



Commission for
Communications Regulation

Information Notice

Opinion of non-compliance issued to Eircom Limited for a breach of its access obligation in the Retail Fixed Narrowband Access market.

Information Notice

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Additional Information

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1. On 29 August 2014, pursuant to Regulation 19 (1) of the European Communities (Electronic Communications Networks and Services) (Access) Regulations, 2011 (“the Access Regulations”)¹, the Commission for Communications Regulation (“ComReg”) notified Eircom Limited (“Eircom”) of a finding that, with regard to its processes for Single Billing Wholesale Line Rental (“SB-WLR”) ordering process, Eircom had not complied with its access obligation in the market for retail fixed narrowband access as provided for at Section 6.1 of ComReg Decision D07/61².
2. The matter relates to Eircom’s rejection of wholesale SB-WLR orders from Other Authorised Operators (“OAO”) where Eircom Retail Virtual Private Network services (“Eircom Retail VPN services”) existed.
3. The access obligation in Section 6.1 of the Decision Instrument annexed to D07/61 states that *“Pursuant to Regulation 13 (1) of the Access Regulations³, eircom shall meet all reasonable requests for access to and use of such wholesale access products, services, features, or additional associated facilities, by undertakings requesting access or use of such access products, services, features, or additional associated facilities in the Markets, which enable such other undertakings to provide retail equivalents to the retail products offered by eircom in the Markets.”*
4. ComReg found that the SB-WLR orders were reasonable requests for access to wholesale products. Under Eircom’s access obligation in the market reasonable requests for access to wholesale products must be accepted irrespective of the existence of Eircom Retail VPN services.

¹ European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011).

² ComReg Document No. 07/61, ComReg Decision D07/61, ‘Decision Notice and Decision Instrument - Designation of SMP and SMP Obligations: Market Analysis: Retail Fixed Narrowband Access Markets’, dated 8 July 2011.

³ European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 (S.I. No. 305 of 2003); these Regulations were replaced by the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011).

5. In particular, ComReg found that Eircom was rejecting SB-WLR orders where certain Eircom Retail Virtual Private Network ('VPN') services existed and that by rejecting these orders Eircom was not complying with its obligation to meet reasonable requests for access to wholesale products as required by Section 6.1 of the Decision Instrument annexed to D07/61. ComReg also found that Eircom was rejecting SB-WLR orders where Eircom Retail VPN services existed until such time as the Retail services were removed. The time taken to remove the Retail service exceeded the two working days for access where there was no such Retail service and could take up to 40 working days. It was ComReg's view that provisioning times for SB-WLR where there was an Eircom Retail VPN should not exceed those of standard SB-WLR (two days), that delaying access was effectively a refusal to provide access for the period of the delay, and that consequently Eircom was not compliant with its obligation to meet reasonable requests for access to wholesale products as required by Section 6.1 of the Decision Instrument annexed to D07/61.
6. Pursuant to Regulation 19(1) of the Access Regulations Eircom was notified of Comreg's finding of non-compliance on 29 August 2014. On 1 October 2014, Eircom responded to the Notification.
7. Following an extensive investigation and having carefully considered the matter, including Eircom's representations, and taking into account the relevant legislative context, ComReg has formed the opinion, pursuant to Regulation 19(4) of the Access Regulations, that for the period 1 July 2011⁴ to 29 August 2014⁵, Eircom did not comply with the access obligation imposed on it by Section 6.1 of the Decision Instrument annexed to D07/61 in respect of Eircom's supply of wholesale access products in the market for higher and lower level retail narrowband access.
8. ComReg has decided to make an application to the High Court pursuant to Regulation 19(4) of the Access Regulations for a declaration of non-compliance and for an order that Eircom pay to ComReg an amount by way of financial penalty in respect of the above non-compliance.
9. ComReg will make submissions to the High Court in due course in relation to the appropriate amount for such penalty. Any such submissions will take full account of all Eircom's representations and any relevant aggravating, mitigating or other factors.
10. ComReg has informed Eircom of its opinion and of its intention to apply to the High Court for the orders outlined above.

⁴ The effective date of the Access Regulations.

⁵ The date of the Notification.