



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Responses to Consultation 22/87R

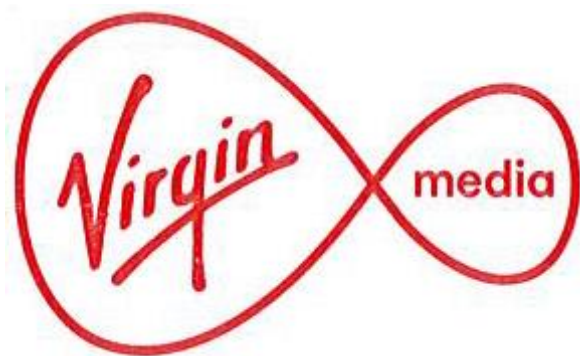
Fixed Voice and Mobile Voice Call Termination Market Review

Non – Confidential

ComReg Document 23/17S

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Virgin Media response to:

**ComReg's Review of the Fixed Voice and Mobile Voice
Call Termination Markets**

7 December 2022

Introduction

Virgin Media Ireland Limited ('Virgin Media') welcomes the opportunity to participate in Comreg's Review of the Fixed Voice and Mobile Voice Call Termination Markets.

Our response is provided below. The response is non-confidential.

Virgin Media Response to Comreg's Review of the Fixed Voice and Mobile Voice Call Termination Markets.

Response to the Comreg Questions

Q 1. *Do you agree with ComReg's preliminary views on the definition of the Relevant Termination Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.*

Virgin Media agrees with ComReg's preliminary views as set out in the Market Review Consultation ("the Consultation") on the definition of the Relevant Termination Markets.

We agree with ComReg that, as set out at paragraph 3.6 in the Consultation, there are currently no existing viable demand-side substitutes at the wholesale level for the delivery of Wholesale Voice Call Termination ('WVCT'), encompassing both Fixed Voice Call Termination ('FVCT') and Mobile Voice Call Termination ('MVCT').

When considering demand-side substitution at the retail level, ComReg is also right to find that calling / called parties are likely to have low awareness of / concerns in relation to certain costs, and that the conclusions from the Termination Markets Decisions (as defined in paragraph 1.6) remain valid (see also paragraphs 3.9 to 3.12).

ComReg is also right, as set out in paragraphs 3.14 to 3.15, to find that there is presently no viable supply-side substitute for WVCT available at the wholesale level.

Finally, we agree with the relevant FVCT and MVCT definitions proposed – namely a minor adjustment to the FVCT Market definition to take account of changes in underlying technology, in particular the greater use of Internet Protocol ('IP') based technology (see paragraphs 3.29 and 3.30), plus no change for the MVCT Market definition (see paragraph 3.34).

Q 2. *Do you agree with ComReg’s preliminary conclusions on the 3CT for the Relevant Termination Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.*

Virgin Media agrees with ComReg’s preliminary conclusion in relation to its assessment of Criterion 1 (“*the presence of high and non-transitory barriers to entry*”) of the 3 Criteria Test (‘3 CT’). In both the FVCT and MVCT Markets, there are no effective demand or supply side substitutes to using the network of the terminating operator, nor is there currently any credible prospect of such substitutes emerging. In view of this, ComReg is correct to find that this Criterion is met (see paragraph 4.9).

In relation to Criterion 2 (“*a market structure which does not tend towards effective competition within the relevant time horizon*”) of the 3CT ComReg’s preliminary conclusion is that this Criterion is failed. ComReg provides some brief commentary on underlying factors that suggest the market structure is moving towards effective competition (see paragraph 4.13, sub parts (a) and (b)). However, ComReg appears to place greater weight in its assessment of this Criterion on the presence of other existing regulations (principally the ‘Delegated Regulation’ in addition to Articles 15(2), 60 and 61(2) in the EECC) setting outcomes that would be expected in a competitive market (see paragraphs 4.11, 4.12 and 4.13 sub part (c)); and providing adequate protection against anti-competitive practices in circumstances where SMP is removed, as is being proposed in the Consultation. Virgin Media provides further comments on the proposed removal of SMP below in the response to Question 3.

As noted in the Consultation, given that ComReg finds that Criterion 2 is failed, it does not undertake any assessment of Criterion 3.

Q 3. *Do you agree with ComReg’s conclusions on the withdrawal of SMP and associated remedies on the Relevant Termination Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.*

ComReg’s justification for the removal of SMP turns on the presence of other forms of regulation (as described in the response to Question 2 above) being effective in creating the conditions that would exist in a competitive market and providing adequate protection in relation to price and non-price matters that would normally be conferred by ex-ante SMP remedies.

Separately in the consultation, ComReg rightly finds that there are no alternatives to using terminating operator networks for call termination. Given this, along with the continued importance of the FVCT and MVCT Markets, ComReg needs to be confident that the alternative regulations named in the Consultation will provide adequate protection before it removes SMP.

In relation to pricing matters, Virgin Media agrees that the Delegated Regulation, so long as it remains in place, will be effective in addressing concerns relating to excessive pricing. It is important that there are no regulatory gaps between the removal of SMP and the Delegated Regulation being fully effective.¹

In relation to non-pricing matters, ComReg relies on protection coming from: (i) the Delegated Regulation covering pricing matters; (ii) alternative forms of regulation within the EECC (as described in paragraph 4.22); plus (iii) other industry custom and practice that has developed over time (see paragraphs 4.10 to 4.13). Virgin Media broadly agrees with ComReg that these protections will disincentivise operators from acting in a manner that is likely to harm competition (for example, by engaging in practices that are exclusionary in nature). However, we also consider that the protections cited by ComReg in the non-pricing area are not as strong / watertight as those provided on an ex-ante basis by SMP regulation. In this context, we remain concerned that removal of SMP could still potentially allow damaging behaviour to emerge such as, for example, terminating operators choosing to limit the number of other operators they were willing to enter into interconnection arrangements with for the purposes of call termination and / or transit. While this behaviour may not come to pass for the reasons set out in the Consultation, such outcomes still need to be carefully guarded against as they would be disruptive and harmful to competition should they arise and would need to be promptly addressed. We therefore suggest that if it does proceed with the removal of SMP, ComReg should monitor the operation of the FVCT and MVCT markets closely in order to assess behaviours in those markets, and to test the adequacy of the alternative controls in the absence of SMP. This monitoring should be proactive in nature and is particularly important in the early stages following the removal of SMP. ComReg itself notes its ability to take steps in circumstances where market failures arose, or other regulatory instruments proved an inadequate replacement for SMP (see paragraph 4.25).

Finally, ComReg is correct to impose certain additional 'sunset' interconnection obligations on Eircom (see paragraph 5.4) in order to ensure that sufficient time is given to operators who need to make alternative arrangements in order to avoid disruption to service. If, for valid operational or technical reasons, it takes operators longer than 6 months to move to alternative arrangements, ComReg should be ready to impose longer sunset periods on a case by case basis where justified.

¹ It is also important that the Delegated Regulation is not removed unless and until further detailed review has been conducted showing that it is no longer required. Clearly such conditions are not present at this point in time.

eir

Response to ComReg Consultation:

Market Review: Fixed Voice and Mobile Voice Call Termination Markets

ComReg Document 22/87



7 December 2022



eir response to 22/87

DOCUMENT CONTROL

Document name	eir response to ComReg 22/87
Document Owner	eir
Status	Non-Confidential

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

Response to consultation

1. eir welcomes the opportunity to contribute to the consultation process.

Q.1 Do you agree with ComReg's preliminary views on the definition of the Relevant Termination Markets?

2. eir notes that the proposed Relevant Termination Markets are consistent with the Delegated Regulation.
3. eir notes that ComReg proposes different wording for the definitions of Fixed Voice Call Termination and Mobile Voice Call Termination in the Draft Decision Instrument relative to Fixed Voice Termination Service and Mobile Voice Termination used in the Delegated Regulation. Whilst this does not appear to have any appreciable impact on the overall conclusions we believe it would be appropriate for ComReg to align to the definitions in the Delegated Regulation.

Q.2 Do you agree with ComReg's preliminary conclusions on the 3CT for the Relevant Termination Markets?

4. eir agrees with the preliminary conclusions of the 3CT. The Delegated Regulation negates the need for national regulatory remedies and consequently the second test is not passed.

Q.3 Do you agree with ComReg's conclusions on the withdrawal of SMP and associated remedies on the Relevant Termination Markets?

5. eir agrees with the conclusion to withdraw national regulation of the Relevant Termination Markets thereby reducing the administrative burden on regulated operators.
6. eir has no objection to the proposed 6 month sunset period in principle. However it is unclear why eir is singled out to be subject to a sunset period when a number of other operators have also previously been determined by ComReg to possess SMP in respect of voice termination services. The application of a sunset period that applies to only one designated SMP operator is discriminatory, disproportionate and unnecessary.