



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

eir's 2012-2013 Universal Service Funding Application

Unfair burden assessment

Consultation

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Additional Information

All responses to this consultation should be clearly marked: “Reference: Submission re ComReg 24/96 as indicated above, and sent by post, e-mail or online at www.comreg.ie (current consultations), to arrive on or before 5pm on 17 January 2025, to:

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Redacted Information

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.

¹ “ComReg's Guidelines on the treatment of confidential information”, Document No. 05/24, 22 March 2005, https://www.comreg.ie/?dIm_download=response-to-consultation-guidelines-on-the-treatment-of-confidential-information.

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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.

“**D07/19**” means “Assessment of eir’s 2012-13 Universal Service Fund Application, Assessment of the net cost and unfair burden for the period 2012-13”, Document No. 19/38, Decision No. D07/19, 17 April 2019.

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

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

“**Consultation 23/113**” means “eir’s 2010-2011 Universal Service Fund Application, Unfair burden assessment, Consultation and Draft Determination”, Document No. 23/113, 6 December 2023.

“**Consultation 24/79**” means “eir’s 2011-2012 Universal Service Fund Application, Unfair burden assessment, Consultation”, Document No. 24/79, 26 September 2024.

“**CRO**” refers to the Companies Registration Office.

“**D04/11**” means “Decision on the Costing of universal service obligations: Principles and Methodologies”, 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 and Decision”, Document No. 14/89, Decision No. D12/14, 28 August 2014. This was a response to the 2012 FVA Consultation.

“**D07/19**” means “Assessment of eir’s 2012-13 Universal Service Fund Application, Assessment of the net cost and unfair burden for the period 2012-13”, Document No. 19/38, Decision No. D07/19, 17 April 2019.

“**D17/24**” means “eir’s 2010-2011 Universal Service Funding Application, Unfair burden assessment, Response to Consultation and Final Determination”, Document No. 24/43R, Decision No. 17/24, 27 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**” means 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 2012/13**”, refers to the report prepared by Oxera, titled “Oxera unfair burden report 2012/13” (24/96a) which 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 2012-2013”, Document No. 19/38a, November 2017, published 18 April 2019.

“**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”)², submitted an application for funding, in respect of the net costs of meeting its universal service obligations (“USO”) during its financial year 2012-2013³. 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 2012-2013. 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 for 2012-2013, including the key findings of the “Oxera Unfair Burden Report 2012/13” (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 2012-2013, 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 2012-2013.

² The provision of telephony services under Universal Service Obligations, Response to Consultation, Decision and Decision Instrument, Document No. 12/71, Decision No. D07/12, 29 June 2012, https://www.comreg.ie/?dln_download=the-provision-of-telephony-services-under-universal-service-obligations-response-to-consultation-decision-and-decision-instrument.

³ Referred to as “2012-2013”.

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 cost 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 USP⁴.
- 2.2. eir as the designated USP, may submit applications for USO funding in accordance with ComReg Decision D04/11⁵ (“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 2012-2013. In this application eir claimed a net cost of €7,948,457 for this period, after taking account of intangible benefits of €1,800,036.
- 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 2012-2013 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 2012-2013 from €7,948,457 to €8,012,033.
- 2.5. On 22 November 2017 ComReg published Consultation 17/95⁶, in which ComReg set out and consulted upon its preliminary views in relation to eir’s final application for funding for 2012-2013, having regard to the Universal Service Regulations, D04/11, and the consultants’ reports⁷.

⁴ 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/>.

⁵ “Decision on the Costing of universal service obligations: Principles and Methodologies”, Document No. 11/42, Decision 04/11, , 31 May 2011., <https://www.comreg.ie/publication/report-on-consultation-and-decision-on-the-costing-of-universal-service-obligations-principles-and-methodologies/>.

⁶ “Assessment of eir’s 2012-2013 Universal Service Fund Application, Assessment of the net cost and unfair burden for the period 2012-2013, Consultation and Draft Determination”, Document No. 17/95, 22 November 2017, https://www.comreg.ie/?dlm_download=assessment-eirs-2012-2013-universal-service-funding-application.

⁷ “Assessment of eir’s USO funding application – Direct net cost 2012-2013, November 2017, Document No. 17/95a, 22 November 2017, <https://www.comreg.ie/publication/tera-report-assessment-eirs-uso-funding-applications-201213>. “Assessment of eir’s calculation of intangible benefits for 2012/13”, Document

2.6. On 18 April 2019, ComReg published the following 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” (“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 Decisions⁸.

2.9. On 19 February 2021, 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:

- (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

No. 17/95b, published 29 September 2017, published 22 November 2017, https://www.comreg.ie/?dln_download=oxera-report-assessment-eirs-calculation-intangible-benefits-201213. “Oxera unfair burden report 2012/13”, Document No. 17/95c, 20 September 2017, published 22 November 2017, <https://www.comreg.ie/publication/oxera-unfair-burden-report-201213>.

⁸ Eircom Limited v. The Commission for Communications Regulation, High Court Commercial, Record No 2019/167 MCA.

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 judgment⁹. The CJEU responded¹⁰ 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”.

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

⁹ 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>.

¹⁰ Paragraph 54 of the CJEU judgment.

Decision D06/19 (beginning “Pursuant to the calculation of the positive net cost...”)

- c) section 1.3 of the determination in 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 accompanying Oxera Unfair Burden Report for 2010-11¹¹. 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 in 2010-2011 did not represent an unfair burden on eir¹².
- 2.15. On 26 September 2024 ComReg published Consultation 24/79, and the accompanying Oxera Unfair Burden Report for 2011-12¹³. In Consultation 24/79 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 2011-2012.
- 2.16. Following responses to consultation ComReg will determine whether, for the financial year 2011-2012, the determined net cost of the provision of the universal

¹¹“eir’s 2010-2011 Universal Service Funding Application, Unfair burden assessment, Consultation and Draft Determination”, 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>. <https://www.comreg.ie/publication/oxera-unfair-burden-report-2010-11-2>.

¹² “eir’s 2010-2011 Universal Service Funding Application. Unfair burden assessment, Response to Consultation and Final Determination,” 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>.

¹³ “eir’s 2011-2012 Universal Service Funding Application, Unfair burden assessment, Consultation”, Document No. 24/79, 26 September 2024. https://www.comreg.ie/?dml_download=eirs-2011-2012-universal-service-funding-application-unfair-burden-assessment, “Oxera unfair burden report 2011/12”, g Document No. 24/79a, 26 September 2024. <https://www.comreg.ie/publication/oxera-unfair-burden-report-2011-12-2>.

service obligation does not represent an unfair burden on eir.

- 2.17. ComReg is now consulting on its assessment of eir's application for USO funding for 2012-2013. The ComReg determined positive net cost for 2012-2013 is €7,723,749¹⁴.

Table 1: Determined net cost calculation

USO Net Cost 2012-2013		2012-2013 ComReg's Determination	
		€	
Direct net cost (a)	Uneconomic Areas		€268,296
	Uneconomic Customers		€8,286,066
	Directories		€0
	Public Payphones		€311,887
	Services for disabled end users		€56,933
	Consultancy fees		€0
	Direct net cost		€8,923,182
Intangible benefits (b)	Enhanced brand recognition		€1,002,351
	Life-cycle		€167,257
	Ubiquity		€11,144
	Marketing		€18,681
	Total intangible benefits		€1,199,433
Net cost (after intangible benefits)			€7,723,749

- 2.18. ComReg is now re-conducting the unfair burden assessment for 2012-2013 in the

¹⁴ "Assessment of eir's 2012-13 Universal Service Fund Application: Assessment of the net cost and unfair burden for the period 2012-2013", Document No. 19/38, Decision No. D07/19 17 April 2019. <https://www.comreg.ie/publication/assessment-of-eirs-2012-2013-universal-service-fund-application-assessment-of-the-net-cost-and-unfair-burden-for-the-period-2012-2013>.

light of the CJEU judgment¹⁵. 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.

- 2.19. This document details and consults on ComReg's preliminary views in relation to the unfair burden assessment for 2012-2013. Following consideration of responses to this consultation, ComReg will make a decision regarding the unfair burden assessment for 2012-2013.

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¹⁵ Aspects of the assessment remain undisturbed, namely the application of Decisions 38(i), 38(ii) of D04/11 and the administrative cost assessment (Decisions 38(iii)(a) and 39 of D04/11).

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 revoked¹⁶ and replaced by the Code Regulations. The Code Regulations are part of the transposition of Directive (EU) 2018/1972¹⁷ which repealed and recast, amongst others, the Universal Service Directive¹⁸ and established the European Electronic Communications Code¹⁹ (“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 Regulations²⁰ 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”.

3.2. D04/11

- 3.5. In D04/11, ComReg set out the principles and methodologies to be applied to the

¹⁶ European Union (Electronic Communications Code) (Amendment) Regulations 2023 (S.I. No. 300/2023), <https://www.irishstatutebook.ie/eli/2023/si/300/made/en/pdf>.

¹⁷ 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>.

¹⁸ 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>.

¹⁹ 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>.

²⁰ Regulation 113 of the Code Regulations.

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 judgment²¹, 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 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

²¹ 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>.

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.

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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 2012-2013 of €7,723,749.

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.

4.3. For completeness, ComReg asked Oxera to consider this aspect. The current estimate of the administrative costs of establishing and operating a sharing mechanism is €200,000. The basis for this estimate is set out below.

4.4. 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]."

4.5. In Consultation 10/77²² ComReg elicited initial views of stakeholders on the establishment of a sharing mechanism. In Consultation 11/77²³ 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).

4.6. 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 currently does²⁴) and as such considers that it has the necessary competencies to

²² "Preliminary Consultation - Call for Input, Costing and Financing of Universal Service Obligations", Document No. 10/77, 28 September 2010. https://www.comreg.ie/?dml_download=preliminary-consultation-call-for-input-on-costing-and-financing-of-universal-service-obligation#!.

²³ "Consultation on sharing mechanism for any USO Fund: Principles and Methodologies", Document No. 11/77, 28 October 2011. https://www.comreg.ie/?dml_download=consultation-on-sharing-mechanism-for-any-uso-fund-principles-and-methodologies.

²⁴ Pursuant to section 30 of the 2002 Act.

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.

- 4.7. 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.
- 4.8. 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.

4.3. The market

- 4.9. ComReg is of the view that, in order for it to conduct the unfair burden assessment, the relevant market²⁵ 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 Narrowband Access²⁶ and Retail Fixed Voice Access²⁷ Markets (in 2007 and 2014 respectively). ComReg has taken these into account in its assessment of unfair

²⁵ 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.

²⁶ "Decision Notice and Decision Instrument - Designation of SMP and SMP Obligations Market Analysis: Retail Fixed Narrowband Access Markets", Document No. 07/61, Decision No. D07/61, 14 July 2007, https://www.comreg.ie/?dln_download=decision-notice-market-analysis-retail-fixed-narrowband-access-markets.

²⁷ "Market Review: Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers", Document No. 14/89, Decision No. D12/14, 28 August 2014, <https://www.comreg.ie/media/2018/01/ComReg1489.pdf>.

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 late 2024 undertaking an unfair burden assessment in respect of 2012-2013. 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
- 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 2012-2013 USO funding application

4.21. eir's 2012-2013 USO funding application, consists of the following documents:

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

4.5.3.Companies Registration Office

4.22. 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.

4.23. ComReg procured the relevant accounts for those service providers operating in the Irish fixed line market for the relevant periods, where available²⁸. In some cases, service providers’ reporting is amalgamated into regional or global group accounts²⁹.

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

4.5.4.ComReg Quarterly Key Data reports

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

4.26. 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.

4.27. ComReg has provided Oxera with the relevant QDKR reports and associated

²⁸ 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.

²⁹ Sky Ireland financial reporting is consolidated into its UK British Sky Broadcasting Group plc.

information for the period 2012-2013.

4.5.5. ComReg market analysis information

4.28. ComReg has provided Oxera with copies of previous market analyses conducted i.e. Retail Fixed Narrowband Access Markets in 2007³⁰ and Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers in 2014³¹.

4.5.6. Responses to the Information Requirements

4.29. 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 analysis³². ComReg requested this information in order to ensure that it had fully considered all available information that could possibly be relevant and investigated all possible avenues.

4.30. 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 analysis³³.

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).

³⁰ D07/61.

³¹ D12/14.

³² As set out at A2 of the Oxera Unfair Burden Report 2012/3. 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.

³³ No respondent was able to provide data at the requested geographical split.

5 Unfair burden assessment 2012-2013

- 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 2012-2013 constituted an unfair burden. It summarises the Oxera Unfair Burden Report 2012/13 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 responses to the Information Requirements, the Oxera Unfair Burden Report 2012/13, and other relevant information informed ComReg's assessment of whether the positive net cost of providing the USO in 2012-2013 constituted an unfair burden.

5.1. Oxera Unfair Burden Report 2012/13

- 5.3. To assist ComReg in assessing whether the provision by eir of the USO in 2012-2013 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 judgment. 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 2012/13", published as part of this consultation at Annex 2. The Oxera Unfair Burden Report 2012/13 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, which is the application of Decisions 38(iii)(a) and 39 of D04/11;
 - Section 4 presents an assessment of eir's financial and competitive position, which is the application of Decision 38 (iii) (b) and Decisions 40 to 42.
 - Section 5 concludes Oxera's unfair burden assessment;
 - Appendix A1 sets out Oxera's understanding of the sub-products within eir's fixed-line business that could potentially be dissociable from the USO business; and

- Appendix A2 sets out the preferred analysis that Oxera would ideally have carried out, the data constraints that are applicable to the unfair burden assessment for 2012/13, and the analysis taken in light of these constraints.

5.6. In summary, Oxera carried out the following:

- **Administrative cost assessment (Decision 39 and 38(iii)(a))** – This assessment was conducted as part of ComReg's original assessment of eir's funding application and remains undisturbed. In this context ComReg asked Oxera to consider the administrative cost assessment.
- **Assessment of eir's financial and competitive position in 2012-2013** – 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 4A sets out the scope of the market in which the assessment of an unfair burden should be undertaken;
 - Section 4B applies **Decision 40**, to assess whether or not the net cost significantly affects eir's profitability. The analysis of eir's profitability relative to its competitors is captured in section 4D.4, under the application of Decision 42
 - Section 4C applies **Decision 41**, to assess whether the net cost materially impacts eir's ability to compete on equal terms with competitors going forward; and
 - Section 4D applies the **criteria of Decision 42** to inform the analysis as to whether the net cost burden is unfair.

5.7. In section 5 of the Oxera Unfair Burden Report 2012/13 Oxera concluded by applying the three cumulative conditions in Decision 38.³⁴ Oxera considered its findings in relation to Decisions 40, 41 and 42 in the round. Oxera considered that the net cost of the USO did not cause a significant competitive disadvantage for eir in 2012-2013 (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 2012-2013.

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 2012-2013 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,

³⁴ Aspects of the assessment remain undisturbed, namely the application of Decisions 38(i), 38(ii) of D04/11 and the administrative cost assessment (Decisions 38(iii)(a) and 39 of D04/11).

and the Oxera Unfair Burden Report 2012/13.

- 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 2012-2013 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 numbers as reported at Irish group-level should be used as a proxy.³⁵
- 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 €7,723,749. This figure represents the net cost as determined by ComReg; and
 - ii. The benefits of the USO 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 consider this aspect.
- 5.13. ComReg has carefully considered Section 3 of Oxera's Unfair Burden Report 2012/13. ComReg has taken Oxera's conclusions into account and remains of the view that the size of the positive net cost in 2012-2013 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 2012/2013 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),

³⁵ 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 2012/13

ComReg's preliminary views are summarised as follows:

- **Decision 40:** In 2012-2013, 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 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 2012-2013 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; and
 - 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 2012-2013 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. The available evidence suggests that market entry barriers did not prevent new entrants (i.e. eir's competitors) from achieving growth.
- **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 2012-2013.

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 2012-2013.

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 2012-2012 did 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 2012-2013 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 2012-2013 (i.e. €7,723,749) does 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 document is **5pm on 17 January 2025**. 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 24/96".

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 2007.³⁶ In conducting the RIA, ComReg takes account of the RIA Guidelines³⁷ 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 ComReg 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

³⁶ "ComReg's Approach to Regulatory Impact Assessment, Response to Consultation and Guidelines," Document No. 07/56, 10 August 2007, https://www.comreg.ie/media/dlm_uploads/2015/12/ComReg_0756.pdf; and "Guidelines on ComReg's Approach to Regulatory Impact Assessment", Document No. 07/56a, 10 August 2007, https://www.comreg.ie/media/dlm_uploads/2015/12/ComReg0756a.pdf.

³⁷ 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 “Decision on the Costing of universal service obligations: Principles and Methodologies”, ComReg Document No. 11/42, Decision No. D04/11 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): responses received to ComReg’s section 13D information requirements dated 24 March 2024, ComReg Document No. 24/96, the Oxera Unfair Burden Report 2012/13 (24/96a), Submissions to Consultation (XX/XXs), ComReg Document No. XX/XX and the Oxera Unfair Burden Report 2012/13 (XX/XXa);
 - 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 D07/19, 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 2012-2013, determined that there was a positive net cost in 2012-2013 of €7,723,749 comprised of the following figures (“the net cost”):

USO Net Cost 2012-2013		2012-2013 ComReg's Determination
		€
Direct net cost (a)	Uneconomic Areas	€268,296
	Uneconomic Customers	€8,286,066
	Directories	€0
	Public Payphones	€311,887
	Services for disabled end users	€56,933
	Consultancy fees	€0
	Direct net cost	€8,923,182
Intangible benefits (b)	Enhanced brand recognition	€1,002,351
	Life-cycle	€167,257
	Ubiquity	€11,144
	Marketing	€18,681
	Total intangible benefits	€1,199,433
Net cost (after intangible benefits)		€7,723,749

- viii. Having, in ComReg D07/19 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 2012-2013 represented an unfair burden on the USP.
2. ComReg has determined that for the financial year 2012-2013, 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 2012-2013 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. 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 2012-2013 (i.e. €7,723,749) does not represent an unfair burden on eir? Please give reasons for your answer.

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Annex 2: Oxera Unfair Burden Report 2012/13

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