



Commission for
Communications Regulation

Supplementary Consultation to ComReg 11/72

Price regulation of bundled offers

Further input into Consultation

Reference: ComReg 12/63

Date: 15/06/2012

**An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation**

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland

Telephone +353 1 804 9600 Fax +353 1 804 9680 Email info@comreg.ie Web www.comreg.ie

Legal Disclaimer

This document is not a binding legal document and also does not contain legal, commercial, financial, technical or other advice. The Commission for Communications Regulation is not bound by it, nor does it necessarily set out the Commission's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this document and the due exercise by it of its functions and powers, and the carrying out by it of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the Commission for Communications Regulation. Inappropriate reliance ought not therefore to be placed on the contents of this document.

Content

Section	Page
1 Introduction.....	5
2 Analysis of Larger Exchange Area.....	8
2.1 Introduction	8
2.2 Summary of LEA proposal in ComReg 11/72.....	9
2.3 Overview of information requested.....	11
2.4 ComReg's preliminary interpretation of data	13
2.5 Development of an appropriate LEA	20
3 Revisions to the current net revenue test.....	27
3.1 Two-part net revenue test	27
3.2 A revised wholesale input cost	29
3.3 What happens to the formula when NGA is rolled-out into Category 1 exchanges?.....	32
3.4 What happens if the weighted average wholesale input cost increases? Will this require an increase in Eircom retail prices?	34
3.5 How will the percentage usage of OAOs wholesale inputs be calculated to derive the weighted average wholesale input for Category 1 exchanges?	35
4 Updated definitions in Draft Directions in ComReg 11/72.....	37
5 Submitting Comments.....	38

Annex

Section	Page
Annex: 1 Revised net revenue test under Decision D07/61.....	39
Annex: 2 Urban centres / Cities which prospectively contain individual exchanges to be included in the LEA.....	43

1 Introduction

- 1 On 10 October 2011, the Commission for Communications Regulation ("ComReg") published a Consultation and Draft Decision Document No: 11/72¹ ("ComReg 11/72"). The principal aim of ComReg 11/72 was to consider whether ComReg should further specify the existing regulatory controls in place on Eircom Limited ("Eircom") when it sells a bundle or bundles of services that include Retail Fixed Narrowband Access.
- 2 The retail sale of telecommunication services by bundling more than one service together using the same bill has grown in significance for most operators. The key regulated services in many Eircom bundles include: retail fixed and wholesale narrowband access, wholesale voice (i.e. fixed origination and termination and mobile termination), wholesale physical network infrastructure access ("WPNIA") and wholesale broadband access ("WBA").
- 3 The delivery of retail bundled services to end-users relies heavily on these key regulated inputs. ComReg 11/72 and the annexed Draft Directions therein discussed the inter-relationship between these regulated inputs and set out a proposed framework to ensure that potential anti-competitive behaviour by the Significant Market Power ("SMP") operator in one or more of these markets is mitigated through appropriate ex-ante controls. The controls are intended to ensure that where Eircom (the SMP operator) bundles regulated inputs,² that it is not priced in such a way as to force Other Authorised Operators ("OAOs") which use Eircom's network to sell their retail bundles at a loss. Controls that ComReg currently implements include a "net revenue test" and a "margin/price squeeze test", both of which are described in more detail in ComReg 11/72.

¹ ComReg, "Review of the appropriate price controls in the markets of Retail Fixed Narrowband Access, Wholesale Physical Network Infrastructure Access and Wholesale Broadband Access: Further specification of certain price control obligations in the markets of Retail Fixed Narrowband Access and Wholesale Physical Network Infrastructure Access", 10 October 2011.

² Eircom has been designated as the SMP operator in a number of upstream wholesale and downstream retail markets – in particular, the markets of Retail Fixed Narrowband Access (Market 1), WBA (Market 5) and WPNIA (Market 4) pursuant to ComReg Decision D07/61, "Decision Notice and Decision Instrument - Designation of SMP and SMP Obligations Market Analysis: Retail Fixed Narrowband Access Markets", 24 August 2007, ComReg Decision No. D06/11, "Market Review: Wholesale Broadband Access, Response to Consultation and Decision", 08 July 2011 and ComReg Decision D05/10, "Response to Consultation and Decision - Market Review: Wholesale (Physical) Network Infrastructure Access (Market 4)", 20 May 2010 respectively.

- 4 The purpose of this document ("Supplementary Consultation Paper") is to provide interested parties a further opportunity to submit views on ComReg 11/72; to allow interested parties to provide cross-submissions to the non-confidential responses received to ComReg 11/72;³ and to submit views on ComReg's proposals discussed in this document.
- 5 This Supplementary Consultation Paper should be read carefully in conjunction with ComReg 11/72; it assumes that the reader has a general understanding of the principles and proposals discussed therein and for the most part these are not repeated in this document. This document does not respond to submissions received to ComReg 11/72 — these and any submissions received with respect to this Supplementary Consultation Paper will be carefully considered in future responses(s).
- 6 In ComReg 11/72, ComReg considered that with the prospect of more localised competition evolving over time that there may be merit in revising the parameters of the net revenue test — to ensure that regulation is sufficiently responsive to any such developments. Eircom is currently subject to a number of obligations, including a number of price controls including:
 - the obligation not to unreasonably bundle services in the Retail Fixed Narrowband Access market, which includes the obligation not to cause a margin squeeze and to pass a net revenue test;
 - the obligation not to cause a margin / price squeeze in connection with the WPNIA market; and
 - the obligation not to cause a margin / price squeeze in connection with the WBA market.
- 7 Since publication of ComReg 11/72, ComReg has undertaken additional analysis of the Larger Exchange Area ("LEA") proposal set out in that consultation document. ComReg considers that the outcome of this analysis (discussed further in section 2.4) supports the proposed revision to the current net revenue test as set out in ComReg 11/72 Chapters 4 and 5. A LEA was intended to reflect those areas which prospectively are more likely to permit a greater degree of competition.

³ The full non-confidential responses have been published ComReg 12/63a.

- 8 The main purpose of this Supplementary Consultation Paper is to set out what ComReg considers to be an appropriate LEA — and its implementation in the proposed revision to the current net revenue test. ComReg 11/72 included a Draft Regulatory Impact Assessment (“RIA”) (Annex C of ComReg 11/72) which considered amongst other things the impact of setting a LEA. Consequently, this document does not contain a draft RIA. The draft RIA, set out in ComReg 11/72, will be updated as necessary, following due consideration of all respondent views, and will be published in tandem with the final decision.
- 9 The Supplementary Consultation Paper is structured as follows:

Chapter 2: Analysis of Larger Exchange Area: This chapter discusses the further analysis carried out by ComReg in determining an appropriate LEA over the past few months.

Chapter 3: Revisions to the current net revenue test and margin / price squeeze test: This chapter discusses ComReg's preliminary views with respect to the revisions required to the current net revenue test and the margin / price squeeze test as a result of the analysis outlined in chapter 2.

Chapter 4: Updated definitions to the Draft Directions: This chapter sets out updated definitions to the Draft Directions in Annex B of ComReg 11/72.

Chapter 5: Submitting comments: This chapter sets out the consultation period.

2 Analysis of Larger Exchange Area

2.1 Introduction

10 Since publication of ComReg 11/72, ComReg has gathered further data to help it understand better whether different structural conditions of competition are in fact evolving in different locations across Ireland.⁴ This information provided ComReg with fresh information on transfers between OAOs, new subscriptions and cessations profiles for quarters one to three in 2011 in specific geographic locations. This consideration is important in the context of possible revisions to the current net revenue test for the following two reasons:

1. Assessing the appropriateness of a revised net revenue test under D07/61 by formulating portfolios of certain bundles together based on whether they are sold within or outside the LEA.
2. The applicable wholesale input cost for bundles under the revised net revenue test under D07/61 based on whether they are sold within or outside the LEA.

11 The information provided by those OAOs is confidential in nature and therefore no disaggregated numerical operator data is discussed specifically in this chapter. However, for the purposes of discussion, utilising the publicly available quarterly report data for the same period, it is possible to describe more precisely ComReg's preliminary interpretation of that data including the qualitative results of same. This is discussed in further detail in section 2.4.

12 It is important to note that this data and ComReg's preliminary interpretation of same is without prejudice to the more substantive market analysis of the Retail Fixed Narrowband Access which is currently on-going. The market analysis and interested party views (to this document and ComReg 11/72) will be fully considered prior to ComReg finalising a decision regarding the further specification of the price control obligations in the markets of Retail Fixed Narrowband Access.

13 For ease of reference, this chapter is structured under the following headings:

- Summary of LEA proposal in ComReg 11/72;
- Overview of information requested;
- ComReg's preliminary interpretation of data; and

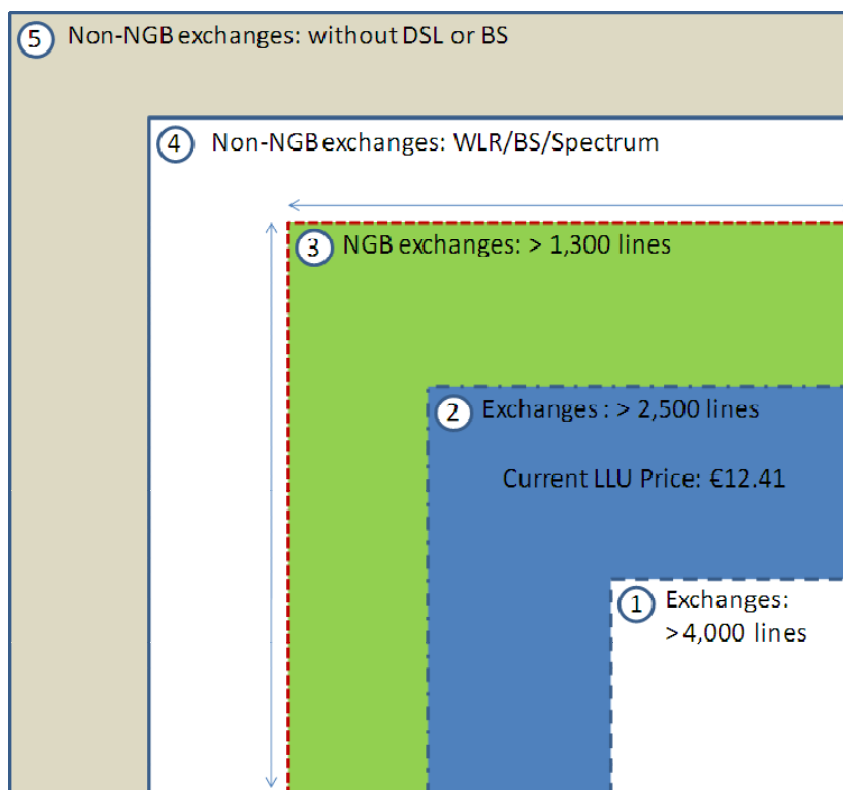
⁴ ComReg's recent review of the WBA market review (ComReg Document 11/49, *Market Review: Wholesale Broadband Access, Response to Consultation and Decision*, Decision No. D06/11, 8 July 2011) found evidence of structural change arising in certain overlapping geographic areas.

- Development of an appropriate LEA.

2.2 Summary of LEA proposal in ComReg 11/72

14 As set out in ComReg 11/72, ComReg considers that Eircom together with the other fixed operators utilising wholesale inputs, namely Wholesale Line Rental (“WLR”) and bitstream, from Eircom have faced a growing presence of alternative infrastructure operators such as the cable operator UPC. ComReg considers that this may prospectively differ by geographic area — subject to the underlying structural characteristics and investment incentives / viability of those areas. Although relatively nascent, Eircom may soon face more competition from Local Loop Unbundling (“LLU”) or Virtual Unbundling (“VUA”) based competition (the latter in the context of Next Generation Access (“NGA”)). However, these forms of competition are very likely to be restricted to more densely populated areas. This could mean that conditions of competition may prospectively differ across the territory of Ireland. Such possible variations can be broadly represented graphically as follows:

Figure 1: Geographic areas identified in Ireland per ComReg 11/72⁵



15 In the above and in summary:

⁵ Where: DSL means a digital subscriber line; BS means bitstream and WLR means wholesale line rental.

“**Area 1**” represents the current footprint of LLU which ComReg believes, for the most part, also matches the current footprint of UPC. This is estimated to be c.80-90 exchanges. This area is likely to be made up of densely populated urban areas with the highest number of access lines per exchange.

“**Area 2**” represents the potential footprint of LLU that was assumed in order to set the maximum price of Full LLU (unbundled local metallic path or “ULMP”) at €12.41 per month. However, actual LLU take-up to date has been low in this area. This maximum price was set on the assumption that only 149 of the largest exchanges (i.e. those with more than 2,500 connections) would ever be unbundled. This issue is discussed in more detail in ComReg 11/72, paragraph 3.13.

“**Area 3**” represents the footprint of Eircom’s Next Generation Broadband (“NGB”) where Eircom offers “uncongested” broadband to its retail and wholesale customers. This is c.250 exchanges situated across the country.

“**Area 4**” represents the footprint of Eircom’s non-NGB WBA.

“**Area 5**” represents the area with no broadband provision by Eircom and relates to mainly very rural areas (there may be broadband through the National Broadband Scheme/other fixed/mobile wireless providers in this area).

16 ComReg indicated that while regulation may be justified across the national territory the appropriate form or level of regulation may vary geographically according to the underlying structural characteristics. ComReg is of the view that the conditions of competition in respect of wholesale broadband are not substantially different to those described in WBA market analysis⁶ to justify a departure for a national market definition. ComReg notes in particular the limited development of LLU since that decision. ComReg plans, before making a final decision in respect of obligations associated with Retail Fixed Narrowband Access, to have arrived at a preliminary conclusion in respect of market conditions in that market.

17 Notwithstanding the above, in ComReg 11/72 ComReg proposed a LEA, to reflect those areas where greater competition may emerge over time and which may require more flexible regulation of bundles as competition emerges. At that time, ComReg did not have a preliminary view on the appropriate LEA and views on the appropriate LEA were sought from interested parties.

⁶ ComReg Decision No. D06/11, “*Market Review: Wholesale Broadband Access, Response to Consultation and Decision*”, 08 July 2011.

18 It is important to note that the proposed revisions to the current net revenue test (discussed in Chapter 3 of this document and in Chapters 4 and 5 of ComReg 11/72) and in particular the weighted average wholesale input (see paragraphs 69-88) are designed in such a way, that it is when Full LLU and /or potentially VUA-based competition increases, that the greater flexibility of these revisions for bundles sold in the LEA will flow through into the revised net revenue test. This is highlighted in an illustrative example in paragraphs 77-78. Therefore, for the avoidance of doubt, under the status quo, ComReg considers that the proposed revisions to the current net revenue test are not significantly different to the current net revenue test and the flexibility of the proposed revision only comes into effect and differentiates from the current net revenue test as structural competition increases.⁷ However, in circumstances where Eircom is pricing above the WBA minimum price floors in the LEA⁸, Eircom would benefit from the lower wholesale network input for bundles sold / offered within the LEA (see paragraphs 75-76).

2.3 Overview of information requested

- 19 Based on ComReg's quarterly report data, the largest service providers of fixed broadband at a wholesale and retail level: BT, Eircom, Vodafone and UPC were requested, for details of their voice and broadband subscribers for quarters one, two and three of 2011 (the "new data"). Specifically, Eircom was requested to provide these details for all exchanges in Ireland. The OAOs were requested to provide these details for the exchanges / areas in which they were present or co-located as unbundlers.
- 20 By filtering this data by the number of lines (see Figure 1) in those exchanges,⁹ ComReg has been able to disaggregate all the information received into what it terms Area 1, Area 2, Area 3 and Areas 4 and 5. The resulting disaggregated information provided ComReg with the customer activity within quarter two and three of 2011 by geographic location / area. While data for quarter one was also provided, as quarter four of 2010 was not requested (on grounds of proportionality), ComReg did not have comparative information to determine the net movement of customers for that period.

⁷ In other words, as the actual use of LLU/VUA by OAOs increases, the weighted average wholesale input cost could decrease for Eircom Retail — which should act as an incentive for Eircom Wholesale to encourage OAOs to use LLU or VUA.

⁸ WBA (ComReg Document No: 12/32, *Wholesale Broadband Access: Further specification to the price control obligation and an amendment to the transparency obligation*, ComReg D06/12, 5 April 2012.

⁹ Where this has not been possible, ComReg has sought to match the geographic areas in which the operators are present to certain exchanges. UPC does not record customer activity by exchange but rather by geographic area. This required ComReg to attribute UPC consumer activity in areas to certain exchanges. For example, UPC noted they were present in the Kildare "area" — which has 12 exchanges, of which UPC presence overlaps 7 of these exchanges. Of those 7 exchanges, 3 would be considered to be "Area 1" exchanges (i.e. greater than 4,000 lines). Consequently, ComReg has

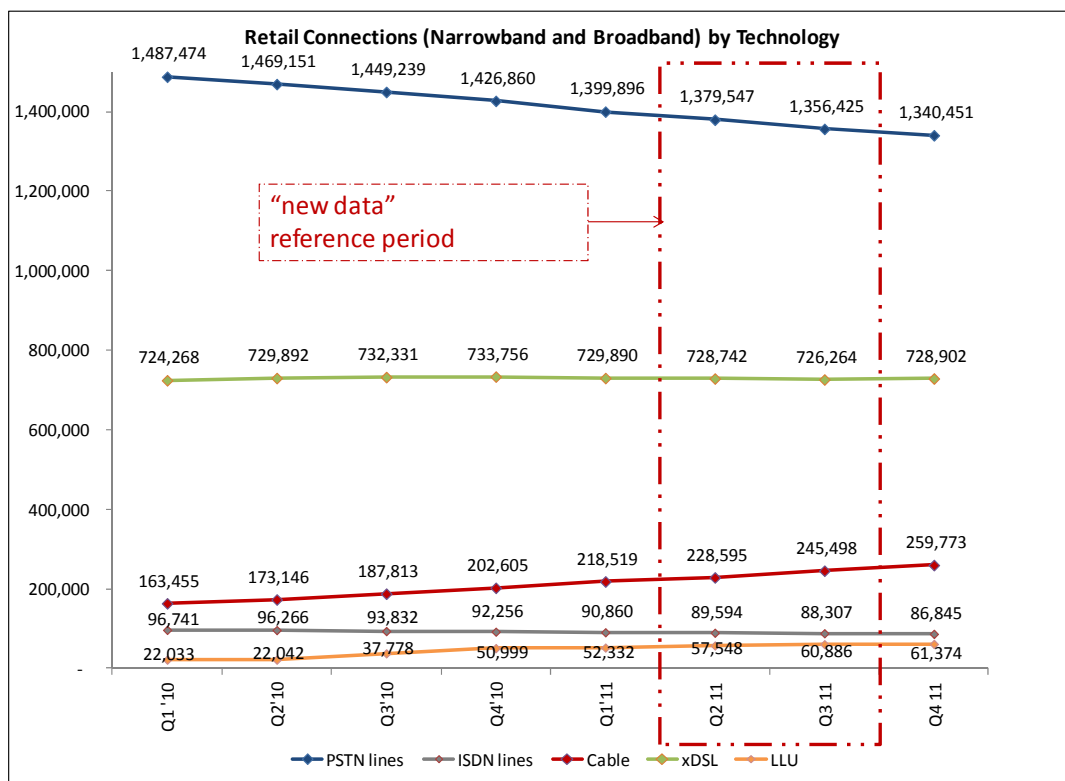
- 21 Operators were requested to provide their customer transfer information (i.e. the number of customer gains or losses from / to other operators). In addition, Eircom and UPC provided additional information on the number of new customers and customer cessations during the period.
- 22 As noted in paragraph 11, the information received is confidential and ComReg is not in a position to publish detailed quantitative data. However, for the purposes of discussion ComReg's preliminary interpretation of that data is discussed in further detail in section 2.4.

assumed that the majority of the UPC activity in Kildare "area" is attributable to those Area 1 exchanges. While by definition some of this activity would also be attributable to Area 2 and Area 3, ComReg considers that this would not be material.

2.4 ComReg's preliminary interpretation of data

23 As is evident in Figure 2 below, the number of PSTN lines has been decreasing over the period, DSL lines and Integrated Services Digital Network (“ISDN”) lines have also been declining quarter-on-quarter. Cable subscriptions to voice and broadband has increased steadily over the period; while there was an initial ramp in LLU-Line Share take-up in quarter three and quarter four of 2010, overall take-up is still relatively low especially when compared to the number of Single Billing Wholesale Line Rental (“SB-WLR”) (as illustrated in Figure 3).

Figure 2: Retail Connections Quarterly Report¹⁰



¹⁰ Extract summary of respective ComReg Quarterly Reports Q1 2010 – Q4 2011.

Figure 3: Carrier Pre-Select and Wholesale Line Rental Access paths Q4 2009 – Q4 2011

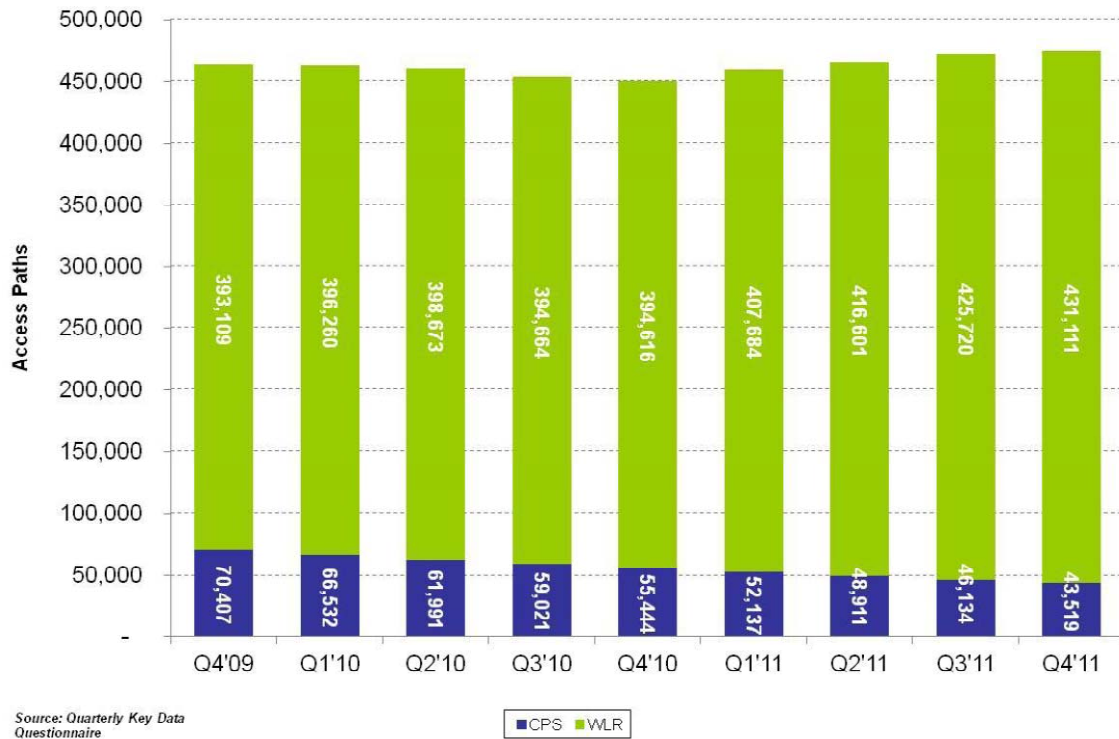
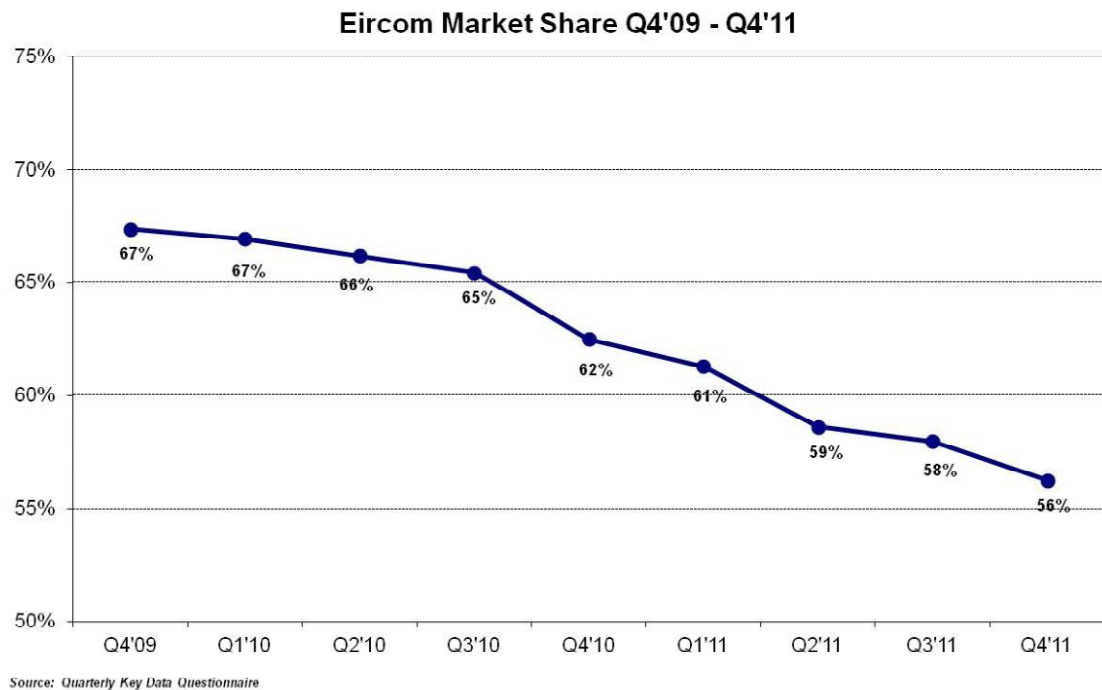


Figure 4: Eircom’s fixed line market revenue (wholesale and retail)



- 24 With respect to Figure 2, as noted in ComReg, *"Quarterly Key Data Report: Data as of Q3 2011"*, 11/98, published 9 December 2011: *"[the] reduction in demand for fixed lines could be due to a number of reasons such as an increase in the number of business failures and exits, competition from other platforms and fixed line disconnections due to emigration"*¹¹. This trend (i.e. decline in fixed lines) is also evident in the new data, in all areas (i.e. Areas 1 to 5). While there is a net decline of customers in Area 2 and Area 3 in both quarters, the quantum of the decrease is significantly lower in comparison to the other areas — both on a standalone basis or when grouped together (i.e. aggregating Area 2 and Area 3).
- 25 With respect to the increase in cable lines over the period in Figure 2, it is evident from the UPC new data and recent press releases¹² that their customer base is following this upward moving trend.
- 26 A summary of the movement of customers for each area is discussed in turn below:

Area 1

- 27 The new data suggests that at the retail level there is a high degree of movement by customers between authorised operators in Area 1. As noted in paragraph 15, Area 1 consists mostly of densely populated urban areas. Of the c.80-90 exchanges in this area, LLU is largely present and for the most part UPC is also available.
- 28 As is evident in both Figure 2 and Figure 4, fixed line connections are decreasing. This is also evident in the new data in Area 1. Area 1 has a high number of customer losses (i.e. through cessations and transfers to other operators). Conversely, the new data indicates that UPC is growing in Area 1. UPC's customer activity is largely confined to Area 1 — see also Figure 5.
- 29 As the incremental cost of network roll-out per customer is significantly lower in this area, due to customer concentration, it is one of the contributory factors of both cable and unbundlers operating in these exchanges (e.g. from a commercial and economic perspective these exchanges have attracted structural investment). As is evident from the new data, once investment has occurred in those exchanges, Eircom together with the other fixed operators utilising its wholesale inputs are facing a migration of customers to alternative infrastructure operators. As the provision of bitstream services (with the exception of any future Naked WBA product) requires the existence of a PSTN line rental, as these PSTN lines are decreasing, it suggests that customers may also be migrating their broadband requirement to other alternative infrastructure operators or ceasing altogether.

¹¹ ComReg Document No. 11/98, 9 December 2011, pg. 19.

¹² <http://www.upc.ie/pdf/quarter1results.pdf>

30 Based on the new data and discussions with industry, ComReg considers that at the retail level competitive pressures appear to be prospectively different in Area 1 — with a high movement of customers between operators. This could be due to a number of reasons including: customer preferences; service; ability to switch to other competitive platforms; ability to switch to other retail providers; pricing and availability of bundling options and marketing strategies. In addition, ComReg considers that there appears to be some correlation between the decreasing fixed line customers (and as a result bitstream subscribers) and increasing cable customers in Area 1. Based on the new data, ComReg considers that Eircom, including OAOs utilising its wholesale inputs are facing increased localised competition from alternative infrastructure-based operators (which includes cable operators). However, it appears to be too early to determine whether the increasing competition indicates that conditions in this area are sufficiently unique and stable to merit defining a separate sub-geographic market — nonetheless, ComReg considers it important to recognise the changing market conditions within this area. It also appears that the presence of UPC is affecting all operators using Eircom’s network to some extent. Accordingly, ComReg propose that the net revenue test continues to be required in order to protect OAOs on Eircom’s network. However, ComReg also proposes to provide more flexibility in order to cater for the possibility that LLU or VUA become more prevalent.

Area 2

- 31 The movement of customers between authorised operators is significantly lower in Area 2 (compared to other areas, with the exception of Area 3 which is currently broadly similar). Of the c.60 exchanges in this area, LLU take-up in this area is currently low. UPC currently has a limited presence in Area 2 and this is also evident in the new data.
- 32 At the retail level the new data indicates that the overall movement of customers is significantly lower than experienced in Area 1.
- 33 The new data suggests that Eircom and retail operators using its wholesale inputs are not facing as much migration of customers to alternative infrastructure operators as experienced in Area 1.
- 34 As LLU take-up in Area 2 is currently low and UPC’s presence in this area also appears limited, coupled with the results of the new data, ComReg considers that as a result of these structural differences, that at the retail level, consumer options appear to be different to that evident in Area 1. Similarly, based on the smaller number of cessations, suggests that Eircom, including OAOs utilising its wholesale inputs are facing different localised competition than that evident in Area 1.

Area 3

- 35 The movement of customers between authorised operators broadly mirrors that evident in Area 2. As noted in paragraphs 15, it is unlikely that LLU-based competition will be a significant factor in Area 3 in the short-to-medium term. Furthermore, UPC's current network coverage appears to be limited in Area 3 — see also Figure 5.
- 36 The new data suggests that prospectively localised competition is broadly similar to that experienced in Area 2. Consequently, ComReg considers that there currently appears to be similarities between these two areas. ComReg considers that this may be potentially as a result of the similar infrastructural presence (or lack of) of other operators in both areas at this point in time. Based on the number of lines in Area 2, ComReg considers that infrastructural-based investment should increase in Area 2 over time, more so than in Area 3, again for reasons of economies of scale and scope, and therefore the localised competitive conditions between these two areas may change as a result.

Figure 5 – Current UPC footprint^{13,14}



¹³ http://www.upc.ie/media/2009/6/30/map_ireland.jpg

¹⁴ UPC's footprint in the Dublin area is available here
<http://www.upc.ie/media/2011/1/13/2011BuildPlanV13.png>

Areas 4 to 5

- 37 Area 4 and Area 5 consist mostly of rural or very rural exchanges. LLU and cable are not present and currently WLR and WBA are the only means of providing an alternative to Eircom Retail over the copper network. The new data is quite limited for these areas, with the exception of Eircom's new data, and therefore for the purposes of discussion these areas have been grouped together.
- 38 The general trend of fixed line decline is evident in Areas 4 to 5. As alternative fixed line infrastructure investment in these areas is limited, it would suggest that there may be a different driver for this activity than that evident in Area 1 — this may be due to a number of reasons including: competition from other platforms and fixed line disconnections due to emigration, affordability etc.
- 39 Based on the geo-type of exchanges in Areas 4 and 5 and discussions with industry participants it is unlikely that alternative fixed line infrastructure investment will occur in these areas to any significant level in the short-to-medium term. Based on the new data and the lack of alternative fixed line infrastructure suggests that the localised competitive conditions in these areas is different to that experienced in other areas and in particular Area 1.

ComReg's preliminary interpretation of data

- 40 ComReg is of the preliminary view that different structural conditions are prospectively creating different consumer choices in certain areas in Ireland. In particular, in Area 1, ComReg considers that the relative switching of consumers between operators at the retail level and the increasing connections to cable provides a very informative view of more localised competitive pressures that appear to be more prevalent in certain areas. However, as noted in paragraph 30, it appears to be too early to determine whether the increasing competition indicates that conditions in this area are sufficiently unique and stable to merit defining a separate sub-geographic market. This will be revisited as part of the market analysis of the retail access market.
- 41 However, it is important to adjust the regulatory regime according to the market conditions. As a result, ComReg considers it appropriate that the regulatory controls imposed on Eircom, as the SMP provider, take account of the market developments such that it:
- Allows Eircom to better compete with any emergent infrastructure competition to the benefit of end-users;
 - Allows efficient OAOs using Eircom's key regulated inputs to better compete which, as shown in the supporting market analyses, continues to be to the benefit of end-users;

- Ensures appropriate incentives remain for both Eircom and OAOs to invest efficiently in broadband infrastructure;
 - Ensures efficient OAOs are not squeezed to the point where they are forced to exit to the ultimate detriment of end-users; and
 - Ensures that retail end-users can benefit from competitive bundle options from multiple operators.
- 42 As set out in ComReg 11/72, ComReg considers that the appropriate remedy, which achieves the objectives outlined above and takes account of the more localised competitive conditions, is to allow Eircom flexibility when selling bundles or groups of bundles in those areas where these changing structural conditions are evident and fast evolving.
- 43 In particular, the above impacts on ComReg's proposals in relation to:
- Assessing the revised net revenue test under D07/61 by reviewing a portfolio of bundles together and on a bundle by bundle basis, based on whether they are sold within or outside the LEA (see paragraph 58 for ComReg's preliminary view of the appropriate LEA).
 - The applicable wholesale network input cost for bundles under the revised net revenue test under D07/61 based on whether they are sold within or outside the LEA (see paragraph 58 for ComReg's preliminary view of the appropriate LEA).
- 44 ComReg considers that these proposals strike the right balance between allowing Eircom some pricing flexibility and ensuring that OAOs (who have fewer customers and a less differentiated customer base than Eircom) can remain competitive in the provision of bundled services in those areas. This flexibility will also be in the long-term interests of consumers, through the provision of more competitive prices, bundles and higher broadband speeds (as operators move from price differentiation to product differentiation to attain and retain new customers). ComReg's proposals are discussed in greater detail in Chapter 3.
- 45 ComReg considers that an appropriate safeguard is required in the retail access market – such that this pricing flexibility for Eircom Retail is not to the detriment of industry and the long-term benefit of consumers. As is evident from the regulatory objectives outlined in paragraph 41, the regulatory objective is to allow the regulated market to replicate, as far as possible, the commercial dynamic outcomes of competitive markets. Consequently, ComReg is of the preliminary view that Eircom's retail access market share will continue to be monitored to ensure that this pricing control remedy remains appropriate. This is discussed in further detail in paragraph 88.

46 As noted in paragraph 12, the market analysis of the Retail Fixed Narrowband Access is currently ongoing and ComReg's preliminary interpretation of the new data is without prejudice to the outcome of this more substantive market analysis — which will also consider the appropriate market definition including different geographic dimensions (if any). However, for the avoidance of doubt, consistent with the European Commission's position,¹⁵ a finding through a market review process that the scope of a relevant market is national does not necessarily preclude ComReg from imposing different geographic remedies. Therefore, from its assessment based on the evidence of the new data and / or submissions to this document, ComReg may implement remedies as appropriate on a geographic basis. In addition, ComReg considers that the methodological stages are consistent with the ERG's (now BEREC) position on geographic aspects of market analysis (definition and remedies)¹⁶ and with precedent overseas regulators (e.g. Ofcom's decision to remove the 10,000 premises threshold from the geographic market definition criteria).¹⁷

2.5 Development of an appropriate LEA

47 As noted in paragraph 40, ComReg is of the preliminary view that different structural conditions are prospectively creating different consumer choices in certain areas in Ireland. Consequently, ComReg considers it appropriate to allow Eircom a different treatment of bundles in those areas (see paragraph 64). ComReg considers that Area 1 is the main area where localised competitive pressures are such that a refined remedy which is flexible enough to reflect any changes in competitive conditions may be warranted.

48 Area 1 is comprised of predominantly large urban exchanges, where LLU and cable are also widely available. Consequently, ComReg considers that the structural conditions evident in Area 1 are greater than merely defining Area 1 as exchanges with greater than 4,000 lines, as previously proposed in ComReg 11/72. Furthermore, ComReg is aware that there are pockets of exchanges in large urban areas which due to the network architecture have fewer than 4,000 lines but that have access to services / products of alternative fixed line infrastructure-based operators. Consequently, ComReg considers that to base the definition purely on number of lines in an exchange may result in inappropriate regulatory outcomes — where a bundle offering / price may not be available in neighbouring estates — in particular as the infrastructure is already in place to provide these “bundles” to the neighbouring exchanges.

¹⁵ For example, Case AT/2008/0757 (Wholesale broadband access in Austria).

¹⁶ http://erg.eu.int/doc/publications/erg_08_20_final_cp_geog_aspects_081016.pdf

¹⁷ <http://stakeholders.ofcom.org.uk/binaries/consultations/wba/statement/wbastatement.pdf> and <http://stakeholders.ofcom.org.uk/binaries/consultations/wba/summary/wbacondoc.pdf>

- 49 As such, ComReg considers that it may not be appropriate that the LEA be based solely on the number of lines present in an exchange but rather on a category of exchanges which comply with certain criteria. Consequently, as a starting point ComReg considers that the LEA should comprise of exchanges where UPC is providing telecommunications services at the retail level in that exchange area and at least one other operator is providing telecommunications services from that exchange at the retail level using LLU¹⁸/VUA (either directly or through the provision of a wholesale service from an LLU/VUA operator) (“Qualifying Exchanges”).
- 50 ComReg is aware that this criterion would include exchanges which may not meet the Area 1 definition (i.e. fewer than 4,000 lines¹⁹). However, ComReg considers that as both LLU/VUA and UPC²⁰ is available in these exchanges that as a result of the structural investment in these areas that the customer choice evident in the new data in Area 1 would also be prevalent in these exchanges. Furthermore, ComReg considers that this definition would also allow the incorporation of certain smaller exchanges in large urban densely populated areas. For example, the Athlone exchange currently has fewer than 4,000 lines but alternative fixed line infrastructure-based is present in this area — which would mean that while the Athlone exchange would not have greater than 4,000 lines it would be included in the LEA.
- 51 Similarly, ComReg is cognisant that the proposed criterion of the appropriate LEA may create “islands” or “pockets” of exchanges that do not meet the above criterion (i.e. paragraph 49) but are surrounded by exchanges and neighbouring communities that do. ComReg considers that this would be inconsistent with commercial dynamic outcomes of competitive markets where the same bundle / offering would not be available on equal terms in neighbouring exchanges. As such, ComReg considers that it may be appropriate to include exchanges into the LEA — where to exclude these might create pockets or islands that are either:
- within the boundaries of contiguous Qualifying Exchanges; or
 - directly beside exchange(s) areas which are Qualifying Exchanges.

¹⁸ where LLU includes either Line Share or GLUMP.

¹⁹ The total number of lines in an exchange which can be active, inactive or dormant.

²⁰ For the avoidance of doubt, where UPC is providing telecommunications services at the retail level in that exchange area.

- 52 In the first instance, these “islands” or “pockets” of exchanges could be created where exchanges are completely surrounded by Qualifying Exchanges. This can occur particularly in inner city or suburban areas due to the network architecture. ComReg considers that it would be inconsistent to have a “pocket” of customers where a bundle offering / price may not be available. In addition, ComReg considers that from a practical commercial perspective (to avoid marketing black-spots) and to avoid the social exclusion of consumers (in particular as the infrastructure is already in place to provide these “bundles” to these “pocket” exchanges) that it would be appropriate to include those exchanges that are completely surrounded by Qualifying Exchanges. In addition, ComReg considers that due to the benefits of a contiguous network, the fact that these “pocket” exchanges are surrounded by Qualifying Exchanges, may increase the future roll-out of infrastructure-based investment in those exchanges.
- 53 With respect to exchanges which are contiguous (i.e. directly beside) Qualifying Exchanges, ComReg considers that based on the new data it would not be appropriate to allow those contiguous exchanges where neither LLU/VUA or UPC²¹ is present in that exchange area to be included in the LEA. ComReg considers that the structural conditions in these exchanges are not homogenous to those contiguous Qualifying Exchanges. As such, ComReg considers that prospectively at the retail level the outcomes evident in the new data where both LLU and UPC are present may not occur in these exchanges over the short-medium term. However, ComReg will continue to review the structural conditions of these exchanges — so that in circumstances where they meet the criteria outlined in paragraph 58 these exchanges could be included in the LEA as appropriate.
- 54 Similarly, there may be exchanges where either LLU or UPC²² is present in that exchange area which is contiguous to a Qualifying Exchange. ComReg considers that further criteria may be required to determine the merits of their inclusion in to the LEA. These exchanges may not be within the current LLU or UPC footprint but might become so in the short-medium term. Therefore, an important consideration is whether the structural conditions in these exchanges are homogenous to the adjoining exchange areas but for whatever reason the roll-out by other operators has not yet commenced. ComReg considers that from a supply side the relative economies of scale and scope should provide a useful indicator of the likelihood of the current and future footprint of LLU/VUA and cable. Consequently, ComReg considers that it may be appropriate to include exchanges which are:

- adjoining Qualifying Exchanges; **and**

²¹ For the avoidance of doubt, where UPC is not providing telecommunications services at the retail level in that exchange area even if it has a television service in that exchange area.

²² Where UPC is providing telecommunications services at the retail level in that exchange area.

- where UPC is providing retail telecommunications services in that exchange area and there are more than 4,000 lines in that exchange and where the exchange area is directly beside Qualifying Exchange(s).

55 ComReg considers that this criterion provides an appropriate indicator of the likelihood of the current and future footprint of LLU/VUA and cable. The requirement that the cable operator UPC is present in that exchange area ensures that consumers are benefiting from infrastructural-based competition. In addition, the requirement that the exchange area has greater than 4,000 lines ensures that the economics of unbundling and the competitive dynamic outcomes of unbundling (i.e. that unbundlers have strong incentives to acquire as high market share as quickly as possible) would allow entrants to compete as effectively in these islands as they can in the adjoining areas (i.e. Qualifying Exchanges). In other words, while LLU may not have yet occurred in these exchanges, operators could do so relatively easily and therefore the structural conditions in these “islands” are similar to the criterion of requiring an exchange area to have both LLU and UPC present in the exchange. In addition, the potential for LLU/VUA ensures competition at the wholesale level in these exchange areas — as noted in paragraph 18, as the actual use of LLU by OAOs increases, the weighted average wholesale input cost would decrease for Eircom Retail — which should act as an incentive for Eircom Wholesale to encourage OAOs to use LLU or VUA.

56 Conversely, ComReg considers it would not be appropriate to include contiguous exchanges which have greater than 4,000 lines but where UPC²³ is not currently present. This is supported by the results of the new data, where ComReg considers that as a result of these structural differences, that at the retail level, consumer options appear to be different to that evident to where both LLU and UPC are present. In addition, the roll-out of UPC network is very different structurally to LLU. As such, where UPC is not currently providing telecommunications services at the retail level in an exchange area implies that prospectively that at the retail level the outcomes evident in the new data may not occur in this area over the short-medium term — as UPC could not as easily roll-out into an exchange area as LLU-based infrastructure.

²³ For the avoidance of doubt, where UPC is not providing telecommunications services at the retail level in that exchange area even if it has a television service in that exchange area.

- 57 However, where UPC is not providing telecommunications services at the retail level in an exchange area, ComReg considers it appropriate to include contiguous exchanges where at least two LLU/VUA-based operators are operating at the retail level in that exchange (i.e. where at least two OAOs are using LLU/VUA infrastructure, directly or indirectly in the provision of telecommunications services). ComReg considers that these LLU/VUA-based operators would have a combined substantial retail presence in each such exchange, or group of exchanges before it can be included in the LEA. ComReg believes that this criterion should ensure that the retail competitive pressures would be prospectively similar to those exchange area(s) where both LLU and UPC is present. ComReg is cognisant that no exchange currently meets criterion number 4. However, ComReg considers that this could prospectively change over time and therefore in order to provide regulatory certainty of the LEA, it is appropriate to future proof the requirements for future potential market developments.
- 58 In summary, ComReg proposes that it is appropriate that the LEA be comprised of Category 1 areas only. ComReg is of the preliminary view that Category 1 areas are exchanges that meet the following criteria:
1. Where UPC is providing telecommunications services at the retail level in that exchange area and at least one other operator is providing telecommunications services from that exchange at the retail level using LLU²⁴/VUA (either directly or through the provision of a wholesale service from an LLU/VUA operator); or
 2. Where an exchange is surrounded by exchange areas which meet criteria 1, 3 or 4; or
 3. Where UPC is providing retail telecommunications services in that exchange area and there are more than 4,000 lines in that exchange and where the exchange area is directly beside exchange(s) which meet criterion 1; or
 4. Where UPC is not providing telecommunications services at the retail level in that exchange area, but where at least two operators at the retail level are either using LLU/VUA, or purchasing LLU/VUA from an LLU/VUA operator in that exchange, in either case with a combined substantial retail presence²⁵, and where the exchange is directly beside exchange(s) which meet criterion 1.

²⁴ For each of the four criteria, LLU includes either Line Share or GLUMP.

²⁵ Indicatively for these purposes, this could be a combined share of at least 30-40% of the retail fixed telecommunications revenues in each such exchange, or group of exchanges.

- 59 ComReg considers that as the entire network is contiguous criteria 2, 3 and 4 are important requirements for the inclusion of “island” or “pocket” exchanges — without these provisions it could result in all the exchanges in Ireland being included — based on the results of the new data this would not currently be appropriate. ComReg considers that the exchanges included in Category 1 as a result of being an “island” or an adjacent exchange (i.e. as a result of criteria 2, 3 and 4 above) should not give rise to competitive distortions. However, as noted in paragraph 88 this will be kept under review by ComReg.
- 60 ComReg considers that in order to provide regulatory certainty in respect of the various components of the net revenue test and margin squeeze test that it is appropriate that a list of individual exchanges which meet criteria 1-4 are included in the net revenue test and updated as appropriate. However, ComReg would continue to keep the list of exchanges in the LEA under review to ensure it is sufficient to address any competition concerns that may arise and reserves the right to intervene in exceptional circumstances.
- 61 Annex: 2, provides a list of cities/ urban centres which ComReg considers may prospectively meet the criteria outlined in paragraph 58. For the avoidance of doubt, these cities / urban centres are indicative only and the LEA will be comprised of a list of certain exchanges within these cities / urban centres (e.g. while Dublin is listed in Annex: 2, it does not imply that all exchanges within Dublin city and county are necessarily included in the LEA). ComReg would be interested in receiving interested parties’ views on the list of the cities / urban centres listed. Subject to non-confidentiality and ComReg 05/24, the list of exchanges in these cities / urban centres is available on request by interested parties.

Figure 6: ComReg's preliminary view of the appropriate LEA

LEA means Category 1 exchanges

Category 1 exchanges means:

1. Where UPC is providing telecommunications services at the retail level in that exchange area and at least one other operator is providing telecommunications services from that exchange at the retail level using LLU¹/VUA (either directly or through the provision of a wholesale service from an LLU/VUA operator); or
2. Where an exchange is surrounded by exchange areas which meet criteria 1, 3 or 4; or
3. Where UPC is providing retail telecommunications services in that exchange area and there are more than 4,000 lines in that exchange and where the exchange area is directly beside exchange(s) which meet criterion 1; or
4. Where UPC is not providing telecommunications services at the retail level in that exchange area, but where at least two operators at the retail level are either using LLU/VUA, or purchasing LLU/VUA from an LLU/VUA operator in that exchange, in either case with a combined substantial retail presence², and where the exchange is directly beside exchange(s) which meet criterion 1.

¹ For each of the four criteria, LLU includes either Line Share or GLUMP.

² Indicatively for these purposes, this could be a combined share of at least 30-40% of the retail fixed telecommunications revenues in each such exchange, or group of exchanges.

Q. 1 Do you agree with the definition of the LEA (i.e. Category 1 exchanges) as set out in paragraph 58? Please provide a detailed response with supporting data where appropriate to support your view.

Q. 2 With reference to Annex: 2, ComReg would be interested in interested parties' views.

Q. 3 Do you agree with the inclusion of "island" exchanges in the definition of Category 1 exchanges to be appropriate? Please provide sufficient reasoning to justify your views.

3 Revisions to the current net revenue test

Introduction

62 As the SMP operator²⁶ there is a requirement on Eircom to avoid a margin squeeze and to pass a net revenue test for its bundles that include retail fixed narrowband access.²⁷ Since Decision D05/10, an obligation also falls on Eircom not to cause a margin / price squeeze in connection with the market for WPNIA (this is discussed in further detail in Chapter 8 of ComReg 11/72).

The current net revenue test

63 The current net revenue test is conducted on a per month basis for each individual Eircom bundle that includes Retail Fixed Narrowband Access (retail line rental). The various factors considered in the current net revenue test are set out in Figure 6 page 25 of ComReg 11/72, as extracted from the Information Notice No. 09/08.

Proposed revisions to the current net revenue test

64 ComReg 11/72 consulted on certain revisions to the net revenue test which included:

1. For the net revenue test to be a two-part test: Part 1) Portfolio aggregate bundle assessment based on Average Total Cost ("ATC"); and Part 2) Individual bundle assessment with a lower cost standard required for retail calls only.
2. A revised wholesale input cost: setting a revised wholesale input cost for use in the net revenue test (see ComReg 11/72 paragraphs 5.1-5.26).

Each of these is discussed in turn below in the context of ComReg's preliminary view of the appropriate LEA (see paragraphs 58-60) **only**. ComReg's reasoning for the proposed revisions were discussed in ComReg 11/72 and for the most part these are not repeated here.

3.1 Two-part net revenue test

65 ComReg 11/72 (paragraphs 4.26 - 4.33) specifically considered how to define a portfolio of bundles under Part 1 of the proposed revision to the net revenue test. ComReg was of the preliminary view that it was appropriate to apply the test for two separate portfolios:

²⁶ supra n 2.

²⁷ ComReg Decision D07/61, "Decision Notice and Decision Instrument - Designation of SMP and SMP Obligations Market Analysis: Retail Fixed Narrowband Access Markets", 24 August 2007.

1. Bundles (including voice only bundles) sold in the LEA; and
2. Bundles sold outside the LEA.

66 Based on the results of the new data, ComReg is of the preliminary view that the appropriate LEA is Category 1 (see paragraph 58). Consequently, this results in two separate portfolios being assessed; the first would consider bundles (including voice only bundles) in Category 1 exchanges, the second would consider bundles sold outside of Category 1 exchanges.

67 For clarity, this would mean that:

- Part 1 of the revised net revenue test requires that bundles sold / offered are grouped into two portfolios. The first portfolio is bundles sold / offered in the LEA, the second portfolio is those bundles sold / offered outside the LEA. The bundles in the first portfolio are aggregated together and together must pass its Average Total Cost ("ATC"). A proposed revision of the wholesale inputs discussed in section 3.2 is proposed for this first portfolio. Similarly, the bundles in the second portfolio are aggregated together and together must pass its ATC. However, no revision of the wholesale inputs is applicable for this portfolio and the cost standard for retail costs associated with SB-WLR and WBA would remain that as calculated under their respective retail-minus price controls.
- On the provision that the portfolios pass Part 1 of the test, Part 2 of the net revenue test is then applied. The bundles in the first portfolio (i.e. within the LEA) are now assessed on an individual bundle basis and each bundle must pass its own ATC with a Long Run Incremental Cost ('LRIC') cost standard for retail calls. The bundles in the second portfolio (i.e. outside the LEA) are still assessed on an individual bundle basis and each bundle must pass its own ATC, however, the LRIC cost standard for retail calls is not applied to these bundles.
- The assessment of individual bundles will, however, be subject to an overriding competitive impact assessment. For example, where a bundle is likely to be immaterial in subscriber terms ComReg may not withhold its launch.

68 For ease of reference, the proposed revised net revenue test (as set out in ComReg 11/72) is replicated in Annex: 1.

3.2 A revised wholesale input cost

69 Currently, the net revenue test uses SB-WLR and WBA (Bitstream) as the wholesale inputs. In ComReg 11/72,²⁸ ComReg proposed that the net revenue test for bundles sold / offered within the LEA could utilise a weighted average combination for Part 1 of the revised net revenue test of:

- SB-WLR and WBA;
- SB-WLR and LLU Line Share;
- LLU (ULMP)

The above would only be used in the net revenue test to assess whether a bundle that includes retail fixed narrowband access in the LEA is below cost. The weighting would be determined by the use of the different wholesale inputs by OAOs in the LEA. ComReg proposed that for areas outside the LEA the use of the SB-WLR and WBA (Bitstream) as the applicable wholesale inputs in the net revenue test would continue where no alternative infrastructure exists.

70 As noted in paragraphs 58-60, ComReg is of the preliminary view that the appropriate LEA is Category 1. This would allow Eircom to use a different wholesale input cost in Category 1 exchanges. It should be noted, that the weighting determined by the use of the different wholesale inputs by OAOs in the LEA will lower the wholesale input cost available to Eircom as more OAOs migrate to full unbundling (i.e. Full LLU or “GLUMP” (see paragraph 78)). Similarly, the wholesale input for WBA in Category 1 exchanges will be based on the underlying financial floors model for WBA (ComReg D06/12) see paragraphs 75-76.

71 For illustrative purposes, the applicable wholesale inputs used by OAOs in Category 1 exchanges would be calculated as follows: the three applicable wholesale inputs and all associated costs would be taken based on the prices in effect and current cost models.

72 The examples and unit costs below are indicative only based on assumptions made. Supporting cost models have not been finalised. ComReg will use the most up to date information available at the time of any review of a bundle proposed. The costs below therefore may be higher or lower depending on such a review and should only be used as guidance.

²⁸ ComReg 11/72, paragraphs 5.1 to 5.30 and paragraph 6.2.5.

- 73 The first applicable wholesale input is SB-WLR and WBA. This would be based on the SB-WLR price plus the weighted average price of all the wholesale equivalent of NGB, bitstream managed backhaul (“BMB”). As BMB is priced based on usage, an assumption has to be made in relation to the Mbps usage that sets the wholesale price.²⁹ For this example, ComReg proposes to use an average usage of 100kbps³⁰ for the 8Mb BMB product and 150 kbps for the 24Mb BMB product as the assumed usage facing an equivalent operator.
- 74 Consequently, assuming a hypothetical example of 80% customers on 8Mb BMB and 20% on 24Mb BMB, and using Eircom’s current wholesale pricing³¹ for its BMB products and making an assumption of 100 kbps for 8 Mb BMB and 150 kbps for 24Mb BMB, this would result in a possible monthly wholesale input price of:

SB-WLR and BMB			Input	Blend
100% SB-WLR			€	18.02
80% 8Mb BMB (€4.90+0.03*100kbps)=	€	7.90	€	6.32
20% 24Mb BMB (€5.90+0.03*150kbps)=	€	10.40	€	2.08
<u>Connection and disconnection</u>			€	0.83
Total possible SB-WLR and BMB wholesale input			€	27.25

- 75 The second applicable wholesale input is SB-WLR and Line Share plus all the relevant costs facing a Reasonably Efficient Operator (“LS+”). For illustrative purposes, the price floor for bitstream is included in this worked example – which has been informed by the underlying financial floors model for WBA (ComReg D06/12). For clarity, it should be noted that the relevant wholesale input costs for WBA will be set by reference to ComReg D06/12³² and the resulting minimum price floors for WBA bundles sold / offered within the LEA only.

²⁹ Since publication of ComReg 11/72, ComReg finalised the minimum price floor model for WBA (ComReg Document No: 12/32, *Wholesale Broadband Access: Further specification to the price control obligation and an amendment to the transparency obligation*, ComReg D06/12, 5 April 2012.

³⁰ Where kbps means kilobit per second.

³¹ [Bitstream Price List v7.12](#). Note that Eircom Wholesale charge all operators’ usage on a tiered basis from 1 May 2012 until the price reduction for Bitstream MB is introduced on 1 July 2012. For illustrative purposes ComReg has used the price reduction available from 1 July 2012.

³² ComReg Document No: 12/32, *Wholesale Broadband Access: Further specification to the price control obligation and an amendment to the transparency obligation*, ComReg D06/12, 5 April 2012.

SB-WLR and LS+			
	Input		Blend
SB-WLR - per Eircom RIO			€ 18.02
Fault Repair			€ 0.37
Line Share-per Eircom ARO			€ 0.77
Port cost per user (per minimum price floors model)	€	4.55	€ 4.55
Backhaul costs (per minimum price floors model)			
Fixed cost per user	€	1.33	€ 1.33
Variable (cost per Mbps), say 100kbps usage	€	8.14	€ 0.81
Connection and disconnection			€ 0.83
Total possible SB-WLR and LS+ wholesale input			€ 26.68

76 The third possible applicable wholesale input is LLU+ (i.e. the cost of full unbundling, known within industry as GLUMP). This would use the ULMP price / network input cost in effect in the relevant area as appropriate. For illustrative purposes, the price floor for bitstream is included in this worked example – which has been informed by the underlying financial floors model for WBA (ComReg D06/12). In addition, a monthly cost for Fault Repair to reflect the likely average cost faced by an LLU operator is also required in the cost stack. Therefore, for this example, ComReg considers all the relevant monthly costs for this applicable wholesale input could be as follows:

LLU+			
	Input		Blend
ULMP			€ 12.41
ULMP Fault Repair			€ 1.20
Line card included in DSLAM			€ -
ULMP connection and disconnection charges			€ 0.83
Port cost per user (per minimum price floors model)	€	4.55	€ 4.55
Backhaul costs (per minimum price floors model)			
Fixed cost per user	€	1.33	€ 1.33
Variable (cost per Mbps), say 100kbps usage	€	8.14	€ 0.81
Total possible LLU+ wholesale input			€ 21.13

77 To get the applicable weighted average of all the applicable wholesale inputs the % usage of each applicable wholesale input by OAOs in Category 1 will be used (this is discussed in greater detail in paragraphs 89-94). Therefore, assuming for this hypothetical example that OAOs use 45% SB-WLR and BMB, 43% SB-WLR and Line Share and 12% LLU in Category 1 would **result in a weighted average wholesale input for Category 1 exchanges only** as follows:

LEA	Category 1 areas	Input	Blend
	45% SB-WLR and BMB	€ 27.25	€ 12.26
	43% SB-WLR and LS+	€ 26.68	€ 11.47
	12% LLU+	€ 21.13	€ 2.54
Wholesale input cost for Category 1 areas			€ 26.27

78 As can be seen, for the example above, the weighted average wholesale input proposed for use in Category 1 exchanges is broadly similar to that for the full SB-WLR and WBA input currently in use. This is mainly due to the low level take-up of LLU by OAOs in the example. Therefore, as the actual use of LLU by OAOs increases, the weighted average wholesale input cost would decrease for Eircom which would act as an incentive for Eircom to encourage OAOs to use LLU.

79 This raises three important considerations which were not originally consulted on in ComReg 11/72:

1. What happens to the formula when NGA is rolled-out into Category 1 exchanges?
2. What happens if the weighted average wholesale input cost increases? Will this require an increase in Eircom retail prices? and
3. How will the percentage usage of OAOs wholesale inputs be calculated to derive the weighted average wholesale input for Category 1 exchanges?

Each of these is discussed in turn below:

3.3 What happens to the formula when NGA is rolled-out into Category 1 exchanges?

80 As noted in paragraph 77, to get the applicable weighted average of all the applicable wholesale inputs the percentage usage of each applicable wholesale input by OAOs in Category 1 exchanges will be used. Therefore, as NGA is rolled-out into Category 1 exchanges the formula will simply be amended to take account of the SB-WLR-VUA and / or VUA wholesale input cost – similar to illustrative examples set out in paragraphs 74, 75 and 76, with the resulting input cost being multiplied by its weighted usage of each of the applicable wholesale input costs used by OAOs in Category 1 exchanges.

81 This can be expressed algebraically as follows:

Where

x = SB-WLR and BMB wholesale input

y = SB-WLR and LS+ wholesale input

z = LLU+ wholesale input

β = SB-WLR and VUA wholesale input

δ = VUA wholesale input

WNI = Wholesale Input Cost for Category 1 areas

% = Weighting of each applicable wholesale input used by OAOs in Category 1 areas

Weighted Average Wholesale input cost for Category 1 formula:

$$%*x + %*z + %*y + %*\beta + %*\delta = \text{WNI}$$

82 ComReg considers that it is appropriate for the weighted average wholesale input formula as consulted on in ComReg 11/72 to be updated — such that it will take account of potential changes in wholesale inputs used by OAOs. The appropriate cost stack of standalone VUA is subject to a separate consultation process (see ComReg “Response to Consultation, Further Consultation and draft decision on NGA”, ComReg Document No. 12/27). ComReg is cognisant that the SB-WLR-VUA cost stack may need to be adjusted for costs that are counted twice within the SB-WLR and VUA cost stack (e.g. faults, migration charges etc.).

Q. 4 Do you agree with the proposed use of a weighted average wholesale input in the net revenue test in Category 1 exchanges?

Q. 5 Do you agree with the weighted average wholesale input calculation to take account of OAOs use of VUA as a wholesale service / product in Category 1 exchanges? Please provide adequate reasoning to support your views.

3.4 What happens if the weighted average wholesale input cost increases? Will this require an increase in Eircom retail prices?

- 83 The weighted average wholesale input cost formula could over time result, should OAOs (for whatever reason) use a different mix of the current wholesale inputs in the Category 1 area, in an increase in the wholesale input cost for Eircom. Potentially, this could give rise to Eircom being required to increase retail prices in the Category 1 exchanges in order to pass the required net revenue test; or, in order to avoid a margin squeeze test between the wholesale and retail markets. In addition, ComReg considers that this could create perverse incentives for industry to influence Eircom wholesale and retail prices to the potential detriment of long-term interests of consumers and create inconsistent commercial dynamic outcomes of competitive markets — as prices could fluctuate year-on-year due to the regulatory controls (and may result in increasing Eircom retail prices).
- 84 Consequently, ComReg is of the preliminary view that the resulting wholesale input cost for Category 1 exchanges must be less than or equal to the previous applicable weighted average wholesale input cost — with the exception of the circumstance outlined in paragraph 86. Where wholesale input cost is greater than the previous applicable wholesale input cost, ComReg is of the preliminary view that the previously lower applicable wholesale input cost must be used for the current period — with the exception of the circumstance outlined in paragraph 86.
- 85 Notwithstanding the above, should the derived weighted average wholesale input cost be greater than the previous applicable weighted average wholesale input cost for three consecutive periods, ComReg will review its causation and if appropriate may revise the downward only adjustments for the wholesale input cost in Category 1 exchanges.
- 86 However, as noted in paragraphs 80-82, as NGA is rolled-out into Category 1 exchanges the formula will simply be amended to take account of the updated use of wholesale inputs. ComReg considers that in this instance the weighted average wholesale input cost may have to increase due to the higher costs of VUA.

- 87 For the avoidance of doubt, as the revised net revenue test is a two part test; the second part requiring a bundle by bundle net revenue test (see paragraphs 65-68), Eircom will need to be mindful that the lower weighted average wholesale input does not cause a margin / price squeeze on an individual bundle basis. Consequently, Eircom may need to lower the wholesale input cost stacks (e.g. SB-WLR, LLU etc.) in order to comply with the test — such that Eircom retail does not need to raise retail prices. ComReg considers that this will enable Eircom at the retail level greater pricing flexibility but also that the economic space between wholesale and retail continues to be respected. However if, for any reason a reduction in wholesale prices is not possible then an increase in retail prices may be required.
- 88 Eircom's retail market share will be monitored by ComReg and should that indicate that OAOs are being squeezed (for example if their retail market share on Eircom's platform is declining or has reached an excessively low level) then ComReg will review the appropriateness of the further specification of the pricing control. ComReg considers that it is appropriate to calculate this retail broadband share based by reference to respective DSL lines. ComReg is cognisant that this parameter may need to be updated in future depending on technology developments and usage.

Q. 6 Do you agree with ComReg's proposal with respect to Category 1 exchanges — where changing market shares would normally require an increase in the bundles wholesale input? If you disagree, please provide sufficient detail to justify your views.

Q. 7 What indicators in the retail market do you think should trigger a re-assessment of the revised net revenue test?

3.5 How will the percentage usage of OAOs wholesale inputs be calculated to derive the weighted average wholesale input for Category 1 exchanges?

- 89 ComReg 11/72 proposed that in order to derive the applicable weighted average of all the applicable wholesale inputs the actual percentage usage of each applicable wholesale input by OAOs in the LEA is used – it was proposed that this would be updated quarterly.

- 90 ComReg considers that this raises an important consideration of what will inform this actual usage of OAOs. Data from the ComReg Quarterly Reports could be used to inform this, however, ComReg considers that while this would reflect actual OAOs usage, it could be out of date (i.e. the derived wholesale input would not be capable of reflecting a large up-take or decrease OAOs usage in a particular quarter until after that quarter has passed). Coupled with the notification period required for new pricing may result in a significant time lag for prices to be introduced to the market which reflect OAOs actual usage. ComReg considers that this is an important consideration in the context of Eircom's NGA roll-out and potential migration from legacy to NGA. In addition, the Quarterly Reports do not provide disaggregated data on OAOs usage of wholesale inputs by geographic area — which is a necessary to be determine OAOs usage in Category 1 exchanges.
- 91 Consequently, ComReg considers that an alternative approach is required. ComReg believes that Eircom wholesale could be an alternative source for this data. This would have the advantage that the data is capable of identifying wholesale input usage of OAOs in Category 1 exchanges. In addition, the data would be timelier than requiring the publication of the Quarterly Report. This is of course on the premise that sufficient Chinese walls exist in Eircom such that Eircom Retail has no visibility of any such movements or planned movements of an LLU/VUA operator.
- 92 ComReg is of the preliminary view that OAOs usage of wholesale inputs in Category 1 exchanges is to be provided by Eircom wholesale. The relevant weightings are to be provided to ComReg as part of the notification and pre-clearance requirements with respect to the launch of bundles (as discussed in Chapter 7 in ComReg 11/72).
- 93 ComReg would be interested in receiving interested parties' views on an alternative to this approach where a pre-determined 'efficient' wholesale product mix is set for the three year review period. This could ensure there are no perverse incentives to maintain an inefficient actual product mix and the net revenue test could be based on certain assumptions about realistic and achievable migration to LLU (similar to the recent LLU take-up assumptions used in the recent WBA Decision (ComReg 12/32)).
- 94 As noted in paragraph 88, Eircom's retail market share will be monitored and if appropriate ComReg will review the appropriateness of the further specification of the pricing control.

Q. 8 Do you agree with how the wholesale input usage of OAOs in Category 1 exchanges is calculated? If you disagree, please provide sufficient detail to justify your views and provide an alternative mechanism by which this could be calculated.

4 Updated definitions in Draft Directions in ComReg 11/72

95 Annex B of ComReg 11/72 provided the draft direction in relation to decision D07/61. The following definitions provided in section 2.1 of the Direction were as follows:

“**Bundle**” means a package of services, consisting of Retail Fixed Narrowband Access and one or more other services, which is offered for sale by Eircom to end users;

“**Portfolio**” means [*to be defined following consultation in line with discussion on pages 26 to 27 of ComReg Consultation Document No. 11/72*];

96 ComReg proposes to revise these definitions and include a definition of the Larger Exchange Area. As such, ComReg proposes the following definitions:

“**Bundle**” means a package of services, consisting of Retail Fixed Narrowband Access and one or more other services, which is on offer or on sale by Eircom to end users;

“**Portfolio**” means:

- (a) the aggregation of bundles on offer or on sale by Eircom to end users in the Larger Exchange Area; and
- (b) the aggregation of bundles on offer or on sale by Eircom to end users outside the Larger Exchange Area.

“**Larger Exchange Area**” means an area specified by a list of exchanges contained in Net Revenue Test Model;

Q. 9 Do you believe the draft text of the proposed directions are from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain your response and provide details of any specific amendments you believe are required.

5 Submitting Comments

- 97 The consultation period will run till 5pm on 27 July 2012, during which ComReg welcomes written comments on any of the issues raised in this paper. It is requested that comments be referenced to the relevant question numbers and/or paragraph numbers from this document. Where views are provided, please provide a supporting rationale for your comments, including if possible, an indication on the broader impact on industry of any changes proposed.
- 98 In order to promote further openness and transparency, ComReg will publish all respondent's submissions to this Supplementary Consultation Paper, subject to the provisions of the ComReg's Guidelines on the Treatment of Confidential Information – ComReg 05/24. If the submission contains confidential information an additional document labelled "public version" should be provided.
- 99 We would request that electronic submissions be submitted in an unprotected format so that they can be appended into the ComReg submissions document for publishing electronically.
- 100 All responses to this consultation should be clearly marked:- "Reference: Submission re Supplementary Consultation to ComReg 11/72" as indicated above, and sent by post, facsimile or e-mail to arrive on or before 5pm, 27 July 2012, to:

Mr. Kjeld Hartog
Commission for Communications Regulation
Block DEF
Abbey Court
Lower Abbey Street Freepost
Dublin 1

Ph: +353-1-804 9600 **Fax:** +353-1-804 9680

Email: wholesaleconsult@comreg.ie

Annex: 1 Revised net revenue test under Decision D07/61

REF	ITEM (all ex VAT)	Description	
	Revenue:		
R1	Monthly Bundle Price	This is the headline monthly price of a bundle.	
R2	Monthly Out of Bundle Calls Revenue	<p>This is a weighted average of the total calls revenue earned on average outside the bundle per month based on actual revenues and volumes (post-launch assessment) or forecast revenues and volumes (pre-launch assessment).</p> <p>This is calculated for each component call that is charged separately outside the bundle by: (i) taking the total number of calls for that component that are outside by bundle allowance and multiplying that by the call set up fee; and (ii) taking the total minutes for that component that are outside bundle allowance and multiplying that by the retail price per minute. This total revenue for the component outside bundle allowance is then divided by the total number of customers to get an average revenue per customer for that component used outside of bundle allowance.</p>	
R3	Monthly Out of Bundle Other Revenue	This is the average of any other monthly out of bundle revenue.	
R4	Total Monthly Bundle Revenue	This is the sum of the Monthly Bundle Price <i>plus</i> Monthly Out of Bundle Calls Revenue <i>plus</i> Monthly Out of Bundle Other Revenue.	
R5	Total Monthly Portfolio Revenue	This is a weighted average of Total Monthly Bundle Revenue based on the actual volumes of each Bundle in the Portfolio (in the case of post-launch assessment) or the forecast volumes for each Bundle in the Portfolio (in the case of pre-launch assessment).	
	Costs:		
C1	Total Wholesale Access Input Cost	In the case of Bundles sold from the Larger Exchange Area	This is the applicable monthly prices plus all relevant wholesale costs of SB-WLR, WBA, Line Share and LLU network input cost in effect in the Larger Exchange Area weighted by the use of those wholesale

			inputs by OAOs in the Larger Exchange Area. In this context “all relevant wholesale costs” means a) ancillary charges levied by Eircom in respect of a particular service amortised, where appropriate, over the relevant assumed customer life ³³ plus b) other unavoidable non-retail costs which are necessary to provide a retail service ³⁴ . All costs are converted to a monthly average.
		In the case of Bundles sold from outside the Larger Exchange Area	This is the sum of the monthly prices of SB-WLR and WBA plus the monthly average of all relevant wholesale costs levied by Eircom.
C2	Retail Costs Associated with Retail Line Rental	These are the monthly operating costs as derived from the SB-WLR regulated retail minus price control.	
C3	Mailbox cost	Where the bundle packages include free mailbox, the wholesale monthly price of the mailbox as per the regulated retail minus price control as published in Eircom’s Reference Interconnect Offer Price List must be taken to ensure an operator can replicate the offer. However, consideration will be taken of the applicable average take up of the mailbox and the wholesale price will be adjusted to reflect this. The retail costs as derived from the retail minus price control will also be considered here.	
C4	Total Cost of Calls	These are the monthly weighted average of the wholesale and retail costs as calculated for each retail call including all common cost. Costs are based on wholesale prices and Eircom’s retail costs according to its latest regulatory accounts to derive an average total cost and will reflect known future changes in those costs where these can be adequately verified.	
C5	Total LRIC of Calls	This is estimated from Eircom’s accounts as Total Cost of Calls /less common costs /less fixed indirect costs (LRIC of retail calls only)	
C6	Retail Costs Associated with Retail Broadband	These are the monthly operating costs as derived from the WBA regulated retail minus price control.	
C7	Total Bundle Cost	This is the Total Wholesale Access Input Cost plus Retail Costs Associated with Retail Line Rental plus Retail Costs	

³³ For example, connection fees or co-location charges

³⁴ For example, the cost of a line card, amortised over the relevant customer life

		Associated with Retail Broadband <i>plus</i> Total Cost of Calls <i>plus</i> the LRIC of unregulated retail services <i>plus</i> Mailbox Cost where applicable
C8	Total Monthly Adjusted Bundle Cost	This is the Total Wholesale Access Input Cost <i>plus</i> Retail Costs Associated with Retail Line Rental <i>plus</i> Retail Costs Associated with Retail Broadband <i>plus</i> Total LRIC of Calls <i>plus</i> the LRIC of unregulated retail services <i>plus</i> Mailbox Cost where applicable
C9	Total Monthly Portfolio Cost	This is the weighted average by volume of Total Bundle Cost based on actual monthly volume for each Bundle in the Portfolio (in the case of post-launch assessment) or the forecast monthly volume for each Bundle in the Portfolio (in the case of pre-launch assessment).

Assessment of Bundles:

In order to pass the Net Revenue Test:

- (i) as regards every Portfolio, the Total Monthly Portfolio Revenue shall be equal to or exceed the Total Monthly Portfolio Cost;
- (ii) as regards each individual Bundle, the Total Monthly Bundle Revenue shall be equal to or exceed the Total Monthly Adjusted Bundle Cost;
- (iii) when a given Bundle includes unregulated retail services, compliance with the Net Revenue Test (as regards such unregulated services) shall be evaluated in accordance with the Unregulated Retail Services Assessment.

Unreasonable Bundle Assessment/Complementary Competitive Assessment

If a Bundle does not pass the Net Revenue Test, as outlined in Section 4.3 of the Draft Direction, ComReg will carry out a general assessment of the reasonableness of the Bundle and may conclude that, notwithstanding the fact that the Bundle fails the Net Revenue Test, the offer for sale by Eircom of that Bundle does not constitute a breach of the obligation under ComReg Decision D07/61 not to unreasonably bundle services. For the purposes of such assessment, ComReg may, in particular, have regard to any robust evidence of retail efficiencies or increased customer lifetimes resulting from the relevant Bundle. ComReg will also consider the impact of the Bundle on competition, including by reference to the promotion of sustainable competition in the medium to long term and the likelihood of any potential foreclosure and associated consumer harm.

Annex: 2 Urban centres / Cities which prospectively contain individual exchanges to be included in the LEA³⁵

Urban / cities

- 1 Carlow
- 2 Cork
- 3 Dublin
- 4 Galway
- 5 Kildare
- 6 Kilkenny (city)
- 7 Laois (Portlaoise)
- 8 Limerick (city)
- 9 Meath (Navan)
- 10 Sligo (city)
- 11 Tipperary North (Thurles)
- 12 Tipperary South (Clonmel)
- 13 Waterford (city)
- 14 Westmeath (Athlone, Roslevin, Mullingar)
- 15 Wicklow (Bray, Greystones)

³⁵ Note that the LEA will comprise a list of Eircom exchanges, as such while Dublin is listed it does not imply that all exchanges in Dublin will be included in the LEA.

Questions

Section	Page
Q. 1 Do you agree with the definition of the LEA (i.e. Category 1 exchanges) as set out in paragraph 58? Please provide a detailed response with supporting data where appropriate to support your view.	26
Q. 2 With reference to Annex: 2, ComReg would be interested in interested parties' views.	26
Q. 3 Do you agree with the inclusion of "island" exchanges in the definition of Category 1 exchanges to be appropriate? Please provide sufficient reasoning to justify your views.	26
Q. 4 Do you agree with the proposed use of a weighted average wholesale input in the net revenue test in Category 1 exchanges?	33
Q. 5 Do you agree with the weighted average wholesale input calculation to take account of OAOs use of VUA as a wholesale service / product in Category 1 exchanges? Please provide adequate reasoning to support your views.....	33
Q. 6 Do you agree with ComReg's proposal with respect to Category 1 exchanges — where changing market shares would normally require an increase in the bundles wholesale input? If you disagree, please provide sufficient detail to justify your views.	35
Q. 7 What indicators in the retail market do you think should trigger a re-assessment of the revised net revenue test?	35
Q. 8 Do you agree with how the wholesale input usage of OAOs in Category 1 exchanges is calculated? If you disagree, please provide sufficient detail to justify your views and provide an alternative mechanism by which this could be calculated.....	36
Q. 9 Do you believe the draft text of the proposed directions are from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain your response and provide details of any specific amendments you believe are required.	37