

Appendix: 3

Correspondence and Submissions

Appendix: 3.1 BT Dispute submission

Formal Dispute between BT Communications Ireland Ltd [“BT”] and Eircom Ltd trading as Eir and open eir

Concerning CEI Access.

Issue 1: 25th January 2022

This dispute is submitted in accordance with the format required by ComReg within doc 10/18R.pdf (Decision D03/10) as issued 29th March 2010.

1. Contact Details

For the Complainant:

[REDACTED]
BT Communications Ireland Ltd
6th Floor
2 Grand Canal Plaza
Upper Grand Canal Street
Dublin 4

Email: [REDACTED]@bt.com

Tel: [REDACTED]

For the Respondent:

[REDACTED],
2022 Bianconi Avenue,
Citywest Business Campus
Dublin 24
Email: [REDACTED]@eir.ie

2. Statement of the scope of the dispute.

Eircom has provided itself with duct facilities that it uses to sell BT NGN/WDM services to mast sites nationally for H3G.

We dispute Eircom’s refusal to supply BT with CEI for BT to serve a mobile operator with Leased Line backhaul for mobile access services (for the transport of e.g., end user mobile data or voice calls).

3. A statement of the relevant obligation(s) under the regulatory framework which have given rise to the dispute, including reference to the Specific Regulation(s), market and decisions imposing the obligation as appropriate.

References/Relevance	Text
<p>Reference Clauses 7.4 & 7.6 of the WLA Decision Instrument (D10/18)</p> <p>(Highlighting added for emphasis)</p>	<p>7 OBLIGATIONS TO PROVIDE ACCESS...</p> <p>7.4 Without prejudice to the generality of Sections 7.1 and 7.2 of this Decision Instrument and further to Section 7.2(xiii) above, Eircom shall not impose unreasonable restrictions on Access to its Civil Engineering Infrastructure where such Access is required for the purpose of the provision by Undertakings of services in the Relevant Market or in other downstream markets.</p> <p>7.6 The access obligations set out in this Section 7 shall apply irrespective of the electronic communications service that the requested access product, service or facility shall be used to provide. For the avoidance of doubt, the purpose for which the access request is made is not limited to the provision by the Undertaking of services to End Users</p>
<p>Appendix 20, D10/18 s 1.3 – showing the priority that D10/18 has, if there was a conflict, over preceding documents.</p> <p>(Highlighting added for emphasis)</p>	<p>1.3 The provisions of ComReg Document No. 16/96 and ComReg Decision D10/18, as well as ComReg Document No. 17/26 and ComReg Decision D11/18, together with ComReg Document No. 17/51 and ComReg Decision D12/18 shall, where appropriate, be construed consistently with this Decision Instrument. For the avoidance of doubt, however, to the extent that there is any conflict between a decision instrument dated prior to the Effective Date (as defined in Section 2.1 of this Decision Instrument) and this Decision Instrument, this Decision Instrument shall prevail.</p>
<p>Evidence of ComReg’s intent that CEI may be used by Access Seekers is in the 2016 WCA/WLA Market Review (16/96)</p> <p>(Highlighting added for emphasis)</p>	<p>8.215 For the avoidance of doubt, ComReg notes that the use of Eircom’s CEI by an Access shall be limited to the provision by an Access Seeker of a ECS and/or ECN. In particular, Access Seekers should not be restricted from using the CEI for the purposes of providing broadband, broadband enabled services (e.g. IPTV, VOIP), leased lines, backhaul for fixed and mobile services, and for network rollout etc.</p>

From the above extracts, ComReg’s intention (16/96) and regulation (D10/18) allow for OAO’s to purchase CEI for the provision of downstream WLA access facilities such as data solutions or leased lines services to other operators (including MNOs) as well as end-users.

4. Background to the Dispute.

- i. BT is an Authorised operator in Ireland and a significant user of Eircom wholesale regulated products purchasing such for at least two decades in Ireland;
- ii. BT provides wholesale services, including access services to other providers in Ireland, often re-packaging wholesale services provided by Eircom;
- iii. BT has signed the appropriate contracts and licences to order this particular CEI service instance from Eircom.
- iv. In early Nov 2021, BT submitted a Duct order for a deployment that included a chamber at the foot of a mast site. BT confirmed, when asked by Eircom, that the route would be used to collect local mast site traffic;
- v. Eircom refused to supply the route stating that serving an Undertaking is outside the ComReg D10/18 definition of End Users;
- vi. On 10th Jan 2022, Eircom sought BT’s affirmation on three statements - ‘in order to make progress’. This dispute only focuses on one condition – a separate dispute will cover the

other condition(s). The condition at issue is, per Eircom, that “an Undertaking (e.g. MNO) will not be connected”.

5. Desired Outcome – the outcome desired by the Complainant.

- Resolution so that Eircom will provide the service requested without delay.

6. Details of any attempts to resolve the dispute.

BT have spoken to and engaged in writing with Eircom for more than two months on this. An e-mail trail exists and BT’s emails to Eircom are attached for the record (Annex A). BT has removed Eircom’s e-mails as they are noted as ‘Confidential to open eir’.

BT has shared with Eircom its plan to raise a Dispute to resolve the matter.

7. Details of any legal proceedings in relation to the dispute that have been initiated by either party.

None to date but we reserve all legal rights.

8. Details as to the impact of the dispute on the Complainant’s business.

Eircom’s refusal to supply such requirements means:

- Competition in the market is limited as BT (without access to lower cost inputs) cannot efficiently compete to win new MNO local access leased line services;
- Absent the supply of CEI, BT is burdened with unnecessary costs such as expensive fully managed NGN/WDM solutions or self-build construction costs to serve local access requirements of MNOs. These higher costs flow downstream – this is adverse for retail customers;
- Absent the supply of CEI, end customers face downstream product limits when the local NGN exchange is only 1G enabled but the cost to buy a 10G WUP is not cost effective for the MNO. This is adverse for retail customers.

9. Documentary Evidence.

BT offers the following documentary evidence.

1. Documents ComReg 16/96 and ComReg 18/94 (Decision 10/18) supported by the various communications regulations as appropriate.
2. BT has signed the ARO including the duct and pole schedules and is actively ordering the CEI product. BT also has the appropriate accreditations in place to order the Eircom CEI product requested.
3. That during the period 15th November 2021 to the 14th January 2022 BT and Eircom engaged in correspondence that has led BT to believe that Eircom is unreasonably restricting BT’s ability to avail of the CEI product from Eircom to use it to provide services to a mobile access mast of the mobile operator Three Ireland for the purpose of serving end users. Eircom’s argument for not providing CEI for this service instance was this type of service provision was out of scope of the CEI obligations according to the definitions with D10/18 and appendix 12 of the consultation 19/96.

4. Attempts by BT to clarify the matter on the 15th December 2021, including BT providing an extract of clause 7.6 of the Decision Instrument in D10/18 have failed to resolve the matter. We acknowledge that other clauses in D10/18 also support our position.
5. Eircom on the 22 December 2021 re-iterated their position that their interpretation is that CEI can only be used to supply services to end users. Eircom also suggest that the situation could be clarified by ComReg. Hence in this respect with are issuing a formal dispute for ComReg to resolve this matter.
6. We have attached the emails that BT sent to Eircom regarding this matter.

10. A Non-confidential version of the dispute submission.

This is submitted as non-confidential to the parties.

End

Annex A



FW_ Duct Access
Order - Project_Bespc

Appendix: 3.2 Email thread between BT and Eircom

From: [REDACTED]@openeir.ie>
Sent: Wednesday, January 26, 2022 10:26 AM
To: [REDACTED]
Subject: Fwd: BT Formal Dispute against eircom concerning a CEI request that it being refused - Mail Trail (Duct Access Order - Project/Bespoke sub-duct - Cork)

Hi [REDACTED],

All of the responses listed in your mail are contained in the mail trail below.

Thanks,

[REDACTED].

[REDACTED]

M: [REDACTED]
[REDACTED]@openeir.ie

open eir, [REDACTED], Ground Floor, 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03.

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Confidential Wholesale Customer Information

[REDACTED]

----- Forwarded message -----

From: [REDACTED]
Date: Wed, 12 Jan 2022 at 14:33
Subject: Re: Duct Access Order - Project/Bespoke sub-duct - Cork

To: [REDACTED]
Cc: [REDACTED] <[REDACTED]@bt.com>

Hi [REDACTED],

I hope that this finds you well.

Thank you for your mail below. This has been shared with, and is currently being reviewed by, the relevant management within open eir.

We will revert shortly.

Thanks,

[REDACTED].

[REDACTED]

M: [REDACTED]
[REDACTED]

open eir, [REDACTED], Ground Floor, 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03.

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[REDACTED]

On Tue, 11 Jan 2022 at 09:42, [REDACTED] wrote:

Good morning [REDACTED]

The egress point of this CEI route must be UUB5060 for us to reach the Kilbarry Industrial Estate. Thus, we request OE re-consider our 6th January request knowing that we'll stand down serving the mast site until this matter is resolved between yourselves, ourselves and ComReg. Should the matter not be resolved, then OE are free, per the product documentation, to audit our installations/services in life to ensure that our use of CEI is valid.

We look forward to your response.

Thanks,

[REDACTED]

[REDACTED]

Telephone

Mobile: [REDACTED]

Land line: [REDACTED]

Microsoft Teams Phone Number = [REDACTED]

From: [REDACTED]

Sent: 10 January 2022 18:54

To: [REDACTED]

Cc: [REDACTED] [@bt.com](mailto:[REDACTED]@bt.com)>

Subject: Re: Duct Access Order - Project/Bespoke sub-duct - Cork

Hi [REDACTED],

I hope that you had a good weekend.

Thank you for your mail.

As advised, open eir cannot proceed with the original order received, for the reasons outlined in detail in our correspondence below.

Should BT wish, a new order could be placed, containing revised diagrams, in line with the following parameters:

- No ingress or egress point should be included that could serve the mast access site
- An Undertaking (e.g. MNO) may not be connected
- Network-network interconnect connections may not be provided

We trust that this clarifies the situation.

Should you have any queries please do not hesitate to contact me.

Thanks,

[REDACTED]

[REDACTED]

M: [REDACTED]
[REDACTED]

open eir, [REDACTED], Ground Floor, 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03.

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[REDACTED]

On Thu, 6 Jan 2022 at 17:30, [REDACTED] > wrote:

Hi [REDACTED]

A request if I may please.

You'll know we're progressing OE's refusal to supply duct access to serve the leased line requirements of an MNO.

In the meantime, may I ask OE to progress (as requested 8th Dec) this route on the basis of us not using the route to serve the MNO (until the matter has been resolved). The route from Penrose Wharf to customers in the Blackrock area and the Kilbarry Industrial Estate are valid uses of CEI.

We welcome your response.

Thank you,

[REDACTED]

[REDACTED]

Telephone

Mobile: [REDACTED]

Land line: [REDACTED]

Microsoft Teams Phone Number = [REDACTED]

From: [REDACTED]
Sent: 22 December 2021 11:25
To: [REDACTED]
Subject: Re: Duct Access Order - Project/Bespoke sub-duct - Cork

Hi [REDACTED],

I hope that all is well today.

Thank you for updating me on the next steps.

Should you have any queries please do not hesitate to contact me.

Thanks,

[REDACTED].

[REDACTED]

M: [REDACTED]
[REDACTED]

open eir, [REDACTED], Ground Floor, 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03.

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[REDACTED]

On Wed, 22 Dec 2021 at 10:50, [REDACTED] wrote:

Good morning [REDACTED]

Thank you for writing. Given the gravity of the matter - I'd rather have [REDACTED]'s view to add to my own before I respond fully. [REDACTED] is on leave now til early January. I will write then - sharing then too the ComReg interpretation of this matter.

[REDACTED]

[REDACTED]

Telephone

Mobile: [REDACTED]

Land line: [REDACTED]

Microsoft Teams Phone Number = + [REDACTED]

From: [REDACTED] >

Sent: 22 December 2021 07:35

To: [REDACTED] >

Cc: [REDACTED] @bt.com>; [REDACTED]

Subject: Re: Duct Access Order - Project/Bespoke sub-duct - Cork

Hi [REDACTED],

I hope that this finds you well today.

Thank you for your mail of 15 December.

open eir does not agree that section 7.6 supersedes open eir's view of the access obligation defined in D10/18. open eir is obliged to grant 'Duct Access'. A 'Duct' is a pipe capable of carrying cables that are used to deliver electronic communications services to End Users. However, BT wants to use the duct to deliver services to an MNO (not to End Users), so open eir considers that this is a different kind of 'duct' access, not

covered by the regulation in the first place. open eir notes that the interaction with section 7.6 is not entirely clear and could perhaps be helpfully clarified by ComReg.

Should you have any queries please do not hesitate to contact me.

Thanks,

█.

█

M: █
█

open eir, █, Ground Floor, 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03.

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█

On Mon, 20 Dec 2021 at 11:34, █ wrote:

Hi █,

Yes, very good, thanks. I hope that yours was also enjoyable.

I am currently checking back in with the relevant management, and will revert shortly.

Thanks,

█.

█

M: █
█

open eir, █, Ground Floor, 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03.

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█

On Mon, 20 Dec 2021 at 11:31, █ wrote:

Good morning [REDACTED]

I hope you had a good weekend.

May I ask you/OE to respond to this open ask please?

Thank you,

[REDACTED]

[REDACTED]

Telephone

Mobile: [REDACTED]

Land line: [REDACTED]

Microsoft Teams Phone Number = [REDACTED]

From: [REDACTED]

Sent: 15 December 2021 17:51

To: [REDACTED]

Cc: [REDACTED] <[\[REDACTED\]@bt.com](mailto:[REDACTED]@bt.com)>; [REDACTED]

Subject: RE: Duct Access Order - Project/Bespoke sub-duct - Cork

Good evening [REDACTED]

The WLA Decision Instrument at Appendix 20 of D10/18, specifically clause 7.6 (extract below), is relevant and supersedes the OE view on the limitation to End Users only.

7.6 The access obligations set out in this Section 7 shall apply irrespective of the electronic communications service that the requested access product, service or facility shall be used to provide. For the avoidance of doubt, the purpose for which the access request is made is not limited to the provision by the Undertaking of services to End Users.

Can you please confirm by cob this Friday that this entire order can proceed?

Thank you,

[REDACTED]

[REDACTED]

Telephone

Mobile: [REDACTED]

Land line: [REDACTED]

Microsoft Teams Phone Number = [REDACTED]

From: [REDACTED]
Sent: 13 December 2021 18:27
To: [REDACTED]
Cc: [REDACTED] <[REDACTED]@bt.com>
Subject: Re: Duct Access Order - Project/Bespoke sub-duct - Cork

Hi [REDACTED],

I hope that you had a good weekend.

Thank you for the detail provided in your mail of 8 December. open eir's position remains as previously communicated - that this duct access order is not valid as it does not align with the defined CEI obligations. Therefore, this order will not be progressed.

Should you have any queries please do not hesitate to contact me.

Thanks,

[REDACTED].

[REDACTED]

M: [REDACTED]
[REDACTED]

open eir, [REDACTED], Ground Floor, 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03.

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[REDACTED]

On Wed, 8 Dec 2021 at 17:29, [REDACTED] wrote:

Good evening [REDACTED]

I have just discussed a revised order with our planner, [REDACTED].

He has talked me through our network in the area, an extract is below.

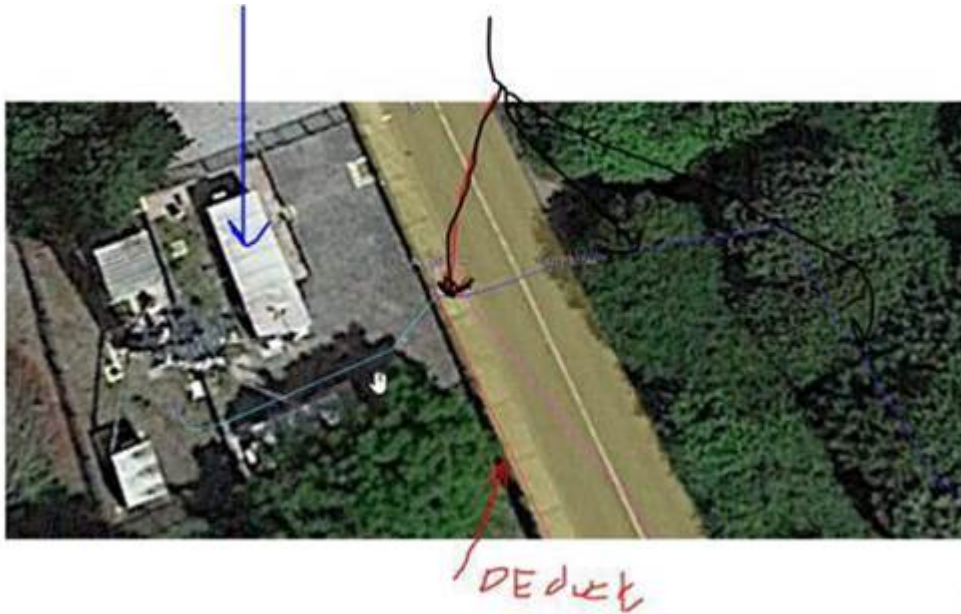
- The blue arrow points to the mast site.
- The red arrow points to the OE duct path that we wish to use - coming up from Cork city.
- The black arrow points to BT network that runs today from a point of interconnect outside the mast site across the road, south and then north/north east to serve several customers that we have.

Thus, our planned route remains the same and is valid. Until we have resolved the point around serving the mast site with yourselves/ComReg, we will not plan to serve the mast site using OE CEI.

Can you please nudge this request on again and share the expected forecast date?

Thank you,

██████



██████

Telephone

Mobile: ██████████

Land line: ██████████

Microsoft Teams Phone Number = ██████████

From: ██████████

Sent: 08 December 2021 13:40

To: ██████████

Cc: ██████████ [@bt.com](#)>

Subject: Re: Duct Access Order - Project/Bespoke sub-duct - Cork

Hi ████████,

Thanks again for your mail.

Having pursued your mail internally it has been reaffirmed to me that open eir's position is as outlined in previous mails.

Thanks,

██████.

[REDACTED]

M: [REDACTED]
[REDACTED]

open eir, [REDACTED], Ground Floor, 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03.

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[REDACTED]

On Tue, 7 Dec 2021 at 14:30, [REDACTED] wrote:

Good afternoon [REDACTED]

Your response surprises me. We can point to OE using the OE duct network to supply us (at least) with 30 leased lines to mast sites. Refusal to supply here is not equivalent.

[REDACTED]

[REDACTED]

Telephone

Mobile: [REDACTED]

Land line: [REDACTED]

Microsoft Teams Phone Number = [REDACTED]

From: [REDACTED]
Sent: 06 December 2021 09:38
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: Duct Access Order - Project/Bespoke sub-duct - Cork

Hi [REDACTED],

I hope that you had a good weekend.

The update received - as stated originally in our mail of 15 November (below) - is that open eir believes the provision of service to an undertaking is outside the scope of open eir's CEI Access obligations as outlined, and as such open eir will not progress this order based on this assessment.

Should you have any queries please do not hesitate to contact me.

Thanks,

[REDACTED]

[REDACTED]

M: [REDACTED]
[REDACTED]

open air, [REDACTED], Ground Floor, 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03.

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[REDACTED]

On Thu, 2 Dec 2021 at 11:25, [REDACTED] wrote:

Hi [REDACTED]

May I assume that this order has been acknowledged please and that we are awaiting a Forecast Date (due T+29)?

Thanks for your time,

[REDACTED]

[REDACTED]

Telephone

Mobile: [REDACTED]

Land line: [REDACTED]

Microsoft Teams Phone Number = [REDACTED]

From: [REDACTED]

Sent: 26 November 2021 13:16

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: Duct Access Order - Project/Bespoke sub-duct - Cork

Hi [REDACTED]

Thank you for your note.

The Kilbarry Mast Site is in scope to provide a leased line service to a customer. We are not aware of any restriction on providing leased lines to our customers. We understand OE self-provide similar services - thus the confusion as to why this order has been queried.

We welcome your validation of this order.

Thank you,

[REDACTED]

[REDACTED]

Telephone

Mobile: [REDACTED]

Land line: [REDACTED]

Microsoft Teams Phone Number = [REDACTED]

From: [REDACTED]

Sent: 15 November 2021 09:50

To: [REDACTED]

Cc: [REDACTED]

[REDACTED]

Subject: Re: Duct Access Order - Project/Bespoke sub-duct - Cork

Hi [REDACTED],

I hope that this finds you well.

In following this order through I have been advised by the relevant management that it is open eir's understanding that it is not a reasonable request to provide service to an Undertaking (e.g. a Mobile Operator) and that such a request does not fall within the scope of open eir's CEI Access obligations as they relate to End Users. This is consistent with the definitions within D10/18 and Appendix 12 of 19/96.

Should you have any queries please do not hesitate to contact me.

Thanks,

[REDACTED].

[REDACTED]

M: [REDACTED]
[REDACTED]

open eir, [REDACTED], Ground Floor, 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03.

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[REDACTED]

On Fri, 5 Nov 2021 at 12:31, [REDACTED] wrote:

Hi [REDACTED],

Thanks for confirming the point on local access only use of the service.

Thanks,

[REDACTED]

[REDACTED]

M: [REDACTED]
[REDACTED]

open eir, [REDACTED], Ground Floor, 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03.

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Planned Holidays:

On Fri, 5 Nov 2021 at 10:38, [REDACTED] wrote:

Hi [REDACTED],

Thanks for your confirmation.

The order is intended for local access provisions only – we are delivering access service to the mast site, however we are not providing any core network services from this location.

Kind Regards,

[REDACTED] | [REDACTED] |

Ph: [REDACTED] | Mobile: [REDACTED] |

Email: [REDACTED] | Web: www.btireland.com

BT Ireland, Block C Ground Floor, Dundrum Business Park, Dublin 14, Ireland.



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From: [REDACTED]
Sent: 05 November 2021 10:08
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: Duct Access Order - Project/Bespoke sub-duct - Cork

Hi [REDACTED]

I hope that this finds you well.

open eir acknowledges receipt of this duct access order.

Could you please confirm that this duct access order is solely intended for local access purposes - as opposed to accessing the Mast Site at Kilbarry for instance?

Thanks,

[REDACTED]

Confidential Regulated

Confidential to open eir

On Wed, 3 Nov 2021, 23:22, [REDACTED] > wrote:

Hi [REDACTED], [REDACTED],

Please find attached and below CEI Order Submission for the supply of Duct Access - Standard Micro Duct Product.

Please let me know all is in order once you have reviewed, as always would welcome getting on a call to go over the detail as required.

Kind Regards,

[REDACTED]

=====
=====
=====

Order qualifies as a Project/Bespoke order ? Y

Confirm this is to provide local access to an end user ? **Y**

Confirm all duct ownership permissions obtained along the route ? **Y**

Agreement to pay open eir charges? **Y**

Confirm standard (or OAO controlled) eir sub-duct ? **Standard eir sub-duct**

Confirm map attached showing requested route ? **Y**

If open eir returned Field Survey results to OAO:

- Reference Number ? **n/a**
- open eir Map is attached ? **n/a**

If OAO is providing field survey results:

- Requested Ingress UUB number and address ? **UUB3095, Entrance to Penrose Wharf Carpark, Alfred Street, Cork**
- Requested Egress UUB number and address ? **UUB 5060, Outside Kilbarry Mast Sie, Old Whitechurch Road, Cork.**
- Requested Egress UUB X-Y co-ordinate (+CRS) (also show on map) **X,Y = 167423,74363 See Attached Map in CAD and PDF document page 12of12**
- Estimated total length ? **4498m**
- Estimated surface type(s) along the length ? **CW: 1314m FW: 3184 GV: 0m**
- OAO Map is attached (for licence) ? **Y**

Handover to open eir UUB ? **UUB numbers – 3095, 3426, 4498, 3269, No ID X,Y=167551, 72397, No ID X,Y = 167408, 73232**

3095, 3426, 4498, 3269, No ID X,Y=167551, 72397, No ID X,Y = 167408, 73232 We will also require access to microduct ends at Equipment in UUB locations as listed in the supplied schedule and at Lead-in requested locations.

- If b) confirm OAO has 'UUB access' accreditation ? **Y** enter UUB details [describe] ? **Please see attached spreadsheet file**

Contact Details: Operator contact details (name, position, phone number, email).

██████████

██████████████████

██████████

[REDACTED]

Contact Details: Operator on-site/contractor personnel contact details (as above, plus company name).

KN Circet

Details to be provided on confirmation of works

Kind Regards,

[REDACTED] | [REDACTED] |

Ph: [REDACTED] | Mobile: [REDACTED] |

Email: [REDACTED] | Web: www.btireland.com

BT Ireland, Block C Ground Floor, Dundrum Business Park, Dublin 14, Ireland.

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eircom Limited, Registered as a Branch in Ireland Number 907674. Incorporated in Jersey Number 116389. Branch Address: 2022 Bianconi Avenue, Citywest Business Park, Dublin 24, D24 HX03, Ireland.

Appendix: 3.3 Letter from ComReg to BT 4 February 2022



Regulatory Affairs BT Ireland
BT Communications Ireland Limited.
Registered office: Grand Canal Plaza,
Upper Grand Canal Street,
Dublin 4

BY E-MAIL¹

04 February 2022

Re: Case COM-22-718 - Dispute between BT and Eircom

Dear [REDACTED],

On 25 January 2022, BT Communications Ireland Limited (“BT”) submitted a dispute (“the Dispute”) to the Commission for Communications Regulation (“ComReg”). The Dispute relates to Eircom Limited (“Eircom”) providing BT with access to “Duct²”. The dispute was allocated case number COM-22-718.

ComReg is now considering whether to accept the request pursuant to Regulation 31 of the Framework Regulations³. ComReg Document 10/18R⁴ sets out the procedure for disputes under Regulation 31 of the Framework Regulations.

Our initial review of the circumstances described in the submissions from BT are narrow, relating to the use of Eircom duct for connection to a Mobile Network Operator at a specific location. If the dispute is accepted, it would appear to be consistent with issuing a determination to resolve the dispute within the four-month period. However, ComReg must ensure that any determination of the dispute will achieve resolution to the issues on which the parties are at odds. Therefore, prior to accepting the dispute, ComReg require confirmation that negotiations between the parties in respect of the duct access order, the subject of this dispute, have concluded⁵, and thereafter, require confirmation as to the issues which remain at odds as between the parties. Provided negotiations between the parties have concluded, ComReg can see no reasons that would require the determination of the issues between the parties in respect of a single duct access order by way of multiple disputes.

[REDACTED] [@bt.com](mailto:[REDACTED]@bt.com)

² Duct is defined at Section 2.1 of the Decision Instrument at Appendix 20 of ComReg decision D10/18 (“the WLA DI”).

³ European Communities (Electronic Communications Networks and Services) (Framework) Regulations, 2011 (“the Framework Regulations”).

⁴ Document No 10/18R “Dispute Resolution Procedures - Framework Regulations - (Response to Consultation Document No. 09/85).

⁵ Per ComReg Document 10/18R, a reasonable degree of negotiation has taken place and has failed before ComReg will accept a dispute.



In relation to negotiations between the parties, Eircom's response to BT of 12 January 2022 indicates that Eircom is still reviewing the matter.

In relation to the issues on which the parties are at odds, BT's letter of 25 January 2022 includes the following statement under Part 4 v.i;

On 10th Jan 2022, Eircom sought BT's affirmation on three statements - 'in order to make progress'. This dispute only focuses on one condition – a separate dispute will cover the other condition(s). The condition at issue is, per Eircom, that "an Undertaking (e.g. MNO) will not be connected".

ComReg is under the assumption that the "three statements" referenced by BT above are as per the email from [REDACTED] to [REDACTED] of 10 January 2022 being;

1. "No ingress or egress point should be included that could serve the mast access site."
2. "An Undertaking (e.g. MNO) may not be connected"
3. "Network-network interconnect connections may not be provided"

ComReg has the following queries:

- Q.1. Please confirm whether our assumption in respect of the "three statements" is correct.
- Q.2. Please confirm from BT's perspective, whether negotiations between Eircom and BT are still ongoing in respect of the duct access order, the subject of this dispute.
- Q.3. If negotiations have concluded, please indicate whether the parties have reached a resolution in respect of any issues and on what issues the parties remain at odds.
- Q.4. If negotiations have concluded, please indicate whether you have any objections to any of the issues listed in your reply to Q.3. being included within the scope of the dispute to be determined.
- Q.5. If you have any such objections, please set out the basis for same.

We ask that BT respond to these queries on or before 12pm on the 7 February 2022. A non-confidential version of the response is also required.

Yours sincerely,

Shane McKiernan
Case Officer
Wholesale Compliance

Appendix: 3.4 Letter from ComReg to Eircom 4 February 2022



[REDACTED]
Eircom Limited
2022 Bianconi Avenue
Citywest Business Campus
Dublin 24
D24 HX03

BY E-MAIL¹

04 February 2022

Re: Case COM-22-718 - Dispute between BT and Eircom

Dear [REDACTED],

On 25 January 2022, BT Communications Ireland Limited (“BT”) submitted a dispute (“the Dispute”) to the Commission for Communications Regulation (“ComReg”). The Dispute relates to Eircom Limited (“Eircom”) providing BT with access to “Duct²”. The dispute was allocated case number COM-22-718.

ComReg is now considering whether to accept the request pursuant to Regulation 31 of the Framework Regulations³. ComReg Document 10/18R⁴ sets out the procedure for disputes under Regulation 31 of the Framework Regulations.

Our initial review of the circumstances described in the submissions from BT are narrow, relating to the use of Eircom duct for connection to a Mobile Network Operator at a specific location. If the dispute is accepted, it would appear to be consistent with issuing a determination to resolve the dispute within the four-month period. However, ComReg must ensure that any determination of the dispute will achieve resolution to the issues on which the parties are at odds. Therefore, prior to accepting the dispute, ComReg require confirmation that negotiations between the parties in respect of the duct access order, the subject of this dispute, have concluded⁵, and thereafter, require confirmation as to the issues which remain at odds as between the parties. Provided negotiations between the parties have concluded, ComReg can see no reasons that would require the determination of the issues between the parties in respect of a single duct access order by way of multiple disputes.

¹ [REDACTED]@eir.ie

² Duct is defined at Section 2.1 of the Decision Instrument at Appendix 20 of ComReg decision D10/18 (“the WLA DI”).

³ European Communities (Electronic Communications Networks and Services) (Framework) Regulations, 2011 (“the Framework Regulations”).

⁴ Document No 10/18R “Dispute Resolution Procedures - Framework Regulations - (Response to Consultation Document No. 09/85).

⁵ Per ComReg Document 10/18R, a reasonable degree of negotiation has taken place and has failed before ComReg will accept a dispute.



In relation to negotiations between the parties, Eircom's response to BT of 12 January 2022 indicates that Eircom is still reviewing the matter.

In relation to the issues on which the parties are at odds, BT's letter of 25 January 2022 includes the following statement under Part 4 v.i;

On 10th Jan 2022, Eircom sought BT's affirmation on three statements - 'in order to make progress'. This dispute only focuses on one condition – a separate dispute will cover the other condition(s). The condition at issue is, per Eircom, that "an Undertaking (e.g. MNO) will not be connected".

ComReg is under the assumption that the "three statements" referenced by BT above are as per the email from [REDACTED] to [REDACTED] of 10 January 2022 being;

1. *"No ingress or egress point should be included that could serve the mast access site."*
2. *"An Undertaking (e.g. MNO) may not be connected"*
3. *"Network-network interconnect connections may not be provided"*

We have asked BT to clarify whether that assumption is correct.

ComReg has the following queries for Eircom:

- Q.1. Please confirm from Eircom's perspective, whether negotiations between Eircom and BT are still ongoing in respect of the duct access order, the subject of this dispute.
- Q.2. If negotiations have concluded, please indicate whether the parties have reached a resolution in respect of any issues and on what issues the parties remain at odds.
- Q.3. If negotiations have concluded, please indicate whether you have any objections to any of the issues listed in your reply to Q.2. being included within the scope of the dispute to be determined.
- Q.4. If you have any such objections, please set out the basis for same.

We ask that Eircom respond to these queries on or before 12pm on the 7 February 2022. A non-confidential version of the response is also required.

Yours sincerely,

Shane McKiernan
Case Officer
Wholesale Compliance

Appendix: 3.5 Letter from Eircom to ComReg 7 February 2022 (non-confidential)

Case COM-22-718: Dispute between BT and Eircom
- Eircom response to ComReg questions of 4th February 2022

Q.1. Please confirm from Eircom's perspective, whether negotiations between Eircom and BT are still ongoing in respect of the duct access order, the subject of this dispute.

Eircom response: open eir Wholesale advised BT as to what it considered to be an appropriate way forward on 14 January 2022. BT has not responded to that email. From open eir's perspective the situation remains open.

Q.2. If negotiations have concluded, please indicate whether the parties have reached a resolution in respect of any issues and on what issues the parties remain at odds.

Eircom response: Please see response to question 1. Open eir Wholesale has requested three assurances from BT that it will consume CEI access as defined in D10/18. These are:

-No ingress or egress point will be included for the purpose of serving the mast access site

-An Undertaking (e.g. MNO) will not be connected

-Network-network interconnect connections will not be provided

To date the assurances have not been received.

Q.3. If negotiations have concluded, please indicate whether you have any objections to any of the issues listed in your reply to Q.2. being included within the scope of the dispute to be determined.

Eircom response: The outstanding matters appear to sit within the scope of the dispute.

Q.4. If you have any such objections, please set out the basis for same.

Eircom response: Not applicable.

Appendix: 3.6 Letter from BT to ComReg 7 February 2022 (non- confidential)



7 February 2022

Shane McKiernan
Case Officer Wholesale Compliance
Commission for Communications Regulation
1 Dockland Central
Guild Street
Dublin 1
D01 E4X0

RE: Case COM-22-718 – Dispute between BT and Eircom

Dear Shane,

Thank you for your letter of the 4th of February 2022 concerning this dispute and I would like to offer BT's response below to you five questions:

Q.1. Please confirm whether our assumption in respect of the “three statements” is correct.

BT Response

BT confirm ComReg's understanding that the three statements in your letter of the 4th of February 2022 are as per the email from [REDACTED] to [REDACTED] of the 10th of January 2022 ✂

Q.2. Please confirm from BT's perspective, whether negotiations between Eircom and BT are still ongoing in respect of the duct access order, the subject of this dispute.

BT Response

We can confirm from BT's perspective the negotiations between Eircom and BT are over in respect of the three issues as per question 1. We checked with Eircom several times in respect of the mobile issue (2 of the bullets and the third relates to these), including supplying our interpretation of the regulation to ensure Eircom were fully aware of what they were saying. ✂

We also need to make a correction to the covering email with the dispute that indicated that we had let Eircom know that we were going to issue a dispute. This was an error however we did inform their product team and we copied their Director of Regulatory Affairs in our dispute application to ComReg. However, it would have been abundantly clear that our regulatory team were engaged in this issue.

Q.3. If negotiations have concluded, please indicate whether the parties have reached a resolution in respect of any issues and on what issues the parties remain at odds.

BT Response

We consider negotiations have concluded without resolution, ✂ Please also see our dispute for the issue in disagreement and we accept the items in question 1 as they are so closely related.

Q.4. If negotiations have concluded, please indicate whether you have any objections to any of the issues listed in your reply to Q.3. being included within the scope of the dispute to be determined.

BT Response

We have no objections to any of the issues listed in Q1/Q3 being included within the scope of the dispute however we don't want other issues included unless asked.

Q.5. If you have any such objections, please set out the basis for same.

We do not object to the issues in question 1 or 3 being added but we do not want complexity added that will cause the dispute to take more than 4 months. ✂.

Yours sincerely

[Redacted signature]

[Redacted name]

[Redacted title]

Phone: [Redacted]

Email: [Redacted]@BT.com

Appendix: 3.7 Letter from ComReg to Eircom 9 February 2022 Dispute Accepted



██████████
Eircom Limited
2022 Bianconi Avenue
Citywest Business Campus
Dublin 24
D24 HX03

BY E-MAIL¹

09 February 2022

Re: Case COM-22-718 - Dispute between BT and Eircom

Dear ██████████,

On 25 January 2022, BT Communications Ireland Limited (“BT”) submitted a dispute (“the Dispute”) to the Commission for Communications Regulation (“ComReg”). The Dispute relates to Eircom Limited (“Eircom”) providing BT with access to Civil Engineering Infrastructure (“CEI”)². The dispute was allocated a case number COM-22-718.

Following consideration of the request, ComReg has accepted the Dispute pursuant to Regulation 31 of the Framework Regulations³. ComReg Document 10/18R⁴ sets out the procedure for disputes under Regulation 31 of the Framework Regulations.

This is a dispute arising between undertakings⁵ providing electronic communications networks or services in the State, in connection with existing obligations under the Access Regulations⁶. As set out at Regulation 31(2) of the Framework Regulations, in the event of a dispute ComReg shall, at the request of either party, initiate an investigation of the dispute and as soon as possible but, except in circumstances which the ComReg considers exceptional, within 4 months from the date on which the dispute was notified to it by either party, make a determination aimed at ensuring compliance with obligations to resolve the dispute.

ComReg defines the scope of the Dispute as follows:

Whether Eircom is permitted to require BT to agree to the following conditions:

1. *“No ingress or egress point will be included for the purpose of serving the mast access site”;*
2. *“An Undertaking (e.g. MNO) will not be connected”;*

¹ ██████████y@eir.ie

² CEI is defined at Section 2.1 of the Decision Instrument at Appendix 20 of ComReg decision D10/18 (“the WLA DI”).

³ European Communities (Electronic Communications Networks and Services) (Framework) Regulations, 2011 (“the Framework Regulations”).

⁴ Document No 10/18R “Dispute Resolution Procedures - Framework Regulations - (Response to Consultation Document No. 09/85).

⁵ “Undertaking(s)” shall have the same meaning as under Regulation 2 of the Framework Regulations.

⁶ European Communities (Electronic Communications Networks and Services) (Access) Regulations, 2011 (“the Access Regulations”).

3. *“Network-network interconnect connections will not be provided”,*

prior to Eircom supplying Access to CEI to BT at the Kilbarry Mast Site, Old Whitechurch Rd, Cork.

A copy of the non-confidential dispute submission from BT has been attached. This includes:

1. BT's non-confidential dispute submission of 25 January 2022
2. Emails attached to the dispute submission of 25 January 2022
3. Letter from BT to ComReg of 7 February 2022

We request that Eircom make representations, if any, by close of business on 22 February 2022.

Any representations made by Eircom in respect of this dispute must be provided by email to shane.mckiernan@comreg.ie.

Eircom's representations may be shared (in full or in part) with the other party during the analysis of the dispute or as part of a published determination. Accordingly, when submitting representations, which sections of the submission are confidential should be clearly identified and a non-confidential version of Eircom's submission provided, which ComReg may share with BT, and/or publish in full or as part of a published determination.

Yours sincerely,

Shane McKiernan
Case Officer
Wholesale Compliance

Appendix: 3.8 Letter from ComReg to BT 9 February 2022 Dispute Accepted



Regulatory Affairs BT Ireland
BT Communications Ireland Limited.
Registered office: Grand Canal Plaza,
Upper Grand Canal Street,
Dublin 4

BYE-MAIL¹

09 February 2022

Re: Case COM-22-718 - Dispute between BT and Eircom

Dear [REDACTED],

On 25 January 2022, BT Communications Ireland Limited (“BT”) submitted a dispute (“the Dispute”) to the Commission for Communications Regulation (“ComReg”). The Dispute relates to Eircom Limited (“Eircom”) providing BT with access to Civil Engineering Infrastructure (“CEI”)². The dispute was allocated case number COM-22-718.

Following consideration of the request, ComReg has accepted the Dispute pursuant to Regulation 31 of the Framework Regulations³. ComReg Document 10/18R⁴ sets out the procedure for disputes under Regulation 31 of the Framework Regulations.

This is a dispute arising between undertakings⁵ providing electronic communications networks or services in the State, in connection with existing obligations under the Access Regulations⁶. As set out at Regulation 31(2) of the Framework Regulations, in the event of a dispute ComReg shall, at the request of either party, initiate an investigation of the dispute and as soon as possible but, except in circumstances which ComReg considers exceptional, within 4 months from the date on which the dispute was notified to it by either party, make a determination aimed at ensuring compliance with obligations to resolve the dispute.

ComReg defines the scope of the Dispute as follows:

Whether Eircom is permitted to require BT to agree to the following conditions:

1. “No ingress or egress point will be included for the purpose of serving the mast access site”;
2. “An Undertaking (e.g. MNO) will not be connected”;

¹ [REDACTED]@bt.com

² CEI is defined at Section 2.1 of the Decision Instrument at Appendix 20 of ComReg decision D10/18 (“the WLA DI”).

³ European Communities (Electronic Communications Networks and Services) (Framework) Regulations, 2011 (“the Framework Regulations”).

⁴ Document No 10/18R “Dispute Resolution Procedures - Framework Regulations - (Response to Consultation Document No. 09/85).

⁵ “Undertaking(s)” shall have the same meaning as under Regulation 2 of the Framework Regulations.

⁶ European Communities (Electronic Communications Networks and Services) (Access) Regulations, 2011 (“the Access Regulations”).



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

3. *“Network-network interconnect connections will not be provided”,*

prior to Eircom supplying Access to CEI to BT at the Kilbarry Mast Site, Old Whitechurch Rd, Cork.

A copy of the non-confidential dispute submission from BT has been provided to Eircom. Eircom has been afforded an opportunity to make representations, if any, by 22 February 2022.

As part of the investigation of the dispute, further submissions from BT may be required. These submissions may be shared (in full or in part) with the other party during the analysis of the dispute or as part of a published determination. Accordingly, when submitting representations, which sections of the submission are confidential should be clearly identified and a non-confidential version of BT's submission provided, which ComReg may share with Eircom, and/or publish in full or as part of a published determination.

Yours sincerely,

Shane McKiernan
Case Officer
Wholesale Compliance

Appendix: 3.9 Letter from Eircom to ComReg 22 February 2022 Representations in response to BT dispute

**CASE COM-22-718
DISPUTE RESOLUTION PROCEDURE
PURSUANT TO COMREG D10/18R**

22ND FEBRUARY 2022

CASE COM-22-718 REQUEST FOR REPRESENTATIONS

On 9th February 2022, ComReg notified Eircom Limited ('Eircom') that it had accepted a Dispute from BT Communications Ireland Limited ('BT') pursuant to Regulation 31 of the Framework Regulations 2011, in accordance with the procedures set out in ComReg's Dispute Resolution Procedure, in Document 10/18R.

Pursuant to the 10/18R procedure, ComReg requested that Eircom provide representations by 22nd February 2022. Eircom's initial representations are set out below. In light of the very limited time provided to Eircom to prepare these representations, Eircom fully reserves its right to make further representations as the procedure progresses, to be informed of, and given the opportunity to respond to, any further representations by BT, and notes in particular that it will be given the opportunity to make submissions on any draft determination prepared by ComReg.

As statutory regulator, ComReg has a legal obligation to act fairly and proportionately in both the conduct of this process, and in making any determination. This includes ensuring that Eircom is informed of any case against it, and given the opportunity to respond.

SCOPE OF THE DISPUTE

Eircom understands the Scope of the Dispute is as set out in ComReg's letter of 9th February 2022 namely:

'Whether Eircom is permitted to require BT to agree to the following conditions:

- 1. No ingress or egress point will be included for the purpose of serving the mast access site*
- 2. An Undertaking (e.g. MNO) will not be connected*
- 3. Network-network interconnect connections will not be provided*

BT SUBMISSIONS

Eircom understands that BT's position is that Clauses 7.4 and 7.6 of Decision D10/18 extend to require Eircom to provide Duct Access to an Access Seeker in order for that Access Seeker to provide network-network interconnection to an Undertaking (an MNO).

EIRCOM INITIAL REPRESENTATIONS

Legal framework for the imposition of CEI Access obligations

Eircom's Civil Engineering Infrastructure ('CEI') is Eircom's private property, built at Eircom's expense. In the ordinary course as a matter of law, it would have no obligation to permit any third party to access its private property. It is only as a result of the finding of SMP in Decision D10/18 that ComReg can legally require Eircom to provide Access to its CEI to third parties. Such Access, consisting as it does of an abridgement of Eircom's constitutionally protected property rights, must be strictly construed, and go no further than what is permitted by the governing legislation, namely the Framework and Access Regulations, the relevant European Directives, and, since December 2020, the provisions of the European Electronic Communications Code (the 'Code'). The European Commission has confirmed that insofar as possible the Code is to be treated by ComReg as directly effective in Ireland, even prior to transposition by the Irish government.

Provisions of Section 7 relating to Duct Access

Section 7.1 of Decision D10/18 imposes a general obligation on Eircom to meet

'all reasonable requests from Undertakings for the provision of Access to Wholesale Local Access.'

Section 7.2 goes on to specify specific categories of Access including, at Section 7.2(xiii)

'Civil Engineering Infrastructure and in particular the following a. Duct Access.'

'Duct' is defined as a conduit for carrying cables used to deliver services to End Users:

'an underground pipe or conduit that carries or is capable of carrying cables that are in turn used to deliver electronic communications services to End Users'¹

'End Users are defined as

'shall have the same meaning as under Regulation 2 of the Framework Regulations....deemed to include any natural or legal person who facilitates or intends to facilitate the provision of public communications networks...to other End Users and who is not acting as an Undertaking'.

In turn the Framework Regulations (and the underlying Directive) define End-User as

¹ Note also that a Sub-Duct is defined as *'a tube..inserted in a Duct'* i.e. the same restrictions apply to Sub-Duct

'a user not providing public communications networks or publicly available electronic communications services'

The above definitions make clear that a 'Duct' covered by Eircom's Access obligation is solely one used by an Undertaking to carry cables to deliver services to End Users, not to another Undertaking. For this reason, Eircom considers that a 'duct' (or sub-duct) to be used to provide services from one Undertaking to another Undertaking (as is proposed by BT here) does not fall within the definition of 'Duct' set out in Decision D10/18. Eircom does not therefore have an Access obligation to provide this type of Duct or Sub-Duct.

Eircom further notes that this aligns with statements by ComReg in its Response to Consultation Document published alongside Decision D10/18, including for example at paragraph 7.381 which states that,

'CEI access is available to enable Access Seekers deploy their access network' (which does not include backhaul)

See also paragraph 7.376 where ComReg notes that

'Colt acknowledged that CEI is intended for the deployment of access networks'

as well as the reference to Appendix 12 setting out the scope of the Duct Access obligation.

Eircom notes that BT relies on the provisions of section 7.4 and 7.6 to claim that the Duct Access obligation may be extended to mandate use of Ducts to provide backhaul to a mobile operator. However, neither provision supports this interpretation, particularly when the binding definitions of Duct and End User are taken into account, together with the statements in the Response to Consultation.

Clause 7.4 provides that

'Without prejudice to the generality of Sections 7.1 and 7.2 of this Decision Instrument and further to Section 7.2(xiii) above, Eircom shall not impose unreasonable restrictions on Access to its Civil Engineering Infrastructure where such Access is required for the purpose of the provision by Undertakings of services in the Relevant Market or in other downstream markets.'

This Clause relates to the imposition of restrictions on Access under Clause 7.2(xiii). However, as noted above, Eircom considers that it is clear that Ducts to supply Undertakings are not covered by Section 7.2(xiii) in the first place, in light of how Duct is defined (and as supported by ComReg's statements in paragraphs 7.381 and 7.376.)

Clause 7.6 provides that

'The access obligations set out in this Section 7 shall apply irrespective of the electronic communications service that the requested access product, service or facility shall be used to provide. For the avoidance of doubt, the purpose for which the access request is made is not limited to the provision by the Undertaking of services to End Users'

This provision applies to all forms of Access requests under Section 7, which include e.g. Access to VUA, Co-Location and Migration. However, this does not change the fundamental point that the definition of a Duct for the purposes of Section 7.2(xiii) is limited to ducts providing services to End Users, so that a duct to provide backhaul services to an MNO Undertaking is simply not covered in the first instance.

Finally, BT rely on a statement in the initial 2016 Consultation document 16/96. However, with respect, the fact that ComReg may have expressed an initial view in an early consultation document, cannot override the explicit language of a Decision Instrument adopted two years later, after consideration of submissions received. The statement is also clearly not consistent with the statements made in the subsequent Response to Consultation cited above, which indicate that access to CEI is for the purposes of deployment of access networks i.e. not the provision of backhaul to Undertakings.

Lastly, Eircom notes that its response to BT was based on its understanding of the definitions in Decision D10/18, which provide that the type of duct requested is not covered by Section 7, meaning that it was not a section 7 Access request. For that reason Eircom has not carried out the second step which is triggered when a qualifying Access request is made, namely to assess reasonableness.

Appendix: 3.10 Letter from ComReg to BT 2 March 2022



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

██████████
Regulatory Affairs BT Ireland
BT Communications Ireland Limited.
Registered office: Grand Canal Plaza,
Upper Grand Canal Street,
Dublin 4

BY E-MAIL¹

02 March 2022

Re: Case COM-22-718 - Dispute between BT and Eircom

Dear ██████████,

As you are aware, on 25 January 2022, BT Communications Ireland Limited ("BT") submitted a dispute ("the Dispute") to the Commission for Communications Regulation ("ComReg"). ComReg wrote to you on 04 February 2022 to confirm acceptance of the dispute.

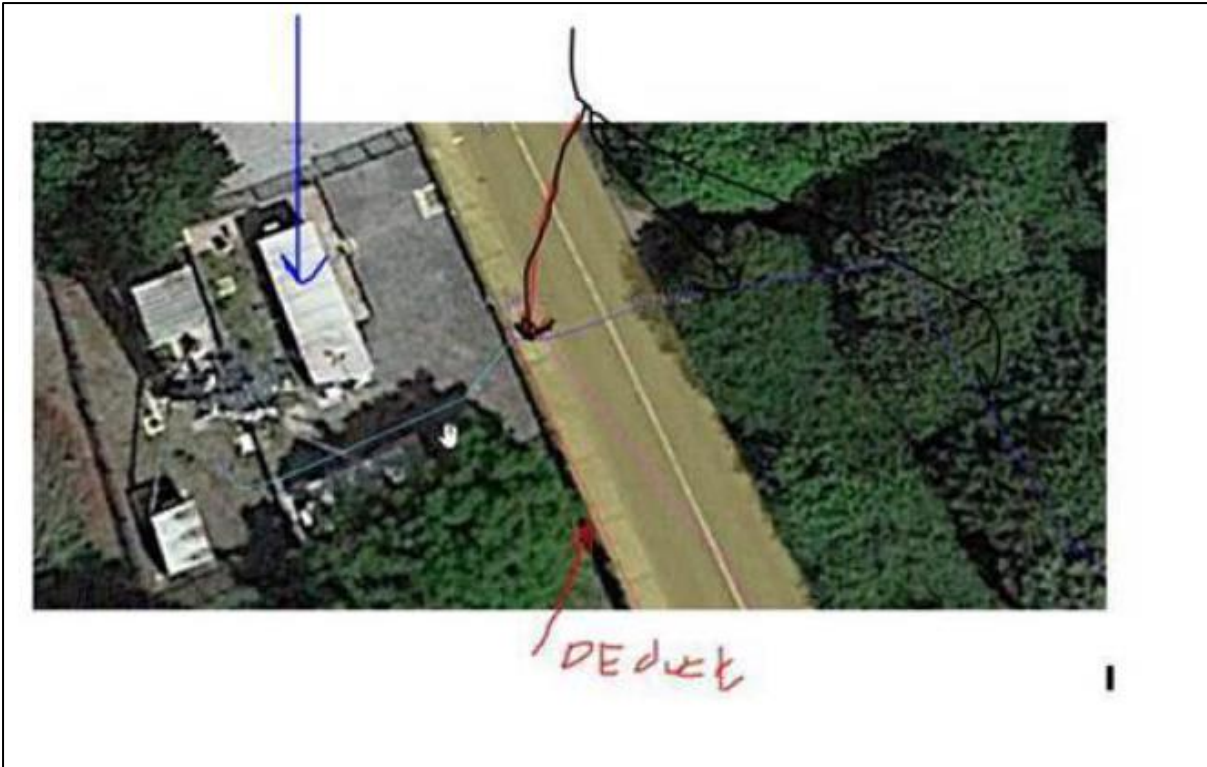
Based on the email from BT to Eircom of 5 November 2021, the request was for Access to Eircom Sub-duct. Ingress point at UUB3095 Alfred Street Cork; Egressing point at UUB5060 Old Whitechurch Road Cork (4km).

A further email from BT to Eircom of 8 December 2021 included the annotated arial image below showing the mast site; Eircom Ducting and existing BT network from a "point of interconnect" outside the mast site.

██████████@bt.com

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

1 Lárcheantar na nDugaí, Sráid na nGildeanna, BÁC 1, Éire, D01 E4X0.
One Dockland Central, Guild Street, Dublin 1, Ireland, D01 E4X0.
Teil | Tel +353 1 804 9600 Suíomh | Web www.comreg.ie



Extract from BT email of 8 December 2021 referring to the annotated arial image –

- *“The blue arrow points to the mast site.*
- *“The red arrow points to the OE duct path that we wish to use - coming up from Cork city.”*
- *“The black arrow points to BT network that runs today from a point of interconnect outside the mast site across the road, south and then north/north east to serve several customers that we have.”*

Based on our understanding of the annotated arial image and the statement “...BT network that runs today from a point of interconnect outside the mast site across the road, south and then north/north east”, ComReg has the following queries

1. Please explain the relevance of BT's annotated arial image of 8 December 2021. Please provide a clearer image of the mast site with the OpenEir and BT infrastructure at and around the site clearly marked.
2. Based on BT's annotated arial image of 8 December 2021, it appears that BT has infrastructure and a "point of interconnect" immediately at the mast site -
 - a. What BT infrastructure is present at the mast site (ducting, chambers etc.)?
 - b. What does BT mean by a "point of interconnect"?
 - c. Is the BT infrastructure capable of carrying BT fibres?
 - d. If BT has infrastructure capable of carrying BT fibres at the mast site, please explain the necessity to seek access to Eircom Subduct from UUB3095 to UUB5060 as requested on 3 November 2021?
3. Who owns or controls the infrastructure within the Mast Site compound? How does BT intend to access the Mast Site from UUB5060 to equipment within the Mast Site compound?

4. In its email to Eircom of 3 November 2021 BT refers to an "*Attached Map in CAD and PDF* document and an "*attached spreadsheet file*". Please provide copies of these documents.
5. In its email to Eircom of 7 December 2021, BT states that "*We can point to OE using the OE duct network to supply us (at least) with 30 leased lines to mast sites*". Please provide detail on the leased lines to mast sites to which BT refers.
6. In the email of 6 January from BT to Eircom BT states that "*The route from Penrose Wharf to customers in the Blackrock area and the Kilbarry Industrial Estate are valid uses of CEI.*" Please explain what is meant by this statement. Particularly -
 - a. Does BT have existing customers in the Kilbarry Industrial Estate? If so, what types of service do these customers have presently and using what infrastructure (fibres cables etc)?
 - b. Please explain the relevance of the reference to the Blackrock area. Blackrock is south of the River Lee in the south-east of Cork city. It is not near Penrose Wharf; the Kilbarry Industrial Estate or; the Mast Site compound on Old Whitechurch Road.
7. Please indicate where it is intended that the BT fibre will go after it egresses the Eircom Sub-duct at UUB3095?

As communicated to BT in ComReg's letter of 9 February 2022, a copy of the non-confidential dispute submission from BT was provided to Eircom to afford Eircom an opportunity to make representations. Please find enclosed Eircom's non-confidential response dated 22 February 2022. Please now furnish to Comreg, any response or further representations that you wish to make, if any.

Please note that in the interest of an expedited determination ComReg will submit queries to the parties as they arise and require prompt responses. In that respect, ComReg requires a response by 5pm on 04 March 2022 and further queries may follow.

Yours sincerely,

Shane McKiernan
Case Officer
Wholesale Compliance

Appendix: 3.11 Email from Eircom to BT 14 January 2022 (non-confidential)

From: Sharon Fitzpatrick
Sent: Monday, March 14, 2022 3:43 PM
To: [REDACTED]
Cc: Shane McKiernan; [REDACTED]; Michael Patterson
Subject: FW: [Confidential] Duct Access Order - Project/Bespoke sub-duct - Cork

[REDACTED],

See email below from Eircom to BT of 14 January.

Kind regards
Sharon

From: [REDACTED]@eir.ie>
Sent: Monday 14 March 2022 15:37
To: Sharon Fitzpatrick <sharon.fitzpatrick@comreg.ie>
Subject: Fwd: Duct Access Order - Project/Bespoke sub-duct - Cork

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and believe the content is safe.

Hi Sharon,

Copy of [REDACTED] email as requested.

Regards,
[REDACTED]

From: [REDACTED]
Sent: 14 January 2022 10:33
To: [REDACTED]
Cc: [REDACTED]@bt.com>
Subject: Re: Duct Access Order - Project/Bespoke sub-duct - Cork

Hi [REDACTED],

Thanks again for your mail of 11 January.

In order to make progress, could you please confirm that BT's revised requirement as outlined in your mail conforms with each of the following requirements?

- No ingress or egress point will be included for the purpose of serving the mast access site
- An Undertaking (e.g. MNO) will not be connected
- Network-network interconnect connections will not be provided

Should you have any queries please do not hesitate to contact me.

Thanks,

█.

█

M: █
█

open eir, █, Ground Floor, 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03.

Confidential Regulated Information

Confidential Wholesale Customer Information

█

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Tá an ríomhphost seo, chomh maith le haon iatáin a bhaineann leis faoi rún agus d'fhéadfadh leis a bheith faoi phribhléid nó cosanta ó aon nochtadh. Is don seolaí(aithe) ainmnithe thuas amháin é. Níl sé ceadaithe go mbeidh rochtain ag éinne eile ar an ríomhphost seo. Más rud é nach tusa an faighteoir ainmnithe, ná cló amach, léigh, cóipeáil, nocht d'éinne nó bain úsáid as an eolas sa ríomhphost seo in aon tslí eile, le do thoil. Más rud é go bhfuair tú an ríomhphost seo trí earráid, dean teagmháil leis an seoltóir láithreach agus scríos an t-ábhar ina iomlán, bíodh sé i gcóip leictreonach nó chrua.

Appendix: 3.12 Letter from BT to ComReg 7 March 2022 (non- confidential)

BT Response to ComReg's questions of the 2nd March 2022 -

Issue 1 Confidential – 7th March 2022

Issue 2 Non-Confidential Version - 13th April 2022 – This is Issue 2

Introduction

Prior to responding to the ComReg questions of the 2nd March 2022 we will respond to Eircom's non-confidential response separately and after we have completed consultation with our legal team.

✂

Please find below responses to each of the questions posed.

1. The picture was included after OE refused to supply the duct route. BT offered a picture of the immediate area to evidence that it could technically use the requested route while standing down serving the Mast Site until agreement was reached. A clearer picture is below.

Fig. 1 – ✂

2. ✂ The BT chamber at the site connects into the ESB owned duct for onward connectivity to the Mast. ✂
3. The ESB own and control access to the Mast Site compound. OLO's would typically engage with ESB to arrange for ESB to connect the BT fibres to the customer services.
4. See attached e-mail from ✂
5. Below see an extract of a recent OE bill detailing the physical services that BT buys from OE to serve approx 30 customer sites. These are SEA and WDM services. ComReg will be aware that there's at least 1*WES attached to each SEA. To simplify the bill, BT have combined two billing elements (Zonal + Local components) into one MRC on two services ✂.

✂.

6. BT uses the magenta route in Fig 1 passing by the Mast Site to go east to Kilbarry Industrial Estate and then back onto the railway line. The magenta route in Fig 1 is the green route in Fig 2 below. This leg is BT's diverse path out of Cork City - critical for customers such as ✂. ✂.

Fig 2. - ✂

The proposed route was from ✂ and to the UUB outside the Mast Site. ✂. ✂

7. UUB3095 is the chamber closest to BT's ✂. That is the end of the route.

Extract of the questions for reference.

1. Please explain the relevance of BT's annotated arial image of 8 December 2021. Please provide a clearer image of the mast site with the OpenEir and BT infrastructure at and around the site clearly marked.
2. Based on BT's annotated arial image of 8 December 2021, it appears that BT has infrastructure and a "point of interconnect" immediately at the mast site -
 - a. What BT infrastructure is present at the mast site (ducting, chambers etc.)?
 - b. What does BT mean by a "point of interconnect"?
 - c. Is the BT infrastructure capable of carrying BT fibres?
 - d. If BT has infrastructure capable of carrying BT fibres at the mast site, please explain the necessity to seek access to Eircom Subduct from UUB3095 to UUB5060 as requested on 3 November 2021?
3. Who owns or controls the infrastructure within the Mast Site compound? How does BT intend to access the Mast Site from **UUB5060** to equipment within the Mast Site compound?
4. In its email to Eircom of 3 November 2021 BT refers to an "*Attached Map in CAD and PDF* document and an "*attached spreadsheet file*". Please provide copies of these documents.
5. In its email to Eircom of 7 December 2021, BT states that "*We can point to OE using the OE duct network to supply us (at least) with 30 leased lines to mast sites*". Please provide detail on the leased lines to mast sites to which BT refers.
6. In the email of 6 January from BT to Eircom BT states that "*The route from Penrose Wharf to customers in the Blackrock area and the Kilbarry Industrial Estate are valid uses of CEI.*" Please explain what is meant by this statement. Particularly -
 - a. Does BT have existing customers in the Kilbarry Industrial Estate? If so, what types of service do these customers have presently and using what infrastructure (fibres cables etc)?
 - b. Please explain the relevance of the reference to the Blackrock area. Blackrock is south of the River Lee in the south-east of Cork city. It is not near Penrose Wharf; the Kilbarry Industrial Estate or; the Mast Site compound on Old Whitechurch Road.
7. Please indicate where it is intended that the BT fibre will go after it egresses the Eircom Sub-duct at UUB3095?

End

Appendix: 3.13 Email from BT to ComReg 1 April 2022 (non-confidential)

From: [REDACTED]@bt.com
Sent: Friday, April 1, 2022 10:48 AM
To: Shane McKiernan
Cc: Michael Patterson; Sharon Fitzpatrick; [REDACTED]
Subject: RE: [Confidential] COM-22-718

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Shane and all,

Having reviewed Eircom's representations dated 22 February 2022, BT Ireland maintains its position in relation to this dispute as set out in our original submissions dated 25 January 2022 and 7 March 2022.

The restrictive nature of access to Eircom's Civil Engineering Infrastructure, in particular Duct access, is in clear conflict with S.I. No. 334 of 2011 Access Regulations which seeks to promote sustainable competition, promote efficient innovation and give maximum benefit to end-users. In light of BT's unfairly disadvantageous position, we request that ComReg reaches a determination on the dispute expeditiously.

Kind regards
[REDACTED]

From: [REDACTED]
Sent: 31 March 2022 11:56
To: Shane McKiernan <Shane.Mckiernan@comreg.ie>
Cc: Michael Patterson <michael.patterson@comreg.ie>; Sharon Fitzpatrick <sharon.fitzpatrick@comreg.ie>; [REDACTED]
Subject: RE: [Confidential] COM-22-718

Shane and all,

Our initial view is we are going to provide a short response to the Eircom position and we are drafting now for a meeting with our legal team this afternoon.

We will try to issue ASAP but its appropriate we take this through our legal team.
[REDACTED]

From: [REDACTED]
Sent: 31 March 2022 10:55
To: Shane McKiernan <Shane.Mckiernan@comreg.ie>
Cc: Michael Patterson <michael.patterson@comreg.ie>; Sharon Fitzpatrick <sharon.fitzpatrick@comreg.ie>
Subject: RE: [Confidential] COM-22-718

Shane,

Apologies but I was on leave on Monday and had to complete a difficult 13D1 by COP yesterday hence we will take this up with our legal team today.

I trust this is ok.

From: Shane McKiernan <Shane.Mckiernan@comreg.ie>

Sent: 28 March 2022 10:12

To: [REDACTED] <[REDACTED]@bt.com>

Cc: Michael Patterson <michael.patterson@comreg.ie>; Sharon Fitzpatrick <sharon.fitzpatrick@comreg.ie>

Subject: [Confidential] COM-22-718

In your email dated 7 March 2022 (attached) in response to ComReg's letter dated 2 March 2022, you indicated that "We will reply separately to the Eircom non-confidential response once we have completed consultation with our lawyers." ComReg has yet to receive any further response from BT.

As you are aware, parties to a dispute are required to expedite their responses to allow the matter to be determined in 4 months. In that regard, please confirm whether BT will be making any further submissions at this time. If so, please do so by COB on Tuesday 29 March 2022.

BT will of course be given opportunity to review and response to the Draft Determination once it has been issued.

Best regards,

Shane McKiernan

Compliance Analyst

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

1 Lárcheantar na nDugaí, Sráid na nGildeanna, BÁC 1, Éire, D01 E4X0
One Dockland Central, Guild Street, Dublin 1, Ireland, D01 E4X0

Contact Number: 0860753005

Rphost | Email Shane.Mckiernan@comreg.ie
Suíomh | Website www.comreg.ie

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Tá an ríomhphost seo, chomh maith le haon iatáin a bhaineann leis faoi rún agus d'fhéadfadh leis a bheith faoi phribhléid nó cosanta ó aon nochtadh. Is don seolaí(aithe) ainmnithe thuas amháin é. Níl sé ceadaithe go mbeidh rochtain ag éinne eile ar an ríomhphost seo. Más rud é nach tusa an faighteoir ainmnithe, ná cló amach, léigh, cóipeáil, nocht d'éinne nó bain úsáid as an eolas sa ríomhphost seo in aon tslí eile, le do thoil. Más rud é go bhfuair tú an ríomhphost seo trí earráid, dean teagmháil leis an seoltóir láithreach agus scríos an t-ábhar ina iomlán, bíodh sé i gcóip leictreonach nó chrua.

Appendix: 3.14 Eircom Response to Draft Determination (non-confidential)

Case COM-22-718
Dispute resolution procedure pursuant to ComReg D10/18R

Eircom comments on the draft Determination

As requested, further to ComReg Document 22/26 dated 14th April 2022 setting out ComReg's draft Determination in the above Case COM-22-718, ('the 'draft Determination'), Eircom's comments on the draft Determination.

Eircom is disappointed by ComReg's proposed Determination that a request by BT to use Eircom's CEI to install mobile backhaul for Three now falls within the scope of Eircom's CEI Access obligations under section 7 of ComReg Decision D10/18.

As set out in Eircom's previous submissions, Eircom had understood that Access by Access Seekers to Eircom's Ducts, being the infrastructure used for Eircom's local access network, could only be used for purposes related to Access Seekers providing electronic communications services to End Users; not for the provision of mobile backhaul to Undertakings such as Three, as is envisaged by BT. Eircom's understanding was based on the restrictions of the definition of Duct (as set out in its previous submission), together with statements by ComReg in its Consultation document. Eircom remains of the view that the text of D10/18 does not clearly support the extended form of CEI Access now contended for, given the ambiguity introduced by the provisions of D10/18 previously cited.

Eircom notes that the section of the WHQA Consultation response relied upon by ComReg in the draft Determination acknowledges that four respondents to that consultation had requested that ComReg now legislate for '*unfettered Access*' to Eircom's Ducts and Poles, with a '*full suite of Duct and Pole access regulation*'; indicating that they also did not appear to consider the provisions of D10/18 as mandating the extent of the Access now claimed (see A1.806 of the WHQA Response to Consultation Document D20/06). Further, the implications of such an extended form of CEI Access to Ducts were not set out or considered in ComReg's consultation process leading to the Decision. Eircom must therefore reserve its right to oppose and if necessary appeal, any similar provision in future legislation.

Without prejudice to its views as set out above, and some further comments below however, in light of ComReg's draft Determination that Eircom is required to permit Access to BT for mobile backhaul in the present case, Eircom will now liaise with BT with a view to progressing its Access request.

As Eircom is accepting the draft Determination in the present case, it does not propose responding in detail to various comments and assertions made in the draft Determination; this should not be taken however as acceptance of any particular statement. It does wish to note the following specific points:

'No technical or other reasons'. In paragraph 1.7(d) ComReg state that '*there are no technical or other reasons why Eircom cannot provide the Access requested by BT in respect of the Requested Route.*'

Case COM-22-718
Dispute resolution procedure pursuant to ComReg D10/18R

Eircom comments on the draft Determination

With respect, under D10/18 it is a matter for the SMP operator to assess, whether a particular Access request meets the criterion of being a *'reasonable'* request, which includes assessing its technical and economic feasibility. As the present dispute related to whether the *type* of proposed use fell within the scope of section 7 at all, there is no basis for ComReg to go further in the draft Determination and also purport to, in addition, reach a conclusion on the reasonableness assessment, assessing technical etc, feasibility. Per D10/18 this is a matter for the SMP operator to assess.

Reliance on comments in Appendix 1 of WHQA Document D20/06. ComReg appears to place reliance on statements made by it in Appendix 1 of the Response to Consultation on WHQA, to contend for its current interpretation of D10/18. For the avoidance of any doubt therefore, as a matter of law, ComReg cannot amend or extend the meaning of a prior Decision in another market; only a subsequent Decision explicitly amending a prior Decision can do that.

'Ladder of investment'. In paragraph 3.6 ComReg repeats an argument it has made elsewhere, and in respect of which Eircom has flagged its concerns, when it states that Access to CEI is *'an important aspect of facilitating entry in telecommunications markets. By allowing use of the SMP Undertaking's network at the highest rung of the 'ladder of investment'*

ComReg's exclusive focus on the installation of CEI in Eircom's network and subsequent rental of access, as the 'highest rung' of investment in market entry, discounts the reality of market competition in Ireland. The telecommunications market in Ireland is characterised by the fact that two of the largest operators, Virgin Media and SIRO have demonstrated a clear strategy of continuing to build out their own CEI infrastructure, not using Eircom's CEI other than as infill occasionally. Failure to take account of these aspects of telecommunications infrastructure competition risks leading to flawed regulatory decision-making that unfairly distorts the competitive landscape, in particular by an over-emphasis on promoting and extending Access to Eircom CEI at all costs, regardless of whether it is fair, proportionate or warranted in the circumstances of the Irish market.

Eircom further notes that ComReg does not appear to be taking steps to encourage or enforce take up of access to other operators' CEI infrastructure to *'facilitate entry into telecommunications markets'* e.g. by implementation of SI 391/2016 European Union (Reduction of Cost of Deploying High-Speed Public Communications Networks) Regulations 2016. It leaves Eircom as the only operator being required in practice by ComReg to incur the burden of costs and work involved in making available its CEI, while not enforcing access obligations on other equally large infrastructure owners. This apparently exclusive focus on regulating only Eircom's CEI, risks giving the impression that ComReg is not in fact focussed on facilitating entry to the market, and prioritises promoting competitors rather than competition or end-users.