



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Urgent Interim Measures Notice addressed to Eircom Limited t/a Eir and Open Eir

“€50 Gift Card”

NON-CONFIDENTIAL

Reference: ComReg 25/71

Decision: D13/25

Date: 17 October 2025

Redacted Information

Please note that this is a non-confidential version of the Decision. Certain information within the Decision has been redacted for reasons of confidentiality and commercial sensitivity, with such redactions indicated by the symbol ✂ and highlighted in BLACK

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1 Introduction

- (1) Section 57 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (“the 2023 Act”) provides that ComReg may, at any time where it has evidence of a breach of a regulatory provision, or of a substantial risk that such a breach will take place, that risks creating serious economic or operational problems for other providers or users of electronic communications networks and services, impose urgent interim measures to remedy the breach. Urgent interim measures may include a requirement that the suspected breach ceases and a requirement that specified measures be taken to remedy the breach or the risk of breach, immediately or within a reasonable time limit.
- (2) In ComReg Decision D05/24 of 18 January 2024 (ComReg 24/07),¹ ComReg found that Eircom Limited t/a Eir and Open Eir (“Eircom”) had significant market power in the market for Wholesale Local Access and imposed on Eircom obligations designed to address the associated competition problems. This includes an obligation on Eircom to obtain the prior approval of ComReg before offering any wholesale promotion or discount in respect of its FTTH VUA product.
- (3) On 10 October 2025, ComReg was informed, by email received at a general ComReg email address (industry@comreg.ie) from a retail operator,² that Eircom was launching a promotion, to run from 13 October 2025 to 23 November 2025, offering end-users connecting to Eircom’s fibre-to-the-home broadband network, a €50 Gift Card (hereafter, “the Promotion”). In a phone call on the morning of 14 October 2025 from Mr. James Mulholland (ComReg) to Mr. Kjeld Hartog (Eircom’s Chief Regulatory Officer), Mr. Hartog confirmed that he was aware of the promotion, which in Eircom’s view, did not fall to be notified to ComReg in accordance with the requirements set out in ComReg Decision D05/24 because it was not a “wholesale promotion”. The promotion was launched accordingly absent ComReg’s prior approval. Further information and inquiries were received by ComReg on 15 October 2025.³

¹ Decision D05/24, “Market Reviews. Wholesale Local Access (WLA) provided at a fixed location. Wholesale Central Access (WCA) provided at fixed location for mass-market products”, 18 January 2024.

² Annex 1, tab 1, enclosing email from <[REDACTED]> to industry@comreg.ie dated 10 October 2025 forwarding an email from marketing@openeir.ie to customers@openeir.ie of Eircom (Open eir) dated 9 October 2025, entitled “FW: open eir €50 Gift Card Promotion”, enclosing leaflet, FAQs and list of Eircodes.

³ Annex 1, tab 2, Email from Siro dated 15 October 2025 pointing to a Vodafone webpage.

- (4) As set out below, the offering of the Promotion by Eircom without ComReg's prior approval is *prima facie* a breach of a regulatory provision within the meaning of section 57 of the 2023 Act, that risks creating serious economic or operational problems for other providers of electronic communications networks or services and urgent interim measures are required in order to address same.

2 Breach of a regulatory provision

2.1 The Promotion

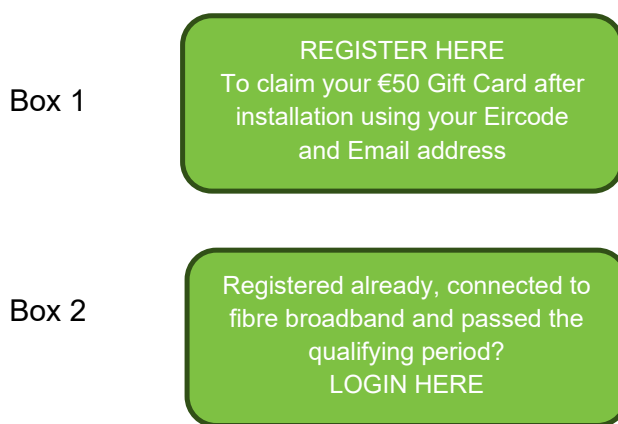
- (5) On Thursday 9 October 2025, Eircom (Open eir) emailed its wholesale customers (which would be retailers purchasing wholesale access broadband from Eircom) *"about a new promotion designed to help drive fibre broadband take-up on the open eir network"*. This *"new promotion"* consists in the grant of a €50 Gift Card (JustEat, Boots or whoopee) to those end-users for whom a connection is activated on the Open eir network. The Gift Card can be claimed on Open eir's website when a connection is live, by providing an email address (to which the Gift Card will be emailed) and the Eircode.
- (6) The email to the retailers included as attachments:
- A .pdf file of *"the leaflet that will be dropped to the targeted premises"*;
 - A .pdf file of "Frequently Asked Questions" that the retailers were encouraged to *"share with your teams in case they get any queries"*;
 - A .csv file containing 77,464 Eircodes being the premises that would be targeted by the Promotion through receipt of the leaflet.
- (7) As Eircom explains in its email: *"No action is required from you [the retailers]; customers manage the process themselves through www.openeirrewards.ie (will go live for launch)"*. Eircom further explained that the Promotion targets premises that have FTTH available *"in low penetration areas"*.
- (8) The following details of the process to be followed to claim a €50 Gift Card are set out in the leaflet and the FAQ:

How do I claim my €50 gift card?

1. Visit www.openeirrewards.ie or scan the QR code on your leaflet.
 2. Register on the site using your Eircode and email address.
 3. Order fibre broadband from your chosen retail service provider.
 4. Once installation is complete, your service is live, following the qualifying period, log back in to www.openeirrewards.ie.
 5. Select your preferred gift card, which will be emailed directly to you.
- (9) The terms and conditions for the Promotion included on the leaflet read as follows:

Terms and Conditions ** Open to residents of ROI only. 18+. Fibre-to-the-home purchase necessary. The connection must be purchased on the open eir fibre broadband network prior to the end of the Promotional Period. Promotion applies from 00:00 on 13.10.2025 to 23:59 on 23.11.2025. Qualifying eligible customers must register on www.openeirrewards.ie, purchase fibre broadband from a retail service provider on the open eir fibre broadband network and pass the qualifying period (e.g. cooling off period) with your retail service provider to receive the gift card reward. Max 1 gift card per household. Gift cards brands are Just Eat, Boots and whoopee! gift card. Promotion only valid for the Eircode this leaflet was delivered to. Terms and Conditions apply – go to www.openeirrewards.ie for details. Promoter: open eir.

- (10) The www.openeirrewards.ie webpage⁴ is now live and displays the following two boxes:



- (11) In order for a connection to be activated, the end-user must order from a “*trusted retail service provider who deliver broadband on the open eir fibre network*”.⁵ In practice, this means that Eircom will receive an order for a wholesale Fibre-to-the-Premise product, including Virtual Unbundled Access (FTTP-VUA) or FTTP-Bitstream for which Eircom self-supplies FTTP-VUA, from a wholesale customer/retailer, and in respect of the premises targeted in the Promotion, for the finite period of time during which the offer is available (13 October - 23 November 2025), that Eircom will forego the value of a €50 Gift Card in respect of each new active connection added to its network. In other words, the offer of the Gift Card by Eircom in respect of new FTTP connection entails in effect a price reduction for that connection, the cost of which is borne by Eircom’s wholesale arm, Open eir.

2.2 Regulation of promotions under ComReg Decision D05/24

- (12) The offer of Wholesale Discounts and Promotions by Eircom in respect of FTTP VUA is regulated under Section 14 of the Decision Instrument at Annex 1 of ComReg

⁴ Annex 1, tab 3, screenshot of the web page at www.openeirrewards.ie.

⁵ Annex 1, tab 1, Open eir Fibre Broadband Leaflet Campaign – FAQs

Decision D05/24 (“the WLA Decision Instrument”). In particular, Section 14.9 provides that “*Eircom shall not apply any Discounts or Promotions in respect of FTTP-based VUA without the express prior approval of ComReg...*” with “*Promotion*” defined as “*an offer in respect of a product, service or facility which is available for a finite period of time and which entails a price reduction*”. Section 14.10 requires that four criteria are all met, failing which the discount or promotion will not be approved. They are:

- The proposed price taking account of any Promotion or Discount remains above the applicable Price Floor (Section 14.10.1);
- The Promotion or Discount does not, in form or in effect, favour Eircom’s retail arm and is in practice available to a range of Access Seekers (Section 14.10.2);
- The Promotion or Discount is not targeted at a specific geographic area and for the avoidance of doubt and in particular, does not give rise to a geographic differentiation of prices (Section 14.10.3); and
- The Promotion or Discount will not adversely affect investments by Undertakings or undermine competition (Section 14.10.4).

- (13) ComReg Decision D05/24 was made further to ComReg’s functions and powers under the Code Regulations (SI 444 of 2022) and as such, is a “*regulatory provision*” within the meaning of section 60(1)(f)(ii) of the 2023 Act. Section 60(1)(f)(ii) of the 2023 Act which includes among regulatory provisions, “*a decision... of [ComReg] the effect of which is to require a person to, or refrain from doing something ... under the Code Regulations.*”

2.3 Breach of the price control

- (14) Under section 57(1) of the 2023 Act, ComReg may impose urgent interim measures to remedy a breach or risk of breach, at any time it has evidence of a breach of a regulatory provision (or evidence of a substantial risk that such a breach take place) which risks creating serious economic or operational problems for other providers or users of electronic communications networks and services.
- (15) Given that each FTTP connection on Eircom’s network is activated using Eircom’s VUA product, Eircom’s “*new promotion*” is an offer in respect of a product, being FTTP VUA, which is available for a finite period of time and which entails a price reduction. As such it falls within the scope of section 14.9 of the WLA Decision Instrument. It is not relevant that the price reduction arises by way of a Gift Card granted to the retailer’s customer, rather than directly to the retailer.

- (16) Accordingly, Eircom was prohibited from applying, or implementing, the Promotion without having first obtained ComReg's prior approval. However, and as confirmed in the phone call on Tuesday 14 October 2025 between Mr. Mulholland (ComReg) to Mr Hartog (Eircom's Chief Regulatory Officer), Eircom did not notify the Promotion to ComReg and the promotion was launched accordingly absent ComReg's prior approval, in a prima facie breach of Eircom's obligations under ComReg Decision D05/24.
- (17) For the reasons set out below this is a breach that risks creating serious economic or operational problems for other providers of electronic communications networks and services.

3 Serious economic or operational problems

3.1 Objectives pursued by the Price control

- (18) ComReg Decision D05/24 relaxed the prohibition on wholesale discounts and promotions which had applied until then to FTTP VUA since ComReg Decision D10/18. In Decision D05/24, ComReg noted that in 2018 ComReg had been concerned that wholesale promotions and discounts could be implemented in a way that could discriminate in favour of some Access Seekers or that would, for reasons that are not cost related, result in lower prices being targeted at one geographic area in such a way as to foreclose economically efficient alternative investment by other operators that are either investing or planning to invest in VHCN in specific areas. On the basis that there had been material FTTP network deployment in competition with Eircom in the period between 2018 and 2025, ComReg in Decision D05/24 did not believe that maintaining an outright prohibition on wholesale promotions and discounts continued to be appropriate. In particular, the fact that rival operators may offer wholesale promotions and discounts may leave Eircom at an unfair commercial disadvantage or limit price competition to the detriment of Access Seekers and ultimately end users in downstream markets.⁶
- (19) ComReg, however, was conscious of the competitive concerns arising from discounts and promotions given Eircom's SMP position including that discounts and promotions can enable foreclosure strategies, for instance by introducing a geographic differentiation in FTTP prices that would materially impact existing and/or emerging competition.⁷
- (20) ComReg Decision D05/24 accordingly relaxed the prohibition on wholesale discounts and promotions for FTTP but imposed on Eircom an obligation to obtain

⁶ ComReg Decision D05/24, ComReg 24/07, paras 9.498-9.499.

⁷ ComReg Decision D05/24, ComReg 24/07, para 9.503.

ComReg's prior approval in advance of announcing and implementing any wholesale discounts and promotions. This allows ComReg to verify that any wholesale discount and promotion will not, in itself or in aggregate with others, have a material impact on economically efficient alternative investment by network operators that are either investing or planning to invest in VHCNs. This verification is done by ComReg examining each of the four criteria set out in Section 14.10 of the WLA Decision Instrument.⁸ Because the promotion of viable investment is a key policy objective of ComReg, ComReg pays particular attention to ensuring that promotions and discounts are only permitted when it is clear that they do not prevent new investment by alternative operators or undermine competition.⁹

- (21) As captured by Section 14.10.3 of the WLA Decision Instrument, targeted discounts and promotions are particularly concerning as discounts targeted to an area where a rival had just deployed or was in the process of deploying a network could foreclose efficient investment or make the business case for rival network investment much more challenging, which could threaten viable network expansion and undermine the prospect of economically efficient network competition.¹⁰

3.2 Serious risk of economic harm

- (22) The requirement that Eircom obtain ComReg's prior approval in advance of implementing a wholesale promotion or discount, so that ComReg can ensure that the discount or promotion will not have anti-competitive effects in the market, is a cornerstone of WLA regulation and an essential requirement in ensuring fair competition. Eircom's failure to pre-notify ComReg means that there has been no economic assessment of the promotion and no assurance that no anti-competitive effects will arise from the implementation. Implementation by Eircom of the Promotion without prior approval by ComReg, risks creating serious economic problems for alternative network providers by Eircom unfairly enticing end-users away from their networks, thereby strengthening its market position and foreclosing the market further.
- (23) This risk is all the more serious given that there are *prima facie* serious doubts arising that the Promotion would meet the criteria set out in Section 14.10 of the WLA Decision Instrument and accordingly that had ComReg been notified the Promotion, it would not have allowed it.
- (24) In particular, there are *prima facie* serious doubts that the condition set out in Section 14.10.3, namely that the Promotion is not targeted at a specific geographic area and

⁸ ComReg Decision D05/24, ComReg 24/07, para 9.517.

⁹ ComReg Decision D05/24, ComReg 24/07, para 9.521.

¹⁰ ComReg Decision D05/24, ComReg 24/07, paras 9.553 and 9.554.

does not give rise to a geographic differentiation of prices, could be met. Not only is the Promotion offered to 77,464 premises only but based on Eircom's own communication to retail operators, it is "*targeting premises that have FTTH available in low penetration areas*" (emphasis added). Based on an initial analysis of the Eircodes included in the Promotion, the Promotion is targeted at existing Virgin Media Ireland Limited ('VMI') customers and footprint.¹¹

- (25) There is also a substantial risk that the Promotion where and if it is cumulated with an ongoing, approved, promotion (WN2025-002) means that the Price Floor in respect of the premises where both promotions are available will be breached (contrary to Section 14.10.1). Finally, Open eir's direct engagement with retail end-users, using the Open eir brand which is graphically very similar to Eircom's retail brand, "eir", may in effect favour the latter (Section 14.10.2). The direct engagement leads to the confusion of the retail and wholesale arms of Eircom thereby undermining governance arrangements designed to ensure that Eircom does not abuse the position of significant market power it in the WLA market in downstream wholesale and retail markets.

4 Remedies

4.1 Requirement to cease the breach with immediate effect

- (26) By implementing a promotion that falls within the scope of Section 14.9 of the WLA Decision Instrument without obtaining ComReg's prior approval, where there is a real possibility that approval would not have been granted by ComReg, Eircom has created a situation of a risk of serious economic harm arising to alternative operators. It is as a result imperative to ensure that the effects of the breach are minimised as much as possible.
- (27) Minimising the effects of the Promotion requires that it is availed of by as little as possible of end-users and reaches as few as possible of the 77,464 premises targeted by the Promotion or the end-users at those premises. Eircom should take all such measures as can be deployed to ensure that as few end-users as possible avail of the Promotion. This includes:
- Deactivating the "Register Here" link on www.openeirrewards.ie so that no new customers may register to benefit from the €50 Gift Card promotion, and replace the existing text with text that makes it clear that registration is no longer available.

¹¹ Of the 77K Eircodes included in the Promotion over 50% [redacted] have an active Broadband service, of which the vast majority [redacted] are Virgin Media Ireland (VMI) active Cable lines, meaning the RSP is VMI too. Less than 2K of the active lines relate to Eircom Copper or FTTC. Of the 77K Eircodes included in the Promotion the vast majority [redacted] are also passed by VMI Cable or VMI FTTH.

For the avoidance of doubt, Eircom is not required under this Notice, not to honour claims from those customers already registered.

- Putting an immediate stop to the distribution of leaflets to any of the 77,464 premises targeted by the Promotions, regardless of form (physical or digital (e.g., through a website)) and who has been engaging in the distribution;
 - Putting an immediate stop to the distribution, or making available of any information regarding the availability of the Promotion by Eircom, whether acting as Open eir or eir;
 - Asking any retail operators not to advertise or otherwise make available information on the Promotion.
- (28) Requirements on Eircom to minimise the effects of the Promotion should remain in place for all the time that the Promotion runs, namely from the date of this Notice to 23 November 2025.
- (29) Eircom is obliged, pursuant to section 57(15), to comply with the measures set out in the Notice and ComReg may apply to the High Court for an order compelling compliance. In order to ensure that the measures imposed in the Notice are being implemented, Eircom is also required to confirm as soon as practicable after receipt of the Notice, that it will implement the measures and, within two days of receipt, confirm that all measures have been implemented, with details of the steps taken to that effect. This will allow ComReg to monitor compliance with the urgent interim measures.

4.2 Extreme urgency

- (30) Section 57(6) of the 2023 Act requires ComReg, subject to section 57(8), to allow a reasonable period, having regard to the urgency of the measures and the particular circumstances, before an urgent interim measure takes effect to enable the person to whom the measure is directed to make written submissions to the Commission in relation to the measure including any remedies that the person concerned may wish to propose. Section 57(8), however, allows ComReg “*exceptionally, and in circumstances of extreme urgency*” to specify that an urgent interim measure take effect without the person to whom it is directed having an opportunity to make submissions. In such a case, ComReg must provide the person with an opportunity to make such submissions as soon as possible after the measure takes effect. ComReg must then consider any submissions that it receives and by notice in writing, confirm, revoke or vary the urgent interim measure.
- (31) The Promotion has already been launched and any delays in taking the actions described in section 4.1 will materially affect their effectiveness. This is accordingly

a situation of extreme urgency justifying that the measures imposed on Eircom take effect immediately without Eircom being given the opportunity to make submissions. However, in accordance with section 57(8) of the 2023 Act, Eircom may make submissions to ComReg as soon as possible after receipt of the Notice by emailing wholesalepricing@comreg.ie.

- (32) Were Eircom to avail of the opportunity to make submissions, ComReg will endeavour to consider the submissions and by notice in writing as soon as practicable thereafter, confirm, revoke or vary the Notice.
- (33) For these reasons, ComReg hereby issues the following urgent interim measures notice.

5 Notice

1. This Urgent Interim Measures Notice is issued by the Commission for Communications Regulation (“ComReg”) to Eircom Limited (“Eircom”) of 2 Heuston South Quarter, St John’s Road, Dublin 8:
 - (a) Pursuant to and having regard to Sections 10 and 12 of the Communications Regulation Act 2002 (as amended) and Regulation 4 of the European Union (Electronic Communications Code) Regulations (SI 444 of 2022);
 - (b) Pursuant to Section 57(1) of the Communications Regulation and Digital Development Hub Agency (Amendment) Act 2023 (“the 2023 Act”);
 - (c) Pursuant to Section 57(8) of the 2023 Act;
 - (d) Having regard to Eircom’s designation as an undertaking with Significant Market Power in the Wholesale Local Access market in ComReg Decision D05/24 of 18 January 2024 (ComReg 24/07), (“ComReg Decision D05/24”) which decision together with the decision instrument at its Annex 1 (“the WLA Decision Instrument”), amount to a regulatory provision within the meaning of section 57 of the 2023 Act;
 - (e) Having regard to the reasons set out in ComReg Decision D05/24;
 - (f) Having regard to section 14.9 of the WLA Decision Instrument;
 - (g) Having regard to section 14.10 of the WLA Decision Instrument;
 - (h) Having the evidence, as identified in Chapters 3 and 4, that Eircom, in failing to notify and obtain the prior approval of ComReg before introducing the Open eir €50 Gift Card promotion (the “Promotion”) in accordance with section 14.9 of the WLA Decision Instrument, has committed a breach of a regulatory provision which risks creating serious economic or operational problems for other providers or users of electronic communications networks or services.
2. Eircom is hereby required to:—
 - (a) Cease immediately all registration activities and without limitation, to that purpose:
 - (i) Deactivate the “Register Here” link on www.openeirrewards.ie;
 - (ii) On www.openeirrewards.ie, substitute the text “*Register Here To claim your €50 Gift Card after installation using your Eircode and Email address*” with “*Registration is no longer available*”;

- (b) Cease, or arrange to have ceased immediately, the distribution of the Promotion's leaflets to any of the 77,464 premises targeted by the Promotion;
 - (c) Take all necessary measures to bring to an immediate end any marketing activity concerned with the Promotion whether under the eir or Open eir brand or any other brand of Eircom Limited and refrain from making available any information regarding the Promotion and from engaging in any related marketing activities, directly or indirectly; and
 - (d) Advise immediately all customers of Open eir who were advised of the Promotion by Open eir, to cease all marketing activities in respect of the Promotion, to remove from their website any information regarding the Promotion and to refrain from making available information in respect of the Promotion.
- 3. Eircom shall confirm to ComReg on or before 5:00pm on Monday 20 October 2025 that all the measures set out in paragraph 2 have been implemented and furnish all relevant details of the measures and time of implementation.
 - 4. Eircom may make written submissions in respect of the Notice, which submissions shall be made as soon as practicable for ComReg's consideration.
 - 5. This Notice takes immediate effect and shall remain in force until 23 November 2025.

ROBERT MOURIK
COMMISSIONER
THE COMMISSION FOR COMMUNICATIONS REGULATION
THE 17TH DAY OF OCTOBER 2025

Annex 1: Evidence referred to in the Notice

SEE SEPARATE ANNEX 1