



## EUROPEAN COMMISSION

Brussels, 13.5.2016  
C(2016) 3034 final

Commission for Communications  
(ComReg)  
Block DEF — Abbey Court  
Irish Life Centre  
Lower Abbey St.  
Dublin 1  
Ireland

For the attention of:  
Mr Kevin O'Brien  
Chairperson of the Commission

Fax: +35318788193

Dear Mr O'Brien,

**Subject: Commission Decision concerning:  
Case IE/2016/1858: Wholesale local access provided at a fixed location in Ireland — remedies  
Case IE/2016/1859: Wholesale central access provided at a fixed location for mass-market products in Ireland — remedies  
Case IE/2016/1860: Call origination on the public telephone network provided at a fixed location in Ireland — remedies  
Comments pursuant to Article 7(3) of Directive 2002/21/EC**

### 1. PROCEDURE

On 14 April 2016, the Commission registered three notifications from Ireland's national regulatory authority, the Commission for Communications (ComReg),<sup>1</sup> concerning the market for wholesale local access provided at a fixed location,<sup>2</sup> the market for wholesale

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<sup>1</sup> Under 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).

<sup>2</sup> Corresponding to market 3a in Commission Recommendation 2014/710/EU of 9 October 2014 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 (Recommendation on Relevant Markets) (OJ L 295, 11.10.2014, p. 79).

central access provided at a fixed location for mass-market products<sup>3</sup> and the market for call origination on the public telephone network provided at a fixed location<sup>4</sup> in Ireland.

The national consultation<sup>5</sup> ran from 3 July to 28 August 2015.

The Commission sent ComReg a request for information<sup>6</sup> on 21 April 2016 and received a response on 26 April 2016.

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

## **2. DESCRIPTION OF THE DRAFT MEASURE**

### **2.1. Background**

#### ***2.1.1. Wholesale local access provided at a fixed location***

The market for wholesale (physical) network infrastructure access at a fixed location<sup>7</sup> in Ireland was previously notified to and assessed by the Commission under case IE/2009/0875.<sup>8</sup>

The relevant market, which was considered to be national in scope, included partially or fully unbundled access to the copper and fibre loop, but excluded access provided through cable and wireless networks. The regulator decided to exclude from the market access to fibre networks provided by alternative operators, given the limited scale of fibre-to-the-home (FTTH) projects in Ireland and the low probability that they would be deployed to an extent that would make them an alternative to the incumbent's network.

ComReg concluded that Eircom (now Eir) had significant market power (SMP) in the market and maintained a number of regulatory remedies on Eircom, including:

- i) access;
- ii) transparency;
- iii) non-discrimination;
- iv) price control<sup>9</sup> and cost accounting; and

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<sup>3</sup> Corresponding to market 3b in the Recommendation on Relevant Markets.

<sup>4</sup> Corresponding to market 2 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 (2007 Recommendation on Relevant Markets) (OJ L 344, 28.12.2007, p. 65).

<sup>5</sup> In accordance with Article 6 of the Framework Directive.

<sup>6</sup> In accordance with Article 5(2) of the Framework Directive.

<sup>7</sup> Corresponding to market 4 of the 2007 Recommendation on Relevant Markets.

<sup>8</sup> C(2009) 1283.

- v) accounting separation.

The Commission invited ComReg to:

- a) include all access products based on fibre networks in the relevant market, whether or not such networks were owned by the incumbent operator;
- b) notify the future details and implementation of the price control obligation and the cost accounting obligation measures to the Commission;
- c) when carrying out the next market review, revisit its analysis along the lines of the Commission's upcoming Recommendation on Next Generation Access (NGA) remedies (once adopted); and
- d) analyse markets 3a and 3b (markets 4 and 5, at the time) together in the context of the next market review.

In a number of other notifications to the Commission,<sup>10</sup> ComReg gave further details of the remedies imposed in case IE/2009/0875.

### ***2.1.2. Wholesale central access provided at a fixed location for mass-market products***

The market for wholesale broadband access (WBA)<sup>11</sup> in Ireland was previously notified to and assessed by the Commission under case IE/2011/1207.<sup>12</sup>

The relevant market, which was considered to be national in scope, included non-physical or virtual network access at a fixed location, including 'bitstream' access, via both DSL/copper and fibre networks (including the incumbent's self-supply).

ComReg designated Eircom as an operator with SMP and imposed the full set of obligations, including:

- i) access;
- ii) non-discrimination;
- iii) transparency;
- iv) accounting separation; and
- v) price control and cost accounting.

The majority of the obligations were established in general terms and then further specified in a number of subsequent notifications to the Commission.<sup>13</sup>

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<sup>9</sup> The remedy was established only in general terms; the details were set out in a subsequent decision.

<sup>10</sup> Cases IE/2009/0918, IE/2009/0923, IE/2009/0924, IE/2009/0969, IE/2010/1104, IE/2011/1185, IE/2012/1382, IE/2012/1404 and IE/2014/1649.

<sup>11</sup> Corresponding to market 5 in the 2007 Recommendation on Relevant Markets.

<sup>12</sup> C(2011) 350.

<sup>13</sup> Cases IE/2012/1295, IE/2012/1404, IE/2014/1571 and IE/2014/1649.

The Commission reiterated its previous comment, inviting ComReg to analyse markets 3a and 3b together as soon as possible, thus ensuring a coherent approach to NGA regulation.

### ***2.1.3. Call origination on the public telephone network provided at a fixed location***

The wholesale market for call origination on the public telephone network provided at a fixed location in Ireland was previously notified to and assessed by the Commission under case IE/2015/1746.<sup>14</sup>

The retail market was considered to be national in scope and included retail fixed telephony services (RFTS) provided to a fixed location over a narrowband copper network, and managed voice over broadband (VOB)-based<sup>15</sup> RFTS delivered over a broadband access path (via IP rather than traditional circuit-switched telephony) through a fibre or a cable access television (CaTV) network.<sup>16</sup>

ComReg then defined a wholesale market for fixed access and call origination (FACO) comprising a fixed access (FA) or wholesale line rental (WLR) component and a fixed call origination (FVCO)<sup>17</sup> component. It distinguished between the high-level (HL) and the low-level (LL) FACO markets,<sup>18</sup> which were both considered to be national in scope. The market also included Eircom's self-supply, in particular its notional supply of FACO via managed VOB. Self-supply over CaTV networks was excluded from the FACO markets.

As the FACO market was not listed in the Recommendation on Relevant Markets, ComReg carried out the three-criteria test and concluded that it was still fulfilled. ComReg designated Eircom as operator with SMP on both the LL-FACO and the HL-FACO markets and imposed the following obligations:

- i) access (including SB-WLR);<sup>19</sup>
- ii) non-discrimination;

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<sup>14</sup> C(2015) 5011.

<sup>15</sup> 'Managed VOB' means voice over internet protocol (VOIP) provided by a fixed service provider either directly, using its own network, or indirectly, by renting the access path from a third party.

<sup>16</sup> In case IE/2014/1629, relating to the retail markets for access to the public telephone network at a fixed location (market 1 in the 2007 Recommendation), ComReg imposed on Eircom a set of retail remedies, including (i) no excessive charges, (ii) price cap, (iii) not to unreasonably bundle, (iv) transparency and (v) cost accounting.

<sup>17</sup> FVCO is defined as calls originated at a fixed location of an end-user which are conveyed and routed through any switching stages (or equivalent) up to a point of interconnection.

<sup>18</sup> While both the HL- and LL-FACO markets comprise FVCO, the border line between the two is based on the underlying differences in demand- and supply-side conditions of the FA/WLR component. Thus, the LL-FACO market comprises public switched telephone network (PSTN) and integrated services digital network (ISDN) basic rate access (BRA) (supporting 2 voice channels), while the HL-FACO market comprises ISDN fractional rate access (FRA), which supports 14 to 30 voice channels, or ISDN primary rate access (PRA), which supports 30 voice channels.

<sup>19</sup> Single billing wholesale line rental (SB-WLR) combines WLR and FVCO.

- iii) transparency;
- iv) price control and cost accounting; and
- v) accounting separation.

In the context of the price control obligation, ComReg imposed a ‘retail minus’ obligation for SB-WLR, whereby Eircom had to provide WLR to access seekers at least 14 % below its retail-line rental price, and set prices so as not to cause a margin squeeze between FVCO and switchless voice services.<sup>20</sup>

The Commission invited ComReg to proceed with the review of the retail access market without undue delay and to take the opportunity of the forthcoming parallel consultations to streamline the existing pricing remedies on the various regulated wholesale markets.

## 2.2. Regulatory remedies

The measures set out in the three notified draft decisions relate to obligations already imposed following analysis of the markets referred to in section 2.1. With the current draft decisions, ComReg is further specifying and/or amending the price control obligations and transparency obligations imposed on the three markets.<sup>21</sup> In particular, it has updated its copper access model<sup>22</sup> in order to determine the cost-oriented prices for the fixed wholesale access services provided in the three markets for the July 2016-June 2019 period.

In some cases, ComReg has used bottom-up long run average incremental cost plus an apportionment for joint and common costs (BU-LRAIC+) pricing<sup>23</sup> and in others top-down historic cost accounting (TD HCA).<sup>24</sup> The former has been generally applied to those assets that cannot be reused for the provision of NGA services, while Eir’s TD data have been generally applied to those assets that can be reused, such as poles and ducts.

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<sup>20</sup> Pending the outcome of separate consultations on *inter alia* (i) the pricing methodology for WLR-related products, (ii) whether to move to cost-oriented price control for SB-WLR and (iii) further details of the margin squeeze. At the time, ComReg proposed to reassess the former retail access market and consider whether it could be further deregulated, once adequate wholesale measures were put in place as a result of these price-related work streams.

<sup>21</sup> In doing so, ComReg appears largely to be following the 2013 Commission Recommendation on non-discrimination and costing methodologies.

<sup>22</sup> CAM (now known as the ‘revised CAM’), implemented in Ireland for the first time in 2009.

<sup>23</sup> The BU-LRAIC+ methodology values the operator’s assets at current market value and allows for changes in asset prices. A potential entrant is charged an access price (in principle) similar to what it might pay to build its own network, and thus faces a balanced ‘build-or-buy’ decision.

<sup>24</sup> The TD methodology uses Eir’s actual accounting data adjusted for efficiencies, as well as the forecast for future expenditure over the price control period, similarly adjusted for efficiencies.

### ***2.2.1. Wholesale local access provided at a fixed location***

In the draft decision, ComReg has further specified the methodology for determining the charges for Local Loop Unbundling (LLU), Sub-Loop Unbundling (SLU)<sup>25</sup> and line share. For the first time, it also sets regulated charges for civil engineering infrastructure (CEI)<sup>26</sup> and dark fibre. It is maintaining the obligation of cost orientation for these wholesale fixed access services.

The national monthly LLU rental price is based on a BU-LRAIC+ model for the ‘modified LEA’<sup>27</sup> (for non-reusable assets) and a TD HCA methodology for reusable assets. This approach relies on the assumption that only lines in urban areas are likely to be unbundled.

The national monthly SLU rental price is based on a national BU-LRAIC+/TD HCA model. ComReg’s approach (using national costs rather than costs limited to the modified LEA, as in the case of LLU) relies on the assumption that there could be demand for SLU lines nationally — including in rural areas.

For CEI and dark fibre,<sup>28</sup> the maximum price is based on a blend of Eir’s TD costs for those assets that can be reused for the provision of NGA services and the BU-LRAIC+ costs of assets that will need to be replaced for the provision of NGA services.

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<sup>25</sup> Under the existing price control remedy, LLU and SLU charges could be reviewed only where significant and sustainable changes are noted to key parameters, i.e. those that would materially affect Eir’s ability to recover its costs or the investment decisions of network operators. Any price changes would be subject to ComReg’s review and approval.

<sup>26</sup> Poles and ducts.

<sup>27</sup> In 2012, ComReg undertook a detailed exchange-by-exchange analysis of the structural conditions in the market, and established a set of criteria to identify areas in the country with higher competitive conditions. Areas (mainly urban) where uptake of unbundled services was likely to be viable or with potential for future deployment of alternative infrastructures were grouped together in the ‘large exchange area’ (LEA). In subsequent years, ComReg increased the number of exchanges included in the LEA as these became more competitive. The ‘modified LEA’ is the LEA area in the current notification.

<sup>28</sup> The maximum price for dark fibre applies only where access to civil engineering infrastructure (ducts and poles) is unavailable for economic, technical or capacity reasons and where dark fibre is reasonably available.

The maximum charges for services provided in this market are as follows:

Services	1 July 2016 to 30 June 2017	1 July 2017 to 30 June 2018	1 July 2018 to 30 June 2019
<b>LLU</b> (monthly) <sup>29</sup>	€9.34	€9.88	€10.40
<b>SLU</b> (monthly)	€5.41	€5.60	€5.77
<b>Line Share</b> (monthly) <sup>30</sup>	€0.77	€0.77	€0.77
<b>Poles</b> (annual) <sup>31</sup>	€23.15 (LEA) €19.18 (Outside LEA)	€24.30 (LEA) €20.00 (Outside LEA)	€25.46 (LEA) €20.84 (Outside LEA)
<b>Ducts</b> (annual) <sup>32</sup>	€1.16 to €2.57	€1.18 to €2.64	€2.71 to €1.20
<b>Dark fibre</b> <sup>33</sup> (annual)	€0.24 (Dublin) €0.13 (Provincial)	€0.25 (Dublin) €0.13 (Provincial)	€0.26 (Dublin) €0.14 (Provincial)

### 2.2.2. Wholesale central access provided at a fixed location for mass-market products

ComReg has further specified the existing price control obligation of cost orientation for standalone broadband (SABB) outside the LEA. This maximum monthly price is based on Eir's TD costs (adjusted for efficiencies) associated with the provision of SABB outside the LEA.<sup>34</sup>

The maximum monthly charges for SABB outside the LEA are as follows:

Services	1 July 2016 to 30 June 2017	1 July 2017 to 30 June 2018	1 July 2018 to 30 June 2019
<b>SABB outside LEA</b>	€21.68	€22.09	€22.45

<sup>29</sup> This price excludes monthly repair charges of €0.96.

<sup>30</sup> The maximum national monthly rental price for line share is based on the incremental costs relevant to the ongoing day-to-day running of the line share service and has not changed since previous decisions were taken. There is a separate fault repair cost of €0.05.

<sup>31</sup> The price is split among the operators using the pole.

<sup>32</sup> These prices (per metre of sub-duct) depend on geography (Dublin or provinces) and surface type (carriageway, footway or verge).

<sup>33</sup> Prices per metre for a single strand of dark fibre.

<sup>34</sup> For the provision of wholesale broadband access services within the LEA, Eir must comply with a retail margin squeeze obligation and a price floor.

### ***2.2.3. Call origination on the public telephone network provided at a fixed location***

For SB-WLR, ComReg is switching from a retail-minus price control obligation to a cost orientation price control. It proposes that Eir should apply prices based on the higher of the following:

- i) TD HCA costs of providing SB-WLR nationally (with BU costs applied to the line card); and
- ii) BU costs in the LEA (with BU-LRAIC+ for non-reusable and TD HCA for reusable assets).

It has further specified the two high-level margin squeeze obligations<sup>35</sup> imposed in the FACO.

In light of the above, the national monthly charges for SB-WLR are as follows:

Services	1 July 2016 to 30 June 2017	1 July 2017 to 30 June 2018	1 July 2018 to 30 June 2019
SB-WLR	€15.91	€16.20	€16.41

### **3. COMMENTS**

The Commission has examined the three notifications and the additional information provided by ComReg, and has the following comments:<sup>36</sup>

#### **Timeframe and consistency of market analyses and proposed price control remedies**

Under Article 8(4) of the Access Directive,<sup>37</sup> obligations are to be based on the nature of the problem identified, proportionate and justified in the light of the objectives laid down in Article 8 of the Framework Directive.

Under the Framework Directive, NRAs are to decide whether to maintain, amend or withdraw obligations on undertakings on the basis of a market analysis. Under Article 16(6) of the Directive, regulators should carry out their market reviews within three years from the adoption of the previous measure.

<sup>35</sup> The first test between retail and wholesale line rental (or SB-WLR) should ensure a sufficient margin between the respective services, so that another authorised operator can replicate Eir's retail prices on a standalone basis. The second test is to ensure sufficient economic space between the price for POTS-based Virtual Unbundled Access (VUA) and the price for standalone VUA / NGA bitstream (including a contribution towards the cost of managed VoB), so that an operator is not dis-incentivised from moving to alternative technologies as appropriate. According to ComReg, this should ensure technological neutrality.

<sup>36</sup> In accordance with Article 7(3) of the Framework Directive.

<sup>37</sup> Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ L 108, 24.4.2002, p. 7), as amended by Directive 2009/140/EC (Better Regulation Directive) (OJ L 337, 18.12.2009, p. 37).



The Commission notes that ComReg's latest full review of the markets for wholesale local access provided at a fixed location and for wholesale central access provided at a fixed location for mass-market products in Ireland date back to 2009 and 2011, respectively. Moreover, the charge controls proposed in the draft measures under review extend well into 2019.

The Commission acknowledges ComReg's response to the RFI, in which it explains its intention to notify new reviews of markets 3a and 3b in late 2016 or early 2017, and urges it to do so as soon as possible, in particular in view of the obligation under Article 16(6) of the Framework Directive.

In particular, the Commission stresses that carrying out a new market analysis without undue delay is essential to allow proper assessment of the most appropriate regulatory obligations and whether the regulatory measures taken in the past seven years (or proposed through the current decisions) are proportionate and justified in the current market environment.

### **The need to review the retail access market**

The Commission notes that, in the context of case IE/2015/1746, ComReg proposed to reassess the former retail access market and consider whether it could be further deregulated once adequate wholesale measures were in place as a result of a number of price control-related notifications. At the time, the Commission noted that, while transferring the WLR obligation from the retail access market to the FACO market, ComReg continued to regulate the former. While the analysis of that market has not yet taken place, ComReg has informed the Commission that it is planning to carry out a review in the course of 2016 and to notify it in the fourth quarter of 2016 or first quarter of 2017.

In light of the above, the Commission invites ComReg once again to monitor developments in the retail access market and to examine without undue delay whether, in light of retail developments, regulation in the retail access (and FACO) markets remains appropriate.

Pursuant to Article 7(7) of the Framework Directive, ComReg shall take the utmost account of the comments of other NRAs, BEREC and the Commission, and may adopt the resulting draft measure; 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,<sup>38</sup> 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 Commission<sup>39</sup> within three working days following receipt whether you consider that, in accordance with EU and

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<sup>38</sup> 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).

<sup>39</sup> Your request should be sent by email ([CNECT-ARTICLE7@ec.europa.eu](mailto:CNECT-ARTICLE7@ec.europa.eu)) or fax (+32 2 298 87 82).

national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.<sup>40</sup> You should give reasons for any such request.

Yours sincerely,

For the Commission,  
Roberto Viola  
Director-General



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<sup>40</sup> The Commission may inform the public of the result of its assessment before the end of this three-day period.