



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

# Market Review Further Update

Retail Access to the Public Telephone  
Network at a Fixed Location for Residential  
and Non-Residential Customers

Wholesale Fixed Access and Call  
Origination

## Information Notice

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# 1 Market Analysis Further Update

## 1.1 Background

- 1.1 In June 2021 the Commission for Communications Regulation ('**ComReg**') issued an information notice (ComReg Document 21/65)<sup>1</sup> concerning its publication and parallel notification to relevant European authorities of a 'Draft Decision' concerning its analysis of the Retail Fixed Telephony Service ('**RFTS**') and wholesale Fixed Access and Call Origination ('**FACO**')<sup>2</sup> markets in Ireland. The notification was made on the basis of the draft measures set out in the Draft Decision attached at Appendix 1 of ComReg Document 21/65.
- 1.2 In the Draft Decision, ComReg proposed to de-regulate and remove all existing regulation in the RFTS markets and to partially de-regulate the FACO markets. The proposals in the Draft Decision meant that regulation would be maintained in the so-called 'Regional FACO Markets' only.
- 1.3 Prior to the adoption of a final decision, Article 32(3) of the European Electronic Communications Code ('**EECC**')<sup>3</sup> requires ComReg to publish and, at the same time, make draft measures accessible to the European Commission ('**EC**'), the Body of European Regulators for Electronic Communications ('**BEREC**') and National Regulatory Authorities ('**NRAs**') in other Member States (the '**Article 32 Notification**'). The Article 32 Notification was submitted by ComReg on 19 June 2021.
- 1.4 Under Article 32(3) of the EECC, the EC, BEREC and other NRAs have one month, to comment on ComReg's Article 32 Notification. Following its consideration, the EC can then issue a 'comments' or 'no comments' decision. A comments decision typically involves the EC expressing views on an NRA's draft measures and an NRA is obligated to take utmost account of them. ComReg and other NRAs are often, in the conduct of their market analyses, recipients of EC comments decisions.
- 1.5 However, under Article 32(4) of the EECC, where the EC issues comments on a draft measure which aims to,

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<sup>1</sup>Information Notice - Publication and notification to the European Commission (EC), the Body of European Regulators for Electronic Communications (BEREC), and Member State National Regulatory Authorities (NRAs) of draft measures under Article 32 of Directive 2018/1972, ('**ComReg Document 21/65**'), available at <https://www.comreg.ie/publication-download/information-notice-rfts-faco-draft-decision>.

<sup>2</sup> FACO, in general, is a wholesale line rental and call origination product enabling the provision of retail fixed line rental and call services to end users.

<sup>3</sup> Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the '**EECC**').

- (a) define a relevant market which is different from those defined in the recommendation referred to in Article 64(1); or
- (b) designate an undertaking as having, either individually or jointly with others, significant market power ('**SMP**'), under Article 67(3) or 67(4),

and where it would affect trade between Member States and the EC considers the draft measure would create a barrier to the internal market, or the EC has serious doubts as to its compatibility with Union law and, in particular, the objectives referred to in Article 3 (a so-called 'serious doubts' decision), the NRA cannot adopt the measure, and a further two month assessment period may commence, if the NRA does not withdraw the draft measure.

- 1.6 On 19 July 2021 the EC issued a comments letter in which it raises serious doubts with respect to ComReg's Draft Decision as set out in the Article 32 Notification ('**Serious Doubts Comments Letter**'). The EC also issued a notice<sup>4</sup> regarding its Serious Doubts Comments Letter.
- 1.7 On 20 July 2021, ComReg issued an information notice (ComReg Document 21/76<sup>5</sup>) concerning the EC's Serious Doubts Comments Letter noting the next steps to be followed in accordance with the requirements of Article 32 of the EEC. The next step in the timeline was for BEREC to adopt and publish an opinion on the EC's Serious Doubts Comments Letter indicating whether or not it considered the EC's serious doubts are justified.
- 1.8 On the 17 August 2021 BEREC adopted, published and sent to the EC, its opinion (BEREC document BOR (21) 109)<sup>6</sup> (the '**BEREC Opinion**'). The overall conclusions set out in the BEREC Opinion are that:

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<sup>4</sup> See <https://digital-strategy.ec.europa.eu/en/news/commission-opens-depth-investigation-irish-markets-fixed-voice-telephony>.

<sup>5</sup> Information Notice, Market Review Update, ComReg Document 21/75, available at <https://www.comreg.ie/publication-download/market-review-update-rfts-and-faco>.

<sup>6</sup> See [https://bereg.europa.eu/eng/document\\_register/subject\\_matter/bereg/opinions/10019-bereg-opinion-on-phase-ii-investigation-pursuant-to-article-32-of-directive-eu-20181972-cases-ie20212332-2333-market-for-access-to-the-public-telephone-network-at-a-fixed-location-for-residential-and-non-residential-customers-m12007-in-ireland-market-for-call-origination-on-the-public-telephone-network-provided-at-a-fixed-location-m22007-in-ireland](https://bereg.europa.eu/eng/document_register/subject_matter/bereg/opinions/10019-bereg-opinion-on-phase-ii-investigation-pursuant-to-article-32-of-directive-eu-20181972-cases-ie20212332-2333-market-for-access-to-the-public-telephone-network-at-a-fixed-location-for-residential-and-non-residential-customers-m12007-in-ireland-market-for-call-origination-on-the-public-telephone-network-provided-at-a-fixed-location-m22007-in-ireland).

*“...BEREC considers that the Commission’s serious doubts regarding the finding of a market for RFTS and FACO are not justified. Furthermore, BEREC finds the serious doubts regarding the three criteria test and most of the SMP assessment not justified. However, BEREC finds that the Commission’s serious doubts as to the substantiation of the geographic market analysis and the lack of a forward-looking perspective are justified. Even though BEREC cannot conclude that this substantiation would lead to a different outcome regarding the geographic market definition and ultimately the outcome of the market analysis.*

*Therefore, BEREC’s overall conclusion is that the Commission’s serious doubts regarding the draft decision of the Irish national regulatory authority, ComReg, as expressed in the Commission’s letter, dated 16 July 2021, are partially justified.”*

- 1.9 The EC is now required under Article 32(6) of the EECC, having received and taken utmost account of BEREC’s opinion, by 20 September 2021, either,
- (a) To take a decision requiring ComReg to withdraw the draft measure; or
  - (b) To take a decision to lift its serious doubts.

## 1.2 Next Steps

- 1.10 ComReg notes the BEREC Opinion and, in the period up to 20 September 2021, ComReg will engage with the EC, as appropriate, having regard to the Article 32 process. ComReg will provide further updates on this process as appropriate.
- 1.11 As ComReg has not yet adopted a decision with respect to its analysis of the RFTS and FACO markets, both the 2014 RFTS Decision<sup>7</sup> and 2015 FACO Decision<sup>8</sup> remain in full effect.

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<sup>7</sup> ComReg 14/89, Decision D12/14, Market Review, Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers.

<sup>8</sup> ComReg 15/82, Decision D05/15, Market Review, Wholesale Fixed Voice Call Origination and Transit Markets.