Survey – COMPLETE

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1. Have the relevant aspects of the environment as they relate to the NBP-Intervention Strategy been described?

If you have any further observations, please add comment below:

2. Have the relevant significant effects [positive and negative] of implementation of the NBP-Intervention Strategy been considered?

If you have any further observations, please add comment below:

3. What amendments to the Intervention Strategy are required to adequately reflect the findings of the SEA report and the NIS?

4. What, if any, observations do you have regarding the High Speed Broadband Map Process?

Sky considers that the Department should revisit the issue of whether a portion of premises in the Eir 300k premises FTTH footprint ("300k Footprint") should be returned for inclusion in the intervention area for the National Broadband Plan. Furthermore, Eircom's wholesale and retail pricing strategy within the 300k Footprint is designed to deter other retail operators from entering the market and to deter existing Eircom retail customers from taking up the FTTH service.

We would further note that operators' ability to get information from Eircom Ltd in relation to developments within the 300k Footprint has proved extremely difficult and is often met with resistance. Having given an indication, under the terms of its agreement with the government that it could facilitate connection to 95% of premises within the 300k Footprint for a standard connection charge, Sky and other operators requested a SLA pursuant to the existing Access Regulations that reflected this commitment. Eircom has refused to provide any comfort to operators that reflects this commitment citing that it would amount to a 'double jeopardy' on Eircom.

Sky and others has also sought information from Eircom on a regular basis as to connection statistics within the 300k Footprint. According to Eircom's latest quarterly report (released on 2 February 2018), it has connected over 20,000 customers to FTTH. Consequently, it could reasonably be expected that Eircom has a considerable wealth of information available to it as to connection statistics, issues

encountered, how problems were overcome etc. with respect to this footprint.

However, Eircom has been very reluctant to share information with other operators contrary to their transparency obligations. On 8 September 2017, after repeated requests for information, Eircom sent the following information to the ComReg NGA regulatory forum mailing list: "In response to your request for data, open eir has analysed over 10,000 FTTH orders received over the last number of months. Using existing reporting tools open eir has been able to analyse how many completed orders were referred and the reason for the referral. - 74% were completed without any referral – this means that these order were completed most likely in a single visit without the customer having to complete any work and open eir not requiring additional infrastructure - 11% Customer Delay and Eircom referral – this means customer was not available/ ready or open eir could not complete the appointment.

It is possible in some of these cases that the customer had to complete some additional work beyond the standard RAP FTTH connection fee - 15% Non-standard referral - this referral relates mainly to open eir infrastructure issues and most likely indicates that the customer did not carry any costs beyond the standard RAP connection fee

The new refer code functionality that was implemented recently and reporting being developed in October will allow open eir to record and categorise instances where customer input is required in order to complete a provision.

In addition, over the next couple of weeks open eir will conduct some further analysis to try and estimate the % of the referred orders above that may have led to the customer bearing extra cost beyond the standard connection fee." [Eircom, 8th September, 2017] As can be seen the language is vague ("most likely completed", "it is possible in some cases", "most likely indicates") and it would appear that considerably less than 95% of premises were being connected for standard connection charges.

Sky further consider that this data may be heavily skewed as a consequence of Eircom being the only national retail provider that is actively selling FTTH in the 300k Footprint. In this regard we would note that in Eircom's most recent quarterly report (2 February, 2018) as published on its website, it claimed that 70% of all customers connected in the 300k Footprint were customers that were "new" to Eircom. We consider this is more a reflection of Eircom's retail strategy to target only customers connected to other service providers within the 300k Footprint. It is quite possible that customers already receiving ADSL service from Eircom were turned away by agents at the 'call-in' phase or were excluded from direct marketing plans. Whatever the reason there appears no logical reason as to why existing Eircom customers are disproportionately underrepresented in terms of looking to upgrade to a FTTH service. The extent to which Eircom's retail strategy is therefore having an impact on the current connection statistics is unclear.

In early December 2017, Sky sought a further update from Eircom in relation to connection developments within the footprint. On 9 January 2018, Eircom provided the following update to the ComReg NGA forum mailing list: "open eir is developing reporting per AP 1709.2 and the first reports may be available later this month. In the interim the following summary is based on available data for the last few months. - 19% Customer Delay referral – this means customer was not available/ ready and open eir could not complete the appointment. It is possible in some of these cases that the customer had to complete some additional work beyond the standard RAP FTTH connection fee - 7% Non-standard referral - this referral relates mainly to open eir infrastructure issues and most likely indicates that the customer did not carry any costs beyond the standard RAP connection fee" [Eircom, 9 January 2018]

Again there is significant ambiguity about the information provided to the extent that it is not helpful to other retail providers from a business planning perspective. As of 2 February, 2018 we have received no detailed report as proposed by Eircom in its 9 January communication as being available "later" in the month of January.

Sky are also concerned that Eircom are proposing to introduce a new "connection service" which it claims falls out the RAP (Regulatory Access Product) within the 300K Footprint. Sky has raised concerns with ComReg about Eircom's proposal which in effect would allow Eircom (an operator with Significant Market Power) to be the sole arbiter of whether or not a premises will be connected for a standard charge and whether or not connection to a particular premises falls the RAP definition as judged by Eircom on a case by case basis. As an alternative it will offer an unregulated commercial product to carry out work in excess of the standard connection charge. The scope such a product creates for engaging in discriminatory behaviour with little or no transparency should be of grave

concern to not just ComReg but to the government as well.

This is of particular concern if less than 95% target on standard connection charges is not being met. Finally it is clear that Eircom's €270 connection charge for FTTH within the 300K Footprint has had the effect of restricting entry of retail operators in the market. ComReg has proposed that only in-life migration charges should be recovered through once off connection charges in the Market 3a/3b market review issued in April 2017. Sky agree with ComReg's proposal and its recognition that network investments should be recovered over the life of the assets and not through substantial upfront charges which restricts take up.

Eircom are clearly seeking to recover a significant proportion of costs upfront from other retail providers even while it is offering retail connections to customers (in particular non-Eircom customers) for free. While ComReg continues to be late in issuing its decision on the Market 3a/3b, Eircom is benefitting enormously from the dual strategy of high wholesale connection charges coupled with free retail connection charges targeted in the main at non-Eircom customers. They are of course also benefitting enormously from significant above cost pricing of FTTC services (following significant and arbitrary price increases in 2016) which is fuelling fixed EBITDA margins in excess of 45% - a fixed line profitability margin at the top end of Eircom's global peer group. Sky consider that it could not have been the government's intention that the market within the 300k Footprint would have developed in this way that see's Eircom being the only national retail operator selling the service where wholesale charges are deterring market entry. Sky Ireland, 2 February, 2018