



ComReg's response to Interested Parties Questions - relating to the NBP Process.

Information Notice

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1 Introduction

1. The National Broadband Plan (“NBP”) is the Irish Government’s plan to provide for high speed broadband in geographic areas not served by commercial operators. It is the responsibility of the Department of Communications, Climate Action and Environment (“the Department” or “DCCA”). The Department published the NBP Intervention Strategy in December 2015¹.
2. The Commission for Communications Regulation (“ComReg”) published an Information Notice (reference ComReg Document No. 16/80²) on 16 September 2016. In the Information Notice ComReg acknowledges “*that interested parties may wish to gain insight into the possible interaction between the NBP and regulation and may wish to discuss these matters with us*”. It sets a process whereby Interested Parties can submit questions in writing to ComReg. It states that such questions and responses to them would be published, in an anonymised format, on the ComReg website. However, the interested party in this case is happy for the request for clarification and response to be published in a non-anonymised format.
3. We note that we are unable to provide any guidance as to the outcome of future regulatory decisions that is not already in the public domain and we cannot fetter our discretion in respect of such future decisions. It remains the responsibility of undertakings to ensure that they comply with all applicable regulatory and competition law obligations.
4. This document sets out recent questions ComReg has received under this process and our response.

¹ [http://www.dcca.gov.ie/en-
ie/communications/publications/Documents/62/Updated%20Strategy%20December%202015.pdf](http://www.dcca.gov.ie/en-
ie/communications/publications/Documents/62/Updated%20Strategy%20December%202015.pdf)

² <http://www.comreg.ie/publication/nbp-bidders-queries-clarifications-process/>

2 ComReg's Response to questions received regarding the NBP Process

Request 1. Non – Confidential

Request for Clarification in respect of matters related to the National Broadband Plan.

These requests for clarification are submitted by open Eir as a potential provider of wholesale products and services to successful NBP bidder(s).

Does ComReg consider that the dark fibre transit product, the NBP co-location product and the VUA integrant transit product proposed by open Eir to meet the needs of NBP bidders are regulated access products³?

ComReg's Response to Request 1

It is the view of ComReg that rental of dark fibre in the Eir access network is a product that falls within the scope of regulatory obligations provided for in the wholesale physical network infrastructure access (WPNIA) market as set out in decision D05/10 as amended by D03/13 (NGA decision).

Eir is also obliged, amongst other things, to provide access to co-location and cabinet co-location further to the WPNIA decision as set out in decision D05/10 (WPNIA decision) as amended by the NGA Decision.

It follows that these products are regulated access products, subject to the regulatory obligations imposed under the WPNIA and NGA decisions. In particular, Eir is obliged to meet reasonable access requests for these products and comply with other regulatory obligations, including transparency, non-discrimination and any relevant price control obligation.

Eir has a specific obligation to grant access to dark fibre where civil engineering infrastructure is not available and dark fibre is reasonably available. This is set out in section 7.2 of D05/10 as inserted by section 4.6 of the NGA Decision Instrument D03/13. However, this obligation does not detract from the generality of Eir's obligation to meet reasonable access requests, including reasonable requests for access to dark fibre in other circumstances.

ComReg considers that the VUA Integrant transit products fall within the scope of Eircom's regulatory obligations. VUA is currently regulated under the wholesale broadband access (WBA) market ComReg Decision D06/11 as amended by the NGA decision

With respect to the future regulatory framework, the proposed future regulation of dark fibre, co-location and VUA is set out in ComReg's consultation on the wholesale local access market

³ This is not a verbatim quote from the question posed to ComReg. Rather it is a distillation of the question posed, with the removal of information explaining why the question has been asked.

(WLA) ComReg Document No. 16/96. Section 7.1 of the draft WLA Decision Instrument sets out ComReg's preliminary view that Eir should meet all reasonable requests from Undertakings for the provision of access to Wholesale Local Access including associated facilities. Section 7.2 provides that, without prejudice to Section 7.1, Eir shall provide and grant access to undertakings for the following particular products, services and Associated Facilities:

- VUA which includes FTTC based VUA, FTTH based VUA and Exchange launched VUA as well as VUA, combined with GNP (where required),
- Co-location generally and in particular for interconnection services, co-location Resource Sharing; co-location Rack Interconnection; and CEI Co-Location.
- Civil Engineering Infrastructure (CEI) including in particular duct access, pole access, direct duct access, sub duct access, CEI Tie connection service
- Where CEI is not available, Dark Fibre where Dark Fibre is reasonably available.

Other products referred to on open Eir's website⁴ include pole, duct, and the bitstream plus variant. For the avoidance of doubt, ComReg considers that these are also regulated.

Request 2. Non Confidential

If Eir develops products to meet the needs of NBP bidders, can it restrict the availability of those products and the associated pricing to NBP bidders?

ComReg's Response to Request 2

Where products are regulated currently, Eir is bound by obligations including those requiring it to provide access (and meet reasonable requests for such), not to withdraw access to services and facilities already granted without the prior approval of ComReg, transparency, cost-orientation and non-discrimination.

Eir's existing obligations to act in a non-discriminatory manner means it must apply equivalent conditions in equivalent circumstances to other undertakings providing equivalent services and to provide services and information to others under the same conditions and of the same quality as Eir provides for its own services or those of its subsidiaries or partners. Whether or not different treatment may be objectively justified would have regard to the above. It is not possible for ComReg to be definitive about future access requests in different circumstances, in the absence of specific information. However, the following points are relevant.

As regards Eir's obligations, dark fibre and VUA integrant transit products are already subject to an obligation to meet reasonable requests for access. Any such requests must be evaluated by Eir in the usual way. In the event of a dispute in this regard, ComReg would consider the issues in light of its statutory objectives and its stated policy of promoting infrastructure based competition. The provision of access to co-location services is already mandatory nationally.

In respect of the access and pricing of dark fibre transit products and VUA integrant transit products, ComReg understands that specific circumstances are relevant in the scenario identified by eir. These specific circumstances include the following:

⁴ Including the RAP customer portal.

- The products transit the 300k area only with no service provided in the 300k area permitted
- The transit products have specific network design features and are specific to the rural fibre network
- 25 year indefeasible right of use (IRU) access and pricing terms are proposed
- There is a requirement to ensure no state aid distortion into the non-intervention area.

While ComReg cannot fetter its discretion with regard to either regulation or competition law, ComReg is of the view that the specific circumstances identified imply that Eir would not be required to automatically offer similar terms in other circumstances. While ComReg cannot pre judge the outcome of any future access request or, as noted above, fetter its discretion, it would have regard to these specific circumstances arising from the NBP in which access to these products was granted if it were called upon to adjudicate on such a request.

ComReg at this time sees no reason why co-location services in these areas would be offered on principles different to normal regulatory practice which envisages differential pricing depending on the specific costs of each exchange.

The regulatory status of products in the future would depend on the legal framework in place at that point in time, including the outcomes of future relevant market reviews. ComReg cannot provide assurance regarding the evolution of the legal framework or prejudge the outcome of future reviews.
