



An Coimisiún um  
**Rialáil Cumarsáide**  
Commission for  
**Communications Regulation**

## INFORMATION NOTICE

**EIRCOM ACKNOWLEDGES BREACHES OF ACCESS, NON-DISCRIMINATION AND TRANSPARENCY OBLIGATIONS AND AGREES TO PAY A FINANCIAL PENALTY OF €2.8 MILLION**

### Information Notice

**Reference:** 24/93

**Version:** Final

**Date:** 28 November 2024

**EIRCOM ACKNOWLEDGES BREACHES OF ACCESS, NON-DISCRIMINATION  
AND TRANSPARENCY OBLIGATIONS AND AGREES TO PAY A FINANCIAL  
PENALTY OF €2.8 MILLION**

1. Eircom Limited'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. Under Comreg Decision D10/18, Eircom was required to make this infrastructure available to other 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. Access to PAR is an important enabler for operators wishing to use Eircom's CEI to deploy their own communications networks and has the potential to lead to more effective competition, increase network investment, and provide a greater choice of fibre connectivity for consumers. Given the potential benefits derived from all PAR being available to all operators on an equivalent basis, and recognising that these advantages may not be fully realised if access is restricted, ComReg considers any failure by Eircom to provide full access to PAR as a significant concern.
2. On 26 August 2019, ComReg notified Eircom that it had commenced an investigation into Eircom's compliance with its obligations under Decision D10/18 in the Wholesale Local Access ("WLA") Market. ComReg investigated Eircom's compliance with its access and non-discrimination obligations regarding PAR, and with its transparency obligations related to making available its CEI Build Plan, as set out in Appendix 20 to Decision D10/18, referred to as the WLA Decision Instrument.
3. ComReg's investigation resulted in findings of non-compliance, and ComReg delivered its Notification of Non-Compliance to Eircom on 8 March 2021<sup>1</sup> and its Opinion of Non-Compliance on 3 March 2022<sup>2</sup>, in which ComReg found that Eircom failed to comply with access and non-discrimination obligations under the WLA Decision Instrument regarding PAR, as well as obligations to make available its CEI Build Plan.
4. The European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. 334 of 2011) (the "Access

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<sup>1</sup> ComReg's Information Notice published 8 March 2021 in relation to the issuance of the Notification of Non-Compliance is available on ComReg's website [here](#).

<sup>2</sup> ComReg's Information Notice published 4 March 2022 in relation to the issuance of the Opinion of Non-Compliance is available on ComReg's website [here](#).

Regulations") provide that at the conclusion of an investigation, ComReg may apply to the High Court to confirm its findings of non-compliance and to seek the imposition of a financial penalty. ComReg issued proceedings in the High Court on 12 August 2022,<sup>3</sup> seeking declarations of non-compliance, orders directing compliance by Eircom and remedying its non-compliance with its obligations under the WLA Decision Instrument, and requesting that the High Court impose a financial penalty on Eircom.

5. On 27 November 2024, ComReg and Eircom agreed to resolve the High Court proceedings on the following terms:
  - (a) Eircom agreed to pay a financial penalty of €2,800,000 and to make a contribution of €200,000 to ComReg's costs in the proceedings.
  - (b) Eircom acknowledged that in relation to its obligations set out in the WLA Decision Instrument, Eircom:
    - (i) failed to provide full access to PAR as required by Section 7.2(xiii)(c) of the WLA Decision Instrument, during the period 19 May 2019 to 01 November 2021;
    - (ii) failed to provide full access to information, specifically PAR, to other Undertakings under the same conditions and of the same quality as Eircom provides to itself, its subsidiaries, affiliates or partners, as required by Section 9.1(ii) of the WLA Decision Instrument on at least an Equivalent of Outputs basis as required by Section 9.2 of the WLA Decision Instrument, during the period 19 May 2019 to 01 November 2021;
    - (iii) failed to provide full access to PAR for the purposes of pre-ordering for CEI on an Equivalent of Inputs basis as required by Section 9.5 of the WLA Decision Instrument, during the period 19 September 2019 to 01 November 2021; and
    - (iv) failed to provide the CEI Build Plan containing the minimum information required by Sections 10.26(i)(b) and 10.26(i)(c) of the WLA Decision Instrument from 19 November 2018 to 01 November 2021.
6. Eircom acknowledged that its implementation of substantial remediation on 1 November 2021 fell short of full compliance and that Eircom remained in breach of the relevant obligations following implementation of the remediation on 1 November 2021. ComReg acknowledged that Eircom's implementation of the remaining remediation measures identified to it by ComReg on 24 March 2023

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<sup>3</sup> 2022/211 MCA: *Commission for Communications Regulation v Eircom Limited*

were addressed to ComReg's satisfaction, amounting to full remediation by Eircom of the incidents of non-compliance specified in the Notification of Non-Compliance.

7. ComReg continues to monitor compliance by all undertakings with their regulatory obligations relating to the supply of and access to electronic communications services, networks and associated facilities, and will continue to investigate and take all enforcement action it deems necessary in respect of any instances of non-compliance.

## **APPENDIX: COPY OF SETTLEMENT AGREEMENT**

THE HIGH COURT

Record No. 2022 / 211 MCA

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 19 OF THE EUROPEAN  
COMMUNITIES (ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES)  
(ACCESS) REGULATIONS 2011 (S.I. 334 OF 2011)

AND IN THE MATTER OF THE COMMUNICATIONS REGULATION ACT 2002 AS AMENDED

BETWEEN:

COMMISSION FOR COMMUNICATIONS REGULATION

APPLICANT

-AND-

EIRCOM LIMITED

RESPONDENT

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SETTLEMENT AGREEMENT

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**McCann FitzGerald LLP**  
Solicitors for the Applicant  
Riverside One  
Sir John Rogerson's Quay  
Dublin 2  
68835067

This agreement dated the 27th day of November 2024 is between:

- (i) **The Commission for Communications Regulation**, of 1 Dockland Central, Guild Street, Dublin 1 (the “**Applicant**”); and
- (ii) **Eircom Limited**, having its registered address at 2 Heuston South Quarter, St. John's Road West, Dublin 8, D08 Y42N (the “**Respondent**”).
- (iii) The Applicant and the Respondent are together referred to as the “**the Parties**”.

Whereas:

- (A) Under Comreg Decision D10/18 (“**Decision D10/18**”), the Respondent was designated by the Applicant as having significant market power (“**SMP**”) in the Wholesale Local Access Market (the “**WLA Market**”).
- (B) On 26 August 2019, the Applicant notified the Respondent that it had commenced an investigation into the Respondent’s compliance with its obligations under Decision D10/18 in the WLA Market. The investigation related to the Respondent’s compliance with access and non-discrimination obligations under Appendix 20 of Decision D10/18 (the “**WLA Decision Instrument**”) regarding Passive Access Records (“**PAR**”), as well as obligations to make available its CEI Build Plan. PAR are records which document the location, physical characteristics and utilisation of the Respondent’s Civil Engineering Infrastructure (“**CEI**”) which is its physical network infrastructure such as ducts, poles and chambers which are used to convey copper and fibre optic cables.
- (C) Arising from the findings of non-compliance made by the Applicant in its investigation, the Applicant issued proceedings in the High Court on 12 August 2022, seeking declarations of non-compliance, orders directing compliance by the Respondent and remedying its non-compliance with its obligations under the WLA Decision Instrument, and requesting that the High Court impose a financial penalty on the Respondent of €5,379,713 (the “**Proceedings**”).
- (D) The Applicant is represented by McCann FitzGerald LLP (the “**Applicant’s Solicitors**”). The Respondent is represented by A&L Goodbody LLP (the “**Respondent’s Solicitors**”).

The Parties have agreed to settle the Proceedings on the following terms:

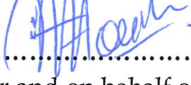
- 1. The Respondent will pay a financial penalty of €2,800,000 to the Applicant and to make a contribution of €200,000 inclusive of VAT if applicable to the Applicant’s costs in the Proceedings (together in total, the “**Agreed Sum**”). The Agreed Sum of €3,000,000 is to be paid on or before 4 April 2025, by way of bank transfer to the Applicant’s Solicitor’s client account. Time shall be of the essence in relation to the said payment.
- 2. The Respondent consents to judgment being entered against it in favour of the Applicant in the amount of the Agreed Sum in the event that the Agreed Sum is not paid on or before 4 April 2025.
- 3. The Respondent acknowledges that it has breached the following obligations set out in the WLA Decision Instrument in Decision D10/18:

- (a) The Respondent failed to provide full access to PAR as required by Section 7.2(xiii)(c) of the WLA Decision Instrument, during the period 19 May 2019 to 1 November 2021;
  - (b) The Respondent failed to provide full access to information, specifically PAR, to other Undertakings under the same conditions and of the same quality as the Respondent provides to itself, its subsidiaries, affiliates or partners, as required by Section 9.1(ii) of the WLA Decision Instrument on at least an Equivalent of Outputs basis as required by Section 9.2 of the WLA Decision Instrument, during the period 19 May 2019 to 1 November 2021;
  - (c) The Respondent failed to provide full access to PAR for the purposes of pre-ordering for CEI on an Equivalent of Inputs basis as required by Section 9.5 of the WLA Decision Instrument, during the period 19 September 2019 to 1 November 2021; and
  - (d) The Respondent failed to provide the CEI Build Plan containing the minimum information required by Sections 10.26(i)(b) and 10.26(i)(c) of the WLA Decision Instrument from 19 November 2018 to 1 November 2021.
4. The Respondent acknowledges that its implementation of substantial remediation on 1 November 2021 fell short of full compliance and that the Respondent remained in breach of the relevant obligations following implementation of the remediation on 1 November 2021. The Applicant acknowledges that the Respondent's implementation of the remaining remediation measures identified to it by the Applicant on 24 March 2023 were addressed to the Applicant's satisfaction, amounting to full remediation by the Respondent of the incidents of non-compliance specified in the Notification of Non-Compliance dated 8 March 2021.
  5. The Respondent gives these acknowledgments to the Applicant for the purposes of these Proceedings only.
  6. The Applicant will publish an Information Notice in relation to the Proceedings and this agreement as the Applicant has previously advised the Respondent.
  7. The Parties agree that the trial date in these Proceedings beginning 3 December 2024 is to be vacated.
  8. The Parties agree to adjourn the Proceedings for mention in the Non Jury list and agree (subject to the Court) that the next available for mention date after 4 April 2025 will be sought in this regard. On that occasion, if the terms of paragraph (1) above have been complied with by the Respondent, the Parties agree that the Proceedings will be struck out with no further order. However, if on that occasion the terms of paragraph (1) above have not been complied with by the Respondent, judgment shall be entered against it in favour of the Applicant in the amount of the Agreed Sum.
  9. This agreement has been entered into on the date stated at the beginning of it. The Parties agree that this agreement has been jointly drafted between them and their respective legal advisers and that no implication of contra proferentem shall arise in respect of the construction of this agreement.
  10. This agreement shall be binding upon signature on behalf of all Parties thereto. It may be executed by signature of counterparts.
  11. This agreement is governed by, and to be construed in accordance with, Irish law. Any dispute arising out of or in connection with, or concerning the carrying into effect of, this agreement



shall be subject to the exclusive jurisdiction of the Courts of Ireland, and the Parties hereby submit to the exclusive jurisdiction of those Courts for such purposes.

Signed by (print name):

  
.....  
for and on behalf of the Applicant

Robert Mourik  
.....

Position held: Commissioner

Date: 27/11/2024  
.....

Signed by (print name):

.....  
for and on behalf of the Respondent

Position held:

Date:  
.....

shall be subject to the exclusive jurisdiction of the Courts of Ireland, and the Parties hereby submit to the exclusive jurisdiction of those Courts for such purposes.

Signed by (print name):

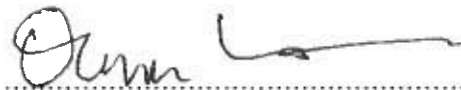
.....  
for and on behalf of the Applicant

Position held:

Date:

Signed by (print name):

OLIVER LOOMES  
.....  
for and on behalf of the Respondent



Position held: DIRECTOR

Date: 27/11/24  
.....