



Commission for  
**Communications Regulation**

# **Information Notice**

**Notification of non-compliance issued to Eircom Limited  
("Eir") for breach of non-discrimination obligation  
regarding Provision Of Information to Downstream Arm**

## **Information Notice**

**Reference:** ComReg 16/02

**Version:** Final

**Date:** 07/01/16



## **Notification of non-compliance issued to Eircom Limited (“Eir”) for discrimination regarding Provision of Information to Downstream Arm**

### **A. SUMMARY**

1. On 6th January 2016, the Commission for Communications Regulation (“ComReg”) notified Eircom Limited (“Eir”) of a finding that Eir had not complied with its non-discrimination obligations as provided in Decision D03/13, Part 3 - SMP obligations in relation to Next Generation WPNIA, Section 8.
2. In accordance with the functions of the Commission for Communications Regulation (“ComReg”) as set out at Sections 10(1) (a), 10(1) (d) and 10(2) of the Communications Regulation Acts 2002 to 2011 (the “Acts”), ComReg has conducted an investigation into the compliance of Eircom Limited (hereafter “Eircom”) with the regulatory obligations imposed upon Eircom by ComReg Decision Number D03/13.<sup>1</sup>
3. ComReg found that Eir provided information regarding its plans to roll out Fibre to the Home (“FTTH”) to the Director of Managed Network Services three weeks before it was provided to OAOs.
4. Accordingly ComReg finds that Eir was in breach of its non-discrimination obligation.
5. Pursuant to Regulation 19 of the European Communities (Electronic Communications Networks and Services) (Access) Regulations, 2011<sup>2</sup> (“Access Regulations”), ComReg hereby notifies Eir of a finding of non-compliance with the non-discrimination obligations imposed on Eir by ComReg Decision Number D03/13.
6. Eir has until 5<sup>th</sup> February 2016 to state its views.

### **B. THE COMMISSION AND ITS POWERS**

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<sup>1</sup> Next Generation Access: Remedies for Next Generation Access Markets D03/13, Document No:13/11, Date:31 January 2013

<sup>2</sup> S.I. No. 334 of 2011



7. ComReg was established by section 6 of the Acts and is the statutory body responsible for the regulation of electronic communications networks and services, and postal services in the State.

8. A function of ComReg under section 10 (1) (a) of the Acts is to:

*“...ensure compliance by undertakings with obligations in relation to the supply of and access to electronic communications services, electronic communications networks and associated facilities and the transmission of such services on such networks.”*

9. A further function of ComReg under section 10 (1) (d) of the Acts is:

*“...to carry out investigations into matters relating to the supply of, and access to, electronic communications services, electronic communications networks and associated facilities and the transmission of such services on such networks.”*

10. Objectives of ComReg as set out 12 (1) of the Acts are:

*“(i) to promote competition,*

*“(ii) to contribute to the development of the internal market,*

*“(iii) to promote the interests of users within the Community*

11. Further objectives of ComReg are set out at Regulation 16 of the *European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011*<sup>3</sup> (“Framework Regulations”).

12. In accordance with Regulation 6 of the Access Regulations, ComReg shall, acting in pursuit of its objectives set out in Section 12 of the Acts and Regulation 16 of the Framework Regulations, encourage and, where appropriate ensure, in accordance

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<sup>3</sup> S.I. No. 333 of 2011



with these Regulations, adequate access, interconnection and the interoperability of services in such a way as to –

- (a) Promote efficiency,
- (b) Promote sustainable competition,
- (c) Promote efficient investment and innovation, and
- (d) Give the maximum benefit to end-users.

13. Where ComReg finds that an operator or undertaking has not complied with an obligation under the Access Regulations, it is required to notify the operator or undertaking of these findings pursuant to Regulation 19(1) of the Access Regulations<sup>4</sup>

### **C. THE LEGAL OBLIGATION UPON EIR**

14. In accordance with ComReg Decision Number D03/13, Part 3 - SMP obligations in relation to Next Generation WPNIA, Section 8, Eir has an obligation of non-discrimination with respect to the provision of WPNIA pursuant to Regulation 9 of the Access Regulations. That obligation is set out in Section 8 of D03/13, which provides that Eir shall:

*“...have an obligation of non-discrimination as provided for by Regulation 10 of the Access Regulations in respect of products, services or facilities referred to in Section 6 of this Decision Instrument.*

*8.2 Without prejudice to the generality of Section 8.1, Eircom shall:*

*(i) Apply equivalent conditions in equivalent circumstances to other Undertakings providing equivalent products, services or facilities;*

*and*

*(ii) Ensure that all products, services or facilities and information are provided to other Undertakings under the same conditions and of the same quality as the products, services, facilities and information that Eircom provides to its own services or those of its subsidiaries or partners.”*

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<sup>4</sup> S.I. No. 334 of 2011, European Communities( Electronic Communications Networks and Services) (Access) Regulations 2011