An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Information Notice

Draft Decision on Migration from Legacy Infrastructure to Modern Infrastructure

Publication and notification to the European Commission (EC), the Body of Regulators for Electronic Communications (BEREC), and National Regulatory Authorities (NRAs) in other Member States of Draft Measures under Article 32 of Directive 2018\1972 and Regulation 17 of the European Union (Electronic Communications Code) Regulations 2022

Information Notice

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1. This Information Notice concerns the Commission for Communication Regulation's ('**ComReg**') publication and parallel notification to relevant European authorities of its draft decision concerning the Migration from Legacy Infrastructure to Modern Infrastructure (the "**Draft Decision**"). A copy of the Draft Decision is set out in Appendix 1.

2. In accordance with the requirements of Article 23 of the European Electronic Communications Code ('**EECC**') and Regulation 101 of the European Union (Electronic Communications Code) Regulations 2022 (the '**EECC Regulations**'), ComReg carried out a national public consultation ('**Consultation**') on its analysis of the Migration from Legacy Infrastructure to Modern Infrastructure over the period 25 March 2022 to 11 May 2022.

3. Prior to the adoption of a final decision, Article 32(3) of the EECC and Regulation 17(4) of the EECC Regulations requires ComReg to publish and, at the same time, make draft measures accessible to the European Commission ('**EC**'), the Body of European Regulators for Electronic Communications ('**BEREC**') and National Regulatory Authorities ('**NRAs**') in other Member States (the '**Article 32 Notification**').

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

5. Note that this Information Notice, including the Draft Decision in Appendix 1, does not constitute a further national public consultation and should therefore not be construed as an invitation to make further submissions to ComReg.

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

Appendix 1: Draft Decision

An Coimisiún um
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Commission for
Communications Regulation

Framework for the Migration from Legacy Infrastructure to Modern Infrastructure

Decision

NOTE: THIS IS A DRAFT DECISION

Decision

Reference: ComReg XX/YY

Decision: AA/BB

Version: Draft

Date: XX/YY/2023

Additional Information

Document No:	XX/YY
Date:	XX/YY/2023

Redacted Information

Please note that this is a non-confidential version of the Response to Consultation and Decision. Certain information within the Response to Consultation and Decision has been redacted from the public version for reasons of confidentiality and commercial sensitivity, with such redactions indicated by the symbol ✂.

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1.2 The Commission for Communications Regulation ('**ComReg'**) has the power to specify requirements on Eircom as an operator designated with SMP on a number of relevant markets, to safeguard competition and the rights of end-users throughout the process of migration to modern-based services (e.g. delivered on Very High Capacity Networks ('**VHCNs**')) and the switch-off of the copper network.

1.3 Article 81 of the European Electronic Communications Code (the **'Code**')[4] transposed in Ireland by Regulation 63 of the European Communications Code Regulations (the "**ECC Regulations**")[5] set out provisions on migration from legacy infrastructure. These provisions are applicable for operators designated with SMP

[1] "Market Review Wholesale Local Access (WLA) provided at a Fixed Location Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products", ComReg Document 18/94, Decision D10/18, 19 November 2018. See also ComReg Decision D10/21, ComReg 21/120, November 2021.

Mid-term Assessment Regional Wholesale Central Access (WCA) Market, Re-application of geographic assessment criteria set out in ComReg Decision D10/18, ComReg 21/120, Decision D10/21, dated 25 November 2021.

[2] "Market Analysis – Wholesale High Quality Access at a Fixed Location", ComReg Decision D03/20, ComReg 20/06, 24 January 2020.

[3] Market Reviews: Wholesale Local Access (WLA) provided at a fixed location; Wholesale Central Access (WCA) provided at a fixed location for mass-market products, Consultation and Draft Decision, ComReg 23/03, 9 January 2023.

[4] Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (L 321/165), dated 17 December 2018.

[5] European Union (Electronic Communications Code) Regulations 2022, SI No. 444 of 2022.

in regulated markets. ComReg's role in respect of migration from legacy infrastructure is to ensure that the SMP operator's decommissioning process:

(a) Includes a transparent timetable and conditions, including an appropriate notice period for transition; and

(b) establishes the availability of alternative products of at least comparable quality providing access to the upgraded network infrastructure substituting the replaced elements, that in the opinion of the Regulator, are necessary to safeguard competition and the rights of end-users.

1.4 To enable it to carry out its role, ComReg may specify requirements on the SMP operator. Once the SMP operator abides by the requirements set out in this Decision, ComReg will lift the SMP obligations regarding the provision of copper-based services. Obligations other than SMP obligations, including universal service obligation for the provision of voice only connections and voice communications services at a fixed location ('**VFL USO**')[6] are not affected.

1.5 The process for migrating services from copper-based to fibre-based networks (or other suitable modern networks) is referred to throughout this Decision as '**Migration from Legacy Infrastructure**'. The upgraded or new network infrastructure substituting the replaced elements of the legacy infrastructure is referred to, in general, throughout this Decision as '**Modern Infrastructure**'. Modern Infrastructure includes in particular the VHCNs as defined in the ECC Regulations, namely electronic communications networks which consist wholly of optical fibre elements at least up to the distribution point at the serving location, or electronic communications networks which are capable of delivering, under usual peak-time conditions, similar network performance in terms of available downlink and uplink bandwidth, service availability, resilience, error-related parameters and latency and its variation.

1.6 On 3 August 2021, ComReg published a Call for Inputs, entitled "*Migration from Legacy Infrastructure to Modern Infrastructure: Call for Inputs*" (the '**2021 Call for Inputs**').[7] The 2021 Call for Inputs suggested possible key principles to govern copper switch-off from both wholesale and retail perspectives as well as possible principles for a framework governing Migration from Legacy Infrastructure to Modern Infrastructure and the requirements to be met in these respects by Eircom as an SMP operator. Submissions were received from seven stakeholders: ALTO, BT, Eircom, NBI, Siro, Sky and Vodafone.

[6] Universal Service Requirements: Provision of Access at a Fixed Location (AFL USO), Document No. 21/112R, ComReg D09/21, 05 November 2021,

[7] Migration from Legacy Infrastructure to Modern Infrastructure: Call for Inputs, ComReg 21/78, dated 3 August 2021.

1.7 With the benefit of the responses to the 2021 Call for Inputs, on 25 March 2022, ComReg published a Consultation, entitled "Framework for the Migration from Legacy Infrastructure to Modern Infrastructure"[8] (the '**2022 Consultation**').

1.8 The 2022 Consultation outlined ComReg's proposal for a framework setting out the minimum standard of requirements for Eircom and included the principles and conditions which Eircom must comply with before Eircom may withdraw copper-based telecommunications services and switch-off its copper network. Submissions were received from eight industry stakeholders: ALTO, BT, Eircom, NBI, SFG, Siro, Sky and Vodafone (the '**Respondents**') and sixteen individuals (the '**Individual Respondents**').

1.9 This Decision, which takes into account the submissions made by the Respondents and Individual Respondents, sets out the framework governing Eircom's transition from Legacy Infrastructure to Modern Infrastructure for so long as it is designated with SMP on relevant markets (the '**Framework**').

1.2 Principles

1.10 In considering the appropriate Framework, ComReg's objective is to create the conditions for a successful transition ensuring that migration does not adversely affect wholesale and retail competition and the interests of end-users while being mindful of not inhibiting the retirement of the legacy network. The premises in scope for the Framework are those premises which have either ceased in-situ copper lines[9] or active copper-based services,[10] and which are included in a regulated market.

1.11 The following four principles have guided the design of the Framework:

1.11.1 **Wholesale migration** whereby Migration from Legacy Infrastructure to Modern Infrastructure must be enabled at the wholesale level and ensuring that Access Seekers are able to migrate their end-users to the Modern Infrastructure with minimum disruption for end-users and maximum certainty for Access Seekers using appropriate processes, procedures and with necessary information being made available by Eircom to Access Seekers in sufficient time ahead of the migration.

[8] Framework for the Migration from Legacy Infrastructure to Modern Infrastructure, ComReg 22/13R, dated 25 March 2022.

[9] A ceased in-situ copper line is a copper line that was once fully provisioned into the customer premises to the network termination unit ('**NTU**') but the service on the copper line has since been ceased.

[10] Including copper-based services with partial copper, such as Fibre to the Cabinet ('**FTTC**').

1.11.2 **Replicability**, requiring that before withdrawing access to Legacy Infrastructure-based services, Eircom has Alternative Comparable Products ('**ACPs**') available, that is, a suite of alternative wholesale access products, comparable in terms of both quality and price to the Legacy Infrastructure-based services they replace.

1.11.3 **Timeliness** of the process, which is achieved by organising the design of the Framework around transition phases allowing for progressive migration, decommissioning and withdrawal of obligations on a legacy exchange area by legacy exchange area basis (by reference to each of Eircom's approximately 1,200 existing exchanges), thereby ensuring that transition may commence as soon as a legacy exchange area has Modern Infrastructure available (in the context of the conditions set out under the Framework) and can proceed as fibre network rollout is ongoing. ComReg defines the legacy exchange area where its copper access network is terminated on a Main Distribution Frame ('**MDF**') or equivalent (including a Remote Subscriber Unit ('**RSU**')). For the purpose of determining whether access to Modern Infrastructure is available and accordingly, whether migration may proceed, ComReg considers Modern Infrastructure as consisting of:

(a) Eircom's modern infrastructure, which includes Fibre to the Home ('**FTTH**')[11] and other alternative modern infrastructure used by Eircom (if applicable); and

(b) National Broadband Ireland's **('NBI**') modern infrastructure which includes FTTH and other alternative modern infrastructure used by NBI (if applicable).

The principle of timeliness also means that ComReg may allow copper switch-off to proceed even though some premises do not have access to Eircom's or NBI's Modern Infrastructure. This could include where premises are derelict or Eircom is denied access to private property as part of its Modern Infrastructure rollout activities, for example, or where premises are passed by an alternative FTTH network offering wholesale access (e.g. Siro). In those circumstances Eircom may seek ComReg's approval to proceed with copper switch-off transition (refer to paragraphs 4.72 to 4.75 below).

1.11.4 **Transparency\Communication** in order that the Migration from Legacy Infrastructure process flows smoothly, by ensuring that Access Seekers have a clear understanding as to what Eircom's plan for transition is (on a legacy

[11] Also known as Fibre to the Premises ('**FTTP**').

exchange area by legacy exchange area basis), including with sufficient notice that Access Seekers can plan accordingly and communicate appropriately with their customers. It also requires that Eircom refrain from engaging in direct contact with end-users to whom it does not directly provide retail or business services and all required communications are to be undertaken by the end-users' own retail service provider ('**RSP'**). For the avoidance of doubt, Eircom is not prevented from engaging in general information campaigns to ensure the general public understands the concept and timing of the transition.

1.12 This Decision does not include a set of rules or guidance on the retail principles. Retail aspects associated with the Framework will be the subject of a separate publication.

1.3 Framework

1.13 The Framework is designed to enable Access Seekers to:

(a) understand Eircom's process for withdrawal of legacy-based services, and how this will affect them and their end-users;

(b) have access to information about ACPs available to them and their end-users;

(c) have confidence that the ACPs provide comparable functionality and are available at comparable prices to the legacy-based services;

(d) have a modern comparable service accessible to the end-user (where their end-user wishes to migrate from a legacy-based service); and

(e) have reasonable time to prepare for a proposed withdrawal of the legacy-based services, including a suitable notice period for their end-users.

Phases

1.14 The starting point of the transition process is by way of a proposal by Eircom ('**Eircom's Switch-off Proposal**') providing ComReg with information on how Eircom plans to migrate from its legacy network to modern infrastructure. When ComReg is satisfied that Eircom's Switch-off Proposal, amended as the case may be, fulfils the Framework conditions set out in this Decision, ComReg will approve it at which point Eircom's Switch-off Proposal becomes Eircom's Switch-off Plan (the '**Switch-off Plan'**).

1.15 The Framework for the transition from Legacy Infrastructure to Modern Infrastructure (illustrated in Figure 1 below), consists of three phases:

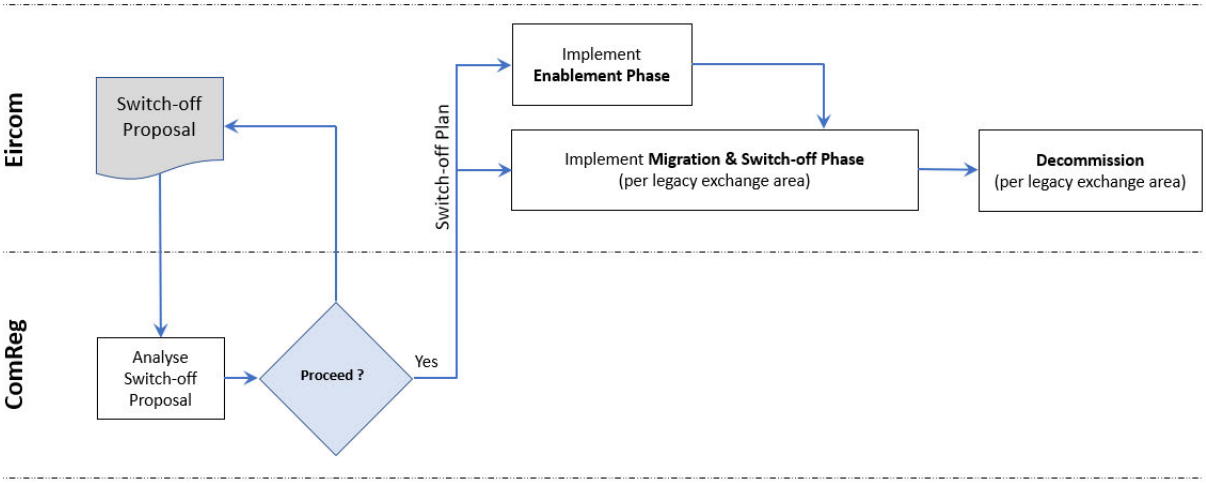
(a) An Enablement Phase;

(b) A Migration and Switch-off Phase; and

(c) A Decommission Phase.

1.16 The purpose of the Enablement Phase, which can run in parallel to the Migration and Switch-off Phase, is for Eircom to develop the required new ACPs (where applicable) and to ensure that Eircom provides Access Seekers with the opportunity to successfully trial and migrate end-users to new ACPs or existing products intended to be an ACP where amendments are required that affect the ordering or delivery process.

Figure 1: Framework



1.17 End-users today are already making the transition from copper-based broadband to FTTH. At the end of Q1 2023,[12] a total of 537,244 end-users had subscribed to a FTTH service, a large number having migrated from Asymmetric Digital Subscriber Line ('**ADSL**') and increasingly from Very high-speed Digital Subscriber Line ('**VDSL**') copper-based services. For this reason, there is no requirement on Eircom to trial the standard transition from ADSL and VDSL copper-based services to FTTH given that this transition is business-as-usual. Hence, the Migration and Switch-off Phase can run in parallel to the Enablement Phase.

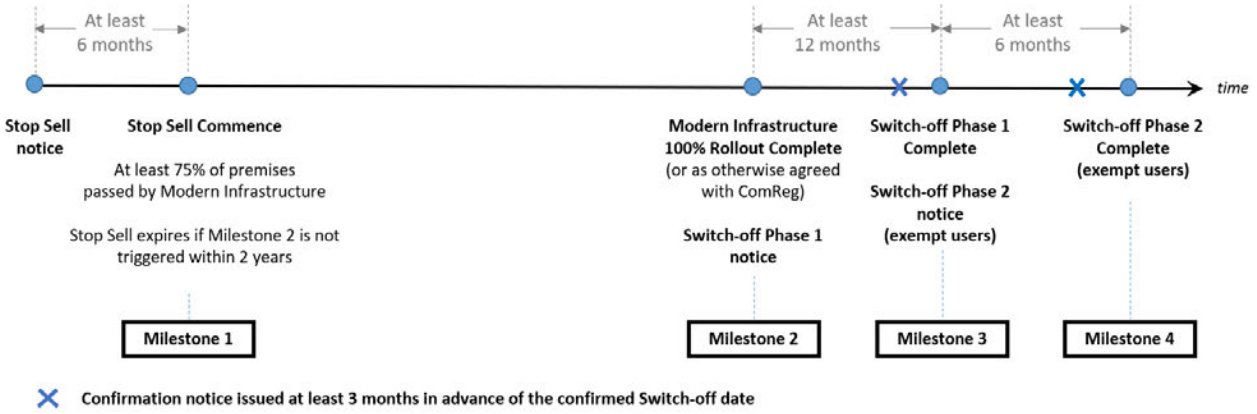
1.18 The Migration and Switch-off Phase will ensure that the Migration from Legacy Infrastructure is conducted according to a transparent timetable and conditions, including an appropriate notice period for the transition. The migration and switch-off of legacy-based services will occur on a legacy exchange area by legacy exchange area basis according to four milestones as depicted in Figure 2. The first milestone is a "Stop Sell" phase, which Eircom may elect to include or not as part

[12] https://www.comreg.ie/industry/electronic-communications/data-portal/tabular-information.

of the migration process. Stop Sell means an arrangement whereby Eircom no longer provides access to Legacy Infrastructure including new access or to switch a legacy-based service to a different RSP or make changes to a legacy-based service at those premises within a legacy exchange area passed by Modern Infrastructure.

1.19 The Decommission Phase will ensure the Legacy Infrastructure (both the active equipment and copper cables) is put in a permanent beyond-use state (on a legacy exchange by legacy exchange basis).

Figure 2: Migration and Switch-off Phase (per legacy exchange area)



1.20 A key requirement of the Framework is that transition may only begin where in scope premises have access to Modern Infrastructure by way of ACPs on Eircom's Modern Infrastructure or other modern services on NBI's Modern Infrastructure. An ACP shall:

(a) have at least equivalent features and performance as the legacy-based service;

(b) be delivered to the location of legacy-based service NTU or other location agreed with the end-user, in the end-user's premises, at no more than the standard connection charge;

(c) have at least service equivalence in terms of service delivery, service assurance, service availability, Service Level Agreements ('**SLAs**') and Key Performance Indicators ('**KPIs**');

(d) have at least service equivalence in terms of Quality of Service ('**QoS**'); and

(e) be of a comparable price to the legacy-based service it is mapped to,[13] and be delivered at no more than the standard connection charge applicable at

[13] In the WLA/WCA Consultation, ComReg has proposed that, where FTTC is being withdrawn, an emulated FTTC-like service on the FTTH network should be made available. It is proposed that an

that time (for the period from Milestone 1 to Milestone 4 where Eircom chooses to implement Stop Sell, otherwise for the period Milestone 2 to Milestone 4).

1.21 For the avoidance of doubt, Eircom is not required to develop ACP(s) on NBI's Modern Infrastructure or any other alternative wholesale FTTH networks or resell NBI or other alternative wholesale products and services (although it may itself decide to do so on a commercial basis). Eircom can rely on the availability of access to the NBI network as defined in the NBP Contract[14] between NBI and Department of the Environment, Climate and Communications ('**DECC**').

1.22 Figure 3 outlines a summary of the information which Eircom is required to provide to ComReg and Access Seekers.

Figure 3: Summary of Information to be provided to ComReg and Access Seekers

Information provided by Eircom	ComReg	Access Seekers	Timing
Switch-off Proposal	✓		As determined by Eircom
Switch-off Plan	✓	✓	Eircom publish its Switch-off Plan, within one month, following ComReg's confirmation that Eircom's Switch-off Proposal fulfils the conditions of the proposed Framework
Trial Report (resolution of issues)	✓		End of trial stage (Enablement Phase)
Notifications	✓	✓	As per the Framework: Stop Sell notices, Stop Sell Commence notices, Switch-off Phase 1 notices, Switch-off Phase 1 Complete notices, Switch-off Phase 2 notices, Switch-off Phase 2 Complete notices, Confirmation notices.
In-Scope Premises File ('**ISPF**')	✓	✓	Weekly (on publication of the Switch-off Plan)
Information to monitor Migration and Switch-off Phase	✓	✓	On a monthly basis following the publication of the Switch-off Plan
Information on premises not passed by Modern Infrastructure	✓		At least one month in advance of Milestone 2
Exempt User Process	✓	✓	In advance of Milestone 2 (for first legacy exchange(s)) of the Migration and Switch-off Phase

emulated FTTC-like service would deliver at least an equivalent level of service typical of a FTTC-based VUA service and would be priced at no more than the relevant regulated maximum price for FTTC-based VUA. This emulated FTTC-like service on the FTTH network would be an ACP.

[14] https://www.gov.ie/en/publication/16717-national-broadband-plan-contract/.

1.23 In addition, in order to avoid a situation where Access Seekers and end-users, through no fault of their own, are left with no access following transition, there are two additional conditions to be met. These conditions concern in scope premises passed which cannot be connected, and non-standard, premises-specific, connection costs.

Premises passed cannot be connected

1.24 Where an In Scope Premises cannot be connected to the Modern Infrastructure, Eircom must provide a legacy-based service at that premises by way of a temporary legacy-based service ('**TLS**') within ten working days (excluding any end-user delay time) from order, and continue to provide it until such time the premises can be connected to Modern Infrastructure.

Non-standard, premises-specific, connection costs

1.25 The installation of an FTTH service may entail work within the curtilage of the customer's premises that is characterised by Eircom as non-standard. This could include, for example, tree-trimming and clearance of duct blockages. At present, when an end-user requests a new FTTH connection, the end-user may be responsible for these non-standard costs that fall within private property or the curtilage of their property. An end-user may currently choose to meet these costs directly by engaging its own contractor. Alternatively, an Access Seeker may choose to absorb some or all of any non-standard premises-specific costs.

1.26 A key objective of the Framework for the Migration to Modern Infrastructure is to ensure that end-users who are obliged to migrate from Legacy Infrastructure to Modern Infrastructure are provided with an alternative comparable service at a comparable price. This means, where an end-user whose premises is passed by Eircom's Modern Infrastructure no longer has the option to purchase a new legacy-based service or switch RSP and make changes to their existing legacy-based service (at Stop Sell or Milestone 2), that Eircom must have available at that premises an ACP at no more than the standard connection charge with no additional costs for the RSP and ultimately for the end-user.

Chapter 2

2 Introduction

2.1 Regulatory Context

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

2.2 Currently, the majority of fixed line telephone and broadband connections are delivered to premises using copper lines. The copper line technology has been in existence for many decades and was originally designed to deliver telephony services (i.e., voice services) at a fixed location. Copper-based networks were not originally designed to carry large amounts of data or internet traffic.

2.3 As electronic communications have evolved there are now greater demands on communication systems to carry increasing volumes of data traffic. It is apparent that there are now physical limitations on copper networks to cater for today's requirements of faster and more reliable data services and more flexible telephony services. Such important services can be better served by more modern technology, such as fibre.

2.4 In that context, Eircom is continuing to expand its Fibre to the Home ('**FTTH**') network (which is expected to be complete in 2026), while National Broadband Ireland ('**NBI'**) is rolling out a fibre network to premises that are not served commercially throughout the country (which is expected to be complete in 2026/7). Siro expects its FTTH network will pass 700,000 premises by 2026.[15] Virgin Media plans to complete the upgrade of its network to FTTH by end of 2025.[16]

2.5 With the accelerated rollout of Very High Capacity Networks ('**VHCNs**'), through a combination of commercial investment by telecommunications companies and State intervention by means of the National Broadband Plan ('**NBP**'), the prospect of near universal coverage of premises in the State by these VHCNs is possible in

[15] https://www.rte.ie/news/business/2023/0609/1388163-siro-network-hits-milestone-as-500-000-premises-passed/

[16] https://www.libertyglobal.com/virgin-media-ireland-announces-national-fibre-network-upgrade/

the next 5 – 7 years.[17] This rollout will facilitate the complete migration of copper-based services to modern-based services. The migration to modern-based services and the switch-off of the copper network is inevitable due to the inefficiencies of maintaining two parallel networks and the end of support and life status of the equipment on the legacy network.

2.6 The process for migrating services from copper-based to fibre-based networks (or other suitable modern networks) is referred to throughout this Decision as '**Migration from Legacy Infrastructure**'. The upgraded or new network infrastructure substituting the replaced elements of the legacy infrastructure is referred to throughout this Decision as '**Modern Infrastructure**'. Modern Infrastructure includes in particular the Very High Capacity Networks as defined in the European Communications Code Regulations (the "**ECC Regulations**")[18], namely electronic communications networks which consist wholly of optical fibre elements at least up to the distribution point at the serving location, or electronic communications network which are capable of delivering, under usual peak-time conditions, similar network performance in terms of available downlink and uplink bandwidth, service availability, resilience, error-related parameters and latency and its variation.

2.7 ComReg's engagement with stakeholders takes place against the background of Eircom's designation as having Significant Market Power ('**SMP**') in the markets for Wholesale Local Access and Wholesale Central Access,[19] and Wholesale High

[17] On 4 March 2021, Eircom shared with the ComReg and also published on its website, what it described as a "white paper" entitled "Copper switch-off: Leaving a legacy for the Future" (the '**White Paper**') in which Eircom signalled its intent to migrate copper-based services to largely fibre-based networks and ultimately switch off its copper access network. On 9 April 2021, ComReg published Information Notice 21/35 (ComReg - Eircom Correspondence on Copper Switch Off, Information Notice, ComReg 21/35, dated 9 April 2021) welcoming Eircom's initiative and confirming that ComReg would engage with Eircom and other stakeholders on this important matter and would consult publicly in due course.

Eircom's White Paper is available at: https://www.openeir.ie/wp-content/uploads/2021/03/White-paper_Leaving-a-Legacy.pdf

[18] European Union (Electronic Communications Code) Regulations 2022, SI No. 444 of 2022.

[19] "Market Review Wholesale Local Access (WLA) provided at a Fixed Location Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products", ComReg Document 18/94, Decision D10/18, 19 November 2018, Appendix: 20 Wholesale Local Access: Decision Instrument, paragraph 7.7(ii); Appendix: 21 Wholesale Central Access: Decision Instrument, paragraph 7.5(ii).

Mid-term Assessment Regional Wholesale Central Access (WCA) Market, Re-application of geographic assessment criteria set out in ComReg Decision D10/18, ComReg 21/120, Decision D10/21, dated 25 November 2021.

Quality Access.[20] In ComReg Consultation 23/03[21] on Wholesale Local Access and Wholesale Central Access (the "**WLA/WCA Consultation**"), ComReg has proposed to continue Eircom's SMP designation in the Wholesale Local Access market (excluding the provision of copper-based Local Loop Unbundling) but to remove it in the Wholesale Central Access market). Article 81 of the European Electronic Communications Code (the **'Code**'),[22] transposed by Regulation 63 of the ECC Regulations sets out a number of requirements in respect of the Migration from Legacy Infrastructure.

2.8 In particular, Regulation 63(1) of the ECC Regulations requires undertakings which have been designated as having SMP in one or several relevant markets to notify ComReg in advance and in a timely manner when they plan to decommission or replace, with a new infrastructure, parts of the network, including legacy infrastructure necessary to operate a copper network.

2.9 Regulation 63(2) of the ECC Regulations states that ComReg shall ensure that the decommissioning or replacement process includes a transparent timetable and conditions, including an appropriate notice period for transition. With regard to assets which are proposed for decommissioning or replacement, ComReg may withdraw the obligations after having ascertained that the access provider:

(a) has established the appropriate conditions for migration, including making available an alternative access product of at least comparable quality as was available using the legacy infrastructure enabling the Access Seekers to reach the same end-users; and

(b) has complied with the conditions and process notified to ComReg in accordance with Regulation 63 of the ECC Regulations.

The procedures referred to in Regulation 101 of the ECC Regulations (in relation to consultation and transparency), Regulation 17 of the ECC Regulations (in relation to consolidating the internal market for electronic communications) and Regulation 18 of the ECC Regulations (in relation to the consistent application of remedies) apply in respect of the withdrawal of obligations.

[20] "Market Analysis – Wholesale High Quality Access at a Fixed Location", ComReg Document 20/06, Decision D03/20, 24 January 2020, Annex 8: Decision Instrument paragraphs 7.4(ii) and 14.5(ii).

[21] Market Reviews: Wholesale Local Access ('**WLA**') provided at a fixed location; Wholesale Central Access ('**WCA**') provided at a fixed location for mass-market products, Consultation and Draft Decision, ComReg 23/03, 9 January 2023.

[22] Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (L 321/165), dated 17 December 2018.

2.10 Against this background, on 4 May 2021, ComReg published Information Notice 21/43[23] outlining its approach to engaging with Eircom and other stakeholders, summarised as follows:

(a) Facilitating bi-lateral stakeholder discussions with ComReg;

(b) ComReg to publish a Call for Inputs whereby interested parties could express their views in writing;

(c) Having considered the responses to the Call for Inputs, ComReg to issue a public consultation with more detailed proposals as to how the transition from copper-based to fibre-based networks (or other suitable modern networks) should be conducted; and

(d) Having considered the responses to the public consultation, ComReg to publish its decision.

2.11 On 3 August 2021, ComReg published Call for Inputs, entitled "*Migration from Legacy Infrastructure to Modern Infrastructure: Call for Inputs*" ('**2021 Call for Inputs**').[24] Submissions were received from seven stakeholders: ALTO, BT, Eircom, NBI, Siro, Sky and Vodafone (the '**Call for Inputs Respondents**').

2.12 With the benefit of the responses to the 2021 Call for Inputs, on 25 March 2022, ComReg published a Consultation, entitled "Framework for the Migration from Legacy Infrastructure to Modern Infrastructure"[25] (the '**2022 Consultation**'). Submissions were received from eight Industry stakeholders: ALTO, BT, Eircom, NBI, SFG, Siro, Sky and Vodafone (the '**Respondents**') and sixteen individuals (the '**Individual Respondents**').

2.13 The 2022 Consultation outlined in detail ComReg's proposal for a framework setting out the minimum standard of requirements for Eircom and the principles and conditions which Eircom must comply with before Eircom may withdraw copper-based telecommunications services and switch-off its copper network.

2.14 In its Submission, Eircom stated that ComReg is seeking to impose its own framework for copper switch off, which it considers appears contrary to the intention of Article 81 of the Code.[26] ComReg, however, considers that this Decision is in accordance with both Article 81 of the Code and Regulation 63 of the ECC Regulations, which require ComReg to ensure that the decommissioning

[23] Consultation Process regarding the Transition from Regulated Copper Products and Services, Information Notice, ComReg 21/43, dated 4 May 2021.

[24] ComReg Document 21/78.

[25] Framework for the Migration from Legacy Infrastructure to Modern Infrastructure, ComReg 22/13R, dated 25 March 2022.

[26] Eircom Submission, paragraph 1.

or replacement process includes a transparent timetable and conditions and establishes the availability of alternative products. In addition, Regulation 63 of the ECC Regulations provides that ComReg may specify the requirements to be complied with by the SMP undertaking in respect of these points as well as the notification to ComReg of Eircom's plan to decommission or replace parts of the network.

2.15 The framework outlined in the 2022 Consultation was the minimum set of conditions whereby ComReg can meet its obligations to safeguard competition and ensure the rights of end-users. The conditions have been updated in this Decision, where necessary, to take account of the Submissions to the 2022 Consultation. If ComReg did not issue such a set of conditions, Eircom and Access Seekers would not know the minimum conditions ComReg considers necessary for the Migration from Legacy Infrastructure. This could lead to delays in the process due to a lack of transparency, with Eircom submitting plans without knowing exactly what the minimum conditions are.

2.16 NBI suggested in its Submission that ComReg should consider other aspects of the Code as well as Article 81, such as Article 3 and recital 23.[27]

2.17 Recital 23 refers to a connectivity objective in terms of:

(a) Widespread access to and take-up of VHCNs;

(b) Effective and fair competition;

(c) Open innovation;

(d) Efficient use of the radio spectrum;

(e) Common rules and predictable regulatory approaches in the internal market; and

(f) Necessary sector specific rules to safeguard interests of citizens.

The recital also states that the connectivity objective translates into aiming for the highest capacity networks and services and into pursuing territorial cohesion, in the sense of convergence in capacity available in different areas.

2.18 ComReg's view is that the existence of the NBP is an enabler to meeting the objectives of recital 23. In the absence of the NBP, end-users in the Intervention Area ('**IA**') would be at a disadvantage as the area, by definition, serves those premises not considered to be commercially viable. It is also the case that in the absence of a Migration from Legacy Infrastructure program, NBI would need to encourage and incentivise take up of Modern Infrastructure by whatever means

[27] NBI Submission, pages 3-8.

available to it. Such an approach may still be carried out by NBI, irrespective of how Eircom implements the Migration from Legacy Infrastructure.

2.19 Article 3 of the Code refers to the general objectives such as promoting access to and take up of VHCNs, promoting competition, developing the internal market, and promoting the interests of end-users. The framework is consistent with these objectives as it promotes the take up of VHCN services and safeguards the interests of end-users throughout the migration and switch-off process.

2.20 This Decision outlines in detail the framework that would apply throughout Eircom's transition from Legacy Infrastructure to Modern Infrastructure for so long as it is designated with SMP on relevant markets (the '**Framework**'). Where migration has been conducted by Eircom in accordance with the requirements set out in this Decision, ComReg will lift the SMP obligations regarding the provision of copper-based services. Obligations other than SMP obligations, including universal service obligation for the provision of voice only connections and voice communications services at a fixed location ('**VFL USO'**)[28] are not affected by this Decision.

2.21 ComReg has published the Submissions to the 2022 Consultation (subject to the protection of any confidential information) on its website.[29] [30]

2.22 These Submissions include those received from Individual Respondents (rather than Operators). The issues raised by Individual Respondents are summarised into the following themes:

(a) A landline is a lifeline and/or is connected to security/medical devices;

(b) A landline is not impacted by power outages;

(c) Concerns about Mobile/WiFi Electromagnetic Radiation ;

(d) Voice over Internet Protocol ('**VoIP**') is less secure than landline; and,

(e) VoIP has a lower quality than landline.

2.23 ComReg notes however that Regulation 63 of the ECC Regulations is only concerned with Migration from Legacy Infrastructure to Modern Infrastructure where an operator has been found to have significant market power in a given market (in practice here, Eircom). Legacy voice services have not been regulated

[28] Universal Service Requirements: Provision of Access at a Fixed Location (AFL USO), Document No. 21/112R, ComReg D09/21, 05 November 2021,

[29] Migration from Legacy Infrastructure to Modern Infrastructure, Submissions to Consultation, ComReg XX/YYs, dated <day><month> 2022.

[30] Migration from Legacy Infrastructure to Modern Infrastructure, Submissions to Consultation (Individual Respondents), ComReg XX/YYs, dated <day><month> 2022.

at retail level for a number of years and wholesale regulation of wholesale voice services will cease on 28 December 2023 as Eircom has been found not to have significant market power in these markets.[31]

2.24 RSPs and vendors are aware of security concerns in the IP network in general and for VoIP in particular. They have various systems and processes to mitigate these risks. For end-users, there should be no difference in behaviour whether they are availing of a landline or a VoIP service. Regarding voice quality, Managed VoIP services supplied by RSPs have equivalent or better quality than landlines. The IP network is configured to prioritise the Managed VoIP traffic above other data traffic, ensuring the voice quality. Managed VoIP services, provided by RSPs, should not be confused with over-the-top VoIP services, which are not marked as priority and can result in a poorer quality experience for the end-user.

2.25 As was pointed out by many of the Individual Respondents, the landline has provided a reliable communications service for the community for many years. However, the telecommunications equipment which provides the PSTN service dates back to the 1990s in most cases and is end of support/end of life. Human resources skilled to operate and maintain a copper access network are no longer readily available. This is a significant risk for operators and hence there is a need to modernise these networks. Although the technology is changing, VoIP services, for example, should provide consumers with an equally reliable voice service as the PSTN has.

2.26 When it comes to the Migration from Legacy Infrastructure to Modern Infrastructure, ComReg's remit, as laid out by the Code[32] and further specified in the ECC Regulations is to ensure that the migration process includes appropriate timetables, notice periods and conditions related to safeguarding competition and to protecting the rights of end-users. This includes ensuring that there are alternative comparable products to replace the legacy services. It is not within ComReg's remit to prevent Eircom from retiring its Legacy Infrastructure. Instead, Eircom is obliged to ensure that Access Seekers/RSPs have a framework for migration, which is sufficient to enable them to manage the migration of their customers to the modern network. In this respect, Eircom is required to ensure alternative comparable products are available to replace the legacy services.

2.27 Regarding security and medical devices, it is a matter for those enterprises who provide such products to provide upgrade solutions as needed. ComReg is aware

[31] Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers, Wholesale Fixed Access and Call Origination, ComReg 22/50, Decision D05/22, 29 June 2022.

[32] European Electronic Communications Code, Article 81.

that there are options available to provide security and medical monitoring services over the mobile and broadband networks.

2.28 Landlines receive power from an exchange and so are usually not impacted by in-home power outages. Broadband, and hence VoIP (which relies on the broadband service) is susceptible to power outages. The use of battery backup systems can mitigate the risk of typical power outages.[33] ComReg notes that electricity supply in the State has proven to be stable. For example, in 2021, ESB networks reported an average of 1.2 customer interruptions per customer for the year, where a customer interruption is classified as an unplanned outage for longer than 3 minutes.[34]

2.29 End-users wishing to utilise a fixed voice service without introducing mobiles or WiFi to their premises may opt to physically connect a VoIP handset to the broadband modem and request their RSP turn off the WiFi on their broadband modem.

2.30 In order to ensure that end-users are protected in the migration process, in addition to this Decision, ComReg will issue regulatory guidance to RSPs and disseminate relevant information to consumers.

2.2 Structure of this Decision

2.31 This Decision is structured as follows:

(a) Chapter 3 outlines the principles governing the design of the Framework;

(b) Chapter 4 describes the Framework for Migration from Legacy Infrastructure to Modern Infrastructure;

(c) The Decision Instrument is documented in Appendix 1; and

(d) Hypothetical monitoring report as an example is provided in Appendix 2.

2.32 This Decision references previous publications by ComReg on this topic, in particular:

(a) ComReg Call for Inputs 16/01, dated 6 January 2016;[35]

[33] Review of Requirements Regarding Battery Back-up and Information for Electronic Communication Services Over Non-Public Switched Telephone Networks, Information Notice, ComReg 21/143, 23 December 2021.

[34] ESB Networks Distribution Annual Performance Report 2021, page 19.

[35] "Transition from Eir's copper network: Proposed principles and notification procedures", Call for Inputs, ComReg 16/01, dated 6 January 2016.

(b) ComReg Information Notice 17/05, dated 19 January 2017;[36]

(c) ComReg Information Notice 21/35, dated 9 April 2021;[37]

(d) ComReg Information Notice 21/43, dated 4 May 2021;[38]

(e) The 2021 Call for Inputs 21/78, dated 3 August 2021; and

(f) The 2022 Consultation 22/13R, dated 25 March 2022.

[36] "Retirement of Legacy Networks and services (including correspondence between Eircom and ComReg)", Information Notice, Reference ComReg 17/05, 19 January 2017.

[37] ComReg - Eircom Correspondence on Copper Switch Off, Information Notice, ComReg 21/35, dated 9 April 2021.

[38] Consultation Process regarding the Transition from Regulated Copper Products and Services, Information Notice, ComReg 21/43, dated 4 May 2021.

Chapter 3

3 Transition Principles

3.1 Background

3.1 Migration from Legacy Infrastructure to Modern Infrastructure will result in the withdrawal, and switch-off of Legacy Infrastructure-based services and, ultimately, the decommissioning of Legacy Infrastructure. In considering the appropriate Framework, ComReg's objective is to create the conditions for a successful transition ensuring that migration does not adversely affect wholesale and retail competition and the interests of end-users while being mindful of not inhibiting the retirement of that network.

3.2 Under Regulation 63 of the ECC Regulations, ComReg is required to ensure that the decommissioning or replacement process includes a transparent timetable and conditions, including an appropriate notice period for transition, and establishes the availability of alternative products of at least comparable quality providing access to the upgraded network infrastructure substituting the replaced elements if necessary to safeguard competition and the rights of end-users.

3.3 Against this background, the Framework is governed by the following general principles in order to ensure that migration to Modern Infrastructure may take place with no detrimental impact on competition and the position of Access Seekers relying on access to Eircom's network, or the rights of end-users:

(a) Wholesale Migration: Migration from Legacy Infrastructure to Modern Infrastructure must be enabled at the wholesale level;

(b) Wholesale Replicability: Services must be in place and available to Access Seekers that are comparable to the legacy-based services in order that they are able to migrate their end-users from legacy-based services;

(c) Timeliness: Migration should be permitted where suitable Modern Infrastructure is available and suitable alternative comparable access products are available to Access Seekers; and

(d) Transparency: The rules and timelines for migration should be clear to all upfront, including end-users.

3.4 These principles are considered in further detail below.

3.2 Wholesale Migration Principle

3.5 A key principle guiding the Framework is that Access Seekers are able to migrate their end-users from the existing Legacy Infrastructure to Modern Infrastructure with minimum disruption for the end-user and maximum certainty for Access Seekers (in relation to conditions, process, timelines and prices).

3.6 In order to achieve a smooth transition, particular attention must be given to ensuring that appropriate processes, procedures and necessary information are made available by Eircom to Access Seekers in sufficient time ahead of the migration. This will enable Access Seekers to plan and manage the migration of large numbers of end-users, while ensuring that disruption and risk of service loss for end-users is kept to a minimum. In general, the transition to these replacement wholesale inputs should be seamless and not involve unnecessary delay or disruption for Access Seekers and RSPs.

3.3 Wholesale Replicability Principle

3.7 Another key principle is that Eircom is required, prior to withdrawing access to Legacy Infrastructure-based services, to make available a suite of alternative wholesale access products (Alternative Comparable Products, or '**ACPs**') to Access Seekers on Eircom's Modern Infrastructure, comparable in terms both of quality and price, to the Legacy Infrastructure-based services. Throughout this Decision where ComReg refers to a product or service as comparable, this is intended to cover comparable quality and comparable price. Access of "comparable quality" is access with at least the same degree of functionality and service quality, and "comparable price" is 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 and can be justified. For the avoidance of doubt, the ACP shall provide at least comparable performance to an end user, when compared with the performance of that end user's legacy service.

3.8 In its Submission, Eircom explained that it did not anticipate the need for new ACPs. In Eircom's view, FTTH is the alternative product for mass market broadband copper services. Regarding business services within the WHQA market, Eircom noted that the likely alternative services will be Wholesale Symmetrical Ethernet Access ('**WSEA**') but some bespoke wireless service may be required in some cases.[39] Vodafone also noted the benefits of maintaining one

[39] Eircom Submission, paragraph 8.

technology across multiple wholesalers so that non-FTTH ACPs should be the last resort.[40]

3.9 ComReg, however, does not believe that simply relying on FTTH will provide full wholesale replicability as it is unlikely that 100% of premises in scope will be catered for by FTTH alone. ComReg notes in this regard that in its White Paper, Eircom states a target of 95% of premises being served by FTTH with the remaining 5% being given access to a greater than 30Mbit/s service within three years. No specific details of what this 30Mbit/s service would be were given, but it does outline the need for non-FTTH ACPs to meet the principle of wholesale replicability. ComReg notes further that Eircom can choose to offer a non-FTTH ACP should it not wish to absorb any non-standard premises-specific connection costs (see Section 4.6 below), in which case an ACP at least comparable to the Legacy Infrastructure-based services, delivered at no more than the standard connection charge, will be required.

3.10 However, the principle of wholesale replicability does not mean that every legacy copper-based service offered by Eircom must be replicated. In this regard, Eircom noted in its Submission that there may be many variants of legacy services which exist for historical reasons that should not be necessary to replicate.[41] NBI also suggested that ComReg should focus on the shift from low quality services available on the Legacy Infrastructure to high-speed broadband services delivered over fibre and, as a consequence of this, Eircom should not be required to replicate every legacy service currently available but rather should seek to reap the benefits of the step change in technology.[42] ComReg agrees with Eircom and NBI that there is no need to replicate every legacy copper-based service on the Modern Infrastructure.

3.11 Furthermore, ComReg notes that the need for ACPs only arises in substitution for regulated products. Siro stated that a study should be done to understand the scope of services and RSPs that require ACPs, and how they may be adapted to the modern technology. Siro noted that the 2022 Consultation contained very little information on wholesale access products such as Local Loop Unbundling ('**LLU**'), Sub Loop Unbundling ('**SLU**'), footprint space in exchanges, antenna colocation, in-building WEIL interconnection paths[43] and suggested a survey of the ancillary

[40] Vodafone Submission, page 4.

[41] Eircom Submission, paragraph 9

[42] NBI Submission, page 19.

[43] Siro Submission, page 4.

services which operate over the legacy network, along with the equipment used and their suppliers, to ensure that the ACPs can fulfil their needs.[44]

3.12 However, ancillary services such as medical alarms, security alarms, etc. principally operate over Single Billing Wholesale Line Rental ('**SB-WLR**'), which has been deregulated and is subject to a sunset period due to expire on 28 December 2023. RSPs can determine the impact of a migration from legacy-based service to a modern-based service and can advise their end-users of the upgrade options available.

3.13 As for the ACPs that will be needed, in its Submission, ALTO, echoed by BT, expressed concern on the lack of information regarding ACPs in the 2022 Consultation. ALTO noted that the ACPs must be effective and fit-for-purpose[45] while BT drew ComReg's attention to the fact that as modern day order handling systems are automated, development will be required to integrate with Eircom systems, as this migration will span many years. Both ALTO and BT suggested that ACPs are developed and deployed using existing order types to avoid the need for expensive software upgrades on Access Seeker order handling systems.[46,47] For Vodafone, development of non-FTTH ACPs (which should be a last resort) should see Eircom engaging with industry well in advance of such developments with appropriate information such as forecast volumes of premises to be served by non-FTTH ACPs to help Access Seekers develop their business cases.[48] Sky Ireland submitted that any non-FTTH ACPs proposed by Eircom should have been part of the 2022 Consultation if already known and if not already known, the 2022 Consultation should set out the rules as to how Eircom can introduce new non-FTTH ACPs.[49]

3.14 To date, Eircom has not provided any information on ACPs. However, in response to the concerns expressed as regards the manner in which ACPs will be developed and introduced, ComReg notes that regulatory requirements as regards product development and publication will apply to ACPs as for any other products. A key aspect of product development will be industry requirements on automated ordering and assurance solutions. The product development process allows for Access Seekers to provide input to Eircom during the development of the ACPs.

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[44] Siro Submission, page 4.

[45] ALTO Submission, page 4.

[46] ALTO Submission, page 4.

[47] BT Submission, page 4.

[48] Vodafone Submission, page 4.

[49] Sky Ireland Submission, page 2.

3.15 ACPs will be regulated access products ('**RAPs**') and subject to all applicable product development, notification and publication requirements. ACPs likely will include existing RAPs, such as Eircom's FTTH service, and new RAPs (including product/process enhancements to an existing RAP).

3.16 Finally, a number of Respondents noted the importance of pricing to wholesale replicability. Eircom referenced Article 81 of the Code, suggesting that Article 81 only contemplates that ACPs should be of at least a comparable quality to legacy products, and that ComReg could not propose that ACPs should be provided at a comparable price.[50] Vodafone noted the need for certainty and the importance to Access Seekers of a price control. [51] BT proposed that an entry level fibre price should be linked to a mainstream broadband copper price and referenced the anchor pricing approach implemented by Ofcom in the UK.[52] ALTO[53] and Sky[54] disagreed with ComReg's definition of comparable price, questioning how "fair and reasonable" could be defined. Sky proposed that ComReg should specify a mechanism for benchmarking pricing.

3.17 While Eircom challenged the position that a requirement for a comparable product should cover comparable price as well as comparable quality, ComReg maintains the position in this Decision that an ACP must be of both a comparable price (covering all of the elements constituting the overall price of a product) and a comparable quality. This is in line with the wording of Regulation 63 of the ECC Regulations which provides for ComReg to specify the requirements to be complied with by an SMP undertaking, including for the purpose of establishing the availability of alternative products of at least comparable quality providing access to the upgraded network infrastructure, enabling access seekers to reach the same end-users.

3.18 ComReg notes that insofar as FTTH is concerned, the applicable price control at this point in time is that set out in ComReg Decision D11/18 and ComReg has put its proposal for a future price control to consultation in the WLA/WCA Consultation. Where Eircom chooses to offer a non-FTTH ACP to an RSP, insofar as pricing of a non-FTTH ACP is concerned, the principle of wholesale replicability means that Eircom must offer an RSP migrating to Modern Infrastructure an ACP of comparable quality and at a comparable price. This means in practice that any connection charge for an ACP may be no greater than the standard connection

[50] Eircom Submission, paragraph 6

[51] Vodafone Submission, page 3.

[52] BT Submission, page 7.

[53] ALTO Submission, page 10.

[54] Sky Submission, page 2.

charge applicable at that time, and with an on-going rental price that is fair and reasonable. This principle also means that when customers are being forced to migrate, the pricing of ACPs must be fair and reasonable and any differences in pricing between legacy services and modern infrastructure services must be justified.

3.4 Timeliness Principle

Migration in stages to be implemented on a legacy exchange area basis

3.19 A migration in stages, where incentives are introduced to facilitate uptake of Modern Infrastructure access so that the transition can occur on a legacy exchange area by legacy exchange area basis, is appropriate. This will ensure that transition may commence as soon as a legacy exchange area has Modern Infrastructure available (within the conditions set out under the Framework) and not delayed until Modern Infrastructure rollout is completed in full. ComReg defines the legacy exchange area by reference to each of Eircom's approximately 1,200 exchanges where its copper access network is terminated on a Main Distribution Frame ('**MDF**') or equivalent (including a Remote Subscriber Unit ('**RSU**')).

3.20 All Respondents, with the exception of NBI, agreed that the transition from regulated copper-based broadband services should occur on a legacy exchange area by legacy exchange area basis. NBI does not consider the use of Eircom's legacy exchange areas to be a suitable unit for the transition in areas where a significant proportion of premises will be those covered by NBI's fibre network.[55] NBI noted that its network deployment does not follow Eircom's exchange areas, therefore using Eircom's exchange areas as the relevant unit for the transition could result in long delays between when Eircom and/or NBI begin roll out of Modern Infrastructure in a given area, and when Modern Infrastructure build to all or the majority of that area is completed. [56]

3.21 ComReg does not agree with NBI's views given that the legacy access network is defined in units of legacy exchange areas and switch-off of the legacy access network will naturally occur on a legacy exchange area basis. The transition from regulated copper-based broadband services based on a unit smaller than the legacy exchange area (e.g., on a road-by-road basis, or access cable basis, or premises basis) would be too granular and complex to implement. Access Seekers are also familiar with the exchange area topology of Eircom's network.

[55] NBI Submission, page 10.

[56] NBI Submission, page 10.

3.22 The timeliness principle is a key principle to ensure the readiness of Access Seekers and the availability of ACPs to them, and that the conditions to be met for each phase are clear and objective, and supported by clear and full information made available to Access Seekers.

3.23 Taking into account Eircom's White Paper, ComReg sets out its Framework in Chapter 4 which outlines a three-phased approach and the associated notice periods and conditions assigned to each one.

Modern Infrastructure

3.24 Modern Infrastructure includes in particular Very High Capacity Networks as defined in the Code[57], that is either an electronic communications network which consists wholly of optical fibre elements at least up to the distribution point at the serving location, or an electronic communications network which is capable of delivering, under usual peak-time conditions, similar network performance in terms of available downlink and uplink bandwidth**,** service availability, resilience**,** error-related parameters, and latency and its variation. In terms of determining whether access to Modern Infrastructure is available and migration accordingly may proceed (in the stages outlined in Chapter 4), ComReg considers Modern Infrastructure as consisting of:

(a) Eircom's modern infrastructure, which includes FTTH and other alternative modern technology used by Eircom (if applicable); and

(b) The NBI modern infrastructure which includes FTTH and other alternative modern technology used by NBI (if applicable) (in short, '**NBI's FTTH Network'**).

3.25 NBI, a wholesale-only operator, has a minimum 25-year contract with the State to deliver high speed broadband services in those areas of Ireland where Eircom and other operators have no plans to invest in fixed Modern Infrastructure and which comprise of approximately 560,000 premises/delivery points.[58] It is contractually bound to deliver modern-based services to these premises. Once a premises is passed by its network, NBI can connect a premises and provide the end-user with a fibre-based service, at a standard connection charge. The Department of the Environment, Climate and Communications ('**DECC**') manages the compliance of its contract with NBI in order*, inter alia*, to safeguard competition and the rights of end-users. ComReg for the purpose of the Framework considers that NBI's FTTH network constitutes Modern Infrastructure.

[57] European Electronic Communications Code, Article 2(2).

[58] https://nbi.ie/rollout-plan/

3.26 Taking into account the availability of NBI's network is consistent with Eircom's proposed approach in its White Paper, including its proposal that the trigger for the first stage of the transition process takes account of the premises passed by NBI. Eircom's White Paper also proposed that the final stage of the transition to fibre commences where 95% of premises have fibre available, be it from Eircom or NBI. While ComReg does not believe that it is appropriate that Eircom's access obligations may be withdrawn simply on the basis that another network is available, ComReg sees that the position of NBI is different from other operators' as its network is contractually required to be rolled out in areas where no commercial operator (including Eircom) has plans to roll an FTTH network and NBI has committed to make available on a transparent and non-discriminatory basis a suite of FTTH-based wholesale access products. This approach is consistent with ComReg's definition of the relevant WLA market in the WLA/WCA Consultation.

3.27 In practical terms, this means that availability of Modern Infrastructure in a legacy exchange area will be defined by reference to the extent to which ACPs are available from Eircom in any given legacy exchange area and/or by reference to NBI's presence – whether all or some premises in a given legacy exchange are passed by NBI's FTTH Network. For the avoidance of doubt, Eircom is not required to develop ACP(s) on NBI's FTTH Network or any other FTTH network. Furthermore, Eircom is not required to resell NBI's products and services, and Eircom can rely on the availability of access to the NBI network as defined in the NBP Contract between NBI and DECC dated 20 March 2020.[59]

3.28 ComReg also accepts that there may be instances where not all in scope premises have access to Modern Infrastructure but that it would not be appropriate to delay starting transition. Such instances include the cases where the premises with no access are derelict premises or Eircom is denied access to private property as part of its Modern Infrastructure rollout activities; it may also include premises which are passed by an alternative FTTH network offering wholesale access. In such cases, approval from ComReg is required before Eircom may proceed with transition in respect of the legacy exchange area concerned (this process is outlined in Chapter 4).

3.5 Transparency: Access Seeker and End-user Communications

3.29 In order that competition is safeguarded and end-user rights protected, it is essential that there is a clear understanding on the part of Access Seekers as to what Eircom's plans are for transition on a legacy exchange by legacy exchange

[59] https://www.gov.ie/en/publication/16717-national-broadband-plan-contract/

basis. Such information must also be available with sufficient advance notice such that Access Seekers can plan accordingly and communicate appropriately with their customers.

3.30 Timely communication of information to Access Seekers and affected end-users will be key to a successful transition to Modern Infrastructure. Eircom proposes in its White Paper that during its proposed first stage (Consumer led migration), that it would communicate directly with all end-users. This would include marketing collateral outlining the benefits of FTTH and provide clear information on the transition to Modern Infrastructure's associated timelines. Eircom envisages further communication in Stage 3 (Completing the transition and Copper Switch-off phase) giving a 12-month notice to end-users of copper switch-off, with further notifications three months and one month before the copper switch-off deadline.

3.31 However, direct communication by Eircom to end-users who are not its retail customers is not appropriate. Competition will be better safeguarded and the rights of end-users protected where retail providers are in charge of communication with their own end-users. Accordingly, Eircom may not directly contact end-users who are not its direct customers (that is, they are customers of Eir Retail) and all required communications are to be undertaken by the end-user's own RSP. All Respondents agreed with this principle.

3.32 A number of Respondents, including ALTO,[60] BT[61], and NBI[62] suggested the need for an industry-wide general information campaign regarding the Migration from Legacy Infrastructure. Siro,[63] Sky Ireland[64] and Vodafone[65] proposed that such a general information campaign could be led by ComReg. Vodafone and Siro anticipated that such a campaign could be similar to those run recently for Non-Geographic Numbers migration programme.[66] NBI[67] and Vodafone[68] stated that all market players should be able to conduct campaigns to raise awareness regarding network roll outs and the benefits of transition to new networks. Siro

[60] ALTO Submission, page 6.

[61] BT Submission, page 5.

[62] NBI Submission, pages 20-21.

[63] Siro Submission, pages 3-4.

[64] Sky Ireland Submission, page 3.

[65] Vodafone Submission, page 4.

[66] Non-Geographic Numbers | Commission for Communications Regulation (comreg.ie)

[67] NBI Submission, pages 20-21.

[68] Vodafone Submission, page 4.

stated that a multi-layered approach to communications was required including ComReg, Eircom and RSPs. Siro proposed that Eircom should be responsible for the direct communication to all Eircodes (including premises with working copper lines and premises with ceased in-situ copper lines)[69] to inform them of their options and that RSPs be responsible for contacting their end-users to inform them and encourage migration.[70]

3.33 Having considered the Respondents' submissions, ComReg remains of the view that end-user communication ought to be a matter primarily for the RSPs based on information provided by Eircom. First, contrary to the case of migration from Non-Geographic Numbers, which was a regulatory initiative of ComReg in discharge of its statutory duty to manage number resources, Migration from Legacy Infrastructure is a programme that is concerned with the provision of regulated services by Eircom to wholesale customers with impact on retail operators and their end-users. For the avoidance of doubt, it may be that at a stage in the process, ComReg finds that it would be helpful to provide the general public with communication regarding Migration from Legacy Infrastructure. However, this will not relieve Eircom and RSPs of their obligations to provide appropriate information to their customers.

3.34 Second, ComReg agrees that operators can and may wish to carry out general information campaigns to promote the benefits and take-up of fibre-based services. However, ComReg is not mandating Eircom to carry out such information campaigns. It is in the interest of all wholesale providers to promote the benefits of fibre-based services and to encourage Access Seekers and end-users to migrate to their network. However, ComReg notes that promotion of the benefits of VHCNs falls outside the scope of a decision under Regulation 63 of the ECC Regulations.

3.35 In Chapter 4, ComReg details requirements to be met by Eircom in terms of the information that Eircom must provide to all Access Seekers, and the associated timelines, so that Access Seekers and RSPs are in the position to inform their customers fully throughout the copper switch-off process and have sufficient time to make informed decisions on how to act in advance of switch-off of legacy-based services.

[69] "Ceased in-situ copper line" means a copper line that was once fully provisioned into the customer premises to the NTU but the service on the copper line has since been ceased.

[70] Siro Submission, pages 3-4.

3.36 For the avoidance of doubt, Eircom is not prohibited from engaging in general information campaigns to ensure the general public understands the concept and timing of the transition.

Chapter 4

4 Transition Framework

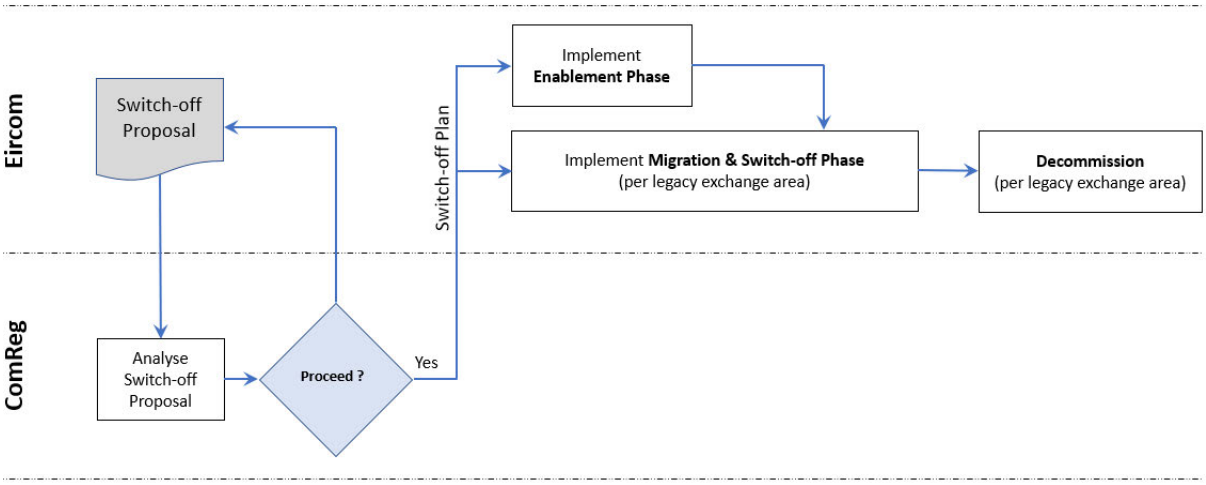
4.1 Design of the Framework

4.1 Under Regulation 63(2) of the ECC Regulations, ComReg must ensure that the decommissioning or replacement process for legacy-based services and infrastructure includes a transparent timetable and conditions, including an appropriate notice period for transition, and establishes the availability of alternative products of at least comparable quality providing access to the upgraded network infrastructure substituting the replaced elements if necessary to safeguard competition and the rights of end-users.

4.2 The principles outlined in Chapter 3 above, are embodied in a Framework setting out the steps, and associated conditions, to be complied with as part of the Migration from Legacy Infrastructure.

4.3 The Framework will consist of an initiation step, where Eircom sets out for ComReg's review and approval its plans for copper switch-off ('**Eircom's Switch-off Proposal**'), followed by three phases: an Enablement Phase, a Migration and Switch-off Phase and a Decommission Phase as shown in Figure 4 below.

Figure 4: Framework



4.4 ComReg may require Eircom to amend the Switch-off Proposal, in which case ComReg will indicate what changes are required; Eircom is required to submit a new Switch-off Proposal (including a version showing the changes made to the Switch-off Proposal) for assessment and approval by ComReg. When ComReg has analysed Eircom's Switch-off Proposal and confirmed it fulfils the Framework

conditions arising from this Decision, ComReg will approve it, at which point Eircom's Switch-off Proposal becomes Eircom's switch-off plan (the '**Switch-off Plan'**).

4.5 In contrast with the approach proposed in Eircom's White Paper, in addition to an Enablement phase (allowing for a trial), the transition phases for Migration and Switch-off are centred on the basis that in line with Regulation 63(2)(b) of the ECC Regulations, all end-users passed by Eircom's Legacy Infrastructure are to have access to a Modern Infrastructure-based service following transition. This means that copper switch off in any given legacy exchange may only take place where Eircom (and not ComReg as Eircom had proposed in the White Paper) has established that 100% of in scope premises[71] are passed with Modern Infrastructure (as defined). In establishing that all end-users have access to Modern Infrastructure, as explained in further detail in paragraph 4.72 below, in order to cater for situations where roll-out may truly be impossible, Eircom ought to be capable of completing the phase when less than 100% of premises have access to Modern Infrastructure, but only with ComReg's agreement.

4.6 Eircom's Switch-off Proposal should provide an overall view of how it proposes to proceed with transition to Modern Infrastructure throughout the State and over which timeframe, and the means by which Access Seekers will be able to reach existing end-users, namely the ACPs that Eircom proposes will be available. For the purpose of ascertaining the percentage of premises passed by Modern Infrastructure, insofar as Eircom's Modern Infrastructure is concerned, a premises is considered passed when 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) on receipt of an ACP order.

4.7 Only when ComReg has approved Eircom's Switch-off Proposal, and following Eircom's publication of the Switch-off Plan, may Eircom proceed to the Enablement Phase and the Migration and Switch-off Phase.

Implementation phases

4.8 The Enablement Phase sees the development, trial and launch of the non-FTTH ACPs which Eircom has identified in the Switch-off Plan as being necessary to reach all end-users in all legacy exchanges. It is envisaged that the Migration and Switch-off Phase – and indeed the Decommission Phase – will proceed on an **exchange by exchange** basis and in that context, in order to avoid any unnecessary delay to Migration and Switch-off, **the Enablement Phase and the Migration and Switch-off Phase may be run in parallel by Eircom**. In other words, as soon as the conditions for the Migration and Switch-off Phase are met

[71] Eircom proposed that this percentage should be 95%.

in respect of an exchange, Eircom may proceed with that Phase in that exchange, although the Enablement Phase may still be ongoing.

4.9 ALTO, BT and Sky Ireland expressed the view in their respective submissions that the Enablement Phase should be carried out in advance of the Migration and Switch-off Phase. ALTO thought this was necessary to avoid insurmountable issues requiring pause to the Migration and Switch-off Phase.[72] BT thought it was necessary to avoid a discriminatory environment whereby only some operators need to trial ACPs,[73] and to provide sufficient time to develop and test systems while the migration scale is small, and allow issues to be resolved and learnings to be brought through to the Migration and Switch-off Phase.[74] BT's final point was echoed by Sky Ireland who noted that starting the Enablement Phase and the Migration and Switch-off Phase simultaneously would not allow for key learnings to be taken on board by stakeholders, which is the main objective of a trial.[75] Vodafone recommended an initial trial among a small number of exchange areas to ensure bulk processes are working as planned, customer impacts are minimised and that future migrations can be adopted with any lessons learned on the initial trial.[76]

4.10 However, allowing Eircom to develop the ACPs which are not currently available in parallel to the start of the Migration and Switch-off Phase will avoid unnecessarily postponing commencement of Migration and Switch-off Phase in those exchanges where no development of ACPs is required and to which accordingly, the Enablement Phase is not relevant. ComReg notes that operators' concerns voiced as part of Submissions to Consultation are in this regard addressed by rolling out the Migration and Switch-off Phase on an exchange by exchange basis once a Switch-off Plan is in place which identifies all ACPs. Under the Framework, a switch-off notice in a legacy exchange area can only be issued once all required ACPs for that legacy exchange area are available and in scope premises can order an ACP. The Enablement Phase, including trial requirements, are considered in further detail below.

4.11 **Consistent with the principle of timeliness, Access Seekers and end-users are encouraged to switch to Modern Infrastructure as soon as it is available in respect of all regulated services.** To that effect, Eircom may choose to

[72] ALTO Submission, page 4.

[73] BT Submission, page 1.

[74] BT Submission, page 1.

[75] Sky Ireland Submission, page 3.

[76] Vodafone Submission, pages 5-6.

implement as part of the Migration and Switch-off Phase, a **Stop Sell** where at least 75% of the in scope premises within the legacy exchange area are passed by Modern Infrastructure. Following Stop Sell commencement, end-users with access to Modern Infrastructure will no longer be able to switch their legacy-based service to a different retailer (including Eir Retail) or to make changes to their legacy-based service, nor can a new customer on the Eircom network avail of a legacy service if access to Modern Infrastructure is available at the customers' premises.[77]

4.12 ComReg sees allowing Stop Sell to commence on a legacy exchange by legacy exchange basis where at least 75% of the in scope premises within the legacy exchange area are passed by Modern Infrastructure as an appropriate way of facilitating migration over time. Vodafone noted in its Submission that running the Migration and Switch-off and Enablement Phases in parallel means that the Migration and Switch-off Phase can only begin in exchange areas which do not require the development of new ACPs. For the avoidance of doubt, where Eircom chooses to initiate the Migration and Switch-off Phase by a Stop Sell, the Phase may commence provided at least 75% of premises in scope in the legacy exchange area have access to Modern Infrastructure.

4.13 This approach seeks to balance the interests of end-users while allowing Eircom to accelerate the Migration from Legacy Infrastructure in electing to implement a Stop Sell for legacy-based services. If Eircom chooses to implement a Stop Sell, it applies to all impacted consumers of regulated legacy-based services (i.e., all consumers, small businesses, large businesses and government, including Eir Retail customers) passed by Modern Infrastructure within the legacy exchange area and all Access Seekers and RSPs. This approach is transparent and ensures that all Access Seekers, RSPs and end-users are treated in an equivalent, non-discriminatory manner.

4.14 In its White Paper, Eircom had proposed that business-to-business and government markets are subject to a different transition to residential and small/medium enterprise end-users and the Stop Sell "*applies to the consumer and small business mass market only*". In their Submissions to Consultation, both ALTO and Eircom proposed that a different transition framework apply in respect

[77] ComReg does not believe that Eircom's proposed premises-by-premises Stop Sell as FTTH is rolled out, subject to a 28-day notice period as premises are added to Eircom's Advanced Pre-Qual ('APQ') file, is a satisfactory approach being too granular, with an insufficient notice period and leading to regulatory uncertainty for Access Seekers.

of High Quality Access/leased lines products.[78,79] BT noted that the Framework must have regard to non-residential sites that may have a special dependence on legacy copper services.[80] Eircom pointed out that Low Bandwidth Traditional Interface Wholesale HQA (LB TI WHQA) lines are typically characterised by network "*tails*" (data circuit ends) which may extend beyond exchange boundaries, so that triggering migrations in a legacy exchange may not be possible as the other end/location associated with that circuit may not have a Modern Infrastructure alternative. Eircom noted further that in order to deal with any commercial tenders and business continuity plans, a longer notice period in advance of migration was required so that plans to retire any regulated data copper-based products would not be announced by Eircom for at least 12 months following the complete rollout of its Modern Infrastructure in the final Eircom exchange, estimated to occur in 2027/2028.[81]

4.15 ComReg, however, does not accept that the fact that LB TI WHQA lines may cross different exchanges is a bar to migration and it is possible for a business customer to migrate the "tail" (known as an End User Link ('**EUL**') of a legacy data service at a legacy exchange without impacting the other end of the link at the hub site (the Transport Link ('**TL**') or at another EUL at other legacy exchanges. An EUL is a single circuit served from a legacy exchange which can be migrated independently, based on an Eircom defined schedule.[82]

4.16 There is also evidence that the transition from LB TI WHQA to modern business services is already underway and that over the last 3-4 years, Access Seekers have continued to transition at scale from regulated LB TI WHQA products to modern equivalents. On 31 December 2021, four Access Seekers had a total installed base of [✂[redacted]✂] EULs and [✂[redacted]✂] TLs. The

[78] ALTO Submission, page 5.

[79] Eircom's Submission, para 30-31. Eircom suggested that it would be more appropriate for regulated copper-based data services, classified as LB TI WHQA, to be withdrawn on a product-by-product basis whereby Eircom seeks ComReg's consent to withdraw Access for specific products under section 7.4(ii) of the Decision Instrument of ComReg Decision D03/20, Wholesale High Quality Access at a Fixed Location – Decision, ComReg 20/06, 24 January 2020, (the '**2020 WHQA Decision**').

[80] BT Submission, page 2.

[81] Eircom Submission, paragraph 33.

[82] By way of example, In upgrading a LB TI WHQA network consisting of a TL and 30 EULs, the business customer would typically undertake the following tasks: (a) Create a network design for the new modern network; (b) Following a tender process (if necessary) for modern services and equipment, order a modern service and equipment at the hub site where the TL is installed; (c) Order modern services and equipment for the remote sites (in batches) based on an upgrade schedule; (d) Commission the hub site modern communications; (e) Commission a remote site modern communications and connect to the hub site modern communications; (f) Cease the EUL at the remote site upgraded to modern communications; (g) Repeat the process steps (e) and (f) above until the final remote site is upgraded to modern communications; and (h) Finally, cease the TL at the hub site.

Access Seeker with the greatest proportion of EULs ([✂[redacted]✂] of the EUL installed base) upgraded its core network to Internet Protocol ('**IP**') in September 2022 and is planning to migrate all its PPC circuits to fibre-based services by the end of 2023. The remaining three Access Seekers have reduced their combined installed EUL bases by 50% over a three-year period ending on 31 December 2021. In 2021, only two Access Seekers purchased regulated LB TI WHQA products, with the total number of products ordered totalling [✂[redacted]✂]. Twelve months later, on 31 December 2022, the wholesale EUL installed base reduced by 29.6% to [✂[redacted]✂] circuits.

4.17 Eircom may also coordinate switch-off in the exchanges concerned without there being any need for a separate framework or a different treatment of legacy data services. As of 31 December 2021, the wholesale TL installed base was concentrated in just 12 main legacy exchanges. 38 legacy exchanges (~3% of all legacy exchanges) contained all TLs and 28% of the EULs installed base. 674 legacy exchanges (~56% of all legacy exchanges) had no wholesale LB TI WHQA lines installed and a further 370 legacy exchanges (~31% of all legacy exchanges) had just one wholesale EUL installed. A total of 1,040 legacy exchange (~87% of all legacy exchanges) have no more than one EUL installed. It is open to Eircom to schedule the switch-off of 38 legacy exchanges, which contain all TLs and 28% of the wholesale EULs installed base, to the end of the switch-off programme, thereby maximising the time for all business customers to keep their TLs in place while remote sites EUL are migrated to modern services.

4.18 Accordingly, 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 is the same. ComReg, however, in order to ensure that non-residential sites that may have a special dependence on legacy copper services have maximum time to reasonably plan and execute the transition to modern services, has decided to extend the additional time granted under the Framework to exempt users (discussed further below) to all users consuming regulated LB TI WHQA products.

4.19 Another key requirement is that **Access Seekers are given adequate notice that within a legacy exchange area, Modern Infrastructure rollout is complete and withdrawal of legacy-based services is forthcoming.** This is achieved through Eircom issuing a number of notices to Access Seekers at certain key points of the process. This is further detailed in Section 4.4.

4.20 In addition, **the appropriate notice periods to be met by Eircom should recognise the position of** certain end-users, hereafter referred to as '**exempt**

users', (including end-users providing critical infrastructure (for example, utilities such as gas or electricity network providers), all users with regulated LB TI WHQA services, and vulnerable end-users as determined by the RSP which rely on legacy-based services), who may require additional time before the switch-off of their legacy-based services occur and Eircom is required to operate a mechanism allowing such end-users to be identified and afforded additional time, in a transparent and predictable manner. Exempt users include those users who require more time to identify suitable replacement services (which could interwork with ACPs or be delivered using alternative technology e.g. mobile[83]).

4.21 Finally, RSPs and ultimately **end-users should not have to bear costs in relation to Eircom's choice to proceed with switching-off its copper network**. In this regard, Eircom must offer an ACP to Access Seekers which is of comparable quality and price as the legacy service being replaced, at no more than the standard connection charge (outlined in detail in Section 4.6 below).

4.22 For the avoidance of doubt, throughout the Migration and Switch-off Phase, Eircom must apply the same conditions it imposes on Access Seekers, to its own self-supply regarding the provision and maintenance of copper based regulated services.

4.23 Prior to Eircom's obligation(s) to provide Legacy Infrastructure-based services in a legacy exchange area being considered to be withdrawn, Eircom must complete a **Decommission Phase**. The purpose of the Decommission Phase is to ensure that the Legacy Infrastructure (both the active equipment and copper cables) is put beyond use and is not available for use by Eircom for any commercial purposes. ComReg notes in this respect that a fundamental premise of the Framework for migration from Legacy Infrastructure to Modern Infrastructure is that the legacy infrastructure is being retired.

4.24 The sections below set out the Framework in detail.

4.2 Eircom's Switch-off Plan

Eircom's Switch-off Proposal

4.25 The starting point of the transition process is by way of Eircom's Switch-off Proposal providing ComReg with information on how Eircom plans to migrate from its legacy network to a modern network. Eircom is required to provide such information to all Access Seekers after ComReg is satisfied that Eircom's Switch-off Proposal fulfils the conditions of the Framework.

[83] For example, a monitored medical alert system using 4G.

4.26 The Eircom Switch-off Proposal will describe the entire suite of ACPs to be offered to Access Seekers and the anticipated timelines for the key milestones of the Migration from Legacy Infrastructure.

4.27 In its White Paper, Eircom referred to a "*transition and copper switch-off*" stage which had a threshold of 95% of all premises in an exchange area capable of ordering fibre, with the final 5% being serviced by an unspecified service within 3 years of the final notice period. However, it is a requirement under Regulation 63(4)(a) of the Communications Regulations, that the Modern Infrastructure enable Access Seekers to reach the same end-users as the legacy infrastructure; this means that 100% of end-users with a connection to the copper network are in scope. The Eircom Switch-off Proposal will include details for ACPs (including any new ACPs required) covering all scenarios, including difficult-to-reach end-users. Eircom can draw on its extensive experience of fibre rollout to identify the likely difficult scenarios and propose the suitable solutions. This is set out in further detail below.

ACPs

4.28 The availability of ACPs will be critical to ensure that Access Seekers are not adversely impacted by copper switch-off. An ACP means a product that allows an Access Seeker to at least replicate its legacy offerings on Modern Infrastructure, in terms of functionality, performance, quality and value including price. Eircom's Switch-off Proposal will include, on a market-by-market basis, a detailed description of how access will be provided over Eircom's Modern Infrastructure by way of ACPs. This includes:

(a) The mapping of regulated legacy-based services to existing and proposed ACPs;

(b) A description of how all (100%) end-users, accessible via the Legacy Infrastructure, will be accessible from an ACP or fibre-based service from NBI;

(c) A detailed description of the proposed ACPs on Eircom's Modern Infrastructure. A proposed ACP shall:

(i) have at least equivalent features and performance as the legacy-based service;

(ii) be delivered to the location of legacy-based service NTU or other location agreed with the end-user [84] in the end-user's premises, at no more than the standard connection charge;

(iii) have at least service equivalence with the legacy-based service in terms of service delivery, service assurance, service availability, Service Level Agreements ('**SLA**s') and Key Performance Indicators ('**KPI**s');

(iv) have at least service equivalence with the legacy-based service in terms of Quality of Service ('**QoS**'); and

(v) is of a comparable price to the legacy-based service it is mapped to, delivered at no more than the standard connection charge.

(d) A description of the migration process (including rollback options) from each legacy-based service to the existing and proposed ACPs.

4.29 Siro submitted that "*ACPs will always be inferior products to FTTH"* and that RSPs will need to be aware when an end-user will be provided with an ACP rather than FTTH, so that they can use the appropriate language when communicating with end-users.[85] ComReg notes, however, that ACPs do include FTTH-based products and that their purpose, including ACPs other than FTTH-based products, is to ensure that Access Seekers are at least in the position to provide comparable products on Modern Infrastructure to their legacy offerings, in terms of functionality, performance, quality and value including price. While it is essential that Access Seekers have all the information required in advance of migration so that they can inform their customers, this does not include any requirement to compare ACPs.

Timelines

4.30 In order that Access Seekers have a clear understanding of the transition process and how it may affect them over time, it is essential that the Switch-off Proposal sets out clear timelines in respect of milestones for the migration and switch-off process, as follows:

(a) The timeline for the completion of the migration and switch-off for each legacy exchange, to include forecast (quarter and year) for the milestones as set out in Section 4.4 (see Figure 5 below);

(b) The decommissioning method and timeline once the migration and switch-off of a legacy exchange area is completed.

[84] For example, where the ACP is FTTH, in the end-user's premises, Eircom will deliver the Optical Network Terminal ('**ONT**') to the location of legacy-based service NTU or other location agreed with the end-user.

[85] Siro Submission, page 4.

Figure 5: Exchange Switch-Off Timeline Example

Exchange	Exchange Code	Milestone 1	Milestone 2	Milestone 3	Milestone 4
Ashbourne	ABE	Q4 2024	Q4 2026	Q4 2027	Q2 2028
Blanchardstown	BDT	Q1 2027	Q2 2028	Q2 2029	Q4 2030
Clonygowan	CYG	Q3 2023	Q1 2024	Q1 2025	Q3 2025
Meadowvale	MDV		Q4 2023	Q4 2024	Q4 2025

4.31 ComReg expects that as the Migration from Legacy Infrastructure will take place over many years, indicative dates for exchange milestones will change and become more accurate as they draw closer. Accordingly, Eircom is required to review this information on at least an annual basis and update if necessary, and publish for Access Seekers and ComReg, a new clean version of the Switch-off Plan together with a version showing the changes to the previous version, by 31 December every year.

4.32 ComReg, in addition, notes the Submissions of many Respondents requesting that Eircom be required to provide them with detailed information as regards in-scope premises for Migration and Switch-off. BT stated that an Advanced Prequal File ('**APQ**') will also be necessary for Access Seekers to understand which services are available at each premises.[86] Sky Ireland proposed that all premises in an exchange area be linked to Eircodes and this information be shared with RSPs.[87] NBI stated that Eircode details must be included as a field in the premises level data published by Eircom for both the IA and the commercial area.[88] Siro proposed that the information be available down to Eircode level in the same way it is available on the Eircom Broadband Checker Map system online.[89]

4.33 Having considered those submissions, ComReg agrees that the Switch-off Plan should be complemented by the provision by Eircom of information regarding all in scope premises showing Access Seekers the status of each premises (connected, in situ, legacy or modern based service) and the modern infrastructure-based services available at each in scope premises. ComReg also agrees that Eircodes (which Eircom uses already for its FTTH rollout) are the most accurate way of identifying in scope premises.

4.34 Specifically, the following in scope premises information (hereafter, the '**In Scope Premises File**' or '**ISPF**') should be published to Access Seekers availing of Eircom's regulated products and ComReg on a weekly basis from the time the

[86] BT Submission, page 8.

[87] Sky Ireland Submission, page 3.

[88] NBI Submission, page 18.

[89] Siro Submission, page 6.

Switch-off Plan is published (unless otherwise agreed with ComReg) and until the Decommission Notice for the final legacy exchange area is issued, in respect of all in scope premises with either a ceased in-situ copper line or active copper-based service:

(a) The information contained in the APQ file published by Eircom to Access Seekers on a weekly basis further to its obligation in the 2018 WLA/WCA Decision,[90] Appendix 20 10.25(iii) to minimise IT development for Access Seekers;

(b) Eircode data or for in scope premises which do not have Eircodes, the latitude and longitude coordinates;

(c) The Address Reference Database ('**ARD**') ID (linked to Eircode where available);

(d) The premises' Modern Infrastructure status, as follows:

(i) not passed

(i) passed (by Eircom, NBI)

(ii) not passed – possible exception: not yet agreed with ComReg

(iii) not passed – ComReg-confirmed exception: access denied

(iv) not passed – ComReg-confirmed exception: passed by alternative wholesale operator(s)

(v) not passed – ComReg-confirmed exception: other

(e) The premises' legacy service connection status (active, ceased in-situ);

(f) Modern Infrastructure Service Type available at the premises (for example, FTTH, FWA, etc.).

4.35 To the extent that Eircom intends to include other wholesale networks, to demonstrate that all users in a given legacy exchange area have access to Modern Infrastructure, the above information must be included on this infrastructure (for example, NBI).

4.36 ComReg notes also the comments made by a number of Respondents as regards the accuracy of data and the requirement that Eircom be required to agree SLAs in that respect.[91] Siro for example submitted that the move to FTTH means the network becomes simpler, easier to manage and more reliable so that Eircom

[90] Market Review: Wholesale Local Access (WLA) provided at a Fixed Location, Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products, Response to Consultation and Decision, ComReg Decision D10/18, ComReg Document 18/94, dated 19 November 2018 ('**2018 WLA/WCA Decision'**),

[91] SFG Submission, pages 1-3; Siro Submission, page 4.

should offer improved service and delivery SLAs, which would also impact on ACPs incentivising Eircom to switch to pure FTTH faster. Siro also proposed that Eircom extend the Order of Indicative Magnitude file to provide a monthly updated Homes Planned file, with an associated SLA on accuracy and appropriate penalties.[92]

4.37 ComReg agrees that in order that Access Seekers can rely on the ISPF for information on Eircom's Migration and Switch-off Plan in respect of specific premises, it is essential that the ISPF is kept accurate. This involves, in particular, updating of the ISPF by Eircom according to the APQ file publication timelines, whereby at least 28 days' notice of the Ready for Order date must be provided when Modern Infrastructure service is available for order at a given premises. Any change to the premises information, such as the Modern Infrastructure status or the Modern Infrastructure Service Type available must be updated in the ISPF at the earliest opportunity to provide the most accurate and up-to-date data to Access Seekers.

4.38 ComReg however does not believe that it is necessary or appropriate to mandate SLAs. ComReg does anticipate that the use of Eircodes in the ISPF will improve the accuracy of the data by default. In addition, if Access Seekers require new or amended SLAs for the FTTH service, they may request these using the standard access request process in the relevant market. The information in the Order of Magnitude file is mandated under the 2018 WLA/WCA Decision[93] and specifies information on premises expected to be passed by NGA be made available to Access Seekers a minimum of three months in advance of the Ready for Order date. Access Seekers may use the access request process to seek changes to the Order of Magnitude file. They may also request a new or amended SLA regarding the APQ file under that same process. As the source of data for the APQ file and the ISPF is likely to be the same system, any improvements on the accuracy of APQ file data will likely feed into the ISPF.

[92] Siro Submission, page 4.

[93] Appendix 20 WLA Decision Instrument (ComReg Decision D10/18), Section 10.25 (ii),

Safeguard

4.39 In order to avoid that Access Seekers and end-users are left with no access following transition through no fault of their own, Eircom is required to make available a temporary legacy-based service ('**TLS'**) as described in Section 4.6 below. In its Switch-off Proposal, Eircom must outline the TLS process and the timelines it will use to make this TLS available to Access Seekers, noting that the process must be in place prior to the first legacy exchange area entering the Migration and Switch-off Phase.

Communications

4.40 How Eircom plans to communicate in respect of migration and switch-off is an essential aspect of a switch-off programme and of Eircom's Switch-off Proposal. In its Submission to Consultation, Vodafone was of the view that the communication plan should differentiate between the broad national information campaign and targeted geographic information campaigns in an exchange area for example, as retail service providers will be communicating directly with end-users at exchange level.[94] ComReg notes in this regard that there are different ways in which Eircom can communicate on copper switch-off, which include but are not limited to the datasets which Eircom is required to publish including the ISPF or the monitoring reports referred to in Section 4.7 below.

4.41 It will be a matter for Eircom whether to conduct a general information campaign, which, ComReg notes, could include a campaign addressed to the general public or a campaign addressed to Access Seekers,[95] namely its wholesale customers affected by migration and switch-off, or both. Such information campaigns could provide information explaining the overall process, the implications for the services offered including insofar as Access Seekers are concerned, available ACPs, implications for in-home services, and where and how any further information may be obtained. It is essential that the conduct of a general campaign by Eircom is not used, and does not have the effect, of undermining or supplanting RSPs in their communications with end-users. This means that any campaign which would reach beyond Eircom's existing retail customers (e.g., billboard/Internet-based campaigns) may only be conducted under the Open Eir brand. No such campaign should be conducted by Eircom unless Eircom's plans in this respect are clearly set out in this regard.

4.42 Adequate communications with Access Seekers as the Switch-off and Migration process gets underway will be essential to Access Seekers' ability to manage the

[94] Vodafone Submission, page 6.

[95] In addition to the mandatory requirements set out in paragraphs 4.42 to 4.44.

process including in respect of managing their own customers. In reviewing and approving the Switch-off Plan, ComReg will look for and assess the suitability of Eircom's plans as regards its providing information to Access Seekers/RSPs and ComReg in respect of its Migration programme, including information and processes that apply generally and information needed in respect of the exchange areas under transition.

4.43 This includes:

(a) The information that Eircom proposes will be provided to Access Seekers in order that they can plan for and undertake their role in the proposed Migration from Legacy Infrastructure process;

(b) Details of how and when Eircom will provide Access Seekers and ComReg with that information throughout the duration of the Migration programme;

(c) The process to be used by Access Seekers to register an end-user as an exempt user; and

(d) Contact information that will be made available to Access Seekers.

4.44 It may also be appropriate that certain communications by Eircom to Access Seekers and ComReg in particular take place on a geographic basis so that information is made available in a timely manner in advance and/or during the Migration and Switch-off process as it is underway in specific geographic areas. This includes:

(a) Information regarding the ACPs that are relevant to the geographic area concerned;

(b) Implications for in-home services;

(c) The specific timelines and dates for Stop Sell, Switch-off Phase 1, Switch-off Phase 2; and

(d) Contact information that Access Seekers may use.

4.45 The Switch-off Proposal should be sufficiently detailed in respect of Eircom's communication plans that ComReg can ascertain how they will work in practice.

Publication

4.46 Vodafone proposed that ComReg should publish the Switch-off Proposal submitted by Eircom to allow a period for comment before ComReg would approve the Switch-off Plan.[96] Vodafone also suggested that following acceptance by ComReg of Eircom's Switch-off Proposal, ComReg should publish an Information

[96] Vodafone Submission, page 4.

Notice detailing the engagement process and outcomes in advance of Eircom publishing the Switch-off Plan.[97] Eircom proposed that the review period for Eircom's Switch-off Proposal by ComReg should be explicitly stated.[98]

4.47 ComReg does not agree with publishing the Switch-off Proposal submitted by Eircom. Access Seekers have been given the opportunity to comment on the information which Eircom must include in the Switch-off Proposal and the purpose of the requirement that Eircom notify ComReg with a Switch-off Proposal is to allow ComReg to ensure that the Switch-off Plan meets the requirements of the Framework. ComReg does not believe that it is necessary or appropriate to set a maximum time period for its review of Eircom's Switch-off Proposal in order to allow sufficient flexibility for any inquiry and engagement which may be required with Eircom.

4.48 While the Switch-off Proposal will not be published for consultation, Eircom is required under the Framework to publish within one month following ComReg's confirmation that it fulfils the conditions of this Framework, the Switch-off Plan for Access Seekers and ComReg. This is with the view to help ensure RSPs can effectively communicate with, and provide relevant information to, their end-users on the transition from Legacy Infrastructure, as necessary.

4.3 Enablement Phase

4.49 The Enablement Phase can commence when Eircom publishes the Switch-off Plan as approved by ComReg. The Enablement Phase will be used to establish that Access Seekers are in the position to successfully migrate end-users to new ACPs[99] on Eircom's Modern Infrastructure allowing Access Seekers to have a clear understanding of how any new ACP(s) will be delivered to end-users' premises in practice, by way of test and trial. Only following the Enablement Phase, when new ACP(s) are launched, can Eircom rely on new ACP(s) to pass in scope premises.

4.50 The Enablement Phase includes three steps, namely the Development Stage, the Trial Stage and the Evaluate Trial Stage.

[97] Vodafone Submission, page 6.

[98] Eircom Submission, paragraph 19.

[99] New RAPs or product/process enhancements to existing RAPs.

Figure 6: Enablement Phase

4.51 ComReg notes that Eircom's White Paper did not envisage the use of an enablement phase or a trial phase. However, on the basis that all in scope premises in a legacy exchange area must have access to Modern Infrastructure, it is essential that there is a clear understanding by Access Seekers of what ACPs will be available and how new ACP(s) will be delivered to end-users' premises in practice. If new ACPs have been identified in Eircom's Switch-off Plan to meet this requirement, this phase will allow Eircom to develop those products, and test and trial them with Access Seekers. For example, Eircom may wish to develop FWA or an alternative product for difficult-to-reach premises.

4.52 Eircom submitted that it was not clear whether a trial was required for all ACPs noting that a trial should only be warranted if the ACP is materially different to pre-existing ACPs.[100] In this regard, ComReg confirms that under the Framework, there is no requirement for a trial phase for all ACPs. In particular, ComReg expects that a key ACP will be Eircom's FTTH product, which includes single and bulk order functionality, and with Eircom having approximately [✂[redacted]✂] active FTTH connections in the State as of Q1 2023 has been used at scale already to migrate customers. No trial of an existing product already allowing for bulk ordering would be required unless Eircom wished to make material amendments impacting Access Seekers' ability to order, deliver and migrate end-users. Similarly, in response to NBI's suggestion in its Submission that trials should not be focussed on Eircom-to-Eircom migrations only and should include migrations from Eircom to NBI Modern Infrastructure in the Intervention Area, ComReg notes that this is a process that is already underway, with ~43,426 active NBI connections[101] as of June 2023, so that no trial would be required as part of the Enablement Phase.[102]

4.53 However, where ACPs are required that are not yet available, or existing products require amendments in order that they qualify as ACPs and the amendments affect ordering and delivery processes, trials will be required. For instance, the minimum 30Mbit/s product referred to by Eircom in its White Paper for the 5% of premises that could not be passed with FTTH, would likely also necessitate a trial.

[100] Eircom Submission, paragraphs 21 and 22.

[101] www.nbi.ie.

[102] NBI Submission, pages 14-15, 21.

4.54 Against this background, a trial is an important aspect of the Enablement Phase. A trial will allow Eircom and Access Seekers to develop and test their end-to-end processes for new ACPs developed to enable Access Seekers to reach in scope premises. The trial phase should include a variety of scenarios which may be encountered in order to reduce service interruption risks for Access Seekers and end-users during the migration.

Development Stage

4.55 In the Development Stage, Eircom will follow its existing product development process to develop the changes to existing RAPs and/or new RAPs, including IT and processes to support migrations.

Trial Stage

4.56 During the Trial Stage, Eircom and Access Seekers will develop and test their end-to-end processes for new ACPs developed to enable Access Seekers to reach in scope premises. The trial phase should include a variety of scenarios which may be encountered to reduce service interruption risks for Access Seekers and end-users during the migration.

4.57 The Trial Stage will involve Eircom and Access Seekers (who purchase RAPs) validating their IT systems and processes including the end-to-end migration of their trial end-users, covering different geographic areas, as the case may be, end-user types and delivery of ACPs to trial premises.[103]

4.58 In line with existing obligations in the 2018 WLA/WCA Decision,[104] Eircom may only initiate a trial having complied with the following requirements:

(a) Access Seekers[105] have been invited to participate in the trial, by means of:

(i) direct written invitation; and

(ii) the publication of a general invitation on Eircom's wholesale website;

(b) Eircom has set the trial for a reasonable period sufficient only to achieve the objectives of the trial and furnished with the invitation a statement of the objectives of the trial and the requirements for participation to all Access Seekers, in sufficient time to allow participation;

(c) Eircom has notified ComReg in writing at least one month in advance of the proposed trial being notified to Access Seekers, in accordance with

[103] Including premises in Multi Dwelling Units ('**MDU**s').

[104] Appendix 20 WLA Decision Instrument (ComReg Decision D10/18), Sections 10.14 – 10.15.

[105] Those undertakings who signed the relevant reference offer.

paragraphs 4.58(a) and (b) above, or as otherwise agreed with ComReg; and

(d) Eircom has notified Access Seekers at least three months in advance of the commencement of the proposed trial, in accordance with paragraph 4.58(a)-(b) above, or as otherwise agreed with ComReg.

Evaluate Trial Stage

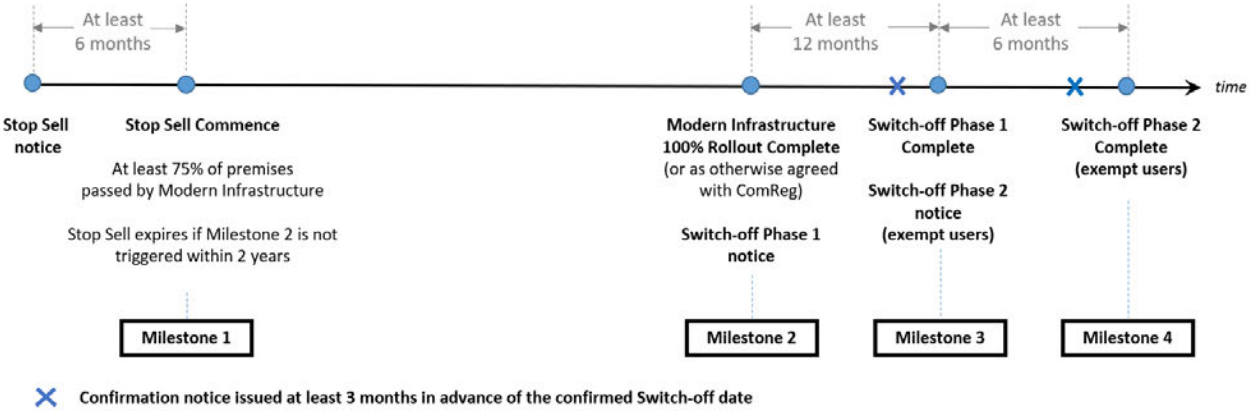
4.59 The objective is that at the end of the Enablement Phase, Eircom and Access Seekers will have validated their systems and processes with the end-to-end migration of their trial end-users, to the new ACP(s). To that effect, and in order to ensure that issues identified during the trial of an ACP are satisfactorily resolved, Eircom is required to maintain during any trial, a log of issues encountered and at the end of the Trial Stage, as part of notification of the ACP(s) to ComReg under its obligations under the relevant market(s), to provide ComReg with a report on the resolution of the issues identified.

4.4 Migration and Switch-off Phase

Milestones

4.60 The Migration and Switch-off Phase will be progressed on a legacy exchange by legacy exchange basis using a four-milestone process to transition from legacy-based services, in order to provide Access Seekers with certainty on how the transition will take place and protect the rights of all end-users impacted by the transition. Figure 7 depicts the transition milestones and associated timelines, for a legacy exchange area.

Figure 7: Migration and Switch-off Phase (per legacy exchange area)



4.61 The milestones are designed to ensure that sufficient notice is given to Access Seekers regarding the status of rollout of Modern Infrastructure and the timeline to

switch-off Legacy Infrastructure within a legacy exchange area. With the view to encouraging and managing migration, this Phase may commence, at Eircom's discretion, with a "***Stop Sell***" (Milestone 1), where at least 75% of the in scope premises within a legacy exchange area are passed by Modern Infrastructure. Stop Sell in a legacy exchange area means that end-users may not switch their legacy-based service to a different retailer (including Eir Retail) or order any legacy services, including new connections, if modern infrastructure-based services are available to order at their premises. Legacy services remain available in the exchange for all those premises in the exchange where modern infrastructure-based services are not yet available.

4.62 Vodafone requested clarity on whether repair services are available under Stop Sell and on the terms that would apply where a customer is informed that the only remedy to their service issues requires migration to Modern Infrastructure.[106] ComReg notes that until the Migration and Switch-off Phase is complete in any given exchange, Eircom continues to be subject to all applicable requirements as regards the provision of regulated copper-based services and the terms and conditions under which they are offered in accordance with the relevant Reference Offer including as regards repairs or for instance, service levels.

4.63 Where Eircom chooses not to implement a Stop Sell, the intention to switch off Legacy Infrastructure is triggered with Milestone 2. End-users who do not migrate from their legacy-based services in a timely manner before Milestone 3, will be disconnected at Milestone 3, unless they are registered with Eircom (via their RSP) as exempt users. Exempt users who choose not to migrate from their legacy-based services in a timely manner before Milestone 4, will be disconnected at Milestone 4. Milestone 4 builds on Eircom's proposal in the White Paper that exempt users are given extra time to identify and purchase suitable replacement services.

4.64 An additional minimum six-month notice will be provided to Access Seekers in respect of exempt users in addition to a minimum standard 12-months' notice. If a Stop Sell is implemented by Eircom in a legacy exchange area, a minimum of 24 months is required between the Stop Sell notification and copper switch-off (Milestone 4). This should be ample time to migrate residential, business-to-business and government end-users in a legacy exchange area to Modern Infrastructure.

4.65 NBI suggested in its Submission to the 2022 Consultation that any Stop Sell should be implemented by Eircom on an equivalent basis in the IA and the commercial area to ensure territorial cohesion, consistent with ComReg's duties under recital

[106] Vodafone Submission, page 5.

23 of the Code.[107] However, ComReg is satisfied that the constraints imposed in respect of Stop Sell, including that it may be used only where 75% at least of in scope premises have access to Modern Infrastructure and for a maximum period of two years are sufficient. ComReg does not believe that a further constraint to require Eircom to implement Stop Sell uniformly in every exchange area is appropriate. Furthermore, in ComReg's view it is the NBP itself, not the Migration from Legacy Infrastructure Framework, which is to ensure territorial cohesion, by ensuring the availability of VHCNs to end-users in otherwise commercially unviable areas, a matter that is not affected one way or another by the implementation by Eircom of a Stop Sell phase in all or selected exchanges. Consistent with the purpose of Regulation 63 of the ECC Regulations, the Framework ensures that competition and end-users are not adversely affected by withdrawal of access to regulated copper-based services.

Milestone 1

4.66 Milestone 1 marks Stop Sell Commence and only applies if Eircom chooses to implement a Stop Sell of legacy-based services. The following conditions are attached to Milestone 1 in order to ensure that Access Seekers are given sufficient notice of the commencement of the Stop Sell at a legacy exchange and that there is regulatory certainty as regards in scope premises.

4.67 Eircom may trigger Milestone 1 when:

(a) Modern Infrastructure services are available to be ordered at a minimum of 75% of in scope premises in the legacy exchange area; and

(b) Eircom has published for Access Seekers and ComReg, notice of the date for Milestone 1 at least six months in advance.

4.68 In each legacy exchange area where Stop Sell applies, Eircom must continue to provide access to Legacy Infrastructure to those in scope premises not passed by Modern Infrastructure on the day the Stop Sell commences and can only implement Stop Sell in respect of those in scope premises when Access Seekers can order an ACP or an NBI Modern Infrastructure-based service. In practice this means that for those in scope premises not passed by Modern Infrastructure when Stop Sell is triggered for the legacy exchange area in which they are located, Stop Sell will apply only once Modern Infrastructure is ready for order in their respect.

4.69 A limit of two years on the Stop Sell period will apply in each legacy exchange area. This means that if after two years Eircom does not progress to Milestone 2, legacy-based services may once again be ordered to in scope premises in the legacy exchange area. For example, if a legacy exchange area consists of 1,000

[107] NBI Submission, P16.

in scope premises and 2 years after Stop Sell commenced, Eircom has passed 900 in scope premises with Modern Infrastructure, while 100 in scope premises are not passed by Modern Infrastructure, the Stop Sell will lapse and any of the 1,000 in scope premises are entitled to order a copper-based service. If, in the example above, Eircom passes the remaining 100 in scope premises a number of months later (triggering Milestone 2), Eircom may reinstate the Stop Sell on the legacy exchange area with immediate effect given that all 1,000 in scope premises can order a Modern Infrastructure-based service.

Milestone 2

4.70 Eircom may trigger Milestone 2 when it has reached the stage where the process for withdrawal of legacy-based services in a particular legacy exchange area (at Milestones 3 and 4) may commence. At Milestone 2, Access Seekers are given notice that Modern Infrastructure rollout is complete for the legacy exchange area concerned. In receiving this information, Access Seekers can determine the end-users of the legacy exchange who have not transitioned to the Modern Infrastructure noting that end-users are at risk of being disconnected from their copper-based service if they fail to act in the final periods of the Migration and Switch-off Phase. Milestone 2 (Switch off Phase 1 notice) is accordingly required to ensure that Access Seekers are aware of the commencement of legacy exchange area led migration and the forecast date of the planned Switch-off Phase 1.

4.71 Milestone 2 may be triggered when:

(a) 100% of the in scope premises, with either ceased in-situ copper lines or active copper-based services in a legacy exchange area (or as otherwise agreed with ComReg) are passed by Eircom's or NBI's Modern Infrastructure;

(b) A process is in place which allows Access Seekers to register an end-user as an exempt user – all users with regulated LB TI WHQA services will be automatically marked as exempt users by Eircom; and,

(c) Eircom has given, and published for Access Seekers and ComReg, at least 12 months' advance notice of the forecast date that it plans to switch-off legacy-based services for non-exempt users.

4.72 In addition, ComReg may allow Eircom to trigger Milestone 2 where less than 100% of premises are covered, where ComReg is satisfied that there are reasonable grounds why Eircom has not passed the premises with Modern Infrastructure including that the premises concerned are derelict; that Eircom has

been denied access to private property hindering rollout to that premises;[108] or that the in scope premises concerned are passed by an alternative FTTH provider offering wholesale access. In order that ComReg is in the position to determine whether there are good reasons why Modern Infrastructure does not pass 100% of in scope premises in a legacy exchange area, Eircom is required to provide ComReg, at least one month in advance of the planned Milestone 2, with a report containing:

(a) the Eircodes of the in scope premises concerned (for in scope premises which do not have Eircodes, the latitude and longitude coordinates);

(b) the ARD IDs of the premises;

(c) the category of reasons why Modern Infrastructure is not available (per premises), including the identity of the network operator(s) offering wholesale access on an FTTH network passing the premises, where applicable;

(d) legacy-based service status (ceased in-situ copper line, active legacy-based service) and type (if active);

(e) the identity of the Access Seeker where the legacy-based service status is active; and

(f) Where relevant, evidence that access to the property has been denied.

4.73 In its Submission, Eircom expressed concern that setting Milestone 2 at the point when 100% of in scope premises are passed by Modern Infrastructure will be administratively burdensome for both ComReg and Eircom, on the basis that it is very unlikely that Modern Infrastructure passes 100% of premises in any legacy exchange area resulting in the need for Eircom to make ~1,200 applications to proceed to Milestone 2 at a percentage lower than 100%.[109] However, ComReg notes that Eircom's Modern Infrastructure build team can readily collect information on premises that cannot be passed by Modern Infrastructure during rollout/implementation phase as issues are encountered. It is in the interest of end-users that the reasons why certain in scope premises cannot be passed by Modern Infrastructure are recorded and shared with ComReg. This process step will ensure there is an audit trail for all in scope premises which cannot be passed by Modern

[108] Eircom requested that section 9.2.3 of the draft Decision Instrument, of the 2022 Consultation, be amended to acknowledge that 'access denied' (e.g., to a multi-dwelling unit) is a valid reason why Eircom's Modern Infrastructure may not be available at a premises. A change has been made to section 8.6.3 of the Decision Instrument to deal with the issue of 'access denied'.

[109] Eircom Submission, paragraph 24.

Infrastructure. This is necessary as ComReg must ensure[110] that Eircom has made available an alternative access product of at least comparable quality as was available via the legacy infrastructure, enabling Access Seekers to reach the same end-users, before ComReg may withdraw the obligations on regulated copper-based products.

4.74 In allowing Eircom to proceed to Milestone 2 where a number of in scope premises are not passed by Modern Infrastructure, ComReg may attach conditions to its approval designed in particular to ensure that in scope premises are not left without service where service is requested.

4.75 For instance, in respect of premises excluded on the basis that they are passed by an alternative FTTH network on which wholesale access is offered, if an Access Seeker was unable to obtain a connection for such an in scope premises to the alternative FTTH network between Milestone 2 and Milestone 3 (or Milestone 4 for exempt users), the in scope premises can no longer be considered an exception and Eircom would be required to connect the in scope premises by means of an ACP, before the copper switch-off date.

4.76 Vodafone stated that it is critical that Access Seekers get early access to information on premises not passed by Modern Infrastructure well in advance of Milestone 2 and noted that a period of one month is not a sufficient timeframe to develop a tailored switch off communications plan for customers while ensuring customers who will need to be managed by exception are kept informed appropriately.[111] ComReg agrees that information regarding in scope premises not passed or where difficulties arise should be made available as early as possible and notes that this is now provided for by the requirement that Eircom publishes and keeps updated the ISPF including up-to-date details of in-scope premises in the Modern Infrastructure Status[112] field. This will give a minimum of 12 months' notice before Switch-off Phase 1 and a minimum 18 months' notice before Switch-off Phase 2, allowing Access Seekers sufficient time to put in place further communications specific to these exceptional cases.

4.77 Eircom can commence the Migration and Switch-off Phase by offering existing ACPs to Access Seekers to enable end-users to migrate from their legacy-based services. However, where new ACPs are required to enable certain end-users to migrate from their legacy-based services, these new ACPs must be available to order, at a legacy exchange area, before Milestone 2 can be triggered. In legacy exchange areas where Eircom requires a non-FTTH ACP to reach 100% of in

[110] Article 63(2)b of the ECC.

[111] Vodafone Submission, page 5.

[112] See paragraph 4.34 (d).

scope premises, Eircom must develop, launch and deploy the non-FTTH ACP before Milestone 2.

4.78 By Milestone 2, Access Seekers will have been fully informed by Eircom of the process to allow them to register an end-user as an exempt user. The registration process, for exempt users, should not close any earlier than one week before the Switch-off Phase 1 Complete (Milestone 3), or as otherwise agreed with ComReg.

Milestones 3 and 4

4.79 A confirmation notice is necessary to ensure Access Seekers are informed of the actual date for the Switch-off Phase 1. Eircom shall publish for Access Seekers and ComReg the confirmation notice at least three months before Switch-off Phase 1 (Milestone 3). This milestone occurs no earlier than 12 months after the Switch-off Phase 1 notice. Milestone 3 Switch-off Phase 2 notice is required to ensure that exempt users receive at least six months' notice of the switch-off of their legacy-based services.

4.80 The prior conditions that must be achieved, for Eircom to declare Milestone 3, are:

(a) Milestone 2 is met;

(b) Eircom publishes for Access Seekers and ComReg a confirmation notice of the Switch-off Phase 1 date, at least three months in advance of the Switch-off Phase 1 Complete (Milestone 3);

(c) Eircom switches off the legacy-based services of non-exempt users; and

(d) Eircom publishes a Switch-Off (Phase 2) notice for Access Seekers and ComReg at least six months in advance of the forecast date that it plans to switch-off the legacy-based services of exempt users.

4.81 Milestone 4 occurs when Eircom switches off the legacy-based services of exempt users and is necessary to ensure Eircom can switch-off its entire legacy infrastructure in a legacy exchange area.

4.82 A confirmation notice is also necessary to ensure Access Seekers are informed of the actual date for the Switch-off Phase 2. Eircom shall publish for Access Seekers and ComReg the confirmation notice at least three months before Switch-off Phase 2 (Milestone 4).

4.83 The prior conditions that must be achieved, for Eircom to declare Milestone 4, are:

(a) Eircom publishes for Access Seekers and ComReg a confirmation notice of the Switch-off Phase 2 date at least three months in advance of the Switch-off Phase 2 Complete (Milestone 4); and

(b) Eircom switches off the legacy-based services of exempt users.

4.84 In exceptional circumstances, where Eircom proposes to amend the Switch-off Phase 1 date or Switch-off Phase 2 date, for a legacy exchange area, it must seek prior approval from ComReg.

4.5 Decommission Phase

4.85 A Decommission Phase is necessary to ensure that the Legacy Infrastructure (which includes both active equipment and the copper cables) is not available for use by Eircom for commercial purposes after ComReg withdraws the obligations to provide services on the Legacy Infrastructure, following the successful completion of Migration and Switch-off Phase, on a legacy exchange by legacy exchange basis. ComReg notes in this respect that a fundamental premise of the Framework for the Migration from Legacy Infrastructure to Modern Infrastructure is that the Legacy Infrastructure is being retired.

4.86 The act of decommissioning will ensure the Legacy Infrastructure is put into a permanent beyond-use state. This can be achieved by the permanent disconnection of the active equipment from the legacy access cables. Hence, the removal of legacy access cables from ducts/poles is not required in the decommission of Legacy Infrastructure. Decommissioning of the Legacy Infrastructure in a legacy exchange area will take place no later than one month after Milestone 4 for that legacy exchange.

4.87 Following the decommissioning of a legacy exchange area, ComReg will withdraw the obligations to provide and maintain services on the legacy infrastructure for that legacy exchange area, after having ascertained that Eircom has complied with such conditions as have been set down by ComReg in the Framework. Eircom shall provide a Decommission Notice to ComReg within one month of a legacy exchange being decommissioned.

4.88 Eircom's White Paper had proposed that the full list of copper access regulatory requirements be lifted when 95% of premises in a legacy exchange area can order fibre. However, ComReg does not believe that it would be appropriate to remove obligations on the part of Eircom in respect of premises not yet passed by Modern Infrastructure and Eircom is required to provide service assurance for existing copper-based services in a legacy exchange area until Milestones 3 and 4 have been reached for non-exempt and exempt users respectively. The full list of copper access regulatory requirements for a legacy exchange area will be lifted when Eircom confirms decommissioning of the legacy exchange area.

4.6 Protecting end-users and Access Seekers throughout the Migration process

4.89 In order to avoid that Access Seekers and end-users are left with no access following transition through no fault of their own, two additional conditions are set as part of the Framework, in respect of premises passed which may not be connected, and in respect of non-standard, premises-specific, connection costs.

Premises passed may not be connected

4.90 ComReg sees it as essential that if Eircom publishes an in scope premises as passed by Modern Infrastructure, but subsequently it transpires that the premises cannot be served by the Modern Infrastructure, Eircom continues to provide a legacy-based service at that premises until such time as the Modern Infrastructure becomes accessible (noting that a Stop Sell arrangement never applies to a premises with no access to the Modern Infrastructure). Such a rule is, in ComReg's view, necessary to protect the interests of end-users and avoid the situation where an end-user who moves into an in scope premises with access to the existing Legacy Infrastructure, may not have access to a telecommunication service if access to the Modern Infrastructure were not actually available.

4.91 Specifically, under the Framework, Eircom is required to ensure that an end-user may request changes to its existing legacy-based service or a new legacy-based service where Eircom is unable in fact to deliver an ACP within 15 working days (excluding any end-user delay time) on receipt of an ACP order; or access to another wholesale network operator's Modern Infrastructure (including NBI or another wholesale operator) upon which Eircom had relied upon at Milestone 2 proves unavailable. This means that where an in scope premises, passed by Modern Infrastructure, is subsequently unable to get connected to the Modern Infrastructure, in such circumstances, Eircom must implement a process to allow the Access Seeker to order a legacy-based service or request changes to an existing legacy-based service, at that premises, and update the status of the premises in the ISPF. Where the Access Seeker requests a legacy-based service in those circumstances, Eircom is required to deliver the service concerned on a temporary basis – i.e. a TLS – no later than 10 working days, excluding any end-user delay time from receipt of the TLS order. In their Submission to the 2022 Consultation, ALTO and BT suggested that what end-user delay means should be defined. ComReg notes that what end-user delay means in general terms, is a delay that originates solely with the end-user such as the end-user not being available for an appointment or the end-user refusing the service. However, this is a matter that is best dealt with in detail in Eircom's Industry Process Manual ('**IPM**').

4.92 Eircom cannot move to Milestone 3 or 4 for non-exempt and exempt users respectively in a Legacy Exchange Area where there are active TLSs in place. This means that in order to proceed to Milestone 3 or 4 as applicable, Eircom must ensure first that all TLSs in a Legacy Exchange Area have been migrated to Modern Infrastructure including where necessary by making an ACP available to the Access Seekers concerned, updating the ISPF accordingly and notifying the relevant Access Seekers of the ACP's availability so they can place an order for migration from the TLS. In other words, Eircom may proceed to Milestone 3 or Milestone 4 as the case may be in respect of premises where a TLS was put in place only where the Access Seeker who ordered the TLS has terminated the TLS or has migrated its customer to Modern Infrastructure.

4.93 For example, if an RSP wishes to migrate an end-user during the Switch-off Phase 1 period to Modern Infrastructure operated by Siro (approved by ComReg at Milestone 2), but Siro encounter difficulties with connection, the RSP can request a TLS from Eircom after 15 working days of the migration order. The RSP may terminate the TLS using the standard broadband migration process as soon as the delivery issue is resolved by Siro and the modern-infrastructure based service is installed. If the delivery issue cannot be resolved by Siro and/or it has not been resolved by the time that Eircom wishes to move to Milestone 3 or 4 as applicable, Eircom may do so only by making available an ACP on the Eircom Modern Infrastructure to the RSP, having updated the ISPF entry for the premises to ensure the accuracy of the file.

4.94 ComReg is satisfied that the requirement that Eircom keeps available a TLS for those premises marked as passed by Modern Infrastructure but which in practice cannot be connected, is sufficient to address the concerns of several Respondents that a premises passed by Modern Infrastructure does not necessarily mean that it can be connected.[113] ComReg in this regard does not agree that the survey of the Eircom network suggested by Respondents[114] is necessary either in advance of development of ACPs or before or as part of the commencement of the CSO project. This would require a disproportionate amount of work by Eircom and would unduly delay the onset of the Migration from Legacy Infrastructure process. In February 2023, Eircom's FTTH network passed approximately 1,000,000 premises[115] and connected [✂ [redacted] ✂] premises to this network, as of Q1 2023. During this rollout, Eircom will have gained an insight into the number of premises on average which will need ACPs other than FTTH in order to estimate

[113] ALTO Submission, page 5 and BT Submission, page 5.

[114] ALTO Submission, pages 7-8; Sky Ireland Submission, page 2; Vodafone Submission, page 4; SFG Submission, pages 1-3

[115] https://www.openeir.ie/5728-2/.

volumes during the ACP development in the Enablement Phase. Considering that the take-up rate for Eircom's FTTH network is approximately [✂ [redacted] ✂] of premises passed, a requirement that Eircom revisit approximately [✂ [redacted] ✂] existing premises which are passed but not connected to ensure that they can be connected would represent a disproportionate amount of work which also has the potential to delay Eircom's FTTH rollout.

4.95 For similar reasons, ComReg does not agree with the proposal that Eircom's OSS should give an indication when an ACP can be delivered more quickly than 15 working days, as suggested by ALTO.[116]

4.96 Sky Ireland's suggestion in its Submission that Eircom be required to make available a fibre line/Distribution Point ('**DP**') testing facility to give Access Seekers certainty that a premises can be connected[117] would have limited benefit while likely delaying the Migration from Legacy Infrastructure process. As the DP is a passive device, it is unclear how such a test would work without a truck roll for a technician to install a temporary device. Even if a device were installed, it would not account for issues which may arise between the DP and the end-user premises.

4.97 In its Submission Eircom was of the view that the requirement that ACPs be delivered within 15 working days of orders or a TLS within 10 working days, amounted to the imposition of SLAs by ComReg, which was not reasonable, and delivery of these services should be in accordance with the terms and conditions consistent with the SMP obligations imposed within the relevant market.[118] However, requirements for delivery within 15 or 10 days for ACPs and TLS respectively are not SLAs – rather they are conditions of the Framework which apply only where Eircom has initiated the Migration from Legacy Infrastructure in order to ensure that the rights of end-users are safeguarded. These conditions only apply in legacy exchange areas where Eircom has triggered Milestone 1 or Milestone 2. Absent these conditions, end-users could be left without a telecommunication service for an unacceptable period of time with no recourse available to them.

4.98 A requirement to deliver an ACP within 15 working days is a fair delivery timeframe for a premises that has been published as passed while leaving Eircom enough time to resolve business-as-usual issues which may arise during an installation.

[116] ALTO Submission, page 9.

[117] Sky Ireland Submission, page 3.

[118] Eircom Submission, paragraphs 12 and 40.

The TLS provides an adequate backstop in the case that issues arise which block the delivery of the ACP in 15 working days.

4.99 The requirement that a TLS be available will ensure end-users are not left without service for a prolonged period. It means that where there is an active copper-based service in place before an order for the ACP is placed, there will be no downtime as the copper service may not be terminated until the ACP installation has successfully completed. In the case where an end-user moves into an in scope premises which is subject to a Stop Sell but cannot receive the ACP (within 15 working days) then activation of a pre-existing copper line is required. ComReg notes that some of these pre-existing copper lines may be re-activated electronically without the requirement of a technician to visit the premises.

4.100 ComReg is of the view that Siro's proposal, namely that where Eircom fails to connect a premises to its FTTH network, Eircom would be obliged to attempt to provide FTTH via an alternative network prior to reverting to a TLS, or in the alternative that Eircom should be obliged to give the customer a €1,500 voucher to facilitate another FTTH provider providing service and cover any connection/migration costs,[119] are not necessary or appropriate to protect the rights of end-users during the Migration from Legacy Infrastructure.

4.101 The requirement that Eircom offers a TLS is a backstop measure designed to ensure that an end-user does not suffer in case a premises counted by Eircom as passed by Modern Infrastructure in fact cannot be connected to Modern Infrastructure within 15 working days. But it is for Eircom to decide when to Migrate from Legacy Infrastructure and ComReg does not believe that it is appropriate or proportionate to require Eircom to rely on another wholesale provider to connect to the premises concerned. It is sufficient for the purpose of protecting end-user's rights to make sure that Eircom provides a TLS until such time as it can deliver a service to the end-user over the Modern Infrastructure. If there are alternative networks available at an in scope premises, the end-user or the RSP is free to reject the TLS and purchase a modern infrastructure-based service via an alternative network provider.

4.102 Eircom shall not trigger Milestone 3 or 4 where active TLS(s) exist, for non-exempt and exempt users respectively. As an end-user is provided with a TLS, where their requested service over Modern Infrastructure was not delivered in a timely manner, the TLS shall not be disconnected before being migrated to a modern-based service.

[119] Siro Submission, page 5.

Non-standard, premises-specific, connection costs

4.103 The installation of an FTTH service may entail work within the curtilage of the customer's premises that is characterised by Eircom as non-standard. This could include, for example, tree-trimming or clearance of duct blockages. At present, when an end-user requests a new FTTH connection, the end-user may be responsible for these non-standard costs that fall within private property or the curtilage of their property when Eircom provides a FTTH service at an end-user's premises. An end-user may currently choose to meet these costs directly by engaging its own contractor. Alternatively, an Access Seeker may choose to absorb some or all of any non-standard premises-specific costs.

4.104 A key objective of the Framework for the Migration to Modern Infrastructure is to ensure that end-users who are obliged to migrate from Legacy Infrastructure to Modern Infrastructure are provided with an alternative service that is comparable in terms of functionality, quality and price. This means, where an end-user whose premises is passed by Eircom's Modern Infrastructure no longer has the option to purchase a new legacy-based service or switch RSP and make changes to their existing legacy-based service (at Stop Sell or Milestone 2), that Eircom must make available at that premises an ACP at no more than the standard connection charge with no additional costs for the RSP and ultimately for the end-user.

4.105 Which ACP to offer is Eircom's choice. For example, if there would be non-standard premises-specific costs associated with connecting a premise to the FTTH network, Eircom may either offer the RSP and ultimately the end-user the FTTH ACP at no more than the standard rental and standard connection charge, or offer another, non-FTTH ACP (at that ACP's standard price including standard connection charge).

4.106 In its Submission,[120] Eircom contended that it was unreasonable that it should bear all of the costs associated with non-standard premises-specific connection to FTTH, and questioned the basis for the recovery of these costs. Eircom provided estimates of its potential cost exposure to non-standard premises-specific connection costs as [✂[redacted]✂]. Siro proposed[121] that the proportion of recoverable costs should be limited to €1,500 for the end-user, with

[120] Eircom Submission, paragraph 47.

[121] Siro Submission, page 5.

Eircom absorbing any costs in excess of this. BT,[122] Vodafone,[123] ALTO,[124] Sky[125] and SFG[126] proposed that Eircom should bear all costs for non-standard premises-specific connection when copper migration has become involuntary.

4.107 To clarify ComReg does not mean to imply that Eircom has an obligation to supply all premises to be migrated with FTTH at a standard connection charge. Eircom can choose to offer a non-FTTH ACP should the provision of an FTTH ACP give rise to non-standard premises-specific connection costs which Eircom is unwilling to absorb. Furthermore, the timing of Milestones and the initiation of any Stop Sell are at Eircom's discretion meaning Eircom can delay triggering these milestones and so reduce or even remove its potential exposure.

4.108 In circumstances where the RSP declines the alternative ACP and requires FTTH, Eircom may then charge to the RSP any non-standard, premises-specific, costs associated with connecting the premises to the FTTH network.

4.109 ComReg notes that Eircom's potential exposure to non-standard connection costs is significantly lower than was estimated by Eircom, because the number of customers with access to regulated copper-based services at the time of migration to Modern Infrastructure will be lower than at the time of Eircom's estimate. The continuing increase in subscriber numbers connected to FTTH,[127] together with the deregulation of the wholesale Fixed Access and Call Origination ('**FACO**') market[128,129] and the potential implementation of proposed deregulatory measures being consulted on in the WLA/WCA Consultation will significantly reduce the number of in scope premises impacted by this Decision.

[122] BT Submission, page 7.

[123] Vodafone Submission, page 6.

[124] ALTO Submission, page 10.

[125] Sky Submission, page 4.

[126] SFG Submission, pages 1- 4.

[127] For example, there has been a 34% increase in the number of FTTH subscriptions for the period Q1 2022 to Q1 2023 (QKDR).

[128] Market Reviews: Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers - Wholesale Fixed Access and Call Origination, ComReg 22/50, Decision D05/22, 29 June 2022.

[129] D05/22 withdrew existing obligations from the FACO markets. From the Decision date of 29 June 2022, an 18-month sunset period applied to existing supply of FACO over PSTN and ISDN FRA/PRA, with a parallel 9-month sunset period for new supply. For ISDN BRA, the sunset period for existing supply is 12 months, with a parallel 2-month sunset period for new supply.

4.110 ComReg is satisfied accordingly that it is appropriate, reasonable and proportionate to require that Eircom only charges the applicable standard connection and rental charges associated with the ACP used to connect an in scope premises to its Modern Infrastructure. The choice of ACP is Eircom's. The benefits of this approach include the following:

(a) It minimises the risk that non-standard premises-specific connection costs act as a barrier to Migration from Legacy Infrastructure as Access Seekers will be offered an ACP at a comparable price;

(b) The alternative to a copper service provides end-users with a service comparable to (or better) than the service they currently enjoy; and

(c) Eircom will achieve benefits in decommissioning its copper network.[130]

4.111 Both Eircom[131] and Siro[132] claimed that there was no evidence to substantiate whether non-standard premises-specific costs act as a barrier to FTTH take-up, and made general points about the potential impact on competition of ComReg's proposals. Eircom[133] stated that ComReg had not provided evidence of benefits associated with decommissioning its copper network. However, ALTO[134] and Sky[135] both expected Eircom to achieve a significant windfall, and NBI[136] noted likely efficiencies for Eircom in not running a copper network alongside its fibre network.

4.112 The Framework is concerned with ensuring that those end-users who are impacted by copper switch-off are provided with an alternative comparable service and not left to bear the costs of Migration from Legacy Infrastructure thereby risking such end-users being left with no connection at all. It is essential that RSPs and end-users who are obliged to migrate from Legacy Infrastructure to Modern Infrastructure are provided with an alternative comparable service and are not required to bear additional costs. As ComReg has discussed above, Eircom can choose to minimise or remove liability for those costs.

[130] Given that the coverage thresholds of 75% and 100% include premises passed by NBI, Eircom will avoid incurring any costs in providing FTTH to those premises while gaining all the benefits from copper decommissioning.

[131] Eircom Submission, paragraphs 49-53.

[132] Siro Submission, page 6.

[133] Eircom Submission, paragraph 52.

[134] ALTO Submission, page 10.

[135] Sky Submission pages 4-5.

[136] NBI Submission, page 17.

4.113 In ComReg's view, there will clearly be benefits for Eircom associated with the decommissioning of its copper network. Eircom itself in its White Paper identified the benefits associated with decommissioning. Eircom explained that fibre networks require less maintenance and less energy compared to copper, and that further operating costs would be saved due to a reduction in the number of exchanges required. ComReg agrees that potential benefits may be achieved by Eircom in the Migration from Legacy Infrastructure to Modern Infrastructure.

4.7 Monitoring the Migration from Legacy Infrastructure

4.114 In order that progress of key milestones of the Migration and Switch-off Phase can be monitored, it is necessary that Eircom makes available, on a monthly basis, key information from the time the Switch-off Plan is published (unless otherwise agreed with ComReg) and until the Decommission Notice for the final legacy exchange area is issued, the following information:

(a) Exchange (Legacy Infrastructure) name;

(b) Exchange (Legacy Infrastructure) code;

(c) Stop Sell notice date;[137]

(d) Number of in scope premises in the legacy exchange area;

(e) Number of in scope premises in legacy exchange area passed with Modern Infrastructure at Stop Sell notice date;[138]

(f) Percentage of in scope premises in legacy exchange area passed with Modern Infrastructure at Stop Sell notice date (paragraph 4.114 (e)/(d));

(g) Stop Sell date (Milestone 1);[139]

(h) Number of in scope premises in legacy exchange area passed with Modern Infrastructure at Stop Sell date;[140]

(i) Percentage of in scope premises in legacy exchange area passed with Modern Infrastructure at Stop Sell date (paragraph 4.114 (h)/(d));

(j) Number of in scope premises in legacy exchange area passed with Modern Infrastructure;

[137] Where Eircom implements Stop Sell.

[138] Where Eircom implements Stop Sell.

[139] Where Eircom implements Stop Sell.

[140] Where Eircom implements Stop Sell.

(k) Percentage of in scope premises passed with Modern Infrastructure (paragraph 4.114 (j)/(d));

(l) Number of in scope premises with active legacy copper-based services;

(m) Percentage of in scope premises with active legacy copper-based services (paragraph 4.114 (l)/(d));

(n) Number of in scope premises with TLSs;

(o) Number of exempt users registered;

(p) Modern Infrastructure Rollout Complete date and Switch-off Phase 1 notice date (Milestone 2);

(q) Switch-off Phase 1 forecast date;

(r) Switch-off Phase 1 confirmation notice date;

(s) Switch-off Phase 1 complete and Switch-off Phase 2 notice date (Milestone 3);

(t) Switch-off Phase 2 forecast date;

(u) Switch-off Phase 2 confirmation notice date;

(v) Switch-off Phase 2 complete date (Milestone 4); and

(w) Decommission date.

4.115 A sample hypothetical report containing a number of rows is published[141] along with a description in Appendix 2 to show how the fields should be populated.[142]

4.116 Sky Ireland proposed that additional metrics be reported on by Eircom, such as the breakdown of orders submitted on a monthly basis. This breakdown would include orders submitted, orders delivered, orders rejected for lack of infrastructure, and average delivery times on a per exchange basis.[143] However, as the report is provided monthly, and as the delivery performance level spans up to 15 days for ACPs, there would be added complexity on this report to take into consideration orders spanning two reporting periods. Tracking orders across reporting period every month could require a disproportionate effort from Eircom and would unduly complicate the monitoring report. As part of the 2022 KPI Decision,[144] ComReg is receiving similar cumulative information from across the network from Eircom on a

[141] Sample monitoring report, ComReg XX\YYa.

[142] BT requested that ComReg provide some worked examples of the monthly monitoring report, see Submission, page 7.

[143] Sky Ireland Submission, page 5.

[144] 2022 KPI Decision, ComReg D04/22.

quarterly basis for FTTH. Access Seekers will also be able to bring issues they experience during this process to ComReg's attention via the ongoing engagement fora. In addition, an Access Seeker can submit a written notice of a request for dispute determination to ComReg.[145]

4.117 In ComReg's view, the existing mechanisms, including the quarterly report under the 2022 KPI Decision, the engagement forum and the dispute resolution process are sufficient to address SFG's concern regarding the importance to monitor Eircom's behaviour prior to the implementation of the principles/framework citing examples of problems it has encountered for standard migrations from Bitstream to VUA for FTTC/FTTH due to Eircom data issues which require Open Eir Contact Centre ('**OECC**') intervention.[146]

4.118 The published information (outlined in paragraphs 4.114 and 4.122) will provide a reference for ComReg and Access Seekers with regard to the status of each legacy exchange in relation to the Framework for transition to the Modern Infrastructure, thereby improving the transparency of the process.

4.119 Eircom requested that the reporting period be changed from monthly to quarterly to align with geo directory updates and current network rollout reporting periods. Eircom stated that there would not be significant change on a monthly basis to warrant monthly reporting.[147] However, Geo-Directory updates should have very little bearing on Migration from Legacy Infrastructure reporting as new premises added via Geo Directory are not likely to have a copper line and so will not be in scope for the program. Analysis of Eircom's APQ file shows that Eircom are passing [✂ [redacted] ✂] per quarter and this number is anticipated to accelerate in 2023.[148] ComReg's view is that this is a significant number of additional premises on a monthly basis and warrants a monthly report to provide transparency to Access Seekers and ComReg.

4.120 Each monthly report is to be archived and available for viewing by ComReg and Access Seekers until 2 months after all legacy exchanges in Eircom's Switch-off Plan have reached the Decommission date. At a minimum, Eircom shall provide the report in .csv format.

4.121 Eircom requested that reporting on the LB TI WHQA products be handled separately as this typically had an A and B end which may be in different

[145] Regulation 67 of the ECC Regulations.

[146] SFG Submission, page 5.

[147] Eircom Submission, paragraph 60.

[148] eir_Fibre_Partnership_Press_Release_220128.pdf

exchanges, and also there are locations where these services terminate which do not have an Eircode.[149]

4.122 ComReg understands that there may be difficulty in supplying data in the same format for the LB TI WHQA services and merging this data with the broadband data. ComReg's view is that Eircom may report separately on LB TI WHQA services, but the frequency and timing of publication must be aligned with the main reporting requirement described in paragraph 4.114. The LB TI WHQA services report shall list:

(a) The legacy exchange name and code;

(b) The number of premises with active regulated copper-based LB TI services; and

(c) The number of premises in paragraph 4.122(b) passed with Modern Infrastructure.

4.123 Eircom stated that as a reseller it has access to information from NBI on premises passed by the NBI network which could be used for reporting. However, Eircom noted that if it were to cease being a reseller, it would no longer have access to this information. Eircom proposed that ComReg is in a better position to collect this data and publish regular reports.[150] NBI also noted Eircom's dependency on information from NBI to comply with its proposed reporting obligations. NBI stated that it was unclear from ComReg's proposals what process would be used for Eircom to obtain such information. NBI suggests one option would be to obtain the information directly from NBI and another would be via ComReg. NBI stressed that it was keen to cooperate in this regard and would propose to align with information already being provided by NBI to DECC under the NBP Contract to avoid unnecessary duplication of data provision. NBI stated that information supplied by it to Eircom for the purpose of preparing duct and pole routes for NBIs network build should not be used for the purposes of Migration from Legacy Infrastructure reporting.[151]

4.124 It is Eircom, as SMP operator, who will notify ComReg of its intention to migrate end-users from its copper network and switch it off. ComReg has set out its view that the NBI network may be used by Eircom when calculating which premises are passed for the reasons described in Section 3.4. However, ComReg's view is that it is a matter for Eircom to agree with NBI on the use of NBI supplied data with respect to the Framework set out in this Decision when publishing the ISPF and

[149] Eircom Submission, paragraph 61.

[150] Eircom Submission, paragraph 59.

[151] NBI Submission, pages 18, 23.

the monthly monitoring data reports. While ComReg may receive data from operators, this is received on a quarterly basis and there is a time lag on this information. ComReg expects that Eircom will want to use the most up-to-date information available to reach milestones efficiently. As part of NBI's Submission, while unsure what process ComReg was proposing, NBI made it clear that it is keen to cooperate in respect of sharing of data. ComReg's view is that, in the case where Eircom wishes to use NBI premises passed data in its monthly monitoring report and for its weekly ISPF,[152] a bilateral arrangement regarding sharing of data between Eircom and NBI would be the most efficient process.

4.125 Siro proposed that the monitoring reports should be made available on a public facing website and not just to Access Seekers and RSPs. This would allow all in scope users, including those who do not have an active service to be aware of the program.[153]

4.126 ComReg does not believe that publication of the monitoring reports would be of any benefit to end-users. The data which will be provided in the report will be cumulative data per exchange. Most end-users will not be aware of the specific exchange they are connected to. The information in the monitoring report is for the benefit of Access Seekers and RSPs to track the progress of rollout in exchange areas to aid their preparation of end-users for migration. Also, the report will allow ComReg to monitor adherence to the conditions set out in this Decision.

[152] Noting the proposed defined markets outlined by ComReg in the WLA/WCA Consultation.

[153] Siro Submission, page 6.

Appendix 1: Decision Instrument

1 STATUTORY POWERS GIVING RISE TO THIS DECISION INSTRUMENT

1.1 This Decision Instrument is made by the Commission for Communications Regulation:

(i) Pursuant to and having regard to sections 10 and 12 of the Communications Regulation Act 2002 and Regulation 4 of the ECC Regulations;

(ii) Pursuant to Regulation 63 of the ECC Regulations;

(iii) Pursuant to the analysis and conclusions set out in the following ComReg Decisions in which Eircom was designated as having SMP: in the markets for Wholesale Local Access and Wholesale Central Access (ComReg Decision D10/18 and ComReg Decision D11/18), Fixed Access and Call Origination (ComReg Decision D05/15) (which has been considered in light of the more recent decision on Fixed Access and Call Origination (ComReg Decision D05/22)) and Wholesale High Quality Access (ComReg Decision D03/20);

(iv) Having, where applicable, pursuant to Section 13 of the Communications Regulation Act 2002, complied with Ministerial Policy Directions;

(v) Having regard to the analysis and reasons set out in ComReg Document No. 22/13;

(vi) Having consulted with, and taken into account the submissions received from, interested parties, pursuant to Regulations 12(3) of the Framework Regulations and Regulation 101(3) of the ECC Regulations;

(vii) Having notified the proposed final decision to the European Commission, BEREC and the national regulatory authorities of other EU Member States pursuant to Regulation 17 of the ECC Regulations and at the same time published the proposed final decision in accordance with Regulation 17 of the ECC Regulations by way of Information Notice [x/x];

(viii) Having regard to the analysis and reasons set out in ComReg Document [x/x] *[the final decision document to which the Decision Instrument is an annex];* and

(ix) Having taken the utmost account of the comments received from the European Commission.

PART I – GENERAL PROVISIONS

2 DEFINITIONS

2.1 In this Decision Instrument, unless the context otherwise requires:

"Access" shall have the same meaning as under Regulation 2 of the ECC Regulations;

"Access Seeker" means an Undertaking (or other authorised operator) that avails or intends to avail of Access to Eircom's network in accordance with a ComReg decision designating Eircom with SMP;

"ACP" means an Eircom Modern Infrastructure based product that is comparable in terms of quality, functionality and price to the Legacy Infrastructure product it is provided in place of;

"APQ File" means Eircom's Advanced Prequalification File published by Eircom further to its obligation under section 10.25(ii), Appendix 20 of ComReg Decision D10/18;

"**Ceased in-situ Copper Line**" means a fully provisioned line that includes copper in part or in full between the MDF and the NTU with no active service;

"Communications Regulation Act 2002" means the Communications Regulation Act 2002 (No. 20 of 2002), as amended;

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

"ComReg Decision D10/18" means ComReg Document No. 18/94, entitled "Market Review – Wholesale Local Access (WLA) provided at a Fixed Location & Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products: Response to Consultation and Decision", dated 19 November 2018;

"ComReg Decision D11/18" means ComReg Document No. 18/95, entitled "Pricing of wholesale broadband services, Wholesale Local Access (WLA) market and the Wholesale Central Access (WCA) markets, Response to Consultation Document 17/26 and Final Decision", dated 19 November 2018;

"ComReg Decision D05/15" means ComReg Document No. 15/82, entitled "Market Review – Wholesale Fixed Voice Call Origination and Transit Markets", dated 24 July 2015;

"ComReg Decision D05/22" means ComReg Document 22/50 entitled "Market Reviews – Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers; Wholesale Fixed Access and Call Origination" dated 29 June 2022;

"ComReg Decision D03/20" means ComReg Document No. 20/06, entitled "Market Review – Wholesale High Quality Access at a Fixed Location" dated 24 January 2020;

"Decision Instrument" means this decision instrument which is made in accordance with the statutory powers and requirements set out in Section 1;

"Decommission" or "Decommissioning" means the act of putting the Legacy Infrastructure into a permanent beyond-use state;

"EECC" or "European Electronic Communications Code" means Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code;

"ECC Regulations" means S.I. No. 444/2022 – European Union (Electronic Communications Code) Regulations 2022;

"Effective Date" means the date set out in Section 17.2 of this Decision Instrument;

"Eircom" means Eircom Limited, a company incorporated in Jersey (Number 116389), registered as a Branch in Ireland (Number 907674), with an Irish registered Branch Office at 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03;

"Eircom's Modern Infrastructure" means Modern Infrastructure operated by Eircom including Eircom's FTTH network;

"End-User" has the same meaning as under Regulation 2 of the ECC Regulations;

"Exempt User" means an End-User providing critical infrastructure or a vulnerable End-User, in each case relying on legacy-based services and as determined by the Retail Service Provider, or an End-User of products supported by regulated LB TI WHQA services;

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

"FTTH" means an access network architecture where fibre optic cable is used to connect the End-User premises to the ODF in an Exchange;

"In Scope Premises" means the premises served with in-situ copper lines, that is, the premises connected to Eircom's Legacy Infrastructure via a fully provisioned line to the NTU, including both premises with an active copper-based service and premises for which the copper-based service has been ceased (Ceased in-situ Copper Lines);

"In Scope Premises File" or **"ISPF"** means the list of all In Scope Premises to be passed by Modern Infrastructure including, where relevant, information on In Scope Premises passed by NBI's Modern Infrastructure;

"KPIs" means key performance indicators;

"Legacy Infrastructure" means the infrastructure operated by Eircom consisting in part or in full of copper between the MDF and the NTU, including copper cables active and passive equipment, including the copper cables;

"Legacy Exchange Area" means the geographic area served by a Legacy Infrastructure exchange;

"LB TI WHQA" means low bandwidth traditional interface Wholesale High Quality Access;

"Modern Infrastructure" means electronic communications network infrastructure other than Legacy Infrastructure, including without limitation network infrastructure which consists wholly of optical fibre elements at least up to the distribution point at the serving location, or an electronic communications network which is capable of delivering, under usual peak-time conditions, similar network performance in terms of available downlink and uplink bandwidth**,** service availability, resilience**,** error**-**related parameters, and latency and its variation;

"NBI" means NBI Infrastructure Designated Activity Company, a company registered in Ireland with number 631656 whose registered office is at 3009, Lake Drive, Citywest Business Campus, Citywest, Dublin 24, D24H6RR, Ireland;

"NBI's Modern Infrastructure" means Modern Infrastructure operated by NBI including NBI's FTTH network;

"NTU" means the legacy network termination unit;

"**ODF**" means optical distribution frame;

"Regulated Access Product" or "RAP" means a product, service or associated facility which Eircom provides under a ComReg decision designating Eircom with SMP;

"Retail Service Provider" or "RSP" means the provider who sells a service to an End-User;

"SLA" means service level agreement;

"Stop Sell" means the stage or milestone during the migration process where Legacy Infrastructure-based services are no longer available for new sale, including in the context of a change of service or change of RSP, at premises passed by Modern Infrastructure;

"Switch-off Plan" means a plan for the withdrawal of Access granted over Legacy Infrastructure by way of Regulated Access Products and migration to Modern Infrastructure;

"Switch-off Proposal" means a draft Switch-off Plan submitted to ComReg for approval;

"TLS" means a temporary Legacy Infrastructure-based service;

"Undertaking" has the same meaning as under Regulation 2 of the EEC Regulations;

"WCA Decision Instrument" or "WCA DI" means the decision instrument found in Appendix 21 of ComReg Decision D10/18 or any decision instrument withdrawing the decision instrument in Appendix 21 of ComReg Decision D10/18, where there is a finding of SMP;

"WLA Decision Instrument" or "WLA DI" means the decision instrument found in Appendix 20 of ComReg Decision D10/18 or any decision instrument withdrawing the decision instrument in Appendix 20 of ComReg Decision D10/18, where there is a finding of SMP; and

"WHQA Decision Instrument" or "WHQA DI" means the decision instrument found in Annex 8 of ComReg Decision D03/20 or any decision instrument

withdrawing the decision instrument in Annex 8 of ComReg Decision D03/20, where there is a finding of SMP.

3 SCOPE AND APPLICATION

3.1 This Decision Instrument shall apply to Eircom and its subsidiaries and any related companies, and any entity which it owns or controls, and any entity which owns or controls Eircom, and its successors and assigns, and the terms "subsidiary" and "related company" shall have the meaning ascribed to them in the Companies Act 2014.

3.2 This Decision Instrument sets out the Framework allowing for the withdrawal of Eircom's SMP obligations to provide access to products, services and facilities over its Legacy Infrastructure where Eircom decides to decommission or replace with Modern Infrastructure parts of the Legacy Infrastructure. To that end, this Decision Instrument requires Eircom to comply with the following requirements:

3.2.1 Requirements that Eircom designs and implements a Switch-off Plan approved by ComReg which includes a transparent timetable and conditions including appropriate notice periods and ensures that Access Seekers have access to the Modern Infrastructure in respect of all In Scope Premises.

3.2.2 Requirements to provide ComReg with certain information regarding Eircom's process for migration from the Legacy Infrastructure that is necessary for ComReg to determine whether the process meets the conditions set out in this Decision Instrument; and

3.2.3 Requirements relating to Eircom's obligation to comply with the conditions set out in this Decision Instrument when undertaking the process of migration from the Legacy Infrastructure.

PART II – FRAMEWORK PRINCIPLES

4 TRANSITION PHASES

4.1 Eircom may not proceed with the Migration and Switch-off process for the withdrawal of Access already granted by way of Regulated Access Products and Services and other facilities over its Legacy Infrastructure in accordance with applicable SMP Obligations, other than in accordance with a Switch-off Plan as further described in Section 6.

4.2 The Switch-off Plan shall organise the migration process from Legacy to Modern Infrastructure over the following three phases, subject to the conditions set out in the Decision Instrument:

Enablement

4.2.1 An Enablement Phase, where Eircom shall in accordance with the requirements of the WLA Decision Instrument, the WCA Decision Instrument and the WHQA Decision Instrument, as applicable, and the requirements set out in Section 7, develop, test and trial the new ACPs which will be available on Eircom's Modern Infrastructure, to the extent necessary.

Migration and Switch-off

4.2.2 A Migration and Switch-off Phase, during which Eircom proceeds, on a Legacy Exchange Area by Legacy Exchange Area basis, to withdraw Access for itself and Access Seekers to the Legacy Infrastructure, where Access to Modern Infrastructure is available to In Scope Premises.

Decommission

4.2.3 A Decommission Phase ensuring that obligations are withdrawn only in circumstances where the Legacy Infrastructure has been put in a permanent beyond-use state.

4.3 Eircom shall put in place, maintain and implement throughout each of the phases an adequate communication plan that is consistent with Eircom's obligations under the Framework set out in this Decision Instrument including in particular the requirements set out in Section 8 and setting out Eircom's communications with Access Seekers and any general information plan for the public.

4.4 Eircom's communications plan under Section 4.3 shall not provide for, and there shall be no, direct communications in respect of Migration from Legacy Infrastructure from Eircom to End-Users who are not retail customers of Eircom, and any public information campaign run by Eircom for the purpose of informing the general public of Eircom's Migration from Legacy Infrastructure plan and its timing may only be carried out under the 'Open Eir' brand.

5 ALTERNATIVE ACCESS

5.1 It shall be a condition of its approval that the Switch-off Plan identifies for all In Scope Premises how Access will be provided to Access Seekers on the Modern Infrastructure substituting the Legacy Infrastructure.

5.2 Where Access is to be provided over Eircom's Modern Infrastructure, the Switch-off Plan shall include, for each RAP provided over Legacy Infrastructure, all applicable ACPs.

5.3 In order for a product to be an ACP, the product shall:

5.3.1 have at least equivalent features and performance for the End-User as the legacy product which it is intended to replace;

5.3.2 be delivered to the location of the legacy service NTU or other location agreed with the End-User, at the End-User's premises;

5.3.3 have at least service equivalence of the legacy product which it is intended to replace in terms of quality of service, service delivery, service assurance, service availability, SLAs and KPIs; and

5.3.4 be of a comparable price to the legacy product it is intended to replace, in terms of both connection charge and rental.

5.4 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 delays that originate solely with the End-User) of receipt of the ACP order.

PART III – MIGRATION FROM LEGACY TO MODERN INFRASTRUCTURE AND COPPER SWITCH-OFF

6 SWITCH-OFF PLAN

6.1 In the event that Eircom makes a decision to commence a migration from the Legacy Infrastructure, before any such commencement, Eircom shall provide in a timely manner formal written notification to ComReg of its proposal (the "**Switch-off Proposal**").

6.2 Written notification for the purpose of Section 6.1 shall include the following information together with a copy of all documents that Eircom relies on as part of its Switch-off Proposal and to fulfil the conditions set out in this Decision Instrument:

6.2.1 For each RAP offered on Legacy Infrastructure, the ACP or multiple ACPs to be offered on Eircom's Modern Infrastructure together with a description of the migration process (including rollback options) from each legacy-based service to the ACPs;

6.2.2 A detailed process document stating:

a) the anticipated timeline for the Enablement Phase, including timelines for design, testing, trial and implementation of ACPs;

b) the anticipated timeline for the completion of the Migration and Switch-off for each Legacy Exchanges Area, to include forecast dates (on a quarter and year basis) for the Milestones and Notices set out in Sections 8 and 10;

c) the decommissioning method which shall be carried out by Eircom within one month after the Migration and Switch-off Phase of a Legacy Exchange Area is completed;

d) a detailed process for Access Seekers and RSPs to follow in order to register an End-User as an Exempt User, save that for all users with regulated LB TI WHQA services, Eircom shall automatically classify them as Exempt Users. The registration of Exempt Users shall be completed one week before Switch off (Phase 1) Complete (Milestone 3) or as otherwise agreed with ComReg;

e) details of the processes to be used to allow order and access to the Temporary Legacy Services provided for in Section 9.1; and

f) 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.

6.2.3 A communication plan to include the following:

a) Details of how, what and when Eircom will communicate to Access Seekers and other industry stakeholders in order to ensure that they are in the position to understand and manage the process and engagement with their own customers, to include details on the duration of the programme, details of all relevant processes generally applicable to the Migration from Legacy Infrastructure and details of the information that will be provided on an exchange by exchange basis; and

b) Details of the public information campaign informing the general public of Eircom's Migration from Legacy Infrastructure plan and its timing.

6.3 Eircom shall provide additional information to ComReg if requested, to enable ComReg to assess and approve the Switch-off Proposal.

6.4 Eircom shall submit the Switch-off Proposal to ComReg for assessment and approval by ComReg, at least three months before it proposes to publish the Switch-off Plan.

6.5 ComReg may require Eircom to amend the Switch-off Proposal, in which case ComReg shall indicate what changes are required and once those changes have been implemented, Eircom shall provide a new Switch-off Proposal (including a version showing changes made to the Switch-off Proposal) for assessment and approval by ComReg.

6.6 Within one month of the date of ComReg's written confirmation that the Switch-off Proposal meets all of the required conditions, Eircom shall publish for Access Seekers and ComReg, its Switch-off Plan in the form of the final approved version of the Switch-off Proposal.

6.7 Any material change to the Switch-off Plan, including for example as regards the ACPs to be offered on the Eircom's Modern Infrastructure, shall require ComReg's prior approval and in such case Section 6.5 shall apply. Within one month of receiving ComReg's approval, Eircom shall publish for Access Seekers and ComReg, an updated Switch-off Plan showing the material change made and all versions of the Switch-off Plan shall be available for Access Seekers and ComReg until two months after the Decommission date of the final Legacy Exchange Area.

6.8 Eircom shall review the indicative dates for exchange milestones included in the Switch-off Plan on at least an annual basis and shall update any dates by 31 December each year until such time that a Decommission Notice under Section 10.2 has been issued for each and every legacy exchange area listed in the Switch-off Plan. Following any changes to dates in the Switch-off Plan, Eircom shall publish for Access Seekers and ComReg a new clean version of the Switch-off Plan together with a version showing the changes made.

6.9 Unless otherwise agreed with ComReg, at the same time Eircom publishes the Switch-off Plan as approved by ComReg, it shall publish for Access Seekers and ComReg the ISPF and shall continue to publish the ISPF on a weekly basis until the Decommission Notice for the final Legacy Exchange Area has been issued. Eircom shall ensure the ISPF is maintained as accurate and any change to the premises information such as Modern Infrastructure status or service type shall be updated in the ISPF at the earliest opportunity. Eircom will update the ISPF according to the APQ file publication timelines, whereby at least 28 days' notice of the Ready for Order date shall be provided when Modern Infrastructure service is available for order at a given premises. The ISPF shall include the following information for all In Scope Premises:

6.9.1 the fields which currently exist in the APQ File;

6.9.2 Eircodes or for In Scope Premises which do not have Eircodes, the latitude and longitude coordinates;

6.9.3 Address Reference Database ('**ARD'**) ID (linked to Eircode where available);

6.9.4 information on Modern Infrastructure status: (i) not passed; (ii) passed (by Eircom, NBI); (iii) not passed - possible exception (not yet agreed with ComReg); (iv) not passed – confirmed exception: access denied; (v) not passed – confirmed exception: passed by alternative wholesale operator(s); or, (vi) not passed – confirmed exception: other.

6.9.5 legacy service connection status (active, ceased in-situ);

6.9.6 Modern Infrastructure service type (for example, FTTH, FWA, etc.) and where this is FTTH but subsequently Eircom decides not to deliver FTTH, the entry shall be amended to describe the relevant ACP; and,

6.9.7 data from other wholesalers of Modern Infrastructure (for example, NBI) upon which Eircom relies to pass 100% of In Scope Premises.

7 ENABLEMENT PHASE

7.1 Upon publication of Eircom's Switch-off Plan, Eircom may commence the Enablement Phase.

7.2 In developing ACPs, Eircom shall follow any relevant mandated product development processes in any relevant ComReg SMP Decision to develop the changes to existing RAPs (if required) and/or new RAPs, including IT and processes required to support migrations.

7.3 Eircom shall carry out a trial in relation to any new ACPs or existing products intended to be an ACP where amendments are required that affect the ordering or delivery process, to include the end-to-end migration process from Legacy Infrastructure, which shall be designed and determined by Eircom but which, at a minimum, shall involve the following:

7.3.1 Eircom shall invite all Access Seekers and RSPs to participate in the trial, by means of:

a) a direct written invitation issued to Access Seekers and RSPs that have signed the relevant reference offer provided by Eircom; and

b) the publication of a general invitation on Eircom's wholesale website;

7.3.2 Eircom shall provide a statement of the objectives of the trial and the requirements for participation to all Access Seekers and RSPs in sufficient time to allow participation;

7.3.3 The trial must be for a reasonable period, sufficient to achieve the objectives of the trial;

7.3.4 Eircom shall notify ComReg in writing at least one month in advance of the proposed trial being notified to Access Seekers and RSPs in accordance with section 7.3.1 above, or as otherwise agreed with ComReg;

7.3.5 Eircom shall notify Access Seekers at least three months in advance of the commencement of the proposed trial, in accordance with section 7.3.1 above, or as otherwise agreed with ComReg;

7.3.6 As part of the trial, Eircom shall maintain a log of all of the issues encountered during the trial. At the end of the trial, as part of the notification of the ACP(s) to ComReg under its obligations under the relevant market, Eircom shall provide ComReg with a report setting out each of the issues encountered and how each issue was resolved;

7.3.7 Eircom shall terminate a trial at least one month prior to the launch of the new or amended product, service or facility being trialled or as otherwise agreed with ComReg; and

7.3.8 Eircom shall notify any new ACP(s) to ComReg based on the relevant applicable obligations in the relevant market.

8 MIGRATION AND SWITCH-OFF PHASE

8.1 The Migration and Switch-off Phase shall consist of the following three mandatory phases and optional initial phase, implemented on a Legacy Exchange Area by a Legacy Exchange Area basis:

8.1.1 Milestone 1: 75% of In Scope Premises in a Legacy Exchange Area are passed by Eircom's or NBI's Modern Infrastructure;

8.1.2 Milestone 2: 100% of In Scope Premises in a Legacy Exchange Area are passed by Eircom's or NBI's Modern Infrastructure;

8.1.3 Milestone 3: Legacy Infrastructure-based services are terminated for Non-Exempt Users;

8.1.4 Milestone 4: Legacy Infrastructure-based services are terminated for all Users.

8.2 Upon publication of Eircom's Switch-off Plan, Eircom may proceed in any Legacy Exchange Area meeting Milestone 1 or Milestone 2 with the Migration and Switch-off Phase. During the Migration and Switch-off Phase, Eircom shall apply the same conditions it imposes on Access Seekers to its own self-supply regarding the provision and maintenance of copper based regulated services.

Milestone 1 – Stop Sell

8.3 Upon Milestone 1 being reached in accordance with Section 8.1.1 in a Legacy Exchange Area, Eircom may trigger, at its election, the Stop Sell of Legacy Infrastructure-based services in that Legacy Exchange Area from the date set in a Stop Sell Notice published at least six months in advance.

8.4 Where in accordance with Section 8.3, Stop Sell has been triggered:

8.4.1 Legacy Infrastructure-based services (to include new order and change to a Legacy Infrastructure-based service or change to the RSP providing the Legacy Infrastructure-based service) shall no longer be available for order at those In Scope Premises within that Legacy Exchange Area that are passed by Modern Infrastructure and marked as such on the ISPF;

8.4.2 Eircom shall continue to make Legacy Infrastructure-based services available for order to those In Scope Premises not passed by Modern Infrastructure for so long as any given In Scope Premises has not been marked as passed by Modern Infrastructure in the ISPF.

8.5 A Stop Sell may only apply in respect of a Legacy Exchange Area for a maximum period of two years before Milestone 2 is reached and a Switch-off (Phase 1) Notice issued in accordance with Section 8.10. Where no Switch-off (Phase 1) Notice is issued for the Legacy Exchange Area concerned within two years of Stop Sell commencement, Stop Sell shall lapse and Eircom shall provide Access to the Legacy infrastructure in the Legacy Exchange Area and make Legacy Infrastructure-based services available for order in accordance with applicable SMP obligations.

Milestone 2 – All In Scope Premises Passed

8.6 Where less than 100% of In Scope Premises are passed by Eircom's or NBI's Modern Infrastructure, Eircom may, no later than one month in advance of the date Eircom intends to publish for the Legacy Exchange Area the Switch-off (Phase 1) Notice referred to in Sections 8.9 to 8.12, seek ComReg's prior approval in writing, providing reasonable grounds, to

proceed to Milestone 2 providing a report on a Legacy Exchange Area basis containing the following information:

8.6.1 the Eircodes of the In Scope Premises that are not passed by Eircom's or NBI's Modern Infrastructure (or for In Scope Premises which do not have Eircodes, the latitude and longitude coordinates);

8.6.2 the Address Reference Database ("**ARD**") IDs of the In Scope Premises;

8.6.3 the reasons why Eircom's Modern Infrastructure is not available (per In Scope Premises) together with evidence of same, including where Eircom states that it has been denied access to private property as part of its Modern Infrastructure rollout activities, conclusive evidence of denial of access to the property;

8.6.4 the identity of the network operator other than Eircom and NBI offering wholesale access to Modern Infrastructure passing the In Scope Premises, where applicable;

8.6.5 the legacy service status (Ceased in-situ Copper Line or active service) and legacy service type (if active); and

8.6.6 the identity of the RSP(s) where the legacy service status is active.

8.7 Upon approval of ComReg, Eircom shall update the ISPF entries for the exceptions with the relevant status as outlined in Section 6.9.4 (iv) to (vi) above.

8.8 For the purpose of Section 8.6, ComReg may require any additional information that ComReg considers is necessary to its determining whether to allow Eircom to proceed to Milestone 2, and attach any conditions as it considers appropriate in all the circumstances to its approval.

Switch-off (Phase 1) Notices

8.9 Upon Milestone 2 being reached in accordance with Section 8.1.2 or Section 8.6 as the case may be, and a registration process allowing Access Seekers and RSPs to register an End-User as an Exempt User being in place, Eircom may, save in respect of Exempt Users, withdraw access to Legacy Infrastructure in a Legacy Exchange Area subject to providing a minimum of 12 months' notice to Access Seekers in accordance with Section 8.10.

8.10 Eircom shall provide notice by publishing for Access Seekers and ComReg a Switch-off (Phase 1) Notice, stating the forecast date on which switch-off for End-Users (except for Exempt Users) is planned to take place at least

12 months in advance, and by confirming such date by publishing for Access Seekers and ComReg a Switch-off (Phase 1) Confirmation Notice at least three months in advance of switch-off taking place.

8.11 Eircom shall not amend the date for switch-off set out in a Switch-off (Phase 1) Confirmation Notice without ComReg's prior approval.

8.12 Upon switch-off, Eircom shall publish for Access Seekers and ComReg a Switch-off (Phase 1) Complete Notice confirming that all access to Legacy Infrastructure in the Legacy Exchange Area concerned has been withdrawn save as regards Exempt Users.

Switch-off (Phase 2) Notices

8.13 On switch-off having taken place for End-Users other than Exempt Users, Eircom may proceed with withdrawing access to Legacy Infrastructure for Exempt Users in a Legacy Exchange Area subject to having provided a minimum of an additional six month notice to Access Seekers in accordance with Section 8.14.

8.14 Eircom shall provide notice by publishing for Access Seekers and ComReg at least six months in advance, a Switch-off (Phase 2) Notice, stating the forecast date on which switch-off for Exempt Users is planned to take place, and by confirming such date by publishing for Access Seekers and ComReg a Switch-off (Phase 2) Confirmation Notice at least three months in advance of switch-off taking place.

8.15 Eircom shall not amend the date for switch-off set out in a Switch-off (Phase 2) Confirmation Notice without ComReg's prior approval.

8.16 Upon switch-off, Eircom shall publish for Access Seekers and ComReg a Switch-off (Phase 2) Complete Notice confirming that all Access to Legacy Infrastructure in the Legacy Exchange Area concerned has been withdrawn.

9 SAFEGUARDS

Temporary legacy services

9.1 Where in a Legacy Exchange Area in respect of which a Stop Sell applies or a Switch-off (Phase 1) Notice or a Switch-off (Phase 2) Notice as applicable has been published:

(a) Eircom is unable to serve by an ACP an In Scope Premises passed by Eircom's Modern Infrastructure in accordance with Section 5.4 or

(b) An RSP notifies Eircom that connection to Modern Infrastructure is not available in respect of an In-Scope Premises passed by Modern Infrastructure other than Eircom's as established by Eircom in accordance with Section 8.6.4,

Eircom shall make a TLS available for order to that In Scope Premises and provide the Access Seeker concerned with the TLS no later than ten working days from receipt of the order excluding any delays that originate solely with the End-User.

9.2 Eircom shall continue to provide a TLS requested under Section 9.1 for so long as the TLS has not been terminated at the request of the RSP or the In Scope Premises is not connected to Eircom's Modern Infrastructure.

9.3 Eircom may not issue a Switch-off (Phase 1) Complete Notice in respect of a Legacy Exchange Area where there are In-Scope Premises of non-Exempt Users in that Legacy Exchange Area served by a TLS, or a Switch-off (Phase 2) Complete Notice in respect of a Legacy Exchange Area where there are In-Scope Premises of Exempt Users in that Legacy Exchange Area served by a TLS.

Connection Charges

9.4 From the time that Stop Sell has commenced in respect of the In Scope Premises concerned (if Stop Sell applies) or from when a Switch-off (Phase 1) Notice has been published in a Legacy Exchange Area, and until such time that a Switch-off (Phase 1) Complete Notice in respect of Non-Exempt End-Users, or a Switch-off (Phase 2) Complete Notice in respect of Exempt End-Users has issued, Eircom shall charge no more than the applicable published standard connection charges and rental charges associated with the ACP used to connect the In Scope Premises to its Modern Infrastructure using the ACP of its choice.

9.5 For the purpose of Section 9.4, and for the avoidance of doubt:

9.5.1 Subject to Section 9.5.3, Eircom may not raise charges that are additional to the standard connection charges and rentals, including in particular, charges designed to recover premises specific connection costs relating to work carried out on private property, or pass onto Access Seekers any such costs in addition to the standard connection charges;

9.5.2 The choice of ACP is Eircom's and Eircom's only at all times and Eircom may decide not to provide an ACP which gives rise to non-standard connection costs and instead, provide another ACP.

9.5.3 Where an Access Seeker declines Eircom's ACP of choice to connect an In Scope Premises, Eircom may at its election offer another ACP for that In Scope Premises and charge to the Access Seeker any non-standard, premises-specific, costs associated with that ACP.

10 DECOMMISSIONING

10.1 Following publication of a Switch-off (Phase 2) Complete Notice in respect of a Legacy Exchange Area, Eircom shall not offer any services over the Legacy Infrastructure and shall decommission the Legacy Infrastructure within one month of issuing the Switch-off (Phase 2) Complete Notice, so that it is permanently put into a non-usable state in the Legacy Exchange Area.

10.2 Eircom shall provide written confirmation ('**Decommission Notice**') to ComReg that an exchange has been Decommissioned within two months of issuing the Switch-off (Phase 2) Complete Notice.

PART IV – MONITORING AND WITHDRAWAL

11 MONITORING

11.1 Within one month of the publication of the Switch-off Plan set out in Section 6 of this Decision Instrument, Eircom shall, on a monthly basis, publish information to ensure that Access Seekers and ComReg can monitor the progress of the Migration and Switch-off Phase.

11.2 Eircom shall publish the monthly report for Access Seekers and ComReg, in a format agreed with ComReg, and keep all such monthly reports available for viewing by Access Seekers and ComReg until at least two months after all Legacy Exchange Areas listed in Eircom's Switch-off Plan have been Decommissioned.

11.3 Each monthly report shall include, for each Legacy Exchange Area referring to the name and code of that legacy exchange, the following information:

(a) Whether Stop Sell applies: Y/N;

(b) Stop Sell notice date if applicable;

(c) Number of In Scope Premises in the Legacy Exchange Area;

(d) Number of In Scope Premises in Legacy Exchange Area passed with Modern Infrastructure at Stop Sell notice date;

(e) Percentage of In Scope Premises in Legacy Exchange Area passed with Modern Infrastructure at Stop Sell notice date;

(f) Number of In Scope Premises in Legacy Exchange Area passed with Modern Infrastructure at Stop Sell date;

(g) Percentage of In Scope Premises in Legacy Exchange Area passed with Modern Infrastructure at Stop Sell date;

(h) Number of In Scope Premises in Legacy Exchange Area passed with Modern Infrastructure;

(i) Percentage of In Scope Premises passed with Modern Infrastructure;

(j) Number of In Scope Premises with active legacy-based services;

(k) Percentage of In Scope Premises with active legacy copper-based services;

(l) Number of In Scope Premises with TLSs;

(m) Number of Exempt Users registered;

(n) Stop Sell date (Milestone 1);

(o) Modern Infrastructure Rollout Complete date and Switch-off Phase 1 notice date (Milestone 2);

(p) Switch-off Phase 1 forecast date;

(q) Switch-off Phase 1 confirmation notice date;

(r) Switch-off Phase 1 complete and Switch-off Phase 2 notice date (Milestone 3);

(s) Switch-off Phase 2 forecast date;

(t) Switch-off Phase 2 confirmation notice date;

(u) Switch-off Phase 2 complete date (Milestone 4); and

(v) Decommission date.

11.4 If Eircom chooses to prepare a separate monthly report for LB TI WHQA services, the frequency and timing of publication for Access Seekers and ComReg shall align with the monthly report outlined in Section 11.3. Any separate report for LB TI WHQA services shall include the following information:

(a) Legacy exchange name and code;

(b) Number of In Scope Premises with active copper-based LB TI services; and

(c) Number of In Scope Premises passed with Modern Infrastructure.

12 WITHDRAWAL

12.1 On a Legacy Exchange Area basis, from the date Eircom commences Stop Sell in respect of the Legacy Exchange Area (subject to Stop Sell lapsing in accordance with Section 8.5), the obligations in the WLA Decision Instrument, the WCA Decision Instrument and the WHQA Decision Instrument to provide new Access to Undertakings to services on the Legacy Infrastructure in that Legacy Exchange Area shall be withdrawn in respect of those In Scope Premises with access to Modern Infrastructure, subject always to Sections 9.1 to 9.3.

12.2 In the case of no Stop Sell, on a Legacy Exchange Area basis, from the date Eircom publishes a Switch-off (Phase 1) Notice in respect of the Legacy Exchange Area, the obligations in the WLA Decision Instrument, the WCA Decision Instrument and the WHQA Decision Instrument to provide new Access to Undertakings to services on the Legacy Infrastructure in that Legacy Exchange Area shall be withdrawn, subject always to Sections 9.1 to 9.3.

12.3 On a Legacy Exchange Area basis:

12.3.1 from the date when Eircom has issued a Switch-off (Phase 1) Complete Notice, Eircom shall no longer meet requests for Access or provide services over Legacy Infrastructure in that Legacy Exchange Area, in respect of End-Users other than Exempt Users; and

12.3.2 from the date when Eircom has issued a Switch-off (Phase 2) Complete Notice Eircom shall no longer meet requests for Access or provide services over Legacy Infrastructure in that Legacy Exchange Area.

12.4 On a Legacy Exchange Area basis, from the date Eircom issues a Decommission Notice to ComReg in respect of the exchange, the Access obligations in the WLA Decision Instrument, WCA Decision Instrument and WHQA Decision Instrument for services on the Legacy Infrastructure shall be withdrawn.

PART V – OPERATION AND EFFECTIVE DATE

13 STATUTORY POWERS NOT AFFECTED

13.1 Nothing in this Decision Instrument and these Directions shall operate to limit ComReg in the exercise and performance of its statutory powers or duties conferred on it under any primary or secondary legislation in force prior to or after the Effective Date of this Decision Instrument.

14 MAINTENANCE OF OBLIGATIONS

14.1 Unless expressly stated otherwise in this Decision Instrument, all obligations and requirements contained in Decision Notices and Directions made by ComReg applying to Eircom and in force immediately prior to the Effective Date of this Decision Instrument, including all obligations specified in ComReg Decision D10/18, ComReg Decision D11/18; ComReg Decision D05/22 and ComReg Decision D03/20 continue in force and Eircom shall comply with same.

15 CONFLICT

15.1 For the avoidance of doubt, to the extent that there is any conflict between a ComReg Decision Instrument or ComReg document dated prior to the Effective Date and Eircom's obligations now set out herein, this Decision Instrument shall prevail.

16 SEVERANCE

16.1 If any Section(s), clause(s) or provision(s), or portion(s) of this Decision Instrument, is(are) found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, that(those) Section(s), clause(s) or provision(s), or portion(s) shall, to the extent required, be severed from this Decision Instrument and rendered ineffective as far as possible without modifying the remaining Section(s), clause(s) or provision(s), or portion(s) thereof, of this Decision Instrument, and shall not in any way affect the validity or enforcement of this Decision Instrument or other Decision Instruments.

17 PUBLICATION, NOTIFICATION AND EFFECTIVE DATE

17.1 This Decision Instrument shall be published on ComReg's website (www.comreg.ie) and notified to Eircom.

17.2 The Effective Date of this Decision Instrument shall be the date of its notification to Eircom.

17.3 This Decision Instrument shall remain in force until further notice by ComReg.

ROBERT MOURIK
COMMISSIONER
THE COMMISSION FOR COMMUNICATIONS REGULATION
THE […] DAY OF […] 202[X]

Appendix 2: Monitoring Report Examples

A 2.1 ComReg Sample Migration from Legacy Infrastructure Report[154] shows a hypothetical worked example based on the April 2026 report.

A 2.2 Row 2 shows Ashbourne exchange is nearly at Milestone 3.

(a) Stop Sell implemented on 30 June 2023 at which point 4,000 in scope premises (80%) were passed with Modern Infrastructure.

(b) Milestone 2 was achieved on 1 May 2025, with a Milestone 3 forecast date originally being set at 1 May 2026.

(c) However, the confirmation notice for Milestone 3 was provided on 28 Feb 2026 in which the Milestone 3 date (column S) was set to 16 June 2026. As this date is the confirmed date, it may only be changed following agreement from ComReg.

(d) The current status in the exchange on the report date is 300 active copper-based legacy services, with 80 exempt users registered and 10 TLS services active.

(e) As of April 2026, a maximum of 210 copper-based services will be terminated on 16 June 2026 if these services are not migrated to a modern-based services.

(f) All TLS services (10 in the case of Ashbourne exchange as of April 2026) must be migrated to modern infrastructure-based services before Milestone 3 for non-exempt users and before Milestone 4 for exempt users.

A 2.3 Row 3 shows Abbeyknockmoy exchange has been decommissioned.

(a) No Stop Sell was implemented on this exchange.

(b) There were 600 in scope premises and 30 were registered as exempt.

(c) A confirmation notice was issues on 31 May 2024 which confirmed the Milestone 3 forecast date as 31 Oct 2024.

(d) The forecast date for Milestone 4 was 30 Apr 2025 and this date was confirmed on 31 Jan 2025.

(e) The copper was decommissioned on 31 May 2025.

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A 2.4 Row 4 shows Cork Airport Industrial Estate exchange which is approaching Milestone 4 next month on 31 May 2026.

(a) Stop Sell for this exchange was given notice on 31 May 2023, with the commencement on 30 Nov 2023.

(b) Milestone 2 was met quickly after on 31 Jan 2024 with Milestone 3 forecast date of 31 Jan 25. This date was confirmed on 31 Oct 2024.

(c) Milestone 4 forecast date was originally 31 Jan 26, but no confirmation of the date was sent until 28 Feb 2026 giving a confirmed Milestone 4 forecast date next month on 31 May 26.

(d) Column V (Milestone 4) will be populated with the switch-off date in the June 2026 report (assuming the date did not change, which would require agreement from ComReg).

(e) There are currently 3 active copper-based legacy services which will be terminated on Milestone 4 if not migrated.

A 2.5 Row 5 shows Abbeyleix exchange which met Milestone 2 on 28 Feb 2026.

(a) There are 500 active copper-based legacy services (25% of in scope premises) with 2 exempt users registered.

(b) Milestone 3 forecast date is 28 Feb 2027.

A 2.6 Row 6 shows Athboy exchange which met Milestone 2 on 15 Mar 2026.

(a) Note that 99% of in scope premises are passed by Modern Infrastructure meaning Eircom have received an exemption from ComReg for 30 in scope premises in the exchange.

(b) There are 400 active copper-based legacy services and Milestone 3 forecast date in 30 Jun 2027.

A 2.7 Row 7 shows Aclare exchange which has met Milestone 1 on 30 Mar 2026. There are currently 90 in scope premises with active copper-based legacy services.

A 2.8 Row 8 shows Aughnacliffe exchange which has given notice of a Milestone 1 date.

(a) There are currently 270 in scope premises passed by Modern Infrastructure and 250 with active copper-based legacy services.

(b) Stop sell date is set at 30 Jun 2026. Eircom must pass another 30 in scope premises to meet the 75% threshold required at the stop sell date.

A 2.9 Row 9 shows Annascaul exchange which has not published any notices yet.

(a) There are 600 in scope premises in scope in this exchange but only 50 are passed by Modern Infrastructure.

(b) There are 480 in scope premises with active copper-based legacy services