

# Market Review 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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**An Coimisiún um Rialáil Cumarsáide**  
**Commission for Communications Regulation**

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# 1 Market Analysis Update

## 1.1 Background

- 1.1 In June 2021 ComReg issued an information notice (ComReg Document 21/65)<sup>1</sup> concerning the Commission for Communications Regulation's ('**ComReg**') publication and parallel notification to relevant European authorities of its '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 accordance with the requirements, at that time, of Article 6 of the Framework Directive (now Article 23 of the of the EECC) ComReg had carried out a public consultation ('**Consultation**') on its analysis of the RFTS and FACO markets over the period 17 June to 19 August 2020.<sup>3</sup>
- 1.3 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.
- 1.4 Prior to the adoption of a final decision, Article 32(3) of the European Electronic Communications Code ('**EECC**')<sup>4</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.

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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> On 17 June 2020 ComReg published its RFTS and FACO Market Review - Consultation and Draft Decision, ComReg Document 20/31 ('**Consultation**') available at: <https://www.comreg.ie/publication/rfts-faco-consultation-document-and-draft-decision-instrument>.

<sup>4</sup> Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the '**EECC**').

- 1.5 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.
- 1.6 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.
- 1.7 However, under Article 32(4) of the EECC, where the EC issues comments on a draft measure which aims to,
- (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.
- 1.8 On 19 July 2021 the EC issued its 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 has issued a notice<sup>5</sup> regarding its Serious Doubts Comments Letter. The EC has also issued<sup>6</sup> an invitation to third parties to submit any observation(s), in writing, on its Serious Doubts Comments Letter ('**Third Party Observations Invitation**'), with these to be provided to the EC by 27 July next. The Third Party Observations Invitation includes details as to where a non-confidential version of the EC's Serious Doubts Comments Letter will be published over the coming days.

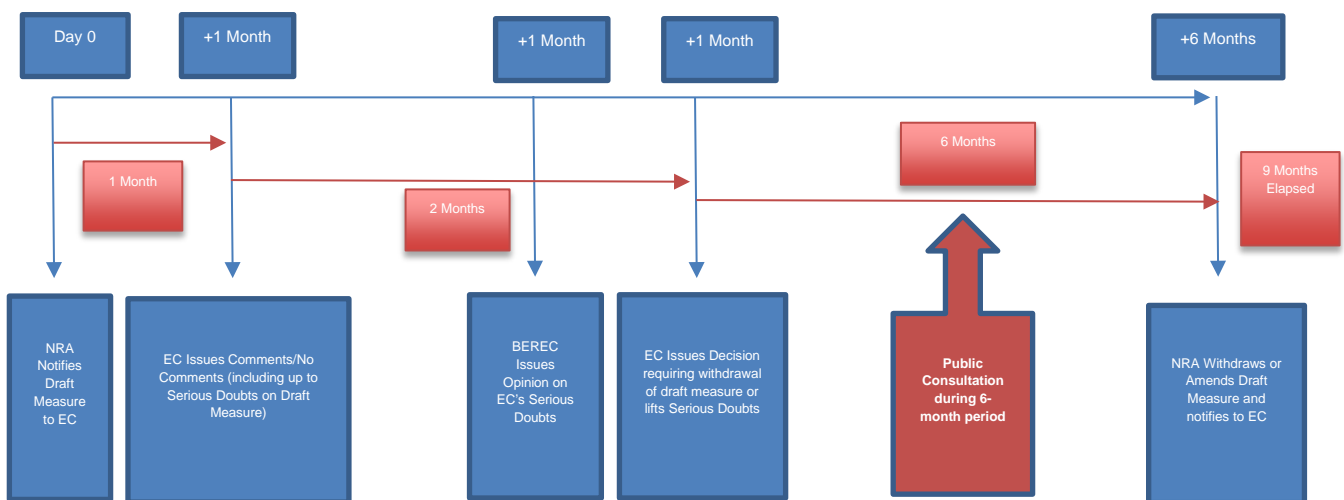
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<sup>5</sup> See <https://digital-strategy.ec.europa.eu/en/news/commission-opens-depth-investigation-irish-markets-fixed-voice-telephony>.

<sup>6</sup> See <https://ec.europa.eu/newsroom/dae/redirection/document/78388>.

- 1.9 Within the next two months, in accordance with the provisions of the EECC, BEREC must now publish an opinion on the EC’s **Serious Doubts Comments Letter** indicating whether it considers that the draft measures in ComReg’s Article 32 Notification should be maintained, amended or withdrawn. Where appropriate, BEREC must provide specific proposals to that end. BEREC’s opinion is typically provided within the first month of the two-month period referred to in paragraph 1.7 above.
- 1.10 Having received and taken utmost account of BEREC’s opinion, under Article 32(6) of the EECC the EC will, within the two-month period referred to in paragraph 1.7 above, either,
  - (a) take a decision requiring an NRA to withdraw the draft measure; or
  - (b) take a decision to lift its serious doubts.
- 1.11 Under Article 32(7) of the EECC, where the EC takes a decision requiring the NRA to withdraw the draft measure, the NRA must amend or withdraw the draft measure within six months of the date of the EC’s decision. If the NRA decides to amend the draft measure it must undertake a public consultation on its proposals within this six month period. The amended draft measure must then be notified to the EC according to the process set out in Article 32 of the EECC.
- 1.12 Figure 1 below illustrates the above timelines.

**Figure 1: Article 32 Timelines and Process Steps**



## 1.2 Next Steps

- 1.13 ComReg notes the EC’s Serious Doubts Comments Letter and will now engage with BEREC and the EC, as appropriate, over the next two months having regard to the Article 32 process outlined above. ComReg will provide further updates on this process as appropriate.

- 1.14 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.