



Commission for
Communications Regulation

Information Notice

Opinion of non-compliance issued to Eircom Limited for a breach of its transparency obligation in the Wholesale (Physical) Network Infrastructure Access market.

Information Notice

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Additional Information

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1. On 9 July 2015, pursuant to Regulation 19(1) of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 ('the Access Regulations')¹, the Commission for Communications Regulation ('ComReg') notified Eircom Limited ('Eircom') of a finding that, during the period 20 September 2010² to 9 July 2015³, Eircom did not comply with the transparency obligation imposed on it by Section 10.10 of the Decision Instrument contained in Appendix C of ComReg Decision D05/10⁴ in respect of its (Current Generation) Line Share product.
2. Section 10.1 of the Decision Instrument contained in Appendix C of ComReg Decision D05/10 which states that "*Eircom shall have an obligation of transparency as provided for by Regulation 10 of the Access Regulations in relation to Access*". Section 10.10 states (*inter alia*) that "*Pursuant to its obligation of transparency, Eircom shall, within four months of the effective date, publish on its website sufficient information to identify and justify any differences between the services and facilities set out in the ARO and the comparable services and facilities which Eircom provides to itself. The information shall include all material associated terms and conditions, including relevant processes, and shall be kept updated by Eircom as new services or facilities are developed and deployed or existing services or facilities are amended*".
3. Based on an analysis of Eircom data, ComReg found that, during the period 20 September 2010 to 9 July 2015, Eircom did not publish on its website sufficient information to identify and justify any differences between the services and facilities set out in the Access Reference Offer ('**ARO**') and the comparable services and facilities which Eircom provided to itself during this period and that Eircom did not provide updated information as new services or facilities were developed and deployed, or existing services or facilities were amended. ComReg accordingly found that Eircom was not compliant with the transparency obligation imposed by Section 10.10 of the Decision Instrument annexed to ComReg Decision D05/10.
4. Pursuant to Regulation 19(1) of the Access Regulations Eircom was notified of ComReg's finding of non-compliance on 9 July 2015. On 27 August 2015, Eircom responded to the Notification.

¹ European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011).

² Four months from the effective date of D05/10.

³ The date of the Notification.

⁴ ComReg Document No. 10/39, ComReg Decision D05/10, 'Response to consultation and Decision – Market Review: Wholesale (Physical) Network Infrastructure Access (Market 4)', dated 20 May 2010.

5. Following an extensive investigation and having carefully considered the matter, including Eircom's representations, and taking into account the relevant legislative context, ComReg has formed the opinion, pursuant to Regulation 19(4) of the Access Regulations, that for the period 1 July 2011⁵ to 9 July 2015, Eircom did not comply with the transparency obligation imposed on it by Section 10.10 of the Decision Instrument contained in Appendix C of D05/10 in respect of Eircom's supply of its (Current Generation) Line Share product.
6. ComReg has decided to make an application to the High Court pursuant to Regulation 19(4) of the Access Regulations for a declaration of non-compliance and for an order that Eircom pay to ComReg an amount by way of financial penalty in respect of the above non-compliance.
7. ComReg will make submissions to the High Court in due course in relation to the appropriate amount for such penalty. Any such submissions will take full account of all Eircom's representations and any relevant aggravating, mitigating or other factors.
8. ComReg has informed Eircom of its opinion and of its intention to apply to the High Court for the orders outlined above.

⁵ ComReg is forming no opinion in respect of non-compliance prior to 1 July 2011, the date on which the current Access Regulations came into force.