



Commission for
Communications Regulation

Update to Consultation ComReg document 14/90

Replicability Test: Further specification of the
price control obligation not to cause a margin
squeeze: Market 2 and Market 5

Information Notice

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An Coimisiún um Rialáil Cumarsáide

Commission for Communications Regulation

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland

Telephone +353 1 804 9600 Fax +353 1 804 9680 Email info@comreg.ie Web www.comreg.ie

1 Introduction

1. This document provides an update on the recent publication by the Commission for Communications Regulation (**'ComReg'**) relating to the Consultation and Draft Decision ComReg Document No 14/90¹ (the **'Draft Decision'**). The Draft Decision proposed to further specify the obligation on Eircom Limited (**'Eircom'**) not to cause a margin squeeze in the wholesale markets for Fixed Voice Call Origination and Transit Markets (**'Market 2'**²) and for Wholesale Broadband Access (**'WBA'**) (**'Market 5'**³).
2. The Draft Decision proposed a margin squeeze test to ensure that Eircom can not cause a margin squeeze between the price of the wholesale services it offers / sells to Other Authorised Operators (**'OAOs'**) and the price of an Eircom retail bundle of services – where those wholesale services are required as inputs by OAOs in order to replicate that Eircom retail bundle.
3. Currently, the Net Revenue Test (**'NRT'**) pursuant to ComReg Decision D04/13⁴ (the **'Bundles Decision'**) is the price control remedy, pursuant to the obligation not to unreasonably bundle⁵, used to assess whether or not Eircom is covering its total costs when it offer / sells a bundle of services together. In addition, there are a number of regulatory obligations at the upstream level (i.e., where Eircom is considered to be dominant at the wholesale level) to ensure that a margin squeeze or excessive pricing does not occur.
4. As set out in the Draft Decision, ComReg noted that if a margin squeeze test was effectively implemented upstream it might permit the removal downstream of the current NRT in the Retail Fixed Voice Access market (**'Market 1'**⁶). The purpose of the Draft Decision was to consult on ComReg's preliminary view of the structure and implementation of such a margin squeeze test.
5. The consultation period ran from 28 August 2014 to 30 October 2014. ComReg received 4 submissions to the Draft Decision:

¹ Replicability Test: Further specification of the price control obligation not to cause a margin squeeze: Market 2 and Market 5; dated 28 August 2014.

² This is the second market as listed by the European Commission in its Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (**'2007 Commission Recommendation'**).

³ This is the fifth market as listed by the European Commission in the 2007 Commission Recommendation.

⁴ <http://www.comreg.ie/fileupload/publications/ComReg1314.pdf>

⁵ ComReg, "Market Review: Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers", ComReg Decision D12/14.

⁶ This is the first market as listed by the European Commission in the 2007 Commission Recommendation.

- Eircom;
 - Sky;
 - Magnet Networks Limited (**'Magnet'**);
 - Alternative operators in the communications market (**'ALTO'**).
6. In summary, Eircom's submission noted that it disagreed with the requirement for an ex-ante margin squeeze test. It further noted that the proposed margin squeeze test was not flexible enough in light of increased competition. The respective submissions received from Sky, Magnet and ALTO noted that the proposed test provided Eircom too much flexibility, particularly with respect to the definition of the Larger Exchange Area.
7. The non-confidential responses have been published in ComReg Document No. 14/90s.

2 Update

8. ComReg notes that since publication of the Draft Decision there have been a number of developments in the market. For example, Eircom has announced plans to offer fibre-to-the-home ('FTTH') services,⁷ the ESB / Vodafone Joint Venture has commenced trialling its proposed FTTH services⁸ and Sky has now commenced offering its superfast broadband service.⁹ ComReg is also aware that there have been some price increases in the market at both a retail and wholesale level. Furthermore, while ComReg is aware that the uptake of Eircom's Virtual Unbundled Access ('VUA') product remains nascent, we note that BT has requested Eircom to provide regional handover of their backhaul — which would allow BT to utilise its own infrastructure investment to manage its traffic. ComReg considers that these developments might potentially make the provision of VUA more attractive in a greater number of NGA exchanges. In addition, we note that Eircom launched Bitstream Ethernet Connection Services ('BECS') over Wholesale Ethernet Interconnect Link ('WEIL') in May 2015.
9. Consequently, having regard to the views expressed in the submissions received and in light of the fact that ComReg has also now commenced reviewing Markets 3a and 3b (with a likely decision due in the next 12-18 months) — ComReg considers that it would be prudent to consider the likely implications of these matters in a full forward looking market analysis.
10. It is our intention to further consider, in parallel to that market analysis, ComReg's preliminary views expressed in the Draft Decision and to reflect (as appropriate) any changes that may be necessary following the market review process. ComReg will undertake a separate consultation on any proposed pricing remedies (as appropriate).
11. Therefore, for now, the current NRT will remain in force.

⁷ http://www.eircomwholesale.ie/news/FTTH_Pricing/

⁸ <http://www.irishtimes.com/business/first-10-towns-on-new-superfast-broadband-plan-announced-1.2212503>

⁹ <http://www.businessandleadership.com/marketing/item/48730-sky-ireland-announces-intro>