



Commission for
Communications Regulation

Information Notice

Opinion of non-compliance issued to Eircom Limited for a breach of its non-discrimination obligation in the Wholesale (Physical) Network Infrastructure Access market.

Information Notice

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Additional Information

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1. On 9 July 2015, 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, during the period 20 May 2010² to 9 July 2015³, Eircom did not comply with the non-discrimination obligation imposed on it by Sections 9.1 and 9.2 of the Decision Instrument contained in Appendix C of ComReg Decision D05/10⁴ in respect of its (Current Generation) Line Share product.
2. Section 9.1 of the Decision Instrument contained in Appendix C of ComReg Decision D05/10 states that "*Eircom shall have an obligation of non-discrimination as provided for by Regulation 11 of the Access Regulations in respect of Access.*". Section 9.2 states (*inter alia*) that "*Eircom shall ensure that all services and information are provided to other undertakings under the same conditions and of the same quality as the services and information that Eircom provides to its own services or those of its subsidiaries or partners*".
3. Based on an analysis of Eircom data, ComReg found that Eircom failed to provide a service for fault repair⁵ to Other Authorised Operators ('OAOs') under the same conditions and of the same quality as the services and information that Eircom provided for or to itself. ComReg accordingly found that Eircom was not compliant with the non-discrimination obligation imposed by Sections 9.1 and 9.2 of the Decision Instrument annexed to ComReg Decision D05/10.
4. With respect to Line Test History specifically, ComReg found that this non-compliance was ongoing at the time of the Notification. As of 9 July 2015, Eircom Retail had access to all historical line test history results for all customers, whereas Other Authorised Operators had access only to the line test history results for a customer (1) for the preceding three months and (2) only where that customer was with the same operator for that entire three-month period.
5. Pursuant to Regulation 19(1) of the Access Regulations Eircom was notified of ComReg's finding of non-compliance on 9 July 2015. On 27 August 2015, Eircom responded to the Notification.

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

² The effective date of D05/10.

³ The date of the Notification.

⁴ ComReg Document No. 10/39, ComReg Decision D05/10, 'Response to consultation and Decision – Market Review: Wholesale (Physical) Network Infrastructure Access (Market 4)', dated 20 May 2010.

⁵ The information in question related to Line Signature Information, Line Test History, Line Lock Out, Line Test System, Short Circuit Information and Line Type.

6. 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 2011⁶ to 9 July 2015, Eircom did not comply with the non-discrimination obligation imposed on it by Sections 9.1 and 9.2 of the Decision Instrument contained in Appendix C of D05/10 in respect of Eircom's supply of its (Current Generation) Line Share product.
7. 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.
8. 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.
9. ComReg has informed Eircom of its opinion and of its intention to apply to the High Court for the orders outlined above.

⁶ ComReg is forming no opinion in respect of non-compliance prior to 1 July 2011, the date on which the current Access Regulations came into force.