



Commission for
Communications Regulation

Opinion of non-compliance issued to Eircom Limited regarding obligations in the market for terminating segments of leased lines.

Information Notice

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1. In accordance with the functions of the Commission for Communications Regulation ('ComReg') provided for at Sections 10(1) (a), 10(1) (d) and 10(2) of the Communications Regulation Act, 2002¹, ComReg initiated an investigation in March 2010 into the compliance of Eircom Limited ('Eircom') with the regulatory obligations imposed on it in the market for wholesale terminating segments of leased lines by ComReg Decision D06/08, 2008 ('Decision D06/08')².
2. This investigation related to a complaint made by BT Telecommunications Ireland Limited to ComReg regarding Eircom's bid submissions to Telefónica Ireland Limited for the provision of a managed fibre backhaul service in January and April 2010.
3. On 30 November 2010, pursuant to Regulation 18(1) of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 (as amended) ('the 2003 Access Regulations')³, ComReg notified Eircom of ComReg's finding that Eircom had breached its obligations of access, non-discrimination, transparency and cost orientation in the market for wholesale terminating segments of leased lines, as provided for at Sections 6, 8, 9 and 11 of the Decision Instrument contained in Appendix A of Decision D06/08 ('the Notification').
4. On 28 October 2011, pursuant to Regulation 18(3) of the 2003 Access Regulations, ComReg notified Eircom of its amendment to the Notification ('the Amended Notification').
5. ComReg has reviewed the representations made by Eircom in response to both the Notification and the Amended Notification and is of the view that these representations do not present grounds to either amend or revoke the Amended Notification. Accordingly, ComReg has formed an opinion of non-compliance accordance with Regulation 18(4) of the 2003 Access Regulations.
6. Regulation 18(4) of the 2003 Access Regulations provides that ComReg has discretion to apply to the High Court for such order as may be appropriate by way of compliance. It is ComReg's position that constraints arising from the 2003 Access Regulations regarding an absence of ongoing non-compliance limits the orders by way of compliance that could be issued by the Court in relation to this matter.
7. On this basis, it is ComReg's position that it is not appropriate to apply to the High Court for such order as may be appropriate by way of compliance in accordance with Regulation 18(4) of the 2003 Access Regulations.

¹ Communications Regulation Act, 2002 (No. 20 of 2002), as amended by the Communications Regulation (Amendment) Act 2007 (No. 22 of 2007), the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 (No. 2 of 2010) and The Communications Regulation (Postal Services) Act 2011 (No. 21 of 2011).

² Decision Notice and Decision Instrument - Market Analysis - Leased Line Market Review, Response to Consultation on draft Decision Instrument Final Decision Notice and Decision Instrument (Decision No: D06/08, Document No: 08/103, Date: 22 December 2008).

³ European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 (S.I. No. 305 of 2003), amended by the European Communities (Electronic Communications Networks and Services) (Access) (Amendment) Regulations 2007 (S.I. No. 373 of 2007).

8. In relation to the particular circumstances under investigation, ComReg has decided not to apply to the High Court for such an order by way of compliance ComReg has therefore closed this investigation on 17 October 2014.