An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

eir's 2015-2016 Universal Service Funding Application

Unfair Burden Assessment

Submissions to Consultation

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Submissions Received from Respondents

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Content

alto

alternative operators in the communications market

Consultation: 2015 – 2016 Universal Service Funding Application – Unfair Burden Assessment - Ref: 25/43 and 25/43a

Submission By ALTO

Date: August 5th 2025

ALTO is pleased to respond to the Consultation: Assessment of eir’s 2015 – 2016 Universal Service Funding Application – Unfair Burden Assessment - Ref: 25/43 and 25/43a.

ALTO welcomes this opportunity to comment on this timely and important set of consultation papers.

Preliminary Remarks

ALTO notes and welcomes the fact that considerable effort has been expended in re-analysing the various eir’s USO funding claim for this period.

It is obviously highly undesirable to have taken over ten years to reach this stage of the process which as a result creates considerable risk and an unacceptable level of uncertainly for all operators on the market. Nevertheless, we are aware of the fact of protracted litigation and that ComReg endeavoured to dispose of this issue through consultation in 2017. We agree with ComReg’s conclusions that there should be no funding awarded to eir for the period in question.

Period 2015 – 2016:

For the year 2015 to 2016 eir made a retrospective USO funding application to ComReg in the sum of **€12.86m** - Adjusted to **€11.53m** by determination of ComReg
Result: <u>No Burden on assessment</u>
Positive net cost for 2015 – 2016 was **€11.53m**
WACC of **8.18%**
ROCE **10.82%**
CPI 2015 - 2016: - 0.3%

Response to Consultation Questions:

Q. 1. Do you agree with ComReg's approach to the unfair burden assessment? Please give reasons for your answer.

A. 1. ALTO agrees with ComReg's approach to the unfair burden assessment together with the more structured and methodological approach deployed concerning Decisions 38 – 42 and considering the recent judgment of the Court of Justice of the European Union. ALTO is of the opinion that ComReg has properly deployed the principles; processes and methodologies appropriate in order to calculate the direct net cost in the circumstances.

ALTO notes that ComReg has undertaken a full and thorough consultation on the principles, processes and methodologies in Decision 04/11 whilst noting the above observations.

ALTO has reviewed ComReg's findings and the relevant decision in the funding application period and believes that those findings are correct.

ALTO also notes that ComReg has deployed the principles in Case C-389/08 *Base & Others v Ministerraad* concerning the discretion permitted when a National Regulatory Authority undertakes the task of assessing burdens.

Q. 2. Do you agree with ComReg's approach to information and information constraints? Please give reasons for your answer. If you are of the view that ComReg should consider any additional relevant information when conducting the unfair burden assessment, please provide copies of that information (including full source references and independent verification, where appropriate).

A. 2. ALTO agrees with ComReg's approach to information and information constraints. As ALTO has mentioned above and indeed as is acknowledged by ComReg in the Consultation document, it is far from ideal that a USO burden analysis is being carried out 11 – 12 years after the relevant period (litigation delays allowed for). We note that Oxera have taken a position in relation to information constraints as directed by ComReg.

We further note that the Oxera Report at Appendix A.2 at pages 71 - 72 states with clarity that on a comparative analysis basis there is little difference between what 'preferred analysis' and the 'analysis presented'. As this issue is as important to industry and ALTO members, we support the methodology and clarity brought to bear on the position as is set out by Oxera.

Q. 3. Do you agree with ComReg's preliminary view that the positive net cost of the provision of the USO in 2014-2015 (i.e. €11,530,321) does not represent an unfair burden on eir? Please give reasons for you answer.

A. 3. ALTO agrees with ComReg's position in the year under consultation at this time. ALTO notes that for there to be an unfair burden, three cumulative conditions must be met re. Decision 38:

> *"i. There must be a verifiable and verified direct net cost*
>
> *ii. The benefits of the USO must not outweigh the net cost (i.e. there is a positive net cost)*
>
> *iii. This positive net cost is (a) material compared to administrative costs of a sharing mechanism, and (b) causes a significant competitive disadvantage for a USP."*

It is clear from eir's remarkable financial performance, its market share/dominance and significantly higher returns than anticipated, it is not the case that an unfair burden can be determined on any objective assessment of the company's results and financial performance.

1. 2015 – 2016: WACC 8.18% - ROCE 10.82% (2.64% differential)

USO Assessment Rules

ALTO notes that ComReg set out a clear set of conditions for the USO in Decision D04/11[1] which was consulted publicly, and all parties had the opportunity to appeal the Decisions. Hence the formal public consultation process was executed correctly, and the rules were set and not appealed or changed. eir and the wider industry must accept that basis.

ALTO notes that ComReg and its consultants Oxera provide considerable clarity with the consultation and the recent judgment of the Court of Justice of the European Union in the application of the various rules of D04/11 to assess whether the USO costs were an unfair burden on eir. On reading the consultation the rules do appear to have been implemented correctly.

Unfair Burden

We agree with the assessment within the Oxera unfair burden report 2015/2016 that the USO cost was not an unfair burden as eir was able to maintain a Return On Capital Employed (ROCE) above the maximum of the range for the allowable Weighted Average Cost of Capital (WACC). i.e., it was able to maintain a return on investment above the level expected by regulation.

ALTO emphasises eir's position regarding unfair burden versus financial performance concerning unfair burden.

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[1] https://www.comreg.ie/publication/report-on-consultation-and-decision-on-the-costing-of-universal-service-obligations-principles-and-methodologies/

Oxera Report Extract 2015 – 2016 – Pages 24 to 26:

"It shows that the ROCE of eir's fixed-line business in 2015/16 was 10.82%, exceeding the 2014 WACC of 8.18% by 2.64 percentage points.

While this represents a decrease in the ROCE relative to 2014/15, it is important to further contextualise eir's financial position by noting that:

for there to be no returns above the 2014 WACC, the net cost of the USO would have to have been around 5.0 times higher or, alternatively, the absolute level of operating profit (EBIT) for its fixed-line business would have to have been around 24% lower for the application period 2015/16.

Figure 4.3 shows the impact of the net cost of the USO on the profitability of eir's fixed-line business. It shows both the ROCE with the net cost of the USO and the counterfactual scenario of the ROCE without the net cost of the USO. In the counterfactual scenario, eir's ROCE would have been approximately 0.7 percentage points higher in 2015/16. (Note: this 0.7 percentage points estimate can also be interpreted as the net cost of the USO as a proportion of mean capital employed.) This means that the profitability of eir's fixed-line business was not materially undermined by the net cost of the USO. We note that, conceptually, the capital employed in the counterfactual could change, although there is no evidence available to adjust this. Given the large proportion of eir's assets which are used to support products and sub-products that are not dissociable from the USO, we consider our analysis to be a good proxy of the impact of the net cost of the USO on eir's profitability."

Conclusion

ComReg and the industry can be left in no doubt that no unfair burden existed in the period under consultation based on the assessment and independent expert information provided above.

ALTO remarks that as a matter of commercial fairness, having to consider potential funding requests and accounting reserves that are now stale and historical, there may be some legal and timing impediments if some form of burden was found – given the long passage of time.

ALTO

5 August 2025

BT Communications Ireland Limited [“BT”] Response to the ComReg Consultation:

eir’s 2015-2016 Universal Service Funding Application

Unfair burden assessment

Issue 1: 5th August 2025

Not Confidential

1.0 Introduction

We welcome the opportunity to comment to the ComReg USO assessment for 2015-2016 and provide our response to the questions below. We also welcome ComReg is working pragmatically and with due process to complete the process.

Given the similarities in process within this consultation to the earlier 2010 – 2011, 2011 – 2012 and 2012 – 2013, 2013 - 2014 and 2014 – 2015 consultations we continue to support our earlier views but also address the issues within this consultation.

2.0 BT Response to the Questions

Q. 1 Do you agree with ComReg’s approach to the unfair burden assessment? Please give reasons for your answer.

BT Response

We note the ComReg process is fixed by long established regulatory Decisions that were not challenged (appealed) at their issue other than the recent limited changes required by the European and Irish courts, hence we accept the approach is in line with the established rules and the updates of the Irish and European courts.

Q. 2 Do you agree with ComReg’s approach to information and information constraints? Please give reasons for your answer. If you are of the view that ComReg should consider any additional relevant information when conducting the unfair burden assessment, please provide copies of that information (including full source references and independent verification, where appropriate).

BT Response

Our view is the 2015-2016 assessment should have been concluded in a timely manner and that it took too long before the initial ComReg Decision on the Assessment was originally issued. We consider this delay led to the constraints that ComReg is now facing.

Given the situation we would like to offer the following comments:

1. We welcome that ComReg has sought the assistance of the well-respected expert consultancy company Oxera. We note Oxera has a wide experience of regulation in various countries and consider this helpful.
2. We continue to consider the relevant market revenues should relate to telephone and broadband services and exclude leased line services – as leased line operators do not benefit from the presence or absence of a USO obligation for fixed lines.
3. We consider that market shares should be assessed as the retail value of relevant services divided among the retail and wholesale actors who generated that value.

Q. 3 Do you agree with ComReg's preliminary view that the positive net cost of the provision of the USO in 2015-2016 (i.e. €11,530,321) does not represent an unfair burden on eir? Please give reasons for your answer.

BT Response

1. Although there was limited availability of some data due to the passing of a significant number of years since the period in question, fortunately given the regulated nature of the market and the requirements for Eircom and other operators to continuously provide data to the regulator, a lot of data is still available to ComReg and based on this, plus the Oxera look at the impact on Eircom and competitors in the market, we agree with ComReg that the USO did not create an undue burden on Eircom as it still achieved a financial return higher than the WACC. Eircom also maintained a steady ARPU and maintained its position as the main player in the market during this period.

2. We agree with the Oxera financial analysis of the eir ROCE vs the WACC as demonstrated in the Oxera supporting document[1] at figure 4.3 and note that during this annual period the eir ROCE at 10.8% was above the WACC at 8.18% highlighting an over recovery compared to that of an expected efficient operator. Operating above the WACC rate is seen as one of the key indicators that the USO was not an undue burden to eir for the period 2015 to 2016.

3. We would also agree with Oxera at clause 4.58 in its supporting document to the ComReg consultation that the USO cost does not appear to have prevented eir from undertaking the necessary investments and improvements to its financial health. We would note one of the key eir investments during this time was the continuation of its rollout of copper based Next Generation Broadband.

4. For 2015–2016 we welcome the clarity of the financial analysis and agree with ComReg's preliminary view that the positive net cost of the provision of the USO in 2015-2016 does not represent an unfair burden on eir.

End

[1] Oxera unfair burden report 2015/16 Prepared for the Commission for Communications Regulation 2 July 2025 - ComReg web site reference 2543a.pdf.

Virgin Media response to:

ComReg's unfair burden assessment of eir's 2015-16 Universal Service Funding Application.

Reference: ComReg 25/43.

Date of submission: 28 July 2025.
Non-confidential.

Executive Summary

This is the Virgin Media Ireland Limited ("Virgin Media") response to ComReg's unfair burden assessment of eir's 2015/16 Universal Service Funding Application.

ComReg's evaluation of the alleged unfair burden on eir for discharging its obligations under the 2015/16 Universal Service Obligation ("USO") is in the context of a legal challenge by eir, the decision for which was handed down by the Irish High Court, the High Court having referred a question of law to the Court of Justice of the European Union ("CJEU").

In its legal challenge eir alleged that ComReg had erred in a number of USO decisions by failing to recognise that the costs imposed on eir for discharging its obligations under the USO represented a so-called unfair burden, and that in consequence eir had not been adequately compensated and had been unfairly placed at a competitive disadvantage.

As part of its conclusions, the High Court remitted five USO decisions (including for 2015/16) back to ComReg and instructed it to re-evaluate them in line with the CJEU judgement. The court provided detailed guidance that ComReg was required to follow when undertaking the re-evaluations. ComReg took full account of the guidance provided by the court, and of the relevant wider legal and commercial context in reaching its draft findings.

Virgin Media considers that ComReg has done a thorough job in conducting the re-evaluation of the 2015/16 eir USO funding arrangements, and that the approach it has taken is in line with the instructions of the High Court and mindful of the wider relevant legal and commercial context. In particular, ComReg has been clear in articulating the methodology it has used in undertaking the unfair burden assessment of the 2015/16 USO and has clearly laid out the evidence relied upon to reach its draft conclusions. Where there have been gaps in the data (given the passage of time), this is clearly laid out in ComReg's draft determination (and the supporting analysis) and an appropriate alternative approach to deal with this lacuna has been set out. As part of the unfair burden assessment ComReg again engaged Oxera to conduct a detailed analysis and the Oxera report is also available to stakeholders.[1]

The conclusions reached through this process are clear, with Oxera finding that *"As a result, having examined eir's particular characteristics, applied Decisions 38–42 and considered all of*

[1] See Oxera Unfair Burden report 2015/16. ComReg2543a.pdf

the evidence outlined, we are of the view that the cumulative conditions of Decision 38 are not met, and that the net cost of the USO did not represent an unfair burden on eir in 2015/2016."[2]

Virgin Media agrees with the Oxera and ComReg assessments and considers that eir's contention that its costs for providing the USO in 2015/16 represented an unfair burden to be unfounded and contradicted by the best available evidence. Virgin Media further notes that, at time of writing, eir has not produced any further evidence in support of its earlier arguments that the USO represented an unfair burden on it for which it should be additionally compensated.

Accordingly, Virgin Media considers that ComReg's draft finding that eir's costs for providing the USO in 2015/16 do not represent an unfair burden on eir should stand in ComReg's final decision.

[2] See Oxera Unfair Burden report 2015/16, paragraph 5.7, page 67.

Response to ComReg's Questions

Question 1

Do you agree with ComReg's approach to the unfair burden assessment? Please give your reasons for the answer.

Response

Virgin Media agrees with the approach taken by ComReg in conducting the unfair burden assessment for 2015/16.

ComReg has adopted an approach that is transparent, reasonable, apt to produce sound conclusions, and consistent with the decision and instructions handed down by the High Court. The approach is consistent with the evaluations already undertaken following the eir legal challenge.

ComReg has also engaged a credible and independent third party (Oxera) to conduct the unfair burden assessment in a manner consistent with the legal instructions handed down. Both ComReg and Oxera have been open when historic data has been lacking and have set out their methodologies and findings clearly – enabling stakeholders to understand the approach that has been followed, and the evidence relied upon to reach the draft conclusions.

For example, in the Oxera Unfair Burden report for 2015/16, Oxera clearly articulates the methodological approach taken in conducting the unfair burden assessment; saying that: "*For there to be an unfair burden, three cumulative conditions must be met: (i) There must be a verifiable and verified direct net cost (ii) The benefits of the USO must not outweigh the net cost (i.e. there is a positive net cost) (iii) This positive net cost is (a) material compared to administrative costs of a sharing mechanism, and (b) causes a significant competitive disadvantage for a USP*."[3]

The Oxera report is clearly laid out, with good articulation of the analytical framework employed, including why draft conclusions have been reached, and the evidence relied upon. Importantly, Oxera is also open about circumstances when the originally sought data is not available, and when such cases arise (given the passage of time) it clearly sets out the evidence

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[3] See Oxera Unfair Burden report 2015/16, paragraph 3.1, page 8.

that has been relied upon (see Table A 2.1 in the Annex of the Oxera report). This gives clarity to stakeholders as to the precise basis on which Oxera and in turn ComReg have reached their draft conclusions.

By setting out in detail the methodological approach employed to reach the draft conclusions, including the data relied upon, and the specific questions being addressed gives confidence to stakeholders by allowing them to understand the precise basis for ComReg's draft findings, how they relate to the relevant legal framework handed down by the High Court, and understand the approach taken in circumstances when information is not available. This also enables stakeholders to critique (either in support or opposition) the draft findings, should they wish to do so.

Question 2

Do you agree with ComReg's approach to information and information constraints? Please give reasons for your answer. If you are of the view that ComReg should consider any additional relevant information when conducting the unfair burden assessment, please provide copies of that information (including full source references and independent verification, where appropriate).

Response

Virgin Media agrees with the approach taken by ComReg in dealing with information constraints.

The clarity and consistency of the methodological approach adopted in the ComReg and Oxera reports gives stakeholders confidence that the assessments conducted are unbiased, in line with the instructions handed down by the High Court and based on the most relevant information available. In circumstances where information is not available, given the passage of time, this is clearly articulated, and an alternative approach is described, including the data sources relied upon.

In the appendix to its report, Oxera helpfully sets out the data constraints encountered, and the analysis conducted / data relied upon when such situations arose.[4] This approach gives stakeholders clear line of sight as to the method used to draw draft conclusions and the data employed to underpin the same, and gives confidence that those draft conclusions are based on sound assumptions. The approach also provides stakeholders with ample opportunity to suggest alternative data sources / methodological approaches, should they consider this is merited.

As an example of the approach taken by ComReg, for Decision 42 (i), which relates to changes in profitability, including an understanding of where a USP generates most of its profits over time, Oxera describes the data finally used: "*The ROCE calculation is based on revenue, operating costs, and mean capital employed information from eir's historical-cost regulatory separated accounts. The WACC benchmark is based on ComReg's 2014 WACC. USO net cost figures for 2009/10 to 2015/16 are from ComReg documents relating to eir's Universal Service Fund applications (ComReg 14/03, 19/36, 19/37, 19/38, 19/39, 19/40 and 23/84R).*"[5]

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[4] See Oxera Unfair Burden report 2015/16 Table A.2 "*Data Constraints and implications for the preferred analysis*."
[5] See Oxera Unfair Burden report 2015/16, Decision 42(i), pp 74-75.

By providing this level of transparency as to the data / methodology used in circumstances where there were gaps in the data originally sought is good regulatory practice and gives stakeholders clarity on the basis for ComReg's draft decision. For Virgin Media this supports the view that ComReg's draft conclusions for 2015/16 are consistent with the relevant legal framework, based on the best supporting evidence available and, in consequence, sound.

Virgin Media notes that, thus far, eir has not put forward a superior analytical approach to that adopted by ComReg (at least not publicly).

Question 3

Do you agree with ComReg's preliminary view that the positive net cost of the provision of the USO in 2015-2016 (i.e. €11,530,321) does not represent an unfair burden on eir? Please give reasons for your answer.

Response

Virgin Media agrees with ComReg's preliminary view that the positive net cost of the provision of the USO in 2015/16 does not represent an unfair burden on eir.

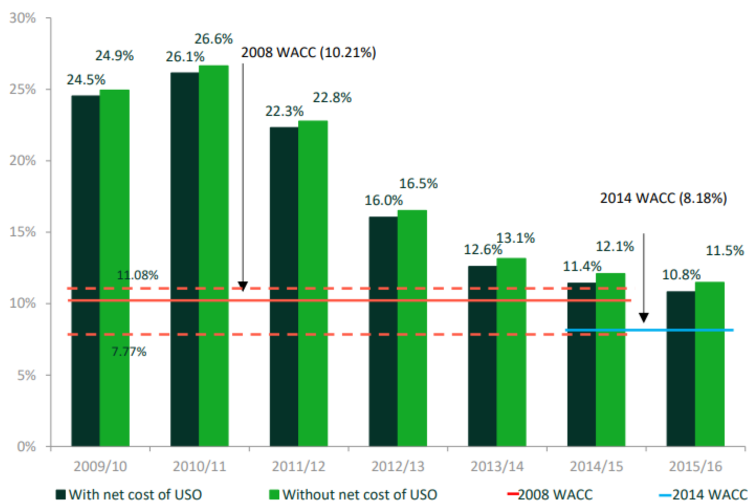
In its preliminary assessment ComReg (supported by the independent assessment conducted by Oxera) clearly sets out the basis for its draft conclusion that the USO in 2015/16 does not represent an unfair burden on eir. In Virgin Media's view the preliminary conclusion reached by ComReg is based on sound evidence, consistent with the instructions handed down by the High Court, and inherently sound. In support of this, and as noted in the response to question 2, Oxera does a thorough job in articulating the methodological approach that it has taken to draw its conclusions, including the data relied upon. This should give confidence to stakeholders that the decisions reached are: (a) based on the legal instructions handed down to ComReg; and (b) based on the most relevant information available. The methodological clarity also gives stakeholders the ability to set out if they disagree with any aspect of the approach taken. Again, Virgin Media notes that, at time of writing, eir has not suggested (in public at least) improvements to the analytical framework and / or draft conclusions drawn to date by ComReg as it works through a number of historic USO decisions.

Confidence in the approach taken by ComReg is supported in particular through (i) ComReg clearly laying out the analytical methodology used and how this relates to its obligations pursuant to the directions of the High Court based on the ruling by the CJEU; (ii) the use of a credible and independent third party (Oxera) to conduct the relevant analysis; and (iii) being clear and open when the "ideal" information was not available, and the approach taken in such circumstances (see also the response to question 2, above).

Virgin Media further notes that in its submission, Oxera shows that eir's assertion that the USO represents an unfair burden to be wholly unsupported based on a variety of relevant evidence points. For example, Oxera sets out that: "*While looking over the time horizon of 2009/10 to 2023/24, we observe that eir increased its capital investment, and improved its financial health whilst paying dividends each year between 2015/16 and 2023/24. Therefore, the following key findings are supported. (1) The USO net cost has not prevented eir from undertaking necessary* *investments. (2)* ***There is no available evidence of a causal link between the financial challenges experienced by eir, that have been observed over time, and the USO net cost****. (3) The USO net cost has not impeded eir from making improvements to its financial health over time.*[6] [Emphasis added]

Oxera goes on to set out the ROCE of eir's fixed line business (which is as good a proxy for the USO as has been put forward to date) has been consistently healthy, and at levels above regulated returns (see figure 4.3 below, taken from the Oxera report).[7] This is again wholly inconsistent with eir's assertion that the USO for 2015/16 represents an unfair burden.

Figure 4.3 **eir's fixed-line business ROCE including and excluding the net cost of the USO**



Note: The 2009/10 data shown here is not directly comparable to the data for the period 2010/11–2015/16 due to changes in the format of the regulatory accounts.

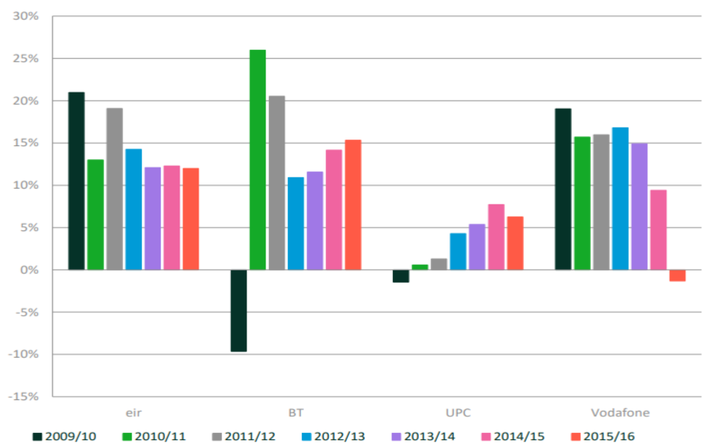
Source: Oxera analysis based on ComReg's 2008 and 2014 WACC determinations (ComReg (2008) and ComReg (2014), op. cit.) and eir's historical-cost regulatory separated accounts.

By way of alternative analysis, Oxera further shows that eir's group-level financial performance, measured using ROCE and EBIT, were at healthy levels when compared to competitors (see figures 4.12 and 4.11 respectively below).

[6] See Oxera Unfair Burden report 2015/16, paragraph 4.58, page 32.

[7] See Oxera Unfair Burden report 2015/16, Figure 4.3, page 26.

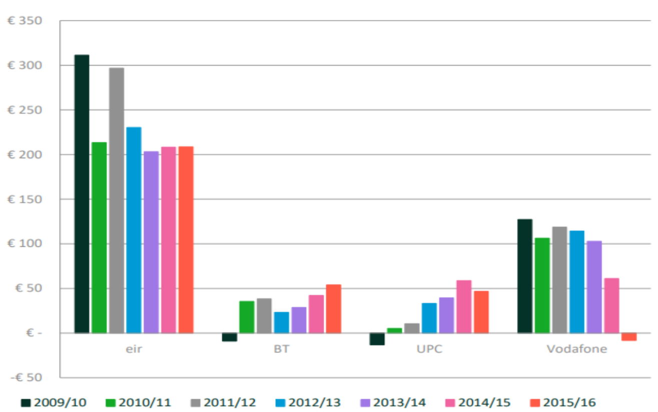
Figure 4.12 Irish group-level ROCE, 2009/10–2015/16



Note: eir's group-level ROCE is calculated by Oxera based on historical-cost accounts. Competitors' Irish group-level ROCE is calculated based on financial statements. Sky has been excluded due to data limitations.

Source: Oxera analysis based on eir's historical-cost regulatory separated accounts for the years ending 30 June 2010, 30 June 2011, 30 June 2012, 30 June 2013, 30 June 2014, 30 June 2015 and 30 June 2016 and the 2010/11, 2011/12, 2012/13, 2013/14, 2014/15 and 2015/16 financial statements of BT Communications Ireland Limited, UPC Communications Ireland Limited, and Vodafone Ireland Limited.

Figure 4.11 Irish group-level EBIT, 2009/10–2015/16



Note: eir's group-level EBIT is calculated by Oxera based on historical-cost accounts. Competitors' Irish group-level EBIT is based on financial statements. Sky has been excluded due to data limitations.

Source: Oxera analysis based on eir's historical-cost regulatory separated accounts for the years ending 30 June 2010, 30 June 2011, 30 June 2012, 30 June 2013, 30 June 2014, 30 June 2015 and 30 June 2016 and the 2010/11, 2011/12, 2012/13, 2013/14, 2014/15 and 2015/16 financial statements of BT Communications Ireland Limited, UPC Communications Ireland Limited, and Vodafone Ireland Limited.

Oxera goes on to show that, while eir has been through periods where its financial performance has declined or been under some pressure, there is no credible causal link between those periods and eir's obligations under the USO. In its report, Oxera notes that the financial difficulties that were experienced by eir from time to time did not appear to have been caused or exacerbated by the effects of the USO at all but rather were due to other factors: "…*the evidence does not show a causal link between the financial challenges experienced by eir and* *the USO net cost*."[8] Oxera further concludes that: "*The evidence we have reviewed indicates that the net cost of the USO for the year 2015/16 under application has not materially impacted eir's ability to compete on equal terms with competitors going forward. We also find this conclusion to hold when eir's operational metrics are assessed up until 2023/24. As part of our analysis, we are of the view that there is no available evidence of a causal link between the financial challenges faced by eir and the net cost of the USO. Similarly, the evidence indicates that the requirement to provide the USO over the period has not impeded eir's ability to invest. The strengthening of its performance in some of the assessed areas (i.e. carrying out necessary investment, reducing leverage with debt refinancing on cheaper terms, and improvements to its credit rating) with relatively limited reference to the USO across the reviewed sources suggests that the net cost of the USO did not have a material impact on eir's overall economic, operational and financial performance.*"[9] Virgin Media agrees with this conclusion – while the evidence does show that there have been periods when eir's financial performance has been at lower levels / under pressure, there is an absence of credible evidence that such periods have anything to do with eir meeting its obligations under the USO.

Having conducted a detailed and well-articulated analysis, in line with the directions of the High Court based on the judgement of the CJEU, and using the most appropriate data available, Oxera concludes by saying that: "*Based on this analysis, our view is that eir has indeed faced financial challenges, such as high indebtedness, over the assessed time period, including 2015/16.* ***However, the evidence reviewed does not indicate that these challenges were caused by the net cost of the USO***."[10] [emphasis added]

Virgin Media agrees with this assessment. Overall, the weight of evidence strongly supports a conclusion that eir did NOT face an unfair burden in discharging its obligations under the 2015/16 USO. In reality, and as found by ComReg and supported in detail by the analysis (based on the best available information) conducted by Oxera, eircom was a business whose financial performance (good and bad) had very little to do with its costs associated with the USO. There is no evidence to show that the costs borne by eir in the USO put it at a competitive disadvantage. Where eir did experience periods of relatively worse financial performance, the available evidence points to this being due to decisions made by eir and its owner(s), i.e. not a consequence of meeting the obligations under the USO.

Based on the evidence presented, which is based on sound methodology and the best information available (given the passage of time), and consistent with the instructions handed

[8] See Oxera Unfair Burden report 2015/16, paragraph 4.54, page 30.
[9] See Oxera Unfair Burden Report 2015/16, paragraph 4.79, pp 41-42.
[10] See Oxera Unfair Burden Report 2015/16, paragraph 4.75, page 40.

down by the legal authorities, Virgin Media supports ComReg's overall approach and draft conclusions that for 2015/16 the net cost of the USO did <u>not</u> represent an unfair burden on eir. Accordingly, ComReg should adopt the same conclusions in its final statement for the 2015/16 USO unfair burden assessment.

Vodafone Response to Consultation

Eir's 2015-2016 Universal Service Funding Application

Unfair Burden Assessment

Consultation

Reference: ComReg Doc 25/43

Version: Non-Confidential

Date: 05/08/25

Response to Consultation

Vodafone welcomes the opportunity to respond to the Commission for Communications Regulation (ComReg's) further consultation on Eir's 2015 to 2016 Universal Service Funding Application and the draft determination on the unfair burden assessment.

SUMMARY OF POSITION

In summary our views

- Vodafone is satisfied with the draft determination that there is no USO unfair burden.
- The issues under consultation have been held over the sector for far too long bearing in mind publication of ComReg Decision D04/11 over 14 years ago.
- The fact remains that Eir continues to be hugely profitable with an EBITDA margin at 48%[1] after adjustments which is funded to a large extent by wholesale charges.

We have provided answers to the consultation questions below.

[1] eir Group Results (Q1 FY25) presented 31 March 2025

CONSULTATION QUESTIONS

Question 1
Do you agree with ComReg's approach to the unfair burden assessment? Please give reasons for your answer.

Vodafone is satisfied with the findings that for the financial year 2015-2016 that the provision of the USO does not represent an unfair burden on eir.

Q. 2 Do you agree with ComReg's approach to information and information constraints? Please give reasons for your answer. If you are of the view that ComReg should consider any additional relevant information when conducting the unfair burden assessment, please provide copies of that information (including full source references and independent verification, where appropriate).

The passage of time is stark and the information constraints arising are not a surprise given the matters under consideration relate to services provided in 2015 to 2016. ComReg do have sufficient information to inform its position.

Vodafone has been a participant in this process in the period leading up to ComReg decision D4/11 in May 2011. In the period of over 14 years since publication Vodafone have invested in mobile infrastructure rollout and the delivery of fixed line services to Irish customers.

Q.3 Do you agree with ComReg's preliminary view that the positive net cost of the provision of the USO in 2015-2016 (i.e. €11,530,321) does not represent an unfair burden on eir? Please give reasons for your answer.

Vodafone is satisfied with the findings that there is no USO unfair burden. It is very evident that the obligation has not affected Eir profitability with EBITDA margin at 48% at the end of Q1 2025. Eir remains extremely reliant on wholesale to maintain high profits and, against this backdrop, it seems clear that there is no unfair burden on Eir and that industry should not be required to contribute any universal service payment.

It is important to note that all operators will have unprofitable customers who are more expensive to service. It is not possible to limit the broad targeting of services based on profitability of the customer. It remains a central theme of the challenges to previous USO decisions that absent USO obligations Eir would have limited its service to profitable customers. This is clearly not the case.

This could be evidenced when homes initially targeted for State Intervention under National Broadband Plan were subsequently removed from the subvention area and Eir made it clear it could rollout FTTH services on a commercial basis to these areas. It is highly probable that customers within that 340K footprint may be uneconomic however overall Eir has made a commercial call to service these areas. The removal of these homes from the NBP ensure that Eir remains the monopoly access provider in the 340K footprint.

ENDS