



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Migration from Legacy Infrastructure to Modern Infrastructure

Submissions to Consultation
Non-Confidential

Submissions to Consultation

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An Coimisiún um Rialáil Cumarsáide
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Consultation:	ComReg 22/13R
Response to Consultation and Decision:	ComReg 23/102

alto

alternative operators in the communications market

Consultation: Framework for the Migration from Legacy Infrastructure to Modern Infrastructure - ComReg Ref: 22/13R and 22/29 (Amendments)

Submission By ALTO

Date: May 11th 2022

ALTO is pleased to respond to the ComReg Consultation – Framework for the Migration from Legacy infrastructure to Modern Infrastructure and the later amendments paper – ComReg Ref: 22/13R and 22/29.

Preliminary Comments

ALTO supports the overall aim, framework and principles proposed by ComReg in relation to the Copper Switch-Off (“CSO”) and we recognise the need to migrate from copper legacy services to high-speed fibre services.

We also recognise that of paramount importance in this planned migration are the principles of:

1. Protecting and facilitating end-users;
2. Transparency; and
3. Clarity of execution

throughout all aspects of the CSO migration planning.

ALTO has already invested in this subject to the extent that we could, and has furnished ComReg with extensive thoughts through its submission drafted by RegOpp in response to the ComReg Call for Input on CSO.

ALTO does not agree with the suggestion that a trial should be run at the same time as actual migrations take place. Any trial must be run in advance of actual live migrations in order that operators can properly test services and adhere to the principle of end-user protection and unbroken service dynamics.

ALTO remarks that to date no real information on the CSO migrations plans has been forthcoming, and we call on ComReg to remediate this situation. Unlike other jurisdictions, such as the UK, there are no “anchor” products with which to model or control entry pricing. This may be problematic for the consumer in the short to

medium term. We discuss this in the ALTO CSO submission already made to ComReg. This may be address by the inclusion of eircom having to draft and submit a CSO migration plan for approval in advance.

ALTO notes that issues such as Service Level Agreements (“SLAs”); site and end-user surveys; critical network infrastructure and migration planning need to be carefully considered and managed by ComReg in conjunction with industry.

ALTO support for the overall aim, framework and principles proposed by ComReg though our support is not without serious caveats that we believe require to be addressed by ComReg and industry in advance of the CSO migration project to ensure its efficiency and success.

Consultation Questions

Q. 1. Do you agree with the proposed principles to govern the Framework? Are there any other principles in this respect that should be considered? Please set out clearly the reasons for your response and any supporting evidence.

A. 1. ALTO agrees with the proposed principles proposed to govern the Framework. In particular we welcome the statement at paragraph 1.11 concerning Access Seekers and the clarity required surrounding eircom’s plans for transition and sufficient notice.

ALTO agrees with and fully endorses the principle at paragraph 1.12 that eircom should not communicate with end-users that are not its customers. This, of course, emerged in the eircom White Paper published on 4 March, 2021 wherein eircom submitted a letter to ComReg under the heading “*Establishing a Protocol for Copper switch-off*” to which was attached a “*white paper*” it had authored entitled “*Copper*

switch-off: Leaving a legacy for the Future” which was subsequently published on eircom’s website.

ALTO notes issues with suggestions at paragraphs 1.25 and 1.27 concerning testing of ACPs and automated order handling, and a dearth of detail in relation to cellular proposals, respectively. ALTO anticipates use of existing order handling models without the needs for expensive software upgrades on the new entrant order handling systems to enable migration.

ALTO notes the position at paragraph 1.29, and requires more information concerning possible alternatives and availability. ALTO submits that alternative offerings must be both “*effective*” and “*fit-for-purpose*”.

ALTO reiterates its remarks above. There must be no in-migration trial phases. Trial phases must occur logically and in any case before enablement and/or migration phases. In the event that issues arise at trial phase that are insurmountable or unworkable, this would result in the migration having to be paused which would not be appropriate. ComReg should propose instead that trials take place before migration begins.

ALTO notes the position set out at paragraph 3.8, or the ‘*Wholesale Replicability Principle*’. ALTO does not agree with the proposal by ComReg that ‘*comparable price*’ for an ACP would be defined ‘*as a price which is not necessarily the same but where any differential or margin between prices for Legacy Infrastructure-based services and the price of ACPs provided over the Modern Infrastructure is fair and reasonable*’. It also is unclear how the definition of ‘*fair and reasonable*’ would be defined. ALTO submits that a comparable price should be a price that is comparable today, noting that we do not have the ‘anchoring’ product offering, but we should be seeking indexing based on a fixed time and available pricing data as a matter of logic.

Business Customers

ALTO does not agree with ComReg's proposal to align consumer and business customer migration. This is due to the potential scale and complexity of business customer contracts and technical solutions with ALTO member companies. Losing business customers due to a poorly planned and managed copper line to fibre migration will be an expensive business for new entrants. Therefore we will require that ComReg removes the alignment proposed in the ComReg Consultation document. Such a proposal is consistent with the Regulatory Framework. It should be carefully noted that this is a very significant consideration for ALTO members, and one we do not state lightly.

Q. 2. Do you agree to ComReg's approach to the definition of Modern Infrastructure? If not, what changes do you propose? Please set out clearly the reasons for your response and any supporting evidence.

A. 2. ALTO notes the position at paragraph 1.9 wherein ComReg defines modern infrastructure as that of eircom and NBI fibre. However, at paragraph 1.10 appears to widen to premises passed by an alternative FTTH network.

At paragraph 1.27 (and others) ComReg acknowledges that premises passed does not necessarily mean this premises can be provided with modern infrastructure and our own experience in Ireland has caused us real concerns with the term "*passed*" by an FTTH network as in reality premises claimed as passed is not the same as premises that can be connected when ordered.

ALTO members have experienced the situation where a customer has been rejected for copper on the basis only fibre is available, yet the fibre is not available in reality. In these cases it should be possible to order copper solutions.

Concerning the widening of the definition of FTTH to include other providers such as SIRO we believe this would need to be specified to the actual customer address rather than the area given new entrants are unlikely to have ubiquitous coverage.

ComReg must not find itself in a position where it is asked to approve the switching-off of a copper solution by eircom merely because a given premises is passed. A viable and actual connection must exist and be enabled on condition of approval with the engagement of the operator and the end-user.

Q. 3. Do you agree with the principle that end-user communications rest solely with the RSP? Please set out clearly the reasons for your response and any supporting evidence.

A. 3. ALTO restates the position set out above and supports ComReg's proposal that eircom should not be allowed to communicate with operator customers. There cannot be even a remote prospect of confusion when it comes to this process and the procedures that need to be adopted. Misinformation or mis-selling should be attended to by ComReg, regardless of the undertaking involved.

In ALTO's view, the best approach is for eircom to provide notice and timely information to operators in order that they can prepare properly for the migration including developing the communications packages for their customers. If other retail operators do not act to migrate and care for customer access, then there are already existing channels by which ComReg can address issues with the relevant retail provider. An industry wide statement as the roll-out of fibre is also being conducted by other providers (as acknowledged by ComReg at paragraphs 1.9 and 1.10) and the impression should not be given that eircom is the only provider on the market.

Q. 4. Do you agree with ComReg’s preliminary views on the proposed Framework outlined in Sections 4.1 to 4.5 above? Please set out clearly the reasons for your response and any supporting evidence.

A. 4. ALTO broadly welcomes the position set out by ComReg in Sections 4.1 to 4.5.

In particular, we welcome:

1. the inclusion of the ‘*initiation step*’ as outlined in the consultation document and fully supports the proposal that eircom will have to set out for ComReg’s review and approval its plans for Copper Switch-Off;
2. the transition phases proposal for Migration and Switch-off are centred on the premise that copper switch off may only take place where 100% of in scope premises and are passed by Modern Infrastructure;
3. the inclusion of trials – with the caveat that we do not agree with the concept that trials should subsist during the enablement phase, or simultaneously. This could lead to huge issues for operators and may undermine the enablement phase as set out. The aim of a trial is to remove errors and try concepts, if the trial and enablement phases are simultaneous or close, or cannot be paused by ComReg, then this may be unworkable.
4. the stop-sell proposals. However, we submit that we require that specific conditions be attached to the proposals such that, the threshold requirement of 75% by achieved before stop sell can begin. One of the critical issues in this point is the reliability of data maintained by eircom. To date, we believe this may be problematic in certain areas.

Conditions should include: (1) a timed premises passed period of 2-years; (2) eircom entire network survey prior to the CSO project commencement; (3) validation of Eircode to line testing to enable migrations; (4) costs be borne by eircom where non-standard connections are in-situ (as proposed by ComReg).

ALTO welcomes these principles only with the pre-existing condition that ComReg must maintain active supervision of the CSO project once commenced. This must be fixed and built into the eventual decision and the appropriate 'poison' or 'pause' provisions must be available to ComReg at short notice, in the event of any issues arising during the process. In the main, this suggestion should serve both the consumer and industry well. ComReg cannot take a position where it simply leaves CSO entirely to the industry based on past experience, an ongoing Wholesale, Retail and Market Framework Division supervision function undertaken by ComReg, is envisaged by ALTO and the wider industry in term of CSO.

Q. 5. Does ComReg's proposed Framework provide sufficient time for an Access Seeker to migrate its end-users from legacy-based services? Please set out clearly the reasons for your response and any supporting evidence.

A. 5. ALTO restates the positions taken above, relating to trial, enablement and migration. We do not see a problem with the ComReg proposed timelines. However, as also stated, the CSO project will only be as good as the data used to drive it. ALTO's experience is that this can leave a lot to be desired, depending on exchange record management. If ComReg can mandate certain precursor or preceding steps, then data and migrations may be able to work in the timescales proposed. In the event of any issue, ComReg needs to be able to revise schedules and must not fetter its discretion in any Decision Instrument in that regard concerning the issues of timing revision, project pause, or issues with incorrect or bad data.

Q. 6. Do you agree with ComReg's preliminary views on premises passed, outlined in Section 4.6 above? Please set out clearly the reasons for your response and any supporting evidence.

A. 6. ALTO supports the view that a premises is passed when an Access Seeker is capable of ordering an Alternative Comparable Product (“ACP”) and having the ACP installed at the premises within 15 working days (excluding any end-user delay time) on receipt of an order. It is essential for ComReg to mandate that such is added to the contractual SLAs between eircom and industry otherwise the proposal will be meaningless for customers that actually seek to apply this.

Separately, ALTO notes that end-user delay needs to be specified in very specific detail otherwise in practice it could/will mean a myriad of things that effectively undermine the proposal. Lastly, the end-user in most cases should not have to wait 15 working days (21 calendar days), eircom should have the information on their systems so that it or other retail providers can obtain an instant view of availability in most cases and where available supply could be faster than 21 calendar days. ALTO restates the issue of data again, as mentioned in response to Q. 5 above.

Temporary Legacy Services

ALTO agrees with ComReg’s proposed approach concerning the provision of Temporary Legacy-based Service (“TLS”) where the premises cannot be connected to the Modern Infrastructure, and such should be provided within 10 working days. We also support the principle that the issues should be resolved before eircom informs the customer (for its retail customers) or the retail provider that has contracted the customer before re-attempting the migration to the Modern Infrastructure.

Q. 7. Do you agree with ComReg’s proposal on non-standard connection costs, outlined in Section 4.6 above? Please set out clearly the reasons for your response and any supporting evidence.

A. 7. ALTO agrees with ComReg's proposal on non-standard connection costs as outlined in Section 4.6. The main reason or rationale for supporting this is not to penalise eircom, who will make a significant windfall from the decommissioning and selling of copper, but to facilitate the inconvenience for the end-user being made to migrate where they may not need or necessarily want to, and where a non-standard or bespoke service or connection has been provided. ALTO endorses the Ofcom approach of 'anchor' entry fibre pricing on entry and linked to copper services and it is a useful precedent to follow in Ireland. We suggested above a minimum concept of temporal pricing indexing. It may be that ComReg has this in-mind in which case we would require additional detail.

Q. 8. Do you have any other comments on these pricing principles or any other pricing principles that should be considered? Please set out clearly the reasons for your response and any supporting evidence.

A. 8. ALTO agrees with ComReg's position that increasing the price of copper does not and should never serve as an incentive to migrate to more modern services.

ALTO considers that the entry fibre price should be linked to a mainstream copper broadband price in a similar way to that implemented by Ofcom, we do not understand why ComReg rejected a linkage to pricing and entry indexation. ALTO properly considered the linkage options in its submission to the ComReg call for input and we refer you to the ALTO RegOpp paper and pages 11, 34 – 38, in that regard.

Q. 9. Do you agree with ComReg's preliminary views on monitoring the Migration from Legacy Infrastructure outlined in section 4.7 above? Please set out clearly the reasons for your response and any supporting evidence.

A. 9. ALTO agrees with ComReg's proposal on monitoring the Migration from Legacy Infrastructure outlined in section 4.7. In particular, we support this so that all stakeholders can clearly understand the progress of the project and focus on customers groups within the exchange areas notified. Experience dictates that often times network exists that is either not properly recorded, or is in-situ utilised but not either enabled or being properly serviced. The issue of data recording and data integrity will pass or fail the overall CSO project, and it underpins the requirement to have proper offline trials, before enablement and/or migration as mentioned above.

ALTO

11th May 2022

BT Communications Ireland Ltd (“BT”) Response to ComReg’s Consultation Framework for the Migration from Legacy Infrastructure to Modern Infrastructure

Issue 1.1 – 11 May 2022

1.0 Introduction

BT welcomes the opportunity to respond to this important consultation concerning the new Framework for the Migration from Legacy Infrastructure to Modern Infrastructure. The proposed framework implies a move towards full IP/Ethernet type access solutions rather than traditional Time-Division Multiplexing (**TDM**) access. BT supports the modernisation of the access network to full fibre as such should support the growth of digital transformation to help facilitate the economy both locally and nationally. BT Ireland’s concern relates to the timeframe of the migration noting that we expect it is carried out with minimal disruption to our customers’ businesses or end users. In order to mitigate this type of risk, BT believes that the provision of clear and reasonable formal notice to operators is imperative to allow operators to manage their own wholesale and retail customers. We welcome that ComReg has provided an indicative timeline for the project in Figure 5 and in the event that the plans are subject to change, we ask that the industry is alerted as soon as possible.

1.1 Trial (Enablement)

We need a practical and sensible approach to migration that protects customers and reflects the commercial realities at both the wholesale and retail level. This is a complex set of issues and anticipating all of them ‘up front’ is challenging. We believe the use of trials is a key tool to better understand and resolve any issues arising. From BT Ireland’s perspective, the key objective of the establishment and operation of a trial is to test and gain experience of the processes and apply the proposed new Alternative Comparable Products (**ACPs**) to minimise issues. However, we do not understand the rationale behind the proposal to run a trial (“Enablement Phase”) in parallel with the actual migration. In our view, this proposed approach creates a discriminatory environment where it would appear some operators for whatever reason do not need to build ACPs or test the migration whereas others may have no option. The obvious solution is for “trial exchange areas” to be selected prior to the main project starting or during the stop-sell phase so that the processes/products can be tested by all and refined to ensure they are “effective” or in everyday language “fit for purpose”. In light of Eircom’s recent roll-out claim, i.e. to have passed more than 800k¹ premises across Ireland with its fibre network, it should be relatively easy to find exchange areas with different characteristics (e.g. rural and urban etc.) given the total number of lines in Ireland is circa 2.2 million.

1.2 Price controls

We are concerned ComReg does not have a price-control in place to establish an entry level price for fibre access and hence such is creating a potential for abuse. We note the approach² taken by Ofcom

¹ [eir’s Gigabit Fibre Network now available to more than 800,000 homes and businesses across Ireland](#)

² [Ofcom – Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26.](#)

in the UK to address this issue used an established regulated copper broadband access product and with the addition of a small uplift to reflect customer benefits such as speed and reliability that fibre offers over copper, to effectively set the entry fibre price. As copper broadband access will not disappear immediately, this should help stimulate voluntary migrations and limit the hurdle of forced migration, particularly given the difficult economic conditions now facing Ireland and end users.

1.3 Migration of business and residential customers together.

We note that Eircom's White Paper "Copper switch-off: Leaving a legacy for the Future" dated 4 March 2021 proposed to offer different migration and timescale approaches for consumers compared to non-residential customers, although the process for business migrations needed further development. BT agrees, in general, with the adoption of a similar approach for both business and residential customers, however, the framework must have regard to non-residential sites (e.g. businesses and state agencies) that may have a special dependence on legacy copper services.

Over the years we have managed the closure of various business services and a key element of such is that business customers sometime have to make a significant investment in their own customer premises equipment, and this could require a significant customer procurement decision. If that decision does not align with the migration window then the project can go into delay.

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1.4 Vulnerable Customers

We consider that ComReg, Eircom and industry stakeholders alike should seek to agree reasonable measures to support vulnerable end users during the lifetime of this proposed framework. The trial would provide a good opportunity to reach agreement on such measures. We note that the UK's Office of Telecommunications Adjudicator (**OTA**) have documented their learnings to protect and support vulnerable customers.

1.5 Critical Network Infrastructure

We suggest that ComReg considers Critical Network Infrastructure (**CNI**) on an individual case-by-case service basis where service requirements genuinely need to be addressed. We believe time should be made available to the customer and provider to reasonably resolve any potential CNI issues. For example some exceptional situations may still exist such as replacing legacy point-to-point copper-copper solutions which could be problematic to replace in the migration process. Lastly but not least it should be remembered that any provider may have resold CNI products so it should not be assumed that Eircom is the only provider of CNI and any such solution should be discussed with industry. We consider it disappointing that the industry has not been consulted until now in this matter.

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1.6 Extended Legacy Service vs Temporary Legacy Service

We believe it would be more appropriate to use the term "Extended Legacy Services" rather than "Temporary Legacy Services" whereby the objective is to maintain the connected copper users for a

time until the fibre network is available for delivery to the customer. I.e. the copper should not be switched off at the customers premises until the fibre is available.

1.7 Further Consultations

It is impossible to deal with every hypothetical scenario in respect of this proposed new framework and inevitably new challenges are anticipated. Hence based on the recent phased consultations taken by Ofcom, we consider that ComReg should follow suit and keep its options open in order to be better prepared to deal with and manage any material issue as it may arise.

2.0 Response to Detailed Questions

Q.1 Do you agree with the proposed principles to govern the Framework? Are there any other principles in this respect that should be considered? Please set out clearly the reasons for your response and any supporting evidence.

Response 1

We generally agree with the proposed principles to govern the Framework to achieve a migration that both protects the end users and promotes competition in the market. Section 12 of the Communications Regulation Act, 2002 (as amended) places an onus on ComReg in exercising its functions to promote competition and to promote the interests of users within the Community and we believe that this proposed new framework is a clear occasion when such an obligation must be fulfilled. Extract provided below.

Extract from the 2002 Communications Act – Italics added.

“2.—(1) The objectives of the Commission in exercising its functions shall be as follows— (a) in relation to the provision of electronic communications networks, electronic communications services and associated facilities— (i) to promote competition, (ii) to contribute to the development of the internal market, and (iii) to promote the interests of users within the Community,”

End of Extract

We note that Reference 1.25 – Table 4 appears to pay little attention to the industry and more specifically how the Alternative Comparable Products (**ACPs**) will be tested by operators and confirmed as workable. We believe that ComReg should take into consideration the fact that modern day order handling is automated, and operators will also have to understand and develop their own systems given this migration is likely to span over a number of years rather than in one single migration event. We would expect Eircom to deploy the proposed framework under the current regime using existing order types rather than creating new order types that have the potential to be incompatible with current systems. This would lead to inordinate and unnecessary delays.

Reference 1.27 – BT’s position is that availability of legacy services from the copper network should be extended until such a time that the fibre network is available for delivery to the customer. BT supports ComReg’s position to keep the regulation current on the extended legacy-based services.

Migration Phases

We welcome that ComReg has included an enablement phase “trial” as this should enable the migration and decommissioning phase to be trialled and refined but such should happen prior to the main migration and decommissioning phase. A particular concern for us is to be given access to the ACP’s and the associated order handling system early so that we can develop and test our systems whilst the migration scale is small. Any issues can then be resolved by the whole industry including the smaller operators given the scale of the change. We would disagree with ComReg’s Figure 1: Proposed Framework as this suggests the trial and the migration and Switch-off would run in parallel and this begs the question as to the value of the trial. Surely the trial should commence before the main phase. If the cross-over in time concerns the stop-sell Milestone 1 that might be workable but not during the migration and decommissioning phases.

If problems occur in the trial or full roll-out then ComReg should ensure it has the regulatory powers to press the “pause button” to allow time for issues to be resolved.

Business Customers

Some customers, particularly business customers can have a scale and complexity that is not easily migrated. We have seen this before on several occasions and such can require considerable expenditure by the customer to renew their on-site office solution so it can take a long time for them to migrate, and some applications are wider than replacing a PBX. Hence BT requests that any process should be considerate of additional complexity and difficulty in migrating business customers.

Q.2 Do you agree to ComReg’s approach to the definition of Modern Infrastructure? If not, what changes do you propose? Please set out clearly the reasons for your response and any supporting evidence.

BT Response

We note in clause 1.9 ComReg define modern infrastructure (in the context of FTTH) as that of Eircom and NBI fibre however ComReg in clause 1.10 appears to widen to premises passed by an alternative FTTH network. ComReg in clause 1.27 (and in other clauses) acknowledge that premises passed does not necessarily mean this premises can be provided with modern infrastructure and our own experience in Ireland has caused us real concerns with the term “passed” by an FTTH network as in reality premises claimed as passed is not the same as premises that can be connected when ordered. We have also experienced the situation where a customer has been rejected for copper on the basis that only fibre is available, yet the fibre is not available in reality. In these cases we agree it should be possible to order copper solutions.

Concerning the widening of the definition of FTTH to include other providers such as SIRO we believe this would need to be specified to the actual customer address (Eircode) rather than the area as new entrants are unlikely to have ubiquitous coverage. If the various access seekers can offer available Eircode’s on their ordering systems it’s difficult to see why ComReg can’t be more specific. Our concern is we end up with Eircom closing copper sites and in reality no fibre player, including Eircom is serving fibre to that site. I.e. Existing copper customers are disconnected and completely left without service.

Q.3 Do you agree with the principle that end-user communications rest solely with the RSP? Please set out clearly the reasons for your response and any supporting evidence.

While we do not operate in the consumer market in Ireland, we support ComReg's proposition that Eircom should not be in direct contact with the retail customers of other retail providers in relation to the migration as such could unnecessarily interfere with the retail providers own plans and could potentially confer an unfair competitive advantage to Eircom. In our view, the fairest approach is for Eircom to notify other operators within a reasonable timeframe so that they can prepare properly for the migration including the development of the communications packages for their customers. If action is not taken by the relevant retail operator upon receipt of the formal notice, ComReg has means to address any issue through its existing compliance division. An industry wide statement regarding the status of the migration should also be considered as ComReg acknowledge that the roll-out of fibre network is to be conducted by other providers (see section 1.9 and 1.10) and the impression should not be given that Eircom is the only provider.

Q.4 Do you agree with ComReg's preliminary views on the proposed Framework outlined in Sections 4.1 to 4.5 above? Please set out clearly the reasons for your response and any supporting evidence.

BT Response

We generally agree with ComReg's preliminary views on the proposed Framework outlined in Sections 4.1 to 4.5 above and would like to offer the following comments:

1. We agree with clause 4.2 that the ComReg framework should be embodied within a formal Decision setting out the steps and associated conditions to be complied with as part of the migration from Legacy Infrastructure. Our concern is to do otherwise allows for inconsistencies which could create uncertainty for the programme.
2. With regards to clause 4.3 and figure 7 we are concerned the Enablement phase appears to be run largely in parallel to the Migration & Switch-Off Phase which would appear to undermine the Enablement phase. We need clarity as to how the simultaneous running will enable the learnings from the Enablement Phase to be taken into the Migration and Switch-off phase whilst not causing a competitive distortion in the market. We are seeking a trial in some exchange area so we can develop our systems to order the ACPs and they can be tested in the trial environment before entering the actual Migration and Switch-off phase. We could understand the building up to the 75% happening in parallel to the trial, but not the actual Migration and Switch-off. In conclusion we disagree with enablement and migration/switch-off being run in parallel.
3. Clause 4.4 appears to suggest that once the plan is approved it becomes Eircom's Switch-off plan and ComReg exits from the project. Given the level of difficult wholesale issues that have been documented over the years on the ComReg Web site we consider ComReg need to ensure it has an oversight role and a fast-track intervention facility. We believe this should be hardwired into the Decision rather than ComReg using general wholesale regulation which in our view is still not working effectively in Ireland.
4. We are concerned with the definition in footnote 32 which suggests the copper roll-out is either in-situ copper or active copper-based services. It's not clear whether the definition means actual in-situ copper that may not be powered or listed by Eircom on its databases as in-situ. We therefore ask that ComReg clarify what it actually means by 100% in terms of premises with listed in-situ lines or all premises with listed in-situ and unlisted in-situ. We

would also ask that ComReg explain how the Universal Service Offering (USO) is maintained as this is not clear. Our understanding is there is no Irish USO at this time for Broadband, but such still exists for Voice.

Q.5 Does ComReg’s proposed Framework provide sufficient time for an Access Seeker to migrate its end-users from legacy-based services? Please set out clearly the reasons for your response and any supporting evidence.

BT Response

We consider this a good question and as indicated previously the industry should be given the opportunity and time to trial the process in nominated trial exchange areas (more than one) where many operators trade. Such exchange areas should have different characteristics such as rural and urban. The trial period should be before the actual Migration and Switch-Off starts but could be during the period where Eircom is moving towards the 75% Milestone 1 target. We would ask that the time period be made known to the industry in advance and it should give operators sufficient time to update their order handling systems and we would ask that existing order types are maintained and tweaked, as necessary.

As indicated in clause 1.1 of this response and with reference to clause 4.9 of the consultation, we do not agree with the Enablement phase running in parallel with the live migration-switch off phase as such could lead to competitive distortion where some may already have the features developed and others may not. The existing regulations require appropriate notice periods, and these should continue during this project so that competitors have the opportunity to compete on fair terms in the same timescales.

At this point there is little information as to when this project will commence, and we consider that ComReg should ensure a projected timetable is published in advance of any such migration to allow operators to proactively manage their business plans. For example, one month’s notice would not be considered respectful to industry, and we believe engagement with the incumbent on the proposed timelines for expected delivery are key to the successful roll-out of the fibre network in Ireland.

Q.6 Do you agree with ComReg’s preliminary views on premises passed, outlined in Section 4.6 above? Please set out clearly the reasons for your response and any supporting evidence.

BT Response

We support ComReg’s view that a premises is passed when an Access Seeker is capable of ordering an Alternative Comparable Product (ACO) and having the ACP installed at the premises within 15 working days (excluding any end-user delay time) on receipt of an order. It would be essential for ComReg to mandate that such is added to the contractual Service Level Agreements (SLAs) between Eircom and Industry otherwise experience of the Irish market suggests the proposal will be largely meaningless for customers that actually seek to apply this. Separately “end-user delay” needs to be specified in very specific detail otherwise in practice it could/will mean a myriad of things that effectively undermine the proposal. Lastly, the end-user in most cases should not have to wait 15 working days (21 calendar days), Eircom should have the information on their systems so that it or other retail providers can obtain an instant view of availability in most cases and where available supply could be faster than 21 calendar days.

Q.7 Do you agree with ComReg’s proposal on non-standard connection costs, outlined in Section 4.6 above? Please set out clearly the reasons for your response and any supporting evidence.

BT Response

We would agree where the customer is being effectively force migrated that Eircom should cover the costs and also ensure the new service meets a comparable minimum standard to the legacy service. We have indicated in our earlier responses that the Ofcom anchor pricing approach should be adopted for the entry fibre price.

Where Eircom don’t offer fibre to a premises then we consider the existing copper service should continue, i.e. an extended legacy service rather than something that is temporary, and where nobody actually knows whether temporary is just a delay before disconnection.

Q.8 Do you have any other comments on these pricing principles or any other pricing principles that should be considered? Please set out clearly the reasons for your response and any supporting evidence.

BT Response

We note ComReg has seemingly dismissed pricing as part of this project, and we consider this a serious oversight. We certainly consider that the entry fibre price should be linked to a mainstream copper broadband price in a similar way to that implemented by Ofcom. Otherwise, it’s likely that many users will experience a potential significant price uplift that they did not influence or in many cases request. The current rising rate of inflation in Ireland further supports the need for ComReg to apply an anchor price control. Hence we are seeking a wholesale fibre entry rate akin to the approach mandated by Ofcom. We have no confidence in voluntary wholesale offers in Ireland as our experience of the price reduction with NGA in 2013 was a poor as the discount applied at launch was latterly removed.

Q. 9 Do you agree with ComReg’s preliminary views on monitoring the Migration from Legacy Infrastructure outlined in section 4.7 above? Please set out clearly the reasons for your response and any supporting evidence

We agree with ComReg’s proposal for monitoring so that all can have confidence in the progress being reported and an assurance that the phases are being conducted correctly. In addition to the monitoring it would be extremely helpful for industry preparation to understand to a quarter-year resolution when the individual migration areas are expected to start.

Comments to the list of metrics.

1. Please note that we do not agree with footnote 41 as this is a subset of the real number and if a customer were to move to a new premises it will be a lottery as to whether fibre is available. Does this mean that copper will be provided to such customers?
2. On top of the numbers we will continue to need the APQ file from Eircom to tell us what capabilities exist at each premises.
3. Can we see a worked example of the KPIs as the titles look useful but it’s difficult to tell how it will work until we see a worked example?

End

eir

Response to ComReg Consultation:

Framework for the Migration from Legacy Infrastructure to Modern Infrastructure

ComReg Document 22/13



11 May 2022

DOCUMENT CONTROL

Document name	eir response to ComReg 22/13
Document Owner	eir
Status	Non-Confidential

The comments submitted in response to this consultation document are those of Eircom Limited and Meteor Mobile Communications Limited (trading as 'eir' and 'open eir'), collectively referred to as 'eir Group' or 'eir'.

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Accordingly, you are requested to contact a member of eir Group's Regulatory Strategy Team where there is a request by any party to have access to records which may contain any of the information herein and not to furnish any information before the eir Group has had an opportunity to consider the matter.

Response to consultation

1. eir welcomes the opportunity to comment on ComReg's draft Decision. eir notes that ComReg is seeking to impose its own framework for Copper Switch-Off (CSO) which appears to be contrary to the intention of Article 81. These points were raised in our response to the Call for Inputs (ComReg 21/78) and ComReg has failed to respond to them in this consultation. ComReg's proposed conditions and timeframes are very different to eir's proposals. However eir will consider ComReg's proposals constructively.
2. eir notes that the focus of this consultation is on the wholesale aspects of a framework for CSO and we look forward to separate consultation on retail principles including end user rights and a full review of the USO framework.
3. The proposed decision instrument refers to the FACO, WLA, WCA, and WHQA markets. In light of ComReg's proposal to deregulate the FACO market (ComReg consultation 22/10 refers) we have limited our comments in this response to the regulated access products in the WLA, WCA, and WHQA markets.
4. In our response to the Call for Input, eir submitted that any non-standard costs associated with an FTTH connection within the curtilage of a property owner is the responsibility of the property owner. In the draft Decision, ComReg has failed to respond to this submission. eir submits again that it is not the responsibility of a commercial entity to subsidise, as a regulatory requirement, such costs for connection to the network. This is a recognised and a long-standing practice in other sectors including for telecoms networks. This aspect of ComReg's decision must be revised in order to ensure that infrastructure-based operators' business case is not potentially undermined. Without revision the digital connectivity targets as set out in the National Digital Strategy, as published by the Irish Government, will be jeopardised.
5. Similarly, to avoid excessive disruption in the Business/Enterprise market, ComReg must revise its draft Decision. In the context of CSO, the Business/Enterprise market has completely different characteristics compared to the consumer market. eir submits that CSO for the Business/Enterprise market must be completed on a national product-by-product basis. In order to allow appropriate forward planning for the migration to the modern network, eir proposes an additional notice period. Plans to retire any Business legacy products (unless otherwise agreed by ComReg on a case-by-case basis) will at a minimum

not be announced for 12 months following the roll-out completion of modern infrastructure in the last Eircom exchange. This is estimated to occur in ca. 2027/2028.

Q.1 Do you agree with the proposed principles to govern the Framework? Are there any other principles in this respect that should be considered?

Alternative Comparable Products (ACP)

6. eir has previously commented on the proposed principles and is disappointed to note regarding wholesale replicability that ComReg still proposes to make it a condition that Alternative Comparable Products (ACPs) must be “*of a comparable price to the legacy product it is intended to replace*”. This is not a requirement of Article 81 which only contemplates the need for ACPs to be of at least comparable quality.
7. ComReg does not have the authority to specify or require there to be wholesale “differentials” or “margins” between legacy infrastructure-based services and those on Modern Infrastructures either entirely on open eir’s network or between open eir’s legacy network and competing alternative Modern Infrastructure platforms. Consequently ComReg’s proposal to include this pricing principle is ultra vires.
8. open eir has reviewed the legacy regulated access products and concluded that the relevant ACPs for mass market broadband services are SA FTTH VUA and Bitstream services (e.g. the 150Mb / 30Mb profile). With regard to data products the relevant ACPs for Traditional Interface WHQA would likely be WSEAs noting that some of the bespoke use cases may migrate to wireless technology. As such open eir does not consider there will be a need to develop new ACPs.
9. If ComReg intends to keep this “principle” then it must be amended to acknowledge that for historical reasons many legacy services are delivered in multiple variants and the associated pricing may have complexities that are not necessary to replicate and in certain circumstances may not be “comparable”. In addition, that demand on certain legacy services is low and in decline and in such circumstances that any bespoke requirement ACP is not proportionate or justified.
10. The ability to provide promotions at the wholesale level will also be a key requirement in order to ensure that open eir has the available tools to facilitate and encourage migration to Eircom’s Modern Infrastructure. In response to eir’s White Paper on CSO, there were

references made to “*all stick and no carrot*” by ALTO. Such continued restrictions on wholesale promotions and discounts by ComReg on open eir’s activities is not sustainable and is distorting the market.

11. open eir is currently finalising a list of ACPs (which exclude Business/Enterprise products for reasons set out in Question 4). open eir would welcome the opportunity to discuss this with ComReg in the coming weeks. In order to provide market certainty and forward planning it is imperative that open eir has an understanding of ComReg’s position on the list of ACPs. Without knowing ComReg’s position in advance, any CSO programme will be subject to undue delay and disruption including the inefficient cost consequences of maintaining dual networks for longer than necessary. This will also assist in determining if an Enablement phase trial is required.

In Scope Premises

12. Section 5.4 proposes that “*An In Scope Premises shall be considered to be passed by Eircom’s Modern Infrastructure where an Access Seeker is capable of ordering an ACP and having the ACP installed at the premises within 15 Working Days (excluding any End-User delay time) of receipt of the ACP order.*” eir does not believe it is reasonable for the definition of the ACPs to mandate a provisioning SLA in the manner proposed. The ACPs will be delivered in accordance with the terms and conditions of the regulated access products. CSO principles should not dictate the terms of delivery of regulated access products but rather the regulated access products should be delivered in accordance with the terms and conditions consistent with the SMP obligations imposed in the relevant market. Such an approach is consistent with BEREC’s report in ensuring a consistent approach to the migration of copper switch-off (BoR (21) 171).
13. In the interest of clarity we believe it would be appropriate to further define what is meant by in-situ. open eir believes that further clarification should be added in the context of ceased in-situ copper lines that these are lines that were ceased in the previous 13 months¹ that can be electronically enabled to provide a legacy RAP.
14. open eir notes that ComReg proposes to impose a further obligation in respect of ACPs such that they “*be delivered to the location of the legacy service NTU , at the End-User’s*

¹ Aligning with removal of customer details in line with GDPR data retention after the quarantine period and ensuring the integrity of the maintenance records.

premises". It may not be helpful to mandate this requirement and it is notable that ComReg offers no explanation as to why this proposed requirement is necessary. It is assumed that ComReg intends that the Optical Network Terminal (in the case of FTTH) be located exactly where the legacy NTU is. Whilst in many cases it may be logical to locate the Modern Infrastructure delivery point close to the location of the legacy service NTU, it may be the case that an alternative point in the premises is better, e.g. close to at least two power sockets, or better located for Wifi distribution. The end-user may also wish to retain access to the legacy NTU for a period of parallel running before the legacy service is ceased. An appropriate delivery point is discussed with property owners as part of the installation process. However, there may be numerous reasons including health & safety, internal wiring/ducting issues etc., such that it may not be appropriate to locate the Modern Infrastructure delivery point at the location of the legacy NTU. We therefore request this obligation to be removed noting that the location of the Modern Infrastructure delivery point has not arisen as a concern in the ongoing connection of premises to open eir's FTTH network.

Exempt Users

15. The needs of vulnerable end-users reliant on legacy-based services who require additional notice before switch off of their legacy services should be managed by industry in a predictable manner. Any obligation proposed by ComReg in defining exempt users' should take into account that exempt users may not be easily identified by Access Seekers. eir submits that with suitable communication and promotion in the migration phases, together with a clear process to register Exempt users should ensure their needs are adequately met. open eir agrees with the proposed timelines proposed by ComReg for Exempt Users.

Q.2 Do you agree to ComReg's approach to the definition of Modern Infrastructure? If not, what changes do you propose?

Modern Infrastructure

16. eir agrees with the definition of 'Eircom's Modern Infrastructure' to be 'Eircom's FTTH and other Eircom alternative modern networks'. eir further agrees it is appropriate to include NBI in the broader definition of 'Modern Infrastructure' however as currently drafted this is limited to NBI's FTTH Network. It is our understanding that NBI may be permitted to use alternative technologies to provide services to a small number of premises in the Intervention Area. Consequently we believe that NBI's Modern Infrastructure should be defined, in the same manner as Eircom, to be 'NBI's FTTH and other NBI alternative modern networks'.
17. It should also be clarified, for example in section 3.2 of the proposed decision that open eir can only be held responsible for the provision of Eircom's Modern Infrastructure and that the construct of the text of the obligations does not result in inappropriately imposing an obligation on Eircom to resell NBI products and services.

Q.3 Do you agree with the principle that end-user communications rest solely with the RSP?

18. open eir notes that it is important to ensure that end users are fully informed. open eir agrees that direct communication with individual end users is the responsibility of the retail service provider. open eir welcomes the clarification in section 3.25 that a prohibition on direct communication does not prevent it from engaging in general information campaigns such as leaflet drops as it does today.

Q.4 Do you agree with ComReg's preliminary views on the proposed Framework outlined in Sections 4.1 to 4.5 above?

Switch-off Plan

19. Section 7 sets out the detailed requirements in respect of producing a Switch-off Proposal. eir notes that the detailed proposal must be submitted to ComReg at least three months before open eir intends to publish the plan. This would suggest ComReg envisages a three month period within which it will assess a Switch-off Proposal. However the anticipated review period is not explicitly stated. It would be in the interest of a transparent and predictable framework if ComReg could set out in the decision the anticipated time period for its review.
20. Section 7.2.2 e) requires eir to provide "*all other information that Access Seekers will require in order to plan for and undertake their role in the proposed Migration from Legacy Infrastructure*". This is a somewhat broad obligation which is not defined sufficiently to allow eir to assess the reasonableness of the obligation that ComReg proposes to impose. Given the list of detailed information prescribed in section 7.2 it is not apparent what other additional information may be required. eir requests that section 7.2.2 e) be deleted or at the very least be amended to "*all other information that Access Seekers will reasonably require in order to plan for and undertake their role in the proposed Migration from Legacy Infrastructure*".

Enablement Phase

21. The purpose of the Enablement Phase requires further consideration. As we noted in response to the Call for Inputs "*many premises have already effectively migrated to FTTP and the transition is ongoing*". Consequently it is not clear what the purpose of a trial would be in the Enablement Phase particularly if there is no requirement to develop new ACPs noting our response to question 2.
22. Section 4.2.1 of the draft decision describes the Enablement Phase "*where Eircom shall develop, test and trial the new ACPs to be offered on Eircom's Modern Infrastructure, to the extent necessary.*" [emphasis added] This appears to correctly acknowledge that a trial may not be necessary. This interpretation is also captured in "Figure 1: Proposed Framework". However, section 8.3 of the draft decision seems to make a trial mandatory

stating that “*Eircom shall carry out a trial...*” and yet sections 8.3.7 and 8.3.8 tie the end of a trial period to the making available of a new or amended ACP. We therefore request clarification that a trial is only required in the circumstances of a new or amended ACP being developed — and only where such an ACP is materially different such that those characteristics would warrant a “trial”. This would avoid unnecessary trials in circumstances where a trial outcome is self-evident.

Migration and switch-off phase

Administrative burden

23. ComReg proposes that the migration and switch-off phase may begin when network rollout has been achieved for 75% of In Scope premises in an exchange area (Milestone 1) or 100% (Milestone 2). ComReg proposes that CSO should be progressed on an exchange-by-exchange area for all In Scope Premises in both the business and consumer markets.
24. eir is concerned that setting Milestone 2 at 100% will be administratively burdensome for both ComReg and eir. As ComReg notes some premises may be derelict and as we discuss below there may be situations where open eir is denied access to facilitate network rollout. As such it will be very unlikely that a target of 100% will be reached in any exchange area resulting in the need for open eir to make and ComReg to assess approx. 1,200 applications for Milestone 2 to commence at a lower percentage.
25. ComReg’s proposed approach will therefore in operation be contrary to the best practices exhibited in BEREC’s draft report (BoR (21) 171). BEREC observes at paragraph 3.9 that in 16 of the “*17 countries in which the NRA already set rules for the copper switch-off, the SMPO has the possibility to close MDFs if the rules set by the NRA are fulfilled and the SMPO does not need any further explicit formal permission except in one country*”. Establishing robust principles upfront to remove the need for copious formal decision making during the CSO process is a much more efficient approach.
26. In its White Paper eir sought to reduce the need for incremental decision making and proposed that the stage to commence completion of the transition and CSO would commence when 95% of In Scope Premises are passed with fibre. ComReg’s proposal to raise the bar to 100% of In Scope Premises albeit passed by Modern Infrastructure will, as noted above, introduce a substantial administrative burden. Under section 9.2 ComReg will entertain the commencement of Milestone 2 at less than 100% of In Scope Premises passed, subject to its consent. If eir wishes to avail of this flexibility it is required to provide

information specified in section 9.2 which includes “9.2.3 *the reasons why Modern Infrastructure is not available (per premises), including the identity of the network operator offering wholesale access on an FTTH network passing the premises*”.

27. In paragraph 4.47 of the consultation ComReg explains that it considers reasonable grounds that Modern Infrastructure is not available may include premises with an Eircode being derelict or, as described in 9.2.3 the premises is passed by another wholesale FTTH network. Noting our reservations regarding the administrative burden if the proposed approach is to be maintained it is important to note that another reasonable ground is where open eir has been denied access to private property as part of its rollout activities, for example access to multi-dwelling units, and consequently cannot complete the planned rollout of its Modern Infrastructure. Therefore 9.2.3 should be amended acknowledging access denied as a valid reason. This was also included in eir’s White Paper.

Out of scope premises

28. Section 9.2.4 of the proposed Decision requires “*the legacy service status (no existing copper connection, ceased in situ, active) and legacy service (if active)*”. eir notes that the CSO protocols apply to In Scope Premises which are defined as “*premises which have ceased in-situ copper lines or active copper-based services*”. Consequently premises with no existing copper connection are out of scope and should be removed from the requirements of section 9.2.4.

Treatment of Business markets

29. eir does not agree with ComReg’s proposal to treat businesses and consumers the same and withdraw legacy services on an exchange by exchange basis. ComReg puts forward its view in paragraph 4.11 that “*while the business and government market are typically characterised by multi-year contracts for multi-geographic locations throughout Ireland, a common framework will result in a more transparent and less confusing migration process and ensure that all end-users are treated equivalently and the position of Access Seekers the same*”. We believe that ComReg has put too much weight on its belief that a common approach for all products is more transparent and less confusing.

30. The reality, particularly in respect of Low Bandwidth Traditional Interface (LB TI) WHQA products is that they are used by business often for bespoke use cases. A migration of the

service to Modern Infrastructure may require a tender for new equipment to support the service. If the retirement of LB TI WHQA is approached on an exchange by exchange basis then the need for a business to tender for a new national service will be triggered by Milestone 2 in the first exchange area where a business has one of its locations. Any such a tender process will also be fraught with uncertainty. For example, it may be unclear at the time of tender (which may also be triggered when CSO occurs in an exchange) which (further) locations could be subject to CSO and in which sequence. The conditionality for unknown market developments will result in poor competitive outcomes. Thus an exchange by exchange approach could be more confusing and burdensome for businesses consuming LB TI WHQA products. open eir believes it would be more appropriate for LB TI WHQA to be withdrawn on a product-by-product basis whereby open eir seeks ComReg's consent to withdraw Access for specific products under section 7.4(ii) of D03/20. This process has worked well to date and provides a good model for the retirement of LB TI WHQA in the context of CSO. It should also be noted that LB TI WHQA operate on the legacy Martis network which is distinct from DSL broadband services and as such separate withdrawal and decommissioning plans can be maintained.

31. Similarly, LB TI WHQA lines are typically characterised by network "tails". These may extend beyond exchange boundaries and can often be in very different geographic locations. As such, the triggering of CSO in an exchange may not be possible as multiple locations associated with that circuit not having Modern Infrastructure alternatives. As noted above, the confusion and tendering difficulties associated with such a scenario would be highly problematic and result in undue business disruption.
32. Finally, it is unclear to eir whether ComReg has the power to stipulate materially different conditions than those contemplated and put forward by the SMP operator under Article 81.
33. eir submits that a more effective and efficient way forward is to separate CSO requirements between the consumer mass market and business/enterprise market. For the business/enterprise market CSO will occur following the retirement on a product-by-product basis. To assist with any commercial tendering frameworks and business continuity plans, eir submits that an additional notice period is required. Plans to retire any Business legacy products (unless otherwise agreed by ComReg on a case-by-case basis) will at a minimum not be announced for 12 months following the roll-out completion of modern infrastructure in the last eircom exchange. This is estimated to occur in ca. 2027/2028. Such a milestone date which is sufficiently into the future (coupled with the status reporting on various

milestone for each exchange) will also allow account managers and service providers to inform their customers or perspective customers of the likely evolution in the market and therefore could be accommodate within future frameworks/tenders/bids etc.

Milestone 1: stop sell

34. eir is pleased to note that ComReg has included a stop sell phase, to be invoked at open eir's discretion. ComReg proposes this milestone may be triggered when the number of premises passed by Modern infrastructure is at 75% or more. This differs from our proposal which could have seen stop sell commence at an individual premises level when passed by Modern Infrastructure. This may have the effect of prolonging the CSO process by delaying the point when stop sell could be applied however we note ComReg's view that this will provide more certainty to Access Seekers and acknowledge that a balance may be struck.
35. ComReg proposes that if stop sell is invoked by eir after 75% of In Scope premises have been passed then Milestone 2 (100% of In scope premises) must be achieved within 2 years or the stop sell is reversed. It should be noted that in most Exchanges the completion of FTTH roll-out will have a dependency on the progress of NBI. Consequently it should be possible to extend the stop sell period beyond 2 years if the Exchange cannot proceed to Milestone 2 due to delays by NBI that are outside of eir's reasonable control.
36. For reasons set out in response to Question 7, eir does not agree that a 'Stop Sell' notification should trigger a requirement that private property costs are now the responsibility of the network owner.

Switch-off (Phase 1) Notices

37. eir has no objection to the proposals in respect of the timing and publication of the proposed notices set out in sections 9.7 to 9.10 of the draft decision instrument .

Switch-off (Phase 2) Notices

38. eir has no objection to the proposals in respect of the timing and publication of the proposed notices set in sections 9.11 to 9.14 of the draft decision instrument.

Safeguard

39. eir agrees with the principle that existing customers should not be left without service during the migration phase if issues arise during the process to connect a premises to Modern Infrastructure. Section 9.15 of the proposed decision further requires that if a premises requests a new connection to Modern Infrastructure and connection issues arise, then a Temporary Legacy Service (TLS) should be provided within 10 working days. eir does not object to the proposal to provision a TLS on the understanding that it applies only in the case of premises with in-situ copper lines. It would be counter intuitive for the CSO protocol to mandate the provision of new copper lines.

40. However eir does not agree that the CSO protocol should mandate the provision of a TLS within 10 working days. The regulated access product providing the TLS should be provided in accordance with the established open eir Wholesale terms and conditions of the relevant legacy access product.

Decommissioning phase

41. eir has no objection to ComReg's proposed section 10 of the decision instrument.

Q.5 Does ComReg's proposed Framework provide sufficient time for an Access Seeker to migrate its end-users from legacy-based services?

42. eir considers that the proposed framework provides sufficient time for an Access Seeker to migrate its end-users from legacy-based services. It should be noted that it is not in open eir's interest to unduly upset its customers and their end users during the migration as this will be taking place against a competitive backdrop where alternative networks are available.

Q.6 Do you agree with ComReg's preliminary views on premises passed, outlined in Section 4.6 above?

43. Please see paragraph 6, 24 and 25 of this response. open eir is supportive of providing a TLS in respect of premises with in-situ copper lines. However provisioning timelines for Modern Infrastructure and TLS should not be dictated by the CSO protocol but rather in accordance with the relevant regulated access product terms and conditions.

Q.7 Do you agree with ComReg's proposal on non-standard connection costs, outlined in Section 4.6 above?

44. eir does not agree with ComReg's proposal on non-standard connection costs (which are not defined in the draft Decision Instrument which is the prevailing legal instrument). ComReg does not have the vires to impose such a regulatory obligation under Article 81.
45. ComReg's proposal is also not compatible with the regime for imposing SMP obligations. Article 74 (Price control and cost accounting obligations) requires "*[w]here the national regulatory authorities consider price control obligations to be appropriate, they shall allow the undertaking a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.*" However it is ComReg's clear intention, as exhibited in Figure 11 and 12 in the consultation, that the non-standard connection costs must be borne solely by eir with no additional cost to the end-user or Retail Service Provider.
46. This is an entirely unreasonable and unjustified proposal. In ComReg 21/78 ComReg posed the question that if such costs were to be borne by Eircom, how should such costs be recovered? It is very concerning that ComReg does not consider cost recovery in the current consultation further underlining the illegality of ComReg's proposal.
47. It is estimated that 30% of FTTH connections will require some form of non-standard connection. Assuming a conservative average cost of 30€² implies a total cost exposure to eir of over 30€ (1.9m premises x 30% x 30€).
48. eir understands that NBI is subject to obligations under the National Broadband Plan that are similar to ComReg's proposal in respect of non-standard connection costs. eir also understands that NBI's costs in this regard are recoverable from the State subsidy. Based on Eircom's experience and estimates it is therefore likely that a high proportion of the State Aid subvention is to pay NBI for the private property costs associated with non-standard connections . It is unreasonable that eir should be required to solely bear these costs in the Commercial Area and are not comparable.

² Estimated average cost in respect of residential premises. Average cost for business premises will be significantly higher.

49. ComReg provides a list of perceived benefits at paragraph 4.68. The first of these is “*Non-standard connection costs may act as a barrier to the take-up of FTTH, and removing this barrier, at the point of legacy exchange area led migration, would address this*”. ComReg does not substantiate if non-standard costs are acting as a barrier to FTTH take-up. If such a barrier is demonstrated to exist it is not as a consequence of CSO and any related public policy intervention with a proportionate remedy, for example in the form of targeted grant aid, should be addressed at the entire market level in a non-discriminatory manner. eir notes that TII made similar submissions in response to the States’ National Recovery and Resilience Plan. eir recommends that ComReg discuss the issue with the Department for Environment, Climate and Communications so that implications for the National Digital Strategy are understood and that appropriate State funding/tax incentives or credits can be introduced.
50. ComReg’s second perceived benefit is “*It [non standard connection costs borne by eir] provides end-users with a comparable (or better) service than they currently enjoy*”. The meaning of this perceived benefit is not clear. It is either a repeat of the first perceived benefit, lower barriers to FTTH take-up, or it is an acknowledgement of the fact that end-users will have a better service when they migrate to FTTH. If the latter then economic principles actually support the proposition that end-users bear some of the costs particularly where they are incurred on private property. No other utility in Ireland is required to be responsible for connection costs on private property. Indeed, even from a cursory view of property websites it is clear that “full fibre” broadband is a recognised amenity in property sales and letting listings and is therefore attributing to the realisable value of the property owner.
51. The third perceived benefit is “*It incentivises Eircom to minimise the Stop Sell period*”. This is not a valid justification to make eir incur unreasonable costs particularly when ComReg has separately proposed to impose a two year limit on the duration of the Stop Sell period.
52. The fourth and final perceived benefit put forward by ComReg is that “*It balances the burden of the non-standard connection costs, to be borne by Eircom, with the benefits that Eircom will obtain in decommissioning its copper network.*” ComReg has not provided any evidence to support this assertion and in any event we do not consider this a valid justification that overcomes the fact that ComReg will be acting ultra vires if it seeks to enforce the proposal.

53. In addition, ComReg has failed to undertake an assessment of the potential impact on competition arising from its proposals. ComReg's proposals may have a significant distortionary effect unduly influencing other alternative wholesale FTTH access products and bias competition in the market. ComReg has failed to properly assess its proposal and its potential impact on competition between eir and other FTTH network operators.
54. eir submits that it is unclear what specific powers would allow National Regulatory Authorities to mandate that the SMP operator incur the (private property) costs of end-users (individuals and enterprise customers) under Article 67 and Article 81 of the Code. As a comparison, such private property costs are also borne by end-users when connecting to the electricity/gas/water networks
55. Taking the above into account it is clear that ComReg's proposals in respect of non standard connection costs are not fair, reasonable or proportionate and therefore section 6 of the draft decision instrument should be deleted. Any gap for funding non-standard connection costs is an Irish State policy issue and must be addressed at that level.
56. If ComReg maintains its view then it must, consistent with its Regulatory Impact Assessment requirement, assess whether such obligations would risk compromising the business case for recently deployed or future deployment of very high capacity networks. ComReg's current work programme developing an FTTH cost model should include such scenarios – if such policy decisions are to be assessed against proportionality, non-discrimination, incentivising infrastructure-based investment decisions etc. However, having not fully addressed the issue under this consultation, if ComReg maintains its view, then it must at a minimum re-consult with interested parties before being able to move to a final decision on CSO.

Q.8 Do you have any other comments on these pricing principles or any other pricing principles that should be considered?

57. eir notes reference made in the consultation to the future consideration of a 'Copper Windfall'. It is not clear why ComReg would assume a 'Copper Windfall'. Any revenue from the sale of copper metal is likely to be counter-balanced by the removal and recovery costs, revenue foregone, and the costs of disposal of non-metallic sheath material. Much of the existing copper cable plant consists of cables with small numbers of copper pairs and small-gauge strands. Recovery and removal of these is likely to be uneconomic and disruptive, potentially creating faults on other services sharing the same civil infrastructure if fibre cables are disturbed in the process. In any event it is unclear as to how 'Copper Windfall' is relevant to forward looking pricing reviews and even if considered relevant how it could be factored into pricing considerations across regulated and unregulated products across multiple markets.

58. eir has no further comment at this time in respect to the CSO pricing principles put forward by ComReg.

Q.9 Do you agree with ComReg's preliminary views on monitoring the Migration from Legacy Infrastructure outlined in section 4.7 above?

59. eir has reviewed the reporting requirement as specified in section 11. eir has no objection to producing such reporting in respect of broadband products in relation to its own network. In the short term as eir has access to NBI premises passed information as a reseller of NBI products it can include NBI in such reporting. However, if eir ceased to be a reseller it would no longer have access to this information. eir further notes that it does not have the rollout information relating to other network providers and hence cannot report on them. Consequently we reiterate that ComReg is in a better position to collect data from all Operators and publish a regular report with the information as set out in section 11.

60. eir would however request, on the basis of proportionality, that the reporting frequency be made quarterly to align with Geo-Directory updates which are issued quarterly. The report would be available 1 month following the Geo-Directory release. This frequency would also align with current reporting processes that form the basis of network rollout reporting. The overall change at a monthly level (including its implications for CSO) would not be significant enough to warrant reporting at this frequency.

61. As set out above eir believes Low Bandwidth Traditional Interface (LB TI) WHQA products should be treated differently and reported separately. These products typically have an A and B end so may not be in the same exchange area and do not have the same level of spatial data available relating to the current installed base. It should also be noted that LB TI WHQA may be delivered to locations that are not and will never be assigned Eircodes.

Framework for the Migration from Legacy Infrastructure to Modern Infrastructure

Response by NBI to ComReg's Consultation

Issue Date : 11th May 2022

Issued By : NBI

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1. Executive summary

National Broadband Ireland (NBI) is pleased to provide its response to ComReg's Consultation on its proposed framework for the migration from Legacy Infrastructure to Modern Infrastructure (MI).¹

This response largely focuses on the implications of ComReg's proposals as they affect NBI's provision of FTTH-based electronic communications services in the National Broadband Plan (NBP) Intervention Area (IA) and hence on NBI's operations.

In particular, NBI considers that ComReg's proposed framework needs some adaptation in order to recognise more explicitly differences in:

- the necessary processes underpinning the migration to fibre in the IA, in light of the fact that NBI and not Eircom will be the provider of MI within the IA;
- the existing protections for end-users and access-based competition in relation to the MI deployed in the IA, given the NBP Project Agreement that NBI has signed with the Department for the Environment, Climate and Communications (DECC);
- the different incentives facing Eircom to complete the migration to MI in the IA compared to the commercial area.

Where we do not comment on proposals by ComReg relating to migration issues that impact on the commercial area², this is not an indication that NBI considers the proposals appropriate, but rather that those particular proposals are outside the scope of NBI's response. In any event, NBI has already shared its position on many of these issues in its response to ComReg's Call for Inputs on this topic.³

The remainder of this response is organised as follows:

- In Section 2, we provide some introductory comments on the regulatory context for ComReg's proposals;
- In Section 3, we discuss the principles underpinning the proposed framework for migration from Legacy Infrastructure to MI;
- In Section 4, we set out some observations on various aspects of the proposed transition framework; and
- In Section 5, we provide responses to the questions posed by ComReg in its Consultation Document.

¹ ComReg Consultation and Draft Decision (Document No. 22/13) published on 25th March 2022.

² From a definitional point of view, usage of the term "commercial area" in this response denotes everywhere in the country outside the NBP IA, i.e. all locations where NBI has no contractual mandate nor obligation to pass and connect premises with its FTTH network under the NBP.

³ Migration from Legacy Infrastructure to Modern Infrastructure, Response to ComReg's Call for Inputs, NBI, 11th September 2022.

2. Introduction

Regulatory context

The proposals should reflect ComReg’s wider duties under the EECC to promote roll-out and take-up of Modern Infrastructure, and “territorial cohesion” across Ireland

In general ComReg’s proposals should be consistent with its relevant statutory objectives, which include its existing statutory objectives as set out in the Communications Regulation Act / Regulation 16 of the Framework Regulations⁴, and the relevant provisions of the European Electronic Communications Code (EECC), which will be transposed into Irish law.

In this case ComReg states that its overall objective is to ensure that the migration process does not adversely affect wholesale and retail competition and the interests of end-users, while being mindful of not inhibiting the retirement of legacy networks⁵: this is consistent with its statutory objectives to promote competition and promote the interests of end users.

ComReg also correctly notes that the migration process needs to be consistent with Article 81 of the EECC, which defines a (minimum) set of obligations for migration from Legacy Infrastructure. This includes specific requirements on the process for migration (such as a requirement for the process to have transparent timelines and conditions), and requirements on the wholesale products that must be available on replacement infrastructure before legacy services can be withdrawn.

However, ComReg must also consider other parts of the EECC, which add other duties that are relevant for ComReg’s decision-making on the appropriate migration process. In particular, Article 3 and recital 23 of the EECC will add a duty on ComReg to promote roll-out and take-up of services on MI, and ensure “territorial cohesion” of this across Ireland:

“promote connectivity and access to, and take-up of, very high capacity networks, including fixed, mobile and wireless networks, by all citizens and businesses of the Union”⁶
[emphasis added]

“[...]. For the Member States, the national regulatory and other competent authorities and the stakeholders, that connectivity objective translates, on the one hand, into aiming for the highest capacity networks and services economically sustainable in a given area, and, on the

⁴ These include objectives to promote competition; encourage efficient investment and innovation; and promote the interests of users.

⁵ ComReg 22/13, paragraph 3.2.

⁶ EECC Article 3, paragraph 2a.

other, into pursuing territorial cohesion, in the sense of convergence in capacity available in different areas.”⁷ [emphasis added]

These are directly relevant to decisions on the appropriate migration process, in particular:

- Providing clarity on the circumstances in which customers can be denied access to services on Legacy Infrastructure (as opposed to “unforced” migration by customers moving to services on MI where they have the free choice between services delivered over Modern and Legacy Infrastructure), and on the timing of when Legacy Infrastructure can be retired, reduces the risk for operators of legacy networks who plan to overbuild this network with MI, improving the business case for, and hence accelerating the roll out of, MI;
- Allowing customers to be denied access to Legacy Infrastructure services will lead to greater take-up of services delivered over MI; and
- Decisions must take account of the need to pursue territorial cohesion. In the case of migration from Legacy to Modern Infrastructure, this means that end-users in similar positions have similar access to Legacy and Modern Infrastructure services wherever they are, including in the commercial area and the National Broadband Plan (NBP) Intervention Area (IA).

The process can only impose obligations on SMP operators, and should take account of NBI’s contractual obligations under the NBP Project Agreement

Article 81 of the EECC allows ComReg to place obligations on operators with SMP who are planning to replace or retire legacy infrastructure, i.e. Eircom. As such, ComReg correctly places no direct obligations on NBI within its proposals, instead focusing on obligations to be imposed on Eircom. This includes a requirement on Eircom to provide alternative comparable wholesale products (ACPs) on MI before its Legacy Infrastructure can be retired, in order to protect end-users and wholesale access-based competition during and after the migration process (the key underlying objective of Article 81).

However, ComReg’s proposals do make reference to NBI’s roll out, and while the consultation is clear that there is no requirement on Eircom to provide ACPs in the Intervention Area and that, more generally, it is not expected that ACPs are required to be offered on other FTTH networks⁸, there may perhaps be a presumption about the services that will be available on NBI’s network at the time that Eircom switches-off its legacy network in the IA.⁹

⁷ EECC, Recital 23

⁸ Paragraph 1.9 of ComReg 22/13 states that Eircom is not required to provide ACPs on other FTTH networks.

⁹ For example, Paragraph 1.21 states that “transition may only begin where premises concerned have access to Modern Infrastructure by way of ACPs on Eircom’s modern infrastructure or fibre-based services on NBI’s network”.

Given that the availability of wholesale services in the IA is governed by the NBP Project Agreement, this contract is important context for ComReg's approach. The Project Agreement explicitly provides for the protection of end-users and the promotion of wholesale access-based competition in the IA, thereby ensuring that the key objectives of Article 81 are met in this area.

Clarity would therefore be welcomed on whether or not ComReg's proposals impose any additional obligations on Eircom in the IA, or whether Eircom can simply rely on the availability of access to the NBI network as defined in the Project Agreement to meet the criteria required to move towards retirement of the Legacy Infrastructure in the IA. NBI's assumption is that no additional obligations on either Eircom or NBI in the IA are envisaged but it would welcome confirmation on this point.

Wholesale access price regulation of MI is relevant for the migration process, but ComReg's proposals on wholesale pricing cannot be assessed at this stage

As noted in NBI's response to ComReg's Call for Inputs, the set of wholesale products and prices that will be offered on MI is a key element of the migration process, as this defines the "end goal" of the process (i.e. the products and associated prices that access seekers will use to serve end-users post-migration).¹⁰

While ComReg states that the pricing of wholesale access to MI will be consulted on separately, which is consistent with paragraph 3 of EEC Article 81, there are a number of references to wholesale pricing within its proposals. For example, that ACPs will have 'comparable' pricing to equivalent legacy services¹¹, and that access seekers will need to pay the standard fibre connection charge for end-users who take up ACPs¹². It is difficult for NBI to comment on these proposals in the absence of regulatory decisions on the control of wholesale prices, given these may be used as benchmarks for ACP prices and/or for the connection fee to be charged to Access Seekers. Furthermore, decisions on regulation of wholesale prices in the commercial area may affect the requirements for wholesale access under the Project Agreement. NBI therefore reserves the right to comment further on these proposals once the relevant regulatory decisions have been made.

¹⁰ Access pricing will also have a significant impact on ComReg's key relevant objectives – for example the introduction of price regulation, or an obligation to provide lower priced, legacy quality wholesale products would dampen investment in Modern Infrastructure and in turn risk limiting infrastructure-based competition for services provided over MI.

¹¹ ComReg 22/13, paragraph 1.14.

¹² ComReg 22/13, paragraph 1.21.

Differences between the IA and the commercial area

As noted above, a key objective for ComReg is to ensure “territorial cohesion” in migration to MI i.e. that end-users in similar positions have similar access to Legacy and Modern Infrastructure across Ireland.

Eircom’s control of both the Legacy and Modern Infrastructure in the commercial area, as well as being a significant retail provider, provide it with strong incentives and ability to migrate customers from the Legacy Infrastructure to the MI, once built:

- A customer migrating from Eircom’s legacy network to its MI is likely to be margin-enhancing at the wholesale level (i.e. fibre wholesale ARPUs will tend to be higher than legacy wholesale ARPUs and variable expenditure will tend to be lower) which will provide a strong incentive to actively migrate customers;
- The ability of Eircom to retire its Legacy Infrastructure will provide a further incentive to migrate all customers in a given area;
- Eircom will be able to co-ordinate its own build of MI so as to enable rapid migration from Legacy Infrastructure by ensuring all customers have access to alternative products within a given area; and
- Eircom will be able to use its control of the MI and of its retail arm to further incentivise migration, for example through wholesale and retail pricing structures which encourage access seekers and end-users to rapidly migrate customers, including via the provision of ACPs.

Eircom’s ability and incentives in the commercial area mean that, absent regulation, Eircom would likely seek to rapidly migrate customers to MI. In this context, ComReg’s proposals aim to provide a balance between Eircom’s desire to quickly migrate customers to its own MI with a series of obligations placed on Eircom before it can deny access to the Legacy Infrastructure, in order to protect end-users and access-based competition during the migration process.

However in the IA, where NBI will be the deployer of MI, the ability and incentive of Eircom to migrate customers (and therefore the speed at which Eircom would seek to migrate these customers) will differ from the commercial area. In particular, Eircom is likely to have lower incentives to migrate customers to MI in the IA in the short-run compared to areas where Eircom will roll out its own MI. Initially, migrating customers from the Eircom copper network to NBI’s fibre network would result in a reduction in Eircom’s wholesale margins (as it effectively “loses” its wholesale customers to NBI), which is likely to dampen its incentives to migrate customers. Only when it can retire its copper plant, thereby avoiding the costs of maintaining copper cables, will it make significant cost savings (taking account of the fact that a disproportionate share of Eircom’s legacy network and thus on-going costs of running that network is located in the IA).

Therefore, absent regulation, the migration of customers to MI in the IA is likely to be slower than in the commercial area in the short-run.

While in its proposals ComReg have identified that NBI will provide MI in the IA, it does not appear to have fully taken into account the implications of this conclusion within its proposals on the process and criteria for migration i.e.

- The details of the proposed Principles and Transition Framework focus almost exclusively on “Eircom-to-Eircom” migration, and therefore provide very little detail on ComReg’s view on the specific process for migration to NBI’s MI;
- When considering thresholds for MI coverage in Eircom exchange areas, it effectively considers NBI as a “perfect substitute” for Eircom’s own MI i.e. it does not recognise the implications of NBI’s network design process on when these thresholds will be met;
- A number of steps in the migration process (such as the “Stop Sell” of legacy wholesale services) are at Eircom’s discretion, and therefore ComReg’s proposals do not appear to adequately recognise that Eircom has lower incentives to implement these steps in the IA; and
- As mentioned above, it is not clear whether ComReg’s proposals take account of the fact that NBI is governed by the Project Agreement it has signed with DECC which protects access-based competition and end-users within the IA, or whether the proposals indirectly (and unjustifiably) impose additional obligations on NBI beyond those defined by that contract.

Implications for ComReg’s proposals in the context of the IA

Given the above, ComReg’s proposals need to be adjusted in a number of ways to take account of the distinct characteristics of the IA, and NBI’s network build and existing obligations within that area. In NBI’s view this should result in:

- Adjustments to the criteria at different stages of the migration process to ensure that Eircom has the necessary incentives to migrate customers to MI in the IA at a similar pace to that in the commercial area;
- Adjustments to reflect the different approach to NBI’s roll-out in the IA versus that of Eircom in the commercial area, which may impact on the timing of the different phases of the migration plan and thus on Eircom’s ability to implement certain steps of the migration process;
- Clarity being provided that the obligations on NBI under Project Agreement are sufficient to meet ComReg’s relevant objectives for the migration process, and therefore that its proposals will not impose additional obligations on NBI beyond those in that contract e.g. to provide ACPs in the IA; and

- Clarity being provided on the details of each phase of the Transition Framework in the case of migration to NBI's MI in the IA, and the requirements on Eircom in that scenario.

Without these adjustments ComReg's proposals could lead to a situation where initial migration to MI is much slower in the IA than in the commercial area (with a greater proportion of customers, including vulnerable customers, being "force migrated" to MI once Eircom switches off its copper network), which would be at odds with ComReg's objectives in terms of territorial cohesion. The adjustments would also provide more clarity to NBI (as well as Eircom, access seekers, and end-users) on the specific process for migration to NBI's network, which is consistent with ComReg's duties under Article 81(2) of the EECC to ensure the migration process is transparent and will help all parties to better plan for the transition.

Below we consider, in Section 3, each of the relevant Principles and, in Section 4, elements of the Transition Framework within ComReg's proposals, in which we also set out potential specific adjustments to take account of the nature of the IA.

3. Principles

Wholesale replicability principle

NBI notes ComReg's proposal that Eircom should, prior to the withdrawal of services provided over the Legacy Infrastructure, be obliged to make available over the MI a suite of ACPs to Access Seekers. This replicability principle will need to be adjusted to take account of the situation within the NBP IA, given that NBI will be the provider of access services over the MI within the IA and so Eircom will not be in a position to provide ACPs to other operators.

NBI would be concerned if the migration framework were to result in an outcome where operators accessing wholesale services on the NBI network, including Eircom, were to seek the development of ACPs that mimic in functionality the types of services that are currently available over Eircom's Legacy Infrastructure. State Aid approval for the NBP Project is on the basis that it is only used to provide a Next Generation Access (NGA) service¹³ and NBI's minimum speed service is currently a 500Mbps one. It is difficult to see how a request from any operator for an ACP service could be reconciled with these State Aid requirements. In any event, any new product development undertaken by NBI may only happen with the express approval of DECC. As noted earlier, it is not NBI's expectation that there will be any need for it to supply ACPs on its network, nor does it believe (in part based on its own experience to date) that there would be any demand for such products. Clarification from ComReg on this point would, however, be welcome.

Timeliness

Staging of the Migration Process

In relation to this Principle, ComReg propose that the migration process is undertaken in stages, with (non-price) measures introduced to facilitate take-up of services on MI once certain thresholds on the coverage of MI are met. It proposes to consider this process on an "area-by-area" basis, with these "areas" defined based on Eircom's legacy exchange areas. The proposals include an ability for Eircom to stop selling legacy services ("Stop Sell") once 75% of an exchange area has been passed with MI, and switch-off these services once the area is fully covered.

NBI agrees with the overarching approach to consider the process on an area-by-area basis, and for the process to include steps to increase the rate of customer migration. This approach ensures that the migration process is "more closely linked" to the timing of MI deployment, and encourages take-up of services provided over MI, consistent with

¹³ See European Commission letter dated 15th November 2019 relating to State Aid SA.54472 (2019/N).

ComReg's duties under Article 3 of the EECC. Making the process area-based also prevents Eircom from migrating selected customers in particular areas while leaving others not to be migrated.

However, NBI does not consider the use of Eircom's legacy exchange areas to be a suitable area "unit" to define coverage thresholds for different stages of the migration process, in areas where a significant proportion of premises will be those covered by NBI under the deployment of the NBP fibre network. This is because:

- The use of Eircom exchange areas as the unit to determine thresholds appears to have no relation to ComReg's objectives to protect of end-users and access-based competition, as end-users are only interested in the premises they are in and not the exchange they are connected to, and access seekers are able to differentiate commercial offers on a premises-by-premises basis.
- In exchange areas where Eircom has full control of the roll-out of MI, the use of its exchange areas may be a reasonable approach as Eircom can ensure that it designs its fibre network build in a way which ensures it covers the majority (preferably all) premises in a given exchange area quickly. Such an approach would avoid the danger alluded to above, where Eircom may focus on migrating selected customers in a particular area. It needs to be noted, however, that, such is the dispersion of in-fill premises that fall within the IA, very few Eircom exchange areas would not include at least some premises in the IA;
- In exchange areas which are partly or completely within the IA, however, NBI's deployment as provided for in the Project Agreement does not follow Eircom's exchange area topology, and so using these exchange areas as the relevant unit could result in a long delay between when Eircom and/or NBI begin roll out of MI in a given area, and when MI build to all or the majority of that area is completed. As a result under ComReg's proposals, Eircom may not be able to implement "stop sell" or switch-off legacy services until a number of years after the fibre build has begun, reducing both the ability and incentive of Eircom to migrate customers to the MI in these areas. This is therefore likely to result in the rate of migration from copper to fibre within the IA being slower than that in the commercial area, which would not be consistent with ComReg's relevant objective to ensure territorial cohesion.

Given this, it would appear sensible to adjust the area "units" used to define coverage thresholds to take account of the staging of NBI's roll-out, rather than basing this on Eircom exchange areas. NBI would support the ability of Eircom to 'stop sell' and withdraw legacy services once an individual premises is passed by MI, independently of when the Eircom exchange area it is located in will be partially or fully covered.

This would also be consistent with the cost structure of Eircom's network in the IA, where a much higher proportion of avoidable cost from the retirement of the copper network relates

to outside plant. As such, enabling this element of the network to be retired as it becomes redundant will increase efficiency compared to waiting for the whole exchange area to be retired. This is in line with ComReg's statutory objectives to encourage efficient investment under the Communications Regulation Act and Regulation 16 of the Framework Regulations.

Requirements to trigger stages of the migration process

ComReg states that the conditions to be met in each phase of the migration process must be clear and objective, including access seekers having clear and full information, and having access to ACPs on the relevant MI.¹⁴

However, as already noted above, there are a number of elements of the Transition Framework where the process for migration to NBI's network in the IA is not fully clear, given this Framework focuses primarily on Eircom-to-Eircom migration.

Modern Infrastructure

The Project Agreement that NBI has concluded with DECC sets out the requirements relating to its provision of FTTH-based wholesale services. NBI welcomes ComReg's confirmation that its fibre network will be recognised as MI for the purposes of the migration¹⁵ and that there will be no requirement on Eircom to offer ACPs over other FTTH networks, including that of NBI.¹⁶

As ComReg notes¹⁷, taking account of NBI's network presence is consistent with the position set out in Eircom's White Paper.¹⁸ ComReg also recognises that NBI's network deployment is different in that it is being rolled out in areas of the country where no commercial NGA deployment is being considered and that NBI is contractually obliged to make available over its fibre network a suite of wholesale services on a non-discriminatory basis.¹⁹ NBI welcomes ComReg's recognition of NBI's position in this respect.

¹⁴ ComReg 22/13, paragraph 3.14.

¹⁵ ComReg 22/13, paragraph 3.16.

¹⁶ ComReg 22/13, paragraph 3.19.

¹⁷ ComReg 22/13, paragraph 3.18.

¹⁸ See https://www.openeir.ie/wp-content/uploads/2021/03/White-paper_Leaving-a-Legacy.pdf

¹⁹ ComReg 22/13, paragraph 3.18.

Access Seeker and End-User Information

It is not clear from ComReg's proposals how issues relating to Access Seeker and end-user information will be managed by Eircom where the migration is from Eircom's Legacy Infrastructure to NBI's MI.

In particular, the framework needs to take account of the information that, for the purposes of the migration process, NBI will need to provide to Eircom on its FTTH build and the information that Eircom will in turn need to provide to NBI on its Legacy Infrastructure switch-off plans. This information exchange will need to operate seamlessly to ensure that the migration in the case of Eircom to NBI works equally well as in the case of Eircom to Eircom.

The framework must not provide Eircom with different incentives on the speed of migration when this is from its own copper network to its fibre network, as opposed to when the migration is from Eircom's copper network to NBI's fibre network. Competitive safeguards will also be needed in relation to the provision of information by NBI to Eircom in this regard so that retail providers other than Eir Retail are not disadvantaged during the migration process.

In terms of the provision of information to end-users, NBI supports ComReg's proposal that Eircom should not be allowed to undertake direct communications with end-users who are not its retail customers. As ComReg states, such a rule will help to safeguard access-based competition.²⁰

NBI also believes that there is a role for general information campaigns to be undertaken with the aim of providing the general public with information on the benefits of fibre services and the timelines for the migration process. As was stated in its response to ComReg's Call for Inputs, NBI is of the view that there is merit in an industry-wide general information campaign on the transition from copper to fibre services.

²⁰ ComReg 22/13, paragraph 3.24.

4. Transition framework

As noted above, ComReg's proposed Transition Framework includes four main "Phases." The starting point is Eircom's Switch-Off Proposal, which are plans produced by Eircom defining the ACPs that will be offered on its MI, and the timelines and communication plan associated with migration to MI in all areas of Ireland. This is followed by three "Implementation phases", including:

- the "Enablement Phase" (in which access seekers can plan and test migration to MI);
- the "Migration and Switch-Off Phase" (in which customers are actually migrated, ending with the withdrawal of all legacy wholesale access products); and
- the "Decommission Phase" (in which ComReg's network is "put into a permanent beyond-use state").

ComReg also sets out specific proposals to protect access seekers and end users throughout the migration process, and requirements on the monitoring of migration to MI.

NBI considers that the overarching premise of the Framework and the general phases within it are appropriate. However, ComReg needs to provide more clarity on how these will be implemented in areas where MI will be partially or solely provided by NBI. We detail our position on each element of the Framework below.

Eircom's Switch-off Proposal

NBI supports ComReg's proposal that the transition framework includes an initiation step, in which Eircom would submit its proposal for Copper Switch-off to ComReg for its review and approval.²¹ This initiation step will be key to the entire migration process and will enable ComReg to ensure that Eircom's Copper Switch-off Plan ensures adequate protection for end-users and of access-based competition. Such a provision would also be consistent with ComReg's duties under the EECC, which requires NRAs to ensure that the migration process includes transparent timetables and conditions, and that there are appropriate products available on replacement infrastructure.²²

In this regard, it is important that, in reviewing Eircom's proposal, ComReg is fully cognisant of the different situation that will pertain within the IA and the need for this to be adequately catered for within the finalised Copper Switch-off Plan. End-users located within the IA need to be adequately protected in the same way as those based in the commercial area and that the former should not be disadvantaged in any way compared to the latter. The finalised plan needs to contain appropriate safeguards in this respect. Likewise, access-based competition needs to be protected so that retail competitors to Eircom are not placed at any

²¹ ComReg 22/13, paragraphs 4.3 and Figure 7.

²² EECC, Article 81 (paragraph 2).

disadvantage within the migration process, both generally and in relation to migration plans for each of the commercial area and the IA.

As noted earlier, Eircom's timelines for switch-off within the IA will be dependent on NBI build and so effective information exchange between NBI and Eircom (with appropriate competitive safeguards) will be important in this respect. In addition, there will be a need for end-user communication within the IA to include NBI, as some aspects of the migration will require NBI's direct involvement. In addition, end-user communications will also need to involve retail operators who are currently providing services to end-users over Eircom's copper network within the IA.

Enablement phase

ComReg's proposal for an Enablement Phase goes further than Eircom's own migration plans and its proposal that this Phase encompasses the development, trial and evaluation of ACPs should help to ensure that access-based competition is protected in the commercial area.

NBI remains concerned, however, that an undue focus on ACPs that simply replicate services – such as voice telephony and low-speed broadband – that are already available over the copper network risks detracting from the purpose of migrating from Legacy to Modern Infrastructure. In practice, NBI would expect the main focus in the area of wholesale products within the transition to be on fibre-based Bitstream and Virtual Unbundled Access (VUA) services. NBI anticipates that competitors to Eircom will develop their own VOIP-based telephony offerings to complement the high-speed retail broadband services that will be offered to end-users over the fibre network. Thus the Enablement Phase should focus on how access-based competitors can seamlessly transition from the copper network to the fibre network and the ease with which they are able to migrate end-users to whom they provide retail services.

An approach that is unduly backward-looking and merely seeks to replicate services that are capable of being provided over the legacy copper network would be at odds with ComReg's own objectives, aimed at encouraging the take-up of fibre-based high-speed broadband services by end-users.²³ If end-users opt for lower quality services (based on ACP wholesale inputs) when migrating to fibre connections, then the benefits to be unlocked from use of fibre-based services (for example, new digital applications that require higher bandwidth connections) will not be realised.²⁴

NBI also notes that ComReg's proposals for the Enablement Phase only detail what needs to happen where the migration is Eircom to Eircom. For the transition to operate smoothly on

²³ In particular, ComReg's duties under Article 3 of the EECC (to promote VHCN take-up), and its statutory objectives under the Communications Regulation Act / Regulation 16 (to promote the interests of end-users).

²⁴ For a more detailed discussion on this issue, see NBI's response to ComReg's Call for Inputs (Frontier Economics report, Section 3.2.1).

a national basis, however, the migration process from Eircom to NBI also needs to be included within this Phase and so Eircom must be obliged to facilitate trial areas within the IA, i.e. Eircom to NBI migrations. This would ensure that Eircom's proposed processes are fit for purpose for the transition from copper to fibre within the IA. As a result, NBI must be fully involved within the Enablement Phase in relation to the development of appropriate processes for migration from copper to fibre within the IA.

In this regard, over 11,000 end-users are now connected to NBI's fibre network, with high-speed broadband services being provided to them via a variety of retail providers (including Eir Retail). NBI has already gained valuable experience, as a wholesale-only operator, in ensuring efficient migration of end-users from copper to fibre. This experience provides valuable insights both into issues of primary concern to end-users and also how the interests of competing retail providers may best be catered for as end-users transition from Legacy to Modern Infrastructure. NBI is ready and able to play a constructive part in the development of this phase to ensure that Eircom's processes for the transition from copper to fibre within the IA are appropriate and are geared towards the successful migration of end-users in a multi-operator environment. Well-developed processes in this regard will also help to ensure territorial cohesion within the migration process across the IA and the commercial area.

Migration and Switch-off Phase

ComReg's proposal for the Migration and Switch-off Phase includes a set of "actions" that Eircom can take to incentivise customer migration to MI and the switch-off its legacy infrastructure, as well a set of conditions that must be met before these actions can be taken. As noted earlier, however, ComReg proposes that the migration/switch-off process is done on an Eircom exchange-by-exchange basis, with actions being allowed in each exchange area once a certain share of premises in that area are passed with MI. The key actions and thresholds include:

- Once 75% of premises have MI network coverage, Eircom is able to "Stop Sell" in the exchange area. This means that once a premises is passed with MI, the customer is no longer able to change its legacy-based service to another retail provider, or take up a new legacy-based service after it has switched to a service on MI.
- Once 100% of premises have MI coverage, Eircom can trigger the process for withdrawing legacy-based services, which ends with the customer being disconnected from the legacy service.
- It is at the discretion of Eircom to implement the "Stop Sell" and withdrawal of legacy-based services.

However, NBI considers that two key adjustments need to be made to this process:

First, as already noted above, NBI considers that defining the "triggers" within the process based on the coverage of Eircom exchange areas is inappropriate, given it is the passing of

individual premises that is relevant for end-users and access seekers, and that it does not account for the specific nature of the legacy network in the IA and NBI's MI network build (which will not be undertaken on an Eircom exchange-by-exchange basis).

This approach therefore appears inconsistent with ComReg's relevant objectives and duties, as it (i) does not appear to provide benefits either to end-users or access seekers, and (ii) in exchange areas that will be largely covered by NBI's MI build, it could result in a significant delay between the start of Eircom/NBI network build and when the "Stop Sell" / legacy service withdrawal occurs, thus slowing take-up of MI services in these areas and resulting in a slower rate of migration in the IA than in the commercial area.

Second, NBI suggests that a mechanism be put in place to ensure 'Stop Sell' and legacy service withdrawal is implemented on an equivalent basis whether the MI is provided by Eircom or NBI, again consistent with ComReg's duty under the EECC to ensure territorial cohesion in the process. This could include, for example, requiring Eircom to commit to stop sell / legacy service withdrawal as soon as a premises is passed with MI / the relevant coverage threshold is met, rather than this being at Eircom's discretion. Absent such a mechanism, Eircom may be slower in implementing these actions in areas covered by NBI's MI relative to its own MI, given Eircom's wholesale margins will reduce post- customer migration in this scenario.

Decommission Phase

As noted above, ComReg defines the decommissioning of Eircom's legacy network as the situation in which "Legacy Infrastructure is put in a permanent beyond-use state." However it is unclear what this means in practice, in particular whether this means Eircom will physically remove legacy copper assets such as copper cabling and distribution points from its CEI network.

NBI notes that once Eircom has retired its network, NBI will be the exclusive user of Eircom's poles and ducts in all or the majority of the IA, and that future CEI access prices may depend on the number of operators using the CEI infrastructure. While this is an issue that will need to be considered in the forthcoming Physical Infrastructure Access (PIA) market review, NBI's position is that if copper cabling remains on Eircom's poles after its copper-based services have ceased, then from a charging perspective Eircom should still be regarded as an operator using the infrastructure and should continue to be the case until such time as the legacy network cabling is removed.

NBI also notes that the physical removal of copper assets from Eircom's overhead poles will impact the quality of the pole access services that NBI will use, because the removal of these assets will reduce the load on Eircom's poles, which is likely, for example, to make them more resilient to weather events and in turn reduce fault occurrence.

NBI therefore expects that Eircom will be required to physically remove its overhead copper infrastructure from poles before it can charge NBI for exclusive use of the poles, given that

this will affect the quality of the pole access service Eircom offers as well as providing it more generally with the correct economic signals.

Protecting end-users and access seekers within the migration process

Premises may not be connected

It is extremely important that the transition process does not result in an outcome whereby end-users cannot avail of a retail service over the MI even though their premises has been passed by MI. In such a situation, the proposals set out by ComReg for the continuing availability of retail services over the copper network²⁵ – including Access Seekers' ability to place a wholesale order for a legacy-based service or to request changes to an existing legacy-based service – are reasonable and proportionate. No end-users should become “stranded” as a result of the transition from copper to fibre; were this to happen, it would undermine the whole purpose of the transition as well as public confidence in and support for this important technological shift.

In practical terms, this will only be an issue outside the IA. This is because the NBP Project Agreement contains safeguards ensuring that all premises within the IA that are passed by NBI's fibre network must, once a fibre-based retail broadband service is ordered, be connected to the NBI network. As a result, there is not the same issue with end-users in the IA potentially becoming “stranded” between the two technologies as could happen in the commercial area. It is, then, important, in order to ensure territorial cohesion at a national level within the transition, that appropriate safeguards are put in place to protect the interests of end-users and competitors in relation to the connection of premises in the commercial area. In NBI's view, ComReg's proposals meet this requirement.

Non-standard connection cost

ComReg also notes that during the migration, non-standard connection costs for customers who can no longer be provided with services from the Legacy Infrastructure should be borne by Eircom. It supports this principle on the basis that Eircom benefits from the retirement of the Legacy Infrastructure, which means this proposal balances the costs borne by Eircom with the benefits it will obtain from legacy network decommissioning.

NBI has no observations to offer in relation to non-standard connection costs within the commercial area but notes that this issue has been catered for within the Project Agreement in relation to such connection costs for premises within the IA.

²⁵ ComReg 22/13, paragraphs 4.62 to 4.64.

Monitoring the Migration from the Legacy Infrastructure

NBI agrees that for all relevant parties to have the necessary information to monitor the progress of key milestones in the Migration and Switch-off Phase, the information proposed by ComReg²⁶ should be published by Eircom on a monthly basis until all legacy exchanges in Eircom's Switch-off Plan have reached the Decommissioning date.

It is important to note, however, that some of the data requirements it is proposed to impose on Eircom in this respect include information that will need to be obtained from other operators, including NBI. An example of this would be the number of premises passed by NBI's fibre network in each Eircom exchange area, which is needed in order to fulfil the requirement to publish information on the total number of premises passed with Modern Infrastructure within each exchange area.

It is unclear from ComReg's proposals what process would be used for Eircom to obtain such information from NBI. One option is for this to happen directly, another would be for it to be supplied via ComReg. While NBI is obviously keen to co-operate in this regard, it would make sense for the process that is put in place for the provision of this information to be able to draw, where possible, on data NBI already provides, for example to DECC under the Project Agreement. This would ensure any unnecessary duplication of data provision.

For the record, however, information shared separately by NBI with Eircom for the purposes of preparing pole and duct routes for the NBP network build should not be used by Eircom for the purposes of reporting on key milestones in the Migration and Switch-off Phase. Information on pole and duct make-ready works should only be used within Eircom for that purpose and should not be shared within Eircom for other uses.

NBI would also be keen to ensure that Eircode details are included as a field in the premises-level information that Eircom publishes, both for premises in the IA and the commercial area.

NBI would be happy to discuss this requirement and how it might best be fulfilled with ComReg in due course.

²⁶ ComReg 22/13, paragraph 4.70.

5. Responses to consultation question posed by ComReg

1. Do you agree with the proposed principles to govern the Framework? Are there any other principles in this respect that should be considered? Please set out clearly the reasons for your response and any supporting evidence.

NBI supports the broad thrust of ComReg's proposed Framework and the principles underlying this. There are, however, two issues in relation to the design of the Framework that merit further consideration:

- The Framework is designed primarily to deal with the transition from Eircom's Legacy Infrastructure to its MI and so does not cater adequately for the transition from Eircom's copper network to NBI's fibre network. While this is understandable to the extent that ComReg must regulate the actions of operators with Significant Market Power (SMP), ComReg must also ensure that the migration process is one that works equally well in the NBP IA as it does in the commercial area. If it does not, then the interests of access-based competitors and end-users will be undermined.
- Related to this, is the requirement on ComReg under the EECC to promote the take-up of high-speed broadband services and to ensure territorial cohesion in the deployment of fibre networks. A process that overly focuses on Eircom to Eircom migrations and which does not fully account for Eircom to NBI migrations could mean that ComReg will not meet the duties imposed on it under the EECC. It also risks an outcome whereby the transition from Legacy to Modern Infrastructure does not proceed as efficiently as it otherwise could.

In relation to the principles underpinning the Framework, NBI would offer two main observations:

- ComReg must ensure that the wholesale replicability supports a shift from low quality services available over the legacy copper network to high-speed broadband services available over fibre networks. NBI has a concern that the requirement for Eircom to develop ACPs risks an undue focus on replicating copper-based services on fibre when instead the aim should be to reap the benefits from the step-change in technology. NBI appreciates that ComReg does not appear to intend that ACPs are required to be developed by NBI but for the migration process to proceed on a consistent basis nationally, it is important that Eircom is not obliged to focus unduly on developing services in the commercial area that are backward-looking in nature.
- The staging of the migration process should not be based on Eircom's exchange areas as this would mean that the main focus would be on Eircom to Eircom migrations, with a danger that less attention is paid to Eircom to NBI migrations. The staging should instead take account of fibre build by both Eircom and NBI in particular local areas.

Eircom should have an obligation to include Eircom to NBI migrations in the proposed trials involving other operators of migrating customers from Legacy to Modern Infrastructure. Including migrations to NBI's fibre network will ensure the process works better and more efficiently on a national basis, which will in turn help to ensure the successful completion of the transition from copper to fibre.

Please see Sections 2 and 3 of this response for more detailed discussion on these issues.

2. Do you agree to ComReg's approach to the definition of Modern Infrastructure? If not, what changes do you propose? Please set out clearly the reasons for your response and any supporting evidence.

NBI agrees with ComReg's proposal to define MI so that it encompasses both the Eircom and NBI FTTH networks.

As noted earlier in this response, taking account of NBI's network presence is consistent with the position set out in Eircom's White Paper. This definition also recognises that NBI's network is being rolled out in areas of the country where no commercial FTTH deployment is being considered and that NBI is contractually obliged to make available over its fibre network a suite of wholesale services on a non-discriminatory basis.

3. Do you agree with the principle that end-user communications rest solely with the RSP? Please set out clearly the reasons for your response and any supporting evidence.

NBI agrees with the principle that communications addressed to specific, named end-users should be restricted to the operator contracted to supply retail services to that end-user. In this respect, ComReg's proposed prohibition on Eircom communicating with end-users with whom it does not have a contractual connection is sensible and proportionate.

NBI notes the distinction ComReg makes between end-user communications and general information campaigns aimed at ensuring public understanding of the migration process and timing, which it says Eircom should be allowed to undertake. NBI supports this distinction and believes that it is appropriate for Eircom – and all other market players, NBI included – to engage in such activity. Indeed, NBI is already undertaking awareness-raising campaigns on an ongoing basis as its fibre build continues and it believes this activity has an important part to play in demand stimulation and the take-up more broadly of high-speed broadband services provided over Gigabit-capable networks.

NBI also believes that there is a role for general information campaigns to be undertaken with the aim of providing the general public with information on the benefits of fibre services and the timelines for the migration process. In this regard, NBI is of the view that

there is merit in an industry-wide general information campaign on the transition from copper to fibre services.

4. Do you agree with ComReg's preliminary views on the proposed Framework outlined in Sections 4.1 to 4.5 above? Please set out clearly the reasons for your response and any supporting evidence.

NBI's view is that the overarching premise of the Framework and the general phases within it are appropriate. However, ComReg needs to provide more clarity on how the phases will be implemented in areas where MI will be partially or solely provided by NBI rather than Eircom.

NBI supports ComReg's proposal that the transition framework includes an initiation step, in which Eircom would submit its proposal for Copper Switch-off to ComReg for its review and approval. This step will be key to the entire migration process and will enable ComReg to ensure that Eircom's Copper Switch-off Plan ensures adequate protection for end-users and of access-based competition. It is, as a result, important that migrations from Eircom to NBI are fully considered at this stage so that they are included in Eircom's Copper Switch-off Plan.

NBI also supports the principle of an enablement phase but would repeat points made earlier about (i) the need to ensure that the development of ACPs does not mean that the migration process is unduly backward-looking and (ii) this phase – including trials with other operators – needing to include migrations from Eircom to NBI's Modern Infrastructure.

Similarly, within the Migration and Switch-off Phase, the 'triggers' should not be set on an Eircom exchange area-basis, in particular within the IA. Such an approach would not account for the specific nature of the legacy copper network in the IA and the manner in which NBI's fibre network build is being undertaken (i.e. is not proceeding with reference to Eircom's legacy exchanges).

In relation to the Decommission Phase, NBI expects that this means Eircom will physically remove legacy copper assets such as copper cabling and distribution points from its pole and duct network. In particular, NBI expects that Eircom will be required to physically remove its overhead copper infrastructure from poles before it can charge NBI for exclusive use of the poles, given that this will affect the quality of the pole access service Eircom offers as well as providing it more generally with the correct economic signals.

Please see Section 4 of this response for further discussion on issues relating to the transition Framework.

5. Does ComReg's proposed Framework provide sufficient time for an Access Seeker to migrate its end-users from legacy-based services? Please set out clearly the reasons for your response and any supporting evidence.

In NBI's view, ComReg's proposed Framework does provide sufficient time for an Access Seeker to migrate its end-users from the legacy copper network to fibre, including their transfer from copper-based to fibre-based services. The proposed trial of the migration process should prove extremely instructive in this regard, however, and will help to indicate if any shift to the proposed timelines is required.

As already noted, the migration of end-users by different operators from Eircom's copper network to NBI's fibre network will be a key part of the process and these migration scenarios will need to be included within the planned trial to ensure that the timelines for completing them are appropriate.

6. Do you agree with ComReg's preliminary views on premises passed, outlined in Section 4.6 above? Please set out clearly the reasons for your response and any supporting evidence.

NBI agrees with the position set out by ComReg in relation to premises passed, specifically relating to those situations where there are issues with providing a connection to a premises that has been passed by a fibre network. It is extremely important that the transition process does not result in an outcome whereby end-users cannot avail of a retail service over the MI even though their premises has been passed by a fibre network.

As noted above, however, this will only be an issue outside the IA. This is because the NBP Project Agreement contains safeguards ensuring that all premises within the IA that are passed by NBI's fibre network must, once a fibre-based retail broadband service is ordered, be connected to the NBI network.

7. Do you agree with ComReg's proposal on non-standard connection costs, outlined in Section 4.6 above? Please set out clearly the reasons for your response and any supporting evidence.

NBI has no observations to offer in relation to non-standard connection costs within the commercial area but notes that this issue has been catered for within the Project Agreement in relation to such connection costs for premises within the IA.

8. Do you have any other comments on these pricing principles or any other pricing principles that should be considered? Please set out clearly the reasons for your response and any supporting evidence.

NBI has no further comments to provide on these or other pricing principles relating to the transition from Legacy to Modern Infrastructure.

9. Do you agree with ComReg's preliminary views on monitoring the Migration from Legacy Infrastructure outlined in section 4.7 above? Please set out clearly the reasons for your response and any supporting evidence.

NBI agrees with the principle that all relevant parties should have the necessary information to monitor the progress of key milestones in the Migration and Switch-off Phase and so it supports ComReg's proposal that Eircom should publish monthly information on the metrics it has outlined.

As noted earlier in this response, some of the data requirements it is proposed to impose on Eircom include information that will need to be obtained from other operators, including NBI. Clarification from ComReg would be welcomed on the most appropriate mechanism for doing this.

Please see Section 4 of this response for further discussion on issues relating to monitoring the migration.

By email: products@comreg.ie

Speed Fibre Group Submission to Framework for the Migration from Legacy Infrastructure to Modern Infrastructure (Copper Switch Off)

Ref 22/13R

Please find below the submission of the Speed Fibre Group to Consultation ref 22/13R.

Summary

Speed Fibre Group (SFG) supports ComReg proposals for a principled based approach to facilitate migration from legacy infrastructure – **Copper Switch-Off (CSO)**. It is vital that binding principles are not only laid out in terms of providing regulatory certainty in relation to this complex initiative, but that such principles are strictly adhered to and monitored by ComReg in terms of compliance. The key themes from our response to the individual questions below can be summarised as follows:

1. Importance of the Trial Phase

Providing up to date and accurate information to Other Authorised Operators (OAOs) / Access Seekers will be critical to ensuring end-users and, competition generally, is protected. In this regard the Trial Phase of the “Switch-Off” process will be crucial in terms of ensuring everything is working as expected.

2. Need for surveying of addresses in advance

Another of the key issues that needs to be addressed is the carrying out of appropriate survey’s in advance of addresses being added to open eir’s Advanced Pre-qualification File (APQ File). It is simply not possible to “ensure” end-users can be certain of availing of Alternative Comparable Products (ACPs) without carrying out surveying in this manner. Such an approach is industry best practice and it is understood to be the approach currently adopted by other infrastructure providers in Ireland including NBI and SIRO rolling out FTTH services. This surveying activity should be extended to addresses already in the APQ File and supported by stringent SLAs and associated credits where “Stop Sell” or “Switch-Off” occurs at an address that ultimately cannot be delivered in a timely manner (subject to certain exclusions such as requiring wayleave approval).

3. Open Eir to absorb cost of non – standard connections

It is appropriate that the cost of non-standard connections is incurred by open eir in particular, given that it currently has pricing flexibility on FTTH services. There are strong arguments why it should already be incurring such charges but it is certainly justified where “Stop Sell” or “Switch-Off” phases are applied.

4. Exceptions for loss making wholesale services

In addition to supporting the “comparable pricing” principle proposed by ComReg, SFG consider that ComReg should also give consideration to scenarios where wholesale services (co-location/CGA backhaul etc) are no

longer viable for OAOs at an exchange as a consequence of loss of a critical mass of customers owing to “Stop Sell” or “Switch-Off” phases being implemented. Where purchase of these services become loss-making due to the migration programme, OAOs may have no choice but to terminate services for legacy (including FTTC) customers in a timeframe that does not allow end-users to migrate to Modern Infrastructure in time. These legacy costs should be reduced in this period to ensure OAOs are not required to continue to provide these services on a loss-making basis.

Specific Questions

Q1. Do you agree with the proposed principles to govern the Framework? Are there any other principles in this respect that should be considered? Please set out clearly the reasons for your response and any supporting evidence?

SFG consider that it is critical that open eir carryout a comprehensive survey of its network before addresses are added to its APQ file as being able to access FTTH (Modern Infrastructure). Where addresses have already been added without having undergone detailed surveying these should be revisited to verify whether they should be retained.

It is difficult to see how open eir can comply with the proposed requirements of the “Stop Sell” and “Switch-Off” phases of ComReg’s proposal in the absence of such an approach. To date multiple Eircode’s have been loaded into APQ file based on an assumption that open eir will be capable of providing FTTH service to the premises but in many cases the order ultimately gets rejected for one reason or other because the address is not surveyed until a sell order has been accepted. The current approach involves adding addresses/Eircodes as the default and carrying out the survey subsequent to an order being placed.

This clearly needs to be avoided in the context of CSO whether it is on the basis of “Stop Sell” or “Switch-Off” scenarios. ComReg notes in the consultation that “*Stop Sell*” ***never applies*** to a premises with no access to Modern Infrastructure” [emphasis added]. The only manner in which this can be assured is through carrying out a comprehensive survey of all premises in advance of entering the “Stop Sell” phase. This is even more important at the “Switch-Off” phase.

SFG submit that a principle around carrying out full network survey in advance of including addresses in open eir’s APQ/order handling system should be considered. While the Enablement Phase proposed by ComReg is welcomed and seen to be necessary by SFG, it may be possible to “game” this phase by conducting appropriate surveys on exchanges areas only that are subject to trials with the objective of passing the Enablement/Trial Phase. Unless the same processes/surveys are carried forward to post Enablement/Trial phase then the trials will have been rendered largely redundant as they will have operated under conditions that has not been carried forward and so will have failed to have identified real world problems. Consequently, SFG consider requiring detailed surveys to be carried out will be crucial to the success of CSO and as such it should be enshrined as a principle underpinning the initiative.

Ensuring that appropriate surveying is carried out and that Modern Infrastructure can be delivered should be supported by stringent SLAs and associated credits where “Stop Sell” or “Switch-Off” occurs at an address that ultimately cannot be delivered in a timely manner (subject to certain exclusions such as requiring wayleave approval). Such an SLA regime would incentivise open eir to carry out surveying in an appropriate manner.

Q2. Do you agree to ComReg’s approach to the definition of Modern Infrastructure? If not, what changes do you propose? Please set out clearly the reasons for your response and any supporting evidence.

ComReg’s definition of Modern Infrastructure for the purposes of catering for migration from legacy networks under Art. 81 of EEC appears to make sense. It is important to note however, that FTTC falls under the definition of Next Generation Access under the European Directive so ComReg should ensure the definition of Modern Infrastructure in the context of CSO is not inappropriately adopted interchangeably with NGA in a broader sense e.g. WLA market review.

The current price delta between FTTC and open eir’s entry level FTTH service is c. €5 (ex VAT) per end user per month. Those live FTTC customers that are to be migrated as part of this CSO should not incur this level of price increase based on the ‘comparable pricing’ principle. This price differential is unlikely to be accounted for by real cost differences given both services have significant overlap in terms of the assets utilised. It is therefore important that comparable pricing applies to Modern Infrastructure services end-users are being forced on to away from FTTC. Otherwise, CSO will have failed in terms of protecting the rights of end-users.

Q3. Do you agree with the principle that end-user communications rest solely with the RSP? Please set out clearly the reasons for your response and any supporting evidence.

End-user communications should sit solely with RSPs but RSPs must be able to rely on clear and accurate information being provided by open eir. Where incorrect information is provided by open eir e.g. if Modern Infrastructure is indicated to be available at the premises but this is ultimately found not to be the case then this should be subject to an SLA commitment under both “Stop Sell” and “Switch-Off” scenarios in order to compensate OAOs/Access Seekers and end-users for the associated inconvenience. Such an SLA should be designed to promote incentives to ensure information provided by open eir is accurate.

There is no scenario where open eir (including its outsourced field staff) should be communicating directly with end-users in relation to matters related to CSO and any evidence of this occurring should be treated as an issue of non-compliance.

Q4. Do you agree with ComReg’s preliminary views on the proposed Framework outlined in Sections 4.1 to 4.5 above? Please set out clearly the reasons for your response and any supporting evidence.

SFG broadly agree with framework outlined in 4.1 to 4.5 subject to caveats outlined elsewhere in this response e.g. appropriate surveying of addresses should be central to the process and subject to a SLA regime that promotes the correct incentives.

Q5. Does ComReg’s proposed Framework provide sufficient time for an Access Seeker to migrate its end-users from legacy-based services? Please set out clearly the reasons for your response and any supporting evidence.

It is difficult to be definitive in response to this question in advance of completion of the proposed Enablement Phase. This is likely the first such initiative of its kind in Irish telecommunications and certainly the first to be envisaged at this scale. It is only following completion of the trial period and taking into consideration learnings from that process that a more definitive view can be taken on this issue. It is submitted that ComReg should therefore reserve its position in relation to timelines following a review of trials based on open eir FTTH and NBI FTTH relevant exchanges. For example, if the process is working well in relation to one but not the other network, it should not be delayed for both networks. On the basis that everything is working as it should during the Enablement Phase then the current proposed timelines may be achievable, but ComReg should not make itself a hostage to fortune in terms of pinning down those timeframes at this stage.

Q6 & Q7. Do you agree with ComReg’s preliminary views on premises passed, outlined in Section 4.6 above? Please set out clearly the reasons for your response and any supporting evidence. Do you agree with ComReg’s proposal on non-standard connection costs, outlined in Section 4.6 above? Please set out clearly the reasons for your response and any supporting evidence.

SFG agrees with ComReg’s proposals with respect to cost of connections and the “Service Connection” (currently €100) been borne by open eir. This requirement should be extended to any costs associated with CSO at the operator level. Where operators have invested in FTTC VUA services (which would be seen as a long term investment) it should not incur addition costs associated with switching from FTTC VUA to FTTH VUA in a way that impairs the original investment/business plan e.g. rehomings of FTTH lines to new exchanges that undermines the original FTTC investment.

While SFG agrees that some process needs to be put in place to protect end-users where an ACP cannot be delivered in a timely manner, these should be edge case scenarios if a proper surveying exercise on the access network is carried out by open eir. It is only where this has not happened is it likely that a large number of customers will be impacted.

Q8. Do you have any other comments on these pricing principles or any other pricing principles that should be considered? Please set out clearly the reasons for your response and any supporting evidence.

SFG agrees that ACPs should be available at “comparable prices”. Greater specificity around this principle will be required as part of the WCA/WLA market reviews. It is of little or no value if the pricing is comparable only at the point of transfer or shortly thereafter. Open eir currently have no cost orientation obligation on FTTH and while they could offer “comparable pricing” for a short period of time in order to comply with this principle they could quickly increase prices thereafter where no cost orientation obligation is in place. It is critical that ComReg prevent this principle being ‘gamed’ in this manner and reduced FTTH pricing – which appears warranted at the entry level given the significant and unexplained gap to cost oriented FTTC pricing – must be

locked in for a period after the end-user has been required to switch or is unable to avail of alternatives during the “Stop Sell” stage.

As already noted it is entirely appropriate that open eir incur any costs associated with non-standard connections during the “Stop Sell” and “Switch-Off” phase and this should be extended to any costs operators may incur during these phases. For example, where an operator is offering LLU or LS there will be a threshold of customers that makes continuing offering the service unviable as a consequence of “Stop Sell” or “Switch-Off” phases. In these circumstances operators should be given a period of grace on incurring legacy wholesale charges to ensure they have adequate time and incentive to switch customers on to open eir’s desired product. Maintaining CGA customers that are effectively loss-making due to co-location and other wholesale charges may result in operators terminating these services hastily in order to avoid losses and end-users will bear the negative impact associated with this economic reality. The cost to open eir of maintaining these customers will be minimal in real terms as their investment will already have been recovered on these assets but the cost to operators are real and will materially impact on profitability.

One way in which the impact on operators may be mitigated is that costs associated with maintaining a presence at an exchange (co-location/WEILS) is reduced on a customer pro-rate basis from the time “Stop Sell” is triggered on an exchange. For example, if the operator had monthly charges of **€1000** per month (excluding port charges) and had 100 customers at the exchange at the time of “Stop Sell” this amounts to €10 per customer / month. If the operators base fell to 90 customers on the next billing period the wholesale charges are capped at **90*€10 = €900**. This approach will ensure operators don’t leave customers stranded when exchange presence is no longer viable.

Q9. Do you agree with ComReg’s preliminary views on monitoring the Migration from Legacy Infrastructure outlined in section 4.7 above? Please set out clearly the reasons for your response and any supporting evidence.

SFG broadly agree with ComReg’s proposals around monitoring. The information needs to be easily accessible, reliable and updated in a timely manner and appropriate sanctions applied where this has not been the case.

It is important that ComReg also monitor behaviour prior to the implementation of these principles. SFG note that even on migrations from Bitstream to VUA this has been complicated by open eir data issues such as: lines that have active FTTC / H cannot migrate to VUA as cable records need to be updated via oecc prequal update requests and active lines that are faulty will not prequal accurately and need to be brought to spec before migrating to VUA.

Submitted on behalf of Speed Fibre Group

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10th May 2022

Submissions to ComReg 22/13R

Dear Sir/Madam,

Thank you for this opportunity to participate in your Consultation regarding the Framework for the Migration from Legacy Infrastructure to Modern Infrastructure.

Q.1 Do you agree with the proposed principles to govern the Framework? Are there any other principles in this respect that should be considered? Please set out clearly the reasons for your response and any supporting evidence.

In general, Siro would agree with the proposed principles, however Siro would specifically call out the following:

- That the 'Exchange Area' is the appropriate unit to consider the transition phasing within.
- That rather than including NBI in the definition of Modern Infrastructure, the definition should be changed such that where Eircom provide FTTH, even FTTH of another operator, whether NBI, Virgin, BT, Magnet or SIRO, as alternative comparable products, that such infrastructure would be included in the Definition of Modern Infrastructure. In this case, as Eircom provide NBI already on a wholesale basis, NBI would be covered, without them being called out within the specific definition as a 'special pleading'.
- That it is unclear how Eircom may become aware of the confidential network coverage of alternative FTTH network operators unless they resell the alternative network operators in the same manner as they do NBI. In the case that Eircom seek to benefit from clause 1.10, they should be obliged to resell generally the FTTH of each of the alternative operators they are seeking to count as an ACP. Otherwise, for example, an Eircom reseller who was not directly connected to SIRO would not be able to maintain ownership of such a 'derogated' customer and the end-user customer would suffer the consequences.

- Regarding 1.11, to protect end user rights, it is not sufficient that Access Seekers alone are provided with information on the progress of Eircom's plans for the transition. End-Users who are not currently Eircom customers, but who without adequate transparency and information are entitled to expect that they could be, in so far as they are eligible for copper services, especially before stop-sell, should also have a right to a clear understanding of the Comreg regulated Eircom timelines. It is ComReg's role to ensure a transparent timeline and conditions and not Eircom's. Comreg have an obligation by way of Article 81(2) of the Code to provide effective transparency of the timetable and condition to all end-users and stakeholders. Furthermore, Siro believe that this information should be published on a public facing web-site to provide up to date indicative timelines, even as they change.
- Siro believes that there is a multi-layered approach required in the dissemination of information regarding the transition, and that the position adopted by ComReg at Section 1.12 is insufficient to ensure transparency for end-users.
 - ComReg should be responsible for general information campaigns regarding the concept and timing of transition which is within its competence. Eircom as beneficiary of this migration should fund this Comreg managed campaign, which should inform every householder and business that shall be impacted in a neutral but factual way of the impact and of the need to engage in a timely fashion with their RSP. The impact of Copper Switch off on End-Users will be significant. ComReg's expertise at running these campaigns was recently demonstrated with the successful NGN Switch-Off Campaign, the impact of which was miniscule compared to copper switch off. If Comreg, through inaction were to 'leave behind' the Vulnerable, Elderly and the non-technically minded end-users, it would run counter to end-user and consumer focus that has been traditionally a cornerstone of its reason for being. The Saorview information campaign run through the Department of Communications also provides a model on how to share disruptive technical transitions with End-Users and those who might be End-Users. In so far as ComReg is obliged to consider forward looking scenarios, it should also consider those scenarios where non-End-Users are prospective copper customers. Considering these stakeholders obliges ComReg to open its perspective beyond only those who are currently End-Users and conduct a general information campaign.
 - Eircom should be required, to run direct marketing campaigns, to all Eircodes impacted by the Transition, informing both current End-Users and those who would otherwise be connectable of their options; e.g. Contact their Current Service Provider, contact alternative service providers, etc. These campaigns should be run every six months during the course of the transition unless an occupier of an Eircoded premises opts-out.
 - RSPs should be required to make regular and concerted efforts to inform and migrate current customers. RSPs should on an ongoing basis notify ComReg of their migration progress off of copper and inform ComReg of the difficulties being encountered to facilitate ComReg to share best practice with all operators on migration techniques.

Q.2 Do you agree to ComReg's approach to the definition of Modern Infrastructure? If not, what changes do you propose? Please set out clearly the reasons for your response and any supporting evidence.

Siro does not agree with ComReg's approach to the definition of Modern Infrastructure.

Siro would argue that rather than including NBI in the definition of Modern Infrastructure, that the definition would be changed such that where Eircom provide FTTH, even FTTH of another operator, whether NBI, Virgin, BT, Magnet or SIRO, as alternative comparable products, that all such infrastructure would be capable of being included in the Definition of Modern Infrastructure.

In this case, as Eircom provide NBI already on a wholesale basis, NBI would be covered, without them being called out within the specific definition.

Furthermore, this approach would tie-in with our concerns regarding Clause 1.10 where Siro are unclear how Eircom may become aware of the confidential network coverage of alternative FTTH network operators, unless they resell the alternative network operators in the same manner as they do NBI.

In the case that Eircom seek to benefit from this 'derogation' clause, they should be obliged to resell generally the FTTH of each of the alternative operators they are seeking to count as an ACP, in the same way they resell NBI. Otherwise, for example, an Eircom reseller who was not directly connected to SIRO would not be able to maintain ownership of such a 'derogated' customer and the end-user customer would suffer the consequences.

Following this approach, Comreg would avoid the perception of a bias towards NBI in the same way as might possibly have been apparent in the recently withdrawn proposal on changes to the PIA pricing methodology.

Q.3 Do you agree with the principle that end-user communications rest solely with the RSP? Please set out clearly the reasons for your response and any supporting evidence.

The transition to FTTH is a fundamental shift in the nature of telecommunications services delivery which will be very impactful on end-users.

The key to managing expectations of end-users and ensuring a smooth transition is that information from all relevant stakeholders including Comreg, Eircom, and the RSP is as abundant as possible, especially in regard to the timing impact which needs to be clear, provided well in advance, and avoiding building false expectations.

Siro does not believe that end-user communications should rest solely with the RSP.

Siro believes that there is a multi-layered approach required in the dissemination of information regarding the transition, and that the position adopted by ComReg at Section 1.12 is insufficient to ensure transparency for end-users:

- ComReg should be responsible for general information campaigns regarding the concept and timing of transition which is within its competence. Eircom as beneficiary of this migration should fund this Comreg managed campaign, which should inform every householder and business that shall be impacted in a neutral but factual way of the impact and of the need to engage in a timely fashion with their RSP. The impact of Copper Switch off on End-Users will be significant. ComReg's expertise at running these campaigns was recently demonstrated with the successful NGN Switch-Off Campaign, the impact of which was miniscule compared to copper switch off. If Comreg, through inaction were to 'leave behind' the Vulnerable, Elderly and the non-technically minded end-users, it would run counter to end-user and consumer focus that has been traditionally a cornerstone of its reason for being.

- Eircom should be required, to run direct marketing campaigns, to all Eircodes impacted by the Transition, informing both current End-Users and those who would otherwise be connectable of their options; e.g. Contact their Current Service Provider, contact alternative service providers, etc. These campaigns should be run every six months during the course of the transition unless an occupier of an Eircoded premises opts-out.
- RSPs should be required to make regular and concerted efforts to inform and migrate current customers. RSPs should on an ongoing basis notify ComReg of their migration progress off of copper and inform ComReg of the difficulties being encountered to facilitate ComReg to share best practice with all operators on migration techniques.

Q.4 Do you agree with ComReg's preliminary views on the proposed Framework outlined in Sections 4.1 to 4.5 above? Please set out clearly the reasons for your response and any supporting evidence.

Regarding the Alternative Comparable Products ("ACPs") - Siro believes that a preliminary study should be done to understand the scope of services and service providers that require ACPs and how these might be adapted to move to IP based service delivery. The document provides very little information on the ACPs for the Wholesale Access products such as ULL, SLU, Footprint space on exchanges, antenna co-location, inbuilding WEIL interconnection paths. The logical extension of Copper Switch Off is that the exchanges themselves will be on a trajectory to being 'shut down'. This trajectory needs to be considered and the impacts consulted upon prior to the enablement phase.

In any event, the access ACPs shall always be lessor products compared to FTTH, and it is important that there is transparency with end-users as to the constraints and differences between receiving an ACP and receiving FTTH. Where an ACP is proposed such as FWA, it needs to be clear to the end-user the compromise product they are receiving. In so far as Eircom have fore-knowledge that the end-user will receive an ACP that information must be provided for in the Advance Pre Qual (APQ) file and the bitstream line profile file. Retail Service Providers need to be clear with appropriate warning language, that ordering with Eircom may expose them to the risk of receiving an ACP as opposed to genuine FTTH.

Moreover, there is a genuine lack of shared understanding in the ancillary services industries, who provide elderly monitoring, medical devices, alarms etc. about the forthcoming impact of these changes. Unfortunately, the services they provide support many of the most vulnerable end-users in our communities. A survey of such suppliers and the types of equipment and services involved needs to be considered in order to ensure the ACPs will suffice to fulfil all required needs.

Siro also believes that with the move to FTTH, that the network becomes simpler, easier to manage, and more reliable and arising from that Eircom should be required to provide better delivery and service SLAs. These improved SLAs should also impact on the ACPs to incentivise Eircom to switch faster to pure FTTH.

Additionally, Eircom should be obliged to extend the OIM (Order of Indicative Magnitude) File to provide for a monthly updated Homes Planned file, the accuracy of which should be subject to an SLA, with appropriate penalties.

There is an assumption made in the document that Eircom shall not roll-out on-top of NBI, for example at section 3.18. This assumption needs to be validated with an appropriate commitment agreement from Eircom, that they will not, for the period of the transition, roll out

themselves FTTH in an NBI area. If such a commitment agreement is not forthcoming then Comreg need to assume that NBI cannot be considered as Modern Technology, in the same way that Comreg is proposing Siro is not Modern Technology.

The Decommissioning Phase definition which requires that Legacy Infrastructure is put in a permanent beyond-use state is insufficient. It is essential that existing copper is removed and ducts are cleared, and that there is an incentive for Eircom to do so. Comreg should confirm that so long as Eircom doesn't remove its copper infrastructure that PIA pole costs are reduced for other users. It is essential that Eircom should still be charged for where they are cluttering pole/duct space with decommissioned infrastructure. Similarly for ducts and facade those unnecessary cables and junction Boxes need to be removed as part of the installation process for FTTH. This obligation will ensure that where deprecated copper infrastructure remains in place sterilising effectively infrastructure that might otherwise be available to alternative operators, that Eircom cannot do this to prevent or restrict competition.

Q.5 Does ComReg's proposed Framework provide sufficient time for an Access Seeker to migrate its end-users from legacy-based services? Please set out clearly the reasons for your response and any supporting evidence.

Siro believes that the timelines are very tight especially given the resource shortage that is facing the FTTH industry at the moment.

Siro believes that the 6 month gap between the stop sell notice and the 'stop sell commence' should be at least 12 months, and that the transparency requirements should require at least 2 notifications to end-users, and 2 notifications to non-end-users within the exchange during that that period.

Siro believes that Milestone 2 should be collared at 36 months as opposed to 24 months, which is too short for the scale of roll-out that will be required over so many exchange areas. This may be scaled such that for small rural exchanges 24 months is appropriate, but for medium/large urban exchanges 38 months is more appropriate, depending on the build difficulty. Perhaps Eircom, could propose such variable Milestone 2 timing.

Q.6 Do you agree with ComReg's preliminary views on premises passed, outlined in Section 4.6 above? Please set out clearly the reasons for your response and any supporting evidence.

Siro would propose that where an in-scope premises is found not to be connectable by Eircom FTTH that Eircom would be obliged in the first instance to seek to provide service through another FTTH provider, that passes the premises.

The customer having had their expectations raised to expect their home to be passed by FTTH should not be required to fall down to a legacy copper or radio based infrastructure if there is an ACP available by way of alternative FTTH infrastructure including NBI, Siro, Virgin, BT, Magnet etc.

Alternatively, Eircom should be obliged to provide the customer with a voucher for €1,500 to facilitate an alternative FTTH service provider to provide service to the premise and cover any connection/migration costs of the access seeker holding that end-user and the end-user themselves.

Q.7 Do you agree with ComReg's proposal on non-standard connection costs, outlined in Section 4.6 above? Please set out clearly the reasons for your response and any supporting evidence.

Siro would disagree with ComReg's proposal on non-standard connection costs and would maintain that:

1. Non-Standard connection costs do not act as a barrier to the take up of FTTH and there is no empirical evidence to suggest this substantiating the Comreg approach. In fact, the growth of FTTH in Ireland to date, with Eircom not covering non-standard connection costs is evidence that these genuine cost recovery mechanisms are appropriate, and in fact are targeted, and tiered appropriately, and ultimately only paid for by householders and businesses whose premises is particularly non-aligned with the Eircom network, or where an end-user has refused the connection by Pole or other alternatively simpler method of connection.
2. It assumes that Eircom need an incentive to minimise the Stop Sell or are otherwise incentivised to pro-long the Stop Sell Period. It is arguable that a longer Stop Sell period would provide End Users with a more manageable transition timeframe. In this case, such an incentive would be counterproductive for consumer benefit.
3. It assumes that Eircom should suffer costs, that are otherwise beyond their control, for the benefits of decommissioning, those benefits have not been calculated to exist or to exist in any meaningful way by Comreg, so to attempt a balancing exercise without having understood the figures supporting their rationale is not fair.

It is arguable that a fairer approach would be to limit the recoverable proportion of non-standard costs to a reasonable level such as €1,500, with Eircom having to cover any excess.

Q.8 Do you have any other comments on these pricing principles or any other pricing principles that should be considered? Please set out clearly the reasons for your response and any supporting evidence.

None.

Q.9 Do you agree with ComReg's preliminary views on monitoring the Migration from Legacy Infrastructure outlined in section 4.7 above? Please set out clearly the reasons for your response and any supporting evidence.

Siro agrees in substance to the detail of the data points being required. However, Siro believes that Comreg does not propose adequate transparency to all stakeholders in proposing that only Access Seekers and Comreg will be provided with the necessary information to monitor the progress of key milestones of the migration and switch off phase. Given the impact that this program of work will have on End-Users, this information should, in the interests of transparency for all stakeholders, be published on a public facing web-Site. This will allow all stakeholders, including all end-users of communications services, and not just current Eircom retail customers, to have visibility of this information, which will have an impact on their purchasing and switching choices during the course of, and prior to the transition commencing. Furthermore, Siro believe this information should be provided down to Eircode level in the same way that it is available on the Eircom Broadband Checker Map system online.

Siro appreciate your consideration of our observations, and should Siro be able to answer any further questions or clarifications, please do not hesitate to reach out to us.

Kind regards,

No signature as sent by email

Rory Ardagh
Regulatory Affairs Manager



Consultation - Framework for the Migration from Legacy
Infrastructure to Modern Infrastructure amendments

ComReg 22/13R

11 May 2022

Sky Ireland welcomes the opportunity to comment on ComReg's proposed framework for the Copper Switch-Off (CSO) process. Sky Ireland supports the overall aim of the proposed framework namely, that of a managed migration which recognises the importance of protecting end users and of ensuring a clear and transparent timetable and process for all operators.

As Sky Ireland has already provided a detailed submission to the Call for Inputs, including jointly commissioning an expert report via ALTO, we do not intend to repeat those submissions in this document. Instead, we will specifically focus our comments on the areas proposed by ComReg which we recommend are included in the framework for the CSO process.

We would also note that, while Sky supports the overall framework and principles behind it, there are a number of issues that need to be addressed within the proposed framework to ensure that the CSO process is an efficient and successful process for all stakeholders. We have outlined these below.

[Q.1 Do you agree with the proposed principles to govern the Framework? Are there any other principles in this respect that should be considered? Please set out clearly the reasons for your response and any supporting evidence.](#)

Sky Ireland welcomes the principle contained in section 1.11 that access seekers should have a clear understanding of what Eircom's plans for transition are, and that sufficient notice is provided throughout the process.

As recommended by Sky in the Call for Inputs, ComReg is also correct to propose in section 1.12 that Eircom should not be permitted to communicate directly with end users that are not their customers as part of the transition.

On the **'Wholesale Replicability Principle'** outlined in section 3.8, Sky Ireland does not agree with the proposal by ComReg that 'comparable price' for an ACP would be defined as '*a price which is not necessarily the same but where any differential or margin between prices for Legacy Infrastructure-based services and the price of ACPs provided over the Modern Infrastructure is fair and reasonable*'. It is unclear how the definition of 'fair and reasonable' would work in practice. Sky recommends that ComReg proposes more than a general principle and specifies an actual mechanism that can be used to benchmark pricing. For example, in the UK, Ofcom has opted for an anchor price mechanism that provides a level of certainty to access seekers.

[Q.2 Do you agree to ComReg's approach to the definition of Modern Infrastructure? If not, what changes do you propose? Please set out clearly the reasons for your response and any supporting evidence.](#)

The framework needs to take account of the ability to convert Homes Passed into Homes Connected before granting Eircom any relief. There is a real risk that Eircom may notionally pass premises for FTTH without any guarantee that these premises can be subsequently connected.

Any alternative technologies other than FTTH proposed by Eircom should be defined as part of the consultation if these technologies are already known. The consultation should set out the rules governing how Eircom can introduce alternative technologies that may not be known today that could potentially be utilised to count towards the FTTH targets for copper switch-off.

Q.3 Do you agree with the principle that end-user communications rest solely with the RSP? Please set out clearly the reasons for your response and any supporting evidence.

As set out in previous responses and above, end user communications must rest solely with the RSP. It is critical that this principle is part of the overall CSO process, and the proposal by ComReg that Eircom will only be allowed to directly contact their own customers should be included in the overall framework. Without this rule in place, and with Eircom having already proposed to contact all end users, there may well be widespread confusion among end users.

Sky Ireland would support, and recommends, that ComReg undertake a general marketing campaign to ensure consumers at a macro level understand that copper will be retired and replaced by Fibre, and the potential implications for their services. This is particularly important for vulnerable customers who may have other services attached to their copper line, including house alarms, health monitors and other types of monitoring services.

Q.4 Do you agree with ComReg's preliminary views on the proposed Framework outlined in Sections 4.1 to 4.5 above? Please set out clearly the reasons for your response and any supporting evidence.

Sky Ireland **welcomes the inclusion of the 'initiation step'** as outlined in the consultation document and fully supports the proposal that Eircom will have to set out, for ComReg's review and approval, its plans for Copper Switch-off.

Sky also supports that the transition phases for Migration and Switch-off are centred on the premise **that copper switch off may only take place where 100% of in scope premises** are passed by Modern Infrastructure.

While **the inclusion of trials** within the enablement phase aims to allow access seekers to understand how the migration will work from an end-to-end perspective is welcomed, **Sky Ireland cautions against allowing the enablement phase and migration and switch-off phase to begin simultaneously**. This will result in trials taking place at the same time as the migration phase and would not allow for key learnings to be taken on board by stakeholders, which is the main aim of a trial.

Sky Ireland can **support the concept of stop sell providing that there are adequate conditions** attached to the threshold requirement of 75% before stop sell can begin. These conditions centre around the reliability of data that Eircom provides which will need to be significantly improved for the CSO process to be successful.

These conditions should include:

- That the stop-sell period should end after two years if Eircom have not passed all premises as outlined by ComReg. Additionally, to incentivise Eircom to pass all premises within this timeframe and in the interest of protecting end users, there should be penalties applied to Eircom if they do not pass all premises within two years.
- That Eircom must undertake a survey of their entire network prior to the commencement of the CSO process.
- That fibre line / DP testing for Eircodes is a pre-requisite for Eircom to undertake to allow access seekers to understand if a premises can actually be connected once passed. In practice this means that Eircom will have to ensure that all premises and services are linked to an Eircode so that access seekers can simply check the services available at the address using only an Eircode.
- All premises in an exchange area are linked to an Eircode so that we can cross reference in the area to ensure the 75% threshold has been met.
- All the Eircodes in the exchange are provided to the RSPs.

- Sky Ireland welcomes ComReg’s draft KPI Decision¹ which introduces a more-than-one appointment required metric which considers the number of orders not completed within one appointment and collates data on how many appointments it subsequently takes to complete the order.
- A mechanism is introduced to confirm the validity of Homes Passed within a designated area by analysing the ability to convert Homes Passed into Homes Connected. This is a key metric that is required as part of the CSO process to calculate the ratio of orders that were connected versus those that required additional infrastructure to complete or orders that were rejected as undeliverable.
- We fully support the proposal by ComReg that costs of non-standard connections need to be borne by Eircom and not the end user. This should be part of the conditions to incentivise Eircom to minimise the length of the stop sell period.

Q.5 Does ComReg’s proposed Framework provide sufficient time for an Access Seeker to migrate its end-users from legacy-based services? Please set out clearly the reasons for your response and any supporting evidence.

Sky Ireland does not see any issue with the proposed timelines outlined. However, as detailed above, the success of the CSO process hinges on the reliability of the data that Eircom provides to access seekers. There will need to be significant improvements in this data to ensure that these timelines can be met. Eircom should also introduce metrics within these timeframes that measure and confirm the validity of their data / files as part of this process.

Q.6 Do you agree with ComReg’s preliminary views on premises passed, outlined in Section 4.6 above? Please set out clearly the reasons for your response and any supporting evidence.

As above.

Q.7 Do you agree with ComReg’s proposal on non-standard connection costs, outlined in Section 4.6 above? Please set out clearly the reasons for your response and any supporting evidence.

Yes, Sky Ireland agrees with ComReg that the correct way to incentivise end users to migrate is to ensure that the cost of non-standard connections is borne by Eircom.

Where an end user does not wish to upgrade to FTTH, including because they already have a good working ADSL or FTTC service or they may struggle to afford the potential costs associated with the connection, they will obviously be more likely to upgrade if there is no additional cost to them for an improved service. Therefore, ComReg should require that the connection price is removed, or significantly reduced, for existing copper customers.

It is already clear that getting end users to connect and take up FTTH is not a straightforward task.² Ensuring no additional cost for end users for connection charges will be key to incentivising take up, particularly at a time when the cost of living is increasing.

The CSO process cannot be deemed successful if end users who do not want to migrate across due to the cost of connection charges are left stranded at the end of the process. As ComReg correctly highlights, ensuring that the cost of non-standard connection charges is borne by Eircom will also ensure that Eircom is incentivised to minimise the length of the stop sell period.

Furthermore, as outlined in the RegOpp expert paper submitted by ALTO in the Call for Inputs, Eircom is expected to make a significant windfall from the decommissioning and subsequent

¹ Access Product and Services Key Performance Indicator Metrics, ComReg 22/27

² Note the Department of Environment, Communications, & Climate Change has tasked staff from the ESRI to research how to encourage the take-up of high-speed broadband after lower than expected connection for NBI, found here at <https://www.businesspost.ie/telecoms/esri-behavioural-study-aims-to-tackle-lack-of-public-interest-in-high-speed-broadband-1676934e?auth=login>

extraction of copper which they will be able to sell on the open market. It is unclear why end users should pay for non-standard connection charges which would essentially result in end users paying for Eircom's network upgrade.

Q.8 Do you have any other comments on these pricing principles or any other pricing principles that should be considered? Please set out clearly the reasons for your response and any supporting evidence.

Sky Ireland fully supports the recommendation by ComReg that increasing the price of copper services should not be used as an incentive to migrate end users. Instead, we believe that suspending connection charges for FTTH products and other promotional pricing initiatives which encourage end users to make the switch are likely to be much more effective and garner much more public support for the process.

We note that ComReg has highlighted the intention to deal with the pricing of FTTH in separate decisions. However, it is worth noting that, as the cost-of-living challenge for end users sharpens and bearing in mind the incentive point to ensure that end users migrate, FTTH needs to be competitively priced.

Q. 9 Do you agree with ComReg's preliminary views on monitoring the Migration from Legacy Infrastructure outlined in section 4.7 above? Please set out clearly the reasons for your response and any supporting evidence.

Sky Ireland welcomes the metrics proposed in section 4.7 on Migration from Legacy Infrastructure. In any given area, we strongly recommend that a breakdown of the orders submitted on a monthly basis is included. This breakdown would include - orders submitted, orders delivered, orders rejected for lack of infrastructure, average delivery time etc.

-ENDS -



Vodafone Response to Consultation

Framework for Migration from Legacy to Modern Infrastructure

Reference: ComReg Doc 22/13

Version: Non-confidential

Date: 11/5/22

Introduction

Vodafone welcome the opportunity to respond to this consultation on the Framework for Migration from Legacy Infrastructure to Modern Infrastructure (ComReg document 22/13)

Vodafone share the national ambition to fully modernise Irish infrastructure. We support the multiple wholesale Irish fibre networks, are an investor in SIRO and are a market leader of retail fibre solutions for Irish consumers and business.

The transition from copper to fibre is progressing at speed and at the end of Q2 2021 there was approximately 372K¹ FTTP connections growing 50% year on year. Vodafone, as a leading retailer of FTTP in Ireland, sells fibre services over the SIRO, Eircom and NBI networks. We recognise the benefits fibre can deliver to our customers and the efficiency benefits that arrive from reducing the amount of time during which copper and fibre networks must co-exist. The opportunity now exists to further accelerate the transformation from legacy to modern infrastructure. This can only succeed where there is full industry support underpinned by fair and reasonable conditions, improvements to process and long-term certainty on pricing.

The response to each of the consultation questions is set out below.

It is our view that the Framework while still general in nature, subject to responses provided, is fit for purpose. In addition, we remain of the view

- **That retail providers require certainty and safeguards.** The key issue which will still need to be dealt with, is the ask for Access Seekers to support a programme while moving from controlled regulated pricing on FTTC to FTTH based services with limited price protection. It is agreed these issues will be reviewed as part of the market review however, in other countries industry engagement was also achieved through the provision of committed long term pricing as it was recognised this would drive the overall success of the programme; and
- **That consumer and business confidence is critical.** The Framework aside there will need to be ongoing engagement of industry (via the IEF or other means) to ensure the programme is managed and adapted to ensure confidence is maintained; and
- **That there is an opportunity to improve process.** To facilitate CSO detailed network analysis and network preparation should be completed including remediation of non-standard issues such as collapsed ducts.

¹ [quarterly key data report \(comreg.ie\)](https://www.comreg.ie/quarterly-key-data-report)

Response to Consultation Questions

Q.1 Do you agree with the proposed principles to govern the Framework? Are there any other principles in this respect that should be considered? Please set out clearly the reasons for your response and any supporting evidence.

The Wholesale Migration Principle: Vodafone agree with the principle that attention needs to be given to ensuring appropriate process, procedure and necessary information are made available in sufficient time to ensure migration can be planned and project managed. It is appropriate in this context that there is a high degree of accuracy

- on the inventory information of circuits that are eligible to switch, and
- on the certainty of availability of Modern Infrastructure when switching.

This may well require work to ensure pre-existing delivery constraints are remediated in advance of customer switching in specific exchange areas. Considering the position that migration costs will be borne by Eircom it is in their interest, from a cost perspective, and for overall success of the project that the number of non-standard issues is minimised in advance.

The Wholesale Replicability Principle: ComReg highlight the need to ensure Access Seekers do not incur significant additional cost or IT changes in respect of order handling, provisioning, and billing systems and that ACPs must be comparable in terms of price and quality.

This principle should also recognise the requirement for certainty. As it stands, and without pre-judging any outcomes from future market reviews, the less than compelling ask for Access Seekers is to switch our customers from a product where pricing is controlled to one without any control. In fact, the white paper also proposed an increase in FTTC prices to drive switching. The fact remains the participation of the whole industry will drive the efficiency of this project. In other countries in Europe this has been recognised. Vodafone refer to the special offers developed by Openreach² to provide long term pricing certainty to wholesale customers until 2031 in return for Access Seekers achieving target percentages of orders they are willing to place on the Openreach FTTH network.

Regarding comparability, the primary concern is in relation to pricing. It is expected the benefits in functionality and quality on FTTH are clear. The view on what is a fair and reasonable margin is not clear however if pricing is reasonable and fixed this will expedite the switch.

The overall cost of an un-precedented large scale requirement for all customers to change their technology in a defined timeline drives significant Access Seeker operational and capex demand. Whilst order handling, provisioning and billing system changes must be kept to a minimum other significant costs once off costs arise. In relation to replacement wholesale inputs this is discussed further below in the context of the definition of Modern Infrastructure, however, additional costs on operators will also include the disruptive cost to customers, acquisition, CPE changes, marketing

² [NGA2017/21 \(openreach.co.uk\)](https://openreach.co.uk)

costs, uplift in assurance and care activities etc also. It is accepted the transition will deliver longer term benefits in having customers on Modern Infrastructure, and Vodafone supports the collective aspiration for a full fibre connected Ireland. The investment by wholesale customers to play our part in the success of this project must be more fully considered as part of the Eircom proposal.

Timeliness Principle: Vodafone agree that the proposal to increase FTTC pricing in no way constitutes an incentivised switching programme. We would support staged implementation in a managed way.

Q.2 Do you agree to ComReg's approach to the definition of Modern Infrastructure? If not, what changes do you propose? Please set out clearly the reasons for your response and any supporting evidence.

Vodafone Response: The uncertainty arising relates to alternative modern technology used by Eircom. The benefits for an operator in managing one technology type across multiple wholesale suppliers are important, in terms of CPE, provisioning processes, customer assurance etc. As a wholesale customer of Eircom, SIRO and NBI this alignment of inputs is of primary importance. The introduction of alternatives will require bespoke operational process and should only be introduced as an absolute last resort. The development of such alternative products will also need to engage industry well in advance to ensure appropriate lead times. In developing its own business case the volumes will need to be understood and this may further support the case for detailed survey of the network in advance to develop the full list of premises by Eircode that require alternative modern technology.

Q.3 Do you agree with the principle that end-user communications rest solely with the RSP? Please set out clearly the reasons for your response and any supporting evidence.

Vodafone Response: Vodafone agree that it is the responsibility of the existing operator to communicate directly with its customers. In respect of general information campaigns on the project to switch these should be conducted under the wholesale brand. It is also anticipated, and is likely within ComReg plans, that general information campaigns like those recently adopted during the NGN migration programme, would be employed.

It is recommended that general information campaigns by the wholesaler and by ComReg focus on the benefits of transition and refer customers to their retail provider for further details. It should also focus on the service providers who deliver in home services for security and for support of more vulnerable customers on their requirement to engage with their end customers to support the transition.

In relation to transparency requirements detailed in paragraph 3.26 Vodafone notes the switch off proposal determined by Eircom is only being provided to ComReg. In the spirit of transparency, we would expect that this document is published, as per the approach taken with the initial White Paper. This would afford a period for comment before ComReg provide confirmation that Eircom's switch-off plan fulfils the conditions of the Framework. On the trial report ComReg should also ensure Access

Seeker outcomes from trials are also factored into decisions to proceed and any alterations to process that may be required. Finally, as outlined above it is critical that Access Seekers have early access to information on premises not passed by Modern Infrastructure well in advance of Milestone 2. A period of 1 month is not a sufficient timeframe to develop tailored switch off communications plan for customers while ensuring customers who will need to be managed by exception are kept informed appropriately.

Q.4 Do you agree with ComReg's preliminary views on the proposed Framework outlined in Sections 4.1 to 4.5 above? Please set out clearly the reasons for your response and any supporting evidence.

Vodafone Response: Vodafone broadly agree in principle subject to comments below.

The initiation phase seems to exclude Access Seeker engagement. Eircom will submit a proposal and, while not absolutely clear, it may be the view that this would be analysed and confirmed by ComReg without further Access Seeker consultation. We would urge some level of engagement.

We consider the detail being sought from ComReg on ACPs, on timing and on communications is clear. In our view this proposal should incentivise Access Seekers to support the programme by providing some level of certainty on terms as evidenced in other countries. This in our view is critical to the success of the programme.

The enablement phase is the period in which ACPs are developed and trials can take place. We note in the switch off proposal (as referenced in Paragraph 4.15 and 4.18) that ACP detail will be required however more detail needs to be provided well in advance of enablement phase. To understand the case for development of systems and processes around any ACP the volumes, locations, terms, IPM and SLAs will be required well in advance of any development to facilitate a trial.

The trial period runs parallel to the migration and switch off phase. This would indicate that the migration and switch off can only commence on exchanges where ACPs are not required. We would advise some level of trial, review and update to process may be required to ensure bulk processes are working as planned, customer impacts are minimised, and future migrations are adapted with lessons which will be learned on an initial trial in a small number of exchange areas.

In relation to stop sell Vodafone can see the logic in progressing with stop sell in exchange areas where other wholesale fibre services are available. Vodafone would request clarity whether full repair services are available under stop sell conditions and situations where a repair may not progress and the terms that apply to any situation that may arise where a customer may be informed that the only remedy to their service issues require migration to Modern Infrastructure.

Vodafone support in principle the target that all customers have access to Modern Infrastructure following transition. The overall aim is that ACPs should only be offered as a last resort and for operational efficiency and customer experience the target should be to have most customers on a fibre service.

In relation to exempt users it will be necessary for industry and ComReg to engage with Service providers of copper based critical non-ECS services to ensure they are fully aware of end dates so they can make plans for moving their customers to alternative services.

In relation to the Switch off proposal and ACPs Eircom will need to provide descriptions of ACPs and volumes and as already advised Vodafone consider that some level of engagement is required with industry by Eircom and ComReg to evaluate ACP options.

In relation to communications detail in Paragraph 4.20 the communication plan should make it clear that the wholesale provider of Eircom will conduct the general information campaigns. The communications plan should be very clear on what is a “general” information campaign. This will need to differentiate between a broad national information campaign and targeted geographic information campaigns when a specific exchange area is migrating as retail service providers will be communicating directly with end-users at exchange level.

As above we would urge some level of engagement with Access Seekers on the switch-off proposal. Nonetheless on confirmation by ComReg to Eircom of acceptance it is anticipated that the details of the engagement process and the outcomes will be published via information note in advance of any requirement for Eircom to publish on the Openeir website.

In relation to the trial stage the focus (as indicated in paragraphs 4.25/4.28) is very much on ACPs and this is warranted, however, given the unprecedented scale of mass migration required, it will be appropriate to have an initial general trial on migration, regardless of whether ACPs exist on that exchange. This will ensure initial learnings are captured and processes adapted in order to move forward in the most effective way on the programme.

Q.5 Does ComReg’s proposed Framework provide sufficient time for an Access Seeker to migrate its end-users from legacy-based services? Please set out clearly the reasons for your response and any supporting evidence.

Vodafone Response: Vodafone broadly agree with the timings proposed, subject to inclusion of some form of general trial with lessons learned and adaptation of processes that is not solely focussed on ACP products and processes.

Q.6 Do you agree with ComReg’s preliminary views on premises passed, outlined in Section 4.6 above? Please set out clearly the reasons for your response and any supporting evidence.

Vodafone Response: We agree that stop sell should never apply to premises with no access to Modern Infrastructure. The position on repair of legacy circuits requires some clarification for customers who are choosing not to migrate and have access to fibre. It will also be necessary, when Modern Infrastructure is being made available but may be a non-standard connection, and where existing lines are degraded beyond repair, that new replacement legacy technology lines are installed for the interim period.

Q.7 Do you agree with ComReg’s proposal on non-standard connection costs, outlined in Section 4.6 above? Please set out clearly the reasons for your response and any supporting evidence.

Vodafone Response: Vodafone welcome the pragmatic approach adopted to non-standard, premises specific connection costs and remediation of customers impacted by non-standard installations.

Access Seekers will require the detail to facilitate customer communications that the service is non-standard, that it will be remediated by corrective works to existing infrastructure, by fibre installation or by ACP installation within a specific and relatively short timeframe. As part of this programme the aspiration should be to vastly improve the current approach to non-standard installations which are a source of much customer frustration when forecasts are provided and changed repeatedly.

Q.8 Do you have any other comments on these pricing principles or any other pricing principles that should be considered? Please set out clearly the reasons for your response and any supporting evidence.

Vodafone Response: In relation to general connection costs the efficiencies arising from exchange-by-exchange bulk switching should be reflected in a reduction to the standard connection cost. We would ask ComReg to benchmark Irish connection costs against those offered in the similar UK programme which are much lower, starting at £25.

Q. 9 Do you agree with ComReg's preliminary views on monitoring the Migration from Legacy Infrastructure outlined in section 4.7 above? Please set out clearly the reasons for your response and any supporting evidence.

Vodafone Response: Vodafone agree with the preliminary views.

ENDS