



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Notification of Opinion of Non-Compliance issued to Eircom Limited.

Information Notice

Reference: 22/16
Version: FINAL
Date: 4 March 2022

1. Eircom's Civil Engineering Infrastructure ('CEI') is its physical network infrastructure such as ducts, poles and chambers which are used to convey copper and fibre optic cables. Eircom Limited ('Eircom') is required to make this infrastructure available to rent by other telecommunications operators to allow them to deploy their own cables if they so choose. Passive Access Records ('PAR') are records which document the location, physical characteristics and utilisation of CEI. Access to PAR is essential to any operator which wants to make use of Eircom's CEI as it will need to understand, among other things, the location and available capacity of Eircom's infrastructure if it wishes to plan its own network roll out. Re-using existing infrastructure in this way has the potential to stimulate new network investment and enhanced connectivity in a cost-effective manner, ultimately to the benefit of consumers and businesses.
2. On 8 March 2021, ComReg notified Eircom of a Notification of Non-Compliance in relation to obligations imposed in the market for Wholesale Local Access in 2018.¹
3. These obligations included:
 - (a) Provide Access to PAR (as defined) to other operators from 19 May 2019;²
 - (b) From the same date, provide non-discriminatory Access to PAR to other operators, that is, provide Access to PAR under the same conditions and of the same quality as Eircom provides to itself, or its subsidiaries, affiliates or partners on at least an "Equivalence of Outputs" basis.³ Equivalence of Outputs means that Eircom must provide services and information to operators in a manner which achieves the same standards in terms of functionality, price, terms and conditions, service and quality levels as Eircom provide to itself, albeit potentially using different systems and processes;⁴
 - (c) From 19 September 2019, provide non-discriminatory Access to PAR on a "Equivalence of Inputs" basis as part of the pre-ordering process for CEI,

¹ The obligations are set out in the Decision Instrument set out in Appendix 20 of ComReg Decision D10/18, Response to Consultation and Decision, Market Review, Wholesale Local Access (WLA) provided at a Fixed Location, Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products, Document No: 18/94, 19 November 2018 (the 'WLA Decision Instrument').

² Section 7.2 (xiii) of the WLA Decision Instrument.

³ Section 9.1(ii) and Section 9(2) of the WLA Decision Instrument.

⁴ As defined in Section 2.1 of the WLA Decision Instrument.

that is, using the same systems and processes as Eircom uses operating in the same way and with the same degree of reliability and performance;⁵

- (d) Provide information regarding Eircom's CEI roll out plans⁶ by way of publication by Eircom of its CEI Build Plan, including a description of the CEI that Eircom plans to roll out in the future.
4. Following receipt of the Notification of Non-Compliance, Eircom made representations to ComReg on 22 April 2021 which ComReg has taken into consideration. In addition, Eircom proposed a remediation to the breaches as part of its submissions. A revised remediation was made available to Operators from 1 November 2021.
 5. ComReg's position is that the remediation does not address all of the non-compliances contained in the Notification of Non-Compliance. ComReg having reached an Opinion of Non-Compliance as provided for in Regulation 19(4) of the Access Regulations, provided the Opinion of Non-Compliance to Eircom.
 6. Further to the issuing of the Opinion of Non-Compliance, ComReg notes its intention to initiate proceedings in the High Court, pursuant to Regulation 19(4) of the Access Regulations seeking appropriate orders.

⁵ Section 9.1(ii) and Section 9.5 of the WLA Decision Instrument. Equivalence of Inputs is defined in Section 2.1 of the WLA Decision Instrument.

⁶ Sections 10.26(i)(b) and 10.26(i)(c) of the WLA Decision Instrument.