



ComReg informs Eircom Limited of opinion that it has not complied with its Access obligations under Section 7.1 of Decision D05/10 pursuant to Regulation 19(4) of the Access Regulations

Information Notice

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Opinion of non-compliance issued to Eircom Limited

1. On 19 February 2013, the Commission for Communications Regulation ("ComReg") notified Eircom of a finding that Eircom had not complied with its obligation to "meet all reasonable requests from OAOs for the provision of access, including associated facilities" as provided for in Section 7.1 of ComReg Decision D05/10, 2010 ("Decision D05/10")¹ by refusing to provide in building connection (the Requested Facility) to BT Communications Ireland Ltd ("BT"), following its request of 12 July 2011.
2. Eircom refused a request by BT for access to "In Building Connection" which BT described as "*eircom..instal[ing]l a small number of cables (copper or fibre as required by the access seeker) between the LLU footprints of the two Access Seekers requesting such.*" ComReg considers that this constitutes a reasonable request for access to an associated facility.
3. Associated Facilities is defined in Regulation 2 of the Framework Regulations² as " those associated services, physical infrastructures and other facilities or elements associated with an electronic communications network or an electronic communications service which enable or support the provision of services via that network or service or have the potential to do so and include, among other things, buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes and cabinets".
4. The Commission is of the view that the Requested Facility falls within the definition of an Associated Facility because this request for access supports the provision of services via that network or service. The Requested Facility would allow BT to avail of resilience through the services of another OAO, and therefore the facility supports the provision of services by BT via Eircom's network (i.e. using Eircom's LLU or WPNIA products) and as such this request is for an associated facility.

¹ Decision Notice and Decision Instrument – Designation of SMP and SMP Obligations: Market Analysis: WPNIA Market Review /Response to Consultation and Decision (Decision No.: D05/10, Document No.: 10/39, Date 20th May 2010).

² European Communities (Electronic Communications Networks and Services)(Framework)Regulations 2011, S.I. No. 333 of 2011, hereafter "the Framework Regulations"

5. Following the publication of the notification of finding of non-compliance pursuant to Regulation 19 of the European Communities (Electronic Communications Networks and Services) (Access) Regulations, 2011 (“the Access Regulations”)³, ComReg provided Eircom with an opportunity to state its views.
6. On the 20th March 2013 Eircom responded to the notification of finding of non-compliance.
7. Having regard to ComReg’s statutory functions and objectives, all of the correspondence with Eircom on this issue to date and on the basis of the analysis undertaken as part of this investigation that formed the basis for the notification of non-compliance and Eircom’s response to the notification, pursuant to Regulation 19 (4) of the European Communities (Electronic Communications Networks and Services) (Access) Regulations, 2011 (“the Access Regulations”) ComReg has formed the opinion that Eircom has not complied with its Access obligations under Section 7.1 of Decision D05/10 by refusing to provide in building connection (the Requested Facility) to BT, following its request of 12 July 2011.
8. ComReg is not taking this particular case further. However, ComReg will continue to monitor similar access requests and will initiate compliance actions where appropriate.

³ European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011).