

Commission opens in-depth investigation of Irish markets for fixed voice telephony

Today, the European Commission opened an in-depth investigation into the Irish Commission for Communications Regulation (ComReg)'s analysis of the retail markets for fixed telephony services and the corresponding wholesale markets in Ireland that was notified on 18 June.

In the notified measure, ComReg has proposed to lift regulation imposed on the historic operator, Eircom, which obliged it not to charge excessive prices in the retail market for fixed voice telephony services. It also proposed to partially lift regulation, obliging Eircom to provide access to its network to alternative operators from the *wholesale* 'legacy' fixed access and call origination services, which are used by telecoms operators to provide fixed voice telephony. ComReg proposed to re-impose wholesale access obligations on Eircom in certain narrow sub-urban and rural regional areas, which altogether cover around one third of Irish premises. However, within that area, about two thirds of premises already have the possibility to be served through wholesale services provided by alternative operators over so-called next generation networks, networks (partially) existing of fibre providing higher speeds.

The Commission has serious doubts on the definition of the product and geographic markets for wholesale fixed access and call origination services. It also has doubts on ComReg's finding that these markets require regulation and that Eircom has a significant market power (SMP) allowing it to abuse competitors and ultimately end users in this market. In particular, the Commission considers that ComReg has underestimated the competitive constraints limiting Eircom's possibility to behave independently of competitors and end users. Therefore, it has proposed to impose regulation, which is not sufficiently proportionate and forward-looking. In this context it is relevant that the markets for fixed access and call origination were already removed from the Commission's Recommendation on Relevant Markets (listing markets in which regulation was in principle appropriate) in 2014. The Commission also noted that end users located in rural areas would be protected against possible discrimination by the Universal Service Obligation imposed under Irish legislation, which requires Eircom to apply geographically averaged prices in the whole of the Irish territory.

In addition, Eircom offered voluntary commitments to provide access to alternative operators under different conditions than those proposed by ComReg. In this context, the Commission commented that ComReg should have applied Article 79 of the European Electronic Communications Code, allowing national regulatory authorities to assess operators' voluntary commitments and make them binding. Based on Article 79, national regulatory authorities must assess the consequences of such a decision on the market and, against that background, the appropriateness of any regulatory obligation. ComReg argues that it could not apply Article 79 of the Code because there is no statutory basis in Irish law to accept commitments and make them binding, and the Code has not yet been transposed into Irish law. In any event, ComReg considered Eircom's voluntary commitments insufficient to address its competitive concerns.

The Commission, therefore, initiates the in-depth investigation to verify the appropriateness of the

market definition and the corresponding SMP finding proposed by ComReg.

Retail fixed telephony is the service that allows residential or business end-users to make and receive voice calls via a fixed telephone. It can be provided over the legacy copper network, but also over fibre or cable networks in the form of VoIP (Voice over IP). End-users can buy it as a standalone product, but it is increasingly being sold as part of bundled offers, for instance with internet or TV services.

The providers of retail fixed telephony services that do not have their own network need to buy wholesale fixed access and call origination services from other operators of legacy or, where available, next generation access networks. Today, the great majority of overall voice call minutes are mobile calls, while residential and business fixed voice minutes dropped significantly. In most areas, next generation networks are available, offering an alternative to the purchase of legacy wholesale fixed and call origination services, which are currently still subject to full regulation in Ireland. In addition, several operators have entered these wholesale markets in Ireland, and there are ongoing fibre deployments in the more rural areas thanks to public subsidies.

Next steps

The Commission has two months to discuss the draft measure with ComReg, in close cooperation with the Body of European regulators (BEREC). At the end of the Phase II investigation period, the Commission may either lift its reservations or issue a veto decision under Article 32 of the European Electronic Communications Code. During this period, ComReg will not be able to adopt a final measure regarding the markets for retail fixed telephony services and wholesale markets for fixed access and call origination.

The Commission's serious doubts letter opening the in-depth investigation will be available online shortly.

The Commission invites third parties to submit their observations within 5 working days.

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