



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

Information Notice

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

Introduction

1. ComReg is aware that the eNet-SSE consortium, referred to below as “NBPCo” and which is the remaining bidder in respect of the NBP, plans to use eir’s Civil Engineering Infrastructure (“CEI”) to facilitate its roll out of high speed broadband under the terms of a proposed contract between it and the Minister for Communications, Climate Action and Environment (the “Minister”).
2. Access to CEI, for the purposes of facilitating broadband roll out under the terms of the NBP, is referred to below as “NBP Access”. NBPCo has made a number of access requests which are intended to amend certain process elements attaching to eir’s CEI Access (duct and pole) offers in order to make them more efficient in the specific context of the NBP roll out. These are summarised in Annex 1 and are referred to as “NBP Specific Product Process Enhancements” below. eir has written to ComReg on 11 June 2018 seeking clarity on the regulatory status of these requests. The letter is appended as Annex II.
3. In this Information Notice, the NBP “Intervention Area” means the intervention area specified by the Minister in the agreement to be entered into between the Minister and NBPCo in relation to the implementation of the NBP (the “NBP Agreement”) and the “Transit Area” means the eir Deployment Area as defined in the commitment agreement dated 4 April 2017 between DCCAIE and eir over which NBPCo desires to transit using eir’s CEI for the purposes of the performance of its obligations under the NBP Agreement.

ComReg’s Position on eir’s non-discrimination obligation

4. It is ComReg’s position that the unique set of circumstances applicable to the NBP Specific Product Process Enhancements are unlikely to ever be replicated and ComReg notes also the scale and time constraints involved in the NBP access. The modifications to the poles and ducts products comprising the NBP Specific Product Process Enhancements are sought in the Transit Area (“TA”) and Intervention Area (“IA”) in the context of a draft NBP contract to be entered into between the Minister and NBPCo which would be obliged to deliver high speed broadband to in excess of 500,000 households. This project is State funded in response to a market failure. The proposed duration of any access contract between eir and NBPCo for access to CEI is 25 years. In ComReg’s view this creates a unique set of requirements which are unlikely to ever be replicated given the scale and time constraints.

5. eir's obligations to act in a non-discriminatory manner means it is to 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 the operator provides for its own services or those of its subsidiaries or partners¹."
6. It is ComReg's view that there are objectively justified different circumstances at play in relation to the use of NBP Specific Product Process Enhancements for the purposes of the NBP such that these would not be equivalent to CEI access provided in other circumstances. There are substantial differences between these access requests for the NBPCo and those ordinarily sought by other authorised operators ("OAO").
7. Accordingly, it is ComReg's position that the NBP Specific Product Process Enhancements are specific to the NBP and eir is not obliged to offer them in other circumstances on foot of its non-discrimination obligation. Such NBP Specific Product Process Enhancements therefore would not, as a result of them being provided for the NBP, create any precedent in the context of future access requests.
8. It is also ComReg's view that the specific nature and urgency associated with these requests mean that they do not need to go through eir's existing regulatory access product (RAP) development processes and prioritisation model.

¹ Regulation 10 of SI no. 344 of 2011 European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011

2 Annex 1 – NBP Specific Product Process Enhancements.

Access to Pole ‘Transitions’ for NBP major infrastructure product (“MIP”)

Open eir as part of this NBP MIP would allow eNet-SSE to access aerial routes which transition underground

Duct Access Delivery and Payment Process for NBP MIP

An aggregated payments process for duct blockages in order to reduce administrative costs associated with large volume roll out in the context of the NBP

Duct - Distribution Pole access for NBP MIP

eNet-SSE as part of this NBP MIP would be permitted to construct interconnections between open eir distribution poles and the open eir chamber at the base of the pole

‘In-Life’ pole access order fulfilment

Open eir as part of this NBP MIP would facilitate eNet-SSE to extend their passing network to serve customers and thereby consume additional pole access at scale beyond the build phase of the NBP

3 Annex 2 – Eir’s Letter



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Mr Donal Leavy
Director – Wholesale Division
Commission for Communications Regulation
1 Dockland Central
Guild Street
Dublin 1
D01 E4X0

11th June 2018

Dear Donal,

Re: NBP Specific Product Process Enhancements

We write to you in relation to the regulatory treatment of certain access requests received from the eNet consortium, the remaining bidder in respect of the NBP (“NBPCo”) which are intended to amend certain process elements attaching to Eir’s Civil Engineering Infrastructure Access (duct and pole) (“CEI”) offers in order to make them more efficient in the specific context of the NBP roll out (the “NBP Specific Product Process Enhancements”). The relevant requested NBP Specific Product Process Enhancements are summarised at Appendix 1 hereto. These are being considered by open eir in the context of the scale and time constraints involved in the NBP.

The NBP Specific Product Process Enhancements are sought in the Transit Area and Intervention Area (as applicable) in the context of the contract to be entered into between the Minister for Communications, Climate Action and Environment and NBPCo who, pursuant thereto, would be obliged to deliver high speed broadband to in excess of 500,000 households. The proposed duration of any related access contract between Eir and NBPCo for access to Eir’s CEI would be 25 years. These circumstances are specific to the NBP and are substantially different to the other circumstances in which CEI access is provided to other authorised operators.

We therefore require definitive guidance and clarity from ComReg regarding the regulatory status of these requests. Specifically, we require confirmation that the NBP Specific Product Process Enhancements are specific to the NBP, that (if they are provided to NBPCo) eir would not be obliged to offer them in other circumstances on foot of its non-discrimination obligation and that the NBP Specific Product Process Enhancements would not, as a result of them being provided for the NBP, create any precedent in the context of future access requests. For the avoidance of doubt eir are seeking views on the NBP Specific Product Process Enhancements which do not relate to the pricing for access to Eir’s CEI.

cc: Carolan Lennon, Stephen Tighe

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These matters are of significant importance both to eir and in the context of the broader NBP project and we look forward to your response as a matter of priority, so that we can consider these requests as soon as possible.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gary Healy'.

Gary Healy
Director of Regulatory and Public Policy

Annex

Access to Pole 'Transitions' for NBP MIP

Open eir as part of this NBP MIP would allow eNet-SSE to access aerial routes which transition underground.

Duct Access Delivery and Payment Process for NBP MIP

Open eir as part of this NBP MIP would implement a process to clear all duct blockages and recover all associated costs.

Duct - Distribution Pole access for NBP MIP

eNet-SSE as part of this NBP MIP would be permitted to construct interconnections between open air distribution poles and the open air chamber at the base of the pole.

'In-Life' pole access order fulfilment

Open eir as part of this NBP MIP would facilitate eNet-SSE to extend their passing network to serve customers and thereby consume additional pole access at scale beyond the build phase.