Responses to Consultation on ComReg's Access Products and Services KPI Metrics

Non-confidential Submission to document 21/33

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alternative operators in the communications market

Consultation: Access Products and Services KPI Metrics – Ref: 21/33

Submission By ALTO

Date: June 2nd 2021

ALTO is pleased to respond to the Consultation: Access Products and Services KPI Metrics – Ref: 21/33**.**

ALTO welcomes this opportunity to comment on this important consultation.

Preliminary Remarks

We provide this short response having considered matters arising under each question set out in ComReg Document 21/33. We do not propose to address each question posed in the ComReg Consultation Paper.

Response to Consultation

ALTO offers the following general remarks considering its position as an association of undertakings active on the market for access products and services.

ALTO agrees with ComReg's proposal to include Next Generation Access ("**NGA**"), Fibre to the Home ("**FTTH**") and Civil Engineering Infrastructure ("**CEI**") within the list of Key Performance Indicators ("**KPIs**"). This proposal clearly reflects the evolution of technology and the industry and its right to monitor mainstream products on the market in Ireland.

Furthermore, ALTO agrees with ComReg's proposal to prohibit Eircom from applying any form of filtering of fault data so that the full unedited performance and service picture can be seen and interrogated by ComReg. This includes the provision of 'Fault-Not-Found', 'Right When Tested', and other used and useful metrics, etc. figures and cause codes to ComReg.

ALTO is disappointed to note the approach ComReg proposes regarding CEI. Not measuring until a threshold is met based on leased lines is unsatisfactory in our view.

ALTO asks ComReg to reconsider the thresholds and target markets being considered as a reference. ALTOs considers that the target market is wider than leased lines with the main volume of deployment to be found in broadband services passing homes and this is already well underway in the National Broadband Plan ("**NBP**") area and other operators are also using the service for broadband supply.

Significantly and worryingly, ALTO notes that one order for CEI could address a 1000 homes which would be a substantial physical network so the whole measuring approach needs to be re-reviewed by ComReg.

ALTO acknowledges that CEI could also support the leased lines market, however, the CEI product would need to be substantially improved for this to be viable. ALTO believes and submits that the choice of the leased market is incorrect although we agree it could be included alongside the main CEI market which is broadband rollout.

Finally, ALTO notes that in most instances reporting is to ComReg only, with no publication for reasons of confidentiality. We would therefore request that ComReg also produce an annual report of that data so that operators may review whether their own experience is aligned with the average service levels and to highlight whether they are receiving service levels below the average expected by ComReg.

ALTO
2nd June 2021

BT Communications Ireland Ltd ["BT"] Response to ComReg's Consultation:

Access Products and Services Performance Indicator Metrics

Issue 1 – 2nd June 2021

1.0   Introduction

We welcome this important consultation and its purpose to monitor for equivalence issues. We also support the updating of the KPIs to include NGA, FTTH and CEI products which are increasingly characterising the wholesale telecoms market in Ireland and across Europe.

Whilst we appreciate confidential information cannot be shared we believe there is considerable information being captured in the KPIs that would be helpful in the public domain and it would be helpful on top of the reports issued by Eircom for ComReg to publish an annual view of the metrics (sanitised as necessary) for operators to view whether the conclusions and trends align with their individual experience. We note ComReg can do this for the quarter market information reports so we assume it should be possible for this.

2.0   Response to Detail Questions

Q. 1. Do you agree with ComReg's proposals regarding the scope of relevant product and services? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.

BT Response 1

We agree with some of ComReg's proposals regarding the scope of relevant product and services which reflect the evolving market such as to bring NGA and FTTH into scope and to improve the KPIs for CEI services. However, we think ComReg is being too quick to suddenly remove the KPIs on other products such as LLU which are still being used by consumers and business customers at reasonable volumes. We would like to offer the following comments in relation to the KPIs being proposed.

Hence we agree with the following scope:

a.   To maintain KPIs for the WCA Regional Market.
b.   To maintain KPIs for the WLA national market.
c.   We don't agree that the FACO market is appropriate for de-regulation given substantial hurdles preventing an efficient and economic migration away from WLR and we also do not believe the 3CT was carried out properly so we consider the KPIs for the FACO market should continue.
d.   We agree the scope of the KPI should include the NGA, FTTH and CEI markets.

Q. 2. Do you agree with ComReg's approach to keeping KPIs current? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.

BT Response 2

We agree with ComReg's approach to keeping KPIs current and to track emerging products as the market evolves. We would like to make the following comments:

General Comments

a. We agree with ComReg's analysis of the CGA products however there are still substantial numbers of customers using these services and the rollout of NGA/FTTH has not fully reached all customers whether from Eircom or other providers. With regards to LLU which is used to offer bitstream and EFM services we believe it's premature to suddenly drop this product from the KPIs. Whilst we acknowledge KPIs for new provides could be dropped service assurance is critically important to BT and its customers and should be reported for a further three years or to a point when the platforms are retired, whichever is reached first. It should be noted EFM is also used over LLU to provide service to business customers and service assurance equivalence to both markets is important.

b. We agree all the current NGA products such as FTTC and FTTH should be included as these have become key trading markets in Ireland and are expected to continue for many years to come even with Eircom's proposal for copper withdrawal.

c. We fully agree with ComReg's comment in clause 3.11 that it is appropriate to consult on the KPI Metrics for CEI. We also believe the claimed lack of demand in Ireland for CEI is not due to a lack of demand but more to do with the way the product is currently offered. We note effective CEI products in other jurisdictions such as the UK and Portugal, hence we agree with ComReg's proposal to further review the KPIs for CEI to increase the transparency of equivalence issues.

Wholesale inputs Vs Retail Equivalents

We agree it is fundamental to correctly measure the relative quality of wholesale products offered by Eircom against its self-supply to its downstream businesses including its downstream white label operation, its downstream retail operation and to other divisions/depts/subsidiaries etc. We therefore agree with ComReg's approach of identifying "retail equivalents" and we strongly believe such should include its white label wholesale operations which do have the ability and opportunity to offer preferential white label solutions into the wholesale market.

With regards to CEI we are concerned the current ComReg KPIs do not measure equivalence parameters that would highlight whether CEI operators are receiving key inputs equivalently. For example it would be important to focus on issues such as whether CEI access seekers are receiving the same level, quality and format of Passive Access Records that is self-supplied. We strongly believe this area, as well as many others of the CEI product needs to be improved and it is helpful for the KPIs to bring transparency to these equivalence issues.

Products and services in Scope

We agree with the products and service in scope and welcome the inclusion of white label products as these are effectively downstream products with a direct impact on the market. However we

consider that LLU should still be included for service assurance as this is important for the customer base which includes EFM customers. Hence whilst we accept the general approach of clause 3.22 we believe that the reporting to be reduced in a phased way, removing new supply first so that existing customers are protected for service assurance until the product has a negligible level of customers. For LLU we consider a 3-year sunset or the closure of the platforms whichever is the first should be the base for removing the KPIs for this product.

We agree to the publication of the table as it brings improved transparency to this important issue.

We agree with ComReg's approach in 3.21 to allow for a more flexible approach to updating KPIs by using Directions and this should help keep the situation current and meaningful. However, we consider ComReg needs to be transparent in its changes and should give a published notice of not less than 3 months so that other operators have time to consider the change and comment, accept or reject the change prior to the Direction being issued. These Directions should be issued in the open so all can follow what is happening.

Introduction of New Products

We agree with ComReg's view that the KPI metrics should be updated with the launch of appropriate new products as we have learnt the hard way from SLAs that it can take many years to introduce such if they are not introduced at product launch. Hence we fully agree this proposal as Eircom should have considered equivalence within their product design so this should not be onerous for them.

Legacy Products

As regards the proposal for removing KPIs please note our comments concerning LLU and a two phased approach should be adopted based on removing KPIs for legacy declining products. The first phase would be to remove the KPIs on new supply as such is no longer an issue. For the second phase existing customers need to be protected for equivalent treatment for service assurance etc. where the base is still significant and to protect these customers against any forced degradation of service assurance which maybe aimed at influencing the closure of the service. The removal of the KPIs in the second phase would happen when the base is negligible. Our own experience of two legacy residential services was that even with no new supply it took many years (more than 5) before the bases fell to a negligible level.

Q. 3. Do you agree with ComReg's proposed KPIs for appointments for the NGA products and services? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.

BT agrees with ComReg's proposed KPIs for appointments for the NGA products and services and would like to offer the following comments.

    a. We agree both the appointment being met and the average number of visits per appointment metric are critical to the performance of the service. We would like to also understand from the KPI definitions whether the appointment date that ComReg is measuring is the actual appointment date or whether it's an appointment window of a few days as is used for the SLA. i.e. the SLA permits a level of local re-arrangement within a

window of a few days to count as appointment met. We are not commenting of the merit or validity of either approach, it's more to understand whether we are comparing like with like.

Q. 4. Do you agree with ComReg's proposed order related KPI Metrics? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.

BT Response

We agree with ComReg's proposed order of KPI Metrics and the reasons outlined for requiring the KPIs. However given past issues with address matching we would seek a measurement of failed orders due to address matching issues. Whilst a small level of address miss-matching is inevitable this is a critical parameter susceptible to equivalence issues and needs to be monitored closely.

Q. 5. Do you agree with ComReg's proposed KPIs for supply of service in the NGA, CGA and SB-WLR product and services? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.

BT Response

We agree with ComReg's proposed KPIs for supply of service in the NGA, CGA and SB-WLR products and services and fully support the inclusion of the DOA and ELF KPIs which are a very good indicator of the quality of the installation.

One aspect where we consider more specific attention is required concerns the deployment of FTTH where we are seeing a growing list of installation issues leading to long tails for the installation to complete. We believe this is an area sensitive to equivalence concerns as Eircom withdraw its copper network and the known difficulties of installing fibre into urban premises. Whilst we accept some of the characteristics of this will be picked up through the number of customer visits etc. it is important to understand the end to end delivery times for this key product and such should be measured through the KPIs.

Q. 6. Do you agree with ComReg's proposed fault related KPIs metrics? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.

BT Response

We agree with ComReg's proposed fault related KPIs metrics and as per our response to question 5 we fully agree with the inclusion of the DOA and ELF metrics and in-life faults in the form of repeat fault KPI as these largely occur when the install or fault was not fully resolved (We acknowledge some faults can be intermittent making them difficult to fix first time however higher incident rates of DOA, ELF and Repeat faults can indicate other issues). We also understand a field engineers' fault investigation may lead to an unscheduled visit to the customer premises which is understandable and ask ComReg ensure that these are not counted as missed appointments as no appointment was made.

We welcome and support ComReg's prohibition on Eircom filtering any fault types and we would also support the recording of Fault-Not-Found (and similar fault codes e.g. Right When Test etc.) statistics so that the whole picture is available to ComReg. Past industry discussions have highlighted analysis of the FNF figures to be very informative of practices in the whole industry, not just Eircom.

Q. 7. Do you agree with ComReg's approach to the implementation of KPIs for CEI access, including the delaying of the Eircom's obligation to publish KPIs until demand for CEI has grown to a sufficient level? Please provide reasons for your answer.

BT Response

We cannot agree with ComReg's approach to CEI metrics. For example there are 5 products types, and each needed to be addressed. If we take the three categories that ComReg are proposing:

a) Accepted /Rejected order
Our comment below assumes the 'Recorded/Order Receipt has already taken place.

The ComReg proposed metric suggests a simple number or percentage for the volumes of orders accepted/rejected. However such does not consider the scale of the order, some may be considerable passing thousands of premises yet others a single run. We would expect the ComReg measurements to include Major Infrastructure Projects (MIPs) as these are clearly in play and their equivalence is important. Hence a deeper review of order types is needed to monitor equivalence more accurately. Separately we agree with ComReg capturing delay periods within the metric tables but consider longer delay period should also be captured to understand the accurate performance of the product. See our comments to question 8.

b) Completed order metric
Again we consider this is overly simplistic and does not capture equivalence issues being experienced. Indeed this type of headline figure can be unhelpful as such masks a catalogue of issues. For example was the order completed late, how late, weeks, months, years etc. How much did it cost and is this equivalent with an Eircom self-supply? Was the industry given access to the same tool kit as Eircom self-supply etc. We believe some of the facilities being provided by Eircom force the access seekers to manual methods compared to what we believe Eircom have internally so the time taken and Eircom charges will play a big part in determining the characteristic of the service being offered and whether its equivalent. In terms of volume thresholds we would propose ComReg analyse why the product is failing and thus more measurements are needed at this early stage of the product life cycle to highlight why this market failure is happening. The level of issues being raised in the industry fora and to ComReg directly should provide a strong indication of the problems. We are surprised and disappointed with the limited scope of the ComReg proposal in this matter and consider ComReg urgently need to carry out a deeper review of the CEI product as equivalence is critical to making this product work.

Regarding clause 4.69 the Self-Install duct variant has been notified to ComReg for launch hence now is the time to start measuring the performance of the duct and pole product variants and to start publishing the information as appropriate. We are surprised the NBP MIP does not appear to be counted within the CEI KPIs as this project is rolling and the public information on NBP would suggest the downstream volumes will substantially

increase soon. Hence we believe the MIP should be included in any threshold view of the product. We also consider that this is one of the most important times to be capturing CEI data as this market has been failing for many years although its strong in other countries, so we need transparency as to what is happening so issues can be remedied.

Repair of Service Metrics
We agree with ComReg's approach to capturing the repair times and in capturing the total number of faults unfiltered so that an accurate picture can be established.

Q. 8. Do you agree with ComReg's proposed KPIs for the CEI products and services? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.

BT Response

We believe ComReg should consider the different variants of the duct and pole product including the Self-install sub duct product that is about to launch. We also suggest adding the following to the metrics.

For the self-install product we suggest adding a category to address the item of operator deployment design being verified or rejected in a timely way. I.e. The Access Seeker does the design and submits to open eir for agreement for the access seeker to deploy. It's important the access seeker is not unreasonably delayed at this stage and so a metric is needed for this aspect of the self-install products.

Lastly we consider all the CEI metrics should be published by ComReg (sanitised as appropriate) as the transparency in an annual publication will assist the industry in understanding whether it's being treated equivalently.

Q. 9. Do you agree with ComReg's proposals regarding processing, reporting, publication, and auditing requirement to improve the effectiveness of KPI metrics? Do you have any other observations in relation to the requirements being proposed? Please provide reasons for your answers.

BT Response

We agree with ComReg's proposals regarding processing, reporting, publication, and auditing requirement to improve the effectiveness of KPI metrics and would like to offer the following comments in relation to the requirements being proposed:

a. We agree with ComReg's discussion in Section 5.3 of the consultation and the proposal in clause 5.11. This would align with our concerns and previous discussions some years ago over the fault figures and what is included and what is not. One area that we would consider ComReg also review is how the faults numbers are dealt with as they cross months. For example how is the pool of fault numbers treated when it's carried over two or more measuring periods. We understand how it works for SLAs, but it's never been completely clear whether some faults are being lost in carrying the numbers forward. E.g. A fault opens in January and is still open in March. Hence it is clearly not closed in Jan or Feb but did not start in Feb or March, so how is it addressed in the KPIs.

b. We agree with ComReg that a level of automation is very possible when simply updating numbers hence quarterly reporting with 30days to prepare appears reasonable.

c. As per clause 5.17 we would also agree with ComReg that six months provides sufficient time for the new measurements to be implemented, including for CEI, NGA and FTTH/P.

d. As per 5.20 we would also agree that verification and audit of KPI should be available to ComReg to ensure the reporting is accurate.

e. With regard to 5.23 it is clear Eircom will have obtained the data sets as part of the process of building the KPI response plus we are already aware Eircom reports figures to operators individually for SLAs, hence there seems to be very little work involved in the data sets being provided to ComReg annually which is not overly onerous on Eircom, helps maintain an awareness of compliance and ComReg can review from time to time.

f. We fully agree with ComReg's proposal in 5.26 that the business processes should be published with a clear explanation of any formulas or algorithms also published so we can re-work our own numbers for comparison and checking.

g. Lastly agree to the standardised format proposed in clause 5.28.

End

eir Response to ComReg Consultation:

Access Products and Services Key Performance Indicator Metrics

ComReg Document 21/33

2 June 2021

DOCUMENT CONTROL

Document name	eir response to ComReg 21/33
Document Owner	eir
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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'.

Executive summary

1. eir welcomes the opportunity to comment on ComReg's KPI consultation. It is important that the regulator conducts its business in an open and transparent manner.

2. eir is concerned that ComReg is proposing to impose a much more onerous KPI regime. The scale of the proposed regime has increased dramatically in terms of the number of KPI metrics increasing from 114 to 212 and the number of data points requiring validation will increase from 951 to a staggering number of 5,196.

3. A number of the proposed metrics stray outside of the KPI obligation. The purpose of the KPI regime is to provide transparency with regard to eir's compliance with non-discrimination however ComReg is proposing a number of metrics that relate to the quality of service provided rather than measures of equivalence.

4. ComReg has failed to demonstrate that the proposed obligations are necessary, justified and proportionate. ComReg has provided no evidence to suggest that the KPI current regime is not working.

5. ComReg suggests changes to NGA KPIs are needed because they are not specified in D05/11. However this ignores the fact that eir developed and published NGA KPIs from the launch of NGA in 2013. Following its market review in 2018 ComReg concluded that the D05/11 KPI regime should be maintained in respect of the WLA / WCA markets.

6. The correct time and place to specify SMP obligations is at the time a market review is being conducted so that the remedies are aligned to the identified problems. ComReg has provided no evidence that there has been any material change in the WLA / WCA markets since D10/18 to warrant changes on the scale proposed to justify an imperative / urgent need for a review.

7. eir also notes that in its recent FACO market review consultation ComReg also reached a preliminary conclusion that the D05/11 KPI regime was sufficient. eir also notes that ComReg changed the KPI specifications in the WHQA market in Decision 03/20.

8. The current review of the KPI regime has no legal basis and ComReg's Regulatory Impact Assessment is not to a sufficient standard to inform the regulatory decision making process.

9. Even if changes to the KPI regime could be justified, which we do not believe they can at this time, as we highlight in detail in this response a significant amount of further work is required

to develop a meaningful set of KPI metrics focussed on measuring equivalence in a manageable way.

10. eir notes ComReg's proposal for a mechanism to request withdrawal of KPI metrics when "*demand for a Regulated Product or Service falls below the population threshold from which meaningful conclusions can be drawn from the data*". eir agrees the KPI regime should take due account of statistical significance and strongly believes that the manner in which statistical significance is to be assessed needs further specification within the proposed regime.

11. Given the granular nature of the proposed KPI regime, we believe a number of the proposed KPIs will already fail a statistical significance test and therefore in the interest of proportionality ComReg should assess the statistical significance of its proposed metrics **before** mandating that eir must develop reporting capabilities.

12. Finally in respect of the proposed CEI metrics eir notes its product reporting system is not set up in a manner that allows relevant civil engineering elements of Zone B NGN Ethernet services to be readily identifiable and our position on the feasibility of implementing the proposed CEI KPI regime is reserved accordingly. eir agrees in principle that commencement of CEI KPI reporting should be linked to measures of demand to ensure statistical significance. However the granular nature of the proposed CEI metrics means it may be many years before there is a sufficient volume of transactions.

Response to consultation

No legal basis for review

13. In this consultation ComReg proposes to make substantial changes to the KPI reporting regime in the WLA / WCA markets established in D10/18. ComReg does not propose to make changes to KPIs in respect of the WHQA market on the basis of the changes it mandated in D03/20 following its market review. We also understand it is ComReg's intention that KPI metrics pertaining to the FACO market established in D05/15 should remain largely unchanged albeit apply to a much smaller base of regulated lines which may give rise to questions of statistical significance.

14. However with regard to FACO KPIs eir notes that there is an ongoing market review of that market and that ComReg proposed in its draft Decision (ComReg 20/46) that the KPI reporting obligation should be maintained as set out in D05/11[1]. It is therefore concerning and contrary to the principle of regulatory predictability that ComReg is now seeking, through an entirely separate process, to amend the suite of obligations previously consulted on in an active market review. It is notable that ComReg reviewed the KPI obligations during the WHQA review and interested parties therefore had a complete view of the proposed package of remedies in order to be able to make informed comment during the consultation process.

15. With regard to ComReg's focus on changing remedies in the WLA / WCA markets. ComReg is proposing a significantly more intrusive KPI remedy with both expanded scale and scope. ComReg proposes that the number of metrics should increase from 114 to 212. The proposed change in approach would mean that the number of data points requiring validation will increase from 951 to a staggering number of 5,196[2]. As we discuss later in this response some of these proposed metrics are at such a granular level that the published metrics will not provide meaningful information to interested parties. ComReg is also proposing to extend the scope of the KPI regime into assessment of quality of service rather than measures to demonstrate compliance with non-discrimination obligations which is ultra-vires to ComReg's statutory powers.

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[1] eir's position on the merits of ComReg's KPI proposal are set out in its response to ComReg 20/46
[2] This is based on the tables set out in Schedule 4 KPI reports to the draft Decision instrument and in line with current KPI metrics eir assumes the reporting to be monthly therefore there would be three versions of each table required each quarter.

16. ComReg states in the current consultation[3] "*a number of changes are required to ensure that the KPI Metrics are relevant to the regulated markets and appropriate, to improve the clarity and granularity of KPI Metrics reporting, and to provide for mechanisms allowing for the update of KPIs as required to ensure they remain effective and meaningful.*" However ComReg has provided no tangible basis as to why the proposed changes are <u>required</u>.

17. ComReg goes on to suggest that there is an <u>imperative</u> need to expand the existing KPI requirements because the current mandated KPIs do not include NGA products and services. It is not at all clear why ComReg now considers there is an imperative, urgent or crucial need to impose NGA KPIs in 2021. In respect to eir's compliance with its non-discrimination obligations - what has now changed since the launch of NGA services in 2013? Or since the market was last reviewed in 2018? With respect, ComReg should first determine whether the market remains susceptible to ex-ante regulation before considering that more regulation is required.

18. The reality is that open eir already provides a fulsome suite of NGA KPIs and has done since 2013. This was the case when ComReg concluded its last market review in 2018 and decided that the mandated regime should be maintained per D05/11.

19. In 2018 ComReg advised[4] (with the exception of KPIs in respect of CEI[5]) it "*will continue to monitor the market. If appropriate, ComReg may propose additional remedies or further specify existing remedies when justified by its objectives as and when those remedies are necessary and proportionate.*"

20. ComReg has not met its own conditions to review the NGA KPI regime. The consultation paper shows no evidence that ComReg has monitored the market and identified an issue that requires a necessary and proportionate response. However ComReg is obliged under Article 68 (4) of the Code to ensure "*Obligations imposed in accordance with this Article shall be: (a) based on the nature of the problem identified by a national regulatory authority in its market analysis*". For this to be effective, ComReg must first identify the problem. ComReg has not demonstrated that a problem has arisen in the WLA or WCA markets since D10/18 was issued. Indeed D10/18 introduced de-regulatory measures in the WCA market, D03/20

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[3] Para. 1.3
[4] ComReg 18/94 (D10/18) para. 7.1089
[5] A consultation in respect of CEI KPIs is not unexpected in view of paragraph 7.1095 "*Having regard to the analysis set out in the Consultation, along with its consideration of the Respondents' views, ComReg retains its view that it is necessary to develop a set of KPIs with respect to CEI access and it will consider consulting separately on specific CEI KPIs, at the appropriate time.*"

introduced de-regulatory measures in the WHQA market, and ComReg's preliminary view is to introduce de-regulatory measures in the FACO market. All these point towards an improving competitive environment in the regulated markets suggesting there is not a regulatory problem requiring remediation. Consequently ComReg's proposals to substantially increase the KPI regime for broadband services are without any legal basis under the European Regulatory Framework.

21. In paragraph 6.41 of the consultation ComReg seeks to justify amendments to the KPI regime on the basis "*ComReg provided examples of potential competition problems and their impact on competition and End Users* [in the FACO and WLA reviews]." Whilst the potential competition problems raised in those reviews were somewhat text book and not specific to the circumstances in the relevant markets in Ireland, the appropriate time for ComReg to design appropriate remedies is within those reviews and ComReg concluded that the D05/11 KPI regime was sufficient. In the WHQA review (D03/20) ComReg did make amendments to the KPI regime for some metrics and clearly illustrated at the same time as designating Eircom with SMP how the process to impose SMP remedies should operate. This is in stark contrast to today and this consultation where the SMP designation happened a number of years ago in the case of WLA and WCA (meaning the market is closer to the requirement for a fresh review) and more puzzling in the case of FACO where ComReg's preliminary view in that on-going live consultation is that there is no need to those update existing KPIs.

22. The purpose of the KPI regime is to provide transparency in the context of Eircom's obligations of non-discrimination, the potential risk being that open eir could seek to provide a superior level of service to the eir downstream retail arms such that Eircom's SMP in the wholesale market could be leveraged into the downstream retail market.

23. There is no evidence, based on the existing NGA KPIs, that open eir is acting in a discriminatory manner towards eir's retail arms. In paragraph 6.30 the regulatory merits of the KPI regime are flagged noting "*ComReg's analysis of the published KPIs has identified equivalence issues that resulted in ComReg opening a compliance investigation and issuing an Opinion of Non-compliance to Eircom. As a result of these compliance investigations, Eircom implemented process changes to address the identified equivalence issues. This ensured that issues relating to the implementation of Eircom's non-discrimination obligation could be addressed, for the benefit of Access Seekers and ultimately, End Users*." The Opinion of Non-compliance referred to occurred in 2016 in respect of CGA, some 6 years ago, and was related to fault screening tools rather than actual repair performance. The fact

that there has not been material evidence of non-discrimination since then strongly suggests the NGA KPI regime is operating effectively particularly as the provision of NGA RAPs is done to the equivalence of inputs standard.

24. Nor is there any evidence of some advantage being given to eir's retail arms. According to market data published by ComReg eir's retail market share of fixed broadband subscriptions has fallen from 32.5% in Q4 2018 when D10/18 was imposed to 29.9% in Q4 2020. Furthermore eir's retail market share of FTTP broadband subscriptions has fallen from 47% in Q1 2019 when ComReg first published this metric, to 35.3% in Q4 2020. It has previously been noted that eir's retail share in the broadband market is amongst the lowest of any SMP operator in the EU. None of this supports the proposition put forward by ComReg that there is an urgent need to impose more regulatory controls in the form of a significantly more granular and intrusive set of KPI obligations.

25. ComReg is obliged under Article 68 (2) of the Code "*Where an undertaking is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Article 67, national regulatory authorities shall, as appropriate, impose any of the obligations set out in Articles 69 to 74 and Articles 76 and 80. In accordance with the principle of proportionality, a national regulatory authority shall choose the least intrusive way of addressing the problems identified in the market analysis.*" There has been no evident change since ComReg's market analysis in 2018 to justify the imposition of additional, further intrusive regulation. eir also notes that there have been significant developments in eir's Regulatory Governance Model since 2018 including the operation of an Independent Oversight Body, and the scrutiny of ComReg's Regulatory Governance Unit which should provide confidence in eir's compliance with its obligations in a less intrusive manner. Finally, in respect to the market analysis that was undertaken in 2018, in terms of market review period in which ComReg "identified" its regulatory concerns, the elapsed time has been three years (the period in which ComReg should have traditionally[6] already undertaken a fresh review) and is now closer to the milestone[7] which requires ComReg to undertake fresh analysis to ensure those concerns remain as opposed to imposing fresh obligations on outdated analysis under the erroneous assumption that nothing has changed in the market. This is particularly relevant because ComReg has already made this mistake twice before. First, ComReg D03/16 further specified remedies

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[6] Although ComReg, contrary to its legal obligations, has never successfully conducted any market analysis on time in the last 10 years.

[7] Notwithstanding that such an extension from 3 years to 5 years for ComReg to undertake a market review has not been transposed into Irish law – eir accepts that similar to other Articles, which eir has written extensively to ComReg, can have direct effect.

based on a 2011 market analysis decision. At that time of further specifying remedies in 2016 ComReg did not undertake an updated market analysis (which should legally have occurred in 2014) and this led to ComReg clearly failing to correctly identify those new market conditions that were subsequently captured in the full 2018 market analysis decision — which undoubtedly meant that a market was unduly regulated by ComReg for a further two years when such regulation was not in fact warranted. Similarly, the leased line (now WHQA) market analysis decision in 2008 was further specified with additional remedies some 3 years later in 2011. That decision would alarmingly hold until January 2020 when the market was next reviewed. ComReg must accept that for further specification of remedies to be proportionate, appropriate and justified they must at least be done at the time of the original market analysis on which it relies or undertake fresh analysis to justify their specification. The regulatory failures of the past based on such assumptions by ComReg cannot continue. In each of ComReg's recent strategy statement consultations, eir has consistently highlighted the importance of ComReg performing appropriate sequential decision making.

Many of the proposed metrics go beyond the scope of the remedy

26. As already noted the KPI regime is to provide transparency in the context of Eircom's obligations of non-discrimination. Paragraph 8.508 of the WLA/WCA market review consultation (ComReg 16/96) clearly states the purpose of the KPI remedy: "*The 2011 KPI Decision identified the importance of KPIs as a means of monitoring performance of the SMP operator with respect to its non-discrimination obligations.*" However ComReg is now proposing to extend the KPI regime to include quality of service measures.

27. ComReg states at paragraph 6.14 in an attempt to justify its proposals "*Since the 2011 KPI Decision, significant changes have occurred including changes to the regulated markets (i.e. the WBA market is now the WCA market, the WPNIA market is now the WLA market referenced in the 2011 KPI Decision, the segmentation of the markets (i.e. the emergence of sub-geographic markets), the development of new access network technology and a wider portfolio of regulated access products, and changes relating to service delivery and service assurance processes.*"

28. As set out in paragraph 25, ComReg appears to have forgotten its market review programme and the correct way to assess remedies. The 'significant changes' have all been considered in, or are, the outcomes of ComReg's market reviews. The passage of time since 2011 is not of itself a justification for an urgent review.

29. ComReg goes on to state in paragraph 6.14 "*Besides these market, technology, product and process changes, the dependence of End Users on broadband products and services delivered over NGA products has greatly increased, so that End Users are now more sensitive to delays with service delivery and/or service assurance.*" It is of great concern to eir and relevant in the context of proportionality and appropriate justified decision making that ComReg provides no evidence to support this assertion of end-user behaviour and more fundamentally provides no evidence that there is an issue in regard to these sensitivities.

30. At paragraph 6.24 ComReg states "*The improved KPI metrics will assist operators in competing for customers in downstream retail markets. For instance, such information would enable operators to confirm to retail customers the quality of service assurance available, and to provide them with evidence of service quality. End Users would, in turn, benefit from greater information on the retail choices available to them and have increased confidence in competing retail operators. Enhanced retail competition should also deliver important benefits to consumers in terms of price and product innovations over the medium to longer term.*" KPIs which compare how open eir provides Regulated Access Products (RAPs) to eir's downstream businesses on the one hand, and wholesale Access Seekers on the other are not appropriate for measuring quality of service. They are calculated at aggregate levels and are measuring the provision of access to the RAPs in accordance with defined product descriptions and service levels. ComReg is misguided to believe that KPIs are of benefit to assess quality of service. More fundamentally, KPI obligations are to promote transparency in terms of demonstrating eir's compliance with its non-discrimination obligations. Quality of service is an entirely separate matter.

31. ComReg has already imposed obligations in respect of SLAs and a transparency obligation in respect of reporting on aggregate SLA performance. The regulatory regime therefore already considers quality of service. ComReg is exceeding its authority by proposing the inclusion of metrics in the KPI regime that go beyond the objective of monitoring open eir's compliance with its non-discrimination obligations.

32. eir notes that there are aspects of the draft decision which require further clarification before they can be implemented. Precise business rules will need to be specified in order to develop the KPI reporting. One example is the use of Parked Time which is not defined in the draft decision. eir can only assume that the definition for Parked Time is as per the published RAP documentation which may vary from product to product and over time. eir notes that since D05/11 eir has engaged with ComReg to firstly implement the initial KPI reporting and then to amend and update these metrics as required. eir recommends that this

The Regulatory Impact Assessment is not fit for purpose

33. eir notes that ComReg has not requested views on the Regulatory Impact Assessment (RIA). As highlighted above ComReg does not have the legal authority to implement the proposed scale and scope.

34. Even if ComReg had the legal authority the RIA presented does not provide a robust aide for decision making. The RIA is a series of unsubstantiated sweeping statements written with a self-fulfilling objective to give a façade of justification for ComReg's burdensome proposals.

35. At paragraph 6.45 ComReg lists four reasons as to why ComReg feels the proposals are justified. First, in ComReg's view "*The effort incurred in implementing the proposed measures is not considered overly burdensome, taking account of the current KPIs already produced by Eircom and modifications required to current processes for gathering, processing and producing the data set, and publication of KPIs*". ComReg has reached this conclusion in a vacuum without any objective analysis or engagement with eir. This is a significant process flaw. In eir's view we estimate it will likely require at least a year long project to redevelop the reporting systems and the recurring monthly operational effort to write monthly commentary on the 212 metrics and the validation of 5,196 data points will require a significant increase in resources. Given the absence of any evidence to suggest the current KPI regime is not operating effectively, this is an unjustifiable regulatory burden. Note: we assume any third party auditing cost must be borne by ComReg.

36. The second reason offered is that "*The publication of product performance metrics helps Eircom to demonstrate the performance of its wholesale products to existing and potential wholesale Access Seekers, as well as compliance with regulatory obligations imposed by ComReg*". The current KPI regime already achieves this. As identified throughout this response the additional KPI reports sought by ComReg are disproportionate and unjustified.

37. The third reason presented by ComReg is "*The benefits of the proposed KPIs would be substantial in terms of enhancing investor and consumer confidence in Irish telecommunications markets and the resulting promotion of competition and reduction of ongoing regulation costs. The benefits would apply across the board to Eircom, Access Seekers, End Users and to ComReg.*" This statement falls flat. It is nothing more than sweeping assertion. ComReg offers no empirical evidence to support the premise that there

is a deficit of investor and consumer confidence. Indeed the high levels of network investment evident in the market and the high take up of high speed broadband services in a dynamic retail market suggests quite the opposite. It is also not clear how implementing an unnecessarily burdensome and more costly regime leads to a reduction in the cost of regulation.

38. Finally ComReg suggests that "*The KPIs can be used by Eircom as a form of control to help identify issues and mitigate the potential risk of non-compliance.*" Eircom already has a well-established Regulatory Governance Model with over 200 controls and robust governance processes. It is also worth noting that where KPIs are based on metrics for which the activity in question already involves an EoI obligation then it cannot by definition also be a risk of non-compliance but is more certainly a difference arising from operators' own performance.

39. The RIA is not to a sufficient standard to inform the regulatory decision making process.

40. In the event that ComReg can adequately demonstrate that changes to the KPI regime are justified and proportionate, eir is of the view that ComReg would need to clearly document in an annex in the final decision what metrics are removed from the consultation and what metrics remain. This table should clearly set out the rationale for the metric and the exact requirement for each metric.

41. However in light of the points made above, from a legal perspective it appears that ComReg's consultation has not complied with the following legal requirements:

Obligation to provide adequate reasons. As a matter of general law, as well as sector-specific telecoms regulation, ComReg is required to provide appropriate reasons to support both proposing and making decisions. As noted by the Irish High Court in the recent *Facebook v DPC,* the reasoning must be sufficiently adequate to (a) enable a person to know why the decision was made (b) to provide them with enough information to consider whether to appeal the decision and (c) to allow a court hearing an appeal to do so properly. For the reasons outlined above however, the reasoning offered by ComReg in parts of this consultation are so high-level and vague that they do not meet the High Court criteria outlined above for the provision of adequate reasons.

Only take relevant considerations into account. ComReg has a duty to only take into account relevant matters, and avoid taking into account irrelevant matters (see for example *P.&F. Sharpe Ltd v Dublin City and County Manager* 1989 IR 701). As set out above, ComReg appears to have explicitly taken irrelevant considerations into account – namely

monitoring of quality of service, quality of retail offering – in proposing KPIs, whose legal basis is to facilitate compliance with obligations of non-discrimination. Equally, ComReg is required to take into account relevant matters, which, in the present case, include its obligations to act proportionately, which it has not done.

Evidence-based decision-making. Fundamentally, ComReg is proposing to impose more onerous administrative reporting regulations on eir on foot of its underlying finding of SMP. However, where regulatory intervention is proposed to address competition law related concerns it is required to be supported by evidence-based analysis (see for example *Case C-12/03 Tetra Laval v Commission*). As noted in the paragraphs above however, ComReg has not produced evidence to support the sweeping assertions relied upon to justify proposing significantly more onerous regulation. In particular it has not provided evidence that the present detailed reporting requirements have been ineffective, so as to warrant seeking far more detailed reporting, nor has ComReg provided evidence to justify the specific additional reporting requirements now proposed.

Proportionality. As noted above, ComReg has a legal obligation to act proportionately in imposing regulatory burdens on any operator. As noted by the Court of Justice in *Fedesa* this requires ComReg to ensure that any measures it adopts are '*appropriate and necessary in order to achieve the objectives legitimately pursued by the legislation in question; where there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued.*' eir has already set out above a number of grounds upon which ComReg's proposal is not proportionate. In particular, in pursuing quality of service rather than non-discrimination objectives, it does not meet the requirement that the measure relates to an '*objective legitimately pursued by the legislation in question.*' ComReg has also not assessed whether its measures meet the requirement that '*the disadvantages caused must not be disproportionate to the aims pursued.*' ComReg has not therefore carried out the required proportionality assessment. As set out in detail in this response, eir considers that the disadvantages caused to eir are significantly disproportionate to the aims pursued.

Data Protection compliance. As noted later in this document, ComReg's proposal to carry out their own investigations may impact upon eir's data retention policies. To the extent that ComReg is seeking the retention or provision of any personal data for it, eir notes that ComReg is required to carry out the appropriate assessments under the General Data Protection Regulation (GDPR), identify a legal basis for this request, and ensure that any such processing of personal data would be legally justified and compliant.

Confidential   **13**

Response to consultation questions

42. The responses to the consultation questions are without prejudice to eir's primary position that ComReg's proposals are unreasonable, disproportionate, unnecessary and unjustified.

Q. 1. Do you agree with ComReg's proposals regarding the scope of relevant product and services? Do you have any other observations in relation to the KPIs being proposed?

43. eir agrees with the concept of reporting on KPIs that provide an objective measure of provisioning and service assurance process where the full part of the journey is under the control of open eir processes. While there has been no amendment to the obligation to publish KPIs since D05/11 open eir has in good faith continued with the principle of publishing provisioning and assurance KPIs for all services provided within the relevant markets in a transparent manner including those not listed in D05/11 such as NGA products.

44. eir agrees with the principle proposed in paragraph 3.22 that the on-going proportionality of the KPI reporting obligations should be assessed against statistical relevance. ComReg proposes that requests to withdraw KPIs could be made "*when the demand for regulated access products and services falls below a threshold such that the product population size becomes so small that meaningful conclusions can no longer be drawn from the data*". eir believes that the mechanics regarding establishing such thresholds should be clearly set out in any future consultation/decision on KPIs. For example, in the case of CGA any such reasonable threshold would already have been triggered to justify its removal. The same is likely to be true in the proposed regional FACO markets given the likely substantial decrease in the regulated line base. It would be far more efficient and fair if ComReg was to apply the statistical significance measure prior to making a new KPI Decision. This would ensure that eir is not required to develop already redundant reporting.

45. eir notes that in the case of CGA Bitstream the consultation proposes to further expand the CGA Bitstream metrics to split out reporting on POTS based and Standalone ADSL. eir notes that the line base of Standalone ADSL is less than ▆▆▆▆▆▆ lines and is decreasing. Furthermore the volume of orders in any period are already sufficiently low that they can give rise to statistical variations. In addition, in ComReg D12/18, ComReg reasoned that "As WCA Bitstream is proposed for deregulation in the UA [Urban Area] there will be no assessment of Eircom's CGA based bundles offered for sale in that market. ComReg does not consider that this will impact on OAOs' ability to compete due to the decline of CGA services nationally …particularly in the UA, where ▆▆▆▆▆▆ of broadband services using the Eircom platform are CGA. OAOs expecting to compete in the UA, are

likely to transition over time to NGA services to win or retain customers". Consequently we do not agree that it is appropriate or consistent with ComReg's previous reasoning for the existing metrics to be split further on the basis of statistical significance.

46. eir notes that the definition of CGA Bitstream includes Bitstream Ethernet Access (BEA) which is not ordered in the same manner as mass market broadband access products. There are two elements to the BEA order similar to NGN Ethernet Delivery, a physical (Bitstream) access path and the virtual logic circuit. When volumes are sufficient to warrant reporting different KPI metrics would be required to reflect the different order journeys. eir notes that there was no real take up of the BEA product and as this is a declining metric would not envisage any benefit on expanding the KPI metrics to include these. BEA should therefore be excluded from the definition for KPI reporting purposes.

47. eir welcomes the proposal to withdraw LLU metrics acknowledging this product set is no longer statistically relevant.

48. eir notes that the consultation does not take consideration of the fact that NGA products are subject to EOI obligations so there is no difference in the information available to eir Downstream or Access Seekers in relation to the ordering, provisioning and repair of NGA services. As such there is no justification to impose more granular reporting for NGA KPIs.

49. eir notes that ComReg has proposed NGN Ethernet orders as the retail equivalent for CEI metrics. Paragraph 3.16 states that "*orders are typically sub-divided into two parts, namely: (a) Site survey, Sub-Duct design and installation of Sub-Duct, or "CEI component", and (b) Installation of fibre and the active element i.e. installation and configuration of the Ethernet equipment*". This is a simplistic interpretation and does not accurately reflect the provisioning process which is once a NGN Ethernet order is placed the required fibre pairs to deliver the service are ordered. The initial stage of this fibre delivery, if fibre is not in-situ and there is no spare sub duct, is to rod, rope and test the identified route if fibre is to be provided. Provision of fibre does not automatically require sub-duct installation.

50. eir agrees with the principle of publishing a table clearly identifying the wholesale inputs and retail order types as this aids transparency as to what is included in the KPI metrics.

Q. 2. Do you agree with ComReg's approach to keeping KPIs current? Do you have any other observations in relation to the KPIs being proposed?

51. eir agrees with the need to ensure KPI metrics are current when new products and services are implemented. As is evident since 2011 eir has worked in good faith to ensure KPI metrics align with the products in the regulated market. In particular eir welcomes the ability to suspend KPI reporting when relevance decreases.

52. When developing a new RAP or implementing changes to RAP part of the established product development process is to consider impacts to the equivalence KPIs and ensure these are developed in line with product launch. This aligns with the proposal by ComReg that eir must provide details of KPI metrics when notifying RAP changes / new RAP to ComReg.

53. eir considers that a pragmatic approach should be taken when launching a new RAP and the timing of the commencement of KPI reporting. Therefore eir proposes that there should be a minimum threshold defined in order to ensure meaningful metrics.

54. eir notes ComReg's statement in paragraph 3.25 "*if a new category of KPI Metrics is considered necessary for a new product or service, this would be subject to prior public consultation.*" It is not clear to us how this would be workable in practice and eir is concerned that in the case of a new category of KPI being identified for a new product the need to have a consultation could unduly delay the introduction of new products and services in the market to the detriment of enhancing competition and innovation in the market.

55. ComReg proposes in paragraph 3.21 "*that the list of KPI metrics and products and services concerned may be amended by ComReg from time to time by way of direction to Eircom…subject as the case may be, to public consultation. In this regard, ComReg would not envisage that a consultation would be required prior to directing minor adjustments to existing KPIs; but ComReg would envisage that more significant changes to existing KPIs, or the introduction of KPIs for existing products may require (and benefit from) public consultation.*" ComReg does not have the discretion to decide whether a consultation is required or may be beneficial. Article 67 (5) requires that amendments to obligations "*shall be subject to the procedures referred to in Articles 23* [consultation] *and 32* [notification]."

Q. 3. Do you agree with ComReg's proposed KPIs for appointments for the NGA products and services? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed?

56.   As highlighted earlier in this response eir does not agree that the proposed expansion of the NGA KPIs in terms of scale and scope are justified, reasonable or proportionate.

57.   eir notes that ComReg has misinterpreted the provisioning process of NGA orders as set out in the IPM and the published Statement of Compliance.   All NGA order types require an appointment and therefore eir assumes the category of appointment based order is in fact NGA orders that require a customer site visit.   Therefore the proposed definition in Schedule 1 Definitions should be updated:

"**Appointment Based order**" means an order where it is mandatory to select an appointment prior to order placement irrespective of the network inventory at the address (i.e. electronically enabled or Insitu/Non Insitu)

58.   eir has significant concerns relating to proportionality as the volume of metrics (87 x 16 per month) details at such a granular level there will be a significant amount of time in reviewing metrics, investigating apparent differences and explaining Access Seeker behaviour which have no relevance to the purpose of equivalence KPI metrics. This is not an efficient use of eir's resources and is an undue regulatory burden.

59.   eir notes that one of the proposed metrics (metric 24) is the mean number of appointments per order which is one example of proposed metrics where eir does not have full control over the process as Access Seekers can re-schedule an appointment prior to the scheduled appointment.   This metric is a measure of Access Seeker practice not just open eir.   The NGA product process is designed to give operators control over the end user journey allowing them to reschedule appointments to suit their customers.   eir does not agree with paragraph 4.14 where ComReg state "*it would be reasonable to expect that the average of number of appointments per order would be broadly similar for wholesale inputs and their retail equivalents, perhaps with some legitimate variations*". The level of flexibility inherently designed into the wholesale products and processes means the number of appointments can be heavily influenced by individual Access Seeker behaviour and a disproportionate amount of time would be spent seeking to provide explanations and justifying the variances for matters outside of the control of open eir. eir notes that the published appointment based SLA includes a metric that the first appointment offered will be within 7 days.   The proposed

metrics will not demonstrate equivalence as there are too many factors outside eir's control. Consequently metric 24 should be deleted.

60. eir notes that the equivalence KPI metrics published today for NGA (FTTC POTS based, FTTC Standalone and FTTH) include an appointment met metric. This metric is calculated on if an order is referred with a reason category of "eir" which indicates the appointment was not met due to an issue on open eir's part. This is a data driven approach. The definition proposed by ComReg would not only require additional development but would also require interpretation of data which is not a robust method to ensure consistency when producing equivalence KPIs. Consequently metric 21 should be amended to align to the current process.

Q. 4. Do you agree with ComReg's proposed order related KPI Metrics? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed?

61.   As highlighted earlier in this response eir does not agree that the proposed expansion of the NGA KPIs in terms of scale and scope are justified, reasonable or proportionate.

62.   eir notes that the proposed metrics are not related to equivalence but instead to provide details of the Access Seekers use of the RAPs through ordering (rejected orders) and fault screening and fault logging (rejected faults and fault screening).

63.   eir notes that a number of metrics which cannot be reported against automatically and would require manual interpretation of data (order comments) to identify the data set for the metrics. The manual sifting through large volumes of orders is not a feasible approach that could be implemented by eir. Consequently metrics 6 and 7 should be deleted.

64.   eir notes that the concept of recorded orders is noted in the RAP IPMs which is a UG status to inform the Access Seeker the order has been received and the next step is order acceptance or rejection. This is not a reportable order status as it is not a recorded process point. When an order is identified as being received this is visible on the UG but once this status changes to accepted / rejected it (i.e., "received") is no longer visible. RAP development would be required to report against this. The benefit of this metric is questionable as this implies that not all orders submitted to the UG are actually processed i.e. accepted or rejected. There is no basis for this assumption. eir questions the proportionality in monitoring accepted and rejected orders and variances in performance to establish if there is an issue with the method in which Access Seekers submit orders. These are factors outside eir's control. Consequently metrics 1, 13, 14 should be deleted

65.   eir does not agree with the proposed metrics for accepted and rejected orders. The simplistic view is that rejected orders are solely an issue with open eir. In reality the issue is dependent on the quality of training provided by Access Seekers to their agents in relation to the order requirements when submitting an order. This metric is completely outside of the control of eir. In fact, a review of order data from 2020 indicates that ███████ of the orders are rejected due to Operators failing to order a BPU which is a standard process steps when submitting orders to a new NGA cabinet. Consequently metric 3 should be deleted.

66.   eir notes that ComReg proposes the number of accepted orders is a baseline parameter to calculate other metrics. In eir's opinion this would only add confusion as the draft decision

proposes expressing different data sets as a percentage of another. For example in a period there are 100 accepted orders and 1000 completed order the metric would then be 1000/100 = 1000% of accepted orders completed in a period. In order to be able to provide statistical comparison for equivalence purposes the data sets need to be the same. Provision of commentary to these metrics would not provide any insight as to the equivalence as the commentary would need to reflect that accepted orders in a period is a different data set to completed orders so it is possible for accepted orders not to be completed in a period. This concern applies to all the proposed metrics in this category.

67. eir does not agree with the undeliverable order metric. A review of order data from 2020 indicates that ▮▮▮▮▮▮▮ of the orders are rejected due to Access Seekers failure to re-schedule the appointment after receiving 2 notifications requesting to re-schedule the appointment. Consequently metrics 11 and 12 should be deleted.

68. eir notes the completed order metrics which is aligned to metrics in the equivalence KPIs published today which considers completed orders and agrees with the concept of a completed order metric. However eir does not agree with the proposed metric expressing completed orders as a percentage of accepted orders due to the use of two different data sets. eir notes that the data set of completed orders is all orders completed in a period which is a different data set to orders accepted in a period. eir is of the view this metric will only add confusion not transparency and require a significant and yet unnecessary amount of explanation to explain the metric. This metric will not enable demonstration of equivalence as different data sets are being used. Equivalence can only be expressed where using one data set for example the metric is % of orders completed in 5 working days.

69. eir does not agree with the proposed metric on cancelled orders as eir cannot determine the reason for order cancellation as Access Seekers are not required to provide a reason when cancelling an order. Manual interpretation of the order activity and comments prior to the cancellation may provide some insight as to the possible reasons for cancellation but this is not a robust basis to report on, it adds a layer of additional follow-up, querying and reporting, and it is subjective interpretation of data as well as being a highly manual and burdensome process. Consequently metrics 6 and 7 should be deleted.

70. eir does not agree with the request to cancel metric as the refer codes that request cancel and re-issue relate to instances where the Access Seeker provided incorrect end customer details such as address, contact information and Eircode. All this information should be captured as part of the sales journey when the Access Seekers agent is speaking to the end

customer and validates this information. eir also notes that ComReg is of the view that it is possible to "divert undeliverable orders" into the cancelled order category. This is a flawed misunderstanding of the process. There is a standard order process where if there is an issue with the data on an order such as address (incorrect Eircode) the Access Seeker will cancel the order on request from oeCC and re-issue a new order. These cannot be considered as true cancelled orders as there is a subsequent order that completes and provides service. eir notes that the consultation implies that open eir provides this information to the Access Seeker. While this information may be contained in open eir's files the Access Seeker should already have validated this information as part of the initial order and there are processes to request merge / de-merge if the Eircode is incorrectly merged with an address. Consequently metrics 7 and 23 should be deleted.

71. eir notes the referred order metric which describes these as orders that become non-standard. Order referral is a process used in NGA orders to facilitate automation of the order process where either the Access Seeker needs to take action, for example re-schedule an appointment, or if eir needs to take action. Referral of an order does not automatically deem it to be non-standard. Local arrangements are used to inform the Access Seeker that the technician has arranged with the end customer to return to complete the order and the reason why this has happened. Consequently metrics 9 and 19 should be deleted.

72. eir notes that the proposal for the referred order metrics is to only report on the subset of non-standard where eir is responsible for resolving. Again this metric is subjective, while there are refer codes that can be identified, significant analysis of the order activity would be required to identify those where eir has sole responsibility for resolving. These metrics are process measurement metrics and will not demonstrate equivalence.

73. eir does not agree with the proposed percentage metric where the number of referred orders are expressed as a percentage of accepted orders. As set out previously these are different data sets which will lead to confusing metrics not providing evidence of equivalence. Consequently metric 19 should be removed.

74. eir notes that one of the metrics for referred orders requires calculation of the cumulative parked time which is not defined in the draft decision. The RAP Appointment Based SLA sets out a definition for parked time and this should be used as the basis for calculating the metric. ComReg has indicated that a different definition may be used.

Q. 5. Do you agree with ComReg's proposed KPIs for supply of service in the NGA, CGA and SB-WLR product and services? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed?

75. As highlighted earlier in this response eir does not agree that the proposed expansion of the NGA KPIs in terms of scale and scope are justified, reasonable or proportionate. Nor do we consider there is justification for changes to be made in respect of CGA or FACO KPIs. eir agrees with the concept of reporting on the percentage of orders completed in x working days but is concerned that the level of granularity arising from the proposed sub-categories of each product group that could produce meaningless volumes (and consequently meaningless metrics).

76. eir notes the process set out in 4.36 is not in line with the process set out in the NGA IPM or published Statement of Compliance for the appointment based provisioning process. In the case of appointment based orders (NGA orders, LNB and PUN order type) the Access Seeker selects an appointment option such as "earliest available" when submitting the order. The order acceptance notification confirms the appointment date and type such as "AP Exchange Home". The Access Seeker does have the ability to specify "technician site visit required" as part of order placement which will ensure that a technician site visit happens for the order independent of the inventory available. As set out in the NGA IPM the earliest appointment available is 2 working days from placement of order. Orders are then completed on the appointment date or referred if an issue occurs that prevents delivery completing on the appointment date. This is the process for all appointment based order types and not as described by ComReg in paragraph 4.36, regardless of network inventory. In the case of legacy provisioning orders like SB-WLR there are separate orders for electronically enabled and full install and in addition there is an appointment based order option as set out above. These are referred to as time based provisioning orders in the Statement of Compliance and it is not mandatory to schedule an appointment. There are fixed time parameters (2 day, 5 day or 10 day) for delivery of these orders. Consequently the time based approach is incompatible with NGA electronic enabled delivery and metrics 60 to 64 should be deleted or amended to more appropriate metrics for NGA delivery.

77. eir notes that the draft Decision Instrument sets out separate reporting for electronically enable, non-in situ and appointment based orders for NGA totalling 28 new metrics (reported across 16 different categories per metric). As all NGA orders are appointment based, eir is interpreting the reporting requirements to be orders requiring customer site visit, non-insitu

orders (which is customer site visit plus cabinet only orders) and electronically enabled orders. This needs to be clarified by ComReg.

78. eir notes the proposal to increase the number of KPI metrics for CGA provisioning separating reporting on CGA POTs based ADSL and CGA Standalone. eir notes that the volume of provisioning orders for CGA standalone is low and the overall line base is declining. As set out in paragraph 45 eir does not agree that the existing metrics to be split further on the basis of statistical significance.

79. eir notes the proposed supply of CGA Bitstream services metric does not align to the metrics currently published today. Metric 88 describes the number of connections in a month but the metric published today is the number of connections and transfer orders in a month that does not require a jumpering task. Similarly the metrics published today that align Metric 91 is the number of connections and transfer orders in a month that require a jumpering task. eir presumes that the current metrics will be unchanged.

Q. 6. Do you agree with ComReg's proposed fault related KPIs metrics? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed?

80.   As highlighted earlier in this response eir does not agree that the proposed expansion of the NGA KPIs in terms of scale and scope are justified, reasonable or proportionate.

81.   eir is concerned that the level of granularity arising from the proposed sub-categories of each product group could produce meaningless volumes (and consequently meaningless metrics)

82.   eir agrees with the repair of service metrics which report the number of faults cleared within a number of days (2, 5 and 10 days). eir assumes metric 70 should reflect number of fault cleared within 5 working days not 4 working days as set out in the draft Decision Instrument as this aligns with all other metrics.

83.   eir notes that the proposed repeat fault metric is a change to the current metric which looks at a repeat fault on the product that was originally reported faulty. This new metric looks at the repeat regardless of how the original and repeat fault were logged or even if the same Access Seeker provides both services and reflects a measure of network quality not a repeat fault metric. A repeat fault metric considers if a fault was reported on a product, SB-WLR for example and if a fault occurs on the same service for the same repair category (for example the initial fault was a line clear and if the subsequent fault was a line clear this would be considered a repeat fault) within 28 days. Consequently the proposed metrics 77, 87, 105, 111 140 and 147 should be amended to reflect the current metric or should be deleted.

84.   eir also notes paragraph 4.46 states "*those faults must be counted as repeat faults irrespective of the product or service the fault was reported against in each case unless a different root cause can be verifiably demonstrated for each reported fault*". There is an onerous level of analysis required to deem if a fault is a repeat fault or not and this can include reviewing the technician notes, test results that were taken at a point in time and other details of the fault report and fault clear codes. This would significantly increase the amount of time required to produce the initial set of metrics, analyse the metrics and prepare the report for publication and represents an inefficient and disproportionate use of open eir's resources.

85.   eir does not agree with the metrics rejected faults and NFF metric categories. open eir does not have full control over the processes behind these metrics as they can be influenced by

the level of training Access Seekers provide to their agents when screening and logging a fault. Consequently metrics 72, 73, 82 and 83 should be deleted.

86.   eir notes that ComReg states that purpose of the accepted / rejected fault metric is to identify potential differences in the fault order validation process between Access Seekers and eir Downstream. All Access Seekers including eir's downstream businesses have access to the tools via the UG to carry out fault screening and open eir has provided training to Access Seekers specifically on fault screening. open eir has no part to play on how the Access Seekers choose to use these tools or what training they provide to the agents so it is not appropriate that equivalence KPIs should include metrics on Access Seeker performance which open eir has no control over. Consequently metrics 72 and 82 should be deleted.

87.   eir has concerns relating to the statements made by ComReg regarding prohibiting of filtering as this leads to confusion in terms of defining clear repeatable business rules for fault metrics. eir considers it appropriate to use the published list of valid / invalid clear codes and suffixes to identify valid in-scope faults for reporting on the equivalence metrics for the respective product as this is a clearly understood comparison and would not be skewed by inclusion of invalid faults that may have a shorter fault resolution time. These clear codes and categorisation of valid / invalid per product group were reviewed by Industry and are reviewed on a bi-annual basis to ensure all clear codes are included and have a clear action. eir also uses the fault report type selected by the Access Seeker when submitting the fault as they would have selected this based on the fault screening and information available to them prior to submitting the fault.

88.   eir does not agree with the new fault allocation metric, the only purpose which appears to be put forward by ComReg is to demonstrate that open eir has reported on all faults in the equivalence KPI report. It is not an equivalence metric. The purpose of equivalence KPIs is to consider comparable journeys to identify if the overall process is equivalent. In order to ensure this is the case equivalence metrics would exclude outliers such as non-faults as there are a number of processes outside of open eir's control that could contribute to these. Inclusion of all faults in the fault reporting metric even those deemed to not be a fault in the open eir network will potentially skew the actual repair performance figures. Consequently metric 148 to 154 should be deleted.

89.   open eir will use the order type selected by the Access Seeker when logging the fault as the means to allocate the faults. The expectation is that if an Access Seeker has an issue

relating to their voice service on a POTS based broadband service they would report this as a fault on the telephone line and have fully unitised all the fault screening tools available to them to aid in determining the appropriate fault type to log.

90.   eir again notes the onerous level of analysis and evidence required to demonstrate that it is correctly reporting the Equivalence KPI metrics where there is no basis behind ComReg's the implication that the metrics today are incorrect or that the KPI regime is not working effectively.

91.   eir notes ComReg proposes new quality of supply metrics for NGA orders, ELF and DOA (metrics 39-42, 56-59 and 65-68) and the proposed formula which is the percentage of orders that are ELF / DOA. Quality of supply metrics are usually expressed in terms of what number of connections were not ELF / DOA i.e. 1 – (total number of orders that were ELF / DOA in the Data collection period / Total number of orders in the data collection period)*100. The specification of these metrics should be amended accordingly.

92.   eir notes the published RAP documentation for NGA defines DOA (Dead on Arrival) as a fault occurring within 2 days. ComReg defines this as a fault identified in the time interval between the completed order and the post complete order status. This does not cater for the exception where the Access Seeker carries out part of the provisioning work on behalf of open eir where these orders are not considered DOA as open eir did not complete the full install. Consequently metrics 39, 41, 56, 58, 65 and 67 should be deleted.

93.   eir notes that while the published RAP for NGA defines an ELF (Early Life failure) as a fault occurring within 8 days, ComReg defines this as a fault occurring within 28 days which aligns with the definition for Quality of Supply and is not an equivalence metric. Consequently metrics 40, 42, 57, 59, 66 and 68 should be renamed as Quality of Repair metrics in line with the existing equivalence KPIs.

94.   eir notes that the Quality of Supply metric set out in the Draft Decision Supply of CGA Bitstream services (metric 90 and 93) is incorrect, the formula should reflect 1 – (total number of orders that incurred a fault within 28 day in the Data collection period / Total number of orders in the data collection period)*100.

95.   eir notes the metrics proposed in respect to No Entry Obtained which is used where a technician cannot gain entry to the customer premises to test the line at the NTU. The purpose of this clear code is to indicate to the Access Seeker that if the end-user issue is not

resolved an appointment is required and the fault can be re-activated in pending clear once an appointment is scheduled. Consequently metrics 76 and 86 should be deleted.

96.   eir notes that ComReg's proposed metrics will result in some double counting of faults leading to confusing metrics and additional overhead for eir to comment on the reasons why there is data double counted. This in particular could arise where there is more than one clear code on a fault such as 003 (No entry obtained) which is used to inform the Operator that entry could not be gained to prove service to the NTU and the other clears indicate if a repair is carried out in the network. The Operator then uses this information to contact the customer and establish if a site visit is required and re-active the fault while in pending clear. In this case the fault would be counted as a repair for the service fault and also in the non fault category. Again there is an onerous overhead in then having to explain and justify any instance of double counting.

97.   eir notes paragraph 4.54 considers that "*NFF metrics are important metrics to provide transparency regarding potential differences in the fault diagnosis process should they exist*". As set out in the RAP IPM and the published Statement of Compliance all Access Seekers including eir's downstream businesses use the Unified Gateway for fault screening and fault logging and there is no basis for ComReg's suggestion that there is a difference in the information and tools provided to Access Seekers and eir's downstream businesses via the Unified Gateway. Each Access Seeker will have their own processes for fault screening and logging based on the information and tools available so differences will exist depending on how Access Seekers run their operations centre. One such example is a typical call centre metric of time on call where call centres have target call durations to complete calls. This is a metric open eir has asked Access Seekers in the past to increase to allow sufficient time for complete fault screening prior to logging a fault on the UG — if insufficient time is allocated this can lead to faults being submitted where the actual route cause such as faulty CPE could have been diagnosed and resolved on the call. Consequently metrics 73 and 83 should be deleted.

98.   eir notes paragraph 4.54 states "*In cases where the fault cannot be confirmed, ComReg considers it would be inappropriate to include these non-fault incidences in the repair of service KPI metric*" whereas paragraph 5.11 states *"To avoid the removal of faults from the calculation of the KPI metrics as a result of a filtering process (e.g. the removal of non-valid cleared faults), potentially masking equivalence issues".* eir notes that the term "non-valid" is incorrect and should read as "valid cleared faults".

99.   eir notes paragraph 4.55 states "*This NFF metric will be particularly useful in cases where Access Seekers can demonstrate that they have fully executed the required diagnosis process prior to raising faults*". eir is unclear how this can be facilitated by Access Seekers based on KPIs that are calculated at an aggregated level. There is an underlying implication that the level of NFF is solely an eir issue and this metric would identify where there is RAP changes required or indeed additional technician training is required to improve fault localisation skills. There is no basis to the assumption that technician training is inadequate nor has consideration been given by ComReg to the training provided by eir to Access Seekers to improve training within their own organisation. Consequently metrics 73 and 83 should be deleted as ComReg's stated purpose for this metric is clearly out of scope of assessing compliance with equivalence obligations.

100. eir notes that the clear code right when tested (RWT) is described by ComReg as used by service centre staff. However ComReg appears to have overlooked a key note that it is used by service centre staff which is where a fault has been reported but the test results recorded prior to logging the fault indicate the service is working and no additional notes have been provided by the Operator as to the reason a fault has been reported on what appears to be a working service. Consequently metric 74 and 84 should be deleted as ComReg's stated purpose for this metric is clearly out of scope of assessing compliance with equivalence obligations.

101. eir notes that paragraph 4.51 refers to paragraphs 4.21 for more detail on clear codes which does not appear to the be the correct reference. The correct reference should be 4.54

Q. 7. Do you agree with ComReg's approach to the implementation of KPIs for CEI access, including the delaying of the Eircom's obligation to publish KPIs until demand for CEI has grown to a sufficient level?

102. eir agrees in principle that the retail comparator for CEI access should be the civil engineering elements associated with regulated Zone B NGN Ethernet services. However providing / maintaining sub-duct and/or enabling fibre on the overhead network are sub components of the active NGN Ethernet services. open eir's processes and systems have been developed over many years with the focus being on the active service. As such open eir's reporting is not set up in a manner that allows relevant civil engineering elements of Zone B NGN Ethernet services to be readily identifiable. As such open eir is not currently in a position to comment on the feasibility of reporting on the relevant civil engineering elements of retail zone B NGN Ethernet services and reserves its position accordingly.

103. Noting the reservation in the preceding paragraph eir offers the following comments on the operation of ComReg's proposed CEI KPI regime. eir agrees with ComReg's view in paragraph 3.12 "*that current consumption for CEI access is too low to support meaningful reporting of CEI KPI metrics*". eir also agrees in principle with ComReg's proposal[8] "*that the processes for gathering, processing and reporting of CEI KPI metrics are put in place, but Eircom's obligation to publish such metrics delayed until demand for CEI has grown to a level that is sufficient to produce meaningful and useful CEI KPIs.*" However the mechanism proposed to put this principle into effect is not entirely clear.

104. ComReg proposes "*to use the average order volume of the NGN Ethernet provisioning and service assurance orders in the period between Q3 2019 and Q3 2020 as the threshold to trigger the publication of the CEI KPI metrics. In ComReg's preliminary view, when the CEI order volumes reaches the NGN Ethernet average order threshold, this would be sufficient to produce meaningful and useful CEI KPI metrics.*" What is meant by the 'average order volume' over the 5 quarter period (Q3 2019 up to Q3 2020) is not specified. If we assume that the average is calculated for a quarterly period then this would be an appropriate approach as the quarterly CEI volumes must be sufficiently material for the KPIs to be calculated. We note that the approach to statistical relevance as outlined in principle at paragraph 3.22 will need to be applied to the, as yet, unknown average quarterly volume of retail Zone B NGN service orders.

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[8] Para. 4.70

105. eir has no objection to reporting on the quarterly number of CEI orders as proposed by ComReg.

Q. 8. Do you agree with ComReg's proposed KPIs for the CEI products and services? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed?

106. Subject to our reservation in paragraph 93, eir has the following comments on the proposed metrics. Bearing in mind the principle of statistical relevance and taking into account observed demand for CEI access we do not believe it is possible to sustain a CEI KPI reporting regime at the level of granularity proposed by ComReg.

107. As such the Duct Access Supply and Repair metrics (161 to 208) should be rolled up for the categories proposed by ComReg, in line with the published product process timelines[9], for each of duct access and pole access to:

- Percentage orders acknowledged in 4 days
- Percentage orders validated in 21 days for duct access and 9 working days for pole access
- Percentage orders completed within 44 days
- Mean order completion time
- Number of valid access orders received
- Percentage of repairs within 5 days
- Mean repair time

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[9] Note the SLA metrics and targets will be reviewed for the current product later this year and some targets will likely change. The SLA metrics and targets for the sub-duct self-install product will be reviewed when a sufficient number of orders have been received. As such the KPIs should be updated as products evolve.

Q. 9. Do you agree with ComReg's proposals regarding processing, reporting, publication and auditing requirement to improve the effectiveness of KPI metrics? Do you have any other observations in relation to the requirements being proposed?

108. eir notes the proposed changes to the ancillary requirements identified and does not agree with the additional onerous overhead associated with these that is proposed to be introduced. These are based on the implication that there is an issue with existing KPIs which eir has voluntarily worked with ComReg since the 2011 decision to improve the reporting process. As noted earlier in this response ComReg has not demonstrated that there is any justification to change the current KPI regime nor has ComReg highlighted any such issues to eir in working together to improve the reporting process.

109. eir notes that regarding KPI measurement intervals ComReg states it may require changes to the intervals. eir notes that any such changes applies additional onerous overhead in monitoring equivalence as, in addition to ensuring equivalence in the services based on the time intervals set out in the RAP SLA, eir would also have to report based on the different KPI intervals. An example is fault repair in 2, 5 and 10 working days as all processes for fault repair are based on these time intervals. If these were to change in the KPIs to different time intervals (from the RAP SLA targets) eir will need to amend the process to manage repair to align to the KPI metrics to ensure equivalence, while at the same time ensuring that the RAP SLA repair thresholds / targets are met (to maintain SLA performance and avoid penalties). eir's reporting systems are correctly aligned to the RAP specifications and so should the KPI metrics — as KPIs are meant for the assessment of the delivery of the specified products in a non-discriminatory manner.

110. eir notes that ComReg in paragraph 5.7 states "*the concept of valid and non-valid reported faults originated from SLAS and was carried forward into the KPI metrics*". This is not correct. This concept originated from other ComReg reporting linked to USO quality of service reporting which is designed to meet entirely different objectives. The purpose of using valid clear codes for a product ensures that when reporting for equivalence a comparable process is used. In the case of NFF where eir has not identified a fault in the network this is heavily influenced by the level of screening and how the fault is reported by the Operator. For example, if the Operator reports a fault as a SB-WLR fault when the actual issue reported by the customer is a broadband fault eir is not aware of this and will validate if the SB-WLR service is working. Inclusion of non- faults in the repair of service metrics may skew the figures and potentially mask issues with the actual service and again lead to unnecessary onerous investigations and meaningless metrics. The clear codes

considered valid for a product relate to the service for example where there is POTS based FTTC service the NGA clears relate to the NGA service such as the port in the cabinet and any fault in the access path would be associated with the POTS service. i.e. if there was no dial tone and the line test indicated a fault on the line the fault should be reported as a SB-WLR fault not a FTTC fault. Where the product is standalone all clears associated with the access path and the NGA service are in scope for the repair.

111. eir notes paragraph 5.9 "*There are circumstances where inaccurate or inappropriate use of clear codes could result in the exclusion of faults that could distort the KPI metrics*". There is no basis for this statement and implies an issue with the workmanship standards of the open eir technicians and such errors would need to occur at unprecedented levels if they are to influence the KPI metrics.

112. eir notes that ComReg has taken an overly simplistic view of the significant development required to enable eir to report on the new proposed metrics as set out in paragraph 5.16. While eir has moved to a more automated process the development is on-going and a large number of new metrics have been proposed in this consultation. There is no basis for the assumptions taken by ComReg as to the size of the development.   While some of the data may be available in a data warehouse, there is a significant level of effort in defining business rules to develop the scripts to extract the KPIs and test the reporting. A comparable example here is the fact that the project to develop the current KPI reporting for the legacy products (tables 1 to 4) has been on-going since 2018.

113. ComReg proposes[10] to allow a 6 month period for eir to implement changes to the KPI regime. ComReg's rationale for the 6 month transition period is "[i]*n light of what appears to ComReg to be a limited impact on Eircom's processes*". It is difficult to see how ComReg has reached such a conclusion absent any engagement with eir on its current systems. Setting aside for now the question of whether the proposed CEI metrics are feasible, implementation of the numerous changes that would be required in respect of the other KPIs will require substantial time and effort. Noting that ComReg allowed a 12 month transition period for changes to WHQA KPIs in D03/20 with comparatively less complexity, eir strongly believes that the minimum time period for the transition period would be 18 months. eir would propose to provide ComReg with a progress update after 12 months.

114. eir notes that the consultation proposes to reduce the time to publish the report. Given the number of additional metrics and significant overhead in investigations that such metrics

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[10] Para. 5.17

require (which in a number of occasions ComReg has already accepted in the Consultation can be different), eir does not agree that the time should be reduced and is of the view in fact that the preparation time would have to be increased to allow adequate time for review of the metrics, investigate variances and write up the report prior to publication.

115. There are also practical considerations that mean a shorter preparation period as proposed by ComReg is not possible. Some metrics (e.g. quality of supply - 28 days after the order was completed) will not be available until the month following the last month of the quarter being reported on so there would be no time to allow for review of figures prior to publication.

116. eir does not agree with the proposal in paragraph 5.15 that eir should publish KPI metrics with incomplete investigations as this will only cause unnecessary confusion and uncertainty. As ComReg is aware the current analysis in KPI may contain confidential Operator information used to outline the underlying root cause and does not agree that confidential Operator information should be published. In particular eir notes the onerous process set out in the draft decision (6.3) where if the investigation cannot be completed prior to publication of the report eir has to provide an update of the investigation at least every 10 working days. This is not proportionate.

117. eir notes paragraph 5.20 where ComReg may look to audit the KPI metric preparation process. eir notes that the IOB have a role in determining the effectiveness of this process. As such another layer of oversight is not required. We expect that ComReg will pay the costs of any third party audit and agree the terms of reference with eir in advance.

118. eir notes as per paragraph 5.23 ComReg intend to carry out their own analysis of the data. In line with the data protection regulations eir only retains data for as long as is legally necessary and the KPI data is retained for a rolling 9 quarters where on the start of the 10th quarter the 1st quarter is removed. Where ComReg wish data to be retained they need to inform eir so the data can be taken offline and stored in a secure location. eir is concerned at the duration investigations may take where more than 2 years is required.

119. eir notes paragraphs 5.24 refers to the use of random samples to analyse equivalence KPI and potentially identify issues. eir is concerned re this approach as selecting a random data set to analyse equivalence may highlight a potential issue incorrectly as only a subset of the data has been considered.

120. eir notes the publication requirements for the business processes used by eir. In the consultation eir notes ComReg refers to the eir document "*Business Rules for Metrics in KPI Equivalence Report*". This is an internal document for eir used to define the IT business rules

to automate the KPIs. eir considers some of this information confidential and will publish a non-confidential version that will outline the business rules used to select the data for each metric.

121. eir notes the definitions set out in the Draft Decision Instrument and proposes the following changes:

Definition as per draft DI	Proposed Definition
Access Line" means the connection, either physical or logical, between an End User's premises and the physical point where access is provided to Eircom's network, and such connections include without limitation a connection from the Copper Network Termination Unit to the Local Switch, RSU or MSAN, a connection from the Optical Network Termination to the Aggregation node, a connection from the Fibre Network Termination Unit to the Aggregation node, a connection from the Copper Network Termination Unit to Main Distribution Frame, a connection from the Optical Network Termination to the Optical Distribution Frame, and a connection from the Fibre Network Termination Unit to the Optical Distribution Frame.	As per D03/17 propose the following definition: Access Line" means a Connection from the NTP to the entry point or to the local switch or remote concentrator, whichever is nearer; which is in many cases the main distribution frame (MDF) or optical distribution frame (ODF);
"All Other Connections" means Lines that are not In-Situ SB-WLR Connections and includes those that are new-build and Pending Available.	Propose that this should reflect "All Other SB-WLR Connections" as per D05/11
"All Retail Connections" means In-Situ Retail Connections and All Other Retail Connections.	Propose that this should reflect the definitions in D05/11
"All Wholesale Connections" means In-Situ Wholesale Connections and All Other Wholesale Connections.	Propose that this should reflect the definitions in D05/11
Appointment Based Order - means an order in respect Electronically Enabled or is Non in-situ for which completion requires a technician's visit at the End User's premises.	Appointment based order means an order where it is mandatory to select an appointment prior to order placement irrespective of the network inventory at the address (i.e. electronically enabled or Insitu/Non Insitu)
"Completed Order" means the order status used by Eircom to indicate that all tasks relating to the Order are finished and the billing commences against the account / telephone number.	"Completed Order" means the order status used by Eircom to indicate that all tasks relating to the Order are finished
Completion Date - Means the date an order was posted on the system for billing purposes	Completion Date - Means the date all tasks relating to the Order are finished
"Completed Order" means the order status used by Eircom to indicate that all tasks relating to the Order are finished and the billing commences against the account / telephone number.	Post Completed Order means the order status used by Eircom to indicate that all tasks relating to the Order are finished and the billing commences against the account / telephone numb
Completion Date - Means the date an order was posted on the system for billing purposes	Post Completion Date - Means the date an order was posted on the system for billing purposes

"Customer" means a natural or legal person, or their representative making a valid request for a service at a specified address or the operator submitting the SB- WLR order in the case of wholesale orders.	**"Customer"** means a natural or legal person, or their representative making a valid request for a service at a specified address or the operator submitting the order in the case of wholesale orders.
"Dead on Arrival" or **"DOA"** means the instances where Eircom advised an Access Seeker that the requested product or service is provisioned. However, the product or service never worked or has a Fault.	**"Dead on Arrival"** or **"DOA"** means the instances where Eircom advised an Access Seeker that the requested product or service is provisioned. However, the product or service never worked.
"Early Life Fault (ELF)" means a fault reported in the 28-day period following provisioning and localised and cleared to the eircom network elements impacted by the provisioning process	**"Early Life Fault (ELF)"** for the purposes of this decision this means a fault reported in the 28-day period following provisioning and localised and cleared to the eircom network elements impacted by the provisioning process
"Migration" means the provision of a service on an existing active Line with another operator.	As per D10/18: **"Migration"** means where the upstream wholesale input used to supply a retail service is changed whilst maintaining services to the End User, irrespective of whether or not the supplier at the retail level changes.
"**No entry obtained**" means in respect of a fault, that it could not be repaired by reason that entry to the End User's premises was required for the technician, but the technician could not enter the End User's premises.	"**No entry obtained**" means in respect of a fault, that the technician was unable to gain access to the NTU in the customer premises to validate service to that point. The purpose of this is to enable the operator to identify a follow up contact with the customer to reschedule an appointment
"Pending Clear or PC" means the code used by Eircom to indicate that an Eircom technician has attended to the logged fault and is waiting operator confirmation of fault resolution.	**"Pending Clear or PC"** means a fault status indicating that the technician has resolved the fault and the Access Seeker is notified via the UG to validate fault resolution with the customer.
"**Referred order**" means that an order er has been assigned a reason code that Eircom is responsible for resolving.	**"Referred order"** means an order is an order that has been referred as an action needs to be taken before order can be completed. For the purposes of this decision this includes the sub-category where eir has to resolve an issue before the order can progress.
"**Repeat Fault**" means a Fault that is reported in respect of a Line within 28 days of a Fault on that same Line and that is not the result of a separate network failure	**Repeat fault** means a fault that is reported on a service within 28 days of a fault resolution on the same service and is attributable to the same fault resolution as the intial fault clear
"**Right-When-Tested or RWT**" means that service centre staff could identify a network fault.	**"Right-When-Tested or RWT"** means that service centre staff could not identify a network fault and no additional information is provided by the operator relating to the reason why the fault was logged
"Transferred Connection" means "all Electronic Transfer of Broadband services to/from OAOs (incl. eir Retail) excludes transfers with Jumpering	**"Transferred Connection"** means "all Electronic Transfer of Broadband services to/from OAOs (incl. eir Retail) or electronic provision of Broadband serivces excluding provisioning /transfers with Jumpering
"Valid Service Order" means an order by a Customer for a Line, that is not later deemed invalid during the Data Collection period.	**"Valid Service Order"** means an order by a Customer for a service(s), that is not later deemed invalid during the Data Collection period.

Comments on Decision Instrument text

122. Section 6.1 requires the material to be additionally provided in.csv format. This is unnecessary as the material will be provided in the tables specified by ComReg.

123. The text of section 6.2 needs attention "*6.2 Eircom shall ensure that provide true and accurate information in the KPI Report.*" There appears to be wording missing between 'that' and 'provide'.

124. In paragraph 1.1 of the consultation ComReg correctly describes the current KPI regimes as the "*obligation on Eircom to report on KPIs to ComReg monthly and to publish KPIs on a quarterly basis*". It is our belief that ComReg intends to maintain monthly reporting published on a quarterly basis and we agree with this approach. However the draft Decision Instrument is not clear on this point and needs to be clarified in Section 6.

125. The text in square brackets at the end of section 7.3.3 should be deleted as the discretion ComReg proposes to give itself is not compatible with the regulatory framework,

126. Section 8.2 states "*Strictly without limitation to the exercise of its statutory powers at any point in time, ComReg may request **in writing copy** of any Quarterly Data **for the purpose of and** Eircom shall meet any such request within 15 Working Days where the request is made within two years of the end of the Quarter to which the data relate, or as otherwise agreed with ComReg*". We requested that the text highlighted in bold is clarified.

127. Again at Section 8.3 ComReg proposes to give itself broad discretion to redesign the KPI regime without following due process. This is not compatible with the regulatory framework. Any changes to the KPI regime must be considered through the proper consultation process. Section 8.3 must be amended accordingly. "*In particular, ComReg may from time to time request one or more Quarterly Data sets with the view to performing checks and statistical analysis and producing additional KPI metrics for the purpose of verifying compliance with Eircom's obligations of non-discrimination. ~~ComReg may publish any such additional KPI Metrics as ComReg believes is appropriate in accordance with statutory requirements and its statutory powers.~~*" To the extent that ComReg wishes to publish any additional material that does not represent a change to the KPI regime, it must first obtain eir's express confirmation that eir does not object to the publication of its proprietary information.

Access Products and Services Key Performance Indicator Metrics

Response to ComReg's Consultation Document No. 21/33

Issue Date : 2nd **June 2021**

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1 Introduction

National Broadband Ireland (NBI) is pleased to provide its response to ComReg's Consultation Document on Key Performance Indicator (KPI) Metrics relating to Eircom's provision of regulated access products and services.[1]

In November 2019 NBI signed a Project Agreement with the Minister for the Environment, Climate and Communications committing it to roll out a full-fibre network to those areas of the country where the commercial sector had no concrete plans to invest in next generation high-speed broadband networks.[2] NBI is a wholesale-only provider of electronic communications services and it has begun to connect end-users to its fibre network, with retail broadband services being provided to these customers by a variety of operators.

NBI's NBP network deployment plan involves making extensive use of Civil Engineering Infrastructure (CEI) under the control of Eircom Limited. Access to this pole and duct infrastructure is provided for arising from Eircom's designation by ComReg as an operator with Significant Market Power (SMP) in the Wholesale Local Access (WLA) market.[3] Prior to signing the Project Agreement with the Minister, NBI concluded a long-term Infrastructure Access Agreement (IAA) with Eircom, guaranteeing it access at scale to Eircom's regulated duct and pole products within a Major Infrastructure Programme (MIP) framework. Under this arrangement, NBI expects to utilise approximately 1.5 million Eircom poles and 15,000 km of duct as it rolls out its Fibre to the Home (FTTH) network to an estimated 544,000 premises within the NBP Intervention Area (IA).

As it will be by far the most significant user of Eircom's pole and duct access services over the coming years, NBI is interested in ComReg's proposals to extend the KPI reporting regime to CEI access services. It is these KPI metrics that NBI focuses on in this response, which is structured as follows:

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[1] ComReg Consultation, Document No. 21/33, 1st April 2021.
[2] The Project Agreement signed by the Minister for the Environment, Climate and Communication and NBI is available at: https://www.gov.ie/en/publication/16717-national-broadband-plan-contract/.
[3] ComReg Decision D10/18, Document No. 18/94, 19th November 2018.

- In *Section 2* we discuss briefly some general principles relating to KPIs;

- In *Section 3* we consider KPIs in the context of the MIP that NBI has agreed with Eircom for the build-out of the NBP network;

- In *Section 4* we provide responses to the questions posed by ComReg in the Consultation Document, focusing in particular on those relating to the proposed new KPIs for CEI access services.

2 General principles on Key Performance Indicators

KPIs play an important role in furthering the effectiveness of regulatory remedies imposed on operators designated with SMP in the electronic communications sector, in particular obligations in relation to transparency and non-discrimination. The publication of key metrics relating to the SMP operator's performance at both wholesale and retail levels provides important public proof, both for competing operators who purchase wholesale inputs from the SMP operator and for end-users who buy retail services from all providers in the market, of performance levels attained by the dominant operator within the wholesale and retail markets in which it provides services.

Regulation at the wholesale level helps to drive increased competition for retail services and so the use of KPIs to increase the effectiveness of Equivalence of Inputs (EoI) obligations on the SMP operator, as well as its compliance with non-discrimination obligations more generally, helps to ensure that important wholesale inputs are being made available to third-party competitors within the same timeframes and to the same standards as they are to the SMP operator's downstream retail arm. The better that regulation operates at the upstream wholesale level, the better are the outcomes for end-users in relation to the retail communications services they use and, in light of the ongoing Covid-19 pandemic, on which they increasingly depend.

NBI notes the very large number of metrics and KPIs that ComReg collects today and proposes to collect in the future. There is an obvious balance to be struck in terms of how many metrics should be tracked and reported on and the burden this imposes on the SMP operator in complying with the KPI reporting requirement, including the provision of underlying data.

The issue of information asymmetries between regulator and regulated firm is well understood within the realm of the economics of regulation[4] but the ability in recent years to collect, transfer and analyse large volumes of data has arguably meant that these asymmetries are not as significant as they once were. Notwithstanding this, however, the regulator still needs to guard against asking for and collecting too much data, in light of the overhead such requests impose on the regulated firm and, indeed, on ComReg itself. In this sense, it is worth the regulator

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[4] A fully informed regulator with complete authority can simply order the regulated firm to choose the first-best outcome. In reality, however, the regulator has limited powers and is never fully informed. In addition, the regulated firm tends to be better informed and will aim to maximise profits rather than consumer welfare. The age-old problem for regulatory policy is, then, how to induce the regulated firm to act in accordance with the public interest without the regulator being able to observe fully the firm's behaviour.

pondering on what data are key in light of the market behaviours it wishes to drive, as well as the desired outcomes it wishes to see, both at wholesale and retail levels.

NBI's particular focus in this response is on the set of KPI metrics that ComReg proposes to put in place relating to CEI access, as it is in this area that NBI is dependent on physical infrastructure inputs provided by Eircom for the deployment of its wholesale-only FTTH network.

NBI's use of CEI access products (i.e. pole and duct access) from Eircom differs from that of other CEI access seekers both in terms of the scale of the access it proposes to use and nationwide reach of the access it will require to be provided by Eircom. The very different nature of the access NBI requires to roll out the NBP fibre network in furtherance of public policy is reflected by the fact that Eircom supplies NBI with CEI access within a Major Infrastructure Programme (MIP) framework. Under the MIP Eircom and NBI have agreed bespoke arrangements for placing and fulfilling at very considerable scale and pace orders for pole and duct access on a rolling basis during the NBP network deployment period. The arrangements agreed under the NBI/Eircom MIP differ significantly from how other operators obtain small-scale access at particular locations to the 'generic' variants of the pole and duct access products from the SMP provider[5].

In the next section of this response, NBI explains in more detail the arrangements it has put in place with Eircom under the MIP and what these mean for the proposed KPI metrics on CEI access that Eircom might have to report to ComReg under the KPI reporting framework.

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[5] In its Consultation and Draft Decision on Eircom's CEI access pricing, ComReg made a distinction between NBI's use of CEI access from Eircom for the purposes of deploying the NBP network and the 'generic' CEI access Eircom provides to all other access seekers. Our use of the term 'generic' access in this response has the same meaning as that set out by ComReg in that Consultation. See ComReg Consultation Document No. 20/81 (Paras. 11/12), 9th September 2020.

3 KPI Metrics in the context of the NBP MIP

Before considering in detail the KPIs that ComReg proposes to put in place in relation to Eircom's provision of CEI services, it is first worth setting out details of NBI's use of these services in the deployment of the NBP fibre network. This is important in two respects, as NBI's use of Eircom's pole and duct access varies significantly – both in scale and in how orders for access are fulfilled – from the kind of 'generic' CEI access used by other operators and also because, over the full NBP deployment period, NBI is set to become by far the biggest user of Eircom's CEI access services as it fulfils this initiative of national strategic importance.

In light of this, it is important for ComReg to ensure that the KPIs it plans to put in place for CEI access are reflective of how this access is already being used by NBI and how it will be used even more so as the NBP network deployment progresses over the coming years. Conversely, if ComReg does not do this, then it would mean that its KPI regime for CEI access would, in effect, ignore the main usage that is being made of these wholesale inputs and would instead only focus on the less significant – albeit still important – usage of 'generic' CEI access demanded by other market players.

Unique characteristics of the NBP

The NBP is a major policy initiative by the Government and the deployment solution adopted by NBI constitutes a unique development within the electronic communications sector in this country. NBI is deploying its FTTH network using where feasible existing physical infrastructure assets owned by Eircom, with this network set to be deployed on a nationwide basis connecting approximately 544,000 premises within the NBP Intervention Area (IA).

As noted earlier, over the course of the full NBP network deployment NBI expects to utilise 1.5 million of Eircom's poles and over 15,000 km of its ducts. The scale and pace of access being taken up by NBI over the coming years is unprecedented and will almost certainly be bigger in scale than the CEI access demanded by all other operators combined over the same period.

NBI's use of Eircom's poles and ducts is different from the kind of access taken up by other operators in another important respect. Outside of the NBP IA, in those areas of the country where it is economically feasible for multiple operators to deploy their own networks and compete with each other on a commercial basis, CEI access is an important upstream component in developing competition at retail level for electronic communications services. In the so-called

'commercial areas'[6] operators are looking to secure access to Eircom's CEI to enable them to deploy fibre over which they will then be able to provide active downstream communications services that compete both with Eircom and with other providers. Within the IA, however, as well as being the only provider seeking CEI access, NBI is not looking to obtain access to Eircom's poles and ducts to enable it to compete with Eircom's existing downstream services.[7] Instead, NBI's FTTH network will, when fully deployed, largely replace Eircom's legacy copper network within the IA, with Copper Switch-off (CSO) now already being considered both by Eircom itself[8] and by ComReg too[9].

The deployment of the NBP network on Eircom's poles and ducts within the IA has, in fact, already resulted in an access phenomenon that is unique in the Irish market and is also extremely unusual in an international context. This is that while Eircom is an upstream supplier of CEI access to NBI it is already also a downstream purchaser of wholesale FTTH-based Bitstream and VUA services from NBI. These are, of course, services that are provided over a network that is itself deployed on Eircom's poles and ducts, pursuant to Eircom's SMP obligations to provide pole and duct access.

As already noted, the very clear difference in the type of CEI access required by NBI compared to the 'generic' CEI access demanded by other operators has already been recognised by ComReg in relation to the pricing of access to poles and ducts. In its Consultation Document 20/81, ComReg proposed that a separate pricing regime should be put in place for pole and duct access used by NBI for the purposes of the NBP. The same logic would, then, suggest that ComReg should also consider putting in place NBP-specific KPI metrics for CEI access, to reflect the unique nature of the CEI access being taken up by NBI, both in scale and in usage.

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[6] ComReg coined the term 'Commercial Areas' in Consultation Document 20/81 (Section 3.4.2) to denote those parts of the country, both urban and rural, where high-speed broadband services either are or will be available commercially and so lie beyond the NBP IA. Our use of the term in this response has the same meaning as was adopted by ComReg in that Consultation.

[7] This does not preclude the possibility of such an outcome occurring. An example of this would be where Eircom chose (as would be its right) to use its CEI assets to extend its FTTH network into the IA to enable it to provide competing wholesale and retail fibre-based services there.

[8] See *Copper Switch-off: Leaving a legacy for the Future*, White Paper by Open Eir, March 2021, available at: https://www.openeir.ie/wp-content/uploads/2021/03/White-paper_Leaving-a-Legacy.pdf.

[9] *Consultation process regarding the Transition from Regulated Copper Products and Services*, ComReg Information Notice (Document 21/43), 4th May 2021, available at: https://www.comreg.ie/publication/information-notice-copper-transition-process.

The IAA and MIP

While NBI's use of Eircom's CEI is by way of its regulated pole and duct access products, the duration over which this access will be required, the scale of access needed and the speed at which it is required from Eircom to support the NBP network deployment, as well as its operation and maintenance have meant that bespoke contractual arrangements have had to be put in place to cater for this access request by NBI. This was done by way of an overarching Infrastructure Access Agreement (IAA), a constituent part of which is the Major Infrastructure Programme (MIP) arrangements agreed to by NBI and Eircom, relating to NBI's specific requirements for the ordering of pole and duct access at scale under the NBP.

In brief, the IAA, which was signed by the parties in November 2019, provides for NBI's access to Eircom's CEI **[✕ ✕]** to enable NBI to fulfil its obligations under the NBP Project Agreement with DECC. NBI's access is to the standard regulated pole and duct access products, under the same route licensing arrangements that Eircom has in place with all other operators. Under the MIP, however, NBI and Eircom have agreed bespoke processes for how NBI places orders for and how Eircom is expected to deliver pole and duct access at scale and pace both inside and outside the NBP IA for the purposes of NBI's deployment of the NBP network.

The existence of these processes under the MIP means that the KPI metrics that ComReg plans to put in place for CEI access will be of lesser relevance to NBI in view of the kind of CEI access that is required for the deployment of the NBP network. This is because NBI does not order, nor does Eircom supply to it, the kind of 'generic' pole and duct access it offers to all other operators. As a result, KPI metrics relating to such things as accepted/rejected orders, completed orders and service repair that are grounded in the supply of 'generic' pole and duct access are less relevant from NBI's perspective.

Instead, it is necessary to look at the ordering and supply arrangements for pole and duct access to NBI under the MIP. In this regard, commitments agreed to by Eircom within the MIP are highly relevant:

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In NBI's view, NBP-specific KPI metrics for CEI access in the areas of order acceptance and order completion should be formulated based on the above pole and duct delivery provisions of the MIP. By doing this, ComReg will be able to ensure that the KPI measurement of pole and duct provision related to the NBP network deployment – which is set to comprise the vast bulk of CEI access provided by Eircom over the coming years – is linked directly to relevant contractual commitments on CEI access provision by the SMP operator under the MIP.

It is also worth bearing in mind that, once the NBP network deployment is complete, NBI will still require the fulfilment of further pole and duct access orders, primarily to complete end-user connections. While such connections are catered for within the MIP, once NBI has completed the rollout of its distribution network and has passed all relevant premises within the IA, Eircom will no longer be obliged to maintain the Project Management Office (PMO) it has established to ensure the provisions of the MIP are fulfilled. In that sense, the ongoing pole and duct access required by NBI, post-network rollout, will begin to resemble 'generic' access, as it will involve, for

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each end-user connection, NBI's access to a small number of poles or to a particular section of duct. Notwithstanding this, the volume of end-user connections that NBI envisages to be putting in place in the first few years after the passing network rollout has been completed will still be significant in scale, albeit this will decline over time. This means that the need for NBP-specific KPIs will persist for some time following the end of the NBP network deployment phase.

In light of the arrangements that are in place under the MIP, it is NBI's view that ComReg should give further consideration to a set of KPI metrics that would be appropriate to measure NBP-specific pole and duct access provided by Eircom to facilitate end-user connections put in place by NBI as it rolls out its network across the NBP IA. NBI would welcome engagement with ComReg on what KPI metrics might be most useful to put in place in this regard, based on NBI's evolving experience on pole and duct access delivery to date under the MIP and ComReg's requirements for a well-functioning KPI reporting framework that encompasses all relevant data on pole and duct access provision by the SMP operator.

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4 Responses to ComReg's consultation questions

In this section NBI provides responses to the consultation questions posed by ComReg. In doing so, we focus in particular on ComReg's proposal to extend the KPI reporting regime to include metrics relating to CEI access.

> Q.1.   *Do you agree with ComReg's proposals regarding the scope of relevant products and services? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.*

NBI agrees with ComReg's proposals in relation to the scope of the product and services to be covered by the KPI reporting regime, albeit that its main interest is in the proposed CEI products set. NBI's observations on the KPIs being proposed for CEI access are set out in the response provided to Q.8 below.

> Q.2.   *Do you agree with ComReg's approach to keeping KPIs current? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.*

NBI agrees with ComReg's approach in relation to keeping KPIs current and minimal necessary to measure and drive appropriate behaviour. In this respect, it makes sense to build a KPI component into the development process for new regulated products, based on the KPI metrics that are already in place. Keeping KPIs current should also mean that reporting in respect of declining legacy products should be discontinued where this no longer serves any useful purpose.

NBI notes ComReg's proposal (Para. 3.25) that Eircom may request some KPI reporting be suspended in such a situation. However, to ensure that KPI reporting is truly dynamic over time, there should also be a provision for completely discontinuing the reporting of obsolete KPIs. In this way, the KPI reporting framework should remain focused on the provision of those regulatory products and services that are of most interest to access seekers, thus helping to ensure that obligations on transparency and non-discrimination are complied with in relation to the main wholesale inputs that will, in turn, ensure more effective competition for products and services at the retail level.

> *Q.3.* *Do you agree with ComReg's proposed KPIs for appointments for the NGA products and services? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.*

NBI has no observations to offer in relation to these proposed KPIs at this time.

> *Q.4.* *Do you agree with ComReg's proposed order related KPI metrics? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.*

NBI has no observations to offer in relation to these proposed KPIs at this time.

> *Q.5.* *Do you agree with ComReg's proposed KPIs for supply of service in the NGA, CGA and SB-WLR product and services? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.*

NBI has no observations to offer in relation to these proposed KPIs at this time.

> *Q.6.* *Do you agree with ComReg's proposed fault related KPIs metrics? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.*

NBI has no observations to offer in relation to these proposed KPIs at this time.

> *Q.7.* *Do you agree with ComReg's proposed implementation of KPIs for CEI access, including delaying Eircom's obligation to publish KPIs until demand for CEI has grown to a sufficient level? Please provide reasons for your answers.*

NBI agrees with ComReg's proposed implementation of KPI reporting in the area of CEI access. There is nothing to be gained from obliging Eircom to publish KPI data until such time that demand for CEI access has reached a level where meaningful KPI reporting is possible. NBI

agrees with ComReg's proposed threshold at which the publication of KPI metrics for CEI access should commence.

In addition, as noted earlier and in our response to Q.8 below, NBI would welcome further discussion with ComReg on NBP-specific KPI metrics for CEI access. It is only when these metrics have been finalised and pole and duct orders subsequently exceed the proposed threshold level should their publication commence.

> *Q.8.   Do you agree with ComReg's proposed KPIs for the CEI products and services? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.*

As already outlined in Section 3 of this response, it is apparent to NBI that the KPIs ComReg plans to put in place for CEI products and services are relevant only for the 'generic' variants of pole and duct access. The proposed KPIs do not reflect the very different ordering and delivery processes that are in place between NBI and Eircom in the context of the MIP that has been agreed bilaterally to ensure the delivery at scale of pole and duct access to facilitate the deployment of the NBP fibre network.

Because NBI's use of Eircom's CEI products and services will greatly outweigh in scale, duration and geographic spread all other pole and duct access required by the rest of the market, it follows that a set of KPI metrics that only relate to 'generic' CEI access will fail to pick up ordering and delivery data for most of the pole and duct access that is expected to be availed of over the coming years. As a result, ComReg needs to reconsider its proposed KPI metrics for CEI access to ensure that it collects meaningful data in relation to all pole and duct access orders, in particular the very large volume of orders that are set to be placed by NBI within the ambit of the Eircom/NBI MIP.

NBI's view is that this gap can best be filled by the creation of a set of NBP-specific KPI metrics for CEI access. As outlined earlier in Section 3 of this response, NBI would welcome further engagement with ComReg on what KPI metrics might be most useful to put in place for NBP-specific CEI access, based on NBI's evolving experience on pole and duct access delivery to date under the MIP and ComReg's requirements for a well-functioning KPI reporting framework that encompasses all data on pole and duct access provision by the SMP operator.

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As we have already stressed in this response, NBI's arrangement with Eircom for delivery of CEI access at considerable scale and pace differs completely from the kind of pole and duct access that is required by other market players. It is also a reasonable claim to make that NBI's relationship with Eircom on CEI access is markedly different than the rest of the market, as both parties recognise the need for a collaborative approach to the ordering and delivery of the access that is required to support the deployment of the NBP network.

To that extent, ComReg's proposed KPI reporting framework for CEI access is unlikely to be of significant direct benefit to NBI. This is because NBI already liaises extensively with Eircom on a bilateral basis in relation to all aspects of the CEI access it requires. Nonetheless, extending the KPI reporting framework to CEI access is still a development NBI welcomes. It provides for greater transparency in the supply of this important wholesale input and, as a result, is likely to help drive better performance by the SMP operator in processing and fulfilling orders for CEI services more generally.

> Q.9.   *Do you agree with ComReg's proposals regarding processing, reporting, publication and auditing requirement to improve the effectiveness of KPI metrics? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.*

NBI agrees with ComReg's proposals on the processing, reporting and publication of the KPI metrics, as well as its proposals on auditing requirements to improve the effectiveness of the metrics. NBI has no further observations to offer on these proposals at this time.

Response to ComReg Document 21/33

Public Consultation on ComReg's document entitled "Access Products and Services Key Performance Indicator Metrics"

2nd June 2021

Sky welcomes the opportunity to respond to this public consultation and we have set out our views below under each of the questions posed in ComReg Document 21/33.

Sky is broadly in favour of the proposed approach in the document however more needs to be done to ensure the effectiveness and transparency of the KPI metrics and associated processes once they are implemented. For example, to ensure the maximum benefit from imposing KPIs on the SMP operator, more granular detail in relation to performance as against each of the KPIs should be provided to OAOs. From a transparency and non-discrimination perspective, OAOs should be able to assess how the SMP operator provides their service, whether Eircom is meeting the KPIs and whether the OAO is getting the same treatment as other OAOs and as Eircom provides its own retail arm.

When analysing the market and the trend towards increased fibre rollout, metrics surrounding the installations become increasingly valuable as installations inevitably become more intrusive to achieve the benefits of fibre. For example, we do not believe that the focus should be solely on appointments being met as this does not show anything in terms of the customer experience. The focus should also be on actual provisioning and we would urge ComReg to include KPI metrics around the percentage of orders actually provisioned on the first visit, second visit or longer. We note that other wholesale providers in the Irish market publish such metrics on provisioning and this should become industry standard. In a world where we are looking at migrating customers from ADSL or FTTC to FTTH the provisioning process and appropriate protections for the consumer are vital and this should be recognised in the established KPIs.

Statistics and measurements of "homes passed" for FTTH also need to be clearly understood and explained so that different interpretations are avoided. We also believe that issues associated with data quality should be included in the KPI metrics. The accuracy of the APQ File, which has been an issue for some time, should be monitored and measured. For example, orders that fail because addresses were incorrectly included in the APQ File should be monitored. The accuracy of in-situ and non in-situ data provided in the Masked File should also be monitored.

Q. 1. Do you agree with ComReg's proposals regarding the scope of relevant product and services? Do you have any other observations in relation to the KPIs being proposed?

We are broadly in agreement with the approach. However, while there are not significant orders for LLU there is still a relatively sizeable base and the KPIs for service performance should be maintained.

Q. 2. Do you agree with ComReg's approach to keeping KPIs current? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.

In relation to keeping the KPIs current, we believe that the population size should be defined. While the overall size of the population may not be significant at an industry level it may well be significant at an operator level and as such the metrics may still be of importance.

While we don't believe that a full public consultation will necessarily be required to update the KPI metrics, industry should be informed in advance of any intention to change the KPI metrics and afforded an opportunity to provide input.

Q. 3. Do you agree with ComReg's proposed KPIs for appointments for the NGA products and services? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed?

We believe that additional metrics are required and would be appropriate to introduce. These new metrics would be:

"**First Time Install**" – the % of installs that were delivered in a single appointment.
"**Second Time Install**" – the % of installs that were delivered in the second appointment.

Other wholesale providers have such metrics and, given the importance of provisioning in the move towards FTTH, we believe that this should become industry standard.

We also believe that a new KPI metric should be created detailing the "**availability of appointments**", that is the % of orders that were able to obtain an appointment within 5 days had the customer so desired.

In relation to section 4.30, we also believe that the KPI metrics should take account of **local arrangement**. That is, measure the % of orders that were delivered on the actual appointment date as opposed to those that were delivered on an appointment date locally agreed with the customers post order submission.

Additional metrics should also be included determining the **accuracy of forecasted dates** within the "Non-Standard" metric. Operators rely on these dates to keep customers informed and this data is important in enhancing the customer journey.

Q. 4. Do you agree with ComReg's proposed order related KPI Metrics? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.

We believe the order metrics as currently defined do not provide a complete or accurate picture of performance. The reject reason and undeliverable reason should be further categorised into Eir issue, Customer issue or Order issue.

In addition, there is a lack of transparency in relation to the ability to identify why orders are cancelled. In many cases orders are cancelled as Eir cannot fulfil the provisioning while in other cases the customer can decide to refuse service. It should be evident from these KPIs "why" the order is being cancelled during the provisioning process as per section 4.27. Often the "why" is included in the comments and not readily obvious.

We also believe that issues associated with data quality should be included. That is, the accuracy of the APQ File should be monitored and measured. For example, orders that fail because addresses were incorrectly included in the APQ File should be monitored. Similarly, the accuracy of in-situ and non in-situ data provided in the Masked File should be monitored.

Q. 5. Do you agree with ComReg's proposed KPIs for supply of service in the NGA, CGA and SB-WLR product and services? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed?

Yes, we agree with the addition of the new KPIs for supply of service proposed in the Consultation.

Q. 6. Do you agree with ComReg's proposed fault related KPIs metrics? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.

Yes, we agree with the addition of the new No Fault Found KPIs proposed in the Consultation.

Q. 7. Do you agree with ComReg's approach to the implementation of KPIs for CEI access, including the delaying of the Eircom's obligation to publish KPIs until demand for CEI has grown to a sufficient level? Please provide reasons for your answer.

Yes, we agree with the approach outlined by ComReg in the consultation.

Q. 8. Do you agree with ComReg's proposed KPIs for the CEI products and services? Are there other KPIs you would like to see included in this category? Do you have any other observations in relation to the KPIs being proposed? Please provide reasons for your answers.

Yes, we agree with the approach outlined by ComReg in the consultation.

Q. 9. Do you agree with ComReg's proposals regarding processing, reporting, publication and auditing requirement to improve the effectiveness of KPI metrics? Do you have any other observations in relation to the requirements being proposed? Please provide reasons for your answers.

As stated above, we believe that industry should have sight of the SMP operator's performance as against all KPIs. From a transparency and non-discrimination perspective, OAOs should be able to assess how the SMP operator provides their service, whether Eircom is meeting the KPIs and whether the OAO is getting the same treatment as other OAOs and as Eircom provides its own retail arm.

END.