An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

09 July 2020

Ms. Emma O'Toole,
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By email only to: [redacted]

Cc: [redacted]; [redacted]; [redacted]

RE: ComReg 20/46 – Request for further clarification

Dear Emma,

I refer to your email dated July 1st last, in which you sought clarification on points set out in ComReg Document 20/46, ComReg's RFTS and FACO Market Consultation and Draft Decision.

ComReg's response is set out in the Annex to this letter. Please note that this letter (save for the email addresses), together with the Annex, will today be published in the form of an Information Notice on ComReg's website, www.comreg.ie in order to provide transparency for all stakeholders.

I trust that the foregoing is in order.

Yours sincerely,

Sent by email, bears no signature

Dave O'Connell

Market Analysis Manager

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Annex – Response to Eircom Clarification Request on ComReg Document 20/46 (the "Consultation")

ComReg's response to the Eircom clarifications is set out below. Capitalised terms used below, unless otherwise defined, are defined in the Consultation.

1. **"We would like to better understand the thinking behind the 18 month (existing supply) and 9 month (new supply) sunset periods if possible. ComReg states that the sunset period is designed to afford Access Seekers a reasonable and sufficient period of time to migrate away from the purchase of FACO from eir, to the purchase of other wholesale inputs capable of delivering FACO or RFTS (including self-supply), should they so wish. Can ComReg provide additional clarity as to the justification for these periods e.g. any analysis undertaken as to the feasible migration period and whether ComReg has determined the appropriate period with reference to the practice of other NRAs. In addition, our understanding is that ComReg will require eir to provide access with respect to new orders in the first 9 months of this 18 month period. Can ComReg confirm that this is correct and, if so, provide additional clarity as to the rationale for this proposal, given that access seekers may ultimately choose to migrate following deregulation 9 months later?"**

   The purpose of the sunset period is set out in Chapter 11 of the Consultation, which recalls that Regulation 27(2) of the Framework Regulations allows ComReg to give reasonable notice to any parties which it considers to be affected by the withdrawal of obligations. As set out in paragraph 11.5 of the Consultation, the sunset periods seek to provide sufficient time in order to facilitate orderly deregulation in the Urban Low-Level FACO Market, and Urban High-Level FACO Market. In particular, as explained in paragraph 11.3 of the Consultation, ComReg's preliminary view that deregulation is warranted in these markets is predicated on a number of factors, including a forward-looking assessment of the competitive constraints arising in those markets, principally due to the presence of wholesale NGA Broadband networks capable of delivering RFTS by means of Managed VoIP offered by Access Seekers to end users on a retail basis, or to other SPs on a wholesale basis. The presence of such constraints is assured, in a Modified Greenfield Approach, through upstream regulation in the Wholesale Local Access Market, as per ComReg 2018 WLA/WCA Decision. In this context the sunset periods proposed in the Consultation seek to allow Access Seekers sufficient time in which to make any necessary preparations for the new market environment and preserve continuity in the supply of both wholesale and retail services (were Eircom to withdraw SB-WLR, or significantly alter its SB-WLR terms and conditions, following deregulation), noting the following:

- The initial 9 month period following the effective date of the decision arising from the Consultation seeks to ensure that an Access Seeker has sufficient time to (further) develop or procure a Voice over Internet Protocol ('**VoIP**') platform and associated operational/support systems in order to enable the provision of Managed VoIP to Retail Fixed Telephony Service ('**RFTS**') end users.[1] ComReg proposes to require Eircom to provide access with respect to new SB-WLR orders in this 9 month period, given that an Access Seeker may require continuity in the supply of SB-WLR while it develops or procures a VoIP platform (along with, for example, all ancillary systems integration for in-life management of the Managed VoIP product(s)). This initial 9 month period should also provide sufficient time to an Access Seeker to also, in parallel to these activities, initiate a communication programme with its end users regarding the replacement of its existing SB-WLR based RFTS service by Managed VoIP delivered via Next Generation ('**NG**') broadband access.

- The subsequent 9 month period of the 18 month sunset period seeks to ensure that Access Seekers have sufficient time to migrate their end users from POTS-based NG broadband to standalone NG broadband with Managed VoIP, noting that SB-WLR-only end users will require NG broadband to be installed before migrating to standalone NG broadband with Managed VoIP. The length of the latter 9 month period proposed in the Consultation was determined having regard to the volume of FACO lines in the Urban FACO Markets[2] and Eircom's published product migration processes,[3] which have a maximum throughput of 1,000 migrations per operator per day.[4]

2. **"In terms of the boundaries of the geographic market, is there any additional analysis that can be shared on the determination by Exchange Area e.g. the manner in which the 80% criterion was passed? We would like to understand this better in order to be able to comment fully."**

ComReg set out its justification for an 80% coverage criterion at sub-section 5.2.9 of the Consultation, and also at Appendix 9. As set out at paragraph 5.415 of the Consultation, ComReg considered a range of coverage levels. In selecting a threshold of 80%, ComReg *inter alia* aimed to strike a balance between:

- setting a lower coverage level (which would lead to Exchange Areas being designated as exhibiting different competitive conditions, even where a non-trivial level of premises at those Exchange Areas were not passed by Next Generation broadband); and

- requiring coverage levels at 100%, or close to 100%, (which would fail to take account of the differences in conditions of competition arising from the presence at high, but not ubiquitous, levels at an Exchange Area of Next Generation broadband coverage).

As set out at paragraph 5.411 of the Consultation, ComReg proposes to apply a single assessment criterion, rather than a cumulative set of criteria, on the ground that the key criterion in distinguishing competitive conditions between Exchange Areas is the presence (or absence) of Next Generation broadband capable of facilitating the supply of products falling within the Relevant FACO Product Markets, and serving an appreciable number of premises at an Exchange Area.

[1] As set out at paragraphs 5.84 to 5.93, and 5.118 to 5.128 of the Consultation.
[2] Overall volume of FACO lines in the Urban FACO Markets set out in Table 55 of the Consultation.
[3] https://www.openeir.ie/products/.
[4] As specified in the Open eir Unified Gateway ('**UG**') Data Contract.

ComReg considers that a (cumulative) coverage level of 80% is likely to offer a sufficient level of scale for an operator to be capable of providing service to a customer base which is large enough to generate a competitive constraint at an Exchange Area. At coverage levels below 80%, it is ComReg's preliminary view that a large enough cohort of premises in an Exchange Area would be unable to access Managed VoIP over Next Generation broadband, such that competitive conditions at that Exchange Area would be insufficiently different from a scenario where Next Generation broadband was not present.