



An Coimisiún um  
**Rialáil Cumarsáide**  
Commission for  
**Communications Regulation**

# Determination of a dispute between Siro and Eircom (Non-Confidential)

Concerning disclosure by Eircom of its NGA rollout plans pursuant to ComReg Decision D10/18.

## Determination

<b>Decision</b>	D06/20
<b>Reference:</b>	ComReg 20/28
<b>Date:</b>	29 April 2020

**An Coimisiún um Rialáil Cumarsáide**  
**Commission for Communications Regulation**

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## Redacted Information

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## Chapter 1

# Executive Summary

- 1.1 On 18 November 2019, Siro Limited (**'Siro'**) submitted a request for dispute resolution under Regulation 31 of the Framework Regulations<sup>1</sup>. The respondent was Eircom Limited (**'Eircom'**).
- 1.2 Regulation 31(2) of the Framework Regulations requires that within 4 months from the date on which the dispute was notified, the Commission for Communications Regulation (**'ComReg'**) must make a determination aimed at ensuring compliance with the obligations of the Framework Directive<sup>2</sup>, the Specific Directives<sup>3</sup> and the Specific Regulations<sup>4</sup> to resolve the dispute.
- 1.3 ComReg accepted the dispute on 28 November 2019 and published the scope on the ComReg website on 29 November 2019 as follows:

*“Whether Eircom may require Siro to comply with conditions, and if so which, in respect of access to information regarding Eircom’s “NGA [Next Generation Access] rollout plans” (as provided for under Section 10.25 of the WLA Decision Instrument at Appendix 20 of ComReg Decision D10/18)”*.
- 1.4 Section 10.25 of the Wholesale Local Access Decision Instrument at Appendix 20 of ComReg Decision D10/18<sup>5</sup> (**'the WLA DI'**) states that:

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

<sup>2</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 as amended by Regulation (EC) No. 717/2007 of the European Parliament and of the Council of 27 June 2007, Regulation (EC) No. 544/2009 of the European Parliament and of the Council of 18 June 2009 and Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009.

<sup>3</sup> Authorisation Directive (Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 as amended by Directive 2009/140/EC of the European Parliament and of the Council of the 25 November 2009), Access Directive (Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 as amended by Directive 2009/140/EC of the European Parliament and of the Council of the 25 November 2009), Universal Service Directive (Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009) and Directive on privacy and electronic communications (Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 as amended by Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 and Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009).

<sup>4</sup> Framework Regulations (S.I. No. 333 of 2011), Authorisation Regulations (S.I. No. 335 of 2011), Access Regulations (S.I. No. 334 of 2011), Universal Service Regulations (S.I. No. 337 of 2011) and Privacy and Electronic Communications Regulations (S.I. No. 336 of 2011).

<sup>5</sup> Market Review Wholesale Local Access (WLA) provided at a Fixed Location, Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products- Response to Consultation and Decision; ComReg 18/94 Decision D10/18 19 November 2018.

*“10.25 Without prejudice to the generality of Section 10.24 Eircom shall in particular make available on its publicly available wholesale website in advance of implementation, information regarding its NGA rollout plans, and information relating to wholesale products, services and facilities, such as the expected time for service availability ...”*

- 1.5 It is ComReg’s view that, to resolve this dispute, ComReg must determine:
- (a) To whom must Eircom make Next Generation Access (**‘NGA’**) rollout plans available?
  - (b) May Eircom apply conditions, and if so, what conditions?
- 1.6 This dispute centres on the transparency obligations that ComReg imposed on Eircom pursuant to Regulation 9 of the Access Regulations in the market for wholesale local access (**‘WLA’**)<sup>6</sup>. It should be noted that when ComReg imposes a significant market power (**‘SMP’**) obligation on an Undertaking that obligation must, among other things, be based on the problem identified<sup>7</sup>.
- 1.7 Accordingly, an important consideration in the context of this dispute is the purpose of the transparency obligation under Section 10.25 of the WLA DI and what problem ComReg sought to resolve in the WLA market when this obligation was imposed.
- 1.8 Having considered ComReg Document 16/96 (**‘the Consultation document’**)<sup>8</sup>; and ComReg Decision D10/18 (the response to Consultation document) and the submissions of the parties, the competition problem ComReg sought to resolve in the WLA market by Section 10.25 of the WLA DI is Eircom’s ability, absent regulation, to leverage its market power to the benefit of its retail arm, by creating or exploiting information asymmetries and withholding, in a discriminatory manner, relevant information on the rollout and delivery of Eircom’s supply of WLA products to users of those wholesale services, i.e., Access Seekers.
- 1.9 This competition problem is addressed by Eircom’s obligation to make NGA rollout plans available to Access Seekers, that is, as NGA rollout plans relate to the deployment of Fibre to the Home (**‘FTTH’**), those Undertakings that directly or indirectly, avail of access to, or seek to purchase access to, FTTH in the form of Eircom’s Virtual Unbundled Access (**‘VUA’**) products.

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<sup>6</sup> Access Regulations (S.I. No. 334 of 2011).

<sup>7</sup> Regulation 8 of the Access Regulations.

<sup>8</sup> Market Review Wholesale Local Access (WLA) provided at a Fixed Location, Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products- Consultation and Draft Decision; ComReg 16/96 11 November 2016.

- 1.10 This obligation ensures that Access Seekers (that are reliant on Eircom's upstream input) are provided with up to date information with respect to Eircom's network rollout, so that they can efficiently and effectively plan for and deliver products and services on a wholesale basis or to End-users and compete with Eircom's retail arm. This is consistent with the non-discrimination obligation at Section 9.1(ii) of the WLA DI which requires that Eircom provides access and information in relation to such access to other Undertakings under the same conditions and of the same quality as Eircom provides to itself.
- 1.11 As Eircom's obligation under Section 10.25 of the WLA DI is limited to an obligation to make available rollout plans to VUA Access Seekers, Eircom may impose reasonable conditions designed to limit the provision of the rollout plans to such Access Seekers.
- 1.12 Eircom currently applies two conditions on the availability of NGA rollout plans. Information is available to Undertakings that:
- (a) Have signed the Eircom Access Reference Offer ('**ARO**') schedules for VUA, or in the alternative, are availing of VUA indirectly through a third party and;
  - (b) Have signed a non-disclosure agreement ('**NDA**').
- 1.13 ComReg is of the view that both conditions are reasonable. The requirement that an Undertaking sign the ARO schedule for VUA, or that the Undertaking avails of VUA through a third party, allows Eircom to ensure that NGA rollout plans are available to Undertakings that are availing, directly or indirectly, of access to VUA . The requirement to sign an NDA ensures that the information that is provided, including the NGA rollout plans, which are likely to be confidential and commercially sensitive, is used only for the purpose for which it is disclosed.
- 1.14 ComReg published a Draft Determination<sup>9</sup> on 6 March. Submissions in response were received from Siro, Eircom and Sky Ireland Limited ('**Sky**'). These responses are summarised in Chapter 4 of this document ('**the Determination**'). Non-confidential versions of the responses are included at Annexes 13, 14 and 15.
- 1.15 ComReg's analysis of the Siro, Eircom and Sky responses are detailed at Chapter 5 of this Determination. Having considered these responses, ComReg determines as follows<sup>10</sup>:

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<sup>9</sup> Draft Determination of a dispute between Siro and Eircom (Non-Confidential) (Document Number 20/13, 6 March 2020).

<sup>10</sup> See the Determination Notice at Annex: 1 of the Determination.

- (a) For the purpose of Section 10.25 of the WLA DI, Eircom is required to make available NGA rollout plans to all Undertakings availing, directly or indirectly, of relevant access products.
- (b) For the purpose of Section 10.25 of the WLA DI, Eircom may apply reasonable conditions in order to:
  - (i) limit the availability of NGA rollout plans to Undertakings availing, directly or indirectly, of relevant access products; and
  - (ii) limit the use of NGA rollout plans by such Undertakings at (b)(i) to the purpose of availing, directly or indirectly, of the relevant access products.
- (c) For the purpose of (b)(i) above, Eircom may require that Undertakings:
  - (i) have entered into an access agreement with Eircom in respect of VUA, having executed the particular schedules of the Access Reference Offer concerning VUA; or
  - (ii) are availing of relevant access products indirectly through those Undertakings described at (c)(i).
- (d) For the purpose of (b)(ii) above, Eircom may require that Undertakings:
  - (i) have entered into a non-disclosure agreement to ensure that the use of NGA rollout plans is limited to the purpose described at (b)(ii) or;
  - (ii) have met any other reasonably imposed conditions to ensure that the use of NGA rollout plans is limited to the purpose described at (b)(ii).
- (e) Eircom is not required to make NGA rollout plans available to Siro under Section 10.25 of the WLA DI, until such time that Siro meets the conditions at (c) and (d) above, which Eircom may reasonably impose for the purpose of (b) above.

1.16 The Determination Notice (which is the legal instrument that contains ComReg's determination) is contained in Annex: 1 of this document. The Determination Notice contains the text of what ComReg has concluded in relation to this dispute. The remainder of the Determination is structured as follows:

- (a) Chapter 2 - Background to the Dispute
- (b) Chapter 3 – Regulatory Framework
- (c) Chapter 4 – Submissions of the parties

- (d) Chapter 5 – Analysis
- (e) Chapter 6 – Summary of conclusions
- (f) Chapter 7 – Next Steps

## Chapter 2

# Background to the Dispute

## 2.1 Chronology

2.1 Below is a chronology of events relating to this dispute:

- (a) 18 November 2019 Siro submits a request for dispute resolution.
- (b) 28 November 2019 ComReg notifies Siro that the dispute is accepted.
- (c) 28 November 2019 Siro is notified of the scope of the dispute. Eircom is notified of the dispute, and is provided with a non-confidential version of the Siro submission and given until 11 December 2019 to respond.
- (d) 29 November 2019 An information Notice (ComReg 19/106) (Annex: 4) is published on the ComReg website setting out the scope and details of the dispute.
- (e) 11 December 2019 Eircom provides its response.(Annex: 8)
- (f) 18 December 2019 ComReg issues letters to Siro and Eircom with specific questions. The closing date for return is 10 January 2020.
- (g) 10-13 January 2020 Eircom and Siro provide their responses to the questions asked by ComReg. (Eircom Annex: 9, Siro Annex: 10 and Annex: 11)
- (h) 6 March 2020 ComReg issued the Draft Determination and information notice. Responses were due by 20 March 2020.
- (i) 20 March 2020 Responses to the Draft Determination were received from Siro, Eircom and Sky (Annexes 13, 14 and 15 respectively).

## 2.2 The parties to the dispute

2.2 Siro is an alternative network operator and wholesale operator. Siro is a joint venture between the Electricity Supply Board and Vodafone Ireland. Siro has a FTTH network across 50 towns in Ireland and offers a Virtual Unbundled Local Access ('**VULA**') service at the wholesale level only.

2.3 Eircom Limited is the incumbent fixed and mobile telecommunications company in Ireland. Eircom operates a wholesale fixed-line network through its Open eir

unit (Eircom Wholesale), providing copper and fibre based access products to a wide range of Irish telecommunications companies. Its services include next generation access products, such as FTTH and Fibre to the Cabinet ('FTTC'). Eircom's retail division markets these services directly to homes and businesses. Eircom has been designated as having Significant Market Power on a number of wholesale markets, including in particular by ComReg Decision D10/18 (ComReg Document 18/94) in respect of the market for Wholesale Local Access (WLA) provided at a Fixed Location and the market for Wholesale Central Access (WCA) provided at a Fixed Location.<sup>11</sup>

## 2.3 Siro's pre-dispute complaint to Eircom

- 2.4 Prior to submitting a dispute request to ComReg, Siro submitted a complaint to the Eircom's Wholesale Regulatory Complaint mailbox on 16 October 2019 (Annex: 5), concerning the *"failure of eir to comply with its Transparency obligations (D10/18 WLA) regarding the provision of FTTH Rollout Information."*
- 2.5 In summary, Siro complained that Eircom did not provide the FTTH Rollout Information specified in Section 10.25 of the WLA DI on its "publicly available wholesale website". Furthermore, Eircom had refused to provide this information to Siro on request, which Siro said was not compliant with Eircom's regulatory obligations.
- 2.6 Below is a chronology of subsequent events relating to the pre-dispute complaint:
- (a) On 23 October 2019, Siro sent an email to Eircom's wholesale regulatory complaints department notifying it that Siro had not received a response to its complaint of 16 October 2019.
  - (b) On 7 November 2019 Eircom responded to the Siro complaint, and issued its report entitled "*Complaint W/SCust16*" (see Annex: 6) stating that Eircom had "*... found no basis for Siro's complaint that open eir was in breach of its transparency obligations.*" In that report, Eircom noted that
    - (i) "The FTTH Rollout Information is published on the wholesale website for all operators with the correct access credentials."

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<sup>11</sup> The WLA and WCA markets correspond to Markets 3(a) and 3(b) respectively of the European Commission's 2014 Recommendation of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services.

- (ii) “This information is available to all Wholesale Customers that have signed a WBARO<sup>12</sup> and /or ARO.”
  - (iii) “Open eir requires a reference offer to be signed before providing access to this information as this is the best way to ensure that the NGA Rollout Information is used for the purpose for which it is required, i.e. to inform its Wholesale Customers where and when open eir is rolling out FTTH network capability so that they can consume the open eir FTTH services (Bitstream and VUA) in order to provide broadband services to their end users.”
  - (iv) “Siro has not yet provided the clarity required to demonstrate that this is the purpose for which they require access.”
- (c) On 18 November 2019, Siro submitted a dispute to ComReg under Regulation 31 (Annex: 3).

## 2.4 ComReg’s Dispute Resolution Powers

2.7 Regulation 31 of the Framework Regulations sets out ComReg’s powers regarding disputes arising either between:

- (a) Undertakings providing electronic communications networks or services in the State in connection with existing obligations under the Framework Directive, Specific Directives or Specific Regulations, or
- (b) such Undertakings and other Undertakings benefiting from obligations of access or interconnection arising under the Framework Directive, Specific Directives or Specific Regulations.

2.8 ComReg’s determination in the dispute must ensure compliance with the obligation and resolve the dispute. Regulation 31 of the Framework Regulations transposes Article 20 of the Framework Directive.

2.9 In accordance with Regulation 31(2) of the Framework Regulations, ComReg published Dispute Resolution procedures in ComReg Document No. 10/18 R<sup>13</sup>.

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<sup>12</sup> Wholesale Bitstream Access Reference Offer.

<sup>13</sup> Response to Consultation and Decision Notice, Dispute Resolution Procedures - Framework Regulations (Response to Consultation Document No. 09/85) (Document No: 10/18, Decision No: D03/10 Date: 29 March 2010).

- 2.10 Regulation 31(2) of the Framework Regulations requires that within 4 months from the date on which the dispute was notified, ComReg must make a determination aimed at ensuring compliance with the relevant obligation to resolve the dispute.
- 2.11 In determining this dispute, ComReg will do so with regard to its functions and objectives at Section 12(1)(a) of the Communications Regulation Act 2002 (as amended) and Regulation 16 of the Framework Regulations.

## 2.5 Scope of the Dispute

- 2.12 In its submission of 18 November 2019 (Annex: 3), Siro defined the scope of the submitted dispute as “*Whether Eircom is meeting their obligation to provide NGA rollout information*” and cited the full text of Section 10.25 of the WLA DI.
- 2.13 As set out above, while ComReg’s jurisdiction under Regulation 31 must be exercised with the view to ensuring compliance with existing obligations, it is grounded in resolving a dispute between Undertakings. In exercising its powers under Regulation 31, ComReg accordingly must be first satisfied that there is a dispute that is arising either between Undertakings providing electronic communications networks or services in the State in connection with existing regulatory obligations, or between such Undertakings and other Undertakings benefiting from obligations of access or interconnection. A complaint that an Undertaking is not complying with its obligations is insufficient to trigger ComReg’s jurisdiction under Regulation 31.
- 2.14 ComReg, having reviewed Siro’s submissions, is satisfied that Siro had raised a dispute for the purpose of Regulation 31 between two Undertakings providing electronic communications networks or services in the State, and that the dispute concerned an existing regulatory obligation, namely that set out in Section 10.25 of the WLA DI. More particularly, the dispute to be resolved is concerned with the following matters:
- “Whether Eircom may require Siro to comply with conditions, and if so which, in respect of access to information regarding Eircom’s “NGA rollout plans” (as provided for under Section 10.25 of the WLA Decision Instrument at Appendix 20 of ComReg Decision D10/18 ).”*
- 2.15 This scope was published on the ComReg website as Information Notice 19/109 on 29 November 2019 (Annex: 4).
- 2.16 In its response to ComReg’s questions of 13 January 2020 (Annex: 11) Siro agreed to ComReg formulation of the dispute. Eircom made no comment.

## 2.6 The Draft Determination

- 2.17 ComReg published a Draft Determination<sup>14</sup> on 6 March 2020 which included the following text at Section 4.1 of the Draft Determination Notice<sup>15</sup>:
- (a) *“Eircom may apply reasonable conditions in respect of access to information regarding Eircom’s NGA rollout plans in order to ensure that access is limited to Undertakings purchasing access to relevant access products.*
  - (b) *A condition whereby Eircom limits access to information regarding its NGA rollout plans only to those Undertakings that have entered into an access agreement with Eircom in respect of VUA, having executed the particular schedules of the ARO concerning VUA and the associated non-disclosure agreement is reasonable.*
  - (c) *Eircom is not required to provide Siro with access to information regarding NGA rollout plans until such time that Siro has met the requirements contained in paragraph (b) above or any other reasonably imposed conditions for the purpose of (a) above that are also consistent with ComReg Decision D10/18.”*
- 2.18 Responses received from Siro, Eircom and Sky in response to this Draft Determination Notice are summarised at Chapter 4 of this Determination and considered at Chapter 5 of this Determination.

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<sup>14</sup> Draft Determination of a dispute between Siro and Eircom (Non-Confidential) (Document Number 20/13, 6 March 2020).

<sup>15</sup> Draft Determination Notice is at Annex 1 of the Draft Determination.

## Chapter 3

# Regulatory Framework

- 3.1 This chapter provides a brief overview of the legal framework for managing the dispute and for the regulation of access by Undertakings providing electronic communications networks or services in the State, in connection with existing obligations under the Access Regulations, concerning access to information in Eircom's NGA rollout plans. This overview is limited to the scope of those regulations specifically applicable or related to the circumstances of this dispute.

## 3.1 Relevant Markets and their Regulation

- 3.2 The relevant regulations are those applicable to the regulation of competition within the markets for the provision of WLA. WLA services are wholesale inputs used in the supply of a range of downstream wholesale and retail telecommunications services, such as broadband internet connectivity, television services, and the provision of fixed telephony to residential and business consumers. WLA inputs can also be utilised by Service Providers ('**SP(s)**') to supply downstream Wholesale Central Access ('**WCA**') or other wholesale services.
- 3.3 At the wholesale level, Access Seekers purchase WLA inputs, such as VULA or WCA inputs such as Bitstream, to provide retail services to End-users (or wholesale services to other SPs). In the case of VULA, an Access Seeker gains control of the fibre or hybrid copper/fibre path from the local exchange or aggregation node to the End-user's premises. The Access Seeker can then supply retail services to the End-user, or sell wholesale services, such as those sold in the WCA market, to other Access Seekers
- 3.4 Access in the WLA market comprises both Current Generation ('**CG**') WLA over copper and Next Generation ('**NG**') WLA over fibre as FTTH and FTTC.
- 3.5 Eircom's VUA product offers Virtual Unbundled Access across Eircom's FTTC and FTTH networks. The VUA Schedules attached to Eircom's ARO sets out the terms and conditions under which VUA is made available.

## 3.2 The Market Analysis process

- 3.6 The Market Analysis process is relevant to this Draft Determination in that the obligation at Section 10.25 of the WLA DI was imposed as a remedy to a particular current or future competition problem arising from Eircom's SMP in the WLA

market. ComReg considered and consulted upon the obligation and the competition problem of the WLA market as part of the Market Analysis process. This consultation included a public consultation and with the European Commission, the Body of European Regulators of Electronic Communications ('BEREC') and other National Regulatory Authorities ('NRAs').

- 3.7 The following ComReg documents relate to Eircom's obligations in the WLA Market and are therefore relevant to this dispute:

Year	Month	Type	Decision - Doc. No.	Market	Relevance
2016	November	Consultation	16/96	Wholesale Access	Local Consultation on WLA
2018	November	Decision	D10/18 - 18/94	Wholesale Access	Local Response to 16/96, Final Decision

- 3.8 Furthermore, the NGA Recommendation<sup>16</sup> published by the European Commission is relevant to this dispute as discussed at paragraph 5.25 of this Determination.

### 3.3 Current Applicable Regulation

- 3.9 The current regulation in relation to the WLA market is outlined in the WLA Decision Instrument at Appendix 20 of ComReg Decision D10/18 ('the WLA DI'), having regard to the analysis and reasons set out in ComReg Decision D10/18, with which it is to be construed consistently. Section 10 of the WLA DI describes Eircom's transparency obligations. In particular, Section 10.25 of the WLA DI sets out the obligation on Eircom to provide access to its NGA rollout plans. The full text is included in Annex: 2 of this document. The key reference from this Section is:

*"10.25 Eircom shall in particular make available on its publicly available wholesale website in advance of implementation, information regarding its NGA rollout plans..."*

- 3.10 As can be seen in Annex: 2, Section 10.25 of the WLA DI defines what information should be *"made available on its publicly available wholesale website"* along with

<sup>16</sup> Commission Recommendation of 20 September 2010 on regulated access to Next Generation Access Networks (NGA), 2010/572/EU (OJ L 251, 25.9.2010, p. 35–48) ('the NGA Recommendation').

the lead times for providing this information. In addition to information regarding rollout plans, Eircom is obliged to provide information relating to

*“wholesale products, services and facilities, such as the expected time for service availability”.*

3.11 Section 10.25 of the WLA DI specifies information to be provided for key lead times in advance of the Ready for Order Date (**RFO**). These lead times are 6 months, 3 months, 1 month and 28 days. These requirements are summarised as follows.

3.12 Eircom is obliged to provide NGA rollout plan Information as follows:

*“(i) to exchange level “at least 6 months in advance of the Ready for Order Date”*

3.13 This covers:

- (a) a list of cabinets with their associated geographic co-ordinates;
- (b) the location and name of the Exchange which houses the Metropolitan PoP (“MPoP”) for each cabinet and for each proposed FTTH network;
- (c) the expected Ready for Order Date for each cabinet or fibre based FTTH network; and
- (d) for each Exchange area the number of premises that Eircom forecasts will be passed by FTTH.

3.14 At Section 10.25(ii) of the WLA DI, Eircom is obliged to provide, at least 3 months in advance of the RFO, sufficient information to enable Undertakings to identify locations of FTTH availability.

*“(ii) For the Exchange areas included in Eircom’s NGA rollout plan Eircom shall make available on its publicly available wholesale website at least 3 months in advance of the Ready for Order Date sufficient information to enable Undertakings to identify the addresses that will be passed by FTTH. Such information may take the form of a detailed map or cross references to Eircom’s address database”*

3.15 At Section 10.25(iii) of the WLA DI, Eircom is obliged to provide, at least 28 days in advance of the RFO, pre-qualification values for each premises capable of receiving FTTC, and the MPoP for each premises capable of receiving FTTH:

*“(iii) For the Exchange areas included in Eircom’s NGA rollout plan the following details shall also be made available on Eircom’s publicly available wholesale website at least 28 calendar days in advance of the of the Ready for Order Date by way of a data file which shall include the following information:*

- (a) *a list of the premises, as uniquely identified, that are capable of receiving FTTC and the associated Pre-Qualification Value for each such line/premises; and*
- (b) *a list of all addresses passed by FTTH categorised by the Exchange area and showing the MPoP for each address;*

3.16 The part (iv) of Section 10.25 of the WLA DI places obligations on Eircom to publish any updates or changes to its previously published information:

*“(iv) Eircom shall publish on its publicly available wholesale website on a monthly basis, or as reasonably required by ComReg, in advance of particular cabinets becoming enabled or any FTTH fibre routes being completed, information to update, reconcile or revise any previous announcements or notifications, projections or plans, regarding NGA rollout, as matters progress in order that accurate, clear and current information is made available in respect of plans for particular cabinets or plans for particular FTTH fibre routes. Material amendments or changes to information may not be notified by way of such an update but shall be notified in accordance with this Section 10.25 or by agreement with ComReg, or at ComReg’s discretion”*

## Chapter 4

# Submissions of the parties

## 4.1 Summary of Siro's Submissions (Pre-Draft Determination)

- 4.1 This chapter draws on the Siro dispute submission to ComReg of 18 November 2019 (Annex: 3), the Siro complaint to Eircom Wholesale of 16 October 2019 (Annex: 5) and the Siro submission of 13 January 2020 (Annex: 10 and Annex: 11).
- 4.2 ComReg understands Siro's position to be that Eircom is non-compliant with its obligations under Section 10.25 of the WLA DI, on the basis that access to Eircom's NGA rollout plan information is limited, as opposed to being available to all on a publicly accessible website.
- 4.3 Siro suggests that it is, in accordance with the plain wording of ComReg Decision D10/18, entitled to the Eircom NGA roll-out plans in order "*...to plan for and to deliver products and services on a wholesale basis or to End-users*" in the following three ways:
- (a) Assess whether to use Eircom WLA as inputs to wholesale offerings;
  - (b) ✂ [REDACTED];
  - (c) [REDACTED] ✂
- 4.4 ✂ [REDACTED] ✂
- 4.5 Siro cites three competition problems which are addressed by the requirement to provide NGA rollout plans, including to an Undertaking which does not directly provide retail services.

- (a) The exercise of Eircom's SMP in the exploitative practices as outlined at paragraphs 7.18 to 7.23 of the Consultation document. In paragraph 7.23 of the Consultation document, ComReg outlines that a transparency obligation addresses this potential behaviour.
- (b) Eircom has the ability to engage in vertical leveraging of its SMP in the WLA market as outlined at paragraphs 7.28 and 7.29 of the Consultation document. This leveraging occurs by Eircom phasing its FTTH roll-out to maximise benefit to Eircom's retail arm at the expense of other retail providers. Providing visibility of Eircom's rollout plans allows for deployment of alternative FTTH services in areas where retail competitors of Eircom Retail have offerings with different demand side characteristic.
- (c) Without the requirement to provide rollout information, there is scope for Eircom to exercise its SMP the information asymmetries outlined at paragraph 7.37 of the Consultation document, by restricting access to information in areas where Eircom's FTTH is not present. This restricts the ability of Undertakings other than Eircom to plan for the network deployment required to supply WLA products.

4.6 Siro has not yet signed an ARO because Siro has not made a definitive decision to purchase Eircom's WLA services. There is no business reason to enter into a formal purchase agreement at this time. Siro would not enter into such a commercial contract without a legitimate business need.

4.7 When asked if Siro would sign an NDA, in order to reassure Eircom, Siro's response as detailed in its submission of 13 January 2020 (Annex: 11) was that, with the WLA Decision, "*Siro should not be required to provide reassurances to Eircom*". ✂

✂. Siro claimed that NDAs could leverage Eircom's SMP via information asymmetries. Section 10.21 of the WLA DI sets out that Eircom shall inform ComReg where information is confidential and/or commercially sensitive. Eircom should notify ComReg why the information is sensitive and thus requires protection via an NDA. It would be unreasonable for Eircom to require Siro to enter into an NDA which provides more assurances than a basic undertaking not to publish in bulk information supplied by Eircom. Retailers who sign a Wholesale Bitstream Access Reference Offer ('**WBARO**') can communicate this information to End-users. It effectively enters into the public domain.

## 4.2 Summary of Siro's response to the Draft Determination.

4.8 Siro's submission in respect of the Draft Determination was received by ComReg on 20 March 2020 (Annex: 13). The letter categorised the submission under the following points:

- (a) Siro contended that the plain reading of text of ComReg Decision D10/18 prohibits Eircom from restricting any information on a website that is available to the public. The Draft Determination "*would amount to a material change to the provisions of D10/18, rather than a simple clarification*", and "*any proposed change should happen as part of a Market Review involving full industry consultation*".
- (b) Siro contended that "*Under the European Electronic Communication Code ('EECC'),<sup>17</sup> 'the role of ComReg as the NRA should be to encourage new wholesale-only entrants into the market'*". Siro cited Article 28 of the EECC and its reference to "*the necessity to give appropriate incentives for investment in very high capacity networks*".
- (c) Siro, concerned that Eircom could use its SMP position to make it uneconomical for alternative infrastructure providers to compete, claimed that "*public provision of Eircom information ...will result in optimal levels of competition*". Siro claims that the view set out in paragraph 6.10 of the Draft Determination, that "*information received from Eircom for the purpose of access to WLA services must be used for that purpose only*", is inconsistent with Article 27 of the EECC. Siro claims that ComReg's position could reduce investment in FTTH networks. Siro, concerned that Eircom could use its SMP position to make it uneconomical for alternative infrastructure providers to compete, claimed that "*public provision of Eircom information ...will result in optimal levels of competition*". Siro claimed that the view set out in paragraph 6.10 of the Draft Determination, that "*information received from Eircom for the purpose of access to WLA services must be used for that purpose only*" was inconsistent with Article 27 of the EECC. Siro claimed that ComReg's position created investment risks and could reduce investment in FTTH networks.

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<sup>17</sup> EECC (European Electronic Communications Code) – Directive (EU) 2018/1972 of the European Parliament and of the Council.

(d)



## 4.3 Summary of Eircom's submission (Pre-Draft Determination)

4.9 In its submission of 11 December 2019 (Annex: 8), in response to ComReg's notification of the dispute, Eircom claimed that it is compliant with its obligations under Section 10.25 of the WLA DI, and made the following points:

- (a) It is necessary to sign an ARO to enable Eircom to support Regulation 5(6) of the Access Regulations:

*"5(6)...an undertaking that acquires information from another undertaking before, during or after the process of negotiating access or interconnection arrangements shall not use that information for a purpose other than that for which it was supplied and shall respect at all times the confidentiality of information transmitted or stored."*

- (b) It would be a breach of Regulation 5(6) of the Access Regulations if Eircom allowed the information to be used for purposes other than those outlined by 7.979 and 7.980, such as another operator's network rollout planning, particularly if the inappropriate use of information distorts competition and/or undermines Eircom's investment incentives. Signing an ARO helps commit Operators to use information for the purposes of providing services to End-users. Use of the information by Siro for network planning would therefore constitute a breach of Access Regulations. Eircom had attempted to get an assurance from Siro on the intended use of the information but Siro refused to engage and appeared unwilling to make the implicit assurances that it will comply with regulation 5(6).
- (c) It is "reasonable" to manage access to commercially sensitive information, and consistent with the intent in the Remedies chapter of ComReg document 18/94 that information published on the Eircom website is used by Access Seeker's for providing service to either wholesale or End-users<sup>18</sup>:

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<sup>18</sup> A user not providing public communications networks or publicly available electronic communications services (Regulation 2 of Framework Regulations).

*“7.980 ComReg considers that the requirement summarised in paragraph 7.979 is necessary so that Access Seekers are provided with up to date information with respect to network rollout **so as to efficiently and effectively plan for and deliver products and services on a wholesale basis or to End Users**”.*

*“7.979 For Exchange areas included in Eircom’s NGA rollout plan Eircom shall publish on its publicly available wholesale website on a monthly basis, or as reasonably required by ComReg, in advance of particular cabinets becoming enabled or any FTTH fibre routes being completed, information to update, reconcile or revise any previous announcements or notifications, projections or plans, regarding NGA rollout, as matters progress in order that accurate, clear and current information is made available in respect of plans for particular cabinets or plans for particular FTTH fibre routes”.*

- (d) The second part of paragraph 7.980 justified Eircom controlling access to the information:

*“ComReg considers that it would not be a burdensome requirement for Eircom to have a process in place to keep its network rollout information up to date for use by it and by Access Seekers.” “This is the best way to ensure that the NGA Rollout Information is used for the purposes for which it is required, i.e. to inform its Wholesale Customers where and when open eir is rolling out FTTH network capability so that they can consume the open eir FTTH Services (Bitstream and VUA) in order to provide broadband services to their end users.”*

- (e) All Undertakings seeking access to Eircom’s NGA rollout plans have signed AROs, with the exception of Sky Ireland. However, Sky is a reseller of BT Ireland products, and BT is a signatory.
- (f) Siro is aware of Eircom’s NGA footprint because it is publicly known. This source of information has been sufficient for other operators seeking to interconnect to the Eircom NGA network.
- (g) Eircom’s letter also referred to its investigation of a direct complaint, relating to the same issue, from Siro on 16 October 2019. The report “W/SCustomer16” found “no basis for Siro’s complaint that open eir was in breach of its transparency obligations” on the basis of the following four points:
- (i) *“The FTTH Rollout Information is published on the wholesale website and for all operators with the correct access credentials.*
  - (ii) *This information is available to all Wholesale Customers that have signed a WBARO and / or ARO.*

- (iii) *open eir requires a reference offer to be signed before providing access to this information as this is the best way to ensure that the NGA Rollout Information is used for the purposes for which it is required, i.e. to inform its Wholesale Customers where and when open eir is rolling out FTTH network capability so that they can consume the open eir FTTH Services (Bitstream and VUA) in order to provide broadband services to their End-users.*
  - (iv) *Siro has not yet provided the clarity required to demonstrate that this is the purpose for which they require access.”*
  - (h) Eircom invited Siro to re-engage “...with a view to on-boarding for the purpose of availing of open eir’s FTTH services in order to provide Broadband services to end users.”
  - (i) Eircom has not sought ComReg agreement to categorise the information as confidential because it did not consider it necessary on the basis that the process of accessing this information has continued unchanged for several years, since D10/13. Therefore this process existed well before ComReg Decision D10/18.
- 4.10 Eircom’s letter of 11 December 2019 quoted the Siro Dispute Submission which indicated the purpose of Siro seeking access to the NGA rollout information:
- “Without NGA planned rollout information Siro is unable to fully evaluate the opportunity of connecting to the eir NGA network.”*
- 4.11 Eircom’s final argument pointed out the continuity of controlled access to its NGA rollout plans since 2013 and the absence of any concerns by the 20 Access Seekers who have complied with the process, or ComReg:

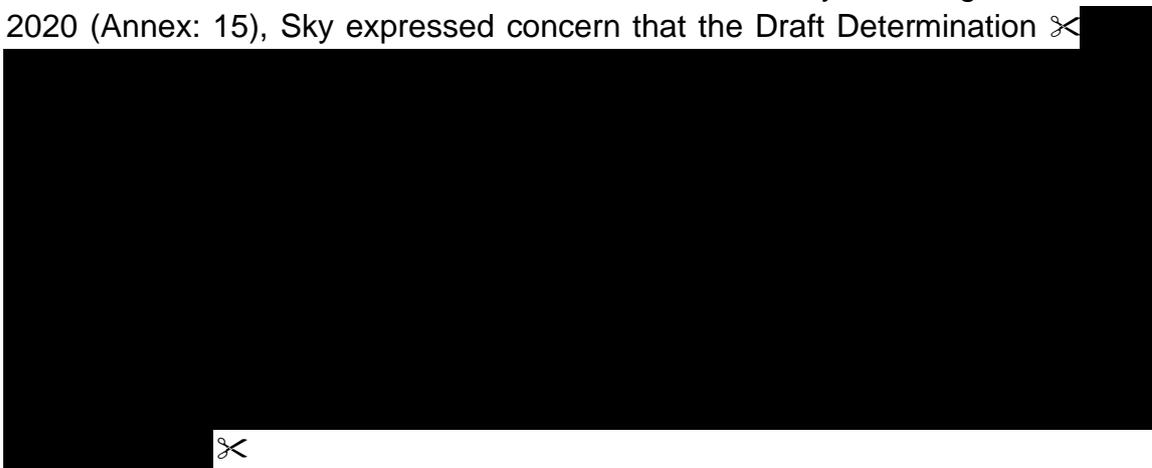
## 4.4 Summary of Eircom’s response to the Draft Determination

- 4.12 Eircom’s submission on the Draft Determination was received by ComReg on 20 March 2020 (Annex: 14). The submission falls under three broad categories:
- (a) In relation to the restriction on access to NGA plans to Access Seekers *“Eircom agreed with ComReg’s preliminary view (in paragraph 6.6) that Eircom must make NGA rollout plans available only to Undertakings that avail of access to Eircom’s VUA. Eircom further agrees with ComReg’s view that Siro could not use the NGA plans for other purposes, and that for it to do so would potentially create distortive effects that could restrict competition to the detriment of End-users as noted in paragraph 5.19.”*

- (b) In relation to Eircom’s condition of signing an ARO and NDA “*Eircom welcomes the draft determination findings, including the finding that a condition whereby Eircom limits access to information regarding its NGA rollout plans only to those Undertakings that have executed the particular schedules of the ARO concerning VUA and the associated non-disclosure agreement is reasonable*”.
- (c) In relation to the purpose of obtaining information on NGA plans, “*Eircom notes that Siro has explicitly stated interest in using open eir’s rollout information for other purposes that could negatively impact on fair competition. However Eircom trusts that Siro would abide by the terms of ComReg’s determination and if it did subsequently sign an ARO and NDA to gain access to the rollout plan, its personnel would take appropriate measures to ensure the Determination, ARO and NDA terms are fully complied with within Siro and that the rollout plan is not used for anything other than the permitted purpose*”.

## 4.5 Summary of Sky’s submission following publication of the Draft Determination

- 4.13 In its submission to the Draft Determination, received by ComReg on 9 March 2020 (Annex: 15), Sky expressed concern that the Draft Determination 





## Chapter 5

# Analysis

## 5.1 Analysis Overview

5.1 The dispute is concerned with Eircom's obligation to make available certain information, in particular its NGA rollout plans, under Section 10.25 of the WLA DI.

5.2 Section 10.25 of the WLA DI provides as follows:

*“10.25 Without prejudice to the generality of Section 10.24 Eircom shall in particular make available on its publicly available wholesale website in advance of implementation, information regarding its NGA rollout plans, and information relating to wholesale products, services and facilities, such as the expected time for service availability, as follows.”*

5.3 In its submissions, Siro argues that on a “plain reading” of Section 10.25 of the WLA DI, Eircom must make available its NGA rollout plans on a publicly available wholesale website.

5.4 This, however, is not correct, including on a “plain reading” of Section 10.25 of the WLA DI. In particular, the requirement at Section 10.25 of the WLA DI is not that the information is “publicly available”; rather it is that it is made available on a wholesale website that must be publicly available. There is no doubt that Eircom's wholesale website is publicly available. The question is the extent to which information, in particular the NGA rollout plans, must be made available, and in that context, whether Siro is entitled to have access to such rollout plans.

5.5 ComReg accordingly considers that the scope of the dispute to be determined is as follows:

*“Whether Eircom may require Siro to comply with conditions, and if so which, in respect of access to information regarding Eircom's “NGA rollout plans” (as provided for under Section 10.25 of the WLA Decision Instrument at Appendix 20 of ComReg Decision D10/18)”.*

5.6 The WLA DI is the operative part of ComReg Decision D10/18. In this regard Section 10.25 of the WLA DI must be read in conjunction with the remainder of the WLA DI and the analysis and reasons set out in ComReg Decision D10/18 (ComReg Document 18/94). Section 10.25 of the WLA DI is without prejudice to the generality of Section 10.24 of the WLA DI, which imposed a general transparency obligation on Eircom to make certain information available on its wholesale website (which website must be publicly available). That obligation is a

further specification of Section 9.1 of the WLA DI (which contains the general non-discrimination obligation) and Section 10.1 (which contains the general transparency obligation). Consistent with the above analysis, the transparency obligation contained at Section 10.25 of the WLA DI was imposed to support the non-discrimination obligation. In the light of this, in order to resolve this dispute, ComReg must determine, having regard to ComReg Decision D10/18:

- (a) To whom must Eircom make NGA rollout plans available to?
- (b) May Eircom apply conditions, and if so, what conditions?

5.7 Having considered the matter, and for the reasons set out below in Section 5.2, ComReg determines the following:

- (a) In accordance with ComReg Decision D10/18, Eircom is required to make NGA rollout plans available to Undertakings that directly or indirectly avail of access to Eircom's VUA.
- (b) Eircom may apply reasonable conditions that are designed to ensure that those receiving information regarding access to VUA are Undertakings that avail of access to Eircom's VUA and use the information for the purpose for which the information was provided. Reasonable conditions which Eircom may apply include, but are not limited to, requiring that Undertakings :
  - (i) Have signed the Eircom ARO schedules for VUA, or in the alternative, are availing of VUA indirectly through a third party and;
  - (ii) Have signed a NDA.

## 5.2 Availability of NGA rollout plans

5.8 Where ComReg designates an Undertaking with SMP on a market, it must impose on that Undertaking, at least one obligation designed to address the competition issues identified during the market analysis<sup>19</sup>. ComReg Decision D10/18 imposed a number of obligations on Eircom including obligations of access, non-discrimination, transparency, price control and cost accounting. This dispute centres on the transparency obligations that ComReg imposed on Eircom pursuant to Regulation 9 (Transparency) of the Access Regulations. It should be noted that when ComReg imposes an SMP obligation on an Undertaking, that obligation must, among other things, be based on the problem identified<sup>20</sup>.

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<sup>19</sup> Regulation 27(4) of the Framework Regulations.

<sup>20</sup> Regulation 8 of the Access Regulations.

- 5.9 Accordingly, an important consideration in the context of this dispute is the competition problem that the transparency obligation under Section 10.25 of the WLA DI sought to address. Chapter 7 of the Consultation document<sup>21</sup> and Chapter 6 of ComReg Decision D10/18 outline and discuss the specific competition problems that ComReg identified in the WLA Market.

## 5.2.1 Competition problems and remedies

- 5.10 Paragraph 7.33 of the Consultation document discusses Eircom's ability to leverage its market power, by way of non-price means, from the wholesale WLA market downstream to the retail level. Of relevance to this dispute is paragraph 7.33(c) which discusses Eircom's ability, absent regulation, to create or exploit information asymmetries and to withhold relevant information via vertical leverage. The focus of this analysis is Eircom's behaviour relative to those Undertakings that are dependent on Eircom's wholesale access products i.e. Access Seekers rather than all Undertakings. It notes that:

*"...where downstream competitors are dependent on Eircom to provide WLA and need certain (quality or technical) information in order to effectively compete in downstream wholesale or retail markets, a lack of transparency or asymmetry in the provision of relevant information can impede competition. For example, a lack of transparency in the terms and conditions of supply for WLA products that are self-supplied by the SMP WLA provider could make it difficult for Access Seekers to make effective commercial or operational decisions that involve the use of or investment in WLA inputs for the provision of their own downstream services."*

- 5.11 Access Seekers in the context of ComReg Decision D10/18 are defined as:

*"An Access Seeker is a Service Provider ('SP') that purchases wholesale services from another SP. In this Decision, ComReg refers to SPs seeking to purchase services in the WLA and/or WCA Markets as 'Access Seekers'."*<sup>22</sup>

- 5.12 Furthermore, paragraph 7.37 of the Consultation document discusses information asymmetries as a separate means of vertical leverage. and Eircom's incentive to provide its own retail arm with more information, concerning network rollout plans, than an Access Seeker. ComReg's concern relates to the information provided to Access Seekers using WLA products (and not Undertakings more generally) in a discriminatory manner:

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<sup>21</sup> ComReg Document Number 16/96.

<sup>22</sup> See footnote 3 of ComReg Decision D10/18.

“7.37 *Information asymmetries may also apply to future planning by the SMP undertaking. For example, changes by Eircom to its network topography such as its FTTC and FTTH rollout, to location of points of interconnect or any intentions to withdraw its copper network may have significant implications for Access Seekers using WLA products. Insufficient notice of network and process changes relevant to the delivery of services in the retail market could significantly impede the ability of WLA Access Seekers to launch corresponding retail products and to compete with Eircom on an equivalent basis in downstream markets. A lack of information and the associated uncertainty may discourage Access Seekers from investing in or expanding their network footprint (to avail of WLA products)<sup>23</sup> or downstream footprint (since there may be a perceived risk of stranded assets). Further, such information asymmetries may lead to a delayed consideration of Access Seekers’ wholesale requirements as part of such network developments, also delaying/impeding their ability to respond to any new downstream offerings by the SMP undertaking.” (Emphasis added)*

- 5.13 Accordingly, the competition problems posed by information asymmetries, as identified by paragraphs 7.33(c) and 7.37, include the lack of transparency in the rollout and delivery of Eircom’s supply of WLA products to Access Seekers, to their detriment in competing in downstream markets, and the benefit of Eircom’s retail arm.

## 5.2.2 Remedies

- 5.14 Having considered the specific competition problems that ComReg identified in the WLA Market, Chapter 8 of the Consultation document and Chapter 7 of ComReg Decision D10/18 outline and discuss the specific remedies that ComReg proposed to address the identified competition problems.
- 5.15 Paragraphs 8.444 to 8.568 of the Consultation document set out the justification for the proposed transparency obligations. In particular, ComReg considered obligations relating to the “*Transparency requirement with respect to network roll out and network development*” at paragraphs 8.509 to 8.537. As can be seen from these paragraphs, the target recipients of FTTH rollout plans (that ComReg mandated Eircom to provide) are “Access Seekers”:

“8.521 *ComReg is of the view that, for the purposes of marketing and selling of FTTH services, more granular and accurate location information is required in sufficient time to allow **Access Seekers** to compete effectively in the downstream market for FTTH customers.*”

<sup>23</sup> Access Seekers’ use of WLA products depends on the extent of their backhaul network. Investing in backhaul depends on the location of Eircom’s Points of Interconnection.

“8.522 *...with regard to rolling out FTTH and providing **information to Access Seekers** marking a cabinet as “Dual FTTH/FTTC” does not in ComReg’s view give sufficient detail as to the location of the premises to be served by FTTH.*

“8.525 *Given the nature of the FTTH topology both in urban and rural areas and the gradual rollout of the network, it is critical that **Access Seekers** have sufficient and timely clarity as to the proposed **roll out areas** in question and the numbers of potential customers in each area, in order to be able to plan and execute operational and sales activities.*

“8.526 *Accordingly ComReg considers that an amendment to the existing transparency obligation is required to ensure that **Access Seekers** in addition to **having sufficient information** with respect to FTTC will have sufficient clarity **with respect to the planned roll out of FTTH**, the areas where it will be deployed and the corresponding number of potential premises served”.*

“8.537 *“... The proposed remedy is reasonable and proportionate given that Eircom is already adopting the use of Eircodes in their processes for FTTH deployment and will have the ability to provide unique address identifiers, as it is a fundamental part of its network planning and roll out process for FTTH. Therefore **providing the information to Access Seekers** does not create an unreasonable burden on Eircom” (Emphasis added)*

5.16 The remedies set out in the above paragraphs seek to place obligations on Eircom to provide information on the planned rollout of its FTTH network. It is clear from the text that these remedies are to oblige Eircom to provide information to Access Seekers.

5.17 The reasons why obligations are needed in the WLA market and what those obligations should be is also described at Chapter 7 of ComReg Decision D10/18. Regarding the obligation at Section 10.25 of the WLA DI, paragraphs 7.979 and 7.980 of ComReg Decision D10/18 are of particular relevance.

5.18 Paragraph 7.979 of ComReg Decision D10/18 describes the type of information that Eircom should make available in respect of NGA rollout plans. Paragraph 7.980 of ComReg Decision D10/18 describes why the obligation is necessary:

“7.980 *ComReg considers that the requirement summarised in paragraph 7.979 is necessary so that Access Seekers are provided with up to date information with respect to network rollout so as to efficiently and effectively plan for and deliver products and services on a wholesale basis or to End Users. ...*” (Emphasis added)

- 5.19 Paragraph 7.980 of ComReg Decision D10/18 therefore clearly specifies that the obligation on Eircom to provide NGA rollout plans is in respect of “Access Seekers”.
- 5.20 Therefore, when considering the transparency obligation to make NGA rollout plans available, it was ComReg’s position that the obligation was necessary to ensure that ‘Access Seekers’ i.e. those seeking access to or seeking to purchase VUA services had access to NGA rollout plans. NGA rollout plans relate to the deployment of FTTH and are therefore relevant to those seeking access to or seeking to purchase Eircom’s VUA.
- 5.21 This is also consistent with the non-discrimination obligation at Section 9.1(ii) of the WLA DI which requires that Eircom provides access and information in relation to such access to other Undertakings under the same conditions and of the same quality as Eircom provides to itself.

### 5.2.3 Siro’s position on competition problems

- 5.22 In its submissions, Siro states its view that specific remedies were imposed by ComReg to “...ensure that new entrants such as Siro could gain a foothold in the market”<sup>24</sup>. It observes that the transparency obligation imposed on Eircom, to publish specific details of its NGA rollout plans on a public website is one of those determined remedies.
- 5.23 In support of its position, Siro refers to ComReg’s emphasis on the importance of “*alternative network investment*” as an enabler for a competitive market – Siro also referred to ComReg’s statement that network competition being the “*most effective driver for investment in high quality networks*”<sup>25</sup>. It is Siro’s position that to limit the applicability of remedies in a manner that only benefits those who purchase Eircom’s wholesale services, i.e., Access Seekers, would “*significantly reduce their effectiveness*” and in some cases might actually act to reinforce and entrench Eircom’s SMP position<sup>26</sup>. Siro considers that, to have its intended effect, the information must be provided to all Undertakings without condition.
- 5.24 ComReg has considered Siro’s argument but does not agree. ComReg recognises that Siro is providing services in the WLA market and that Eircom’s market power may be exercised, not only in the context of Eircom’s provision of services in the WLA market, but also in the context of competition with other Undertakings

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<sup>24</sup> See letter from Siro (Gerry McAndrew) to ComReg (Alan Cox and Michael Patterson) dated 13 January 2020.

<sup>25</sup> Point 4 on page 2 of Siro’s letter of 13 January 2020, which referred to paragraph 7.368 of Decision D10/18.

<sup>26</sup> Page 2 of Siro’s letter of 13 January 2020.

providing services in the WLA market<sup>27</sup>. However, it is ComReg's position that the objective of the transparency obligation at Section 10.25 of the WLA DI is to remedy potential competition problems in the WLA market caused by asymmetries of information (NGA rollout plans) provided to those Undertakings availing of access to VUA, in comparison to the information that Eircom provides to itself. The obligation is not intended to address the potential exercise of market power by Eircom as against other infrastructure-based competitors in the WLA market that are not (actually or potentially) availing of access to VUA.

5.25 It follows that Eircom may impose reasonable conditions for the purposes of ensuring the recipient is an Access Seeker and will use the information only for the purposes for which it has been provided and to ensure that confidentiality of the information is protected<sup>28</sup>. ComReg considers that this is consistent with the objective of Section 10.25 of the WLA DI (and Section 10.21 of the WLA DI).

5.26 As highlighted by ComReg in the Consultation document (and noted by Siro in its submissions), the competition problem that ComReg seeks to address in ComReg Decision D10/18 is the potential for Eircom use its SMP to vertically leverage and discriminate in favour of its own retail arm. In particular, as set out above, ComReg has a concern that changes by Eircom to its network topology such as its FTTC and FTTH rollout (i.e. VUA FTTC and FTTH) may have significant implications for Access Seekers using WLA products. An important distinction needs to be highlighted in this regard. Having regard to the competition problems identified<sup>29</sup> and the justification for the obligation<sup>30</sup> it is clear that the obligation applies, not generally (i.e. to all Undertakings), but only in relation to those Undertakings that are reliant on Eircom's upstream wholesale input (i.e. VUA) to provide their own downstream services. The same issues do not arise for platform competitors that

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<sup>27</sup> For example, when setting price control obligations ComReg is very mindful of setting the correct 'build-or-buy' signals.

<sup>28</sup> This position is consistent the European Commission's recommendation, as set out in recital and paragraph 41 of the NGA Recommendation of 2010 (2010/572/EU), that highlighted the importance of Undertakings enjoying access to the SMP operator's network getting access to all necessary information, in a timely fashion, to adjust their own networks and network extension plans accordingly. The European Commission also recognised the need to ensure that information is used only for the purpose that it is intended to serve and that the confidentiality of information is ensured throughout the process.

<sup>29</sup> See paragraph 7.37 of the Consultation which is discussed in paragraph 5.12 of this Determination; "*changes by Eircom to its network topography such as its FTTC and FTTH rollout... may have significant implications for Access Seekers using WLA products. Insufficient notice of network and process changes relevant to the delivery of services in the retail market could significantly impede the ability of WLA Access Seekers to launch corresponding retail products and to compete with Eircom on an equivalent basis in downstream markets.*")

<sup>30</sup> See paragraph 7.980 of ComReg Decision D10/18 : it "*is necessary so that Access Seekers are provided with up to date information with respect to network rollout so as to efficiently and effectively plan for and deliver products and services on a wholesale basis or to End Users*" to allow Access Seekers (i.e. not all Undertakings) to "*efficiently and effectively plan for and deliver products and services on a wholesale basis or to End Users*").

are not dependant on Eircom’s wholesale input to decide how and where to rollout their network.

5.27 Siro states that it intends to use the information obtained through access to Eircom’s NGA rollout plans in three ways, namely:

(a) to assess and plan whether or not to use Eircom WLA products as an input into an aggregated wholesale offering;

(b) ✂ [REDACTED]  
[REDACTED] ✂; and

(c) ✂ [REDACTED]  
[REDACTED] ✂

5.28 ComReg considers that if there is a realistic prospect that Siro will avail of VUA services, it would be reasonable for Eircom to expect Siro to sign an ARO for VUA and for Siro to comply with the requirement that the information is only used for the purposes for which it was provided i.e., facilitate the provision of downstream services by means of Eircom’s VUA. This is because such conditions do not go further than is necessary to limit availability of the NGA rollout plans to Access Seekers, and their use to the purpose for which they are provided in accordance with ComReg Decision D10/18. There is no obligation under ComReg Decision D10/18 on Eircom to make the NGA rollout plans available further than to Access Seekers and for other purposes than those identified in ComReg Decision D10/18.

5.29 It is ComReg’s position therefore that, in accordance with ComReg Decision D10/18, Eircom may put in place reasonable conditions to ensure that information provided under Section 10.25 of the WLA DI is available to Undertakings availing of access to VUA, and that it is used by those Undertakings for the purpose for which it is provided. If Siro were to sign the ARO schedules for VUA and have NGA rollout plans made available to it, the use of NGA rollout plans to in the manner described in 5.27 (b) and (c), would not be consistent with availing of access to VUA. In such circumstances, other conditions on the availability of the information to Siro may be reasonable.

5.30 Although Eircom has been designated with SMP in the WLA market, and despite any efficiencies that Siro considers could accrue from information sharing, ComReg does not consider that the remedies imposed under ComReg Decision D10/18 include an obligation requiring that Eircom’s NGA rollout plans must be made available beyond Access Seekers i.e. those Undertakings availing of access to VUA). ComReg notes in particular that in ComReg Decision D10/18, there is no analysis, let alone justification, for an obligation on Eircom to make available NGA

rollout plans to other operators who do not rely on Eircom's network inputs and reduce the strategic uncertainty existing between infrastructure-based competitors.

- 5.31 For the avoidance of doubt, in this regard, ComReg's determination that Eircom is required to make available NGA rollout plans to those Undertakings availing of access to its network does not amount to a material change of ComReg Decision D10/18, as Siro contends. In contrast, and contrary to Siro's submissions, any finding that Eircom must share its rollout plans with any undertaking which so requests would extend the scope of Eircom's obligations under ComReg Decision D10/18.
- 5.32 In the light of this, ComReg does not believe that Siro's contentions as regards the EECC are relevant. ComReg notes first, that the EECC, adopted by the European Parliament and Council on 20 December 2018, is not due to be transposed into Irish law until 21 December 2020 and that ComReg Decision D10/18 was published prior to the EECC, in November 2018. The provisions of the EECC accordingly do not apply yet. Second, even if the EECC were relevant to ComReg's determination, ComReg does not believe that its determination falls contrary to any of the principles set out in Recitals 27 and 28 of the EECC, as Siro appears to suggest.
- 5.33 In particular, for the reasons set out above, ComReg's determination that Eircom is required to make NGA rollout plans available to Access Seekers (availing of VUA access to Eircom's network) reflects the analysis and reasoning for the obligation set out in Section 10.25 of the WLA DI. As such it does not in any way amount to a "*rewrite [of] key provisions of existing decision notices without the benefit of public consultation*" which in turn would "*create significant issues and risks for all investors in the Irish fibre market*" contrary to the approach called for by Recital 28 of the EECC.
- 5.34 As for Recital 27 of the EECC which refers to optimising competition by fostering an efficient level of investment which it defines as "*...the extent of infrastructure duplication at which investors can reasonably be expected to make a fair return*", as explained in paragraph 5.29 of this Determination, ComReg does not believe that the provision of information by Eircom on its NGA rollout plans is necessary to foster an efficient level of infrastructure-based competition. Not only is this not contemplated by ComReg Decision D10/18, but it does not appear to ComReg that reducing strategic uncertainty through the sharing of information on Eircom's NGA rollout plans with infrastructure-based operators would lead to an economically efficient level of investment, and/or achieve effective competition in retail services.

5.35

✂

[REDACTED]

5.36

[REDACTED]

## 5.2.4 Conclusions on the availability of NGA rollout plans

5.37 Having considered all of the above, the competition problem that ComReg sought to remedy through the transparency obligation under Section 10.25 of the WLA DI problem specifically related to making NGA rollout plans available on its wholesale website (which must be publicly available) to those Undertakings seeking access to or seeking to purchase VUA services in the WLA market. Section 10.25 of the WLA DI therefore must be read as requiring that Eircom make NGA rollout plans available to Undertakings that avail of Eircom's VUA.

5.38 As discussed at paragraph 5.6 of this Determination, Section 10.25 of the WLA DI (and Section 10.24 of the WLA DI, which imposed a general transparency obligation on Eircom to make certain information available on its publicly available wholesale website) are a further specification of Section 9.1 of the WLA DI (which contains the general non-discrimination obligation) and Section 10.1 (which contains the general transparency obligation). Consistent with the above analysis, the transparency obligation contained at Section 10.25 of the WLA DI supports the non-discrimination obligation and is to ensure that Undertakings availing of Eircom's network receive all necessary information to ensure that they can effectively compete at the retail level. ComReg's analysis in this Determination is also consistent with Sections 10.21 to 10.23 of the WLA DI which recognise that confidentiality of the SMP Undertaking's information must be ensured.

5.39 ComReg ✂ [REDACTED] ✂ considers that NGA rollout plans should be made available to Undertakings that indirectly avail of Eircom's VUA product. The competition problem that is addressed by ComReg Decision D10/18 is the potential for Eircom, as an undertaking designated with SMP, to vertically leverage its SMP and discriminate in favour of its own retail arm. This competition problem is addressed through a transparency obligation that requires Eircom to make NGA rollout plans available to Access Seekers. This is necessary to ensure that Access Seekers (that are reliant on Eircom's upstream input) are provided with up to date information with respect to Eircom's network rollout, so as to efficiently and effectively plan for and

deliver products and services on a wholesale basis or to End-users, at the same time that Eircom's retail arm is in the position to do.

- 5.40 ✂ [REDACTED] ✂ ComReg does not believe that Eircom could reasonably refuse to make available its NGA rollout plans to Undertakings that avail, not directly, but indirectly, of Eircom's upstream input via another Undertaking. The same competition problems addressed by the obligation exists as regards those Undertakings that purchase Eircom's VUA via a third party and such Undertakings require access to NGA rollout plans in the same way as Access Seekers purchasing VUA directly from Eircom. However, in the same way, Eircom may apply reasonable conditions in respect of access to information regarding its NGA rollout plans in order to ensure that access is limited to Undertakings availing, directly or indirectly, of access to relevant access products, including for example a requirement for a NDA.
- 5.41 Section 4.1(c) of the Draft Determination Notice set out two circumstances under which Eircom may apply reasonable conditions in order to ensure that access to NGA rollout plans is limited to Undertakings availing of VUA. Such reasonable conditions include:
- (a) That the particular schedules of the ARO concerning VUA and the associated NDA have been executed<sup>31</sup>; or
  - (b) Any other reasonably imposed conditions that are consistent with ComReg Decision D10/18 and serve the purpose of ensuring that access to NGA rollout plans is limited to Undertakings purchasing VUA<sup>32</sup>.
- 5.42 ✂ [REDACTED] ✂ ComReg has amended the wording in the Determination Notice to clarify that Eircom may impose reasonable conditions in order to ensure that NGA roll-out plans are available to Undertakings availing VUA whether directly and indirectly. For the avoidance of doubt, it would not be reasonable for Eircom to impose conditions that would exclude Undertakings that are indirectly accessing VUA from accessing NGA rollout plans.

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<sup>31</sup> 4.1(b) of the Draft Determination Notice.

<sup>32</sup> 4.1(a) of the Draft Determination Notice.

## 5.3 Reasonable conditions

### 5.3.1 May Eircom apply conditions?

- 5.43 As Eircom is entitled to limit the availability of NGA rollout plans to those Undertakings that are availing, directly or indirectly, of access to VUA, Eircom may put in place conditions that are designed to ensure that this is the case.

### 5.3.2 Are the conditions imposed by Eircom reasonable?

- 5.44 Eircom currently applies two conditions on the availability of NGA rollout plans. Information is available to Undertakings that:

- (a) Have signed the Eircom ARO schedules for VUA, or in the alternative, are availing of VUA indirectly through a third party and;
- (b) Have signed an NDA.

- 5.45 ComReg is of the view that both conditions are reasonable. The requirement that an Undertaking sign the ARO schedule for VUA, or that the Undertaking avails of VUA through a third party, allows Eircom to ensure that NGA rollout plans are available to Undertakings that are availing, directly or indirectly, of access to VUA.

- 5.46 The requirement to sign an NDA ensures that the information that is provided, including the NGA rollout plans, which are likely to be confidential and commercially sensitive, is used only for the purpose for which it is disclosed.

- 5.47 ComReg notes that although Siro has signed the service schedules of the Eircom ARO for Duct access and Pole access and consequently, an NDA should already be in place between the parties, Siro is not currently availing of access to VUA directly or indirectly.

### 5.3.3 Conclusions on applicable conditions

- 5.48 It is ComReg's view that Eircom may apply reasonable conditions to ensure that information regarding access to VUA is made available to those Undertakings that avail of access to Eircom's VUA. Such reasonable conditions include, but are not limited to, making information available to Undertakings that:

- (a) Have signed the Eircom ARO schedules for VUA, or in the alternative, are availing of VUA indirectly through a third party and/;
- (b) Have signed a NDA.

5.49 ComReg’s conclusions are summarised in Chapter 6 below.

## Chapter 6

# Conclusion

- 6.1 This dispute centres on the transparency obligations that ComReg imposed on Eircom by Section 10.25 of the WLA DI in ComReg Decision D10/18 pursuant to Regulation 9 of the Access Regulations. As recalled above, the competition problem addressed by Section 10.25 of the WLA DI is Eircom's ability, absent regulation, to leverage its market power to the benefit of its retail arm by creating or exploiting information asymmetries and in particular, by withholding relevant information on the rollout and delivery of Eircom's supply of WLA products to Access Seekers.
- 6.2 The obligation set out in Section 10.25 of the WLA DI accordingly requires that Eircom make NGA rollout plans available to Access Seekers, that is, those operators seeking access to or seeking to purchase services from Eircom in the WLA market. This ensures that Access Seekers relying on to wholesale access provided by Eircom in order to compete with Eircom's retail arm are provided with up to date information with respect to Eircom's network rollout so as that can efficiently and effectively plan for and deliver products and services on a wholesale basis or to End-users and compete with Eircom.
- 6.3 As NGA rollout plans relate to the deployment of FTTH, the Access Seekers concerned are those seeking access to or seeking to purchase access to FTTH in the form of Eircom's VUA products, whether directly or indirectly.
- 6.4 Eircom accordingly is required, under Section 10.25 of the WLA DI, and consistent also with the non-discrimination obligation under Section 9.1(ii) of the WLA DI (which requires that Eircom provide access and information in relation to such access to other Undertakings under the same conditions and of the same quality as Eircom provides to itself), to make NGA rollout plans available to Undertakings that avail of access to Eircom's VUA. This includes Undertakings that avail of access to VUA directly from Eircom and Undertakings that avail of access to VUA indirectly via another Undertaking.
- 6.5 This means that Eircom may attach conditions to the provision of NGA rollout plans which are intended to ensure that the plans are only made available to Undertakings that are availing of access to VUA.
- 6.6 Eircom currently applies two conditions on the availability of NGA rollout plans. Information on NGA rollout plans is available to Undertakings that:
- (a) Have signed the Eircom ARO schedules for VUA, or in the alternative, are availing of VUA indirectly through a third party and;

(b) Have signed an NDA.

6.7 ComReg finds that both conditions are reasonable. The requirement that an Undertaking sign the ARO schedule for VUA, or that the Undertaking avails of VUA through a third party, allows Eircom to ensure that NGA rollout plans are available to Undertakings that are availing, directly or indirectly, of access to VUA. The requirement to sign an NDA ensures that the information that is provided, including the NGA rollout plans, which are likely to be confidential and commercially sensitive, is used only for the purpose for which it is disclosed.

6.8 ComReg therefore makes the following determination:

(a) For the purpose of Section 10.25 of the WLA DI, Eircom is required to make available NGA rollout plans to all Undertakings availing, directly or indirectly, of relevant access products.

(b) For the purpose of Section 10.25 of the WLA DI, Eircom may apply reasonable conditions in order to:

(i) limit the availability of NGA rollout plans to Undertakings availing, directly or indirectly, of relevant access products; and

(ii) limit the use of NGA rollout plans by such Undertakings at (b)(i) to the purpose of availing, directly or indirectly, of the relevant access products.

(c) For the purpose of (b)(i) above, Eircom may require that Undertakings:

(i) have entered into an access agreement with Eircom in respect of VUA, having executed the particular schedules of the Access Reference Offer concerning VUA; or

(ii) are availing of relevant access products indirectly through those Undertakings described at (c)(i).

(d) For the purpose of (b)(ii) above, Eircom may require that Undertakings:

(i) have entered into a non-disclosure agreement to ensure that the use of NGA rollout plans is limited to the purpose described at (b)(ii) or;

(ii) have met any other reasonably imposed conditions to ensure that the use of NGA rollout plans is limited to the purpose described at (b)(ii).

(e) Eircom is not required to make NGA rollout plans available to Siro under Section 10.25 of the WLA DI, until such time that Siro meets the conditions at (c) and (d) above, which Eircom may reasonably impose for the purpose of (b) above.

- 6.9 The Determination Notice (which is the legal instrument that contains ComReg's determination above is contained in Annex: 1 of this document.

## Chapter 7

# Publication

- 7.1 In order to promote further openness and transparency, ComReg will publish this Determination and submissions received in connection with the dispute and its proposed resolution, subject to the provisions of ComReg's guidelines on the treatment of confidential information in ComReg Document No. 05/24<sup>33</sup>.
- 7.2 ComReg appreciates that many of the issues raised in this Determination required the parties to provide confidential information. Only non-confidential versions of the Determination will be published.
- 7.3 As it is ComReg's policy to make all responses available, the parties were requested to clearly identify confidential material within their submissions and place any such confidential material in a separate document to their response.
- 7.4 Such Information will be treated subject to the provisions of ComReg's guidelines on the treatment of confidential information as set out in ComReg Document No. 05/24.

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<sup>33</sup> Guidelines on the Treatment of Confidential Information, Response to Consultation, ComReg Document 05/24, March 2005.

## Annexes

### Annex: 1 Determination Notice

## Determination resolving the dispute between Siro Limited and Eircom Limited concerning disclosure of Eircom's NGA rollout plans pursuant to ComReg Decision D10/18

### 1. STATUTORY POWERS GIVING RISE TO THIS DETERMINATION

- 1.1. This Determination is made by the Commission for Communications Regulation (ComReg) and relates to a dispute within the scope of Regulation 31 of the Framework Regulations in connection with existing obligations imposed pursuant to Regulations 8 and 9 of the Access Regulations and in Market Review: Wholesale Local Access (WLA) (ComReg Document No 18/94 and Decision No D10/18).
- 1.2. This Determination is made:
  - (a) Pursuant to Regulation 31 of the Framework Regulations;
  - (b) Having had regard to Sections 10 and 12 of the Communications Regulation Act 2002 and Regulation 16 of the Framework Regulations;
  - (c) Having taken account of submissions received from the Parties and another Undertaking following the publication of the draft determination published on 6 March 2020 in ComReg Document No. 20/13; and
  - (d) Having regard to the analysis and reasoning set out in ComReg Decision D10/18 and this ComReg Document, ComReg Decision D06/20.

### 2. DEFINITIONS

- 2.1. In this Determination, unless the context otherwise suggests:
  - (a) 'Access Reference Offer' or 'ARO' means the offer of contract by Eircom to Undertakings in relation to WLA, and shall have the same meaning as under Section 2.1 of the decision instrument contained in Appendix 20 of ComReg Decision D10/18;

- (b) ‘Access Regulations’ means the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011);
- (c) ‘Communications Regulation Act 2002’ means the Communications Regulation Act 2002 (No. 20 of 2002), as amended;
- (d) ‘ComReg Decision D06/20 means the determination entitled “*Determination of a dispute between Siro and Eircom*” dated 29 April 2020
- (e) ‘ComReg Decision D10/18’ means ComReg Document No. 18/94, entitled “Market Review - Wholesale Local Access (WLA) provided at a Fixed Location & Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products: Response to Consultation and Decision”, dated 19 November 2018;
- (f) ‘ComReg Document No. 20/13’ means the draft determination entitled “*Draft Determination of a dispute between Siro and Eircom*” dated 6 March 2020;
- (g) ‘ComReg’ means the Commission for Communications Regulation, established under Section 6 of the Communications Regulation Act 2002;
- (h) ‘Determination’ means this determination;
- (i) ‘Dispute Referral’ means the dispute as submitted by Siro to ComReg on 18 November 2019;
- (j) ‘Effective Date’ means the date the Determination is published and notified to the Parties;
- (k) ‘Eircom’ means Eircom Limited;
- (l) ‘Framework Regulations’ means the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011);
- (m) ‘Parties’ means Eircom and Siro;
- (n) ‘Siro’ means Siro Limited;
- (o) ‘SMP’ significant market power;
- (p) ‘Undertaking(s)’ shall have the same meaning as under Regulation 2 of the Framework Regulations;

- (q) ‘Virtual Unbundled Access’ or ‘VUA’ means the wholesale active access product provided by Eircom in accordance with Section 7 of the decision instrument contained in Appendix 20 of ComReg Decision D10/18.
- (r) ‘WLA DI’ means of the decision instrument contained in Appendix 20 of ComReg Decision D10/18

### 3. SCOPE AND APPLICATION

- 3.1. This Determination relates to the SMP obligation set out in Section 10.25 of the WLA DI.
- 3.2. ComReg has considered the scope of the dispute contained in the Dispute Referral and has concluded that the scope for the dispute the subject of this Determination is as follows:

*“Whether Eircom may require Siro to comply with conditions, and if so which, in respect of access to information regarding Eircom’s “NGA [Next Generation Access] rollout plans” (as provided for under Section 10.25 of the WLA Decision Instrument at Appendix 20 of ComReg Decision D10/18)”.*

- 3.3. This Determination applies to Eircom and Siro, and their subsidiaries and any related companies, and any Undertaking which they each own or control, and any Undertaking which owns or controls either of them, and their respective successors and assigns. For the purpose of this Determination, the terms “subsidiary” and “related company” shall have the meaning ascribed to them in the Companies Act 2014.

### 4. DETERMINATION

- 4.1. In accordance with Regulation 31 of the Framework Regulations, the Communications Regulation Act 2002, and for the purpose of resolving the dispute between the Parties, ComReg hereby determines that:
  - (a) For the purpose of Section 10.25 of the WLA DI, Eircom is required to make available NGA rollout plans to all Undertakings availing, directly or indirectly, of relevant access products.
  - (b) For the purpose of Section 10.25 of the WLA DI, Eircom may apply reasonable conditions in order to:
    - (i) limit the availability of NGA rollout plans to Undertakings availing, directly or indirectly, of relevant access products; and

- (ii) limit the use of NGA rollout plans by such Undertakings at 4.1(b)(i) to the purpose of availing, directly or indirectly, of the relevant access products.
- (c) For the purpose of 4.1(b)(i) above, Eircom may require that Undertakings:
- (i) have entered into an access agreement with Eircom in respect of VUA, having executed the particular schedules of the Access Reference Offer concerning VUA; or
  - (ii) are availing of relevant access products indirectly through those Undertakings described at 4.1(c)(i).
- (d) For the purpose of 4.1(b)(ii) above, Eircom may require that Undertakings:
- (i) have entered into a non-disclosure agreement to ensure that the use of NGA rollout plans is limited to the purpose described at 4.1(b)(ii) or;
  - (ii) have met any other reasonably imposed conditions to ensure that the use of NGA rollout plans is limited to the purpose described at 4.1(b)(ii).
- (e) Eircom is not required to make NGA rollout plans available to Siro under Section 10.25 of the WLA DI, until such time that Siro meets the conditions at 4.1(c) and 4.1(d) above, which Eircom may reasonably impose for the purpose of 4.1(b) above.

## 5. STATUTORY POWERS NOT AFFECTED

- 5.1. Nothing in this Determination shall operate to limit ComReg in the exercise and performance of its statutory powers or duties under any primary or secondary legislation (in force prior to or after the Effective Date of this Determination).

## 6. EFFECTIVE DATE

- 6.1. The Effective Date of the Determination shall be the date of its publication and notification to the Parties.

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**ROBERT MOURIK**  
**COMMISSIONER**  
**THE COMMISSION FOR COMMUNICATIONS REGULATION**  
**THE 29 DAY OF APRIL 2020**

## **Annex: 2 Section 10.25 of the WLA DI**

See Document 20/28A – Annexes for Determination of a dispute between Siro and Eircom.

## **Annex: 3 Siro submission 18 November 2019**

See Document 20/28A – Annexes for Determination of a dispute between Siro and Eircom.

## **Annex: 4 Information Notice 19/109**

See Document 20/28A – Annexes for Determination of a dispute between Siro and Eircom

## **Annex: 5 Siro complaint to Eircom 16 October 2019**

See Document 20/28A – Annexes for the Determination of a dispute between Siro and Eircom.

## **Annex: 6 Eircom Report Complaint W/SCust 16(Complainant Version)**

See Document 20/28A– Annexes for Determination of a dispute between Siro and Eircom

## **Annex: 7 Eircom Report Complaint W/SCust 16 (Confidential Version)**

See Document 20/28A – Annexes for Draft Determination of a dispute between Siro and Eircom

## **Annex: 8 Eircom Reply 11 December 2019**

See Document 20/28A – Annexes for Determination of a dispute between Siro and Eircom

## **Annex: 9 Eircom Response to Questions 10 January 2020**

See Document 20/28A – Annexes for Determination of a dispute between Siro and Eircom

## **Annex: 10 Siro Cover Letter 13 January 2020**

See Document 20/28A – Annexes for Determination of a dispute between Siro and Eircom

## **Annex: 11 Siro Response to Questions 13 January 2020**

See Document 20/28A – Annexes for Determination of a dispute between Siro and Eircom

## **Annex: 12 ComReg Consultation Document 16/96**

See Document 20/28A – Annexes for Determination of a dispute between Siro and Eircom.

## **Annex: 13 Siro Response to Draft Determination**

See Document 20/28A – Annexes for the Determination of a dispute between Siro and Eircom.

## **Annex: 14 Eircom Response to Draft Determination**

See Document 20/28A – Annexes for the Determination of a dispute between Siro and Eircom.

## **Annex: 15 Sky Response to Draft Determination**

See Document 20/28A – Annexes for the Determination of a dispute between Siro and Eircom.