



Commission for  
**Communications Regulation**

# **Mid-term Assessment**

## **Regional Wholesale Central Access (WCA) Market**

### **Re-application of geographic assessment set out in ComReg Decision D10/18**

#### **Consultation and Draft Decision**

**Reference:** ComReg 20/114  
**Date:** 23 November 2020

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# 1 Executive Summary

## Overview

- 1.1 In November 2018, ComReg published its Response to Consultation and Decision in respect of its review of competition in the Wholesale Local Access ('WLA') and Wholesale Central Access ('WCA') markets (hereafter, the '**2018 Decision**').<sup>1</sup> The 2018 Decision defined a national WLA market (the '**Relevant WLA Market**'), on which Eircom was designated with Significant Market Power ('SMP'). A full suite of remedies (or obligations) was imposed on Eircom on the Relevant WLA Market, having regard to its ability and incentives to engage in a range of identified competition problems.
- 1.2 The 2018 Decision also defined two relevant sub-national WCA markets, a '**2018 Urban WCA Market**' and a '**2018 Regional WCA Market**' (together, the '**2018 Relevant WCA Markets**'), each such market corresponding to a specifically identified set of Eircom Exchange Areas (hereafter, '**EA(s)**').<sup>2</sup> Eircom was found to have SMP in the 2018 Regional WCA Market only, with appropriate regulatory obligations imposed on it. Regulation was withdrawn from the 2018 Urban WCA Market following the expiry of a six-month sunset period.
- 1.3 The 2018 Decision indicated that ComReg would carry out a Mid-term Assessment (hereafter, '**MTA**') of the 2018 Regional WCA Market and issue a consultation on the preliminary findings of the MTA within 24 months of the publication of the 2018 Decision – that is, by no later than 19 November 2020. This document is the envisaged MTA Consultation.
- 1.4 As set out at paragraph 1.65 of the 2018 Decision, the function of the MTA is to enable ComReg to capture the potential dynamic nature of the 2018 Regional WCA Market through the reapplication of the criteria used in the 2018 Decision to categorise each of the 1,203 EAs in the State according to the level of infrastructure competition, and group those EAs into, respectively, the 2018 Urban WCA Market, which ComReg found to be competitive, and the 2018 Regional WCA Market, where ComReg found that Eircom had SMP.
- 1.5 As set out at paragraph 1.65 of the 2018 Decision,

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<sup>1</sup> Market Review: Wholesale Local Access (WLA) provided at a Fixed Location, Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products. Response to Consultation and Decision (Decision D10/18).

<sup>2</sup> As defined in the 2018 Decision, the 2018 Urban WCA Market consisted of 154 EAs, while the 2018 Regional WCA Market consisted of 1,049 EAs.

*“Given the need for market reviews to be forward-looking (where possible), and the potential dynamic nature of the Regional WCA Market, given the ongoing rollout of the SIRO and Virgin Media networks and the potential for Access Seekers to increase their WLA-based footprints, ComReg intends to reapply Criteria 1 to 5 during the lifetime of the market review (and to consult within 24 months of the publication of this Decision) in order to examine the appropriateness of the continued imposition of regulatory obligations (the ‘Mid-term Assessment’). This could lead to, for example, the maintenance of existing regulation or its lessening or removal, as appropriate, in those Exchange Areas falling within the Regional WCA Markets. Where regulation is to be lessened or removed, the sunset period discussed in Section 13 of this Decision would be applied.”*

## Relevant WCA Geographic Market Definition

- 1.6 ComReg proposes to re-apply the geographic assessment criteria originally set out and applied in the 2018 Decision. The criteria are those listed at Table 29 of the 2018 Decision which, for convenience, are set out below:

**Table 1: Criteria for assessing competitive conditions in EAs**

Absent regulation in the WCA Market
<b>Criterion 1:</b> An Exchange Area in which at least three Primary Operators would be capable, within a sufficiently short period, of providing WCA, WLA, or broadband services at the retail level to End Users; AND
<b>Criterion 2:</b> An Exchange Area in which Eircom would provide broadband services at the retail level to less than 50% of End Users; AND
<b>Criterion 3:</b> An Exchange Area where any Primary Operator(s) using third-party WLA inputs, if present, collectively provide(s) <sup>3</sup> retail broadband services to at least 10% of End Users; AND

<sup>3</sup> In this instance, ‘collectively provides’ means the provision of retail broadband services by one or more Primary Operators using WLA inputs, directly to End Users and/or indirectly to End Users via a WLA-based WCA service that is sold to other retail SPs. The 10% market share figure is satisfied by a single Primary Operator using WLA inputs, or by the sum of the market shares of all Primary Operators using WLA inputs.



**Criterion 4A:** An Exchange Area in which an Alternative Network Operator, if present provides,<sup>4</sup> or could provide, within a sufficiently short period, retail broadband services to End Users to at least 30% of the premises in that particular Exchange Area; AND

**Criterion 4B:** An Exchange Area in which any Alternative Network Operator(s), if present, collectively provide(s)<sup>5</sup> retail broadband services to at least 10% of End Users; AND

**Criterion 5:** Exceptionally, on a case-by-case basis, where an Exchange Area:

(i) fails no more than one of Criteria (2) to (4B) above, and fails the Criterion by a small margin (i.e. less than 10% of the percentage specified);<sup>6</sup> OR

(ii) fails no more than one of Criteria (2) to (4B) above, and where an Alternative Network Operator provides broadband services, either at the wholesale level or at the retail level, which equates to at least 60% of End Users, that Exchange Area will be deemed to have satisfied the relevant Criterion.

1.7 In applying the geographic assessment criteria, ComReg made use of two concepts, namely those of Primary Operators (hereafter, '**PO(s)**'), and Alternative Network Operators (hereafter, '**ANO(s)**'). As set out at footnote 1617 of the 2018 Decision, a Primary Operator is a Service Provider (hereafter, '**SP**') that can operate in the Relevant WCA Market and/or the retail market (directly or indirectly), absent regulation in the Relevant WCA Markets, in addition to having a sizable national (or regional) presence. ComReg's position in the 2018 Decision is that only POs are capable of exerting an effective competitive constraint on other competitors and thereby potentially contributing to differing competitive conditions.

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<sup>4</sup> 'Provides' means the provision of retail broadband services directly to End Users and/or indirectly to End Users via a WLA-based WCA service that is sold to other retail SPs. Thus, the 30% coverage figure is satisfied by a single ANO, even if two ANOs are present, but is not satisfied by the two ANOs having coverage which sums to at least 30%, where each individual ANO's coverage is less than 30%.

<sup>5</sup> In this instance, 'collectively provides' means the provision of retail broadband services by one or more Alternative Network Operators, directly to End Users and/or indirectly to End Users via WCA service that is sold to other retail SPs. Thus, the 10% market share figure may be satisfied by a single Alternative Network Operator, or by the sum of the market shares of all Alternative Network Operators.

<sup>6</sup> For example, the requirement for Eircom's market share to be less than 50% (Criterion 2) could be amended to 55% under Criterion 5 (i.e. 110% of the requirement set out in Criterion 2).

- 1.8 As set out at footnote 1620 of the 2018 Decision, an ANO is a PO that has a network that exists independently of WLA and WCA SMP-based regulation. It follows that such networks would likely exist absent regulation. At the time of the 2018 Decision, Virgin Media and SIRO were, accordingly, the only ANOs identified by ComReg as being present on the 2018 Relevant WCA Markets.
- 1.9 Accordingly, in the 2018 Decision ComReg identified five POs (Eircom, BT, Vodafone, SIRO, and Virgin Media), two of whom (SIRO and Virgin Media) were also deemed to be ANOs. As detailed in Section 3 below, ComReg proposes on the basis of the evidence available to it, not to designate additional POs.
- 1.10 The outcome of the application of the criteria (summarised in paragraph 1.6 above) to each EA in the State at the time of the 2018 Decision is set out at Table 2 below, which replicates Table 30 of the 2018 Decision. Those EAs passing all of the relevant geographic assessment criteria were deemed to fall into the 2018 Urban WCA Market, while those EAs failing one or more of the geographic assessment criteria, and not benefitting from the exceptions set out at Criteria 5A and 5B, were deemed to fall into the 2018 Regional WCA Market. The specific EAs falling into the 2018 Urban WCA Market and the 2018 Regional WCA Market are listed at Appendix 11 of the 2018 Decision.

**Table 2: Application of criteria for assessing competitive conditions by geographic area, Q4 2017**

2018 Relevant WCA Markets	No. of EAs	Premises in EAs	Subscriptions in EAs
<b>2018 Urban WCA Market</b>	154	1,061,911	809,006
<b>2018 Regional WCA Market</b>	1,049	1,143,977	529,769

- 1.11 As set out in detail at Section 9 of the 2018 Decision, ComReg concluded that there was insufficient evidence of any operator having SMP on the 2018 Urban WCA Market. Accordingly, the 2018 Urban WCA Market was deregulated, and no remedies are currently in force at the 154 EAs constituting the 2018 Urban WCA Market. In contrast, ComReg concluded on the basis of the evidence available to it that Eircom held SMP on the 2018 Regional WCA Market, and accordingly imposed the full suite of regulatory remedies on Eircom at the 1,049 EAs constituting the 2018 Regional WCA Market.<sup>7</sup>
- 1.12 For the avoidance of confusion, in this MTA:
- (a) The terms ‘**2018 Regional WCA Market**’ and ‘**2018 Urban WCA Market**’ (collectively, the ‘**2018 Relevant WCA Markets**’) refer to those markets defined in the 2018 Decision;

<sup>7</sup> See Section 12 of the 2018 Decision.

- (b) The terms '**Revised Regional WCA Market**' and '**Revised Urban WCA Market**' (collectively, the '**Revised Relevant WCA Markets**')<sup>8</sup> refer to those markets defined in this MTA; and
- (c) The term '**Candidate EAs**' refers to the 82 EAs which formed part of the 2018 Regional WCA Market, but which ComReg now proposes form part of the Revised Urban WCA Market.

## Competition Assessment

- 1.13 In the 2018 Decision, ComReg found that the 2018 Urban WCA Market EAs meeting the five geographic assessment criteria were characterised by effective competition. In particular, ComReg concluded that
- (a) Eircom faced direct and indirect constraints from existing competition arising, in particular, from BT, Virgin Media and Vodafone;
  - (b) Absent regulation and given its network expansion plans, potential competition from SIRO would likely further constrain Eircom; but that
  - (c) Countervailing Buyer Power ('**CBP**') would not, on its own, act as an effective competitive constraint on Eircom, given the relative size of WCA purchases from Access Seekers, compared to Eircom's own purchases, and the absence of evidence of purchaser bargaining power in negotiations.
- 1.14 ComReg has assessed, in light of the evidence available to it, whether the 82 Candidate EAs display sufficiently similar characteristics of competition as the 2018 Urban WCA Market detailed in the 2018 Decision, and is satisfied that this is the case. ComReg accordingly proposes that the 82 Candidate EAs be removed from the 2018 Regional WCA Market and instead, included in the Revised Urban WCA Market, and should no longer be subject to SMP regulation.

## Proposed Removal of Remedies

- 1.15 As set out at Section 13 of the 2018 Decision, in order to allow for an orderly transition to deregulation, ComReg will apply a six month sunset period for the withdrawal of existing regulation at the Candidate EAs. During the sunset period, access to existing WCA services will be maintained at prevailing prices, and Eircom is not obliged to meet new requests for WCA inputs on a regulated basis. It may, however, at its discretion, meet any such new requests on a commercial basis. At the end of the sunset period, these obligations will no longer apply.

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<sup>8</sup> In this Consultation, ComReg refers to the Revised Relevant WCA Markets to distinguish between the markets set out in the 2018 Decision, and the proposed redefined markets set out herein. The draft Decision Instrument at Annex: 1 retains the terminology applied in the 2018 Decision, but amends that terminology to refer to the proposed updated markets.

## 2 Introduction

### Overview

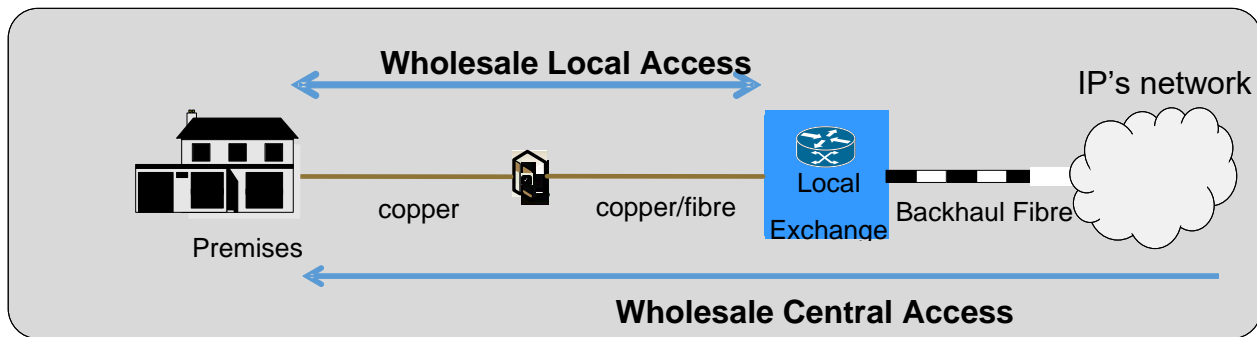
- 2.1 The Commission for Communications Regulation ('**ComReg**') is the National Regulatory Authority ('**NRA**') responsible for the regulation of the electronic communications sector (telecommunications, radio communications and broadcasting transmission) and the postal sector in the State.
- 2.2 Wholesale Central Access ('**WCA**') is a wholesale input used both directly and indirectly in the supply of a range of downstream wholesale and retail services, including (but not limited to) fixed telephone, broadband internet/connectivity, and television ('**TV**') services, to residential and business consumers ('**End Users**'). Service Providers purchase WCA inputs such as Bitstream to provide retail services to End Users (or, indeed, wholesale services to other Service Providers).
- 2.3 The WCA market sits between the retail broadband market (and other retail markets<sup>9</sup>), where End Users buy broadband access, and the WLA Market (which relates to the access path<sup>10</sup> between the End User and a Service Provider's network). WCA encompasses the rental of an active broadband connection between an End User's premises and an aggregation point in a network, and therefore encompasses backhaul connectivity across the WCA Service Provider's ('**SP's**') network.
- 2.4 Figure 2 below describes graphically the WLA and WCA markets and how they are related. The WLA market comprises the connection typically between the local exchange (or equivalent) and the End User's premise. In buying WLA an SP must arrange its own provision of the backhaul elements between its network and the local exchange. The WCA market relates to the provision of the full connection from a network to the End User's premises, and includes the backhaul element. A number of other features also distinguish WLA and WCA services.

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<sup>9</sup> For example, products sold in the WCA market can be used to provide Multicast TV services and Managed VoIP, as well as Bitstream services.

<sup>10</sup> The Access Path is the connection from the NTU/NTP in the customer's premises to the Point-of-Handover. The Points-of-Handover for WLA are the MDF (for copper) and the ODF (for fibre) in the exchange/MPoP, and the Point-of-Handover for non-physical WLA-based unbundling (virtual access) is the Ethernet Interconnection Link at the serving Aggregation Node for the customer.

Figure 2: Example of Typical WLA and WCA Provision



- 2.5 On 19 November 2018 ComReg published its WLA/WCA Decision (hereafter, the **'2018 Decision'**),<sup>11</sup> in which it set out its final position regarding its review of competition within the WLA and WCA markets. This followed the publication of a consultation in November 2016 (hereafter, the **'2016 Consultation'**).<sup>12</sup>
- 2.6 On the same day, ComReg also issued two pricing decisions (hereafter, the **'2018 Pricing Decision'** and the **'2018 Bundles Decision'**)<sup>13</sup> which further specified the price control obligations that ComReg had imposed in the 2018 Decision. These followed the publication of separate pricing consultations in 2017.<sup>14</sup>
- 2.7 In this Consultation, ComReg, as indicated in the 2018 Decision, proposes to carry out a Mid-term Assessment (hereafter, **'MTA'**) to determine whether conditions of competition have appreciably altered in the in the intervening period at any of the EAs currently constituting the 2018 Regional WCA Market and, if so, whether it is appropriate to alter the relevant geographic market definition, and findings of SMP

<sup>11</sup> Market Review: Wholesale Local Access (WLA) provided at a Fixed Location, Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products - Response to Consultation and Decision. ComReg 18/94, D10/18.

<sup>12</sup> Market Reviews: Wholesale Local Access (WLA) provided at a Fixed Location, Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products - Consultation and Draft Decision. ComReg 16/96 (the **'2016 Consultation'**).

<sup>13</sup> Pricing of wholesale broadband services: Wholesale Local Access (WLA) market and the Wholesale Central Access (WCA) markets - Response to Consultation Document 17/26 and Final Decision. ComReg 18/95, D11/18 (the **'2018 Bundles Decision'**)

and

Response to Consultation and Decision on price control obligations relating to retail bundles: Further specification of the wholesale price control obligation not to cause a margin squeeze in the WLA, and WCA Markets - Response to Consultation and Decision. ComReg 18/96, D12/18 (the **'2018 Pricing Decision'**).

<sup>14</sup> ComReg Document No. 17/26 "Pricing of wholesale services in the Wholesale Local Access (WLA) Market and in the Wholesale Central Access (WCA) Markets: further specification of price control obligations in Market 3a (WLA) and Market 3b (WCA)", dated 7 April 2017 (the **'2017 Pricing Consultation'**).

and

Consultation on Price control obligations relating to Bundles: Further specification of the price control obligation not to cause a margin squeeze: FACO and WLA (Market 3a) and WCA (Market 3b), dated 9 June 2017 (the **'2017 Bundles Consultation'**).

at those EAs, and any remedies currently in force at those EAs. In this regard, in accordance with the 2018 Decision, ComReg reapplies the geographic assessment criteria set out at Section 9 of the 2018 Decision to determine whether or not any EAs in the 2018 Regional WCA Market exhibit conditions of competition more consistent with conditions arising in the 2018 Urban WCA Market.

## Legal Basis and Regulatory Framework

- 2.8 This Mid-term Assessment is undertaken by ComReg following the market analysis conducted in 2018 in accordance with the obligation set out in the **Framework Directive**<sup>15</sup> (transposed into Irish law as the **Framework Regulations**)<sup>16</sup> that National Regulatory Authorities (hereafter, '**NRAs**') should analyse relevant markets taking utmost account of the European Commission's 2014 Recommendation<sup>17</sup> and the SMP Guidelines,<sup>18</sup> and which led to the 2018 Decision.
- 2.9 Regulation 26 of the Framework Regulations requires that ComReg, taking the utmost account of the 2014 Recommendation and of the SMP Guidelines, define relevant markets appropriate to national circumstances, in accordance with the principles of competition law.
- 2.10 The preliminary views set out in this Consultation rely heavily on the assessment carried out in the 2018 Decision, which adopted the approaches recommended by the European Commission (hereafter, '**EC**'). In doing so, the 2018 Decision took the utmost account of:

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<sup>15</sup> Article 16 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, as amended by Directive 2009/140/EC (the '**Framework Directive**').

<sup>16</sup> European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011) (the '**Framework Regulations**'). The Framework Regulations transpose the Framework Directive.

<sup>17</sup> European Commission Recommendation of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation (the '**2014 Recommendation**').

<sup>18</sup> European Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic networks and services, OJ 2002 C 165/3 (the '**SMP Guidelines**').

- (a) The **2014 Recommendation**<sup>19</sup> and the **Explanatory Note to the 2014 Recommendation**<sup>20</sup> on relevant product and service markets susceptible to *ex ante* regulation within the electronic communications sector;
- (b) The **SMP Guidelines**<sup>21</sup> on market analysis and the assessment of SMP; and
- (c) other recommendations which were also taken into account insofar as they were relevant to the assessment, as set out at paragraph 2.33 of the 2018 Decision.

2.11 ComReg also takes account of:

- (a) The EC's **Notice on Market Definition** for the purposes of community competition law;<sup>22</sup>
- (b) Any relevant common positions adopted by the Body of European Regulators for Electronic Communications (hereafter, '**BEREC**');
- (c) Where appropriate, the European Electronic Communications Code (hereafter, '**EECC**');<sup>23</sup> and
- (d) ComReg has also had regard to relevant EC comments made, pursuant to Article 7 of the **Framework Directive**,<sup>24</sup> with respect to other EU NRAs' market analyses.

2.12 The EECC entered into force on 20 December 2018. The EECC replaces the existing EU Common Regulatory Framework which was adopted in 2002 (and amended in 2009). With some limited exceptions, Member States are required to transpose the EECC into national law by 21 December 2020.

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<sup>19</sup> European Commission Recommendation of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (C(2014) 7174 final) ('**2014 Recommendation**').

<sup>20</sup> Explanatory Note accompanying the Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation, dated 9.10.2014 (the '**Explanatory Note to the 2014 Recommendation**'). The Explanatory Note to the 2014 Recommendation is available at <https://ec.europa.eu/digital-single-market/en/news/explanatory-note-accompanying-commission-recommendation-relevant-product-and-service-markets>.

<sup>21</sup> European Commission Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services, C(2018) 2374 {SWD(2018) 124} (the '**SMP Guidelines**').

<sup>22</sup> Commission notice on the definition of relevant market for the purposes of Community competition law, Official Journal C 372, 09/12/1997 pp.5-13 ('**Notice on Market Definition**').

<sup>23</sup> DIRECTIVE (EU) 2018/1972 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 establishing the European Electronic Communications Code <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN>.

<sup>24</sup> Article 16 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, as amended by Directive 2009/140/EC (the '**Framework Directive**').

- 2.13 As the EECC has not yet been transposed into Irish law, the legal basis for this MTA is the current statutory regime. Whilst the publication of this Consultation occurs prior to the transposition of the EECC into Irish law, ComReg is mindful of the EECC in developing its proposals in this Consultation. ComReg notes that the current market review process (including the procedure for the identification and definition of markets and market analysis procedure) is broadly consistent with that proposed under the EECC, although there are some differences.
- 2.14 In the event that there are any other areas where the EECC either materially deviates from the current framework or otherwise requires special emphasis for purposes of the market analysis, ComReg will identify such specific instances and give due consideration to these as they arise in this Consultation.
- 2.15 The EC 2014 Recommendation describes the WCA market in the following terms:  
*“Wholesale central access provided at a fixed location for mass-market products (‘Market 3B’)”*<sup>25</sup>
- 2.16 ComReg notes that the 2014 Recommendation is due to be updated and replaced by 21 December 2020,<sup>26</sup> and the EC accordingly published a draft recommendation in August 2020, which proposes to remove WCA from the list of markets which the EC considers are susceptible to *ex ante* regulation. If this proposal remains in place, WCA market reviews commenced by NRAs following the entry into force of the updated recommendation on relevant markets will need to carry out a 3CT in the light of national market circumstances.
- 2.17 For the avoidance of doubt, ComReg considers that this MTA is not a new market review, but rather an updating of the market review set out in the 2018 Decision. Accordingly, ComReg is satisfied that the MTA is governed by the 2014 Recommendation, and that it is accordingly not necessary to carry out a 3CT for the purposes of the MTA.
- 2.18 Section 12(1)(a) of the Communications Regulation Act 2002 (as amended) 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.

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<sup>25</sup> Annex to the 2014 Recommendation.

<sup>26</sup> <https://ec.europa.eu/digital-single-market/en/news/recommendation-relevant-markets#:~:text=The%20Recommendation%20on%20Relevant%20Markets,are%20required%20to%20regularly%20review.&text=wholesale%20local%20access%20provided%20at,broadband%20services%20and%20bundles%20and>



2.19 Apart from conducting a public consultation in accordance with Regulation 12 of the Framework Regulations, ComReg is also obliged to make its draft measures accessible to the EC, BEREC and NRAs in other Member States pursuant to Regulation 13(3) of the Framework Regulations.

## Information Sources Relied Upon

2.20 In drafting this Consultation, ComReg has obtained and draws upon the following information sources:

- (a) Information provided by Service Providers in response to non-statutory information requests regarding the provision of WCA;
- (b) The experience of NRAs in regulating relevant WCA markets in other jurisdictions;
- (c) Relevant guidance from the EC, BEREC and other relevant commentators;
- (d) Information set out in the 2018 Decision;
- (e) Information provided to ComReg by Service Providers for the purpose of ComReg's Quarterly Key Data Reports (hereafter, '**QKDR(s)**'); and
- (f) Other information in the public domain.

## Liaison with other Bodies

2.21 Pursuant to Regulation 27(1) of the Framework Regulations, ComReg is required to carry out an analysis of the Relevant WCA Markets, where appropriate, consulting with the Competition and Consumer Protection Commission (hereafter, '**CCPC**') under section 34 or 47G of the **Competition Act 2002** (as amended)<sup>27</sup> (referred to at the '**CCPC Consultation**').

2.22 ComReg is also required to make its draft measures accessible to the EC, BEREC and NRAs in other Member States (collectively referred to as the '**European Notification Requirements**') pursuant to Regulation 13(3) of the Framework Regulations and to take utmost account of any comments received.

2.23 ComReg will, as appropriate, conduct the CCPC Consultation and the European Notification Requirements prior to the adoption of any decisions arising from this Consultation.

## Consultation Process

2.24 ComReg invites all interested parties to respond to the questions set out in this Consultation. The consultation period will run to 1700 on 15 January 2021, providing an 8 week consultation period and respondents must ensure that any submissions are provided within this period.

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<sup>27</sup> Competition Act 2002 (No. 14 of 2002), as amended, ('**Competition Act 2002**').

- 2.25 The task of analysing responses received will be made easier if all comments are referenced to the specific question numbers as set out previously in this document.
- 2.26 In so doing, respondents are requested to:
- (a) Clearly explain the reasoning for their response, indicating the specific relevant paragraph numbers within the Consultation to which their response refers, along with all relevant factual or other evidence supporting views presented;
  - (b) Ensure that a non-confidential version of their response is provided by the closing date set out above at paragraph 2.24 and also be aware that all non-confidential responses to this Consultation will be published;<sup>28</sup>
  - (c) Ensure that confidential elements of responses are clearly marked using the following format: [~~relevant text deemed to be confidential~~] and identify why they consider that the relevant text is confidential. Respondents should provide both a confidential and non-confidential version of any submissions by the closing date set out above; and
  - (d) Provide a copy of their submissions in an unprotected electronic format in order to facilitate publication by ComReg.
- 2.27 Having analysed and considered the comments received, ComReg will review the proposals set out in this Consultation and having conducted the CCPC Consultation and the European Notification Requirements will consider whether to maintain or amend its proposals, as appropriate.<sup>29</sup>
- 2.28 ComReg will then seek to adopt and publish the final decision in its subsequent Response to Consultation and Decision.
- 2.29 All responses should be sent by post or email to the address below to arrive on or before **1700 on 15 January 2021**. Responses received after this date will not be considered. Responses should be marked for the attention of:

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<sup>28</sup> Subject to the provisions of ComReg's published guidelines on the treatment of confidential information as set out in [ComReg Document 05/24](#).

<sup>29</sup> See Annex: 1 of this Consultation for the Draft Decision Instrument to give effect to the proposals (which may be amended having considered respondents' views on the Consultation proposals).

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## Structure of the Consultation

2.30 The remainder of this Consultation is structured as follows:

- (a) Section 3 examines whether the geographic markets defined in the 2018 Decision should be redefined;
- (b) Section 4 assesses competition within the Candidate EAs which ComReg proposes to transfer from the 2018 Regional WCA Market to the Revised Urban WCA Market, and considers whether the competition assessment conclusions in respect of the 2018 Urban WCA Market similarly apply to the Candidate EAs;
- (c) Section 5 sets out the proposed removal of regulatory remedies at the Candidate EAs, with such withdrawal subject to the a six month sunset period, as set out in the 2018 Decision;
- (d) Section 6 briefly sets out the Regulatory Impact Assessment (hereafter, 'RIA') of the proposed approaches to further de-regulation of the Candidate EAs;
- (e) Section 7 sets out the next steps;
- (f) Annex: 1 sets out the draft Decision Instrument;
- (g) Annex: 2 presents the details behind the WCA geographic market assessment which is discussed in Section 3 above;
- (h) Annex: 3 describes the proposed geographic boundaries of the Revised Relevant WCA Markets; and
- (i) Annex: 4 lists the questions set out in this Consultation.

# 3 Assessment of the Relevant WCA Markets

## Overview

3.1 In Section 9 of the 2018 Decision, ComReg set out its position on the appropriate Relevant WCA Market definitions. ComReg now reconsiders the geographic scope of the 2018 Relevant WCA Markets, in line with the approach to the MTA set out in Section 9 of the 2018 Decision (and elsewhere). ComReg then sets out its preliminary views below with reference, in particular, to the geographic scope of the 2018 Regional WCA Market and the 2018 Urban WCA Market.

## Relevant Product Market Assessment

3.2 The MTA proceeds on the basis of the relevant WCA product market defined in the 2018 Decision. The 'WCA Product Market' is comprised of:

- (a) WCA-based Bitstream products provided over copper and FTTx networks, including wholesale Bitstream products provided using upstream WLA inputs;
- (b) Self-supply of WCA-based Bitstream by Eircom and BT Ireland (hereafter, '**BT**');
- (c) WCA-based Bitstream products that may hypothetically be offered by SIRO;
- (d) Self-supply of CATV retail broadband products offered by Virgin Media in areas where its network is present; and
- (e) Self-supply of retail broadband products offered by SPs using WLA upstream inputs and having widespread coverage (such as Vodafone).

3.3 In the 2018 Decision, Bitstream-based WCA products hypothetically provided over localised alternative FTTH networks were excluded from the WCA Product Market as no WCA products were supplied over these networks which could, or could likely, serve as an effective substitute for the WCA offering of a Hypothetical Monopolist (hereafter, '**HM**') supplier.

## Relevant Geographic Market Assessment

3.4 The EC Notice on Market Definition states that the relevant geographic market relates to an area in which undertakings are involved in the demand and supply of the relevant products or services, and in which the conditions of competition are similar, or sufficiently homogeneous.

3.5 In the 2018 Decision, ComReg carried out a two-step assessment to define the WCA geographic markets:<sup>30</sup>

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<sup>30</sup> As described at paragraphs 9.13 to 9.15, as well as paragraph A5.31 and A5.56 of the 2018 Decision.

- (a) An assessment of the geographic scope of the WCA market(s) based on five indicators (**Step 1**); and
  - (b) A framework for defining the geographic boundaries of those markets, which included establishing criteria for assessing competitive conditions (**Step 2**).
- 3.6 Much of the Step 1 and Step 2 analysis overlaps and is interdependent. Step 1 justifies the appropriateness of defining either separate geographic markets, or a single geographic market. That done, Step 2 describes how to decide which market each EA should fall into, on the basis of quantifiable criteria. Therefore, it is necessary to carry out Step 1 to show that Step 2 is warranted. If Step 1 concludes that a single geographic market is appropriate, then Step 2 is unnecessary.
- 3.7 **Step 1** applies five geographic assessment indicators which are of general application, and which ComReg similarly applies in its assessments of other markets. These indicators - originally identified at paragraph 9.13 of the 2018 Decision - are based on the principles set out in the Notice on Market Definition and the BEREC Common Position on Geographic Aspects of Market Analysis:
- (a) Geographic differences in entry conditions over time;
  - (b) Variation in the number and size of potential competitors;
  - (c) Distribution of market shares;
  - (d) Evidence of differentiated pricing strategies or marketing; and
  - (e) Geographical differences in demand characteristics.
- 3.8 **Step 2** is a bespoke assessment tailored to the characteristics of the 2018 Relevant WCA Markets. Having regard to the Step 1 assessment, Step 2 re-applies the 2018 Decision criteria set out at Table 3 below to determine how, on a quantitative basis, to assign EAs to one or other of the separate geographic markets identified by means of Step 1.

**Table 3: Criteria for Assessing Competitive Conditions at Exchange Areas**

Absent regulation in the WCA Market:	
	<b>Criterion 1:</b> An Exchange Area in which at least three Primary Operators would be capable, within a sufficiently short period, of providing WCA, WLA, or broadband services at the retail level to End Users; AND
	<b>Criterion 2:</b> An Exchange Area in which Eircom would provide broadband services at the retail level to less than 50% of End Users; AND
	<b>Criterion 3:</b> An Exchange Area where any Primary Operator(s) using third-party WLA inputs, if present, collectively provide(s) <sup>31</sup> retail broadband services to at least 10% of End Users; AND
	<b>Criterion 4A:</b> An Exchange Area in which an Alternative Network Operator, if present provides, <sup>32</sup> or could provide, within a sufficiently short period, retail broadband services to End Users to at least 30% of the premises in that particular Exchange Area; AND
	<b>Criterion 4B:</b> An Exchange Area in which any Alternative Network Operator(s), if present, collectively provide(s) <sup>33</sup> retail broadband services to at least 10% of End Users; AND
	<b>Criterion 5:</b> Exceptionally, on a case-by-case basis, where an Exchange Area:
(i)	fails no more than one of Criteria (2) to (4B) above, and fails the Criterion by a small margin (i.e. less than 10% of the percentage specified); <sup>34</sup> OR
(ii)	fails no more than one of Criteria (2) to (4B) above, and where an Alternative Network Operator provides broadband services, either at the wholesale level or at the retail level, which equates to at least 60% of End Users, that Exchange Area will be deemed to have satisfied the relevant Criterion.

<sup>31</sup> 'Collectively provides' means the provision of retail broadband services by one or more Primary Operators using WLA inputs, directly to End Users and/or indirectly to End Users via a WLA-based WCA service that is sold to other retail SPs. The 10% market share figure is satisfied by a single PO using WLA inputs, or by the sum of the market shares of all POs using WLA inputs.

<sup>32</sup> 'Provides' means the provision of retail broadband services directly to End Users and/or indirectly to End Users via a WLA-based WCA service that is sold to other retail SPs. Thus, the 30% coverage figure is satisfied by a single ANO, even if two ANOs are present, but is not satisfied by the two ANOs having coverage which sums to at least 30%, where each individual ANO's coverage is less than 30%.

<sup>33</sup> In this instance, 'collectively provides' means the provision of retail broadband services by one or more ANOs, directly to End Users and/or indirectly to End Users via WCA service that is sold to other retail SPs. Thus, the 10% market share figure may be satisfied by a single ANO, or by the sum of the market shares of all ANOs.

<sup>34</sup> For example, the requirement for Eircom's market share to be less than 50% (Criterion 2) could be amended to 55% under Criterion 5 (i.e. 110% of the requirement set out in Criterion 2).

- 3.9 Step 2 is the application of the geographic criteria. Having regard to the Step 1 conclusion that it is appropriate to define separate geographic markets, Step 2 considers what criteria should be used to assess whether the conditions of competition in EAs are appreciably different, such that they can be distinguished from neighbouring EAs and therefore form separate geographic markets. Step 2 therefore groups together EAs, depending on whether they met all five geographic assessment criteria, or whether they failed one or more of these criteria.
- 3.10 In this Consultation, and in accordance with the 2018 Decision, ComReg re-applies the Step 2 geographic criteria set out at Table 3 below to the 1,049 EAs which ComReg had assigned to the 2018 Regional WCA Market. At the time of the 2018 Decision, these EAs failed one or more of the geographic assessment criteria. Accordingly, ComReg assigned these EAs to the 2018 Regional WCA Market, on the basis of the comparative sufficiently similarity of conditions of competition at those EAs, and the comparative sufficient differences to conditions of competition on those EAs constituting the 2018 Urban WCA Market.
- 3.11 Accordingly, following the analytical methodology set out in the 2018 Decision, in this MTA, ComReg reapplies both Step 2 and Step 1 as part of its relevant geographic market assessment.

## Consideration of additional Primary Operators ('POs')

- 3.12 In re-assessing the geographic scope of the 2018 Relevant WCA Markets, and as set out at paragraph A10.33 of the 2018 Decision, ComReg only includes those SPs that have significant presence (whether directly or indirectly) in the retail broadband market at a national or regional level, absent regulation in the WCA market. ComReg designated such SPs as '**Primary Operators**' (hereafter, '**PO(s)**'). Accordingly, prior to re-assessing the relevant geographic markets, ComReg must first determine whether it is appropriate, based on current market circumstances, to designate additional POs.
- 3.13 ComReg's position, set out at paragraph A10.34 in the 2018 Decision, is that the following operators are POs:
- (a) Eircom, which provides the focal WCA product;
  - (b) BT, which offers a demand-side substitute;
  - (c) SIRO, which offers a supply-side substitute;
  - (d) Vodafone, which offers an indirect retail constraint; and
  - (e) Virgin Media, which also offers an indirect retail constraint.

- 3.14 Only those SPs having a reasonably-sized presence (denoted primarily by market share) are capable of potentially exerting an effective competitive constraint on other competitors.<sup>35</sup> This assessment is also forward looking, in that ComReg has also taken into consideration the planned network presence and rollout plans of various SPs. As such, ComReg proposes to apply the same conditions applied in the 2018 Decision, which are set out at Table 4 above, to determine whether any additional SPs should be designated as a PO.<sup>36</sup>
- 3.15 Each of the POs identified above manages or can access a network, absent regulation in the WCA market, which is capable (or which ComReg considers is prospectively capable within a reasonable timeframe and without incurring significant sunk costs) of providing WCA and/or retail broadband (and other) services using its own network inputs or inputs procured via the WLA market.
- 3.16 ComReg also confirmed at paragraph 9.259 of the 2018 Decision that, as part of the MTA, consideration would be given to whether it would be appropriate to designate additional POs:
- “On a forward-looking basis, and in view of the potential dynamic nature of the geographic aspects of the Relevant WCA Markets, in intending to conduct the Mid-term Assessment, ComReg reserves the right to designate further SPs as Primary Operators, in addition to the five Primary Operators identified in this Decision, should ComReg form the view that any SP meets the conditions for designation as a Primary Operator set out at paragraphs 10.154 and 10.155 of the Consultation, and at footnote 1617 above.”*
- 3.17 ComReg has accordingly considered whether it is appropriate to designate further POs in addition to the five POs identified in the 2018 Decision. ComReg’s assessment has focussed, in particular, on whether Sky Ireland (hereafter, ‘**Sky**’) or National Broadband Ireland (hereafter, ‘**NBI**’) should be so designated, having regard to the conditions which were set out in the 2018 Decision for such a designation, set out at Table 4 below:

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<sup>35</sup> See footnote 1617 and paragraphs A10.33 to A10.35 of the 2018 Decision.

<sup>36</sup> ComReg defines Primary Operators in the 2018 Decision at paragraphs A5.59 to A5.64. Note that this is not intended as an SMP assessment, but rather an examination as to whether competitive conditions may differ across different geographic areas.



**Table 4: 2018 Decision conditions for designation as a Primary Operator**

<p><b>Condition 1</b></p> <p>Can the SP manage or access a network, absent regulation in the WCA markets, which is capable (or prospectively capable within a reasonable timeframe and without incurring significant sunk costs) of providing WCA and/or retail broadband (and other) services using its own network inputs or inputs procured via the WLA market?</p>
<p><b>Condition 2</b></p> <p>Does the SP have a sizable national (or regional) presence, that is, a reasonably sized market share capable of potentially exerting an effective competitive constraint on other competitors?</p>

- 3.18 ComReg applies these two criteria to determine whether, as part of the MTA, it is appropriate to designate additional POs. Consistent with the 2018 Decision, in order for an SP to be designated as a PO, it must meet both conditions cumulatively; if it meets one condition only, it cannot be so designated.
- 3.19 ComReg has considered, in particular, whether there are sufficient grounds to designate either or both of National Broadband Ireland<sup>37</sup> (hereafter, '**NBI**') or Sky Ireland (hereafter, '**Sky**') as POs, and, for the reasons set out below, has concluded on a preliminary basis that neither NBI nor Sky meets both necessary conditions. Aside from NBI and Sky, ComReg has not identified any other SPs which could potentially meet both conditions for designation as a PO.

## **Sky Ireland ('Sky')**

- 3.20 As set out at paragraphs 1.3 and 1.6 of the 2018 Decision, Access Seekers use WLA inputs to provide various downstream wholesale and/or retail products, including WCA. POs accordingly participate in the Relevant WCA Markets on the basis of their use of upstream WLA inputs, either in selling WCA to other SPs (BT), or for self-supply for their own sales of retail broadband to End Users (in the case of Vodafone, which purchases WLA from both Eircom and SIRO).
- 3.21 Sky is not active in the merchant market provision of WLA or WCA to other SPs. Accordingly, it may only be designated as a PO where:
- (a) by virtue of its WLA purchases from SIRO (facilitated by means of the provision of ancillary products and services by BT), it generates an effective indirect retail constraint on the provision of WCA, and
  - (b) it meets Conditions 1 and 2 above.

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<sup>37</sup> See [www.nbi.ie](http://www.nbi.ie). NBI was awarded a contract by the Government under its National Broadband Plan ('**NBP**'), to build, operate and maintain a high speed broadband network in those parts of the State that are not, nor are likely to be, commercially served with broadband.

3.22 As of Q2 2020, Sky purchased [redacted] WLA lines from SIRO. Sky does not purchase WLA from Eircom which it uses to offer retail broadband to its own end users. In purchasing WLA from SIRO, Sky makes use of certain BT inputs. Sky's purchases of WLA amount to [redacted] of WLA VUA lines, and [redacted] of all fixed retail broadband lines reported in the Q2 2020 QKDR. While Sky is capable of accessing SIRO's network, the limited footprint of this network, taken together with Sky market share figures, suggests that, absent regulation, Sky could not access a network capable of generating an effective indirect competitive constraint, because it would be reliant on the provision of SIRO WLA alone.<sup>41</sup> In particular, these figures suggest that, absent regulation, Sky would be unlikely to have a sufficiently sizable presence in the 2018 Regional WCA Market which would be capable of potentially exerting an effective indirect retail constraint on Eircom. For these reasons, ComReg concludes on a preliminary basis that Sky should not be designated as a PO for the purpose of the MTA.

## National Broadband Ireland ('NBI')

3.23 ComReg has also given consideration to whether it is appropriate to designate NBI as a PO. The NBP contract was signed between the Government and NBI in November 2019. Pursuant to the contract, over a seven-year rollout period, NBI is scheduled to pass by approximately 540,000 Intervention Area ('IA') premises<sup>42</sup> spread across [redacted] EAs. The IA focuses on premises in areas where there is no existing or planned commercial network. This amounts to approximately 23% of all premises in the State. Although predominantly rural, the IA covers areas in all 26 counties, and all but four metropolitan Dublin constituencies. Accordingly, NBI will have a presence at (at least part of) [redacted] of EAs.

3.24 Upon launch, NBI will be obliged to offer both WLA and WCA<sup>45</sup> products to other SPs in the IA. NBI is required to operate at the wholesale level only, and will not generally have a direct retail presence. Accordingly, to the extent that NBI is required to offer WCA on its FTTP network, it is likely to act as a demand-side substitute in the provision of WCA, in those areas where its network is present.

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<sup>38</sup> Less than 10,000 lines.

<sup>39</sup> 0-5%.

<sup>40</sup> 0-5%.

<sup>41</sup> As set out at paragraph A 2.22 below, to avoid double-counting of POs, SIRO VUA sales to BT are designated to BT for assessment purposes.

<sup>42</sup> <https://nbi.ie/rollout-plan/>.

<sup>43</sup> 1,100-1,200 EAs.

<sup>44</sup> 90-100% of EAs.

<sup>45</sup> See Section 4.2.1 of Schedule 2.2 of the NBP Contract, 'Reference Offer Requirements', available online at <https://s3-eu-west-1.amazonaws.com/govieassets/76783/3e26ff7b-c325-4af1-973b-8e0e0d4970a2.pdf>.

- 3.25 As of November 2020, NBI has not yet commenced the provision of WLA or WCA to SPs. However, ComReg understands that service provision is due to commence at 7,900 premises located in EAs within the IA (in Cork, Galway, and Cavan) by the end of 2020.<sup>46</sup>
- 3.26 In respect of the assessment of **Condition 1** for determining whether NBI should be designated as a PO, NBI is not currently capable of managing a network capable of providing WCA or retail broadband, pending network rollout and service activation, but is on the cusp of doing so. Condition 1 also stipulates, however, that an SP may be designated as a PO where it manages a network which is *'prospectively capable within a reasonable timeframe and without incurring significant sunk costs'* of providing WCA or retail broadband.<sup>47</sup> Thus, while NBI is not currently capable of providing WCA or retail broadband, it is likely prospectively capable of doing so. As set out at Table 5 below, NBI intends to pass 7,900 premises by the end of 2020, at the end of in Year 1 of a projected seven-year rollout plan. ComReg has mapped NBI's intended rollout, although there may be some timing uncertainty on precise network rollout.
- 3.27 Accordingly, ComReg concludes on a preliminary basis that NBI can manage a network prospectively capable of offering WCA or retail broadband without incurring significant sunk costs. For that reason, ComReg concludes that NBI passes Condition 1 for designation as a PO.
- 3.28 In respect of **Condition 2**, ComReg assesses whether NBI has a sizable national (or regional) presence, that is, a reasonably sized market share capable of potentially exerting an effective competitive constraint on Eircom.

**Table 5: Proposed NBI rollout [X REDACTED X]**

Year	Premises coordinates <sup>48</sup>	% of premises coordinates	No. of EAs present
2020: Year 1	[X REDACTED X]	REDACTED	REDACTED
2021: Year 2	REDACTED	REDACTED	REDACTED
2022: Year 3	REDACTED	REDACTED	REDACTED
2023: Year 4	REDACTED	REDACTED	REDACTED
2024: Year 5	REDACTED	REDACTED	REDACTED
2025: Year 6	REDACTED	REDACTED	REDACTED
2026: Year 7	REDACTED	REDACTED	REDACTED
<b>Total</b>	REDACTED	REDACTED	REDACTED [X]

<sup>46</sup> <https://nbi.ie/news/latest/2020/10/12/7900-rural-homes-will-get-broadband-access-this-year/>

<sup>47</sup> As of 22 October 2020, NBI has not yet listed any broadband SPs on its website, but has committed to doing so, one it is ready to deliver network capability: <https://nbi.ie/where-can-i-buy/>

<sup>48</sup> While the NBI rollout consists of c.540,000 premises (defined as 'Delivery Points' in the Eircode database), this amounts to only [X REDACTED X] premises coordinates. This difference arises from situations where there are multiple units at a coordinate (e.g. apartment, office block), or where a building is both a business and a residential premises (e.g. B&B).

- 3.29 NBI has commenced network rollout, with the first premises expected to be passed by the end of 2020, and target rollout of 115,000 premises by the end of 2021.<sup>49</sup> This amounts to 21% of NBI's intended overall rollout to 544,000 eligible premises in the IA.<sup>50</sup> Over the next two to three years, this level of network rollout is not consistent with a sizable national (or regional) presence, given that, approximately one year after the intended publication of this MTA Consultation, NBI is likely to have passed no more than 5% of premises in the State. Accordingly, it is ComReg's preliminary view that it is unlikely that NBI would have a sufficiently sizeable market presence, measured by premises passed, capable of potentially exerting an effective competitive constraint on Eircom in the provision of WCA until a number of years following publication of the MTA Consultation or final Decision, and ComReg therefore considers that NBI fails Condition 2.
- 3.30 For this reason, ComReg concludes that NBI does not pass the cumulative conditions for designation as a PO for the purposes of the MTA. As NBI progresses its rollout, this situation may alter in future. ComReg also notes that, even if NBI did pass Condition 2, for its presence to be material to the relevant geographic market assessment, it would need to meet the quantitative criteria set out in respect of Step 2 described above, which it would be unable to do at those EAs where it has not yet rolled out, or at those EAs where it had rolled out to a very limited degree.
- 3.31 Accordingly, ComReg concludes on a preliminary basis that there are no grounds to designate additional POs for the purpose of the MTA, and the assessment is be carried out based on the five existing POs<sup>51</sup> (Eircom, BT, Vodafone, SIRO, and Virgin Media). ComReg now moves to reapply the Step 1 and Step 2 assessments on the 1,049 EAs constituting the 2018 Regional WCA Market.

## Step 1: Application of 2018 WCA geographic market assessment indicators

- 3.32 As set out at paragraph 3.7 above, the Step 1 indicators are of general application in carrying out any geographic market assessment:
- (a) Geographic differences in entry conditions over time;
  - (b) Variation in the number and size of potential competitors;
  - (c) Distribution of market shares;
  - (d) Evidence of differentiated pricing strategies or marketing; and
  - (e) Geographical differences in demand characteristics.

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<sup>49</sup> <https://nbi.ie/faqs/> "How long will the rollout take?"

<sup>50</sup> Ibid.

<sup>51</sup> See paragraph 3.13 above.

## Indicator (a): Geographic Differences in Entry Conditions

- 3.33 ComReg’s 2018 assessment of Indicator (a) continues to apply, *mutatis mutandis*, as of 2020, as set out in further detail in the following paragraphs. Eircom’s copper Current Generation (hereafter, ‘CG’) network offers near-ubiquitous coverage. As a result, Eircom can offer CG broadband services, where its network allows. Access Seekers using WLA inputs to provide WCA (or retail) services over Eircom’s copper network can only do so in EAs where investments have been made to avail of the WLA inputs. Given the cost of the investments and likely return, these investments are likely to be limited to larger EAs, or areas of higher population/premises density.
- 3.34 Eircom’s FTTx network rollout is ongoing and, at present, passes close to 2 million premises. As of 30 June 2020, Eircom’s FTTP network passed 576,000 premises, a 54% increase year-on-year,<sup>52</sup> with in excess of 400,000 premises added since the publication of the 2018 Decision. This FTTx network allows Eircom to provide faster broadband (and other) services than could otherwise be provided over its copper network. Eircom’s FTTx footprint is limited to areas where it considers it is commercially viable to roll out the network. Access Seekers wishing to use Eircom’s WLA inputs to provide WCA (or downstream retail) services over Eircom’s FTTx network must invest in backhaul and associated facilities to avail of the WLA input. The cost of rolling out a backhaul network and associated facilities at Eircom’s Aggregation Nodes means that an Access Seeker’s ability to provide WCA services, absent regulation in the WCA Market, is likely to be limited to its potential WLA customer base in urban areas.
- 3.35 Similarly, the rollout of alternative networks, such as the SIRO and Virgin Media networks, depends heavily on premises density and the potential return on investment. Virgin Media’s network is focussed on areas of higher population and premises density, predominantly in cities and larger regional towns. The extent of any indirect constraint from Virgin Media is limited to the EAs where Virgin Media has network presence. Virgin Media’s network coverage passes 941,100 premises, as of Q2 2020 (40% of total premises) mostly in urban areas. This is an increase of approximately 8% on the Q4 2017 data on which the 2018 Decision was based.<sup>53</sup>
- 3.36 In addition, SIRO’s network rollout is ongoing, but largely avoids areas of Virgin Media network rollout. There is, therefore, limited overlap between these networks.

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<sup>52</sup> <https://www.eir.ie/investorrelations/about/> and [https://www.eir.ie/opencms/export/sites/default/.content/pdf/IR/presentations/2019\\_2020/eir\\_Q4\\_FY20\\_results\\_presentation.pdf](https://www.eir.ie/opencms/export/sites/default/.content/pdf/IR/presentations/2019_2020/eir_Q4_FY20_results_presentation.pdf)

<sup>53</sup> <https://www.libertyglobal.com/wp-content/uploads/2020/08/Virgin-Media-Fixed-Income-Q2-2020-Release.pdf> “Selected Operating Data & Subscriber Variance Table — As of and for the quarter ended June 30, 2020”.

3.37 Annex: 2 provides a breakdown of the number of EAs within the 2018 Regional WCA Market according to the number of POs providing services at each EA. Table A2.17 suggests that a number of POs appear to have overcome barriers to entry, and now provide wholesale or retail services at some of the EAs forming part of the 2018 Regional WCA Market.

**Table 6: 2018 Regional WCA Market: Number of POs by EAs and Premises – Q2 2020**

Number of POs	No. of EAs failing Criteria 1-5 (n = 967)	Premises Coverage	No. of EAs meeting Criteria 1-5 (n = 82)	Premises Coverage
1	245 (25%)	204,784	0 (0%)	n/a
2	241 (25%)	224,691	0 (0%)	n/a
3	459 (48%)	447,383	47 (59%)	106,489
4	21 (2%)	37,281	22 (27%)	93,951
5	1 (%)	854	13 (14%)	59,036

3.38 This information indicates that there are a number of EAs where Eircom faces competition, either directly in the 2018 Regional WCA Market (as currently defined) and/or directly in the retail market for broadband access (and related services). In particular, of EAs failing Criteria 1 to 5, only 50% have 3 or more POs present, whereas 3 or more POs are present at all of the EAs which pass the Criteria.

3.39 ComReg accordingly concludes on a preliminary basis in respect of Indicator (a) that the conclusions reached in the 2018 Decision in respect of all 1,203 EAs nationwide remain valid in respect of the 1,049 EAs constituting the 2018 Regional WCA Market as of Q2 2020 - that the provision of WCA is characterised by geographic differences in entry conditions. This conclusion is supported by differences in levels of NG network rollout across the 2018 Regional WCA Market which were not present at the time of the 2018 Decision, as set out in Step 2.

## Indicator (b): Variation in the number and size of potential competitors

- 3.40 ComReg's 2018 assessment of Indicator (b) continues to apply, *mutatis mutandis*, as of 2020, as set out in further detail in the following paragraphs. Eircom now faces greater constraints at certain EAs in the 2018 Regional WCA Market, compared to at the time of publication of the 2018 Decision. These constraints arise from SPs purchasing WLA inputs to provide WCA services (or retail services), or further rolling out independent (of Eircom) Alternative Network Operators (e.g. Virgin Media and SIRO). However, at the vast majority of EAs in the 2018 Regional WCA Market, the intensity of competition measured by variation in the number and size of potential competitors relative to 2018 remains unchanged, due to fewer SPs supplying broadband (and related) services in these less densely populated areas. Low premises density in these areas continues to imply that it is not economically viable or profitable to offer broadband services either via WLA inputs or via an alternative network infrastructure on a commercial basis.
- 3.41 NBI is mandated to rollout Next Generation (hereafter, '**NG**') broadband services in the IA, which overlaps substantially with the footprint of the 2018 Regional WCA Market, as defined in the 2018 Decision, due in large part to NBI's presence – even at partial coverage levels – at over 90% of EAs nationwide. However, for the reasons set out above, ComReg considers that there are insufficient grounds to take account of prospective NBI rollout at this stage.
- 3.42 Eircom is the only operator present at all EAs in the 2018 Regional WCA Market, and has a market share of 100% at any EAs where other SPs are not present on the basis of either direct constraints or indirect retail constraints. As noted in the discussion that follows, Eircom's market share at an EA falls as the number of competitors present in an EA (absent regulation in the WCA Market) increases, as set out at Figure A2.2 below, which shows that, as the number of POs present at an EA increased, Eircom's average market share declines, ranging from a market share of 100% where Eircom is the only PO present, to an average market share of 31-40%, where all 5 POs are present at an EA.
- 3.43 ComReg accordingly concludes on a preliminary basis in respect of Indicator (b) that the conclusions in the 2018 Decision remain valid, namely that geographic variation in the number and size of potential competitors continues to be evident in the provision of WCA. Within the footprint of the 2018 Regional WCA Market, this conclusion is supported by differences in levels of NG network rollout across EAs as of Q2 2020, compared to 2018.

## Indicator (c): Distribution of market shares

- 3.44 ComReg's 2018 assessment of Indicator (c) continues to apply, *mutatis mutandis*, as of 2020, as set out in further detail in the following paragraphs. At the time of the 2018 Decision, ComReg demonstrated that market share distributions across SPs provided evidence in favour of the conclusion that separate geographic markets were warranted. As part of the MTA, ComReg considers that the distribution of market shares on EAs forming part of the 2018 Regional WCA Market continues to provide evidence of the presence of differing competitive conditions
- 3.45 In demonstrating this, ComReg relies on the market share data calculated as part of Step 2 at paragraphs 3.54 to 3.60 below. Table 7 below outlines market shares among POs in the absence of regulation in the 2018 Regional WCA Market, broken down into the EAs that meet Criteria 1-5 and those that do not meet these Criteria. This is to assess whether competitive conditions may now differ across those EAs originally assigned to the 2018 Regional WCA Market.



**Table 7: 2018 Regional WCA Market Retail Market Shares for POs (absent regulation) [REDACTED]**

Market Share	Eircom	Virgin Media	BT	Vodafone	Total Active Subscriptions /Lines	% of Total Active Subscriptions
<b>Regional WCA Market, Q4 2017<sup>54</sup></b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	529,769	39.6%
<b>Candidate EAs, Q2 2020<sup>55</sup></b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	165,665	42.2%
<b>EAs failing Criteria, Q2 2020<sup>56</sup></b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	392,176 <sup>57</sup>	28.2%

- 3.46 Table 7 indicates that there may be differing competitive conditions across two separate geographic areas within the footprint of the 2018 Regional WCA Market – those that meet Criteria 1-5 (which are more akin to the 2018 Urban WCA Market), and those that do not meet Criteria 1-5. For example, in the Candidate EAs that pass Criteria 1-5, Virgin Media has a substantially higher market share compared to the 2018 Regional WCA Market, and consequently, Eircom’s market share is considerably lower. Further evidence is considered below. Accordingly, competitive conditions at the Candidate EAs are likely to be more akin to competitive conditions at the EAs constituting the 2018 Urban WCA Market.
- 3.47 ComReg accordingly concludes on a preliminary basis in respect of Indicator (c) that the conclusions in the 2018 Decision remain valid, namely that geographic variation in market share distributions continues to be evident in the provision of WCA. Within the footprint of the 2018 Regional WCA Market, this preliminary conclusion is supported by differences in market share distributions between those EAs meeting the Step 2 criteria, and those EAs failing one or more of the criteria as of Q2 2020, compared to 2018.

<sup>54</sup> Market shares: Eircom (71-80%), Virgin Media (0-10%), BT (0-10%), Vodafone (11-20%).

<sup>55</sup> The 82 EAs in the 2018 Regional WCA Market which now pass the geographic assessment criteria. Market shares: Eircom (41-50%), Virgin Media (11-20%), BT (11-20%), Vodafone (21-30%).

<sup>56</sup> The 967 EAs in the 2018 Regional WCA Market which again fail the geographic assessment criteria. Market shares: Eircom (71-80%), Virgin Media (0-10%), BT (1-10%), Vodafone (11-20%).

<sup>57</sup> The sum of active subscriptions and lines as of Q2 2020 is greater than the number for Q4 2017, arising from the presence of additional broadband customers in the 2018 Regional WCA Market over time.

## Indicator (d): Evidence of differentiated pricing or marketing strategies

- 3.48 ComReg's 2018 assessment of Indicator (d) continues to apply, *mutatis mutandis*, as of 2020, as set out in the following paragraphs. ComReg has considered whether there is evidence of differentiated pricing or marketing that might indicate the presence of different regional or local competitive conditions, and in particular, geographically de-averaged or differentiated pricing, in the footprint of the 2018 Regional WCA Market. The 2018 Decision confirmed ComReg's preliminary findings in the 2016 Consultation in this regard, which were that, as set out at paragraph 10.172 of the 2016 Consultation:
- (a) SPs often vary retail prices, bundling and marketing schemes in an area, based on the network technology (copper, FTTC or FTTP) available;
  - (b) Retail broadband services are marketed nationally by most SPs, with local marketing campaigns following the rollout of new services; and
  - (c) At the wholesale level, neither Eircom nor BT vary prices for WCA.
- 3.49 As set out in greater detail at paragraphs 4.29 to 4.33 below, ComReg is aware of instances of Eircom charging different prices for WCA services in the (deregulated) 2018 Urban WCA Market, relative to the 2018 Regional WCA Market, on which WCA prices continue to be regulated. In respect of CG WCA, this differential arises from Eircom continuing to charge the former regulated rates on the now-deregulated 2018 Urban WCA Market, while prices continue to decline in line with regulatory obligations on the 2018 Regional WCA Market.
- 3.50 ComReg accordingly concludes on a preliminary basis in respect of Indicator (d) that the conclusions in the 2018 Decision are no longer valid, and pricing or marketing strategies *do* now appear to be indicative of geographic variation on the 2018 Relevant WCA Market. However, within the footprint of the 2018 Regional WCA Market, ComReg has seen no material evidence of SPs differentiating their WCA pricing on a geographic basis.

## Indicator (e): Geographical differences in demand characteristics

- 3.51 ComReg's 2018 assessment concluded that, at both the retail level and on the WLA market, there were limited differences in demand characteristics across regions, suggesting that the geographic scope of these markets was likely to be national, absent regulation. ComReg did not assess in detail whether the WCA market was characterised by geographical differences in demand characteristics. The absence of a positive finding of geographical differences in demand characteristics in respect of the provision of WCA suggests that in 2018, as with the retail broadband and WLA markets, there was no evidence that geographical differences in demand characteristics contributed to differences in competitive conditions across EAs.

3.52 ComReg accordingly concludes on a preliminary basis in respect of Indicator (e) that the 2018 Decision conclusions remain valid - that geographical differences in demand characteristics do not appear to be indicative of geographic variation in competitive conditions within the footprint of the 2018 Regional WCA Market.

## Preliminary Conclusion on Step 1

3.53 Having reassessed the five geographic market assessment indicators under Step 1 above, ComReg concludes on a preliminary basis that three of the indicators – geographic differences in entry conditions, variation in the number and size of potential competitors, and distribution of market shares – provide evidence in favour of the contention that competitive conditions differ across EAs in the 2018 Regional WCA Market, to an extent which would, when considered alongside other factors below, justify differing competitive conditions between EAs. In contrast, two of the indicators – evidence of differentiated pricing or marketing strategies, and geographical differences in demand characteristics – provide insufficient evidence in favour of the contention. Accordingly, Step 1 provides mixed evidence in respect of differences in competitive conditions between EAs forming part of the 2018 Regional WCA Market.

## Step 2: Application of 2018 WCA geographic market assessment Criteria

3.54 Table 29 of the 2018 Decision – which is reproduced below - sets out the WCA geographic market criteria which, along with the Step 1 indicators, were used to ascertain whether conditions of competition in EAs were sufficiently homogeneous to warrant the definition of a single national market, or whether the conditions of competition were sufficiently different between certain EAs, such that separate geographic markets should be distinguished. ComReg accordingly set out a range of cumulative criteria, based around the following parameters:

- (a) A minimum number of SPs;
- (b) Network presence;
- (c) SPs' market shares;
- (d) Network coverage of alternative networks; and
- (e) Reasonable additions.

3.55 These parameters give rise to a set of cumulative criteria that an EA must meet for consideration as to whether or not there are differences in competitive conditions compared to other geographic areas. The reasoning underpinning the selection of these criteria was set out at Section 10 of the 2016 Consultation, and further refined at Section 9 of the 2018 Decision.

- 3.56 As part of the MTA, ComReg reapplies these Step 2 criteria to the 1,049 EAs forming part of the 2018 Regional WCA Market, in order to determine whether competitive conditions at all of these EAs continue to be sufficiently similar, or, in the alternative, to identify whether competitive conditions at any of the EAs have changed in the intervening period. The full Step 2 analysis of the 2018 Regional WCA Market– including the information relied on, and the associated time periods - is set out at Annex: 2 below. In the paragraphs that follow, ComReg highlights the key preliminary findings from this analysis and the implications for the potential re-definition of the geographic scope of the 2018 Relevant WCA Markets.
- 3.57 On the basis of the application of the geographic assessment criteria, in the 2018 Decision, ComReg defined an Urban WCA Market consisting of 154 EAs and a Regional WCA Market consisting of 1,049 EAs, as set out below. The identities of the EAs falling into the 2018 Urban WCA Market and the 2018 Regional WCA Market were set out at Appendix 11 of the 2018 Decision.

**Table 8: Application of Criteria for Assessing Competitive Conditions by Geographic Area – Q4 2017**

	Exchange Areas		
	N	Premises	Subscriptions <sup>58</sup>
<b>2018 Urban WCA Market</b>	154	1,061,911	809,006
<b>2018 Regional WCA Market</b>	1,049	1,143,977	529,769

- 3.58 Accordingly, in the 2018 Decision, ComReg defined two separate, distinct geographic markets in the provision of WCA services. Based on the above geographic assessment criteria, the two geographic markets were:
- (a) The **2018 Urban WCA Geographic Market**, being those 154 EAs where Criteria 1 to 5 were met; and
  - (b) The **2018 Regional WCA Geographic Market**, being those 1,049 EAs where Criteria 1 to 5 were not met.

<sup>58</sup> Total retail and wholesale subscriptions delivered over all access technologies falling into the relevant product markets.

3.59 In accordance with the 2018 Decision, ComReg has now reapplied the geographic assessment criteria to the 1,049 EAs constituting the 2018 Regional WCA Market. Table 9 below presents the outcome of this assessment, with the supporting detail set out at Annex: 2. The Step 2 analysis suggests that the number of EAs falling into the Urban WCA Market has increased since the 2018 Decision. This has largely been driven by uptake of VUA services by POs making use of WLA inputs (i.e. investment in backhaul facilities at Eircom Aggregation Nodes).<sup>59</sup> By investing in backhaul facilities, WLA-based POs have been able to also grow market share. Uptake of VUA services has also been driven by expansion of Eircom and SIRO's respective FTTP networks. Some of the growth in EAs now falling into the Urban WCA Market is also attributable to expansion in Virgin Media's network coverage.

**Table 9: Application of Criteria for Assessing Competitive Conditions on 2018 Regional WCA Market Exchange Areas – Q2 2020**

	Number of EAs	Total Premises in EAs
<b>EAs meeting Criteria</b>	82	229,984
<b>EAs <i>not</i> meeting Criteria</b>	967	913,993
<b>Total</b>	1,049	1,143,977

## Preliminary Conclusion on Step 2

3.60 Accordingly, Step 2 suggests that 82 Candidate EAs, the identities of which are set out at Annex: 3 below, now exhibit competitive conditions which are more consistent with competitive conditions at EAs constituting the 2018 Urban WCA Market, rather than at EAs constituting the 2018 Regional WCA Market.

## Preliminary Conclusion on Relevant WCA Markets Definition

3.61 As set out in the 2018 Decision, ComReg proposed to carry out a MTA, given the potential dynamic nature of the 2018 Relevant WCA Markets over the lifetime of the 2018 Decision. The WCA Product Market remains as defined in the 2018 Decision, but ComReg has reassessed the WCA geographic markets in accordance with the analytical steps set out in the 2018 Decision.

3.62 In particular, ComReg has reapplied Step 1 and Step 2 to the 1,049 EAs which, pursuant to the 2018 Decision, were then assigned to the 2018 Regional WCA Market. ComReg defines those SPs that can operate independently of WCA regulation as Primary Operators. ComReg proposes not to define any additional POs in its assessment.

<sup>59</sup> Figure 103 in the Consultation. An 'Aggregation Node' or 'AGG node' means a network concentration point for Access Paths.

- 3.63 The preliminary conclusions arising from Step 1 and Step 2 suggest that there are sufficient reasons, including on quantitative grounds, to distinguish two sets of EAs within the 2018 Regional WCA Market. ComReg concludes on a preliminary basis that the analysis provides sufficient evidence to suggest that 82 EAs in the 2018 Regional WCA Market (the '**Candidate EAs**') are characterised by different competitive conditions relative to the other 967 EAs in that market. Moreover, the 82 Candidate EAs exhibit competitive conditions which are sufficiently homogenous to the EAs in the 2018 Urban WCA Market.
- 3.64 On the basis of the above analysis, ComReg proposes to re-allocate the 82 Candidate EAs from the 2018 Regional WCA Market to the Revised Urban WCA Market, thereby increasing the geographic scope of the 2018 Urban WCA Market (now the '**Revised Urban WCA Market**'), while reducing the geographic scope of the 2018 Regional WCA Market (now the '**Revised Regional WCA Market**'). Table 10 below outlines these proposed changes. In comparing premises and active subscriptions/lines, and in addition to changes in premises between the Urban WCA Market and Regional WCA Market, there will also have been a small increase in the total number of premises in the State based on housing activity (+65,000). Likewise, with active subscriptions/lines, the market will have increased in size by a small amount based on new broadband subscribers (+51,969).

**Table 10: Proposed Regional WCA Market and Urban WCA Market boundary alterations**

		Urban WCA Market	Regional WCA Market	Total
<b>Exchange Areas</b>	2018 Decision	154	1,049	1,203
	MTA Q2 2020 <sup>60</sup>	236	967	1,203
	Change	82	-82	0
<b>Premises</b>	2018 Decision	1,061,911	1,143,977	2,205,888
	MTA Q2 2020	1,357,531	913,993	2,271,524
	Change	295,620	-229,984	65,636
<b>Subscriptions/ Active Lines</b>	2018 Decision	809,006	529,769	1,338,775
	MTA Q2 2020	998,537	392,176	1,390,744
	Change	193,336	-138,805	51,969

<sup>60</sup> In respect of EAs, premises, and subscriptions / active lines, the 'MTA Q2 2020' figures for the Urban WCA Market refer to the entirety of the Revised Urban WCA Market defined by means of this Consultation.

3.65 Table 10 above is reproduced below, but with changes shown in percentages.

**Table 11: Proposed alteration of Regional WCA Market and Urban WCA Market boundaries, %**

		Urban WCA Market	Regional WCA Market	Total
<b>Exchange Areas</b>	2018 Decision	13%	87%	100%
	MTA Q2 2020	20%	80%	100%
	% Point Change	7%	-7%	
<b>Premises</b>	2018 Decision	48%	52%	100%
	MTA Q2 2020	60%	40%	100%
	% Point Change	12%	-12%	
<b>Subscriptions/ Active Lines</b>	2018 Decision	60%	40%	100%
	MTA Q2 2020	72%	28%	100%
	% Point Change	12%	-12%	

3.66 ComReg accordingly proposes to assign the Candidate EAs from the 2018 Regional WCA Market to the Revised Urban WCA Market on the grounds that conditions of competition in the Candidate EAs are now sufficiently similar to conditions of competition at the EAs falling within the 2018 Urban WCA Market, rather than in the 2018 Regional WCA Market, as follows:

- (a) The **Revised Urban WCA Market**, being those 236 EAs in which all necessary criteria are met on a cumulative basis, 154 of which were so designated by means of the 2018 Decision, together with a further 82 Candidate EAs which ComReg proposes, by means of the MTA, to transfer from the 2018 Regional WCA Market to the Revised Urban WCA Market. and
- (b) The **Revised Regional WCA Market**, being those 967 EAs where the necessary criteria were not cumulatively met, 1,049 of which were originally so designated by means of the 2018 Decision. ComReg now proposes to transfer 82 Candidate EAs, by means of the MTA, from the Regional WCA Market to the Revised Urban WCA Market.

3.67 Having carried out a preliminary assessment of the geographic boundaries of the Revised Regional WCA Market and the Revised Urban WCA Market (together, the **'Revised Relevant WCA Markets'**), ComReg moves at Section 4 below to carry out a competition analysis and assessment of SMP on the Candidate EAs which it proposes should be transferred to the Revised Urban WCA Market.

**Q. 1. Do you agree with ComReg's preliminary views on the re-definition of the geographic scope of the Revised Relevant WCA Markets? In particular, do you agree that 82 Candidate Exchange Areas should be transferred from the 2018 Regional WCA Market? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**



## 4 Competition Analysis

4.1 In this Section, ComReg analyses competition in the 82 Candidate EAs which it proposes to transfer from the Regional WCA Market to the Revised Urban WCA Market, as set out at Section 3 above. This is, ultimately, carried out with a view to assessing whether the competition assessment in the 2018 Decision in respect of the 2018 Relevant WCA Markets applies equally in respect of the proposed Revised Relevant WCA Markets. In doing so, ComReg assesses whether competition at the Candidate EAs exhibits characteristics which are the same as, or sufficiently similar to, competition in the already de-regulated 2018 Urban WCA Market under the 2018 Decision.

### Competition Assessment of the 2018 Urban WCA Market in the 2018 Decision

4.2 Prior to considering the above, ComReg sets out below a summary of the underlying analysis which led to the conclusion in the 2018 Decision that the 2018 Urban WCA Market was effectively competitive, and that no finding of SMP was warranted. As set out at paragraphs 5.1 and 10.3 of the 2018 Decision, ComReg identified a range of economic characteristics set out in the SMP Guidelines which it deemed to be relevant to the assessment of competition in the 2018 Relevant WCA Markets, and which it grouped into three broad headings:<sup>61</sup>

- (a) **Existing competition:** vertical integration, market shares, relative strength of existing competitors, barriers to expansion, economies of scale and scope, indirect constraints, and pricing behaviour;
- (b) **Potential competition:** the overall size of the undertaking, an assessment of control of infrastructure not easily duplicated, barriers to entry in the Relevant WCA Markets, as well as the overall strength of potential competitors; and
- (c) **Strength of any countervailing buyer power** (hereafter, '**CBP**'): the impact of any strong buyers of WCA on the competitive behaviour of WCA providers.

4.3 In summary, ComReg made the following findings under these three SMP assessment headings in respect of the 2018 Urban WCA Market.

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<sup>61</sup> In paragraphs 11.3 and 11.7 and Appendix 11 of the 2016 Consultation, other factors were considered but deemed to be of less or no relevance to the SMP assessment in the 2018 Relevant WCA Markets.

## Existing competition

- 4.4 In assessing existing competition in the 2018 Decision,<sup>62</sup> ComReg considered three sub-headings, as set out below. ComReg concluded that Eircom faced direct and indirect constraints from existing competition in the 2018 Urban WCA Market arising, in particular, from BT, Virgin Media and Vodafone. ComReg determined that, when considered alongside other factors, this was indicative that no SP had SMP in the 2018 Urban WCA Market.

## Market shares

- 4.5 Absent regulation in the 2018 Urban WCA Market, ComReg identified that Eircom faced competition from at least two POs capable of providing retail or broadband services, and such competition was reflected in market share thresholds. As a result, Eircom's 2018 Urban WCA Market share (<40% in Q4 2017) was significantly lower than in the 2018 Regional WCA Market (>75% in Q4 2017).
- 4.6 ComReg accordingly concluded that Eircom's market share in the 2018 Urban WCA Market suggested (when considered alongside other factors) that it faced greater competitive constraints in the 2018 Urban WCA Market.

## Indirect constraints

- 4.7 The 2018 Urban WCA Market, by construction, was an area where Eircom faced constraints in the provision of WCA. The 2018 Decision determined that a vertically-integrated SP's presence in the retail market by means of self-supply could pose a sufficiently strong indirect constraint on Eircom's supply of WCA. ComReg concluded that certain vertically-integrated retail SPs, in particular Virgin Media and Vodafone, provided such an indirect constraint on Eircom's supply of WCA within those geographic areas where they had a network presence.

## Pricing behaviour

- 4.8 In the 2018 Decision, ComReg concluded that Eircom would not likely be in a position to profitably raise prices above the competitive level, limiting its ability to behave, to an appreciable extent, independently of competitors, customers or consumers on the 2018 Urban WCA Market.

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<sup>62</sup> At paragraphs 10.76 to 10.88, and 10.115 to 10.117.

## Potential competition

4.9 In assessing potential competition in the 2018 Decision,<sup>63</sup> ComReg considered two sub-headings, as set out below. In summary, ComReg concluded that, absent regulation and given its network expansion plans, potential competition from SIRO would, combined with existing competition, likely further constrain Eircom on the 2018 Urban WCA Market. At the time of the 2018 Decision, ComReg was unable to include the NBP in its assessment on a forward-looking basis with sufficient certainty and accuracy, given the lack of certainty in respect of the NBP contract award, the timing of the NBP rollout and any resulting impact on competition.

## Barriers to entry and expansion

4.10 In assessing barriers to entry and expansion, ComReg considered various factors:

- (a) Size of the undertaking and control of infrastructure not easily replicated;
- (b) Sunk costs;
- (c) Economies of scale, economies of scope and economies of density; and
- (d) Vertical integration.

4.11 In respect of **(a)**, ComReg concluded that, in the 2018 Urban WCA Market, Eircom faced competition from those POs (Vodafone, BT (and purchasers of its WCA services, including Sky), and Virgin Media) which had, to a reasonable degree, overcome barriers to entry which, on a forward looking basis, should enable them to compete with Eircom and each other, absent regulation.

4.12 In respect of **(b)**, ComReg concluded that sunk costs did not seem to sufficiently undermine entry and/or expansion in the 2018 Urban WCA Market. Sunk costs could be reduced if the potential entrant had an existing network in place (e.g. Virgin Media or SIRO), or if a purchaser of upstream WLA (e.g. Vodafone) incurred the necessary additional investments. ComReg noted that, in all three cases, the relevant networks were predominantly located in the 2018 Urban WCA Market.

4.13 In respect of **(c)**, ComReg concluded that economies of scale, scope and density were not suggestive of Eircom having SMP. A number of SPs made network investments to take advantage of the higher premises density on the 2018 Urban WCA Market, which facilitated easier, more cost effective network rollout.

4.14 In respect of **(d)**, ComReg concluded that Eircom may, as a vertically-integrated SP, face lower incentives to exercise SMP on the 2018 Urban WCA Market. Insofar as indirect constraints are concerned, rather than losing a retail customer to another independent network (and the entire loss of profitability from that customer), Eircom may face some incentive to provide wholesale services to SPs (as in this scenario it retains the profit from the wholesale sales).

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<sup>63</sup> At paragraphs 10.89 to 10.93, and 10.118 to 10.119 of the 2018 Decision.

## Strength of potential competitors

- 4.15 In considering the strength of potential competitors, ComReg assessed:
- (a) Building an independent network to offer WCA; and
  - (b) Adapting existing network to provide WCA.
- 4.16 In respect of option (a), ComReg noted that, even if independent network build were unlikely, Eircom already faced greater network competition in the 2018 Urban WCA Market from Virgin Media, BT, Vodafone and, prospectively, by SIRO, whose rollout was likely to fall more within the footprint of the 2018 Urban WCA Market.
- 4.17 In respect of option (b), ComReg included hypothetical supply by SIRO in the WCA market on the basis of supply-side substitution. Given that SIRO's current and expected network footprint would largely be confined to the 2018 Urban WCA Market, ComReg concluded that, other than SIRO, adapting an existing network to offer WCA would not sufficiently constrain Eircom on the 2018 Urban WCA Market.

## Countervailing Buyer Power ('CBP')

- 4.18 ComReg concluded that CBP would be insufficient, on its own, to act as an effective competitive constraint on Eircom.<sup>64</sup> In assessing CBP on the 2018 Urban WCA Market, ComReg considered three factors:
- (a) Size of buyer and relative importance to the seller;
  - (b) Credible alternative sources of supply; and
  - (c) Evidence of bargaining power from negotiations.
- 4.19 In respect of factor **(a)**, ComReg concluded that the relative size of WCA purchasers did not suggest that they would have a sufficiently strengthened bargaining position regarding price or other terms of supply. ComReg noted that the 2018 Urban WCA Market was characterised by the greater availability of retail broadband services from alternative SPs, which could possibly suggest a greater level of CBP, compared to the 2018 Regional WCA Market. ComReg nevertheless concluded that even this greater level of CBP would not be sufficient to exercise an effective constraint on Eircom supply of WCA on the 2018 Urban WCA Market.
- 4.20 In respect of factor **(b)**, ComReg concluded that, by the nature of its construct, the 2018 Urban WCA Market is an area where Eircom faces greater competition from credible alternative sources of WCA supply (BT) as well as, networks capable of supplying WCA (SIRO), and also indirectly from Virgin Media and Vodafone.
- 4.21 In respect of factor **(c)**, ComReg found no evidence of purchaser bargaining power in negotiations in the 2018 Urban WCA Market.

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<sup>64</sup> At paragraphs 10.94 to 10.95, and 10.120 to 10.121.

## Candidate EAs Competition Assessment

- 4.22 ComReg seeks to determine whether or not competition at the Candidate EAs which ComReg now proposes to transfer to the Revised Urban WCA Market is sufficiently similar to the competition at the 2018 Urban WCA Market, such that the same conclusions – namely, that the EAs are characterised by effective competition, and that SMP obligations should therefore be removed – are warranted.
- 4.23 In carrying out this assessment, ComReg follows the same assessment methodology as it applied in respect of the 2018 Urban WCA Market. Accordingly, ComReg considers:
- (a) Existing competition at the Candidate EAs (at paragraphs 4.24 to 4.30 below);
  - (b) Potential competition at the Candidate EAs (at paragraphs 4.34 to 4.45 below); and
  - (c) Countervailing Buyer Power (at paragraphs 4.46 to 4.51 below).

## Existing competition

### Market shares

- 4.24 Similar to the position in the 2018 Decision, absent regulation in the Candidate EAs, Eircom also faces at least two POs capable of providing retail and/or wholesale broadband services. As set out at Table 12 below, as of Q2 2020, Eircom's Candidate EA market share was similar to its market share on the 2018 Urban WCA Market, and significantly lower than its market share in the Revised Regional WCA Market.

Table 12: WCA Market Shares [REDACTED]

		Eircom	Virgin Media	BT	Vodafone
<b>2018 Urban WCA Market<sup>65</sup></b>		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Candidate EAs [82]</b>	<b>Q2 2020<sup>66</sup></b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	<b>Q4 2017<sup>67</sup></b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	<b>% change</b>	-25%	+5%	+11%	+9%
<b>Revised Regional WCA Market, Q2 2020<sup>68</sup></b>		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Revised Urban WCA Market, Q2 2020<sup>69</sup></b>		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

4.25 Since the publication of the 2018 Decision, Eircom’s market share on the Candidate EAs has declined substantially, while the market shares of other POs have increased. The key differences between market shares on the Candidate EAs as of 2018, and again as of Q2 2020, are:

- (a) Eircom’s lower market share (2020: 41-50% v. 2018: 61-70%);
- (b) Vodafone’s higher market share (2020: 21-30% v. 2018: 11-20%);
- (c) BT’s higher market share (2020: 11-20% v. 2018: 0-10%); and
- (d) Virgin Media’s higher market share (2020: 11-20% v. 2018: 11-20%).

4.26 Eircom’s declining market share on the Candidate EAs relative to the 2018 Decision suggests (but is not determinative in itself) that it now faces greater constraints on the Candidate EAs which were either not present or less effective, at the time of the 2018 Decision. Such constraints are also consistent with the constraints it faced in the 2018 Urban WCA Market.

### Indirect constraints

4.27 As with the 2018 Urban WCA Market, by construction, the Candidate EAs form an area where Eircom faces greater direct and/or indirect constraints in its provision of WCA. Virgin Media’s network has more limited network coverage in the

<sup>65</sup> Market shares: (Eircom 31-40%), (Virgin Media 41-50%), (BT 11-20%), (Vodafone 11-20%).

<sup>66</sup> Market shares: (Eircom 41-50%), (Virgin Media 11-20%), (BT 11-20%), (Vodafone 21-30%).

<sup>67</sup> Market shares: (Eircom 61-70%), (Virgin Media 11-20%), (BT 0-10%), (Vodafone 11-20%).

<sup>68</sup> Market shares: (Eircom 71-80%), (Virgin Media 0-10%), (BT 0-10%), (Vodafone 11-20%).

<sup>69</sup> Market shares: (Eircom 31-40%), (Virgin Media 31-40%), (BT 11-20%), (Vodafone 11-20%).

Candidate EAs, and has a presence at any level at ([X ██████ X]<sup>70</sup> of the 82 Candidate EAs), but nonetheless has a sizeable retail market share at the Candidate EAs, as of Q2 2020, of [X ██████ X]<sup>71</sup> (though lower than its market share on the 2018 Urban WCA Market). Similarly, since the publication of the 2018 Decision, Vodafone has increased its retail market share at the Candidate EAs from [X ████████████████████ X],<sup>72</sup> per Table 12 above.

- 4.28 Similar to the position with respect to the 2018 Urban WCA Market, ComReg's preliminary view is that both Vodafone and Virgin Media, as vertically-integrated retail SPs, are likely to continue to provide an effective indirect constraint on Eircom supply of WCA at the Candidate EAs, due to their network coverage and retail market share. While Virgin Media's market share at the Candidate EAs is much lower than on the 2018 Urban WCA Market, its share has grown at the Candidate EAs over less than two years. This is likely (alongside other constraints) to limit Eircom's ability to act independently of competitors, customers and consumers at the Candidate EAs.

## Pricing behaviour

- 4.29 ComReg notes, that, in the (deregulated) 2018 Urban WCA Market, there are clear instances of Eircom charging higher prices for certain CG WCA services, relative to the 2018 Regional WCA Market, on which WCA prices continue to be regulated, as set out at Table 13 below.

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<sup>70</sup> 31-40% of Candidate EAs.

<sup>71</sup> 11-20%.

<sup>72</sup> From (11-20%) to (21-30%).

4.30 ComReg research, based on a review of Eircom’s Broadband Service Price List<sup>73</sup> and Commercial Interconnection Services Price List (hereafter, ‘CISPL’)<sup>74</sup> indicates that, since the 2018 Decision, Eircom appears to have charged different prices for the same WCA products, depending on whether they are provided on the 2018 Urban WCA Market, or the 2018 Regional WCA Market. In respect of **CG WCA**, depending on the associated broadband speed profile, prices for equivalent CG Bitstream products are consistently more expensive on the 2018 Urban WCA Market, and this price difference increases with speed profiles, as set out at Table 13 below. While regulated prices on the 2018 Regional WCA Market are the same for all CG speed profiles, on the 2018 Urban WCA Market, prices increase for higher CG speed profiles. However, Eircom has not increased its CG Bitstream prices since deregulation. Rather, it has continued to charge the price ceiling arising from the former regulated prices on the 2018 Urban WCA Market, while reducing prices on the 2018 Regional WCA Market, in line with its regulatory obligations.

**Table 13: Eircom CG Bitstream Prices, 2019-2020**

Bitstream Product	Date	2018 WCA Market		Difference	% difference
		Regional	Urban		
<b>Connect</b>	Publication of 2018 Decision	€9.48			
	Expiry of sunset period	€5.85			
	01/07/19 - 30/06/20	€8.95	€9.48	€0.53	6%
	01/07/20 - 30/06/21	€9.14	€9.48	€0.34	4%
<b>Expand IP</b>	Publication of 2018 Decision	€11.55			
	Expiry of sunset period	€6.75			
	01/07/19 - 30/06/20	€8.95	€11.55	€2.60	29%
	01/07/20 - 30/06/21	€9.14	€11.55	€2.41	26%
<b>Rapid IP</b>	Publication of 2018 Decision	€14.00			
	Expiry of sunset period	€7.75			
	01/07/19 - 30/06/20	€8.95	€14.00	€5.05	56%
	01/07/20 - 30/06/21	€9.14	€14.00	€4.86	53%
<b>Zoom IP</b>	Publication of 2018 Decision	€15.00			
	Expiry of sunset period	€10.95			
	01/07/19 - 30/06/20	€8.95	€15.00	€6.05	68%
	01/07/20 - 30/06/21	€9.14	€15.00	€5.86	64%

<sup>73</sup> Available online at [https://www.openeir.ie/wp-content/uploads/2020/05/Broadband-Price-List-V16\\_2-unmarked-20042020.pdf](https://www.openeir.ie/wp-content/uploads/2020/05/Broadband-Price-List-V16_2-unmarked-20042020.pdf)

<sup>74</sup> Available online at [https://www.openeir.ie/wp-content/uploads/2020/07/CISPL-V37\\_0-Unmarked-01072020.pdf](https://www.openeir.ie/wp-content/uploads/2020/07/CISPL-V37_0-Unmarked-01072020.pdf)



<b>Swift IP</b>	Publication of 2018 Decision	€16.50			
	Expiry of sunset period	€11.50			
	01/07/19 - 30/06/20	€8.95	€16.50	€7.55	84%
	01/07/20 - 30/06/21	€9.14	€16.50	€7.36	81%
<b>Sprint IP</b>	Publication of 2018 Decision	€21.50			
	Expiry of sunset period	€14.80			
	01/07/19 - 30/06/20	€8.95	€21.50	€12.55	140%
	01/07/20 - 30/06/21	€9.14	€21.50	€12.36	135%
<b>Turbo IP Plus</b>	01/07/12 - 28/02/19	€24.50			
	01/03/19 - 30/06/19	€15.80			
	01/07/19 - 30/06/20	€9.95	€24.50	€14.55	146%
	01/07/20 - 30/06/21	€9.14	€24.50	€15.36	168%

- 4.31 ComReg is of the view that this pricing behaviour is not necessarily indicative of Eircom capacity to exert market power. Rather, Eircom has an interest in moving Access Seekers from older legacy CG WCA technology to newer NG WCA, and Eircom differential pricing reflects a commercial decision to incentivise Access Seekers to move from CG WCA to NG WCA. This is supported by ComReg QKDR data, which indicate that, as of Q4 2017, 57% of WCA was delivered over CG DSL Bitstream, compared to 43% delivered over NG VDSL Bitstream. By Q2 2020, these figures had almost reversed, with 42% of WCA was delivered over CG DSL Bitstream, compared to 58% delivered over NG VDSL Bitstream.
- 4.32 ComReg also assessed Eircom pricing behaviour in respect of NG Bitstream prices on the 2018 Urban WCA Market and the 2018 Regional WCA Market. That assessment, set out at Table 14 below, indicates that, in most, but not all, cases, NG WCA is more expensive on the 2018 Regional WCA Market than on the 2018 Urban WCA Market. This suggests that NG WCA pricing behaviour is not indicative of Eircom's capacity to exert market power on the 2018 Urban WCA Market.

**Table 14: Eircom NG Bitstream Prices, 2019-2020**

NGA Bitstream Plus Product	Date	Regional	Urban	Difference	Difference as % of Regional price
<b>Standalone</b>	01/07/19 - 30/06/20	€24.68	€28.84	€4.16	17%
	01/07/20 - 30/06/21	€24.94	€28.84	€3.90	16%
<b>Standalone 150Mbps</b>	01/07/19 - 30/06/20	€29.34	€29.34	€0.00	0%
	10/07/20 - 30/06/21	€29.49	€29.49	€0.00	0%
<b>Standalone 300Mbps</b>	01/07/19 - 30/06/20	€34.34	€34.34	€0.00	0%
	10/07/20 - 31/12/20	€34.49	€29.49	-€5.00	-14%
<b>Standalone 500Mbps</b>	27/04/20 - 30/06/20	€34.34	€34.34	€0.00	0%
	01/07/20 - 30/06/21	€34.49	€29.49	-€5.00	-14%
<b>Standalone 1000Mbps</b>	01/07/19 - 31/01/20	€44.34	€44.34	€0.00	0%
	01/02/20 - 30/06/20	€39.34	€39.34	€0.00	0%
	01/07/20 - 30/06/21	€39.49	€34.49	-€5.00	-13%
<b>POTS Based</b>	01/07/19 - 30/06/20	€10.76	€13.93	€3.17	29%
	01/07/20 - 30/06/21	€11.03	€13.93	€2.90	26%
<b>POTS Based 150Mbps</b>	01/07/19 - 30/06/20	€14.93	€14.93	€0.00	0%
	10/07/20 - 30/06/21	€15.08	€15.08	€0.00	0%
<b>POTS Based 300Mbps</b>	01/07/19 - 30/06/20	€19.93	€19.93	€0.00	0%
	10/07/20 - 31/12/20	€20.08	€15.08	-€5.00	-25%
<b>POTS Based 500Mbps</b>	27/04/20 - 30/06/20	€19.93	€19.93	€0.00	0%
	10/07/20 - 30/06/21	€20.08	€15.08	-€5.00	-25%
<b>POTS Based 1000Mbps</b>	01/07/19 - 31/01/20	€29.93	€29.93	€0.00	0%
	01/02/20 - 30/06/20	€24.93	€24.93	€0.00	0%
	10/07/20 - 30/06/21	€25.08	€20.08	€0.80	3%

4.33 Accordingly, data available to ComReg suggest that Eircom exhibits differences in pricing behaviour on the 2018 WCA FACO Market and the 2018 Regional WCA Market. ComReg is of the preliminary view that these price differences reflect the presence of competitive constraints in the provision of NG Bitstream on the Urban FACO Market, and reflect Eircom’s strategic intent to move Access Seekers from WCA delivered over CG technology, to WCA delivered over NG technology, in the case of the provision of CG Bitstream.

## Potential competition

4.34 In assessing potential competition, ComReg considers two sub-headings, set out below. ComReg is of the view that the conclusions in respect of potential competition on the 2018 Urban WCA Market apply equally to the Candidate EAs.

## Barriers to entry and expansion

- 4.35 In assessing barriers to entry and expansion, ComReg considered various factors:
- (a) Size of the undertaking and control of infrastructure not easily replicated;
  - (b) Sunk costs;
  - (c) Economies of scale, economies of scope and economies of density; and
  - (d) Vertical integration.
- 4.36 In respect of factor **(a)**, ComReg considers that the conclusions set out in the 2018 Decision in respect of the Urban WCA Market apply equally to the Candidate EAs. Given network rollout EAs by SIRO, Virgin Media, and Vodafone, several SPs have, despite Eircom’s overall size and its control of infrastructure, to a sufficiently reasonable degree, overcome barriers to entry. On a forward-looking basis, this should enable them to compete with Eircom and each other, absent regulation.
- 4.37 In respect of factor **(b)**, ComReg considers that market dynamics since the publication of the 2018 Decision indicate that sunk costs are not significant barriers to entry to the Candidate EAs, including having regard to the availability of upstream WLA services. Therefore, the conclusions in the 2018 Decision in respect of the Urban WCA Market apply equally to the Candidate EAs.
- 4.38 ComReg considers that entry by POs to the Candidate EAs provides evidence that sunk costs do not seem to be a sufficient factor to undermine entry and/or expansion in the Candidate EAs, as set out at Table 15 below.

**Table 15: PO entry to the Candidate EAs, as of Q2 2020 [X REDACTED X]**

PO	Candidate EA presence	% of Candidate EAs	Average coverage at Candidate EAs
<b>Eircom</b>	[X ■	■	■
<b>SIRO</b>	■	■	■
<b>BT</b>	■	■	■
<b>Virgin Media</b>	■	■	■
<b>Vodafone</b>	■	■	■ X]

- 4.39 In respect of factor **(c)**, ComReg considers that the conclusions set out in the 2018 Decision in respect of the Urban WCA Market apply with equal validity to the Candidate EAs. A number of SPs have made network investments at the Candidate EAs to take advantage of the higher premises density (3,208 premises per EA, on average) of potential customers, compared to the Revised Regional WCA Market (935 premises per EA, on average). The Candidate EAs potentially make network rollout easier and more cost effective, as cable (whether copper, fibre or CATV) lengths are shorter between premises to be served and the risks of non-recovery of costs are lower.

- 4.40 The assessment of economies of scale, scope and density suggests that they do not amount to sufficiently effective barriers to entry and/or expansion within the Candidate EAs.
- 4.41 In respect of factor **(d)**, ComReg considers that the conclusions set out in the 2018 Decision in respect of the Urban WCA Market – that vertical integration is not, on its own, likely to generate an effective barrier to entry or expansion - apply with equal validity to the Candidate EAs.
- 4.42 In the Candidate EAs, Eircom may, in the presence of WLA regulation and competition from independent networks and SPs using WLA inputs, face lower incentives to behave, to an appreciable extent, independently of its competitors, customers and consumers. Insofar as indirect constraints are concerned, rather than losing one of its own retail customers to another independent network (and the entire loss of profitability from that customer), it may face some incentive to provide wholesale services to SPs (as, in doing so, it retains profit from wholesale sales).

### Strength of potential competitors

- 4.43 In considering the strength of potential competitors, ComReg assessed:
- (a) Building an independent network to offer WCA, including the use of upstream WLA inputs to do so;
  - (b) Adapting existing network to provide WCA.
- 4.44 In respect of option (a), it is ComReg’s preliminary view that the analysis set out in the 2018 Decision – that potential competition arising from building an independent network is unlikely - continues to be valid in respect of the Candidate EAs. In this respect, ComReg notes that NBI rollout will amount to building an independent network. However, while there is likely to be substantial overlap between the Intervention Area and the Candidate EAs as its network is rolled out – NBI will have at least some presence in [ X █████ X]<sup>75</sup> of the 82 Candidate EAs – it will only have commenced rollout at [ X █████ X]<sup>76</sup> of these EAs by the end of the second full year of rollout. It also remains to be seen what the competitive impact of such network rollout will be. Accordingly, NBI network rollout is unlikely to generate an effective competitive constraint arising from potential competition over the remaining lifetime of this market review period. ComReg recognises that this may change over a longer time horizon.

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<sup>75</sup> 91-100%.

<sup>76</sup> 41-50%.

4.45 Similarly, in respect of option (b), it is ComReg's preliminary view that the analysis set out in the 2018 Decision continues to be valid in respect of the Candidate EAs, as no analytical factors are substantially different. Specifically, Virgin Media and Vodafone are unlikely to adapt existing networks to offer WCA on the 2018 Urban WCA Market, but the hypothetical supply by SIRO in the WCA market on the basis of supply-side substitution does allow for the possibility of SIRO adapting an existing network to compete in the WCA Markets.

## Countervailing Buyer Power ('CBP')

4.46 In assessing CBP at the Candidates EAs, ComReg, following the analytical approach at paragraphs 10.25 to 10.34 of the 2018 Decision, considers:

- (a) Size of buyer and relative importance to the seller;
- (b) Credible alternative sources of supply; and
- (c) Evidence of bargaining power from negotiations.

4.47 In respect of factor **(a)**, Eircom's retail business is the largest purchaser of WCA at the Candidate EAs. Given similarities in PO purchasing patterns on the Candidate EAs, as of Q2 2020, and the 2018 Urban WCA Market, ComReg has no clear grounds to alter the finding in the 2018 Decision that the relative size of purchasers did not suggest that they would have sufficiently strengthened bargaining position regarding price or other terms of supply.

4.48 As set out at Table 16 below, while Eircom retail's share of WCA purchases is lower in the Candidate EAs compared to the 2018 Urban WCA Market, those purchases still account for over half of all WCA purchases, and are almost three times larger than purchases made by the single largest merchant market purchaser.

**Table 16: Share of WCA Purchases from Eircom, Urban WCA Market Q4 2017 and Candidate EAs, Q2 2020 [X REDACTED X]**

WCA Purchaser	Candidate EAs, Q2 2020			2018 Urban WCA		
	Copper	FTTx	Total	Copper	FTTx	Total
<b>Eircom - Self Supply</b> <sup>77</sup>	█	█	█	█	█	█
<b>Merchant Market Supply:</b> <sup>78</sup>	█	█	█	█	█	█
– <b>Vodafone</b> <sup>79</sup>	█	█	█	█	█	█
– <b>BT</b> <sup>80</sup>	█	█	█	█	█	█
– <b>Digiweb</b> <sup>81</sup>	█	█	█	█	█	█
– <b>Imagine</b> <sup>82</sup>	█	█	█	█	█	█
– <b>Magnet</b> <sup>83</sup>	█	█	█	█	█	█
– <b>Others</b> <sup>84</sup>	█	█	█	█	█	█

4.49 In respect of factor **(b)**, on the Candidate EAs, ComReg consider that the conclusions set out in the 2018 Decision remain valid. By the nature of its construct, the Candidate EAs form an area where Eircom faces greater competition from credible alternative sources of WCA supply such as BT, as well as ANOs capable of supplying WCA such as SIRO, and also indirectly from Virgin Media and Vodafone.

4.50 In this regard, of the 82 Candidate EAs, POs are present at the following EAs:

- (a) **Eircom** – present at [X █ X] Candidate EAs;
- (b) **BT** – present at [X █ X] Candidate EAs;
- (c) **Virgin Media** – present at [X █ X] Candidate EAs;
- (d) **Vodafone** – present at [X █ X] Candidate EAs; and
- (e) **SIRO** – present at [X █ X] Candidate EAs.

4.51 In respect of factor **(c)**, ComReg consider that the conclusions set out in the 2018 Decision remain valid. CBP on the Candidate EAs is unlikely to be sufficient, on its own, to act as an effective competitive constraint on Eircom’s provision of WCA.

<sup>77</sup> As of Q2, 2020, 0-10%% of Copper WCA, 41-50% of FTTx WCA, and 51-60% of Total WCA.

<sup>78</sup> As of Q2, 2020, 11-20% of Copper WCA, 31-40% of FTTx WCA, and 41-50% of Total WCA.

<sup>79</sup> As of Q2, 2020, 0-10% of Copper WCA, 11-2% of FTTx WCA, and 11-20% of Total WCA.

<sup>80</sup> As of Q2, 2020, 0-10% of Copper WCA, 11-20% of FTTx WCA, and 11-20% of Total WCA.

<sup>81</sup> As of Q2, 2020, 0-10% of Copper WCA, FTTx WCA, and Total WCA.

<sup>82</sup> As of Q2, 2020, 0-10% of Copper WCA, FTTx WCA, and Total WCA.

<sup>83</sup> As of Q2, 2020, 0-10% of Copper WCA, FTTx WCA, and Total WCA.

<sup>84</sup> As of Q2, 2020, 0-10% of Copper WCA, FTTx WCA, and Total WCA.

## Candidate EAs competition assessment findings

- 4.52 In this Section, ComReg has assessed whether competition at the Candidate EAs are the same as, or sufficiently similar to, competition in the EAs constituting the de-regulated 2018 Urban WCA Market, thereby confirming that it is appropriate to incorporate the 82 Candidate EAs into the Revised Urban WCA Market.
- 4.53 Having considered the competition assessment approach applied in the 2018 Decision, ComReg's preliminary view, subject to consultation, is that competitive conditions at the Candidate EAs are the same as, or sufficiently similar to, competitive conditions on the 2018 Urban WCA Market, as set out in the 2018 Decision. Competition is accordingly likely to be effective on the Candidate EAs.
- 4.54 ComReg concludes on a preliminary basis that competition is likely to be effective at the Candidate EAs, and that they therefore benefit from the findings in respect of the 2018 Urban WCA Market set out in the 2018 Decision. The Candidate EAs should be included in the Revised Urban WCA Market.

## Revised Regional WCA Market

- 4.55 The competition assessment in respect of the 2018 Regional WCA Market set out in the 2018 Decision remains valid. ComReg bases this preliminary conclusion on the fact that those EAs forming part of the 2018 Regional WCA Market which now exhibiting signs of effective competition (the Candidate EAs) have been transferred to the Revised Urban WCA Market.
- 4.56 It follows that the competition assessment set out in the 2018 Decision remains valid, although those EAs now form part of a slightly smaller Revised Regional WCA Market. The designation of Eircom with SMP at those EAs constituting the 2018 Regional WCA Market in the 2018 Decision should be retained at those EAs now constituting the Revised Regional WCA Market.

**Q. 2. Do you agree with ComReg's competition analysis of the Candidate EAs and ComReg's preliminary finding that they are similar to the conditions of competition in the 2018 Urban WCA Market? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

# 5 Withdrawal of Obligations at the Candidate EAs

## Overview

- 5.1 In cases where Eircom has previously been designated with SMP on a relevant market and accordingly been subject to regulatory obligations, ComReg notes that Regulation 27(2) of the Framework Regulations allows it to give reasonable notice to any parties which it considers to be affected by a withdrawal of such obligations.
- 5.2 ComReg proposes to withdraw existing regulatory obligations as they currently apply in the Candidate EAs, given its preliminary finding that competition in those EAs is effective and that they fall into the Revised Urban WCA Market. In this respect, ComReg proposes that existing obligations, other than those as set out below, would be withdrawn on the date at which ComReg makes its final decision.

## Sunset Period

- 5.3 ComReg determined, at paragraph 13.47 of the 2018 Decision, that, to facilitate an orderly transition to de-regulation of the 2018 Urban WCA Market, a six month sunset period was appropriate, starting from the effective date of this Decision. As set out at paragraph 9.257 of the 2018 Decision, ComReg confirmed that where the MTA leads to the withdrawal of regulation at EAs, the sunset period similarly applies. During this six month sunset period, as further set out at Section 13 of the 2018 Decision, access to existing WCA services would continue to be maintained at prevailing prices. At the end of this six month sunset period, these obligations would be withdrawn.
- 5.4 ComReg will therefore apply the six month sunset period, as detailed at paragraph 13.47 of the 2018 Decision, at the Candidate EAs which ComReg proposes will now form part of the Revised Urban WCA Market (insofar as they apply to those SPs that are currently supplied with WCA inputs by Eircom).
- 5.5 However, all other existing obligations imposed under the 2018 Decision would be withdrawn at the date of ComReg's decision.

**Q. 3. Do you agree with the above proposals to maintain requirements upon Eircom to continue to provide existing access at prevailing prices during a six month sunset period? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**



## 6 Regulatory Impact Assessment

- 6.1 A Regulatory Impact Assessment (hereafter, 'RIA') is a detailed consideration of the likely effect of proposed new regulation, or changes to existing regulation. A RIA seeks to establish if such proposals are necessary and, in doing so, identifies any possible effects which might result from their implementation.
- 6.2 Where necessary, a RIA identifies alternative regulatory options and, ultimately, establishes whether a proposed regulation is likely to have the desired impact. It is a structured approach to the development of policy, and analyses the impact of the proposed regulation, and other regulatory options, on stakeholders. Appropriate use of a RIA ensures that the most effective regulatory option is identified.
- 6.3 The ultimate aim of conducting a RIA of proposed regulation is to ensure that the regulatory measures which are implemented are appropriate, proportionate and justified.
- 6.4 ComReg notes that a RIA was conducted in the 2018 Decision in respect of the analysis of the 2018 Relevant WCA Markets. This Consultation proposes to:
  - (a) Transfer the Candidate EAs from the Revised Regional WCA Market to the Revised Urban WCA Market;
  - (b) Make a finding that no undertaking has SMP in the Revised Urban WCA Market; and
  - (c) As a consequence, remove all regulatory remedies imposed by means of the 2018 Decision at those EAs, subject to a six month sunset period.
- 6.5 ComReg's preliminary view is that these changes do not involve any significant impacts that would lead to a different conclusion in relation to the appropriateness of removing remedies at those EAs, compared to the position set out in the 2018 Decision in respect of the EAs constituting the 2018 Urban WCA Market.
- 6.6 With regard to the proposals in respect of the Candidate EAs, as explained in this Consultation, ComReg's preliminary view is that conditions of competition at the Candidate EAs are similar to conditions of competition in EAs constituting the 2018 Urban WCA Market, in respect of which ComReg made no finding of SMP. Accordingly, ComReg proposes to transfer the Candidate EAs to the Revised Urban WCA Market. Accordingly, it is ComReg's preliminary view that the RIA conducted for the purposes of the 2018 Decision is equally valid in the context of this MTA.
- 6.7 A finding that there is insufficient evidence of SMP at the Revised Urban WCA Market – which consists of the 2018 Urban WCA Market, together with the Candidate EAs, implies that the Candidate EAs are no longer susceptible to *ex ante* regulation and, therefore, regulation is no longer warranted on that market.

- 6.8 In the absence of a finding of SMP at a duly-defined market, ComReg is not entitled to impose any SMP regulatory obligations on that market. Therefore, ComReg's options in respect of the Revised Urban WCA Market are limited to the timing of the withdrawal of existing obligations. ComReg has set out its views in respect of the sunset period at Section 13 of the 2018 Decision, and at Section 5 above.
- 6.9 In respect of the Revised Regional WCA Market, on which ComReg proposes to continue to retain the SMP designation imposed on Eircom by means of the 2018 Decision, the RIA set out in the 2018 Decision continues to apply.

**Q. 4. Do you agree with ComReg's preliminary conclusions on the Regulatory Impact Assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your position.**

## 7 Next Steps

- 7.1 As set out at paragraphs 2.24 to 2.29 above, ComReg proposes that the consultation period will run to 1700 on 15 January 2021, providing an 8 week consultation period, and respondents should ensure that any submissions are provided within this period. ComReg encourages interested parties to comment on the issues set out in this Consultation.
- 7.2 ComReg will then notify these final draft measures to the EC, other NRAs and BEREC, pursuant to Regulation 13 of the Framework Regulations. Taking utmost account of any comments received from the EC, as well as from the other aforementioned parties, ComReg will then seek to adopt and publish the final decision in its subsequent Response to Consultation and Decision.

# Annex: 1 Draft Decision Instrument

## 1 STATUTORY POWERS GIVING RISE TO THIS DECISION INSTRUMENT

- 1.1 This Decision Instrument (“Decision Instrument”) is made by the Commission for Communications Regulation (“ComReg”) and relates to the market for wholesale central access provided at a fixed location as identified by the European Commission in the 2014 Recommendation and analysed by ComReg in ComReg Decision D10/18 and ComReg Decision D[•/•].
- 1.2 This Decision Instrument is made:
- (i) Pursuant to and having regard to Sections 10 and 12 of the Communications Regulation Act 2002 (as amended); Regulation 6(1) of the Access Regulations and Regulation 16 of the Framework Regulations;
  - (ii) Having taken the utmost account of the 2014 Recommendation, the Explanatory Note and the SMP Guidelines;
  - (iii) Having complied with Ministerial Policy Directions, where applicable pursuant to Section 13 of the Communications Regulation Act 2002 (as amended);
  - (iv) Having consulted with the Competition and Consumer Protection Commission, pursuant to Regulation 27 of the Framework Regulations;
  - (v) 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 pursuant to Regulation 13 and Regulation 14 of the Framework Regulations and having taken utmost account of any comments made by these parties;
  - (vi) Pursuant to Regulations 25, 26 and 27 of the Framework Regulations and Regulations 8 and 18 of the Access Regulations; and
  - (vii) Having regard to the analysis and reasoning set out in ComReg Decisions D10/18 and D[•/•].
- 1.3 The provisions of ComReg Decision D[•/•] and ComReg Decision D10/18 shall, where appropriate, be construed consistently with this Decision Instrument. For the avoidance of doubt, however, to the extent that there is any conflict between a decision instrument dated prior to the Effective Date (as defined in Section 8 of this Decision Instrument) and this Decision Instrument, this Decision Instrument shall prevail.

## **PART I - GENERAL PROVISIONS (SECTIONS 2 TO 4 OF THE DECISION INSTRUMENT)**

### **2 DEFINITIONS**

2.1 In this Decision Instrument, capitalised terms used and not defined herein are as defined in the WCA Decision Instrument:

**“Decision Instrument”** means this decision instrument which is made pursuant to *inter alia* Regulations 8 and 18 of the Access Regulations;

**“Effective Date”** means the date set out in Section 8 of this Decision Instrument;

**“WCA Decision Instrument”** means the decision instrument at Appendix 21 of ComReg Decision D10/18.

### **3 SCOPE AND APPLICATION**

3.1 This Decision Instrument is binding upon Eircom and Eircom shall comply with it in all respects.

3.2 This Decision Instrument applies to Eircom in respect of activities falling within the scope of the Relevant Markets as defined in Section 4.2 of the WCA Decision Instrument as amended by this Decision Instrument.

3.3 This Decision Instrument withdraws certain obligations previously imposed upon Eircom, as more particularly set out in Sections 5 and 6 of this Decision Instrument.

### **4 MODIFICATIONS TO THE WCA DECISION INSTRUMENT**

4.1 This Decision Instrument relates to the market for Wholesale Central Access provided at a fixed location, as identified in the 2014 Recommendation and as analysed by ComReg in ComReg Decision D10/18.

4.2 For the reasons set out in ComReg Decision D[•/•], Section 4.2 of the WCA Decision Instrument, which reads as follows:

*“Pursuant to Regulation 26 of the Framework Regulations and in accordance with the 2014 Recommendation, the Explanatory Note and taking the utmost account of the SMP Guidelines, in accordance with the principles of competition law, the Relevant Markets defined in this Decision Instrument are:-*

- (i) the wholesale market for central access in urban areas as more particularly defined in accordance with the criteria set out in Section 9 of ComReg Decision D10/18 and includes those Exchange Areas as listed in Appendix: 11 of ComReg Decision D10/18 which is referred to in this Decision Instrument as the Urban Wholesale Central Access market or the ‘Urban WCA Market’;*

- (ii) *the wholesale market for central access in regional areas as more particularly defined in accordance with the criteria set out in Section 9 of ComReg Decision D10/18 and includes those Exchange Areas as listed in Appendix: 11 of ComReg Decision D10/18 which is referred to in this Decision Instrument as the Regional Wholesale Central Access market or the ‘Regional WCA Market’;*”

shall be deleted and replaced with the following:

*"Pursuant to Regulation 26 of the Framework Regulations and in accordance with the 2014 Recommendation, the Explanatory Note and taking the utmost account of the SMP Guidelines, in accordance with the principles of competition law, the Relevant Markets defined in this Decision Instrument are:-*

- (i) *the wholesale market for central access in urban areas as more particularly defined in accordance with the criteria set out in Section 9 of ComReg Decision D10/18 and includes those Exchange Areas as listed in [A.3.3 of Annex 3] of ComReg Decision D[•/•] which is referred to in this Decision Instrument as the Urban Wholesale Central Access market or the ‘Urban WCA Market’;*
- (ii) *the wholesale market for central access in regional areas as more particularly defined in accordance with the criteria set out in Section 9 of ComReg Decision D10/18 and includes those Exchange Areas as listed in [A.3.4 of Annex 3] of ComReg Decision D[•/•] which is referred to in this Decision Instrument as the Regional Wholesale Central Access market or the ‘Regional WCA Market’;*”

4.3 The definition of “Eircom” in the WCA Decision Instrument, which reads as follows:

*““**Eircom**” means Eircom Limited, and its subsidiaries and any related companies, and any Undertaking which it owns or controls, and any Undertaking which owns or controls Eircom Limited, and its successors and assigns. For the purpose of this Decision Instrument, the terms “subsidiary” and “related company” shall have the meaning ascribed to them in the Companies Act 2014;”*

shall be deleted and replaced with the following:

*““**Eircom**” means Eircom Limited, a company incorporated in Jersey (Number 116389), registered as a Branch in Ireland (Number 907674), with an Irish registered Branch Office at 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03, and its subsidiaries and any related companies, and any Undertaking which it owns or controls, and any Undertaking which owns or controls Eircom Limited, and its successors and assigns. For the purpose of this Decision*

*Instrument, the terms “subsidiary” and “related company” shall have the meaning ascribed to them in the Companies Act 2014;”*

- 4.4 For the avoidance of doubt, the WCA Decision Instrument (as amended by this Decision Instrument) remains in full force and effect unless and until it is otherwise amended, revoked or replaced.

## **PART II – WITHDRAWAL OF SMP OBLIGATIONS**

### **5 WITHDRAWAL OF SMP OBLIGATIONS**

- 5.1 ComReg hereby withdraws existing regulatory obligations at the Exchange Areas listed in [A.3.2 of Annex 3] of ComReg Decision D[•/•]. Subject to clause 7.3 below, the obligations are withdrawn on the Effective Date.

## **PART III - OPERATION AND EFFECTIVE DATE**

### **6 STATUTORY POWERS NOT AFFECTED**

- 6.1 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).

### **7 MAINTENANCE OF OBLIGATIONS**

- 7.1 Unless expressly stated otherwise in this Decision Instrument, all obligations and requirements contained in Decision Notices and Directions made by ComReg, applying to Eircom, and in force immediately prior to the Effective Date of this Decision Instrument, continue in force and Eircom shall comply with the same.
- 7.2 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.
- 7.3 Pursuant to Regulation 18 of the Access Regulations and Regulation 27(3) of the Framework Regulations, an appropriate notice period of six (6) months from the Effective Date shall be provided to affected parties and during that period Eircom shall continue to provide access to Current and Next Generation Bitstream in the Exchange Areas listed at [A3.2 of Annex 3] of ComReg Decision D[•/•] at prices consistent with the current draft of the WBARO.

**8 EFFECTIVE DATE**

- 8.1 The Effective Date of this Decision Instrument shall be the date of its notification to Eircom and it shall remain in force until further notice by ComReg.

**ROBERT MOURIK**

**COMMISSIONER**

**THE COMMISSION FOR COMMUNICATIONS REGULATION**

**THE XX DAY OF XXXX**



# Annex: 2 WCA Geographic Market Assessment under Step 2

## Introduction

A 2.1 In the 2018 Decision, ComReg outlined its approach to the market definition process in respect of the Relevant WCA Geographic Markets, applying two assessments, designated for convenience at Section 3 above as Step 1 and Step 2.<sup>85</sup> Step 2 applied a set of five quantitative geographic Criteria (hereafter, the ‘Criteria’), using data obtained from SPs, as set out at Table 1 above, and derived five geographic assessment criteria based on following indicators:

- (a) Geographic differences in entry conditions over time;
- (b) Variation in the number and size of potential competitors;
- (c) Distribution of market shares; and
- (d) Evidence of differentiated pricing or marketing strategies.

A 2.2 This Annex updates Step 2 using the geographic Criteria set out in the Decision, and is structured as follows:

- (a) Framework for Step 2 (paragraphs A 2.3 to A 2.32);
- (b) Step 2 analysis of differences in competitive conditions (paragraphs A 2.33 to A 2.42); and
- (c) Overall Conclusions on Step 2 (paragraphs A 2.43 to A 2.44).

## Framework for Step 2

A 2.3 ComReg applies its geographic assessment criteria at the level of the EA. ComReg considers that the EA is the most suitable unit of assessment for the reasons set out at paragraphs A10.7 to A10.29 of the 2018 Decision. The framework for assessing the boundaries of these markets follows these steps:

- (a) **Establishing Criteria for assessing competitive conditions:** ComReg sets out a number of Criteria for assessing competitive conditions in the appropriate geographic areas (see paragraphs A 2.5 to A 2.27 below).
- (b) **Analysis of Criteria:** ComReg examines factors inputting to the Criteria, which assist in distinguishing geographic areas marked by different conditions of competition (see paragraphs A 2.28 to A 2.42 below).

A 2.4 The rationale for the selection of this assessment framework is discussed below.

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<sup>85</sup> See paragraphs 3.5 to 3.11 above.

## Establishing Criteria for assessing competitive conditions

A 2.5 In the Decision, ComReg set out a range of cumulative Criteria which it used to determine the competitive conditions which characterised EAs.

### **Minimum Number of POs**

A 2.6 As noted above, SPs have unbundled a number of Eircom EAs to provide retail and/or wholesale services by means of LLU, Line Share, and VUA. A number of these SPs are relatively small in terms of their subscriber base and coverage, and do not supply wholesale access products.<sup>86</sup>

A 2.7 In some cases, these smaller SPs only provide services in limited geographic areas. Such SPs are unlikely to cause an appreciable impact on competitive conditions between EAs.

A 2.8 In carrying out this assessment of the WCA geographic markets, ComReg intends to only include those SPs that have a sufficiently significant presence on the Revised Relevant WCA Markets (either directly as a demand or supply-side substitute, or in posing an effective indirect constraint). ComReg's position is that only SPs having a reasonably-sized national (or regional) market share are capable of causing an appreciable impact on competitive conditions between EAs. ComReg designates such SPs as '**Primary Operators**', or '**POs**'. ComReg's assessment is forward-looking, and it has also taken into consideration the planned network presence and rollout plans of POs. Accordingly, ComReg limits its assessment of competition in EAs to those POs that can operate in the Revised Relevant WCA Markets absent regulation, and that have a sizable national (or regional) presence.

A 2.9 Having regard to the consideration of the above criteria, ComReg designated the following SPs as POs in the 2018 Decision:

- (a) BT;
- (b) Eircom;
- (c) SIRO;
- (d) Virgin Media; and
- (e) Vodafone.

A 2.10 Each of these POs is present on a network that is capable (or that ComReg considers is prospectively capable within a reasonable timeframe and without incurring significant sunk costs) of providing WCA and/or retail broadband services using its own network inputs, or inputs procured via the Relevant WLA Market.

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<sup>86</sup> Colt and Magnet purchase LLU and/or Line Share from Eircom in the Relevant WLA Market. Each of these SPs has unbundled a small number of exchanges and does not supply wholesale broadband (or other) access products.

A 2.11 ComReg indicated in the 2018 Decision that it recognised that, over the period of the current market review, additional SPs could potentially fulfil the conditions for being designated as a PO. To this end, ComReg, as part of this Mid-term Assessment, has considered whether it is appropriate to designate any additional POs and, as set out at paragraphs 3.12 to 3.31 above, has concluded on a preliminary basis that there are insufficient grounds to justify designating additional POs, having regard to the conditions for designation set out at Table 4 above.

### **Conclusion on Primary Operators**

A 2.12 Having regard to the above analysis, ComReg’s position is that only those SPs who are likely to have a reasonably-sized market share are capable of exerting an effective competitive constraint on other competitors. Such SPs, described as Primary Operators, are those listed at paragraph A 2.9 above.

## **Interpreting the Cumulative Criteria**

A 2.13 It is important to note that Criteria 4A and 4B are only to be applied where an ANO is present. Where no ANO is present, the analysis proceeds on the basis of Criteria 1, 2, 3 and 5(i). Similarly, Criterion 3 is only to be applied where a PO making use of WLA inputs is present. Where no such PO is present, the analysis proceeds on the basis of Criteria 1, 2, 4A, 4B, and 5.

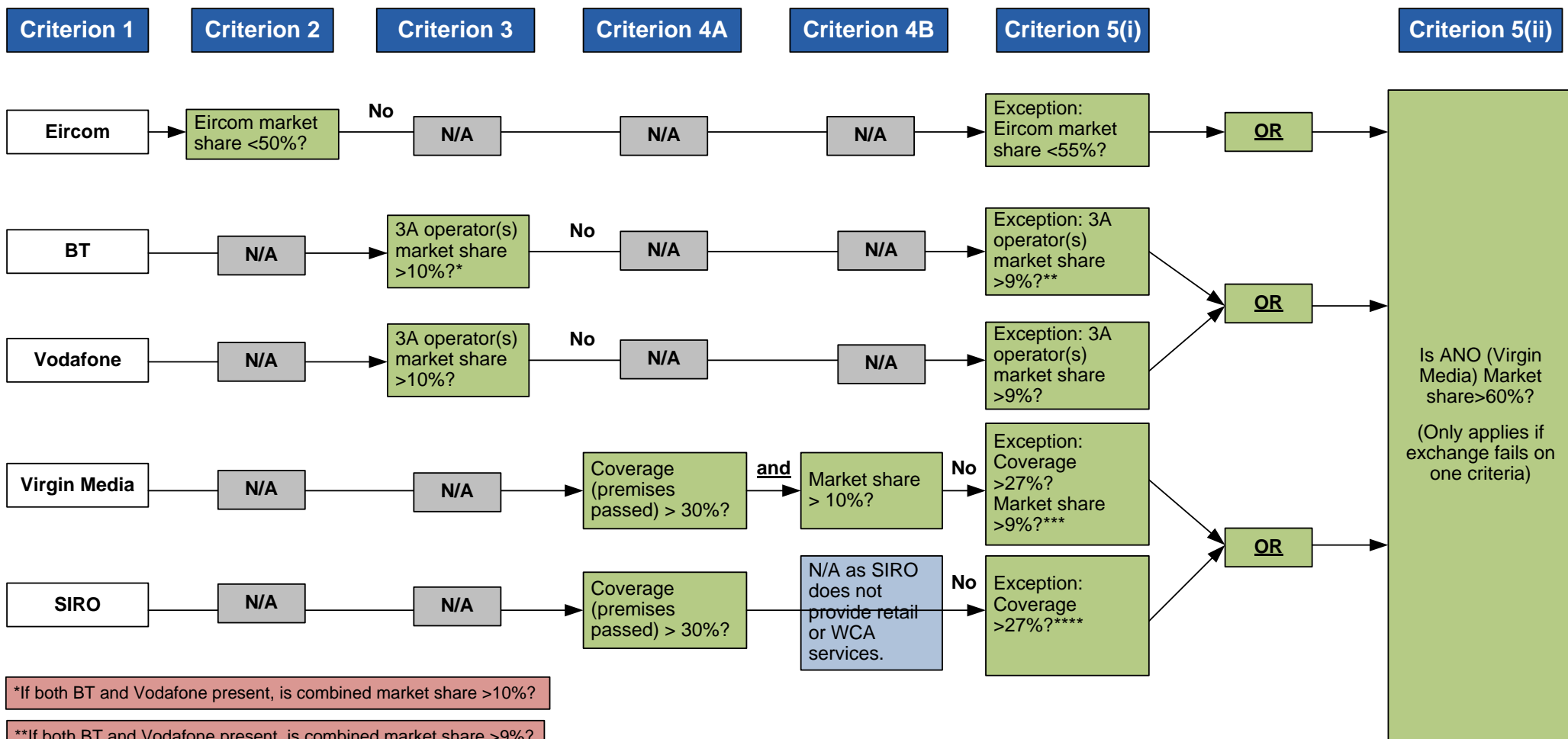
A 2.14 Thus, all five (1 to 4B) cumulative criteria only apply in circumstances where at least one ANO and at least one PO making use of WLA inputs are present at the EA. Figure A2.1 below gives an overview of how the cumulative criteria are applied.

A 2.15 As ComReg has identified five POs, the Criteria to be applied at an EA will vary depending on whether a PO making use of WLA inputs is present (BT or Vodafone, in which case Criterion 3 is applied) or whether they are ANOs (Virgin Media and SIRO, in which Criteria 4A and 4B,<sup>87</sup> and – if necessary – 5(ii) are applied).

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<sup>87</sup> As set out at paragraph A 2.24 below, Criterion 4B currently only applies to Virgin Media, although this could alter if another ANO commenced provision of retail broadband, or of WCA services.

Figure A2.1: Application of Cumulative Criteria



\*If both BT and Vodafone present, is combined market share >10%?

\*\*If both BT and Vodafone present, is combined market share >9%?

\*\*\*If both Virgin Media and SIRO present, at least one must meet >10% market share and >30% coverage.

\*\*\*\*If more than 3 Primary Operators present at Exchange Area, a subset of them must meet the criteria above.

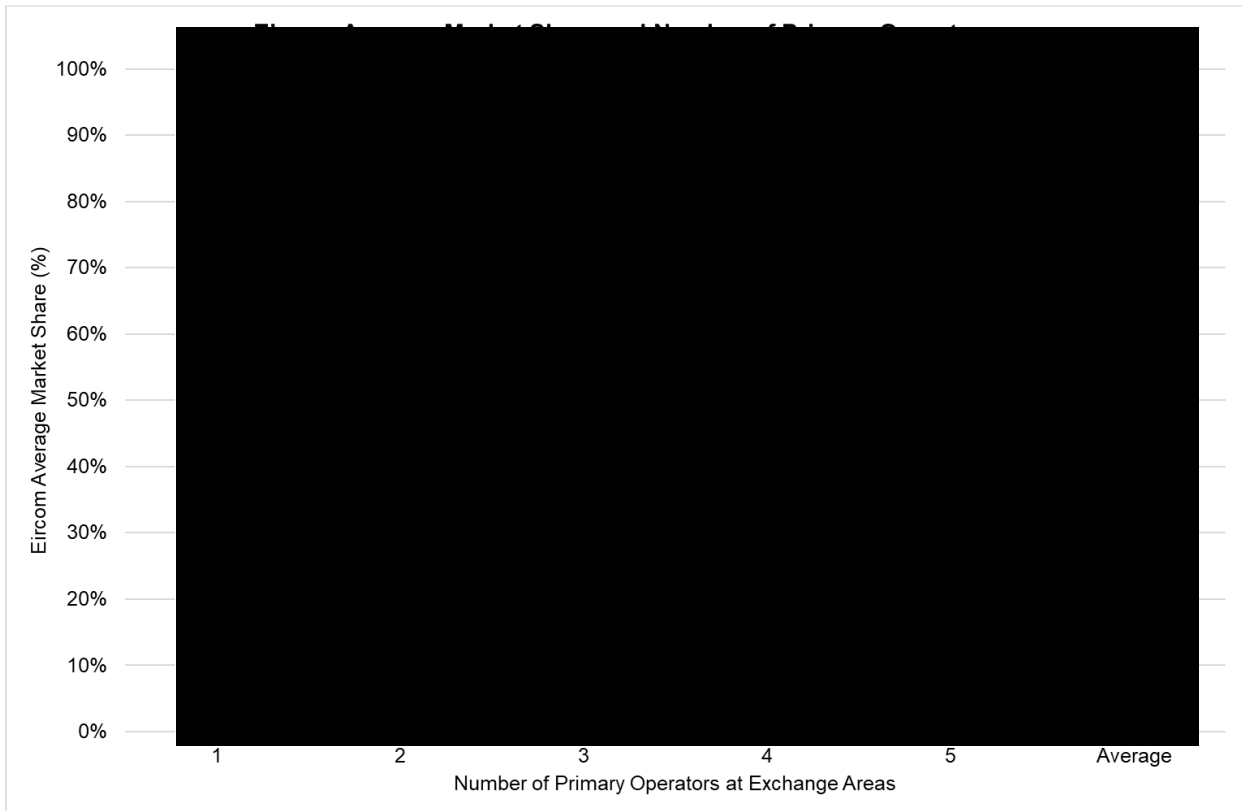
- A 2.16 Criterion 1 establishes the number of POs present at any given EA (noting that, to meet the Criterion, a minimum of three POs must be present).
- A 2.17 As Eircom is present at all 1,203 EAs, Criterion 2 (and the exception to Criterion 2 under Criterion 5(i)) applies only to Eircom. Criterion 2 is met if Eircom's market share at the EA is less than 50%. Where the EA has passed all other relevant Criteria, an exception is made if Eircom's market share is between 50% and 55%.
- A 2.18 Criterion 3 applies to POs using (LLU or VUA) inputs purchased in the Relevant WLA Market. If one of BT or Vodafone is present at an EA, ComReg examines whether its market share is greater than 10%; if both BT and Vodafone are present at the EA, ComReg assesses whether their combined market share is greater than 10%. If either of these conditions are met, the EA is considered to meet Criterion 3.
- A 2.19 Criterion 3 applies to a PO providing retail broadband services to End Users using inputs from the WLA Market. For the avoidance of doubt, this definition includes POs which provide retail broadband services either:
- (a) Directly to End Users; and/or
  - (b) Indirectly to End Users via a WLA-based WCA service that is sold to other retail SPs.
- A 2.20 This implies that BT, which sells a WCA-based Bitstream service to Sky and Vodafone using WLA inputs falls to be assessed under Criterion 3.
- A 2.21 ComReg notes that, in calculating market shares (absent regulation), the total market comprises all Eircom self-supply (i.e. Eircom retail subscribers), Eircom Wholesale (WLA and WCA), Vodafone's total subscriptions, BT's total subscriptions, Virgin Media total subscriptions and SIRO subscriptions.
- (a) Eircom market share (absent regulation) – total Eircom self-supply (i.e. Eircom retail subscribers) plus Eircom Wholesale (excluding WLA to BT and Vodafone, and WCA that BT/Vodafone can be converted to WLA where applicable);
  - (b) BT market share – total BT purchases of WLA plus purchases of WCA that can be converted to WLA where BT has a WLA presence at an exchange area (i.e. LLU for CG Bitstream or VUA for NG Bitstream);
  - (c) Vodafone market share - total Vodafone purchases of WLA plus purchases of WCA that can be converted to WLA where Vodafone has a WLA presence at an exchange area (i.e. VUA for NG Bitstream);
  - (d) Virgin Media market share – total active subscriptions provided over Virgin Media's network;
  - (e) SIRO market share – total active subscriptions provided over SIRO's network.

- A 2.22 ComReg notes that, in calculating market shares, it must take care to avoid instances of double-counting, and therefore applies the designation principles set out at paragraphs 9.329 to 9.331 of the 2018 Decision. Thus, since SIRO is included on the 2018 Relevant WCA Markets by virtue of its position as a credible hypothetical supply-side substitute, its WLA sales to Vodafone are assigned to Vodafone, which is included on the 2018 Relevant WCA Markets by virtue of the indirect constraint it generates from the retail level. Should SIRO actually commence offering WCA, then such services would be assigned to SIRO for market share calculation purposes.
- A 2.23 Criteria 4A and 4B apply only to ANOs (Virgin Media and SIRO). Criterion 4A considers whether, at a given EA, Virgin Media or SIRO have total coverage (in terms of premises passed) of more than 30%. This is computed by taking the total number of premises passed by such networks in that EA as a proportion of the total number of premises (residential and business) in that EA. Where both Virgin Media and SIRO are present at an EA, it will suffice if just one of their individual network coverages exceeds 30%.
- A 2.24 Criterion 4B considers whether the ANO has a market share of more than 10% in that EA. Currently, this criterion only applies to Virgin Media, which offers a retail broadband service. It does not apply to SIRO, which is active on the Relevant WLA Market, but does not offer WCA or retail broadband services. However, were SIRO to commence providing either a WCA or a retail broadband service, where both Virgin Media and SIRO are present at an EA, it would suffice if the sum of their individual market shares exceeds 10%.
- A 2.25 For an ANO to be considered a sufficient competitive constraint at the EA, it must meet both Criteria 4A and 4B (in the case of Virgin Media) or Criterion 4A (in the case of SIRO).
- A 2.26 Criterion 5 includes a number of exceptions which are considered only if an EA fails one of Criteria 2 to 4B. For example, if an EA fails Criterion 2, the EA may nevertheless pass, if it is eligible for exemption under either of the stipulations set out at Criterion 5.
- A 2.27 As noted above, if, under Criterion 2, Eircom's market share is greater than 50% at the EA, but Criteria 1 and 3 have been met, then an exception is made under Criterion 5(i) if Eircom's market share is less than 55%, or under Criterion 5(ii) if an ANO has coverage at that EA of at least 60%.

## Analysis of Geographic Criteria

- A 2.28 Figure A2.2 below presents Eircom's average market share (absent regulation in the Relevant WCA Markets) for all 1,203 EAs, having regard to differences in the number of POs providing services at the EA. Eircom is the only PO present at all EAs, and has a market share of 100% in EAs where other POs have neither unbundled the EA, nor built an alternative network. As can be seen, Eircom's market share falls as the number of competitors present increases – thus suggesting differences in competitive conditions across different EAs, having regard to increases in the number of POs present.

**Figure A2.2: Average National Eircom Market Share and Number of POs Q2 2020 [REDACTED]**<sup>88</sup>



A 2.29 Table A2.17 below provides a breakdown of the number of EAs in the Revised Regional WCA Market by the number of POs present. This indicates that Eircom likely faces greater competition at a number of EAs in terms of the number of POs, either directly, or indirectly, arising from the retail broadband market (and is thus suggestive of differing competitive conditions).

**Table A2.17: Revised Regional WCA Market: Number of POs by EAs and Premises**

Number of POs	No. of EAs (N=967)	Premises Coverage
1	245	203,784
2	241	224,691
3	459	447,383
4	21	37,281
5	1	854

<sup>88</sup> Eircom market share, for the following numbers of POs at EAs: 1 PO – 91-100%, 2 POs – 81-90%, 3 POs – 61-70%, 4 POs – 41-50%, 5 POs – 31-40%, Average – 61-70%.

A 2.30 In terms of ANO coverage, ComReg has sought to establish the extent of Virgin Media and SIRO network coverage. Virgin Media's network is present (at any coverage level > 0%) in [REDACTED] EAs, with a total network coverage of [REDACTED] in these EAs.<sup>89</sup>

A 2.31 Table A2.18 below shows the relationship between Virgin Media's network coverage and its market share. Virgin Media's market share increases with network coverage. For example, there are [REDACTED]<sup>90</sup> EAs where Virgin Media's coverage is between 50% and 75% and in these EAs, its market share averages [REDACTED].<sup>91</sup>

**Table A2.18: Virgin Media Network Coverage by EA Q2 2020 [REDACTED]**

Virgin Media	< 25%	25-50%	50-75%	>75%
<b>Number of EAs<sup>92</sup></b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Market Share (%)<sup>93</sup></b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

A 2.32 As noted above, the SIRO network has a limited but growing footprint, with its coverage by EA outlined in Table A2.19 below. As with Virgin Media, SIRO's market share rises with network coverage. While ComReg has included the SIRO network in its analysis (on the basis of supply-side substitution), it is not active on the Relevant WCA Markets, and therefore has no market share. ComReg will continue to seek information from SIRO (and other SPs) regarding network footprint and subscriber figures. The SIRO network, at October 2020, has passed 338,000 premises and was available in 45 towns.<sup>94</sup> The SIRO network is present in [REDACTED]<sup>95</sup> EAs, with a total network coverage of [REDACTED] in these EAs.

**Table A2.19: SIRO Network Coverage by EA Q2 2020 [REDACTED]**

SIRO	< 25%	25-50%	50-75%	>75%
<b>Number of EAs<sup>96</sup></b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Market Share<sup>97</sup></b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

<sup>89</sup> Network coverage is defined as the total number of premises passed by the Virgin Media network divided by the total number of premises in the EAs. Virgin Media is present at (151-200) EAs, with total network coverage of (71-80)%.

<sup>90</sup> 50-100.

<sup>91</sup> 25-30%.

<sup>92</sup> The number of EAs in all four quartiles ranges from 0 to 100%.

<sup>93</sup> Market share: <25%: 0-10%, 25-50%: 21-30%, 50-75%: 21-30%, >75%, 51-60%.

<sup>96</sup> The number of EAs in all four quartiles ranges from 0 to 100%.

<sup>97</sup> Market share: <25%: 0-10%, 25-50%: 0-10%, 50-75%: 11-20%, >75%, 31-30%.



## Step 2 analysis of differences in competitive conditions

A 2.33 Since the publication of the 2018 Decision in November 2018, ComReg has obtained further data from POs on a quarterly basis relating to:

- (a) Network Maps;
- (b) Coverage and Rollout Plans; and
- (c) Wholesale and retail broadband subscriber figures at EA level.

A 2.34 For the avoidance of doubt, and following the principles set out at paragraphs 9.329 to 9.331 of the 2018 Decision, SIRO is not currently active on the 2018 Relevant WCA Markets, or on the retail broadband market. Accordingly, SIRO services are assigned for assessment purposes to Vodafone, which purchases WLA from SIRO in order to provide retail broadband services. These services are capable of generating indirect competitive constraints on the 2018 Regional WCA Market.

A 2.35 As POs that both purchase WCA and WLA services from Eircom essentially follow the same EA topology as Eircom itself, there is limited explanatory or additional benefit in mapping these PO shares and coverage.

A 2.36 Using the inputs described above, ComReg applied the Criteria above to each EA in the 2018 Regional WCA Market. ComReg has mapped the Virgin Media and SIRO footprints onto an EA map to allow subscriber and market share figures to be compared to other POs' subscriber and market share figures. The result of this overall analysis is outlined below.

**Table A2.20: Application of Criteria for Assessing Competitive Conditions by Exchange Area on WCA Markets**

EAs meeting Criteria	n	Subscriptions/ Active Lines	Premises
<b>2018 Decision – Urban</b>	154	809,006	1,061,911
<b>Q2 2020 – Revised Urban</b>	236	998,537	1,357,531
EAs not meeting Criteria	n	Subscriptions/ Active Lines	Premises
<b>2018 Decision - Regional</b>	1,049	529,769	1,143,977
<b>Q2 2020 – Revised Regional</b>	967	392,176	913,637

A 2.37 The most recent data (Q2 2020) show that 236 EAs met all applicable Criteria, and therefore exhibit competitive conditions which are appreciably different from the remaining 967 EAs.

<sup>96</sup> The number of EAs in all four quartiles ranges from 0 to 100%.

<sup>97</sup> Market share: <25%: 0-10%, 25-50%: 0-10%, 50-75%: 11-20%, >75%, 31-30%.

- A 2.38 The Step 2 analysis suggests that the number of EAs falling into the Urban WCA Market has increased since the publication of the 2018 Decision. At each iteration of the assessment, the number of EAs falling into the Urban WCA Market has increased. This has largely been driven by uptake of VUA services by POs making use of WLA inputs (i.e. investment in backhaul facilities at Eircom Aggregation Nodes).<sup>98</sup> By investing in backhaul facilities, WLA POs have been able to also grow market share, and consequently increasing the number of EAs passing Criterion 3. Uptake of VUA services has also been driven by expansion of Eircom and SIRO's respective FTTP networks. Since Q4 2017, SIRO has added approximately [X ██████████ X]<sup>99</sup> new premises, while the Eircom FTTP network, currently passing 576,000 premises,<sup>100</sup> has added in excess of 400,000 premises since late 2017. Some of the growth in EAs in the Urban WCA Market is also attributable to expansion in Virgin Media's network coverage, which has increased by [X ██████████ X]<sup>101</sup> premises since Q4 2017.
- A 2.39 Between the assessment carried out for the 2018 Decision (data as at Q4 2017) and the assessment as at Q2 2020, ComReg proposes to add 82 Candidate EAs to the 2018 Urban WCA Market. ComReg has assessed several quarters of data since the 2018 Decision, as illustrated below. In line with market dynamics and expanded roll out, additional EAs meeting the criteria are added to the 2018 Urban WCA Market each quarter.

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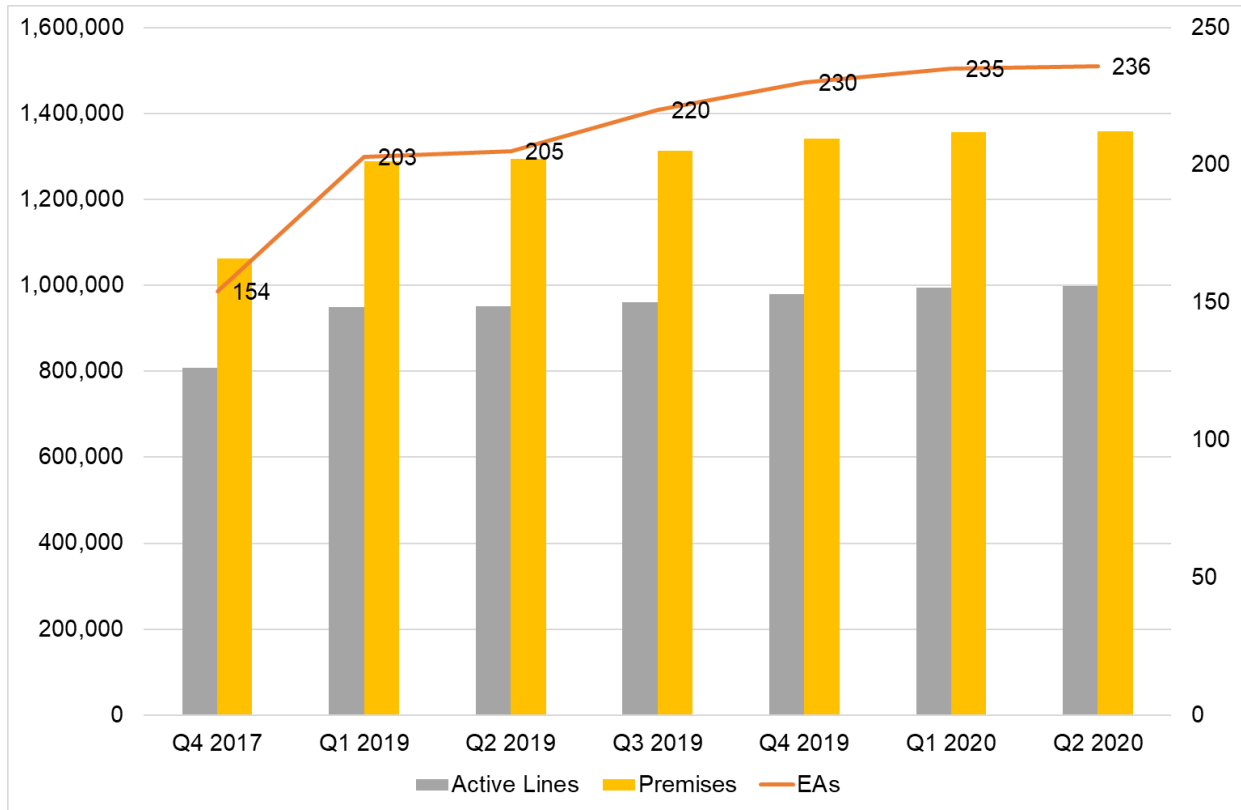
<sup>98</sup> Figure 103 in the Consultation. An 'Aggregation Node' or 'AGG node' means a network concentration point for Access Paths.

<sup>99</sup> 200,000-250,000.

<sup>100</sup> <https://www.eir.ie/pressroom/eir-announces-full-year-and-fourth-quarter-FY20-results-to-30-June-2020/>

<sup>101</sup> 50,000-100,000.

Figure A2.3: Outputs of Assessments Q1 2019 to Q2 2020<sup>102</sup>



A 2.40 Table A2.21 below presents figures for market shares for each of the POs in the 2018 Regional WCA Market and the Revised Regional WCA Market. Eircom’s share in the retail market was [redacted] <sup>103</sup> in Q4 2017 in the footprint of the 2018 Regional WCA Market, and in Q2 2020 this share is estimated to decrease to [redacted] <sup>104</sup> on the Revised Regional WCA Market as retail broadband customers who are served by SPs using WCA inputs are, in ComReg’s view, likely to switch back to Eircom to retain services. It is also important to note that the market shares are using data from two different data points and in differing numbers of EAs (Q4 2017 v. Q2 2020 Urban WCA Market), so a like-for-like comparison is not entirely valid – the table is shown as a broad illustration of market dynamics.

<sup>102</sup> ComReg did not collect data on an EA basis in 2018, while developing a new data collection system.

<sup>103</sup> 71-80%.

<sup>104</sup> 71-80%.

**Table A2.21: Retail Market Shares (Absent regulation) for Primary Operators in the Regional WCA Market, Q2 2020 [X REDACTED X]**

Market	Eircom	Virgin Media	BT	Vodafone	Total Active Subs.	% of Total Active Subs.
Q4 2017 <sup>105</sup>	[X █████ ]	[X █████ ]	[X █████ ]	[X █████ ]	529,769	39.60%
Q2 2020 <sup>106</sup>	[X █████ ]	[X █████ ]	[X █████ ]	[X █████ ]	392,176	28.2%

A 2.41 Table A2.22 below suggests that there are likely to be differing competitive conditions across two separate geographic areas – comprised of those EAs that meet all relevant Criteria, and those that do not. ComReg therefore groups EAs into two areas:

- (a) The **Revised Urban WCA Market**: The 236 EAs where the relevant Criteria have, as applicable, been met, consisting of:
  - 154 EAs assigned to the 2018 Urban WCA Market by means of the 2018 Decision, to which are added
  - 82 Candidate EAs which ComReg proposes to transfer from the 2018 Regional WCA Market to the Revised Urban WCA Market on the basis of the analysis in the Mid-Term Assessment; and
- (b) The **Revised Regional WCA Market**: The 967 EAs where the relevant Criteria have, as applicable, not been met, consisting of:
  - 1,049 EAs assigned to the 2018 Regional WCA Market by means of the 2018 Decision, from which are subtracted
  - 82 Candidate EAs which ComReg proposes to transfer from the 2018 Regional WCA Market to the Revised Urban WCA Market on the basis of the analysis in the Mid-Term Assessment.

A 2.42 The Candidate EAs are set out in Annex: 3 of this Consultation.

## Overall Conclusions Step 2

A 2.43 Having regard to the analysis above, Step 2 suggests that there are likely to be two separate Relevant WCA Geographic Markets, namely:

- (a) The **Revised Urban WCA Geographic Market**, being those 236 EAs where all relevant Criteria have been met; and
- (b) The **Revised Regional WCA Geographic Market**, being those 967 EAs where all relevant Criteria have not been met.

<sup>105</sup> Market shares (n=1,049): Eircom (71-80%), Virgin Media (0-10%), BT (0-10%), Vodafone (11-20%).

<sup>106</sup> Market shares (n=967): Eircom (71-80%), Virgin Media (0-10%), BT (0-10%), Vodafone (11-20%).

A 2.44 Table A2.22 below presents the overall outcome of applying the Step 2 Criteria for assessing competitive conditions by EA within the footprint of the 2018 Regional WCA Market, and reassigning the Candidate EAs.

**Table A2.22: Application of Criteria for Assessing Competitive Conditions by Geographic Area – Q2 2020**

	<b>Number of EAs</b>	<b>Premises in EAs</b>	<b>Subscriptions in EAs</b>
<b>Revised Urban WCA Market</b>	236	1,357,531	998,537
<b>Revised Regional WCA Market</b>	967	913,993	392,176

## Annex: 3 Boundaries of the Revised Relevant WCA Markets

A 3.1 ComReg proposes to group EAs into two areas:

- (a) The **Revised Urban WCA Market**: EAs where all applicable Criteria have been met; and
- (b) The **Revised Regional WCA Market**: EAs where all applicable Criteria have not been met.

A 3.2 ComReg proposes to transfer the following 82 Candidate EAs from the 2018 Regional WCA Market to the Revised Urban WCA Market:

ANR, ATD, BDA, BDN, BGV, BIR, BLR, BND, BOF, BPN, BSE, BSZ, BUA, BYS, CAE, CCH, CHH, CHT, CIL, CLH, CLN, CLY, CMS, CNP, COU, COV, CSL, CUE, CWT, DEZ, DLK, DSN, DVA, ERL, FBK, FFD, FMY, GLF, JNN, KBY, KGD, KHA, KLC, KLE, KLO, KLR, LEG, LEX, LGA, LKY, MBG, MDN, MER, MNT, MRW, MSN, MUG, MWY, NAL, NCV, NNH, NRS, NTF, NWT, PAN, PTW, RBK, RCL, RLH, RTH, SBE, STM, TRM, TRR, TUM, VMT, WAL, WOL, WST, WXA, WXD, YHL.

A 3.3 Accordingly, ComReg now proposes that the following 236 EAs are contained within the Revised Urban WCA Market:<sup>107</sup>

ABE, ADW, AGN, AKW, ANR, ASG, ASM, ASQ, ATD, ATH, ATP, AUV, BAR, BAX, BBH, BDA, BDN, BDT, BEE, BFF, BGV, BIR, BLA, BLB, BLI, BLP, BLR, BNC, BND, BNN, BOF, BOM, BPN, BRI, BRN, BSE, BSZ, BUA, BYS, CAB, CAE, CCE, CCH, CEE, CEL, CGA, CGI, CHD, CHF, CHH, CHT, CIL, CKC, CKH, CLD, CLH, CLK, CLM, CLN, CLT, CLX, CLY, CMS, CNP, COU, COV, CRA, CRL, CRT, CRW, CSA, CSL, CSW, CTY, CUE, CUS, CWD, CWJ, CWT, DAH, DBC, DBN, DBT, DDK, DDM, DEZ, DGS, DLA, DLK, DNU, DOM, DSN, DVA, DYX, EFD, ENS, EPT, ERL, ETY, FBK, FFD, FLH, FMY, FNG, FOX, GAL, GLF, GMR, GRS, GRY, HPD, HSQ, HYD, JNN, KBK, KBY, KGD, KHA, KIC, KIH, KIK, KIL, KLC, KLE, KLM, KLN, KLO, KLR, KMC, KMO, KNY, KSH, LCN, LEG, LEX, LGA, LKD, LKY, LMK, LND, LOD, LPT, MAH, MBG, MBT, MDN, MDV, MER, MFR, MGR, MHZ, MLW, MMT, MNK, MNS, MNT, MRW, MSN, MTK, MUG, MVN, MVW, MWY, NAL, NAS, NCV, NEP, NIN, NMN, NNH, NRS, NTF, NUT, NWL, NWT, PAL, PAN, PGS, PLT, PMK, PRP, PTW, QKR, QVE, RBK, RCL, RCR, RLH, RMS, ROC, ROM, RSL, RTD, RTH, RUS, SAN, SAP, SBE, SBK, SGO, SHN, SHP, SKL, SKS, SLA, SLS, SND, SNH, SRD, SRL, STM, STN, THS, TLH, TLM, TLT, TOG, TRE, TRM, TRR, TUM, TWV, TYC, UGM, VMT, WAL, WHI, WLW, WOL, WPK, WRD, WST, WTD, WXA, WXD, YHL.

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<sup>107</sup> ComReg notes that, based on Eircom's data, there are 1,203 exchanges nationally, consisting of 1,189 EAs, plus an additional 14 small exchanges/nodes, each of which are contained entirely within the boundaries of one of the 1,189 EAs.

A 3.4 ComReg now proposes that the following 967 EAs remain within the Revised Regional WCA Market:

ABK, ABP, ABX, ABY, ACE, ACF, ACL, ACY, ADA, ADE, ADG, ADH, ADM, ADN, ADR, ADT, ADY, AFD, AFE, AFN, AGA, AGH, AGL, AGY, AHA, AHC, AHH, AHM, AHO, AHS, ALD, ALE, ALS, ALW, AME, ANA, ANN, ANY, ARA, ARC, ARD, ARL, ARN, ART, ARW, ASD, ASN, ATE, ATL, ATN, ATS, ATY, AUG, AVA, AVO, AYL, BAA, BAD, BAE, BAH, BAI, BAK, BAL, BAM, BAN, BAO, BAS, BAY, BBA, BBE, BBN, BBO, BBS, BBT, BBY, BCA, BCE, BCG, BCH, BCK, BCL, BCN, BCR, BCS, BCY, BDB, BDY, BEG, BEN, BER, BES, BEY, BFD, BFN, BFO, BFR, BFT, BGA, BGE, BGH, BGL, BGN, BGR, BGS, BGT, BGW, BGY, BHE, BHG, BHH, BHL, BHM, BHN, BHR, BHS, BHT, BHY, BIB, BIG, BIN, BIT, BIY, BJD, BKA, BKD, BKG, BKN, BKR, BKS, BKT, BLC, BLD, BLE, BLF, BLG, BLH, BLL, BLN, BLO, BLS, BLT, BLV, BLX, BLY, BMA, BMD, BME, BMH, BML, BMN, BMO, BMT, BMY, BNA, BNE, BNG, BNR, BNS, BNY, BNZ, BOH, BOK, BOL, BON, BOY, BPC, BPO, BRA, BRD, BRE, BRF, BRH, BRM, BRS, BRT, BRU, BRY, BSA, BSB, BSH, BSN, BSO, BSP, BTA, BTB, BTE, BTH, BTM, BTN, BTR, BTS, BTT, BTW, BTY, BUB, BUD, BUN, BUO, BUT, BUY, BVN, BVR, BVT, BWG, BWM, BWN, BWR, BXG, BYA, BYB, BYC, BYD, BYE, BYF, BYG, BYH, BYM, BYN, BYO, BYR, BYV, BYW, BYX, CAA, CAG, CAH, CAL, CAM, CAN, CAR, CAS, CAT, CAV, CAW, CAY, CBA, CBE, CBM, CBN, CBO, CBR, CBT, CBY, CCG, CCI, CCL, CCM, CCR, CCS, CDA, CDF, CDH, CDN, CDT, CDU, CDW, CEA, CEN, CER, CFA, CFD, CFG, CFL, CFN, CFO, CFY, CGB, CGE, CGG, CGH, CGL, CGM, CGN, CGS, CGY, CHA, CHE, CHG, CHL, CHR, CHW, CHX, CID, CIG, CIM, CIN, CIS, CJN, CKA, CKE, CKN, CKO, CKS, CKW, CKY, CLA, CLB, CLC, CLE, CLG, CLL, CLO, CLR, CLS, CLU, CLW, CMA, CMK, CML, CMN, CMO, CMP, CMR, CMY, CNA, CNB, CNE, CNG, CNN, CNR, CNS, CNV, CNW, CNX, CNY, COG, COL, CON, COO, COS, COT, COY, CPH, CPL, CPM, CPN, CPO, CPT, CPW, CRC, CRD, CRE, CRF, CRI, CRK, CRM, CRN, CRO, CRR, CRV, CRX, CRY, CSB, CSE, CSH, CSJ, CSK, CSO, CSP, CSR, CSS, CSY, CTB, CTD, CTE, CTH, CTL, CTN, CTW, CUA, CUB, CUR, CUX, CVN, CVW, CWL, CWN, CYA, CYE, CYG, CYW, DAP, DBG, DBR, DCE, DCK, DCL, DCN, DDA, DDT, DDY, DFY, DGE, DGH, DGL, DGN, DGY, DHA, DHL, DHR, DKE, DKN, DLE, DLG, DLO, DLR, DMD, DME, DMO, DMR, DMW, DNA, DND, DNM, DNN, DNR, DNV, DNX, DON, DPF, DRA, DRB, DRH, DRI, DRL, DRM, DRS, DRW, DUK, DUN, DUR, DUW, DVN, DWT, ECT, EDY, EFI, EFN, EKK, EKY, EMJ, EMN, EMV, EMY, ERS, ESK, ETN, ETW, FBD, FBO, FCA, FDR, FEH, FES, FET, FFO, FGE, FGH, FHD, FHN, FHX, FIN, FKE, FMH, FML, FMT, FMX, FNA, FNS, FNT, FPK, FRB, FRS, FVA, FWN, FXD, FXH, FYB, GAR, GBE, GBH, GBY, GCE, GCF, GCK, GCR, GDH, GDN, GEY, GGF, GHL, GIL, GLA, GLC, GLI, GLN, GLO, GLS, GME, GMH, GMI, GMY, GNA, GNE, GNG, GNH, GNK, GNO, GNY, GRD, GRE, GRT, GSL, GSN, GSX, GTA, GTN, GTS, GUE, GUN, GVE, GWH, GWN, HBN, HCS, HCX, HDD, HFD, HFT, HKN, HLP, HMT, HOB, HOD, HPL, HRD, IBF, IBM, IGE, IGH, IHR, INC, INE, ING, INH, INL, INM, INR, INV, INY, ISK, ISL, ISN, JKN, JSN, JTN, JWL, KAE, KAP, KAS, KBD, KBE, KBN, KBS, KCE, KCH, KCK, KCL, KCN, KCO, KCR, KCW, KCY, KDH, KDK, KDN, KDO, KDT, KDY, KEH, KEK, KEL, KEN, KEY, KFA, KFE, KGL, KGN, KGT, KGV, KGX, KHE, KHN, KIA, KIM, KIN, KIR, KKE, KKL, KKY, KLA, KLB, KLG, KLH, KLK, KLL, KLS, KLU, KLY, KMA, KMD, KME, KMG,

KMK, KML, KMN, KMS, KMT, KMU, KMW, KMY, KNA, KNC, KND, KNE, KNF, KNG, KNK, KNL, KNM, KNT, KOK, KON, KOR, KQY, KRA, KRG, KRH, KRM, KRN, KRR, KRY, KSA, KSL, KSN, KSV, KTA, KTH, KTK, KTM, KTN, KTR, KTX, KUC, KVA, KVN, KWH, KYG, KYK, LAG, LAN, LAY, LBN, LBO, LBU, LCY, LDA, LDN, LED, LEP, LET, LGB, LGN, LGW, LHA, LHY, LIF, LIS, LKR, LMB, LME, LMW, LNE, LNF, LNH, LNW, LNY, LOS, LPN, LRH, LRN, LSL, LSN, LSR, LTH, LTM, LTN, LTW, LVA, LVH, LVN, LWD, LWN, LYR, MAL, MAM, MAN, MBC, MBS, MBW, MBY, MCH, MCM, MCN, MEE, MEN, MEX, MFD, MFM, MGE, MGL, MGN, MHL, MHW, MIK, MIL, MLA, MLD, MLE, MLF, MLH, MLN, MMK, MNB, MNE, MNH, MNU, MON, MOT, MOY, MPT, MRM, MRN, MRO, MRY, MSK, MST, MTH, MTN, MTP, MUC, MUF, MUK, MUN, MUS, MVA, MVE, MVT, MYL, MYN, MYV, NAN, NAR, NBE, NBS, NCE, NCM, NCN, NGO, NHL, NMK, NMT, NOF, NOR, NPT, NRT, NRY, NSM, NTC, NTW, NWB, NWN, OBB, OGO, OGT, OLA, OLD, OLE, OLT, OME, OMH, ORM, OWN, OYG, PGN, PGO, PHB, PKW, PKY, PLL, PME, PML, PNE, PNT, PRE, PRK, PRS, PRT, PSG, PSX, PTN, PUA, PWC, PWL, PWN, QPT, QUN, RAN, RAY, RBE, RBT, RCH, RCM, RCN, RCS, RCY, RDE, RDM, RDS, RFN, RFO, RGN, RHS, RIP, RIS, RIV, RKE, RKY, RLC, RLE, RME, RMK, RMN, RMO, RMT, RNG, RNL, RNV, ROK, ROT, RPT, RPY, RRN, RRX, RSA, RSC, RSK, RSM, RSN, RSP, RST, RSY, RTN, RTO, RUN, RUY, RVD, RVK, RVN, RVY, RWD, RWH, RWN, RWR, RYN, RYX, SBH, SBR, SBY, SCF, SCK, SCL, SCN, SCT, SFN, SGH, SGN, SHE, SHL, SHR, SHY, SIL, SKB, SKN, SLE, SML, SNB, SNM, SNO, SON, SPL, STD, STH, STJ, STY, SUF, SWD, TAA, TAN, TBD, TBL, TBT, TCN, TCY, TDY, TEY, TFA, TFN, TGN, TGR, THY, TLA, TLE, TLN, TLP, TLR, TLW, TMD, TME, TML, TMN, TMO, TMR, TMY, TNE, TNH, TOE, TOO, TOR, TOW, TPN, TPR, TPY, TSK, TST, TSW, TTH, TTN, TUR, TUX, TVN, URL, VGA, VIS, VTY, WAP, WFA, WFD, WGL, WGT, WIS, WKW, WLN, WMN, WTB, WTG, WVE.



# Annex: 4 List of Consultation Questions

**Q. 1. Do you agree with ComReg's preliminary views on the re-definition of the geographic scope of the Revised Relevant WCA Markets? In particular, do you agree that 82 Candidate Exchange Areas should be transferred from the 2018 Regional WCA Market? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

**Q. 2. Do you agree with ComReg's competition analysis of the Candidate EAs and ComReg's preliminary finding that they are similar to the conditions of competition in the 2018 Urban WCA Market? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

**Q. 3. Do you agree with the above proposals to maintain requirements upon Eircom to continue to provide existing access at prevailing prices during a six month sunset period? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

**Q. 4. Do you agree with ComReg's preliminary conclusions on the Regulatory Impact Assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your position.**