Commission for
Communications Regulation

Consultation Paper

Rental Price for Shared Access to the Unbundled Local Loop

Document No:	08/23
Date:	19 March 2008

All responses to this consultation should be clearly marked:- 'Reference: Submission re ComReg 08/23' as indicated above, and sent by post, facsimile, e-mail or on-line at www.comreg.ie (current consultations), to arrive strictly on or before 18:00 on Wednesday 16th April 2008, to:

Mr Tom McCormack
Commission for Communications Regulation
Irish Life Centre
Abbey Street
Freepost
Dublin 1
Ireland

Ph: +353-1-8049600 Fax: +353-1-804 9680 Email: Tom.McCormack@comreg.ie

Please note ComReg will publish all respondents submissions with the Response to this Consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24

Contents

1 Executive Summary

This consultation document addresses the issue of how the price of shared access to the local loop (referred to in this document as "LLU Line Share") for alternative operators, is to be determined. It suggests a number of methodologies which can be adopted for LLU Line Share pricing and proposes that the price of LLU Line Share could be based on an average of comparable prices across the EU 15 for an interim period, in the event that an alternative approach cannot be adopted in a timely manner. The revised price based on this benchmark would be €2.94[1] and would represent a reduction of 65% from the current level.

The local loop is the physical path, usually copper, which connects a local exchange to an end user. It is the most difficult part of a telecoms network for Eircom's competitors to replicate economically. Because of this, Eircom is legally required to allow competing operators to gain access to it, in order to allow them to provide communications services. This process is known as Local Loop Unbundling, ("LLU"). When availing of LLU, the alternative operator has the option to rent either the entire loop ("full unbundling"), or, alternatively, to rent only the high capacity frequencies within the loop which are then used to provide broadband services ("LLU Line Share"). This latter option leaves the low capacity frequencies to Eircom to be used to provide voice services on either a retail or a wholesale basis. In summary LLU Line Share allows an alternative operator to provide its own broadband product *without* having to resell Eircom's broadband and without having to provide its own voice capability. There are therefore distinct advantages to LLU Line Share for Eircom's competitors.

LLU has been a significant driver of broadband penetration in countries such as the UK and France. It is notable that a very large proportion of unbundled loops in these countries were unbundled using the LLU Line Share product. It is therefore potentially a very important driver of LLU and by extension, broadband.

Currently, the Eircom charge for monthly LLU Line Share rental is relatively expensive when compared to other member states. The monthly charge is €8.41, compared to a low in the Netherlands of €0.37 per month and an EU 15 average (excluding Ireland) of €2.94 per month. The charge is also somewhat anomalous in that the cost of the local loop is already fully recovered by voice services. The question therefore arises as to what costs the price of LLU Line Share is intended to cover. This point, while somewhat moot in recent times because of the relative lack of demand for LLU Line Share for other reasons, is now of considerable importance as there now appears to be incipient demand for this product. ComReg is also concerned that current circumstances could be alleged to be conducive to the creation of a margin squeeze. ComReg is obliged to take all measures to promote competition including ensuring that there is no distortion or restriction of competition[2] ComReg therefore believes the time is therefore right to review the price of LLU Line Share.

---

[1] Directive No.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, provides for the use of benchmarking as a form of price control. Article 13 defines "*National regulatory authorities shall ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote efficiency and sustainable competition and maximise consumer benefits. In this regard national regulatory authorities may also take into account of prices available in comparable competitive markets*".

[2] Communications Regulations Act 2002, Section 12: sets out as one of the functions of ComReg.

This consultation document proposes that because voice and broadband services must in total recover the cost of the loop in aggregate, it would be better to conduct a final review of these prices simultaneously. Nevertheless, because there appears to be a manifest over recovery of the cost of a loop and in view of the potential for the distortion of competition referred to above, ComReg believes that in default of an appropriate alternative proposal from industry it must take action. ComReg is therefore proposing in this paper to implement a maximum price for an interim period until such time as parallel work streams on the full LLU pricing is completed. This maximum price is to be based on the simple average of LLU Line Share prices currently available across the EU 15 (currently €2.94). The current LLU Line Share pricing methodology and the actual price is set out in ComReg Decision Notice D08/01[3]. In the interim, should a new Line Share rental price be imposed as a result of this present consultation, ComReg intends to revoke previous Decision Notice D08/01, made by ComReg's predecessor, The Office of the Director of Telecommunications Regulation, insofar as it relates to LLU Line Share Recurring Charges and the methodology for the calculation of LLU Line Share Recurring Charges.

The review of LLU pricing has already commenced and it is hoped that this will be completed in early autumn

[3] Local Loop Unbundling – Eircom's Access Reference Offer (ARO); Decision Notice D8/01; Document No. ODTR01/27R, dated September 2001.

2 Introduction

In ComReg Decision No. D8/04[4] (**'the SMP Decision'**) Eircom was designated with significant market power ('SMP') in the market for wholesale unbundled access to the local loop. As a consequence of this, certain SMP obligations were imposed on Eircom. Accordingly, Eircom is obliged to offer cost oriented prices for LLU (both fully unbundled and shared lines) services and associated facilities on the basis of forward looking long run incremental costs (**'FL-LRIC'**) pursuant to the SMP Decision and Regulation 14 of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 (**'the Access Regulations'**) which transposes Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities.

LLU comes in two main forms, full unbundling (also known as unbundled local metallic path or **'ULMP'**) and shared access to the local loop (also known as LLU Line Share). ComReg determined the price of ULMP in Decision D15/04.[5] This consultation document is concerned with the pricing for LLU Line Share.[6]

A product description of line sharing is provided in Appendix 1 to Service Schedule 103, Product Description for Line Sharing, of the Eircom Access Reference Offer (**'the ARO'**).[7] It provides that:

'The Line Sharing product allows the services provided by Eircom and a DSL service offered by an Access Seeker, to be integrated over the same two wire metallic path. The points of demarcation for Eircom will be the Network Termination Unit (NTU) in the customers' premises and the Access Seeker's connection blocks on the MDF…'

Ireland is at the lower end of the scale for broadband roll-out compared with the EU 15 countries.[8] ComReg believes that, amongst other factors contributing to the low take up in Ireland is the comparatively high price of this service. The price of LLU Line Share in Ireland is expensive in comparison to most EU 15 countries with a €8.41 monthly rental charge, compared to €0.37 in the Netherlands and an EU 15 average of €2.94, excluding Ireland itself.

---

[4] Designation of SMP and Decision on Obligations – Market Analysis: Wholesale unbundled access (including shared access) to metallic loops and sub-loops; Document 04/70; D8/04; published on 15 June 2004.

[5] Decision Notice and Direction: Local Loop Unbundling – Review of Eircom's ULMP monthly rental charge; D15/04; Document No.04/110; published on 5 November 2004.

[6] Directive No.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, Annex II defines shared access as *'…the provision to a beneficiary of access to the local loop or local sub-loop of the notified operator, authorising the use of non voice band frequency spectrum of the twisted metallic pair; the local loop continues to be used by the notified operator to provide the telephone service to the public.'*

[7] Access Reference Offer from Eircom Ltd; Appendix 1 to Service Schedule 103; Product description for line sharing; page 74, version 1.18.

[8] European Commission, 'Broadband access in the EU: situation at 1 July 2007.

The existing methodology for calculating the LLU Line Share monthly rental charge was set out in Decision Notice D8/01.[9] Under this treatment the underlying cost of the entire local loop was to be shared equally between voice and data with lines rented under LLU Line Share being effectively treated as half lines. The issue was revisited later in 2004 in Consultation Document No. 04/111 and a subsequent Response to Consultation Document No.05/22. However a final decision was not issued in 2004 and the current price is still calculated under the methodology set out in D8/01.

Under this methodology the cost of LLU Line Share is governed by the following formula:

(FLLU-A)/2 +A

Where:
FLLU is the price of a fully unbundled loop; and
A is the allowance for carrier billing and administration.

This currently equates to:

(€16.43-€0.39)/2 +€0.39 = €8.41

In assessing the appropriateness of this methodology, one consideration is that Eircom's own broadband products appear to be relatively cheap compared to the price of LLU Line Share. For example the price of Eircom's 1mb/s wholesale broadband product is €9.48[10] per month as compared to €8.41 for LLU Line Share.

Another important consideration is that the cost of a local loop on a bottom up long term incremental cost ("BU-LRIC") basis is already fully recovered through the price charged for narrowband access services whether via retail access, Wholesale Line Rental or via full unbundling.

The upshot of these considerations is that users of LLU Line Share, on one the hand, contribute to Eircom a price which seems to represent an over recovery of cost, when narrowband access revenues are taken into account. On the other hand, Eircom itself appears to operate under no such disadvantage since its wholesale broadband prices do not appear to reflect any such cost input. ComReg is concerned that current circumstances could be alleged to be conducive to the creation of a margin squeeze. One of ComReg's objectives under the Communications Regulation Act 2002 is to promote competition including ensuring that there is no distortion or restriction of competition[11].

While these issues may not have been as much a cause for concern when there was very little demand for LLU Line Share, this is no longer the case as there is clear evidence of increasing demand for LLU Line Share from at least one operator.

[9] Local Loop Unbundling – Eircom's Access Reference Offer (ARO); Decision Notice D8/01; Document No. ODTR01/27R, dated September 2001.

[10] Eircom Wholesale Bitstream Price List 3.9 http://www.Eircomwholesale.ie/dynamic/pdf/bitpricelistv3.9_v2.pdf

[11] Communications Regulations Act 2002, Section 12:which sets out the objectives of ComReg in exercising its functions.

At the time of the original ComReg Decision Notice No.D8/01 in 2001, there were 1,900,000 fixed lines in Ireland (PSTN / ISDN), but there was a very limited retail broadband subscriber base. In contrast the market dynamic in 2007 is very different. There are 2,111,814 fixed lines in Ireland, with a Digital subscriber Line ("DSL") broadband subscriber base of 507,100[12]. Clearly, given current demand for broadband the matter can no longer remain unaddressed and it is therefore timely to revisit the issues raised in Consultation Document No. 04/111 and Consultation Document No. 05/04.

Should a new LLU Line Share rental price be imposed as a result of this consultation, ComReg intends to revoke previous ComReg Decision Notice D08/01, insofar as it relates to LLU Line Share Recurring Charges and the methodology for the calculation of LLU Line Share Recurring Charges.

It should also be noted that in parallel ComReg is currently engaged in a full review of the full ULMP rental price and all associated prices including LLU Line Share.

Q. 1. Do you agree or disagree with the reasoning set out above? In particular do you agree or disagree that current LLU Line Share pricing may represent an over recovery of cost by Eircom and may make it unduly difficult for LLU Line Share users to compete against Eircom's wholesale broadband product? Please detail your response and where possible supported with evidence.

Q. 2. Do you agree or disagree that ComReg should now revoke previous ComReg Decision Notice D8/01, insofar as it relates to LLU Line Share Recurring Charges and the methodology for the calculation of LLU Line Share Recurring Charges, as it is no longer appropriate, given the changes in the broadband market and the demand for LLU Line Share and the over recovery of cost that this decision gives rise to? Please detail your response and where possible supported with evidence.

[12] Source ComReg quarterly key data report: http://www.comreg.ie/_fileupload/publications/ComReg0767.pdf.

3 Broadband in Ireland

This section addresses international benchmarks for LLU Line Share in the EU 15 countries, the Investment Ladder approach for authorised operators ("OAO") and looks at inter-platform issues in the Irish broadband market

3.1 International Benchmarking

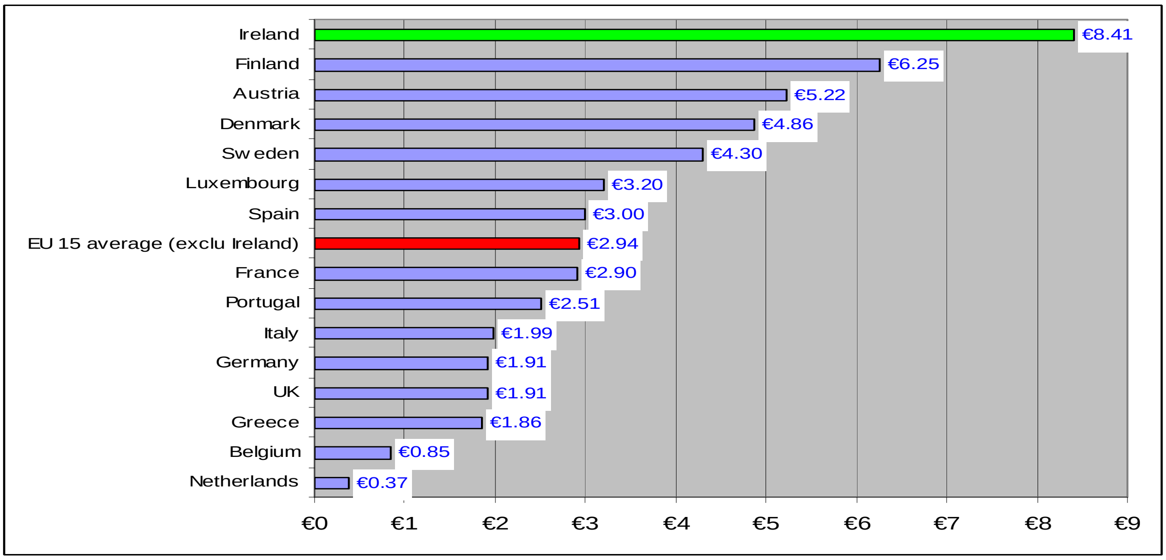
Looking at 'Cullen International' benchmark for LLU Line Share pricing in the EU in 2007[13], Ireland is at the top end with a €8.41 LS monthly rental charge, compare to a low in the Netherlands of €0.37 and an EU 15 average of €2.94, excluding Ireland.

Figure 1 - EU 15 LLU / LLU Line Share Monthly Rental (€) Benchmark (excl. Ireland)

Country	LLU rental (€)	Line Share rental (€)	Line share as % of LLU
Netherlands	€8.00	**€0.37**	5%
Belgium	€9.29	**€0.85**	9%
Greece	€8.48	**€1.86**	22%
UK	€9.82	**€1.91**	19%
Germany	€10.50	**€1.91**	18%
Italy	€7.64	**€1.99**	26%
Portugal	€8.99	**€2.51**	28%
France	€9.29	**€2.90**	31%
EU 15 average (excl Ireland)	€9.36	**€2.94**	**36%**
Spain	€9.72	**€3.00**	31%
Luxembourg	€10.75	**€3.20**	30%
Sweden	€7.72	**€4.30**	56%
Denmark	€9.72	**€4.86**	50%
Austria	€10.70	**€5.22**	49%
Finland	€10.35	**€6.25**	60%

Source: Cullen International

Figure 2 - EU 15 LLU Line Share Monthly Rental (€) Benchmark

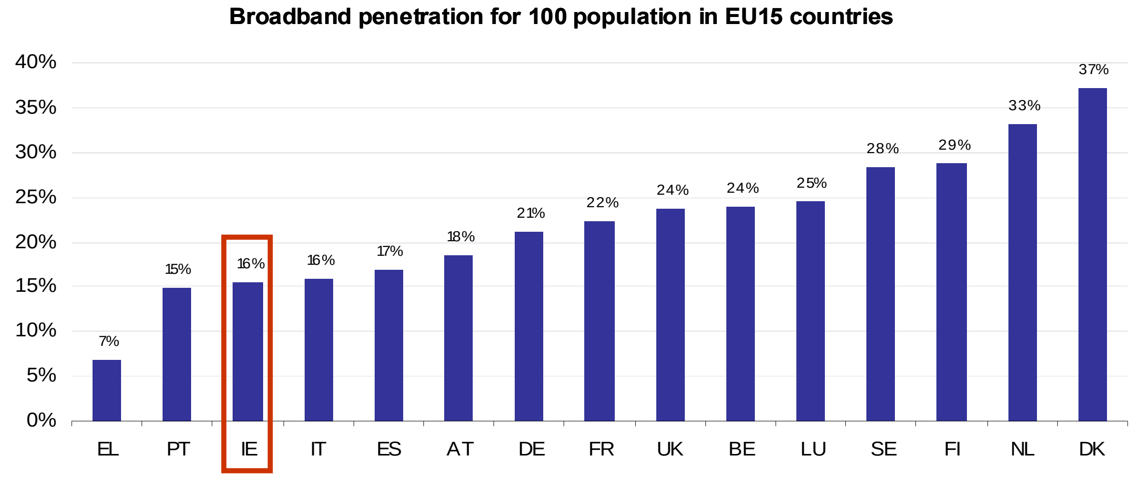


Source: Cullen International

[13] Shared access - Monthly rental charges 2007: http://www.cullen-international.com/ Western Europe / Cross Country Analysis / 4. Local Loop Unbundling charges / ………… Note: Finland: Taken simple average of 2 regulated line share prices (Elisa & Sonera)

Ireland is also at the lower end of EU benchmark for broadband penetration[14].

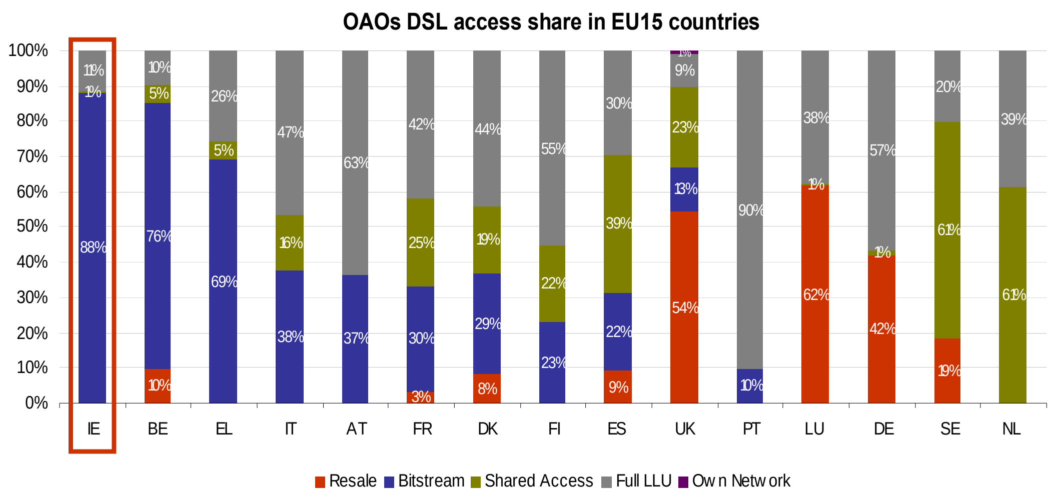
Figure 3 - EU-15 – Broadband Penetration



Source: European Commission, 'Broadband access in the EU: situation at 1 July 2007'

The predominant delivery technology of DSL is Bitstream in Ireland, with only 1% delivered utilising LLU Line Share. Another feature of the Irish broadband market is the extensive use of bitstream products instead of local loop unbundling by OAOs. LLU Line Share stands for only 1% of new entrants' broadband lines, but demand is growing based on ComReg data collected in quarterly report questionnaires.

Figure 4 - EU-15 – DSL Access Share



Source: European Commission, 'Broadband access in the EU: situation at 1 July 2007'

[14] European Commission, 'Broadband access in the EU: situation at 1 July, 2007.

Q. 3. Do you agree of disagree that based on the above comparison to other countries that LLU Line Share in Ireland is expensive? Please detail your response and where possible supported with evidence.

3.2 Investment Ladder approach

Recent discussion of regulatory interventions in telecommunications markets have considered an approach in which competitors are encouraged progressively to make investments in network assets which are less and less easily replicable - thus climbing 'the ladder of investment.'

There are two main options for OAOs to provide broadband only services using DSL over Eircom's network:

- to use Eircom's bitstream offer; or
- to use Eircom's LLU Line Share offer.

The difference of price between bitstream and LLU Line Share affects a OAOs decision whether or not to take up unbundling at an exchange. Where the prices of LLU Line Share are high compared to bitstream, OAOs would have an incentive to take LLU Line Share at relatively few exchanges and elsewhere use bitstream, unless the extra functionality afforded by LLU more than compensated. . In the case where the prices of LLU Line Share low compared to bitstream, OAOs have a stronger incentive to deploy LLU Line Share at more exchanges. The price of LLU Line Share therefore has a direct impact on the relative take up levels of bitstream and LLU Line Share.

On the basis of the 'investment ladder' concept, Local Loop Unbundling / LLU Line Share prices can also be a tool for Regulatory Authorities to influence the investment decisions of OAOs and to achieve the principles set by the European Framework to promote innovation and to encourage efficient investment. The DSL value chain can be described as shown below in Figure 5 (The DSL Value-chain), where local loop is as the deepest form of competition with simple retail resale as the shallowest. Ease of entry decreases as one moves along the value chain but the freedom to differentiate and innovate increases along the same axis.

Figure 5 - The DSL value-chain

As a consequence, access prices set by National Regulatory Authorities can help operators climbing the investment ladder. According to Martin Cave: *'This may imply a regulatory policy of initially setting relatively low access prices for the assets which entrants will find* *it hard to replicate, but raising those prices as entrants accumulate customers and other assets on a scale which makes replication feasible.'* [15]

Facility-based competition may be more sustainable than service-based competition, and should certainly lead to more intensive competition because alternative operators will have greater control over service levels and product specifications. A review of LLU Line Share Prices is essential, under this logic, to ensure that Eircom's wholesale broadband product is not unduly favoured over LLU.

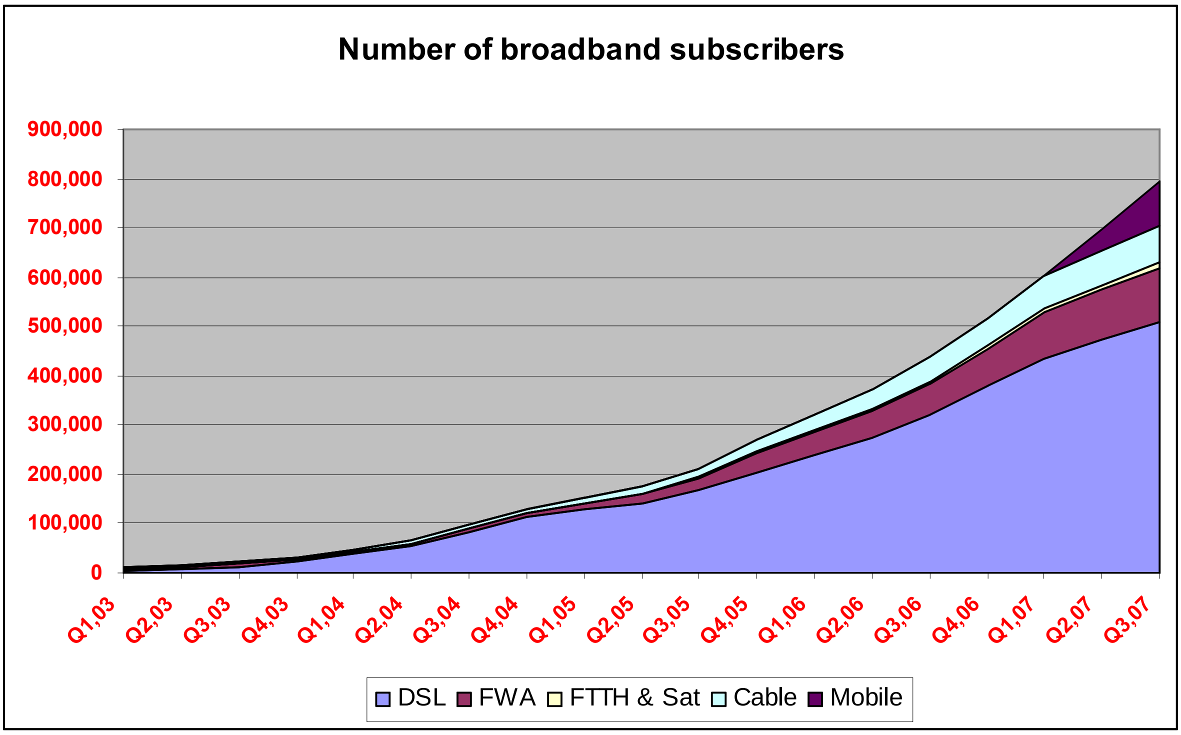
Q. 4. In the context of the 'Ladder of Investment' approach, do you agree or disagree that ComReg's policy should be to encourage investment in LLU products where viable? Please detail your response and where possible supported with evidence.

[15] 'Making the ladder of investment operational', Martin Cave, November 1994 and 'Investment incentives and local loop prices', Martin Cave, August, 1995.

3.3 Inter Platform Issues

Irish broadband market dynamics:

Figure 6 - Broadband subscribers in Ireland Q1 2003 – Q3 2007



Source: ComReg Quarterly Reports

There has been significant growth in alternative infrastructures in Ireland over the last number of years[16] and ComReg is mindful of the need to set regulated prices in such as way that these alternative platforms are not unfairly discriminated against.

It is ComReg's view that, in principle, no distortion in inter-platform competition should arise as long as the cost of a fixed loop is recovered in aggregate. In Ireland it is not currently possible to avail of broadband over DSL without paying for line rental as well as for broadband. While an operator using LLU Line Share is able to provide a broadband only service it cannot do so unless the customer also avails of access services from some operator. As long as the cost of the loop is recovered in full in this way (as is currently the case) there should be no inter platform distortion of competition.

Considering the actual experience of other countries in the EU 15 it is difficult to discern a trend compared to Ireland. In the Netherlands for example where penetration rates are the second highest in the EU and the price of LLU Line Share is based on its incremental cost (€0.37 monthly rental), there is both vigorous competition over cable, as well as relatively high levels of unbundling over both full and shared models. Denmark has the highest penetration levels, high levels of inter platform competition, high levels of unbundling

[16] Source : ComReg Quarterly Reports

with a considerable portion of that over shared access, but a price for shared access that is half the price of full access (€4.60 monthly rental) rather than the incremental cost.

ComReg believes that local factors, such as demographics, are important in explaining such variations, but believes that it is possible to say that based on the evidence available in other countries, the take-up of broadband (considering the fact that line rental is mandatory) that it is highly unlikely that distortion of inter-platform competition would take place if the price of LLU Line Share was reduced.

A final issue arises as to whether the total cost recovered from the loop is consistent with sustainable platform competition. ComReg notes in this regard, that currently the local access network is costed using an independent engineering cost model using the FL-LRIC methodology. In this regard ComReg notes the recent opinion of the Advocate General Poiares Maduro *'Arcor AG & Co. KG v Federal Republic of Germany'*[17] . The Advocate General approved the use of this methodology in circumstances where independent platform competition is an important consideration[18]. ComReg believes that its methodology does encourage platform competition and the success of wireless broadband in Ireland relative to other countries is evidence of this.

ComReg's preliminary conclusion is that once the total cost of the local access network *in aggregate* is recovered from subscribers on costing principles not unfavourable to platform competition (such as BU LRIC) it would appear that there can be no distortion of inter platform competition caused by lowering LLU Line Share price.

Q. 5. Do you agree or dis-agree with ComReg's conclusion which states inter-platform competition should not be negatively impacted by ComReg decision to amend the anomaly in price of LLU Line Share that exists with previous decision D8/01? Please detail your response and where possible supported with evidence.

[17] Case C-55/06. Arcor AG & Co. KG v Federal Republic of Germany.

[18] ComReg notes that the Advocate Generals' opinion is not yet a final ruling. In that respect therefore, ComReg is aware that it should not place any undue weight on this aspect of the Advocate Generals decision.

4 Cost Recovery

This section addresses costing methodologies and costing principles employed in other jurisdiction, relating to LLU Line Share. The section also revisits responses to previous Consultation Document No D04/111, in relation to potential over recovery of costs and sets out ComReg's preliminary position on over-recovery principles.

4.1 International costing Methodologies for LLU Line Share

There is no one constant costing methodologies applied across Europe for LLU / LS. Countries employ long run average incremental costs ("LRAIC"), forward looking long run incremental costs ("FR-LRIC"), current cost accounting ("CCA"), historical cost accounting ("HCA"), price caps and combinations thereof. Below ComReg sets out the most recent decisions and methodologies either adopted or planned to be adopted in other countries.

4.2 Common approach on incremental cost of LLU Line Share

ComReg assumed in Consultation Document No. 04/111 the assumption that the allocation of costs common to the low frequency and high frequency portions of the local loop should entirely be allocated to the low frequency. The line rental revenues associated with the narrowband services are already recovering the cost of the loop, and therefore the inclusion of line cost in LLU Line Share represents an over-recovery of costs.

When setting charges for shared access, a number of National Regulatory authorities ("NRAs") have decided that the costs common to the low frequency and high frequency portions of a loop should be entirely allocated to the low frequency portion (i.e. voice telephony).

In the **UK, Ofcom**[19] stated that: "*Consumers already paying for narrowband services at a proportionately high price than those also availing of broadband services. Split of cost common to low & high frequencies would other than 100% of common cost to narrowband, be difficult to implement.*

Setting charges for shared access, the costs common to the low frequency & high frequency portions of a loop should be entirely allocated to the low frequency portion (i.e. voice telephony)".

In **Australia,** the **ACCC**[20] stated that the: "*Commission does not consider it appropriate for Telstra to recover an additional amount of its line costs in price of LSS. If other services are meeting these costs, then there is no need for increasing the price of sustainable services and nor will there be an inefficient shift in demand towards the LSS if line costs continue to be excluded. The inclusion of line costs in LSS charges, by contrast, will result in Telstra over-recovering its overall line costs*".

---

[19] UK – Ofcom (review of wholesale access market, chapter 7, LLU, 12[t] May, 2004).

[20] Australia – ACCC – final report on assessment of Telstra's undertaking for line sharing service, Aug, 2004.

In Italy, AGACOM stated in Resolution 24/01/CIR[21]: "*The pricing structure of the shared access service is divided into monthly subscriptions and 'once only' fees; …. The value of the subscription is connected only to the additional costs owing to the provision of the shared access service compared to those connected with the provision of the voice telephony service, and does not contain the common costs. The common costs are those connected with all the elements of the distribution network and the activities carried out for the provision of the voice telephony service, and which are already covered by the fees for those services."*

In France, ARCEP; stated in Article D. 99-24 of the Post and Telecommunications Code[22] that: "*the tariffs in effect for shared access to the local loop shall not be inferior to those whose access is completely unbundled, less the amount of the subscription to the public telephone service.*

The costs of shared access: In shared access, pairs are never built—even partially. The list of relevant costs of shared access is as follows.

***i**. Infrastructure usage costs - In shared access, this cost, defined in sub point i of a) above is a common cost for access to the local loop and France Telecom's public telephone service.*

***ii**. Costs of providing non-voice frequencies- These non-recurring costs include: a) costs for order administration, excluding adaptation of the information system. b) Costs for technical operations for providing and attaching cross connects and for providing the non-voice frequencies*

***iii**. Costs related to disturbance location -These are the costs of locating disturbances (call reception, diagnostics and line re-establishment) excluding adaptation of the information system. These costs are non-recurring. However, they may be charged on a recurring basis depending on disturbance frequency.*

***iv**. Technical costs specific to shared access -These are the costs of providing, installing and maintaining racks, pre-equipped with splitters, between France Telecom's MDF and the tie cable to the operator's distribution frame"*

4.3 Review of ComReg's previous Consultation

In Consultation Document No. D04/111, ComReg asked the question*: "Do you agree that the price for LLU Line Sharing should be based on the incremental costs associated with the service i.e. the costs associated with carrier billing and administration? Please state the reasons for your answers. If you have an alternative proposal please document it clearly in your response"*.

[21] Resolution 24/01/CIR; Measures for the implementation of shared local loop access and unbundled local sub-loop access services - http://www.agcom.it/eng/resolutions/2001/d24_01_CIR.pdf

[22] List of relevant costs established in application of article D. 99-24 of the Post and Telecommunications Code http://www.arcep.fr/uploads/tx_gsavis/00-1171ann1-eng.htm

In Response to Consultation Document No. D05/22, four respondents generally agreed with the proposed change in methodology and agreed that the cost of providing the local loop was already recovered and therefore, that the price charged for providing shared access should be the incremental cost to Eircom. One respondent elaborated on this point by highlighting that Eircom's rebalanced line rental charges (voice) already provide for recovery of the cost of access to the public telephone network. The respondent suggested that double recovery of these costs should be avoided and accordingly LLU Line Share should not include any of these costs. The respondent also suggested that if an additional line rental charge was applied for shared access, this respondent indicates that Eircom would have to reduce the monthly rental for access to the public telephone network for those customers availing of shared access.

ComReg noted agreement with the core principle that there should be no over recovery of costs.

A fifth respondent to Consultation Document No. D04/111 alleged that the proposed very low line share price would lead to an increase in false competition as it makes resources available at below their economic value, thus impacting inter-platform competition. ComReg has addressed issues of inter-platform competition in section 3.3 of this consultation document.

A further two respondents Consultation Document No. D04/111 proposed that due consideration was not made to use economic principles such as Ramsey Pricing and Economic Component Pricing, when considering the attribution of common fixed costs between data (high frequency) and voice (low frequency) service. ComReg addresses this issue in subsequent Section 5.3.5 of this consultation document.

There are binding decisions of the European Court of Justice in relation to cost orientation. One of them is *KPN Telecom v OPTA,* Case C[23]. In *Arcor,* the Advocate General refers to *KPN Telecom* as follows: *"In that judgment, the Court held that costs connected with gathering or supplying basic subscriber data should, in any event, be borne by the provider of a voice telephony service and that they are already included in the costs of and earnings from such a service. Under these circumstances, transferring the cost of gathering and supplying these data to persons requesting access to them, would result in unjustifiable overcharging for the costs in question and, therefore, would be incompatible with cost-orientation. According to the judgment in KPN Telecom,* ***it is inherent in the concept of cost-orientation of charges that it prohibits a party whose charges are required to be set on the basis of cost-orientation to receive remuneration several times for providing the same service."*** **(ComReg emphasis)**

It is ComReg's preliminary conclusion therefore that any decision it makes arising from this consultation should properly and fairly reflect the principle of non over recovery. This is an approach that has ample precedent in other jurisdictions. In addition, there would appear to be broad agreement amongst stakeholders in Ireland with this principle.

[23] *KPN Telecom* Case C - 109/03 [2004] ECR I -11273

Q. 6. Do you agree or disagree with ComReg's proposed approach and preliminary conclusion? Please detail your response and where possible supported with evidence.

5 Determining the price of LLU Line Share rental

This section follows on from previous section, and addresses the principles of cost recovery and puts forward a number of cost recovery options and an EU15 benchmarked LLU Line Share price.

5.1 Introduction

Where LLU Line Share is used the situation will frequently arise where two different operators share the copper pair from a customer's premises to the main distribution frame ("MDF"). One operator will use the copper pair to provide standard voice services, while the other will use it to provide broadband services via asymmetric digital subscriber line ("ADSL"). Moreover, it will be possible to provide the two types of service simultaneously. Under these circumstances, the local loop is a common fixed cost. The costs are fixed in the sense that they do not vary with the amount of use made of them. They are also common to the two services in the sense that they would be required in their entirety if just voice services were provided, or if just broadband services were required or if both services were required. The question is how such common fixed costs should be attributed between the user services.

5.2 Cost recovery principles

In assessing the criteria by which costs in general are recovered, ComReg has had regard to the following in the past. Whilst ComReg is not bound by these considerations and the may not be applicable every circumstance, nevertheless they are informative when making decisions of this nature.

- Users should pay for the costs which they cause. This principle does not address the issue of how common costs should best be allocated and recovered, which is a central issue of addressed in Consultation Document No. 04/111 and also highly relevant to this consultation.

- There should be a reasonable distribution of benefits, in particular by facilitating the wider use of broadband services without adding any costs to voice customers.

- Competition among service providers should be promoted, by allowing fuller use to be made of the local loop for the provision of all telecommunication services. Alternative suppliers of infrastructure links will be able to compete with Eircom and suppliers using LLU Line Share or line rental across the full range of telecommunication services.

- Costs should be minimised, by preventing over-charging, by avoiding an unnecessarily complex calculation of refunds from broadband customers to voice line rental customers, and by facilitating increased competition.

- The issue of reciprocity does not arise, because Eircom is the only owner of the local loop and designated with SMP in the market for wholesale unbundled access to the metallic loop and sub-loop.

- The approach should be practical and straightforward to implement.

5.3 Cost Recovery Options

5.3.3 Option 1: Incremental carrier billing and administration costs only

This option was previously consulted upon in Consultation Document No. 04/111.

Under this option, the only incremental costs to be recovered are the incremental carrier billing and administration costs, since all other costs are recovered either via narrowband services and full LLU, or via other charges (for example repairs or co-location).

As described in Consultation Document No. 04/111, the principal merits of this approach are as follows:

- It prevents over recovery of cost by Eircom and ensures cost orientation.
- Once the cost of the local loop is recovered via narrowband services no distortion between different platforms can take place.
- This approach facilitates lower broadband prices which ComReg believes is in the national interest.
- This approach should reduce or eliminate any issue of price squeeze as between LLU Line Share and Eircom's wholesale broadband.
- Similarly the proposal helps eliminates any issue regarding possible discrimination as between Eircom retail and other DSL providers.
- The approach is simple, practical and easy to apply.
- The approach is consistent with existing LLU, WLR and retail access prices.

The possible disadvantages are:

- The resulting price is likely to be quite low based on evidence available. It is possible that the cost of billing would account for most of the revenues.
- As all of the cost of the local loop is recovered over narrowband services, it leads to higher prices for narrowband access than would otherwise be the case.

5.3.4 Option 2: No Charge

If one accepts the logic of Option 1 one could decide simply not to charge for LLU Line Share since the cost of doing so may exceed, or come close to, the incremental revenues.

The advantages and disadvantages of this approach are similar to Option 1 except that a small distortion may result from the lack of cost recovery, but on the other hand, implementation would be very simple.

5.3.5 Option 3: Attribution of fixed costs between user services using Economic Principles

There are a number of economic principles that could be adopted when reviewing the price of LLU Line Share. These are complex by nature and will invariably give different answers depending on the various considerations that are taken for each. ComReg has not undertaken a detailed economic study of the advantages and dis-advantages of each method and the probable prices that could arise from them. However a detailed study of LLU pricing in general is currently underway and this will include detailed consideration of LLU Line Share under the various economic methods such as Ramsey Pricing, Efficient Component Pricing, Shapley-Shubik etc. Some of these methods are further described.

(a) <u>Ramsey Pricing:</u>

One possibility would be to recover the local loop costs in accordance with what the market will bear or, to put it more technically, to set prices that are inversely proportional to elasticities of demand (sometimes referred to as ‘Ramsey prices’). The impact of one service’s price on the demand for other services has to be taken into account. It is also very important that *market* rather than company elasticities of demand are used, to set prices, because otherwise all the shared and common fixed costs end up being recovered from services where there is little or no competition.

Ramsey pricing, properly implemented can set price signals so as to maximise output. In addition it does provide a mechanism whereby common costs are allocated on a relatively objective basis such that no one service bears all the costs of supply.

However there are potential difficulties with this approach:

- Ramsay pricing is difficult to apply relying as it does on the underlying relative price elasticities
- In this particular context, if over recovery of cost is to be avoided, the price of full LLU would need to be reviewed simultaneously
- In general, while theoretically appealing Ramsay can lead to a situation whereby goods and services which are essential to end users bear more cost than non essential goods since the former category are by definition more inelastic than the latter.

(b) <u>Efficient Component Pricing (“ECPR”):</u>

A second approach is to charge the incremental cost plus the opportunity cost of providing the service concerned[24].This is known as efficient component pricing.

[24] If one operator provides a service to another, the opportunity cost is the difference between the price and incremental cost of any loss of retail sales that results.

ECPR is a methodology that addresses access pricing by emphasising the opportunity cost of the integrated access provider. The relevant opportunity cost will depend on market conditions, including product differentiation, bypass, and substitution possibilities. In the most elementary situation, if the incumbent receives the same profits from interconnection and access as it does from sales of the retail product, the competition can enter the market only if they are more efficient in providing retail functions than the incumbent.

However, it may be difficult to identify the opportunity cost as, if one operator provides another with unbundled access to its local loop, it may not be possible to identify whether this leads to the loss of retail services (and hence profits) by the operator providing unbundled access to its local loop or whether it results in the provision of retail services that would not otherwise have been provided (with a zero opportunity cost). It can provide little incentive for the operator providing unbundled access to its local loop to become more efficient, as its profits are underwritten. If a competitor wins a customer and takes away profits from the operator, the latter gets the lost profits back in its unbundled local loop charges. It is not consistent with static economic efficiency if retail prices are out of line with costs.

(c) <u>Shapley-Shubik Pricing:</u>

A third possibility is Shapely-Shubik, an approach, based on game theory. For the given arrival, one deducts the incremental cost for each service. Shapley value is the allocation to a service which is equal to the expected incremental cost (average of the incremental cost of the service after reviewing every order of arrival). Shapley allocation guarantees an allocation for each service; lower than its stand alone cost and higher than its incremental costs. Each service has an interest to collaborate and the coalition has an interest to accept each service.

This method guarantees that the cost allocation for a service is lower than its stand alone costs, even with the existence of technologies providing a service independently to the others.

However, there is a requirement to determine not only the stand alone cost for each service, but also the cost of different combinations.

5.3.6 Option 4: Benchmarking

It is ComReg's view that Option 1 above of those listed above has many merits, including simplicity. On the other hand, ComReg is of the preliminary view that it may be unwise to impose a definitive methodology without considering the impact on the price of full unbundling and without a view as to how the cost of the access network should be recovered over the medium term. These matters are in fact being considered as part of the full review of LLU pricing, currently ongoing. However this review will not be completed until autumn 2008. ComReg is, however, firmly of the view that the current anomalies described in this consultation must be addressed in a timely manner.

Accordingly, ComReg is proposing now to set a price on a benchmarked basis[25] based on EU 15 average. This would entail a price of €2.94 per month for LLU Line Share (See section 3, figure 2) until a full review is completed.

It is ComReg's view that, given the need for timely action addressing this issue that complex economic modelling is not practical and that a reasonable approach to take is to set a benchmark price for an interim period. However, should any respondent provide their own detailed analysis and conclusions on the various methods and the appropriate price of LLU Line Share that this would give rise to; ComReg will review these in detail and consider them as part of the response to consultation.

ComReg proposes to use the EU 15 nations as a benchmark because in general these countries tend to have the most developed telecommunications sectors in terms of broadband in Europe. Also the relative levels of cost in these countries are likely to be more similar to Ireland than more "accession" countries given their differing economic histories. A benchmark based on these countries is therefore more likely to be relevant to Ireland.

ComReg has decided not to look beyond Europe to benchmark LLU Line share prices in this case because it believes that it would need to do more work to ensure that differences in the underlying regulatory regimes do not create difficulties in comparison. Given the interim nature of ComReg's proposal it believes that such extra work is unlikely to yield a significantly different benchmark.

[25] Directive No.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, provides for the use of benchmarking as a form of price control. Article 13 defines "*National regulatory authorities shall ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote efficiency and sustainabl e competition and maximise consumer benefits. In this regard national regulatory authorities may also take into account of prices available in comparable competitive markets*".

Q. 7. Do you agree or disagree with ComReg's proposal to apply a benchmark price of €2.94 per month to LLU Line Share until a full review of LLU pricing has been completed by ComReg, failing an appropriate alternative being proposed by industry? Please detail your response and where possible supported with evidence.

Q. 8. Do you agree or disagree that if Benchmarking is rejected outright that Option 1 would still be the next appropriate alternative? Please detail your response and where possible supported with evidence.

Q. 9. What do you believe is a reasonable price for LLU Line Share, taking into account the concerns and principles outlined in this consultation? Please detail you response and where possible supported with evidence.

6 Submitting Comments

All comments are welcome; however it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document.

The consultation period will run from 19 March 2008 to 16 April 2008 during which the Commission welcomes written comments on any of the issues raised in this paper.

Having analysed and considered the comments received, ComReg will review the responses to the proposed "Rental Price for shared Access to ULL" and publish a report in May 2008 on the consultation which will, inter alia summarise the responses to the consultation.

In order to promote further openness and transparency ComReg will publish all respondents submissions to this consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24. We would request that electronic submissions be submitted in an-unprotected format so that they can be appended into the ComReg submissions document for publishing electronically.

Please note

ComReg appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful.

As it is ComReg's policy to make all responses available on its web-site and for inspection generally, respondents to consultations are requested to clearly identify confidential material and place confidential material in a separate annex to their response

Such Information will be treated subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24.

7 Appendix A – Legislation

PLEASE NOTE: The Draft Decision Instrument below is set out for information purposes only and is not the final Decision Instrument. It is subject to the consideration of any views expressed during the consultation by interested parties.

1 STATUTORY AND LEGAL POWERS

1.1 This Decision Instrument is made by the Commission for Communications Regulation:

1. Pursuant to Regulation 14 of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003;

2. Pursuant to Regulation 17 of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003;

3. Pursuant to and having regard to the significant market power designation on Eircom contained in ComReg Decision No. D8/04;[26] which found Eircom to have SMP for wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services, under the provisions of Regulations 25, 26 and 27 of the Framework Regulations;

4. Having, where appropriate, complied with Policy Directions made by the Minister[27];

5. Having taken account of the submissions received in relation to Document No. [●]

6. Having had regard to the analysis and reasoning set out in Document No. [●] which shall, where necessary, be construed together with this Decision Instrument; and

7. Having regard to its functions and objectives under sections 10 and 12 respectively of the Communications Regulation Act, 2002.

2 DEFINITIONS AND INTERPRETATION

2.1 In this Decision Instrument:

“Access Regulations” means European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003

[26] Designation of SMP and Decision on Obligations- Market Analysis: Wholesale unbundled access (including shared access) to metallic loops and sub-loops; Document 04/70, Decision No. D8.04 published on 15 June 2004.

[27] Policy Directions made by the Minister for Communications, Marine and Natural Resources on 21 February, 2003 and 26 March, 2004.

"ComReg" means the Commission for Communications Regulation, established under section 6 of the Communications Regulation Act, 2002;

"LLU Line Share" means a methodology whereby the voice frequency service provided by Eircom and the high frequency service provided by the Access Seeker may be integrated over the same two-wire metallic path as more fully described in Annex C, Service Schedule 103 Appendix 1 to Eircom's Access Reference Offer;

"ODTR" means the Office of the Director of Telecommunications Regulation which was dissolved under section 8 of the Communications Regulation Act, 2002 on the establishment day of ComReg;

"**Recurring Charge**" means the Line Sharing monthly rental charge, as set out in the Price List contained in Section 1.3 of Annex C, Service Schedule 103 to Eircom's Access Reference Offer under the heading Recurring Charge;

"Relevant Year" means the period of 12 calendar months commencing 30 working days from the effective date;

"SMP Decision" means ComReg Decision No. D8/04;[28] which found Eircom to have significant market power (SMP) for wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services, under the provisions of Regulations 25, 26 and 27 of the Framework Regulations;

"Working day" means a day which is not a Saturday, Sunday or public holiday in Ireland.

2.2 The provisions of ComReg Decision No. D8/04 and the individual decisions in this Decision Notice shall where necessary be construed as forming part of this Decision Instrument.

3 SCOPE AND APPLICATION

3.1 This Decision Instrument applies to Eircom Limited and its successors and assigns ("Eircom") and relates to the treatment of regulated wholesale inputs associated with bundles and promotions.

3.2 This Decision Instrument is binding upon Eircom and Eircom shall comply with it in all respects.

4 PRICE CONTROL

4.1 The SMP Decision imposed *inter alia ex ante* regulatory obligations pursuant to Regulation 14 of the Access Regulations. The obligations imposed on Eircom under Regulation 14 of the Access Regulations include obligations relating to price control

[28] Designation of SMP and Decision on Obligations- Market Analysis: Wholesale unbundled access (including shared access) to metallic loops and sub-loops; Document 04/70: Decision No. D8.04 published on 15 June 2004.

and cost orientation of prices. ComReg may under Regulation 14 of the Access Regulations, require prices to be adjusted.

4.2 Under Regulation 17 of the Access Regulations, ComReg may issue directions to Eircom to do or refrain from doing anything which ComReg specifies in the direction, for the purpose of further specifying requirements to be complied with by Eircom relating to its obligations under the Access Regulations.

4.3 The Direction contained in this Decision Notice is issued pursuant to Regulations 17 in conjunction with Regulation 14 of the Access Regulations, for the purpose of further specifying requirements to be complied with by Eircom relating to obligations imposed on Eircom, under Regulations 14 of the Access Regulations and section 9 of the SMP Decision.

4.4 Eircom is hereby directed for the Relevant Year to apply no more than €2.94 per month as an interim benchmarked Recurring Charge.

5 REVOCATION OF ODTR DECISION D08/01

5.1 Decision D8/01 of the ODTR entitled Local Loop Unbundling – Eircom's Access Reference Offer Decision Notice D8/01 and Document Number ODTR01/27R dated September 2001 is hereby revoked insofar as it relates to LLU Line Share Recurring Charges and the methodology for the calculation of LLU Line Share Recurring Charges.

5.2 Section 5.1 shall take affect on the commencement of the relevant year.

6 MAINTENANCE OF OBLIGATIONS

6.1 For the avoidance of doubt, nothing in this Decision Instrument shall in any way (either expressly, or by implication) affect the continuing validity of Decision D8/01 of the ODTR entitled Local Loop Unbundling – Eircom's Access Reference Offer; Decision Notice D8/01 and Document Number ODTR01/27R dated September 2001 insofar as it does not relate to Line Sharing Recurring Charges and the methodology for the calculation of Line Sharing Recurring Charges.

7 STATUTORY POWERS NOT AFFECTED

7.1 Nothing in this Decision Instrument shall operate to limit ComReg in the exercise and performance of its statutory powers or duties under any primary or secondary legislation (in force prior to or after the effective date of this Decision Instrument) from time to time as the occasion requires.

8 EFFECTIVE DATE

8.1 This Decision Instrument shall be effective from the date of its publication and shall remain in force until further notice by ComReg.

JOHN DOHERTY
CHAIRPERSON
THE COMMISSION FOR COMMUNICATIONS REGULATION
THE ● DAY OF ● 2008

Q. 10. Do you agree or disagree that the above proposed Decision Instrument is clear, unambiguous and practical? Please detail your response and where possible supported with evidence.

8 Appendix B – Consultation Questions

List of Questions