Information Notice

Market Review Fixed Voice and Mobile Voice Call Termination Markets.

Publication and notification to the European Commission (EC), the Body of European Regulators for Electronic Communications (BEREC), and Member State National Regulatory Authorities (NRAs) of draft measures under Article 32 of Directive 2018/1972.

Information Notice

Reference: ComReg 23/17

Version: FINAL

Date: 24/02/2023

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation
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1.1 This Information Notice concerns the Commission for Communications Regulation's ('**ComReg'**) publication and parallel notification to relevant European authorities of its 'Draft Decision' concerning its market review of the Fixed Voice and Mobile Voice Call Termination markets in Ireland. A non-confidential copy of the Draft Decision is attached at Appendix 1 of this Information Notice.

1.2 In accordance with the requirements of Article 23 of the of the European Electronic Communications Code ('**EECC'**)[1]. ComReg carried out a public consultation ('**Consultation'**) on its analysis of the Fixed Voice and Mobile Voice Call Termination Markets in Ireland over the period 26 October 2022 to 7 December 2022.

1.3 Prior to the adoption of a final decision, Article 32(3) of the EECC requires ComReg to publish and, at the same time, make draft measures accessible to the European Commission ('**EC'**), the Body of European Regulators for Electronic Communications ('**BEREC'**) and National Regulatory Authorities ('**NRAs**') in other Member States (the 'Article 32 Notification').

1.4 The Article 32 Notification has today been made by ComReg on the basis of the draft measures set out in the Draft Decision.

1.5 Having completed the Article 32 Notification, ComReg will take utmost account of any views expressed by the EC, BEREC and NRAs in other Member States before adopting its final decision.

[1] Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast)Text with EEA relevance. (europa.eu)

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Appendix 1: Fixed Voice and Mobile Voice Call Termination Markets

1.1 A copy of the Draft Decision is attached below.

Market Review

Fixed Voice and Mobile Voice Call Termination Markets

Response to Consultation and DRAFT Decision

Reference: ComReg 23/XX, Decision DXX/23

Version: DRAFT DECISION

Date: 24/02/2023

Note this is a DRAFT DECISION

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1 Executive Summary

1.1 Telephone calls made from one network to another are initiated (or 'originated') on one Service Provider's ('**SP's**') network and completed (or 'terminated') on another's. While the end-user making the call (the 'calling party') pays the originating SP for doing so, a separate transaction usually takes place at the wholesale level, whereby the terminating SP charges the originating SP for completing the call.

1.2 This wholesale interconnection service is known as Wholesale Voice Call Termination ('**WVCT**') and can be subdivided into Fixed Voice Call Termination ('**FVCT**') in the case of calls delivered to telephones at a fixed location and Mobile Voice Call Termination ('**MVCT**') in the case of calls delivered to mobile telephones. WVCT allows retail subscribers of the originating SP the ability to call and be connected to retail customers of the recipient SP. SPs can be subdivided into Fixed SPs ('**FSPs**') and Mobile SPs ('**MSPs**'), depending on whether they operate fixed or mobile networks[2].

1.3 ComReg is required to review certain electronic communications markets to decide whether regulation is appropriate and, if so, what form such regulation should take. This Response Consultation and Decision ('**Decision'**) is concerned with the analysis of the wholesale markets for the provision of FVCT (the **'Relevant FVCT Market(s)'**) and MVCT (**the 'Relevant MVCT' Market(s)'**) in the State (together the '**Relevant Termination Markets**').

1.4 On the basis of ComReg's previous analysis of the Relevant Termination Markets, the 2019 Termination Markets Decision[3] published on 23 May 2019 designated 22 Fixed SPs ('**FSPs**') and 6 Mobile SPs ('**MSPs**') with SMP (collectively referred to as the '**2019 SMP SPs**') and imposed a series of obligations on them. On the same day, ComReg issued a pricing decision ('**2019 Separate Pricing Decision**')[4] which further specified the price control obligations imposed on the 2019 SMP SPs.

[2] In the context of facilitating subscribers' abilities to make calls to subscribers of other networks ('off-net calls'), the originating SP pays a wholesale charge to the terminating SP, known as a termination rate. Termination rates levied by MSPs are known as Mobile Termination Rates ('**MTRs**'), or Fixed Termination Rates ('**FTRs**') when levied by FSPs. The termination rate allows the terminating SP to recover relevant costs associated with the provision of the WVCT service, which completes the incoming leg of a call to its subscriber.

[3] Fixed Voice Call and Mobile Voice Call Termination - Response to Consultation and Decision, ComReg Document 19/47, ComReg Decision D10/19, May 2019 (the '**2019 Termination Markets Decision**') https://www.comreg.ie/publication/market-review-fixed-voice-call-termination-and-mobile-voice-call-termination/.

[4] Price Control Obligations for Fixed and Mobile Call Termination Rates, Response to Consultation and Decision, ComReg Document 19/48, ComReg Decision D11/19, May 2019 ('**2019 Separate Pricing Decision**') https://www.comreg.ie/publication-download/price-control-obligations-for-fixed-and-mobile-call-termination-rates

1.5 In October 2020 ComReg made a further decision (the **'2020 Further Termination Decision**[5]') which amended the definition of the Relevant FVCT[6] Markets established under the 2019 Termination Markets Decision and also designated 3 additional FSPs with SMP ('**Additional SMP FSPs**')[7], bringing the number of FSPs designated with SMP to 25, with 6 MSPs designated with SMP (together the '**SMP SPs**')[8].

1.6 The 2019 Termination Markets Decision, the 2019 Separate Pricing Decision and the 2020 Further Termination Decision (together the '**Termination Market Decisions**') imposed the same obligations on all SMP MSPs, and the same obligations on all SMP FSPs, save that Eircom was subject to additional access obligations relating to interconnection, having regard to the hierarchical structure of its network.

1.7 Article 75 of the European Electronic Communication Code ('**EECC**')[9] requires the EC to adopt a Delegated Act setting single maximum European Union-wide[10] FTRs and MTRs by 31 December 2020 to apply to all SPs offering termination services irrespective of a finding of SMP. The **Delegated Regulation[11]** adopted by the EC on 18 December 2020 accordingly directly set the 'Eurorate' FTRs and MTRs which from 1 July 2021 replaced the maximum FTRs and MTRs[12] set by ComReg in the Termination Markets Decision.

1.8 In October 2022 ComReg issued a consultation setting out its proposals with respect to its analysis of the Relevant Termination Markets ('**Consultation**')[13]. Having considered the submissions to the Consultation ('**Submissions**')[14],

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[5] ComReg Document 20/95. The Market Review - Fixed Voice Call Termination Markets, Further Review concerning 0818 Numbers and Additional Fixed Service Providers https://www.comreg.ie/publication/market-review-and-decision-fixed-voice-call-termination-markets-further-review-concerning-0818-numbers-and-additional-fixed-service-providers

[6] The amendment was to include FVCT to 0818 numbers in the relevant market because they have the same characteristics as geographic numbers.

[7] See Annex 2 for a list of the additional SMP FSPs.

[8] See Annex 2 for a list of the 2019 SMP SPs.

[9] Directive (EU) 2018/1972 of the European Parliament and the of the Council of 11 December 2018 establishing the European Electronic Communications Code.

[10] The Delegated Regulation will apply to the European Economic Area ('**EEA**') countries after its incorporation into the EEA Agreement. As Iceland, Norway and Liechtenstein are in the EEA, they will be also be subject to the Delegated Act.

[11] Delegated Regulation (EU) 2021/654 ('**Delegated Regulation**').

[12] "Further Information Notice on Maximum Fixed & Mobile Termination Rates ("Eurorates") – effective from 1 July 2021, ComReg Document 21/49,", https://www.comreg.ie/media/2021/05/ComReg-2149.pdf

[13] Market Review, Fixed Voice and Mobile Voice Call Termination Markets, ComReg Document Number 88/27R.

[14] See Section 2.4 below. ComReg received two responses to the Consultation, namely from Virgin Media and Eir, a copy of which is set out in Annex 5: .

ComReg has decided to adopt the approach proposed in the Consultation without change.

1.9 In this Decision, ComReg therefore defines 25 Relevant FVCT Markets, each consisting of the provision by the FSP concerned of a wholesale FVCT service to other SPs from a level on that terminating FSP's network at which incoming voice calls can be handed over for termination to Fixed Numbers[15], and in respect of which that FSP is able to set the FTR. The geographic scope of each of these Relevant FVCT Markets corresponds to the geographic coverage of each individual FSP's network.

1.10 ComReg defines a further 6 Relevant MVCT Markets, each consisting of the provision by the MSP concerned of a wholesale MVCT service to other Service Providers for the purpose of terminating incoming voice calls to mobile numbers, and in respect of which that MSP is able to set the MTR, with the geographic scope of the Relevant MVCT Market corresponding to the geographic coverage of the individual MSP's network.

1.11 As termination markets are no longer identified by the EC as being susceptible to ex ante regulation, the Three Criteria Test ('**3CT**') set out in Article 67 of the EECC must be completed; if any one of the three criteria fails, the market cannot be subject to SMP regulation. In this regard, arising from the assessment set out in this Decision, Criterion 1 (the presence of high and non-transitory barriers to entry) is considered to be passed. However, Criterion 2 (the market is not likely to tend towards effective competition) is likely to be failed.

1.12 With regards to the assessment of Criterion 1, ComReg notes that the originating SP has no option but to purchase call termination once its retail subscriber makes a call to a number (a Fixed Number in the case of FVCT and a mobile number in the case of MVCT), and no effective demand-side and/or supply-side substitutes for call termination exist. Therefore, there are high and non-transitory barriers to entry in these markets.

1.13 With regard to Criterion 2, each of the Relevant Termination Markets can be considered to tend towards an effectively competitive outcome. In particular, the ability of terminating SPs to set excessive termination charges is now addressed by the EU Delegated Regulation which caps termination rates at the cost of an efficient operator, mirroring what would be observed in a competitive market outcome.

1.14 Further, ComReg considers that the incentives and likelihood of SPs systematically engaging in exclusionary or exploitative conduct in the Relevant Termination Markets (and related markets) are likely to be low in the presence of the Delegated Regulation. Three other factors mitigate against such systematic conduct:

[15] Fixed Numbers are defined as including Geographic Numbers as well as numbers in the 112/999 and 0818 number ranges.

(a) The transition to IP networks and network modernisation removes network hierarchies, with the reduction in the corresponding number of points of interconnection making it easier for SPs to interconnect and will increasingly provide more options for them to secure end-to-end connectivity;

(b) Best practice has been established regarding access to termination and interconnection, based on a long history of regulation which has been effective in ensuring access, interconnection and interoperability. Any deviation from this best practice would be highly visible (as it would be obvious to the SP purchasing termination) and costly to defend on legal and reputational grounds; and

(c) There are several regulatory instruments[16] in the EECC available to SPs and to ComReg to address non-price concerns, should they arise.

1.15 Given that Criterion 2 fails on the basis of a general tendency towards effective competition in the Relevant Termination Markets, it is not necessary to assess Criterion 3.

1.16 As the Termination Markets are no longer susceptible to ex ante regulation, ComReg has decided to withdraw all existing SMP Designations and SMP obligations in respect of the Relevant Termination Markets. However, ComReg has decided to impose a six-month sunset period on Eircom in respect of the withdrawal of the existing SMP based interconnection obligations in order to provide certainty to other SPs and allow them time to make alternative operational interconnection arrangements should they be required.

1.17 In arriving at the above conclusions ComReg has:

(a) consulted with the Competition and Consumer Protection Commission ('**CCPC**'). The CCPC in its response at Annex 3: below notes that it does not object to ComReg's proposed conclusions ('**CCPC Response**')[17]; and

(b) notified the European Commission ('**EC**'), BEREC[18], and other National Regulatory Authorities ('**NRAs**') regarding the measures which it proposed to take (the '**Notified Draft Measures**').[19] On XX 2023 the EC issued its response to ComReg (the '**EC Response**'), as further set out

[16] See paragraph 4.22 below which outlines the regulatory instruments available to address non-price concerns in the relevant markets.

[17] A copy of the CCPC's correspondence ('**CCPC Response**') is set out at Annex 3: of this Decision. The CCPC indicated that it does not object to ComReg's conclusions as outlined in the Decision.

[18] Body of European Regulators for Electronic Communications ('**BEREC**') as established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications and the Office.

[19] A non-confidential version of the Notified Draft Measures is available online at https://circabc.europa.eu/.

in Annex 4: below[20]. The EC Response indicated that [INSERT DETAILS ON COMPLETION].

[20] Case IE/2023/XXXX [Insert Details on Completion].

2 Introduction

2.1 Overview

2.1 The Commission for Communications Regulation ('**ComReg**') is the National Regulatory Authority ('**NRA**') responsible for the regulation of the electronic communications sector (telecommunications, radio communications and broadcasting transmission) and the postal sector in Ireland.

2.2 Subscribers to retail fixed[21] voice call ('**RFVC**') services and retail mobile voice call ('**RMVC**') services can make and receive calls to and from subscribers on other fixed and mobile telephony networks[22]. Making and receiving calls across different SPs ('**SP(s)'**) networks is made possible by means of various wholesale interconnection services which include call origination[23], call transit[24] (if necessary), and call termination.

2.3 Wholesale voice call termination ('**WVCT**') services offered by SPs fall into two categories. Firstly, Fixed Voice Call Termination ('**FVCT**') is the completion by a Fixed SP ('**FSP**') of an incoming call to a fixed voice subscriber on its network. Secondly, Mobile Voice Call Termination ('**MVCT**') is the completion by a Mobile SP ('**MSP**') of an incoming call to a mobile voice subscriber on its network. When an FSP's or MSP's subscriber receives a call, that subscriber's SP must terminate that call on its network in order to connect the calling party with the called party. At a wholesale level a termination charge is levied by the called party's SP on the calling party's SP (either directly or indirectly), to cover the costs associated with completing or terminating that incoming call on its network.

2.4 The wholesale termination charges levied by a FSP for the supply of FVCT is known as a Fixed Termination Rate ('**FTR**'), while the wholesale charge levied by an MSP for the supply of MVCT is known as a Mobile Termination Rate ('**MTR**').

[21] Please note that for the purposes of this Decision, the term 'fixed voice' refers to voice services provided to end users who make/receive voice calls at a fixed location, i.e. typically within the home or a business premises. While the definition implies that the voice calls service is provided at a fixed location, it does not necessarily imply that the underlying or supporting network is always a wired network.

[22] In this Decision, where appropriate, RFVC and RMVC are collectively referred to as 'Retail Voice Calls' ('**RVC(s)**').

[23] Fixed Voice Call Origination ('**FVCO**') is a wholesale service that involves the supply of the switching, routing, and conveyance of a voice call up to a designated point of handover on a network, which is typically located at a switching point in a telephone exchange (or equivalent point in a network). Wholesale FVCO services are often supplied with an access path (known as Wholesale Line Rental) over which FVCO is supplied.

[24] Transit is a wholesale service provided to SPs that involves the switching, routing and conveyance of calls within a network, as well as between networks. Several SPs currently provide transit in Ireland, including Eircom, BT and Virgin Media.

2.5 Under the European regulatory framework for electronic communications recast and set out in the European Electronic Communication Code ('**EECC**')[25], ComReg is required to review certain electronic communications markets to decide whether regulation is appropriate and, if so, what form such regulation should take. In May 2019 ComReg completed a market analysis of the wholesale FVCT markets and MVCT markets in Ireland designating 22 FSPs and 6 MSPs with SMP and subjected them to regulation pursuant to the 2019 Termination Markets Decision,[26]. The 2019 Termination Markets Decision was accompanied by the 2019 Separate Pricing Decision which further specified the price control obligations. ComReg's 2020 Further Termination Decision expanded the market definition to include FVCT to 0818 number ranges in the Relevant FVCT Markets and also identified three Additional FSPs providing FVCT and designated them with SMP.

2.6 By this Decision ComReg removes the SMP designations and obligations imposed in the 2019 Termination Markets Decision and the 2020 Further Decision taking utmost account of the following:

(a) The **2020 Recommendation** on relevant product and service markets susceptible to ex ante regulation within the electronic communications sector, and the accompanying 2020 Explanatory Note[27];

(b) The **SMP Guidelines**[28] on market analysis and the assessment of SMP and the accompanying **SMP Explanatory Note**;[29]

[25] Directive (EU) 2018/1972 of the European Parliament and the of the Council of 11 December 2018 establishing the European Electronic Communications Code.

[26] The Relevant FVCT Markets and Relevant MVCT Markets relate to Market 1 and Market 2 respectively of the European Commission's 2014 Recommendation on relevant markets susceptible to *ex ante* regulation.

[27] The EC adopted a revised version of the 2014 Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex-ante regulation (the **'2014 Recommendation'**). The **2020 Recommendation** replaced the 2014 Recommendation on Relevant Markets. The 2020 Recommendation is available at https://ec.europa.eu/newsroom/dae/redirection/document/72437. The accompanying **2020 Explanatory Note** is available at https://ec.europa.eu/newsroom/dae/redirection/document/72442

[28] European Commission guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services (OJ 2018/C 159/01) (the '**SMP Guidelines**'), available at https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=49765 .

[29] European Commission Staff Working Document accompanying the document COMMUNICATION FROM THE COMMISSION: Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services (the '**SMP Explanatory Note**'), available at https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=49766.

(c) The **Notice on Market Definition** for the purposes of Community competition law. [30]

2.7 In doing so, ComReg also takes into account that Article 75(1) of the EECC mandated that the EC, by means of a delegated act, set Union-Wide (and EEA) fixed and mobile termination rates for voice telephony throughout the European Union by 31 December 2020. On 18 December 2020, the EC adopted the Delegated Regulation (which set a single maximum Union-wide (and EEA) mobile voice termination rate and a single maximum Union-wide fixed voice termination rate, to apply from 1 July 2021 to '*all providers of fixed and mobile termination services throughout the Union*'. The '*target values*' under the Delegated Regulation for MTRs are 0.2 cent per minute and 0.07 cent per minute for FTRs. Those rates apply to any provider of mobile or fixed termination services in a Member State and the EEA, without the need of a finding of SMP.

2.8 The Regulations made by the Minister for Communications for the purpose of transposing the EECC, namely the European Union (Electronic Communications Code) Regulations 2022, SI No. 444 of 2022 ('**the Electronic Communications Code Regulations**') have yet, at the time of publication of this Decision, to be commenced and the legal basis for this market review is accordingly the suite of regulations made in 2011 including in particular the Framework Regulations and the Access Regulations. However, given the expectation that the Electronic Communications Code Regulations shall be commenced shortly, references to the Electronic Communications Code Regulations have been included in this Decision.

2.2 Legal basis and regulatory framework

2.9 Regulation 26 of the Framework Regulations (Regulation 46 of the Electronic Communications Code Regulations) requires that ComReg, taking the utmost account of the markets listed by the applicable EC's Recommendation as being susceptible to ex ante regulation and of the SMP Guidelines, defines relevant markets appropriate to national circumstances, in accordance with the principles of competition law. As the 2020 Recommendation[31] removed from the list of markets susceptible to ex ante regulation, all termination markets, ComReg is required to carry out the 3CT, as set out in Article 67(1) of the EECC.

2.10 The 3CT sets out the criteria that must be cumulatively satisfied to determine whether a relevant market should be, or should continue to be, subject to *ex ante* regulation. The three criteria are:

(a) The presence of high and non-transitory barriers to entry.

[30] Commission Notice on the Definition of the Relevant Market for the purposes of Community Competition Law (97/C372/03) (the '**Notice on Market Definition**'), available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y1209(01)&from=EN.

[31] See footnote 27 above.

(b) A market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers to entry; and

(c) The insufficiency of competition law alone to adequately address the identified market failure(s).

2.11 Where at least one of the 3CT criteria is not satisfied, *ex ante* regulation is deemed to be no longer required, and obligations arising from an SMP designation are required to be removed (subject to notice period where necessary and appropriate). Where, on the other hand, all three criteria are satisfied, *ex ante* regulation may be warranted, where one or more operators are found to have SMP. In particular, Regulation 27(4) of the Framework Regulations[32] (Regulation 49(8) of the Electronic Communications Code Regulations) requires that where ComReg determines, following of a market analysis, that a relevant market, defined in accordance with Regulation 26[33] (Regulation 46 of the Electronic Communications Code Regulations) is not effectively competitive, and that the imposition of regulatory obligations are justified, that ComReg designate the operator or operators which individually or jointly have Significant Market Power in that market and impose appropriate specific obligations on such operators, or maintain or amend such obligations where they already exist.

2.12 According to Regulation 25(1) of the Framework Regulations (Regulation 45(1) of the Electronic Communications Code Regulations) SMP means a position which is equivalent to dominance of that market, that is to say a position of economic strength affording the operator concerned the power to behave to an appreciable extent, independently of competitors, customers and ultimately, consumers, in a relevant market.

2.13 In carrying out its assessment ComReg applies the Modified Greenfield Approach (‘**MGA**’) as set out in the 2020 Explanatory Note[34]. ComReg’s market assessment starts from the assumption that SMP regulation is not present in the specific markets under consideration but takes into account regulation present in other related markets, or through the general regulatory framework (such as under the Delegated Regulation). This approach avoids erroneously drawing conclusions regarding the competitive structure of a particular market that may be influenced by, or indeed premised on, existing regulation on that market. Considering how markets may function absent regulation helps to ensure that SMP-based regulation is only applied (or withdrawn) in circumstances where it is justified and proportionate to do so.

[32] This provision reflects Article 63 of the EECC.

[33] This provision reflects Article 64 of the EECC.

[34] See also Point 17 of the SMP Guidelines.

2.14 Where a SP is designated as having SMP in a market, ComReg is obliged, under Regulation 8(1) of the Access Regulations,[35] (Regulation 50(1) of the Electronic Communications Code Regulations) to impose on that SP, or maintain or amend where they already exist, such of the obligations set out in Regulations 9 to 13 of the Access Regulations (Regulations 51 to 56, 58 and 62 of the Electronic Communications Code Regulations) as it considers appropriate. Pursuant to Regulation 8(6) of the Access Regulations (Regulation 50(5) of the Electronic Communications Code Regulations), any obligations imposed must be:

(a) Based on the nature of the problem identified;

(b) Proportionate and justified in the light of the objectives laid down in section 12 of the Communications Regulation Act 2002 (as amended),[36] and Regulation 16 of the Framework Regulations;[37] (Regulation 4 of the Electronic Communications Code Regulations) and

(c) Only be imposed following consultation in accordance with Regulations 12 and 13 of the Framework Regulations (Regulations 17 and 101 of the Electronic Communications Code Regulations).

2.15 Section 12(1)(a) of the 2002 Act sets out ComReg's objectives in exercising its functions in relation to the provision of electronic communications networks, electronic communications services and associated facilities, namely to:

(a) Promote competition;

(b) Contribute to the development of the internal market; and

(c) Promote the interests of users within the European Union.

2.16 Regulation 16(2) (Regulation 4(5) of the Electronic Communications Code Regulations) requires that in pursuit of its objectives under that regulation and under section 12 of the 2002 Act, ComReg shall apply objective, transparent, non-discriminatory and proportionate regulatory principles by, among other things:

(a) Promoting regulatory predictability;

(b) Ensuring there is no discrimination in the treatment of undertakings;

(c) Safeguarding competition and promoting, where appropriate, infrastructure based competition, (Regulation 4(5)(c) of the Electronic Communications Code Regulations requires the application of European Law in a technologically neutral fashion);

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[35] European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011) (the '**Access Regulations**'). This provision reflects Article 68 of the EECC.

[36] Communications Regulation Act 2002 (No. 20 of 2002), as amended (the '**2002 Act**').

[37] The general objectives of the EECC are laid out at Article 3 thereof.

(d) Promoting efficient investment and innovation in new and enhanced infrastructures;

(e) Taking due account of the variety of conditions relating to competition and consumers that exist in the various geographic areas within the state; and

(f) Imposing *ex-ante* regulatory obligations only where there is no effective and sustainable competition and relaxing or lifting such obligations as soon as that condition is fulfilled.

2.17 In addition to conducting a public consultation in accordance with Regulation 12 of the Framework Regulations,[38] (Regulation 17 of the Electronic Communications Code Regulations 2022, ComReg is required by Regulation 27(1) of the Framework Regulations[39] (Regulation 49(1) of the Electronic Communications Code Regulations) to carry out an analysis of relevant markets, consulting, where appropriate, with the CCPC.

2.18 ComReg is also obliged to make certain draft measures accessible to the EC, BEREC and NRAs in other Member States, pursuant to Regulation 13(3) of the Framework Regulations[40] (Regulation 17(4) of the Electronic Communications Code Regulations) ('**European Consultations**').

2.19 As noted in paragraph 1.17 above ComReg has consulted with the CCPC and [carried out the European Consultations. TO BE COMPLETED]

2.3 Information Sources

2.20 For the purpose of this Decision, ComReg has obtained and draws upon information provided to ComReg by Service Providers for the purpose of ComReg's Quarterly Key Data Reports ('**QKDR(s)**') and other information in the public domain.

2.21 ComReg has also reviewed the experience of NRAs[41] in regulating relevant markets in other jurisdictions and has carefully considered guidance from the EC, BEREC and other relevant parties, as set out in this Decision.

2.4 Consultation Responses

2.22 As outlined above at paragraph 1.8, ComReg published a Consultation and invited all interested parties to respond to the questions set out therein.

[38] This provision is mirrored at Article 23 of the EECC.

[39] This provision is mirrored at Article 67(1) of the EECC.

[40] This provision is mirrored at Article 32(3) of the EECC.

[41] For example, the Austria case: AT/2022/2366, Italian case: IT/2021/2352 and the Denmark case DK/2022/2387.

2.23 ComReg received two responses to the Consultation (‘**Submissions**’) namely from Virgin Media and Eircom (the ‘**Respondents**’). A copy of the Respondents’ Submissions is set out at Annex 5:.

2.24 Both Respondents broadly agreed with the proposals set out in the Consultation, as well as making a number of observations. [42] Having considered the Respondents’ Submissions, ComReg has decided to maintain the approach set out in the Consultation.

2.5 Structure of the Decision

2.25 This remainder of this Decision is structured as follows.

- **Section 3** defines the wholesale Relevant Termination Markets from both a product and a geographic perspective;
- **Section 4** assesses competition with consideration to the 3CT to determine whether the markets are susceptible to *ex ante* regulation of SMP; and
- **Section 5** sets out ComReg’s approach on the withdrawal of SMP regulation.
- **Annex 1:** sets out the Decision Instrument under this Decision.
- **Annex 2:** identifies the SPs providing WVCT services.
- **Annex 3:** sets out the CCPC Response.
- **Annex 4:** sets out the EC Response.
- **Annex 5**: sets out a copy of the Submissions to the Consultation.

[42] See paragraphs 3.32 to 3.33, 4.19 to 4.20, 4.26 to 4.27 and 5.5 to 5.9 of this Decision.

3 Wholesale Relevant Market Definitions

3.1 Defining the Relevant Wholesale Termination Markets

3.1 Prior to conducting a 3CT assessment, ComReg must first define the Relevant Termination Markets. In this regard, ComReg has assessed whether any retail consumer behaviour is likely to indirectly constrain a Service Provider in setting termination rates above the level which would otherwise be expected to pertain in a competitive market. Further, ComReg has assessed the upstream wholesale Relevant Termination Markets to determine whether any wholesale products or services could be considered by a SP as an effective substitute for WVCT, taking account of any demand-side and supply-side considerations.

3.2 ComReg considers the key features of WVCT from a technological and numbering perspective, including whether there are any effective substitutes for WVCT, taking account of demand-side and supply-side considerations.

3.2 Overview of the Relevant Market Definitions

3.3 In the 2019 Termination Markets Decision and the 2020 Further Decision, the **2020 Relevant FVCT Markets** were defined as consisting of:

> "the provision by a FSP of a wholesale FVCT service to other Service Providers from the nearest point to the End User or level on that terminating FSP's network at which incoming voice calls can be handed over for termination to Fixed Numbers[43], and in respect of which that FSP is able to set the FTR.
>
> The geographic scope of the Relevant FVCT Market(s) corresponds to the geographic coverage of each individual FSP's network."

3.4 The **2019 Relevant MVCT Markets** were defined as consisting of:

> *"the provision by a MSP of a wholesale MVCT service to other Service Providers for the purpose of terminating incoming voice calls to mobile numbers, and in respect of which that MSP is able to set the MTR".*
>
> *The geographic scope of the Relevant MVCT Market(s) corresponds to the geographic coverage of each individual MSP's network."*

3.5 ComReg considers that as both FVCT and MVCT are concerned with the termination of incoming voice calls to a called party there are shared characteristics that are relevant to the market definition in each case. Accordingly,

[43] Fixed Numbers include Geographic Numbers as well as numbers in the 076, 0818, 112/999 number range.

in considering the relevant market definitions in respect of WVCT, ComReg first sets out the points which are applicable to both markets, before setting out the preliminary views in relation to FVCT and MVCT separately. This analysis is carried out in the context of the MGA.

3.3 Characteristics of call termination relevant to definitions of WVCT markets

3.3.1 Demand-side substitution at the wholesale level

3.6 As wholesale demand for call termination is derived from retail demand, once the originating SP's retail subscriber has chosen to call a particular number, the originating SP has little alternative but to purchase termination from the SP controlling the connectivity to the called party's number. Therefore, given the nature of WVCT, ComReg's view is that, other than WVCT provided by the called party's SP, there are currently no existing viable demand-side substitutes at the wholesale level for the provision of WVCT.

3.3.2 Demand side substitution at the retail level

3.7 The provision of WVCT is necessary to support retail customers of both MSPs and FSPs in making and receiving calls, since it is WVCT services that make it possible for calls to connect and then terminate on traditional fixed and mobile voice platforms, irrespective of which (fixed or mobile) network the subscriber is calling from. A wholesale termination rate (FTR or MTR) is levied by the terminating SP on the originating SP to terminate a call (in some cases via a transit provider who provides interconnection between two networks that are not directly connected).

3.8 Above cost increases in FTRs and MTRs, if passed on to consumers via an increase in retail call (or other) prices, can impact on demand for traditional fixed and mobile voice services. Sufficient changes in calling party (or called party) behaviour in response to this (such as through reducing calls to other networks or changing to alternative means of communication) may make it unprofitable for the terminating SP to increase its terminating rates.

3.9 However, ComReg is of the view that calling party or called party subscribers are unlikely to be sufficiently concerned about increased termination costs such that it would lead to changes in their behaviour. In particular, given the Calling Party Pays ('**CPP**')[44] principle the called party does not pay for incoming calls to fixed numbers or mobile numbers. In that context, the 2019 Termination Markets

[44] Under the Calling Party Pays principle, the subscriber initiating the call ('the calling party') incurs the cost of the call (charged either as a monetary amount, or as a deduction from the subscriber's allocation of bundled minutes). The subscriber answering the call ('the called party') incurs no cost in doing so.

Decision and the 2020 Further Decision concluded that the called party is likely to have:

(a) low levels of awareness of the calling party's Service Provider identity;

(b) low levels of awareness of the retail costs faced by the calling party; and

(c) low sensitivity to/concern for the costs faced by the calling party.

3.10 These factors are likely to affect the degree to which the called party would have an incentive to change how it treats incoming calls in response to concerns regarding the costs faced by the calling party.

3.11 Similarly, the 2019 Termination Markets Decision and the 2020 Further Decision concluded that the calling party is likely to have:

(a) low levels of awareness of the called party's Service Provider identity;

(b) low levels of awareness of the retail costs of making calls; and

(c) relatively low levels of concern about the costs of making off-net calls from both mobile and fixed lines to both mobile and fixed lines, with subscribers more likely to be sensitive to overall tariff costs and the cost of making calls when selecting their Service Provider. This behaviour can likely be partly explained by the prevalence of tariff plans offering unlimited (or limited, but large, amounts of) any network, any time minutes.

3.12 It is ComReg's view that the conclusions set out in the Termination Markets Decisions remain valid[45]. Assuming the absence of any price control, an increase in the wholesale termination rates above the competitive level would not have any material impact on customers' perception of retail prices or their behaviour. Therefore, it would be unlikely that alternative methods for contacting a recipient would be sufficiently close substitutes to make a Small but Significant Non-transitory Increase in Price ('**SSNIP**') unprofitable.

3.13 With the imposition under the Delegated Regulation of an effective price cap (viz-a-viz Eurorates) on maximum FTRs and MTRs the possibility of price increases above the competitive level, and therefore any pass through to higher retail prices, is effectively eliminated.

3.3.3 Supply-side substitution at the wholesale level

3.14 Supply-side substitution at the wholesale level measures the extent to which a firm not currently active in supplying WVCT services would, in response to a hypothetical monopolist's SSNIP in termination rates (above the competitive level), switch production in the immediate to short term without incurring significant costs and start supplying a WVCT service of equivalent characteristics,

[45] See paragraphs 5.110 to 5121 and 5.218 to 5.224 of the 2019 Termination Markets Decision.

thereby rendering a hypothetical monopolist's termination rate increase unprofitable[46]. In considering wholesale supply-side substitution, ComReg assumes that current termination rates, which are regulated, act as a proxy for the termination rate levels which would be expected to prevail in a competitive market (i.e. in a market where no Service Provider held SMP).

3.15 In this regard, as set out in the 2019 Termination Markets Decision and the 2020 Further Decision, given there are no other technical means by which the called party's network can be bypassed in order for a voice call to be completed to the called party, effective supply-side substitution is unlikely[47].

3.3.4 FVCT and MVCT Service Descriptions and Scope of Application of Eurorates as set out in the Delegated Regulation

3.16 The Delegated Regulation applies to both MVCT and FVCT services, namely termination services including interconnection between networks and control over routing of a call via the number called, namely a number in national numbering plans corresponding to E.164 country codes[48] for geographic areas belonging to the territory of the Union. In this respect the **Explanatory Memorandum to the European Commission's Delegated Regulation** notes that:

> "The **number called** is also the element for classifying a given termination service as fixed (for calls terminated on geographic numbers or non-geographic numbers other than numbers for mobile services that behave as "traditional" termination services where there is a termination monopoly, i.e. fixed nomadic and emergency access numbers) or mobile (for calls terminated on mobile numbers). Termination services include services provided through **any technology** used to terminate calls by the termination provider and requires that this provider has legal and technical **control of the number and interconnects with at least one network** other than its own. These services do not include associated facilities, except interconnection ports. Machine to Machine (M2M) communication is not included in the definition, as the services provided over M2M-specific numbering ranges are not used for interpersonal communications –a condition that should be met to fall within the

[46] See paragraphs 37 and 41 of the 2018 SMP Guidelines.

[47] See paragraphs 5.112 to 5.144 and 5.225 to 5.247 of the 2019 Termination Markets Decision.

[48] E.164 is an international standard (ITU-T Recommendation), "*The international public telecommunication numbering plan*", that defines a numbering plan for the worldwide public switched telephone network (PSTN) and some other data networks. E.164 defines a general format for international telephone numbers. See https://www.itu.int/rec/T-REC-E.164/

scope of this Regulation- but for communications between machines”[49]**[EMPHASIS ADDED]**

3.17 The scope of termination services defined in the Delegated Regulation includes, among other service descriptions, the following:

> “(5) Any termination service, mobile or fixed, entails the terminating operator’s network **interconnecting with at least one network** other than its own. Providers of voice termination services should therefore be considered those that have technical **control and the legal right to use the called number and of the routing of the call** to the recipient.” **[EMPHASIS ADDED]**

> “(10) The regulated rates for voice termination services should apply to calls originated from and terminated **to a number included in national numbering plans** corresponding to E.164 country codes for geographic areas belonging to the territory of the Union (Union-numbers)”. **[EMPHASIS ADDED]**[50]

3.18 The Delegated Regulation outlines differences between geographic and non-geographic numbers, stating the following:

> “(7) Voice termination services for calls to certain non-geographic numbers, such as those used for premium-rate services, toll-free services and shared-cost services (also known as “value added services”), do not behave as “traditional” termination services where there is a monopoly of the operators which terminate the call. Providers of such services have some bargaining power and are able to negotiate the termination rate as part of the revenue sharing agreement.…”[51]

3.19 In November 2021, the EC published on its website a series of ‘Questions and Answers’ in respect of the maximum fixed and mobile termination rates in the Delegated Regulation (the ‘**FAQs**’)[52] which aim to clarify a number of issues are regards the application of the Eurorates including, for example, what costs are covered by the Eurorates for both FVCT and MVCT.

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[49] See at page 6 in the **Explanatory Memorandum to the European Commission’s Delegated Regulation**:https://eur-lex.europa.eu/resource.html?uri=cellar:54e4cc97-414d-11eb-b27b-01aa75ed71a1.0018.02/DOC_1&format=PDF.

[50] See at page 9 in the **European Commission’s Delegated Regulation**: https://eur-lex.europa.eu/resource.html?uri=cellar:54e4cc97-414d-11eb-b27b-01aa75ed71a1.0018.02/DOC_1&format=PDF.

[51] *ibid*

[52] https://digital-strategy.ec.europa.eu/en/faqs/maximum-fixed-and-mobile-termination-rates-question-and-answers

3.20 With respect to costs that are included in the Eurorates FTR, the FAQs state as follows:

> "The fixed termination rate covers the traffic related costs related to the network from the interconnection port in the core equipment belonging to the terminating operator (inclusive) until the default demarcation point between traffic- and non-traffic-related costs, which is typically where the first point of traffic concentration occurs (e.g. DSLAM, MSAN, OLT). These costs include:
>
> - network CapEx: costs of purchasing the network elements and other costs required for having the equipment in place (e.g. subcontractors, installation, design), as well as the associated cost of capital;
> - network OpEx: costs of maintenance and operation of the network elements;
> - wholesale costs: specific costs needed to provide services that involve third-party operators (e.g. billing-related costs, contract management costs, regulation costs);
> - non-traffic related costs are already recovered by the access rental cost (for instance, in a wholesale scheme, this would be recovered by the ULL fee), which covers the connection up to the user premise."

3.21 Table 1 below is also taken from the FAQs and responds to questions that are specifically related to FTRs.

Table 1: FAQs on the scope of application of the Eurorates FTR

Question	Answer
Are the costs of interconnection ports covered by the termination rates?	Interconnection ports are part of the termination service thus their costs are covered by the termination rates. The main cost elements covered are building, modification and decommission of a port. It should be noted that some costs associated with interconnection ports are not necessarily covered. For example, colocation is necessary for hosting interconnection ports but its cost is not covered by the termination rates. In case of multiplexing, whether it is covered or not by the termination rates depends on its implementation. If multiplexing is located after the interconnection point, in the network of the terminating operator, its cost is covered by the termination rate, otherwise it is not.
Do the termination rates cover internal transit?	Internal transit occurs when the terminating operator owns both a fixed and a mobile network and a call is handed over for instance to its fixed network but is terminated in its mobile network. In this case the terminating operator needs to transit the call from its fixed to its mobile network. In essence, such internal transit is no different than an external transit (see below). It is a different service than termination thus operators can charge for it on top of the termination rate. In practice, this situation occurs when the originating operator has no direct interconnection with the relevant fixed/mobile network of the terminating operator.
Do the termination rates cover external transit?	No, the termination rates do not cover transit, i.e. delivery of a call from the originating (or another transit) network to the terminating (or another transit) network.
Do the termination rates cover national transmission transit?	Yes, the delivery of a call from the entry point of the network (interconnection point) to the called party in the same network (national transmission) is covered by the termination rate (see SWD[53], page 3-4).

[53] Explanatory Memorandum to the European Commission's Delegated Regulation.

3.22 Recital 6 of the DR is also informative in setting out what is included in the wholesale FTR:

> "The termination service should exclude the associated facilities that may be required by certain operators or in certain Member States for the provision of termination services. However, interconnection ports, which are currently regulated in many Member States, are essential elements of termination services for any operator as increased capacity for interconnection is needed with increasing traffic, and therefore should be included in the definition of the termination service. A provider of voice termination services should not levy any cost other than the relevant rates set by this Regulation for the full service of terminating a call to a user on its network."

3.23 As noted in the FAQs, the cost model developed by the EC (specifically for the purpose of setting Eurorates) accounts for the national transmission transit costs within a network. As national transmission transit costs are included in the cost model used by the EC to calculate the Eurorates, an operator cannot charge for transit/conveyance services within their network (referred to by the EC in its FAQs as 'national transmission transit').

3.24 The DR requires all providers of wholesale voice call termination services ensure that the charges they levy for termination services are fully in accordance with the DR.

3.25 The EC's FAQs also clarify the application of the Eurorates for mobile termination.

3.26 With respect to costs that are included in the Eurorates MTR, the FAQs state that:

> "The mobile termination rate covers the traffic-related costs from the interconnection port in the core network belonging to the terminating operator (inclusive) until the IMT antenna at the radio access network site (included) to which the call recipient is connected. These costs include:
>
> - network CapEx: costs of purchasing the network elements and other costs required for having the equipment in place (e.g. subcontractors, installation, design), as well as the associated cost of capital;
> - network OpEx: costs of maintenance and operation of the network elements;
> - wholesale costs: specific costs needed to provide services that involve third-party operators (e.g. billing-related costs, contract management costs, regulation costs)."

3.27 As required by Article 75(3) of the Code, ComReg is obliged to closely monitor and ensure compliance with the Eurorates and may, at any time, require a provider of voice termination to amend the charges to another undertaking if those charges do not comply with the Eurorates.

3.4 Relevant FVCT Market Definition

3.28 In the 2019 Termination Markets Decision and the 2020 Further Termination Decision, ComReg defined FVCT as being from the nearest point (to the end user) or equivalent level on the terminating network at which calls can be handed over by a FSP for termination.

3.29 SPs are increasingly transitioning their networks away from legacy circuit-switched technologies to Internet Protocol ('**IP**') technology[54]. Taking account of the description of FVCT in the DR and having regard to the FAQs that confirm that national transmission transit costs are covered in the Eurorates, ComReg is of the view that it is no longer appropriate to define FVCT by reference to a particular interconnection level/hierarchy on the terminating SP's network. In this respect, the 2019 Termination Market Decision referred to FVCT as being the nearest point (to the end user) on the terminating network at which calls can be handed over by a FSP for termination. ComReg considers that such a distinction is no longer relevant as:

(a) Firstly, the reference to FVCT being from the nearest point to the end user refers to termination in networks based on legacy circuit-switched technology. As SPs are increasingly transitioning away from this legacy technology to IP, ComReg is of the view that it is more appropriate (on a forward-looking basis) to define FVCT as being from a level in the network (consistent with IP interconnection) at which calls can be handed over for termination.

(b) Secondly, as set out in paragraphs 3.19 to 3.23 above, the Delegated Regulation makes clear that the setting of Eurorates accounts for the national transmission transit costs. As national transmission transit costs are included in the cost model used by the EC to calculate the Eurorates, an operator cannot charge for transit/conveyance services within their network.

3.30 Other than this amendment it is ComReg's position that the FVCT product market definition for FVCT as set out in the 2019 Termination Markets Decision, as amended by the 2020 Further Termination Decision, remains valid.

3.31 As regards the geographic markets definition for FVCT, the 2019 Termination Markets Decision and the 2020 Further Termination Decision concluded that the geographic market should encompass all FVCT services provided by each FSP

[54] The transition to IP and implications for the termination markets assessment is discussed in more detail in paragraphs 4.14 to 4.16 of this Consultation.

in respect of Fixed Numbers utilised by their subscribers. The 'number-based' definition of FVCT also inherently reflected the geographic dimension of those services (i.e. the geographic market corresponds to the (combined) locations of all subscribers using Fixed Numbers and in respect of which the FVCT supplier has the ability to set/control the FTR for the completion of calls to Fixed Numbers). ComReg's position is that this approach remains valid for the purpose of this Decision.

3.32 Both Respondents to the Consultation agreed with ComReg's approach to defining the Relevant FVCT Markets, noting however that in its Submission, Eircom, while not disagreeing with ComReg's approach, stated that:

> *"….ComReg proposes different wording for the definitions of Fixed Voice Call Termination and Mobile Voice Call Termination in the Draft Decision Instrument relative to Fixed Voice Termination Service and Mobile Voice Termination used in the Delegated Regulation. Whilst this does not appear to have any appreciable impact on the overall conclusions we believe it would be appropriate for ComReg to align to the definitions in the Delegated Regulation."*

3.33 However, ComReg, in conducting its analysis of the Relevant Termination Markets, must have regard to specific national circumstances, and in this regard is of the view that the market definition must also have regard to the specific number types used in Ireland in making calls that attract FVCT and MVCT. In any event, ComReg does not see any inconsistency between this approach and the definition of termination services as set out in the Delegated Regulation.

3.34 Having regard to the above analysis, it is ComReg's position that the Relevant FVCT Markets each consist of:

> *"the provision by a FSP of a wholesale FVCT service to other Service Providers from a level on that terminating FSP's network at which incoming voice calls can be handed over for termination to Fixed Numbers*[55]*, and in respect of which that FSP is able to set the FTR.*
>
> *The geographic scope of the Relevant FVCT Market(s) corresponds to the geographic coverage of each individual FSP's network."*

3.35 For the avoidance of doubt:

(a) This is a technology neutral market definition and the use of the term 'FSP' in the above context is intended to refer to any SP supplying the FVCT services concerned, irrespective of the underlying technology (i.e. wired or wireless);

[55] Fixed Numbers are defined as including Geographic Numbers as well as numbers in 112/999 and 0818 number ranges. Note that the 076 Non-Geographic Number (NGN) range (along with 1850 and 1890) were withdrawn from use after 31 December 2021 (see https://www.comreg.ie/ngnreview). The 076 NGN range had been included in the definition of Fixed Numbers in the 2019 Termination Markets Decision and the 2020 Further Termination Decision..

(b) Fixed Numbers includes Geographic Numbers as well as numbers in the 0818 and 112/999 number range;

(c) 'Other SP' includes any authorised undertaking,[56] whether located in the State or in another jurisdiction.

3.5 Relevant MVCT Market Definition

3.36 It is ComReg's view that the product and geographic markets definition for MVCT as set out in the 2019 Termination Markets Decision remains valid, as there have been no material changes in market circumstances since the previous review.

3.37 Both Respondents to the Consultation agreed with ComReg's approach to defining the Relevant MVCT Markets. Eircom's comments and ComReg's response at paragraph 3.33 above apply equally in this context.

3.38 Having regard to the above, it is ComReg's position that the Relevant MVCT Markets consist of:

> *"the provision by a MSP of a wholesale MVCT service to other Service Providers for the purpose of terminating incoming voice calls to mobile numbers[57], and in respect of which that MSP is able to set the MTR.*
>
> *The geographic scope of the Relevant MVCT Market(s) corresponds to the geographic coverage of each individual MSP's network."*

3.39 For the avoidance of doubt, 'other SP' above includes any undertaking,[58] whether this be an undertaking located in the State or in another jurisdiction.

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[56] Pursuant to Regulation 4 of the Authorisation Regulations (European Communities (Electronic Communications Network and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011).

[57] As defined in the Numbering Conditions of Use as "a Non-Geographic Number that is used as part of a mobile service. See also paragraph 5.195 of the 2019 Termination Markets Decision in which ComReg noted that the Relevant MVCT Market includes the provision of MVCT services to all mobile numbers, as defined in the Numbering Conditions of Use.

[58] As defined pursuant to Regulation 2 of the Authorisation Regulations (European Communities (Electronic Communications Network and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011).

4 3CT Assessment for Relevant Termination Markets

4.1 Overview

4.1 In December 2020 the EC adopted its 2020 Recommendation. FVCT and MVCT markets were removed from the list of recommended markets.

4.2 Accordingly, at EU level, there is no longer a presumption in favour of continuing to regulate these markets. ComReg must therefore determine whether, considering national circumstances, the Relevant FVCT Markets and Relevant MVCT Markets defined at Section 3 (together the '**Relevant Termination Markets**') continue to warrant regulation. The 3CT set out in Article 67(1) of the EECC, is the mechanism which allows for this assessment to be carried out in a structured and objective way.

4.3 The 3CT sets out the criteria that must be cumulatively satisfied to determine that a relevant market should be, or should continue to be, subject to *ex ante* regulation. The three criteria are:

(a) the presence of high and non-transitory barriers to entry (paragraph 4.9 below);

(b) a market structure which does not tend towards effective competition within the relevant time horizon (paragraphs 4.10 to 4.25 below); and

(c) the insufficiency of competition law alone to adequately address the market failure(s) concerned (paragraph 4.26 below).

4.4 If all the three criteria are cumulatively satisfied, then the Relevant Termination Markets are unlikely to be effectively competitive , and *ex ante* regulation may, in principle, be required, subject to one or more SP being found to have SMP.

4.5 If, on the other hand, at least one of the three criteria is not met, *ex ante* regulation is not (or no longer) deemed to be required.

4.6 ComReg considers there to be sufficient common features between FVCT and MVCT in terms of market structures, characteristics and the competitive environment to conduct a joint 3CT analysis that is applicable to both. Therefore, the 3CT analysis below refers to the Relevant FVCT Markets and the Relevant MVCT Markets together, unless otherwise indicated.

4.7 Before considering the 3CT and the appropriateness of regulation in the Relevant Termination Markets, ComReg notes that the assessment of the 3CT is carried out in accordance with the MGA where SMP regulation is considered not to be in place in the markets under consideration but the effects of other types of (sector-specific) regulation, decisions, or legislation applicable to the relevant retail and related wholesale market(s) are taken into account.

4.8 For the reasons se out below ComReg considers that the second of the three criteria as set out at paragraph 4.3 above is no longer met and that SMP regulation be removed from these markets.

4.2 Three Criteria Test for the Relevant Termination Markets

4.2.1 Criterion 1: The presence of high and non-transitory barriers to entry

4.9 In Section 3 of this Decision, the Relevant Termination Markets are defined, such that each SP identified is the sole supplier of WVCT to its subscribers. Therefore, the originating SP has no option but to purchase call termination once its retail subscriber makes a call to a number (a Fixed Number in the case of FVCT and a mobile number in the case of MVCT). In such a scenario it is identified that there are no effective demand-side and/or supply-side substitutes for call termination. Therefore, there are high and non-transitory barriers to entry in these markets and Criterion 1 is met.

4.2.2 Criterion 2: Market structure which does not tend towards effective competition within the relevant time horizon

4.10 The incentives and ability of SPs to act in an anti-competitive way has historically been a concern in the Relevant Termination Markets. In the absence of any regulatory constraint on SPs, the bottleneck control over call termination described in paragraph 4.9 has been shown to result in a market outcome in which there is no tendency toward effective competition. In the past this has led NRAs, including ComReg, to make findings of SMP as regards each and every terminating SP and to impose remedies which constrain pricing behaviour and oblige the provision of access to WVCT in a transparent and non-discriminatory manner.

4.11 However, the ability of terminating SPs to set excessive termination charges is now addressed by the application of the Eurorates via the Delegated Regulation. The Eurorates cap, at a pan-European level, the maximum termination rates of all SPs providing terminating services at the cost of an efficient operator. The Delegated Regulation would also apply automatically to any new SP which commences offering termination services. Therefore, insofar as price is concerned, the Delegated Regulation results in a competitive outcome in that the cost-based price caps it imposes mirror what would be observed in a competitive market. This is one of the reasons the EC no longer identifies termination markets as being susceptible to *ex ante* regulation in its 2020 Recommendation.

4.12 ComReg considers that, in the specific case of the Relevant Termination Markets, incentives to engage in non-price related conduct are likely to be closely linked to incentives to charge excessive prices. In this regard the risk of exploitative or exclusionary conduct is substantially reduced as the incentive of SPs to leverage their control over access to termination to extract excessive termination rates by denying access is lessened as the result of the imposition of Eurorates. Excessively high termination rates increase the revenues and profits of the terminating SP and increase the costs of the originating SP, who may be a competitor of the terminating SP. Therefore, terminating SPs benefit from increased profits and improved competitive position relative to other SPs. However while refusing access may harm competitors this would come at a cost. Disadvantaging customers through exploitative or exclusionary conduct, without any ability to recoup profits through monopoly pricing, is not (all else being equal) in the interests of SPs who would be expected to benefit from increased customer activity achieved through the promotion of greater network interoperability. This is consistent with the approach adopted by the European Commission in the Explanatory Note accompanying the EC 2020 Recommendation ('**Explanatory Note to 2020 Recommendation**').[59]

4.13 There may be circumstances where SPs would have an incentive to exclude existing competitors or new entrants by, for example, denying or frustrating access to call termination for new or less established entrants. However, ComReg considers that the likelihood of SPs systematically engaging in exclusionary conduct in the Relevant Termination Markets is likely to be low in the presence of the Delegated Regulation. In this regard, on a forward-looking basis there are three main factors mitigating against systematic exclusionary conduct by SPs and which indicate the Relevant Termination Markets are tending towards effective competitive market outcomes:

(a) The transition to IP networks and network modernisation removes network hierarchies, with the reduction in the corresponding number of points of interconnection making it easier for SPs to interconnect and will increasingly provide more options for them to secure end-to-end connectivity (see paragraphs 4.14 to 4.18 below);

(b) Best practice has been established regarding access to termination, and interconnection, based on a long history of regulation which has been effective in ensuring access, interconnection and interoperability. Any deviation from this best practice would be likely to be highly visible (as it

[59] See page 78 of Commission Staff Working Document Explanatory Note Accompanying the document Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code [C(2020) 8750 final].

would be obvious to the SP purchasing termination) and potentially harmful reputationally (see paragraphs 4.19 to 4.21 below); and

(c) There are several regulatory instruments in the EECC available to SPs and to ComReg to address non-price concerns, should they arise (see paragraphs 4.22 to 4.25 below).

Transition to IP networks and network modernisation

4.14 Fixed telephone services in Ireland have historically been provided by dedicated circuit-switched telephone networks based on Time Division Multiplexing (‘**TDM**’) technology. In recent years, SPs have transitioned away from this technology to modern Internet Protocol based networks (‘**IP**’ networks) which use a common infrastructure for data, broadband and voice services[60]. Ireland is undergoing a widespread rollout of Next Generation Networks which can enable the provision of wholesale and/or retail Managed Voice over Internet Protocol (‘**VoIP**’)[61]. In this regard, PSTN exchanges are being replaced by IP Multimedia Subsystems (‘**IMS**’) and other VoIP platforms as SPs transition from TDM to IP-based telephony.

4.15 The transition to IP networks may lead to significant changes in the pattern of interconnection between networks, for example resulting in more flexible call routing, reducing the cost of interconnection and, consequently, reducing barriers to direct interconnection between networks for the purposes of buying termination services.

4.16 VoIP networks typically require fewer Points of Interconnection (‘**POI**’) for SPs resulting in the removal of network hierarchies making it easier for SPs to interconnect. Interconnection costs are therefore likely to be significantly lower than on TDM. In the 2019 Termination Markets Decision ComReg noted that Eircom could potentially impede/raise the costs of effective handover of calls for termination to fixed numbers on its network, thus undermining the effectiveness of the general access obligation. At the time this was a concern for ComReg in the case of Eircom given the multi-level switching hierarchy in its network and,

[60] The transition from TDM-based networks to predominantly IP-based networks require several transformations in a network both at the core and access network level. The transition to IP-based networks has been taking place gradually over the past number of years. In essence, the key factors in these Next Generation Networks (‘**NGN**’) are the deployment of an IP core network as the backbone to transport the data and voice, the rollout of fibre as deep as possible into the network (ideally to the end-user) and the retirement of PSTN exchanges with IP Multimedia Subsystems (‘IMS’) controlling the voice application.

[61] ComReg’s QKDR defines ‘Voice over Broadband’ as *“IP-based services that facilitate voice calls to and/or from the PSTN over a broadband connection. With this service, the customer may either have broadband access from an ISP and acquire voice over broadband services from a separate entity, or have both broadband and voice over broadband services bundled together by the same supplier. Voice services bundled with digital TV services and delivered over digital cable TV networks should also be recorded here.”* The QKDR furthermore requests SPs to provide data on Managed VoB, SIP Trunking and IP connections equivalent to ISDN (i.e. Hosted PBX). Accordingly, the expression ‘Voice over Broadband’ used in the QKDR equates to the expression ‘Managed VoIP’ used in this Consultation.

therefore, there was a need to provide other FSPs with a mechanism for reaching all points on the Eircom network to which they need to interconnect in order to use the FVCT services provided by Eircom[62].

4.17 Eircom is planning to implement an End of Sale and End of Support of its TDM Interconnect services in Q1 2023 and Q1 2024 respectively. As part of its network modernisation, Eircom developed and launched an IP Interconnect service called VIX via WEIL. This product will replace the existing TDM interconnect service to meet SPs' requirements for a modern IP interface supporting SIP and SIP-I protocols for interconnection of voice traffic (fixed and mobile). Other SPs have also developed IP interconnect products and this development has enabled SPs to begin transitioning away from TDM-based interconnect services.

4.18 On a forward-looking basis, ComReg is of the view that the removal of network hierarchies associated with the transition to IP facilitates further the markets' tendency towards effective competition without the need for specific interconnection obligations on Eircom (including when considered alongside the other factors discussed elsewhere in this Decision). However, the transition to IP is an ongoing process that is not yet complete for some SPs and ComReg has decided in that context to impose a six-month sunset period on Eircom in respect of the additional SMP based interconnection obligations during which time Eircom may not withdraw access to the interconnection services that it is required to provide under the 2019 Termination Markets Decision. This period of time will provide certainty to other SPs and allow them time to make alternative operational arrangements should they be required, including arranging interoperability testing and ordering IP-based interconnection at typically two or more network nodes.

4.19 Eircom, in its Submission, considered that only imposing such a six month sunset period obligation on Eircom was discriminatory. ComReg does not consider this to be the case, noting in particular, that Eircom is the only FSP that to date has been subject to such SMP interconnect based obligations[63] given its hierarchical network and the need to allow SPs time to adjust as set out above. Eircom's position is different to that of other SPs and therefore warrants separate treatment with respect to the removal of these interconnection based obligations.

4.20 Virgin Media, in its Submission, considered that the six month sunset period should be capable of being extended if valid technical, or operational issues arise. ComReg considers that the sunset period should not be extended as it is adequate for the purposes intended. ComReg is satisfied that should any issues

[62] See paragraphs 8.83 to 8.107 of the 2019 Termination Markets Decision.

[63] In the Sections 8.1 and 8.2 of the Decision Instrument attached to the 2019 Termination Markets Decision Eircom was required to provide and grant Access to Undertakings to Interconnect Services, as a form of Associated Facility.

arise, these can be adequately dealt with by way of the exercise of ComReg's functions and powers as set out in the statutory framework.

Best practice with regards to access to termination and interconnection

4.21 Established best practice with regards to interconnection and access to termination is based on a long history of regulation which has been effective in ensuring interconnection and access to termination on a transparent and non-discriminatory basis.

4.22 Any deviation from this best practice would be highly visible (as it would be obvious to the SP purchasing termination).

4.23 ComReg considers that in the event of the withdrawal of the various non-price SMP obligations it is likely to be in the interests of SPs to continue to adhere to the principles underlying those obligations and, therefore, to continue to implement most of the practices associated with those principles.

Regulatory instruments to address non-price concerns

4.24 There are several other provisions of the Electronic Communications Code Regulations (which will replace similar provisions within the Access Regulations) which, in the absence of SMP based regulation, may be used to address any non-price concerns associated with termination. These include:

(a) Regulations 12(2) and 41(1) of the Electronic Communications Code Regulations (replacing Regulation 5(1) of the Access Regulations) which gives providers of electronic communications services the right to negotiate interconnection with and, where applicable, obtain access to, or interconnection from other authorised providers of publicly available electronic communications services;

(b) Regulation 41(2) of the Electronic Communications Code Regulations (replacing Regulation 5(2) of the Access Regulations) which provides that operators of public electronic communications networks have a right and, when requested by other authorised undertakings, an obligation to negotiate with each other interconnection for the purpose of providing publicly available electronic communications services, to ensure provision and interoperability of services;

(c) Regulation 42(3) of the Electronic Communications Code Regulations (replacing Regulation 6(2) of the Access Regulations) which provides for the imposition by ComReg, to the extent necessary to ensure end-to-end connectivity, obligations on undertakings subject to general authorisation that control access to end-users, including, in justified cases, the obligation to interconnect their networks where this is not already the case.[64]

4.25 Having regard to the above, and on a forward-looking basis (over the next 5 years), ComReg considers that criterion 2 is not satisfied on the Relevant Termination Markets as they exhibit conditions equivalent to a tendency towards effective competition.

4.26 In its Submission, Virgin stated that:

"ComReg needs to be confident that the alternative regulations named in the Consultation will provide adequate protection before it removes SMP".

4.27 On the basis that the rights and obligations of undertakings, and ComReg's powers pursuant to the Electronic Communications Code Regulations cited at paragraph 4.24 above, are largely a continuation of those already contained in the Access Regulations, ComReg does not consider that those rights and obligations, and its power to intervene as and when necessary, would be adversely affected, were the publication of this Decision to occur prior to commencement of the Electronic Communications Code Regulations and the withdrawal of the Access Regulations.

4.28 All three criteria must be met for ex ante regulation to be justified and the failure of one means that *ex ante* SMP regulation is required to be lifted. On the basis that the Relevant Termination Markets do not satisfy the second criterion, market conditions are such that the *ex ante* SMP regulation of the Relevant Termination Markets is being withdrawn.

4.29 ComReg notes for the avoidance of doubt that should systematic market failures arise in a Relevant Termination Market, or if other regulatory instruments (as highlighted above) prove inadequate in addressing persistent exclusionary conduct, discrimination or a lack of transparency in the Relevant Termination Markets, ComReg will re-consider whether a market review is appropriate,

[64] See p. 80 of the Explanatory Note to the 2020 Recommendation: "*NRAs can impose ex ante obligations under Article 61(2) of the Code 234 on access, interconnection and interoperability of services in order to ensure the policy objectives of Article 3 of the Code. In the Commission services' view, in particular in specific circumstances where there is a likelihood that specific operators would adopt anticompetitive conducts on the market, NRAs could justify imposition of other obligations based on Article 61(2). Transparency and non-discrimination obligations could also be imposed under this provision given that operators requesting interconnection would require non-discrimination vis-à-vis other retail providers, including the termination provider's retail arm, in order to be competitive. In this regard, the Commission acknowledged in its Article 7 [now Article 32] practice that Article 5 of the Access Directive (corresponding to Article 61 of the Code) could be the legal basis to impose obligations of transparency and non-discrimination. Where NRAs consider imposing obligations, namely interconnection, transparency and non-discrimination, they would have to follow the procedure under Article 61(2)237. The draft measure should therefore first be consulted nationally and afterwards with the Commission under Article 32 of the Code. It should also be noted that Article 61 could also be the legal basis for imposing obligations in the context of the settlement of a dispute arising between terminating operators*".

including whether to impose SMP obligations. In this respect, as noted in the Explanatory Note to the 2020 Recommendation:

> *"NRAs will retain their power to conduct market analyses under Article 67 and impose non-price obligations on SMP operators under Article 68. However, the removal of the termination markets from the list of recommended markets means that NRAs will need to conduct the three criteria test and prove that all criteria are met. In order to do so, NRAs would need to show that specific (non-price related) problems exist. For example, applications for dispute settlement would signal that the market might not function effectively. In such cases, SMP-based ex ante regulation may be the more appropriate way to address persistent problems".*[65]

4.2.3 Criterion 3: The insufficiency of competition law alone to adequately address the market failure(s) concerned

4.30 Given that Criterion 2 fails on the basis of a general tendency towards effective competition in the Relevant Termination Markets, it is therefore not necessary to assess Criterion 3.

4.2.4 Conclusions on the 3CT

4.31 Accordingly, ComReg's position is that, in respect of the Relevant Termination Markets, the 3CT has not been met. ComReg concludes that each of the Relevant Termination Markets displays a tendency towards an effectively competitive outcome. Therefore, ComReg has decided to withdraw all existing SMP regulation.

[65] Explanatory Note to the 2020 Recommendation, page 80.

5 Withdrawal of SMP and Remedies on the Relevant Termination Markets

5.1 Withdrawal of Obligations and Sunset Period

5.1 In cases where SPs have previously been designated as holding SMP[66] on a specific market, and have therefore been subject to regulatory obligations, Regulation 27(2) of the Framework Regulations allows ComReg to give reasonable notice to any parties which it considers to be affected by the withdrawal of such obligations.

5.2 Given that the 3CT is failed with respect to the Relevant Termination Markets, *ex ante* SMP regulation of these markets is no longer justified and all SMP designations and associated obligations are required to be removed. ComReg accordingly has decided to remove all existing SMP findings and SMP obligations imposed pursuant to the 2019 Termination Markets Decision, the Separate Pricing Decision and the 2020 Further Decision to be effective on the date at which this Decision takes effect.

5.3 ComReg noted further in the 2019 Termination Markets Decision that Eircom's integrated position across related markets at the time implied that it had a strong ability and incentive to use its market power in its Relevant FVCT Market to distort competition and raise barriers to entry at various levels of the supply chain (e.g. in wholesale and retail voice markets). In view of this, ComReg imposed additional obligations on Eircom only, as set out in Section 8.3 of the 2019 Termination Markets Decision FVCT Decision Instrument, namely an obligation to "provide and grant Access to Undertakings to Interconnection Services, as a form of Associated Facility".

5.4 With regards to the additional SMP based interconnection obligations on Eircom ComReg has decided to impose a 6-month sunset period on Eircom in respect of those obligations only[67]. Having regard to the discussion above on the transition to IP networks, including the consideration by ComReg of Eircom's and Virgin Media's Submissions, the purpose of the sunset period is to provide certainty to other SPs and allow them time to make alternative operational arrangements should they be required during this initial period of transition to IP, including arranging interoperability testing and ordering IP-based interconnection at typically two or more network nodes.

[66] See Annex 2 for the list of SMP SPs.

[67] See paragraphs 8.85 to 8.90 of the 2019 Termination Markets Decision.

5.5 In it's Submission, Eircom has stated that it did not have an issue with sunset periods *"in principle"*, but that it considered that it was being: *"singled out"*, and that the application of a sunset period to one SMP provider, but not others, was: *"discriminatory, disproportionate and unnecessary"*. However, the sunset period applies to a specific obligation that was imposed on Eircom only in the 2019 Decision and wasn't deemed to be required in respect of any other operator in that decision. As set out at paragraph 5.4 above, ComReg is satisfied that the sunset period is justified in respect of that specific obligation.

5.6 In its Submission, Virgin Media stated that:

> *"ComReg needs to be confident that the alternative regulations named in the Consultation will provide adequate protection before it removes SMP."*

5.7 In paragraphs 4.24 to 4.27 above Comreg has set out the legal basis for non-SMP based regulatory intervention with respect to any non-price issues that may arise after the removal of SMP.

5.8 As previously stated, it is ComReg's intention to monitor the relevant markets. It is ComReg's view that any anti-competitive behaviour such as denial of access to interconnect services is likely to be transparent as between the relevant SPs who can raise issues, as appropriate, with ComReg.

5.9 Regarding the monitoring of pricing issues, under the EECC and the Delegated Regulation NRAs are required to closely monitor and ensure compliance with Delegated Regulation and to report annually to the EC and BEREC.

5.10 As noted in paragraph 4.29, the option for the re-introduction of SMP based regulation also exists where the specific circumstances warrant it.

Annex 1: Decision Instrument

Please note: *The Regulations made by the Minister for Communications for the purpose of transposing the European Electronic Communications Code, namely the European Union (Electronic Communications Code) Regulations 2022, SI No. 444 of 2022, have yet, at the time of publication of this Decision, to be commenced and the legal basis for this market review and Decision is accordingly the suite of regulations made in 2011 including in particular the Framework Regulations and the Access Regulations. Were the Electronic Communications Code Regulations to be commenced prior to the adoption of ComReg's final decision, ComReg will adopt its final decision including this Decision Instrument referring to the relevant Regulations as appropriate. For the purpose of this Decision, references to both the 2011 set of Regulations and to the Electronic Communications Code Regulations have been included.*

2 STATUTORY POWERS GIVING RISE TO THIS DECISION INSTRUMENT

2.1 This Decision Instrument ("**Decision Instrument**") is made by the Commission for Communications Regulation ("**ComReg**"):

(i) Pursuant to and having had regard to Sections 10 and 12 of the Communications Regulation Act;

(ii) Pursuant to and having regard to the EECC;

(iii) Pursuant to and having had regard to Regulation 6(1) of the Access Regulations/Regulation 42 of the Electronic Communications Code Regulations and Regulation 16 of the Framework Regulations/Regulation 4 of the Electronic Communications Code Regulations;

(iv) Having, pursuant to Section 13 of the Communications Regulation Act, where applicable, complied with Ministerial Policy Directions;

(v) Having taken the utmost account of the 2020 Recommendation, the Explanatory Note, and the SMP Guidelines;

(vi) Having had regard to, and taken the utmost account of, the Delegated Regulation;

(vii) Having had regard to the analysis and reasoning set out in ComReg Document 22/87R and ComReg Decision [XX/XX] [this Decision];

(viii) Having, in accordance with Regulation 12(3) of the Framework Regulations, and Regulation 101(3) of the Electronic Communications Code Regulations, published the text of the proposed measure and given reasons for it, including information as to which of ComReg's statutory powers gives rise to the measure, in ComReg Document 22/87R and ComReg Decision [XX/XX] [this Decision];

(ix) Having, in accordance with Regulation 12(4) of the Framework Regulations, and Regulation 101(5) of the Electronic Communications Code Regulations, considered the representations received in response to ComReg Document 22/87R;

(x) Having consulted with the Competition and Consumer Protection Commission pursuant to Regulation 27 of the Framework Regulations/ Regulation 49 of the Electronic Communications Code Regulations;

(xi) Having notified the draft measure and the reasoning on which the measure is based to the European Commission, BEREC and the national regulatory authorities in other EU Member States in accordance with Regulations 13 and 14 of the Framework Regulations/ Regulation 17 of the Electronic Communications Code Regulations and Articles 32 and 33 of the EECC, and having taken the utmost account, pursuant to Regulation 13(6) of the Framework Regulations/ Regulation 17(7) of the Electronic Communications Code Regulations, of any comments made by the European Commission, BEREC and any national regulatory authority in another EU Member State;

(xii) Pursuant to Regulations 25, 26 and 27 of the Framework Regulations, and Regulations 45, 46 and 49 of the Electronic Communications Code Regulations;

(xiii) Having had regard to the market definition, market analysis and reasoning set out in ComReg Decisions D10/19, D11/19 and D09/20; and

(xiv) Having regard to the analysis and reasons set out in ComReg Decision DXX/XX [this Decision].

2.2 This Decision Instrument shall, as and where required, be construed consistently with and in light of the Response to Consultation and Decision, ComReg Decision DXX/XX [this Decision]

2.3 To the extent that there is any conflict between a decision instrument dated prior to the Effective Date and this Decision Instrument, this Decision Instrument shall prevail.

3 DEFINITIONS

3.1 In this Decision Instrument, unless the context otherwise suggests:

“0818 number” has the same meaning as set out in the Numbering Conditions of Use;

“Access” has the same meaning as under the Access Regulations/the European Electronic Communications Code Regulations;

“Access Regulations” means the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No 334 of 2011;

“Authorisation Regulations” means the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No 335 of 2011);

“BEREC” means the Body of European Regulators for Electronic Communications, as established pursuant to Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 (OJ L337, 18.12.2009, p.1);

“Communications Regulation Act 2002” means the Communications Regulation Act 2002 (No. 20 of 2002) (as amended);

“Competition and Consumer Protection Commission” means the body established under section 9 of the Competition and Consumer Protection Act 2014;

“ComReg” means the Commission for Communications Regulation, established under Section 6 of the Communications Regulation Act 2002;

“ComReg Decision D10/19” means the Decision entitled “Market Review, Fixed Voice Call Termination and Mobile Voice Call Termination, Response to Consultation and Decision, ComReg Document 19/47, ComReg Decision D10/19”, dated 23 May 2019;

“ComReg Decision D11/19” means the Decision entitled “Price Control Obligations for Fixed and Mobile Call Termination Rates: Response to Consultation and Decision, ComReg Document 19/48, ComReg Decision D11/19”, dated 23 May 2019;

“ComReg Decision D09/20” means the Decision entitled “Market Review – Fixed Voice Call Termination Markets; Further Review concerning 0818 Numbers and Additional Fixed Service Providers, ComReg Document 20/95” dated 15 October 2020;

“ComReg Document 22/87R” means ComReg Document No.22/87R entitled “Market Review: Fixed Voice and Mobile Voice Call Termination Markets, Consultation and Draft Decision”, dated 21 October 2022;

"ComReg Decision DXX/XX" means ComReg Document No. XX/XX entitled "Market Review: Fixed Voice and Mobile Voice Call Termination Markets-Response to Consultation and Draft Decision", dated [x] 2023 [this Decision];

"Delegated Regulation" means Commission Delegated Regulation (EU) 2021/654 supplementing Directive (EU) 2018/1972 of the European Parliament and of the Council by setting a maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate, dated 18 December 2020.

"EECC" means the European Electronic Communications Code established by Directive 2018/1972 of 11 December 2018;

"End-User" has the same meaning as under the Framework Regulations/the Electronic Communications Code Regulations;

"Effective Date" means the date set out in Section 10 of this Decision Instrument;

"Electronic Communications Code Regulations" means the European Union (Electronic Communications Code) Regulations 2022, S.I. No. 444 of 2022;

"(the) Explanatory Note" means the Commission Staff Working Document: Explanatory Note accompanying the 2020 Recommendation (18 December 2020, SWD (2020) 337final);

"Fixed Number" means a number from the Irish national numbering scheme as set out in the Numbering Conditions of Use that is terminated at a fixed location and includes a Geographic Number, a Nomadic Number, an emergency access number (112 or 999), or an 0818 number;

"Fixed Service Provider" or **"FSP"** means an Undertaking providing End-Users with publicly available voice telephony services using a Fixed Number at a fixed location, irrespective of the underlying technology over which such services are delivered;

"Fixed Termination Rate" or **"FTR"** means the wholesale charge(s) levied by a Fixed Service Provider for the supply of Fixed Voice Call Termination;

"Fixed Voice Call Termination" or **"FVCT"** means the provision by a Fixed Service Provider of a wholesale call termination service to other Undertakings from the nearest point to the End User or level on that terminating FSP's network at which incoming voice calls can be handed over for termination to Fixed Numbers in respect of which that Fixed Service Provider is able to set the Fixed Termination Rate;

"Framework Regulations" means the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. **No 333 of 2011);**

"Geographic Number" has the same meaning as set out in the Numbering Conditions of Use;

"Ministerial Policy Directions" for the purposes of this Decision Instrument means the policy directions made by Dermot Ahern TD, then Minister for Communications, Marine and Natural Resources, dated 21 February 2003 and 26 March 2004;

"Mobile Network" means a 2nd, 3rd, 4th, or 5th Generation digital wireless network, or any intermediate evolution of those, using Mobile Numbers, in which seamless handover and roaming features are provided;

"Mobile Number(s)" has the same meaning as set out in the Numbering Conditions of Use;

"Mobile Service Provider" or **"MSP"** means an Undertaking providing End-Users with land based/terrestrial publicly available mobile voice telephony services using a mobile network;

"Mobile Termination Rate" or **"MTR"** means the wholesale charge(s) levied by a Mobile Service Provider for the supply of Mobile Voice Call Termination;

"Mobile Voice Call Termination" or **"MVCT"** means the provision by a Mobile Service Provider of a wholesale call termination service to other Undertakings for the purpose of terminating incoming voice calls to a mobile number in respect of which that Mobile Service Provider is able to set the Mobile Termination Rate;

"Numbering Conditions of Use" means the set of rules under which the Irish national numbering scheme is managed and administered as set out in the document entitled Numbering Conditions of Use and Application Process, ComReg Document 15/136R3 as may be amended from time to time;

"Nomadic Number" has the same meaning as under the Numbering Conditions of Use;

"Related company" or **"related companies"** has the same meaning as under the Companies Act 2014;

"Relevant Markets" means the markets set out in Section 4 of this Decision Instrument;

"Relevant Undertakings" means the Undertakings listed in the Schedule;

"SMP" means Significant Market Power;

"(the) SMP Guidelines" means the European Commission guidelines of 7 May 2018 on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services (2018/C 159/01) (OJ C159, 7.5.2018, p.1);

"Subsidiary" or **"subsidiaries"** has the same meaning as under the Companies Act 2014;

"(the) Three Criteria Test" means the test set out in Article 67 of the EECC;

"**Undertaking**" has the same meaning as under Regulation 2 of the Framework Regulations/Regulation 2 of the Electronic Communications Code Regulations;

"(the) 2020 Recommendation" means the European Commission Recommendation of 18 December 2020 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code.

4 SCOPE AND APPLICATION

4.1 This Decision Instrument applies to each of the Relevant Undertakings listed in the Schedule, and to their subsidiaries, any Undertaking which a Relevant Undertaking owns or controls and any Undertaking which owns or controls a Relevant Undertaking, and its successors, affiliates and assigns.

5 MARKET DEFINITION

5.1 ComReg hereby defines the following Relevant Markets:

(i) Twenty-five (25) separate markets corresponding to the provision of Fixed Voice Call Termination on each of the 25 Fixed Service Providers' individual public telephone networks provided at a fixed location as listed in the Schedule; and

(ii) Six (6) separate markets corresponding to the provision of Mobile Voice Call Termination on each of the six Mobile Service Providers' individual mobile networks as listed in the Schedule.

6 REMOVAL OF SMP REGULATION

6.1 ComReg hereby finds that the Three Criteria Test is not met in respect of any of the Relevant Markets so that the Relevant Markets are not susceptible to ex ante regulation.

6.2 On the basis of its finding at Section 5.1, subject only to Section 6 of this Decision Instrument, ComReg hereby withdraws all obligations imposed on the Fixed Service Providers and the Mobile Service Providers arising from their designation with SMP in each and any of the following Decision Instruments and the following Decision Instruments (to the extent still extant) are hereby withdrawn at the Effective Date:

(i) the Decision Instruments contained in Annexes 16 and 17 of ComReg Decision D10/19;

(ii) the Decision Instruments contained in Annexes 1 and 2 of ComReg D11/19;

(iii) the Decision Instrument contained in Annex 1 of ComReg Decision D09/20.

7 SUNSET PERIOD

7.1 For a period of six months from the Effective Date, Eircom shall not withdraw Access to any of the Interconnection Services referred to in Section 8.3 of the Decision Instrument at Annex 16 of ComReg Decision D10/19 from any Undertakings to which Access was previously granted on or before the Effective Date.

8 MAINTENANCE OF OBLIGATIONS

8.1 Save as provided for at Section 5.2 of this Decision Instrument, unless expressly stated otherwise in this Decision Instrument, all obligations and requirements contained in Decision Notices and Directions made by ComReg, applying to the Service Providers, and in force immediately prior to the Effective Date of this Decision Instrument, continue in force and those Service Providers shall comply with the same.

8.2 For the avoidance of doubt, to the extent that there is any conflict between a Decision Instrument dated prior to the Effective Date and obligations upon Undertakings set out in this Decision Instrument, the latter shall prevail.

8.3 If any Section(s), clause(s), or provision(s), or portion(s) thereof, contained in this Decision Instrument is(are) 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(those) Section(s), clause(s),or provision(s), or portion(s) thereof shall, to the extent required, be severed from this Decision Instrument and rendered ineffective as far as possible without modifying the remaining Section(s), clause(s), or provision(s), or portion(s) thereof, of this Decision Instrument, and shall not in any way affect the validity or enforcement of this Decision Instrument or other Decision Instruments.

9 STATUTORY POWERS NOT AFFECTED

9.1 Nothing in this Decision Instrument shall operate to limit ComReg in the exercise and performance of its statutory powers or duties conferred on it under any primary or secondary legislation (in force prior to or after the Effective Date of this Decision Instrument) from time to time as the occasion requires.

10 PUBLICATION AND NOTIFICATION

10.1 This Decision Instrument shall be published on ComReg's website, www.comreg.ie and notified to the Undertakings listed at Section 3.1 of this Decision Instrument.

11 EFFECTIVE DATE

11.1 The Effective Date of this Decision Instrument shall be the date of its publication on ComReg's website, www.comreg.ie.

GARRETT BLANEY

CHAIRPERSON

THE COMMISSION FOR COMMUNICATIONS REGULATION

THE XX DAY OF XXXX 2023

SCHEDULE

RELEVANT UNDERTAKINGS

Fixed Service Providers	Mobile Service Providers
1. Airspeed Communications Limited	1. Lycamobile Ireland Limited
2. Blue Face Limited	2. Meteor Mobile Communications Limited
3. BT Communications Ireland Limited	3. Tesco Mobile Ireland Limited
4. Colt Technology Services Limited	4. Three Ireland (Hutchison) Limited
5. Dialoga Servicios Interactivos, SA	5. Virgin Media Ireland Limited
6. Eircom Limited	6. Vodafone Ireland Limited
7. Finarea SA	
8. Goldfish Telecom Limited	
9.Imagine Communications Ireland Limited	
10. Intellicom Ireland Limited	
11. In2com Limited	
12. Internet Protocol Telecom Limited	
13. Magnet Networks Limited	
14. Magrathea Telecommunications Limited	
15. Modeva Networks Unlimited	
16. TSFY Limited trading as Nuacom	
17. Orange Business Telecommunications Services Limited	
18. Phone Pulse Limited	
19. PlanNet 21 Communications Limited	
20. Telcom Group Est 1999 Designated Activity Company	
21. Verizon Ireland Limited	
22. Viatel Ireland Limited	
23. Virgin Media Ireland Limited	
24. Vodafone Ireland Limited	
25. Voxbone SA	

Annex 2: Wholesale Termination Providers

Wholesale FVCT provided by the SMP FSPs:

a) Wholesale FVCT supplied by Airspeed Communications Limited[68] ("**Airspeed Communications**");

b) Wholesale FVCT supplied by Blue Face Limited ("**Blueface**");

c) Wholesale FVCT supplied by BT Communications Ireland Limited ("**BT Communications**");

d) Wholesale FVCT supplied by Colt Technology Services Limited ("**Colt Technology**");

e) Wholesale FVCT supplied by Dialoga Servicios Interactivos, SA ("**Dialoga Servicios**");

f) Wholesale FVCT supplied by Eircom Limited ("**Eircom**");

g) Wholesale FVCT supplied by Equant Network Systems Limited ("**Equant**") now registered as Orange Business Telecommunications Services Limited;[69]

h) Wholesale FVCT supplied by Finarea SA ("**Finarea**");

i) Wholesale FVCT supplied by Imagine Communications Ireland Limited ("**Imagine**");

j) Wholesale FVCT supplied by In2tel, a business name of In2com Limited ("**In2com**");

k) Wholesale FVCT supplied by Intellicom Ireland Limited ("**Intellicom**");

l) Wholesale FVCT supplied by Internet Protocol Telecom Limited ("**IP Telecom**");

m) Wholesale FVCT supplied by Magnet Networks Limited ("**Magnet Networks**");

n) Wholesale FVCT supplied by Magrathea Telecommunications Limited ("**Magrathea**");

o) Wholesale FVCT supplied by Modeva Networks Unlimited[70] ("**Modeva Networks**");

[68] Airspeed Communications exited the Irish market in 2020.

[69] A subsidiary of Orange Business Services.

[70] Modeva Networks exited the Irish market in 2020.

p) Wholesale FVCT supplied by PlanNet 21 Communications Limited (or, for the avoidance of doubt, its 100% owned subsidiary, 3Play Plus Limited) (“**PlanNet21 Communications**”);

q) Wholesale FVCT supplied by Telcom Group Est 1999 Designated Activity Company (“**Telcom**”);

r) Wholesale FVCT supplied by Verizon Ireland Limited (“**Verizon**”);

s) Wholesale FVCT supplied by Viatel Ireland Limited (“**Viatel**”);

t) Wholesale FVCT supplied by Virgin Media Ireland Limited (“**Virgin Media**”);

u) Wholesale FVCT supplied by Vodafone Ireland Limited (“**Vodafone**”); and

v) Wholesale FVCT supplied by Voxbone SA (“**Voxbone**”).

Wholesale FVCT provided by the Additional 2020 SMP FSPs:

a) Wholesale FVCT supplied by Phone Pulse Limited (“**Phonepulse**”),

b) Wholesale FVCT supplied by Goldfish Telecom Limited (“**Goldfish**”); and

c) Wholesale FVCT supplied by TSFY Limited trading as Nuacom (“**Nuacom**”).

Wholesale MVCT provided by the MSPs:

a) Wholesale MVCT supplied by Meteor Mobile Communications Limited, (“**Eir Mobile**”),

b) Wholesale MVCT supplied by Lycamobile Ireland Limited (“**Lycamobile**”);

c) Wholesale MVCT supplied by Tesco Mobile Ireland Limited (“**Tesco Mobile**”);

d) Wholesale MVCT supplied by Three Ireland (Hutchison) Limited (“**Three**”);

e) Wholesale MVCT supplied by Virgin Media Ireland Limited (“**Virgin Media**”); and,

f) Wholesale MVCT supplied by Vodafone Ireland Limited (“**Vodafone**”).

Annex 3: CCPC Response

Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí | Competition and Consumer Protection Commission

Robert Mourik
Chairperson
Commission for Communications Regulation 1
Dockland Central
Guild Street
Dublin 1, D01 E4X0

22 February 2023

Re: Market Analysis of the Wholesale Markets for the Provision of Fixed Voice Call Termination and Mobile Voice Call Termination Markets in the State

Dear Mr Mourik,

Pursuant to Regulation 27(1) of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011), the Commission for Communications Regulation (''ComReg'') has consulted the Competition and Consumer Protection Commission (the ''Commission'') with respect to ComReg's proposed draft measures arising from its Response Consultation and Decision which analyses the wholesale markets for Fixed Voice Call Termination and Mobile Voice Call Termination markets (together, the "Relevant Termination Markets") in the State.

On the basis of the facts and analysis presented by ComReg, the Commission does not object to ComReg's: (i) conclusion that the Relevant Termination Markets are no longer susceptible to ex-ante regulation; and (ii) decision to withdraw all existing significant market power ("SMP") designations and obligations in respect of these markets. The Commission also does not object to ComReg's proposal to impose a six-month sunset period on Eircom in respect of the withdrawal of the existing SMP based interconnection obligations in order to provide certainty to other service providers and allow them time to make alternative operational interconnection arrangements should they be required.

Yours sincerely

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www.ccpc.ie

Annex 4: EC Response

TO BE INSERTED ONCE RECEIVED

Annex 5: Respondents' Submissions

A 5.1 A copy of Respondents' Submissions is published alongside this Decision in ComReg Document 23/17S.