



EUROPEAN COMMISSION

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Commission for Communications
Regulation

Block DEF — Abbey Court —
Irish Life Centre
Lower Abbey St
Dublin 1
Ireland

For the attention of
Mr Alex Chisholm
Chairperson

Fax: +353 1 878 8193

Dear Mr Chisholm,

Subject: Commission decision concerning Case IE/2012/1295: Modification of wholesale broadband access price control and transparency remedies in Ireland

Article 7(3) of Directive 2002/21/EC: No comments

I. PROCEDURE

On 10 February 2012 the Commission registered a notification from the Irish national regulatory authority (NRA), Commission for Communications Regulation (ComReg),¹ concerning the wholesale broadband access (WBA) market.²

¹ In accordance with Article 7 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24.4.2002, p. 33, as amended by Directive 2009/140/EC, OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12.

² Corresponding to market 4 in Commission Recommendation 2007/879/EC 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, OJ L 344, 28.12.2007, p. 65.

The national consultation³ lasted from 22 December 2010 to 4 February 2011.

On 16 and 23 February 2012 requests for information⁴ were sent to ComReg and the responses were received on 21 and 28 February 2012, respectively.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

In April 2011 ComReg carried out its second review of the Irish WBA market which comprises non-physical or virtual network access, including bitstream access, at a fixed location over current (DSL/copper) and next generation (fibre) networks (case IE/2011/1207). Eircom was found to have significant market power on the national market and made subject to a full set of obligations for both current and next generation WBA.⁵ ComReg maintained its retail minus price control for DSL/copper-based WBA, whilst indicating that it would prepare a cost-plus model to be notified to the Commission at a later stage in 2011.

II.2. The notified draft measure

ComReg has notified the current draft measure, which relates to the previously imposed pricing and transparency remedies, against the background of the urgent need to encourage use of local loop unbundling and efficient investment by alternative operators in Ireland.⁶

ComReg proposes to set *minimum price floors for current generation wholesale broadband access (WBA)*⁷ based on the reasonably efficient operator (REO) approach,⁸ in order to minimise the risk of a margin squeeze with regard to wholesale shared unbundled access and to ensure that the appropriate incentives are maintained to encourage investment in full unbundling. ComReg does not determine the minimum price floors on the basis of the full unbundled access given the still limited take-up of

³ In accordance with Article 6 of the Framework Directive.

⁴ In accordance with Article 5(2) of the Framework Directive.

⁵ Besides the accounting separation obligation, the other obligations were defined in 'general terms'. Details of the implementation of the proposed next generation WBA obligations would be notified to the Commission later.

⁶ In its response to the request for information, ComReg clarified that in the third quarter of 2011 (Q3 2011) there were 47 538 shared LLU lines against 13 528 fully unbundled lines, out of a total of 60 886 unbundled local loops. As for the level of WBA take-up, there were 726 264 retail broadband subscriptions based on DSL in Q3 2011 and 25.7% of all DSL lines were provided by alternative providers using wholesale bitstream. In absolute terms, there were 186 846 wholesale bitstream lines in Q3 2011. The remaining 8.4% of DSL lines were provided to subscribers by alternative providers using local loop unbundling. Currently Vodafone is the main alternative operator which purchases BT's WBA product provided over its LLU inputs. However, BT also supplies some smaller alternative operators with only a small number of retail broadband customers.

⁷ Currently, the DSL-based WBA price is higher than the proposed price floor. With regard to next generation WBA services, ComReg plans to notify its regulatory decisions in 2012.

⁸ In applying the REO standard, the costs which serve as input are those of an alternative operator availing of shared LLU lines in order to provide bitstream services; the majority of these costs are taken from Eircom's wholesale price list.

that product.⁹ The regulator considers that the use of shared unbundled access gives the correct signal for operators to climb the ladder of investment and avail themselves of the fully unbundled product.¹⁰

ComReg also specifies that the existing *obligation not to margin/price squeeze between current generation WBA products and WBA resale/end-to-end components* ('White Label Broadband') will be tested by means of the similarly efficient operator (SEO) approach.¹¹ This measure is intended to give alternative providers an incentive to favour bitstream over resale or end-to-end WBA.

In support of the latter obligation, ComReg proposes to *amend the existing transparency obligation* with regard to (i) the precise nature and (ii) the non-discriminatory provision, in terms of quality, of the regulated WBA components included in Eircom's resale/end-to-end WBA. Eircom will, as a consequence, have to publish the terms, conditions, service level agreements, guarantees and other product-related assurances concerning these components. Eircom will also have to submit its minimum price floors to ComReg to demonstrate its compliance with the obligation not to margin squeeze.

The proposed pricing and transparency obligations apply only to current generation WBA services. ComReg confirmed that next generation WBA services will be subject of a separate notification in 2012. Notification of the cost-plus model announced for 2011 is now postponed until later this year.

III. NO COMMENTS

The Commission has examined the notifications and the additional information provided by the NRA and has no comments.¹²

Pursuant to Article 7(7) of the Framework Directive, ComReg may adopt the draft measure and, where it does so, shall communicate it to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take *vis-à-vis* other notified draft measures.

Pursuant to Point 15 of Recommendation 2008/850/EC,¹³ the Commission will publish this

⁹ Both products belong to market 4 in Commission Recommendation 2007/879/EC 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, OJ L 344, 28.12.2007, p. 65.

¹⁰ In its notification, ComReg provides the latest floors ranges (i.e. following national consultation) but informs that these ranges (which are to last for the duration of the price control period and will be kept under annual review against actual take-up) will be finalised following adoption of the measure.

¹¹ This is in line with the WBA retail-minus price control notified to and registered by the Commission under case IE/2011/1207. In the SEO standard, the costs which serve as an input to the margin-squeeze test are taken from Eircom's regulated and audited costs. ComReg explains that it has no robust data from other operators. Similarly to the REO standard, the SEO standard also recognises that WBA operators do not have the same market shares and, therefore, do not have the same economies of scale as the SMP operator.

¹² In accordance with Article 7(3) of the Framework Directive.

¹³ Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services,

document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission¹⁴ within three working days following receipt whether you consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.¹⁵ You should give reasons for any such request.

Yours sincerely,
For the Commission,
Robert Madelin
Director-General

OJ L 301, 12.11.2008, p. 23.

¹⁴ Your request should be sent either by e-mail: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

¹⁵ The Commission may inform the public of the result of its assessment before the end of this three-day period.