



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Settlement of High Court proceedings

Sky Ireland Limited v ComReg 2018/459 MCA.

Information Notice

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Commission for Communications Regulation

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Additional Information

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1. The Commission for Communications Regulation (“ComReg”) and Sky Ireland Limited (“Sky”) have reached a settlement on proceedings issued 14 December 2018 before the High Court¹ relating to an appeal before the High Court pursuant to Regulation 4 of the Framework Regulations 2011² against aspects of ComReg Decision D10/18 of 19 November 2018 entitled “Market reviews: wholesale local access and wholesale central access”, ComReg Decision D11/18 of 19 November 2018 entitled “Pricing of wholesale broadband services in the WLA and WCA Markets” as well as the Information Notice published by ComReg on 27 November 2018 in respect of Eircom’s FTTH connection/migration charges (“the Appeal”).
2. Under the settlement, Sky agreed to withdraw the Appeal, which has now been struck out, and ComReg provided the following confirmations:
 - ComReg confirmed that it plans to publish in Q1 2020 a consultation document on the new Access Network Model which will replace the existing Revised Copper Access Model.
 - The consultation will address the design and costs associated with the provision of a copper and fibre access network, and prices for a number of existing access products. The consultation will consider the appropriate level of costs of FTTH connections and migrations. At the same time, ComReg will also, by way of a call for inputs, seek views on the market impact of the existing prices and having regard to those views, will consider expeditiously the relationship between connection, migration and rental charges in the recovery of those costs and will as soon as reasonably practicable thereafter assess whether it is appropriate to consult on price control obligations for FTTH connection and migration charges.
 - ComReg confirmed that it also plans to issue in Q1 2020 a response to consultation and decision in respect of its consultation entitled “Review of Weighted Average Cost of Capital (WACC), Mobile Telecommunications, Fixed Line Telecommunications, Broadcasting (Market A and Market B)” (ComReg Document No. 19/54) that was published on 31 May 2019. In this regard ComReg noted that the decision will address:
 - (i) The frequency of the review of the WACC parameters (Question 7 in the consultation)
 - (ii) The implementation of the new WACC (Question 9 in the consultation).

The Settlement Agreement notes for clarity that ComReg’s preliminary view regarding implementation was that inter alia a) that any cost oriented prices calculated after the WACC review would apply the revised WACC as a parameter in their calculation and b) when assessing its compliance with its cost orientation

¹ Case No. 2018/459 MCA. By Orders of the Court, Eircom Limited and Vodafone Ireland Limited were joined to the Appeal as Notice Parties.

² SI No. 333 of 2011.

price control obligations the SMP service providers, subject to cost oriented price controls, would apply the revised WACC in any submissions or calculations. This would apply to cost oriented tariffs that were in force prior to the revision of the WACCs.

The Settlement Agreement further notes that the WACC consultation also referenced ComReg Decision D11/18 which had noted ComReg's plans to review the WACC rate, and had reserved the right to require prices to be updated following the WACC decision.

- ComReg noted that FTTC prices are derived from its NGA Cost Model which uses outputs from the Revised Copper Access Model as an input. ComReg will assess the implications of the new Access Network Model for FTTC pricing. In the event that there was likely to be a material impact on the inputs into the NGA Model ComReg would revisit FTTC prices.

END