



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Assessment of a wholesale FTTH promotion notified by Eircom Limited under ComReg Decision D05/24 (WN2024-021)

Decision

Decision

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Decision D21/24
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1 Introduction

- 1.1 Under ComReg Decision D05/24 (**Decision D05/24**), Eircom Limited (**Eircom**) may not apply any Discounts or Promotions in respect of FTTP-based VUA without the express prior approval of ComReg. On 31 May 2024, Eircom notified to ComReg for its prior approval, an FTTP Promotion offer (**WN2024-021**) to apply to Eircom's 1Gbps FTTP service. Clarifications on the proposed promotion were provided to ComReg on 21 June 2024 and 3 July 2024.
- 1.2 Section 2 below describes WN2024-021 in further detail; section 3 sets out the assessment framework for Discounts and Promotions under Decision D05/24 in terms of applicable substantive criteria and procedural requirements; section 4 sets out ComReg's assessment of WN2024-021 under each of the criteria and section 5 contains the operative part of the decision approving the promotion notified under WN2024-021.

2 Eircom's Promotion WN2024-021

- 2.1 WN2024-021 consists of a proposed promotion which would be available to all operators that purchase wholesale inputs from Eircom ('Access Seeker'), when they either connect a new customer or upgrade an existing customer to Eircom's 1Gbps FTTP¹ service (the product termed "NGA Virtual Unbundled Access Standalone 1000Mbps" in the Access Reference Offer (ARO)).
- 2.2 The proposed promotion WN2024-021 has the following features:
- (i) **Price Reduction:** The proposed discount consists of a €2 price reduction to the existing 1Gbps FTTP VUA price of €28.50 to €26.50. The €2 discount is applied to the published price at any given time and will also carry through to the FTTH 1Gbps Bitstream product.
 - (ii) **Eligibility:** WN2024-021 is available to all wholesale customers. New connections and upgrades from any slower profile/product already on the Eircom network, will qualify for the promotion.
 - (iii) **Promotion period and duration:** The promotion period starts on 1 November 2024 and will be available for 6 months, ending on 30 April 2025. Access Seekers who satisfy the eligibility requirement will then receive the discounted

¹ The terms "FTTH" (fibre to the home) and "FTTP" (fibre to the premises) are used interchangeably throughout this document.

price for 2 years (24 instances) from the connection date of that end user to the 1Gbps service.

- (iv) Exclusion: The promotion does not apply to existing FTTP 1Gbps customers. If a 1Gbps customer moves from an Access Seeker receiving the discount while on the promotion, that Access Seeker will cease to receive the discount. Additionally, if a 1Gbps customer moves from one Access Seeker to a second Access Seeker during the promotion, the second Access Seeker will not qualify for the discount.

2.3 The promotion may be cumulated with other wholesale discounts or promotions where the terms and conditions of all schemes are met. As of 30 August 2024 Eircom has not notified any further FTTP wholesale discounts or promotions.

2.4 According to Eircom's notification, WN2024-021 is designed to encourage Access Seekers facilitate end-user migration from copper / FTTC to FTTP, speeding up the transition to fibre, leading to cost savings and performance improvements for Eircom and the broader economy. Eircom also sees a benefit to the retail broadband market as reductions in wholesale prices may lead to lower retail prices.

3 Framework

3.1 Under D05/24, any wholesale FTTP VUA promotion or discount proposed by Eircom is subject to case-by-case approval by ComReg. Approval will only be granted where ComReg is satisfied that the proposed discount or promotion will not have a detrimental impact on actual or potential economically efficient alternative investment in VHCN². In particular, as set out above, ComReg will not approve a wholesale promotion or discount unless it meets the following criteria³:

- (i) the proposed price taking account of any Promotion or Discount remains above the Price Floor;
- (ii) 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;
- (iii) 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; and

² Paragraph 9.557 of ComReg Decision D05/24.

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

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

- 3.2 Notification by Eircom of a proposed discount initiates a three month assessment period which may be paused where complete information has not been provided, or additional information is required, in which case it will resume on provision of the relevant information by Eircom⁴. ComReg is also required to carry out a consultation where it considers that the proposal will have a significant impact on the market within the meaning of the EEC Regulations or, for example, if the proposal is thought to contain aspects of concern where the impact on competition is unclear and may require input to be sought from stakeholders⁵. Decision D05/24 notes that ComReg will exercise its discretion and carry out a consultation on a notified discount or promotion where it considers it necessary, for example, to assess the impact of the offer. ComReg will not consult on offers that either obviously fail or pass the assessment as this is not required and would create an unnecessary process.
- 3.3 Given the nature and limited scope of the promotion notified in WN2024-021, which is limited to the Eircom 1Gbps FTTH VUA products, ComReg determined that it did not require to obtain inputs from stakeholders in respect of its assessment of the promotion. At the time that WN2024-021 was notified, however, Consultation 24/38, in respect of a discount scheme notified under WN2024-010, with which WN2024-021 could be cumulated, had been open for only a week. Consultation 24/38⁶ had been published after Eircom had suggested no more than four weeks before that it did not have immediate intention to notify another discount or promotion. As set out in Consultation 24/57,⁷ ComReg, in order to protect the integrity of its consultation process, decided to inform stakeholders of the notification of WN2024-021 and allowed them to make additional submissions in respect of WN2024-010 in the knowledge that the two offers could be cumulated.
- 3.4 Although ComReg did not seek stakeholders' submissions in respect of WN2024-021 on a standalone basis, in paragraph 5 of Consultation 24/57, ComReg noted that at that stage, it had "*not identified any serious concerns with the promotion on a standalone basis (that is to say without factoring the cumulative effect of WN2024-010)*".

⁴ Paragraph 9.566(a) of ComReg Decision D05/24

⁵ Paragraph 9.566(c) of ComReg Decision D05/24

⁶ ComReg Consultation 24/38, Draft Decision on Assessment of a wholesale FTTH discount scheme notified by Eircom Limited under ComReg Decision D05/24, 24 May 2024.

⁷ ComReg Consultation 24/57, Assessment of a wholesale FTTH discount scheme notified by Eircom Limited under ComReg Decision D05/24 (WN2024-010): Further Consultation following notification of a wholesale FTTH promotion (WN2024-021), 5 July 2024.

- 3.5 Although no submissions were sought as such on WN2021-021 in Consultation 24/57, both Virgin Media Ireland ('VMI') and Vodafone offered views.
- 3.6 VMI expressed serious concerns that ComReg had not complied with its statutory duties including in terms of consultation and transparency and was of the view that ComReg should have held a consultation in respect of its assessment of WN2024-021. Having considered VMI's submission, ComReg continues to be of the view that no consultation as regards the assessment of WN2024-021 on a standalone basis is required given its content and scope, and that this is consistent with the approach set out in Decision D05/24. ComReg notes further that the question of the assessment of the cumulative impact of WN2024-021 were WN2024-010 approved and put into effect, does not arise given ComReg's decision not to approve WN2024-010, as set out in ComReg 24/69.
- 3.7 As for Vodafone, it supported the promotion subject to the removal of the limitation on the transfer of the promotion to another provider, and the two-year duration for the discounted price. Vodafone urged Open eir to introduce simple discounts with no unnecessary constraints. ComReg, however, believes that the framework for the review of discounts and promotions as set out in Decision D05/24 is better approached as being a review that is limited to an assessment of the terms and conditions notified by Eircom, and accordingly as a decision to approve or not approve (subject as the case may be to certain conditions designed to ensure or monitor compliance) the scheme as notified by Eircom. ComReg accordingly has not engaged in an assessment of the amendments suggested by Vodafone.

4 ComReg's assessment

- 4.1 ComReg is of the view that the four criteria set out in Sections 14.10.1 to 14.10.4 of the Decision Instrument in Decision D05/24 are met, as follows:

Criterion 1: FTTH prices remain above the Price Floor

- 4.2 In accordance with Criterion 1, the proposed price taking account of any Promotion or Discount remains above the Price Floor. ComReg notes that under Decision D05/24, the FTTC VUA price acts as a price floor for FTTH VUA⁸ and that since 1 July 2024, the FTTC VUA monthly rental charge is set at €20.00 and will remain at this level until further notice by Eircom.

⁸ ComReg Decision D05/24, Decision Instrument: Section 14.6.1.

- 4.3 The €2 reduction in price provided under WN2024-021, applied to the existing FTTP 1Gbps VUA price of €28.50, as of 30 August 2024, results in a discounted price of €26.50, which is materially above the price floor of €20.00 based on the FTTC VUA price from 1 July 2024.

Criterion 2: The relative benefit to Eircom Retail

- 4.4 In accordance with Criterion 2, *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 notes that the promotion will be available to all Access Seekers who sign up or upgrade a customer to Eircom's 1 Gbps FTTH, without limitation, so that it does not, in form or effect, favour Eircom Retail. In particular the size of the Eircom Retail customer base, and/or the distribution of copper or fibre-based products in the Eircom Retail's customer base, is not susceptible to influence the promotion's availability to Access Seekers.

Criterion 3: Geographic pricing

- 4.5 In accordance with Criterion 3, *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.* There is nothing in the terms and conditions of WN2024-021 that is susceptible to give rise to a geographic differentiation of prices. ComReg notes in this regard that WN2024-021 is available nationally and also carries through to a FTTP Bitstream service that is sold in conjunction with the 1Gbps FTTP VUA service.

Criterion 4: Impact on investments by alternative operators and competition

- 4.6 In accordance with Criterion 4, *ComReg is satisfied that the Promotion or Discount will not adversely affect investments by Undertakings or undermine competition.* ComReg notes that WN2024-021, which will offer a discounted price that is above the Price Floor, does not include any volume related discounts, volume quotas/targets, or induce exclusive dealing, or any other discriminatory features. It is available to all Access Seekers on an incremental basis and does not include features with an exclusionary potential for rivals in either the retail or wholesale markets.

Conclusion

- 4.7 For these reasons, having assessed WN2024-021 against each of the four criteria as set out in D05/24, ComReg makes the enclosed decision, the operative part of which is set out in Chapter 5 below.

5 Decision Instrument

- 5.1 This Decision is made by the Commission for Communications Regulation:
- (i) Pursuant to and having regard to Sections 10 and 12 of the Communications Regulation Act 2002 (as amended) and Regulation 4 and Regulation 42 of the ECC Regulations;
 - (ii) Pursuant to and having regard to Regulation 104 of the ECC Regulations;
 - (iii) Pursuant to ComReg Decision D05/24 of 18 January 2024, in particular Sections 14.9, 14.10 and 14.11 of the Decision Instrument read together with paragraphs 9.497 to 9.569 of ComReg Document 24/07;
 - (iv) Having regard to Eircom's Notification WN2024-021 received on 31 May 2024;
 - (v) For the reasons set out in paragraphs 1.1 to 4.7 above.
- 5.2 All capitalised terms in this Decision Instrument have the same meaning of those terms defined in paragraphs 1.1 to 4.7 above and/or ComReg Decision D05/24.
- 5.3 ComReg hereby approves publication by Eircom, and its making available two months thereafter, of the discount offer set out in Wholesale Notification 2024-021 in the terms and under the conditions set out in Wholesale Notification 2024-021 on the basis that the Offer included in Wholesale Notification 2024-021 meets the four criteria at Section 14.10 of the Decision Instrument in ComReg Decision D05/24.
- 5.4 This approval is granted with immediate effect and shall continue for the six-month period that the Offer is available so long as, and subject to, each of the criteria set out in Section 14.10 of the Decision Instrument in ComReg Decision D05/24 being met at all times.
- 5.5 Where and if necessary, ComReg may issue further directions to Eircom pursuant to Regulation 104 of the ECC Regulations for the purpose of ensuring that the criteria set out in ComReg Decision D05/24 are met for so long as the Offer is available.
- 5.6 This Decision shall be served upon Eircom Limited and published on ComReg's public website.

GARRETT BLANEY
COMMISSIONER
COMMISSION FOR COMMUNICATIONS REGULATION
ON THE 29TH DAY OF AUGUST 2024