



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Information Notice

Request for information by Eircom about
ComReg Consultation Document 20/81

Information Notice

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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

Additional Information

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1. On 9 September 2020 ComReg published Consultation Document 20/81¹ (**‘Consultation 20/81’**) regarding the pricing of Eircom’s Civil Engineering Infrastructure² (**‘CEI’**), including pricing proposals for CEI access by National Broadband Ireland (**‘NBI’**) for the purposes of the Irish Government’s National Broadband Plan (**‘NBP’**).
2. Eircom Limited (**‘Eircom’**) has recently requested information from ComReg regarding the work undertaken by our economic advisors, Europe Economics, in relation to Consultation 20/81.
3. While there is no obligation on ComReg to provide (or to publish) the information sought, ComReg has decided that on this occasion it is in the interests of transparency to all relevant stakeholders to provide the information sought, as set out further below.³
4. In its email to ComReg, Eircom requested “...*sight of the Terms of Reference given to Europe Economics in order for them to draft their report (published as ComReg 20/81b)*...”, stating that it needs to “...*understand certain dynamics within the consultation in more detail.*” Please see Appendix 1 below for the terms of reference provided to Europe Economics in order for it to draft its report in relation to Consultation 20/81.
5. Responses to Consultation 20/81 are due on or before 5.30pm on 18 November 2020, following a recent extension granted by ComReg to the consultation period, as set out in Information Notice 20/100⁴.

¹ ComReg Document No 20/81, “Pricing of Eircom’s Civil Engineering Infrastructure (‘CEI’), CEI access in the context of the National Broadband Plan (‘NBP’)”. Dated 9 September 2020

² Access to Eircom’s ducts and poles.

³ ComReg has also recently published the terms of reference for the work undertaken by Dot Econ consultants in relation to Consultation 20/81, further to a request from ALTO, as set out in ComReg Information Notice 20/90, dated 30 September 2020.

⁴ Information Notice 20/100: ComReg grants extension to consultation period for Consultation Document 20/81, dated 16 October 2020.

Appendix 1: Terms of reference

The following was the terms of reference provided to Europe Economics to prepare its report associated with Consultation 20/81:

“ComReg is seeking advice from Europe Economics on the appropriate weighted average cost of capital (**WACC**) in order to determine the appropriate price for access to Eircom’s CEI in the context of the NBP.

Requirements

1. Europe Economics shall recommend in a report to ComReg whether the general telecoms WACC (currently at 8.18%) is considered appropriate for determining the CEI access prices in the context of the provision of CEI for NBP purposes or whether an alternative WACC should be applied taking into account other factors associated with the provision of CEI services for NBP purposes. If an alternative WACC is recommended by Europe Economics details on why such an alternative is necessary or justified, how an alternative would be applied in practice and the difference in approach between the general telecoms WACC and the alternative WACC should be set out in their report. Europe Economics shall assess the pros and cons of each approach considered.
2. Where an alternative WACC is considered to be more appropriate, Europe Economics shall set out in a report to ComReg the factors contributing to a differentiated WACC in the context of setting CEI prices for NBP purposes. Europe Economics shall also set out in a report to ComReg the level of the WACC that should be applied to CEI costs in the context of the NBP.
3. Europe Economics shall take utmost account of any Recommendations issued by the European Commission. In particular, the European Commission Recommendation of 20 September 2010 on regulated access to Next Generation Access Networks.
4. Based on Europe Economics’ recommendations on the appropriate WACC for the provision of CEI services in the context of the NBP, Europe Economics shall set out, in a report to ComReg
 - a) How the recommended approach meets ComReg’s regulatory objectives. The regulatory objectives include the promotion of competition, contribution to the development of the internal market and to promote the interests of users within the community;

- b) How the recommended approach sends the correct investment incentives to the market, e.g. by ensuring all operators can recover their efficiently incurred investment and that the build/buy signals in commercial areas are not distorted;
 - c) Whether the recommended approach is practical, proportionate and not overly burdensome to implement;
 - d) Whether the recommended approach takes utmost account of any relevant European Commission Recommendation;
 - e) The likely regulatory impact of the recommended approach on the various stakeholders i.e. Eircom, other operators and consumers.
5. Europe Economics shall in its report to ComReg assess its recommendations (on the appropriate WACC for CEI services in the context of the NBP) against relevant comparisons in other European jurisdictions. Any significant variations shall be explained.
6. Europe Economics shall in its report to ComReg take account of the relevant elements of the regulatory framework and specifically:
- a) Section 57 of the Communications Regulation Act 2002 (as amended)⁵;
 - b) Article 3 of Directive 2014/61/EU of the European Parliament and of the Council 12 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks; and
 - c) ComReg's role as provided for by the EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (2013/C 25/01).⁶
7. Europe Economics shall detail in its report to ComReg any other issues that it may consider relevant to the assessment of the appropriate WACC for the provision of CEI access services in the context of the NBP.”

⁵ Communications Regulation Act 2002 (No. 20 of 2002), the ('Communications Regulation Act 2002').

⁶ In the State Aid Guidelines (EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (2013/C 25/01)) ComReg has a role in providing advice in a number of related matters such as: cost orientation principles (Paragraph 78 h of the EU Guidelines); creation of a level playing field for bidding operators (Paragraph 43 of the EU Guidelines); and cost inclusion/recovery (Footnote 64 of the EU Guidelines).