



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

# **Eircom's wholesale Bitstream prices**

## **Response to Request for Pre-Approval**

**Reference:** ComReg 19/50

**Version:** FINAL

**Date:** 27/05/2019

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

1 Lárcheantar na nDugaí, Sráid na nGildeanna, BÁC 1, Éire, D01 E4X0.  
One Dockland Central, Guild Street, Dublin 1, Ireland, D01 E4X0.  
Teil | Tel +353 1 804 9600 Suíomh | Web [www.comreg.ie](http://www.comreg.ie)

## Redacted Information

Please note that this is a **non-confidential version** of the document. Certain information within this document has been redacted for reasons of confidentiality and commercial sensitivity, with such redactions indicated by the symbol &lt; and the symbol [ is used to indicate the start of confidential information and the symbol ] indicates where that confidential information ends.

# Content

<b>Section</b>	<b>Page</b>
1 Introduction	5
2 Issues raised in response to Information Notice 19/29	12
3 ComReg's assessment of the request for pre-approval	13

# Annex

## Section

## Page

Annex: 1 Operator submissions

25

# 1 Introduction

1. In this document the Commission for Communications Regulation (**‘ComReg’**) sets out its decision on whether to grant pre-approval for Eircom Limited (**‘Eircom’**) to apply an alternative pricing structure to that outlined in ComReg Decision D11/18<sup>1</sup> (**‘the 2018 Pricing Decision’**). This pre-approval is required because Eircom wish to apply a logarithmic curve (hereafter **‘log curve’**) for its Fibre to the Cabinet (**‘FTTC’**) Bitstream prices and a separate log curve for its current generation (copper based) Bitstream prices from 1 July 2019.
2. In the 2018 Pricing Decision ComReg further specified the price control obligations, imposed in ComReg Decision D10/18,<sup>2</sup> that should apply to Eircom in the wholesale local access market at a fixed location (hereafter **‘the WLA Market’**) and in the wholesale central access market for mass market products at a fixed location (hereafter **‘the WCA Markets’**). ComReg also further specified the price control obligations imposed in ComReg Decision D05/15<sup>3</sup>. In Chapter 14 and in Annex 7 of the 2018 Pricing Decision ComReg determined the monthly rental prices for FTTC and for current generation (copper based) Bitstream services. The mandated FTTC prices included monthly prices for FTTC based Virtual Unbundled Access (**‘VUA’**), FTTC based Bitstream (for both national handover and regional handover) and the supplemental Plain Old Telephone Service (**‘POTS’**) based prices (that should apply in addition to the FTTC prices). The mandated current generation Bitstream prices included the monthly prices for current generation Bitstream Managed Backhaul (**‘BMB’**), both for national handover and regional handover, and Bitstream Internet Protocol (**‘IP’**) prices, both for national handover and regional handover and based on a combination of cost for port and usage.

## 1.1 Background to the 2018 Pricing Decision

3. As part of the review of the WLA Market and the WCA Markets, ComReg engaged in a separate pricing project. As part of this separate pricing project, ComReg engaged Tera Consultants (**‘TERA’**) to: (a) advise on recommended price controls for Eircom’s Next Generation Access (**‘NGA’**) services i.e., VUA and NGA Bitstream; and (b) to assist with implementing the recommended price controls through the update or development of a model in order to derive the

---

<sup>1</sup> ComReg Document No 18/95, ComReg Decision D11/18, Pricing of wholesale broadband services, Wholesale Local Access (WLA) market and the Wholesale Central Access (WCA) markets, Response to Consultation Document 17/26 and Final Decision, dated 19 November 2018.

<sup>2</sup> ComReg Document No 18/94, Decision D10/18, Market Review: Wholesale Local Access (WLA) provided at a Fixed Location, Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products. Response to Consultation and Decision; dated 19 November 2018.

<sup>3</sup> ComReg Document No 15/82 entitled “Market Review. Wholesale Fixed Voice Call Origination and Transit Markets”, dated 24 July 2015.

various prices that Eircom should charge for its wholesale broadband services, including the NGA services.

4. On 7 April 2017 ComReg published Consultation Document 17/26<sup>4</sup> (**‘the 2017 Pricing Consultation’**) seeking views from interested parties on pricing proposals for wholesale access services in the WLA Market and the WCA Market. ComReg received 8 responses to the 2017 Pricing Consultation and published the non-confidential submissions on its website. The draft measure was notified to the European Commission in September 2018.
5. Having completed the above process, ComReg published its final decision, the 2018 Pricing Decision, on 19 November 2018. In the 2018 Pricing Decision ComReg imposed an obligation on Eircom to charge specific prices for, *inter alia*, FTTC services, including VUA and Bitstream, as well as the prices for current generation Bitstream services, as detailed at paragraph 2. The 2018 Pricing Decision also set out the manner in which those prices had been calculated.
6. The Decision Instruments at Annex 1 and Annex 2 of the 2018 Pricing Decision stated that: “... *The rental charges in Annex 7 of ComReg Decision D11/18 shall, where appropriate to the WLA [or WCA] Market, apply from the Implementation Date [1 March 2019] and thereafter for each year commencing 1 July and ending 30 June as determined in accordance with the Relevant Cost Models as outlined in Annex 7 of ComReg Decision D11/18 and shall apply until if and when they are amended.*”

## 1.2 Background to the application of a log curve

7. In terms of background on the log curve, in Chapter 9, paragraph 9.20 of the 2018 Pricing Decision ComReg provided a summary of this background. It is useful to reproduce that text here:

*“...To clarify, the use of the logarithmic curve arose from industry discussions that took place in 2014 on the appropriate charging mechanism for usage / throughput<sup>5</sup>. At the time industry recognised that, if traffic between low usage and high usage customers diverges, the difference in cost per user remains relatively stable if a logarithmic curve is used to inform the throughput charge. This did not occur when bitstream charges were previously set to recover the core NGN costs on the basis of a static per port charge and an evolving charge per Mbps, i.e. the Mbps charge reduced for all users of the NGN as the total*

---

<sup>4</sup> ComReg Document No. 17/26 “Pricing of wholesale services in the Wholesale Local Access (WLA) Market and in the Wholesale Central Access (WCA) Markets: further specification of price control obligations in Market 3a (WLA) and Market 3b (WCA)”, dated 7 April 2017.

<sup>5</sup> For example: see ComReg Document No. D14/18 - Call for Input: Current and future projections on throughput.

*amount of traffic carried on the NGN increased. The updated NGN Core Model detailed in the Consultation and in this Decision, reflect a clear differentiation between fixed costs; which are attributed on a user basis, and variable cost associated with traffic use. The former which accounts for the bulk of the network costs, is attributable to the port price for CGA Bitstream and the latter to the per M/b price for traffic conveyance. As the original log curve process reflected a small differential in prices between users with differing levels of traffic demand, similarly now, with the reduced scale of costs attributable to traffic conveyance, a change in traffic demand per user does not materially impact on the scale of prices incurred. Therefore, the use of a linear approach to cost recovery for traffic conveyance on a per M/b basis currently has a similar nominal effect, as the application of a cost recovery process based on a log curve, as that used in the past. The key differentiation is that historically a larger share of costs in the modelling process were allocated to conveyance, this is no longer the case...*

### 1.2.1 Discussion of the log curve in the 2017 Pricing Consultation

8. In the 2017 Pricing Consultation ComReg sought views on the appropriate costing approach and the draft wholesale prices for FTTC services and for current generation Bitstream and BMB services.
9. Furthermore, at paragraph 9.9 of the 2017 Pricing Consultation ComReg invited stakeholders views on applying a log curve to the proposed prices, stating:

*“While the model itself does not use a log curve to allocate costs (but rather uses a linear cost pattern), the revised allocation should also facilitate maintaining the current practice of applying a logarithmic curve to set throughput charges which has helped provide greater transparency to industry with regard to the future direction of broadband charges. ComReg welcomes any views stakeholders may have in this regard.”*

10. Sky Ireland Limited (**‘Sky’**) and Analysys Mason (who produced a report on behalf of Sky) were the only stakeholders who provided a submission to ComReg on this point. Sky stated at paragraph 27 of its submission: *“Furthermore, we agree that logarithmic scale pricing should be maintained and indeed mandated by ComReg for the reasons outlined in the AM Report.”*<sup>6</sup> Analysys Mason outlined the basis for their support for the “log-pricing” approach at paragraph 7.1 of their report. No other respondents made any comments on or objections to the continued use of a log curve.

---

<sup>6</sup> Sky has [redacted] in its letter to ComReg on 25 February 2019.

## 1.2.2 Discussion of the log curve in the 2018 Pricing Decision

11. As noted above at paragraphs 5 and 6, the 2018 Pricing Decision specified the prices for FTTC services, including VUA and Bitstream, as well as the prices for current generation Bitstream services. These prices were set out in Annex 7 of the 2018 Pricing Decision.

12. In Chapter 9 at section 9.2 of the 2018 Pricing Decision, ComReg considered the application of a log curve for current generation and next generation access services. Following an analysis of the issue, at paragraph 9.19 of the 2018 Pricing Decision, ComReg stated that:

*“ComReg notes that while only two respondents (Sky and the AM Report) appear to have commented specifically on the issue of the logarithmic curve, no other respondents noted any objections to the continued use of a logarithmic curve. ComReg is of the view the logarithmic curve may continue as an appropriate way to set cost oriented wholesale prices if industry wishes to adopt such a pricing approach.”*

13. In Annex 7<sup>7</sup> of the 2018 Pricing Decision, ComReg stated that it would *“...consider any proposals made by Eircom in relation to alternative pricing structures for Bitstream, subject to compliance with the cost orientation obligation and ComReg’s pre-approval.”*

## 1.3 Eircom’s request for pre-approval

14. On 20 December 2018, Eircom notified ComReg of its proposed prices for FTTC services and current generation Bitstream services, further to the 2018 Pricing Decision (**‘the 2018 Notification’**). Eircom also published the draft price list on the proposal section of the open eir website on 20 December 2018. In the 2018 Notification Eircom proposed to apply the pre-existing log curve to set its prices for FTTC Bitstream and a separate pre-existing log curve for setting its current generation Bitstream prices.

15. Following the 2018 Notification ComReg published Information Notice 19/10<sup>8</sup> (**‘Information Notice 19/10’**).

### 1.3.1 Information Notice 19/10

16. In Information Notice 19/10 ComReg stated that it did not grant its approval for Eircom’s proposed prices for FTTC Bitstream and current generation Bitstream from 1 July 2019, with the result that Bitstream prices from 1 July 2019 should

---

<sup>7</sup> Footnote 335 and 336.

<sup>8</sup> Information Notice entitled *“Eircom’s proposed Bitstream prices further to ComReg Decision D11/18”* dated 28 February 2019.



be as published in Annex 7 of the 2018 Pricing Decision. ComReg decided not to intervene in respect of Eircom's proposed prices for the period from 1 March 2019 to 30 June 2019.

17. Furthermore, ComReg stated that if Eircom were to present to interested parties including ComReg a new proposal before 15 March 2019 which was satisfactory to interested parties and ComReg, then ComReg might revisit the issue regarding the application of log curves for setting the prices for FTTC and current generation Bitstream services from 1 July 2019. ComReg also stated that any such log curve would need to address transmission related costs only and that ComReg would provide an opportunity for interested parties to document and provide to ComReg their views on such a proposal and on the use of the log curve generally.

### 1.3.2 Eircom's 2019 Bitstream Pricing Proposal:

18. On 6 March 2019, Eircom presented a revised proposal to industry. Following on from this presentation to industry, on 14 March 2019 Eircom notified ComReg of its revised prices for FTTC Bitstream and current generation Bitstream, further to the 2018 Pricing Decision<sup>9</sup> (**the 2019 Notification**). Eircom published the draft revised price list on the "Proposals" section of the open eir website on 27 March 2019.<sup>10</sup>

### 1.3.3 Information Notice 19/29

19. On 28 March 2019 ComReg published Information Notice 19/29<sup>11</sup> (**Information Notice 19/29**). In Information Notice 19/29 ComReg outlined that Eircom had notified ComReg of revised prices for FTTC Bitstream and current generation Bitstream, as outlined above at paragraph 18.

20. ComReg invited views from interested parties on Eircom's revised proposal (as presented to industry on 6 March 2019 and as contained in Eircom's draft revised price list) and on the use of the log curve generally. ComReg requested that any such submissions should be sent to ComReg by no later than 5 April 2019.

21. ComReg received five responses to Information Notice 19/29 as follows:

- Alternative Operators in the Telecommunications Market (**'ALTO'**);

---

<sup>9</sup> A further revised submission was received from Eircom on 21 March 2019.

<sup>10</sup> [https://www.openeir.ie/Reference\\_Offers/](https://www.openeir.ie/Reference_Offers/), select "PROPOSALS" tab and select document entitled "Bitstream Price List V13\_1 proposed marked 08032019".

<sup>11</sup> Information Notice entitled "Eircom's revised Bitstream prices further to Information Notice 19/10" dated 28 March 2019.

- BT Communications Ireland Limited (**BT**);
- Eircom;
- Sky;
- Vodafone Ireland Limited (**Vodafone**).

## 1.4 Factors relevant to the assessment of Eircom's proposal

22. The two key criteria considered by ComReg in its assessment on whether the pre-approval is appropriate, are:

- (a) Compliance with the cost-orientation obligation<sup>12</sup>; and
- (b) The proposal is one that Industry wishes to adopt.<sup>13</sup>

23. In addition to the above criteria the following factors would also have to be considered by ComReg before any approval could be granted:

- i. Is the proposal consistent with Eircom's regulatory obligations;
- ii. Is deviation from the actual prices in the 2018 Pricing Decision warranted; and
- iii. Does the proposal address transmission related costs only.

## 1.5 Summary of ComReg's decision

24. ComReg has reviewed the proposal received from Eircom and has determined, for the reasons set out in Section 3.2, that Eircom has not met the criteria for pre-approval.

25. In summary, ComReg has determined:

- a. That on the information available the proposed prices could, on average, be compatible with Eircom's cost-orientation obligation. However, ComReg has concerns that Eircom's proposal to apply different usage charges for FTTC and FTTH, when it is not possible to isolate the traffic measurement for each technology, could be problematic and may distort the application of these charges; and

---

<sup>12</sup> The 2018 Pricing Decision, Footnotes 292, 293, 335 and 336.

<sup>13</sup> The 2018 Pricing Decision, paragraph 9.19.

b. That the proposal submitted is not one that industry wishes to adopt.

26. ComReg also assessed the proposal against the following factors and has found that on balance:

- i. The proposal is not consistent with Eircom's other regulatory obligations;
- ii. Deviation from the actual prices in 2018 Pricing Decision is not warranted;
- iii. The most recent proposal from Eircom in the 2019 Notification (referred to at paragraph 18) does address transmissions costs only.

Further detail on ComReg's assessment of the above criteria can be found in Section 3 of this document.

**27. As the conditions for pre-approval have not been met ComReg has not granted pre-approval.**

## 1.6 Next steps

28. As ComReg has not granted pre-approval to Eircom to apply the log curve pricing approach, Eircom must comply with the mandated prices set out in Annex 7 of the 2018 Pricing Decision from 1 July 2019. Therefore, ComReg now reminds Eircom of its obligation to publish an updated Bitstream Service Price List to comply with the mandated prices in Annex 7 of the 2018 Pricing Decision from 1 July 2019, on the "Proposals" section of the open eir website, without delay.

## 2 Issues raised in response to Information Notice 19/29

### 2.1 Overview

29. In Information Notice 19/29 at paragraph 4 ComReg sought the views of industry to specifically assess whether industry wishes to adopt Eircom's proposed application of the log curve in order to set the prices for FTTC Bitstream and a separate log curve to set the prices for current generation Bitstream services.

30. As outlined above, ComReg received five responses to Information Notice 19/29 as follows:

- ALTO.
- BT.
- Eircom<sup>14</sup>.
- Sky<sup>15</sup>.
- Vodafone.

31. The non-confidential versions of the responses are appended at Annex: 1 of this document.

32. In summary, ALTO, Sky, BT and Vodafone did not wish to adopt Eircom's proposal to set the prices for FTTC and current generation Bitstream services based on a log curve approach. Please see subsection 3.2 below for further details.

33. While ComReg has considered all of the issues raised by respondents the majority of the issues raised are beyond the scope for which views were sought but, for the avoidance of doubt, may be considered by ComReg in other contexts.

---

<sup>14</sup> Eircom subsequently submitted a letter to ComReg on 15 April and a letter on 25 April, 2019, in relation to Information Notice 19/29.

<sup>15</sup> Sky also submitted a letter on 25 February and an email on 7 March 2019 which it considered (in its response to Information Notice 19/29) should be taken into account as part of its response to Information Notice 19/29. Both this letter and email are confidential.

## 3 ComReg's assessment of the request for pre-approval

### 3.1 Eircom's request for pre-approval

34. As set out at paragraphs 14 and 18, Eircom submitted the 2018 Notification in December 2018 and then in March 2019 submitted a revised proposal through the 2019 Notification. In the 2019 Notification Eircom sought ComReg's pre-approval to apply the log curve(s) in order to set its prices for FTTC Bitstream and for current generation BMB services.

35. As already outlined, ComReg engaged in an extensive process in order to set the mandated prices outlined in the 2018 Pricing Decision. Therefore, deviation from those mandated prices should not be permitted lightly. The onus is on Eircom to demonstrate to ComReg as to why the alternative pricing structure (in this case the log curve) should apply as opposed to the mandated prices set by ComReg, as discussed at paragraph 2.

36. ComReg has considered all submissions<sup>16</sup> made by Eircom, with regards to Eircom's proposal to apply log curve pricing.

37. As part of Eircom's submission under the 2019 Notification, Eircom set out in its statement of compliance, the non-confidential version of which is included in Annex: 1, the reasons why it considered that deviation from the 2018 Pricing Decision is warranted. Eircom considered the following reasons in relation to the FTTC Bitstream services:

- a) *"The combined fixed and variable elements of FTTC Bitstream per kbps using this alternative structure ensures that the reduction in FTTC bitstream prices as a result of moving to cost-orientation is passed on equally to all operators. From an economic perspective as the marginal cost has lowered (due to regulation) equally for all operators using this pricing structure it allows for the full pass-through of that benefit to end-users..."*<sup>17</sup>
- b) *"The combination of fixed and variable pricing components in Eir's pricing structure allows our Bitstream customers to create retail propositions based on consumer preferences – this might be relevant for targeting niche consumer groups and/or business users (who could have different*

---

<sup>16</sup> Eircom's submission to ComReg on 20 December 2018, 14 March 2019 and 21 March 2019. Eircom's note on WCA pricing structures dated 8 February 2019, Eircom's response to Information Notice 19/29 dated 29 March 2019, Eircom's letter of 15 April 2019 and Eircom's letter of 25 April 2019.

<sup>17</sup> Eircom non-confidential statement of compliance, page 1.

*busy hours) or different requirements — for example IoT. As noted in Tera's report<sup>18</sup> "[This] pricing structure allows OAOs [other authorised operators] to provide different types of offers with OAOs targeting low revenue users and OAOs targeting high revenue users"...<sup>19</sup>*

- c) *"This alternative approach re-aligns the fixed port element between Bitstream and VUA. By changing the pricing structure the fixed Bitstream prices and fixed POTS-based Bitstream prices re-aligns to pre-March 2019 prices..."<sup>20</sup>*
- d) *"Avoids complexity in Regional Handover discount. The Regional Handover discount for NGA Bitstream Plus is currently (and is proposed to remain from 1 July 2019) implemented by changing a single parameter in the usage charge. This means there is no added complexities in billing. For example, if there was a lower usage charge, in order to meet the cost-orientation obligations in respect to Regional Handover pursuant to ComReg D11/18 it would require that the fixed element port charge needs to be reduced in combination to the variable usage charge..."*
- e) *"The Regional handover discount acknowledges that as the traffic is handed over to operators earlier in the network that the transmission cost is reduced for those operators using this WCA service. The proposed pricing approach is consistent with this network costing principle as the regional handover discount can be fully accounted for in the transmission element of the total Bitstream port charge (i.e., transmission is the only component of the Bitstream service which is being handed over regionally)."<sup>21</sup>*
- f) *"eir's pricing structure means that the total bitstream charge (port & usage) increases the more Bitstream network users drive additional cost in the network over time. However, the pricing structure is such that the total contribution from higher than average network users does not impact eir's cost-orientation obligations. Similarly, the total NGA Bitstream cost per Mb decreases as Bitstream customers use more of the network. For higher than average network users the cost per Mb is materially consistent with ComReg D11/18."<sup>22</sup>*
- g) *"Based on feedback from operators at the Group Pricing workshop on the 6 March 2019, notwithstanding that eir considers that while it is correct from an economic signal perspective that higher than average network*

---

<sup>18</sup> Tera, "Report on potential pricing methodologies for Bitstream Managed Backhaul pricing", ComReg publication 14/116a, 3 November 2014.

<sup>19</sup> Eircom non-confidential statement of compliance, page 1.

<sup>20</sup> Eircom non-confidential statement of compliance, page 1.

<sup>21</sup> Eircom non-confidential statement of compliance, page 2.

<sup>22</sup> Eircom non-confidential statement of compliance, page 2.

*users should contribute more as they drive additional cost of the network over time, eir has amended the variable usage charge...”<sup>23</sup>*

38. Eircom further added that: *“NGA data usage is measured at the aggregate level in the network. This means that the 95<sup>th</sup> Percentile is aggregated across all FTTC and FTTH ports. As the usage charge for FTTC is now lower (which would be the case in all alternative pricing structures including the structure proposed in ComReg D11/18 — with the exception of the pricing structure eir originally proposed on 20 December 2019) a new billing structure will need to be created by eir’s IT team. While the same 95<sup>th</sup> percentile will be used for both NGA services a separate port count for FTTC and FTTH will apply to different charging usage pricing tables. It is unclear, at this time, how separate FTTC and FTTH traffic levels could be measured separately without additional complexity or expense being incurred by eir and operators — as such, eir considers that this approach is the most efficient and effective to implement given ComReg’s preference to move away from those prices already notified on 20 December 2018 (which does not require this amendment to NGA traffic).”<sup>24</sup>*

39. Eircom also considered that deviation from the 2018 Pricing Decision is warranted in the context of current generation Bitstream BMB for the following reasons:

- a) For current generation Bitstream *“eir has multiple wholesale services while Annex 7 of ComReg D11/18 gives a single port charge.”<sup>25</sup>* For current generation BMB *“eir has two wholesale services while Annex 7 of ComReg D11/18 gives a single port charge.”<sup>26</sup>*
- b) For current generation Bitstream Eircom consider that: *“The pricing gradient recognises that the various services have different profiles in terms of upload and download.”<sup>27</sup>* For current generation BMB, *“The pricing gradient recognises that the various services have different profiles in terms of download.”<sup>28</sup>*
- c) For current generation Bitstream *“The use of different prices for different profiles is consistent with how these wholesale services have been priced since 2006 and is consistent with pricing structures implemented in other markets and services e.g., leased lines and FTTH profiles.”<sup>29</sup>* For current generation BMB *“The use of different prices for different profiles is consistent with how these wholesale services have been priced since*

---

<sup>23</sup> Eircom non-confidential statement of compliance, page 2.

<sup>24</sup> Eircom non-confidential statement of compliance, pages 2 and 3.

<sup>25</sup> Eircom non-confidential statement of compliance, page 3.

<sup>26</sup> Eircom non-confidential statement of compliance, page 4.

<sup>27</sup> Eircom non-confidential statement of compliance, page 3.

<sup>28</sup> Eircom non-confidential statement of compliance, page 4.

<sup>29</sup> Eircom non-confidential statement of compliance, page 3.



*2010 and is consistent with pricing structures implemented in other markets and services e.g., leased lines and FTTH profiles.”<sup>30</sup>*

- d) *“Maintaining a price gradient also means that no operator will face a price increase relative to the price paid today either pre and post 1 March 2019 which avoids any possible Reg.14 issues for operators.”<sup>31 32</sup>*
- e) For current generation BMB *“The combined fixed and variable elements of CGA Bitstream per kbps using this alternative structure ensure that the reduction in CGA bitstream prices is passed on equally to all operators. From an economic perspective as the marginal cost has lowered (due to regulation) equally for all operators using this pricing structure it allows for the full pass-through of that benefit to end-users...”<sup>33</sup>*
- f) For current generation BMB *“The combination of fixed and variable pricing components in eir’s pricing structure allows our Bitstream customers to create retail propositions based on consumer preferences – this might be relevant for targeting niche consumer groups and/or business users (who could have different busy hours) or different requirements — for example IoT.”<sup>34</sup>*
- g) For current generation BMB it *“Avoids complexity in Regional Handover discount. The Regional Handover discount for NGA Bitstream Plus is currently (and is proposed to remain from 1 July 2019) implemented by changing a single parameter in the usage charge. This means there is no added complexities in billing.”<sup>35</sup>*
- h) For current generation BMB *“The Regional handover discount acknowledges that as the traffic is handed over to operators earlier in the network that the transmission cost is reduced for those operators using this WCA service. The proposed pricing approach is consistent with this network costing principle as the regional handover discount can be fully accounted for in the transmission element of the total Bitstream port charge (i.e., transmission is the only component of the Bitstream service which is being handed over regionally).”<sup>36</sup>*
- i) For current generation BMB *“eir’s pricing structure means that the total bitstream charge (port & usage) increases the more Bitstream network users drive additional cost in the network over time. However, the pricing*

---

<sup>30</sup> Eircom non-confidential statement of compliance, page 4.

<sup>31</sup> Eircom non-confidential statement of compliance, page 3.

<sup>32</sup> Eircom non-confidential statement of compliance, page 4.

<sup>33</sup> Eircom non-confidential statement of compliance, page 4.

<sup>34</sup> Eircom non-confidential statement of compliance, page 4.

<sup>35</sup> Eircom non-confidential statement of compliance, page 4.

<sup>36</sup> Eircom non-confidential statement of compliance, page 4.



*structure is such that the total contribution from higher than average network users does not impact eir's cost-orientation obligations. Similarly, the total CGA Bitstream cost per Mb decreases as Bitstream customers use more of the network. For higher than average network users the cost per Mb is materially consistent with ComReg D11/18."*<sup>37</sup>

40. Furthermore, in Eircom's letter to ComReg on 25 April, Eircom stated that "...its notification is a compliant pricing structure that should be approved by ComReg." and that its "...structure avoids a number of serious issues that the pricing structure proposed in Decision 11/18 ('D11/18') gives rise to." In its letter Eircom raised four concerns which they claim to be "...serious and significant..." as follows:

1. **"Overview of IT and billing implications:** As you are aware, eir committed significant resources to ensure compliance with its cost orientation obligations with the new regulated prices coming into effect on 1 March 2019. As a result of ComReg information notice 19/10, eir committed further IT resources to change the structure of eir's cost-oriented prices (as notified in eir's Wholesale Notification no. 6 2019) despite the original structure submitted on 20 December 2018 already being compliant with that obligation. The required IT amendments to implement the pricing structure notified is complex and requires a number of developments which we have yet to validate for their effectiveness, efficiency and accuracy. However, as clearly set out in previous correspondence the D11/18 pricing structure creates a number of further complications which require significant further IT development and billing complexities..."<sup>38</sup>
2. **"FTTH implications:** Today, NGA usage is charged using the same price per Mbps. However, where the price of FTTC usage is only €0.46 per Mbps it has a significant impact on the cost recovery of eir's FTTH wholesale portfolio — to the extent that it must introduce a higher fixed port charge...The relative FTTH Bitstream monthly port price increase could be as high as ~€5.00 for each FTTH profile (which may require to be updated annually). Alternatively, eir would need to apply a different usage pricing table...The use of an alternative pricing table has been proposed in Wholesale Notification No.6 ... eir has significant concerns that operators will incorrectly argue (irrespective of approach taken) to ComReg that such changes justify moving to cost-orientation for FTTH. In the event that eir must charge a higher FTTH Bitstream port price to maintain the total FTTH average revenue per user, eir requests that ComReg confirm in writing that the notification timelines per ComReg D10/18 do not apply as the FTTH Bitstream price structure change is a re-balancing of tariffs only and is therefore not a price increase."<sup>39</sup>

---

<sup>37</sup> Eircom non-confidential statement of compliance, page 5.

<sup>38</sup> Eircom letter dated 25 April 2019, page 1.

<sup>39</sup> Eircom letter dated 25 April 2019, pages 1 and 2.

3. **“Regional Handover discount (issue 1):** *A fundamental concern for eir is how the D11/18 pricing structure achieves cost-orientation for Regional Handover Bitstream. It is unclear to eir how it can comply with its cost-orientation obligation by discounting the traffic element of the Bitstream charge — where the “cost” as calculated by ComReg for carrying that traffic back to the National Handover point is €0.46 per Mbps for eir but the discount eir is required to give to operators for handing over that same level of traffic to a regional handover point is ~€2.91. This anomaly is avoided under eir’s proposed pricing structure. Consequently, in the event ComReg proposes publishing a decision which prevents eir implementing its preferred pricing structure from 1 July, eir request that ComReg provide cogent reasoning as to the pricing, network and costing consistencies of that decision to that of: a) the reasoning set out in correspondence to eir dated 28 February 2019 regarding the treatment of transmission costs; and b) the allocation of NGN Core Model costs as detailed in ComReg D11/18.”<sup>40</sup>*
  
4. **“Regional Handover discount (issue 2):** *As the required Regional Handover discount required to meet eir’s cost-orientation obligation is higher than the available billing element of Bitstream usage using the D11/18 pricing structure, eir will need to create a billing solution which provides the required discount on the fixed port element. As the fixed port element and usage element are calculated at different intervals and the 95th percentile could be different for Regional and National traffic, as set out in our submissions, the implementation of ComReg’s proposed pricing structure could result in billing disputes for Regional Handover. Consequently, should ComReg decide to implement the D11/18 pricing structure, eir will require written acknowledgement from ComReg that: eir has notified it of how the Regional Handover discount will be implemented and that ComReg accepts the unavoidable limitations of this approach... eir requests that ComReg confirm in writing that the required change to the calculation of Regional Handover discount can be implemented from 1 July.”<sup>41</sup>*

41. Please see ComReg’s consideration of the points raised by Eircom at paragraphs 37-40 above, at section 3.2 below.

## 3.2 Assessment Criteria

42. The two key criteria considered by ComReg in its assessment on whether the pre-approval is appropriate, are:

---

<sup>40</sup> Eircom letter dated 25 April, page 2.

<sup>41</sup> Eircom letter dated 25 April, page 2.

- (a) Compliance with the cost-orientation obligation<sup>42</sup>; and
- (b) The proposal is one that Industry wishes to adopt.<sup>43</sup>

43. ComReg considers that in relation to criteria (a), on the information available to ComReg at this time, Eircom could, on average, be in compliance with its cost-orientation obligation for FTTC Bitstream services. However, there are concerns that Eircom's proposed implementation of different usage charges for FTTC and FTTH Bitstream usage could give rise to distortions in the application of these charges when it is not possible to isolate the traffic measurement for each technology. For example, in the absence of separate FTTC and FTTH measurements, an operator which serves 50% of its customer base using FTTC with an average usage of 1000Kbps and serves the remaining 50% with FTTH on high average usage ports at 3000kbps would be charged for both FTTC and FTTH services on the basis of an average usage of 2000kbps, which may result in an "over-charge" for FTTC usage. For current generation Bitstream BMB services, based on the information available to ComReg at this time, Eircom appears to be in compliance with its cost-orientation obligation on average across the various services.

44. In relation to criteria (b), ComReg is not satisfied on the basis of Eircom's submission and the responses to Information Notice 19/29 that the proposal (the log curve approach in relation to FTTC Bitstream) is one that industry wishes to adopt. The responses received from respondents other than Eircom were unanimous in their rejection of the proposed log curve for FTTC Bitstream. One operator (BT) commented specifically on the log curve approach for current generation Bitstream BMB services rejecting Eircom's proposal, and no operator advised that they wished to adopt such an approach. Therefore, it cannot be said that the proposal in relation to both FTTC Bitstream and current generation Bitstream BMB services is one that industry wishes to adopt.

45. ComReg also assessed Eircom's proposal against the following factors:

- i. Is the proposal consistent with Eircom's regulatory obligations;
- ii. Is deviation from the actual prices in the 2018 Pricing Decision warranted; and
- iii. Does the proposal address transmission related costs only.

Further detail on ComReg's assessment of the above criteria can be found in Sections 3.2.1 to 3.2.3 below.

---

<sup>42</sup> The 2018 Pricing Decision, Footnotes 292, 293, 335 and 336.

<sup>43</sup> The 2018 Pricing Decision, paragraph 9.19.

### 3.2.1 Is the proposal consistent with Eircom's regulatory obligations:

46. Eircom is subject to other regulatory obligations in the Regional WCA Market pursuant to ComReg Decision D10/18, including the obligation of non-discrimination and the obligation not to cause a margin squeeze. Eircom's non-discrimination obligations are contained in Section 9 of Appendix 21 of ComReg Decision D10/18 and its obligations not to cause to margin squeeze are contained in Section 12 of the Decision Instruments at Appendix 20 and at Appendix 21 of ComReg Decision D10/18.
47. ComReg has concerns that Eircom's proposal has the potential to distort the measurement of usage charges that inform the margin squeeze tests. Vodafone noted, *"There is a greater level of usage associated with FTTH products and the current model dilutes the average Bitstream customer usage on FTTH through the inclusion of FTTC usage. This reduces the cost associated with FTTH usage, which then impacts the costs being factored into margin squeeze calculations on FTTH..."*<sup>44</sup> In ComReg's view Eircom's proposal to apply differential usage charges for FTTC and FTTH on the basis of the same measured usage for both services is problematic, as it is likely to over-estimate the charges for FTTC usage and under estimate the usage charges for FTTH, and if the level of FTTH usage (and cost) is underestimated in the margin squeeze tests, this could result in replicability concerns in respect of Eircom's retail FTTH offers. In this regard, Eircom has an obligation to comply with its margin squeeze obligations for FTTH, as specified in ComReg Decision D10/18 at Appendix 20 Section 12.17 and at Appendix 21 Sections 12.8, 12.9 and 12.11.
48. In addition, ComReg has concerns that Eircom's proposal may give rise to issues relating to discriminatory behaviour. In this regard ComReg notes the concerns expressed by BT, that a wholesale customer would not be able to leverage the low usage ports below 1400Kb/s without having *"...to isolate their low usage ports into a separate wholesale account to be measured and charged separately from their mainstream services"*<sup>45</sup>. It is unclear to ComReg how Eircom intends to reflect the self-supply of such services to its own retail arm. Without such clarity there is a risk that the non-discrimination obligation to apply equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, as required at Section 9.1 of the Decision Instrument at Appendix 21 of ComReg Decision D10/18, may not be met by Eircom.
49. Separately, Eircom noted that: *"NGA data usage is measured at the aggregate level in the network. This means that the 95<sup>th</sup> Percentile is aggregated across*

---

<sup>44</sup> Vodafone's response, page 3.

<sup>45</sup> BT's response, page 2.

*all FTTC and FTTH ports. As the usage charge for FTTC is now lower (which would be the case in all alternative pricing structures including the structure proposed in ComReg D11/18 — with the exception of the pricing structure eir originally proposed on 20 December 2019) a new billing structure will need to be created by eir’s IT team. While the same 95<sup>th</sup> percentile will be used for both NGA services a separate port count for FTTC and FTTH will apply to different charging usage pricing tables...*<sup>46</sup> However, applying the same 95<sup>th</sup> percentile to FTTC and FTTH ports would appear to confirm BT’s concern that an OAO would need to isolate lower usage customers for separate measurement if it is to leverage the low charges that the application of the log curve generates for lower usage customers. As per the example provided in paragraph 43, an operator that does not isolate its FTTC and FTTH customers may effectively be over-charged for its FTTC usage in a manner that could prevent it from competing for the “niche applications” that Eircom suggest are facilitated by the application of a log-curve.

50. While ComReg does not consider that it is necessary to do an in-depth review of these issues at this time, ComReg considers that it would be prudent for Eircom to present a solution to industry on how it proposes to address the separate measurement of usage charges for FTTC and FTTH services, without delay.

### **3.2.2 Is deviation from the actual prices in the 2018 Pricing Decision warranted**

51. The onus is on Eircom to demonstrate why the log curve pricing structure should apply.

52. Paragraphs 37-40 above set out the points made by Eircom on why they consider that deviation from the 2018 Pricing Decision is warranted.

53. ComReg has considered the points raised by Eircom and ComReg is of the view that Eircom has not satisfied it that deviation from the actual prices in the 2018 Pricing Decision is in fact warranted. ComReg has a number of points to make in this regard:

- a) It is not at all clear to ComReg what the added benefits to the market are of Eircom’s proposal compared to the mandated prices in the 2018 Pricing Decision.
- b) The mandated prices in the 2018 Pricing Decision were imposed following an extensive review of the market and all relevant information. In order to provide regulatory certainty ComReg should only allow

---

<sup>46</sup> Eircom non-confidential statement of compliance, pages 2 and 3.

deviation from these mandated prices on an exceptional basis where such deviation is warranted.

- c) For some of the points raised by Eircom in paragraphs 37 and 39, the mandated prices in the 2018 Pricing Decision already captures Eircom's concerns. For example, at paragraph 37 f) Eircom state that: *eir's pricing structure means that the total bitstream charge (port & usage) increases the more Bitstream network users drive additional cost in the network over time. However, the pricing structure is such that the total contribution from higher than average network users does not impact eir's cost-orientation obligations... Similarly, the total NGA Bitstream cost per Mb decreases as Bitstream customers use more of the network...*

The points raised by Eircom are already captured in the lower usage charges in the 2018 Pricing Decision.

- d) At paragraph 37 b) above Eircom refer to the work undertaken by TERA in 2014 on the log curve approach by referencing the TERA report which states that “[This] pricing structure allows OAOs [other authorised operators] to provide different types of offers with OAOs targeting low revenue users and OAOs targeting high revenue users”. However, the position taken by TERA in 2014 was at a time when the usage charges were much higher and on that basis the use of the log curve was more proportionate as it would reduce the differential between different average speed profiles. A similar outcome is now achieved in the 2018 Pricing Decision given the much lower mandated usage charges.
- e) Eircom also note, as outlined at paragraph 38, that: *“It is unclear, at this time, how separate FTTC and FTTH traffic levels could be measured separately without additional complexity or expense being incurred by eir and operators — as such, eir considers that this approach is the most efficient and effective to implement given ComReg’s preference to move away from those prices already notified on 20 December 2018 (which does not require this amendment to NGA traffic).”* It is Eircom’s decision to set separate usage charges for FTTC and FTTH. The 2018 Pricing Decision establishes the cost oriented port and usage charges for FTTC. Eircom can set the usage charges for FTTH at the same level as FTTC, provided that such charges are compliant with its margin squeeze obligations, as set out in ComReg Decision D10/18 at Appendix 20 Section 12.17 and at Appendix 21 Sections 12.8, 12.9 and 12.11, and



which are further specified in the 2018 Pricing Decision and in ComReg Decision D12/18<sup>47</sup>.

- f) ComReg also notes Eircom's concerns at paragraph 40 regarding the IT and billing implications, the impact on FTTH Bitstream port charges and the issues around regional handover discounts, of implementing the prices as per the 2018 Pricing Decision. ComReg has considered each of the points raised by Eircom and we do not believe that they should inhibit Eircom's implementation of the mandated prices as set out in the 2018 Pricing Decision.

### 3.2.3 Does the proposal address transmission related costs only

54. Sky considered in its response to Information Notice 19/29 that: "*Eircom's latest proposals do not seek to apply the log curve to "transmission related costs only"... what Eircom are proposing to do is to take a large portion of the fixed port charges for the same year of €24.58 and apply a variable pricing log curve model to those charges in contravention of D11/18 and Information Notice 19/10.*"<sup>48</sup>
55. While ComReg considers that the initial 2018 Notification from Eircom (referred to at paragraph 14) did not address transmission related costs only, it is ComReg's view that the most recent proposal from Eircom in the 2019 Notification (referred to at paragraph 18) does address transmissions costs only, as the log curve is only being used to recover Bitstream specific costs.
56. Bitstream is essentially a transmission service that is used to route traffic across the Core Next Generation Network ('**NGN**') from the aggregation node to either an edge node or a core node (as illustrated in Figure 12 of the 2018 Pricing Decision). In the 2018 Pricing Decision only a limited number of cost components, such as the costs of the ports of the network router hierarchy, were modelled to vary in response to changes in the level of traffic carried across the Core NGN, and identified as being recoverable on the basis of a usage (or per Mbps) charge. The fixed cost components in the Core NGN that do not vary in response to changes in service demand were identified in the NGN Core Model as a per port cost. As noted in paragraph 8.40 of the 2018 Pricing Decision, these fixed cost components included the cost of "trench, fibre cable, buildings, the chassis and power units of network routers etc.", which are all typical components of a core transmission network.

---

<sup>47</sup> ComReg Document No 18/96, Decision D12/18, Response to Consultation and Decision on price control obligations relating to retail bundles – Further specification of the wholesale price control obligation not to cause a margin squeeze in the WLA, and WCA Markets, dated 19 November 2018.

<sup>48</sup> Sky Response, paragraph 11, page 3.

57. In conclusion, on balance, ComReg has found that in addition to ComReg's consideration of criteria (a) and (b) at paragraph 42, it is also not appropriate to grant pre-approval due to the fact that Eircom's proposal is not consistent with its other regulatory obligations and deviation from the actual prices in 2018 Pricing Decision is not warranted. Therefore, ComReg has not granted pre-approval to Eircom to apply the log curve pricing approach.

### 3.3 Next steps

58. As ComReg has not granted pre-approval to Eircom to apply the log curve pricing approach, Eircom should comply with the mandated prices set out in Annex 7 of the 2018 Pricing Decision from 1 July 2019. Therefore, ComReg now reminds Eircom of its obligation to publish an updated Bitstream Service Price List to comply with the mandated prices in Annex 7 of the 2018 Pricing Decision from 1 July 2019, on the "Proposals" section of the open eir website, without delay.

59. The onus is with Eircom to comply with its regulatory obligations and ComReg will continue to monitor Eircom's compliance in this regard.



# Annex: 1 Operator submissions

# alto

alternative operators in the communications market

**Consultation: Eircom's revised Bitstream prices further to Information Notice 19/10 - Ref: 19/29.**

**Submission By ALTO**

**Date: April 5<sup>th</sup> 2019**

ALTO responds to ComReg's request for further views in relation to Eircom's revised Bitstream prices further to Information Notice 19/10 – Ref: 19/29.

## **Preliminary Remarks**

ALTO notes the position in relation to the ComReg Decision Notice Ref. D11/18 published on 28 February 2019.

We provide this submission as a high-level set of remarks only, conscious that operators and ALTO members will address this call for views bilaterally and in detail.

For completeness, ALTO has not facilitated or held any discussions on the Eircom's proposals pursuant to D11/18. The ALTO Chair noted the call for views and canvassed framework only views on the subject of Information Notice 19/29 by email this week.

The views expressed below represent an ALTO strategic position without prejudice to the submissions that any single ALTO member may make to ComReg.

## **Views in Response**

### **1.1 Regulatory Certainty**

ALTO notes that Eircom's pricing proposal does not appear to be in compliance with the spirit and intention of D11/18.

Furthermore, we note that at least from a *prima facie* position, it could potentially be the case that Eircom may not be in compliance with its cost orientation obligations. This in turn could potentially lead to breaches of margin squeeze obligations. ALTO simply makes reference to this to bring it to

ComReg's attention. ALTO does not need to make reference to the import of strict compliance with such obligations, but submits this observation nonetheless.

It is incumbent on ComReg that the principles of Regulatory Certainty are at the forefront of all such Decision and that lateral pricing notifications comply fully with the intentions and requirements of such Decisions.

As matters stand, ALTO notes that the position with regard to Market Certainty particularly over the past number of weeks, from 28 February 2019 onwards, and we suggest that this has been most unsatisfactory. Such a position should not be permitted to pertain in the future.

## **1.2 Interpretation: Broadband Market Decision**

D11/18 was published by ComReg, is clear, and stipulates in detail the requirements of that particular Decision.

ALTO submits that it is not at all acceptable that Eircom, or any other operator for that matter, should then proceed to implement pricing and/or pricing policies, and/or enforced adjunct procurement rules, in order to 'permit' the market to avail of the said pricing as directed by ComReg.

There is simply no rule or course of conduct that permits the subject of a regulatory decision, such as in the case of D11/18, any flexibility to decide how and when, or to set conditions precedent such as appears to have happened on this occasion.

## **1.3 Conclusion**

ALTO requests that ComReg acts with due speed to resolve this situation, in order to restore market and regulatory certainty.

**ALTO**  
**5<sup>th</sup> April 2019**

## BT Views on Open Eir’s proposed WBARO v13.1 (in response to ComReg documents 19/10 and 19/29)

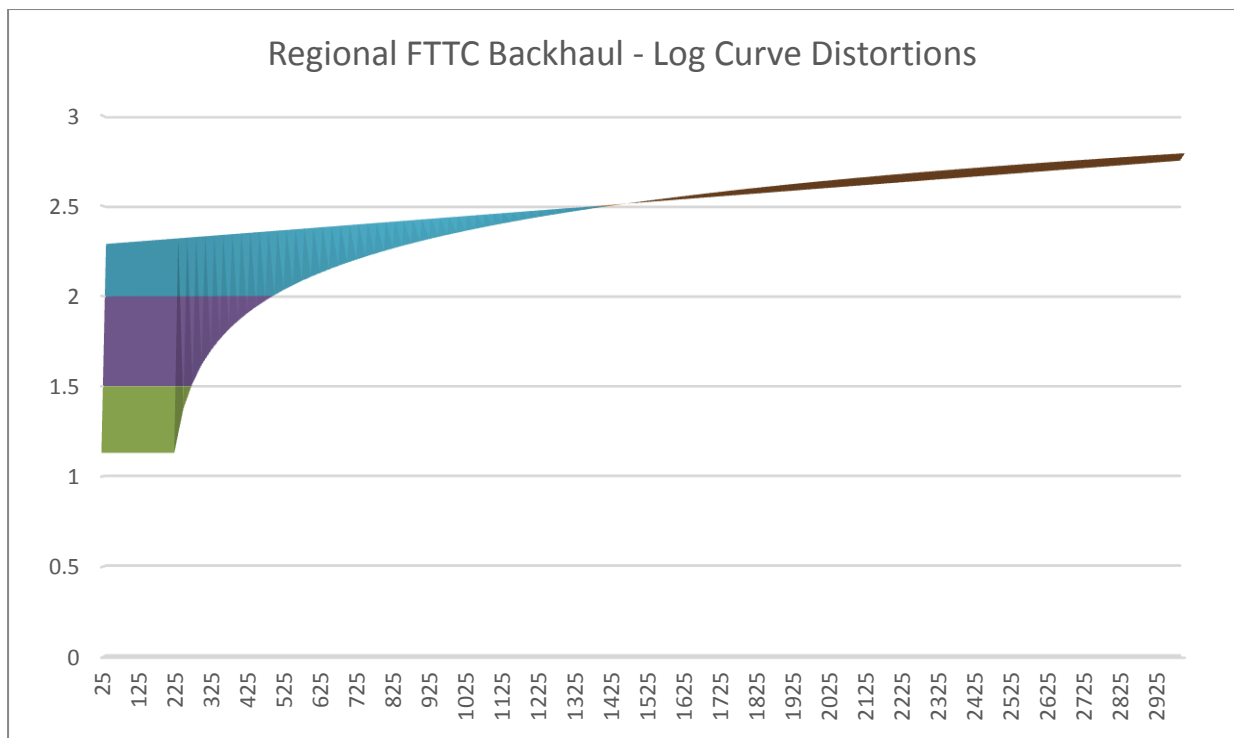
Issue 1.1 – 8 April 2019 two typos corrected from 5 April 2019 version.

On 27 March 2019 we received notification of Eircom Limited (trading as open eir) proposals for Broadband pricing to take effect from July 2019. We have been communicating to ComReg our serious concerns with open eir’s implementation of the price changes required following ComReg Decision D11/18, and open eir’s proposal of 27 March 2019 leaves most of our concerns unaddressed.

We welcome open eir’s correction of Regional FTTC “Pots-Based” port pricing so that it complies with the regulated floor that is the equivalent VUA input price. We observe that we alerted open eir’s Regulated Access Product (RAP) pricing team of this error in January so we are disappointed in the delay to resolve. However a number of problems remain:

### Issue 1 – The “log curve” calculation of price points with its associated under and over recovery of costs.

We note that open eir persist with tabling prices to the wholesale market that set “per port” usage prices derived from the application of a log curve. As per the graph below, this retains the gross under recovery of costs of “low usage” ports below 1400Kb/s, and the over recovery of costs for customers with average usage in excess of circa 1425Kb/s. Please see figure 1 below.



**Figure 1 – Regional FTTC Backhaul – Log Curve Distortions**

It is our view that this is not compliant with the cost oriented straight line graph set out in D11/18. Some usage levels at or below 225Kb/s are being offered more than 60% below cost. Eir have offered a justification that they need to address “niche applications”, without attempting to justify

how this pricing will be made available to all operators including those with existing services from open eir.

We are therefore of the view that this is not an equivalent offer as it does not appear to be open to all operators. I.e. we believe it is not realistic to suggest a wholesale customer of open eir could take advantage of these artificially lowered price points, as to do so would obligate a wholesale customer to isolate their low usage ports into a separate wholesale account to be measured and charged separately from their mainstream services. This is not realistic – to do so would require open eir's agreement to provide service in more than one account served over a duplicate interconnects (triggering its own set of BPU setup costs).

As outlined above we believe it is simply unrealistic for any participant in the Broadband market to access these low prices for Bitstream service unless the open eir service is productised and made available to all, including Eircom downstream divisions including MNS and Retail on the same terms and conditions so that others may also similarly address "niche applications". As it stands we are concerned and of the view the low pricing appears to breach the requirements for cost orientation and equivalence.

Eir's proposed over-recovery of costs may be less significant in percentage terms, but is equally unacceptable as the inflexion point is held at circa 1400Kb/s while usage trends will inexorably increase this percentage over recovery.

We believe the log model offer is an unacceptable distortion of the market and in our view provides a non-equivalent solution. As presented our view is the log model approach is not compliant with D11/18.

We would like to add one further point on the log curve. The argument appears to be that averaging everything on the curve supports cost orientation. Our view is this does not address the regulatory obligation of equivalence. I.e. according to the curve, notional wholesale customers with a low average usage level will enjoy below cost charges, yet wholesale customers with higher average data rates will experience a level of overcharging. This would suggest one cohort of customers is effectively subsidising the other and thus a failure to meet the obligation of equivalence.

**We believe in this instance the log curve should be abandoned as a basis for calculating usage charges.**

## Issue 2 - Discounting the cost of POTS for Urban FTTC Bitstream, national FTTH VUA and national FTTH Bitstream Plus

	URBAN	Regional	Comment
FTTC VUA	19.79	19.79	Aligns with D11/18
Supplemental WLR	2.77	2.77	
FTTH VUA 150	23.50	23.50	Our view is this is non-equivalent and arguably a discriminatory discount on the cost of POTS when supplied with FTTH
Supplemental WLR	2.18	2.18	
FTTC BSP	23.00	19.79	Our view is this is arguably a discriminatory discount on the cost of POTS when supplied with Urban FTTC Bitstream
Supplemental WLR	1.50	2.77	
FTTH BSP	23.50	23.50	Our view is this is non-equivalent and arguably a discriminatory discount on the cost of POTS when supplied with FTTH
Supplemental WLR	2.18	2.18	

**Table 1 - Discounting the cost of POTS for Urban FTTC Bitstream, national FTTH VUA and national FTTH Bitstream Plus**

Our view is Wholesale customers of FTTC VUA and FTTC Bitstream is disadvantaged relative to wholesale customers of FTTH VUA or Bitstream. FTTH is being offered on a non-equivalent basis to wholesale consumers of open eir WLR services.

**BT believes open eir should reduce the price of standalone FTTH VUA and FTTH Bitstream by €0.58 to correct this non-equivalence, and continue to notify and constantly apply the appropriate price delta that will be applied consistently to all customers of Urban POTS-based FTTC bitstream relative to Urban Standalone FTTC bitstream.**

Wholesale customers of Urban FTTC Bitstream are currently being offered an even higher discount as standard on the cost of POTS service, and we assume it is eir's intention to continue with this practice.

**BT believes Open Eir should continue to notify and constantly apply the appropriate price delta that will be applied consistently to all customers of Urban POTS-based FTTC bitstream relative to Urban Standalone FTTC bitstream.**

## Issue 3 - Pricing of 8Mb CGA relative to 24Mb CGA.



Open Eir have chosen to retain a distinction between the cost of 8Mb BMB and 24Mb BMB in their proposal.

As detailed in table 2 below our views is the proposed charges are significantly higher than the cost oriented points under D11/18.

Overrecover on Regional BMB Bitstream						
	D11/18 @ 1Mb	Port	Usage (1Mb)	BT % Split	Blended Cost per Port	Overcharge
National	€9.26	€4.17	€5.49	32.5%	€10.35	10.5%
		€5.19		67.5%		
Regional	€7.22	€4.17	€3.05	32.5%	€7.91	8.7%
		€5.19		67.5%		

**Table 2 – Pricing Over recovery of Regional BMB Bitsteam**

BT buy a considerable number of BMB ports, and believe that open eir's notified pricing will result in a significant overcharge to BT.

**BT considers open eir's BMB Prices should be reduced to align with D11/18**

**End**



1 Heuston South Quarter  
St. John's Road  
Dublin 8  
T +353 1 671 4444  
eir.ie

29 March 2019

Donal Leavy  
Wholesale Director  
Commission for Communications Regulation  
One Dockland Central  
Guild Street  
Dublin 1, D01 E4X0

**NON-CONFIDENTIAL**

**Re: Information Notice 19/29**

Donal

I refer to ComReg's Information Notice 19/29 and eir's Wholesale Notification no. 6 2019.

eir's Wholesale Notification as notified to ComReg on 14 March 2019 includes eir's statement of compliance (updated on 21 March) with its cost-orientation obligation and demonstrates consistency with those prices as included by ComReg in Annex 7 of ComReg D11/18 albeit using an alternative pricing structure. Further to the submissions already provided to ComReg by eir as part of the original notification process on 20 December 2018, including the supporting note submitted to ComReg on 8 February 2019, the compliance statement sets out a number of cogent reasons as to why deviation to those prices as published by ComReg is warranted. These include enhanced consumer benefits, prevention of distortion to the market and avoidance of potential wholesale price increases for certain operators.

ComReg D11/18 provides for alternative pricing structures "*subject to compliance with the cost orientation obligation and ComReg's pre-approval*". The second condition of being able to implement alternative pricing structures has been extended beyond D11/18 by ComReg's information notice 19/29 and 19/10 from moving away from a "pre-approval" decision made by the regulator to that of industry views and potential consensus. Individual company objectives (which include wholesale competitors to open eir) will be different and therefore it is unclear how consensus could be achieved.

In this context there are three important considerations.

First, in order to discharge ComReg's regulatory obligations it must consult transparently with industry and based on economic reasoning determine what is the most proportionate decision in order to address the regulatory concerns identified by ComReg — that assessment should not be based on consensus or number of views presented but rather on cogent reasoning and appraisal of those views by ComReg (noting that not all interested parties will submit views). In reaching its decision as published in D11/18 ComReg has already consulted with industry. The regulatory concern identified by ComReg was the level of Bitstream prices and not the various pricing structures that could be implemented to achieve that cost-orientation. Indeed, ComReg D11/18 acknowledges that "*ComReg considers that the cost allocations in the NGN Core Model result in a relatively small element of the costs being allocated on the basis of the usage / Mbps charge with most of the costs appearing as a cost per customer/port. However, there is no requirement that the cost oriented prices...must recover these costs in this way*". Therefore, correctly, the decision allows for an alternative pricing structure.

Second, while Sky Ireland appealed ComReg's decision, its appeal is not grounded on the flexibility provided for by ComReg of alternative pricing structures. Similarly, no operator raised concerns regarding this aspect of the decision. Coupled with the fact that as acknowledged by ComReg in the decision that *"two respondents (Sky and the AM Report) appear to have commented specifically on the issue of the logarithmic curve, no other respondents noted any objections to the continued use of a logarithmic curve"*. Therefore, it is unclear to eir as to why ComReg has now offered a further consultation process on a ComReg decision. The granting of "pre-approval" in the decision did not clearly contemplate such a consultation phase. In fact, the only loose commonality between this new apparent consultation process and ComReg's decision is the use (but only in part) of a logarithmic curve. As already stated such a requirement has already been surpassed by ComReg's decision to allow for alternative pricing structures and should have reasonably been contemplated by ComReg in reaching its final decision — as eir clearly noted in correspondence to ComReg in October 2018 that it would be implementing a different pricing structure. ✕

Third, the proposed pricing structure is consistent with the pre-existing pricing structure and therefore it is unclear to eir what valid regulatory concerns could be put forward by interested parties — as these "concerns" would already be evident in the market given the pricing structure (as approved by ComReg at the time and as supported as an appropriate methodology by ComReg's consultants TERA) has been in the market since 2014. While eir's proposed structure is different to that published by ComReg it is compliant with eir's cost-orientation obligations and is consistent in overall price path recovery terms with that inferred from ComReg's pricing structure. Similarly, eir's proposed pricing structure ensures — unlike the pricing structure published by ComReg — that the full reduction as a result of cost-orientation is passed on to all our customers irrespective of their size. Therefore, ComReg in reaching its decision must consider whether there are valid regulatory concerns put forward by interested parties and not views influenced by commercial contracts — which outside the possible implications of competition law should not form any consideration for a regulatory decision. In particular, eir considers that in order for ComReg to validate any such potential submissions it must seek, using its statutory powers if required, to understand whether submitting parties have any commercial agreements which present a conflict of interest due to the fact that the financial outcomes of those agreements are directly linked to the implemented pricing structure.

Finally, it is unclear to eir, as set out in the statement of compliance, how any pricing structure which implements a very low Bitstream usage cost (e.g., ComReg's published prices) could be compliant with the targeted level of cost-orientation for Regional Handover ✕. As Regional Handover reflects solely the transmission element of the Bitstream service there cannot be any reduction to the fixed Bitstream port element.

I am available to discuss any queries you may have.

Yours sincerely



**Kjeld Hartog**  
**Director of Group Pricing and Regulatory Finance**

2022 Bianconi Avenue  
Citywest Business Campus  
Dublin 24 D24 HX03  
T +353 1 671 4444  
eir.ie

15 April 2019

Donal Leavy  
Wholesale Director  
Commission for Communications Regulation  
One Dockland Central  
Guild Street  
Dublin 1, D01 E4X0

**NON-CONFIDENTIAL**

**Re: Information Notice 19/29**

Donal

I refer to ComReg's Information Notice 19/29, eir's Wholesale Notification no. 6 2019 and email received from James Mulholland on 13 April 2019.

As you are aware, eir's Wholesale Notification no. 6 2019 made clear that for eir to have sufficient time to implement its regulatory pricing structure on 1 July it needed a decision from ComReg without undue delay and in any event by 13 April. Unfortunately, ComReg's email of 13 April provided no decision, merely indicating that ComReg is still considering the matter, and giving no indication of when ComReg will make a decision.

eir is very concerned at both the process initiated by ComReg in this matter, and ComReg's ongoing delay, the effect of which is now likely to be to effectively deny eir the ability to implement a compliant alternative pricing structure as specifically envisaged in Decision 11/18.

**ComReg's delay**

Having specifically allowed eir to propose alternative pricing structures in Decision 11/18, it is implicit that ComReg must make a decision on them in sufficient time for eir to be able to actually implement them by the regulatory deadline of 1<sup>st</sup> July. In particular, ComReg's decision needs to be made in sufficient time for eir to be able to carry out the necessary IT development before 1<sup>st</sup> July. It was for this reason, as set out in detail in previous correspondence, that eir requested that ComReg come to a decision by 13<sup>th</sup> April at the latest.

eir believes that ComReg has had more than sufficient time to consider eir's proposals and can see no basis for ComReg's delay in this matter. In particular, eir gave ComReg considerable advance notice of its proposed alternative pricing structure, submitting a fully compliant pricing structure on 20<sup>th</sup> December 2018. It has also complied with all subsequent ComReg requests, including re-notifying its pricing structure on 14<sup>th</sup> March 2019 following a presentation to industry. eir notes that the pricing structure proposed by eir has already been in existence for a number of years (such that any valid regulatory concerns would already be evident), and further notes that ComReg has had time to consider submissions by industry, given that the deadline for responses to its Information Notice was 5<sup>th</sup> April.

## **Consultation Process**

As noted above, eir is also concerned at the process ComReg has initiated in relation to eir's proposed alternative pricing structure. It appears that ComReg has effectively created a consultation process on regulatory matters ComReg had already made a decision on in ComReg D11/18 (see eir's submission to ComReg information notice 19/29). It is not clear to eir the justification for this new consultation process. ComReg itself has acknowledged that carrying out unnecessary consultations can have very serious repercussions for eir, stating in its recent affidavit of 1 March 2019 filed in proceedings brought by Sky Ireland "...*the number of notifications is quite voluminous. A requirement to consult on each of these would entail an enormous drain on ComReg's ability to carry out its various other responsibilities. Furthermore, it would have very serious repercussions for Eircom in that even a perfectly compliant proposal could be delayed.*" [emphasis added].

As well as potentially having the effect of delaying ComReg's decision beyond the point at which eir can implement its alternative pricing in time for 1 July, eir is also concerned that as part of this new process ComReg may take into account considerations relating to the commercial contracts of individual operators, which should bear no relevance to ComReg's regulatory decisions.

## **Implications for operators of pricing structure in D11/18**

eir believes it has notified a compliant alternative pricing structure that should be approved by ComReg. Should ComReg decide however that the pricing structure in ComReg D11/18 be implemented, eir notes that this will have a number of implications for other operators. In particular, we request confirmation that the necessary notification period for a wholesale price increase is not required pursuant to ComReg D10/18 — as identified in our supporting documentation to Wholesale notification no.6 2019, a number of operators will face a price increase relative to the prices they are paying today using ComReg's pricing structure. Depending on the circumstances this may have Regulation 14 implications at the retail level for end-users.

For all of the reasons set out above and in previous correspondence, eir requests that ComReg now come to a decision as a matter of urgency, and that it advise eir of the date of that decision. eir further requests ComReg's assurance that in reaching its decision it will take only appropriate considerations into account, and act in a manner consistent with the principles set out in the relevant Decisions and underlying legislation. eir reserves its right to take all appropriate steps to safeguard its legal rights in this matter, including any legal appeal should such prove necessary.

I am available to discuss any further queries you may have.

Yours sincerely

**Kjeld Hartog**  
**Director of Group Pricing and Regulatory Finance**



2022 Bianconi Avenue  
Citywest Business Campus  
Dublin 24 D24 HX03  
T +353 1 671 4444  
eir.ie

25 April 2019

James Mulholland  
Senior Manager  
Commission for Communications Regulation  
One Dockland Central  
Guild Street  
Dublin 1, D01 E4X0

**NON-CONFIDENTIAL**

*By: email*

**Re: Information Notice 19/29**

James

I refer to your email on 13 April 2019 and my letter to Donal Leavy dated 15 April 2019. That letter reiterated the urgent need for ComReg to come to a decision on Wholesale Notification no.6 2019 (concerning eir's proposed wholesale pricing structure), and expressed eir's serious concern that ComReg had not done so. It is now a week since that letter and eir has received no response, even to acknowledge receipt.

As you are aware, eir believes its notification is a compliant pricing structure that should be approved by ComReg. In addition this structure avoids a number of serious issues that the pricing structure proposed in Decision 11/18 ('D11/18') gives rise to. These issues are serious and significant, and eir is concerned they are not being addressed by ComReg.

As a matter of urgency therefore, I request a meeting at your earliest convenience to discuss these and other related issues, including the following:

- 1) **Overview of IT and billing implications:** As you are aware, eir committed significant resources to ensure compliance with its cost orientation obligations with the new regulated prices coming into effect on 1 March 2019. As a result of ComReg information notice 19/10, eir committed further IT resources to change the structure of eir's cost-oriented prices (as notified in eir's Wholesale Notification no. 6 2019) despite the original structure submitted on 20 December 2018 already being compliant with that obligation. The required IT amendments to implement the pricing structure notified is complex and requires a number of developments which we have yet to validate for their effectiveness, efficiency and accuracy. However, as clearly set out in previous correspondence the D11/18 pricing structure creates a number of further complications which require significant further IT development and billing complexities. I propose that Andrew Ball attend our meeting to describe these issues and detail the level of IT and billing complexity under both approaches.
- 2) **FTTH implications:** Today, NGA usage is charged using the same price per Mbps. However, where the price of FTTC usage is only €0.46 per Mbps it has a significant impact on the cost recovery of eir's FTTH wholesale portfolio — to the extent that it must introduce a higher fixed port charge as set out in eir's note entitled "*Overview of Wholesale Central Access pricing structures*" submitted to ComReg on 8 February 2019. The relative FTTH Bitstream monthly port price increase could be as high as ~€5.00 for each FTTH profile (which may require to be updated annually). Alternatively, eir would need to apply a different usage pricing table (which is



required in all possible pricing structures with the exception of the pricing structure notified to ComReg on 20 December 2018). The use of an alternative pricing table has been proposed in Wholesale Notification No.6 (note, as detailed above, such a change is also required using the pricing structure per ComReg D11/18). eir has significant concerns that operators will incorrectly argue (irrespective of approach taken) to ComReg that such changes justify moving to cost-orientation for FTTH. In the event that eir must charge a higher FTTH Bitstream port price to maintain the total FTTH average revenue per user, eir requests that ComReg confirm in writing that the notification timelines per ComReg D10/18 do not apply as the FTTH Bitstream price structure change is a re-balancing of tariffs only and is therefore not a price increase.

- 3) **Regional Handover discount (issue 1):** A fundamental concern for eir is how the D11/18 pricing structure achieves cost-orientation for Regional Handover Bitstream. It is unclear to eir how it can comply with its cost-orientation obligation by discounting the traffic element of the Bitstream charge — where the “cost” as calculated by ComReg for carrying that traffic back to the National Handover point is €0.46 per Mbps for eir but the discount eir is required to give to operators for handing over that same level of traffic to a regional handover point is ~€2.91. This anomaly is avoided under eir’s proposed pricing structure. Consequently, in the event ComReg proposes publishing a decision which prevents eir implementing its preferred pricing structure from 1 July, eir request that ComReg provide cogent reasoning as to the pricing, network and costing consistencies of that decision to that of: a) the reasoning set out in correspondence to eir dated 28 February 2019 regarding the treatment of transmission costs; and b) the allocation of NGN Core Model costs as detailed in ComReg D11/18.
- 4) **Regional Handover discount (issue 2):** As the required Regional Handover discount required to meet eir’s cost-orientation obligation is higher than the available billing element of Bitstream usage using the D11/18 pricing structure, eir will need to create a billing solution which provides the required discount on the fixed port element<sup>1</sup>. As the fixed port element and usage element are calculated at different intervals and the 95<sup>th</sup> percentile could be different for Regional and National traffic, as set out in our submissions, the implementation of ComReg’s proposed pricing structure could result in billing disputes for Regional Handover. Consequently, should ComReg decide to implement the D11/18 pricing structure, eir will require written acknowledgement from ComReg that: eir has notified it of how the Regional Handover discount will be implemented and that ComReg accepts the unavoidable limitations of this approach. James O’Cleirigh and I will discuss this with you in more detail at our meeting. In addition, should ComReg publish a decision which prevents eir implementing its preferred pricing structure from 1 July, eir requests that ComReg confirm in writing that the required change to the calculation of Regional Handover discount can be implemented from 1 July.

For the avoidance of doubt, eir’s engagement on these issues is without prejudice to our view that Wholesale Notification no. 6 2019 is a compliant alternative pricing structure that should be approved by ComReg. These issues (together with eir’s previous submissions) illustrate why the alternative pricing structure is in fact preferable to the D11/18 pricing structure. Should ComReg nonetheless decide on the D11/18 structure, then these issues will have to be addressed by ComReg.

I am available to co-ordinate diaries and organise a meeting at your earliest availability. In the meantime, eir continues to reserve its right to take all appropriate steps to safeguard its legal rights in this matter, including any application to court should such prove necessary.

Yours sincerely

A handwritten signature in black ink that reads 'Kjeld Hartog'.

**Kjeld Hartog**  
**Director of Group Pricing and Regulatory Finance**

---

<sup>1</sup> However, as set out in it correspondence to ComReg on 21 March 2019, is not clear to eir how this could be consistent with ComReg’s network costing principle. Transmission is the only component of the Bitstream service which is being handed over regionally. However, the regulatory regional handover discount required is greater than the transmission element of the Bitstream charge. Of course, if it is just the combined level that needs to be consistent with cost-orientation then it is unclear to eir why it’s proposed pricing structure as submitted to ComReg on 20 December 2018 was not “pre-approved” by ComReg for implementation on 1 July 2019.



## FTTC Bitstream Plus:



### Why deviation from D11/18 is warranted:

1. The combined fixed and variable elements of FTTC Bitstream per kbps using this alternative structure ensures that the reduction in FTTC bitstream prices as a result of moving to cost-orientation is passed on equally to all operators. From an economic perspective as the marginal cost has lowered (due to regulation) equally for all operators using this pricing structure it allows for the full pass-through of that benefit to end-users. This will have a positive economic effect for consumers in Ireland as it raises end-users' consumer surplus.
2. The combination of fixed and variable pricing components in eir's pricing structure allows our Bitstream customers to create retail propositions based on consumer preferences – this might be relevant for targeting niche consumer groups and/or business users (who could have different busy hours) or different requirements — for example IoT. As noted in Tera's report<sup>1</sup> *“[This] pricing structure allows OAOs [other authorised operators] to provide different types of offers with OAOs targeting low revenue users and OAOs targeting high revenue users”. Similarly, “if price differentiation is likely to expand demand, it is likely to be beneficial. In the present case, it is likely that price differentiation would expand demand by allowing lower prices for some customers (those with low willingness to pay – which can be low-usage customers which therefore derive low utility from broadband or high-usage customers who want higher usage but are less willing to pay for that usage) and by ensuring other customers are not facing too high prices because bitstream prices are overall constrained (by competition or by regulation)”*.
3. This alternative approach re-aligns the fixed port element between Bitstream and VUA. By changing the pricing structure the fixed Bitstream prices and fixed POTS-based Bitstream prices re-aligns to pre-March 2019 prices. As evident in table 1 and table 2.

---

<sup>1</sup> Tera, “Report on potential pricing methodologies for Bitstream Managed Backhaul pricing”, ComReg publication 14/116a, 3 November 2014.



4. Avoids complexity in Regional Handover discount. The Regional Handover discount for NGA Bitstream Plus is currently (and is proposed to remain from 1 July 2019) implemented by changing a single parameter in the usage charge. This means there is no added complexities in billing. For example, if there was a lower usage charge, in order to meet the cost-orientation obligations in respect to Regional Handover pursuant to ComReg D11/18 it would require that the fixed element port charge needs to be reduced in combination to the variable usage charge. From a billing perspective as the fixed and variable port charges are calculated at separate times (meaning that the number of port counts can be different in both calculations) this approach (i.e., a very low usage charge) may lead to billing disputes and adds unnecessary complexity given the viable alternatives.
5. The Regional handover discount acknowledges that as the traffic is handed over to operators earlier in the network that the transmission cost is reduced for those operators using this WCA service. The proposed pricing approach is consistent with this network costing principle as the regional handover discount can be fully accounted for in the transmission element of the total Bitstream port charge (i.e., transmission is the only component of the Bitstream service which is being handed over regionally).
6. eir's pricing structure means that the total bitstream charge (port & usage) increases the more Bitstream network users drive additional cost in the network over time. However, the pricing structure is such that the total contribution from higher than average network users does not impact eir's cost-orientation obligations. Similarly, the total NGA Bitstream cost per Mb decreases as Bitstream customers use more of the network. For higher than average network users the cost per Mb is materially consistent with ComReg D11/18.
7. Based on feedback from operators at the Group Pricing workshop on the 6 March 2019, notwithstanding that eir considers that while it is correct from an economic signal perspective that higher than average network users should contribute more as they drive additional cost of the network over time, eir has amended the variable usage charge ✂. ✂.

Today, NGA data usage is measured at the aggregate level in the network. This means that the 95<sup>th</sup> Percentile is aggregated across all FTTC and FTTH ports. As the usage charge for FTTC is now lower (which would be the case in all alternative

pricing structures including the structure proposed in ComReg D11/18 — with the exception of the pricing structure eir originally proposed on 20 December 2019) a new billing structure will need to be created by eir's IT team. While the same 95<sup>th</sup> percentile will be used for both NGA services a separate port count for FTTC and FTTH will apply to different charging usage pricing tables. It is unclear, at this time, how separate FTTC and FTTH traffic levels could be measured separately without additional complexity or expense being incurred by eir and operators — as such, eir considers that this approach is the most efficient and effective to implement given ComReg's preference to move away from those prices already notified on 20 December 2018 (which does not require this amendment to NGA traffic).

✂

**Bitstream IP**

✂

**Why deviation from D11/18 is warranted:**

1. eir has multiple wholesale services while Annex 7 of ComReg D11/18 gives a single port charge.
2. The pricing gradient recognises that the various services have different profiles in terms of upload and download.
3. The use of different prices for different profiles is consistent with how these wholesale services have been priced since 2006 and is consistent with pricing structures implemented in other markets and services e.g., leased lines and FTTH profiles.
4. Maintaining a price gradient also means that no operator will face a price increase relative to the price paid today either pre and post 1 March 2019 which avoids any possible Reg.14 issues for operators.

## Bitstream Managed Backhaul (BMB)



### Why deviation from D11/18 is warranted:

1. eir has two wholesale services while Annex 7 of ComReg D11/18 gives a single port charge.
2. The pricing gradient recognises that the various services have different profiles in terms of download.
3. The use of different prices for different profiles is consistent with how these wholesale services have been priced since 2010 and is consistent with pricing structures implemented in other markets and services e.g., leased lines and FTTH profiles.
4. Maintaining a price gradient also means that no operator will face a price increase pre and post 1 March 2019 which avoids any possible Reg.14 issues for operators.
5. The combined fixed and variable elements of CGA Bitstream per kbps using this alternative structure ensure that the reduction in CGA bitstream prices is passed on equally to all operators. From an economic perspective as the marginal cost has lowered (due to regulation) equally for all operators using this pricing structure it allows for the full pass-through of that benefit to end-users. This will have a positive economic effect for consumers in Ireland as it raises end-users' consumer surplus
6. The combination of fixed and variable pricing components in eir's pricing structure allows our Bitstream customers to create retail propositions based on consumer preferences – this might be relevant for targeting niche consumer groups and/or business users (who could have different busy hours) or different requirements — for example IoT.
7. Avoids complexity in Regional Handover discount. The Regional Handover discount for NGA Bitstream Plus is currently (and is proposed to remain from 1 July 2019) implemented by changing a single parameter in the usage charge. This means there is no added complexities in billing.
8. The Regional handover discount acknowledges that as the traffic is handed over to operators earlier in the network that the transmission cost is reduced for those operators using this WCA service. The proposed pricing approach is consistent with this network costing principle as the regional handover

discount can be fully accounted for in the transmission element of the total Bitstream port charge (i.e., transmission is the only component of the Bitstream service which is being handed over regionally).

8. eir's pricing structure means that the total bitstream charge (port & usage) increases the more Bitstream network users drive additional cost in the network over time. However, the pricing structure is such that the total contribution from higher than average network users does not impact eir's cost-orientation obligations. Similarly, the total CGA Bitstream cost per Mb decreases as Bitstream customers use more of the network. For higher than average network users the cost per Mb is materially consistent with ComReg D11/18.
9. Notwithstanding that eir considers that while it is correct from an economic signal perspective that higher than average network users should contribute more as they drive additional cost of the network over time, eir has amended the variable usage charge ✂.
10. ✂.

✂

**eir**

## **Overview of Wholesale Central Access pricing structures**



**8 February 2019**

## Overview

1. The purpose of this note is to provide an overview of the various pricing structures which comply with ComReg Decision D11/18 and their impact on competition in the market and benefit to end-users. This note supports eir's pricing structure as notified to ComReg on 20 December 2018. ✕.
2. Following discussion with ComReg on 30 January 2019 regarding low bitstream usage levels, eir submitted a revised Bitstream price list on 2 February 2019 to ComReg to cater for throughput levels below 200kbps for Fibre-to-the-cabinet ('FTTC') bitstream services. ✕ However, eir agrees with ComReg, that for the avoidance of doubt of an economic space (i.e., there is a margin to protect the ladder of investment signal) between FTTC Virtual Unbundled Access ('VUA') and FTTC Bitstream even at those low usage levels, that such prices are published.
3. Finally, ✕.

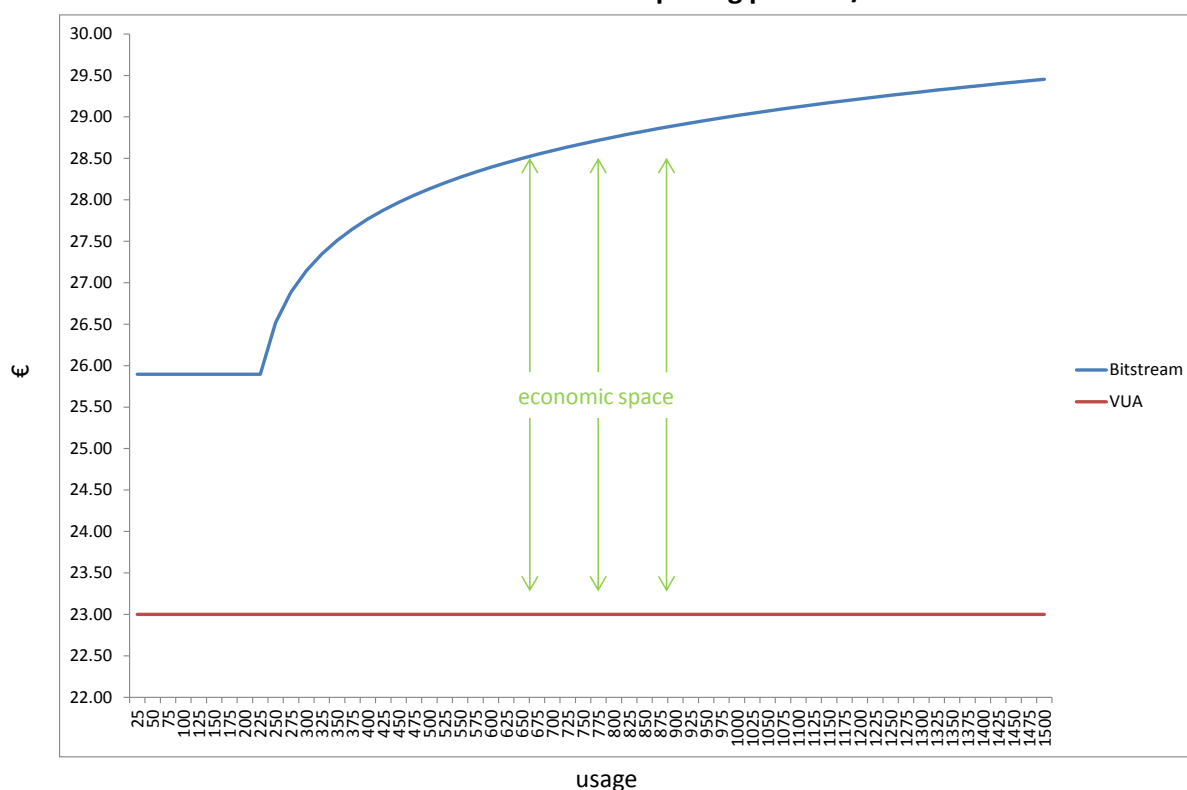
## Pricing Structures

4. Following work undertaken by ComReg and its consultants TERA in 2014 which considered a number of potential pricing methodologies to allow network costs to be recovered using a number of alternative pricing structures for bitstream, eir has charged its Bitstream services using a combination price of a fixed port charge and a variable usage charge based on a logarithmic curve. It is important to note that for bitstream services the port and traffic/usage elements cannot be purchased separately. The use of a logarithmic curve was consulted on by ComReg in reaching its final decision (ComReg D11/18) and which operators supported the continued use of in respective response to ComReg's consultation process. As set out in TERA's report<sup>1</sup> the logarithmic approach was consistent with a number of ComReg's statutory objectives and as described in this note is superior to an alternative approach that charges a higher fixed port charge and a smaller (nearly flat) usage charge.
5. In order to incentivise operators to invest in their own infrastructure there must be sufficient economic space or margin between the various wholesale services or 'rungs' in the ladder of investment concept. The economic space in this context is the wholesale margin between price/cost of VUA and price of Bitstream services (which consists of both port and usage prices). This economic space is illustrated below. As set out in paragraph 2, the Bitstream price list does not currently include a price for usage levels below 200kbps. That is not to say that an economic space does not exist ✕. Therefore, for illustrative purposes a fixed usage for such low usage levels is included in the graph below.

---

<sup>1</sup> Tera, "Report on potential pricing methodologies for Bitstream Managed Backhaul pricing", ComReg publication 14/116a, 3 November 2014.

### VUA vs FTTC bitstream pricing pre-D11/18

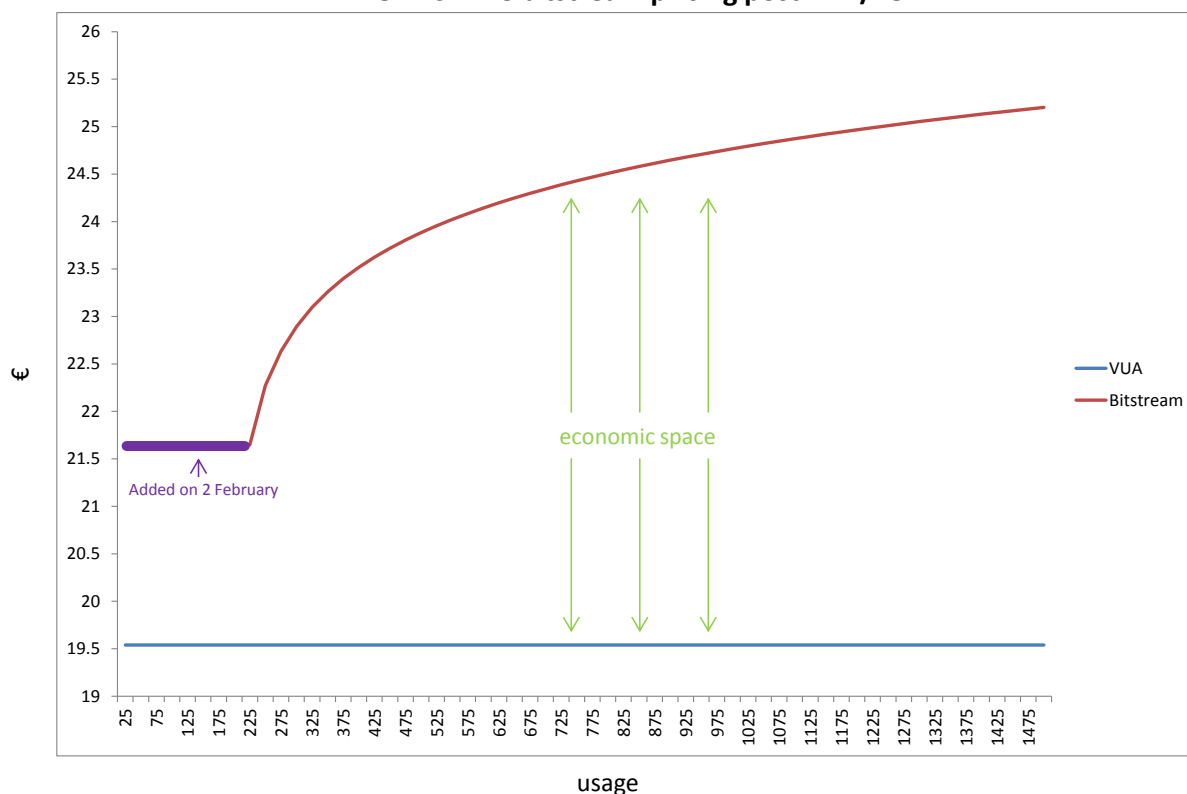


6. As noted in Tera’s report “[This] pricing structure allows OAOs [other authorised operators] to provide different types of offers with OAOs targeting low revenue users and OAOs targeting high revenue users”. Similarly, “if price differentiation is likely to expand demand, it is likely to be beneficial. In the present case, it is likely that price differentiation would expand demand by allowing lower prices for some customers (those with low willingness to pay – which can be low-usage customers which therefore derive low utility from broadband or high-usage customers who want higher usage but are less willing to pay for that usage) and by ensuring other customers are not facing too high prices because bitstream prices are overall constrained (by competition or by regulation)”.
7. Given the actual investment by operators in VUA it suggests that this pricing approach has been successful not only in providing pricing confidence for the cost of continued traffic growth for Bitstream customers but also for infrastructure-based operators which have expanded their VUA presence and investment over time.

#### eir’s notified pricing structure

8. Following ComReg’s publication of D11/18, eir published on its website the proposed Bitstream price list on the 20 December 2018 setting out the pricing structure it proposed to implement from 1 March 2019 (which pursuant to ComReg D11/18 eir was required publish no later than 7 January 2019 to ComReg and to industry). On the same day, eir submitted a separate confidential compliance statement to ComReg for those proposed prices.
9. The economic space created between the price/cost of VUA and price of Bitstream services per eir’s notification is illustrated below:

### VUA vs FTTC bitstream pricing post-D11/18



10. As evident the shape of the economic space between VUA and Bitstream of eir's proposed regulatory compliant structure (including the addition of those prices as discussed in paragraph 2) is similar to that of the extant pricing structure. ✂. ✂.
11. Furthermore, eir's pricing allows for a pricing structure which promotes allocative efficiency based on the different customers' willingness to pay (consistent with the findings by the work undertaken by ComReg and Tera in 2014). This means that eir can offer a wholesale service at prices that directly benefits end-users. The existence of the economic space between VUA and Bitstream means that this pricing dynamic is also true for infrastructure-based operators purchasing VUA.
12. By keeping the existing logarithmic curve (i.e., consistent with that already in-use) the economic benefit of lower cost-oriented prices set by ComReg in D11/18 for FTTC Bitstream services is shared equally among all users (a saving of €4.25 ex-VAT per customer per month compared to today's prices). From an economic perspective as the marginal cost has lowered (due to regulation) equally for all operators using this pricing structure it allows for the full pass-through of that benefit to end-users. This will have a positive economic effect for consumers in Ireland as it raises end-users' consumer surplus.
13. As evident from the graph the Bitstream charge (which is a combination of both the port and usage prices) is always above the price of VUA. Therefore, any view which compares the price of VUA to either the Bitstream port or usage in isolation is incorrect.



14.eir's notified pricing:

- a. shares the benefit of a lower regulated Bitstream price equally among all operators which will allow for an equal distribution of wealth to consumers;
- b. promotes allocative efficiency;
- c. provides some pricing flexibility to eir and OAOs, while also ensuring that high usage customers do not face too high a price because bitstream prices are overall constrained (by competition and by regulation);
- d. maintains an appropriate economic space between VUA and Bitstream; and
- e. is compliant with ComReg D11/18. ✕.

15.While it is possible to set the Bitstream port charge equal to the VUA port charge and adjusting (down) the logarithmic usage charge accordingly — such that eir remains compliant with its cost-orientation obligations — this creates a fundamental IT and billing issue for FTTC Bitstream services in non-regulated areas and for FTTH Bitstream pricing nationally. As identified by eir to ComReg on the 23 October 2018 *“eir calculates data usage charges based on a single logarithmic curve for both FTTC and FTTH. These calculations are based on data usage measured at the aggregate level in the network for NGA. Changing usage charges for FTTC services will require separate logarithmic formulas for FTTC and FTTH to be developed. Such a change would require the same if not more IT development than those outlined above. This would require the ability to measure FTTC and FTTH data usage separately in the network which will require additional IT and infrastructure investment by eir and operators”*. ✕

16.Similarly, the existing logarithmic curve for Bitstream usage is implemented nationally. ✕

17.As identified in paragraph 16, the impact of lower variable usage revenues (as a result of a lower logarithmic curve to comply with FTTC Bitstream cost-orientation) could be partially off-set by increasing the fixed element of the Bitstream port price. ✕ as the regulatory test directly links the combination of prices for Bitstream port and Bitstream usage together<sup>2</sup> to assess regulatory compliance against the price of VUA, the individual price points for the Bitstream port and usage in isolation is in fact irrelevant to ComReg's regulatory objectives and compliance with the pricing obligations (including cost-orientation) as set out in ComReg D11/18.

18.Having worked through these various scenarios, eir considered, on balance, that to have separate usage charges between regulated and non-regulated areas for FTTC Bitstream and an additional completely separate logarithmic curve for FTTH Bitstream services nationally was unnecessarily complex and as there is no regulatory requirement to do so that it is more efficient and effective for it and OAOs to keep the existing pricing structure.

19.Similarly, the continuous requirement to adjust ✕. This superfluous change year-on-year is unreasonable compared to eir's pricing approach as it incurs unnecessary IT development/implementation costs and is not efficient given the alternative pre-existing pricing structure.

20.✕. Such an outcome is counter to ComReg's statutory objectives. eir's pricing structure removes all the various complexities ✕, avoids unnecessary costs, is fully transparent regarding the predictability of charges over-time for all services and provides appropriate and consistent build/buy signals nationally.

---

<sup>2</sup> The link between VUA and Bitstream prices is also highlighted in paragraph 7.47 of ComReg D11/18, where ComReg required that any price reduction in VUA should also be reflected in the price of Bitstream.

### An Alternative Pricing Approach

21. For the purposes of comparison the economic effects of using a higher fixed Bitstream port and smaller (nearly flat) variable usage charge (noting again that operators cannot purchase the port and usage/traffic elements separately and therefore must be viewed in combination) is discussed below.

22. The economic space created between the price/cost of VUA and price of Bitstream services for this alternative price structure is illustrated below. For comparison purposes eir's notified pricing structure is also included.

✂

23. ✂. The current and notified pricing structure, see paragraphs 5-7 and paragraph 11, does not create these distortions and continues to have a positive impact on infrastructure-based investment including in VUA.

24. Similarly, by recovering a high fixed element and a smaller variable element in a pricing structure means that the economic benefit of lower cost-oriented prices for FTTC Bitstream services implemented by ComReg in D11/18 is disproportionately skewed in favour of high-users only. In fact, any Bitstream users with throughput levels below eir's network average will receive a lower benefit compared to the eir's notified pricing structure. From an economic perspective if a high fixed element and smaller variable element pricing structure for Bitstream services is implemented then the marginal cost will be lower (due to regulation) for **high-users only**. Therefore, the full pass-through of those benefits to end-users is unlikely to materialise or will be at much lower levels compared to eir's approach. Therefore, the societal benefits and consumer surplus due to regulation are not shared equally amongst all end-users.

25. The alternative pricing approach is compliant with ComReg D11/18. However:

- a. the benefits of lower regulated Bitstream price is weighted in favour of high-usage customers only;
- b. does not promote allocative efficiency;
- c. does not provide pricing flexibility to eir and OAOs purchasing Bitstream service from eir,
- d. creates a disproportionate economic space between VUA and Bitstream; and
- e. distorts the market.

### **Impact of eir's pricing structure**

26. ✂.

✂

27. As set out in paragraph 11, eir proposed pricing structure allows the creation of retail propositions that reflects different end-users willingness to pay for broadband depending on their usage levels. Furthermore, high users are not facing excessive prices because bitstream prices are overall constrained (by competition<sup>3</sup> or by regulation<sup>4</sup>).

---

<sup>3</sup> As VUA is a fixed regulated price the correct build/buy signals are maintained between purchasing a bitstream service from eir, investing in VUA or by purchasing wholesale services from aggregators such as BT which already have an established VUA presence.

<sup>4</sup> ✂.

28. Similarly, as the combination of eir's Bitstream port and usage prices is cost-oriented it means that eir's network costs are recovered on average over its customer's base and tracks the modelled NGN costs which inform the regulated prices per ComReg D11/18 over the regulatory control period.

#### **Additional considerations: Implementation of the Regional Handover discount**

29. The Regional Handover ('RHO') discount for NGA Bitstream Plus is currently (and as notified in eir's pricing) implemented by changing a single parameter in the logarithmic formula. The implementation of this discount is straightforward as the parameter in the formula is currently reduced from 0.90 for national handover to  $0.90 \times (1 - 31\%) = 0.62$ . In the implementation of the price control directed in D11/18 currently published this RHO parameter will simply reduce from 0.62 to  $0.90 \times (1 - 47\%) = 0.477$ . As such, no change is required to the Bitstream Port rental charge to comply with eir's cost orientation obligations. In addition to the issues identified in paragraphs 15-17, the implementation of separate Bitstream Plus port prices for FTTC depending on the BPU carrying the traffic will require IT development and will add a level of complexity that may lead to billing disputes.

#### **Conclusion**

30. ✕.

31. As supported by analysis in this note, eir's notified pricing structure leads to better regulatory outcomes. It allows all operators to create broadband propositions to the benefit of end-users and distributes the benefits of regulation to all operators — which allows for a larger consumer surplus.

32. eir is available to discuss the contents of this note at ComReg's convenience.

## **Sky response to ComReg request for views on “Eircom’s revised Bitstream prices further to Information Notice 19/10”**

1. At the outset it is important to state that the industry has been placed in the wholly unsatisfactory and unreasonable position of being required to provide feedback to ComReg on Eircom pricing that is, beyond dispute, not compliant with its regulatory obligations in the timeframe of one week. The fact that “proposed” pricing from Eircom is being amended and re-notified so regularly and in the context of the issue at hand, the SMP operator has pursued strategies ranging from ‘active disengagement’ with the industry to providing misinformation (either by accident or design) has only added to an unnecessary and entirely avoidable regulatory burden being placed on OAOs in relation to this issue.
2. ComReg Decision D11/18 and the associated Decision Instruments were unequivocal in relation to pricing that should have taken effect by 1 March, 2019. Although the level of the pricing determined in D11/18 changed considerably from the initial consultation (ComReg 17/26), the proposed structure of the pricing remained consistent from consultation to decision. Indeed Sky and BT entered into a new contract in 2017 in the expectation that the pricing structure would remain consistent when the final decision was issued. There is no record of Eircom raising any issues or concerns in relation to that pricing structure during the consultation phase. Eircom did not challenge either D11/18 or ComReg’s position as outlined in Information Notice 19/10. It is apparent therefore that they are circumventing the regulatory framework, including the public consultation process, and attempting to push through their desired pricing structure by sheer force of will as opposed to legitimate process.
3. It should be further noted that no valid reasons have ever been provided to industry as to why it cannot implement pricing as outlined in D11/18. At a meeting hosted by Eircom on 6 March, 2019 Eircom suggested that unless the pricing was implemented as it was proposing operators would need to order new WEILs in order to cater for the separation of FTTC and FTTH traffic. In bi-lateral communications between Sky and Eircom we raised the fact that this was an entirely false proposition by Eircom at the meeting on 6 March and this subsequently resulted in a partial retraction of that position by Eircom via an email from Eircom to industry on 26 March. It is possible that ComReg also raised concerns with Eircom about the credibility of this position in the intervening period. It is troubling that OAOs and ComReg need to maintain such a level of vigilance to keep Eircom honest in its dealings with industry in this regard.
4. In addition, based on material now on the public record it is clear that Eircom itself ought to have recognised the pricing structure it was proposing was not compliant with D11/18. In this regard Eircom noted in an email to ComReg on 23 October, 2018 that the pricing structure it intended to implement “*in some cases may result in price increases*” to operators. It is difficult to ascertain on what basis Eircom considered that it had the right to unilaterally vary Decision D11/18 to this extent. In correspondence from Sky to ComReg on 25 February, 2019 Sky provided evidence to ComReg that confirmed that Eircom’s expectation in relation to price increases for certain operators was well founded. Sky would refer ComReg to that correspondence as part of its response to this request for “views”.

5. It should be noted that Annex 7 of D11/18 which sets monthly bitstream prices for FTTC contains one caveat to that pricing coming into effect where it states in a footnote to the table:

*“ComReg will consider any proposals made by Eircom in relation to alternative pricing structures for Bitstream, **subject to compliance with the cost orientation obligation and ComReg’s pre-approval**”*

6. It is clear that the pricing currently notified to industry and purportedly applicable since 1 March, 2019 has NOT had ComReg’s pre-approval. There can therefore be no doubt based on a plain reading of D11/18 that Eircom’s current pricing is not compliant with its regulatory obligations. Operators need to be able to rely on the clear and unequivocal positions as outlined in ComReg decisions and not be left uncertain as to whether or not the decision really applies or will somehow be diluted depending on the extent to which Eircom is willing to openly defy them.
7. In this regard it is concerning that ComReg has not provided any justification in Information Notice 19/10 for why it *“decided not to intervene in respect of Eircom’s proposed prices for the period from 1 March 2019 to 30 June 2019”*. It is difficult to characterise this as anything other than an unwarranted “regulatory holiday” granted to Eircom for openly defying a ComReg decision. This type of conduct clearly contradicts ComReg’s strategic intentions as outlined in its strategy statement for 2017-2021, in particular the intention to ensure that regulated entities comply with regulatory obligations and to ensure that ComReg is an effective and relevant regulator. It also flies in the face of regulatory certainty; something which ComReg has committed to achieving.
8. As to the other requirement outlined in the aforementioned caveat i.e. compliance with cost orientation, Sky has already provided evidence as to why the proposed pricing is not in compliance with Eircom’s cost orientation obligations. Indeed Eircom itself has recognised this implicitly in its email to ComReg on 23 October, 2018. Furthermore, Eircom’s requirement to comply with its cost orientation obligation limits the extent to which ComReg itself can grant pre-approval to deviate from the pricings in Annex 7 of D11/18.
9. In carrying out its consultation that culminated in D11/18 ComReg proposed an approach to cost orientation on bitstream FTTC charges that proposed and modelled pricing that allocated fixed charges to a fixed charge recovery mechanism (port charges) and allocated variable costs to a variable charge mechanism (per Mbps charges). Inherent in that consulted on approach was ComReg’s position on its interpretation of cost orientation in the context of bitstream pricing. This approach was also notified to the European Commission prior to the publication of D11/18 and any attempt to now unwind that position would in Sky’s view constitute an attempt to vary D11/18 in a manner that is not permissible under law. Sky’s response to this request for views is without prejudice to our position that ComReg cannot vary D11/18 in the manner “requested” by Eircom.
10. In this regard, Sky welcomes the fact that ComReg has remained consistent in its interpretation of cost orientation in the context of its Decision and in separating out fixed and variable charges for FTTC bitstream as outlined in Information Notice 19/10 where it noted:

*“ComReg might revisit the issue regarding the application of log curves for setting the prices for FTTC and current generation Bitstream services from 1 July, 2019. Any such log curve **would need to address transmission related costs only**”*

11. Eircom’s latest proposals do not seek to apply the log curve to “*transmission related costs only*”. If Eircom were proposing to apply a log curve to those costs, as outlined in our response to the consultation Sky would be supportive of and consider it would be appropriate to apply a log curve to the bitstream usage charges outlined in Annex 7 of D11/18. For the avoidance of any doubt, for example, if Eircom were to propose a log pricing structure for the currently proposed linear pricing for “*FTTC based Bitstream National Handover Per Mbps*” charge of €0.44 for 2019/20 then this would be acceptable, compliant with Eircom’s cost orientation obligations and consistent with what ComReg notified to the European Commission. However, what Eircom are proposing to do is to take a large portion of the fixed port charges for the same year of €24.58 and apply a variable pricing log curve model to those charges in contravention of D11/18 and Information Notice 19/10.
12. Eircom’s latest pricing proposals presented at its product workshop on 3 April, 2019 inexplicably continues to defy the position outlined in D11/18 and Information Notice 19/10. Eircom refuse to acknowledge, let alone attempt to amend its proposals in line with the unequivocal position that the log curve approach can only apply to transmission costs. At the same workshop Eircom indicated that its latest (arbitrary) approach to splitting out FTTC and FTTH usage charges was carried out because ‘ComReg told us to do it’. While Sky are not privy to the discussions between Eircom and ComReg we would be surprised if this was an accurate record of those discussions. What we would expect ComReg to have advised Eircom on is that it should not be mixing its FTTC and FTTH traffic. Continuing to mix this traffic and setting 2 different prices against it not a solution to the very serious nature of the behaviour it has been engaged in with respect to mixing traffic historically.

### **Margin squeeze implications**

13. In this regard it came as a surprise to Sky that Eircom has for some time been mixing its FTTC and FTTH traffic in the context of its historical and current margin squeeze obligations. This was confirmed in an email to industry by Eircom on 24 March, 2019 where it confirmed that “*historically we have measured and rated usage for two products together*”. This begs the questions as to what usage assumptions ComReg has been using to assess Eircom’s compliance with its margin squeeze obligations on FTTH for the past year or so when Eircom has been aggressively adding retail FTTH subscribers to its network. It may be the case that ComReg has made an assumption about higher bandwidth demands for FTTH in assessing Eircom’s margin squeeze historically and that may be appropriate up until recently. However, it is clear that going forward ComReg must be able to rely on actual FTTH usage data to inform its assessment of Eircom’s margin squeeze obligations.
14. This is particularly important given that Eircom has enjoyed a first mover advantage on FTTH that means it has multiples of the number of retail subscribers of all other operators combined on its platform and it is improbable this outcome will be unwound over the pricing review period. Therefore as FTTH usage begins to outstrip FTTC usage (and that may not yet have happened as it will take time for rural customers who historically had very poor broadband

speeds to ramp up their usage demands) as is inevitable it would be in Eircom's commercial interest to continue to mix FTTC and FTTH traffic as it allows it to benefit from artificially lower FTTH bandwidth demands. This in turn would give Eircom unjustified head room on its margin squeeze.

15. This is a particularly important issue in the context of Eircom's new owners who have in other jurisdictions pursued a strategy of extremely aggressive retail pricing to drive take up but often with harmful consequences<sup>1</sup>. Those strategies were pursued in the context of being challengers to incumbents and so in many respect the harm was/is containable in the broader sense. However, as the incumbent and SMP operator in Ireland it is critical that strict adherence to the appropriate margin squeeze parameters is observed as part of Eircom's compliance with its margin squeeze obligations or the consequences for the wider market is likely to be detrimental and material.

16. It should be noted Eircom's most recent report to bondholders it noted:

*"Broadband revenue for the six months of €77 million **decreased by 14% compared to the corresponding prior year period, driven by promotions to drive retail growth.** The retail broadband customer base of 465,000 increased by 6% compared to the corresponding prior year period. The wholesale broadband base of 440,000 remained flat year on year when compared to 31 December 2017."*

17. Sky are unclear how in a retail market that was already very competitive, Eircom had scope to implement discounts/promotions under its margin squeeze obligations that resulted in a 14% decline in retail revenues even though its subscriber base was increasing quickly. It is telling that the growth of all other retail operators combined on its platform remained flat over the same period. Sky considers that this outcome reflects *prima facie* evidence that either the data being used to inform those margin squeeze tests is inappropriate/unrepresentative or the tests are fundamentally flawed. Sky would expect most operators that saw a 14% decline in retail revenues against a growing or stable subscriber base would find themselves in a loss-making territory, in particular over a period where there were no reductions in underlying wholesale costs (and in fact there were increases). In the context of the issue at hand therefore,, it is critical that Eircom do not enjoy any further undue latitude in its margin squeeze tests by using FTTH bandwidth assumptions that are artificially low as a consequence of being mixed with FTTC traffic.

18. As it is clear that new WEILs do not need to be ordered by OAOs in order to split FTTC and FTTH traffic, it is equally clear that there is no technical reason why Eircom cannot split the traffic on its own network. If this requires some incremental investment (which is by no means certain) to facilitate some network changes then it is worth noting on January 1, 2019 it implemented an effective price increase of c15% for FTTH monthly rental charges. It is also currently running record level fixed line EBITDA margins of 51% and has seen as substantial increase in free-cashflow as its capital intensity ratio has fallen considerably. As such resistance to making an incremental investment in its network in order to comply with its regulatory obligations is not something that should be given a sympathetic ear by ComReg.

---

<sup>1</sup> <https://hamodia.com/2016/05/05/report-fearing-bankruptcy-customers-fleeing-golan-telecom/>  
<http://telecoms.com/491904/iliad-share-price-continues-to-tumble-as-competition-heats-up/>

### **Bitstream pricing in D11/18 is transparent and easy to monitor**

19. Equally there is no reason that Eircom cannot implement the pricing as outlined in D11/18 as it merely reflects a fixed charge for ports (as was the case under the pre D11/18 model) and a single usage based charge that is considerably easier to manage than the highly complex log curve approach that it does not perform well from a transparency perspective. The complexity of this approach is underlined by how many times Eircom itself appears to be unable to settle on the approach it wants to take as evidenced by the multiple price renegotiations.
20. It is also worth recalling that Eircom were perfectly capable of operating a fixed charge per port and a linear price per Mbps prior to the log curve approach being implemented. The only difference between that regime and what is in D11/18 is that the linear per Mbps price being charged at that time had a large portion of fixed cost embedded into the variable charge. That was not appropriate and the log curve approach was implemented merely to mitigate against this problem. However, no billing issues were ever reported under the pre-log curve regime.
21. The pricing outlined in D11/18 is easy to understand and is transparent in a way that Eircom's proposed pricing is not. For example there is no transparency on how regional handover discounts are calculated and applied by Eircom. In the pricing outlined in Annex 7 of D11/18 the regional handover pricing is clear. Sky are concerned that Eircom perhaps see a benefit to keeping decisions around amendments to the log curve and regional discounting in house.
22. It may also be the case some of Eircom's purported problems are associated with its pricing strategy in the Urban WCA market that has been deregulated pursuant to D11/18. If so this is not a legitimate basis for infringing on the pricing where it does have SMP and is subject to regulatory obligations. Through the market review process Eircom pushed for deregulation of the Urban WCA market. That has occurred. As a consequence Eircom, must not now be permitted to bend regulatory outcomes in markets where it does have SMP to the commercial strategies it wishes to pursue in deregulated markets.
23. We would note that in any case claims that Eircom has difficulty separating out details on ports in regional and national footprints would be without foundation. This is because the CSID for each port is coded to give the cabinet and exchange number. We believe that Eircom can generate a daily report that calls out the CSID, product, speed, operator etc. per port. Billing therefore for these ports is straightforward.

### **Eircom has not engaged in "good faith" and often not all**

24. Finally, it should be noted that following on from 19/10 ComReg were clear that it might consider an alternative pricing structure on Bitstream provided, among other criteria, if operators were "satisfied" with Eircom's proposals. To this end ComReg was essentially inviting Eircom to engage in good faith negotiations with operators to acquiesce to Eircom's proposals. As touched on at the beginning of this response Eircom's behaviour in the context of this and other issues in recent months could not be described objectively as 'good faith' engagement.



25. It initially refused to engage with operators at all that queried the pricing that was proposed, it obfuscated thereafter and only gave a presentation on pricing on 6 March (6 days after the pricing purportedly took effect) where its credibility on the matter was completely undermined by the misinformation provided at the presentation as noted above. The pricing was presented very much as a '*fait accompli*' with an obvious disregard for what is actually laid out in D11/18 and arguably the authority of ComReg. In simple terms, Eircom don't care whether OAOs are "satisfied" with its proposals or not.
26. Given Eircom's withdrawal from regulatory forums, if it wanted to seriously engage with operators on advancing its pricing proposal it would have documented in very clear terms the reasons it sought to get a consensus on moving away from the pricing outlined in D11/18 and circulated for comment. However, it is clear Eircom's regulatory strategy is to provide as little information to industry as it can feasibly get away with and try and manage its messaging in this regard through its PDW where it has been resistant to recording minutes of those meetings. In this regard Sky on occasion has observed representations that have been made by Eircom that are subsequently denied. As a consequence of the foregoing it is fair and reasonable to say that not a single credible reason for not being able to implement the pricing in D11/18 has ever been circulated to OAOs to assess. The ones that have been delivered verbally do not stand up to scrutiny and often subject to arbitrary revision.

#### **ComReg must stand over its the decisions**

27. In many respects ComReg response to Eircom's behaviour on this issue will be the first significant test it faces in its dealings with the SMP operator since the Settlement Agreement was reached in late 2018. Sky expect that ComReg will stand over its decision, as notified to the European Commission, on the appropriate structure of bitstream pricing as laid out in D11/18 and as reaffirmed in Information Notice 19/10.
28. ComReg's position as stated in 19/10 is that it might consider Eircom's proposed log model approach **IF** OAOs were satisfied with the proposal **AND** the proposal dealt with transmission costs in the appropriate manner. As it is clear that Sky as an OAO is not satisfied with the proposal and the proposal does not deal with transmission costs in the appropriate manner, ComReg should not give any further consideration to Eircom's proposal (as per 19/10) but rather require it to implement the pricing as outlined in D11/18 immediately and in any event no later than 1 July 2018. ComReg should also initiate proceedings against Eircom in relation to its current non-compliance with D11/18 in accordance with its statutory duties.
29. Sky also rely on the correspondence it has had with ComReg to date on this matter which we reproduce here in redacted format at Annex 1.



5 April 2019

## Vodafone Response to ComReg Document 19/29 – Revised Bitstream Prices

In document 19/29, ComReg invited views from interested parties regarding Eircoms proposal on Bitstream pricing that was presented to industry on 6 March 2019. Vodafone welcomes the opportunity to provide comment on this pricing that is currently due to take effect from 1 July 2019.

Vodafone has a number of concerns in relation to the approach adopted to date, on implementation of the pricing requirements in D11/18. There does not appear to be any benefit to Vodafone in adopting the alternative pricing structure being proposed and the pricing, as set out by ComReg in D11/18, is structured in such a way that facilitates better planning on regulated wholesale broadband costs.

Based on our current understanding, Vodafone is of the view that Bitstream prices should align with the requirements of D11/18. The detail below sets out our understanding of the background and our views on the proposed alternative pricing structure. To assist ComReg, we have included confidential data demonstrating the impact of the alternative pricing structure on Vodafone in Annex 1 to this response.

### Background

It is worth setting out Vodafone's view of the sequencing to date:

- **On 19 November 2018** in Annex 7 of document No 18/95 ComReg published the monthly pricing that would apply for FTTC based NGA services and CGA services moving forward. ComReg stated it would consider any proposals made by Eircom in relation to alternative pricing structures for Bitstream, subject to compliance with the cost orientation obligation and ComReg's pre-approval.
- **On 20 December 2018:** Eircom published its proposal on Bitstream Pricing on the openeir website. This pricing did not align with the prices set out in Annex 7 of the ComReg Decision D11/18 and constituted an alternative pricing structure.
- **On 6 February 2019** at the industry product development workshop Vodafone requested that Eircom to provide clarification on the alternative pricing structure put forward in the 20 December proposal from Eircom.
- **On 12 February 2019,** Vodafone was requested by Eircom to submit its request regarding regulatory pricing to its wholesale regulatory queries email address as it related specifically to a regulatory obligation.
- **On 20 February 2019,** Eircom advised Vodafone that it would present a number of worked examples for pricing taking effect from 1 March 2019 at the industry product development workshop on 6 March 2019.

- **On 28 February 2019** a day before the 1 March pricing took effect, ComReg published document 19/10 noting industry and ComReg concerns around pricing and the application of the log curve. ComReg advised it had *'decided not to intervene in respect of Eircom's proposed pricing from 1 March 2019 to 30 June 2019'*. ComReg advised that if Eircom were to present a new proposal, by 15 March, which was satisfactory to interested parties, then ComReg might revisit the issue around application of log curves.
- **On 6 March 2019**, Eircom presented a WCA overview of Bitstream Pricing at the product development workshop. In this presentation, Eircom advise that their alternative pricing structure is *'materially consistent'* with ComReg D11/18. Vodafone received a copy of this presentation on 7 March 2019.
- **On 27 March 2019**, Eircom published another version of the Bitstream Pricing setting out the further updates to the proposed pricing to take effect from 1 July 2019. It should be noted there are differences, admittedly minor, between the presentation of 6 March and the notified proposal. For example, the notified pricing for 1000kpbs is €24.85 (€19.79 port charge + €5.0623 usage charge) whereas the same price appeared as €24.90 in the 6 March presentation. It is a subtle difference but it adds to the current lack of confidence on pricing.
- **On 28 March 2019**, ComReg published the call for input.

### Vodafone views on the alternative proposal

The key concerns for Vodafone are set out below

1. **The absence of clarity on pricing:** Almost six months after D11/18 Eircom and ComReg have not landed on a confirmed pricing structure. The pricing has changed a number of times – for example from 1 March 2019, the port charge on Bitstream was set at €18.75 and it is proposed this now changes to align with the VUA price. This uncertainty is extremely frustrating and raises the question why alternative structures are required. The decision delivers a more reliable pricing framework and is not subject to ongoing change.

Vodafone had used the D11/18 pricing structure for its own planning. The published pricing informed our commercial and investment plans for the next year and beyond. It is extremely frustrating to have to revisit our plans repeatedly to assess a number of iterations on pricing, all of which are opaque, extremely complex and difficult to reconcile and which deliver different outputs.

2. **The proposed structure inhibits transparency:** The proposed alternative pricing structure does not facilitate a clear understanding of our wholesale costs. The blended approach to counting FTTH and FTTC usage does not help us reconcile our wholesale cost and does not provide an adequate view on margin across our product mix. It is difficult to monitor the sources of wholesale cost as our product mix changes between FTTC and FTTH products in regulated and non-regulated areas. In addition, Vodafone found it difficult to model the range of scenarios with variable FTTC/FTTH port mix and different usage rates to be comfortable that we had covered all cost-risk scenarios

adequately to the extent that we were concerned that there was a use case that was materially adverse that we had not covered.

3. **The proposed structure dilutes the impact of FTTH:** There is a greater level of usage associated with FTTH products and the current model dilutes the average Bitstream customer usage on FTTH through the inclusion of FTTC usage. This reduces the cost associated with FTTH usage, which then impacts the costs being factored into margin squeeze calculations on FTTH. This requires serious consideration by ComReg.

A separate concern for Vodafone relates to the process applied to date in implementing the requirements of D11/18. It is not clear how the initial pricing, which was an alternative pricing structure to the pricing set out in D11/18, was pre-approved as required by D11/18. This was implemented without consultation and took effect from 1 March 2019. It is important moving forward that alternative proposals have the required ComReg pre-approval and are to the satisfaction of interested parties in advance of publication. If this is not the case then the decision as set out in D11/18 should apply.

Vodafone are happy to meet ComReg to discuss further at any time.

Annex 1 – Confidential Vodafone view on alternative pricing structure.

CONFIDENTIAL INFORMATION REDACTED