



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Information Notice

Request for information by ALTO about
ComReg Consultation Document 20/81

Information Notice

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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Additional Information

Document No:	20/90
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1. On 9 September 2020 ComReg published Consultation Document 20/81¹ (**‘Consultation 20/81’**) regarding the pricing of Eircom’s Civil Engineering Infrastructure² (**‘CEI’**), including pricing proposals for CEI access by National Broadband Ireland (**‘NBI’**) for the purposes of the Irish Government’s National Broadband Plan (**‘NBP’**).
2. ALTO, the representative body for alternative operators in the communications sector in Ireland, has since, by way of letter attached at Appendix 1, requested information from ComReg regarding the work undertaken by our economic advisors, Dot Econ, in relation to Consultation 20/81.
3. While there is no obligation on ComReg to provide (or to publish) the information sought, ComReg has decided that on this occasion and in the interests of transparency to all relevant stakeholders to provide the information sought, as set out further below.
4. In its letter ALTO requested “...*sight of the Terms of Reference given to Dot Econ in order for them to draft their report.*” Please see Appendix 2 below for the terms of reference of the work undertaken by Dot Econ in relation to Consultation 20/81.
5. In addition, ALTO requested “...*information about who were the key contributors to the report either within Dot Econ or queried externally by Dot Econ.*” To clarify, Dot Econ’s report was prepared solely by Dot Econ and no engagement was considered necessary with external stakeholders as part of its work.
6. Responses to Consultation 20/81 are due on or before 5.30pm on 4 November 2020.

¹ ComReg Document No 20/81, “Pricing of Eircom’s Civil Engineering Infrastructure (**‘CEI’**), CEI access in the context of the National Broadband Plan (**‘NBP’**)”. Dated 9 September 2020

² Access to Eircom’s ducts and poles.

Appendix 1: ALTO Letter

Clifton House
Fitzwilliam Street
Dublin 2

21 September 2020

Garrett Blaney
Chairperson
Commission for Communications Regulation
1 Dockland Central
Guild Street
Dublin 1
D01 E4X0

Dear Garrett

Re. ALTO Requisition Concerning Consultation – Pricing of Eircom’s Civil Engineering Infrastructure (‘CEI’) CEI access in the context of the National Broadband Plan (‘NBP’) ComReg Reference: 20/81 and Dot Econ Report: Annex 2 of ComReg Document 20/81A

ALTO is currently considering the lengthy ComReg CEI Consultation which is due for responses and submission on 4 November 2020 next. We write as we need to understand certain dynamics within the consultation and particularly concerning NBP in more detail.

ALTO’s review of the Dot Econ Report set out at Annex 2 to the CEI Consultation ComReg Reference 20/81 noted as ComReg Reference Document 20/81A has resulted in some ancillary and further queries. Below I set out those ancillary and further queries:

1. ALTO requests sight of the Terms of Reference given to Dot Econ in order for them to draft their report.

Reason: In ALTO’s opinion there are only generic and incomplete references to what the Terms of Reference given to Dot Econ in order to carry out the work and report. ALTO wants to know what precisely what Dot Econ were asked to do in preparation for the drafting and later publication of the report; and

2. ALTO requests information about who were the key contributors to the report either within Dot Econ or queried externally by Dot Econ.

Reason: ALTO would like to fully understand fully the extent of the work undertaken by Dot Econ more precisely, based on the Terms of Reference requested above.

ALTO does not believe that either request above will pose an issue for ComReg or Dot Econ given the public nature of the work and the information imperative that must go into such work and consultations of this nature.

ALTO is happy that this request for information and/or clarification be published, if that is deemed to be an appropriate course by ComReg.

ALTO is happy to receive any confirmations, documents, meeting notes, tender specifications, tender responses, and Terms of Reference by email in the usual manner.

Given the time limitations stipulated by ComReg in the current consultation, should you have any questions regarding the above requests we would welcome the opportunity to discuss this with you at your earliest possible convenience.

Yours sincerely,



Ronan Lupton
Chair – ALTO

Copy: Donal Leavy and @wholesaleconsult

Appendix 2: Terms of reference

The following was the terms of reference provided to Dot Econ to prepare its report:

“ComReg is seeking economic advice from Dot Econ on principles, in particular, whether the existing national pricing/costing methodologies for access to Eircom’s Civil Engineering Infrastructure (“CEI”) (e.g. Duct and Poles) are appropriate in the context of the National Broadband Plan (“NBP”)³ or whether alternative pricing/costing methodologies for CEI access should be considered and adopted. ComReg will then consider Dot Econ’s recommendations and decide on the appropriate approach. Depending on whether changes are required to the existing pricing/costing methodology(ies) for CEI access, Dot Econ may also be required to assist with any consultation and decision process undertaken by ComReg.

Set out in Annex: 1 below is some background information, including a description of the current pricing/costing methodologies underpinning the national CEI access prices in line with that determined previously in ComReg Decision D03/16⁴ (and where these pricing obligations and costing methodologies were more recently re-imposed in ComReg Decision D10/18⁵).

It should also be noted that there will be a separate cost modelling exercise on the access network, which will include an assessment of the costs for CEI access. Dot Econ may be required to engage with other consultants in relation to its economic advice and how its recommendations can be applied in practice.

Requirements

1. Dot Econ shall recommend in a report to ComReg what it considers to be the appropriate pricing / costing principles and methodology(ies) for determining the CEI access prices. In particular, Dot Econ shall assess and consider whether CEI prices should be based on a geographic sub-national level, to take account of the possibility of different levels of costs associated with each area, based on the two areas identified further below. If sub-national geographic pricing is recommended by Dot Econ, details on why such an approach is necessary or justified, how this approach would be applied in practice and the difference in approach between a sub-national area and the rest of Ireland should be set out in their report.

³ <https://www.dccae.gov.ie/documents/Updated%20Strategy%20December%202015.pdf>

⁴ ComReg Document No. 16/39, “Pricing of Eir’s Wholesale Fixed Access Services: Response to Consultation Document 15/67 and Final Decision”, 18 May 2016.

⁵ ComReg Document No 18/94, Decision D10/18, 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.

- A. NBP Intervention Area:**
- (i) This is the area defined by the Department of Communications Climate Action and Environment (**'DCCAE'**)⁶ as *“the areas of the country which will require state intervention to bring about the deployment of high speed broadband services”*. The DCCAE also refer to the Intervention Area as the non-commercial high speed broadband area or “Amber” area,⁷ with approximately 540k postal addresses.⁸

Dot Econ shall assess whether it considers the existing costing / pricing methodology for CEI access as determined in ComReg Decision D03/16 (and as summarised in Annex 1 below) remains appropriate for determining the cost / price for CEI access in the Intervention Area or whether an alternative costing / pricing methodology should be adopted. Dot Econ shall assess the pros and cons of each methodology considered. It should be noted that in the context of potential take-up of CEI (poles in particular), it is understood that the successful NBP bidder (**'NBPCo.'**) may only self-supply a CEI network in those limited situations where Eircom does not have a network.

- B. Commercial (or Excluded) Areas:**
- (ii) This is the area outside the Intervention Area which includes, on one hand, the rural areas where Eircom has rolled out FTTH i.e., these areas are referred to as the “Light Blue areas” on the DCCAE high speed broadband map and, on the other hand, the areas where commercial operators, including Eircom, are delivering or have indicated plans to deliver high speed broadband services (also referred to as the “Blue areas” on the DCCAE high speed broadband map).⁹

Dot Econ shall assess whether it considers the existing costing / pricing methodology for CEI access as determined in ComReg Decision D03/16 (and as summarised in Annex 1 below) remains appropriate for determining the cost / price for CEI access in the Commercial (Excluded) Areas or whether an alternative costing / pricing methodology(ies) should be adopted. Dot Econ shall assess the pros and cons of each methodology considered. Consideration should be given to the appropriate approach for

⁶ <https://www.dccae.gov.ie/documents/Updated%20Strategy%20December%202015.pdf>

⁷ <https://www.dccae.gov.ie/en-ie/communications/topics/Broadband/national-broadband-plan/high-speed-broadband-map/Pages/Interactive-Map.aspx>

⁸ <https://www.dccae.gov.ie/en-ie/communications/topics/Broadband/national-broadband-plan/state-intervention/Pages/Connecting-Communities.aspx>

⁹ <https://www.dccae.gov.ie/en-ie/communications/topics/Broadband/national-broadband-plan/high-speed-broadband-map/Pages/Interactive-Map.aspx>

'Transit only' access, in particular in the rural areas where Eircom rolled out FTTH. This is access to CEI in areas outside the NBP Intervention Area for the purpose of reaching customers in the NBP Intervention Area and not for the purpose of competing for customers in the Commercial (Excluded) Areas.

2. In relation to part (1) above, Dot Econ shall consider and recommend in a report to ComReg what it considers to be the appropriate pricing / costing methodology(ies) for CEI access in the Intervention Area and in the Commercial (Excluded) Areas taking into account the following:
 - a) The appropriate cost standard: long run incremental costs ("**LRIC**"), long run average incremental costs ("**LRAIC**"), LRAIC Plus, fully allocated costs or any other appropriate approach reflecting the specific circumstances applicable;
 - b) The appropriate modelling approach: a bottom-up ("**BU**"), a top down ("**TD**") model or hybrid modelling approach;
 - c) In the case of a TD approach, the appropriate cost base: historical cost accounting ("**HCA**") and/or current cost accounting ("**CCA**");
 - d) An assessment and recommendation on the appropriate capital amortisation/depreciation methodologies in the context of the NBP, with the State intervention scheme operating on the basis of a gap-funding model over a (likely) period of 25 years;
 - e) An assessment and recommendation on whether the pricing approach for Pole access on a 'per operator' basis and Duct access pricing on a "per meter of sub-duct" basis remains appropriate or whether an alternative methodology(ies) should be adopted. This assessment should consider the practicality/feasibility of any alternative approaches.
3. Dot Econ will need to take account of ComReg's obligation to take utmost account of any Recommendations issued by the European Commission. In particular, the European Commission Recommendation of 11 September 2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment and the European Commission Recommendation of 20 September 2010 on regulated access to Next Generation Access Networks. If the recommended approach differs from that recommended by the European Commission, Dot Econ shall set out detailed reasoning and justification for it, in a report to ComReg.

4. Based on Dot Econ's recommendation on the details of the appropriate methodology(ies), Dot Econ shall set out, in a report to ComReg
 - a) How the recommended approach meets ComReg's regulatory objectives. The regulatory objectives include the promotion of competition, contribution to the development of the internal market and to promote the interests of users within the community;
 - b) How the recommended approach sends the correct investment incentives to the market, e.g. by ensuring all operators can recover their efficiently incurred investment and that the build/buy signals in Commercial (Excluded) Areas are not distorted;
 - c) Whether the recommended approach is practical, proportionate and not overly burdensome to implement;
 - d) The likely regulatory impact of the recommended approach on the various stakeholders i.e. Eircom, other operators and consumers.
5. Dot Econ shall in its report to ComReg assess its recommendations (for costing and pricing) against relevant comparisons with other European jurisdictions. Any significant variations shall be explained.
6. Dot Econ shall in its report to ComReg take account of the relevant elements of the regulatory framework set out, where relevant, in the Specific Regulations¹⁰ and specifically:
 - a) Section 57 of the Communications Regulation Act 2002 (as amended)¹¹;
 - b) Article 3 of Directive 2014/61/EU of the European Parliament and of the Council 12 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks; and
 - c) ComReg's role as provided for by the EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (2013/C 25/01).¹²
7. Dot Econ shall detail in its report to ComReg any other issues that it may consider relevant to the assessment of appropriate pricing / costing methodologies for CEI access services.

¹⁰ Framework Regulations, Authorisation Regulations, Access Regulations, Universal Service Regulations and Privacy and Electronic Communications Regulations.

¹¹ Communications Regulation Act 2002 (No. 20 of 2002), the ('Communications Regulation Act 2002').

¹² In the State Aid Guidelines (EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (2013/C 25/01)) ComReg has a role in providing advice in a number of related matters such as: cost orientation principles (Paragraph 78 h of the EU Guidelines); creation of a level playing field for bidding operators (Paragraph 43 of the EU Guidelines); and cost inclusion/recovery (Footnote 64 of the EU Guidelines).

8. Dot Econ shall review and provide comments to ComReg on any Consultation and draft Decision documents prepared by ComReg, depending on whether changes are required to the existing pricing/costing methodology(ies) for CEI access.
9. Dot Econ shall review all responses received by ComReg to any consultation process referred to at paragraph 8 and provide a written critique in relation to same. Dot Econ shall also consider whether any changes are required to its report as a result of consultation responses.
10. Dot Econ shall assist ComReg in responding to any queries the European Commission may have in respect of its draft measures, depending on whether changes are required to the existing pricing/costing methodology(ies) for CEI access.
11. Dot Econ should be aware that the conclusions of this project may be used for price setting purposes and may therefore be appealable in court should there be a difference(s) of opinion between ComReg and the incumbent or Other Authorised Operators ('OAOs') regarding the appropriate price(s) for CEI access. Therefore, all sources of information and inputs should be well documented and any expert opinion should be based on sound documented reasoning.

Annex: 1 Current Pricing/Costing Methodologies

Access to Eircom's CEI is subject to the price control obligation of cost-orientation. Pursuant to ComReg Decision D03/16,¹³ which was largely re-imposed in ComReg Decision D10/18¹⁴ the costing methodologies underpinning the prices for CEI access are largely based on Eircom's Top-Down historic costs but with some costs based on Bottom-up LRAIC Plus ('**BU-LRAIC+**') or replacement costs, with the exact mix depending on the expected reuse of assets for the provision of NGA services over the control period.¹⁵

¹³ ComReg Document No. 16/39, "Pricing of Eir's Wholesale Fixed Access Services: Response to Consultation Document 15/67 and Final Decision", 18 May 2016.

¹⁴ ComReg Document No 18/94, Decision D10/18, 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.

¹⁵ In particular, ComReg took utmost account of the European Commission Recommendation of 11 September 2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment.

For Poles

- Costs are determined on the basis of (a) 92% reuse of Eircom's poles (absent NGA rollout) using projected Top Down Historic costs; and (b) 8% replacement of Eircom's poles (due to NGA rollout) based on the BU-LRAIC + methodology; and
- Annual maximum rental prices are set on a 'per operator' basis, taking Eircom as the incumbent operator¹⁶ and are differentiated between the Modified Large Exchange Areas ('**LEA**')¹⁷ and outside the Large Exchange Areas ('**Outside the Modified LEA**').¹⁸

For Duct

- Access costs are determined on the basis of (a) 95% reuse of Eircom's ducts (absent NGA rollout) using projected Top Down Historic costs; and (b) 5% replacement of Eircom's ducts (due to NGA rollout) using a BU-LRAIC + cost methodology; and
- Annual maximum rental prices set on a 'per meter' of sub-duct and broken-down by surface type¹⁹ and geographically differentiated between Dublin and provincial areas."

¹⁶ A 'per operator' approach (as opposed to a 'per cable' approach) was adopted to provide more stable prices over time and to reduce the administrative burden of setting pole prices. See Section 8.2 of the ComReg Decision D03/16.

¹⁷ The LEA was typically an exchange area served with Eircom's current generation retail broadband products, NGA services as well as services from an alternative infrastructure-based provider or LLU-based services.

¹⁸ Outside the LEA corresponded to those exchanges which were in the more sub-urban, rural and remote areas of Ireland. This area had typically higher costs for potential entrants due to longer local loop lengths, greater distance to provide backhaul, and fewer economies of aggregation.

¹⁹ Surface type is split by Carriageway, Footway and Verge. See Section 8.3 of the ComReg Decision D03/16.