



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Information Notice

Opinion of non-compliance issued to Eircom Limited for a breach of its non-discrimination obligations regarding address matching.

Information Notice

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Additional Information

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1. The following relates to an investigation undertaken by Commission for Communications Regulation ('ComReg') hereafter referred to as 'Case 872'.
2. On 21 February 2017, pursuant to Regulation 19(1) of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 ('the Access Regulations')¹, ComReg notified Eircom Limited ('Eircom') of a finding that, during the period 4 July 2014² to 29 February 2016³, Eircom did not comply with the non-discrimination obligations imposed on it by Instruments contained in the following ComReg Decisions:
 - a) Sections 6.4 and 6.5(ii) and (iii) of ComReg Decision D07/61⁴.
 - b) Sections 6.4 and 6.5(ii) and (iii) of ComReg Decision D07/61 as continued by Sections 7.1 of Appendices 6, 7 and 8 of ComReg Decision D12/14⁵.
 - c) Sections 9.1(ii), 9.2 and 9.3 of ComReg Decision D05/15⁶.
 - d) Sections 9.1, 9.2(ii) and 9.4 of ComReg Decision D06/11⁷.
 - e) Sections 8.1, 8.2(ii) and 8.3 of Annex 1 of ComReg Decision D03/13⁸.
 - f) Sections 8.1, 8.2(ii) and 8.3 of Annex 2 of ComReg Decision D03/13.
3. ComReg found that Eircom was not compliant with its obligations to provide services and information, under the same conditions and of the same quality as the operator provides for its own services or those of its subsidiaries or partners.
4. The non-discrimination obligations under ComReg Decisions D07/61, D12/14, D05/15, D06/11, D05/10 and D03/13 require, *inter alia*, that Eircom provide information to Other Authorised Operators⁹ to enable them to offer regulated services on similar terms to its own retail arm, in markets where Eircom has been designated as having significant market power. This information includes information to enable "address matching" of a potential customer

¹ European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011).

² The date of the Statement of Compliance where Eircom identified the risk.

³ The date of resolution of the issue resulting in the breach of non-discrimination obligations.

⁴ Decision Notice and Decision Instrument - Designation of SMP and SMP Obligations: Market Analysis: Retail Fixed Narrowband Access Markets (Decision No: D07/61, Document No: 07/61, Date: 24 August 2007).

⁵ Market Review: Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non Residential Customers, Response to Consultation and Decision (Decision No: D12/14, Document No: 14/89, Date: 28 August 2014)

⁶ Market Review Wholesale Fixed Voice Call Origination and Transit Markets, Response to Consultation and Decision (Decision No: D05/15, Document No: 15/82, Date: 24 July 2015)

⁷ Response to Consultation and Decision: Market Review: Wholesale Broadband Access (Market 5) (Decision No: D06/11, Document No: 11/49, Date: 8 July 2011).

⁸ Response to Consultation and Final Decision. Next Generation Access ('NGA'): Remedies for Next Generation Access Markets (Decision No: D03/13, Document No: 13/11, Date: 31 January 2013).

⁹ As defined in the relevant Decision Instruments.

premises to Eircom’s local access infrastructure for the purpose of delivering services. The relevant period for this investigation was from 4 July 2014 to 29 February 2016.

5. On 27 March 2017, Eircom provided representations in response to the Notification.
6. Following an extensive investigation and having carefully considered the matter, including Eircom’s representations, and taking into account the relevant legislative context, ComReg has formed the opinion, pursuant to Regulation 19(4) of the Access Regulations, that during the period 4 July 2014 to 29 February 2016, Eircom did not comply with the non-discrimination obligations imposed on it by the Decision Instruments outlined in paragraph 2 of this Information Notice.
7. In respect of Case 872, ComReg has decided to make an application to the High Court pursuant to Regulation 19(4) of the Access Regulations for a declaration of non-compliance and for an order that Eircom pay to ComReg an amount by way of financial penalty in respect of the above non-compliance pursuant to Regulation 19(5) and 19(8) of the Access Regulations.
8. As outlined in ComReg Document 17/98¹⁰, ComReg previously applied to the High Court, in compliance cases 481 and 568 (*The Commission for Communications Regulation v. Eircom Limited*, High Court Record No 2017/186 & 187 MCA) (“Cases 481 and 568”), seeking a declaration of non-compliance and orders for financial penalties:
9. Following ComReg’s application in Cases 481 and 568, Eircom issued proceedings in *Eircom Limited v. The Minister for Communications, Climate Action and Environment, Ireland and the Attorney General and the Commission for Communications Regulation* (High Court Record No 2017/5929P) (“Access Regulations Proceedings”), which challenged Regulation 19(5) and 19(8) of the Access Regulations. Eircom relied on the Access Regulations Proceedings in seeking a stay on the proceedings in compliance cases 481 and 568. Eircom was successful in its stay application and therefore those proceedings are stayed until the hearing of the Access Regulations Proceedings. ComReg appealed the granting of this stay.
10. As an early hearing date was secured in the Access Regulations Proceedings, and without prejudice to ComReg’s position in the Access Regulations Proceedings, the appeal of stay of the Enforcement Proceedings and, any future position that ComReg may take in respect of Case 872, ComReg has decided that, given the proximity to the hearing date in the Access Regulations Proceedings (14 June 2018), ComReg will bring proceedings in Case 872 after judgment is given in the Access Regulations Proceedings.

¹⁰ ComReg Wholesale Compliance Cases 481 and 568, ComReg Document 17/98, 5 December 2017 ([Link](#)).