



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Direction to Eircom Limited with respect to Access to CEI under ComReg Decision D10/18: Document Number 21/60 of 8 June 2021

Correction and republication of the Direction

Information Notice

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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Additional Information

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1. On 8 June 2021, ComReg issued a Direction to Eircom¹ (the '**Direction**') to further specify the requirements relating to Access and conditions of Access to Eircom CEI in ComReg Decision D10/18, in particular as set out in Section 7.1 and Section 7.2 (xiii), Section 8.1 and Section 8.2 of the Decision Instrument in Appendix 20 of ComReg Decision D10/18 (the '**WLA Decision Instrument**'). The Direction required Eircom to make available Sub-Duct Self-Install Duct Access from 13 August 2021, following notification to ComReg and publication on Eircom's publicly available wholesale website.
2. On 30 July 2021,² Eircom notified and published the relevant product documentation with respect to Sub-Duct Self-Install. On making Sub-Duct Self-Install available on 13 August 2021, however, Eircom made changes to it by including the condition that save for minor obstacles, unblocking of Ducts including the removal of silt would be performed by Eircom. That Eircom undertakes unblocking activities including in particular the removal of silt does not reflect the intention of the Direction.
3. As set out in paragraphs 23 – 26 of the Direction, on consideration of submissions by Eircom that unblocking was an integral part of installing one's own Sub-Ducts into Ducts, and an approach whereby Eircom would perform unblocking of Ducts would introduce unnecessary delays, increase costs and make the product inefficient, ComReg drew a distinction between the situations where the unblocking of Duct requires remediation to the Duct by way of repairs, and those situations where the Duct may be unblocked without repairs. Under the Direction accordingly, blockages of Ducts that require repairs are resolved by Eircom, and blockages that do not require repairs to be resolved are carried out by the Access Seekers. Repair is defined in this context as those activities which require to remediate a Duct's structure where damage has the effect of preventing an Access Seeker installing its Sub-Duct into the Eircom Duct, or civil works such as duct excavation and openings. Unblocking of a Duct by the removal of silt does not constitute repair for the purpose of the Direction.³
4. Paragraphs 24-27 of the Direction clearly document ComReg's conclusion that it was appropriate to direct that the Sub Duct Self Install product to be offered by Eircom

¹ Direction to Eircom Limited with respect to Access to CEI under ComReg Decision D10/18, Document Number 21/60, dated 8 June 2021.

² The Direction required Eircom to notify ComReg on or before 1 July 2021 and to publish on or before 15 July 2021. Both dates were subsequently varied by ComReg so that notification to ComReg and publication were required on or before 30 July 2021, as described in the Information Notice titled 'Variation of timelines for notification and publication of documentation required under ComReg Document 21/60 'Direction to Eircom Limited with respect to Access to CEI under ComReg Decision D10/18', ComReg Document 21/72 dated 1 July 2021.

³ Paragraph 26 of the Direction and Section 2.1.3 of the Direction Instrument.

provides for unblocking of Ducts by Access Seekers save that repair activities required to remediate a Duct's structure or where civil works with respect to clearing blockages are to be undertaken by Eircom.

5. However, it has transpired in the context of correspondence with Eircom, that the wording of Section 2.1 of the Direction Instrument does not truly reflect the position set out in the Direction. With the view to avoiding any doubt as to the requirements which Eircom must comply under the Direction, ComReg has corrected the wording in Section 2.1 of the Direction Instrument so that it faithfully reflects the decision made by ComReg in the Direction, namely that Eircom is to make available a Sub-Duct Self-Install Duct Access product whereby Access Seekers install by themselves Sub-Ducts into Eircom's Ducts and for that purpose unblock the Ducts as needed, save that in those circumstances where unblocking requires repair to the Eircom Duct, the unblocking is to be undertaken by Eircom.
6. The Direction with the corrected Direction Instrument has been republished with ComReg Document number 21/60R⁴. Annex 1 of this Information Notice shows the corrections that have been made to the Direction Instrument.
7. ComReg has furnished Eircom with a copy of the corrected Direction and requested that the relevant published documents are updated on or before 22 October 2021 to address any inconsistencies with the requirements of the Direction.
8. ComReg wishes to note for the avoidance of doubt that it may be that Eircom wishes separately to offer, and may be requested to offer by Access Seekers, other Duct Access products whereby Eircom, for example, would undertake some or all of the unblocking at the request of the Access Seeker or allow Access Seekers to undertake some or all repairs involved in unblocking, and the Sub-Duct Self-Install Direction does not prevent, or indeed require, any such additional products to be offered or requested. What the Direction does require, however, is that Eircom offers amongst its suite of products allowing for Duct Access, a Sub Duct Self Install product whereby Access Seekers install their Sub-Ducts into Eircom's Ducts and for that purpose, unblock Ducts, save where repair is required, in which case the unblocking is to be done by Eircom.

⁴ 'Direction to Eircom Limited with respect to Access to CEI under ComReg Decision D10/18', ComReg Document 21/60R.

Annex 1 – Proposed corrections to the Direction Instrument

Text below that is red/underlined or blue/strikethrough shows the proposed corrections to the Direction Instrument:

2 ACCESS TO CEI

2.1 Pursuant to Regulation 18 of the Access Regulations, for the purpose of further specifying the requirements to be complied with relating to Eircom's obligation imposed by Section 7.1 and Section 7.2 (xiii) of the WLA Decision Instrument, and Eircom's obligation imposed by Section 8.1 and Section 8.2 of the WLA Decision Instrument, Eircom is hereby directed as follows:

Sub-Duct Self-Install

2.1.1 In addition to current products and services allowing for Duct Access, Eircom shall make available from 13 August 2021 a Sub-Duct Self-Install Duct Access product allowing whereby Access Seekers ~~to~~ install by themselves Sub-Ducts into Eircom's Ducts and for that purpose unblock the Ducts as needed, save that in those circumstances where unblocking requires repair to the Duct, the unblocking is to be undertaken by Eircom.

2.1.2 In providing Sub-Duct Self-Install Duct Access for the purpose of Section 2.1.1, Eircom ~~may leave unblocking of Ducts to Access Seekers save that Eircom shall, upon request from an Access Seeker,~~ undertake repair of Ducts ~~where repair is required to allow an Access Seeker to install its Sub-Duct in a Duct~~ in a fair, reasonable and timely manner upon request from the Access Seeker.

2.1.3 ~~For the purpose of Section 2.1.2 above, and further to Section 8.1 of the WLA Decision Instrument, Eircom shall ensure that the repair of Eircom Ducts required for the purpose of Sub-Duct Self-Install Duct Access is done in a fair, reasonable and timely manner, and r~~ Repair for the purpose of this Section 2.1.3 ~~and Section 2.1.2,~~ include involves the following:

- (i) Activities required to remediate a Duct's structure where damage to the Duct's structure has the effect of preventing an Access Seeker installing its Sub-Duct into the Eircom Duct;
- (ii) Civil works including in particular Duct excavation and opening activities, required to clear a blockage that cannot be cleared otherwise where that blockage is preventing an Access Seeker from installing its Sub-Duct into the Eircom Duct.

2.1.4 Further to Section 8.2 of the WLA Decision Instrument, Eircom shall ensure that the Service Level Agreement concluded in respect of Sub-Duct Self-Install Duct Access makes provision for Service Credits with respect to Duct repair that adequately incentivise Eircom to deliver an efficient level of performance and allow Access Seekers to recoup, at a minimum, the direct costs and any other

reasonable loss of value incurred as a result of the circumstances that had triggered the payment of Service Credits.

- 2.1.5 Eircom shall ensure that clear procedures are in place for the payment by Eircom of the reasonable costs associated with unblocking activities of Eircom Ducts performed by an Access Seeker.