



Éilis Fallon  
 Committee Secretariat,  
 Committee of Public Accounts,  
 Leinster House  
 Dublin 2

8 March 2019

Ref: PAC32-I-1325

Dear Éilis,

I am writing to you following BT's appearance before the Public Accounts Committee (PAC) on 14<sup>th</sup> February 2019 and in response to your questions of the 22<sup>nd</sup> February 2019 which we have addressed below.

A key point we would like to make not addressed in the Analysys Mason report is that the European Commission State Aid Approval precluded the MSE (Managed Service Entity running the MANSs) from being owned or controlled by an authorised electronic communications operator.<sup>1</sup> This approach was adopted so that the provider of the MANs had the function of infrastructure provider to assist competition in the market rather than to directly compete with the market, which is what has happened.

BT Ireland Response to the three questions:

*1. A note in relation to the Analysis Mason Report outlining which recommendations have been implemented and those that have not;*

*Please see annex A.*

<sup>1</sup> [http://ec.europa.eu/competition/state\\_aid/cases/199656/199656\\_581678\\_68\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/199656/199656_581678_68_2.pdf)

State aid n° N 284/2005 – Ireland

Regional Broadband Programme: Metropolitan Area Networks

("MANs"), phases II and III

See Clause 21.

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 Standards: Quality Standard ISO 9001:2008  
 and Environmental Standard EN 14001:2004



**Directors:**  
 Colm O'Neill, CEO  
 Shay Walsh  
 Peter Evans  
 Aaron Carroll

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2. A copy of correspondence between the Department and BT where BT expressed an interest in relation to the extension of the Metropolitan Area Networks network in June 2017; and

As indicated to the Committee we said we would check with the DCCAIE for agreement to provide the requested correspondence. The DCCAIE provided their agreement and please see Annex B.

3. A copy of correspondence between the Department and BT in relation to the publication of the Analysys Mason Report.

As indicated to the Committee we said we would check with the DCCAIE for agreement to provide the requested correspondence. The DCCAIE provided their agreement and please see Annex C.

Additional to our response to the questions, we would like to raise an issue of clarity concerning a point made by E-Net during their presentation. E-Net stated that they are not regulated; however we consider this statement incorrect and we explain why in Annex D.

Yours Sincerely



John O'Dwyer  
Head of Regulation BT Ireland

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**Annex A – Note in Relation to the Analysys Mason Report outlining which recommendations have been implemented and those that have not.**

For ease of reading we have provided our comments in an additional column to the table provided by the Minister.

**Status of recommendations**

|   | <b>Recommendation</b>   | <b>Status</b>                 | <b>BT Comments on Implementation</b>   |
|---|---|-------------------------------|--|
| 1 | Enet should update its published price lists to explain that upfront and spread-out options are available for paying the connection fee for any product enet should also publish the existence of any discounts that are available for connection fees    | Implemented – enet to publish | <p>We note that a new pricelist was published on 13th February 2019 (please see attached) We believe some clarification of the price structure and discount terms is merited and suggest ComReg is ideally placed to consider as part of their review</p> <p>We welcome the price reductions to the benefit of existing consumers and businesses However compared to the market the max prices still seem high</p> |
| 2 | Enet should update its assumptions used in preparing the desktop survey (DTS) estimate for the cost of the building ‘drop connections’, and prepare a report showing that there is an improvement in the reliability (on average) between the DTS and the | Implemented                   | We have no visibility of this activity and, given the issues identified by Analysys Mason, the improvements should be monitored on an ongoing basis by ComReg to ensure they are fit for purpose   |

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|   |   |             |  |
|---|---|-------------|--|
|   | corresponding field survey (FS)   |             |  |
| 3 | Enet continues to publish its maximum prices, not its actual prices (due to it facing competition for its services)   | Implemented | Enet published its new maximum prices on the 13th February 2019 and the consultant's report did not recommend publication of Enet's negotiated discounted prices for the reasons set out in the report. We consider that equivalence and transparency across all pricing should be guaranteed - if not by publication, through implementation of other recommendations (e.g. those relating to the required documentation of discount schemes), as well as through monitoring by ComReg. |
| 4 | Enet and DCCAE should discuss price changes for dark fibre, sub-duct and duct which will ensure that wholesale customers do not find it more expensive, on average, to buy passive products than comparable managed service products. | Implemented | We have no visibility of these discussions, but we remain concerned that Enet still applies flat pricing for managed service products, and per metre pricing for dark fibre. We consider both products should have the same pricing structure to be comparable and proportionate to their input costs.<br>For example in the new price list purchasers of dark fibre will pay a connection charge whereas purchasers of  |

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|   |   |                               |  |
|---|---|-------------------------------|--|
|   |   |                               | managed service (a higher layer service which uses dark fibre as an input) pay zero connection charges   |
| 5 | Enet should make single strands of dark fibre available, at a price which is lower than the price of dark fibre pairs   | Implemented – enet to publish | We note the introduction of this service in the 13 <sup>th</sup> February 2019 price list.   |
| 6 | Enet should document all of its discounting schemes and adhere to these to ensure that it offers the same type and level of discounts to all requesting operators         | Implemented                   | <p>We have no visibility of the documentation of these discounting schemes and believe E-Net should publish these on their web site for the purposes of transparency and equivalence</p> <p>We consider this is similar to item 1 and Enet should publish the various discounting schemes on its website In any event, we suggest that ComReg should have an oversight/governance role to ensure ongoing compliance with this recommendation</p> |
| 7 | Enet should not sell end-to-end national managed service connections at a price lower than the price for the MAN component (the list price, plus any documented discount) | Implemented                   | <p>We have no visibility or evidence of this being implemented, and expect that this would be applied retrospectively.</p> <p>We suggest that ComReg should have an oversight/governance role to ensure ongoing compliance with this recommendation</p>  |

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|    |   |             |   |
|----|---|-------------|---|
| 8  | Enet should create a transfer price – paid by ETNL to enet – for the MAN component of national end-to-end managed services based on its published MAN price lists, plus any documented discounts for MAN managed services               | Implemented | We have no visibility of this activity<br><br>We consider this activity should be checked and monitored annually by ComReg who is familiar with practices of cross subsidisation etc  |
| 9  | Enet should update a number of key elements within the legal framework of the separated accounts annually   | Implemented | We have no visibility of this activity and we consider that this item should be a central element of the ComReg review and would expect to see ongoing monitoring by ComReg<br><br>We can verify that we are still receiving a single bill which is not itemised as to what is supplied as State Aid assets and what is supplied as Commercial facilities |
| 10 | Enet should permit operators to ‘core drill’ into a specified point of a MAN chamber, under supervision   | Implemented | We are not aware of any changes to E-Net’s product description for this offering  |
| 11 | Enet should prepare a report on the allocated occupancy of passive equipment (dark fibre, duct, sub-duct, co-location) by ISPs, including that used by ETNL for national circuits<br>The report should compare the current occupancy to | Implemented | We have no visibility of the existence of such a report<br><br>Previously occupancy was an element of the published price list This has been removed in the new price list  |

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|    |   |             |   |
|----|---|-------------|---|
|    | the maximum levels set out in the Code of Practice.   |             |   |
| 12 | Enet should make a range of minor improvements to its external communications, including its relationship with service providers, and ensuring clarity of communication regarding services.   | In progress | We welcome this recommendation and look forward to these improvements   |
| 13 | In addition to our previous recommendations (many of which will serve to reduce barriers to take-up on the MANs), we also recommend that DCCAE should work with enet to consider offering a discount for products on specific MANs where take-up is low | In progress | We support the DCCAE Mobile and Broadband Taskforce Recommendation that the Department explore what more can be done to improve the take up of the MANs and provide greater availability of connectivity in the regions |

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**Annex B - Correspondence between the Department and BT where BT expressed an interest in relation to the extension of the Metropolitan Area Networks network in June 2017.**



20190304140830.pdf  
f

15th June 2017 - Letter from BT to Finola Rossi, DCCAE, indicating BT's interest to participate in a tender process for the renewal the MANs contract.



20190304140842.pdf  
f

4th August 2017 - Response from the DCCAE to BT indicating that the MANs contracts had been extended with Enet to 2030.



20190304143808.pdf  
f

21st August 2017 – BT email response to the DCCAE response of the 4th August 2017.

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## Annex C - Correspondence (2 emails) regarding publication of Analysys Mason Report.



20190304142849.pdf  
f

14<sup>th</sup> March 2018 – Email from Seamus (Shay) Walsh MD BT Ireland to Brendan Whelan seeking an update on the Consultant's report.

16<sup>th</sup> March 2018 – Email response from Brendan Whelan, DCCAIE, to Shay Walsh with the latest update.

Note. It is our understanding that the consultants carrying out the study were Analysys Mason.

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## Annex D – Regulation of E-Net

In his PAC presentation the E-Net CEO indicated that E-Net is not regulated; however we consider this statement incorrect for the following reason.

The Web site of the national telecoms regulator ComReg contains a list companies that have registered as providers of Public Electronic Communications Networks in Ireland. The URL for this site is below.

<https://serviceregister.comreg.ie/Services/Search?q=enet>

According to the ComReg Register E-Net have five different Authorisations (licences in old language) from the regulator allowing them to provide various publicly available types of telecoms service in Ireland. **In becoming Authorised to run telecom networks in Ireland a set of obligations are imposed by the national regulator ComReg – in simple terms these obligations are the regulations – so E-Net is regulated.**

For further evidence, below is an extract of the ComReg web site highlighting companies have to be Authorised to provide Publicly available telecoms services and this links to what are known as the General Conditions – these provide the regulations and link to further regulations as required.

<https://www.comreg.ie/industry/licensing/general-authorisation/>

Start of extract  
General Authorisation

Under Section 4 (1) of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011), any person intending to provide an electronic communications network or service shall, before doing so, notify the Regulator of his intention to provide such a service. Under Section 4 (6) any undertaking which fails to comply with section 4 (1) or section 4 (5) (notification of any changes to the information supplied) is guilty of an offence.

Who needs to apply for a General Authorisation?

Any person may provide an electronic communications network and/or service in Ireland, provided they have notified the Commission for Communications Regulation (ComReg), in advance. Under the terms of the Authorisation Regulations, operators are free to commence operations once a completed notification has been received by ComReg, but operations are subject to the conditions set out in a General Authorisation. There may also be a requirement to hold a spectrum licence depending on the service you intend

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to provide The process is very straightforward. Follow the link to the ERAU Service Register to register your services or network. We will assess all notifications, before sending out confirmation of authorisation within 7 days Your services will automatically be listed on the Service Register on our website

## Definitions of Electronic Communications Networks and Services

Electronic communications network and electronic communications service are defined in the European Communities (Electronic Communications networks and Services) (Framework) Regulations 2011 (SI no. 333 of 2011) as follows: “Electronic communications network” means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit-and packet-switched, including internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used in radio and television broadcasting and cable television networks irrespective of the type of information conveyed An “electronic communications service” is defined as a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting If you intend applying for a General Authorisation you should read Document 03/81R5– Conditions of a General Authorisation, which outlines the conditions for the provision of Electronic Communications Networks and Services, before registering with us

End of Extract

The last paragraph highlights the need to consider the Conditions of a General Authorisation and these conditions are what we know as regulation

There are a set of general obligations or regulations on all operators, and depending on the nature of the services you provide, such as mobile, internet etc different rules may apply to the different activities carried out

Examples of some of the General Conditions / “Regulations”

Extract from ComReg document 03/81R5 – Conditions for the provision of Electronic Communications Networks and Services

## Part 2: General Conditions

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## 6. Provision of Information

6.1 The Authorised Person shall provide such information requested from time to time by the Commission, in the form and at the times specified by the Commission, for the purpose of the objectives set out in Regulations 17(1) and 18(1) of the Authorisation Regulations and in Regulation 17(1) of the Framework Regulations; and in accordance with the provisions of Regulation 18(3) of the Authorisation Regulations and Regulation 17(2) of the Framework Regulations

6.1 The Authorised Person shall provide such information requested from time to time by the Commission, in the form and at the times specified by the Commission, for the purpose of the objectives set out in Regulations 17(1) and 18(1) of the Authorisation Regulations and in Regulation 17(1) of the Framework Regulations; and in accordance with the provisions of Regulation 18(3) of the Authorisation Regulations and Regulation 17(2) of the Framework Regulations

### Integrity of Public Communications Networks

9.1 The Authorised Person shall ensure that his or her Electronic Communications Network and parts thereof shall be designed, constructed, installed, maintained, operated and used so as not to cause harmful interference with the lawful use or operation of any Electronic Communications Network.

9.2 The Authorised Person shall comply with any decisions, determinations, requirements, specifications, notifications and directions issued by the Commission from time to time regarding the maintenance of the integrity of Public Electronic Communications Networks and in connection with investigations by the Commission into cases of interference with the operation of Electronic Communications Networks or other authorised apparatus for wireless telegraphy.

### 11. Standards to Ensure Harmonised Electronic Communications Networks and Services

11.1 The Authorised Person shall have regard to any notices or guidelines issued by the Commission under Regulation 29 of the Framework Regulations which are issued for the purpose of encouraging the use of standards, specifications or recommendations adopted by the International Telecommunication Union, the International Organisation for Standardisation or the International Electrotechnical Commission.

## Part 3: Conditions Applying to Persons Obligated to Notify the Commission under Regulation 4 of the Authorisation Regulations

### 13. Administrative Charges

13.1 The Authorised Person shall make any payment required to be paid in accordance with an order made by the Commission under the powers of the Commission set out in Section 30 of the 2002 Act as amended by Regulation 19 of the Authorisation Regulations.

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End of Extract.

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Finola Rossi,  
Principal Officer  
National Digital Strategy & Telecommunications Market Contracts  
Department of Communications,  
Climate Action and Environment,  
29-31 Adelaide Road,  
Dublin 2,  
DO2 X285  
Ireland.

CC: Ciarán Ó hÓbáin, Assistant Secretary – Communications  
CC: Gerry Fahy – Chairperson of ComReg

15<sup>th</sup> June 2017

In Confidence

Dear Finola,

**RE: MSE contract for the Metropolitan Area Networks (MANS) Phase I and Engagement with consultants performing an independent evaluation of the operation of the MANS**

Following Minister Naughten's finalising of his decision to provide that the concession agreements co-terminate in 2030, as expressed in Minister Naughten's response to Dail questions 604 and 607 on May 23<sup>rd</sup> 2017, I am writing to formally express BT's interest in participating in the bid process for the Managed Service Entity (MSE) for the MANS (Phases 1 and 2) to 2030. BT Ireland is a long established operator within the Irish communications market with the expertise, experience and financial position to be the MSE for the MANS. We therefore request the Department of Communications, Climate Action and Environment to formally register our interest in entering this bid process and request that you provide us with an outline timetable of the details of the process.

In addition, Minister Naughten also stated in his response to the Dail questions 604 and 607 on May 23<sup>rd</sup> 2017 that consultants are performing an independent evaluation of the operation of the MANS. I am writing to formally express BT's interest in participating in this evaluation in order to provide insight into the market effects of the current MSE commercial

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arrangements including pricing of products and services which has been stated is part of this evaluation. BT is a long established operator in the Irish communications market and we are well informed of the value and pricing of the MAN service and could bring such expertise to your review.

Yours sincerely



John O'Dwyer  
Head of Regulatory Affairs – BT Ireland  
Contact Number: [REDACTED]  
E-mail: [REDACTED]

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Roinn Cumarsáide, Gníomhaithe  
ar son na hAeráide & Comhshaol  
Department of Communications,  
Climate Action & Environment

4 August, 2017

Mr John O' Dwyer  
Head of Regulatory Affairs  
BT Communications Ireland Ltd  
Grand Canal Plaza  
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Dear John

I refer to your letter of 15<sup>th</sup> June 2017 concerning the Management Services Entity (MSE) contracts for the operation and management of the Metropolitan Area Networks (MANs) and engagement with the consultants undertaking an independent review of the operation of the MANs.

Following two public procurement processes, enet was first appointed for a 15 year term to manage the 28 Phase I Metropolitan Area Networks (MANs) in July 2004, and was subsequently appointed for a 15 year term to manage the 60 Phase II MANs in July 2009. Each Concession Agreement contains specific provisions providing for an extension of up to a maximum period of 10 years. The Concession Agreements, which were due to expire in March 2020 and July 2024 respectively, have been extended to co-terminate in March 2030.

The independent consultants undertaking the review of the operation of the MANs have, with BT's agreement, been provided with correspondence received by the Department from BT which set out BT's views on the operation of the MANs.

Yours sincerely

Brendan Whelan

Principal Officer

*Failltear roimh comhfhreagais i nGaeilge*

O'dwyer, JW, John, NQL R

---

**From:** O'dwyer, John, [redacted]  
**Sent:** 21 August 2017 18:57  
**To:** Brendan Whelan [redacted]  
**Cc:** ciaran ohobain [redacted], gerry fahy [redacted], Evans, Peter, [redacted], O'Toole, Cathal, [redacted], Finola Rossi [redacted]  
**Subject:** Renewal of MANs agreement

**Tracking:** Recipient  
Brendan Whelan [redacted]  
ciaran ohobain [redacted]  
gerry fahy [redacted]  
Evans, Peter, [redacted]  
O'Toole, Cathal, [redacted]  
Finola Rossi [redacted]

To: Brendan Whelan  
CC: Ciaran O'h-Obain  
CC: Gerry Fahy (ComReg)

21<sup>st</sup> August 2017

RE: Renewal of Metropolitan Area Networks (MANs) agreement

I refer to your letter of 4<sup>th</sup> August 2017. BT is disappointed that the Concession Agreements have been extended while BT continues to have serious concerns about E-net's structure and compliance with state aid rules and that the Agreements were extended before the conclusion of the independent consultants' review as we would have expected that the conclusions of this review would have been fundamental to the Department's decision to extend or not, or at least to improvements to the terms of the extension. In addition, the fact that BT has not been taken up on its offer to meet the consultants is also a source of concern as we believe the consultants would have achieved a deeper understanding of the issues through BT's first-hand experience.

Because this and other letters on this matter have not addressed BT's concerns we will now proceed to raise the matter with the European Commission.

Kind regards,

John O'Dwyer

Head of Regulation BT Ireland (RoI) BT Regulatory Affairs [redacted]  
[redacted]

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**From:** seamus.walsh [REDACTED]

**Sent:** 14 March 2018 18:16

**To:** Brendan Whelan

**Subject:** RE: Follow up from our meeting

Hi Brendan,

Following our meeting of last October, are you in a position to share the consultants' report with me?

Unfortunately we're not seeing progress against our asks below and nearly 5 months have passed. It is now over 4 years since our initial concerns were raised and as I see it we have now no option but to raise the issue with the European Commission.

Please feel free to contact me if you wish to discuss further.

Kind regards,

Shay

**From:** Brendan Whelan [REDACTED]

**Sent:** 16 March 2018 13:17

**To:** Walsh,S,Shay,HQ R

**Subject:** RE: Follow up from our meeting

Shay,

I regret the delay in publishing the MANs review report but, as you are aware, the matters at issue in the review of the MANs are quite complex (as you point out, BT have been raising issues for more than 4 years), and it's important that a full verification of the report is undertaken which has taken longer than anticipated. This process is nearing completion and I expect the report to be published in the next few weeks.

The review took on board the concerns which were raised by BT and the BT correspondence was made available to the consultants undertaking the review.

I greatly appreciate your understanding of the situation and the delay in bringing the MANs review to publication stage is regretted, but when the report is published this will clarify matters. I will let you know when it is available.

Kind regards,

Brendan