Commission for
Communications Regulation

Decision Notice

ComReg's Review of the Text of *eircom's* Reference Interconnect Offer

Decision No:	**D10/04**
Document No:	**04/84a**
Date:	**3rd August 2004**

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1 Foreword by the Commissioner

This Decision Notice concludes ComReg's review of the text of *eircom*'s Reference Interconnect Offer (RIO). It is the result of a lengthy consultation process carried out by ComReg and the industry over the last two years.

eircom's RIO is a fundamental document in the electronic communications markets as it sets out the terms and conditions on which interconnect is available at a wholesale level between *eircom* and other operators.

eircom is currently the only operator with Significant Market Power (SMP) in the fixed telephony networks and services markets and as such is required to publish a RIO, and to comply with its obligations of transparency and non discrimination.

The role of the National Regulator is to ensure that the RIO is compliant with the relevant legislation. The RIO is *eircom's* document, and any conditions which are imposed on it must be objectively justified, and must be proportionate to appropriate regulatory goals. ComReg's objective in undertaking this review was to establish a definitive, transparent, non-discriminatory and compliant version of the text of *eircom's* RIO.

ComReg is of the opinion that the RIO in the accompanying RIO document to this paper is compliant, transparent and non discriminatory.

The establishment of an agreed and approved version of the RIO will ensure that the interconnect agreements which incorporate the RIO will be transparent, fair and non-discriminatory.

Comments on the Draft Decision were received from the following parties:

- *eircom*
- Esat BT
- Vodafone.

The Commission wishes to thank all of the respondents to the draft decision notice for their help in reaching its decisions. The responses are available for inspection at the ComReg office, excluding confidential material that respondents specifically asked to be withheld.

Isolde Goggin,
Commissioner.

2 Introduction

In May 2004, ComReg published its Response to Consultation paper[1] which summarised the issues consulted on in the preceding consultation paper and comments received from respondents, and set out ComReg's proposed decisions on each of the issues. The paper invited further comments from interested parties on the draft decisions in order to assist ComReg in reaching its final position.

ComReg would like to address comments made by two respondents who sought clarification on how the decisions taken in this Decision Notice would affect individual *eircom* Interconnect Agreements. In this Decision Notice ComReg is directing *eircom* to amend its RIO to incorporate the amendments directed in this paper. *eircom* has thirty calendar days to amend its RIO to comply with this decision.

ComReg understands that *eircom* intends to issue revised Interconnect Agreements to all interconnected operators following the publication of this Decision Notice. It is ComReg's hope that operators will engage and revise their respective interconnect agreements with *eircom* to incorporate the changes to the RIO made in this Decision Notice in an efficient and positive manner.

ComReg is currently undertaking an analysis of communication markets in Ireland, in accordance with the requirements of the regulatory framework. The markets for interconnection will be addressed in this market analysis. ComReg has commenced its analysis and will issue a consultation paper in the coming months.

2.1 Guidelines for Reading this Decision Notice

This Paper (04/85a) together with the accompanying document referred to as the "RIO Document" (04/85b) is published in Adobe PDF format. Because of the size of the documents they have been put into a zip file. We recommend that you extract the contained documents to your own C drive or network folder in order to review.

2.2 Scope of Decision

The review which ComReg carried out resulted in a number of proposed changes to *eircom*'s RIO. The Draft Decision Notice identified the actions which ComReg wished to take, and explained the rationale behind the more significant changes.

The RIO Document which accompanied the Draft Decision Notice had been amended to take account of the significant changes discussed in the Draft Decision paper, and to incorporate more minor changes proposed during the consultation process.

[1] Please see the related ComReg documents 04/53 and 03/140 available on ComReg's website www.comreg.ie

In order to meet ComReg's objective of establishing a definitive and compliant version of *eircom*'s RIO, ComReg proposed directing *eircom* to adjust its RIO to incorporate the amendments contained in the revised RIO document accompanying the Draft Decision Notice. ComReg stated that the decision should be read as an overall decision incorporating the specific decisions in the Draft Decision Notice.

2.2.1 Views of Respondents

No comments were made by two respondents. One respondent said it would outline its position in relation to the specific draft decisions later in the paper.

2.2.2 Commission's Position

In order to meet ComReg's objective of establishing a definitive and compliant version of *eircom*'s RIO, ComReg is directing *eircom* to adjust its RIO by incorporating the amendments contained in the revised RIO document accompanying this Decision Notice. This decision should be read as an overall decision. This overall decision is followed by consequent specific directions (Direction No1 to Direction No 27).

Decision No. 1.
***eircom* is to adjust its Reference Interconnect Offer by incorporating the amendments contained in the revised RIO Document accompanying this Decision Notice. In furtherance of this Decision and for the purpose of further specifying requirements to be complied with relating to obligations imposed by Regulations 8 and 17 of the Access Regulations and Regulations 13 and 31 of the USO Regulations, *eircom* is directed to comply with the specific directions (Directions 1 to 27). This decision is to take effect thirty days from the date of the Decision Notice.**

3 *Eircom*'s RIO: Main Body

3.1 Definitions and Interpretations clause - Clause 2

ComReg's proposed changes to Clause 2 of the main body of *eircom*'s RIO were intended to address transparency issues and administrative difficulties in incorporating developments to the RIO.

ComReg aimed to create a streamlined Core main body of text, which would be supported by stand alone documents. Therefore in its draft decisions, ComReg directed that the Non Disclosure Agreement, the Network Plan in Annex E, the SLA for Interconnect Paths in Annex D, the CLI Code of Practice in Annex G, the SLAs for Non Geographic Number Portability and Carrier Pre Selection and forms (Billing forms and Order forms for Interconnect paths and PPCs) should all be removed from the Core RIO document[2].

ComReg further directed that these documents would remain part of the Interconnect Agreement but physically separate from the Core RIO document, and would be available as standalone documents on *eircom*'s wholesale website. The text process mandated in D10/02 applied to all elements of the Interconnect Agreement. *Eircom* was reminded to ensure that all the RIO related documents were available on its wholesale website in a transparent manner so as to allow new entrants seeking interconnect and existing interconnect customers easy access to these RIO documents.

In the accompanying RIO Document these new stand alone documents are presented subsequent to the Core RIO document. RIO documents that are already stand alone documents on *eircom*'s website are not attached to the accompanying RIO Document as these have already been deemed compliant. However as discussed in later sections, a revised STRPL and the introductory text to the RIO Price List are also included in the accompanying RIO Document to this paper to show the changes to these documents directed by ComReg in this Decision Notice.

Further, it was ComReg's view that the proposed restructuring of the RIO, and the application of this decision such that there would be a compliant RIO with an established process for updating, meant that the order of precedence was no longer relevant. ComReg therefore proposed to remove the order of precedence from Clause 2.

3.1.1 Views of Respondents

The draft decision was accepted by the three respondents.

One respondent sought to maintain the listing of documents in Clause 2.4 in an order of precedence and argued that ComReg's inclusion of additional documents within

[2] The Core RIO consists of the main body, Annex A- Definitions, Annex B- Billing and Payments, and Annex C Service Schedules.

the RIO document set which had a contractual impact increased the lack of clarity between documents going forward.

eircom accepted the draft decision but wanted to make a few clarifications. It stated that in the event of a material change to the Core RIO, the NDA and the Network plan it would work with operators to update their contracts. It believed that for the most part the management of change was addressed by the proposed Amendments Clause. For the remaining documents listed in Clause 2 it stated that the operator would be bound by the most up to date version of each document published on *eircom*'s website. Lastly this respondent proposed inserting text "signed by the Parties" after the NDA and Network Plan in the proposed Clause 2.4 which it believed more accurately reflected the status of these documents. It also submitted that references to the NDA and the Network Plan in Clauses 4, 10, 13 and 20 of the main body should be amended to reflect this status.

3.1.2 Commission's Position

ComReg does not agree that the absence of the Order of Precedence increases the likelihood of a disjoint or lack of clarity between documents in the RIO set. Having regard to the revised RIO and notably the revised Clause 2 of the Main Body, ComReg believes that the objective of clarity and transparency is met.

ComReg agrees to the additional text proposed by one respondent and agrees to remove the words "as published on the *eircom* wholesale website" in Clauses 4, 10, 13 and 20 of the main body for the NDA and the Network Plan.

Direction No. 1.
***eircom* is directed to amend Clause 2 of the Core RIO document in accordance with the changes to Clause 2 set out in the RIO document attached. This decision is to take effect thirty days from the date of the Decision Notice.**

Direction No. 2.
***eircom* is directed to physically remove the following documents from the Core RIO document and to publish these documents as stand alone documents on the *eircom* wholesale website: the RIO Non Disclosure Agreement, the Network Plan, the SLA for Interconnect Paths, the CLI Code of Practice, the SLAs for Non Geographic Number Portability and Carrier Pre Selection and forms (Billing forms and Order forms for Interconnect paths and PPCs). These documents remain part of *eircom*'s Interconnect Agreement through their reference in Clause 2 of *eircom*'s RIO. This decision is to take effect thirty days from the date of the Decision Notice.**

Direction No. 3.
***eircom* is directed to ensure that all RIO related documents are available on its wholesale website in a transparent manner so as to allow new entrants seeking interconnect and existing interconnect customers easy access to these RIO**

documents. This decision is to take effect thirty days from the date of the Decision Notice

3.2 Interconnect Services clause – Clause 5

ComReg sought views on a pre-consultation submission from one operator which suggested the insertion of additional clauses to Clause 5 of the Core RIO document relating to the treatment of calls across the interconnect for which no agreement or schedule had been drawn up.

ComReg agreed with the points made in argument against the addition of the proposed clauses by two respondents and therefore ComReg proposed not to direct the inclusion of the additional clauses to Clause 5 of the Core RIO document.

3.2.1 Views of Respondents

In response to the Draft Decision Notice, only one comment was made in relation to this Clause. One respondent asked ComReg to reconsider its position.

3.2.2 Commission's Position

ComReg continues to agree with the points made arguing against the addition of the proposed clauses by two respondents and therefore ComReg has decided not to direct the inclusion of the additional clauses to Clause 5 of the Core RIO document.

3.3 Billing & Payment clause - Clause 9

In the Draft Decision ComReg proposed to direct *eircom* to amend Clause 9.2 of the Core RIO document in accordance with the changes to Clause 9.2 set out in the RIO document attached. This decision was to take effect thirty days from the date of the Decision Notice.

3.3.1 Views of Respondents

Two respondents agreed with ComReg's draft decision. One respondent did not make any comment.

3.3.2 Commission's Position

ComReg considers that the revised Clause 9.2 constitutes a clear statement of charges payable by either party to the Interconnect Agreement.

Direction No. 4.
***eircom* is directed to amend Clause 9.2 of the Core RIO document in accordance with the changes to Clause 9.2 set out in the RIO document attached. This decision is to take effect thirty days from the date of the Decision Notice.**

3.4 Network Alteration & Data Management Amendment -Clause 11

ComReg sought views on a pre-consultation submission from one operator which suggested alternative wording to replace the existing Clause 11, Network Alteration and Data Management Amendment.

In the interests of clarity and to bring into alignment with the O&M Forum's review, ComReg agreed to replace the existing clause with the clause proposed in the consultation paper subject to some minor amendments.

3.4.1 Views of Respondents

One respondent pointed out another minor amendment to this Clause. The amendment was to change the wording in two of the paragraphs from 'The minimum charge for such a…' to 'The charges for such a…', the rational being that minimum is not relevant here and the actual prices apply.

Another respondent expressed disappointment that ComReg did not address the issue of the non-charging of Network Alterations where sufficient advance notice is given.

3.4.2 Commission's Position

ComReg agrees with the additional amendment to this Clause as proposed by one of the respondents.

On the subject of non-charging of Network Alterations, ComReg does not intend to address this issue in this consultation. However, this subject may be brought to the attention of the Operations and Maintenance Forum where all interested parties would be given a chance to comment.

Direction No. 5.
***eircom* is directed to amend Clause 11 of the Core RIO document in accordance with the changes to Clause 11 set out in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice.**

3.5 Breach, Suspension and Termination clause - Clause 18

ComReg's draft decision proposed a significant revision to the existing termination clause. It proposed that the procedures for dealing with non-payment should be:

- Default in payment triggers breach notice – 10 days to pay;
- Failure to pay within 10 days triggers credit vetting to establish potential financial risk;
- If justified by vetting, a form of financial security may be requested – 30 days to put in place;

- Refusal/inability to arrange security triggers termination within 30 days;
- Any 4 payment breaches within 24 months triggers termination.

ComReg considered the comments made by one of the respondent to separate clause 18 from the proposed credit vetting procedures in Clause 32. ComReg stated it remained of the opinion that the linking of these two Clauses was sensible and beneficial.

ComReg accepted the amendments suggested by two respondents to its proposed sub Clause 18.20 and inserted wording to the sub clause to state that breach notices must have been issued on the three previous occasions. ComReg also accepted that the period for termination notice following a fourth Payment Breach within a twenty four month period shall be thirty calendar days.

In order to prepare operators and to ensure that the new termination Clause is not applied to a current interconnect invoice (whose due date is pending) ComReg is directing that the new termination Clause will become effective in respect of invoices which are initially raised thirty days after the date of the Decision Notice.

3.5.1 Views of Respondents

One respondent made no comment. One respondent disagreed for the same reasons given in its previous response to the consultation paper.

The third respondent accepted most of ComReg's revised Clause but strongly urged ComReg to further shorten the overall timeframes. While this respondent agreed with the initiation of credit vetting under Clause 19 when a breach under sub clause 18.15 was not remedied, it proposed that termination measures should be initiated in parallel. Thus, if the breaching party did not provide a financial guarantee and pay the outstanding amount within the thirty day time period termination of the agreement would result. The non-breaching Party would issue a final notice of termination between days fifteen and twenty of this period if the breach had not yet been remedied. Termination would not be effected if the breach was fully remedied prior to the expiration of this thirty day period.

This respondent reasoned that the shortened timescale would reduce the bad debt exposure, would avoid abusive cash management and would prompt more efficient and effective remedy of the breach.

3.5.2 Commission's Position

ComReg notes that one respondent is still unclear about one aspect of the revised clause; its belief that non payment due to a dispute under the Billing Disputes procedure should not constitute a material breach to justify termination under sub Clauses 18.15- 18.20. ComReg agrees with the respondent and would like to clarify again that the revised Termination Clause clearly does not apply to late or non

payment of bills which have been the subject of a dispute under the Billing Disputes procedure in Annex B of the RIO.

ComReg welcomes respondents' general support for the linking of the clauses on termination and credit management. ComReg believes that these clauses taken together now provide safeguards for both parties in the Agreement.

ComReg maintains the principle that, should a breach occur and a default notice be issued, the non breaching party should then assess financial risk by credit vetting the breaching party. If justified by vetting, financial security may then be requested. Inability or refusal to arrange financial security would then trigger termination.

It is ComReg's view that this process serves the best interests of both parties, in that, compared with the status quo it offers the breaching party a way forward while safeguarding the non-breaching party's financial position. ComReg is therefore unable to accept one respondent's proposal to operate credit management and termination in parallel.

ComReg notes one respondent's concern with the overall elapsed time of the process. Under the existing termination clause, the elapsed time from invoice to termination is 150 days. ComReg's proposal reduces this to 100 days. One respondent proposed an alternative process which would result in an elapsed time of 70 days. ComReg supports the principle of reducing the elapsed time, and indeed, this was one of the factors which prompted ComReg to propose the revisions to this clause.

ComReg reiterates its belief that the process it has defined is in the best interests of both parties. However, having considered the respondent's comments on the length of the process, ComReg proposes that credit vetting could be carried out when a default in payment triggers a breach notice. ComReg intends that, if justified by credit vetting, a financial security could then be requested if payment were not received within the 10 days after issue of the breach notice.

For the reasons given in the Draft Decision Notice, ComReg is directing that the new Termination Clause will become effective in respect of invoices which are initially raised thirty days after the date of the Decision Notice.

Direction No. 6.
***eircom* is directed to amend Clause 18 of the Core RIO document in accordance with the changes to Clause 18 set out in the RIO Document attached. The effective date of this decision is thirty calendar days from the date of the Decision Notice.**

3.6 Amendments Clause – Clause 30

ComReg rejected one respondent's proposal in respect of sub clause 29.3 the deletion of "in the context of Number Translation Codes" from the beginning of the first sentence of the clause.

ComReg accepted that the prices in the Operator Price List did not form part of *eircom*'s RIO as this List contained the OAO's prices for its services under the agreement with *eircom*. However, ComReg issued Information Notice 03/17 which provided for the Operator Price List consisting of the Process for the Implementation of Operator De-Averaged NTC Price Changes. This process does form part of *eircom*'s interconnect agreements with OAOs; ComReg noted that the Operator Price list was no longer published on *eircom*'s wholesale website and required *eircom* to republish this document to comply with Information Notice 03/17. Finally ComReg was aware of operators' concerns with the process for operator de-averaged NTC price changes, but was of the opinion that until a new process was discussed and agreed the existing process and Clause 29.4 must remain.

ComReg noted the proposal submitted by one respondent for an alternative text change process. ComReg considered that such consideration was outside of the remit of this consultation. However, ComReg stated it was willing on a trial basis to include in the current text process a step whereby upon receipt of comments from OAOs on *eircom* text changes, where warranted, ComReg would convene a meeting of *eircom* and the OAOs who made submissions to ComReg to discuss the text change before ComReg issues its decision. ComReg pointed out that only OAOs who had submitted comments on the text change would be invited to the meeting as the meeting should not be used as a substitute to the process of submissions but rather enhance it. Should the inclusion of a meeting in the D10/02 text process prove effective this could become a permanent feature of the text process.

ComReg had considered the proposal to allow OAOs to initiate text changes under the text process but stated it was not convinced by this suggestion.

ComReg did not agree with the suggestion that all text changes must be completed via actual amendment to the interconnect agreement for audit purposes.

ComReg rejected one respondent's suggestion of an additional clause which would allow an OAO to reject or accept a proposed change to the interconnect agreement rather than having the agreement changing unilaterally as it was not convinced that there was a need to provide the OAO with a further opportunity to negotiate the relevant change to its agreement.

In line with ComReg's agreement to reposition the Credit Management Clause the Amendments Clause was to be renumbered accordingly.

3.6.1 Views of Respondents

The three respondents largely agreed to the draft decision, though each raised a separate concern with a particular aspect of the draft decision. One respondent reiterated that some type of updating process needed to be adopted by *eircom* in

relation to physically updating the RIO. The paper Interconnect Agreements would quickly become out of date, (as has been the case and has contributed to the necessity for this wide-ranging review). At a minimum it suggested that a process should be established for fully updated Interconnect Agreements to be issued in paper bi-annually or annually. This respondent welcomed the trial step of meetings in the text process but asked ComReg to reconsider its proposal for an alternative text change process.

Another respondent pointed out that the proposed clause would transpose text changes which were worded on a reciprocal basis directly into bilaterally negotiated Interconnect Agreements which it opined ComReg could not do where the affected obligations include those of the OAO.

The third respondent stated that ComReg's proposal to limit the application of Clause 30.3 (previously Clause 29.3) to NTCs was incorrect and disagreed with ComReg's rationale for refusing to broaden this clause until the transit process was resolved. It believed that this was one of the issues relating to transit that was resolved and had been operating successfully for the last few years. It reiterated that in respect of sub clause 30.3 ComReg should delete "in the context of Number Translation Codes" from the beginning of the first sentence of the clause. Its rationale was that many of the rates in the STRPL did not relate to NTCs and that prices for these rates were set and changed on the proposal of the relevant OAO e.g. mobile termination rates. It would not be appropriate to have these rates and their changes subject to proposed sub clause 30.2.

Furthermore this respondent stated that the Transit Notifications Working Group established following Decision Notice D3/01 developed a set of processes regarding price changes and the introduction of new services that were designed to ensure that: ComReg approved the inclusion of the changes in the STRPL and that Operators were provided with sufficient transparency and notice regarding such changes so that they had sufficient time to make any changes to retail offerings and billing systems. It stated that while the processes have never formally been approved, *eircom*, ComReg and OAOs have been following them for the past several years for the reasons stated above. More precisely, they are followed for both NTCs and non-NTC services. Following conclusion of the process the prices have been published in the STRPL and applied to the respective interconnect services.

3.6.2 Commission's Position

ComReg notes the respondent's concern that a process should be established for fully updated Interconnect Agreements to be issued in paper bi-annually or annually. It believes these concerns are addressed by *eircom*'s suggestion (in its response to Clause 2) that in the event of a material change to the Core RIO, the NDA and the Network plan it would work with operators to update their contracts. It believed that for the most part the management of change was addressed by the proposed Amendments Clause. For the remaining documents listed in Clause 2 it stated that the operator would be bound by the most up to date version of each document published on *eircom*'s website.

As stated ComReg believes that consideration of an alternative text process is outside of the remit of this consultation but will implement the additional step of convening meetings in the text process on a trial basis going forward.

ComReg accepts the point made by one respondent regarding text changes via the D10/02 text process concerning reciprocal clauses. ComReg would like to clarify that automatic transposition of text changes via the D10/02 process concerning reciprocal clauses would currently relate to *eircom*'s obligations only. In this case it would either be necessary for *eircom* and the OAO to agree the new reciprocal wording or to split the reciprocal terms to give rise to unilateral obligations whereby the OAO obligations would be based on the existing wording and the *eircom* obligations based on the D10/02 text process output. ComReg has inserted a new sub clause in the Amendments clause to address this. However, ComReg remains of the opinion that while such directions of change would apply to *eircom* only it would be in everyone's interest to accept those changes.

Regarding the respondent's suggestion to broaden Clause 30.3 (now Clause 30.4) to all STRPL prices, ComReg accepts the respondent's arguments and has amended the sub clause accordingly.

ComReg's position remains that *eircom* is required to republish the Operator Price List on its website to comply with Information Notice 03/17. ComReg believes that until a new process for operator de- averaged NTC price changes is discussed and agreed the existing process and Clause 30.5 (previously Clause 30.4) must remain.

In line with ComReg's agreement to reposition the Credit Management Clause the Amendments Clause is renumbered to Clause 30.

Direction No. 7.
***eircom* is directed to amend the Amendments clause of the Core RIO Document in accordance with the changes to the Amendments Clause set out in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice.**

3.7 Credit Assessment and Credit Management Clause – Clause 19

ComReg proposed directing *eircom* to amend the Credit Assessment and Credit Risk Clause in the Core RIO document as it had concerns about the transparency and potential means of implementation of the existing Clause

Regarding the suggestion concerning the financial security in sub clauses 32.2 and 32.4 ComReg rejected one respondent's suggestion to limit the guarantee type to bank guarantees and stated that the credit instrument to be used should be subject to

negotiation between *eircom* and the OAO and that *eircom* should not unreasonably preclude alternative options proposed by OAOs.

ComReg agreed that where a financial security has been imposed under sub clause 32.2 it should be subject to quarterly review by the parties.

ComReg accepted the re-wording of sub clause 32.3 proposed by one respondent as it was not ComReg's intention for sub clause 32.3 to be invoked only where one party had evidence of a poor payment record by the other party.

ComReg understood the concern with including net liability as one of the factors to be taken into account when assessing the financial status on which creditworthiness was based. ComReg noted that it was not its intention to detail all possible approaches to this assessment. Therefore, on the specific example of net liability, ComReg proposed to remove "net", so that the general principle of liability may be included, to be assessed as appropriate. On the broader issue of assessment, ComReg stated it would direct a set of principles which should be followed.

ComReg rejected the suggestion to remove the linking of this Clause from the termination Clause as it believed the link was sensible and beneficial.

ComReg accepted the suggestion to reposition the Credit Assessment and Credit Risk Management Clause from Clause 32 to Clause 19 as it agreed the content of the Clauses (18 and 32) were linked and the repositioning would make the RIO document read better. The remaining Clauses in the RIO Main Body would be renumbered accordingly.

ComReg proposed directing a set of principles which would apply to the new Credit Assessment and Credit Risk Management Clause in the RIO. Furthermore, ComReg required *eircom* to publish its credit vetting policy statement and credit assessment and risk management process on its wholesale website within 30 calendar days of the Decision Notice. Any amendments to this methodology in the future should be provided to OAOs.

3.7.1 Views of Respondents

Two respondents made no comment. One respondent agreed with the three draft decisions but was concerned that the second sentence of Clause 19.3 (previously 32.3) still had the effect of limiting the trigger to credit vetting for *eircom* to poor payment history which it noted was not ComReg's intention and which did not apply in Clause 19.6 (previously 32.6) which governed the invocation of credit vetting by the Operator. It proposed deleting or replacing the sentence with an alternative.

3.7.2 Commission's Position

ComReg accepts the alternative wording of the second sentence in Clause 19.3.

Direction No. 8.

ComReg directs that the principles underlying the Credit Assessment and Credit Risk Management clause in *eircom*'s RIO are:
The means of assessing creditworthiness must be fair, transparent, proportional and non discriminatory;
***Eircom*'s credit vetting policy should differentiate for new and existing operators;**
***Eircom*'s credit vetting policy should include a provision which would allow an OAO to understand how the credit assessment has been carried out and how any credit security has been set. Where *eircom* has relied on internal information for the purposes of setting an OAO's credit security, *eircom* will make this information available to the OAO. Where *eircom* has relied on external information, *eircom* will identify external sources to the OAO;**
A credit guarantee/ financial security should only be applied where credit vetting has indicated a specific financial risk and the guarantee sought should be commensurate with the risk identified;
The credit instrument to be used should be subject to negotiation between *eircom* and the OAO;
The application of credit management should be subject to review on an agreed timescale.
This decision is to take effect thirty days from the date of the Decision Notice.

Direction No. 9.
***eircom* is directed to amend the Credit Assessment and Credit Risk Management clause of the Core RIO Document in accordance with the changes to the Credit Assessment and Credit Risk Management Clause set out in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice.**

Direction No. 10.
***eircom* is directed to publish its credit vetting policy statement and credit assessment and risk management process on its wholesale website within 30 calendar days of this Decision Notice. Any amendments to this methodology or policy in the future should be provided to OAOs.**

3.8 Other Comments on RIO Main Body

ComReg agreed to the revised Version Status Report Table and Index.

ComReg accepted the re-wording of the paragraph in the Preface proposed by the respondent as the revised wording stated *eircom*'s aspirations rather than its expectations. In line with the aspirational tone of this paragraph ComReg had also re-worded the first and last sentence.

ComReg agreed to the revised wording of Clause 4.1 and 4.4.

ComReg accepted the revised wording of Clause 21.4 (now Clause 22.4) as proposed by one respondent as this is more accurate and comprehensive.

ComReg understood the concern about differential limits of liability in the Access Reference Offer. ComReg stated that if it received further representations from industry, it would examine this issue. However, the limitation of liability in the RIO was the same for both *eircom* and the OAO. ComReg's view was that there was no need to consider differential liability in the review of the RIO.

ComReg agreed to the suggestion to replace best endeavours in Clauses 14 and 17 with reasonable endeavours.

ComReg accepted the renaming of Operations & Maintenance manual and the new text in Clause 10.6 regarding the penalty regime for interconnect links as these were agreed at the O&M Forum.

ComReg agreed that it was a useful addition to insert the text "including the National Numbering Conventions" after "the Irish national numbering scheme" in Clause 13.1, as proposed by one respondent.

3.8.1 Views of Respondents

One respondent noted that ComReg's statements on these "other issues" were not specifically directed on and requested ComReg to change the statements made to decisions to ensure clarity.

Another respondent suggested amending the first sentence in Clause 13.2 "CLI shall be used for presentation purposes….. with industry if appropriate" to "CLI shall be used for presentation purposes in accordance with the Calling Line Identification (CLI) Code of Practice… with industry if appropriate".

No other comments were received.

3.8.2 Commission's Position

ComReg understands the respondent's concern and assures the respondent that ComReg's final decision on these "other issues" is captured in the overall Decision No 1. ComReg's position on each of these issues remains as outlined in the draft Decision notice.

ComReg accepts the revised wording of Clause 13.2.

4 *Eircom*'s RIO: Annex A

4.1 New Definitions

ComReg believed that a number of additional definitions needed to be included in this Annex in order to increase the level of information to the users of the RIO and to increase transparency of the meanings of some of the terms.

In the draft direction the following definitions were to be added;

- Non Disclosure Agreement
- Catchment Area
- Interconnect Node Identifier
- Main Body
- Access Regulations
- Authorisations Regulations
- Framework Regulations
- USO Regulations
- Other Authorised Operator
- Working Day
- Interconnect Agreement

4.1.1 Views of Respondents

One respondent noted that 'RIO' should be replaced with 'Interconnect Agreement' in the definition of 'Main Body' as the Interconnect Agreement is the contractually binding document.

There were no other specific comments on the draft direction regarding the additional definitions.

4.1.2 Commission's Position

ComReg accepts the proposal to replace 'RIO' with 'Interconnect Agreement' in the definition for 'Main Body'.

Direction No. 11.
***eircom* is directed to amend Annex A of the Core RIO document in accordance with the changes to Annex A as set out in the RIO document attached. This decision is to take effect thirty days from the date of the Decision Notice.**

4.2 Definitions for Call Origination

In the definitions for "Call origination", "*eircom* Call Origination Primary Charge", "*eircom* Call Origination Tandem Charge", "*eircom* Call Origination Double Tandem Charge", ComReg believed there may be a need to make reference to Carrier Pre Selection in each of these definitions for the purposes of clarity.

The draft direction required the inclusion of a reference to Carrier Pre Selection in the definitions mentioned above.

4.2.1 Views of Respondents

There were no other specific comments on the draft direction regarding the inclusion of the reference to Carrier Pre Selection.

4.2.2 Commission's Position

A reference to Carrier Pre Selection in each of these definitions for the purposes of clarity shall be included.

Direction No. 12.
***eircom* is directed to adjust its RIO to include a reference to Carrier Pre Selection in the definitions for "Call origination", "*eircom* Call Origination Primary Charge", "*eircom* Call Origination Tandem Charge" and "*eircom* Call Origination Double Tandem Charge" as set out in the RIO document attached. This decision is to take effect thirty days from the date of the Decision Notice.**

5 *Eircom*'s RIO: Annex B- Billing & Payments

5.1 Annex B Clause 3.2 Interconnect Usage Report

ComReg noted that the principle that the Interconnect Usage Report and the invoice should be issued at the same time was accepted by all respondents. Therefore ComReg proposed directing that the Interconnect Usage Report as defined in Table 1, Clause 3.1 of Annex B should be provided simultaneously with the associated invoice.

In addition, ComReg welcomed *eircom*'s suggestion that the Billing Granularity Report would be issued to those operators who requested it. There would be on an opt in / opt out basis whereby an operator may request that this report be issued to them until they opt out.

5.1.1 Views of Respondents

One respondent considered the proposed insertion in Clause 3.2 of Annex B of 'simultaneously' was superfluous and when used with the word "together" earlier in the sentence created confusion.

5.1.2 Commission's Position

ComReg agrees with the view of the respondent and proposes to delete the word "simultaneously" in Clause 3.2. For the avoidance of doubt, ComReg would like to note that the Interconnect Usage Report will be provided at the same time as the associated invoice by the Billing Party.

ComReg again welcomes *eircom*'s suggestion that the Billing Granularity Report will be issued to those operators who request it. This will be on an opt in / opt out basis whereby an operator may request that this report be issued to them until they opt out.

5.2 Annex B Clause 3.7 Undetected Errors

ComReg proposed directing a change to Clause 3.7 as it believed that it was necessary that operators on discovering an error undertook all reasonable endeavours to correct and provide an estimate of those errors at the start of the review process.

5.2.1 Views of Respondents

No comments were made by two respondents. One respondent claimed that based on past experience there had been billing reviews for which it was not possible to assess the overall billing impact let alone identify the impact for individual OAOs. They cited Project Connect as a good example of such a situation where the level of the error and the impacted operators could not be readily identifiable or quantifiable with the requisite degree of certainty early in the review process. They claimed that

the provision of accurate information was more important than the early provision of as yet unsubstantiated information.

They retained this view that Industry was best served by an expedient, thorough and accurate completion of a billing review rather than by the proposal to insert the text 'best endeavours' to quickly furnish an estimate, which may ultimately be meaningless. Therefore they proposed to revise the last sentence of Clause 3.7 as follows:
"When either Party becomes aware of an error in the process, they must undertake all reasonable endeavours to make the necessary correction, and where possible an estimate of the financial impact of these undetected errors should be provided."

5.2.2 Commission's Position

ComReg recognises that in certain circumstances it may be difficult to assess the impact of a billing error, however it should also be recognised that the party affected by such a billing error should be notified of such an error at the earliest possible time. Recognising this, ComReg proposes to accept the amended wording submitted by the respondent.

Direction No. 13.
***eircom* is directed to amend Clause 3.7 of Annex B in the Core RIO Document in accordance with the changes to Clause 3.7 of Annex B set out in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice.**

5.3 Annex B Clause 5.5 Supplementary invoices & Credits

ComReg considered that the issuing of supplementary invoices and credits could be a contentious issue and could give rise to disputes between parties. For clarity, ComReg proposed to delete Clause 6.6 and revise Clause 5.5 to incorporate credit notes. The reason for ComReg's proposal was to ensure that both parties worked together to reach a solution where possible rather than raising the issue as a dispute.

5.3.1 Views of Respondents

Two respondents made no comments on the draft decision. One respondent argued that this Clause was unnecessary as normal invoicing principles applied. However, they suggested an alternative text for Clause 5.5 of Annex B that would include the 'reasonable level of detail' furnished with an invoice or credit note. In addition, their revised text would not use the term "Supplementary Invoice" as this term was not defined, and it would exclude the last sentence proposed by ComReg in the Draft Decision as invoice and credit notes were not agreed up front but via the dispute process if there was disagreement following reconciliation.

5.3.2 Commission's Position

ComReg accepts the arguments submitted by the respondent and proposes to use their text with some minor modifications.

Direction No. 14.
***eircom* is directed to amend Clause 5.5 of Annex B in the Core RIO Document in accordance with the changes to Clause 5.5 of Annex B set out in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice.**

6 *Eircom*'s RIO: Annex C

6.1 Layout of Annex C – Index of Services

ComReg proposed a re-arrangement of Annex C service schedules. In particular, ComReg proposed to group the following schedules which related to capacity issues together and re-number them:

Eircom Network Services
000. Interconnect and Partial Private Circuit Transport Links
001. *eircom* Interconnect Paths
002. End user links
003. Partial Private Circuits Migration
004. In Span Interconnection

Under ComReg's proposal the 100 series would remain as it currently was. Therefore it would include the following:
Eircom Services
The 100 series would begin with the service schedule for *eircom* National Termination [SS 102] and conclude with Service Schedule 122.

There would be no change to: the 200 series of Operator services; the 300 series of Joint services and, the 400 series of Single Billing through Carrier Pre Selection.

In addition, ComReg accepted one respondent's suggestion to rename some Service Schedules in Annex C.

ComReg also accepted and directed the removal of the Paging Service Access from the RIO as *eircom* no longer provided this service. ComReg stated that regarding one respondent's suggestion to remove International Access including Northern Ireland service from the RIO, it believed that it was more appropriate for this issue to be addressed via the forthcoming market analysis consultation on interconnect.

6.1.1 Views of Respondents

No comments were made by two respondents. The third respondent suggested beginning the numbering for the 000 series with "001 Interconnect and Partial Private Circuit Transport Links" instead of "000 Interconnect and Partial Private Circuit Transport Links". This same respondent reiterated its disappointment that no formal decision was made to remove the International Access service schedule from the RIO.

6.1.2 Commission's Position

ComReg accepts the suggestion to re-number the 000 series. ComReg still believes that the forthcoming market analysis consultation is more appropriate for the issue of International Access service schedule to be addressed.

Direction No. 15.
***eircom* is directed to adjust its RIO in accordance with the revised layout of Annex C service schedules as set out in the RIO document attached. This decision is to take effect thirty days from the date of the Decision Notice.**

Direction No. 16.
***eircom* is directed to remove the Paging Service Access service schedule from its RIO. This decision is to take effect thirty days from the date of the Decision Notice.**

6.2 Exclusion of Prices from RIO and inclusion in RIO Price List

ComReg proposed directing *eircom* to remove all the charges in Service Schedules 120, 301, 302 and 303 in the Core RIO document and to include these charges in *eircom*'s RIO Price list.

6.2.1 Views of Respondents

One respondent agreed with ComReg's draft decision. Two respondents made no comment.

6.2.2 Commission's Position

ComReg believes that its direction will ensure consistency and transparency of the exclusion of prices from the Core RIO document and will ensure complete *eircom* RIO price lists.

Direction No. 17.
ComReg directs *eircom* to remove the charges set out in Service Schedules 120, 301, 302 and 303 in the Core RIO document and to include these charges in *eircom*'s RIO Price list. This decision is to take effect thirty days from the date of the Decision Notice.

6.3 Service Schedule 101- *eircom* Interconnect Paths

In Clause 5.2 "Commissioning of Interconnect Paths", *eircom* state the first stage of commissioning shall conclude with the delivery of the transmission portion of the Interconnect Path and that *eircom* shall issue a notification of transmission delivery. ComReg had sought views in the Consultation paper on whether there should be a notification template for transmission delivery in the O& M manual and whether it should be referenced in service schedule 101.

In the Response to Consultation, ComReg noted respondents' comments that this issue had been addressed by the Operation & Maintenance Forum and that the Forum had agreed that the notification template for transmission delivery was not necessary.

6.3.1 Views of Respondents

One respondent reiterated that it would be useful to have such a process to ensure efficiency. There were no other comments received regarding the notification template for transmission delivery.

6.3.2 Commission's Position

This issue has been addressed by the Operation & Maintenance Forum and the Forum has agreed that the notification template for transmission delivery is not necessary.

In line with the reformatting of the layout of Annex C service schedules, the schedule for *eircom* Interconnect Paths had been renumbered to 002.

6.4 Service Schedule 102- *eircom* National Termination

6.4.1 Clause 3.2

Clause 3.2 of Service Schedule 102 in *eircom*'s RIO refers to the conveyance by *eircom* of operator calls "at the same standard and quality of service as *eircom* conveys similar Calls within the *eircom* Network". In the Draft Decision Notice ComReg agreed with two respondents that it was not necessary for a set of standards for quality of service to be developed to provide a comparison of OAO and *eircom* calls conveyed through *eircom's* network.

6.4.2 Views of Respondents

No comments were made on the Commission's position in the Draft Decision Notice.

6.4.3 Commission's Position

ComReg believe that calls for OAO customers and *eircom* retail customers are conveyed through *eircom*'s network at the same level of quality. Therefore, in the absence of any evidence to suggest that this level is anything but a high level of quality, ComReg believe that placing a requirement on *eircom* to produce data to show a comparison for various quality parameters is unwarranted and unnecessary at this time.

6.4.4 Charging

ComReg proposed that the "*eircom* Call Origination and Termination Routing Scheme" should be included as part of the RIO document.

6.4.5 Views of Respondents

All respondents agreed that the "*eircom* Call Origination and Termination Routing Scheme" should be included as part of the RIO document.

6.4.6 Commission's Position

The Call Origination and Routing Scheme should form part of *eircom*'s Interconnect Agreement through the reference to the document in Clause 2 of *eircom*'s Core RIO. ComReg believes that the Call Origination and Routing Scheme should remain physically separate from the Core RIO document and should be a standalone document, published on the *eircom* wholesale website.

Direction No. 18.
***eircom* is directed that the *eircom* Call Origination and Termination Routing Scheme should form part of *eircom*'s Interconnect Agreement via clause 2 of *eircom*'s RIO. The *eircom* Call Origination and Termination Routing Scheme should still be published as a standalone document on *eircom*'s wholesale website. This decision is to take effect thirty days from the date of the Decision Notice.**

6.5 Service Schedule 109, 110, 121, 122, 209, 210, 221 and 222

ComReg proposed to direct the removal of the following Clause from service schedules 109,110, 121,122, 209, 210, 221 and 222 of *eircom*'s RIO. This Clause stated:
"Other terms and conditions will be added when developed and agreed by the Parties"

6.5.1 Views of Respondents

One respondent agreed with ComReg's draft decision. Two respondents made no comment.

6.5.2 Commission's Position

ComReg believes that the removal of this Clause makes the terms and conditions of the aforementioned service schedules consistent with the other 100 and 200 service schedules.

Direction No. 19.
***eircom* is directed to amend Service Schedules 109, 110, 121, 122, 209, 210, 221 and 222 in the Core RIO Document in accordance with the changes to these service schedules set out in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice.**

6.6 Service Schedule 120 – Carrier Pre Selection

ComReg agreed with a suggestion by one respondent to replace the CPS Service Level Agreement Appendix 1 of Service Schedule 120, with a suitable reference to the publication of this document on the *eircom* Wholesale website. This was consistent with the approach that was being adopted for other interconnect products. ComReg noted that *eircom* had already removed the CPS Code of Practice from the

Core RIO document and inserted it on its website as a standalone document which ComReg agreed with in the Information Notice 03/151.

ComReg did not agree that Clause 3.7 should be amended to include additional codes for CPS exclusion such as 1892 and 1893, as proposed by one respondent. As stated in the consultation document, the Decision Notice D13/02 called for the list of excluded codes to be reviewed. This exercise was in progress though the industry working group and any additions to this list of excluded codes should not pre-empt the outcome of that work stream. Finally ComReg approved the replacement of the term "calls" for "traffic" in Clause 5.1.

6.6.1 Views of Respondents

One respondent agreed with ComReg's draft decision. Two respondents made no comment.

6.6.2 Commission's Position

ComReg's position on Service Schedule 120 remains the same as that outlined in the Draft Decision Notice.

Direction No. 20.
***eircom* is directed to amend Service Schedule 120 of the Core RIO Document in accordance with the changes to Service Schedule 120 set out in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice.**

6.7 Service Schedules 301 & 303- Non Geographic & Geographic Number Portability

ComReg accepted the proposal by one respondent to the consultation paper for the change in the text of the definitions of NGNP and GNP and the use of the term "service" instead of "process".

ComReg did not accept that the use of the term "holding" charges was still appropriate in the context of the NGNP service schedule. The status of a particular charge must be defined as either interim or final, as listed in the *eircom* RIO Price list. ComReg noted that *eircom* in RIO Version 3.7 had amended Clause 5 of the GNP service schedule and had removed the definition of holding charges to reflect final prices.

Finally ComReg noted the comments of the respondent and agreed that it was appropriate to remove Clause 3.4 in Service Schedule 303 and replace the NGNP SLA, Appendix 1 to Schedule 301, with a suitable reference to the publication of the industry agreed document on the *eircom* Wholesale website in a revised Clause 3.4 in Service Schedule 301.

6.7.1 Views of Respondents

One respondent agreed with ComReg's draft decision. Two respondents made no comment.

6.7.2 Commission's Position

ComReg's position on Service Schedules 301 and 303 remains the same as that outlined in the Draft Decision Notice.

Direction No. 21.
***eircom* is directed to amend Service Schedules 301 and 303 of the Core RIO Document in accordance with the changes to these service schedules set out in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice.**

6.8 Service Schedule 302- Data Management Amendment

Data Management Amendments are mentioned in Annex A, the main body of the RIO Clause 11 and in Service Schedule 302 – Data Management Amendment. One respondent suggested the following text for Clause 3 in Service Schedule 302 in order to clarify the distinction between single and multiple Data Management Amendments;

"In the event that a party should request implementation of more than one amendment at the same time, a 50% discount on the administration charge should apply for all requests after the first. In addition a 50% discount to the charge per interconnect node shall apply to all nodes amended in the first or subsequent amendments."

ComReg considered this distinction was beneficial, added to transparency and proposed directing *eircom* to include this in Service Schedule 302 in the Core RIO.

6.8.1 Views of Respondents

One respondent agreed with ComReg's draft decision. Two respondents made no comment.

6.8.2 Commission's Position

ComReg is directing *eircom* to include the distinction between single and multiple Data Management Amendments in Service Schedule 302.

Direction No. 22.
***eircom* is directed to amend Service Schedule 302 of the Core RIO document in accordance with the changes to Service Schedule 302 as set out in the RIO document attached. This decision is to take effect thirty days from the date of the Decision Notice.**

6.9 Service Schedule 401 Single Billing

ComReg did not propose any changes to Service Schedule 401 (Single Billing Wholesale Line Rental) in this consultation process. ComReg did state that until pricing for the Single Billing Agency Rebilling product was set, *eircom* was required to remove the Service Schedule {No.402 in RIO Version 3.5} for Single Billing Agency Rebilling from the RIO. In the Draft Decision ComReg noted that *eircom* had removed SS402 in Version 3.8 of its RIO on 1 April 2004 which ComReg agreed with.

Since December 2003 there have been a lot of changes to the Single Billing Wholesale Line Rental product all of which have either been agreed at Industry Forum or to comply with ComReg directions.

In its response to the consultation paper, *eircom* proposed to extend Clause 3.3 with the following text: "However, it is possible for an Operator to request the provision of CPS All Calls on the line simultaneously to the provision of WLR". ComReg presented this additional text to the CPS Single Billing Steering Group where it was accepted at a meeting of the Steering Group on 22nd April 2004.

ComReg confirm *eircom* are compliant with their obligations regarding Service Schedule 401 at this time. It is worth noting that further releases of the product are planned in the future.

6.10 Other Comments on Annex C

- One respondent highlighted that there were inconsistencies in clauses in various services schedules in Annex C, whereby one clause referred to "this product description may be updated….following *discussions* with the industry whereas another similar clause stated "following *negotiations* with Industry". ComReg agreed with this respondent that the term *"following negotiations"* should be used in all such clauses. In addition ComReg added the words *"if appropriate"* at the end of these clauses in the accompanying RIO document because in some instances i.e. specific ComReg directions, negotiation with industry would not be appropriate.

- ComReg agreed that it was useful in Service Schedule 116 (Access to *eircom* Packet Services) to replace the Clause 2.1 text "151" with the more precise "1511" which was the code designated "for packet access service, as proposed by one respondent.

- ComReg accepted one respondent's proposal to replace in Clause 2.1of Service Schedules 105 and 205 (Premium Rate Services) "15XX" with "15XX excluding 1511 as the 1511 code was used for Eirpac purposes and was referenced in Service Schedule 116 Access to *eircom* Packet Services.

- ComReg accepted some small textual changes to Annex C Service Schedules as these changes provided improved clarity and reflected the more accurate charging mechanisms that were currently in place. These text changes were:
    - In Clause 5 in Service Schedules 106, 107, 108, 109, 110,121, 122, 206 to replace the beginning of the last sentence "Traffic charging…" with in "Per Minute traffic charging..".
    - In Clause 5 in service schedules 106, 107, 108, 109 and 110 to replace in the line "the Operator shall pay *eircom* a charge per call and per minute calculated in accordance with the rates …" with "the Operator shall pay *eircom* a charge per call and/or per minute ….".
    - In Clause 2 in Service Schedules 105, 106, 107, 108, 109 and 110 to replace in the last sentence of the Clause "*eircom* traffic" with "*eircom* calls".
- The addition of "or ported into the *eircom* network" in Clause 2 ensured the Service Schedules (105, 106, 107, 108, 109 and 110) reflected the developments in non-geographic number portability.
- ComReg accepted the respondent's proposal to re-title Service Schedules 109, 110, 115, 116 and 121 in Annex C.

6.10.1 Views of Respondents

One respondent noted that ComReg's statements on these "other issues" were not specifically directed on and requested ComReg to issue decisions on these issues in the Decision Notice to ensure clarity.

Another respondent suggested the deletion of the definition of Actual Date of Delivery in Service Schedules 001 and 003.

No other comments were received.

6.10.2 Commission's Position

As stated in Section 3.8, ComReg understands the respondent's concern and assures the respondent that ComReg's final decision on these "other issues" is captured in the overall Decision No 1. ComReg's position on each of these issues remains as outlined in the Draft Decision Notice.

ComReg's accepts the deletion of the definition of "Actual Date of Delivery" in Service Schedules 001 and 003 as it notes that this is defined in Annex A of the RIO.

7 Annex D and Annex E

As explained in the Draft Decision Notice both the Service Level Agreement for Interconnect Paths and the Network Plan were excluded from this review.

Agreement on a new SLA was reached in the O&M Forum in December 2003. The Forum agreed to physically remove the SLA (Annex D) from the Core RIO document and to publish it as a stand alone document on *eircom*'s wholesale website. The SLA for Interconnect Paths remains part of *eircom*'s interconnect agreement via Cause 2.4.

In line with ComReg's policy outlined in Section 3.1, ComReg agrees to the streamlining of the Core RIO document and therefore has agreed to delete Annex E from the Core RIO document and replace it by publishing the Network Plan as a stand alone document on *eircom*'s wholesale website. The Network Plan remains part of *eircom*'s interconnect agreement via Clause 2.

Finally ComReg accepts the respondent's suggestion to delete Appendix 5 of the Network Plan as this appendix is the *eircom* Call Origination and Termination Routing Scheme.

8 *Eircom*'s RIO: Annex F – Non Disclosure Agreement

8.1 Stand Alone Non Disclosure Agreement for all *eircom*'s Reference Offers

ComReg believed that the Non Disclosure Agreement should be physically removed from the Core RIO document and should become a standalone document, published on the *eircom* wholesale website. It would remain part of the Interconnect Agreement through the reference to the document in Clause 2 of *eircom*'s Core RIO.

8.1.1 Views of Respondents

No comments were made by respondents.

8.1.2 Commission's Position

As stated in Section 3.1 (Clause 2 of the RIO) ComReg believes that the Non Disclosure Agreement should be physically removed from the Core RIO document and should become a standalone document, published on the *eircom* wholesale website. It would remain part of the Interconnect Agreement through the reference to the document in Clause 2 of *eircom*'s Core RIO.

8.2 Contents of *eircom*'s Proposed NDA

ComReg decided that *eircom*'s revised position on the NDA, together with proposals from all respondents which addressed the need to clarify aspects of the NDA, warranted a revised NDA.

ComReg accepted *eircom*'s submission that a standard NDA for all wholesale offers was no longer possible. Therefore, ComReg proposed to only direct a revised Non Disclosure Agreement for the RIO in this Decision Notice.

In addition, ComReg accepted the point that the definitions section in the NDA should only define terms that appear in the NDA.

ComReg accepted the suggestion by the respondent who believed that the opening paragraphs of Clause 3 in the NDA were further recitals and belonged at the start of the NDA after Recitals paragraphs (a) and (b).

ComReg inserted additional clauses proposed by a respondent which it believed would provide further clarity to the NDA. These new clauses were numbered 3.5.5 and 3.8 in the compliant NDA.

ComReg considered that the key area of difference between the revised *eircom* NDA and the alternative NDA proposed by another respondent concerned the limitation of liability for breach of confidentiality. ComReg believed that it was in the interests of both parties to understand the serious nature of breaching confidentiality, and was of the opinion that the wording of the clause was in line with this. Because of the

potential risk of creating a barrier to entry, ComReg stated it would therefore support the limitation of liability for breach of confidentiality.

8.2.1 Views of Respondents

One respondent agreed with ComReg's draft decision. It noted that ComReg's use of the defined terms "Owner" and "Recipient" rendered the definitions of Disclosing Party, Receiving Party, Requested Party and Requesting Party unused and therefore unnecessary. It recommended that they be deleted from the final document.

Another respondent stated that the industry needed more time to review the proposed NDA. No reason for this opinion was given.

The third respondent urged ComReg to reconsider the limitation of liability. This respondent stated that in the context of NDAs unlimited liability was common business practice. Furthermore it was this respondent's experience that potential interconnect parties were willing to sign NDAs with unlimited liability and this had not represented a barrier to entry. It also argued that insurance was unlikely to be an issue as risks associated with an NDA were straight forward and easy to mitigate. Lastly, this respondent stated that if liability was to be limited then the limit needed to reflect the maximum possible damage capable of being caused. If this couldn't be quantified then the liability limit needed to remain undefined and unlimited.

8.2.2 Commission's Position

ComReg notes the arguments made by the respondent regarding unlimited liability for breaches of confidentiality. However, ComReg would like to point out that the RIO is *eircom*'s document and that that the NDA consulted on is *eircom*'s terms and conditions. ComReg has concluded that for the time being the limitation of liability for breach of confidentiality should be retained.

ComReg agrees to the deletion of the definitions for Disclosing Party, Receiving Party, Requested Party and Requesting Party. Finally ComReg considers that interested parties have been given sufficient time to review the NDA.

Direction No. 23.
***Eircom* is directed to adjust its RIO Non Disclosure Agreement in accordance with the changes to the Non Disclosure Agreement set out in the RIO document attached. This decision is to take effect thirty days from the date of the Decision Notice.**

8.3 Definition of Confidential Information

ComReg decided that a definition of confidential information in the Definitions Annex of the Non Disclosure Agreement was not necessary. Instead the information that constituted confidential information should be defined in Clause 3 of the revised NDA.

8.3.1 Views of Respondents

No comments were made by any of the respondents.

8.3.2 Commission's Position

The information that constitutes confidential information should be defined in Clause 3 of the revised NDA.

9 Calling Line Identification Code of Practice

In the Response to Consultation, ComReg decided to replace the old Calling Line Identification (CLI) Code of Practice text with appropriate references to the European Telecommunications Platform (ETP) Guidelines[3] and to add extra elaborations to deal with any specific Irish issues.

Further ComReg stated that this new CLI Code of Practice (CoP) would become a stand alone document on *eircom*'s wholesale website but would remain part of the Interconnect Agreement via the new Clause 2.

9.1.1 Views of Respondents

Two respondents expressed concerns about ComReg's decision making process. One stated that at a minimum it would be useful for *eircom*/ ComReg to present to the industry on the changes to the CLI CoP while the other requested ComReg to facilitate an industry forum to agree any changes to the code of practice.

One respondent noted that no assessment had been sought as to the technical implications of the revised code and whether the abrupt nature of its introduction would force some operators into non-compliance nor had there been an assessment as to the potential cost of implementation of any changes necessitated by the revised Code and whether these costs were proportionate to the perceived benefits of any change.

The third respondent agreed with ComReg's draft decision.

9.1.2 Commission's Position

ComReg cannot agree that moving the RIO references on CLI to a European-wide set of CLI guidelines based on existing legislation and ETSI standards is inappropriate. The guidelines are targeted at supporting compliance with the European regulatory framework for electronic communications and particularly Data Protection Legislation. Accordingly, full account would have to be taken by all parties in any case of the practical CLI implementation rules set down in this document and, contravention of the rules in any significant way could have serious consequences, even if some alternative document was being followed. If specific issues arise in respect of interpretation of the guidelines they may be taken up directly by any party with the European Telecommunications Platform, which developed the guidelines or with ECTRA or ETNO[4] which provided input, while issues of technical and/or national implementation may be discussed within the Numbering Advisory Panel (NAP).

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[3] The European Telecommunications Platform (ETP) Guidelines for Calling Line Identification, which can be found at:
http://www.etp-online.org/downloads/02_051_CLI_Guidelines_Sep_2002.pdf

[4] ECTRA - European Committee for Telecommunications Regulatory Affairs; ETNO - The European Telecommunications Network Operators' Association

Following further clarification from one respondent of its concerns, ComReg is satisfied that a two-pronged approach needs to be taken to the issue of CLI, by dealing directly with the RIO as an immediate issue affecting inter-working with *eircom* while separately dealing with the wider industry issues of CLI within the NAP. The former step will allow *eircom* to proceed with contracts, as necessary. The latter step, which will simultaneously satisfy another respondent's concerns, can ensure account is taken of inter-operator contracts not affecting *eircom.* ComReg believes that the RIO text and ETP guidelines should be used as the core of an agreed industry-wide CLI code of practice to be developed within the NAP. Such an agreed code was already foreseen in the original Annex G document. In this regard, ComReg propose to bring this issue to NAP when it next meets[5]. ComReg would encourage all operators to attend this NAP meeting to ensure that the RIO CLI Code can be quickly and comprehensively broadened into such an agreed industry Code.

The respondent's comments concerning cost and implementation are not considered valid as compliance with legislation and with European standards in respect of CLI – which is what the amended requirements ensure more effectively than their predecessor – is already a fundamental requirement for all operators and no special assessment is necessary to ensure these obligations are met. ComReg would therefore not expect any new cost to arise for operators in respect of compliance with this code. For the avoidance of doubt, ComReg does not intend that the changes to the Code of Practice should result in any new obligations for operators or others over and above those already implicit in the old Code of Practice and existing legislation. If such problems are discovered downstream, they can be accommodated by the above-mentioned discussions in the NAP, leading to suitable qualifications to the RIO text.

Direction No. 24.
***eircom* is directed to adjust the Calling Line Identification Code of Practice in accordance with the changes to the Calling Line Identification Code of Practice set out in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice.**

[5] This meeting is currently expected to be held on Tuesday 14 September 2004.

10 *Eircom*'s RIO Price List

10.1 Inclusion of new text

ComReg proposed inclusion of explanatory text at the beginning of the price list and accepted additional revisions to the text proposed by one respondent.

ComReg also proposed that as a consequence of ComReg's Draft Decision in Clause 2 of the RIO Core text, the *eircom* RIO price list would be a standalone document, published on *eircom*'s wholesale website. It would continue to be part of the Interconnect Agreement.

10.1.1 Views of Respondents

One respondent agreed with ComReg's draft decision. Two respondents made no comment.

10.1.2 Commission's Position

ComReg believes that the revised text at the beginning of the *eircom* RIO Price list will increase the clarity and transparency of this document.

Direction No. 25.
***Eircom* is directed to amend the RIO Price List introductory text in accordance with the changes to the Price List introductory text outlined in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice.**

10.2 Simplification of format of RIO Price List

ComReg proposed that price information should be presented in as standard a way as was practical. It was recognised that some variation was inevitable due to the different characteristics of different services.

ComReg noted *eircom*'s current practice of specifying an "end date" where applicable and agreed that it may not always be appropriate to state an effective "end date", as interim rates for one period may be carried forward to a following period

ComReg also considered the alternative views on rounding, and agreed with the proposal to round to 4 decimal places for traffic related rates, and to 2 decimal places for process rates. This achieved ComReg's objectives of standardising the presentation, and of making the pricing tables easier to read and to work with.

ComReg's principal aim in standardising the format of price list tables was to improve transparency, consistency and ease of use. To this end, the format of each table should be similar, and a common set of principles should be applied. ComReg believed that these principles should be applied whether charging was on a one part or two part basis, particularly as this could readily be identified from the service schedule.

10.2.1 Views of Respondents

One respondent agreed with ComReg's draft decision but added that rates should be shown in Euro cent or euro in the decision. Two respondents made no comment.

10.2.2 Commission's Position

ComReg accepts the respondent's suggestion on the inclusion of euro cent in its decision.

Direction No. 26.
***Eircom* is directed to standardise and simplify the format of *eircom* Price List tables according to the following principles:**
Rates should be shown in Euro or Euro cent;
For all services, the period for which the price is effective should be stated clearly, where applicable;
Prices should be rounded to 4 decimal places for traffic related rates (per call and per minute charges), and rounded to 2 decimal places for all other charges;
The same terminology should be used for all services;
The status of the *eircom* rate should be shown in all tables.
All tables in the *eircom* RIO Price List should be amended to comply with this Decision.
This decision is to take effect thirty days from the date of the Decision Notice.

The accompanying RIO Document includes changes to the introductory text of the Price List. It does not include the Price List tables, as they will be reformatted to comply with this Decision.

11 *Eircom*'s Switched Transit Routing Price List

ComReg consulted on the format of the Switched Transit Routing Price List [STRPL] only.

In advance of publishing the Draft Decision, ComReg met with *eircom* who offered a further redraft of the presentation of the tables, which incorporated particular aspects of ComReg's suggestions and constructive debate led to further elucidation. *Eircom* produced an additional redraft bringing together the best ideas of both parties. This was attached in the RIO document accompanying the Draft Decision and ComReg stated that it provided substantial additional clarity as to the principles at work, while remaining a practical source document for billing functions. It was also much shorter and simpler.

ComReg proposed to adopt this latest draft for use in the RIO with only the most minor drafting changes which had been included in the revised STRPL in the accompanying RIO document.

11.1.1 Views of Respondents

Two respondents made no comment. The third respondent stated that it would be useful if a presentation could be given to the industry in relation to how the new formatting works.

11.1.2 Commission's Position

ComReg agrees with the respondent's suggestion and will arrange a meeting of the industry in late August where *eircom* can present and explain the new formatting of the STRPL.

Direction No. 27.
***eircom* is directed to publish the Switched Transit Routing Price List in the format contained in the accompanying RIO document. This decision is to take effect thirty days from the date of the Decision Notice.**

Appendix A – Legislation

Under current Irish and EU legislation, an operator who is designated as having significant market power ('SMP') is subject to a number of obligations including the requirement to permit other authorised operators ('OAOs') to interconnect with its network. To facilitate this process, one of the obligations that a SMP operator has is to publish a Reference Interconnect Offer ('RIO') that sets out the terms and conditions for interconnection and the prices to be charged. The contents and production of the RIO are subject to various statutory requirements, compliance with which is overseen by ComReg.

Eircom is an operator designated as having SMP in the relevant market for interconnection. Notwithstanding the revocation of the pre-existing regulatory framework to be found in Regulation 38(3) of the Framework Regulations, and pending completion of the market analysis, *eircom* continues, under Regulation 8 of the Access Regulations[6] and Regulation 13 of the USO Regulations[7], to be subject to the obligations set out in the European Communities (Interconnection in Telecommunications) Regulations, 1998 (S.I. No. 15 of 1998) as amended.

In issuing this Decision concerning the RIO, ComReg is exercising its power to issue directions pursuant to Regulation 17 of the Access Regulation and Regulation 31 of the USO Regulations. ComReg may, for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under the Access Regulations or the USO Regulations, issue directions to an undertaking to do or refrain from doing anything which ComReg specifies in the direction.

ComReg have also taken account of its statutory objectives which are set out in Section 12 of the Communications Regulations Act, 2002.

In addition, ComReg are acting in accordance with the policy directions directed to ComReg on Friday 21 February 2003 and 26th March 2004 by Dermot Ahern T.D., Minister for Communications, Marine and Natural Resources. In particular, ComReg has taken account of the Minister's policy directions on: promoting competition; industry sustainability; regulation only where necessary; regulatory impact assessment and consistency with other Member States.

[6] European Communities (Electronic Communications Networks and Services) (Access) Regulations, 2003 (SI 305 of 2003)

[7] European Communities (Electronic Communications Networks and Services)(Universal Service and Users' Rights) Regulations 2003(SI 308 of 2003)

Appendix B – Decisions and Consequent Directions

Decision No. 1. 6
eircom is to adjust its Reference Interconnect Offer by incorporating the amendments contained in the revised RIO Document accompanying this Decision Notice. In furtherance of this Decision and for the purpose of further specifying requirements to be complied with relating to obligations imposed on *eircom* by Regulations 8 and 17 of the Access Regulations and Regulations 13 and 31 of the USO Regulations, *eircom* is directed as follows: 6
Direction No. 1. 8
eircom is directed to amend Clause 2 of the Core RIO document in accordance with the changes to Clause 2 set out in the RIO document attached. This decision is to take effect thirty days from the date of the Decision Notice. 8
Direction No. 2. 8
eircom is directed to physically remove the following documents from the Core RIO document and to publish these documents as stand alone documents on the *eircom* wholesale website: the RIO Non Disclosure Agreement, the Network Plan, the SLA for Interconnect Paths, the CLI Code of Practice, the SLAs for Non Geographic Number Portability and Carrier Pre Selection and forms (Billing forms and Order forms for Interconnect paths and PPCs). These documents remain part of *eircom*'s Interconnect Agreement through their reference in Clause 2 of *eircom*'s RIO. This decision is to take effect thirty days from the date of the Decision Notice. 8
Direction No. 3. 8
eircom is directed to ensure that all RIO related documents are available on its wholesale website in a transparent manner so as to allow new entrants seeking interconnect and existing interconnect customers easy access to these RIO documents. This decision is to take effect thirty days from the date of the Decision Notice 8
Direction No. 4. 9
eircom is directed to amend Clause 9.2 of the Core RIO document in accordance with the changes to Clause 9.2 set out in the RIO document attached. This decision is to take effect thirty days from the date of the Decision Notice. 9
Direction No. 5. 10
eircom is directed to amend Clause 11 of the Core RIO document in accordance with the changes to Clause 11 set out in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice. 10
Direction No. 6. 12
eircom is directed to amend Clause 18 of the Core RIO document in accordance with the changes to Clause 18 set out in the RIO Document attached. The effective date of this decision is thirty calendar days from the date of the Decision Notice. 12
Direction No. 7. 15
eircom is directed to amend the Amendments clause of the Core RIO Document in accordance with the changes to the Amendments Clause set out in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice. 15
Direction No. 8. 16
ComReg directs that the principles underlying the Credit Assessment and Credit Risk Management Clause in *eircom*'s RIO are: 17
Direction No. 9. 17
eircom is directed to amend the Credit Assessment and Credit Risk Management Clause of the Core RIO Document in accordance with the changes to the Credit

Assessment and Credit Risk Management Clause set out in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice. 17
Direction No. 10. 17
eircom is directed to publish its credit vetting policy statement and credit assessment and risk management process on its wholesale website within 30 calendar days of this Decision Notice. Any amendments to this methodology or policy in the future should be provided to OAOs. 17
Direction No. 11. 19
eircom is directed to amend Annex A of the Core RIO document in accordance with the changes to Annex A as set out in the RIO document attached. This decision is to take effect thirty days from the date of the Decision Notice. 19
Direction No. 12. 20
eircom is directed to adjust its RIO to include a reference to Carrier Pre Selection in the definitions for "Call origination", "*eircom* Call Origination Primary Charge", "*eircom* Call Origination Tandem Charge" and "*eircom* Call Origination Double Tandem Charge" as set out in the RIO document attached. This decision is to take effect thirty days from the date of the Decision Notice. 20
Direction No. 13. 22
eircom is directed to amend Clause 3.7 of Annex B in the Core RIO Document in accordance with the changes to Clause 3.7 of Annex B set out in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice. 22
Direction No. 14. 23
eircom is directed to amend Clause 5.5 of Annex B in the Core RIO Document in accordance with the changes to Clause 5.5 of Annex B set out in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice. 23
Direction No. 15. 25
eircom is directed to adjust its RIO in accordance with the revised layout of Annex C service schedules as set out in the RIO document attached. This decision is to take effect thirty days from the date of the Decision Notice. 25
Direction No. 16. 25
eircom is directed to remove the Paging Service Access service schedule from its RIO. This decision is to take effect thirty days from the date of the Decision Notice. 25
Direction No. 17. 25
ComReg directs *eircom* to remove the charges set out in Service Schedules 120, 301, 302 and 303 in the Core RIO document and to include these charges in *eircom*'s RIO Price list. This decision is to take effect thirty days from the date of the Decision Notice. 25
Direction No. 18. 27
eircom is directed that the *eircom* Call Origination and Termination Routing Scheme should form part of *eircom*'s Interconnect Agreement via Clause 2 of *eircom*'s RIO. The *eircom* Call Origination and Termination Routing Scheme should still be published as a standalone document on *eircom*'s wholesale website. This decision is to take effect thirty days from the date of the Decision Notice. 27
Direction No. 19. 27
eircom is directed to amend Service Schedules 109, 110, 121, 122, 209, 210, 221 and 222 in the Core RIO Document in accordance with the changes to these service schedules set out in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice. 27
Direction No. 20. 28

eircom is directed to amend Service Schedule 120 of the Core RIO Document in accordance with the changes to Service Schedule 120 set out in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice. 28
Direction No. 21. 29
eircom is directed to amend Service Schedules 301 and 303 of the Core RIO Document in accordance with the changes to these service schedules set out in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice. 29
Direction No. 22. 29
eircom is directed to amend Service Schedule 302 of the Core RIO document in accordance with the changes to Service Schedule 302 as set out in the RIO document attached. This decision is to take effect thirty days from the date of the Decision Notice. 29
Direction No. 23. 34
Eircom is directed to adjust its RIO Non Disclosure Agreement in accordance with the changes to the Non Disclosure Agreement set out in the RIO document attached. This decision is to take effect thirty days from the date of the Decision Notice. 34
Direction No. 24. 37
eircom is directed to adjust the Calling Line Identification Code of Practice in accordance with the changes to the Calling Line Identification Code of Practice set out in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice. 37
Direction No. 25. 38
Eircom is directed to amend the RIO Price List introductory text in accordance with the changes to the Price List introductory text outlined in the RIO Document attached. This decision is to take effect thirty days from the date of the Decision Notice. 38
Direction No. 26. 39
Eircom is directed to standardise and simplify the format of *eircom* Price List tables according to the following principles:
Rates should be shown in Euro or Euro cent;
For all services, the period for which the price is effective should be stated clearly, where applicable;
Prices should be rounded to 4 decimal places for traffic related rates (per call and per minute charges), and rounded to 2 decimal places for all other charges;
The same terminology should be used for all services;
The status of the *eircom* rate should be shown in all tables.
All tables in the *eircom* RIO Price List should be amended to comply with this Decision.
This decision is to take effect thirty days from the date of the Decision Notice. 39
Direction No. 27.
eircom is directed to publish the Switched Transit Routing Price List in the format contained in the accompanying RIO document. This decision is to take effect thirty days from the date of the Decision Notice. 40