

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

1. In relation to the qualification criteria for the discount we understand that the discount will only be available to an operator upgrading its existing copper-based subscribers (i.e. "to upgrades of an operator's own customers") to FTTH.

1. Given that Eircom's stated objective is to incentivise operators to upgrade from FTTC products to higher-capacity FTTH products and/or to migrate customers from older products to new technology, why is the discount not available to an operator that acquires a customer from another operator on Eircom's network and in the process upgrades them from copper-based broadband to FTTH?

Open eir response:

The objective of this discount is to incentivise Operators to actively plan and manage the migration of their existing copper based Broadband subscribers to FTTH.

Including a scenario where an Operator is actively selling FTTH and wins a customer who has a copper based broadband service does not serve the stated objective.

2. Are operators who currently purchase FTTC or copper based services through an intermediate wholesale provider eligible for the discount?

Open eir response:

The offer is open to intermediate wholesale providers but open eir have no view of or control over commercial agreements between intermediate wholesale providers and their downstream wholesale customers.

2. In relation to the proposed limit for Eircom retail using a cap set at 1.32 times the size of the second-largest FTTC customer base within Eircom's wholesale network as of December 2023, with the multiplier informed by Eircom retail's current broadband market share, which stands at approximately 32%:

1. While Eircom describe this as "a deliberate, proportional approach to structuring incentives for network upgrades", it is also the case that that the multiplier would have been higher if Eircom Retail's market share had been higher. For example, if Eircom Retail's share of the market was 50% the implied multiplier would be 1.5. Given the potential for Eircom's chosen approach to give rise to such an outcome, can Eircom explain the rationale behind using its December 2023 market share as the basis for the cap?

Open eir response:

The implementation of any cap on a single operator that does not apply to other operators is discriminatory to the operator to which a cap applies. Based on previous correspondence from ComReg - it was understood that a cap would be required for eir retail. The rationale behind a cap based on eir retail's market share is twofold: to ensure that the promotion does not disproportionately benefit eir retail at the expense of "smaller" competitors and to maintain a degree of proportionality within the market.

Market dynamics are fluid, and the relationship between eir retail's market share and the application of the cap to the second-largest provider exists within a broader competitive ecosystem. The cap mechanism is to recognise that dynamic and to serve as a compliance benchmark. The market cap is based on the last available ComReg quarterly report before the open eir submission which was December '23.

As the market share is not at 50% and as the cap is set using the historic 32% it appears irrelevant to discuss a scenario of "what ifs" based on a retail market share being 50%. In such a scenario the market shares of all other operators would invariably shift as well.

2. ComReg notes Eircom's statement that "*There is no cap for the other copper-based services such as CGA.*" Considering that Eircom retail also accounts for a large proportion of the CGA customers on Eircom's network, why does Eircom consider that applying a cap to Eircom Retail's non-FTTC based copper services is not necessary?

Open eir response:

The decision not to apply a similar cap to other copper-based services, such as CGA, is based on the distinct market conditions and competitive dynamics associated with these services.

CGA services, based on older copper technology, are increasingly seen as less relevant for future connectivity needs. This transition is reflected in consumer demand, with a growing preference for higher-speed, more reliable broadband services offered by fibre technologies.

As a consequence, the competitive landscape for CGA services is fundamentally different from that of FTTC or FTTH, characterised by declining demand and reduced strategic importance for investment by operators, including Eircom.

Finally, CGA services are available throughout Ireland and include the intervention area. Therefore, placing a cap on CGA would be ineffective in assisting planning and managing the migration of the Operator's existing CGA subscribers to FTTH. This is different to FTTC as there is no FTTC in the

intervention area compared to CGA services. CGA services are likely to be higher in the intervention area and therefore the entire applicable base outside of the intervention should be in scope.

3. How does Eircom intend to monitor and control the take-up by Eircom Retail, to ensure that upgrades from Eircom Retail's non-FTTC copper base are not counted within Eircom Retail's eligible base of [REDACTED]?

Open eir response: Eircom is committed to monitoring to ensure compliance with the established cap, thereby guaranteeing that upgrades from Eircom Retail's non-FTTC copper base do not count towards the eligible base of [REDACTED]. This will involve monthly tracking and reporting of upgrade activities. Those figures will be shared with eir retail for the purposes of compliance with their regulatory obligations.

3. Clarifications:

1. In the compliance statement Eircom has indicated that it may cancel the discount with 12 months notice, however this is not included in the price list. The price list should be consistent with the statement of compliance so if there is a possibility of cancelling with 12 months notice, please provide an updated price list to take account of this.

Open eir response:
Yes, that is correct. open eir will add that clarification to the pricing document.

2. Can you confirm that, in the event of a future increase (or decrease) to the headline FTTP price, the €3 discount will continue to apply to the prevailing applicable price for FTTP, e.g. a future 1.5% increase in the headline FTTP VUA monthly rental price from €23.50 to €23.85 would result in a corresponding increase to the discounted FTTP VUA monthly rental price from €20.50 to €20.85.

Open eir response:
Yes, that is correct. open eir will add that clarification to the pricing document.