



Notification of non-compliance issued to Eircom Limited on failure to comply with the non- discrimination obligation for Bitstream

Information Notice

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Notification of non-compliance on failure to comply with the non-discrimination obligation for Bitstream

1. On 9 July 2015, the Commission for Communications Regulation ("ComReg") notified Eircom Limited ("Eircom") of a finding that, during the period May 2010 to December 2014, Eircom did not comply with the non-discrimination obligation imposed on it by Section 9.2 of the Decision Instrument annexed to ComReg Decision D06/11¹ in respect of its (Current Generation) Bitstream product.
2. This obligation states (*inter alia*) that '*Eircom shall ensure that all services and information are provided to other undertakings under the same conditions and of the same quality as the services and information that Eircom provides for or to itself or its subsidiaries or partners*'. Based on an analysis of Eircom data, ComReg finds that Eircom failed to provide fault handling services to other operators under the same conditions and of the same quality as the services and information that Eircom provided for or to itself.
3. ComReg finds that, during the period May 2010 to December 2014, Eircom did not provide fault handling services to other operators under the same conditions and of the same quality as the services and information that Eircom provided for or to itself. Specifically, information in relation to faults was made available to Eircom's retail arm that was not available to other operators. The information in question related to Line Signature Information, Line Test History, Line Lock Out, Line Test System, Short Circuit Information and Line Type. ComReg accordingly finds that Eircom was not compliant with the non-discrimination obligation imposed by Section 9.2 of the Decision Instrument annexed to ComReg Decision D06/11.
4. With respect to Line Test History specifically, ComReg finds that this non-compliance is ongoing, in that Eircom Retail has access to all historical line test history results for all customers, whereas an OAO only has access to the line test history results for a customer (1) for the preceding three months and (2) only where that customer was with the same operator for that entire three-month period.

¹ ComReg Document No. 11/49, ComReg Decision D06/11, "Response to consultation and Decision, Market Review: Wholesale Broadband Access (Market 5)", dated 8 July 2011.

5. Pursuant to Regulation 19(1) of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (“the Access Regulations”)², ComReg has notified Eircom of its finding of non-compliance and given Eircom six (6) weeks from the date of issue of that notification to state its views.
6. Regulation 19(4) of the Access Regulations provides that, where, at the end of the period specified under Regulation 19(1) (see paragraph 5 immediately above), ComReg is of the opinion that an undertaking has not complied with its obligations, ComReg may, whether or not the non-compliance is continuing, apply to the High Court for such order as may be appropriate.

² European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011).