



Commission for
Communications Regulation

Information Notice

Opinion of non-compliance by Eircom with its non-discrimination obligation

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Introduction

In early May 2006, it was alleged to the Commission for Communications Regulation ('ComReg') that sales agents for Eircom Limited ('Eircom') retail could obtain customers' Universal Account Numbers ('UAN') from internal Eircom systems (thus avoiding the need for the consumer wishing to change operator to provide this information). It was further alleged that several sales agents for Eircom retail, when processing sales orders for Eircom telephone services had obtained the customer UAN from internal Eircom systems.

The UAN is a unique identifier utilised by operators in the context of retail services and is printed on the customer's bill. When customers wish to change operators, the operator they are moving to requires, amongst other things, the customer's UAN before they can progress an order for services. As such this is confidential information. Because of Eircom's role in provision of wholesale services the information is legitimately held by Eircom wholesale but as it is not made equally available to other authorised operators (OAOs) it would be inappropriate for Eircom retail sales staff to access and use this information.

ComReg initiated an investigation into the sales practices of one of Eircom's retail sales channels where the sale is initiated through a sales person calling on the potential customer. The investigation confirmed that, although it was contrary to Eircom internal guidelines, it was possible for Eircom retail sales staff to circumvent Eircom's internal procedures to access this information. Instances where the UANs were being inappropriately accessed by Eircom retail sales staff from Eircom systems were identified by ComReg. It was clear that this was not an approved process but ComReg considered that Eircom systems, processes and procedures around access to wholesale information were insufficiently robust to prevent discriminatory, inappropriate and unauthorised access and use, resulting in Eircom sales staff having an effective advantage over the sales staff of OAOs.

ComReg in Information Notice 'Notification to Eircom of non-compliance by Eircom with its non-discrimination obligation', Document No. 06/27, dated 23rd June 2006 outlined that it had notified Eircom of its finding that Eircom had failed to comply with Regulation 7(1)(a) of the Interconnection Regulations by acting in a discriminatory manner in relation to the provision of information. This notification of non-compliance was in accordance with Regulation 18(1) of the Access Regulations¹. In order to remedy non-compliance ComReg required Eircom to demonstrate to the satisfaction of ComReg that systems had been put in place to ensure that members of Eircom retail (including employees contracted to Eircom) only have access to the same information under the same conditions as that provided to interconnected operators providing similar services.

Eircom responded to the notification of non-compliance on the 24th July 2006. Eircom proposed, without accepting the breach finding, *inter alia* to introduce additional controls

¹ S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 which transposes Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities

on access to the internal Eircom IT systems where the UAN is located. Eircom and ComReg met on several occasions subsequently, during these meetings Eircom provided further detail and status updates on the proposed remedial measures.

On 29th January 2007 ComReg, in accordance with Regulation 18(3) of the Access regulations, and in light of Eircom's remedial plans amended its notification of the 23rd June to extend the date for Eircom to remedy the non-compliance to the 30th April 2007.

ComReg representatives conducted a review of the Eircom remediation programme on 14th May 2007. The purpose of the review was to verify that the systems development which Eircom committed to implement following the Notification of Non-Compliance (as referenced in the Amendment of Notification of Non-Compliance) as a requirement for compliance with its non-discrimination obligations had been implemented and that the implementation had been effective. ComReg also aimed to determine that Eircom's systems ensured that members of Eircom retail (including employees contracted to Eircom) only had access to the same information under the same conditions as that provided to interconnected operators providing similar services.

During the review of the Eircom remediation programme ComReg identified a number of methods available to Eircom retail staff to access UAN information. As such ComReg was not satisfied that the remediation programme had been completed as specified in the amendment to the notification of non-compliance. Further ComReg was not satisfied that Eircom systems sufficiently ensure that members of Eircom retail (including employees contracted to Eircom) only have access to the same information under the same conditions as that provided to interconnected operators providing similar services.

Although Eircom has indicated further planned remediation in the last 7 months, ComReg has no evidence to date of the success of same in remediating the notified non-compliance.

Opinion of Non-Compliance

Having reviewed the Eircom systems following completion of their remediation programme ComReg is not satisfied that:

- (1) The Eircom remediation programme, as specified in the amended notification of non-compliance, has been completed.
- (2) Eircom systems sufficiently ensure that members of Eircom retail (including employees contracted to Eircom) only have access to information under the same conditions and of the same quality as that provided to other undertakings providing equivalent services; and ensure that information and services are provided to OAOs according to timescales, on a basis, and of a quality, which are at least equivalent to those provided to Eircom's retail arm and associates.

Having considered Eircom's representations and the remedial action undertaken by Eircom in light of the investigations and all evidence available ComReg now forms the opinion that Eircom is in breach of its current non-discrimination obligation contained in Sections

6.4 and 6.5 of 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.

Opinion

ComReg, in accordance with Regulation 18(4) of the Access Regulations, has formed the opinion that Eircom has not complied with the non-discrimination obligation contained in Sections 6.4 and 6.5 of 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.

In accordance with the power given to it in Regulation 17(11) of European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2003, ComReg is publishing this opinion.