitive conditions for the WPZ to fall within a separate geographic market. We also agree that a 50% threshold is too low as half of all premises in a WPZ would lack access to an Alternative Network.

- **“Business Parks” & “Islands” tests** - a WPZ that fails Criteria 1 & 2 would ordinarily be deemed to not be effectively competitive such that it would be subject to ex ante obligations. We agree with ComReg’s additional “Business Park Test” whereby any WPZ that overlaps with a Business Park, which passes the 2 Alternative Network test, is considered as having met the Criteria. We also agree that the “Islands Test” should apply to any WPZ that fails the Criteria but is surrounded by WPZs that meet the Criteria.

18. Finally, we generally agree with the methodology used by ComReg to map supply and demand conditions in the WPZs and we have no specific comments regarding same.

Q.5 - Do you agree with ComReg’s assessment of the Trunk –Terminating Boundaries of the MI WDC Markets?

19. We agree with ComReg’s assessment, noting that ComReg views the criteria that were applied in the 2020 Decision as still appropriate. We also note the increase in the number of Trunk Nodes since the 2020 Decision (131 up from 93) which indicates development in the trunk market due to network build and expansion. We agree that the trunk market should include all MI WDC irrespective of bandwidths between each of the Trunk Nodes, as set out in Annex 8 of the Consultation. As outlined, the existence of a chain of substitution between bandwidths in the MI WDC market (as described in section 4.3.5) applies equally to the trunk market, such that neither requires a bandwidth break. Lastly, we note ComReg’s intention to closely monitor the market, particularly in relation to potential changes in ownership or other significant developments, and we support this proactive approach to ensuring ongoing competition and service quality. If market conditions should shift in a way that materially impacts competition, having flexibility to revisit and review the market sooner is prudent and necessary.

Q.6 - Do you agree with ComReg’s assessment of SMP in the Relevant WDC Markets?

20. We agree with ComReg’s assessment of SMP, noting that a three criteria test is unnecessary before advancing to the SMP assessment, given the presumption in favour of regulation at EU level, though, in any event, if a test was carried out it would be passed as the SMP assessments of MI WDC Market 2 and MI WDC Market 4 in (Subsection 5.5 and 5.7m, respectively) substantially overlap with a three criteria test.

21. We further agree that of the twelve criteria other than market share that are used to assess SMP ((a) to (l) as listed in paragraph 5.10), the following eight criteria are most relevant to the analysis of SMP in the Relevant WDC Markets (noting that SMP can derive from combining criteria): (a). overall size of

the undertaking; (b). control of infrastructure not easily duplicated; (d). absence of, or low, countervailing buyer power; (g). economies of scale; (h). economies of scope; (i). vertical integration; (k). absence of potential competition; and (l). barriers to entry and expansion. ComReg correctly assesses the relevant criteria under three broad headings: existing competition in the Relevant WDC Markets; potential competition in the Relevant WDC Markets; and strength of any countervailing buyer power.

22. We consider ComReg's analysis of the four Relevant Markets and its main findings to be reasonable and accurate. These are summarised below:

- **MI WDC Market 1** - no SMP due to sufficiently strong existing competition, favourable prospects for potential competition, and sufficient countervailing buyer power. ComReg's main conclusions are as follows:
 - i. Eircom's market share is well below 50%;
 - ii. Enet provides open access to its WDC service which is used widely by SPs for LL;
 - iii. SIRO has grown its market share from 0% in 2018;
 - iv. algorithm results show 80% of CPs in Market 1 are within 50 metres of at least two Alternative Networks, which suggests that a number of SPs can provide services to those CPs and thus exert a sufficient competitive constraint on each other;
 - v. no SP can materially leverage its vertically integrated position to the detriment of competition; and
 - vi. there are no significant barriers to expansion.
- **MI WDC Market 2** - Eircom has SMP due to a lack of existing competition, unfavourable prospects for potential competition, and insufficient countervailing buyer power. ComReg's main conclusions are as follows:
 - i. Eircom is by far the largest provider with a market share well above 50% (exact figures redacted);
 - ii. algorithm results show that over 90% of premises have access to only one or no ANs;
 - iii. although many SPs in Market 2 are vertically integrated, they have limited coverage;
 - iv. barriers to expansion are quite high because the density of demand in Market 2 is lower than in Market 1 (2.1 premises per WPZ vs 3.5 premises per WPZ). This makes it harder for an Alternative Network to achieve sufficient economies of scale, plus there are fewer premises within 50 metres of at least 2 Alternative Networks which raises economic costs for Alternative Networks in extending their networks.
 - v. unlike Alternative Networks, Eircom operates a ubiquitous duct/pole/fibre network with significant aspects of costs likely to be amortised by this time.
- **MI WDC Market 3:** No SMP as the WPZs in Market 3 contain no CPs meaning there is no demand and ComReg is therefore unable to assess existing or potential competition, though at least two Alternative Networks are present in some of Market 3 market, if demand should arise
- **MI WDC Market 4:** Eircom has SMP as there is no effective demand and insufficient supply, but if demand was to arise in future, Eircom has a ubiquitous network with insufficient Alternative

Networks to impose a competitive constraint, in contrast to MI WDC Market 3 where at least two Alternative Networks are already present.

Q.7 - Do you agree that the competition problems and the associated impacts on competition end users identified are those that could potentially arise in the Zone B MI WDC Markets (and related markets)?

23. We agree with ComReg that in the absence of ex ante regulation of the Zone B MI WDC Markets, which are not effectively competitive, Eircom would likely have the ability and incentive to influence competition in those markets, due to its SMP and its position as a vertically integrated supplier that competes with its wholesale customers in downstream retail markets. Absent regulation, Eircom would have the ability and incentive to engage in exclusionary practices, exploitative practices, and/or leveraging of its market power (of the types described in sections 6.2.1, 6.2.2, and 6.2.3, respectively). This could affect prices, innovation, output and the variety or quality of goods and services provided in the Zone B MI WDC Markets.
24. Chapter 6 is clear and comprehensive as to the types of competition problem that would be likely to occur. There is no need to outline those problems in this response. We would merely note that ComReg, in paragraph 5.6, quotes the CJEU in *United Brands v. Commission* as to what constitutes dominance under EU competition law, and in paragraph 5.7 ComReg quotes Regulation 45(2) of the ECC Regulations which defines SMP by reference to the concept of dominance: “*An undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.*” These both describe Eircom in the Zone B MI WDC Markets – there are insufficient supply-side or demand-side constraints on Eircom and its economic strength affords it power to behave, to an appreciable extent, independently of its competitors and consumers.

Q.8 - Do you agree with ComReg’s proposals in respect of non-pricing remedies in the Zone B MI WDC Markets?

25. We agree with ComReg that it is necessary to impose access obligations on Eircom given the finding of SMP and noting the ubiquity of its network in the Zone B Markets, which is unparalleled by any other network. Absent regulatory intervention, Eircom would have the incentive and ability to stymie the development of competition, to the detriment of consumers. Denial of access, or unreasonable terms of access, would hinder a sustainable competitive retail market and be contrary to the interests of end-users.
26. We agree, in this regard, that retail LL SPs would be at a serious competitive disadvantage if they could not access Eircom’s network in areas where no Alternative Network is present, or where there is no wholesale offering. We also agree that Eircom’s obligation to provide access to its physical infrastructure, under Regulation 54(1) of the ECC Regulations, is not sufficient to address the requirement for access, for the three reasons as set out in paras 7.11 to 7.13 incl.
27. For the above reasons, we strongly support the imposition of the three SMP obligations set out in Chapter 7: access remedies as described in section 7.2; non-discrimination obligations as described in section 7.3, and transparency obligations as described in section 7.4.

28. We agree with ComReg's observations and proposals regarding the technical nature and form of the Access Remedies, set out in sections 7.2.2 and 7.2.3, and we have no specific comments.
29. We agree with the six conditions to be attached to Eircom's access obligations which ComReg views as necessary, as set out and discussed in section 7.2.4. These six conditions are quite standard and are entirely reasonable and justified, having regard to the objective of ensuring that the access obligations are fully and properly adhered to. The six conditions are that Eircom:
- a) *May not refuse access by way of new product development or amendments to an existing product, unless the request is unreasonable and objective reasons have been provided by the Access Seeker;*
 - b) *May only impose restrictions on access that are intended for the protection of the integrity of the network to the extent that they are justified, reasonable, and proportionate;*
 - c) *May not decline orders for an existing product where the order meets the terms and conditions for the product, and where an order is declined, must provide specific and clear reason text and codes to the Access Seeker at the closure of the order;*
 - d) *May not withdraw access to facilities already granted without ComReg's prior written approval;*
 - e) *Must negotiate in good faith, be it a request for a new or amended product, service or associated facility, or Service Level Agreements ('SLAs') and adhere to specified processes and timelines as regards the development of new products or amendments to existing products and SLAs; and*
 - f) *Must offer meaningful SLAs, that is, legally binding contracts committing Eircom to defined service levels.*
30. Regarding the Non-Discrimination obligation, paragraph 7.78 notes that Eircom, to date, has used different systems and processes to supply its own retail arm with dedicated capacity. Eircom's downstream retail arm utilises a Layer 3 NGN Ethernet service, not Eircom's Layer 2 wholesale NGN Ethernet service. In reaching the 2020 Decision, ComReg considered whether Eircom should fulfil its non-discrimination obligation on an Equivalence of Outputs ("EoO") or an Equivalence of Inputs ("EoI") basis. ComReg decided on the former. ComReg considered that an EoI standard would likely involve significant systems development and would not be appropriate or proportionate, given the costs and the incremental benefits. We note ComReg's position on this issue. While we agree with ComReg's overall approach, we submit that given that EoO is a weaker regulatory remedy than EoI, it is important that ComReg should continue to monitor Eircom's compliance (in letter and spirit) and should stand ready to impose EoI, should EoO prove insufficient to promote the development of competition.
31. Regarding transparency, we agree with ComReg's proposal to impose the same obligations as under the 2020 Decision, subject to certain adjustments, which obligations are set out in paragraph 7.88 and are in summary:
- a) to publish a Reference Offer setting terms and conditions including prices;
 - b) to provide advance notice of price and non-price changes;
 - c) to publish information on product development;
 - d) to publish a network rollout plan;
 - e) to publish Key Performance Indicators; and

- f) to publish performance with respect to Service Level Agreements.
32. Regarding advance notification timelines (paras 7.110 – 7.120) we note that under the 2020 Decision, Eircom must notify ComReg five working days in advance of the proposed publication of amendments or changes, with such publication to take place at least three months before any such amendments or changes come into effect (“5 working day + 3-month notification rule”). We support ComReg aligning the WDC notification timeline with the timelines that apply under the 2024 PIA Decision and 2024 WLA Decisions. Under the latter Decisions, Eircom must notify ComReg of proposed amendments or changes at least one month prior to the date of proposed publication, and published amendments or changes come into effect two months after the date of publication (“1 + 2 advance notification”). We agree that these same timelines should apply to the LLRO, as a one-month advance notification would enable more meaningful engagement between ComReg and Eircom. Under this arrangement, amendments must be notified to ComReg at least three months before coming into effect, and to Access Seekers at least two months in advance.
33. We also agree that a “1 + 6 advance notification” rule is appropriate where a change to the LLRO would require Access Seekers to have additional time to effectively compete with Eircom in downstream markets. It makes sense that such exceptions to the “1 + 2 advance notification” rule would apply to changes to Eircom’s IT systems or where an Access Seeker needs new equipment, or needs to update existing equipment, so that the Access Seeker can continue to order existing products or order new products.
34. We also agree with ComReg’s proposal to maintain the obligation whereby Eircom must notify ComReg in advance of any proposed technical development or changes to its network, infrastructure, or new technologies, where any such development or change would result in loss of access previously granted (paras 7.123 -7.125).
35. We also agree with ComReg’s intent to maintain Eircom’s obligation to provide information to Access Seekers with respect to network roll out plans. It is essential that Access Seekers are kept up to date on such plans so that they in turn may plan effectively (paras 7.126 – 7.129). This includes that we support the requirements set out in paragraph 7.129 under which Eircom would be required to:
- (a) publish at least three (3) months in advance (unless otherwise agreed or directed by ComReg) - any forthcoming changes to the MI WDC rollout plan;
 - (b) publish the MI WDC rollout plan within the first ten (10) calendar days of each month; and
 - (c) publish the WDC rollout plan with sufficient detail to allow Access Seekers to determine:
 - i. Active MI WDC nodes;
 - ii. The services offered at each MI WDC node;
 - iii. Planned MI WDC nodes (including forecast dates); and
 - iv. The services to be offered at each planned MI WDC node.

Q. 9 - Do you agree with ComReg's view that a differentiated pricing remedy (of no price control) should apply to Eircom with respect to MI WDC products and services in the IA in the Zone B MI WDC Markets, while the obligations of access, non-discrimination and transparency will continue to apply to the MI WDC products and services in the IA?

36. First, we agree with ComReg's view that absent regulation, and given its SMP, Eircom would have the incentive and ability to engage in exploitative behaviours such as excessive pricing or practices leading to inefficiency and/or inertia, to the detriment of competition and consumers, or Eircom could potentially foreclose competition by lowering prices in certain areas of Zone B where other infrastructure providers have built networks. We therefore agree with ComReg's conclusion, set out in paragraph 7.153, that forbearance on price control is not an appropriate option in Zone B, except for CPs in the Intervention Area. We note, in this regard, that the purpose of a price control obligation is accurately captured in paragraph 7.149:
- (a) Appropriate build-or-buy incentives are provided to Eircom and other operators for efficient network investment;*
 - (c) Eircom and other operators are given price certainty and predictability;*
 - (d) Eircom cannot price excessively nor foreclose other alternative operators who either have invested or who may be considering investing; and*
 - (e) Eircom can recover no more than its efficient costs together with a reasonable rate of return.*
37. We agree with no price control for CPs that lie within both the Zone B MI WDC Markets and the Intervention Area, and which can be served by Eircom or NBI. We note that NBI has a contractual obligation to provide LL services in the Intervention Area, at a price that cannot exceed the benchmark reference price that is based on Eircom's equivalent regulated price, and ComReg considers that Eircom may therefore face greater constraint at CPs within the Intervention Area. We further agree with ComReg that all other SMP obligations - access, non-discrimination and transparency - should apply across Zone B MI WDC Markets in their entirety, including within the Intervention Area. This is necessary to enable the market to function effectively, to the benefit of consumers.

Q.10 - Do you agree with ComReg's view that a cost orientation price control obligation should be maintained for Eircom's MI WDC products, services and associated facilities, including WDM services, outside the IA in Zone B of the MI WDC Markets?

38. We agree with ComReg's intent to maintain the obligation of cost orientation for MI WDC products, services and associated facilities, including for WDM and interconnection services, outside the Intervention Area in Zone B of the MI WDC Markets. ComReg, in paragraph 7.165, correctly points out that it is necessary to strike a balance between three factors in determining the appropriate price control: (1) setting the correct build-or-buy price signal; (2) protecting operators that purchase or buy WDC services from Eircom; and (3) allowing Eircom to recover no more than its efficient investment costs and a reasonable rate of return.

39. A cost orientation obligation should limit the risk of excessive pricing and ensure greater predictability and regulatory certainty around access prices, thus allowing parties to make investment decisions and develop business plans with more confidence, including decisions as to whether to build or buy. We agree, in this regard, that business consumers are ultimately best served where there is infrastructure-based competition as opposed to price-only based competition. ComReg is correct that operators having control over their own infrastructure leads to greater product differentiation in downstream markets, to the benefit of end-users. We also agree that cost-oriented pricing should ensure that Eircom can recover only its efficiently incurred investment costs plus a reasonable rate of return, in line with Regulation 56(2) of the ECC Regulations.
40. Finally, we agree that the other three identified forms of price control - benchmarking, retail minus, and margin squeeze test - are not sufficient to achieve the right balance of the objectives set out in paragraph 7.165 (for the reasons set out in paragraphs 7.174 to 7.176 incl.) plus we note that cost-oriented pricing was imposed in the 2020 Decision and so maintaining it is conducive to regulatory consistency and predictability.

Q. 11 - Do you agree with ComReg's view that Eircom should charge the current Zone B rental prices in the LLRO price list (i.e., the pricing continuity approach), as fixed price points, for Eircom's MI WDC products and services, including WDM services, outside the IA in Zone B of the MI WDC Markets, and the current rental prices in the LLRO price list for the associated Eircom interconnection services?

41. We note and support ComReg's intent to impose cost-oriented pricing to encourage efficient investment by other operators, to protect operators who rely on Eircom's WDC services, and to ensure that Eircom can recover its efficiently incurred costs plus a reasonable return. A Pricing Continuity Approach seems most appropriate to strike the right balance. Prices would be fixed and could not be adjusted up or down. This will provide price stability and predictability which is consistent with Regulation 56(4) of the ECC Regulations and is important for Other Operators looking to invest in their own WDC networks. A fixed price point should help to protect Other Operators' investments, as Eircom could not lower prices to such degree as to undermine competition. It will also allow Eircom to recover its efficient costs and earn a reasonable return on its investment.

Q.12 - Do you agree with ComReg's view that the charges for co-location services and the upfront (non-recurring) charges for connections should reflect no more than the actual efficient costs incurred by Eircom plus a reasonable rate of return

42. ComReg notes that Eircom is required to provide a range of WDC ancillary services and facilities to other operators, including co-location and interconnection. These are essential to ensure access to Eircom's network while also encouraging investment in other networks, thus developing infrastructure-based competition. We agree with ComReg's intent to maintain the existing cost orientation obligation for these services, such that Eircom can recover only its efficiently incurred costs plus a reasonable rate of return. As to the most appropriate costing methodology, ComReg has opted for Top-down historic cost accounting ('TD HCA') over BU-LRAIC+. ComReg views this as the

most appropriate methodology to address concerns around excessive pricing while also allowing Eircom to recover its efficiently incurred costs plus a reasonable rate of return, while it is also consistent with the methodology specified for co-location services and connection charges in the WLA Market. We have no comment on the chosen methodology except to note that it does seem to be the most appropriate.

Q.13 - Do you agree with ComReg's view that Eircom should maintain its cost accounting obligation in relation to its Modern Interface Wholesale Dedicated Capacity products, services and associated facilities?

43. We agree with ComReg that the continued imposition of a cost accounting obligation on Eircom for MI WDC services is wholly justified. ComReg must have a clear understanding of Eircom's costs in providing its WDC services, so that ComReg can monitor and ensure compliance by Eircom with its SMP obligations. A cost accounting system should ensure that fair, objective, and transparent criteria are applied by Eircom in allocating costs to its price-controlled WDC services. We further note that Regulation 56(6) of the ECC Regulations imposes the burden of proof on Eircom to justify that its prices are derived from costs, while also empowering ComReg to use cost accounting methods independent of those used by Eircom and to direct Eircom to justify its prices, or, where appropriate, to adjust its prices.

Q.14 - Do you agree with ComReg's view that Eircom should continue to maintain its accounting separation obligation in relation to its Modern Interface Wholesale Dedicated Capacity products, services and associated facilities, and for the avoidance of doubt this means the inclusion of dark fibre in the MI WDC HCA statements and AFI statements?

44. We agree that Eircom's accounting separation obligation for its MI WDC products, services, and associated facilities should be maintained, and that this obligation should include dark fibre. As noted by ComReg, separate accounts for SMP products provide a greater level of detail than can be gained from standard financial statements. Separate accounts enable a regulator to assess the SMP parts of an operator's overall business as if those parts operated on a standalone basis. For a vertically integrated operator, like Eircom, separate accounts support monitoring of non-discrimination obligations and help prevent unfair cross-subsidies. ComReg correctly notes, in Section 6, that in the absence of regulation Eircom would have the ability and incentive to engage in a range of anti-competitive pricing behaviours in the Zone B MI WDC Markets, including excessive pricing. We support the removal of TI services from the obligation, because it is proposed to no longer make them subject to SMP regulation (given the decline in demand which is set to continue). As to dark fibre, ComReg notes that this is included in regulated SMP products. Therefore, it is appropriate and necessary that Eircom's dark fibre revenues and costs, in respect of MI WDC, be included in its MI WDC HCA statements and AFI statements.

Q.15 - Do you agree with ComReg's view that Eircom should continue to maintain its statement of compliance obligation in relation to its MI WDC products, services and associated facilities in the WDC market?

45. We agree that Eircom's obligation to provide a statement of compliance ("**SoC**") for its MI WDC products, services and associated facilities should be maintained. We note that this is already required under the 2020 Decision, so keeping it in place helps to ensure a consistent approach. It also aligns with the same requirement imposed under the 2024 WLA and PIA Decisions. A SoC requires Eircom to have an effective Regulatory Governance Model ("**RGM**") in place so that it can show precisely how it complies with its SMP obligations, as an RGM helps to identify and manage risks of non-compliance. A requirement to provide an SoC and to have an RGM helps ensure that Eircom is proactively engaged in monitoring its compliance with its SMP obligations. As noted by ComReg in paragraph 7.237, an effective RGM requires Eircom to identify and manage risks of SMP non-compliance and increases transparency as to precisely how Eircom went about these tasks. A structured and systematic approach is required to identify potential risks of non-compliance, to design controls to manage such identified risks, and to properly document the risk analysis. Without these proactive internal measures in place, the possibility of non-compliance by Eircom with one or more of the SMP obligations is likely to be significantly higher. We otherwise agree with ComReg's proposals as to the specifics of the SoC obligation.

- End -



Vodafone Response to Consultation

Market Review

Wholesale Dedicated Capacity (WDC) Market

Public Consultation

Reference: ComReg Doc 24/92

Version: Non-Confidential

Date: 31/01/25

Introduction

Vodafone welcomes the opportunity to respond to the Commission for Communications Regulation (ComReg)'s consultation. We have responded in detail to the questions below.

Our responses to the consultation questions are set out below. We would especially note the following:

- **High Incumbent Returns:** Vodafone agrees with ComReg's assessment that Eircom has Significant Market Power (SMP) in Zone B of the MI WDC Markets but disagrees with the conclusion for Zone A. Vodafone believes that **ComReg's assessment did not consider all key competition drivers and that evidence suggests Eircom could be making returns significantly above the cost of capital in Zone A, indicating SMP**
- **Price Continuity:** Vodafone view is that ComReg's proposal is not supported by sufficient evidence, and that its rationale for choosing pricing continuity based on "price stability" and "complexity of updating cost models" is not supported by available evidence on current and expected future market conditions.
- **Differentiated Pricing Remedy:** Vodafone disagrees with ComReg's proposal to remove the price control in the **IA parts** of Zone B, arguing that the level of competition will remain insufficient to constrain Eircom from setting excessive prices.

Consultation Questions

Question 1: Do you agree that the main developments identified in the provision of retail LL market are those which are most relevant in informing the assessment of the Relevant Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual/empirical evidence supporting your views.

Vodafone agree with the main developments identified for the retail market. We note that Eircom's retail downstream business has retained its position as the largest of retail provider following deregulation in 2020 and has increased its total leased line base.

At the same time, we can see the number of leased lines sold has dropped for other key national providers of leased lines. In our view this is because of pricing strategy on national deals which access seekers find impossible to match.

Question 2: Do you agree with ComReg's proposed definition of the relevant retail LL market? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

Vodafone note the position on ComReg in relation to the retail LL market. There is an important point on price transparency for leased lines. Regarding price comparability ComReg must identify a mechanism to ensure they can effectively run more in depth price analysis of the retail market to inform regulatory control and intervention if required. There is a significant challenge for access seekers which is particularly evident in bids for large Corporate and Government contracts. These customers require an end-to-end solution comprising inputs from regulated and deregulated zones. The lack of any constraint or control in the non-regulated areas can lead to margin squeeze in this market. This must have some form of regulatory oversight. A lack of action on multisite contracts would be detrimental to access seekers.

Question 3: Do you agree with ComReg's product market assessment for the Relevant WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

Vodafone note the position of ComReg in relation to the WDC product market.

Question 4: Do you agree with ComReg’s geographic market assessment for the Relevant WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

The 2020 Commission Recommendation states a network can be considered as present when it is relatively close to the customer premises which need to be connected and notes that some NRAs considered that a 50 metres from business parks or premises is a distance sufficient to consider the network to be present in a given area. ComReg propose that 75% of current demand must be within 50 metres in its assessment. It is important that distance test takes account of accessibility of the network. The network can only be present if it is accessible so distance to the connection points/chambers on the network.

Question 5: Do you agree with ComReg’s assessment of the Trunk –Terminating Boundaries of the MI WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

Paragraph 4.140 states “ComReg also intends to continue to closely monitor developments in the WDC markets over the market review period and if market outcomes appear to be materially different ComReg may, at its sole discretion, decide whether to commence a fresh market review earlier than planned.” It is possible market changes could lead to less choice on available alternative networks and this must be considered in the context of any proposal to de-regulate.

Question 6: Do you agree with ComReg’s assessment of SMP on the Relevant WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

ComReg proposes to conclude that Eircom has SMP in the Zone B MI WDC Markets, but does not in the Zone A MI WDC Markets.

Vodafone agrees with ComReg’s assessment for Zone B, but notes that its conclusion for Zone A may not be appropriate. This is because (i) ComReg’s SMP assessment does not appear to have considered all key relevant drivers of competition in WDC markets, and (ii) available evidence suggests that Eircom could be making returns significantly above the cost of capital within Zone A, which is prima facie evidence of its holding SMP.

An appropriate assessment of SMP requires a thorough evaluation of all key economic characteristics of WDC markets, including a number of factors beyond coverage

The European Commissions (EC) Guidelines on Market Analysis¹ sets out a relevant framework for measuring competition and assessing SMP in electronic communications markets.

Measuring competition involves considering the existence of competitive constraints on market participants, which can take two forms: (i) demand-side substitutability (which is the extent to which customers would be prepared to and are able to switch to other products, or to products in other areas), and (ii) supply-side substitutability i.e. the extent to which additional suppliers could provide the relevant product in the short-to-medium term in the area in question, without incurring significant additional costs.

In practice, in assessing SMP and the strength of competition in wholesale markets, the market share of operators is an important indicator. The EC states that where an operator has held a market share above 50% in a relevant market for some time, this provides evidence of it holding a dominant position, except in “exceptional circumstances”.²

Where an operator holds a market share less than 50%, a complete assessment of SMP requires a thorough evaluation of the economic characteristics of the relevant market.³ The EC outlines a range of criteria that are relevant in making this assessment, including:

- The existence of barriers to entry and expansion;
- Control of hard-to-duplicate infrastructure;
- The absolute and relevant size of the undertaking;
- Economies of scale and scope;
- Vertical integration;
- Technological and commercial advantages of an operator;
- Product diversification; and
- Countervailing buyer power.

Given the existence of high barriers to entry and expansion in wholesale telecoms markets (as recognised by the EC⁴), **the existing and future planned coverage of competing network operators are important factors in measuring the effectiveness of competition for WDC services.**

In doing so, it is important that only the coverage of operators that actually provide WDC services are considered. This is because an operator may choose not to provide WDC services even though it has network infrastructure that is theoretically capable of doing so. In particular, network infrastructure may need to be tailored to provide WDC services⁵, and additional investments required in additional systems and processes

¹ EC Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services

² EC Guidelines on Market Analysis, paragraph 55.

³ EC Guidelines on Market Analysis, paragraph 57.

⁴ EC Guidelines on Market Analysis, paragraph 59/ 62.

⁵ For example, providing dedicated capacity services requires sufficient availability of end to end fibre strands across the operator’s network, so may require different fibre cable dimensioning compared to FTTP networks designed only to provide residential services (where strands can be shared by end users in certain parts of the network). It also requires having network flexibility points close to locations of potential users of dedicated

(such as for monitoring). This means that operators that provide other services over their networks (such as WLA services) may not choose to also provide WDC services.

Beyond this, **a range of other factors in addition to coverage need to be considered when determining the strength of competitive constraints in a given area**

Whilst the presence of competing networks in an area is a necessary condition for effective competition, the presence of such networks may not be sufficient. This is because the specific characteristics of competing operators will impact the extent to which they will impose a competitive constraint, meaning it's possible that competition is not effective even in the presence of a number of alternative networks.

As such, in assessing the degree of competition ComReg should not rely on the coverage of competitors alone, but should seek to confirm that competition is effective by assessing other indicators of the effectiveness of competition. For WDC services, these include:

- **The actual and expected service take-up (or market share) of alternative operators.** As noted by the EC, this is an indicator of the potential competitive intensity created by an operator on Eircom.
- **The “total size” / coverage of the operator (i.e. across geographic areas).** Evidence collected by Ofcom in its 2021 Wholesale Fixed Telecoms Market Review (WFTMR) in the UK suggested that retailers of dedicated capacity services have a preference for using a smaller number of larger wholesalers, which means the overall coverage of an operator across Ireland is likely to be a relevant factor regarding the demand-side substitutability of services: smaller-scale operators may impose a weaker competitive constraint on Eircom, as they may be less able to attract retailers onto their networks.
- **The time period that an operator has provided a service for.** This could be particularly important for high-quality WDC services, as it may take time for an operator to build credibility as a trusted provider of these services. This means that “newer” operators may impose a weaker competitive constraint than longer-established WDC providers.
- **Whether the operator has existing infrastructure connecting to the end user premises.** This will determine the extent to which Eircom has a material cost advantage in serving a customer relative to competing networks. It could also impact the ability of the operator to provide a service over a comparable timeframe to Eircom, as it may take time to deploy the connection to the end user location if it doesn't already have one in place, particularly where permits and building access is required.

These factors must be considered in addition to coverage in order to obtain a complete assessment of competitive conditions in WDC markets.

Finally, it is important that any assessment of competition is forward-looking i.e. should consider both the current competitive conditions, and the expected evolution of these over the relevant review period.

Available evidence supports the position that Eircom holds SMP on MI WDC services in Zone B

For MI WDC Zone B markets, ComReg's conclusion that Eircom has SMP primarily reflects that:

capacity services, which may not necessarily be close to the location of residential customers. As such networks designed primarily to provide WLA services may require potentially significant additional investments in order to be “retrofitted” to provide WDC services.

- The majority (90%) of premises have access to only one or no alternative networks providing WDC services.
- There is unlikely to be sufficient new network entry over the review period to prevent Eircom from behaving to an appreciable extent independently of competitors, given competing operators face significant barriers to expansion in Zone B. This is because of the existence of high fixed costs associated with network build-out, and the low density of demand in Zone B.
- Eircom has maintained a market share significantly above 50% over an extended period of time (between 60 and 70% between 2018 and 2023).

Based on this evidence, Vodafone agrees with ComReg's position that Eircom has SMP in these areas:

- The supply-side evidence shows that there will be little or no presence of alternative operators at the majority of end user sites, and that this is unlikely to change over the market review period. As such the necessary condition for effective competition is not met.
- This is supported by the evidence on market shares, which shows that Eircom's share is significantly above the 50% threshold considered by the EC to consider an operator holding SMP.

However, ComReg's assessment in Zone A does not appear to consider all the relevant dimensions of competition for WDC services

In relation to MI WDC Zone A, ComReg's conclusion that Eircom and other operators do not hold SMP primarily reflects that¹:

- 80% of premises in Zone A are within 50 metres of networks of at least two alternative WDC service providers, which it concludes means service providers are currently able to exert a sufficient competitive constraint on each other's behaviour.
- The prospects for additional competition are favourable, given barriers to expansion are lower in Zone A than Zone B (for example given the larger density of demand), as evidenced by the trends of increased roll-out of networks providing WDC services (including by SIRO, Virgin Media, and NBI).
- Eircom's market share is below 50% (30-40%), and a number of alternative networks including BT, SIRO, Virgin Media and Colt have a sizeable market share, meaning these *"are likely able to exert a reasonable competitive constraint on Eircom"*.

The larger presence of competing networks and more favourable conditions for expansion in Zone A mean there is greater scope for effective competition in Zone A than in Zone B.

However, this evidence may not be sufficient to conclude that Eircom faces a sufficient and sustainable competitive constraint in these areas, and thus to draw a conclusion that Eircom does not hold SMP across Zone A.

This is because ComReg's assessment does not appear to consider all key factors determining the strength of competition for WDC services. In particular, whilst ComReg counts the number of alternative operators that are in close proximity of each end user site, it does not appear to explicitly consider the specific characteristics of each of the present operators, which would impact the competitive constraint these could impose on Eircom. For example:

¹ ComReg D24/92, Section 5.1.

- Whether the competing present operator is large or small in terms of existing take-up and coverage. As explained above, operators with smaller overall coverage and more limited take-up will impose a weaker competitive constraint on Eircom, as they be less able to attract retailers.
- How long they have provided WDC services for. More newly-established WDC providers, such as NBI, may again impose a weaker competitive constraint, as they may not yet be considered trusted providers by retailers.
- Whether they have existing infrastructure connecting to the end user site. Operators without such infrastructure are again likely to impose a weaker constraint, given they are likely to face a cost disadvantage in serving these customers relative to Eircom.

The above means that even though 2 or more alternative networks are in close proximity to a large number of end user sites in Zone A, Eircom may not face a sufficient competitive constraint at a number of these sites, for example if these operators are small in terms of take-up and coverage, are newly established, and/or do not have existing infrastructure connecting the site.

Eircom's Separated Accounts indicate that Eircom is making returns on WDC services that are significantly above the relevant Weighted Average Cost of Capital (WACC), which could indicate that competition is not effective in Zone A

In addition to the above, evidence on Eircom returns on WDC services indicate that Eircom may hold SMP in Zone A.

As noted by ComReg, regulation is designed to protect customers from excessive pricing by operators that hold a dominant position in a given market. Excessive prices are prices which are significantly above the cost of providing the relevant services for a sustained period of time.

In markets where competition is effective, competition constrains the prices of operators to reflect costs. In markets where an operator holds a dominant position, price controls are designed to constrain the prices of that operator to the level of costs.

However, evidence from Eircom's HCA Separated Accounts shows that Eircom's returns across WDC markets are significantly and consistently above its relevant WACC, which is prima facie of excessive pricing.

- Eircom's Return on Capital Employed (ROCE) across Wholesale High Quality Access (WHQA) services¹ was 45% in FY23, significantly higher than the defined relevant WACC of 5.07% for these services.
- This has been the case since at least FY21, with returns increasing from 39% in FY21 to 45% in FY23 (see Table 1 below). This indicates that Eircom's average prices across WDC services have been significantly above costs for a sustained period of time.

Table 1 - Eircom Return on Capital Employed (ROCE) in Wholesale High Quality Access markets

	FY21	FY22	FY23
ROCE	39%	39%	45%

Source: Vodafone, based on Eircom's HCA Separated Accounts. ROCE values reflect restated values in the subsequent year's accounts where available (e.g. FY22 return reflects restated values in FY23 accounts).

¹ WHQA services are synonymous with WDC services, as Vodafone understands that ComReg has changed its naming convention for these services as part of this Market Review.

This suggests one of two issues regarding the market outcomes across WDC markets:

1. If Eircom's WDC returns are significantly above WACC in Zone A, this indicates that competition is not effective in Zone A, and that Eircom holds a dominant position in this area.
2. If its WDC returns are significantly above WACC in Zone B, this indicates that regulation has not been effective in constraining Eircom's prices in these areas.

Given all of the above, Vodafone considers that ComReg needs to conduct a more detailed assessment, and revisit its conclusions based on this. In particular:

- ComReg should assess Eircom's returns on WDC services in different markets (MI vs TI services, Zone A and Zone B), to determine in which WDC markets Eircom is making returns consistently and significantly above the competitive level.
- In markets where returns are significantly above the competitive level, ComReg should ensure that (i) its assessment of competition and findings on SMP are consistent with this, and (ii) ensure that the regulation it imposes in these markets is sufficient to ensure that Eircom does not continue to set prices at an excessive level.
- This could include:
 - Where returns in MI WDC Zone A are significantly above a competitive level, revisiting its finding of no SMP in Zone A, and its decision to impose no price regulation in these areas.
 - Where returns in MI WDC Zone B are significantly above a competitive level, revisiting its proposed price regulation in this market, to ensure that this effectively prevents Eircom from setting excessive prices going over the next market review period (see our response to Q9, Q10, and Q11 on this).

Question 7: Do you agree that the competition problems and the associated impacts on competition end users identified are those that could potentially arise in the Zone B MI WDC Markets (and related markets)? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

Vodafone agree with the competition problems identified. The remedies to address the issues identified must focus on the ability to leverage and cross subsidise in the deregulated zones.

Question 8: Do you agree with ComReg's proposals in respect of non-pricing remedies in the Zone B MI WDC Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

The non-price remedies are consistent with those imposed in previous reviews. ComReg must be clear in their decision that action may be required in respect of application of the remedies. To provide an

example Paragraph 7.68 refers to conditions for SLA suspension. ComReg has not set out any clear requirements on the circumstances where an SLA needs to be suspended, where the SLA must be reinstated etc. There is no detail on a requirement for industry engagement on SLA suspension, following implementation the proposed requirements. The remedies proposed must be accompanied by a clear work plan with industry to agree and where appropriate amend current conditions.

Question 9: Do you agree with ComReg’s view that a differentiated pricing remedy (of no price control) should apply to Eircom with respect to MI WDC products and services in the IA in the Zone B MI WDC Markets, while the obligations of access, non-discrimination and transparency will continue to apply to the MI WDC products and services in the IA? Please provide reasons for your response.

ComReg has proposed to remove the price control in the IA parts of Zone B, whilst maintaining a cost-oriented price control in the remaining parts, and non-price remedies (including access and non-discrimination obligations) across the whole of Zone B.

To justify this, ComReg states that whilst Eircom still holds SMP in the IA parts of Zone B, it would potentially face a greater degree of competition at IA premises, and so is less likely to set excessive prices. This is on the basis of the presence of National Broadband Ireland (NBI) in the IA, and that:

- NBI has an obligation as part of its NBP contract to provide leased lines services in the IA; and
- The NBP contract requires NBI’s prices for leased lines services not to exceed a benchmark reference price based on Eircom’s equivalent regulated prices.¹

It concludes that imposing a price control in the IA parts of Zone B might not be proportionate or justified, given the reduced risk of excessive pricing by Eircom.

Vodafone disagrees with ComReg’s view not to impose a price control in the IA parts of Zone B. This is because available evidence suggests that the level of competition in these areas will remain insufficient to constrain Eircom from setting excessive prices, and that removing the price control is unlikely to result in additional provision of WDC services by Eircom or competitors. Removing the price control therefore creates a significant risk to downstream competition and end users, whilst providing no material benefits.

Relevant regulatory guidelines give scope to NRAs to differentiate regulatory remedies within a geographical market where there are differences in competitive conditions

The European Commission states that NRAs may define markets and differentiate remedies within these based on the differences in competitive conditions.

This is reflected by the EC’s NGA Recommendations, which states that: *“In situations where it cannot be concluded that the different competition conditions would justify the definition of sub-national geographic markets, it could nevertheless be appropriate for NRAs to respond to diverging competitive conditions between different areas within a geographically defined market, for instance due to the presence of several*

¹ ComReg D24/92, paragraph 7.155-7.156

alternative infrastructures or infrastructure-based operators, by imposing differentiated remedies and access products.”

However regulatory remedies should ensure that where an operator has SMP, it is prevented from exploiting its dominant position

ComReg has deemed Eircom to have SMP on MI WDC services across the whole of Zone B. This means that the appropriate set of regulation in this area is that which ensures Eircom is prevented from exploiting its SMP position: In relation to price regulation, such regulation should prevent Eircom from setting excessive prices across all of Zone B.

Given ComReg has proposed to remove price regulation in the IA parts of Zone B, the key question is therefore whether absent such regulation, Eircom will be prevented from setting excessive prices to IA premises.

Eircom is unlikely to be prevented from setting excessive prices to IA parts of Zone B absent a price control, as NBI is likely to be imposing a weak competitive constraint on Eircom

Given ComReg’s findings on the limited to no infrastructure-based competition across Zone B, for Eircom to be constrained in setting excessive pricing in the IA parts, NBI would have to (i) be present at IA premises, and (ii) impose a material competitive constraint on Eircom at those premises.

However available evidence suggests that NBI is likely to be imposing a weak competitive constraint on Eircom in the IA:

- NBI currently only covers just over half of premises in the IA (310,676 of the 564,000 premises in the IA were covered as of November 2024)², indicating that access seekers currently are not able to purchase MI WDC services from NBI at a large number of sites in the IA. Eircom therefore does not currently face any direct competition from NBI in large parts of the IA.
- NBI is a newly-established provider of leased lines (with its network roll-out only beginning in 2020), and as stated by ComReg, take-up of NBI’s MI WDC services has been very small to date: “*ComReg notes the very small volume of MI WDC services currently being sold by NBI*”³. As noted in response to Question 6, it is therefore unclear whether NBI are currently considered a trusted provider of WDC services by access seekers, and therefore considered a suitable substitute to Eircom for MI WDC services.
- ComReg analysis notes the “*relatively high level of prices for these services on NBI’s network*”, which indicates that NBI’s pricing may not currently be a binding constraint on Eircom’s pricing.

It also unclear if this will change materially over the market review period: NBI’s roll-out will remain incomplete for a number of years (its roll-out is not planned for completion until 2027), and it may take time for retailers to gain trust and see NBI as a substitute for retailers.

¹ Commission recommendation of 20 September 2010 on regulated access to Next Generation Access Networks (NGA), paragraph 9.

² <https://nbi.ie/news/events/2024/11/18/national-broadband-plan-on-track-to-pass-over-420000-premises-by-the-end-of-2025/>

³ ComReg D24/92, paragraph 7.155-7.156

It follows that there is a material possibility that Eircom does not face a materially larger competitive constraint in the IA parts of Zone B as it does in the remaining parts.

Removing the price control therefore creates significant risks, whilst not providing any clear material benefits

If NBI's presence does result in Eircom facing effective competition in the IA, then with ComReg's proposed removal of the price control, it will have the ability and incentive to set excessive prices for MI WDC services in the IA parts of Zone B.

Excessive WDC prices would dampen competition in the downstream retail leased line market, by putting external access seekers at a cost disadvantage versus Eircom's own downstream arm, and thus reduce their ability to compete with that downstream arm: higher prices would reduce the profitability of external access seekers, but not Eircom, as the higher price would just represent an internal transfer within the Eircom business (the cost increase faced by Eircom's downstream businesses would be offset by increase in revenue for Openair). It would also be likely to result in higher prices for end users, via higher wholesale prices being passed on in retail prices.

In addition, the removal of the price control is unlikely to provide any benefits to the market through incentivising greater provision of WDC services by Eircom or competition operators. In particular, allowing Eircom pricing flexibility via removing the price control:

- Would not increase the provision of WDC services by Eircom, as Vodafone understands Eircom's network already covers all WDC end users sites. It would also not increase Eircom's incentive to maintain its existing WDC network by making it better able to recover its efficiently-incurred costs, as this could still be enabled under a continued price control (for example a continued cost orientation obligation, as proposed in the non-IA parts of Zone B).
- Pricing flexibility would also be unlikely to promote material additional provision of MI WDC services by alternative operators. The removal of a price control in the IA is unlikely to impact NBIs provision of WDC services, because NBI is obliged under the NBP contract to roll-out its network and provide WDC services to all IA premises, irrespective of the regulatory pricing regime. It is also unlikely to promote material additional provision by other operators, because as noted by ComReg in its SMP assessment, the existence of significant barriers to expansion means that the potential for material additional investment in Zone B over the review period is limited. This is particularly the case in the IA, given by definition, the IA was defined as the set of premises where additional network build was not commercially viable.

Taken together removing the price control in IA parts of Zone B risks significant negative impacts on the market, whilst being unlikely to provide material benefits.

Given the above, Vodafone considers it appropriate to maintain a price control in the IA part of Zone B i.e. not to differentiate its pricing remedies across the IA and non-IA parts of Zone B. ComReg should instead monitor the development of competition across Zone B over the review period, including the provision and take-up of NBI MI WDC services, and re-evaluate the case for differentiating remedies as part of its next market review.

Question 10: Do you agree with ComReg’s view that a cost orientation price control obligation should be maintained for Eircom’s MI WDC products, services and associated facilities, including WDM services, outside the IA in Zone B of the MI WDC Markets? Please provide reasons for your response.

Vodafone agrees with ComReg’s proposal to maintain a cost orientation price control obligation for Eircom’s MI WDC services in Zone B, as this is likely to appropriately balance ComReg’s key regulatory objectives. However, as explained in Question 9, Vodafone believes that this cost orientation price obligation should apply inside all Zone B, and not just outside of the IA.

ComReg considered 4 different pricing approaches: benchmarking, retail minus, margin squeeze test and cost orientation. In determining the appropriate approach ComReg then assessed which one would achieve the best balance between three key objectives¹:

- providing protection to those operators purchasing (or buying) WDC services from Eircom;
- allowing Eircom to recover no more than its efficient investment costs and a reasonable rate of return; and
- setting the correct build-or-buy price signal to help inform efficient investment decisions by alternative operators who may wish to rollout their own network.

Vodafone explains in the following paragraphs why it agrees with ComReg that the cost orientation obligation appropriately balances these objectives in Zone B.

Cost-orientation will protect operators purchasing WDC services in Zone B

Given ComReg’s conclusion that Eircom holds SMP on MI WDC services in Zone B, then absent regulation, it has the ability and incentive to charge excessive prices on these services. As noted in response to Question 9, excessive pricing would harm external purchasers of WDC services by putting them at a cost disadvantage to Eircom downstream retail arm, and thus reduces their ability to compete in the downstream retail leased line market. This would also harm end users, both via this dampening of competition and the higher WDC prices being passed on in retail prices.

Margin squeeze, retail minus or cost-orientation pricing can help establish a level playing field between all retail operators that rely on Eircom’s wholesale offerings. However, among these different approaches, cost orientation is the most effective in ensuring competitive pricing for end customers. By preventing Eircom from setting wholesale prices significantly above costs, cost orientation would allow smaller retail operators, which have not yet achieved economies of scale, to compete more effectively. Ultimately, this approach benefits retail consumers by fostering greater competition in the market and enabling lower prices.

Cost orientation results in Eircom recovering no more than its efficient investment costs and a reasonable rate of return

Cost orientation aims to set prices at the level of Eircom efficiently incurred costs including a reasonable return, so by extension, would likely result in Eircom recovering no more than its efficient investment costs.

¹ ComReg D24/92, paragraph 7.149

Benchmarks, retail minus and margin squeeze test options are not grounded in the costs of Eircom's infrastructure, so could allow Eircom to recover more than its efficiently incurred costs.

Cost orientated prices are likely to send the appropriate build-or-buy decisions, given the competitive conditions in Zone B

As noted by ComReg in its assessment of SMP in Zone B, the existence of significant barriers to expansion means the scope for additional efficient investment by alternative operators is likely to be limited.

Given this, it is appropriate for the pricing signals provided in Zone B to encourage the purchase of products offered over Eircom's existing infrastructure. By ensuring that prices are in line with efficient costs and a reasonable rate of return, cost orientation is an appropriate approach, as this will ensure that operators purchasing WDC services can compete on a level playing field with Eircom's downstream retail business (see above). Such an approach would also not preclude additional network investment in areas where this is efficient, given Eircom's pricing would set a market benchmark that is reflective of efficient costs.

In contrast, the retail minus or margin squeeze test options, which as noted above could allow Eircom to set prices above efficient costs, may encourage inefficient additional investment in Zone B.

Taking all of the above together, Vodafone considers a cost orientation price control obligation for Eircom's MI WDC services in Zone B is likely to appropriately balance ComReg's key regulatory objectives.

Question 11: Do you agree with ComReg's view that Eircom should charge the current Zone B rental prices in the LLRO price list (i.e., the pricing continuity approach), as fixed price points, for Eircom's MI WDC products and services, including WDM services, outside the IA in Zone B of the MI WDC Markets, and the current rental prices in the LLRO price list for the associated Eircom interconnection services? Please provide reasons for your response.

Vodafone considers the evidence provided by ComReg at this stage is insufficient to justify its position that pricing continuity for Eircom's MI WDC products in Zone B is an appropriate approach to implement Eircom's cost orientation obligation.

To implement the cost orientation obligation, ComReg has evaluated different options, including pricing continuity, and updating existing BU-LRAIC+ cost models by either ComReg or Eircom. Under pricing continuity, ComReg would propose that Eircom maintains its prices for MI WDC services at its current level in nominal terms over the market review period.

Following analysis, ComReg determined pricing continuity as the preferred approach for the following reasons:

- It provides price stability and predictability, which is important for alternative operators investing or considering investing in WDC networks.

- Updating cost models would be complex and burdensome given the proposal to differentiate pricing remedies in the IA and non-IA parts of Zone B, as the modelling exercise would require modelling a subset of regulated leased lines that are scattered across the area outside the IA in Zone B.
- Updating the costing models is likely to result in prices that are more in-line with the level of efficiently-incurred costs, but given the points above, it consider that this approach would be disproportionate.

Vodafone view is that ComReg’s proposal is not supported by sufficient evidence, and that its rationale for choosing pricing continuity based on “price stability” and “complexity of updating cost models” is not supported by available evidence on current and expected future market conditions.

Implementing cost orientation by definition requires setting prices at the level of efficiently incurred costs

As outlined in response to Question 10 above, a pricing approach that allows Eircom to set prices significantly above the level of efficiently incurred costs in Zone B is unlikely to result in market outcomes that are in-line with ComReg’s regulatory objectives: it is likely to result in a dampening of retail competition and higher prices for end users, but would be unlikely to promote additional investment by Eircom or alternative operators versus an approach where prices are set in-line with costs.

However, available evidence suggests that pricing continuity would result in prices that are significantly above the level of costs over the price control period

First, evidence from Eircom’s Separated Accounts is indicative of its current WDC prices being significantly above costs.

- As noted in response to Question 6, these Accounts highlight that Eircom’s return across all WDC services in FY23 were significantly above a competitive level, as defined by the current regulated WACC (45% vs 5.07%).
- Given this significant level of return, Vodafone considers it unlikely that its returns on MI WDC services in Zone B are in-line with the regulated WACC, which would be indicative of current prices being reflective of costs. Data in ComReg’s consultation suggests that Eircom’s MI WDC lines in Zone B represent approximately 50% of Eircom total WDC lines¹ - it follows that for Eircom’s current returns in Zone B to be in-line with the WACC, its returns in Zone A would have to be approximately 85%, which Vodafone considers unlikely, unless it is the case that Eircom actually holds a position of SMP in this area (see response to Question 6).

Second, even if current prices are reflective of costs today, pricing continuity would be expected to result in prices above cost over the price control period:

- The expected continued growth in demand for higher bandwidth (as noted by ComReg in section 3.4.2 of its consultation) means the mix of Eircom’s WDC services is likely to shift towards high-bandwidth WDC services over the period. Given these services have higher prices but are not materially more expensive for Eircom to provide than lower bandwidths LLs, this shift will increase Eircom’s average prices but have a negligible impact on unit costs.
- Eircom would also be expected to make efficiency gains over time, which would reduce WDC unit costs with no impact on average prices.

¹ Eircom has 60-70% market share in MI WDC Market 2 within Zone B (which has a total of 5,440 customers), implying Eircom has around 3,500 MI WDC lines in Zone B. In addition, Eircom has 30-40% of market 1 within Zone A (which has a total of 9,371 customers), implying it has approximately 3,300 MI WDC lines in Zone A.

- Taken together, maintaining current prices is expected to result in increases in Eircom profitability on WDC services over time, and therefore bring prices further out of line with costs.

The benefits of pricing continuity in providing pricing stability are likely to be limited

ComReg states that the price stability and predictability provided by the pricing continuity approach can support its objective of encouraging efficient investment by alternative operators. However, as set out in response to Question 9 and 10 above, this is unlikely to drive material additional efficient investment, given market conditions in Zone B mean the scope for such investment in this area is limited.

The result is that pricing continuity risks significant negative effects via WDC prices being significantly above costs, but provide no material benefits.

Given this, the development of a cost model to inform cost-oriented prices would be a proportionate approach

Given the evidence above, Vodafone does not agree with ComReg's position that developing an updated cost model is disproportionate.

First, given available evidence suggests Eircom prices are significantly above costs, updating the cost models could provide significant benefits – it would identify the prices level consistent with the level of costs and allow prices to be reduced to this, in turn avoiding the negative market outcomes that would follow from excessive prices (i.e. dampening of retail competition, higher end user prices).

At a minimum, developing such a model would allow ComReg to test in a more accurate way the extent to which current prices are out of line with costs in Zone B, which is critical exercise in determining if the price continuity approach is appropriate.

Second, Vodafone considers that such an exercise would not be a material burden for ComReg.

- Existing models could be adjusted to estimate unit costs across the proposed Zone B area by removing those WPZs that are proposed to shift from Zone B to Zone A, and by gathering updated forecasts of Eircom demand and costs. Vodafone expects the former to be a relatively simple model update, and that data for the latter would be straightforward to gather (it would largely form part of Eircom's AFI submissions, so would require little or no additional data collection to be done).
- Whilst excluding the IA premises in Zone B from the modelling could introduce additional complexity, this exercise is not required. This is because as set out in response to Question 9, Vodafone consider it unjustified to remove the price control in the IA, and instead considers it appropriate to maintain a cost orientation obligation across all of Zone B. This would remove the need to identify and remove IA premises from the current cost models.

The above means that any effort associated with updating the cost models is likely to be outweighed by the benefit that this provides.

Taken all of the above together, Vodafone therefore urges ComReg to:

- *Present a more detailed assessment of whether the current level of prices in Zone B would result in prices in-line with efficiently-incurred costs over the market review period, including evidence on the current level of Eircom MI WDC returns in Zone B under current prices.*

- *If this suggests that current prices would result in prices significantly above the level of costs, then ComReg should instead rely on an updated BU-LRAIC+ model to determine the appropriate price level, and set prices on this basis.*

Question 12: Do you agree with ComReg’s view that the charges for co-location services and the upfront (non-recurring) charges for connections should reflect no more than the actual efficient costs incurred by Eircom plus a reasonable rate of return? Please provide reasons for your response.

The charges for co-location services and the upfront (non-recurring) charges for connections should reflect no more than the actual efficient costs incurred by Eircom plus a reasonable rate of return.

Question 13: Do you agree with ComReg’s view that Eircom should maintain its cost accounting obligation in relation to its Modern Interface Wholesale Dedicated Capacity products, services and associated facilities? Please provide reasons for your response.

The cost account obligation should be maintained for MI WDC products services and associated facilities.

Question 14: Do you agree with ComReg’s view that Eircom should continue to maintain its accounting separation obligation in relation to its Modern Interface Wholesale Dedicated Capacity products, services and associated facilities, and for the avoidance of doubt this means the inclusion of dark fibre in the MI WDC HCA statements and AFI statements? Please provide reasons for your response.

The account separation obligations should be maintained.

Question 15: Do you agree with ComReg’s view that Eircom should continue to maintain its statement of compliance obligation in relation to its MI WDC products, services and associated facilities in the WDC market? Please provide reasons for your response.

The statement of compliance obligations should be maintained.

Question 16: Do you agree with ComReg’s proposals on the withdrawal of SMP remedies on Eircom in the LB TI WDC Market and in WPZs that have moved from Zone B MI WHQA Markets in the 2020 Decision to Zone A MI WDC Markets in this Consultation? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

Vodafone continue to conduct its own analysis on the proposed changes and will follow up on completion of this review. The impact of ComReg changes must not be underestimated. The deregulation in the WCA market provides a clear example of the potential negative consequences when there is deregulation with prices increasing as a result of changes. A minimum 12-month sunset period must apply to enable impact assessment and planning with end customers if required.

ENDS