



Commission for
Communications Regulation

Information Notice

Opinion of non-compliance issued to Eircom Limited for a breach of its transparency obligation in the Wholesale Broadband 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 8 November 2011² to 9 July 2015³, Eircom did not comply with the transparency obligation imposed on it by Section 10.9 of the Decision Instrument contained in Chapter 8 of ComReg Decision D06/11⁴ in respect of its (Current Generation) Bitstream product.
2. Section 10.1 of the Decision Instrument contained in Chapter 8 of ComReg Decision D06/11 which states that "*Eircom shall have an obligation of transparency as provided for by Regulation 9 of the Access Regulations in respect of Access*", Section 10.9 states that "*Pursuant to its obligation of transparency, Eircom shall, within four months of the effective date, publish on its website sufficient information to identify and justify any differences between the services and facilities set out in the WBARO and the comparable services and facilities which Eircom provides to itself. The information shall include all material associated terms and conditions, including relevant processes, and shall be kept updated by Eircom as new services or facilities are developed and deployed, or existing services or facilities are amended*".
3. Based on an analysis of Eircom data, ComReg found that Eircom did not publish on its website sufficient information to identify and justify any differences between the services and facilities set out in the Wholesale Broadband Access Reference Offer ('**WBARO**') and the comparable services and facilities which Eircom provided to itself during this period and that Eircom did not provide updated information as new services or facilities were developed and deployed, or existing services or facilities were amended. ComReg accordingly found that Eircom was not compliant with the transparency obligation imposed by Section 10.9 of the Decision Instrument annexed to ComReg Decision D06/11.
4. 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.
5. 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 8 November 2011 to 9 July 2015, Eircom did not comply with the transparency obligation imposed on it by Section 9.2 of the Decision Instrument contained in Chapter 8 of D06/11 in respect of Eircom's supply of its (Current Generation) Bitstream product.

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

² Four months from the effective date of D06/11.

³ The date of the Notification.

⁴ ComReg Document No. 11/49, ComReg Decision D06/11, 'Response to consultation and Decision, Market Review: Wholesale Broadband Access (Market 5)', dated 8 July 2011.

6. 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.
7. 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.
8. ComReg has informed Eircom of its opinion and of its intention to apply to the High Court for the orders outlined above.