

Annex 2: Oxera report (24/69b)

A 2.1 The Oxera report (24/69b)

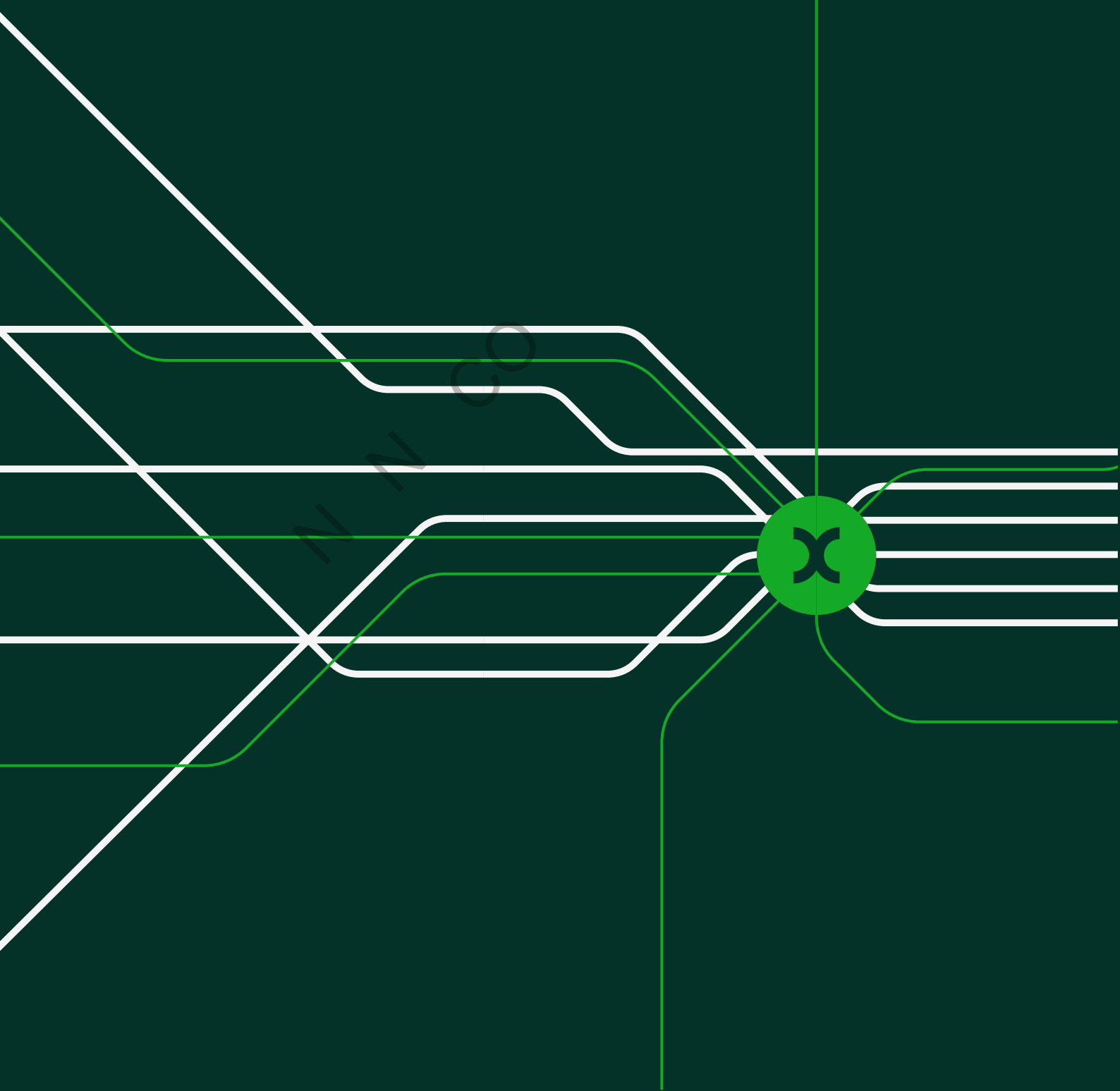
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Oxera's review of Eircom Wholesale Notification 24-010 FTTH Discount



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Prepared for ComReg
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1 Introduction and summary

1.1 In Decision D05/24,¹ ComReg granted Eircom permission to apply Promotions or Discounts in respect of FTTH-based VUA services, subject to it receiving prior approval from ComReg.² ComReg will not approve any such Promotions or Discounts unless:³

- the proposed price taking account of any Promotion or Discount remains above the Price Floor;
- ComReg is satisfied that 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;
- ComReg is satisfied that the Promotion or Discount is not targeted at a specific geographic area and for the avoidance of doubt, no Promotion or Discount will be approved that gives rise to a geographic differentiation of prices;
- ComReg is satisfied that the Promotion or Discount will not adversely affect investments by Undertakings or undermine competition.

1.2 On 23 February 2024, Eircom submitted Wholesale Notification 24-010 to ComReg,⁴ as required under its obligations as set out in Decision D05/24.⁵ This is the first such notification submitted by Eircom to ComReg under Decision D05/24.

1.3 The Wholesale Notification includes a tariff proposal ('FTTH Tariff Proposal') which would provide a discount on Eircom's FTTH wholesale products. Specifically, the FTTH Tariff Proposal provides for a €3 discount on the monthly price for FTTH VUA and Bitstream lines that are upgraded from copper-based technologies (either FTTC or CGA) after the commencement of the offer on 1 August 2024.⁶

¹ ComReg (2024), 'Market Reviews; Wholesale Local Access (WLA) provided at a fixed location; Wholesale Central Access (WCA) provided at a fixed location for mass-market products; ComReg 24/07; Decision D05/25', 18 January. Hereafter referred to as 'ComReg D05/24'.

² ComReg D05/24, Decision Instrument: Section 14.9.

³ ComReg D05/24, Decision Instrument: Section 14.10.1–14.10.4.

⁴ Eircom (2024), 'Pricing Statement of Compliance for CRD 994 – FTTH Review of Tariff Structures'. Hereafter referred to as 'Eircom CRD 994'.

⁵ ComReg D05/24, Decision Instrument: Section 4.11.

⁶ Eircom CRD 994, p. 3.

- 1.4 The discount is available on each line for which a retail operator purchasing wholesale inputs from Eircom (an 'Access Seeker') upgrades its own customers from a copper-based product to an FTTH-based product.⁷ The discount would *not* be available on FTTH lines sold after the commencement of the offer where an Access Seeker:
- acquires a customer from a rival and, in the process, upgrades them from a copper-based product to an FTTH-based product;
 - establishes a new FTTH connection on Eircom's network for a customer that does not have an existing copper-based connection on Eircom's network.
- 1.5 The offer is available to all Access Seekers, including Eircom's downstream retail arm. To mitigate concerns that the discount could favour its downstream retail arm, Eircom has proposed to cap the number of Eircom Retail FTTC lines that are eligible for the discount. Eircom has not proposed to impose a cap on the number of eligible Eircom Retail CGA lines.
- 1.6 ComReg has asked Oxera to conduct an independent economic assessment of the FTTH Tariff Proposal, in line with the regulatory framework as set out in Decision D05/24. The findings from our assessment against each of the four criterion specified by ComReg in Decision D05/24 are summarised below.

Would FTTH prices including the discount remain above the Price Floor?

- 1.7 This criterion is satisfied at the current and proposed price levels,⁸ as the FTTH VUA prices including the discount are above the Price Floor in both cases. However, this will not necessarily remain the case across the maximum three-year period of the offer if Eircom chooses to further increase the FTTC-based VUA price in line with the level permitted by the CPI-0% cap. In this case, to satisfy the criterion, Eircom may need to adjust the FTTH VUA undiscounted list price such that the prices including the discount remain above the Price Floor.

⁷ Eircom CRD 994, p. 3.

⁸ Subsequent to the notification of Wholesale Notification 24-010 to ComReg, Eircom has since proposed to increase the FTTC VUA monthly rental charge to €20.00, which is planned to take effect from 1 July 2024. See Eircom (2024), 'Access Reference Offer Price List: Version 29.1: Proposed, 19 April, p. 62, available [here](#).

Does the FTTH Tariff Proposal favour Eircom's retail arm?

- 1.8 The discount is limited to lines where an Access Seeker upgrades its own customers, and so does not apply to lines where an Access Seeker acquires a customer from a rival and, in the process, upgrades them from a copper-based to a FTTH-based product on the Eircom network.
- 1.9 This condition means that an Access Seeker would be able to upgrade its own copper/FTTC customers to an FTTH product at a €3 cost advantage relative to any customers acquired from rivals and upgraded to FTTH. Therefore, at the margin, Access Seekers will prefer to upgrade their own customers and thus will be less willing and able to compete for FTTH customers at the retail level. This condition could therefore dampen retail competition and consequentially lock-in existing retail fixed broadband market shares.
- 1.10 There does not appear to be a clear pro-competitive rationale for the discount to be limited to own-customer upgrades, particularly when the potential effects on retail competition are considered. If the discount was available to all upgrades, regardless of 'origin', this would encourage Access Seekers to compete across the entire pool of customers eligible for upgrades from CGA/FTTC to FTTH. Access Seekers would be able to compete for these customers on the same terms with respect to the wholesale input price, thus meaning competition would be 'on the merits', rather than simply by any cost advantage conferred by the discount being limited to upgrades from its own CGA/FTTC customers only.
- 1.11 In any case, Eircom has recognised that its position as having the largest FTTC retail base could provide its downstream arm with an advantage relative to other Access Seekers. To mitigate this concern, Eircom has proposed to cap the number of Eircom Retail FTTC lines that are eligible for the discount. We find that while Eircom's proposed cap may reduce the potential advantage Eircom Retail could obtain, it is not sufficient to eliminate the concern. This is particularly the case, when accounting for the fact that not all existing CGA or FTTC lines will be in scope of the Eircom FTTH footprint for the majority of the next three years.
- 1.12 Therefore, the offer has a high likelihood of favouring Eircom's retail arm, and would therefore be in breach of the second

criterion, through the likely 'effect' of the offer. However, the significance of any such advantage that may be afforded should be considered against the level of current retail prices..

Is the FTTH Tariff Proposal geographically targeted?

1.13 The FTTH Tariff Proposal does not contain any conditions or provisions which would be expected to give rise to the application of the Discount being targeted at a specific geographic area. Thus, there is no reason to expect that the FTTH Tariff Proposal itself would lead to geographically differentiated prices.

Would the FTTH Tariff Proposal adversely affect investments by alternative operators or undermine competition?

1.14 We do not find that the FTTH Tariff Proposal includes volume-related, exclusivity and/or retroactive conditions.

1.15 However, it is the case that with the €3 discount available under the FTTH Tariff Proposal, when an Access Seeker is considering upgrading its own legacy customer base (supplied via an Eircom copper/FTTC wholesale service) to an FTTH service, Eircom's FTTH wholesale prices may appear to be more attractive than those of alternative wholesale operators that are not offering such a discount. In this regard, it is important to check whether the discounted price offered by Eircom would be replicable by an alternative wholesale provider.

1.16 The current price floor is respected by the FTTH Tariff proposal.⁹ Therefore, the discounted FTTH wholesale price is not set at a level that could foreclose entry of expansion of alternative wholesale network operators.

1.17 While we consider that the structure of the offer, and the level of the discount would not have an adverse effect on wholesale competition, we have expressed concerns with the potential impact on retail competition under our assessment of the

⁹ We also find that the discounted FTTH wholesale price would be above the price floor of €20.00 that would be in place from 1 July 2024 in line with Eircom's proposal to increase the FTTC VUA monthly rental charge to from €19.12 to €20.00 from 1 July 2024. See Eircom (2024), 'Access Reference Offer Price List: Version 29.1: Proposed, 19 April, p. 62.

second criterion on the potential advantage Eircom Retail could get over other retail providers.

1.18 The remainder of this report is structured as follows:

- section 2 provides a summary of the FTTH Tariff Proposal;
- section 3 presents our assessment of the FTTH Tariff Proposal;

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2 Overview of the FTTH Tariff Proposal

- 2.1 The FTTH Tariff Proposal provides for a €3 discount on the monthly price for FTTH VUA and Bitstream lines that are upgraded from copper-based technologies (either FTTC or CGA) after the commencement of the offer on 1 August 2024.¹⁰
- 2.2 The discount is available on each line for which an operator upgrades its own customers from a copper-based product to an FTTH-based product.¹¹ The discount would *not* be available on FTTH lines sold after the commencement of the offer where a retail provider:
- acquires a customer from a rival and, in the process, upgrades them from a copper-based product to an FTTH-based product;
 - establishes a new FTTH connection on Eircom's network for a customer that does not have an existing copper-based connection on Eircom's network.
- 2.3 Eircom states that the FTTH Tariff Proposal does not include any volume-based targets, and is available to all eligible operators on a non-discriminatory basis.¹²
- 2.4 To mitigate concerns that the discount could favour its retail arm, Eircom has proposed to cap the number of Eircom Retail FTTC lines that are eligible for the discount.¹³ The cap is given by the second-largest FTTC customer base within Eircom's wholesale network as of December 2023, multiplied by 1.32 (which is one plus Eircom's broadband market share of 32%).¹⁴ Eircom states that this means out of its [REDACTED] FTTC base, [REDACTED] lines would be eligible for the discount.¹⁵ Eircom has not proposed to impose a cap on the number of eligible Eircom Retail CGA lines.¹⁶

¹⁰ Eircom CRD 994, p. 3.

¹¹ Eircom CRD 994, p. 3.

¹² Eircom CRD 994, p. 3.

¹³ Eircom CRD 994, p. 4.

¹⁴ Eircom CRD 994, p. 4.

¹⁵ Eircom CRD 994, p. 4.

¹⁶ Eircom CRD 994, p. 4.

2.5 Eircom states the rationale for the FTTH Tariff Proposal is to:¹⁷

- promote the deployment of high-capacity fibre-based broadband on a national basis;
- reduces access costs for wholesale customers;
- incentivises operators to upgrade from FTTC-based products to FTTH-based products, while ensuring there is robust and vigorous competition between wholesale network operators.

2.6 Eircom considers that the FTTH Tariff Proposal meets the requirements of the price controls specified in Decision D05/24.¹⁸

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¹⁷ Eircom CRD 994, p. 2–3.

¹⁸ Eircom CRD 994, p. 3.

3 Economic assessment of the FTTH Tariff Proposal

3.1 Our assessment of Eircom's FTTH Tariff Proposal is based on the framework as set out by ComReg in Decision D05/24.¹⁹ Specifically, we consider the FTTH Tariff proposal against the four criteria specified by ComReg, which are described in more detail in the relevant sections below.

3.2 As part of our assessment, we have considered the submissions made by Eircom in respect of the regulatory compliance of the FTTH Tariff Proposal,²⁰ its responses to ComReg's clarificatory questions,²¹ and the points expressed by Eircom in a meeting with ComReg.²²

3.1 Would FTTH prices including the discount remain above the Price Floor?

3.3 The first criterion that must be satisfied is:²³

The proposed price taking account of any Promotion or Discount remains above the Price Floor

3.4 The Price Floor for the monthly rental charges for FTTH VUA is given by the FTTC VUA price as per ComReg D05/24.²⁴ The FTTC VUA monthly rental charge is currently set at €19.12, and will remain at this level until 30 June 2024.²⁵ Subsequent to the notification of Wholesale Notification 24-010 to ComReg, Eircom has since proposed to increase the FTTC VUA monthly rental charge to €20.00 from 1 July 2024.²⁶ During the course of this market review period, Eircom is able to increase the FTTC VUA

¹⁹ ComReg D05/24, Decision Instrument: Section 14.10.1–14.10.4.

²⁰ Eircom CRD 994.

²¹ Eircom (2024), 'Open eir response to ComReg's queries sent on 15 March 2024 in relation to Wholesale Notification 2024-010 (WN2024-010)', 21 March.

²² ComReg meeting with Eircom on 18 April 2024.

²³ ComReg D05/24, Decision Instrument: Section 14.10.1.

²⁴ ComReg D05/24, Decision Instrument: Section 14.6.1.

²⁵ Eircom (2024), 'Access Reference Offer Price List: Version 29.1: Proposed, 19 April, p. 62 (available at: <https://www.openeir.ie/wp-content/uploads/2024/04/ARO-Price-List-V29.1Marked-Proposed-19042024.pdf> [accessed 22 April 2024]). The published Reference Offer states that the existing FTTC price will end on 30 June 2023 and be replaced by the proposed FTTC price on 1 July 2023. We understand the reference to 2023 is erroneous and that both dates are intended to refer to 2024.

²⁶ Eircom (2024), 'Access Reference Offer Price List: Version 29.1: Proposed, 19 April, p. 62.

price once per year by CPI-0%.²⁷ Therefore, the FTTC VUA price, and thus the Price Floor, may further increase over time.

- 3.5 In exceptional circumstances ComReg may, upon application from Eircom, lower the Price Floor in a specific geographic area.²⁸ However, we understand that at this point no such application has been made to ComReg by Eircom.
- 3.6 We first consider whether, the FTTH VUA prices including the discount would remain above the Price Floor based on the current and proposed FTTC VUA price levels. Under the FTTH Tariff Proposal, the cheapest FTTH VUA wholesale input has an undiscounted list price of €23.50 per month.²⁹ Therefore, the cheapest available FTTH VUA wholesale input including the €3 discount would be €20.50. This is €1.38 (7%) above the current €19.12 Price Floor, and €0.50 (2.5%) above the proposed €20.00 Price Floor. Therefore, we agree with Eircom's assessment that, the FTTH VUA price including the discount is above the Price Floor (based both on the current and proposed FTTC VUA monthly rental price).³⁰
- 3.7 However, when considering whether this would remain the case over the maximum three-year period for which the discount could apply, there are other factors to consider. First, Eircom is permitted to increase the FTTC-based VUA price by CPI-0% once in each year, meaning the Price Floor could further increase over the market review period. Second, Eircom has the flexibility to increase the undiscounted FTTH-based VUA list price to which the discount would apply.³¹
- 3.8 Once the newly proposed FTTC VUA price takes effect, if Eircom were to use the afforded flexibility to further increase this price, and thus the Price Floor, by more than €0.50 (2.5%) in the next three years, without increasing the undiscounted FTTH VUA list price, the discounted FTTH VUA prices would fall below the Price

²⁷ ComReg D05/24, Decision Instrument: Section 14.3.2.

²⁸ ComReg D05/24, Decision Instrument: Section 14.3.3.

²⁹ This is the list price for the FTTH NGA Virtual Unbundled Access Standalone 150Mbps, 300Mbps and 500Mbps products (sources: Eircom (2024), 'Access Reference Offer Price List: Version 29.0: Final', 29 February, p. 64; Eircom (2024), 'Access Reference Offer Price List: Version 29.1: Proposed', 19 April, p. 62).

³⁰ Eircom CRD 994, p. 4.

³¹ ComReg D05/24, Decision Instrument: Section 14.6.

Floor, in breach of this criterion.³² To avoid this, Eircom would need to adjust upward the FTTH VUA undiscounted list price such that the prices including the €3 discount remain above the Price Floor.

3.2 Does the FTTH Tariff Proposal favour Eircom's retail arm?

3.9 The second criterion that must be satisfied is:³³

ComReg is satisfied that 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

3.10 There are two distinct elements to this criterion: (i) whether the discount is available to a range of Access Seekers; and (ii) whether the discount favours Eircom's retail arm.

3.11 We do not consider there are grounds for concern that the discount would not be available to a range of Access Seekers in practice. This is for the following reasons:

3.12 First, there are no explicit volume-based conditions or thresholds, which means that the discount is attainable on each incremental upgraded line, irrespective of the total volume of upgrades. This means all Access Seekers, irrespective of their existing scale, would be able to obtain the €3 discount for each line they upgrade.

3.13 Second, the discount applies equally to FTTH-based VUA and Bitstream services at all speed profiles. This means that Access Seekers, who may have a preferred type of access and/or may focus on providing retail products with certain speeds, can equally benefit from the discount irrespective of the specific FTTH wholesale input used.

3.14 Finally, Eircom states that the discount is available to all Access Seekers on a non-discriminatory basis.³⁴ We have not identified any features or conditions of the FTTH Tariff Proposal to suggest this would not be the case in practice. However, we note that

³² The rate of CPI in Ireland was 2.9% in March 2024 (source: Central Statistics Office Ireland (2024), 'CSO statistical publication, 11 April 2024, 11am', 14 March. While CPI has declined in the past year, given its current level it is plausible that the permitted increase in the Price Floor over the next three years could exceed 2%.

³³ ComReg D05/24, Decision Instrument: Section 14.10.2.

³⁴ Eircom CRD 994, p. 3.

the degree to which an Access Seekers can benefit from the offer is dependent on the relative size of its copper/FTTC customer base and that Access Seekers without an existing copper or FTTC customer base would not be able to take advantage of the discount.

- 3.15 The second element of this criterion relates to whether the discount would favour Eircom's retail arm and thereby place it at an advantage relative to other Access Seekers.
- 3.16 In this regard, it is relevant that the discount is limited to lines where an Access Seeker upgrades its *own* customers, and so does not apply to lines where an Access Seeker acquires a customer from a rival and, in the process, upgrades them from a copper-based to a FTTH-based product provisions on the Eircom wholesale network.
- 3.17 There does not appear to be a clear pro-competitive rationale for the discount to be limited to own-customer upgrades, particularly when the potential effects on retail competition are considered.
- 3.18 In particular, this condition means that an Access Seeker would be able to upgrade its own copper/FTTC customers to an FTTH product at a €3 cost advantage relative to any customers acquired from rivals and upgraded to FTTH. Therefore, at the margin, Access Seekers will prefer to upgrade their own copper-based customers over seeking to 'win and upgrade' a rival's copper-based customer, given they will get a discount on the wholesale FTTH product for the former, but not the latter. This condition could therefore dampen retail competition and consequentially lock-in existing retail fixed broadband market shares. In this way it would have the effect of protecting the market position of Eircom's retail arm by muting retail competition between Access Seekers for the upgrade of legacy customers.
- 3.19 The advantage to Eircom Retail could be compounded in this case because Eircom has the largest retail base of copper and FTTC lines which are eligible for the discount.³⁵ Hence, Eircom

³⁵ At the retail level, Eircom has [X] copper lines and [X] FTTC lines, and accounts for [X] % of all copper based broadband demand, while the next largest Access Seeker accounts for [X] % as of Q4 2023 (source: ComReg QKDR Q4 2023).

has the potential to realise the largest total value of cost savings through obtaining the €3 per line discount on this base of customers.

3.20 To assess whether Eircom's retail arm would gain an advantage, the relevant question is whether Eircom would benefit overall at the retail level. While the cost savings are generated on upgraded lines at the level of wholesale prices, any savings achieved could be used to support a more compelling retail offer, either through lower retail prices, or through other non-price improvements that would provide a competitive advantage, all else being equal.

3.21 We have assessed the potential wholesale cost saving per line that could be realised by each major Access Seeker (including Eircom's retail arm), assuming that Access Seekers distribute the total value of cost savings generated on upgraded lines across their entire FTTH customer base at the retail level (including upgraded and existing FTTH lines). This scenario is broadly consistent with observed nation-wide pricing strategies at the retail level.

3.22 For example, suppose that an Access Seeker has a 50:50 mix of copper/FTTC and FTTH lines in their portfolio and, consistent with the offer, for each line they upgrade from copper/FTTC to FTTH they achieve a €3 discount. That is, if they upgrade all remaining copper/FTTC customers to FTTH (50% of its base) it can achieve a discount of €3 for each of these customers. If these cost savings are passed through to retail prices on a nation-wide basis across all FTTH lines regardless of whether a specific line was in receipt of a wholesale discount then each operator could offer an average cost reduction across all lines of €1.50 (50%*€3)

3.23 In this set-up, whether any one Access Seeker gets a cost advantage relative to another will depend on:

- the mix of existing lines that are on copper/FTTC vs those on FTTH across different operators (if one Access Seeker has a higher mix of copper/FTTC lines than its rivals, it will benefit more from the discount, all else being equal);
- the share of the copper/FTTC base that could feasibly be upgraded within the three-year window of the offer, taking into account: (i) the customers on CGA who fall

within the National Broadband Plan Intervention Area (NBP IA), and thus will generally not have the prospect of being upgraded onto the Eircom FTTH network;³⁶ (ii) the expected coverage of Eircom's FTTH network across all premises outside of the NBP IA. This determines the share of the 'upgradable base' that would be eligible for the discount upon upgrade.

3.24 Based on the available data on CGA, FTTC and FTTH lines, shown in Table 3.1 below, we find that there is some asymmetry in the share of CGA/FTTC lines in the overall base, across different operators.

Table 3.1 Share of CGA/FTTC lines in overall base

Access seekers	FTTH lines	FTTC lines ³⁷	CGA lines	Share of FTTC and CGA lines in overall base
Eircom	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]%
Sky	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]%
Vodafone	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]%

Source: Oxera analysis based on: ComReg QKDR Q4 2023

3.25 As noted above, it may be that not all of the FTTC or CGA lines would be eligible for upgrade to the Eircom FTTH network within the next three years, and this needs to be factored in to our assessment. We therefore estimate the total volume of copper and FTTC lines that retailers could have the opportunity to upgrade to Eircom's FTTH network (the 'upgradable base').

3.26 **Step 1:** In calculating the upgradable base, we first exclude the proportion of CGA lines that are likely to be within the NBP IA, as Eircom's FTTH will generally not be present in this area.³⁸ This

³⁶ The NBP IA refers to the area in which there is no planned commercial FTTH rollout, which will be served by NBI as part of the state-funded National Broadband Plan. Therefore, Eircom's FTTH network will predominantly cover areas outside of the NBP IA. See ComReg D05/24, paras 1.14 and 3.72.

³⁷ We note this figure is similar, but not identical, to the number of FTTC lines reported by Eircom in its regulatory compliance report ([REDACTED]) (source: Eircom CRD 994, p. 4).

³⁸ See ComReg D05/24, paras 1.14 and 3.72.

leads to a reduction in the 'upgradable base' of CGA lines to those set out in Table 3.2 below.³⁹ We do not (at this stage) adjust the FTTC lines as Eircom plans to overlay its FTTC network with FTTP.⁴⁰

Table 3.2 Upgradable base of CGA lines after adjusting for the proportion of copper lines that are within the NBP IA

Access seekers	Adjusted CGA lines
Eircom Retail	[REDACTED]
Sky	[REDACTED]
Vodafone	[REDACTED]

Source: Oxera analysis based on: ComReg QKDR Q4 2023; internal ComReg data Q4 2023.

3.27 **Step 2:** Over the three-year period for which the discount could be available, the number of FTTC and CGA lines that Access Seekers can realise a discount on will depend on the extent of Eircom's FTTH network rollout. Therefore, we analyse the discount on the upgradable base under two scenarios, multiplying the FTTC lines (i.e. those in Table 3.1 above) and CGA lines outside the NBP IA (i.e. those in Table 3.2 above) by:

- 100%, representing the scenario in which all premises outside of the NBP IA are covered by Eircom's FTTH network. This could be possible within the period for which the discount is available, given Eircom's plans to cover 1.9m premises by 2026, which broadly aligns with the number of premises outside the NBP IA (around 1.7m);⁴¹

³⁹ We exclude [REDACTED] % of copper lines for Eircom Retail and [REDACTED] % for other retailers in aggregate (source: Oxera analysis based on internal ComReg data Q4 2023).

⁴⁰ ComReg D05/24, para. 3.72.

⁴¹ There are a total of 2.3m premises in Ireland, of which the 569k are within the NBP IA. This suggests that there are around 1.7m premises outside of the NBP IA. There is a discrepancy between the number of premises Eircom seeks to cover (1.9m), which should in theory be outside of the NBP IA, and the estimated total number of premises outside of the NBP IA (1.7m). This could be due to discrepancies between the source figures and the possibility some of Eircom's FTTH rollout overlaps with the NBP IA. Source: Oxera analysis based on: Eircom (2023), 'Results for full year and fourth quarter 2023' 13 March, p. 1. Available at: <https://www.eir.ie/opencms/export/sites/default/.content/pdf/IR/news/eir-Q4-23-PRESS-RELEASE-VF.pdf> [accessed 22 April 2024]; ComReg D05/24, para. 1.14).

- 69%, representing an estimate of the proportion of premises outside of the NBP IA that were covered by the Eircom FTTH network as of Q4 2023.⁴²

3.28 The volume of lines in the upgradable base under each scenario are presented in Annex A1.

3.29 Table 3 below presents the average cost saving per FTTH line⁴³ for the three retail providers with the largest copper and FTTC customer bases,⁴⁴ under each of the three upgradable base scenarios. For Eircom, the results are presented both including and excluding the proposed cap on its FTTC line base eligible for the upgrade. As set out in paragraphs 3.21–3.22 above, this assumes that Access Seekers distribute the total value of cost savings generated on upgraded lines across their entire FTTH customer base at the retail level (including new upgraded and existing FTTH lines).⁴⁵ This scenario, is broadly consistent with observed nation-wide pricing strategies at the retail level.

Table 3.3 Average cost saving per FTTH line per month

Access seekers	Upgradable base: 69% scenario	Upgradable base: 100% scenario
Eircom Retail (excl. cap)	€[x] [redacted] [x]	€[x] [redacted] [x]
Eircom Retail (incl. cap)	€[x] [redacted] [x]	€[x] [redacted] [x]

⁴² This is given by Eircom's FTTH coverage in Q4 2023 of 1.2m premises, divided by 1,731,000 (a total of 2.3m premises in Ireland minus 569k premises that are within the NBP IA). Source: Oxera analysis based on: Eircom (2024), 'Results for full year and fourth quarter 2023' 13 March, p. 1; ComReg D05/24, para. 1.14).

⁴³ We multiply the upgradable base by the €3 discount, to determine the total potential value of cost savings per month that could be realised. We distribute this evenly across the total volume of each Access Seeker's FTTH lines, under each of the two scenarios, to give the average cost saving per FTTH line.

⁴⁴ Retailers may purchase some of their wholesale lines from aggregators (such as BT Ireland). In practice, the discount would be granted to the aggregators as they are the entities purchasing the wholesale input from Eircom. The extent to which the discount would be passed-on by aggregators to Access Seekers depends on the commercial agreements between these parties. In the absence of information on the extent to which this discount may be passed-on, for the purposes of this stylised exercise, we assume that the discount is passed-on in full to Access Seekers.

⁴⁵ Note, as a simplifying assumption, we also assume that the proportion of CGA lines upgraded to NBI's FTTH network within the NBP IA is proportional to the share upgraded lines to the Eircom FTTH network outside of the NBP IA. In the 100% and 69% upgradable base scenarios, we assume that 100% and 69%, respectively, of CGA lines within the NBP IA are upgraded to NBI's FTTH network. However, our conclusions are also robust to the alternative of assuming that 100% of CGA lines in the NBP IA are upgraded on to the NBI FTTH network.

Access seekers	Upgradable base: 69% scenario	Upgradable base: 100% scenario
Sky	€[REDACTED]	€[REDACTED]
Vodafone	€[REDACTED]	€[REDACTED]

Source: Oxera analysis based on: Eircom CRD 994; ComReg QKDR Q4 2023; internal ComReg QKDR Q4 2023.

- 3.30 As shown in Table 3.3 above, under both scenarios, Eircom would realise a higher cost saving per FTTH line than Sky or Vodafone, absent any cap.
- 3.31 Eircom has recognised that its position as having the largest FTTC retail base could provide its downstream arm with an advantage relative to other Access Seekers.⁴⁶ To mitigate this concern, Eircom has proposed to cap the number of Eircom retail FTTC lines that are eligible for the discount. Eircom considers that the cap would 'mitigate any potential undue competitive advantage' and would 'promote fair competition and establishes a level playing field, ensuring that the benefits of network upgrades are accessible in a balanced and equitable manner across the industry'.⁴⁷ There is no equivalent cap proposed for other copper-based services (such as CGA).⁴⁸
- 3.32 The cap on the number of Eircom's Retail FTTC lines that would be eligible for the discount is given by the second-largest FTTC line base within Eircom's wholesale network as of December 2023, multiplied by 1.32 (with the '32' being Eircom's Retail broadband market share percentage in December 2023). As specified in its regulatory compliance submission, Eircom has proposed to cap the number of FTTC lines eligible for the discount at [REDACTED] lines.⁴⁹
- 3.33 In the 100% upgradable base scenario, Eircom's average cost savings with the cap are generally in line with those that would

⁴⁶ Eircom CRD 994, p. 4.

⁴⁷ Eircom CRD 994, p. 4.

⁴⁸ Eircom CRD 994, p. 4.

⁴⁹ Eircom CRD 994, p. 4. The number of eligible FTTC lines specified in Eircom's regulatory compliance submission is marginally lower than that implied by the ComReg QKDR Q4 2023 data ([REDACTED] lines). For the purposes of assessing the potential impact of FTTH Tariff Proposal, we use the number of eligible FTTC lines under the cap proposed by Eircom in its regulatory compliance submission (i.e. [REDACTED] lines).

be realised by Sky and Vodafone (€[REDACTED] larger than Sky and €[REDACTED] lower than Vodafone).

3.34 In the 69% upgradable base scenario, based on Eircom's FTTH coverage as of Q4 2024, the cap has no effect and Eircom's average cost savings would be (€[REDACTED] larger than Sky and €[REDACTED] higher than Vodafone). This is because, the upgradable base in this scenario is below the volume of eligible lines permitted as per the cap. In any scenario where the upgradable FTTC base is below [REDACTED]% of total FTTC lines copper lines (outside the NBP IA), the cap will have no effect on Eircom's average cost savings.⁵⁰

3.35 These examples demonstrate that while the proposed cap may *reduce* the potential advantage Eircom Retail could obtain, it is not sufficient to *eliminate* the concern. As shown in the 100% upgradable base scenario, Eircom achieves broadly the same average cost savings as Sky and Vodafone. However, given Eircom's rollout target, it is unlikely to reach this level of coverage (outside the NBP IA) before 2026. Therefore, Eircom is likely to have an advantage over other retailers for the majority of the period for which the discount will be available (almost two-and-a-half years out of a maximum of three years, assuming the discount comes into effect in August 2024 and Eircom's FTTH rollout is not completed until the end of 2026). Moreover, for any scenario where the upgradable base of FTTC lines is below the capped number of lines, the cap is not binding on Eircom (i.e. it does not affect Eircom's average cost savings).

3.36 The reason we observe these outcomes is because the proposed cap is determined by a multiplier rule which does not, by design, ensure Eircom's retail arm does not gain an advantage relative to other Access Seekers across different potential scenarios.

3.37 We recognise that the above illustrations are a set of stylised and simplified examples. The exact impact, in practice, may also depend on other variables, including:

- customers will continue to switch retail providers while remaining on copper or FTTC products, meaning the line

⁵⁰ This is because the number of eligible lines under the cap [REDACTED] represents [REDACTED]% of Eircom's total FTTC base. Therefore, below this level, the cap is not binding.

- base on which each Access Seeker can realise the discount will change over time;
- the overall FTTH base of Access Seekers may also change over-time depending on the rate at which they acquire new customers, or lose old customers, in addition to those they upgrade through this scheme.

3.38 Based on the analysis above, we find that there are scenarios in which Eircom could obtain an advantage compared to other Access Seekers through higher average cost savings because of its higher mix of copper/FTTC vs FTTH customers and the cap proposed by Eircom does not provide sufficient assurances to eliminate the concern that Eircom's retail arm would gain an advantage. As such, the offer has a high likelihood of favouring Eircom's retail arm, and would therefore be in breach of the second criterion, through the likely 'effect' of the offer.⁵¹ However, the significance of any such advantage that may be afforded should be considered against the level of current retail prices.⁵²

3.39 Nevertheless, the conditions attached to the offer is also an important factor to be considered in the assessment of the impact of the offer on retail competition. Indeed, the concerns highlighted above are driven primarily by the restriction of the discount to own-customer upgrades. If this restriction was not in place and the discount was therefore available on all upgrades to FTTH on the Eircom network, the offer would not give cause for concern that Eircom's downstream retail arm would be favoured. This is because all Access Seekers would be able to earn the discount on any customer upgraded to FTTH (whether as part of an upgrade offer to their own CGA/FTTC customers, or as part of an 'acquire and upgrade' strategy).

3.40 This would mean that no single Access Seeker would have an automatic advantage or disadvantage by virtue of the current proportion of their base on CGA/FTTC vs FTTH, as each would be free to achieve the discount on any CGA/FTTC customer from any other Access Seeker. They would be competing on a level

⁵¹ ComReg D05/24, Decision Instrument: Section 14.10.2.

⁵² For example, Eircom is currently offering an 'up to 500Mb' broadband product on a 12 month contract for €34.99 (see: <https://www.eir.ie/shop/broadband> [accessed on 22 April 2024]). The illustrated advantage of €[redacted] compared with Sky in the scenario with less than [redacted]% coverage of the Eircom footprint, if passed through to retail prices, would represent a price reduction approximately [redacted]%.

playing field for these legacy customers. The success of an Access Seeker in upgrading customers (and achieving the discount) would be driven by competition on the merits, rather than being a function of its existing copper and FTTH base.

3.41 Therefore, there does not appear to be a clear pro-competitive rationale for the discount to be limited to own-customer upgrades. In fact, this condition can have the effect of protecting the market position of Eircom's retail arm by muting retail competition across Access Seekers by making it more difficult to compete on price for the acquisition and upgrade of legacy customers. Without the conditionality of limiting to the discount only to own-customer upgrades, and instead making the discount available to all upgrades, the concerns we have identified would fall away.

3.42 While the discount itself may encourage and incentivise Access Seekers to upgrade their own copper-based customers to FTTH on Eircom's network, in line with Eircom's objective for the FTTH Tariff Proposal, no evidence has been provided to show that the removal of the conditionality would have a detrimental impact on this objective.

3.3 Is the FTTH Tariff Proposal geographically targeted?

3.43 The third criterion that must be satisfied is:⁵³

ComReg is satisfied that the Promotion or Discount is not targeted at a specific geographic area and for the avoidance of doubt, no Promotion or Discount will be approved that gives rise to a geographic differentiation of prices

3.44 The FTTH Tariff Proposal does not contain any conditions or provisions which would be expected to give rise to the application of the Discount being targeted at a specific geographic area. Thus, there is no reason to expect that the FTTH Tariff Proposal itself would lead to geographically differentiated prices.

⁵³ ComReg D05/24, Decision Instrument: Section 14.10.3.

3.45 This is consistent with Eircom's assessment, which states that '[t]he offer makes no distinction between specific geographic areas and there is no geographic price differentiation'.⁵⁴

3.46 We consider that this criterion is satisfied.

3.4 Would the FTTH Tariff Proposal adversely affect investments by alternative operators or undermine competition?

3.47 The fourth criterion that must be satisfied is:⁵⁵

ComReg is satisfied that the Promotion or Discount will not adversely affect investments by Undertakings or undermine competition.

3.48 While we assessed the potential impact on retail competition (through an assessment of the extent to which Eircom's retail arm is favoured, in Section 3.3 above), the fourth criterion also requires an assessment of whether the discount would adversely affect the investments on alternative network operators (such as SIRO) and, thereby, undermines competition at the wholesale level.

3.49 We do not find that the FTTH Tariff Proposal includes volume-related, exclusivity and/or retroactive conditions.

3.50 The FTTH Tariff Proposal does not include exclusivity conditions that require wholesale customers to purchase inputs exclusively (or quasi-exclusively) from Eircom in order to receive the discount. This mitigates any concerns that this offer would disincentivise multi-supplier arrangements, with potentially detrimental effect on alternative network operators investing in their own infrastructure. Therefore, an Access Seeker relying on wholesale inputs can choose to use a mixture of wholesale suppliers for FTTH inputs without this preventing it from accessing the price reduction under the FTTH Tariff Proposal.

3.51 Further, the FTTH Tariff Proposal does not include conditions that require volume-based targets to be met in order to qualify for the discount. The discount is available on each incremental own-customer line upgrade, irrespective of the total volume of upgrades. This means that, all else being equal, a retail service

⁵⁴ Eircom CRD 994, p. 4.

⁵⁵ ComReg D05/24, para. 14.10.4.

provider relying on wholesale inputs will not be disincentivised to take wholesale lines with other network operators (where available), for fear of this affecting its volume requirements with Eircom that would otherwise affect the level of the discount that is available on lines taken with Eircom.

- 3.52 The discount applies incrementally to each upgraded line and is not applied retroactively. Therefore, in deciding whether to upgrade an existing copper-based customer, an operator can assess the FTTH wholesale price including the discount that it can obtain from Eircom against the wholesale prices offered by alternative network operators, without there being implications for the wholesale prices it pays on other line volumes supplied using Eircom's FTTH network. This mitigates any immediate concerns that this offer could have loyalty-enhancing effects as a result of retro-actively applied discounts.
- 3.53 However, it is the case that with the €3 discount available under the FTTH Tariff Proposal, when an Access Seeker is considering upgrading its own legacy customer base (supplied via an Eircom copper/FTTC wholesale service) to an FTTH service, Eircom's FTTH wholesale prices may appear to be more attractive than those of alternative wholesale operators that are not offering such a discount.
- 3.54 In this regard, it is important to check whether the discounted price offered by Eircom would be replicable by an alternative wholesale provider. The prices including the €3 discount should not be below the price floor i.e. a level set as a proxy for the costs that an efficient operator would incur in supplying the FTTH input.
- 3.55 As explained in section 3.1 above, based on current and proposed price levels, the monthly rental FTTH VUA prices including the discount are above the Price Floor (the monthly rental FTTC VUA price).
- 3.56 The full costs of provision should also take into account the costs of connections (in addition to the monthly rental costs). Given Eircom's current commercial policy of waving the connection fee, the assessment of the monthly rental price should account for the recovery of such costs, as these would need to be incurred by an alternative wholesale provider.

- 3.57 We understand that the Price Floor proxied by the FTTC VUA price would allow for the recovery of connection costs and, therefore, is an appropriate benchmark against which to consider whether the discounted FTTH VUA prices would foreclose competitive alternative network operators.⁵⁶
- 3.58 Eircom has also presented an estimate of the potential cost of FTTH VUA,⁵⁷ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].⁵⁸ This suggested that the cost of providing FTTH VUA (including amortised connection and migration costs) was €[REDACTED] per month. This is below the current (€19.12) and proposed (€20.00) Price Floor. However, as explained in Section 3.2, the Price Floor could further increase over the maximum three-year period for which the discount applies. Since the FTTH VUA price including the discount is above the current and proposed Price Floor, we are not required to undertake a detailed assessment of this estimated cost of providing FTTH VUA.
- 3.59 Based on the evidence available, we consider that the FTTH VUA prices including the discount would remain at a level which would not foreclose the competitive investment by alternative network operators or undermine competition at the wholesale level. Therefore, we consider that this fourth criterion is satisfied with respect to the impact on wholesale competition.
- 3.60 However, as noted in Section 3.3 above, we do have concerns that the structure of the offer, with the condition that it applies only to upgrades by an operator if its own customers (and not in the case where a retail provider acquires a customer from a rival and, in the process, upgrades them from a copper-based product to an FTTP-based product) could have an adverse impact on retail competition, even with the inclusion of Eircom's proposed cap on the number of FTTC lines it could achieve the discount on.

⁵⁶ See ComReg D05/24, para. 9.346 and footnote 1168.

⁵⁷ Eircom CRD 994, p. 6.

⁵⁸ [REDACTED].

A1 Volume of lines in the upgradable base for each scenario set out in Section 3

A1.1 As explained in section 3.2, we analyse the discounts on the upgradable base under two scenarios to recognise that, over the three-year period for which the discount could be available, the number of FTTC and CGA lines that Access Seekers could upgrade (and thus achieve a discount on the Eircom FTTH wholesale price) will depend on the extent of Eircom's FTTH network rollout.

A1.2 The two tables below present the relevant line volumes under each scenario. The tables present the 'upgradable base' of lines for CGA, FTTC, and in total.

A1.3 The tables also present the total volume of retail FTTH lines over which the value of the wholesale discounts could be spread, after the upgrades. This volume of retail FTTH lines is given by the total volume of existing retail FTTH lines, plus the total upgradable base, plus the CGA lines that are assumed to be upgraded to FTTH within in the NBP IA.⁵⁹

Table A1.1 Line volumes in the 100% upgradable base scenario

Access seekers	CGA upgradable base	FTTC upgradable base	Total upgradable base	Total assumed retail FTTH lines (existing and upgraded lines)
Eircom Retail	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sky	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Vodafone	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

⁵⁹ As a simplifying assumption, we assume that the proportion of CGA lines upgraded to NBI's FTTH network within the NBP IA is proportional to the share upgraded lines to the Eircom FTTH network outside of the NBP IA. In the 100% and 69% upgradable base scenarios, we assume that 100% and 69%, respectively, of CGA lines within the NBP IA are upgraded to NBI's FTTH network. However, our conclusions are also robust to the alternative of assuming that 100% of CGA lines in the NBP IA are upgraded on to the NBI FTTH network.

Table A1.3 Line volumes in the 69% upgradable base scenario

Access seekers	CGA upgradable base	FTTC upgradable base	Total upgradable base	Total assumed retail FTTH lines (existing and upgraded lines)
Eircom Retail	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sky	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Vodafone	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Oxera analysis based on: ComReg QKDR Q4 2023; internal ComReg data Q4 2023.

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