



Commission for  
**Communications Regulation**

Information Notice

**Closure of Sync Checker Investigation**

<b>Document No:</b>	<b>09/74</b>
<b>Date:</b>	<b>29 September 2009</b>

On 4 December 2008, following an investigation, the Commission for Communications Regulation (“ComReg”) issued Eircom Limited (“Eircom”) with a Notification of a finding of non-compliance (“the Notification”) with its obligation of non-discrimination<sup>1</sup> as it relates to the business support tool “Sync Checker”. ComReg published an Information Notice regarding this Notification<sup>2</sup>, in accordance with Regulation 18(2) of the European Communities (Electronic Communications Networks and Services) (Access) Regulations, 2003 (“the Access Regulations”)<sup>3</sup>.

In the Notification, ComReg set out that Eircom had one month from the date of the Notification to either make representations in relation to the Notification or to remedy any non-compliance.

On 9 January 2009, ComReg received Eircom’s representations in relation to the Notification.

Eircom’s representations did not express that Eircom had remedied the non-compliance but did propose remediation in February 2009.

No evidence was presented in Eircom’s representations which changed the factual matters relating to the finding. It was therefore evident that the Notification was correct at the time of issue. ComReg considers that, at the time of the Notification, Eircom was not in compliance with the non-discrimination obligation set out in Paragraph 6.1 of the Annex to Decision 03/05, pursuant to Regulation 11 of the Access Regulations.

On 8 April 2009, ComReg met with Eircom and examined the system introduced in February 2009. ComReg found that the Test Sync for Bitstream Order on the Unified Gateway provided Broadband Metric information to Other Authorised Operators according to timescales, on a basis, and of a quality, which are equivalent to those provided by Eircom to its Retail arm.

It is ComReg’s view that Eircom had remedied the non-compliance as set out in the Notification. On this basis, ComReg amended the Notification, pursuant to Regulation 18(3) of the Access Regulations stating that, as of 4 December 2008, Eircom was not compliant with its non-discrimination obligation but pursuant to the Notification, Eircom had remedied the non-compliance.

ComReg will not pursue further enforcement in accordance with Regulation 18(4) of the Access Regulations.

ComReg is therefore closing this investigation. The closure of this investigation is without prejudice to ComReg’s position that, where justified, it may in the future re-investigate any of the issues related to this investigation in accordance with its functions, as set out in sections 10(1)(a) and 10(1)(d) of the Communications Regulation Act of 2002<sup>4</sup>.

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<sup>1</sup> Eircom’s obligation of non-discrimination in the Wholesale Broadband Access Market is imposed at 6.1 of the Annex of ComReg Decision 03/05 pursuant to Regulation 11 of Access Regulations

<sup>2</sup> Information Notice – ‘Decision to find that Eircom is not in compliance with the non-discrimination obligation in its use of “Sync Checker”’ (ComReg Document No: 08/95 Date: 4 December 2008)

<sup>3</sup> European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 (S.I. No. 305 of 2003), amended by the European Communities (Electronic Communications Networks and Services) (Access) (Amendment) Regulations 2007 (S.I. No. 373 of 2007)

<sup>4</sup> Communications Regulation Act, 2002 (No. 20 of 2002), amended by the Communications Regulation (Amendment) Act 2007 (No. 22 of 2007)