



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Eir/InfraVia Transaction

Information Notice

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Commission for Communications Regulation

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On 28 January 2022 Eircom Limited (“Eir”) and InfraVia Capital Partners (“InfraVia”) announced that they had reached an agreement to create a dedicated fibre company, Fibre Networks Ireland Limited (“FNI”) (“the Transaction”). Following completion of the Transaction on 30 June 2022, InfraVia owns a 49.99% interest in FNI, and Eir the remaining 50.01%.

As part of the Transaction Eir has transferred to FNI certain of its passive local access network assets (“Civil Engineering Infrastructure”). ComReg’s understanding is that this Civil Engineering Infrastructure is principally located outside the Government’s National Broadband Plan’s¹ Intervention Area, where National Broadband Ireland (“NBI”) is currently rolling out an FTTH (Fibre To The Home) network to connect some 559,000 premises/delivery points.

Following Eir and InfraVia’s announcement in January 2022, ComReg engaged with Eir in order to assess the effects of the Transaction on existing regulatory obligations imposed on Eir, including in particular those imposed under ComReg Decision D10/18,² with the view to ensuring their continued effectiveness.

On receipt from the parties to the Transaction of the confirmations and undertakings set out in Appendix 1, ComReg was satisfied for the Transaction to conclude. Notwithstanding completion of the Transaction, ComReg will carry out its assessment of the implications of the legal, structural and operational arrangements envisaged by the Transaction in accordance with Regulation 15 of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (“Access Regulations”). This assessment will be completed by way of ComReg’s ongoing reviews of the Physical Infrastructure Access (“PIA”) and Wholesale Local Access (“WLA”) markets.³ Public consultations on these reviews are due to be published in Q4 this year.

Regulation 15 of the Access Regulations requires undertakings which have been designated as having significant market power in one or several relevant markets to notify ComReg when they intend to transfer their local access network assets or a substantial part thereof to a separate legal entity under different ownership, or to establish a separate business entity in order to provide to all retail providers, including its own retail divisions, fully equivalent access products. ComReg is then required to assess the effect of the Transaction on existing regulatory obligations by way of an analysis of the different markets related to the access network and determine on the basis of that assessment whether to impose, maintain, amend or withdraw regulatory obligations.

¹ <https://www.gov.ie/en/publication/c1b0c9-national-broadband-plan/> .

² Market Reviews: Wholesale Local Access and Wholesale Central Access, ComReg Document 18/94, [Decision D10/18](#), November 2018.

³ PIA essentially refers to duct and pole infrastructure that can be used for supporting electronic communications networks and services. WLA concern the supply of wholesale broadband services.

Appendix 1: Confirmations and Undertakings

We refer to the Investment Agreement dated 27 January 2022 between Eircom Limited ("Eircom"), Infravia V Invest S.a.R.L, Fibre Networks Ireland Holdings Limited and Fibre Networks Ireland Limited and to the Carve-out Documents and the Transaction Documents proposed to be entered into on or around 30 June (collectively, together with the Investment Agreement, the "Investment Documents").

1. We confirm that, under the Investment Documents, Eircom remains wholly responsible for and has all of the legal rights and entitlements required by it to ensure that the regulatory obligations associated with its status of operator with Significant Market Power including but not limited to the obligations under ComReg Decision D10/18 dated 19 November 2018 ("Decision D10/18") are met in full.
2. We undertake and agree with ComReg:
 - (a) to implement and operate the arrangements set out in the Investment Documents in a manner consistent with the confirmation at 1 above;
 - (b) that none of us will invoke or apply any provision of the Investment Documents or otherwise take, or omit from taking, any action which would impede or obstruct Eircom from complying with or discharging its obligations in full under Decision D10/18;
 - (c) that Eircom (including any of its contractors and subcontractors) will ensure in taking any of the steps to meet the contractual provisions of the Commercial Service Agreement ('CSA'), the Transitional Managed Services Agreement ('TMSA') and the Managed Services Agreement ('MSA') (including in particular but without limitation those that are intended to ensure that sufficient resources are deployed to meet roll-out targets for FibreCo) that the discharge of its regulatory obligations as regards third parties will not be adversely affected. In particular, Eircom shall:
 - (i) ensure at all times that the allocation of resources and the proportion of staff allocated to the services, including in particular Access to CEI services (including but not necessarily limited to maintenance, duct clearance, pole remediation and fibre make ready programmes) on FibreCo infrastructure and on the infrastructure remaining within Eircom's ownership, do not prioritise FibreCo's roll-out over other forms of Access to CEI required from third parties;

- (ii) ensure that no Service Level Agreement or any other performance agreement is entered with FibreCo, directly or indirectly, which could have the effect to incentivise the prioritisation of FibreCo's business or favour FibreCo or Eircom in any way;
 - (iii) ensure that any information related to FibreCo's assets, their rollout, development or use is made available to all Access Seekers and Eircom at the same time and at the same level of details as required though nothing in this clause is to be understood to either extend or go beyond any of the obligations on Eircom that are set out in Decision D10/18; and
 - (d) that Eircom, arising from its obligation to meet all reasonable requests for access, including to CEI, under Decision D10/18, will refuse, decline or otherwise reject requests for access to CEI (including in respect of CEI owned by FibreCo) whether in the form of orders for existing products or for new forms of access, only on the basis of objective criteria such as technical feasibility or the need to maintain network integrity.
3. Eircom agrees to determine in accordance with its Statement of Compliance obligations under ComReg Decision D10/18 and ComReg Decision D03/20 to carry out an assessment of the risks to compliance with its regulatory obligations arising out of the intended transaction and put in place any remediation measures and controls that are necessary.
 4. We acknowledge and agree that nothing in this letter of undertaking will prejudice the right of ComReg at any time to vary or adjust the regulatory obligations that have been imposed on Eircom, including pursuant to Decision D10/18, to more properly take account of the arrangements contemplated by the Investment Documents or to address any of the matters set out in this letter of undertaking.
 5. The parties will not invoke or rely on any provision of the Investment Documents or any of the arrangements contemplated by or implemented pursuant to the Investment Documents in defence of an investigation of enforcement action by ComReg.
 6. Eircom agrees to provide a quarterly report to ComReg setting out details of its compliance with these undertakings, the first such report to be provided on 30 September 2022. The substance and content of the report referred to herein shall be in a form reasonably acceptable to ComReg.
 7. Eircom agrees to be bound by the above undertakings pending the entry into force of any remedies that may be imposed by ComReg following its Physical Infrastructure Access Market and Wholesale Local Access Market Analyses.