



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Information Notice

ComReg Wholesale Compliance Cases 481 and 568

Information Notice

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Commission for Communications Regulation

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1. In its Electronic Communications Strategy Statement 2017-2019¹, the Commission for Communications Regulation (“ComReg”) set out the general context for enforcement action in relation to wholesale obligations. ComReg stated that it “...*may impose obligations on undertakings where they are found to have Significant Market Power (SMP). The obligations are wholesale remedies to competition problems identified in the regulated markets and are aimed at promoting efficiency, sustainable competition, efficient investment and innovation and to give the maximum benefit to end-users...*”²
2. Regarding wholesale enforcement actions, ComReg stated that “*In wholesale regulation, enforcement is prioritised in cases where an SMP operator’s behaviour has greatest potential to harm competition – both directly and by reducing the confidence of other operators in the effectiveness and predictability of the regulatory regime.*”³
3. With reference to the Information Notice published by ComReg on 22 June 2017⁴, ComReg applied to the High Court, pursuant to Regulation 19(4) of the (European Communities) (Electronic Communications Networks and Services) (Access) Regulations 2011 (“the Access Regulations”) ⁵, for declarations of non-compliance and orders that Eircom Limited (“Eircom”) pay to ComReg amounts by way of financial penalty⁶ (the “Enforcement Proceedings”) ⁷ in relation to five breaches of obligations in three regulated markets.
4. Where ComReg has applied for an order for a financial penalty, ComReg may make an application to the High Court regarding the appropriate amount of financial penalty but it is the Court which decides the final amount.
5. In the Enforcement Proceedings, ComReg has made an application to the High Court that the following orders for financial penalties be issued:
 - a. €5,011,943 in respect of a breach of non-discrimination obligations in Decision D06/11⁸;
 - b. €1,587,210 in respect of a breach of non-discrimination obligations in Decision D05/10⁹;
 - c. €986,726 in respect of a breach of transparency obligations in Decision D06/11;

¹ ComReg Document No. [17/31](#) .

² ComReg 17/31, page 82, paragraph 8.10.

³ ComReg 17/31, page 84, paragraph 8.23.

⁴ ComReg Document No. [17/57](#) .

⁵ S.I. No. 334 of 2011.

⁶ And for such further or other order or orders which the Court may deem appropriate.

⁷ High Court Record Numbers 2017/186 MCA and 2017/187 MCA.

⁸ ComReg Document No. 11/49, ComReg Decision D06/11, ‘Response to consultation and Decision, Market Review: Wholesale Broadband Access (Market 5)’, dated 8 July 2011.

⁹ ComReg Document No. 10/39, ComReg Decision D05/10, ‘Response to consultation and Decision – Market Review: Wholesale (Physical) Network Infrastructure Access (Market 4)’, dated 20 May 2010.

- d. €498,580 in respect of a breach of transparency obligations in Decision D05/10;
 - e. €1,666,185 in respect of a breach of access obligations in Decision D07/61¹⁰.
6. These applications were made taking account of a range of relevant factors and ComReg's statutory functions and relevant legislation.
 7. Eircom has also brought separate High Court proceedings against the Minister for Communications, Climate Action and the Environment, Ireland and the Attorney General in which the validity of aspects of the Access Regulations are challenged (the "Access Regulations Proceedings")¹¹.
 8. On 3 July 2017, ComReg's application to have the Enforcement Proceedings moved to the High Court Commercial list was heard and accepted.
 9. On 12 July 2017, Eircom applied to the High Court for orders staying the Enforcement Proceedings, pending determination of the Access Regulations Proceedings.
 10. On 18 October 2017, the High Court heard the submissions of ComReg and Eircom regarding the stay application and ordered that the Enforcement Proceedings should be stayed until the Access Regulations Proceedings have been determined. Having considered the matter, ComReg has appealed this order on a number of grounds.
 11. ComReg has since successfully applied to be joined to the Access Regulations Proceedings. ComReg intends to fully defend its position in these proceedings and has issued a motion seeking to have the matters moved into the High Court Commercial list.

¹⁰ ComReg Document No. 07/61, ComReg Decision D07/61, 'Decision Notice and Decision Instrument - Designation of SMP and SMP Obligations: Market Analysis: Retail Fixed Narrowband Access Markets', dated 8 July 2011.

¹¹ High Court Record Number 5929P/2017.