



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Update on Pricing of Eircom's Civil Engineering Infrastructure

Procedure under Article 33 of the European Electronic Communications Code

Information Notice

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Commission for Communications Regulation

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- 1.1 On 22 October 2021, ComReg issued an Information Notice in ComReg Document 21/108¹ relating to the Commission for Communications Regulation's ('**ComReg**') publication and parallel notification to relevant European authorities of its Draft Decision on its proposals regarding the pricing of access to Eircom Limited ('**Eircom**') civil engineering infrastructure ('**CEI**') i.e., Eircom's ducts and poles.
- 1.2 The subject of the notification was the prices that Eircom should be entitled to charge other operators to access its CEI. One aspect of the notification was the prices that National Broadband Ireland ('**NBI**'), in its role as the operator contracted to deliver the National Broadband Plan ('**NBP**'), should pay. In summary, ComReg proposed that because of the specific and unique nature of the NBP and NBI's role in it, differential, and consequentially lower, prices would apply to NBI's access to Eircom's ducts and poles relative to other commercial operators. The European Commission ('**EC**') has now expressed its disagreement with this proposal.
- 1.3 In circumstances where ComReg plans to take certain measures in respect of Wholesale Regulation it must first notify that proposal to the EC. The EC has certain rights to comment on the measure and, if it believes appropriate, to intervene. Specifically, ComReg's Draft Decision on CEI pricing was notified to the relevant European authorities in accordance with Article 32(3) of the European Electronic Communications Code ('**EECC**')² on 22 October 2021, which requires ComReg to publish and, at the same time, make draft measures accessible to the EC, the Body of European Regulators for Electronic Communications ('**BEREC**') and National Regulatory Authorities ('**NRAs**') in other Member States (the '**Article 32 Notification**').
- 1.4 The Article 32 Notification was made on the basis of the draft measures set out in the Draft Decision attached at Annex 1 of ComReg Document 21/108. Under Article 32(3) of the EECC, the EC, BEREC and other NRAs have one month, to comment on ComReg's Article 32 Notification. Under Article 33(1) of the EECC, within that one month period, the EC may notify the NRA and BEREC of its reasons for considering that the draft measure would create a barrier to the internal market or of its serious doubts as to its compatibility with Union law.
- 1.5 On 22 November 2021, the EC issued its comments letter to ComReg in which it states its position that the notified draft measure on CEI pricing would create a barrier to the internal market and that it has serious doubts as to its compatibility with Union law ('**Serious Doubts Comments Letter**'). The EC has issued a notice³ regarding

¹ Information Notice 21/108 "Pricing of Eircom's Civil engineering Infrastructure" <https://www.comreg.ie/publication/information-notice-pricing-of-eircoms-civil-engineering-infrastructure>

² Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the '**EECC**').

³ [Commission opens in-depth investigation of remedies for access to civil engineering in Ireland | Shaping Europe's digital future \(europa.eu\)](https://ec.europa.eu/commission/presscorner/detail/en/ip21_1872)

its Serious Doubts Comments Letter and a non-confidential version of the letter⁴ has been published by the EC. The Serious Doubts Comments Letter states that the EC will invite third parties to submit their observations on its serious doubts within 10 working days.⁵

- 1.6 ComReg notes the EC's Serious Doubts Comments Letter and will engage with BEREC and the EC, as appropriate, consistent with the process provided for in Article 33 of the EECC, as set out below.
- 1.7 ComReg's notified draft measures on CEI pricing cannot be adopted for a further three months.⁶
- 1.8 The EC, ComReg and BEREC have three months to "cooperate closely", to identify the most appropriate and effective measure in light of the general objectives of the EECC, while taking account of the views of market participants and the need to ensure the development of consistent regulatory practice.⁷
- 1.9 Within six weeks from the beginning of the three-month period at paragraph 1.7, BEREC must issue an opinion on the EC's notification, indicating whether it considers that the draft measure should be amended or withdrawn and, where appropriate, provide specific proposals to that end. That opinion shall provide reasons and be made public.⁸ If BEREC shares the serious doubts of the EC, it shall cooperate closely with the NRA to identify the most appropriate and effective measure. Before the end of the three-month period referred to above at paragraph 1.7, the NRA may either
 - (a) amend or withdraw its draft measure taking utmost account of the Commission's notification and of BEREC's opinion; or
 - (b) maintain its draft measure.⁹
- 1.10 The EC may, within one month following the end of the three-month period referred to in paragraph 1.7 and taking utmost account of the opinion of BEREC, if any:
 - (a) issue a recommendation requiring the NRA to amend or withdraw the draft measure, including specific proposals to that end and providing reasons for its recommendation, in particular where BEREC does not share the EC's serious doubts; or

⁴ [Circabc \(europa.eu\)](http://circabc.europa.eu)

⁵ Article 33(2) of the EECC.

⁶ Article 33(1) of the EECC.

⁷ Article 33(2) of the EECC.

⁸ Article 33(3) of the EECC.

⁹ Article 33(4) of the EECC.

(b) take a decision to lift its reservations.¹⁰

- 1.11 Within one month of the EC issuing the recommendation in accordance with point (a) at paragraph 1.10 or lifting its reservations in accordance with point (b) at paragraph 1.10, the NRA shall communicate to the EC and to BEREC the adopted final measure. That period may be extended to allow the NRA to undertake a public consultation.¹¹ Where the NRA decides not to amend or withdraw the draft measure on the basis of the recommendation issued under point (a) at paragraph 1.10, it shall provide reasons.¹²
- 1.12 ComReg will provide further updates on this process as appropriate.

¹⁰ Article 33(5) of the EECC.

¹¹ Article 33(6) of the EECC.

¹² Article 33(7) of the EECC.