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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 1 804 9680

Dear Mr Chisholm,

Subject: Commission decision concerning Case IE/2011/1252: Details of remedies: specification of existing price control obligation and the margin squeeze obligation on the market for wholesale terminating segments of leased lines

Article 7(3) of Directive 2002/21/EC:¹ No comments

I. PROCEDURE

On 13 September 2011, the Commission registered a notification from the national regulatory authority of Ireland, the Commission for Communications Regulation (ComReg), concerning the specification of the details of existing price control obligation and the margin squeeze obligation on the market for wholesale terminating segments of leased lines.²

¹ 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, OJ L 108, 24.4.2002, p. 33, as amended by Directive 2009/140/EC (Better Regulation Directive), OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12 (Framework Directive).

² Corresponding to market 6 of the Commission Recommendation 2007/879/EC of 17 December 2007

The national consultation³ ran from 29 April 2011 to 3 June 2011.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (NRAs), BEREC and the Commission may make comments on notified draft measures to the NRA concerned.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1 Background

ComReg's last review of the wholesale market for terminating segment of leased lines was notified to and assessed by the Commission under case number IE/2008/0791.⁴ ComReg concluded that the incumbent operator, Eircom, has an SMP on the market for terminating segments of leased lines and imposed a number of regulatory obligations including price control.

ComReg specified that until further notice, Eircom was to structure its prices for wholesale leased lines (WLL) on a 'retail minus' basis, and for partial private circuits (PPC) and next generation network (NGN) Ethernet terminating segments on the basis of forward-looking long-run incremental costs 'FL-LRIC' (or an alternative pricing model, if ComReg so decides). ComReg also imposed an obligation to prevent margin squeeze but the principles or underlying details of the margin squeeze obligation were not specified.

Therefore, in the current notification ComReg sets out the specification of the existing price control and details of the margin squeeze obligation.⁵

II.2. The notified draft measure

With regard to the 'modern technology' leased lines (Private Partial Circuits ('PPCs') and next generation network (NGN) Ethernet based terminating segments of leased lines), ComReg considers that a bottom-up long-run average incremental costs plus model ('BU LRAIC plus') is the most appropriate model to determine the costs and maximum charges by Eircom. Such charges will reflect prices in a competitive market and will send the right 'build or buy' signals to new entrants. The costing methodology includes all of the average efficiently incurred variable and fixed costs, plus an appropriate part of joint and common costs.

With regard to the legacy infrastructure (low speed, analogue wholesale leased lines 'WLLs') ComReg considers that it would not be appropriate and proportionate to base the charges on the BU LRAIC model.⁶ The demand for legacy infrastructure WLLs is

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 (the Recommendation), OJ L 344, 28.12.2007, p. 65.

³ In accordance with Article 6 of the Framework Directive.

⁴ SG-Greffe (2008) D/205981.

⁵ In February 2011 ComReg notified amendments to the imposed transparency obligation (publication of pricing for WLL), as well as an amendment to the frequency of billing services. The Commission assessed the notification (IE/2011/1178) and made no comments.

⁶ WLLs are legacy infrastructure, the costs of which have largely been recovered by Eircom. Therefore cost oriented WLLs charges could, according to ComReg, lead to a significant anomaly where WLL

rapidly declining, and currently they represent only approximately 1500 lines. ComReg considers it appropriate to maintain the currently existing maximum prices for WLLs, based on retail minus regulation. However ComReg considers it also appropriate to allow Eircom some flexibility to set lower prices, maintaining an appropriate economic space (margin) between WLLs and PPCs. The floor price for WLLs should be calculated on the basis of wholesale inputs based on the results of the model for PPCs and NGN Ethernet (BU LRAIC) and similarly efficient operators' costs. The margin squeeze test should ensure consistent pricing between various alternative wholesale access products.⁷

III. NO COMMENTS

The Commission has examined the notifications and has no comments.⁸

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/EC⁹ the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission¹⁰ 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.¹¹ You should give reasons for any such request.

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

would be cheaper than PPC, which would undermine the principle of network investments.

⁷ WLLs are an end-to-end product over Eircom's network, whereas PPCs allow alternative operators to combine the elements of their own infrastructure with parts of the incumbent's network. .

⁸ In accordance with Article 7(3) of the Framework Directive.

⁹ 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, OJ L 301, 12.11.2008, p. 23.

¹⁰ Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

¹¹ The Commission may inform the public of the result of its assessment before the end of this three-day period.