



Commission for
Communications Regulation

Information Notice

Case 850 Service Level Agreement Dispute

Information Notice

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Additional Information

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1. On 16 November 2015, Sky Ireland Limited, BT Communications Ireland Limited, Vodafone Ireland Limited and Magnet Networks Limited (together, ‘the Referring Parties’) submitted a dispute to the Commission for Communications Regulation (‘ComReg’) pursuant to Regulation 31 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (‘the Framework Regulations’)¹. Eircom Limited (‘Eir’) was the respondent in the matter.
2. The dispute related to the terms of a Service Level Agreement (‘SLA’) offered by Eir for the repair of faults on Eir’s current generation Single Billing Wholesale Line Retail (‘SB-WLR’) and Local Loop Unbundling (‘LLU’) products. These products are provided by Eir to other operators on foot of access obligations imposed pursuant to Eir’s designation with significant market power (‘SMP’) in two Regulated Markets². These wholesale products supplied by Eir are used by operators such as the Referring parties to offer services to their own retail end-users. The fault repair SLAs for these products include parameters for the level of fault repair performance that must be achieved by Eir, and the level of payments that Eir must make if it fails to achieve the required performance level. After a period of negotiation, Eir and the Referring Parties had failed to reach agreement on the terms of the SLA and the Referring Parties brought the matter to ComReg for formal dispute resolution.
3. On 31 January 2017, ComReg published its Final Determination³ with a subsequent clarifications letter published on 21 February 2017⁴. On 28 February 2017, Eir appealed ComReg’s Final Determination to the High Court and included the Referring Parties as Notice Parties to the appeal.
4. On 23 March 2017, ComReg, Eir and the Referring Parties agreed to mediate the dispute. This mediation took place on 26 April 2017.
5. As an outcome of the mediation, Eir and the Referring Parties reached agreement on a number of terms including the following:
 - a. SLAs are revised (‘the Revised SLAs’) for the following products:
 - i. Unbundled Local Metallic Path;
 - ii. Combined GNP and ULMP
 - iii. SB-WLR;
 - iv. Line Sharing;

¹ European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011).

² The Fixed Access and Call Origination (‘FACO’) Market and the Wholesale Physical Network Infrastructure Access (‘WPNIA’) Market respectively.

³ Final Determination in a dispute between (i) BT Communications Ireland Limited, Magnet Networks Limited, Sky Ireland Limited and Vodafone Ireland Limited and (ii) Eircom Limited (ComReg 17/08, Date: 31 January 2017)

⁴ Final Determination in a dispute between (i) four parties represented by Towerhouse LLP and (ii) Eircom Ltd Clarification request and response in relation to ComReg Document No 17/08 (ComReg 17/08s, Date: 21 February 2017)

- v. Stand alone Fibre to the Cabinet ('FTTC') Bitstream Plus;
 - vi. Stand alone FTTC Virtual Unbundled Access; and
 - vii. Current Generation Access Stand alone Broadband
- b. The service assurance performance level repair targets and service credits in the Revised SLAs for the above products are amended as follows, save that the service credits applicable to Line Sharing remain unchanged:

TARGET	ACTUAL PERFORMANCE	SERVICE CREDIT
84% Repair in 2 Days	X% = Actual 2 Day Repair Performance	€18
93% Repair in 5 Days	Y% = Actual 5 Day Repair Performance	€36
100% Repair in 10 Days	Z% = Actual 10 Day Repair Performance	€36

Table 1

- c. The Revised SLAs shall be effective from 1 July 2017 and the performance levels and service credits in the Revised SLAs (at Table 1) shall not be amended by Eir or the Referring Parties for a period of three years from the effective date.
- d. The service credits payable by Eir in any 12 month period commencing on 1 July shall not exceed 1% of Eir's total revenues for the products referred to at 5 a. above to which the Revised SLAs apply ("the Cap"). Furthermore, Eir and the Referring Parties also agree that for the purpose of calculating the Cap, the rental revenue for 'POTS-based VUA' or 'POTS-based Bitstream Plus' products will be used instead of the Wholesale Line Rental revenue for those lines in respect of which the 'POTS-Based VUA' or 'POTS-based Bitstream Plus' rental revenue exceed the SB-WLR revenue in any 12 month period commencing on 1 July 2017.
6. In respect of the products listed at 5a. above, Eir is subject to transparency obligations in a number of regulated markets which require that Eir provide a period of notice to industry and ComReg in advance of proposed changes to SLAs. These notification periods may be varied by ComReg at its discretion. ComReg has decided that the notification periods need not apply in this particular case and Eir may proceed with publication of the Revised SLAs immediately.
7. In accordance with Eir's non-discrimination obligations, the Revised SLAs will be made available to all operators. Operators may continue with any existing SLA or choose to avail of a Revised SLA.
8. Having resolved the dispute through mediation, the Final Determination is no longer in force and Eir has withdrawn its appeal.⁵

⁵ See Court Order dated 2 May 2017