

Minister Eamon Ryan
Department of Climate Action, Communication Networks and Transport
29 – 31 Adelaide Road
Dublin 2
D02 X285

10 August 2020

Dear Minister

I refer to correspondence received from your office dated 13 February 2019 requesting ComReg to undertake a review of the following matters in relation to enet¹:

- 1) Establish whether enet complied with its obligation under the Code of Practice to offer managed services on the MAN's in the context of national end to end service at non-discriminatory prices such that its related company, enet Telecommunications Networks Ltd did not obtain a material unfair advantage.
- 2) Confirm the revised intercompany transfer pricing arrangements in place are in compliance with the Code of Practice.
- 3) Confirm that the Analysys Mason recommendations are being implemented.
- 4) Based on the findings of the review, make any further recommendations to the Minister.

Following a public procurement process PwC was appointed to assist ComReg with its review. Fieldwork commenced in June 2019 and over several months involved extensive interaction between ComReg, PwC and enet. Based on this fieldwork a draft report was issued to enet in November 2019. Subsequent to the issuing of this draft report enet presented new information to clarify certain points made in the draft report which required further in-depth analysis and discussion. Based on this new information further drafts were issued to enet in Q1 2020. The report was finalised in Q2 2020 with a copy submitted to your officials on 21 May 2020.

Based on the findings of PwC ComReg would note the following:

1. There were certain limitations within the data regarding the comparability of services purchased by ETNL compared to other operators. These mainly related to the volume or type of transactions incurred with ETNL purchasing a wider range and higher volume of services than other operators. Based on the analysis and in the context of the

¹ E-Nasc Eireann Teoranta (“enet”).

EBITDA of ETNL after adjustment for once- off items, the difference arising from the pricing comparison calculation did not represent a material unfair advantage to ETNL.

2. enet have updated their intercompany transfer pricing policy to reflect a price based on its documented prices.
3. Of the 12 recommendations set out in the Analysys Mason report PwC noted the following:
 - a. 10 have been implemented in full; and
 - b. 2 recommendations have been partially implemented.

For the two that are partially implemented² we consider that the main issue to be addressed relates to improving the documentation of discounts.

4. The following two further recommendations are made:
 - a. Analysys Mason recommended that an annual report is to be prepared by enet and submitted to your Department³. PwC's fieldwork concluded before the first report was due. However, we recommend that the process surrounding the development of the annual report is formalised. Reasons for exceptional transactions should be documented and it should clearly set out the step by step process in arriving at the result and a clear rationale for any conclusions.
 - b. Analysys Mason recommended that enet make certain improvements to the documentation of discounts⁴. While enet has improved the quality of its documentation PwC recommend further enhancements primarily around the need for documentation of "exceptional discounts" and also publication of criteria for term and volume discounts.

Yours sincerely



Garrett Blaney
Chairperson

² Analysys Mason recommendations 6 and 7.

³ Analysys Mason recommendation 2.

⁴ Analysys Mason recommendation 6.