



Commission for
Communications Regulation

Information Notice

Opinion of non-compliance issued to Eircom Limited (“Eircom”) for a breach of its transparency obligation regarding an Access Reference Offer for Poles

Information Notice

Reference: ComReg 16/60

Version: Final

Date: 22 July 2016

Additional Information

Document No:	16/60
Date:	22 July 2016

1. On 22 March 2016, the Commission for Communications Regulation ('ComReg') notified Eircom Limited ('Eircom') of a finding that, in the period up until and including the 9 August 2015, Eircom was in breach of its transparency obligations under ComReg Decision D05/10¹ (sections 10.1 and 10.2 and 16.1) and ComReg Decision D03/13² (sections 9.1 and 9.2).
2. ComReg published ComReg Decision D03/13 on 31 January 2013 and notified the decision to Eircom on the same day. ComReg Decision D05/10 combined with ComReg Decision D03/13 obliged Eircom to publish an Access Reference Offer ('ARO') for civil engineering infrastructure, including poles.
3. The ARO for poles was published on 10 August 2015, more than 30 months after the publication of ComReg Decision D03/13.
4. ComReg found that in the period up until and including the 9 August 2015 Eircom was in breach of its transparency obligations under ComReg Decision D05/10 and ComReg Decision D03/13.
5. Pursuant to Regulation 19(1) of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 ('the Access Regulations')³, ComReg notified Eircom of its finding of non-compliance
6. On the 18 April 2016 Eircom responded to the notification of finding of non-compliance and stated its views.
7. Having regard to ComReg's statutory functions and objectives and having fully considered, all of the facts before it and all correspondence with Eircom on this issue to date (including Eircom's response to the notification of finding of non-compliance dated 18 April 2016 stating its views) ComReg has formed the opinion pursuant to Regulation 19(4) of the Access Regulations, that in the period up until and including the 9 August 2015, Eircom was not compliant with its transparency obligations imposed by ComReg Decision D05/10 (sections 10.1 and 10.2 and 16.1) and ComReg Decision D03/13 (sections 4, 9.1 and 9.2) due to its failure to make available an ARO for poles.

¹ Market Review Wholesale (Physical) Network Infrastructure Access (Market 4), Document No. 10/39, Decision No. D05/10, dated 20 May 2010 ('D05/10').

² Response to Consultation and Final Decision, Remedies for Next Generation Access Markets, Decision No. D03/13, Document No. 13/11, dated 31 January 2013 ('D03/13').

³ European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011).

8. While the investigation is now complete, ComReg considers that Eircom's failure to meet its transparency obligations in making available a reference offer for access to poles is significant. Failure by Eircom to comply with regulatory obligations can undermine confidence in the system of regulation. Failure to clearly set out in a timely manner how other operators can access infrastructure – when required to do so under regulation – can damage competition and investment, and ultimately can cause consumer harm.
9. Eircom, 30 months after having the obligation imposed, on 10 August 2015 amended its Access Reference Offer to include poles. The details of Eircom's failure to meet its obligation will be considered as part of the current review of Eircom's Regulatory Governance Model^[1]. As part of that review, advisers to ComReg are considering *inter alia* the extent of OpenEir's operational and strategic independence, its strategic decision making and how decisions with regard to product development prioritisation are made.
10. ComReg is still considering, in a separate investigation, whether the restrictions imposed by Eircom in the Access Reference Offer for poles breach Eircom's non-discrimination obligations (Case 683B).

^[1] See ComReg Information Notice 15/128