An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Decision

Price Control Obligations for Fixed and Mobile Call Termination Rates

Submissions to Consultation Document Number 18/19

Response to Consultation and Decision

Reference: ComReg 19/48s

Version: Final
Non-Confidential

Date: 23 May 2019

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation
1 Lárcheantar na nDugaí, Sráid na nGildeanna, BÁC 1, Éire, D01 E4X0.
One Dockland Central, Guild Street, Dublin 1, Ireland, D01 E4X0.
Teil | Tel +353 1 804 9600 Suíomh | Web www.comreg.ie

Table of Contents

Price Consultation:

Further Specification of Proposed Price Control Obligations for Fixed and Mobile Call Termination Rates

Response to Consultation and Draft Decision 18/19

2 May 2018

DOCUMENT CONTROL

Document name	eir response to ComReg 18/19
Document Owner	eir
Status	Non-Confidential

Executive Summary

1. eir welcomes the opportunity to comment on ComReg's Price Consultation and Draft Decisions 18/19: "*Further Specification of Proposed Price Control Obligations for Fixed and Mobile Call Termination Rates*". In summary;

    (i) eir is in broad agreement with ComReg in relation to the implementation of Termination Rates (TRs) set at the pure LRIC of the appropriate eir Network Elements.

    (ii) However, in proposing such a LRIC-based regime, ComReg must make clear where eir (as a highly regulated entity) can recover its efficiently incurred fixed and common costs from, since this Decision will preclude eir from recovering these costs from TRs. ComReg remains silent in relation to this important matter in this Draft Decision paper. It needs to rectify this omission when it finalises the Decisions.

    (iii) In the context of this point around the recovery of stranded costs, eir would highlight that the FACO market is approaching its third anniversary and is now due a review which has not yet been scheduled by ComReg. Given that the FACO is no longer on the list of relevant markets, due in part to competitive developments in respect of VoIP, OTT, etc., the market should be de-regulated putting eir on an even footing with others in terms of flexibility for cost recovery. A review of the Retail Line Rental market is also long overdue and should be progressed by ComReg as soon as possible in tandem with the FACO market.

    (iv) eir also believes that the significant MTR reductions being proposed should be introduced by means of a glide path, rather than by a step change, which could be very disruptive to the market and potentially introduce instability.

General Remarks

2. eir welcomes ComReg's consideration in this Consultation of regulatory best practice and harmonisation within the internal EU market with particular reference to the European Commission's Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU ('the 2009 Termination Rates Recommendation').[1]

[1] European Commission RECOMMENDATION of 7th May 7, 2009, on the regulatory treatment of fixed and mobile termination rates in the EU (2009/396/EC)

3. eir notes that in December 2016 the Commission published a TERA study[2] assessing the 2009 Termination Rates Recommendation (TRR). The study shows that the TRR has contributed to greater consistency of regulatory approaches in much of the internal market. However, the report also identified a number of additional costs and benefits associated with the TRR since its adoption in 2009.

4. TERA noted that *"[t]he most common negative effect observed by NRAs is related to the asymmetric implementation of the TRR in the EU and the fact that non-EEA countries have much greater MTRs"* [Emphasis added]. A number of regulators reported an increase in the prices for calls outside the EEA because of the higher termination rates applied by those countries. TERA estimates[3] that the negative interconnection balance between EU and non-EEA countries was approximately €100 million in 2013 and 2014 and €160 million in 2015.

5. In order to avoid distorting competition further in this regard, operators in EU member states need the ability to address asymmetry so that consumers don't face higher costs. eir notes, that in terms of contributing to the development of the internal market and ensuring the development of consistent regulatory practice, an increasing number of EU/EEA NRAs are now applying regulated FTRs and MTRs to intra EU/EEA traffic or national traffic only rather than to all traffic, regardless of where the call originates. In Portugal and the Czech Republic for example, ANACOM and CTU respectively have adapted the regulatory regime in order to allow operators to set the TR applied to non-EEA operators at a higher level to alleviate the discrepancies caused by Pure LRIC implementation.

6. eir would therefore like to reiterate its position as submitted in its response to ComReg's review of the Fixed Voice Call Termination and Mobile Voice Call Termination Markets[4] that ComReg should allow differentiated approaches to calls originated within and outside the European Economic Area (EEA).

[2] Assessment of the 2009 Termination Rates Recommendation and costing methodologies for estimating termination rates – Final Study Report
[3] Using assumptions of the actual MTRs in non-EEA countries and that outgoing and incoming traffic to and from non-EEA countries is equivalent
[4] ComReg 17/90

RESPONSE TO CONSULTATION QUESTIONS

Question 1:

Do you agree or disagree that the cost orientated models for setting maximum FTRs and MTRs should be bottom-up models of hypothetical efficient operators? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

7. eir agrees with the use of cost orientation (rather than benchmarking) to set termination rates.

8. eir also believes that, on balance, the use of a bottom up methodology is preferable to top down, and the use of a "hypothetical efficient operator" is appropriate, as long as it is based on a reasonable hypothesis.

Question 2:

Do you agree that cost orientation by means of a pure LRIC methodology is the most appropriate approach to set Termination Rates in Ireland? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position

9. eir agrees that, as a matter of principle, cost orientation by means of pure LRIC is the most appropriate approach to setting voice termination rates. Termination of calls on customers directly connected to an operator's network is a service over which each operator has enduring bottleneck control. Competitors who wish to route calls to such customers must consume the termination service offered by the operator serving that customer. The operator terminating that call is entitled to recover at least the efficient level of incremental cost from charges for call termination. For retail services, where the calling party pays their service provider for the provision of call services, the terminating operator is entitled to recover this cost from the originating operator – possibly via a third transit operator.

10. In using LRIC, it is imperative that eir is allowed to recover all of its efficiently-incurred fixed and common costs. While ComReg alludes to this aspect (and refers to the AM report in para. 4.71), neither the consultation paper nor the AM report gives clarity as to where these fixed and common costs ought to be recovered by eir. This leaves open the prospect of stranded costs, which runs counter to good regulation, and is detrimental to eir being able to compete fairly in the various regulated markets concerned. We believe that this issue should be clarified before the finalisation of the ComReg Decision.

11. For instance, at Para. 4.137 ComReg states that "…. *FSPs and MSPs, other than Eircom, can allocate common costs not recovered through TRs* [Termination Rates] *to other services as they see fit. In the case of Eircom as a FSP these costs may need to be recovered, at least in part, from other regulated services. This will be considered under other price-setting exercises*." (This point is reiterated more or less verbatim in para. 6.50). This approach is much too vague and demonstrates that ComReg has not adequately considered the issue of eir's potentially stranded costs.

Question 3:

Do you agree with the preliminary opinion of ComReg regarding the choice of depreciation methods used in the calculation of the MTRs and FTRs? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

12. eir believes that it would have been preferable to use a consistent approach in the case of FVCT and MVCT. Indeed ComReg themselves appear to share this view when it lists as one of its cost modelling principles *"Consistency of treatment between FVCT and MVCT"*.[5]

13. eir accepts that the use of Tilted Annuity is best for FVCT, but we do not believe that there is a compelling case for moving to Economic Depreciation in the case of MVCT.

14. In that context eir notes what ComReg says in para. 4.97

> "*The economic depreciation approach ….. could be more subjective than other methods … and may be a more complex method to implement. However, it tends to give better economic signals than other depreciation methods when the number of outputs produced by an asset is not stable and expected to change significantly over the forecast period*".

15. We would not expect the volume of minutes terminated on mobile networks to vary significantly over the forecast period (no more than we would expect the volume of minutes terminated on fixed networks to vary significantly). In that context, it is unclear why ComReg does not follow a consistent approach for both FVCT and MVCT, and apply tilted annuity in both cases (thereby avoiding the complexities that may be associated with the economic depreciation approach)

[5] Last bullet in Para. 4.143 (Page 52 of 18/19)

Question 4:

Do you agree with ComReg's preliminary view that a modified scorched node approach is appropriate for the modelling of mobile networks? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

16. eir agrees with the use of the modified scorched node approach for the modelling of mobile networks. It is consistent with the use of the hypothetical efficient operator and is also in keeping with the modelling approach previously used for MTRs.

Question 5:

Do you agree with ComReg's preliminary view that a scorched node approach is appropriate for the modelling of fixed networks? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

17. eir agrees with the use of the scorched node approach for the modelling of mobile networks. It is consistent with the use of the hypothetical efficient operator and takes account of the current locations of the nodes in the network.

Question 6:

Do you agree that regulated maximum Termination Rates should be symmetric? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position

18. eir agrees with ComReg's view at paragraph 4.127 that *"symmetric Termination Rates create a level playing field which removes impediments to competition"* and that this approach will *"provide broad benefits to consumers".* This approach is also aligned with the view of the European Commission as put forward in the 2009 Termination Rates Recommendation. eir notes that the recommendation was reviewed in 2016 and the Commission intends to adopt binding measures as part of the review of the EU regulatory framework for electronic communications.

19. eir believes that full symmetry between FSPs and full symmetry between MSPs should follow immediately from the implementation of the Decision. This is consistent with the approach

followed generally across the EU and is in keeping with the use of the hypothetical efficient operator.

20. eir welcomes in this regard ComReg's consideration of regulatory best practice and contribution to harmonisation of the internal EU market. As noted by ComReg at paragraphs 4.121 and 4.124, the 2009 Termination Rates Recommendation *"states that this implies that the termination rates would also be symmetric"* and *"of the 28 Member States … 26 apply FTR symmetry of rates and only two apply it partially"*.

21. Any proposal to deviate from symmetry, or to allow the operators of smaller networks to charge higher rates than the appropriate national symmetric rate simply supplies incentives to game the Decision by managing the criteria where symmetry would not apply.

22. Given this finding, eir proposes that, for reasons of practicality, stability, and predictability of outpayments for fixed and mobile calling, symmetry should apply in the case of voice call termination in Ireland.

Question 7:
Do you agree or disagree that there is a need for consistency in the setting of regulated Termination Rates between the FVCT and MVCT markets? Is there in your opinion any other aspects where there is a need for consistency between those markets? Please provide reasons for your response.

23. eir agrees with ComReg's approach as regards consistency in the setting of regulated Termination Rates between the FVCT and MVCT markets. Unless there is a compelling reason to treat FVCT differently to MVCT, it makes sense for ComReg to use a consistent approach. To do otherwise could create sub-optimal regulatory conditions in either the FVCT or MVCT markets (or indeed in both markets).

Question 8:
Do you agree or disagree with the proposed inputs and assumptions in the proposed BU pure LRIC FTR model for the purposes of determining the fixed termination rate? Please provide reasons for your response.

24. eir agrees in broad terms with the inputs and assumptions in the proposed model. We consider that the modelled Network Elements supporting the termination of voice calls on the eir network are appropriate. The approach strikes a reasonable balance between providing a sufficiently forward looking view of costs (from TDM to IP call conveyance) while taking account of current

constraints (in particular, the delayed implementation of IP interconnection by national operators).

25. In relation to the calculation of transmission costs we agree that the approach undertaken of modelling the variance in core transmission costs with and without the fixed termination traffic is appropriate. However, we note that the Core NGN model that underpins this calculation continues to treat all of the (wholesale) broadband traffic as being either national handover or regional handover. This assumption of future volumes is incorrect given that a large share of the current traffic is now VUA and there is no real economic justification for an OAO to switch back to Bitstream once the costs of unbundling at Aggregation Nodes have been sunk. We therefore consider that more of the fixed NGN costs would be attributable to non-broadband traffic, including external primary termination.

26. eir would also point out that the volumes of national call termination are combined with the off-net (International) in-payment volumes. This is incorrect given that off-net volumes are handed over to national/international OAOs at the tertiary switches on the TDM network. Therefore they would not be – contrary to on-net (International) in-payment volumes – availing of national termination. It appears however that these volumes actually reflect the proportion of on-net volumes (as of 2016) of total in-payment volumes. ComReg should correct this labelling error.

Question 9:

Do you believe that there is any other data that is relevant to the proposed BU pure LRIC FTR model? If so, this data should be provided to ComReg for consideration in any decision.

27. In the context of this response eir does not consider that there is other data that is relevant for the purpose set out by ComReg.

Question 10:

Do you agree or disagree with ComReg's preliminary views regarding the maximum FTRs that FSPs should charge as set out in this document? Please provide reasons for your response, clearly indicating the relevant paragraph numbers to which your comments refer, along with relevant factual evidence supporting your views.

28. Without prejudice to eir's response to question 8 above, eir agrees in broad terms with the maximum FTRs calculated by the FTR model and set out in the consultation document.

29. However, eir is of the view that a further reduction in call termination rates poses an immediate concern in terms of the cost recovery of fixed costs of the NGN network and more generally of common costs. ComReg's consultation (paragraphs 4.35 and 6.26) has not provided any clarity as to how recovery of such costs would be addressed and therefore it remains an issue of concern.

30. Secondly, this abatement of fixed termination rates narrows the scope for changes in the model inputs and assumptions (effectively setting a lower bound close to the zero level). eir is of the view this will create uncertainty amongst operators as to where the rates may be set in the near future.

Question 11:

Do you agree or disagree with the use of a mid-point of the proposed maximum rates as the maximum rate for the entire regulatory control period? Please provide reasons for your response, clearly indicating the relevant paragraph numbers to which your comments refer, along with relevant factual evidence supporting your views.

31. eir agrees with the principle of setting one single maximum rate for the entire regulatory control period as opposed to setting maximum rates per year in the control period for the reasons outlined by ComReg (paragraph 5.30) and to provide the market with predictability, provided that the calculation of this single rate is set to be 'revenue neutral'.

32. eir does not consider that a simple arithmetic average of the maxima per year achieves this (where costs are not perfectly variable with volumes, as is the case here). However, in this particular case, the use of weighted average does not result in a materially different (maximum) fixed termination rate. In any case, the acceptance of the principle of a single maximum rate introduces future risks to achieving full recovery of eir's pure LRIC call termination costs in the period should the decline in termination volumes turn out to be steeper than forecast.

33. eir therefore considers that ComReg should incorporate provisions in its final decision to allow a mid-term review or similar of the single rate and mitigate this risk, in the case where termination volumes are materially lower than forecast.

Question 12:

Do you agree or disagree with ComReg's preliminary views regarding the implementation of any decision on maximum FTRs that can be charged by FSPs found to have SMP in their respective call termination markets? Please provide reasons for your response, clearly indicating the relevant paragraph numbers to which your comments refer, along with relevant factual evidence supporting your views.

34. The current maximum regulated FTR was imposed on 1st July 2015. It is anticipated that a Decision on maximum regulated FTRs will be taken, at the earliest, by mid-2018. ComReg is proposing that any change to the FTR be implemented within 90 days of the Effective Date. This corresponds with the proposed draft FVCT Decision Instrument in the Market Review Consultation, Section 11.5, where it states "*Each SMP Fixed Service Provider, other than Eircom, shall publish its RIO within 90 days of the Effective Date*"
35. eir is of the view that the Decision on maximum FTRs should be implemented symmetrically to all FSPs, including eir. This would mean that all FSPs, including eir, should be required to update their RIOs within 90 days of the effective date of the Decision. We believe this is would be the least disruptive model.

Question 13:

Do you agree or disagree with the proposed inputs and assumptions used in the development of the proposed BU pure LRIC MTR model for the purposes of determining the mobile termination rate as set out above and detailed in the MTR Specification Document? Please provide reasons for your response with references to specific paragraphs in this Consultation.

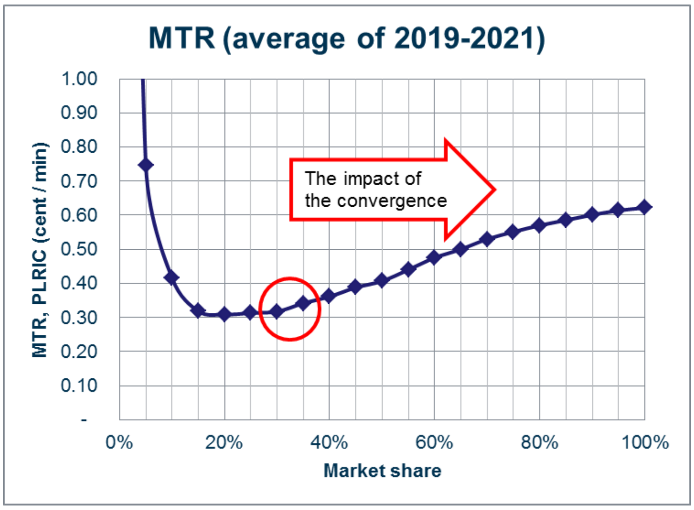
36. In general eir considers the inputs and assumptions to the model to be appropriate.

37. Regarding the type of the operator[6] eir agrees with the use of concept of "*hypothetical efficient existing operator*".

38. However, it is worth considering increasing the current 33% market share of this hypothetical efficient *existing* mobile operator to come more into line with the "fixed" scenario. The financial impact of a possible increase is shown in the graph below (in 5% steps of the market share of the hypothetical efficient operator), with other conditions remaining the same. While the red circle indicates the position of the consultation's proposal, the red arrow indicates the financial

[6] Section 5.4.2, page 66 of 18/19

impact of the change in market share. As can be seen from the graph, the consequence of a move upwards from the current 33% level would be that the MTR also increases slightly.



39. eir also does not have an issue with the use of the "*modified scorched node*" methodology, and also the "Bottom Up" approach.

40. As regards the traffic forecasts shown in Figure 17 on page 74, we note that ComReg's approach is that "*Historical total voice traffic and subscribers from 2005 to 2016 are used to derive a forecast for the duration of the proposed MTR mode*l" and that "*usage per subscriber is … assumed to peak in 2021 and remain constant thereafter*"[7]. This approach would appear to appreciably over-estimate traffic levels going forward, in that no account appears to be taken of the substitution of voice by "Over the Top" applications such as WhatsApp and Skype. This effect is already very evident, and will only increase going forward. This error should be corrected by ComReg. It will lead to lower volume forecasts, which we would expect to increase the resulting levels of MTR (since the traffic figure will be the denominator in the calculation of the MTR rate.

41. Application of S-RAN in mobile network modelling is appropriate. The AM study provides background to the assumption of the economies of scope relative to the separate 2G/3G operation. The ratio is 0.7 in case of Opex[8]. The cost model applies the same 0.7 value in the case of Capex[9], although Capex is not the subject of the referred cost study.

[7] Para. 5.67
[8] "Control" tab – cell E9
[9] "Control" tab – cell D9

42. ComReg should consider including part of the spectrum fees as a (direct) cost of call termination, particularly in 2G (Para. 5.108). Unlike common costs, it is possible to allocate a part of the frequency to call termination service as an avoidable cost. - i.e. a different spectrum fee would be incurred depending on whether or not the wholesale voice call termination service is provided, as long as scaling of spectrums has been considered at the time of the spectrum allocation procedure. Allocation of spectrum for 2G is more flexible than it is in case of other assets (e.g. while call termination requires a given part of the available spectrum, a whole site is needed for the deployment of equipment on a base station).

43. As regards the Modelling timeframe, ComReg notes in Para. 5.144 that *"a modelling timeframe of 2003–2053 is appropriate for the proposed MTR model"* and bases this view on the fact that *"the longest-lived assets (such as owned sites) are normally of the order of 25 years".* In actual fact, owned sites typically have an infinite useful economic life and are not depreciated. Therefore, based on ComReg's flawed logic, the modelling period should be infinite. This is clearly irrational and incorrect. In a fast-changing technological environment such as we are dealing with here, a 50-year modelling timeframe is excessive. There is no way anyone can accurately predict now how the world of MTRs will look beyond the year 2050, so the modelling should be based on a more realistic timeframe.

Question 14:

Do you believe that there is any other data that is relevant to the proposed MTR model? If so, this data should be provided to ComReg for consideration in the final decision.

44. In the context of this response eir does not consider that there is other data that is relevant for the purpose set out by ComReg.

45. Input data and assumptions for unit costs were subject of discussions in former MTR consultations. There are still some open issues in the recent model in relation to these. eir accepts that there were some shortcomings in relation to data availability and that this may occasionally have led to some significant difficulties in the modelling process. Within these constraints, it appears to eir that ComReg has collected as much factual data as was available and developed a reasonably appropriate cost modelling methodology.

46. In the case of both the volume of indirect capex mark-up and volume of opex as proportion of capex, the model simply imports the corresponding values from the previous model version. It would have been preferable if these had been updated based on more contemporaneous data.

47. eir would also note that there are a number of aspects of the model that may require some further attention before the rates are finalised, e.g.

- Worksheet “CalibChks” – Rows 1 to 159 – these relate to data collected from operators for 2016. Why then are there individual columns for “Three” and “O2”, when these companies had been merged since 2014?
- Worksheet “CalibChks” – cell range G83 to J83 – these “Divide by zero cells should be deleted?
- Worksheet “pA” – this shows a graph which is consistent around 350 from 2005 up to 2045. Before falling suddenly to zero. Notwithstanding the fact that we believe the modelling timeline is too long, we do not believe that a metric such as this is a sound basis for modelling any scenario.

48. In relation to other aspects, please see the response to Question 13.

Question 15:

Do you agree with ComReg’s preliminary views regarding the maximum regulated MTR that MSPs with SMP should charge for the forthcoming price control period? Please provide reasons for your response, clearly indicating the relevant paragraph numbers to which your comments refer, along with relevant factual evidence supporting your views.

49. The maximum regulated MTRs are the outputs of a complex model. Any changes of inputs or any changes to the underlying assumptions (indicated by our comments above) will change the outputs, and consequently the levels of the regulated MTRs. The basic structure of the model is sound, so we believe that the outputs will be reasonable once ComReg has taken account of the various issues we have raised in response to the previous questions.

50. As outlined in Para. 5.169, this Consultation proposes sharp drops in MTRs at the end of 2018. In order to avoid the possibility of instability and significant market disruption, eir believes that ComReg should move MTRs to its desired end point at the end of the control period by means of a glide path, as alluded to in Para 5.192.

Question 16:

Is there any other issue raised in this Consultation for which you would like to provide a response? Please provide reasons for your response, clearly indicating the relevant paragraph numbers to which your comments refer, along with relevant factual evidence to support your opinion/position.

The treatment of common costs not recovered from pure LRIC

51. In summary ComReg's position is that operators other than eir are free to recover common costs not recovered from the pure LRIC for call termination where they will. This is on the basis that call termination is the only market where they have been found to have Significant Market Power. For eir, who has been designated with SMP in a number of wholesale markets, ComReg proposes to be more prescriptive. However, the lack of any instruction or guidance from ComReg as to where exactly the fixed and common costs are to be recovered is a significant omission in the overall consultation document.

Draft text of the proposed Decision Instrument (FTRs)

52. In the interests of consistency, eir believes that the FTR Decision should come into effect on the same date as the MTR Decision 9currently proposed as 1st January 2019).

Draft text of the proposed Decision Instrument (MTRs)

53. eir has no comments on the Draft text of the proposed Decision Instrument for MTRs.

Question 17:

Having considered this Consultation are there any further comments you would like to make on the proposed decision to impose a price control of cost orientation in the associated Market Review Consultation? If so can you please refer in your comments to the relevant paragraphs in that decision and support any comments with economics based argumentation and facts. Please note that the text of the draft decision instruments at Annexes 1 and 2 of this document may be subject to change to reflect any final decision taken in regard to the decision instruments proposed in the Market Review Consultation.

54. eir has nothing further to add in response to this question.

Question 18:

Do you have any views on the Regulatory Impact Assessment? Are there other factors that ComReg should consider in completing its Regulatory Impact Assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all facts or argumentation supporting your position.

55. The Regulatory Impact Assessment (RIA) contained in Section 6 of the Draft Decision document 18/19 is deficient in a number of areas. The approach adopted by ComReg is wrong because the RIA is little more than a qualitative discussion that is subjective and cursory in nature.

56. As can be seen from the following quotes, it is speculative in nature and rooted in conjecture –

> "*LRIC based MTRs may encourage FSPs to be more innovative and flexible …"*
> *"Lower MTRs (under pure LRIC) should mean that large MSPs may face greater competition …"*
> *"…To accommodate lower per-customer termination revenue, MSPs may focus on attracting retail customer groups …*"
> *"A pure LRIC approach should give rise to greater retail pricing flexibility …"*

etc.

57. No attempt has been made to quantifiably assess the efficiency or cost of ComReg's proposals. We believe there is a clear need for the quantitative standard of RIAs to be raised by ComReg.

58. As regards the methodology for cost modelling, the impact considered by ComReg in the RIA is between the use of LRIC and the use of LRAIC+ in the setting of TRs. This impact could only properly be evaluated once it has been established how "Fixed and Common" costs are recovered when TRs are set using LRIC. Yet, as outlined above, consideration of this central issue has been deferred into the future by ComReg, thus rendering this aspect of the RIA essentially meaningless.

END

Commission for
Communications Regulation
Dockland Central
1 Guild St
North Dock
Dublin
D01 E4X0

2nd May 2018

Re: Price Consultation Further Specification of Proposed Price Control Obligations for Fixed and Mobile Call Termination Rates (ComReg 18/19)

Dear Sirs

We refer to the document entitled *"Price Consultation Further Specification of Proposed Price Control Obligations for Fixed and Mobile Call Termination Rates"* ComReg Reference: 18/19 (the **Price Consultation**) published by the Commission for Communications Regulation (**ComReg**) on 13 March 2018[1].

We also refer to the document entitled *"Response of Tesco Mobile Ireland to the Commission for Communications Regulation's Consultation entitled "Market Review Fixed Voice Call Termination and Mobile Voice Call Termination" ComReg Reference: 17/90r*"* (the **TMI Market Review Submission**) submitted to ComReg by Tesco Mobile Ireland (**TMI**) on 10 January 2018 in response to the ComReg publication of 27 October 2017 entitled *"Market Review Fixed Voice Call Termination and Mobile Voice Call Termination"*[2] (the **Market Review**).

We have studied the Price Consultation and have to express disappointment as a MVNO hoping to bring real choice and even greater value to the Irish-based consumer because an opportunity to stimulate competition by means of mobile virtual network operators (**MVNOs**) will be lost if this Price Consultation is implemented unchanged.

In regard to the Price Consultation, TMI wishes to highlight that none of the issues affecting MVNOs in the State, that had been raised in the TMI Market Review Submission, have been materially reconsidered.

With regard to mobile termination rates (**MTRs**), the Price Consultation does not mention or take account of any of the material considerations that should have been taken into account, as set out

[1] https://www.comreg.ie/publication/price-consultation-specification-proposed-price-control-obligations-fixed-mobile-call-termination-rates/

[2] https://www.comreg.ie/?dlm_download=market-review-fixed-voice-call-termination-mobile-voice-call-termination

in the TMI Market Review Submission. The TMI Market Review Submission urged a reconsideration of the introduction of more incremental, smarter and better targeted regulation. TMI submitted that both consumers and competition would benefit if an innovative and dynamic regulatory regime were put in place for MVNOs, including easing unnecessary burdens and only imposing proportionate and appropriate requirements.

Not only has the unique position and value of MVNOs not been taken into account, but the proposed MTR model to conduct the analysis underlying the calibration of the proposed MTRs is based on a hypothetical efficient operator that reflects a market in which only established mobile network operators (**MNO**s) operate and compete.[3]

There is only one brief substantive mention of MVNOs in the Price Consultation's 153 pages, at paragraph 6.43, where it is stated that:

> *"6.43 ComReg proposes that symmetric MTRs should apply to all of the current SMP MSPs that ComReg proposes in the Market Review Consultation to designate with SMP, given that all of those MNOs have been in the market for more than 4 years and therefore the justification for higher costs for those MNOs are unlikely.* ***As regards the MVNOs, ComReg believes that, in general, it is difficult to envisage a scenario as to why, absent any objective exogenous cost differences (which ComReg is open to considering), an MVNO could be justified in levying an MTR that differs from that of its host network, particularly as the MVNO has obtained the scale economy advantages accruing to the host network.****"* (Emphasis added)

As TMI set out clearly in the TMI Market Review Submission, there are a number of material factors and challenges faced specifically by MVNOs that are not faced by MNOs. We are particularly concerned that – in relation to possible alternative approaches to MTRs – *"objective exogenous cost differences"* is suggested as the only factor worth considering, with no adequate consideration being given to any of the other factors as raised in the TMI Market Review Submission. The application of MTRs to an MVNO under the current approach in such an unsubstantiated manner is, viewed objectively, neither convincing nor helpful. It is a "general" statement based not on the presence of proof but rather on the absence of proof of a contrary view. It is no way to hinder the development of a competitively important force such as MVNOs in the market place. It is perhaps no wonder that the hope which MVNOs held out for the Irish-based consumer has not yet borne fruit given the fact that so many MVNOs have disappeared from the marketplace, due undoubtedly to some extent to the difficult regulatory regime currently in place.

The Price Consultation does not adequately distinguish between MNOs and MVNOs or take cognisance of the unique challenges facing MVNOs attempting to operate in a market dominated by MNOs. It is almost impossible to envisage that this type of one-dimensional analysis and approach

---

[3] *Paragraphs 5.49 to 5.51, Price Consultation*

to the regulation of MVNOs will result in the creation of conditions for investment in the Irish mobile market, or the promotion of genuine competition to the benefit of consumers.

As set out in the TMI Market Review Submission, the one-size-fits-all approach to mobile regulation is simply not appropriate as there are a number of issues and challenges that are unique to MVNOs and that are not faced by MNOs in the Irish mobile market. These include:

- The fact that MNOs and MVNOs are at different stages of development in their positions as market players;
- The significantly different market position of MVNOs in terms of services and revenue markets to the market position of MNOs;
- The significant costs for MVNOs associated with providing MVCT; and
- How the EU Roaming Regulation significantly weakens the position of MVNOs.

In relation to this last point, it should be highlighted that MVNOs are at a significant disadvantage as a result of the EU Roaming Regulation. For example, TMI receives no inbound revenue from roaming customers and, therefore, has no opportunity to offset the substantial losses incurred in relation to outbound roaming customers.

TMI strongly urges and requests ComReg to provide adequate consideration to a more targeted approach to intervention in order to create the conditions for investment that are urgently needed in the Irish mobile market. As already set out in the TMI Market Review Submission, TMI also urges ComReg to take into account the defects of the current regulatory regime in order that it can undertake a more progressive and forward-looking analysis in regard to the Irish mobile market. This would include giving due consideration to important developments in the Irish mobile market such as:

- The exit of MVNO's from the market, such as just.mobile (2011) and iD Mobile (2017);
- The vigorous growth in the use of OTT services;
- The overall growth in smartphone ownership;
- The life cycle development of mobile service providers;
- The consequences of the EU's 'Roam Like At Home' Regulation; and
- The consistent increase in consumer consumption of data.

Furthermore, TMI is disappointed that the Price Consultation did not provide a robust justification for the decision to continue with the designation of TMI and other MVNOs as dominant in the market for termination of calls on that carrier's network and the resulting attribution to that carrier as having significant market power.

It is disappointing that the Price Consultation has not even acknowledged the unique challenges faced by MVNOs, and raised in the TMI Market Review Submission. If a more progressive and focused approach to regulation in this area is not carefully considered and developed, it is almost certain that no competitive market landscape will be achieved and that no incentives to attract investment from market players (particularly, MVNOs) will be developed to the detriment of consumers.

TMI urges ComReg to give adequate consideration to the distinct challenges and issues facing MVNOs going forward, and to engage with these market players, actual and potential competitors, in order to develop a more robust and dynamic regulatory regime. This, in turn, will allow the – at present – heavily consolidated Irish mobile market to develop into a highly competitive sector to the benefit of consumers. In this context, we would be happy to meet with ComReg to discuss the serious challenges facing MVNOs and to explore, in greater detail, possible solutions that can result in the development of a far more competitive landscape.

TMI understands that ComReg's mission is, above all else, to drive and protect *competition*, and that it is not to protect competitors or any subset of competitors. TMI respects fully the work carried out by ComReg and also wishes to acknowledge the positive outcome achieved in regard to TMI's compliance with the Roaming Regulations, as set out in ComReg's Information Notice[4] published yesterday, 1 May 2018. We note ComReg's acknowledgement of TMI's engagement and cooperation in that process and hope that it demonstrated TMI's genuine commitment to working with ComReg to drive the competitive landscape in the Irish mobile market to the ultimate benefit of consumers.

While it is regrettable that we have to write a letter expressing our disappointment with the approach adopted in the Price Consultation, we would ask ComReg to give serious consideration to having a study commencing early Summer with a view to completion by the end of Q3 2018 which would focus on what can be done to bring greater competition and value to the Irish-based consumer by virtue of MVNOs and how MVNOs can be enabled to compete more effectively in the marketplace. It is a concrete and specific initiative which would be welcomed by all and be a meaningful contribution to the utilisation of MVNOs as a competitive force. It may help reverse the sustained departure of MVNOs from the Irish market place and allow Irish-based consumers the type of opportunity and value which MVNOs offer their counterparts in other EU Member States.

We look forward to hearing from you.

Yours sincerely

Sarah Gallagher
Company Secretary
Tesco Mobile Ireland

[4] *"ComReg forms an Opinion that Tesco Mobile Limited did not comply with provisions of the Roaming Regulations, Information Notice, Reference: ComReg, Date: 01/05/2018. See* https://www.comreg.ie/publication/comreg-forms-an-opinion-that-tesco-mobile-limited-did-not-comply-with-provisions-of-the-roaming-regulations/

Verizon Response to ComReg's "Price Consultation: Further Specification of Proposed Price Control Obligations for Fixed and Mobile Call Termination Rates"

Introduction

1. Verizon Enterprise Solutions ("Verizon") welcomes the opportunity to respond to ComReg's "Price Consultation: Further Specification of Proposed Price Control Obligations for Fixed and Mobile Call Termination Rates", reference 18/19 (the "Consultation").[1]

2. Verizon is the global IT solutions partner to business and government. As part of Verizon Communications – a company with nearly $131 billion in annual revenue – Verizon serves 98 per cent of the Fortune 500. Verizon caters to large and medium businesses and government agencies and is connecting systems, machines, ideas and people around the world for altogether better outcomes.

3. Please note the views expressed in this response are specific to the Irish market environment and regulatory regime and should not be taken as expressing Verizon's views in other jurisdictions where the regulatory and market environments could differ from that in Ireland.

Response to the consultation

4. Verizon considers that the LRIC cost standard is the most appropriate standard to choose in order to best sustain competition in Ireland, for both fixed and mobile termination rates. We therefore encourage ComReg to remain consistent with the 2009 EC recommendation in favour of LRIC,[2] and we fully support this approach.

5. Consistency of regulatory approach across the EU is of considerable benefit to both pan-European and even global Service Providers and consumers alike, and therefore we strongly urge ComReg to continue with its proposals to adopt a BU-LRIC based approach.

[1] Consultation available at: https://www.comreg.ie/publication-download/price-consultation-specification-proposed-price-control-obligations-fixed-mobile-call-termination-rates, Reference Number: 18/19, 13 March 2018.
[2] Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:124:0067:0074:EN:PDF

verizon✓

6. We also strongly urge ComReg to require that the price control is applied to all calls which are terminated to Irish fixed and mobile numbers regardless of where they are originated (including from non-EEA countries).

7. The key point for Verizon in this review is that the status quo for calls from outside the EEA should be retained meaning that ComReg should not allow service providers to charge higher than regulated rates for traffic originating outside the EEA area. However, if ComReg were to allow differentiation, it must restrict this to traffic originating in countries that themselves apply high termination rates. This would ensure that Irish service providers could not charge higher rates for traffic originating in countries, such as the US, where regulated termination rates are extremely low (or zero as will be the case in the US from July 1st, 2018 for all major providers and 2 years later for smaller ones).[3]

8. Verizon submitted extensive comments on this issue in response to ComReg's earlier consultation on the market review published 27 October 2017 – please refer to our answers to Question 14 of that consultation in particular which discusses the legal, economic, and consumer factors which must be considered when deciding to include non-EEA calls in the price control. We also attach our position paper at Annex 1 which provides further information and evidence.

Verizon Enterprise Solutions

May 2018

[3] This is under the "Bill and Keep" mechanism, i.e. no payments are made for termination between carriers. For full details see the 2011 FCC order for more details: https://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0206/FCC-11-161A1.pdf

Proposed Price Control Obligations for Fixed and Mobile Termination Rates

Response to Consultation

2 May 2018

Introduction

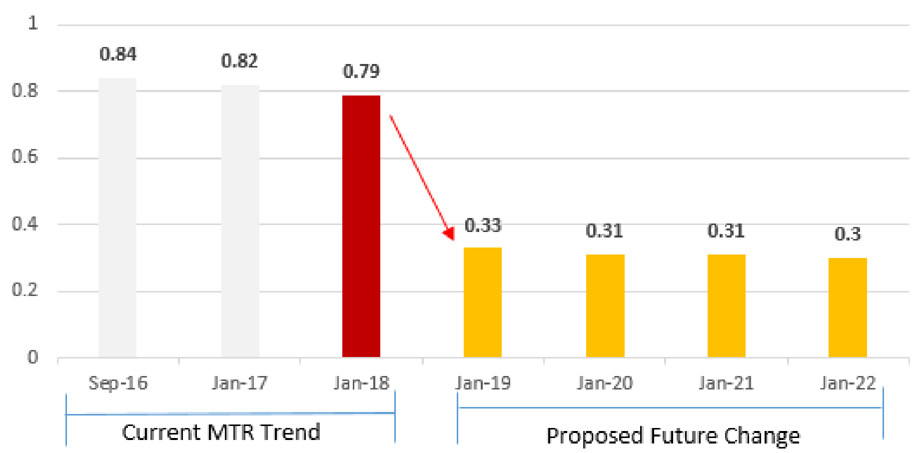
I. Vodafone welcomes the opportunity to respond to the ComReg market review on Fixed Voice Call Termination and Mobile Voice Call Termination markets.

II. Since entering the Irish market 15 years ago, Vodafone has made significant investments in its network, in supporting technologies and infrastructure. Vodafone is the single biggest investor in new technology in the Irish telecoms industry annually, with over €2 billion invested to date, in building and maintaining the network.

Investment

III. A critical factor attracting key investment is certainty over the long term. Having previously adopted a pure-LRIC based approach it is a serious concern for Vodafone that a change to an already complex model has led to very significant changes to the model output. The large drop in the in the cost based MTR from 0.84c – 0.79c in 2016 to 2018 down to 0.33c-0.30c for the period from 2019 onwards raises serious questions around the change in approach to calculating cost of terminating voice traffic. Considering that the assumed costs of sites, equipment and main inputs have not fallen, our view is that the dramatic change in model output is not justified.

Fig 1: Current MTR Trend vs ComReg proposed changes



IV. ComReg have not carried out an analysis that the impact of the very significant proposed changes in the MTR LRIC rate will have on the market, sustainable competition, and on consumer benefits. Given the extent of the reductions proposed, ComReg has a duty to more thoroughly examine the potential impacts before making a final decision.

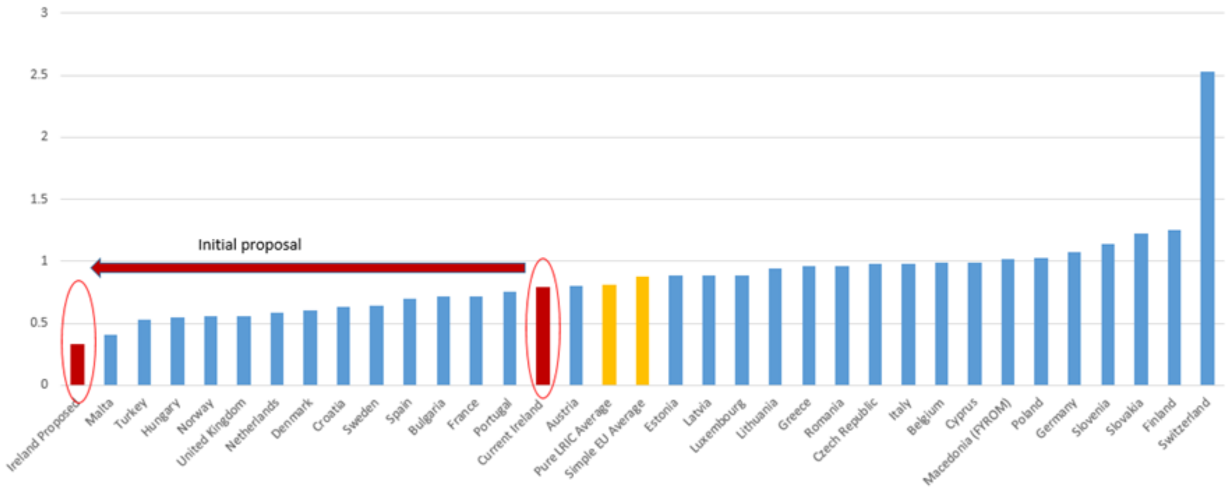
V. ComReg appear to have formed the view that any shortfall in recovery of average costs can be recovered by operators through increased charges for regulated or non-regulated products. They provide no evidence to support this view nor is it clear how operators could recoup reduced revenues through increasing charges in what are competitive markets. This clearly has a larger effect on operators who do not have other regulated products with SMP against which price increases can be imposed without being moderated by competition effects.

VI. Vodafone remains keen to invest and contribute to building out Ireland's digital infrastructure. ComReg has a role to create favourable conditions for investment in the sector and this is dependent on clearly signalled, consistent and proportionate regulatory intervention. The proposals on MTRs create a disincentive to further investment in mobile networks in Ireland and will not deliver any benefit to consumers. The current approach runs the risk of MTR having to be revised upwards in future. ComReg's assertions on the effect of the proposed changes have not been assessed or supported in detail and Vodafone are of the view that proceeding with the proposed lower rates on MTR is unjustified and unwise.

Ireland MTR and Europe compared

VII. The impact on the case for investment in Ireland is further highlighted by a comparison of Irish and European MTRs. The revised AM model suggest costs to Irish mobile operators to provide termination are the lowest in Europe. As set out in Fig 2 below the simple average rate for the EU 28 is 0.88c and for Pure-LRIC countries the simple average is 0.81c. The current rate in Ireland is 0.79c yet ComReg propose Ireland should now have the lowest rate in Europe at 0.33c more than 18% below the current lowest EU rate. We note that ComReg has adjusted some input costs upwards taking into account previous submissions. Given that key input costs in Ireland are generally higher than in other EU countries, ComReg have failed to explain why the model is producing a calculated MTR rate so much lower than the rates in these other countries. This requires further examination by ComReg.

Fig 2: Ireland and Europe MTRs[1]



Assumptions on Data

VIII. Vodafone questions the approach adopted in the model to building network for data. The model incorrectly assumes that new sites are constructed to support increased data use. As we submitted in previous rounds of MTR consultation, large data capacity was available when operators first built 3G networks on existing sites that were built for voice services. When the 4G network was constructed equipment was added to these existing sites without incurring the large costs associated with new site development. It was therefore feasible in the short term to offer high volume data services at very low prices, essentially filling empty networks. As network capacity is filled it is not economically feasible to add additional network sites to support further increased data traffic on these networks because the cost would exceed the figure customers are prepared to pay for higher speeds. Alternative strategies to provide customers with higher data volumes may involve handover of increased data traffic to Wi-Fi or other small cell networks or the limiting of high-volume data users using class-of-service algorithms. Voice traffic remains the **only** driver for new network radio site development.

[1] Source Cullen International April 2018

IX. Achieving the **<u>2% Grade-of-Service for voice services</u>** has always been a key driver of network site capex spend. ComReg's proposed MTR model uses a very simple methodology to combine voice and data traffic on 2G and 3G networks. Voice is considered to be equivalent to a 12Kb/s data stream and added to data traffic. Costs are apportioned by examining the ratio of voice traffic to total traffic. This is a significant over-simplification of the cost drivers in building and operating a mobile network. The proposed model therefore vastly overstates the relevance of data traffic. The cost drivers used in the model must be changed to reflect the real world drivers of network capacity build.

Pure-LRIC in the Irish context

X. Vodafone remains concerned about the appropriateness of the application of "Pure LRIC" in the context of the Irish market. ComReg continues to claim that "Pure LRIC" is the most suitable choice for regulating wholesale voice termination in Ireland. However, material presented by ComReg based on efficiency, competition and equity considerations in conjunction with the proposed rates published in the proposed MTR model do not support this conclusion.

XI. It is worth revisiting some key economic propositions in the context of network industries. The most important one is the significance of fixed costs which require an adjusted model of profit maximisation. This essentially alters the economic equation appropriate in the context of mobile telecommunications.

XII. In the standard economic model, the competitive equilibrium follows the marginal cost rule. The marginal cost curve cuts the average cost curve at its minimum. This implies that marginal costs always cover (average) production costs. However, the situation in the telecommunications industry is a different one. Due to the importance of fixed costs the common assumption of increasing marginal costs does not hold: Marginal costs will always be lower than (average) production costs. Therefore, any costing methodology based on the application of the marginal cost rule will inevitably lead to an under-recovery of costs, as is the case with the application of "Pure LRIC". On the contrary, the implementation of "LRAIC+" takes these particularities into account and is therefore a better cost estimate to reflect underlying network economics as it ensures the recovery of common costs from the termination service.

XIII. Furthermore, ComReg argue that Pure LRIC would lead to a more efficient market outcome as mobile service providers have opportunities to recover more of their costs from their own customers, rather than subscribers of other networks. In other words, suggesting that a market distortion due to the regulation of the wholesale termination market below costs through "Pure LRIC" will lead to a more efficient competitive outcome in the retail market. Clearly, this logic is flawed as the under-recovery of costs ultimately leads to a distortion of market forces and existing market equilibria. Vodafone has stated previously that the "waterbed" effect may be one result of such a measure. Other longer term consequences would be reduced profitability which will have a knock-on effect on investment as well as innovation and ultimately overall welfare and we have outlined our concerns in this regard above.

XIV. ComReg fails to provide sound empirical evidence for the effects they ascribe to lower termination rates. In fact, it is undeniable that there will be some detriment to mobile network operators which will stand to lose money that otherwise would have been available for investment in innovation or network quality. While there is certainly evidence that fixed operators will gain from a decrease in termination rates, it is less clear that consumers have actually benefitted from this in the context of Ireland. Without answering this important question, it is unclear why a "Pure LRIC" costing methodology should be preferred in the Irish context.

XV. Therefore, the positive impact of "Pure LRIC" on competition portrayed by ComReg lacks rigorous analysis and proof of any causal linkage between MTR reductions to the level of "Pure LRIC" and increased mobile-mobile as well as fixed-mobile competition in the Irish market. ComReg have not demonstrated any benefits to the market or to consumers brought about by the imposition of pure LRIC MTR. Even if Pure LRIC contributed to market improvements ComReg have not demonstrated that it constitutes the least intrusive regulatory measure. The evidence thus does not allow ComReg to conclude that a further reduction in termination rates would have significant positive effects.

XVI. In addition, there is no evidence that reducing MTR produces any customer benefit. For example, a simple review of Eircom's per minute charges to Mobile Networks shows an increase in the per minute charge post the reductions in MTR in recent years. The increase in these charges demonstrate that MTR reduction has not been reflected in lower costs to consumers. In addition, ComReg have not demonstrated any link between increased volume in consumer bundles offered to customers and reducing MTR rates.

Fig 3 Eir charges for calls to Vodafone Mobile[2]

	Package name	rate
Apr-12	200	23.7c
2015	eTalk 2014 Off Peak	26c
2018	Out of bundle	29c

XVII. In summary, in light of the concerns we have demonstrated about the imposition of LRIC rates and the lack of evidence to support any market or consumer benefit, Vodafone remains of the opinion that "LRAIC+" would be a more appropriate and less intrusive cost standard in the Irish market. Notwithstanding our belief that LRIC is not an appropriate cost model to impose, it is clear that the rates proposed by ComReg are considerably out of line with the figures calculated in other EU countries. This difference in calculated figures has not been explained or justified by ComReg.

[2] Source http://www.eircom.ie/bveircom/pdf/Pt2.4.1.pdf and http://www.eircom.ie/bveircom/pdf/Pt2.3.9.pdf
Prices from eir website 27 April 2018
https://www.eir.ie/opencms/export/sites/default/.content/pdf/pricing/Part2.1.pdf

Consultation Questions

Question 1

Do you agree or disagree that the cost orientated models for setting maximum FTRs and MTRs should be bottom-up models of hypothetical efficient operators? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

1. Vodafone has no issue with the theory of bottom up models which attempt to estimate the costs of a hypothetical efficient operator. The models themselves are complex and of necessity have a number of key assumptions and inputs which affect the outcome. Certainty as to the accuracy of such a model is difficult to obtain and we urge ComReg to consider carefully whether the rates proposed are too low. We elaborate on this further in the document. There are no objective reasons why the costs of current mobile operators should differ from a hypothetical efficient operator. The models should then be calibrated against the spend of actual operators to ensure a reasonable result is achieved.

Question 2

Do you agree that cost orientation by means of a pure LRIC methodology is the most appropriate approach to set Termination Rates in Ireland? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

2. Vodafone does not agree that pure LRIC is the most appropriate methodology for setting Termination Rates in Ireland.

3. Vodafone notes ComReg's statements in 4.25 to 4.30 inclusive, re the incentives to raise termination rates and associated claims with respect to distortion of competition. ComReg then states in 4.31 that setting termination rates at incremental cost would alleviate this problem but does not specify or demonstrate how this would be achieved. Vodafone contends

that given the current nature of the termination markets and the fact that the termination revenue representing a low percentage of total service revenue (as outlined in 4.40), the objective of not causing market distortion is already being achieved. ComReg then state in 4.32 that LRAIC or LRAIC+ are less appropriate than LRIC in this context but again fails to demonstrate why this is so.

4. Vodafone also notes that ComReg modelled LRIC and LRAIC+. The modelling of LRAIC+ has helped ComReg to identify the extent of the under-recovered common costs. ComReg (AM) then suggest, in paragraph 4.34 and 4.35, again without any evidence to support the view, that operators have in the past, or can in the future, recover these costs through increased charges. No in-depth analysis or attempt to prove this statement is offered however. ComReg do suggest in 4.35 that eircom could recover some of these costs, in part, from other regulated services. This potentially could increase costs for MSP and FSPs.

5. We refer to ComReg's comments in relation to network externalities and the possibility of implementing a mark-up to termination prices, and note ComReg's statement in 4.40 in relation to MNOs and FNOs termination revenues being no longer material. ComReg suggest this as one of the reasons why it would not make sense to introduce a mark-up as it would have to be so material as to exacerbate competitive distortions (which in Vodafone's view don't exist) further emphasises the fact that rates are currently very low already.

6. ComReg states in 4.45 that setting termination rates above incremental cost could result in the calling party initiating an inefficiently low number of calls from the receiving party's perspective. Vodafone would agree with this statement if the termination rates were materially above incremental cost such that to attain a reasonable margin the originating operator was forced to increase its retail price. There is no evidence that this is the case for existing rates nor have ComReg demonstrated empirically the effect that marginal increases above existing rates have on existing retail rates. ComReg's statement that the terminating operator can recover costs as they see fit (4.46) also does not hold for reasons already outlined above. In Vodafone's view ComReg has not justified why call externalities should not result in a mark-up of termination prices and why a LRAIC+ methodology should not apply.

7. With respect to ComReg's statements in 4.47 to 4.50, given the existence of already low termination rates Vodafone is of the view that ComReg has not demonstrated that applying pure LRIC will further prevent distortive effects of TMNE.

8. Vodafone notes ComReg's comment in 4.53 that increasing prices above marginal cost, call volumes and welfare decline. Vodafone would contend that given the already low nature of termination prices, increasing prices above marginal cost would not do so and ComReg has not demonstrated the extent to which this is true.

9. Vodafone note ComReg's statement in 4.56 that there is no evidence that pure LRIC based MTRs would have an adverse effect on voice calling competition for voice calling. Vodafone would assert that ComReg have not demonstrated this nor that the use of LRAIC+ would have an adverse effect on same.

10. ComReg states in 4.58 that as MTRs fall retail prices should also fall. ComReg acknowledges however that this may not be the case. In light of this Vodafone would question the positive impact that lowering MTR further will have on the relevant retail market. Vodafone would suggest the same applies with respect to ComReg's comment in 4.60 in regard to lowering FTRs and its impact on the competition in the mobile market.

11. In 4.61 ComReg stated that MTRs which are currently priced at pure LRIC are "no longer" a significant barrier to MSPs offering competitive packages with unlimited off-net voice bundles. Vodafone would contend that current rates do not currently present a barrier to unlimited off-net bundles.

12. In 4.63 ComReg states that there should be "no distortion or restriction of competition with a view to promoting the interests of users in terms of choice, price and quality of service". Vodafone would contend that ComReg have failed to demonstrate that existing rates have distorted the market or restricted competition. Nor is there any evidence that existing termination rates are above an efficient level of cost impacting carrier's ability to offer off-net calling plans.

13. In relation to ComReg's statement in 4.69 Vodafone would suggest that ComReg have not demonstrated the existence of barriers related to the creation of off-net calling packages at current rates.

14. ComReg has not demonstrated in 4.75 that a lower Termination Rate than those that currently exist in the market would lead to greater flexibility, competition and diversity in consumer offerings.

15. In 4.32 ComReg states "The two sided nature of termination markets imply that the closer prices are set to an incremental cost specific to that service over the long term, the more likely the regulatory objectives of avoiding competitive distortions and encouraging efficient investment will be met" We believe that ComReg has neglected to take the latter part of this statement into consideration when deciding on the proposed rates. As stated above the cost models are complex with many inputs, parameters and sensitivities. ComReg has a duty to consider carefully the potential impact on all parties, including consumers and operators and seek to balance the impact of their proposals. While the net effect of the decrease in MTRs may be small at the lower proposed rates, it still has an impact on Vodafone. AM estimated, as stated in 4.40, that the termination revenue is 2% for MNOs and .1% for FNOs share of total revenues.

Question 3

Do you agree with the preliminary opinion of ComReg regarding the choice of depreciation methods used in the calculation of the MTRs and FTRO Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position?

16. Again our reservations here concern the complexity of the model and the potential for wrong assumptions or data being used. ComReg itself identifies in 4.97 that the economic depreciation approach "requires forecasts on the outputs over a long time period and so as a consequence, could be more subjective than other methods" ComReg in 4.98 recognizes that the MVCT market is "capital intensive, will continue to be subject to significant changes in asset prices and is expected to experience considerable growth in service demand over the period of the

proposed model”. As can be seen from this statement the output of the model is dependent on a number of key assumptions and at best is a complex forecasting tool. It is not clear that ComReg has analysed the risk associated with such a model nor conducted any sensitivity analysis to gauge the impact of changed assumptions.

Question 4

Do you agree with ComReg's preliminary view that a modified scorched node approach is appropriate for the modelling of mobile networks? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

17. Vodafone has no observation to make in this regard at this time.

Question 5

Do you agree with ComReg's preliminary view that a scorched node approach is appropriate for the modelling of fixed networks? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

18. Vodafone has no observation to make in this regard.

Question 6

Do you agree that regulated maximum Termination Rates should be symmetric? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

19. Vodafone has no observation to make in this regard.

Question 7

Do you agree or disagree that there is a need for consistency in the setting of regulated Termination Rates between the FVCT and MVCT markets? Is there in your opinion any other aspects where there is a need for consistency between those markets? Please provide reasons for your response.

20. Vodafone agrees that there is a need for consistency in the approach between MTRs and FTRs. We support the development of a single voice market forecast. We agree that LRAIC+ should identify common costs but do not agree with ComReg's assertion in 4.137 that operators can allocate such unrecovered costs to other services in a competitive market. Nor is it clear what the impact of increased regulated services would be as a result of "other price-setting exercises". Vodafone agrees that the structure for MVCT and FVCT can be different.

21. Vodafone notes that in paragraph 4.140 that ComReg point out that only in the case of "significant divergence of model inputs and assumptions" should an update of the MTR/FTR models occur. Vodafone suggest that as a prudent and fair regulator ComReg should build in a "safety margin" to their proposed rates. This would allow for later adjustment if required but should, in theory and in practise, protect against the need to increase rates. Vodafone would emphasise the need for certainty in the market combined with confidence that investment in the market would be "rewarded" at a predictable rate.

Question 8

Do you agree or disagree with the proposed inputs and assumptions in the proposed BU pure LRIC FTR model for the purposes of determining the fixed termination rate? Please provide reasons for your response.

22. Vodafone has no observation to make in this regard.

Question 9

Do you believe that there is any other data that is relevant to the proposed BU pure LRIC FTR model? If so, this data should be provided to ComReg for consideration in any decision.

23. Vodafone has no observation to make in this regard.

Question 10

Do you agree or disagree with ComReg's preliminary views regarding the maximum FTRs that FSPs should charge as set out in this document? Please provide reasons for your response, clearly indicating the relevant paragraph numbers to which your comments refer, along with relevant factual evidence supporting your views.

24. Vodafone has no observation to make in this regard.

Question 11

Do you agree or disagree with the use of a mid-point of the proposed maximum rates as the maximum rate for the entire regulatory control period? Please provide reasons for your response, clearly indicating the relevant paragraph numbers to which your comments refer, along with relevant factual evidence supporting your views.

25. Vodafone has no observation to make in this regard.

Question 12

Do you agree or disagree with ComReg's preliminary views regarding the implementation of any decision on maximum FTRs that can be charged by FSPs found to have SMP in their respective call termination markets? Please provide reasons for your response, clearly indicating the relevant paragraph numbers to which your comments refer, along with relevant factual evidence supporting your Views.

26. Vodafone has no observation to make in this regard.

Question 13

Do you agree or disagree with the proposed inputs and assumptions used in the development of the proposed BU pure LRIC MTR model for the purposes of determining the mobile termination rate as set out above and detailed in the MTR Specification Document? Please provide reasons for your response with references to specific paragraphs in this Consultation.

27. Vodafone has a number of concerns with respect to the assumptions and inputs used in the MTR model.

28. The **model assumes that additional sites are used to provide data services**. This is fundamentally incorrect. Mobile operators build new sites for voice coverage purposes. The fact that customers can then use data within the coverage range of new sites is a secondary effect. If the customer is out of range of an operator's mobile operator then the operator will not receive MTRs for incoming calls made to that customer, ergo the cost of building the coverage and traffic carrying capacity is incremental.

Question 14

Do you believe that there is any other data that is relevant to the proposed MTR model? If so, this data should be provided to ComReg for consideration in the final decision.

29. In the text above we have explained why we believe the model does not correctly model the roll-out of a mixed voice and data network. There has been inadequate time in this consultation to model alternative routing factors in ComReg's new model to properly reflect the real drivers of network investment. This additional work should be completed before a decision is made on the model outcome.

Question 15

Do you agree with ComReg's preliminary views regarding the maximum regulated MTR that MSPs with SMP should charge for the forthcoming price control period? Please

provide reasons for your response, clearly indicating the relevant paragraph numbers to which your comments refer, along with relevant factual evidence supporting your views.

30. Vodafone believes that ComReg should re-evaluate the proposed rates for the reasons outlined in previous questions. A more conservative approach may be in the best interests of industry and ComReg as it encourages investment strategies of MSPs, allows for a degree of uncertainty created by Brexit, protects consumers and minimizes the risks associated with basing rates on the exact outcome of a very complex model and process.

Question 16

Is there any other issue raised in this Consultation for which you would like to provide a response? Please provide reasons for your response, clearly indicating the relevant paragraph numbers to which your comments refer, along with relevant factual evidence to support your opinion/position.

31. Vodafone has no further comment to make.

Question 17

Having considered this Consultation are there any further comments you would like to make on the proposed decision to impose a price control of cost orientation in the associated Market Review Consultation? If so can you please refer in your comments to the relevant paragraphs in that decision and support any comments with economics based argumentation and facts. Please note that the text of the draft decision instruments at Annexes 1 and 2 of this document may be subject to change to reflect any final decision taken in regard to the decision instruments proposed in the Market Review Consultation.

32. Vodafone has no further comment to make.

Question 18

Do you have any views on the Regulatory Impact Assessment? Are there other factors that ComReg should consider in completing its Regulatory Impact Assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all facts or argumentation supporting your position.

33. Vodafone has no further comment to make.