



Commission for
Communications Regulation

Consultation Paper

Consultation and Draft Direction in Relation to eircom Interim Interconnect Conveyance Rates for 2003/04

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All responses to this consultation should be clearly marked:-
“Reference: Submission re ComReg 03/145” as indicated above,
and sent by post, facsimile, e-mail or on-line at www.comreg.ie
(current consultations), to arrive on or before close of business,
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Please note ComReg will publish all submissions with the
Response to Consultation, subject to the standard confidentiality
procedure.

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1 Foreword

In ComReg 03/134, ComReg indicated that it had reviewed the interim 2003/04 National Termination, Origination and Transit Rates as submitted by eircom in July of this year, had accepted these rates without amendment and had written to eircom requesting that they be published. eircom has subsequently indicated that they consider that this is not now appropriate and have not updated the Reference Interconnect Offer ('RIO') as ComReg had expected.

The Commission for Communications Regulation ('ComReg') now proposes to direct eircom to update the RIO and is publishing the proposed draft direction and its reasons for the draft direction in this document.

ComReg believes the direction to implement the interim rates contained in eircom's latest submission will be in the interest of the industry and the development of sustainable competition. Further delay in publishing these rates appropriate from the period 1 April 2003 does not appear to be warranted.

Responses to this consultation document will be accepted up to 24 December 2003 and a response to Consultation will follow shortly thereafter.

John Doherty,

Chairperson, Commission for Communications Regulation.

2 Introduction

On the 15 July 2003, eircom made a submission to ComReg of proposed revised interim (2nd interim) rates for 2002/03 and interim (1st interim) 2003/04 RIO rates for National Termination, Origination and Transit. Both these submissions were reviewed in detail by ComReg. While ComReg agreed to eircom's suggestion that the 2002/03 figures should not be published because they would be rapidly overtaken by the final figures for 2002/03, ComReg took the view, that the submission for 2003/04 should be published in the RIO as these rates represent the best information currently available about rates for 2003/04 pending finalisation of these rates next year.

On the 21 November, ComReg published an Information Notice on its website detailing the new interim rates as per eircom's submission for the period 1 April 2003 to 31 March 2004. ComReg also wrote to eircom requesting that the new rates be published. ComReg did not formally direct eircom at that point.

eircom responded to this letter and the publication of the Information Notice stating, that as the 2003/04 rates they submitted were derived from the 2nd interim 2002/03 rates, the interim rates for 2003/04 must be reviewed and amended as part the finalisation of the 2002/03 rates. eircom states that it is inappropriate to revise rates for 2003/04 now given that eircom has provided ComReg with a new proposal for final rates for 2002/03 which was provided to ComReg on 7 November 2003. eircom states that it believes that 2003/04 rates cannot be revised with reference to the parallel review of final rates for 2002/03.

The submission of the 2002/03 final rates is, however, the subject of an extensive review by ComReg and based on previous experience, it is possible that this review will not be completed for some time. ComReg is concerned that waiting to complete the finalisation of the 2002/03 charges will cause unwarranted delay. ComReg's proposal is to use eircom's submission as it was originally intended – as a basis for revised interim rates. If there proves to be a need for an intermediate adjustment, second interim rates can be introduced, as has happened in earlier periods where this was judged to be valuable. ComReg therefore considers it appropriate and reasonable to direct eircom to act on the basis of their submission from July 2003.

Setting the 2003/04 RIO Rates;

Crucial to the decision to accept the submission from 15 July 2003 is that the 2003/04 estimates contained in *eircom's* submission implemented a new computation methodology determined upon in ComReg Decision Notice D14/03. The impact of this methodological change appeared to have been reasonably anticipated by eircom's submission and it seems appropriate that it should take effect within the year in which it was intended to be implemented. ComReg is consequently of the opinion that it is in the best interests of industry and the development of competition that the 2003/04 rates are brought into operation as soon as possible.

Draft Direction

Eircom Limited is directed to update the Reference Interconnect Offer with the revised National Termination, Origination and Transit Rates for 2003/04 as submitted (See Appendix C) on the 15 July 2003 and is also directed to refund Other Authorised Operators any monies due within 45 days of the date this direction.

This direction is made under Regulations 8 and 17 of S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003.

Q. 1. Should ComReg proceed with the above direction? Please provide reasons with detailed explanation for your answer.

3 Submitting Comments

The consultation period will run from 10 December 2003 to 24 December 2003, during which ComReg welcomes written comments on any of the issues raised in this paper.

Having analysed and considered the comments received, ComReg will decide on the next course of action in relation to setting 2003/04 interim RIO Rates and publish a report in early January 2004 on the consultation which will, amongst other things take in to account and summarise the responses to the consultation.

In order to promote further openness and transparency, ComReg will publish the names of all respondents and make available for inspection responses to the consultation at its Offices.

ComReg appreciates that issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful. Respondents are requested to clearly identify confidential material and if possible to include it in a separate annex to the response. Such information will be treated as strictly confidential.

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, the SMP operator must publish a 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. In particular, a SMP operator must justify to ComReg's satisfaction that the prices set are in accordance with the requirements of the legislation, which include the need for these prices to be cost-oriented, non-discriminatory and transparent. If ComReg is not satisfied that prices are properly justified, it may direct changes to be made to the RIO.

Eircom is an operator designated as having SMP in the relevant market for interconnection. Following the introduction of a new regulatory framework for electronic communications networks and services in Ireland on 25 July 2003, ComReg commenced a process of market analysis to assess the competitiveness of markets in this sector and if appropriate, to impose appropriate regulatory obligations. Pending completion of this work, *eircom* continues, under Regulation 8 of the Access Regulations¹ 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. Under Regulation 17 of the Access Regulation 17 ComReg may, for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under the Access Regulations, issue directions to an undertaking to do or refrain from doing anything which ComReg specifies in the direction.

¹ S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 which transposes Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities.

Appendix C – RIO Rates

<u>Interim Rates 03/04</u>	24 hour Cost per min	Day Cost per min	Evening Cost per min	Weekend Cost per min
Call Termination				
Primary	0.203	0.263	0.149	0.141
Short Tandem	0.396	0.513	0.291	0.275
Long Tandem	0.571	0.740	0.420	0.396
Call Origination				
Primary	0.207	0.268	0.152	0.144
Short Tandem	0.396	0.514	0.291	0.275
Long Tandem	0.514	0.666	0.378	0.357
Transit	0.211	0.274	0.155	0.147
	24 hour Cost per call	Day Cost per call	Evening Cost per call	Weekend Cost per call
Call Termination				
Primary	0.543	0.705	0.399	0.377
Short Tandem	0.774	1.004	0.569	0.538
Long Tandem	0.859	1.113	0.631	0.596
Call Origination				
Primary	0.547	0.710	0.402	0.380
Short Tandem	0.747	0.969	0.549	0.519
Long Tandem	0.781	1.013	0.574	0.542
Transit	0.411	0.533	0.302	0.285

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Appendix D – Regulatory Impact Assessment ('RIA')

This document considers the impact of the proposed direction relating to the application of revised National Termination, Origination and Transit rates in the interconnection market for 2003/04.

The proposed direction is examined in terms of its contribution to ComReg's statutory objectives – that is the promotion of competition, the completion of the single market, and the promotion of users' interests, all in a proportionate and a technology-neutral manner. An overall evaluation is carried out of the potential impact of the decision on competition.

This analysis looks at the impact of any proposed decision made by ComReg, and therefore considers the impact of change to the status quo whether of incremental or decremental effect. It should be noted that this is not an analysis of the principles of Interconnection.

The option which is assessed below is to implement the 2003/04 conveyance rates as submitted by eircom to ComReg on the 15 July 2003 for the period 1 April 2003 to 31 March 2004 from the date of the proposed direction.

Contribution to regulatory objectives

Promotion of competition

The regulatory objectives designed to promote competition address user benefits; the absence of distortion; and the encouragement of investment and innovation.

The direct impact of the measure is that it will allow OAOs to benefit from ComReg Decision Notice D14/03. This will also encourage new entrants to the market, thus increasing competition.

Development of the Internal Market

The development of the internal market requires the Regulator to ensure that there is no discrimination in the treatment of undertakings providing electronic communications networks and services. The proposed measure does not discriminate in terms of treatment, in that all operators will be on a level playing field in relation to costs incurred for interconnection. The potential impact of the measure will vary according to the market position of the operator, but this is to do with the structure of the market and not with the measure proposed.

Promotion of Users Interests

The ultimate beneficiaries will be users of telecommunications services who are likely to benefit from an improved service offering from increased competition.

Proportionality

ComReg believes that the measure is proportionate, rationally connected to its objectives, should be reasonably easily implemented and will deliver benefits sufficiently in excess of the cost of implementation to warrant implementation. ComReg believes that the proposed measure is appropriate and necessary in order to achieve the objectives, being legitimately pursued by ComReg in relation to its functions and legal obligations to promote efficiency and sustainable competition and to maximise consumer benefits. It affects operators' rights as little as possible and does not impose an excessive burden in relation to those obligations and the objectives sought to be achieved.

Technology Neutrality

The proposed decision has no implications for technology neutrality.

Overall Impact on Competition

There is no change expected in the retail price of calls expected, however the cost structure of the operators will change to reflect more accurately the revised

conveyance rates incurred in carrying calls. As such operators will be in a position to compete more effectively.

Regulatory Risk

ComReg have identified the main area of secondary risk to existing regulatory objectives:

That the new interim rates may send the incorrect signal to the market.

ComReg's view is that prompt implementation of D14/03 is more likely to provide accurate information to the market than further delay.

Cost of Implementation

The cost of implementation should not be significant.

Conclusions

Overall the measure to implement the revised conveyance rates from the date of direction will ensure a fairer representation of costs incurred and the change in the methodology adopted in charging costs by the inclusion of the methodology of Decision Notice D14/03, will promote competition, will allow OAOs to compete on a fairer basis and is justified and proportionate having regard to the likely benefits and costs.