



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

eir's 2011-2012 Universal Service Funding Application

Unfair burden assessment

Consultation

Reference: ComReg 24/79

Version: Non-Confidential

Date: 26/09/2024

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In this document, ComReg has maintained the confidentiality of commercially sensitive information, in accordance with ComReg’s guidelines on the treatment of confidential information¹ (the “Confidentiality Guidelines”). Where information of a confidential/commercially sensitive nature is discussed in this document or the accompanying consultants’ reports, the relevant information has been redacted and a [X] symbol has been inserted.

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¹ ComReg (2005) “ComReg’s Guidelines on the treatment of confidential information”, Document No. 05/24.

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Glossary

“Base judgment” means Base NV and Others v. Ministerraad, Case C-389/08, judgment of the CJEU, delivered by the CJEU on 6 October 2010.

“CJEU” means the Court of Justice of the European Union.

“CJEU judgment” means Eircom Limited v. Commission for Communications Regulation, Case C-494/21, delivered by the CJEU 10 November 2022.

“Code” means the European Electronic Communications Code, established by Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018.

“Code Regulations” means the European Union (Electronic Communications Code Regulations 2022 (S.I. 444 of 2022)).

“ComReg” means the Commission for Communications Regulation, established by section 6(1) of the 2002 Act.

“ComReg Decision D06/19” means “Assessment of eir’s 2011-12 Universal Service Fund Application: Assessment of the net cost and unfair burden for the period 2011-2012”, ComReg Document No. 19/37, Decision No. D06/19, 18 April 2019.

“Consultation 10/77” means “Preliminary Consultation - Call for Input, Costing and Financing of Universal Service Obligations”, ComReg Document No. 10/77, 28 September 2010.

“Consultation 11/77” means “Consultation on sharing mechanism for any USO Fund: Principles and Methodologies”, ComReg Document No. 11/77, 28 October 2011.

“Consultation 23/113” means “eir’s 2010-2011 Universal Service Fund Application. Assessment of the unfair burden. Consultation and Draft Determination,” ComReg Document No. 23/113, 6 December 2023.

“CRO” refers to the Companies Registration Office.

“D04/11” means “Decision on the Costing of universal service obligations: Principles and Methodologies”, ComReg Document No. 11/42, Decision No. D04/11, 31 May 2011.

“D12/14” means “Market Review: Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers”, Response to Consultation, ComReg 14/89, ComReg Decision D12/14, published 28 August 2014. This was a response to the 2012 FVA Consultation.

“**D17/24**” means “eir’s 2010-2011 Universal Service Fund Application. Assessment of the unfair burden. Response to Consultation and Draft Determination,” ComReg Document No. 24/43r, Decision 17/24,4 June 2024.

“**direct net cost**” of the USO is the avoidable costs attributable to the provision of the USO (both direct and indirect), minus revenues (both direct and indirect) attributable to the provision of the USO.

“**eir**” means Eircom Limited.

“**Framework Regulations**” mean the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. 333 of 2011).

“**FVA**” means fixed voice access.

“**HCA**” means historical cost accounting.

“**Information Requirements**” means the additional information formally requested on 11 March 2024 from the relevant undertakings by ComReg, using its statutory powers (Section 13D(1) of the 2002 Act).

“**Minister**” means the Minister for the Environment, Climate and Communications.

“**net cost**” is calculated as the difference between the ‘direct net cost’ and the intangible benefits which accrue to the USP, by virtue of being the USP.

“**NRA**” means National Regulatory Authority.

“**Oxera**” means Oxera Consulting, LLP.

“**Oxera Unfair Burden Report 2011/12**”, refers to the report prepared by Oxera, titled “Unfair burden report 2011/12” (24/79a) and is included as Annex 2 of this consultation document.

“**QKDR**” means the Quarterly Key Data Reports published by ComReg.

“**RIA**” means regulatory impact assessment.

“**ROCE**” means the return on capital employed.

“**SMP**” means significant market power.

“**Tera Report**” refers to the report prepared by Tera Consultants SAS, titled “Assessment of eir’s USO funding application – Direct net cost 2011-2012”, ComReg Document No. 17/81a, 11 October 2017.

“**Universal Service Regulations**” means the European Communities (Electronic Communications Networks and Services)(Universal Service and Users’ Rights) Regulations 2011 (S.I. 337 of 2011).

“USO” means universal service obligations.

“USO model” refers to the USO direct net cost model underpinning eir's USO funding applications to ComReg as a whole, including all calculations, data, spreadsheets, the model summary, and the individual net cost models (Area, Customer, Payphone, Directories, and Disabled End Users' Services). These individual direct net cost models may be referred to cumulatively as “USO models.”

“USP” means universal service provider.

“WACC” means the weighted average cost of capital.

“2002 Act” means the Communications Regulation Act 2002, as amended.

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1. Executive summary

- 1.1. Eircom Limited ("eir"), as the designated universal service provider ("USP"), submitted an application for funding in respect of the net costs of meeting its universal service obligations ("USO") during its financial year 2011-2012². ComReg is obliged to assess this application to determine whether any net cost represents an unfair burden on eir.
- 1.2. This document details and consults on ComReg's preliminary views in relation to the unfair burden assessment for 2011-2012. The document is structured as follows:
 - **Chapter 2** sets out the background to the assessment;
 - **Chapter 3** outlines the legal context;
 - **Chapter 4** details ComReg's approach to the unfair burden assessment;
 - **Chapter 5** details ComReg's unfair burden assessment as applied to 2011-2012, including the key findings of the "Oxera Unfair Burden Report 2011/12" (published as part of this consultation at **Annex 2**), which was carefully considered by ComReg prior to it forming its preliminary view; and
 - **Chapter 6** outlines next steps in the consultation process.
- 1.3. ComReg is of the preliminary view that for 2011-2012, the determined net cost of the provision of the USO does not represent an unfair burden on eir.
- 1.4. ComReg welcomes written responses on any of the issues raised in this consultation document. Following consideration of responses, ComReg will make a decision regarding the unfair burden assessment for 2011-2012.

² Referred to as "2011-2012"

2. Background

- 2.1. Where an undertaking (a USP) is designated as having an obligation (a USO), it may submit to ComReg a written request to receive funding for the net costs of meeting the USO. ComReg is then required to determine, based on a net cost calculation, whether the cost of meeting the USO represents an unfair burden on the USP³.
- 2.2. eir as the designated USP, may submit applications for USO funding in accordance with ComReg Decision D04/11⁴ ("D04/11"). D04/11 sets out how the USP, should they so choose, is to make an application, including how the net cost (after intangible benefits) is to be calculated, and sets out principles and methodologies to apply to ComReg's assessment as to whether a net cost associated with meeting the USO provision, if any, represents an unfair burden on the USP.
- 2.3. In October 2014 eir submitted its initial application for funding for 2011-2012. In this application eir claimed a net cost of €7,261,313 for this period, after taking account of intangible benefits of €1,965,096.
- 2.4. Following a process of engagement between ComReg and eir during which ComReg outlined certain clarifications and adjustments that it required, in February 2016 eir re-submitted its 2011-2012 USO funding application and in July 2016 re-submitted its final application. As a result of these clarifications, eir adjusted the positive net cost claimed for 2011-2012 from €7,261,313 to €6,986,518.
- 2.5. On 10 October 2017 ComReg published Consultation 17/81⁵, in which ComReg set out and consulted upon its preliminary views in relation to eir's final application for funding for 2011-2012, having regard to the Universal Service Regulations,

³ This process is provided for in Regulation 75 of the European Union (Electronic Communications Code) Regulations 2022, S.I. 444 of 2022 ("the Code Regulations"), <https://www.irishstatutebook.ie/eli/2022/si/444/made/en/print>, and was previously provided for in Regulation 11 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011, S.I. No. 337 of 2011 ("the Universal Service Regulations"), <https://www.irishstatutebook.ie/eli/2011/si/337/>.

⁴ "Decision on the Costing of universal service obligations: Principles and Methodologies", ComReg Decision 04/11, Document No. 11/42, 31 May 2011 ("D04/11"), <https://www.comreg.ie/publication/report-on-consultation-and-decision-on-the-costing-of-universal-service-obligations-principles-and-methodologies/>.

⁵ "Assessment of eir's 2011-2012 Universal Service Fund Application. Assessment of the net cost and unfair burden for the period 2011-2012, Consultation and Draft Determination", Document No. 17/81, 10 October 2017, https://www.comreg.ie/media/dlm_uploads/2017/10/ComReg-1781.pdf.

D04/11, and the consultants' reports⁶.

2.6. On 18 April 2019, ComReg published the following ComReg Decisions:

- D05/19 "Assessment of eir's 2010-2011 Universal Service Fund Application Assessment of the net cost and unfair burden for the period 2010-2011" ("ComReg Decision D05/19").
- D06/19 "Assessment of eir's 2011-2012 Universal Service Fund Application Assessment of the net cost and unfair burden for the period 2011-2012" ("ComReg Decision D06/19").
- D07/19 "Assessment of eir's 2012-2013 Universal Service Fund Application Assessment of the net cost and unfair burden for the period 2012-2013" ("ComReg Decision D07/19").
- D08/19 "Assessment of eir's 2013-2014 Universal Service Fund Application Assessment of the net cost and unfair burden for the period 2013-2014" ("ComReg Decision D08/19"); and
- D09/19 "Assessment of eir's 2014-2015 Universal Service Fund Application Assessment of the net cost and unfair burden for the period 2014-2015" ("ComReg Decision D09/19" and together "the Decisions").

2.7. In each of the Decisions, ComReg determined the net cost of provision of the universal service and decided that this did not represent an unfair burden on eir in the financial year in question.

2.8. On 15 May 2019, eir issued an appeal in the High Court against the Decisions⁷.

2.9. On 6 November 2020, the Court decided to stay the proceedings and refer a question concerning the unfair burden assessment to the Court of Justice of the European Union ("the CJEU") for a preliminary ruling pursuant to Article 267 of the Treaty on the Functioning of the European Union. The following is the question referred:

"In circumstances where:

⁶ TERA, "Assessment of eir's USO funding application – Direct net cost 2011-2012", ComReg Document No. 17/81a, 11 October 2017, https://www.comreg.ie/?dml_download=tera-report-assessment-eirs-uso-funding-application ("Tera Report"). Oxera, "Assessment of eir's calculation of intangible benefits for 2011/12", ComReg Document No. 17/81b, 11 October 2017, <https://www.comreg.ie/publication/oxera-report-assessment-eirs-calculation-intangible-benefits-201112>. Oxera, "Unfair burden report 2011/12", ComReg Document No. 17/81c, 11 October 2017, https://www.comreg.ie/?dml_download=oxera-unfair-burden-report-201112.

⁷ Eircom Limited v. The Commission for Communications Regulation, High Court Commercial, Record No 2019/167 MCA, <https://www.casemine.com/judgement/uk/60ab45a94653d0392c49cf5e>.

- (i) the telecommunications market has been liberalised and there are multiple telecommunication services providers operating in the market;
- (ii) one service provider ... has been selected by the National Regulatory Authority ("NRA") to perform Universal Service Obligations ...;
- (iii) it has been determined by the NRA that there is a positive net cost associated with the performance of the [Universal Service Obligations]; and
- (iv) it has been determined by the NRA that the [Universal Service Obligations] Net Cost is material compared to the administrative costs of the establishment of a sharing mechanism in respect of the [Universal Service Obligations] Net Cost amongst participants in the market;

If the NRA is required, pursuant to its obligations under the [Universal Service Directive], to consider whether the [Universal Service Obligations] Net Cost is excessive in view of the ability of the [Universal Service Provider] to bear it, account being taken of all the [Universal Service Provider's] characteristics, in particular, the quality of its equipment, its economic and financial situation and its market share (as referred [to] at para. 42 of [the judgment of 6 October 2010, Base and Others (C-389/08, EU:C:2010:584)]) is it permissible under the Directives for the NRA to conduct that assessment by having regard exclusively to the characteristics/situation of the [Universal Service Provider], or is it required to assess the characteristics/situation of the [Universal Service Provider] relative to its competitors in the relevant market?"

2.10. On 10 November 2022, the CJEU delivered its judgment⁸. The CJEU responded⁹ to the question referred as follows:

"In the light of all the foregoing considerations...Articles 12 and 13 of the Universal Service Directive must be interpreted as requiring the competent national regulatory authority, in order to determine whether the net cost of universal service obligations represents an unfair burden on an operator entrusted with such obligations, to examine the characteristics particular to that operator, taking account of its situation relative to that of its competitors in the relevant market".

⁸ Eircom Limited v. Commission for Communications Regulation, Case C-494/21, Judgment of the Court, delivered 10 November 2022 ("the CJEU judgment"), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62021CJ0494>.

⁹ Paragraph 55 of the CJEU judgment.

- 2.11. On 10 July 2023, the High Court made orders which, amongst other things:
- i. set aside the following determinations relating to ComReg's unfair burden:
 - a) section 1.3 of the determination in ComReg Decision D05/19
 - b) the final paragraph of section 1.2 of the determination in ComReg Decision D06/19 (beginning "Pursuant to the calculation of the positive net cost...")
 - c) section 1.3 of the determination in ComReg Decision D07/19
 - d) section 1.3 of the determination in ComReg Decision D08/19
 - e) section 1.3 of the determination in ComReg Decision D09/19;
- and
- ii. ordered that those aspects of the Decisions identified above be remitted to ComReg for review in accordance with the CJEU judgment.
- 2.12. Accordingly, the net cost determined by ComReg in the Decisions remains undisturbed. The existence of a positive net cost does not automatically constitute an unfair burden or automatically give rise to the need for USO funding.
- 2.13. On 6 December 2023 ComReg published Consultation 23/113, and the "Oxera Initial Unfair Burden Report 2010/11"¹⁰. In Consultation 23/113 ComReg set out how it proposed to apply Decisions 38-42 of D04/11, in light of the CJEU judgment and its unfair burden assessment for 2010-2011.
- 2.14. Following responses to consultation, on 4 June 2024 ComReg determined that for the financial year 2010-2011, the determined net cost of the provision of the universal service obligation did not represent an unfair burden on eir and therefore that the universal service obligation in 2010-2011 did not represent an unfair burden on eir ¹¹.

¹⁰"eir's 2010-2011 Universal Service Fund Application. Assessment of the unfair burden. Consultation and Draft Determination," ComReg Document No. 23/113, 6 December 2023, <https://www.comreg.ie/publication/eirs-2010-2011-universal-service-fund-application-assessment-of-the-unfair-burden-consultation-and-draft-determination>. ("Consultation 23/113"). "Oxera unfair burden report 2010/11", ComReg Document No. 23/113a, 4 December 2023 <https://www.comreg.ie/publication/oxera-unfair-burden-report-2010-11-2>.

¹¹"eir's 2010-2011 Universal Service Fund Application. Assessment of the unfair burden. Response to Consultation and Final Determination," ComReg Decision 17/24, ComReg Document No. 24/43R Decision No.D17/24, 27 June 2024 <https://www.comreg.ie/publication/eirs-2010-2011-universal-service-funding-application-unfair-burden-assessment-response-to-consultation-and-final-determination-24-43>.

- 2.15. ComReg is now consulting on its assessment of eir's application for USO funding for 2011-2012. The ComReg determined positive net cost for 2011-2012 is €6,712,966¹².

Table 1: Determined net cost calculation

USO Net Cost 2011-2012		ComReg'
		€
Direct net cost (a)	Uneconomic Areas	€68,609
	Uneconomic Customers	€7,745,449
	Directories	€0
	Public Payphones	€214,545
	Services for disabled end users	€57,568
	Consultancy fees	€0
	Direct net cost	€8,086,171
Intangible benefits (b)	Enhanced brand recognition	€1,139,442
	Life-cycle	€228,017
	Ubiquity	€1,987
	Marketing	€3,759
	Total intangible benefits	€1,373,205
Net cost (after intangible benefits)		€6,712,966

- 2.16. ComReg is now re-conducting the unfair burden assessment for 2011-2012 in the light of the CJEU judgement. D04/11 sets out the principles and methodologies to be considered in determining whether a net cost represents an unfair burden on a USP. Those principles and methodologies have informed ComReg's assessment of whether the positive net cost of providing the USO constituted an unfair burden on eir.

- 2.17. This document details and consults on ComReg's preliminary views in relation to the unfair burden assessment for 2011-2012. Following consideration of

¹² "Assessment of eir's 2011-12 Universal Service Fund Application: Assessment of the net cost and unfair burden for the period 2011-2012", ComReg Decision D06/19, Document No. 19/37, 18 April 2019, <https://www.comreg.ie/publication/assessment-of-eirs-2011-2012-universal-service-fund-application-assessment-of-the-net-cost-and-unfair-burden-for-the-period-2011-2012>. Note that this determined both that there is a direct net cost and that the benefits of the USO do not outweigh the net cost; see paragraph 211 and paragraph 223.

responses to this consultation, ComReg will make a decision regarding the unfair burden assessment for 2011-2012.

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3. Legal context

3.1. New Regime

- 3.1. The net cost upon which the unfair burden is to be assessed was calculated and determined pursuant to Regulation 11 of the Universal Service Regulations.
- 3.2. In June 2023, the Universal Service Regulations were revoked¹³ and replaced by the Code Regulations. The Code Regulations are part of the transposition of Directive (EU) 2018/1972¹⁴ which repealed and recast, amongst others, the Universal Service Directive¹⁵ and established the European Electronic Communications Code¹⁶ (“the Code”), a comprehensive set of new and revised rules for the telecoms sector.
- 3.3. D04/11 continues in force as if it were made under the Code Regulations¹⁷ and references to Regulations 11 and 12 of the Universal Service Regulations will, going forward be read as references to Regulations 75 and 76 of the Code Regulations, respectively.
- 3.4. Any future determination of an unfair burden by ComReg will be made pursuant to Regulation 75 of the Code Regulations. Where ComReg determines that the net cost of meeting a USO represents an unfair burden on an undertaking it will (unless the Minister for the Environment, Climate and Communications (“the Minister”) intends to introduce a mechanism to compensate the undertaking for the determined net costs under transparent conditions from public funds) provide for financing of that net cost pursuant to Regulation 76 of the Code Regulations “Financing of universal service obligations and transparency” which replaces Regulation 12 of the Universal Service Regulations “Financing of universal service obligations”.

¹³ European Union (Electronic Communications Code) (Amendment) Regulations 2023 (S.I. No. 300/2023), <https://www.irishstatutebook.ie/eli/2023/si/300/made/en/pdf>.

¹⁴ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), <https://eur-lex.europa.eu/eli/dir/2018/1972/oj>.

¹⁵ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002, p. 51) (“the Universal Service Directive”), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32002L0022>.

¹⁶ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), <https://eur-lex.europa.eu/eli/dir/2018/1972/oj>.

¹⁷ Regulation 113 of the Code Regulations.

3.2. D04/11

- 3.5. In D04/11, ComReg set out the principles and methodologies to be applied to the calculation of the net cost and to the subsequent determination by ComReg of whether a resulting positive net cost (if any) constitutes an unfair burden on the USP.
- 3.6. Decisions 1 to 37 of D04/11 set out the basis for calculating the direct net cost and the intangible benefits associated with being the USP and must be adhered to in any assessment of a USP's funding application.
- 3.7. Decisions 38 to 42 of D04/11 set out the general and objective criteria by which ComReg will assess whether a positive net cost, in the particular year of application, may be considered an unfair burden on the USP. The unfair burden assessment must be conducted in accordance with D04/11 (which has been continued under the new regime).
- 3.8. In D04/11 ComReg based its interpretation of the unfair burden on the Base judgment¹⁸, where at paragraph 49 the CJEU previously ruled that a burden is unfair if it:
- “...is excessive in view of the undertaking's ability to bear it, account being taken of all the undertaking's own characteristics, in particular the quality of its equipment, its economic and financial situation and its market share.”
- 3.9. D04/11 must now be read in light of the CJEU judgment. ComReg has considered the CJEU judgment and its impact on D04/11.
- 3.10. The CJEU judgment requires ComReg:
- “...in order to determine whether the net cost of universal service obligations represents an unfair burden on an operator entrusted with such obligations, to examine the characteristics particular to that operator, taking account of its situation relative to that of its competitors in the relevant market”.
- 3.11. ComReg is of the view that, in order for D04/11 to be applied in a way that is consistent with the CJEU judgment, Decisions 40-42 of D04/11 cannot be applied sequentially. Therefore, going forward, when applying D04/11 ComReg must disregard the first ten words of Decision 41 (i.e., the text “If the positive net cost significantly affects a USP's profitability,”).
- 3.12. This means that, regardless of the impact of a positive net cost on the USP's profitability, ComReg will conduct a competitive assessment as set out in Decision

¹⁸ Base NV and Others v. Ministerraad, Case C 389/08, Judgment of the Court delivered on 6 October 2010 (“Base judgment”), <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-389/08>.

41 and Decision 42, and assess whether the positive net cost causes a significant competitive disadvantage for a USP, as set out in Decision 38(iii)(b).

- 3.13. ComReg will conduct an assessment of the characteristics particular to a universal service provider in light of the competitive environment in which that provider operates, and will in this way take account of the situation of the universal service provider relative to that of its competitors in the relevant market. By carrying out its assessment in this way, ComReg will ensure the “comparative component” required by the CJEU is included.
- 3.14. In applying Decisions 38-42 (the aspects of D04/11 which relate to unfair burden assessment) ComReg will take account of the CJEU judgment. Therefore ComReg, when establishing if the net cost represents an unfair burden on the USP, will assess whether it: “...is excessive in view of the undertaking’s ability to bear it, account being taken of all the undertaking’s own characteristics” (Base judgment) and when examining those characteristics “particular to that operator” “tak[e] account of its situation relative to that of its competitors in the relevant market”.
- 3.15. For ease of reading, Decisions 38-42 are set out below at Table 1 and the text ComReg considers necessary to disregard is struck through. All subsequent references to Decision 41 in this document refer to Decision 41 as set out below.

Table 2: Application of Decisions 38-42 as revised

Determining if there is an unfair burden	
Decision 38	For there to be an unfair burden on a USP, three cumulative conditions must be met: <ul style="list-style-type: none"> 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;
Decision 39	If the positive net cost is relatively small, ComReg will determine, on the basis of audited costs of the USO, whether USO financing is or is not justified, taking into account the administrative costs of establishing and operating a sharing mechanism (compared to the positive net cost of the USO) and taking into account whether these costs are disproportionate to any net transfers to a USP.
Decision 40	If the positive net cost is not relatively small, ComReg will assess whether or not this net cost significantly affects a USP's profitability and/or ability to earn a fair rate of return on its capital employed; and
Decision 41	If the positive net cost significantly affects a USP's profitability, ComReg will assess whether or not such a net cost materially impacts a USP's ability to compete on equal terms with competitors going forward.
Decision 42	ComReg will use the following criteria, statically and dynamically, to determine whether or not a net cost burden is actually unfair: <ul style="list-style-type: none"> i. Changes in profitability, including an understanding of where a USP generates most of its profits over time. ii. Changes in accounting profits and related financial measures e.g. earnings before interest, tax, depreciation and amortisation ("EBITDA") analysis. iii. Changes in direct USO net cost, if any, over time. iv. Estimates of average level of cross-subsidy between classes of more or less separately accounted for services, and changes in these over time. v. Changes in prices over time. vi. Changes in market share and/or changes in related markets. vii. Market entry barriers.

4. Approach to assessment of unfair burden

4.1. Net cost

- 4.1. As set out in Chapter 2, the net cost determined by ComReg in the Decisions remains undisturbed. Accordingly, ComReg has instructed Oxera to base its analysis on the determined positive net cost for 2011-2012 of €6,712,966.

4.2. Administrative cost assessment

- 4.2. The administrative cost assessment (Decision 38(iii)(a) and Decision 39) was conducted as part of ComReg's original assessment of eir's funding application. This aspect remains undisturbed. For completeness, ComReg asked Oxera to review this aspect. Below is outlined the current estimate of the administrative costs of establishing and operating a sharing mechanism.
- 4.3. If ComReg, on the basis of the net cost calculation, finds that the net cost of meeting a USO represents an unfair burden, Regulation 76 of the Code Regulations provides that ComReg shall, "unless the Minister intends to introduce a mechanism to compensate the undertaking for the determined net costs under transparent conditions from public funds, establish a sharing mechanism administered by it or by a body independent from the designated undertakings, which body shall be under the supervision of the [ComReg]."
- 4.4. In ComReg 10/77¹⁹ ComReg elicited initial views of stakeholders on the establishment of a sharing mechanism. In Consultation 11/77²⁰ ComReg conducted a further consultation in which it sought further views of stakeholders on a range of issues relating to the development of an appropriate sharing mechanism of a positive net cost (if determined to be an unfair burden).
- 4.5. In Consultation 11/77 ComReg was of the preliminary view that it is well positioned to administer the USO funding mechanism. ComReg considered that the administration of a USO fund is similar to operating ComReg's levy (which it

¹⁹ "Preliminary Consultation - Call for Input, Costing and Financing of Universal Service Obligations", ComReg Document No. 10/77, 28 September 2010 ("Consultation 10/77"), https://www.comreg.ie/?dml_download=preliminary-consultation-call-for-input-on-costing-and-financing-of-universal-service-obligation#!.

²⁰ "Consultation on sharing mechanism for any USO Fund: Principles and Methodologies", ComReg Document No. 11/77, 28 October 2011 ("Consultation 11/77"), https://www.comreg.ie/?dml_download=consultation-on-sharing-mechanism-for-any-uso-fund-principles-and-methodologies.

currently does²¹) and as such considers that it has the necessary competencies to undertake this requirement. These administrative functions would include the collection and dissemination of declarations by liable undertakings and the notification of parties of their respective contribution levels. Liable undertakings would discharge their respective contributions to ComReg – which would subsequently be disbursed to the USP.

- 4.6. Furthermore, given ComReg's knowledge and understanding of the administrative issues some level of efficiencies should be achievable, in particular, if the notification requirements are amalgamated as part of the notification requirements for ComReg's levy. ComReg remains of these preliminary views.
- 4.7. ComReg considers that an independent audit of the apportionment and collection of the net cost from operators may be required. There may be some additional costs pertaining to legal advice, external auditing and IT infrastructure and support.
- 4.8. On this basis, ComReg estimates that the current administrative cost of establishing and operating a sharing mechanism is €200,000.

4.3. The market

- 4.9. ComReg is of the view that, in order for it to conduct the unfair burden assessment, the relevant market²² must firstly be identified and described. The USP's situation relative to that of its competitors can be assessed and taken into account (as is required by the CJEU judgment) by considering relatively simple and straightforward indicators such as those considered in Decision 42.
- 4.10. ComReg does not consider that an unfair burden assessment pursuant to Regulation 75 of the Code Regulations requires a full market analysis as provided for in Part 8 Chapter 3 of the Code Regulations.
- 4.11. ComReg's view, as set out above, is based upon its interpretation of the Code, the Universal Service Directive, the Universal Service Regulations the Framework Regulations and the CJEU judgment and it is supported by submissions made in the context of previous related consultations and eir's 2019 legal challenge.
- 4.12. ComReg notes that it previously conducted full market analyses of the Retail Fixed

²¹ Pursuant to section 30 of the Communications Regulation Act 2002, <https://www.irishstatutebook.ie/eli/2002/act/20/>.

²² For the avoidance of doubt, in this context ComReg uses the term "relevant" to mean "appropriate" and is not referring to the term "relevant market" as it was defined in the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 ("the Framework Regulations") or the term as it is used in relation to Regulation 49 of the Code Regulations market analysis.

Narrowband Access²³ and Retail Fixed Voice Access²⁴ Markets (in 2007 and 2014 respectively). ComReg has taken these into account in its assessment of unfair burden.

4.13. Accordingly, ComReg has shared with Oxera its view of the type of assessment required in the USO funding context.

4.4. Information constraints

4.14. ComReg is in 2024 undertaking an unfair burden assessment in respect of 2011-2012. In this circumstance there are inevitable information constraints. In particular some information is unavailable; and, even where available, some information is only available at a more aggregated level than is ideal.

4.15. In some cases, data is available from company-level databases reporting financial information such as profits and investment. Large firms will be typically diversified into different economic activities, and some will operate multinationally. Aggregation in data reporting therefore often occurs across different areas (economic activities and geographic location).

4.16. Accordingly, limitations in the availability of relevant data and information may constrain the preferred analysis that would be undertaken if full relevant information were available.

4.17. ComReg asked Oxera to address any information constraints within its report.

4.5. Information shared with Oxera

4.5.1. eir's historical cost separated accounts

4.18. eir's regulated accounts in the application year are comprised of the following documents, which eir is required to produce:

- Separated Accounts to the market level;
- Additional Financial Statements ("AFS") for material services and products;
- Additional Financial Information ("AFI") for other financial data; and

²³ "Decision Notice and Decision Instrument - Designation of SMP and SMP Obligations Market Analysis: Retail Fixed Narrowband Access Markets", ComReg Decision 07/61, Document No. 07/61, 14 July 2007 ("D07/61"), https://www.comreg.ie/?dml_download=decision-notice-market-analysis-retail-fixed-narrowband-access-markets.

²⁴ "Market Review: Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers", ComReg Decision 12/14, Document No. 14/89, 28 August 2014, ("D12/14"), <https://www.comreg.ie/media/2018/01/ComReg1489.pdf>.

- Accounting Documentation describing, in detail, eir's regulatory accounting systems.

4.19. This reporting structure means that eir does not necessarily have to disclose unregulated information that was previously published.

4.20. ComReg personnel engaged with Oxera to assist Oxera in understanding eir's historical cost separated accounts.

4.5.2.eir's 2011-2012 USO funding application

4.21. eir's 2011-2012 USO funding application, which was shared with Oxera, consists of the following documents:

- [X [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] X].

4.22. ComReg considered and shared with Oxera:

- [X [REDACTED]
[REDACTED] X].

4.5.3.Companies Registration Office

4.23. The Companies Registration Office ("CRO") is the central repository of public statutory information on Irish companies and business names. The CRO requires companies operating in Ireland to file annual returns.

4.24. ComReg has procured the relevant accounts for those service providers operating

in the Irish fixed line market for the relevant periods, where available²⁵. In some cases, service providers' reporting is amalgamated into regional or global group accounts²⁶.

4.25. The information procured by ComReg from the CRO has been provided to Oxera.

4.5.4. ComReg Quarterly Key Data reports

4.26. Statistical information on the Irish electronic communications market and benchmark data from other countries is collected and analysed by ComReg's wholesale division.

4.27. Through its Quarterly Key Data Reports ("QKDR") and the Data Portal ComReg informs stakeholders of the key trends and developments in the Irish electronic communications market.

4.28. ComReg has provided Oxera with the relevant QDKR reports and associated information for the period 2011-2012.

4.5.5. ComReg market analysis information

4.29. ComReg has provided Oxera with copies of previous market analyses conducted i.e. Retail Fixed Narrowband Access Markets in 2007²⁷ and Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers in 2014²⁸.

4.5.6. Responses to the Information Requirements

4.30. On 11 March 2024, ComReg sent the Information Requirements formally requesting additional information from the relevant undertakings. This information, where available, would have enabled Oxera to conduct its preferred analysis²⁹. ComReg requested this information in order to ensure that it had fully considered all available information that could possibly be relevant and investigated all

²⁵ BT Ireland; Digiweb; eircom Limited; Hutchinson 3G Ireland Limited; Imagine Communications Group Limited; Lycamobile Limited; Tesco Mobile Ireland; Magnet Networks Limited; Telefonica; UPC Communications Ireland Limited.

²⁶ Sky Ireland financial reporting is consolidated into its UK British Sky Broadcasting Group plc.

²⁷ D07/61.

²⁸ D12/14.

²⁹ As set out at A2 of the Oxera Unfair Burden Report 2011/12. This includes: data necessary to calculate EBIT and ROCE in the fixed line market; CapEx, depreciation and amortisation, to compare the ability to invest and as a proxy for quality of equipment in the fixed line market; number of subscribers, revenues and average broadband speed for retail fixed line subscribers split geographically by 26 counties, with the aim of understanding if prices were materially different between urban and rural areas; subscriber numbers and revenues at the retail fixed line level (split by single, dual and triple pay), to enable an assessment of whether certain operators exhibited competitive advantages through provision of bundled products.

possible avenues.

- 4.31. All responses to the Information Requirements were shared with Oxera. Some of the information sought was unavailable, and the information which was available and provided was at an aggregated level, so it was not possible to conduct all of the preferred analysis³⁰.

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

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).

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³⁰ No respondent was able to provide data at the requested geographical split.

5. Unfair burden assessment 2011-2012

- 5.1. This Chapter sets out ComReg's preliminary views in relation to the assessment as to whether the positive net cost to eir of providing the USO in 2011-2012 constituted an unfair burden. It summarises the Oxera Unfair Burden Report 2011/12 and ComReg's preliminary views.
- 5.2. The existence of a positive net cost does not automatically constitute an unfair burden or automatically give rise to the need for USO funding. The principles and methodologies of D04/11, the relevant statutory provisions, the CJEU judgment, the Oxera Unfair Burden Report 2011/12, submissions to Consultation 23/113, the responses to the Information Requirements and other relevant information have informed ComReg's assessment of whether the positive net cost of providing the USO constituted an unfair burden.

5.1. Oxera Unfair Burden Report 2011/12

- 5.3. To assist ComReg in assessing whether the provision by eir of the USO in 2011-2012 represented an unfair burden on eir, and to inform its views, ComReg engaged Oxera to provide expert economic analysis and advice.
- 5.4. ComReg instructed Oxera to conduct its analysis by reference to the principles and methodologies for assessing an unfair burden in Decisions 38 to 42 of D04/11, in light of the CJEU judgement. Oxera was provided with ComReg's interpretation of how the CJEU judgment affected D04/11 and ComReg's approach to the assessment process.
- 5.5. Oxera's assessment was provided to ComReg in a report titled the "Oxera unfair burden report 2011/12", published as part of this consultation at Annex 2. The Oxera Unfair Burden Report 2011/2012 is structured as follows:
 - Section 2 sets out the approach to the determination of an unfair burden, taking into account the relevant legal context;
 - Section 3 presents the administrative cost assessment, consistent with Decisions 38(iii)(a) and 39 of D04/11;
 - Section 4 presents the application of Decision 40–42 of D04/11 including: an assessment of eir's financial and competitive position, taking account of eir's specific characteristics and situation relative to that of its competitors in the relevant market;
 - Section 5 sets out Oxera's conclusion;

- Appendix A1 sets out Oxera's understanding of sub-products within eir's fixed line business that could potentially be dissociable from the USO; and
- Appendix A2 sets out the data constraints faced, and the analysis undertaken, in light of these constraints.

5.6. In summary, Oxera carried out the following:

- **Administrative cost assessment (Decision 39 and 38(iii)(a))** – Oxera assessed whether the positive net cost would be material relative to the administrative costs of establishing and operating a sharing mechanism.
- **Assessment of eir's financial and competitive position in 2011-2012** – Oxera assessed eir's financial and competitive position in the relevant period and market, to establish whether there was an unfair burden on eir (the USP). Specifically:
 - Section 4.A sets out the scope of the relevant market in which the assessment of an unfair burden should be undertaken;
 - Section 4.B applies **Decision 40**, to assess eir's financial position with respect to its profitability;
 - Section 4.C applies **Decision 41**, to assess whether the net cost materially impacts eir's ability to compete with competitors going forward;
 - Section 4.D applies the **criteria of Decision 42** to determine whether or not the net cost burden is unfair; and
 - Section 5 reviews the evidence of eir's financial and economic position to form a view on the outcome of **Decision 38(iii)(b)** as to whether the positive net cost causes significant competitive disadvantages for a USP.

5.7. In section 5 of the Oxera Unfair Burden Report 2011/12 Oxera concluded by applying the three cumulative conditions in Decision 38. Oxera considered that the net cost of the USO did not cause a significant competitive disadvantage for eir in 2011-2012 (i.e. that the condition in Decision 38(iii)(b) of D04/11 has not been met). Oxera concluded that its view is that the net cost of the USO did not represent an unfair burden on eir in 2011-2012.

5.2. ComReg's preliminary view

5.8. ComReg, prior to forming its preliminary view in relation to whether the positive net cost of providing the USO in 2011/2012 constituted an unfair burden on eir, carefully considered, amongst other things, the D04/11 principles and methodologies, the relevant statutory provisions, the CJEU judgment, the information provided to Oxera, and the Oxera Unfair Burden Report 2011/12.

5.9. In respect of the choice of relevant market, ComReg agrees with Oxera's analysis and conclusions. ComReg notes in particular that activities included within eir's fixed

line business are non-dissociable from the USO and agrees that, for the purpose of the 2011-2012 unfair burden assessment, the appropriate market to use to analyse eir's competitive position is the Irish fixed-line market, and where competitor information is unavailable at the Irish fixed-line market level, the aggregate group (Ireland) level market should be used.³¹

- 5.10. ComReg notes that two of the three conditions in Decision 38 of D04/11 (outlined above) are met, as:
- i. There is a verified direct net cost to eir of €8,086,171. This figure represents the net cost as determined by ComReg; and
 - ii. The benefits of the USO, amounting to €1,373,205, do not outweigh the net cost (i.e., there is a positive net cost).
- 5.11. Decision 38(i) and 38(ii) were established as part of ComReg's assessment of eir's funding application, finding that there is a direct net cost and that the benefits of the USO do not outweigh the net cost.
- 5.12. The administrative cost assessment (Decision 38(iii)(a) and Decision 39 outlined above) was conducted as part of ComReg's original assessment of eir's funding application. This aspect remains undisturbed. For completeness, ComReg asked Oxera to review this aspect.
- 5.13. ComReg has carefully considered Section 5 of Oxera's Unfair Burden Report 2011/12. ComReg has taken Oxera's conclusions into account and remains of the view that the size of the positive net cost in 2011-2012 is material compared to the administrative costs of a sharing mechanism.
- 5.14. Decision 38(iii)(b) provides "The positive net cost [is] (b) causes a significant competitive disadvantage for a USP":
- 5.15. ComReg has carefully considered Section 4 of Oxera's unfair burden report 2011-2012 in which it applied Decisions 40 to 42.
- 5.16. In the application of Decisions 40 to 42, which are relevant for Decision 38(iii)(b), ComReg's preliminary views are summarised as follows:
- **Decision 40:** In 2011-2012, the net cost did not significantly affect eir's profitability and/or ability to earn a fair rate of return on its capital employed. Indeed, eir's

³¹ ComReg has considered the activities within the fixed-line business as listed in eir's HCA, and identified certain sub-products that may be considered potentially dissociable from the USO. Ideally, an analysis of the market would exclude these sub-products. ComReg does not consider that these particular sub-products would have a material impact on the estimates. For details, see Annex A1 of the Oxera Unfair Burden report 2011/12

returns were in excess of the competitive benchmark of a 'fair rate of return' as measured by the regulatory allowed WACC.

- **Decision 41:** The net cost of the USO for the year 2011-2012 did not materially impact eir's ability to compete on equal terms with competitors going forward, as:
 - there is no evidence of a causal link between the financial distress and challenges observed over time and the provision of the USO.
 - the results of the wider period of financial analysis undertaken, taking account of the investment horizon of 2009/10 to 2022/23, also indicates that discharging the USO did not materially impact the USP's ability to compete, as:
 - the USO did not prevent eir from undertaking necessary investments; and
 - the USO has not impeded eir from making improvements to its financial health, as evidenced by improvements in its credit rating over the period of analysis.
- **Decision 42:** In 2011-2012 eir was profitable and was well positioned to cross-subsidise the provision of the USO by using profits earned in its fixed-line business. Indeed, when compared to its competitors, eir was able to maintain a steady ARPU over the assessed period, and, despite a reduction in market shares, remained the main player in the market (by revenue and subscriber numbers). Indeed, indicative analysis shows that eir's EBIT at the group level exceeded that of its competitors, while eir group's ROCE was broadly in line with those of its competitors.
- **Decision 38(iii)(b):** Based on the analysis undertaken in the application of Decisions 40 to 42 and the findings in relation to these decisions, ComReg is of the preliminary view that the net cost of the USO did not cause a significant competitive disadvantage for eir in 2011-2012.

5.17. Notwithstanding the information constraints identified, ComReg is of the preliminary view that it had sufficient information available to conduct the unfair burden assessment for the period 2011-2012.

5.18. ComReg, when forming its preliminary view in relation to the unfair burden assessment, considered the preliminary views in relation to each of the decisions from D04/11 referenced. No one of these decisions is, in and of itself determinative. ComReg notes that the preliminary views relating to each of the decisions converge to indicate that the net cost of providing the USO in 2011-2012 did not constitute an unfair burden on eir.

5.19. ComReg is of the preliminary view, for the reasons summarised above, that having applied Decisions 40 to 42 of D04/11 and considered the related findings, for the

reasons summarised above, the condition in Decision 38(iii)(b) of D04/11, has not been met. As a result, ComReg is of the preliminary view that the provision of the USO in 2011-2012 did not represent an unfair burden on eir.

Q. 3 Do you agree with ComReg's preliminary view that the positive net cost of the provision of the USO in 2011-2012 did not represent an unfair burden on eir? Please give reasons for your answer.

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6. Next steps and submitting comments

- 6.1. During the consultation submission period, ComReg welcomes written responses in relation to any of the issues raised in this consultation document. The timeframe for receipt of submissions to this consultation paper is **5pm on 5 November 2024**. It is requested that comments within submissions make reference to the relevant question numbers from this consultation document.
- 6.2. Responses to this consultation should be submitted in written form (post or email) to the following address/email, and clearly marked: "Submission to ComReg 24/79".

Commission for Communications Regulation
Retail Policy
One Dockland Central
1 Guild St.,
North Dock,
Dublin 1,
D01E4XO
Ireland

Email: RetailConsult@comreg.ie

- 6.3. In order to promote further openness and transparency, ComReg will publish all respondents' submissions to this consultation, subject to the provisions of the Confidentiality Guidelines.
- 6.4. Respondents are requested to clearly identify confidential material and place such material in a separate annex to responses.
- 6.5. Respondents are also requested to provide any electronic submissions in an unprotected format so that they can be appended into ComReg's submissions document for electronic publication.

7. Regulatory Impact Assessment (RIA)

- 7.1. A RIA is a structured approach to the development of policy, and analyses the impact of regulatory options on different stakeholders. ComReg's approach to RIA is set out in the Guidelines published in August 2007.³² In conducting the RIA, ComReg takes account of the RIA Guidelines³³ issued by the Department of An Taoiseach in June 2009 and adopted under the government's Better Regulation programme.
- 7.2. Section 13(1) of the Communications Regulation Act 2002, as amended, requires ComReg to comply with certain Ministerial Policy Directions. Policy Direction 6 of February 2003 requires that before deciding to impose regulatory obligations on undertakings we must conduct a RIA in accordance with European and International best practice, and otherwise in accordance with measures that may be adopted under the Government's Better Regulation programme. In conducting the RIA, ComReg also has regard to the fact that regulation by way of issuing decisions, for example imposing obligations or specifying requirements, can be quite different to regulation that arises by the enactment of primary or secondary legislation.
- 7.3. ComReg's published RIA Guidelines, in accordance with a policy direction to ComReg, state that ComReg will conduct a RIA in any process that may result in the imposition of a regulatory obligation, or the amendment of an existing obligation to a significant degree, or which may otherwise significantly impact on any relevant market or any stakeholders or consumers. However, the RIA Guidelines also note that in certain instances it may not be appropriate to conduct a RIA and, in particular, that a RIA is only considered mandatory or necessary in advance of a decision that could result in the imposition of an actual regulatory measure or obligation, and that where ComReg is merely charged with implementing a statutory obligation then it will assess each case individually and will determine whether a RIA is necessary and justified.
- 7.4. In this consultation document, ComReg is not proposing to impose a discretionary regulatory obligation that would require a regulatory impact assessment (RIA) but is acting under a statutory obligation imposed on it by Regulation 75 of the Code Regulations, which requires that upon receipt of a request for funding/compensation from the USP, ComReg shall calculate the net cost of provision and assess whether the universal service obligation represents an unfair burden for the USP. As such, if a request for funding/compensation has been received, ComReg has no discretion as to whether or not such an assessment is undertaken. Therefore, a RIA is not being

³² ComReg Document 07/56, "ComReg's Approach to Regulatory Impact Assessment. Response to Consultation and Guidelines," 10 August 2007, https://www.comreg.ie/media/dlm_uploads/2015/12/ComReg_0756.pdf; and ComReg Document 07/56a, "Guidelines on ComReg's Approach to Regulatory Impact Assessment", 10 August 2007, https://www.comreg.ie/media/dlm_uploads/2015/12/ComReg0756a.pdf.

³³ RIA Guidelines - Department of Taoiseach.

undertaken for this consultation document.

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8. Draft Determination

1. This Determination is hereby issued by the Commission for Communications Regulation ("ComReg"):
 - i. Pursuant to Regulation 75(4) of European Union (Electronic Communications Code) Regulation 2022 ("the Code Regulations");
 - ii. Having applied the principles and methodologies set out in ComReg Document D04/11 "Report on Consultation and Decision on the Costing of Universal Service Obligations Principles and Methodologies" dated 31 May 2011;
 - iii. Having regard to the judgment of the European Court of Justice in the case of Eircom Limited v. Commission for Communications Regulation, Case C-494/21, delivered 10 November 2022 and the order of the High Court dated 10 July 2023 in the case Eircom Limited v. The Commission for Communications Regulation, High Court Commercial, Record No. 2019/167 MCA;
 - iv. Having regard to the contents of (including the analysis and reasoning set out in): ComReg Document No. 24/79, the Oxera Unfair Burden Report 2011/12 (24/79a), and responses received to ComReg's section 13D information requirements dated 24 March 2024; and ComReg Document No. XX/XX;
 - v. Having regard to ComReg's functions and objectives under sections 10 and 12 respectively of the Communications Regulation Act 2002, as amended and ComReg's objectives under Regulation 4 of the Code Regulations;
 - vi. Having, where relevant, complied with policy directions issued to ComReg by the then Minister for Communications, Marine and Natural Resources on 21 February 2003 and 26 March 2004;
 - vii. Having, in ComReg Decision D06/19, following the assessment of the funding application received from Eircom Limited ("eir") on 15 July 2016 in relation to the net cost of meeting its universal service obligations in the financial year 2011-2012, determined that there was a positive net cost in 2011-2012 of €6,712,966 comprised of the following figures ("the net cost"):

USO Net Cost 2011-2012		ComReg'
		€
Direct net cost (a)	Uneconomic Areas	€68,609
	Uneconomic Customers	€7,745,449
	Directories	€0
	Public Payphones	€214,545
	Services for disabled end users	€57,568
	Consultancy fees	€0
	Direct net cost	€8,086,171
Intangible benefits (b)	Enhanced brand recognition	€1,139,442
	Life-cycle	€228,017
	Ubiquity	€1,987
	Marketing	€3,759
	Total intangible benefits	€1,373,205
Net cost (after intangible benefits)		€6,712,966

- viii. Having, in ComReg D06/19 determined that the estimate of benefits to eir as a result of the provision of the universal service do not outweigh the net cost, that the positive net cost is material compared to the administrative costs of a sharing mechanism and that USO financing would be justified if it were found that the provision of the USO in 2011-2012 represented an unfair burden on the USP.
2. ComReg has determined that for the financial year 2011-2012, the determined net cost of the provision of the universal service obligation does not represent an unfair burden on eir and therefore that the universal service obligation in 2011-2012 does not represent an unfair burden on eir.
 3. If any section, clause or provision or portion thereof contained in this Determination is found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, that section, clause or provision or portion thereof shall, to the extent required, be severed from this Determination and rendered ineffective as far as possible without modifying the remaining section(s), clause(s) or provision(s) or portion thereof of this Determination, and shall not in any way affect the validity or enforcement of this Determination.

**SIGNED FOR AND ON BEHALF OF THE COMMISSION FOR COMMUNICATIONS
REGULATION ON THE XX DAY OF XX 202X**

Robert Mourik

Chairperson

COMMISSIONER OF THE COMMISSION FOR COMMUNICATIONS REGULATION

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Annex 1: Questions

- Q. 1 Do you agree with ComReg's approach to the unfair burden assessment? Please give reasons for your answer.
- 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).
- Q. 3 Do you agree with ComReg's preliminary view that the positive net cost of the provision of the USO in 2011-2012 did not represent an unfair burden on eir? Please give reasons for your answer.

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Annex 2: Oxera Unfair Burden Report 2011/12

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