



Commission for  
**Communications Regulation**

## Consultation Paper

### Treatment of Regulated Services within Bundled Retail Offers

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All responses to this consultation should be clearly marked:-  
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## 1 Executive Summary

During the past year, the Commission for Communications Regulation (“ComReg”) faced a challenging regulatory environment in the retail market for telecoms as the sales strategy of the telecoms industry has begun to shift towards selling services within a bundle for an overall retail price and away from the traditional “standalone” line rental and calls offers. Consumers are reaping the benefits of generally lower prices within these bundled offers and competition in the broadband market has also stimulated innovative and varied sales offers to attract customers.

Regulation in the provision of wholesale services, where an operator is designated with significant market power (“SMP”) has been and continues to be, specific to each market (such as retail fixed access, provision of fixed calls and wholesale broadband access). However, a disconnect has evolved between the offer of bundles at the retail level and the regulatory pricing of wholesale services where they are subject to a retail minus price control. This has led to a degree of regulatory uncertainty and a lack of clarity in relation to the monitoring of compliance with retail minus price controls. It has also made it more challenging for ComReg to ensure that competition is not negatively affected by virtue of changes in retail offers of bundles which include multiple services, one or more of which may be regulated.

In order for ComReg to address this uncertainty and to provide industry with the assurance that the SMP operator is in compliance with its regulatory obligations, ComReg has hired Oxera Consulting Limited (“Oxera”) to assist it in undertaking a review of the positive and negative impact of bundled offers on consumers and competition and whether intervention may be required by ComReg in certain circumstances.

Oxera has now completed this work and has proposed an approach which forms the basis of this consultation. ComReg believes that the proposed approach represents a significant step forward in providing clarity and certainty to both ComReg and industry in relation to the treatment of regulated services within bundled retail offers. However, before any formal decision can be made by ComReg on an appropriate regulatory approach, there are some fundamental questions that must first be addressed.

These questions are set out in this consultation and ComReg has set out its preliminary views. ComReg would like industry to provide a response to each question so as to inform its preliminary views and assist it in arriving at a formal decision on these very important matters. Active industry participation in this consultation will help to ensure that ComReg’s final decision is robust and in the best interests of the market as a whole.

## 2 Introduction

### Objectives of this Consultation

- 2.1 The key objective of ComReg in publishing this consultation document is to put in place a means by which ComReg can monitor compliance with regulated wholesale pricing in existing and future bundles in the telecoms market so as to ensure that they do not have any anti-competitive effects. Bundled offerings have been steadily increasing as a sales strategy for all operators. The most common bundle currently on offer includes line rental, broadband and calls. Therefore, bundles include a mix of wholesale products that are currently regulated using different price controls. These bundling strategies have led to a number of policy issues arising for ComReg. This consultation attempts to address these issues.
- 2.2 ComReg wishes to state at the outset that it welcomes the increasing use of bundled packages. Bundles are generally good for consumers, and can ensure consumers obtain significant discounts compared to buying standalone products. However, in certain instances, bundles can have anti-competitive effects on the market. In particular, when some of the services in the bundle are subject to *ex ante* price regulation (of the retail-minus variety), it can be difficult for the regulator to assess whether or not there are margin squeeze problems arising as a result. Recently, it has become increasingly difficult for ComReg to fulfil its regulatory obligations in relation to the standalone wholesale product offerings included within these bundled offerings. This increased pattern of bundling has prompted ComReg to publish this consultation document and engage with interested parties, so that it can ensure compliance with regulatory obligations where bundles include regulated standalone wholesale inputs, in particular those that are regulated via retail minus price controls.
- 2.3 In order to provide greater transparency and certainty to the wholesale market, ComReg is proposing a methodology that will ensure that bundles are not being used in an anti-competitive manner.
- 2.4 It should be noted that, in this consultation, ComReg is not proposing to regulate the retail price of bundles, or to prevent innovative bundles from being offered. The core of the proposed methodology is to ensure that any bundles which are introduced and include regulated wholesale services can be replicated by an efficient entrant. If bundles do not meet the proposed test, then the wholesale access prices of those elements of the bundle that are subject to a retail-minus price control will need to be lowered.
- 2.5 ComReg is of the preliminary view that the proposed methodology will give considerable clarity and certainty to the market, and thus, will have considerable benefits beyond ensuring that margin squeeze does not occur. ComReg believes that the proposed methodology strikes the correct balance between encouraging bundling which is pro-competitive and brings benefits to consumers, and unreasonable bundling that could have anti-competitive implications for competition and ultimately, consumers.

## Background

- 2.6 There are a number of relevant decisions which precede this consultation on bundling, notably in relation to the retail fixed narrowband access markets and the wholesale broadband access (“WBA”) market, as discussed below.
- 2.7 Following a review of the WBA market, Eircom was designated with SMP in that market.<sup>1</sup> As part of its analysis of the WBA market, ComReg identified a number of potential competition problems, in particular, the possible leverage of market power by the SMP operator in the upstream market, into the downstream market for retail broadband services, by way of a margin squeeze. In order to address the potential competition problems identified in this market, ComReg imposed a retail minus price control on an interim basis. ComReg also committed to undertaking further consultation in order to establish a permanent retail minus wholesale price control. In January 2006, ComReg published its final decision on the WBA market and imposed a retail minus price control with prior notification obligations.<sup>2</sup>
- 2.8 ComReg also conducted a market review of the retail fixed narrowband access markets during 2006 and 2007.<sup>3</sup> As part of that market review, ComReg considered whether it would be appropriate, having designated Eircom with SMP in this market, to impose an obligation on Eircom not to unreasonably bundle services - a remedy to address SMP which is permitted under Regulation 14 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2003.<sup>4</sup> ComReg outlined its reasoning for imposing this obligation as a remedy. ComReg highlighted its view that it generally perceives bundling as a positive development for consumers, but also recognised that there is a requirement for some obligation to prevent bundling that might be used for anti-competitive purposes, such as enabling an operator already dominant in one market to leverage its dominance into closely related markets.
- 2.9 In August, 2007, ComReg published a decision notice on the retail fixed narrowband access markets. ComReg designated Eircom as having SMP in the two markets defined and imposed remedies to address Eircom’s SMP that it considered appropriate, justified and proportionate.<sup>5</sup> Eircom was legally required to provide a wholesale line rental product to other authorised operators known as single billing wholesale line rental (“SB-WLR”) on a retail minus basis. In relation to bundling, the decision notice noted that:

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<sup>1</sup> ComReg (2005) Decision Notice – Designation of SMP and Related Remedies – Market Analysis: Wholesale Broadband Access, Document No. 05/11r, Decision No. D3/05, February.

<sup>2</sup> ComReg (2006) Decision Notice – Retail minus price control for the WBA market, Document No 06/01, Decision No D01/06.

<sup>3</sup> The first consultation paper published in relation to the Retail Fixed Narrowband Access Markets (ComReg Document 06/39) was published in August 2006. This was followed by a response to consultation and consultation on the draft decision (ComReg Document 07/26), published on 4 May 2007.

<sup>4</sup> This provision transposed Article 17(2) of the Universal Service Directive. Article 17(2) specifies that such obligations may include requirements that the SMP operator does not unreasonably bundle services.

<sup>5</sup> ComReg (2007) Decision Notice and Decision Instrument – Designation of SMP and SMP Obligations - Market Analysis: Retail Fixed Narrowband Access Markets, Document No. 07/61, Decision No. D07/61, August.

*“The SMP operator shall not unreasonably bundle. Two specific prohibitions under this obligation are that:*

- a) The SMP operator is required to offer all retail narrowband access services as stand-alone products.*
- b) The SMP operator should not price a retail bundle, which includes retail narrowband access, at a price which is below the costs of the fixed wholesale regulated elements. This will be enforced on an ex post basis. Except for bundles with a broadband component, which will continue to be analysed on an ex ante basis.*

*A further detailed consultation will consider how the retail minus price control for SB-WLR applies in the presence of retail bundling.”*

2.10 The Decision Instrument formalising the SMP obligations imposed upon Eircom provided amongst other things as follows:

*“7.8 Pursuant to Regulation 14 (2) (c) of the Universal Service Regulations, eircom shall not unreasonably bundle services.*

*7.9 Without prejudice to the generality of section 7.8, where eircom offers a number of services within a bundle, it shall ensure that end-users are able to purchase an individual service included in any such bundle without being required by contractual, or non-contractual means to purchase the entire bundle of services and that tariffs for the individual services comprising any such bundle, comply with the principle that end-users should not be required to pay for services, or facilities which are not necessary for the service requested.”*

2.11 It was also noted that some guidance as to what unreasonable bundling meant was set out in paragraphs 6.135 – 6.142 of the decision notice.

2.12 An obligation not to unreasonably bundle was therefore imposed upon Eircom and ComReg had also indicated that this consultation in relation to bundling would occur.

2.13 ComReg has now engaged Oxera to assist it in carrying out a robust economic analysis and to develop a methodology that can be employed to monitor bundles that include retail products whose wholesale inputs are regulated on a retail minus basis.

### **Legal background**

2.14 Please refer to sections 2.6- 2.12 and also the draft Decision Instrument in Appendix A to this consultation.

### **3 Proposed Approach to Monitoring Bundles that Contain Products Regulated on a Retail-Minus Basis**

#### **Introduction**

- 3.1 Due to the complexity involved in monitoring bundles that include products which are regulated on a retail minus basis, and given that there are very few precedents in other European countries, or in the European Regulator's Group, ComReg engaged Oxera to assist it in developing a methodology to ensure that the SMP operator does not "*unreasonably bundle*".
- 3.2 The suggested approach is included as part of Appendix C of this consultation document. Oxera's report highlights both the economic benefits and the regulatory concerns associated with bundling. It also considers a number of options for regulating bundles that include regulated services, including those regulated on a retail minus basis. The Oxera report recommends that an imputation test<sup>6</sup> is the best tool to regulate such bundles.
- 3.3 The Oxera report includes a hypothetical numerical example of how its proposed imputation test would operate. This example considers a scenario where the SMP operator would fail the test and wholesale prices of the regulated products would accordingly have to be adjusted. The example also considers a scenario where the incumbent would pass the test and no further action would be required.
- 3.4 The remainder of this section poses a number of questions pertaining to the approach put forward by Oxera. ComReg has put forward its preliminary views in relation to each of these questions. ComReg is keen to seek the views of industry and other interested parties in relation to each of these questions.
- 3.5 At this point it should be stressed again that ComReg is of the opinion that bundles provide direct benefits to the consumer for example, one price for multiple services. However, from a regulatory perspective, it is not sufficient to only have visibility of the overall retail price of a bundle of services where the bundle contains a regulated product / service(s) and in particular, where a retail price of a product / service(s) is used for setting a wholesale price(s).

#### **Proposed Framework**

- 3.6 Oxera's report contains a decision framework for monitoring markets where bundles are sold which include products that are regulated on a retail-minus basis.<sup>7</sup> The decision framework covers cases where the retail-minus wholesale inputs of the products in the bundle may have to be adjusted downwards (left-hand side of the decision framework covering vertical leverage concerns) as well as cases where retail-minus inputs do not need to be modified, but the bundle still needs to be monitored for potential anti-competitive concerns (right-hand side of the decision framework covering horizontal leverage concerns). The focus of Oxera's report and

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<sup>6</sup> An imputation test assesses whether an equally efficient entrant would be able to replicate the bundle. The test will be passed if the retail price for the bundle covers the costs of acquiring the wholesale inputs necessary for the provision of the bundle, plus the relevant retail costs (net of any efficiencies resulting from bundling).

<sup>7</sup> Please refer in particular to section 3.1 of the Oxera report.

of this consultation are vertical leverage concerns – i.e. cases where retail-minus wholesale inputs may have to be modified.

- 3.7 It is ComReg’s preliminary view that this decision framework is the most appropriate tool to determine whether or not a bundle needs to be modified.

**Q. 1. Do you agree that the decision framework put forward in figure 3.1 of Oxera’s report is the most appropriate way to monitor mixed bundles with retail minus wholesale inputs? If not, please explain your answer.**

### Proposed Methodology

- 3.8 Oxera proposes a three-step approach to determining whether, and if so, by how much, to adjust wholesale prices regulated using a retail-minus approach in response to a bundled product offering. The focus of the proposed methodology is on establishing whether the bundle is replicable by efficient competitors. The three steps are as follows:

- **Step 1.** Can the bundle be replicated using retail-minus inputs by an entrant which is as efficient as the incumbent?
- **Step 2.** If the imputation test is not passed, would it be necessary to adjust the regulated wholesale price?
- **Step 3.** By how much should wholesale prices be adjusted?

- 3.9 **Step 2** considers the feasibility of replicating the bundle through means other than purchasing the wholesale inputs, for example, through unbundling of the local loops as an alternative. Given the current low penetration level of LLU operators in Ireland, this alternative route for replicating a bundle is not considered to provide a viable means for replicating any bundle in the short-to-medium term. The focus of this consultation document is therefore on Steps 1 and 3.

- 3.10 **Step 1** in Oxera’s framework proposes an imputation test to monitor bundles which include products which are regulated on a retail-minus basis to ensure that bundles do not lead to anti-competitive effects in the market. An imputation test assesses whether an equally efficient entrant would be able to replicate the bundle. The test will be passed if the retail price for the bundle covers the costs of acquiring the wholesale inputs necessary for the provision of the bundle plus the relevant retail costs (net of any efficiencies resulting from bundling).

- 3.11 The principle of an imputation test seems sensible to ComReg. It will implement a readily understandable and directly applicable mechanism for evaluating bundles. Moreover, it is consistent with the idea of efficient entry, as should an efficient operator be able to replicate the bundle using the wholesale inputs available, then no intervention should normally be necessary. Finally, any intervention that does take place is based on changing the price of already existing wholesale inputs and is understandable and relatively easy to implement.



3.12 The imputation test proposed by Oxera is illustrated as follows in the case of a bundle consisting of three products a, b and c, where the wholesale inputs of products a and b are assumed to be regulated on a retail-minus basis and the wholesale inputs of product c are assumed to be regulated on a cost-plus (“FL-LRIC”) basis, or, more probably, are not regulated at all:

$$P_{abc} \geq (A_a + A_b + A_c) + (C_a + C_b + C_c - e_{abc})$$

where

$P_{abc}$  = the retail price of the bundle of products a, b, and c,

$A_a$  = the wholesale input cost for product a (retail minus),

$A_b$  = the wholesale input cost for product b (retail minus),

$A_c$  = the wholesale input cost for product c (cost-plus or not regulated),

$C_a$  = the retail cost for product a,

$C_b$  = the retail cost for product b,

$C_c$  = the retail cost for product c, and

$e_{abc}$  = the retail efficiency that can be achieved from the sale of the bundle.

3.13 As noted in the Oxera report, this imputation test can be re-expressed as follows:

$$d_{abc} \leq e_{abc} + m_c$$

where

$d_{abc}$  = the discount in the bundle’s price relative to the sum of prices of the unbundled products ( $d_{abc} = P_a + P_b + P_c - P_{abc}$ ) and

$m_c$  = the retail profit margin earned on sales of product c ( $m_c = P_c - A_c - C_c$ ).

3.14 The advantage of using the latter form of the test ( $d_{abc} \leq e_{abc} + m_c$ ) is that it focuses the analysis on  $d_{abc}$ ,  $e_{abc}$  and  $m_c$ , which are critical factors for the adjustment of retail-minus wholesale inputs if the test is not passed, as is explained in Step 3 of the Oxera framework.

3.15 If the imputation test is not passed, it would be necessary to adjust the retail-minus wholesale inputs of products in the bundle. This corresponds to **Step 3** in Oxera’s framework, which using Inequality 7 of Oxera’s report can be expressed as follows:

$$(A_a + A_b)^* \leq A_a + A_b - (d_{abc} - e_{abc} - m_c)$$

3.16 Additionally, it would be necessary to allocate the amount of the adjustment ( $d_{abc} - e_{abc} - m_c$ ) to products a and b. The Oxera report (section 3.4.2) proposes two options: the Ramsey approach (Option 1) and the equi-proportional mark-up approach (Option 2). ComReg proposes to adopt Option 2 as the costs of calculating the Ramsey approach would be disproportionate, and the results would be likely to be uncertain. Under Option 2, a proportion of the discount,  $A_a / (A_a + A_b)$ , would be

allocated to the wholesale input price of product a, and  $A_b / (A_a + A_b)$  to the wholesale input price of product b.

**Q. 2. Do you or do you not agree that LLU is unlikely to be on a sufficiently large scale in Ireland over the next one to two years so as to remove the need to ensure no margin squeeze in bundles? Please explain your response.**

**Q. 3. Do you or do you not agree that the equi-proportional mark-up approach (i.e. Option 2 as referred to in section 3.4.2 of Oxera's Report), is the most appropriate way to allocate the discount when such an allocation is necessary? Please explain your response.**

### **Implementing Changes to Retail Minus Regulated Wholesale Input Prices**

3.17 Where it has been found that the imputation test has not been passed, changes to wholesale prices may be required.

3.18 Oxera put forward a number of suggestions as to how adjustments to wholesale prices could be calculated. These are as follows:

- **Option 1** would involve setting different wholesale prices, depending on whether an entrant is selling products on a standalone basis, or in bundles;
- **Option 2** would involve estimating a blended rate based on the weights of standalone prices, versus bundled prices. This could be implemented in one of two ways: **Option 2a** would use the product mix sold by the incumbent, while **Option 2b** would use the product mix of the market as a whole; or
- **Option 3** would use the lowest of the access prices that are revealed through the imputation test.

3.19 ComReg's view is that Option 2a would be the most appropriate and proportionate way of allocating the required wholesale adjustments. Option 2a involves: *"estimating a blended rate based on the weights of standalone versus bundled sales. This option can be implemented in two ways. Option 2a would use the product mix sold by the incumbent."*

**Q. 4. Do you or do you not agree that the adjustment method detailed above (i.e. Option 2a proposed by Oxera), is the most appropriate way to adjust the retail minus regulated wholesale inputs where the imputation test is not passed? Please explain your response.**

3.20 The information required to undertake steps 1 and 3 of the framework is as follows:

- $P_{abc}$ : The retail price of the bundle ( $P_{abc}$ ) and the standalone prices of the products within the bundle ( $P_a$ ,  $P_b$ , and  $P_c$ );
- A: The wholesale input cost for each of the products included within the bundle;
- C: The retail costs associated with each of the products included within the bundle; and
- $e_{abc}$ : The retail efficiency that can be achieved from the sale of the bundle.

3.21 It is ComReg's preliminary view that the retail price (i.e. P) associated with each of the regulated products included within the bundle should be the SMP operator's standalone retail price for each product included within the bundle. The issue of the appropriate retail price to be used in the case of unregulated products (which may not be sold on a standalone basis) is addressed further below.

3.22 The wholesale input cost (i.e. A) for each of the regulated products included within the bundle can be easily calculated from the retail price via the retail minus price control. For example, the retail price for 1mb broadband from Eircom is currently €24.99, and the wholesale input cost €10.29 (this is calculated according to the formula set out in ComReg Document D1/06).<sup>8</sup> If the product in question is calls, calculating the wholesale input cost is more complicated. This is addressed in more detail in paragraphs 3.27 to 3.42 below.

3.23 In order to derive the retail costs (i.e. C) associated with each individual regulated product within the bundle, the wholesale input cost (A) is subtracted from the standalone retail price (P) of each product included within the bundle. If for example, broadband is included within a bundle, and assuming the standalone retail price of broadband is €20 and the wholesale cost of broadband is €10, then the retail costs associated with broadband would be assumed to be €10 ( i.e.  $P - A = C$ , or in this case  $€20 - €10 = €10$ ).

3.24 It is also necessary to quantify the retail efficiency (i.e.  $e_{abc}$ ) that can be achieved from the sale of the bundle. There are potentially both supply and demand side efficiencies that can be gained from selling a bundle. If such efficiencies are identified at the wholesale level, they should result in reductions to the wholesale costs since it would be difficult for an entrant to replicate them. However, bundling may not obviously give rise to significant economies of scope at the wholesale level over and above the economies of joint supply. Therefore, cost reductions may occur

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<sup>8</sup> See Eircom's Bitstream Access Reference Offer Pricelist on its wholesale website (the "BARO").

as a result of economies of scope at the retail level, for example, marketing expenditure, joint billing, customer service and customer management. It should be noted that retail cost efficiencies should not result in changes to wholesale costs as, in principle, they can be achieved by any operator which is as efficient as the SMP operator. The imputation test designed by Oxera reflects this principle.

3.25 Oxera's report concludes that if the efficiencies at the wholesale level explain the bundled discount, this should lead to adjustments to the wholesale input prices charged for the inputs regulated via retail-minus controls. These adjustments would apply to the general price at which SB-WLR and/or wholesale broadband are sold at. In contrast, if retail efficiencies fully explain the bundled discount, no adjustment to the retail minus wholesale input costs would be required.

3.26 An issue is thus how to put a value, if any, on the efficiencies gained by selling a bundle. This is discussed further in paragraphs 3.46 to 3.48 below.

**Q. 5. Do you or do you not agree that the use of an imputation test is the most appropriate way to monitor regulated wholesale prices sold within bundles so as to ensure that bundles do not lead to anticompetitive effects in the market? If not, what approach do you believe would be more appropriate? Please explain your response.**

**Q. 6. Do you or do you not agree that the retail minus regulated wholesale input should be adjusted where the imputation test is not passed by the SMP operator? Please explain your response.**

**Q. 7. Do you or do you not agree that any adjustment to wholesale prices required should be reflected in the current Eircom Reference Interconnect Offer ('RIO') Offer and the BARO schedules? Please explain your response.**

### **Estimating Prices, Costs and Margins for Non-Regulated Products within Bundles**

3.27 The most common bundle currently being sold includes line rental (access) broadband and calls. Both line rental and broadband are regulated at the wholesale level on a retail minus basis, while calls will shortly cease to be subject to *ex ante* regulation.<sup>9</sup> When these three products are sold together in a bundle, a number of issues arise which ComReg must consider so as to ensure that there is no potential

<sup>9</sup> Refer to ComReg (2007), Decision Notice and Decision Instrument - Market Analysis: Retail Fixed Calls Market Review, Document No. 07/111, Decision No. D07/07, December 2007.

for a margin squeeze for competing operators. The key issue, as highlighted by the proposed methodology described above, is to estimate the profit margin of the calls product sold in the bundle ( $m_c$ ). This requires answering questions such as what the implicit retail price for calls is and what the appropriate wholesale and retail costs for calls are. These questions are considered in more detail in paragraphs 3.29 to 3.42 below.

- 3.28 As many of the bundles currently being sold include fixed line calls, the issues that arise in relation to these types of bundles are discussed below. This is followed by a discussion of bundles that include non-regulated products that could potentially be included in bundles, and the proposed approach with regard to those products. While ComReg recognises that bundles currently include a variety of products, this consultation document will focus on fixed calls for practical purposes.

### ***Estimating Prices and Costs for Bundles that include Fixed Line Calls***

#### Whose wholesale costs should be used for fixed line calls?

- 3.29 When imposing the imputation test, ComReg must consider whose costs should be used, e.g. the costs of the SMP operator or the costs of an equally efficient competitor.
- 3.30 In the SB-WLR market, the SMP operator's costs have been used in the retail minus price control.<sup>10</sup> A 10% margin was applied to derive the wholesale input cost, i.e. the SMP operator's retail price minus 10%.<sup>11</sup>
- 3.31 In the WBA market<sup>12</sup>, the SMP operator's retail prices are used to derive the wholesale cost in the retail minus price control. ComReg used the concept of "similarly efficient operator" i.e. one which shares the same cost function as eircom's (the SMP operator's) own downstream businesses, but which does not yet necessarily enjoy the same economies of scale and scope as eircom's overall business currently does. In order to calculate the similarly efficient operator costs, the SMP operator's costs are used as the starting point for assessment. These costs would then be modified to take into account the costs borne by a similarly efficient new entrant.
- 3.32 In the WBA market<sup>13</sup>, ComReg implemented a forward-looking discounted cash flow ("DCF") model based on a hypothetical new entrant and the costs of a similarly efficient operator have been used in deriving a DCF model to ensure that there is no margin squeeze in the WBA market.
- 3.33 In contrast and in the current context of reviewing bundles, ComReg is not proposing a forward looking DCF model to monitor a new entrant's bundles. The objective of the imputation test is to ensure that a SMP operator is not "*unreasonably bundling*". In this context, it is ComReg's preliminary view that

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<sup>10</sup> See ComReg (2004) Information Notice 04/34.

<sup>11</sup> It should be noted that the SB-WLR retail minus control is currently under review. Pending this review the 10% may be subject to change.

<sup>12</sup> ComReg Decision No. D3/05

<sup>13</sup> ComReg Decision No. D01/06.

using the costs of the SMP operator would be the most appropriate approach. This approach would appear to strike the required balance between the costs of compliance for the SMP operator and the relative benefits for other operators and ultimately, the consumer.

**Q. 8. Whose wholesale costs should be used in relation to fixed line calls to complete the imputation test – the SMP operator, or an equally efficient operator? Please explain your response.**

What are the retail prices and retail costs associated with fixed line calls?

- 3.34 When considering products in a bundle that are not regulated via a retail-minus price control such as calls, ComReg needs to include the retail costs of calls to complete the imputation test. Given the nature of calls and the fact that the minutes and call types may vary substantially, some form of approximation is required in order to have an approximated standard to include in the imputation test.
- 3.35 In order to derive the standalone retail price of the calls included within a bundle, ComReg's preliminary view is that it would be appropriate to use one of the current SMP operator calls bundles that is on offer. For example, if the SMP operator offers a bundle that includes line rental and calls for a retail price of €35 and the SMP operator offers line rental price on its own at a retail price of €25, then the retail price attributable to calls is deemed to be €10 (i.e. €35 - €25).
- 3.36 Having derived the retail price attributable to calls, it is also necessary to determine the retail costs associated with calls to complete the imputation test. ComReg welcomes views on the appropriate allocation of costs between calls and access when they are sold together in a bundle.

**Q. 9. Do you or do you not agree with ComReg's proposed method for deriving the retail price of calls? Please explain your answer and where possible, provide substantiated evidence and examples from the market.**

**Q. 10. What is the appropriate level of retail costs associated with calls to be used when implementing the imputation test? Please explain your answer and where possible, provide substantiated evidence and examples from the market.**

What are the wholesale costs of fixed line calls and what is the appropriate margin on fixed line calls?

3.37 In order to derive the wholesale input costs for calls (i.e. origination, transit and termination), ComReg has two options available.

- Firstly, ComReg could use the SMP operator's historic cost accounts ("HCAs") to provide the overall average profit margins on calls (i.e. local and national) on an annual basis.
- Secondly, ComReg could carry out a discounted cash flow ("DCF") analysis on calls.

In considering these two options, it is necessary to consider the costs versus the benefits of each option.

3.38 Before considering these two options, it should be noted that in order to derive the standalone retail price of the calls included within a bundle, ComReg intends to use an approximated figure as previously described above in paragraph 3.35.

3.39 In ComReg Decision No. D01/06, ComReg used a forward looking DCF model when assessing the margins of an equally efficient operator.<sup>14</sup> This method has also been used by other regulators in Europe for regulating different aspects of the telecoms market. One advantage of this method is that it forecasts the analysis over a number of years, which can provide a more accurate measure of the relevant revenues and costs. However, this methodology would require a SMP operator to provide information about the retail cost savings from selling calls within a bundle. This information flow would have to be closely monitored by ComReg. It might also require a further consultation from ComReg in order to determine the best inputs to use in such a DCF model.

3.40 The alternative is to use the HCAs of the SMP operator to calculate the margin on existing products such as calls. The figures used in the HCA accounts are audited by a third party. The HCA accounts can provide the accounting operating margins for existing products such as local and national calls (which are not regulated via retail minus controls). However, a margin derived via the SMP operator's HCAs is likely to be higher than the relevant economic margin. In theory, the relevant economic margin (which could be seen as profits above the normal level) would probably be lower, as it would have to take into account the return on capital, and the asset base in which an equally efficient operator would need to invest to be able to provide the bundle. Consequently, there will be a trade-off between using readily available information versus attempting to justify some form of economic margin. While the HCA accounts do not measure the economic profit attained on calls, these accounts are not solely an accounting profit in that they take account of a contribution towards the cost of capital.

3.41 ComReg is of the preliminary view that using the HCA accounts for calculating the margins for calls which are not regulated via retail minus price controls, would be the most appropriate way forward, as this information is readily available. ComReg has a significant amount of information on these costs based on regular reviews of the cost orientation of fixed line call offers from the incumbent over the past number

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<sup>14</sup> The DCF analysis calculates the costs and revenues incurred by the relevant entity in each year of a reference time period. These costs and revenues are then discounted back to the start date to obtain a net present value ("NPV") for the project. If the NPV calculation is zero or positive, costs have been covered over the timeframe of the analysis.

of years. Therefore, any future review of this information would be easily accessible and verifiable. ComReg is proposing to review the SMP operator's wholesale cost and retail cost inputs associated with the relevant call types offered within the bundle. Again, once the principle of this calculation is agreed, it would be applied to fixed-to-mobile and international call margins on a similar basis.

- 3.42 Note that ComReg recognises that this may overstate the SMP operator's margin somewhat and thus, it may be appropriate to make an extra allowance for this. ComReg would also expect that as the calls market becomes more competitive, the margin should fall over time.

**Q. 11. In order to populate the imputation test, should the wholesale and retail cost of provision of calls be calculated using the most recent historic cost accounts of the SMP operator in question? If not, please suggest an alternative and outline the reasoning for your suggested approach. If yes, do you feel a further adjustment should be made to allow a closer approximation to the economic margin? Please explain your response.**

***Estimating Margins for Bundles that Include Non-Regulated Products other than Calls***

- 3.43 The proposed imputation test can be used to monitor bundles that include other unregulated products that could potentially, in the future, form part of a bundle, for example mobile telephony, or television services. If such products are added to a bundle, this again raises questions about how the imputation test would take these into account.
- 3.44 In the case of products within a bundle which are not regulated, ComReg is of the preliminary view that the most appropriate retail price for the product is the current standalone retail price and that this would be used as the input in the imputation test. If the standalone prices of the products within the bundle change, the bundle would have to be reassessed using the imputation test. ComReg believes this to be the most practical method, as there is no visibility of wholesale or retail costs associated with unregulated services, and arriving at these would be complicated and problematic. Given the urgency of the need for regulatory assurance in the market, ComReg believes that using the equivalent standalone retail price is the most appropriate way forward. In the event that a standalone price is not available for the equivalent retail offer in the bundle, ComReg would take the closest proxy available in the retail market.
- 3.45 In relation to the issue of wholesale costs, ComReg's first approach would be to use the same methodology as for retail calls. However, for some products, it may be particularly difficult to estimate the wholesale cost and/or the margin involved. HCA estimates, which are available for retail calls, may not be readily accessible for products such as mobile access and calls. ComReg would note that, if the market is



considered to be effectively competitive, that should imply that the economic margin should be close to zero. As such, it would favour using a low margin, possibly around 10%, unless there is good evidence to suggest that a different approach would be appropriate.

**Q. 12. Do you or do you not agree with ComReg's proposed methodology for inclusion of unregulated products in the proposed imputation test? Please explain your answer providing substantiated evidence and / or examples from the market where possible.**

### **Efficiencies**

- 3.46 Bundling a number of products together is likely to give rise to efficiencies, either at the retail level or the wholesale level or both, which allows the bundle to be sold at a discount compared to the standalone products. In order to implement the imputation test, ComReg needs to be able to quantify the size of these efficiencies, if any.
- 3.47 If efficiencies are occurring at the wholesale level, these efficiencies should in turn be quantified in terms of the bundled discount and allocated to the retail minus regulated wholesale inputs. If these regulated wholesale inputs are not adjusted, it could facilitate vertical leverage of the market power of the incumbent operator from the upstream market where it has SMP, into one or several of the downstream markets where it does not have SMP. Therefore, it could make it difficult for alternative, equally efficient operators to replicate the bundle and to compete in the retail markets. If such efficiencies occur solely at the retail level, no adjustment to the wholesale inputs would be required as in principle, these retail efficiencies could be achieved by any new or existing entrant which is as efficient as the incumbent operator. As noted above, the Oxera imputation test has been designed to reflect this principle.
- 3.48 ComReg's preliminary view is that it would be appropriate to use an efficiency of €0 when monitoring bundles, unless operators can provide sufficient justification that efficiencies are above €0. The contrary view may be that the level of efficiency should be greater than this, but ComReg is of the view that this would need clear and compelling evidence to support it. It should also be noted that, even if an efficiency value of €0 could somewhat underestimate the possible level of discount, this may compensate for any inaccurate estimation of the level of margin, as the effects tend to counteract each other.

**Q. 13. What do you believe might be a reasonable efficiency gain that an operator could expect to achieve from selling a number of products / services as part of a bundle as opposed to on a standalone basis (i.e. “e” in the imputation test)? Please explain your answer and where possible provide substantiated evidence and examples from the market.**

**Q. 14. Do you agree or disagree with ComReg that even where there is evidence of an efficiency gain that, due to the subjective nature of estimating its value and the continued change in bundled offers, a value of €0 is a more practical approach when testing bundled offers? Please explain your response.**

**Q. 15. Where ComReg is testing bundled offers of Eircom, do you agree that the proposal to assess Eircom’s historical retail costs (which include economies of scale and scope of the incumbent) in the proposed test provides further weight to taking an efficiency gain of €0? Please explain your response.**

### **Discounts and Promotions**

- 3.49 ComReg is of the preliminary opinion that any discounts to the standalone and/or the overall bundle price will require a re-examination of the imputation test to ensure there is no requirement for an amendment to a wholesale price.
- 3.50 ComReg is of the preliminary view that any promotions proposed relating to a bundle offer must also be considered in relation to the imputation test as a retail cost. In order to include such promotions, they must be looked at on an approximate lifetime of an average customer. In relation to the WBA market, this is currently assumed to be forty two months. Where the promotions are specific to the individual service, say broadband, they should be taken into consideration in the calculation of that wholesale price according to ComReg Decision No. D1/06 and not the imputation test.
- 3.51 ComReg is also of the view that discounts and promotions should only be available for a certain period of time before they become a permanent price change. Experience in the past has shown that promotions launched have run for a considerable period of time beyond that initially intended which can sometimes lead to uncertainty as to the true retail price associated with the service being offered. As such, ComReg seeks the views of industry of what they consider to be best practice when monitoring promotions, should they have a finite lifetime or should they be allowed once there is no potential margin squeeze impact.

3.52 It should be noted that ComReg's proposed measures are concerned with addressing potential competition problems in the market, ComReg will consider promotions etc on an *ex post* basis as well as *ex ante* to ensure a margin squeeze is not being occurring.

**Q. 16. Do you agree or disagree with the proposed methodology above for the treatment of discounts and promotions? Please explain your answer.**

**Q. 17. Do you agree or disagree that discounts and promotions should only be offered for a finite period of time? If so what do you think is the appropriate maximum period over which they can be offered? Please explain your answer.**

### **Notification Process**

3.53 ComReg welcomes views on issues relating to the notification of bundles and how the imputation test would be implemented in practice.

3.54 It is ComReg's preliminary view that in the case of bundles incorporating either line rental or broadband, or both, the SMP operator should notify ComReg using the same or similar *ex ante* timelines specified in ComReg Decision No. D07/61 and ComReg Decision No. D01/06. This would mean that prior to the date that a new bundle is to be made available or offered for sale, Eircom would furnish ComReg with a detailed written submission demonstrating how Eircom's proposed bundle passes the imputation test (or appropriate alternative methodology if one suggested by respondents to this consultation is accepted). The submission would make full and true disclosure of all material facts for the purpose of demonstrating that the proposed bundle actually passes the relevant test.

3.55 If the submission reveals that the imputation test is not passed, the SMP operator would then include in its submission the required adjustments to the wholesale inputs based on the final agreed imputation test control.

3.56 Please refer to the Draft Decision Instrument in Appendix A for further discussion of notification issues.

- Q. 18.** Do you agree or disagree that bundles should be notified to ComReg on an *ex ante* basis in line with the timelines specified in ComReg Decision No. D07/61 and D01/06? Please explain your answer.
- Q. 19.** Do you agree or disagree that existing bundles that include services subject to retail minus wholesale price controls should be notified to ComReg within one month of the proposed imputation test being adopted? Please explain your answer.
- Q. 20.** Do you agree or disagree that in the event that an existing bundle fails the imputation test the associated wholesale prices should be amended and that any change required would be applied to prices on a forward looking basis only? Please explain your answer.

## 4 Submitting Comments

All comments are welcome, however it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document as well as to the relevant paragraph numbers where possible.

The consultation period will run from 4<sup>th</sup> January 2008 to 8<sup>th</sup> February 2008 during which time ComReg welcomes written comments on any of the issues raised in this paper.

Having analysed and considered the comments received, ComReg will review the consultation on bundling in the context of retail minus regulation, the responses received from industry and interested parties and publish a report as soon as possible on the consultation which will, inter alia summarise the responses to the consultation.

In order to promote further openness and transparency ComReg will publish all respondents submissions to this consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information (see ComReg Document No. 05/24).

### **Please note**

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

As it is ComReg's policy to make all responses available on its web-site and for inspection generally, respondents to consultations are requested to clearly identify confidential material and place confidential material in a separate annex to their response. Such information will be treated subject to the provisions of ComReg's guidelines on the treatment of confidential information (see ComReg Document No. 05/24).

## Appendix A – Draft Decision Instrument

*NOTE: This Draft Decision Instrument is for information purposes only and is not the final Decision Instrument. Respondents to consultation are asked to provide their detailed views from a commercial, practical and legal perspective in relation to the Draft Decision Instrument.*

### 1 STATUTORY AND LEGAL POWERS

1.1 This Decision Instrument is made by the Commission for Communications Regulation (“ComReg”) pursuant to:

1. Regulation 14 (2) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2003;
2. ComReg Decision No. 07/61;<sup>15</sup>
3. ComReg Decision No. 06/01<sup>16</sup>; and
4. Having regard to its functions and objectives under sections 10 and 12 respectively of the Communications Regulation Act, 2002

### 2 DEFINITIONS AND INTERPRETATION

2.1 In this Decision Instrument:

“**Bundle**” means a combination of any retail products or services made available to or offered for sale to the public<sup>17</sup>, which has included within that combination a retail product or service having a corresponding regulated wholesale input;

“**Imputation test**” means the test as set out in Table 1 in section 5;

“**OA**” means another authorised operator being an authorised undertaking for the purposes of the European Communities (Electronic Communications Networks and Services (Authorisation) Regulations 2003;

“**Promotion**” means any financial or economic inducement, or any financial or economic incentive with or within a bundle, which is made available to or offered for sale to the public for a period not exceeding [●] months;

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<sup>15</sup> Decision Notice and Decision Instrument - Designation of SMP and SMP Obligations. Market Analysis: Retail Fixed Narrowband Access Markets, dated 24 August, 2007. Sections 7.8 and 7.9 of the Decision Instrument prohibit unreasonable bundling by Eircom.

<sup>16</sup> Decision Notice and Decision Instrument - Retail minus wholesale price control for the WBA market, dated 13 January, 2006.

<sup>17</sup> For the avoidance of doubt, reference to the “public” includes all end-users, including end-users who are acting in the course of business.

**“Regulated wholesale input”** means either or both (i) single billing wholesale line rental (ii) wholesale broadband access, as referred to in ComReg Decision No. 07/61 and ComReg Decision No. 06/01 respectively;

**“Working day”** means any day other than Saturday or Sunday or a bank or public holiday in Ireland.

- 2.2 ComReg Decision No. 07/61 and ComReg Decision No. 06/01 and the individual decisions in this Decision Notice shall where necessary be construed with this Decision Instrument.

### **3 SCOPE AND APPLICATION**

- 3.1 This Decision Instrument applies to Eircom Limited and its successors and assigns (“Eircom”) and relates to the treatment of regulated wholesale inputs associated with bundles and promotions.
- 3.2 This Decision Instrument is binding upon Eircom and Eircom shall comply with it in all respects.

### **4 OBLIGATION TO NOTIFY BUNDLES AND PROMOTIONS**

- 4.1 Eircom shall notify any bundle, or promotion to ComReg in accordance with this section.
- 4.2 Whenever Eircom intends to introduce any bundle, or promotion, it shall notify ComReg in writing of its intention to do so not less than 15 working days prior to the date of its intended introduction.
- 4.3 The notification to ComReg referred to in section 4.2 shall contain full and true disclosure of all material facts for the purposes of this Decision Instrument. Without prejudice to the generality of this requirement, the notification shall include the following information:
1. A full description of the products, goods and services comprising the bundle, or promotion.
  2. The proposed terms and conditions (including the retail price) for the bundle or promotion proposed to be included in any relevant amendment to the Eircom Telecommunications Scheme.
  3. The date upon which the bundle or promotion is intended to be made available to or offered for sale to the public.
  4. A detailed and comprehensive submission, demonstrating how the bundle or promotion passes the imputation test, or does not pass the imputation test, as the case might be. The submission shall at a minimum include the elements contained in the imputation test and Eircom shall, by applying the

imputation test, demonstrate how the bundle or promotion passes it. The onus shall be on Eircom to demonstrate how the bundle or promotion passes the imputation test.

5. If a bundle or promotion includes new retail services or products not previously available on, or available in connection with the retail broadband market, Eircom shall describe in detail how it has determined the value of these as inputs for the purposes of the imputation test and how the value has been assigned within the imputation test.
6. [Other]. **Note for respondents to consultation:** Respondents are asked for specific comments on what further information (if any) should be sought under this section.

## 5 ASSESSMENT OF BUNDLES AND PROMOTIONS

- 5.1 Upon receipt of the notification required by section 4, ComReg shall conduct an assessment of the information and the submission contained in the notification. ComReg shall conduct its assessment by:
  1. Reviewing the information set out in the notification referred to in section 4 and determining whether the imputation test is either passed or failed.
  2. If a bundle or promotion includes new services or products not previously available on, or available in connection with the retail broadband market, and ComReg believes that the value attributed to that input for the purposes of the imputation test is insufficiently justified or is unreasonable, ComReg shall attempt to attribute a reasonable value to it when reviewing the information set out in the notification referred to in section 4 and determining whether the imputation test is either passed or failed.
  3. [Other] **Note for respondents to consultation:** Respondents are asked for specific comments on what (if any) other factors should be set out here and which ComReg should take in to account in its assessment of bundles and promotions.

**Table 1: The imputation test \***

$$P_{abc} \geq (A_a + A_b + A_c) + (C_a + C_b + C_c - e_{abc})$$

where

$P_{abc}$  = the retail price of the bundle of products a, b, and c,

$A_a$  = the wholesale input cost for product a (retail minus),

$A_b$  = the wholesale input cost for product b (retail minus),

$A_c$  = the wholesale input cost for product c (cost-plus or not regulated),



$C_a$  = the retail cost for product a,  
 $C_b$  = the retail cost for product b,  
 $C_c$  = the retail cost for product c and  
 $e_{abc}$  = the retail efficiency that can be achieved from the sale of the bundle.

*\* Note for respondents to consultation: The imputation test as set out above, currently addresses a scenario where the bundle comprises up to 3 products. It must however also be capable of being applied when the bundle comprises 4 or more products, or is a promotion. In addition, the value of the additional products / promotion would have to be given in the equation (i.e. is it the “standalone” retail price/ value or the cost price? The views of respondents to consultation are sought on these matters also.*

5.2 Within 10 working days of receipt of the notification referred to in section 4, ComReg shall inform Eircom in writing that either:

1. The imputation test has been passed; in which case the promotion or bundle shall be deemed to be compliant with this Decision Instrument; or
2. The imputation test has been failed; in which case Eircom shall reduce the price of one, or both of the regulated wholesale inputs, in accordance with its obligations under ComReg Decision No. 07/61 and ComReg Decision No. 06/01 (or both as the case may be). ComReg shall at the same time specify how the reduction(s) required in respect of each regulated wholesale input shall be allocated and Eircom shall allocate any such reduction(s) in accordance with ComReg’s specification; or
3. Eircom has not provided a notification in compliance with section 4 and/or that ComReg requires further information in relation to the notification; in which case ComReg shall inform Eircom in writing how the notification is not in compliance with section 4 and/ or what further information it requires in relation to the notification.

5.3 The wholesale price resulting from a required adjustment to a regulated wholesale input shall be made available by Eircom to all OAOs in accordance with either ComReg Decision No. 07/61 or ComReg Decision No. 06/01, or both, as appropriate.

## **6 OBLIGATION TO NOTIFY EXISTING BUNDLES AND PROMOTIONS**

6.1 All existing bundles and promotions available or offered for sale to the public by Eircom immediately prior to the effective date of this Decision Instrument, shall be notified to ComReg in writing within 30 working days of the effective date of this Decision Instrument, or within such period as may be otherwise agreed by

ComReg. The notification shall contain the same information referred to in section 4.2.

- 6.2 The bundles and promotions required to be notified under section 6.1, shall be assessed by ComReg in the same manner as the assessment referred to in section 5.1.
- 6.3 As soon as practicable, but not later than 60 working days after receipt of the notification referred to in section 6.1, ComReg shall inform Eircom in writing that either:
  1. The imputation test has been passed; in which case the promotion or bundle shall be deemed to be compliant with this Decision Instrument; or
  2. The imputation test has been failed; in which case Eircom shall reduce the price of one, or both of the regulated wholesale inputs, in accordance with its obligations under ComReg Decision No. 07/61 and ComReg Decision No. 06/01 (or both as the case may be). ComReg shall at the same time specify how the reduction(s) required in respect of each regulated wholesale input shall be allocated and Eircom shall allocate any such reduction(s) in accordance with ComReg's specification; or
  3. Eircom has not provided a notification in compliance with section 4 and/or that ComReg requires further information in relation to the notification; in which case ComReg shall inform Eircom in writing how the notification is not in compliance with section 4 and/ or what further information it requires in relation to the notification.

## **7 STATUTORY POWERS NOT AFFECTED**

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

## **8 EFFECTIVE DATE**

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

**JOHN DOHERTY**  
**CHAIRPERSON**  
**THE COMMISSION FOR COMMUNICATIONS REGULATION**  
**THE • DAY OF • 200•**

## Appendix B – Consultation Questions

- Q. 1. Do you agree that the decision framework put forward in figure 3.1 of Oxera's report is the most appropriate way to monitor mixed bundles with retail minus wholesale inputs? If not, please explain your answer.
- Q. 2. Do you or do you not agree that LLU is unlikely to be on a sufficiently large scale in Ireland over the next one to two years so as to remove the need to ensure no margin squeeze in bundles? Please explain your response.
- Q. 3. Do you or do you not agree that the equi-proportional mark-up approach (i.e. Option 2 as referred to in section 3.4.2 of Oxera's Report), is the most appropriate way to allocate the discount when such an allocation is necessary? Please explain your response.
- Q. 4. Do you or do you not agree that the adjustment method detailed above (i.e. Option 2a proposed by Oxera), is the most appropriate way to adjust the retail minus regulated wholesale inputs where the imputation test is not passed? Please explain your response.
- Q. 5. Do you or do you not agree that the use of an imputation test is the most appropriate way to monitor regulated wholesale prices sold within bundles so as to ensure that bundles do not lead to anticompetitive effects in the market? If not, what approach do you believe would be more appropriate? Please explain your response.
- Q. 6. Do you or do you not agree that the retail minus regulated wholesale input should be adjusted where the imputation test is not passed by the SMP operator? Please explain your response.
- Q. 7. Do you or do you not agree that any adjustment to wholesale prices required should be reflected in the current Eircom Reference Interconnect Offer ('RIO') Offer and the BARO schedules? Please explain your response.

- Q. 8. Whose wholesale costs should be used in relation to fixed line calls to complete the imputation test – the SMP operator, or an equally efficient operator? Please explain your response.
- Q. 9. Do you or do you not agree with ComReg’s proposed method for deriving the retail price of calls? Please explain your answer and where possible, provide substantiated evidence and examples from the market.
- Q. 10. What is the appropriate level of retail costs associated with calls to be used when implementing the imputation test? Please explain your answer and where possible, provide substantiated evidence and examples from the market.
- Q. 11. In order to populate the imputation test, should the wholesale and retail cost of provision of calls be calculated using the most recent historic cost accounts of the SMP operator in question? If not, please suggest an alternative and outline the reasoning for your suggested approach. If yes, do you feel a further adjustment should be made to allow a closer approximation to the economic margin? Please explain your response.
- Q. 12. Do you or do you not agree with ComReg’s proposed methodology for inclusion of unregulated products in the proposed imputation test? Please explain your answer providing substantiated evidence and / or examples from the market where possible.
- Q. 13. What do you believe might be a reasonable efficiency gain that an operator could expect to achieve from selling a number of products / services as part of a bundle as opposed to on a standalone basis (i.e. “e” in the imputation test)? Please explain your answer and where possible provide substantiated evidence and examples from the market.
- Q. 14. Do you agree or disagree with ComReg that even where there is evidence of an efficiency gain that, due to the subjective nature of estimating its value and the continued change in bundled offers, a value of €0 is a more practical approach when testing bundled offers? Please explain your response.

- Q. 15. Where ComReg is testing bundled offers of Eircom, do you agree that the proposal to assess Eircom's historical retail costs (which include economies of scale and scope of the incumbent) in the proposed test provides further weight to taking an efficiency gain of €0? Please explain your response.
- Q. 16. Do you agree or disagree with the proposed methodology above for the treatment of discounts and promotions? Please explain your answer.
- Q. 17. Do you agree or disagree that discounts and promotions should only be offered for a finite period of time? If so what do you think is the appropriate maximum period over which they can be offered? Please explain your answer.
- Q. 18. Do you agree or disagree that bundles should be notified to ComReg on an *ex ante* basis in line with the timelines specified in ComReg Decision No. D07/61 and D01/06? Please explain your answer.
- Q. 19. Do you agree or disagree that existing bundles that include services subject to retail minus wholesale price controls should be notified to ComReg within one month of the proposed imputation test being adopted? Please explain your answer.
- Q. 20. Do you agree or disagree that in the event that an existing bundle fails the imputation test the associated wholesale prices should be amended and that any change required would be applied to prices on a forward looking basis only? Please explain your answer.

## Appendix C – Oxera Report