



Commission for
Communications Regulation

Eircom and ComReg correspondence

Wholesale access pricing review

Reference: ComReg 15/67B

Date: 3/7/2015

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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22nd April, 2015

Access Network Cost Modeling – Outstanding Issues

Dear Donal,

I am writing to express some concerns regarding access network cost modelling and pricing proposals, which need to be addressed in advance of the publication of any ComReg consultation on this matter. I note that eircom's examination of the cost model is continuing, and in particular we are investigating why certain values are unexpected (either higher or lower). Where eircom identifies any new significant issue not raised in this letter we will notify ComReg as soon as practicable.

Introduction

ComReg has recently supplied eircom with an updated copy of its proposed Access Network Cost Model and informed us that it shortly intends to publish a consultation on that model. We have been informed that the consultation will include proposed price levels for the products known as Unbundled Local Metallic Path ("ULMP"), Single Billing Wholesale Line Rental ("SB-WLR"), Stand Alone Current Generation Bitstream, Dark Fibre, Duct Sharing, and Pole Access services. We understand ComReg will use the model to review various options for price controls, such as retail-minus, price caps, cost orientation, and directed price setting, for these products. We also understand that ComReg's consultation will include indicative values for prices that might result from each approach.

This cost model has been built to allow consideration of alternative costing approaches, including bottom up current cost accounting ("CCA") and historic cost accounting ("HCA"). We note that ComReg has indicated to us a preference for the use of HCA. We are somewhat surprised at this given the comments made by the European Commission in its letter of 3 April 2014 in relation to ComReg's proposed decision on its Wholesale broadband access market review and ComReg's response to that letter.¹ Our comments in this letter on the draft model and its proposed use are without prejudice to any submission we may make in response to

¹ Annexes 3 and 4 to ComReg decision D11/14.

the forthcoming consultation on whether this is in accordance with the Commission's NGA pricing recommendation² for each of these products or their component parts.

As a general matter we do agree with ComReg that the model reasonably accurately reflects eircom's costs as set out in its regulatory accounts for past years. However those costs would not appear appropriate for the regulation of future wholesale prices.

We understand that the outputs of the cost model will not be used in ComReg's forthcoming statement on its market review on Wholesale Fixed Voice Call Origination and Transit Markets (14/26) but will be used in its forthcoming reviews of the markets for wholesale local access at a fixed location and wholesale central access for mass-market products ("WLA" and "WCA" markets – markets 3a and 3b) and eircom's wholesale duct and pole products. As ComReg is aware the publication of values by it may set expectations, and drive the decision making of other operators, even in advance of any final decision, particularly where ComReg expresses a preference for a particular approach. If the expected prices are too high, operators may choose to build excess capacity rather than buy eircom's services, but if expected values are too low efficient build by eircom and others may be deterred. This current period is particularly sensitive given the forthcoming tender for the National Broadband Plan.

Given the importance of the forthcoming consultation and likely reliance on the proposed prices in it by eircom and other operators we would request visibility of the values which ComReg intend to publish, and the reasoning and preferences for particular costs and cost methodologies which will be expressed by ComReg, and an opportunity to comment on these – as responses to a published consultation may be too late to avoid these problems. eircom is in a unique position as far as this model is concerned as it is solely concerned with eircom's costs, eircom's network and eircom's regulatory accounts.

Issues with cost modeling used to inform price control

The model has been correctly populated with the eircom historic capital and operating costs for the access network for \approx derived from its regulatory accounts. However leaving aside issues around the correct cost modeling methodology there are a number of fundamental adjustments needed before the model can be used to inform a future price control for access services such as SB-WLR, Stand Alone CGA Bitstream, or duct and pole products. These are summarised below.

Connection deficit

The market practice in Ireland is now to offer consumers not just "free connection" but also low introductory rentals for an initial promotional period. Regulatory practice has been to reflect connection promotions at a retail level into wholesale prices (i.e. free retail connection becomes "free minus 14%" at the wholesale level).

² Commission Recommendation (2013) 5761 of 11.9.2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment.

The role of the cost model is to calculate the annual costs per service for access products that use copper delivery for existing customers to their telephone exchange. The costs of installing the first access services to a new dwelling are excluded from this output of the cost model. In order to stimulate service take-up connection charges for telephony and broadband access have been set well below the full cost for some time. The retail price cap which has applied since 2007³ has not allowed eircom to rebalance connection costs towards cost to reflect this continuing practice. Any price control for SB-WLR or Stand Alone CGA Bitstream must recognise this fact and allow installation costs to be recovered from service rental revenues over the average lifetime of the access services. The connection deficit averaged €X per connection in the 2013/14 Regulated Accounts (a combined PSTN/ISDN figure is published, which shows average revenue of €X per connection compared to average cost €X) but as there was no deficit on ISDN connection fees (which are not included in the model); the average deficit on single line PSTN is somewhat greater. The common practice of discounting connection fees is justified by the ability to recover the resulting deficit in the form of a monthly contribution over the life of the connected service. If this ability was removed (e.g. by capping rental charges at a level excluding the deficit or by directing the full cost be charged at point of connection) the impact on demand for connections, and hence future line volumes, may be very significant. This as ComReg is aware has a considerable adverse welfare effect.

We note that there has been a change in the mix of connections in recent times with a larger proportion of wholesale WLR orders being brand new connections (which are more expensive to serve than in-situ, pre-cabled or transfers from other operators). This factor may alter the overall average cost of connections in the future.

We understand that ComReg is aware of this issue and intends to deal with it but we are concerned about the details of any control that will be proposed (perhaps a basket of connection and rental prices to be aligned with the relevant costs in the round) and the review mechanism, if any. The relevant price control should reflect expected future connection types and costs.

Service volumes

There has been a steady reduction in the total demand for copper pairs since 2007. This was driven in part by the decline in total demand for fixed telephone lines and in part from the provision of fixed broadband and telephony on the UPC cable network. Over the period of any price control this downward trend will continue for the same reasons.

In addition, there are very significant initiatives which will influence network demand over the period 2016-2020. Eircom intends to provide FTTH to over 300,000 premises and the ESB/Vodafone joint venture has announced that their infrastructure will serve over 500,000 premises initially and will expand later⁴. eircom's FTTH rollout may re-use much of the eircom duct and pole network but will displace copper cables. The JV will completely bypass eircom infrastructure, including the copper network.

³ ComReg 07/76

⁴ <http://www.esb.ie/main/press/pressreleaseWS.jsp?id=5214>

The current model assumes constant volumes of copper pairs for all time in the future. The model's failure to correctly forecast volumes will give incorrect estimates of future unit costs. We understand ComReg will propose an ongoing review mechanism with assumptions updated on an annual basis. We are particularly concerned that any such review mechanism may be asymmetric, in that future price increases may be less likely than future price reductions. Projected service volumes should be the basis for any cost model and certainly for any multi-year forward looking cost oriented price control.

Trends in operating cost

In general reported⁵ operating costs for the access network have declined broadly in line with service volumes over the last 5 years. This has occurred primarily because of headcount reduction in the field force together with a fall in overhead costs as a result of the eircom company wide cost control program. Going forward service volumes will continue to decline; however operating costs trends will be quite different. There is upward pressure on pay costs (as manpower requirements are stable or increasing, and pay levels are increasing due to growth in the Irish economy⁶). In recent years pay costs have \propto \propto as ComReg is aware but in a forward looking cost model \propto

Projected capital and operating costs should be the basis for any forward looking cost based price control.

Use of depreciation charges and asset base from the Regulated (HCA) accounts

Our continuing examination of the access cost model has recently focused on the cost of poles, where the model outputs were unexpectedly low.

The two key assets in the access network are trenches (ducts) in urban areas and poles in rural areas. The implementation by eircom, as directed by ComReg,⁷ of a 2009 change in asset life from 20 to 40 years for trenches, and from 15 to 30 years for poles, has resulted in a temporary reduction in both annual depreciation charges (below the permanent expected level for the longer lives) and in the ratio of net book value to gross book value, for a period after the change. This change was made to ensure that the accounts reflected more closely the then re-investment rates implemented by eircom. This direction from ComReg understates both the depreciation and the net book value of assets for a period until the affected assets are replaced. The effect of the change also unwinds each year but the model currently proposes to use **both** FY14 depreciation charges **and** net book value as at June 2014 to set prices for the period covering FY 16 to FY 19. We will provide more detail on the asset

⁵ Both in eircom's statutory and regulatory accounts.

⁶ We note that the ESB/Vodafone JV, eircom's FttH and NGA/EVDSL build, and the NBP build may all be proceeding at the same time. While this will offer opportunities for economies of scale it might also lead to a temporary shortage of skilled labour, which could inflate wages levels.

⁷ ComReg 09/65. This led to a reduction in the cost based wholesale prices of LLU and call conveyance (origination, transit and termination)

life change as promised to Kjeld Hartog, but an example of the effect unwinding is as follows: when duct life moved from 20 to 40 years in 2009 an investment made in 1999 would be depreciated by 50%. The remaining 50% of the cost was then depreciated over 30 years giving an annual depreciation charge of 1.67% of the total investment. For investments made after 2009 the life of the duct asset was always 40 years giving an annual depreciation charge of 2.5%. As ducts are replaced over time the proportion of the investments giving rise to a 2.5% charge will rise and those giving rise to lower charges will necessarily fall. As replacement assets are likely to cost more than those they replace the net book value is likely to be over 50% on average.

Depreciation and net book value may also be understated if additional capital expenditure is required to meet USO QOS targets or to stabilise part of the rural network in anticipation of the implementation of the National Broadband Plan, when eircom will need to ensure that all pole routes utilised by successful tenders are fit for purpose. It is also likely that future costs will exceed the historic cost. For example replacing an existing decayed or damaged pole which is carrying cables with live service will be more complex than erecting a new pole ready to take its first new cable.

At a minimum, the expected HCA depreciation charges for the price control period must be calculated and reflected in the model, but to give regulatory certainty to potential bidders for the NBP (which may have a much longer lifetime than any new price control) ComReg should indicate the longer term trends in costs and prices over the NBP rollout period and commit to certainty on the pricing principles.

Further Analysis

Eircom will continue to examine the cost model and to understand unexpected values. Where significant issues arise, we will notify ComReg as soon as practicable.

Other access network pricing issues

For several of the services included in the cost model there are pricing constraints arising from regulations other than a simple finding of SMP in the service market. ComReg must resolve the potential conflicts between such regulations (examples of which we list below) before any legitimate cost oriented price control can be implemented.

Conflicting/Overlapping Regulation

SB-WLR and the Retail Price Cap

Telephony access prices are currently controlled such that annual retail price changes cannot exceed CPI – 0%.⁸ Under existing regulation the wholesale SB-WLR service has been subject to a control of the wholesale price at retail minus (at least) 14%. Therefore, if the move to a cost oriented price control for SB-WLR requires a price increase now or in the future (for either connection or rental), the retail control may need to change.

USO for telephony access

The current USO requires eircom to offer a single national retail price for PSTN access, whereas the cost model clearly indicates much lower unit costs for urban PSTN, and higher unit costs for rural PSTN. If eircom chooses – or is directed -to set a lower SB-WLR price in urban areas and a higher price in rural areas, it is unclear how the USO constraint will apply at the retail level in the light of the current framework. This is obviously not the case if there is no margin squeeze test applicable or the test is changed to deal with this potential conflict. We would seek some clarity over ComReg's intentions. As far as eircom is concerned it does not consider that if there is a cost orientated wholesale price control that on economic grounds any margin squeeze test should or needs to apply and this anomaly is supportive of our views. Eircom also finds it impractical to implement and communicate different prices in urban and rural areas.

We note that ComReg will review the USO in 2015 and there may be substantial revisions to the obligations – which may impact on operating costs and line volumes.

Stand Alone Broadband

The most recent ComReg decision on the WBA market⁹ found that competing infrastructure in urban areas (the Larger Exchange Areas or LEA) constrains eircom's ability to price significantly above its (urban) cost in those areas. So, the part of the WBA market where there is a higher risk that eircom can charge an excessive price is the rural market (i.e. Outside the LEA) - and that is characterised by high unit costs. ComReg has applied cost orientation to current generation WBA with a particular requirement that price increases outside the LEA must be justified with reference to a cost model, which considers ADSL costs and links wholesale broadband access charges to WLR prices¹⁰. These requirements must be considered (or altered) when regulating prices for SA-Broadband using the access model.

We note that the Access Network Model currently considers the physical infrastructure costs in each main distribution frame (MDF) area but applies nationally averaged mark-up for the network electronics required for WBA or WLR.

⁸ As a result of ComReg 07/76

⁹ D11/14 (document 14/73R) e.g. section 4.5

¹⁰ D11/14, Decision Instrument Regulation 4.6

Whilst theoretically eircom can ensure national cost recovery by charging a higher price for the Bitstream service in rural areas the WBA decision is not clear on how this should be done. In any event the market reality at the retail level is that eircom – and other operators – have not found it feasible to have lower prices in urban areas and higher prices elsewhere. Operators simply cannot afford local advertising and differential pricing for the same service dealt with by one call centre, whilst seeking to improve customer care. It is instructive to see that a central requirement for the NBP will be that wholesale and retail prices in rural areas must mirror those in competitive urban areas.

Regulatory Impact Analysis (RIA): Market Reaction to Prices

We note that differing approaches may encourage different behavior by eircom and by operators choosing to use eircom's wholesale services or to invest in their own infrastructure. For example, geographically de-averaged prices might drive more take-up of LLU in the LEA and bitstream outside LEA whereas nationally averaged controls might encourage bitstream everywhere. Conversely, if an operator has already sunk costs into LLU, and will only expect to use bitstream outside the LEA, it might argue for nationally averaged bitstream prices that would be lower outside the LEA.

Therefore, the RIA must consider how existing and potential players will react to various combinations of controls proposed.

Continued use of HCA cost methodology

eircom is concerned at ComReg's continued reliance on HCA concepts as a means of sending signals to eircom on matters unconnected to the cost model such as the perceived need for the purposes of eircom's USO obligations (including fault rate and repair times, and delivery targets) to replace existing network assets in the NBP footprint.. This reliance also indicates a lack of understanding of the extent to which eircom is subject to national constraints on its pricing as discussed above. It has no evidence of any differential retail pricing outside the LEA for a number of years but justifies use of modified HCA prices to prevent this occurring.

Form of Price Control

We have previously indicated our concerns that in ComReg's practice price controls are open ended, and do not have sunset clauses linked to the statutory requirement for three yearly market reviews¹¹. For example, the LLU price control set in 2009 clearly referenced model outputs for 2009, 2010 and 2011 and set an exact average price for that period. The required review was not undertaken in time to set a price control for 2012 and has in fact never been undertaken. The control is still in force in 2015 and is unlikely to change until well into 2016: based on long outdated costs and volume assumptions. Given the number of markets where market reviews are overdue this causes a concern that any new prices indicated using 2013/14 costs and volumes might be expected by operators to apply for an extended period without review, even if they clearly become outdated due to cost and volume changes. As a

¹¹ Article 16(6) of the Framework Directive, as transposed into Irish law by paragraph 27(6) of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011.

matter of good regulatory practice ComReg must address this issue in any consultation, and indicate forward looking price controls which will only continue to apply after 3 years following the appropriate notification of a reasoned extension by ComReg to the European Commission and no objection from the Commission.

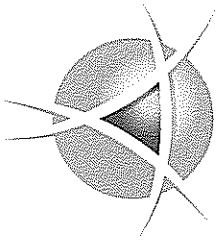
I suggest that it might be useful to meet with our teams to formally discuss the matters set out in this letter and look forward to doing this in the near future. I look forward to your response.

Yours sincerely



Robyn Durie
Interim Head of Legal and Regulatory

cc. Paul Walsh, William McCoubrey



Commission for
Communications Regulation
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6 May 2015

Ms Robyn Durie
Interim Head of Legal and Regulatory
Eircom Limited
1 Heuston South Quarter
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Dublin 8

Ref: Access Network Cost Modelling

Dear Robyn,

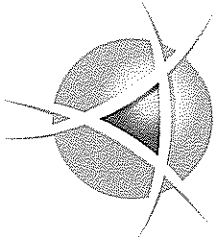
Thank you for your letter of 22 April.

I note the comments in your introduction. We are very much aware of the need to ensure that appropriate price signals are set and to ensure that Eircom is allowed to recover its efficiently incurred costs. We are also cognisant of our obligation to take the utmost account of relevant recommendations issued by the European Commission including the recommendation on costing methodologies¹. Our consultation will explore these issues thoroughly.

We note your view that the publication of values in the forthcoming consultation "may set expectations, and drive the decision making of other operators, even in advance of any final decision". I do not accept that the mere publication of proposals as part of a consultation will leave it "too late" to refine or change our position. A consultation process with no prospect of a change of position based on reasoned responses would be a pointless exercise. Nevertheless, we are anxious to ensure that any proposed prices in the consultation reflect the best information available as of the date of publication and I trust that Eircom will co-operate fully with any outstanding requests for further data in this regard.

While you state that Eircom is in a "unique position" in this context I do not entirely agree. Decisions taken on foot of the consultation may have significant consequences for other industry players and for end users of telecommunications services (a point you have raised later in the letter in the context of your comments on the RIA). I believe that it is therefore appropriate that most of the issues raised in your letter be explored in the context of a public consultation.

¹ 2013/5761 Commission Recommendation on 11 September 2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment.



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I note that Eircom has had full access to the model as it has been developed. We have found this useful as a means of ensuring that it is correctly structured and includes an accurate measure of cost. We plan to continue this approach as we move towards the consultation and decision.

As noted above your letter touches on various policy matters which should, in my view, be addressed publicly. We are therefore considering whether your letter should be published as part of the consultation process. I draw your attention to our published guidance on this matter² and invite you to submit whatever comments you may have in this regard.

Yours sincerely

Donal Leavy
Director,
Wholesale Division

² ComReg Document No. D05/24 dated 22 March 2005.
Commission for Communications Regulation
An Coimisiún um Rialáil Cumarsáide

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Access Network Cost Modelling – Outstanding Issues

Dear Donal,

Thank you for your letter of 6 May.

I note what you say about the effect of the publication of values in your forthcoming consultation on the draft access network cost model. Whilst I agree that a consultation process with no prospect of change of position based on the responses would be a pointless exercise there is nevertheless an expectation that, following the significant amount of work which has gone into the draft cost model, ComReg is content with its accuracy. This has proved to be the case with many consultations. eircom is working closely with your colleagues in fulfilling their outstanding requests for further data and has provided the further material which you have formally requested.

A number of general issues have emerged in respect of the model which remain of considerable concern to us. The first relates to the relevance of the LEA discount which applied from May 2013 to December 2013.

Your officials in meetings have repeatedly remarked that 'eircom was happy with a WLR price of €15 in 2014' and appear to believe that this price somehow reveals the true cost of Wholesale Line Rental (WLR). We wish to stress that the €3 temporary discount applied to only those WLR lines with an associated broadband product in the Larger Exchange Area (LEA). This resulted in a temporary price of €15.02 for only a portion of lines in a limited part of the state. It did not apply at any time to all WLR lines. When it was introduced it applied to about 27% of WLR lines and by the end of the temporary discount period it applied to less than 47% of lines. The effective price nationally varied from €~~X~~ in July 2013 to €~~X~~ in December 2014 giving an average monthly rental over the 18 month period of €~~X~~.

This discount was always intended to be temporary and was designed as a marketing investment in next generation broadband. This was made clear at the time to ComReg¹ and to other operators. The Access Reference Offer published in February 2013 explicitly showed that the discount would run only until December 2014. The marketing message it facilitated

¹ Indeed discussions with ComReg started in December 2011.

was one of 'higher speed at no additional charge'. Subsequent decisions to extend the NGA footprint by eircom, thus increasing the size of the LEA and the scope of the discount, caused the cost to increase beyond the scale originally envisaged. For this reason the discount was ended in December 2014. eircom informed ComReg and industry of this decision in June 2014 following a review and industry consultation. Rather than this discounted price revealing the true cost of WLR, eircom's inability to maintain the discount beyond the scheduled end date indicates the need to maintain the current WLR price to ensure our investment plans remain viable.

There also appears to be some misunderstanding of the impact of access price controls on both investment in high speed broadband at a commercial level and on the National Broadband Plan (NBP). As you know commercial companies invest where they expect a return which is greater than their cost of capital (and which contributes to free cashflow) and not where a lower return is likely. The unit costs of investment in NGA broadband are typically lower in areas where greater concentrations of customers are found. eircom has attempted in the past unsuccessfully to apply different retail prices in different parts of Ireland. A good example was the differential pricing of rural broadband by eircom and other operators. Competitive pressures forced all operators to adopt national prices. Like our significant competitors we now apply national prices, as we are obliged to do with voice services. The single national retail (or wholesale) price determines which areas are commercially viable and which are not. The decision to invest is therefore dependent on the expected price levels. The lower the expected price, the fewer areas that will be commercial – and the bigger the shortfall in areas that are not commercially viable.

When we consider the impact of the NBP the effect of lower prices is even more stark. The NBP requires a gap subsidy that makes uncommercial areas profitable. At a lower price fewer areas are profitable and the short fall in the previously profitable areas gets bigger.

Whilst the copper network is largely built, the NGA access network has not been completed nationally. The total revenue per customer will determine the extent to which it is viable to build out that network on a commercial basis. In the context of the NBP lower regulated prices will make the area which commercial investment might cover smaller and the NBP area larger. This will mean that the required subsidy will need to be greater.

We are not suggesting that ComReg should artificially manipulate urban prices. On the contrary, urban prices should be set by competition. There is currently vigorous competition between, among others, eircom and UPC. However, we would be very concerned if regulation by ComReg artificially reduces the price below the level the market is prepared to pay in the dense urban areas and thereby makes commercial investment unviable elsewhere.

As the Commission Recommendation² expressly acknowledges lower wholesale prices for legacy voice services and current generation broadband may translate into higher retail prices for next generation broadband. This effect may be true even if the prices for wholesale NGA remain unchanged. eircom explained this to ComReg at the time of its NGA launch and the introduction of the temporary discount referred to above. Low LLU and current generation

² Commission Recommendation of 11.9.2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment.


broadband prices can create a substantial gap between prices for CGA and NGA which in turn can depress demand for next generation services. This means that the fixed cost of next generation services, such as systems and product development, need to be recovered over a smaller customer base, with higher unit costs per active user.

If NGA prices were to be reduced in a corresponding manner for current generation services investment will be further deterred with few areas served and higher unit costs for all retailers, and ultimately higher retail prices. Even those providers with their own infrastructure may choose to match the higher prices of their competitors.

The scale of damage to consumer welfare and to competition in the access market arising from this effect should be reflected in any Regulatory Impact Assessment accompanying a proposal for significant reductions in wholesale access prices. Such reductions would also rule out the possibility of eircom not increasing retail prices.

You suggest in your letter that the content of my letter of 22 April and your response should be addressed publicly. This is something which eircom would welcome, as well as publication of any further correspondence between both parties.

Yours sincerely



Robyn Durie
Interim Head of Legal and Regulatory

cc. Paul Walsh, William McCoubrey, Carolan Lennon, Donal Donovan,

Mr Donal Leavy
Director Wholesale Division
Commission for Communications Regulation
Abbey Street
Dublin 1

3 June, 2015

Dear Donal

ComReg Draft Copper Access Model

I refer to Caroline Jordan's email to Paul Walsh of 20 May enclosing the latest draft of the ComReg copper access model and associated file. We have a number of comments on this draft which are set out in the attached note and annexes.

By way of summary, the draft results presentation and the associated model do not currently provide an appropriate basis to proceed to a consultation on price controls for network access services. The principal reasons that eircom finds this to be the case are:

- The modelling approach of projecting eircom historic costs for 2014 forwards as an appropriate basis for pricing key SB-WLR and Stand Alone Bitstream services for the period from 2017-9 is simplistic and flawed. Both annual capital charges and operating costs should vary in line with input cost trends, re-investments required and a stable return over the economic life of regulated assets.
- Despite the well-established trend in declining volumes of lines delivering access services on the eircom network the historic 2014 operating cost per line is used as the cost input for later years when lower volumes will not allow full cost recovery at this rate.
- The draft results indicate a bias towards setting prices based on a simple average of total service costs increasing in each year through the control period. Such controls send the wrong signal to operators building long-term business plans around wholesale access to the eircom network. The example of pole access, where even limited re-investment leads to unit cost increases of 5% per annum, demonstrates that a glide path of the form of $CPI + X\%$ is necessary - both for eircom and for the long term access seeker.
- The bottom-up modelling used to inform LLU prices may be largely fit for purpose but the historic costing that ComReg has indicated will be used to inform price controls on other network access services is in need of further development. In particular the service specific costs for stand-alone Bitstream, SB-WLR ISDN-BRA, ISDN-FRA, and ISDN-PRA need

close attention before the model can provide a sound basis for a comprehensive price control by cost orientation.

- Aside from the major issues summarised above the presentation material and cost models communicated to eircom on 20th May have a number of inconsistencies, ambiguities, and omissions which are outlined above that must be addressed.

These comments are in addition to those previously made in our letters of 13 and 28 May. We would be happy to meet with you and your team to discuss any of these comments if that would be helpful. Whilst we appreciate that ComReg does not wish to conduct a preliminary consultation with eircom, the contents of the model and its proposed use are of material importance to the eircom business and it is important both for us and for ComReg that the model is correct. That is why we have commented in some detail on the draft.

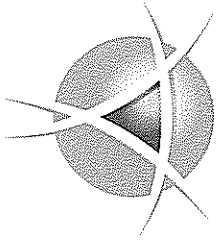
Yours sincerely



Robyn Durie
Interim Head of Legal and Regulatory

Cc Caroline Jordan, Kjeld Hartog – ComReg
Paul Walsh, James O’Cleirigh, Kevin Deaton - eircom





Commission for
Communications Regulation
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11 June 2015

Ms Robyn Durie
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Ref: Access Network Cost Modelling/Poles Access

Dear Robyn,

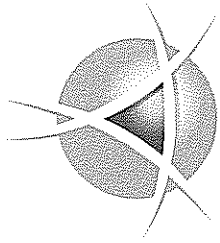
Thank you for your letter of 13 May. I note that I have also received an email from your colleague Carolan Lennon dated 21 May and as her mail also raises matters to do with the pricing of the access network, I have decided to address both pieces of correspondence together. I have copied Ms Lennon with this response. I acknowledge receipt of a further letter from you dated 3 June in relation to which I will revert separately.

In relation to your letter of 13 May and Ms Lennon's e-mail, we note your various concerns and we will consider these as part of the larger consultation process. Generally, I do not propose to respond to the points made there in detail, as I do not consider such an approach to be either helpful or appropriate.

I am surprised at the purported quotation of ComReg officials (I understand that you did not attend any such meetings) and I am advised that your letter is a misrepresentation of what was said. In any event we are fully aware that the current cost modelling exercise is independent of Eircom's decision in the past to offer a discount in the LEA.

I would also like to take the opportunity to correct two misapprehensions that are apparent in Ms Lennon's e-mail of 21 May. First, in relation to the historical cost accounting (HCA) methodology for poles, Eircom appears to have misunderstood our proposed approach; I refer you to slide 218 of the specification document¹ in this regard. Second, in relation to the publication of a pole access product, Ms Lennon refers (at item 3) to ComReg's "desire to have a fit for purpose Pole Access product published and launched by eircom". I do not need to remind you that Eircom is under ongoing obligations inter alia to publish a reference offer, to negotiate in good faith and to provide access on a non-discriminatory basis. I also note Eircom's announcements regarding the provision of FTTH which presumably will involve the

¹ Contained in the email from Caroline Jordan to Paul Walsh on 20 May 2015.



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self supply of duct and poles access. We continue to monitor the situation and reserve our rights in respect of possible compliance action.

I note your comments regarding NGA and investment but find these somewhat puzzling since the proposed consultation is concerned only with current generation services. NGA VUA and NGA Bitstream are not subject to a cost orientation obligation at this time.

Regarding your views on the European Commission Recommendation² I note that any proposed measure arising from the consultation will be notified to the European Commission. We will take utmost account of any comments arising from that process.

More generally I must express my disappointment at the lateness of Eircom's engagement on these matters. Eircom has been in possession of the model since July 2014 and confirmed to ComReg³ on 19 August 2014 that "*After our initial analysis eircom is satisfied that the model is robust and complete...* ". We proceeded to draft our consultation on that basis. Since then there has been extensive engagement by us in an effort to ensure that the model is as far as possible reflective of the underlying cost methodologies. Yet, as far as I am aware, the first indication that Eircom had any concerns was in your letter to me of 22 April 2015. The reasons for Eircom's change of heart have never been articulated by it and the motivation for its new approach is quite unclear to us.

I welcome your indication that the content of your letter of 22 April and my response as well as all subsequent correspondence between us should be addressed publicly and therefore propose to publish this correspondence as part of the consultation process. Therefore I would ask you to let me know by return what (if any) material contained in your correspondence (including that of Ms Lennon) to date should, in your submission, be treated as confidential and why. I request in particular clarification as to what if any elements of your letter of 28 May are to be treated as commercially sensitive.

Yours sincerely

Donal Leavy
Director
Wholesale Division

Cc: Carolan Lennon

² Commission Recommendation dated 11 September 2013 on 'Consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment'.

³ Email from James O'Cleirigh to James Mulholland.
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Commercially confidential in part

Mr Donal Leavy
Director Wholesale Division
Commission for Communications Regulation
Abbey Street
Dublin 1

17 June, 2015

Dear Donal

ComReg draft copper access model

Thank you for your letter of 11 June. This letter responded to my letter to you of 13 May and ~~to~~.

My letter to you of 13 May, in common with our earlier correspondence addressed points of concern to eircom about ComReg's draft cost model, in particular the discount in the LEA introduced to encourage migration to NGA and the general issue of the effect on eircom's business of lower current generation wholesale prices, and needs to be read in context with the slightly longer list of concerns which eircom raised in its letter of 22 April and in various meetings with ComReg.

~~to~~

I do understand that ~~to~~ that ComReg explained how the proposed approach to pole costs was now being dealt with in the model. This followed the extensive discussion of pole costs in my letter of 22 April and subsequent discussions between eircom and ComReg. What appears to remain outstanding is how pole pricing interacts with the pricing of other services, such as WLR.

I am somewhat surprised that you do not understand our comments in relation to the proposed consultation and its effect on NGA and eircom's investment in NGA. The point made in my letter of 13 May was that the value of the Wholesale Line Rental (WLR) service, if it could be ascertained from the model, was relevant to eircom's investment plans. As you know the proposal in the latest iteration of the cost model appears to reduce the monthly PSTN WLR price from ~~to~~ to ~~to~~. At predicted volumes this would result in a direct reduction in revenue to eircom of in excess of ~~to~~ per annum. Other reductions on ISDN or standalone broadband may arise, and wholesale price changes will ultimately impact the retail market. This reduction in overall revenue will necessarily need to be taken into account when considering the extent of NGA investment, a point which is dealt with in the EC Recommendation¹. eircom is only able to invest if it has sufficient revenue. In addition, if the

¹ Of 11 September 2013.

WLR price goes down the price for NGA plus Single Billing WLR (NGA POTS) will go down so there is a direct effect on NGA in the Irish market. To the extent that some NGA services may not be directly impacted, the change in relative price between CGA and NGA may deter the take-up of NGA.

It probably does not advance matters considerably to debate whether or not eircom has accepted that ComReg's draft model is fit for purpose or whether eircom expressed its concerns at a late stage in the process. I do note that the email you referred to was in the context of whether the draft model accurately included inputs to the model from eircom's 2013 regulatory accounts (and was subject to the model being updated from the 2014 accounts). As you can see from the quoted email that statement was expressly subject to the consultation between eircom on the draft model moving onto the next phase of engagement, which specifically included subjects including the economic analysis around the selection of the appropriate capital, annualisation and operating cost treatment for each service. These topics were specifically raised with ComReg at that time and subsequently as you will see from the quoted email and all of the correspondence since that time. Although it was before I joined eircom, I have seen emails reflecting extensive engagement between ComReg and eircom during November 2014 and continuing steadily throughout December and on to March of this year. I understand that despite many requests a pole price was not given in the draft model until March 2015.

It does appear in part that the debate on the draft model has continued for so long because initially it was developed with your consultants on a bottom up LRIC basis but more recently the bulk of the prices are being set by reference to historic costs - and in particular to the treatment of those costs in the eircom HCA accounts of FY13/14.

eircom feels that it is appropriate for ComReg to deal with the substance of the points which have been raised and not to defer them to the consultation process. As we have made it clear once the consultation is published industry will accept as a starting point ComReg's draft. eircom itself needs clarity on the points it has raised around pole pricing and its impact on the prices of other services to ensure that its pole access product is appropriately priced.

I note your concern around the pole access product. eircom yesterday responded to industry's last list of issues and we hope to notify the product to you around 10 July, hopefully with a publication date of 10 August. Given that the model is only at a draft stage, the price to be notified will be eircom's best estimate.

✂ Nor should the figures marked in yellow in this letter, which are obviously commercially confidential, be published. The same reasoning applies to the figures in relation to connection deficits in my letter of 22 April

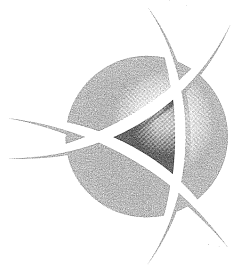
I should say in conclusion that eircom remains willing to engage with ComReg on the matters raised in my letters of 22 April, 13 May and 3 June and would seek to do so prior to publication of ComReg's planned consultation. We note for the record that our letter of 3 June was in response to a specific request from ComReg

Yours sincerely



Robyn Durie
Interim Head of Legal and Regulatory

Cc Caroline Jordan, Kjeld Hartog – ComReg
Carolan Lennon, Paul Walsh, James O’Cleirigh, Kevin Deaton - eircom



Commission for
Communications Regulation
Coimisiún Um
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3 July 2015

Ms Robyn Durie
Interim Head of Legal and Regulatory
Eircom Limited
1 Heuston South Quarter
St John's Road
Dublin 8

Ref: ComReg Draft Copper Access Model

Dear Robyn,

Thank you for your letters of 3 June and 17 June (together referred to as "the letters").

In relation to the letters, and more specifically your letter of 3 June which is a response to the latest draft of the copper access model, we note your various concerns and in some instances we have updated the draft copper access model, where we felt this was appropriate.

ComReg's preliminary views are set out in the wholesale access pricing consultation and draft decision document, which will be published on the ComReg website in ComReg Document No 15/67, later today. We welcome your views on the consultation document and the draft copper access model by Friday, 28 August, 2015.

The updated draft copper access model and the associated files are separately attached in the email accompanying this letter.

Yours sincerely,

Donal Leavy
Director
Wholesale Division

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