Commission for
Communications Regulation

Consultation

Consultation on Remedies – Wholesale voice call termination on individual mobile networks

(Linked to Response to Consultation & Notification to European Commission Document 04/62a)

Remedies Consultation

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All responses to this consultation should be clearly marked:- "Reference: Submission re ComReg 04/62b" as indicated above, and sent by post, facsimile, e-mail or on-line at www.comreg.ie (current consultations), to arrive on or before 5.30pm, 20th July, 2004, to:

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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 Executive Summary

1.1 The new communications regulatory framework requires that ComReg define relevant markets appropriate to national circumstances, in particular relevant geographic markets within its territory, in accordance with the market definition procedure outlined in the *Framework Regulations*.[1] In addition, ComReg is required to conduct an analysis of the relevant markets to decide whether or not they are effectively competitive.

1.2 ComReg set out its initial proposals on the mobile voice call termination market and consulted on them in October 2003. In its response to consultation (ComReg Document No 04/62a) ComReg outlined that there was a relevant market for mobile voice call termination on individual mobile networks and that Vodafone, O_2, Meteor and '3' should be designated as having SMP in the relevant market.

1.3 In ComReg Document 04/62a, ComReg believes that the remedies most appropriate to apply in this market are:

- Access;
- Transparency;
- Non-discrimination; and
- Cost-Orientation

1.4 Additionally, as outlined in ComReg Document 04/62a, ComReg believes that supporting obligations relating to accounting separation and cost accounting systems may be necessary to impose on Vodafone and O_2.

1.5 As outlined in ComReg Document 04/62a, ComReg proposed to further consult on the detailed implementation of remedies to be imposed, where appropriate, in this market. This consultation document performs this task.

1.6 This document outlines the nature of the competition problems in the market, the principles to be applied when selecting remedies and then proposes details on ComReg's market remedies. ComReg believes that the cost-orientation obligation on voice call termination charges should be based on the efficient operator theory. In coming to this preliminary conclusion, ComReg has considered issues such as forbearance and proportionality.

1.7 Regarding ComReg's proposed imposition of the cost-orientation obligation, ComReg has discussed this in terms of two specific timeframes: until September 2005 and from September 2005 onwards. Until September 2005, ComReg proposes that the current voice call termination charges should be a ceiling on the mobile voice call termination charges of each SMP MNO. Additionally, ComReg expects O_2 and Vodafone to reduce their voice call termination charges in line with their existing undertakings. Once O_2 and Vodafone have reduced their voice call termination charges in line with their existing undertakings, ComReg believes that the resulting reduced voice call termination charges will now act as a ceiling

[1] S.I. No. 307 of 2003

on the voice call termination charges of these operators until September 2005.

1.8 From September 2005 onwards, ComReg believes that the voice call termination charges should be set on the basis on a target "efficient charge" level. There are a number of options for deriving the "efficient charge" level including, benchmarking, retail minus, bottom up modelling, top down modelling or a combination of these. ComReg is seeking views as to the appropriateness of these alternatives for deriving the "efficient charge" level. However ComReg is minded to use the Top down approach supported by a relevant benchmarking exercise. In such an exercise ComReg proposes to impose Accounting Separation and Cost Accounting Systems obligations on Vodafone and O_2. Additionally ComReg believes that it is appropriate to benchmark Meteor and '3' against what is subsequently determined as the 'efficient charge' level cost based on a top-down analysis of the relevant costs of Vodafone and O_2, possible by a glide path.

1.9 Regarding the options available to ComReg for reaching the target 'efficient charge' level, there are many alternatives including the use of a once-off step change and/or a glide path. ComReg believes that a measured progressive approach to any reduction in mobile voice call termination charges is appropriate.

1.10 Respondents are asked for their views in terms of the remedies outlined and the proposed details of these remedies.

2 Introduction

2.1 In October 2003, ComReg issued its market analysis consultation paper in relation to mobile voice call termination (ComReg Document No. 03/127). The response to consultation & notification was issued in June 2004 (ComReg Document No. 04/62a). Both of those documents signalled ComReg's intention to consult on the details of the proposed remedies for this market. This document further sets out, in detail, the implementation of the remedies that ComReg believes are appropriate for this market. ComReg seeks respondents' views on the issues outlined in this consultation document.

Structure of Document

2.2 The remainder of this consultation document is structured as follows:

- Section 3 presents the background to the proposed market remedies. This section outlines the nature of the competition problems, ComReg's objective and the potential regulatory remedies that are available to ComReg;
- Section 4 presents ComReg's market remedies;
- Section 5 presents ComReg's proposals on the implementation of a cost-orientation remedy. There are a number of options available to ComReg in implementing a price control and respondents are asked to provide their views;
- Section 6 provides details with regard to the submission of comments on this consultation document;
- Appendix A presents a summary of the consultation questions;
- Appendix B outlines the draft decision on remedies to be applied to the SMP MNOs in the mobile voice call termination market.

Consultation Process

2.3 All responses to this consultation are welcome. However, it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document.

2.4 The consultation period will run from 8th June to 20th July 2004 during which time ComReg welcomes written comments on any of the issues raised in this paper.

3 Background to Proposed Market Remedies

Background

3.1 Following ComReg's identification of the relevant market as the market for voice call termination services on individual mobile networks and its subsequent market analysis which shows evidence of market failure, in that market forces are insufficient to ensure that the pricing of mobile voice call termination services is set at an efficient level, this document sets outs the proposed market remedies to apply to each undertaking identified as having SMP in the mobile voice call termination market, as outlined in section 5 of ComReg Document 04/62a.

3.2 ComReg takes the view that the proposed remedies outlined in this consultation document are the most appropriate for the period under review and are in accordance with the principles set forth in the Framework and Access Regulations. The proposed remedies in this document are aimed at removing potential or persistent market failure in this relevant market, such as the potential to sustain mobile termination charges above the competitive level.[2]

3.3 In ComReg Document 04/62a, ComReg outlined that the remedies most appropriate to apply in this market are access[3], transparency[4], cost-orientation,[5] and non-discrimination,[6] with appropriate supporting obligations to ensure the efficiency of the two principal remedies, relating to cost accounting systems,[7] and accounting separation as necessary.[8] In line with that document ComReg is now consulting further on the detail of its proposed approach to the remedies for the mobile voice call termination market.

The need for ex-ante regulation

3.4 Any sector-specific ex-ante regulation is to deal only with those areas where competition is not yet effective, and where there is evidence of potential or persistent market failure. In ComReg Document 04/62a, ComReg concluded that the relevant market is voice call termination on each individual network in the Republic of Ireland and that Vodafone, O_2, Meteor and '3' should be designated as having SMP on the wholesale market for the termination of voice calls on their network in the Republic of Ireland.

[2] Regulation 9(5) of Access Regulations states, "Where, in exceptional circumstances, the Regulator intends to impose on operators with significant market power obligations for access or interconnection other than those set out in Regulations 10 to 14, the Regulator shall submit to the European Commission a request for permission to impose such other obligations."

[3] Access Regulations Article 13 Obligation of Access.

[4] Access Regulations Article 10 Obligation of transparency.

[5] Access Regulations Article 14 Price control and cost accounting obligations.

[6] Access Regulations Article 11 Obligation of non-discrimination.

[7] Access Regulations Article 14 Price control and cost accounting obligations.

[8] Access Regulations Article 12 Obligation of accounting separation.

3.5 ComReg is obliged therefore by the Framework Regulations to impose appropriate obligations on undertakings identified through the market analysis process as having Significant Market Power.[9]

The Nature of the Potential Competition Problems

3.6 ComReg believes that it is appropriate to regulate the voice call termination charges of individual mobile networks identified as having SMP as ComReg believes that competition in the wholesale market for voice call termination is not yet effective. As highlighted in ComReg Document 04/62a ComReg believes that an MNO enjoys a *de facto* monopoly position over termination of voice calls on its network. At present, the mechanism of supply or demand substitution is not effective in the market for voice call termination due to the absence of alternatives.

3.7 Given ComReg's belief that competitive pressures do not exert sufficient constraints on mobile termination charges, ComReg believes that MNOs have insufficient incentives to lower their mobile voice call termination charges to an efficient level. ComReg's market analysis indicated that there are no adequate market mechanisms at present to force these rates to more efficient levels. Callers to a mobile network have no choice about whether to terminate a voice call on a given network, if the called subscriber is connected to that network. In addition, as subscribers are not significantly influenced by the mobile voice call termination charge in their decision to subscribe to a particular network, it appears that mobile subscribers are also unable to exert sufficient pressure on mobile operators to reduce their voice call termination charges to capture or retain customers.

3.8 ComReg believes that there are strong indications that mobile voice call termination charges are set at inefficient levels. In the response to consultation, one mobile operator acknowledged that in the absence of regulation, fixed to mobile call termination charges may be set above efficient levels, as competition between mobile operators forces each party to maximise the consumer surplus for their customers, possibly at the expense of fixed to mobile voice calls. Current differentials between fixed and mobile voice call termination rates would appear to support this point although it is impossible to be definite in the absence of appropriate cost information. Analysis shows that mobile voice call termination rates are on average more than nine times greater than fixed voice call termination charges.[10] This differential would appear unjustified.

3.9 The potential distortion of competition on the market for wholesale mobile voice call termination as a result of inefficient pricing can have adverse effects at both the wholesale and retail levels. The nature of the potential adverse effects of inefficient

[9] Regulation 27(4) states 'Where the regulator determines that a relevant market is not effectively competitive, it shall designate undertakings with significant market power in accordance with Regulation 25 and it shall impose on such undertakings such specific obligations as it considers appropriate'.

[10] http://europa.eu.int/information_society/topics/ecomm/doc/all_about/implementation_enforcement/annualreports/9threport/com20030715en.pdf

pricing at the wholesale level is outlined in the following paragraphs.

3.10 In the mobile retail market the overall effect of the dominant position of an MNO on voice call termination is that, while MNOs have an incentive to keep the price of those services required and paid for by its own subscribers at a level to attract and retain customers, they have little or no incentive to do so for voice calls originating on other networks. High network termination charges for voice calls to mobile networks can result in high end-user prices for both fixed to mobile calls and mobile to mobile off-net calls as termination charges at the wholesale level often feed through to the retail price. For example, an *eircom* customer making a national call at peak time would pay 8.17c, while a call to a mobile number would be over 20c depending on the operator called.[11] Concerning mobile packages, if one considers Vodafone's Light, Active and Extra tariff packages, off-net calls can be up to three times more expensive than on-net calls as illustrated in the table below.

Table 1: Vodafone Light, Active and Extra Tariff Plans

Per Minute call charges applicable once inclusive bundle has been used (Cents Vat Inclusive) –						
	To on net mobile phones			To off net mobile phones		
	Peak	Off – Peak	Weekend	Peak	Off – Peak	Weekend
Light	30	15	15	50	30	30
Active	15	15	15	45	30	30
Extra	15	15	15	38	30	30

Source: www.vodafone.ie (June 2004)

3.11 Mobile operators argue that high voice call termination charges enable them to cross-subsidise services to their own subscribers in retail markets. For example, a mobile operator may offer mobile handsets subsidies using voice call termination revenue generated from both fixed and mobile operators. However, ComReg's preliminary analysis of the mobile retail market in the access and call origination consultation[12] indicates that price competition in the Republic of Ireland has stagnated over the last number of years and that the profits of O_2 and Vodafone have increased over time. Overall this casts doubt on the assertions of the mobile operators that any profits in the termination market are competed away at the retail level.

3.12 Low on-net charges may give mobile operators with a high subscriber base a potential competitive advantage over smaller networks when attracting or retaining customers. Such practice may constitute a barrier to entry for new entrants or indirect access operators. These potential competitors will have to compete at the retail level and thus will have to compete with low on-net retail prices. Where the wholesale charges incurred by competing operators are greater than the effective on-net retail price in the market, this may result in a price/margin squeeze on potential and existing competitors.

[11] Source - http://www.eircom.ie/About/Activities/Sn1_pt2.pdf. Prices are inclusive of Vat. Calls to mobiles are 23.07c to Vodafone, 23.7c to O_2 and 29.19c to Meteor and '3'.

[12] ComReg Document 04/05

3.13 Considering constraints at the wholesale level, ComReg believes there is little incentive to reduce termination charges, not least, since cutting voice call termination charges can potentially give a competitor an advantage in the retail market by reducing their costs. Mobile operators can discriminate in the way they charge for voice call termination, in that they apply one rate to themselves and another potentially higher rate to other network operators. A direct consequence of high termination charges therefore is that they potentially raise rivals' costs which may also cause the costs of competing retail services to rise. In that regard, a competing terminating operator may be under pressure to raise its own call termination charges to subsidise retail prices.

3.14 The incumbent fixed operator, *eircom*, may not be in a position to retaliate to high mobile termination charges by raising their own termination rates as *eircom* does not have the alternative not to purchase, as it is obliged to provide interconnection to all operators and its fixed interconnection charges are subject to the principle of cost-orientation. Furthermore, since June 2002, *eircom* has passed on all of O_2's and Vodafone's mobile termination rate reductions to its retail customers.

3.15 ComReg believes that the potential adverse effects outlined above arising from inefficient pricing on the wholesale market for mobile voice call termination constitute barriers to effective competition affecting any operator or potential new entrant (e.g. MVNO, Indirect Access) that would terminate voice calls on a mobile network. Furthermore, the high level of voice call termination affects the retail prices paid for fixed to mobile and mobile to mobile off-net voice calls to the disadvantage of end users. As there are insufficient competitive constraints in this relevant market to ensure that the mobile voice call termination prices are set at efficient levels, ComReg is minded to impose appropriate remedies to address the shortcomings of this market.

3.16 While this section has outlined the principal competition problem in this market, ComReg is aware that other potential competition problems may also occur. For example, these could include the withdrawal of the voice call termination service (i.e. access), a lack of transparency in prices and terms and conditions and discrimination. In considering the potential remedies, ComReg will also take these issues into consideration.

3.17 ComReg will endeavour to set out in the following sections how its proposed remedies will aim to address the competition problems in the mobile voice call termination market, such as pricing above efficient levels, and why the proposed remedies are appropriate to ensure that the possible adverse effects are minimised.

Q. 1. Do you agree with ComReg's description of the potential competition problems arising in this relevant market and the possible adverse effects?

ComReg's Objective

3.18 ComReg's objective is to address the competition problems in this market, of which the principal competition problem is that there are insufficient competitive constraints to ensure that voice call termination charges are set at efficient levels.

3.19 As discussed above at a retail level, this competition problem can result in high retail prices for fixed to mobile calls and mobile to mobile off-net calls. As such, the level of traffic for fixed to mobile and mobile off-net to mobile calls may not be at efficient levels. Additionally, ComReg believes that voice call termination charges set above the efficient level do not maximise consumer benefit, and do not give the correct signals in order to promote efficient competition. As discussed above, this is particularly the case for potential competition from new entrants and fixed operators.

3.20 By addressing the competition problems, ComReg believes that it can impose remedies that ensure that voice call termination charges are set at the efficient level. ComReg believes that this will promote effective competition and will be in the interests of end-users, which is in line with ComReg's policy objectives as stated in Section 12 of Communications Regulation Act 2002.

3.21 Finally, in selecting the appropriate remedies, ComReg will aim to provide greater predictability and legal certainty over voice call termination rates, increase transparency while keeping regulation to the minimum necessary to achieve the objective.

Q. 2. Do you agree with ComReg's objectives for remedies in this relevant market?

Principles to be applied when selecting remedies

3.22 When selecting appropriate remedies to address the competition problems identified in this market, ComReg has to abide by a number of principles. ComReg has an obligation to consider the objectives of Section 12 of the Communications (Regulation) Act 2002 (to promote competition, to contribute to the development of the internal market, and to promote the interests of users) and the Ministerial Directions of February 2003 and March 2004.[13] Furthermore, Regulation 9 of the Access Regulations requires that any obligations imposed by ComReg must be based on the nature of the problem identified, be proportionate

[13] Directions by the Minister for Communications, Marine and Natural Resources to the Commission for Communications Regulation under s.13 of the Communications Regulation Act 2002, 21 February, 2003 and 29th March 2004

and be justified in the light of the objectives laid down in Section 12 of the Communications Act 2002 and only be imposed following consultation in accordance with Regulations 19 and 20 of the Framework Regulations.

3.23 While ComReg is obliged to impose the least burdensome and most effective remedy or remedies to address the competition problems in this market, the interplay of a number of remedies might often be necessary. Therefore, the remedies available to ComReg could be seen as a complementary suite of remedies that support and reinforce each other, to which ComReg must give careful consideration.

Q. 3. Do you agree with the principles which ComReg believes should be used when selecting remedies?

Q. 4. Do you think there are other principles that ComReg should consider when selecting appropriate remedies? Please elaborate on your response.

Potential Regulatory Remedies

3.24 ComReg is obliged by the Framework Regulations to impose an obligation on undertakings with significant market power.[14] Such obligations are outlined in the Access Regulations and the Universal Service Regulations.[15] Regulations 10 to 14 of the Access Regulations,[16] are as follows:

- Obligation of transparency;
- Obligation of non-discrimination;
- Obligation of accounting separation;
- Obligation of access to, and use of, specific network facilities; and
- Price control and cost accounting obligations.

3.25 In accordance with Regulation 9 (6) of the Access Regulations any obligations imposed shall be based on the nature of the problem identified, be proportionate and justified in the light of the objectives laid down in section 12 of the Act of 2002, and only be imposed following consultation in accordance with Regulations

[14] Regulation 27(4) states 'Where the regulator determines that a relevant market is not effectively competitive, it shall designate undertakings with significant market power in accordance with Regulation 25 and it shall impose on such undertakings such specific obligations as it considers appropriate'.

[15] Appendix D outlines the relevant text from Access Regulations and the Universal Service and Users' Rights Regulations.

[16] Regulation 9(1) of the Access Regulations.

19 and 20 of the Framework Regulations.

Existing SMP Obligations

3.26 Under the old framework, (Regulation 8(1) of the Access Regulations) [17] both Vodafone and O_2 have been designated with SMP in both the mobile public telephony networks and services market and in the national market for interconnection.[18]

3.27 In summary, the obligations imposed on Vodafone and O_2 as organisations designated with SMP in the mobile market include:

- the obligation to meet all reasonable requests for access to the network;
- the requirement to adhere to the principle of non-discrimination with regard to interconnection offered to others;
- the requirement to make available all necessary information and specifications on request to organisations considering interconnection;
- the requirement to provide copies of all interconnection agreements to ComReg; and
- the requirement to ensure the confidentiality of information received from an organisation seeking interconnection.

3.28 In addition, both Vodafone and O_2 have an existing obligation of cost-orientation in interconnection having been designated with SMP in the national market for interconnection and this includes the requirement that charges for interconnection follow the principles of transparency and cost-orientation.

Summary

3.29 In ComReg Document 04/62a, ComReg believe that Vodafone, O_2, Meteor and '3' should be designated as having SMP on the wholesale market for the termination of voice call on their network in the Republic of Ireland. Under the Framework Regulations, ComReg is obliged to impose an appropriate remedy or remedies. To aid the selection of an appropriate remedy, ComReg has outlined in this section the nature of the competition problems in this market and their possible adverse affects at both the wholesale and retail levels. ComReg has also outlined its objectives for remedies in this market. There are a number of potential remedies available which ComReg can employ to achieve its objectives. The following section discusses the possible alternative remedies and sets out ComReg's proposals in relation to an appropriate market remedy or set of

[17] Obligations under the current framework flow from a number of former EU Directives establishing the Open Network Provision (ONP) framework and the corresponding regulations transposing them into Irish legislation.

[18] ComReg Document 02/53, Decision 08/02, "Significant Market Power in the Irish Telecommunications Sector"

remedies.

4 Proposed Market Remedies

Introduction

4.1 In ComReg Document 04/62a, ComReg proposed a combination of remedies to address the competition problems in this market and indicated that it intended to consult in further detail on these proposed remedies. This section considers the appropriateness of the remedies for this market, outlining why imposing such remedies or combination of remedies is necessary and justified. In that regard, ComReg will endeavour to set out why the particular remedies and combination of those remedies might address the principal competition problem in this market, while minimising also the possible adverse effects resulting from inefficient pricing on the market for wholesale mobile voice call termination.

4.2 The submissions of the respondents to the earlier consultation[19] have been considered in formulating the proposed remedies discussed below. In replying to that consultation, the respondents raised a number of issues including forbearance, the application of the efficient operator theory as a principle for setting the voice call termination charges on all SMP MNOs and the proportionality of remedies on the smaller MNOs. Such issues are considered by ComReg in the discussion below.

Forbearance

4.3 Following ComReg's market analysis which concludes that there is insufficient competitive constraint on wholesale mobile voice termination charges and having taken on board the views of respondents, ComReg believes that regulatory intervention is necessary to bring wholesale mobile voice call termination rates to efficient levels. ComReg has a number of choices available when trying to resolve any potential competition problems arising in this market, such as, forbearance or a direct assessment of mobile operator cost and/or the imposition of a price control.

4.4 Certain mobile operators submit in their response to Consultation 03/127a that they have some of the lowest mobile termination rates in the EU mitigating the need for any direct intervention in mobile termination charges. Furthermore, these operators believe that obligations in relation to accounting separation or cost accounting systems would be wholly inappropriate. Having considered the risks to the market of neglecting to intervene where there are potential and persistent competition problems, ComReg believes that simply monitoring the trend in termination charges is not sufficient to address the potential underlying market failure. Any light handed approach can potentially lead to prices being maintained above efficient levels for a longer period to the disadvantage of potential competitors and ultimately end users. ComReg believes that the declines in mobile termination rates have been primarily due to regulatory pressure and that without such pressure the decline would stop or charges may even increase.

[19] ComReg Document 03/127a

4.5 As stated previously, with ComReg's finding that SMP should be designated in this market and ComReg's belief that there are insufficient constraints on MNOs to set mobile voice call termination charges at efficient levels, ComReg believes that the impact of not imposing any obligations on this relevant market is not appropriate or justified. With over 87% of the population owning a mobile phone, the issue of mobile termination rates is clearly significant. ComReg believes that given the high risk of failure in this market and the importance of the mobile phone market in the Irish economy, intervention to establish cost-orientated price levels is necessary and justified.

4.6 While it may be the case that the Irish market is currently experiencing some of the lowest mobile termination rates in the EU, there is currently no evidence to suggest that the existing levels of termination rates are set at efficient levels. The imposition of some form of accounting separation and/or cost accounting system remedies may help to provide such evidence one way or the other thereby ensuing that cost-orientated rates are achieved in the longer term.

4.7 Overall, ComReg therefore believes that forbearance in the form of simply monitoring the trend in termination charges is not sufficient to address the competition problems in this market. Additionally, as stated earlier, on the designation of SMP in the relevant market, ComReg is obliged under the Framework Regulations to impose an appropriate remedy or remedies.

Q. 5. Do you agree with ComReg's assessment of forbearance?

Using costs of an efficient operator to set a uniform target voice call termination charge

4.8 One respondent to ComReg's Consultation Document 03/127a expressed the view that the most appropriate regulatory solution for determining interconnection tariffs for the Irish 2G operators is to apply a uniform termination rate based upon the appropriately calculated costs of an efficient operator. ComReg believes that there is merit in this proposal. Pricing based on the level of cost of an efficient operator replicates the outcome of a competitive market, and penalises, rather than rewards, productive inefficiency. ComReg is of the view that the principle of efficient operator's costs replicates the effects of competition in a market where competition itself is not possible.

4.9 With regard to the issue of termination of voice calls on a 3G network, ComReg is aware that mobile subscribers are likely to have the same mobile number for termination, irrespective of whether the call is terminated on a 2G or 3G network. ComReg believes that currently the termination of voice calls is likely to be effected at lower cost using a 2G network rather than a 3G network. In effect, an efficient 2G operator is the efficient operator. This is primarily due to the fact that 3G networks are being rolled out and the volume of 3G traffic is low compared to 2G, and therefore the unit cost is correspondingly high. For this reason, ComReg believes that at this time, voice call termination charges (2G or 3G) should be set on the basis of the appropriate 2G efficient costs. However, ComReg is aware that this may change with time.

4.10 Finally, in applying this approach ComReg must consider a number of issues, including proportionality and promotion of competition in the market. In this regard, ComReg may consider setting different time periods for MNOs to reach the uniform target voice call termination charge which is calculated on the basis of the costs of an efficient operator. Further detail of the proposed application of the efficient operator principle in establishing an appropriate price level for mobile voice call termination charges is discussed in paragraph 4.51 to 4.53 and section 5.

Q. 6. Do you agree that ComReg should use the costs of an efficient operator as a basis for setting a uniform target voice call termination charge for all SMP operators?

Q. 7. Do you agree that the costs of an efficient 2G network should be used to set the uniform target voice call termination charge for operators with 3G networks, at this time?

Proportionality of remedies on the smaller operators

4.11 In the October 2003 consultation, ComReg indicated that it would, in considering the imposition of any remedy or combination of remedies, take on board the potential impact of any reduction in termination charges in conjunction with the development of the overall mobile market. In the response to consultation, a number of respondents highlighted that the proposed remedies outlined by ComReg may not be proportionate to apply on the smaller mobile network operators. Further more, to the extent that ComReg intends to intervene in mobile voice call termination, they would submit that the remedies applied must be at an absolute minimum.

4.12 In contrast to this above view, a number of respondents believed that remedies should be applied in a symmetric fashion across all SMP MNOs. One respondent believed that less rigorous obligations on smaller market players are akin to rewarding inefficiency, thereby promoting and favouring inefficient operators.

4.13 As stated above, ComReg believes that in order to ensure that consumers get the best value for money and that excessive returns are not being made by MNOs, mobile voice call termination charges should be based on costs of an efficient operator. Customers of smaller networks, or those calling them, are entitled to the same protection as those of larger networks. The competition problem is the same in each case; therefore the same remedies are appropriate. However, ComReg recognises that the imposition of proposed measures should be the minimum necessary or the least burdensome measure to achieve efficient wholesale mobile voice call termination charges. ComReg believes that the imposition of Access, Transparency, Non-Discrimination and Cost-Orientation remedies are the minimum obligations necessary to achieve efficient pricing in the mobile voice call termination market. The rationale for this belief is outlined throughout this document.

4.14 Cognisant of the fact that the costs of implementing certain remedies, such as accounting separation or cost accounting systems, may be overly burdensome and therefore disproportionate on smaller operators, ComReg believes that it may be appropriate to consider other forms of remedies for such operators. ComReg is consulting on the nature of the remedies and on the proposed detailed application of these remedies in this document, with a view to assessing the possible implications of the voice call termination remedies on SMP operators, including issues of unnecessary or disproportionate burdens being placed on smaller SMP operators.

Q. 8. Do you agree with ComReg that the detailed implementation of remedies may differ between mobile network operators depending upon issues such as proportionality and promotion of competition in the market?

Proposed Market Remedies

4.15 ComReg is aware that there are a range of potential remedies available to address the competition problems in this market. This section discusses these potential remedies with a view to selecting the appropriate remedy or combination of remedies for this market.

4.16 In selecting the appropriate remedies for this market ComReg will use the principles outlined above. In line with Section 12 of the Communications Regulation Act 2002, Article 8 of the Framework Directive and the ministerial directions, ComReg considers that appropriate remedies should foster investment, promote choice and competition, and safeguard end-user interests where market forces do not.

Proposed Access to, and use of, specific network facilities Remedy

4.17 In order to terminate a voice call from another operator's network on a mobile operator's network, it is necessary that the mobile operator has interconnection agreements for the delivery of voice call termination with other operators. Currently, there is a requirement on all operators to enter into negotiations on interconnection while there is a requirement on O_2 and Vodafone, as SMP Operators, to meet reasonable requests for interconnection and to make available all necessary information and specifications on request to organisations considering interconnection. Additionally, ComReg understands that interconnection for the purpose of voice call termination is taking place routinely with all mobile operators.

4.18 Under the new regulatory framework, there is provision under Regulation 6 of the Access Regulations to ensure that there is adequate access and interconnection. However there is also provision under Regulation 13 of the Access Regulations to impose on an SMP operator the obligation to meet reasonable requests for access. ComReg believes it is appropriate to use Regulation 13 of the Access Regulations to set an access obligation to meet reasonable requests for access for the purpose of voice call termination, as this provides greater certainty to the market.

4.19 ComReg believes that an access obligation that requires MNOs to meet reasonable requests for access to and use of their network facilities for the purposes of voice call termination is a necessary condition for interoperability of services and is therefore appropriate for this market. However, ComReg believes that an access obligation is not sufficient to address the competition problems in this market and ensure that the charges for this interconnection are set at the efficient level.

4.20 With regards to the detail of an access obligation, ComReg believes that each SMP MNO should provide network access for the provision of voice call termination services to every Public Electronic Communications Network (PECN) providers who reasonably requests such access. Network access should be provided together with any services, facilities or arrangements which are necessary for the provision of Electronic Communications Service (ECS) over that interconnection. ComReg believes that the provision of network access should occur as soon as reasonably practicable and should be provided on fair and reasonable terms and conditions. Annex B contains the draft decision detailing ComReg's proposed Access obligation.

Q. 9. Do you agree with ComReg that an access obligation is a necessary obligation to include in the remedies for this market?

Q. 10. Do you agree that an access obligation by itself will not be sufficient to address the competition problems in this market?

Q. 11. Do you agree with the details of ComReg's proposed Access obligation as set out above?

Proposed Transparency Remedy

4.21 As outlined in section 3.26 to 3.28, there are existing transparency obligations on Vodafone and O_2 as existing SMP operators. Under the new regulatory framework there is provision under Regulation 10 of the Access Regulations for ComReg to impose transparency obligations on SMP operators in the voice call termination market. Regulation 10 (1) specifies that the Regulator may require an operator to make public specified information such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices.

4.22 ComReg believes that a transparency obligation has many benefits. Firstly, a transparency obligation can assist ComReg and the industry in ascertaining whether SMP operators are meeting their obligations. This can deter potential anti-competitive behaviour from SMP operators as it enables ComReg and the industry to actively monitor SMP behaviour. An example of such a transparency obligation is the obligation to publish charges and/or terms and conditions for supply and use of voice call termination services, including any proposed changes to those charges and/or terms and conditions in advance of them taking place.

4.23 An additional benefit from a transparency obligation with regard to the publication of prices and proposed changes to those prices, in advance of them taking place, is that it can ensure transparency for purchasers of wholesale termination services, and provide advance warning of changes in charges which they may need to restructure their retail prices in response to tariff changes at the wholesale level.

4.24 Furthermore, ComReg believes that transparency obligation can serve to speed-up negotiation, avoid disputes and give confidence to market players that a service is not being provided on a discriminatory basis.[20] Thus overall ComReg believes that a transparency obligation can provide a number of benefits to the market.

4.25 With regard to the drawbacks or costs that may be incurred via the imposition of a transparency remedy, ComReg believes that these are few and that the benefits of a transparency remedy far outweigh any such costs. Thus ComReg believes that a transparency obligation on SMP operators is appropriate for this market.

4.26 Currently the voice call termination charges of the mobile operators are publicly available on *eircom's* website.[21] While this increases the level of transparency in the market, the market analysis in ComReg document 04/62a has shown that there are insufficient constraints on the mobile operators to ensure that their voice call termination charges are set to an efficient level. Thus ComReg believes that a transparency obligation would not be sufficient by itself to address the competition problems in this market, and those other remedies must be considered. However, as stated above, ComReg believes that a transparency obligation is appropriate for this market and therefore that it is most useful in combination with other appropriate obligations.

4.27 Regarding the detail of a transparency remedy, ComReg believes that the following set of obligations on each SMP operator are necessary:

- The filing with ComReg of all voice call termination agreements, including a description of all terms and conditions, including prices. These are to be filed within 28 days of becoming effective. Updates to these agreements should also be filed within 28 days of becoming effective.

[20] See Recital 16 of Access Directive

[21] http://www.eircomwholesale.ie/pdfs/strplv26.pdf

- The publication of voice call termination charges on the SMP MNO's website. Additionally, ComReg may request and publish such information from time to time.
- Advanced notification of price changes. The SMP MNO shall send to ComReg, a written/electronic notice of any amendment to the charges on which it provides voice call termination services, not less than 28 days before any such amendment takes place. Additionally, the MNO should notify all interconnected parties of such changes and should publish this on their websites at the same time as ComReg is notified.
- The publication of a suitable unbundled reference offer on their website.[22] Supporting records which detail any changes to the reference offer should be maintained for a period of 6 years, consistent with company accounts legislation, and should be available to ComReg upon request. Any disputes relating to the above will be dealt with via ComReg's dispute resolution procedures.

4.28 ComReg believes that it is appropriate and proportionate that the proposed remedies above should apply to each SMP MNO. ComReg believes that the transparency requirements outlined above are not overly burdensome and can promote competition in the market. Additionally, ComReg believes that the above transparency obligations will:

- Give visibility to the terms and conditions on which other organisations can purchase services, enabling negotiations to be undertaken more speedily and reducing potential complaints;
- Enable other organisations to react to the changes made in prices on a timely basis;
- Assist in the monitoring of non discrimination.

4.29 ComReg is aware that there may be certain costs in the above obligations, e.g. the maintenance of a reference offer, but believes that mechanisms such as web publication can minimise these costs. Annex B contains the draft decision detailing ComReg's proposed Transparency obligation.

[22] Regulation 11 of the Access Regulations states that "the reference offer should be sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the voice call termination services. Such an offer shall include (a) a description of the relevant offerings broken down into components according to market needs; and (b) a description of the associated terms and conditions, including prices."

Q. 12. Do you agree with ComReg that a transparency obligation is a necessary obligation to include in the remedies for this market?

Q. 13. Do you agree that a transparency obligation is insufficient by itself to address the competition problems in this market?

Q. 14. Do you agree with the details of ComReg's proposed Transparency obligations as outlined above?

Proposed Non-Discrimination Remedy

4.30 As outlined in section 3.26 to 3.28, there are existing non-discrimination obligations on Vodafone and O_2 as existing SMP operators. O_2 and Vodafone have an obligation to adhere to the principle of non-discrimination. Under the new regulatory framework there is provision under Regulation 11 of the Access Regulations for ComReg to impose a non-discrimination obligation in relation to interconnection, access or both interconnection and access.

4.31 ComReg considers that there are benefits to a non-discrimination obligation. A non-discrimination obligation can ensure that a vertically integrated SMP operator is prevented from acting in such a way as to have a material adverse effect on competition. In the absence of a non-discrimination obligation SMP operators may offer different terms and conditions to different purchasers of their voice call termination services which may have potential anti-competitive effects.

4.32 Regarding the potential drawbacks associated with a non-discrimination obligation, ComReg believes that these can be minimised by careful consideration of its application. In that regard, ComReg believes that a non-discrimination obligation should be consistent with Regulation 11 of the Access Regulations and should be guided by the application of the non-discrimination principle under Article 82 EC.

4.33 ComReg believes a non-discrimination obligation is appropriate for this market, as without it a SMP MNO can potentially distort competition. However, ComReg believes that a non-discrimination obligation, by itself, or in combination with a transparency obligation and/or access obligation is insufficient to ensure that the voice call termination charges are set at an efficient level. Currently, under the ONP framework, Vodafone and O_2 as SMP operators have access, transparency and non-discrimination obligations. However, ComReg's analysis of the market, in ComReg Document 04/62a, has shown that competition problems currently exist in the market, in spite of these current obligations.

4.34 With regard to the application of a non-discrimination obligation, ComReg believes that a non-discrimination obligation is necessary to ensures that equivalent conditions in equivalent circumstances are applied to other undertakings providing equivalent services and that this obligation should be applied to each SMP MNO. However, ComReg is aware that the scope of this obligation can cover a wide variety of behaviours. It is difficult for ComReg to specify a list of prohibited behaviours, as such a list would fetter the discretion of ComReg in the event of any potential future breaches of the obligation. However the following provides some guidance on ComReg's current thinking.

4.35 In considering non-discrimination, ComReg believes it is necessary to consider the issue of voice call termination charges separate to all other aspects of the voice call termination service. This distinction is supported by the fact that a number of respondents to ComReg's October consultation[23] specifically referred to voice call termination charges when raising non-discrimination issues.

4.36 In relation to **voice call termination charges**, ComReg is aware that the following types of discrimination might occur.

A. MNO discriminating between other MNOs and FNOs;

B. MNO discriminating between FNOs;

C. MNO discriminating between other MNOs; or

D. MNO discriminating between itself and other MNOs and/or FNOs.

4.37 In relation to type (A) discrimination above, ComReg believes that this may raise concerns while there is uncertainty that the voice call termination charges are not set at the efficient level. However ComReg believes that these concerns may not be an issue provided that ComReg is satisfied that the voice call termination charges offered to either a FNO or a MNO are not set above the costs of an efficient operator. Provided that is the case, then a separate price control mechanism could be put in place to deal with voice call termination charges for FNOs separately to the charges for other MNOs. In this regard, ComReg is aware that one respondent was of the opinion that M2M voice call termination charges set in a reciprocal fashion may be an appropriate mechanism for the setting of voice call termination charges. However, until such a time as ComReg is satisfied that the voice call termination charges are set at an efficient level, then ComReg believes that type (A) discrimination is likely to raise concerns.

4.38 In relation to type (B) discrimination, ComReg believes that such discrimination is likely to adversely affect competition from FNOs and therefore to be of concern to ComReg. ComReg is aware that one respondent believed that there should be potential for MNOs to provide volume-based discounts to FNOs in order to give them a greater incentive to terminate calls on the MNOs network. ComReg believes that a non-discrimination obligation does not prohibit this, as long as such discounts are not anti-competitive and that equivalent volume discounts are offered to equivalent undertakings.

4.39 In relation to type (C) discrimination, ComReg believes that such discrimination is likely to adversely distort competition between MNOs and therefore is of concern to ComReg. Similar to type (B) discrimination, ComReg believes that a non-discrimination obligation does not prohibit volume-based discounts, as long

[23] ComReg Document 03/127a and ComReg Document 04/62a

as such discounts are not anti-competitive and that equivalent volume discounts are offered to equivalent undertakings.

4.40 In relation to type (D) discrimination, ComReg believes that this issue requires careful consideration. On the one hand, ComReg is aware that such behaviour may cause potential price squeeze issues, as it is more expensive for a consumer to call a network to which it does not subscribe, and thus adversely affect competition from existing players or potential new entrants. Such a potential distortion was highlighted by one respondent to the October consultation. On the other hand, ComReg is aware that the imposition of a non-discrimination clause including a margin squeeze test for this type of discrimination may increase on-net retail tariffs and therefore may not be to the benefit of end-users. Additionally, its effects on competition among mobile operators are also subject to current debate. ComReg would welcome comments from the industry on this issue before outlining a view on this form of discrimination.

4.41 The above has discussed ComReg's position with regard to the application of a non-discrimination clause for voice call termination charges. Now focusing on the **other aspects** involved in the provision of a voice call termination service (e.g. terms and conditions, etc.), ComReg believes that a non-discrimination obligation should apply. Annex B contains the draft decision detailing ComReg's proposed Non-Discrimination obligation.

4.42 Finally, with regard to the application of a non-discrimination obligation, ComReg is aware that the supporting obligation of accounting separation may be required. Such supporting obligations are discussed later in this consultation.

Q. 15. Do you agree with ComReg that a non-discrimination obligation is a necessary obligation to include in the remedies for this market?

Q. 16. Do you agree that a non-discrimination obligation either alone or in combination with transparency and/or access obligation is insufficient to address the competition problems in this market?

Q. 17. In relation to voice call termination charges, do you agree with ComReg's analysis of type A, B and C discrimination?

Q. 18. In relation to voice call termination charges, please provide your views on the appropriate form of non-discrimination obligation required for type D discrimination? Do you believe there are any circumstances where "on net" charges would not increase if Type "D" discrimination is prohibited?

Q. 19. In relation to other aspects involved in the provision of a voice call termination service (e.g. terms and conditions, etc.), do you agree with ComReg's Non-Discrimination obligation?

Proposed Price Control Remedies

4.43 ComReg's market analysis (See ComReg Document 04/62a) has indicated that the competition problem in this market is the lack of effective constraints on the MNOs to ensure that their voice call termination charges are set at an efficient level. Without sufficient competitive constraints, there is a potential for MNOs to set their voice call termination charges above the efficient level.

4.44 Regulation 14 of the Access Regulations states that:

"The Regulator may in accordance with Regulation 9 impose on an operator obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection, access or both such interconnection and access in situations where a market analysis indicates that a lack of effective competition means that the operator concerned might sustain prices at an excessively high level, or apply a price squeeze to the detriment of end-users."

4.45 Price control directly targets the pricing policy of MNOs on voice call termination and therefore directly influences the level of termination charges paid by other operators when terminating voice calls on the mobile network. ComReg believes that a price control regime, if appropriately designed, can be a proportionate response where competitive forces and other regulation are insufficient to constrain mobile termination charges to efficient levels. In the absence of a price control the termination charges of the mobile operators may be expected to operate against the public interest. As outlined in the nature of competition problems in section 3, the costs incurred by competing fixed operators and mobile operators through paying call termination charges that are above the efficient price level are generally passed through to the retail tariffs, with the result that end users may be paying too much for fixed to mobile and mobile to mobile off-net calls.

4.46 ComReg considers that a price control on voice call termination charges is appropriate in response to the assessment of the competition problems in this market. Such a requirement can achieve the objectives of promoting competition and protecting the consumer interests by setting mobile call termination charges at an efficient level. As stated earlier, ComReg believes that the alternative remedies of transparency, non-discrimination and accounting separation will not by themselves adequately protect the interests of consumers by creating the necessary conditions to bring down termination charges to an efficient level.

4.47 As highlighted in ComReg document 04/62a, ComReg believes 2G and 3G voice call termination to be in the same product market, namely the wholesale market for voice call termination services on individual mobile networks. In the absence of a price control obligation on 3G voice call termination, SMP MNOs may bypass any price control regulation of 2G voice call termination, leading to a potential distortion of competition. ComReg therefore believes that 3G voice call termination should also be subject to an appropriate form of price control.

4.48 The obligations relating to cost recovery and price control may take a number of different forms. For example, the proposed price control may be relatively light, such as an obligation that mobile termination charges are reasonable, which may include, comparison to a competitive benchmark or somewhat heavier, such as an obligation that prices are cost orientated.

4.49 ComReg believes that a cost orientation obligation on each SMP MNO is the appropriate form of price control. The aim of this is to ensure that voice call termination charges are set to an efficient level (i.e. the efficient charge). For the reasons outlined earlier, ComReg believes that mobile voice call termination charges set at efficient levels will promote sustainable competition and safeguard the interests of end users. In addition, a cost-orientation obligation will reduce the scope for any potential anti-competitive behaviour, for example, margin squeezes.

4.50 With regard to the application of the cost orientation obligation, the supporting obligations of accounting separation and cost accounting systems may be required. Further details as to the possible interaction of the cost-orientation obligation with these supporting remedies are discussed below.

Q. 20. Do you agree that a price control remedy, namely a cost-orientation obligation, is a necessary obligation to include in the remedies for this market?

Q. 21. Do you agree with ComReg that a price control obligation, namely cost-orientation, in combination with transparency, access, and non-discrimination obligations is sufficient to address the competition problems in this market?

The Efficient Charge Level

4.51 ComReg recognises the need to ensure that any price control mechanism should promote efficiency and sustainable competition while maximising the benefit to end users. ComReg also recognises the need to take account of a reasonable rate of return. A wholesale mobile voice call termination charge based on the 'efficient charge' level will, ComReg believes, best achieve these objectives.

4.52 For the purposes of calculating the cost of efficient provision of voice call termination services ComReg may use various costing models, including those based upon accounting methods independent of those used by mobile operators. For example, cost-orientated rates may be set via a bottom-up model, a top-down model, or a hybrid of the two. Such modelling exercises if applicable may require supporting remedies of accounting separation and cost accounting systems. The possible requirements of these supporting obligations are discussed below.

4.53 Following the principle of cost orientation, ComReg needs to consider what mechanism to use to set the "efficient charge" level and how termination charges are lowered to that efficient level. The following sections discuss the alternatives available to ComReg when selecting a specific mechanism to set the "efficient charge" level taking account of the need to be proportionate and justified in light of the state of development of the mobile termination market. Alternatives may include setting the target 'efficient charge' level on the basis of costs, benchmarking, retail-minus, or some combination of these options.

Benchmarking

4.54 Concerning the 'efficient charge' level, Regulation 14 (3) of the Access Regulations provides that "*the Regulator may also take account of prices available in comparable competitive markets*." To ensure that voice call termination rates are among the lowest in Europe, ComReg may set a benchmark level for the mobile operators to achieve using the rates of the lowest three MNOs in the EU. One such benchmarking approach may be to take the "efficient operator" in each EU country, i.e. the one with the lowest weighted average price. On the basis of the "efficient operator" in each member state, the three member states with the lowest "efficient operator" mobile termination rates are selected. A simple average of the "efficient operator" mobile termination rates ranked second and third respectively could be taken to set the target 'efficient charge" level for each of the Irish SMP MNOs to achieve.

4.55 A benchmarking approach, by itself, may be the least burdensome means for an operator to implement as this generally requires no costing information. Additionally, a benchmark level can be re-calculated on a yearly basis or sooner depending on the availability of data, to ensure that the Irish mobile voice call termination charges continue to be amongst the lowest in the EU. However, a benchmarking process using the lowest three "efficient operator" MNOs in the EU does not, of itself, ensure that the voice call termination charges will ultimately be set at an efficient level. Currently there is little or no evidence to suggest that the existing level of termination rates in the EU is set at cost-orientated levels or levels that would prevail in a truly competitive market.

4.56 A benchmarking approach may also be used in combination with other costing methodologies, for example, it could be used in conjunction with a cost modelling exercise (bottom-up or top-down) to set a rate while the modelling exercise is being completed. In principle, ComReg considers that benchmarking can be useful to establish some level of relative efficiency and to ensure that Irish mobile termination charges remain amongst the lowest in the EU. However, ComReg is aware that a benchmarking approach will not set a truly cost-orientated rate for the Irish MNOs, as the benchmark rate is only a proxy based upon data from other EU countries, whose rates themselves may not be cost-orientated.

Q. 22. Do you believe that a benchmarking approach for setting termination charges, by itself or in combination with other price control mechanisms, is appropriate for setting mobile voice call termination rates at an efficient level?

Q. 23. What form of benchmark do you think is appropriate?

Retail minus,

4.57 An alternative method of determining wholesale prices for this service would be to use the retail level as a reference point to determine the level of voice call termination charges. In this regard, a retail margin is subtracted from the retail level to produce the wholesale charge. Applying a retail-minus price control obligation together with other obligations, such as transparency, may ensure that any application of a margin squeeze is avoided. Furthermore, a retail-minus approach can lead to prices that are cost orientated if retail prices are themselves based on efficient levels. A retail-minus formula with an appropriate 'minus' may also ensure that competition is efficient in particular where there is resale. An appropriate minus is usually calculated as the forgone retail costs of an efficient operator.

4.58 In this instance, however there are difficulties with this approach for setting cost orientated voice call termination charges. Firstly, there may some difficulties in calculating the relevant retail costs and / or the appropriate retail margin. Retail-minus is not readily applicable given the range of tariffs for calls requiring termination on mobile networks. Furthermore, mobile retail prices at present may not be set at effectively competitive levels, and subtracting retail costs may not necessarily ensure cost-orientated charges. While a retail-minus approach may be an appropriate form of price control in certain circumstances, ComReg does not believe that retail-minus for the reasons outlined is an appropriate method of achieving cost orientated wholesale mobile voice call termination charges.

Q. 24. Do you agree with ComReg's proposal that a retail-minus approach is not appropriate for setting wholesale mobile voice call termination charges to an efficient level?

Cost-Models

4.59 The 'efficient charge' level can be calculated from costing information, using either a bottom-up and/or a top-down cost model approach. The advantage of setting the 'efficient charge' level on costing information is that such a model gives greater certainty to ComReg that the 'efficient charge' level is calculated using costs that are relevant to the costs of the MNOs in the Republic of Ireland. However, ComReg is aware that there are other factors which must be considered when deciding whether it is appropriate to use a cost-model to set an 'efficient charge' level. A detail discussion of these factors is outlined in Section 5. Overall, ComReg believes that the use of cost-models for setting an 'efficient charge' level may be appropriate for setting wholesale voice call termination charges.

Q. 25. Do you agree with ComReg's proposal that a cost-model approach may be appropriate for setting wholesale mobile voice call termination charges to efficient levels?

Summary on options

4.60 As discussed in this section, ComReg believes there are a number of alternatives to setting the target "efficient charge" level, including the use of cost-models, benchmarking and/or retail minus. ComReg believes that a retail-minus approach is not appropriate for setting the wholesale voice call termination charges. However, ComReg believes that the use of cost models and/or benchmarking may be appropriate. Section 5 discusses these options in more detail when considering the implementation issues relating to the cost-orientation obligation.

Retail Controls

4.61 ComReg is aware that the costs incurred by fixed and mobile operators are generally passed through to their retail customers. Therefore, retail customers making fixed to mobile and mobile to mobile off-net calls may be incurring excess charges that are the results of mobile voice call termination charges that are set above efficient levels. Retail controls could be used to directly address high retail prices, e.g. the imposition of a retail price cap. However, ComReg believes that retail measures should only be considered if wholesale measures fail to address the problem. In this regard, ComReg believes it is inappropriate to consider retail controls to address competition problems arising in the context of the mobile voice call termination market, as appropriate remedies at the wholesale level may do so.

Q. 26. Do you agree with ComReg that it is inappropriate to consider retail controls in the context of the mobile voice call termination market?

Proposed Supporting Remedies

4.62 There are a number of additional supporting obligations which, ComReg believes, may also be appropriate to introduce to ensure competition in this market and that cost-orientated rates are achieved. Supporting obligations of accounting separation and cost account systems may be required to support the non-discrimination and cost-orientation remedies. These are discussed below.

Accounting Separation

4.63 An obligation of accounting separation may be used to require an MNO to keep separate accounts for the relevant wholesale market. This obligation can make transparent the costs and prices that an MNO incurs when using the wholesale services of its own network. This can be used to verify that any non-discrimination requirements are upheld.

4.64 ComReg has considered whether transparency and non-discrimination would work effectively without an appropriate accounting separation obligation. Accounting separation allows internal price transfers to be rendered visible, and allows national regulatory authorities to check compliance with obligations for non-discrimination where applicable.[24]

4.65 Accounting separation can act as a constraint on potential anti-competitive behaviour, for example, margin squeeze, unfair cross subsidy, undue discrimination or a lack of transparency in offering termination services, and would therefore help ComReg in addressing any such potential adverse effects should they arise.

4.66 As outlined earlier, ComReg must take account of issues such as the proportionality of remedies into consideration when proposing remedies. In this regard, ComReg believes that an accounting separation obligation, if required, should only be imposed on the larger SMP MNOs, namely Vodafone and O_2. Such an obligation could cause disproportionate problems for the other SMP MNOs. ComReg believes that an appropriately formed cost-orientation and non-discrimination remedies can be formulated to overcome the requirement for accounting separation for the other SMP operators. As stated earlier, ComReg could benchmark the other SMP MNOs against ComReg's 'efficient charge'

[24] Recital 18 of Access Directive

level.

Q. 27. Do you believe that an accounting separation remedy is required to support ComReg's remedies for this market?

Q. 28. Do you believe that it is appropriate to impose an accounting separation remedy on the larger SMP MNOs, Vodafone and O_2, and not on the other SMP MNOs, Meteor and '3'?

Proposed Cost Accounting Systems Remedy

4.67 In support of the cost-orientation obligation, ComReg may in accordance with Regulation 14 of the Access Regulations impose on an operator obligations relating to cost recovery, including obligations relating to cost accounting systems. Such requirements would be used in support of the principle of cost orientation, for example, establishing the 'efficient charge' level and/or price in any price cap. The aim of such a provision would be to establish the actual "efficient" costs of mobile voice call termination.

4.68 However, imposing a cost-orientation obligation together with supporting cost-accounting obligations on operators, in particular small operators, can be disproportionate given the potential costs associated with the implementation of a suitable cost accounting system for the purposes of achieving cost orientation. In order to obtain a cost-orientated rate a cost modelling exercise, such as top-down or bottom-up, may be required. ComReg recognises that key choices will have to be made with respect to a cost-orientated approach used to calculate mobile termination charges, including but not limited to, costing standard, cost model, depreciation method, cost differences etc.[25]

[25] In October 2002, ComReg (formally the ODTR) consulted on the issue of mobile accounting separation and costing methodologies – ComReg No. Document 02/86. The consultation examined and made proposals on a provisional basis regarding the level of detailed required, treatment of certain cost categories, costing methodologies, format and disclosure requirements and audit.

Q. 29. Do you believe that a cost accounting systems obligation for the purposes of achieving cost orientated wholesale mobile voice call termination charges is required to support the remedies in this market?

Q. 30. Do you believe that it is appropriate to impose cost accounting systems obligation on the larger SMP MNOs, Vodafone and O_2, and not on the other SMP MNOs, Meteor and '3'?

Conclusion on Market Remedies

4.69 Having considered the range of regulatory measures that could potentially be used to address the in efficient price levels in this relevant market and having taken on board the view of respondents, ComReg considers that the following combination of remedies are the minimum necessary to address the competition problems in the voice call termination market, namely:

- Access;
- Transparency;
- Non Discrimination; and
- Cost Orientation;

4.70 ComReg believes that an access condition is a necessary requirement to ensure interoperability of services and therefore believes that it is appropriate to include an access obligation in any proposed remedies for this market. However, ComReg believes that an access condition is not sufficient by itself to address the competition problems in this market. ComReg considered a range of other obligations, including transparency, non-discrimination, price control and retail controls.

4.71 ComReg believes that is it inappropriate to consider retail controls in the context of the voice call termination market, as appropriate remedies at the wholesale remedies may address the competition problems. ComReg believes that non-discrimination and transparency obligations are necessary, but that these obligations, by themselves, are insufficient to ensure that voice call termination charges are not set above the efficient level.

4.72 ComReg has also considered whether forbearance is an appropriate option in this market. While ComReg expects both Vodafone and O_2 to adhere to their undertakings[26] to further reduce their mobile voice call termination rates, ComReg believes that these existing voluntary actions will not ensure predictability, cost-orientation or transparency going forward. ComReg therefore believes it is necessary to impose a price control remedy and set cost-orientated termination rates which it believes will provide a greater level of transparency and

[26] ComReg Press Release – Reference PR 280703 ComReg welcomes reductions in mobile termination rates ensuring that Irish rates stay amongst the lowest in Europe

predictability in mobile voice call termination charges.

4.73 ComReg believes that a form of a cost-orientation which sets voice call termination charges at an efficient level is proportionate and justified because such an obligation would directly influence the voice call termination charges of the SMP MNOs and can effectively prevent the adverse effects of the lack of constraints on the wholesale call termination market on individual mobile networks. ComReg is minded to achieve efficient mobile voice call termination charges through the efficient operator cost principle.

4.74 ComReg believes that the same sets of remedies are required to address the same competition problems. The common suite of remedies to be applied to each SMP MNO will consist of Access, cost-orientation, Transparency and Non-Discrimination obligations.

4.75 ComReg believes that supporting obligations of accounting separation and cost accounting systems may be appropriate to achieving efficient mobile voice call termination charges depending upon the application of remedies imposed in this market. For example, where the "efficient charge" level is based on efficient operator costs using a combination of bottom-up and top-down modelling, supporting obligations may be required. However ComReg is aware that there are a number of issues to consider, including proportionality, when detailing the application of these proposed remedies together with any supporting obligations. In that regard, ComReg believes it is appropriate to impose such supporting obligations, if required, on the larger SMP MNOs, Vodafone and O_2, and not on the other SMP MNOs, Meteor and '3'.

4.76 ComReg will aim to achieve a balance so that any requirements that may be imposed will not unduly burden the operators concerned. ComReg recognises that a gradual decrease of charges over a reasonable period of years to the competitive level may be appropriate. ComReg proposes to introduce a measured progressive approach to any reduction in mobile voice call termination rates it deems necessary. These considerations are discussed in more detail in the following section.

4.77 Overall ComReg believes that the remedies proposed are in line with its objectives including the promotion of sustainable competition to the benefit of end-users. Additionally ComReg believes that these remedies fulfil the requirements for a Regulatory Impact Analysis (RIA) in this market.

Q. 31. Do you agree with ComReg's conclusion on market remedies?

5 Proposed Implementation of Cost-Orientation Obligation

Introduction

5.1 As stated in section 4, and consistent with the October 2003 consultation, ComReg has reached the conclusion that, given the finding of SMP for each operator in the relevant market, the obligation of cost orientation should be imposed on each SMP MNO. The objective of a cost-orientation obligation is to ensure that voice call termination charges are set to an efficient level. ComReg believes that a form of charge control which sets call termination charges at an efficient level is proportionate and justified. For the reasons outlined in previous sections, mobile voice call termination charges set at efficient levels will promote sustainable competition and safe guard the interests of end users.

5.2 For the purpose of achieving cost-orientated rates it is necessary to define the "efficient charge" level that these charges should be set at and the process for getting the voice call termination charges to this level. The following sections discuss the alternatives available to ComReg when selecting a specific mechanism to set the "efficient charge" level, taking account of the principles to be applied by ComReg in selecting remedies, including proportionality. In responding to Consultation Document 03/127a, a number of respondents have provided ComReg with views on remedies. ComReg has considered these views in this section. This section outlines ComReg's proposals for the implementation of the cost orientation obligation together with any supporting obligations, such as cost accounting systems and/or accounting separation.

5.3 The proposed cost-orientation obligation is discussed in terms of two specific timeframes: until September 2005 and from September 2005 onwards.

Proposed Cost-Orientation obligation effective until September 2005

5.4 To date, both O_2 and Vodafone have provided undertakings to reduce their voice call termination charges. In 2004, Vodafone plans a 5% reduction in its average termination rates, while O_2 plans an average termination rate reduction of CPI minus 8%. It has been argued that the reductions in mobile voice call termination rates offered by operators to date have worked well and any move towards a more interventionist approach is unwarranted. ComReg believes that while voluntary reductions have been useful, delivering price reductions to consumer groups (e.g. by virtue of *eircom's* policy of passing on MTR reductions) does not ensure that voice call termination charges are set at efficient levels.

5.5 ComReg expects both Vodafone and O_2 to adhere to their undertaking made earlier this year to further reduce their mobile termination rates. Currently under the ONP Framework, as O_2 and Vodafone have been designated as having SMP in the national market for interconnection, there is an existing obligation of cost-orientation in interconnection on these operators. However, there is no form of cost-orientation obligation on Meteor or '3', as these operators unlike Vodafone and O_2 were not designated as having SMP under the ONP Framework. However, as outlined in ComReg document 04/62a, ComReg believes that Meteor and '3' should be designated as having SMP in this market. Therefore ComReg considers that an appropriate form of cost-orientation for Meteor and '3' is necessary going forward.

5.6 In the absence of a distinct cost-orientation obligation, ComReg believes that the voice call termination charges of mobile operators may operate against the public interest. The introduction of a cost-orientation obligation on all SMP operators will provide a greater level of transparency and predictability in mobile call termination charges.

5.7 Regarding the appropriate cost-orientation obligation to September 2005, ComReg proposes that the current voice call termination charges should be a ceiling on the mobile voice call termination charges of each SMP MNO. Additionally, as stated above, ComReg expects O_2 and Vodafone to reduce their voice call termination charges in line with their existing undertakings. Once O_2 and Vodafone have reduced their voice call termination charges in line with their existing undertakings, ComReg believes that the resulting reduced voice call termination charges will now act as a ceiling on the voice call termination charges of these operators until September 2005.

5.8 Although there is currently no form of price control on Meteor or '3', ComReg does not expect these operators to increase their mobile voice call termination charges in the intervening period between now and September 2005. ComReg considers that a major motivation for a reduction in voice call termination charges is that end users should benefit from lower retail prices.

Q. 32. Do you agree with ComReg's proposed price control obligation for the period up to September 2005?

Proposed Cost-Orientation obligation effective from September 2005

5.9 ComReg believes that from September 2005 onwards voice call termination charges should be based on an 'efficient charge' level. Between now and September 2005, ComReg has a number of alternatives to obtain relevant costing and other information to establish a target 'efficient charge' level. These options include, benchmarking, bottom up modelling, top down modelling or a combination of those. The alternatives are discussed in the sections below.

5.10 ComReg recognises that the target 'efficient charge' level calculated using one of a combination of the options in this section may be different to the voice call termination charges of SMP MNOs. In that regard, ComReg recognises, that there may be a need to use either a glide path and/or a possible once off adjustment followed by a glide path to get the charges of the MNOs to the target level. In particular, this may be an issue for ComReg to consider when setting the proposed implementation of the cost-orientation obligation on Meteor and '3', as currently the average voice call termination charges of Meteor and '3' are above the average charges of Vodafone and O_2. An immediate adjustment downward of Meteor and '3's mobile voice call termination charges to the 'efficient charge' level could cause disproportionate problems for these operators and may also destabilise competition in the overall mobile market. However, ComReg also recognises that voice call termination charges set at the efficient level are among ComReg's objectives and therefore it expects all SMP MNO's voice call termination charges to reach the target 'efficient charge' level. Further details on the possible application of a glide path and/or a once-off adjustment as discussed later in section 5.29 to 5.35.

Option 1: Benchmarking

5.11 As discussed in Section 4, ComReg can use benchmarking to set the voice call termination charges from September 2005 onwards. This remedy is likely to be the least burdensome remedy to implement for ComReg and MNOs as there is no need for any modelling exercises or the imposition of Accounting separation or Cost Accounting Systems as support remedies. However, this remedy may not result in cost-orientated rates in the long run.

5.12 A benchmarking approach would be used to determine an 'efficient charge' level for the mobile voice call termination charges of all the SMP MNOs. However, ComReg recognises that issues such as the glide path and/or a possible once-off adjustment of a combination of both need to be to be considered in the application of this approach.

Q. 33. Do you agree with ComReg's approach to a benchmarking exercise? Please elaborate on your response or suggest possible alternatives.

Option 2: Top Down Approach

5.13 A top-down model is normally derived from the SMP operator's own accounts and is the key element of Accounting Separation and Cost Accounting Systems remedies. The aim of the top-down modelling exercise is to provide information which could be used to derive the 'efficient charge' level and, where appropriate it may also inform ComReg of the appropriate approach to get the voice call termination charges to that level.

5.14 Such models may be prepared on both a CCA and LRIC basis. The major advantages of a Top Down model are auditability: the use of MEA (Modern Equivalent Assets), efficient CAPEX and OPEX; and reconciliation to statutory accounts giving a higher degree of confidence in the numbers.

5.15 However if CCA results are not carried out correctly under a top-down approach, it is more difficult to provide any information on whether an MNO is efficient or not. For example, the CCA calculation may not be performed fully (e.g., operating expenses adjusted and modern equivalent assets included) with the result that efficiency adjustments may not have been fully carried out.

5.16 If CCA accounting is preformed correctly, ComReg believes it should eliminate most of the inefficiencies that would be revealed by a bottom-up model. As mobile networks are relatively new compared to say a fixed network, less inefficiency should have crept into their top down systems, potentially reducing the effectiveness of a bottom-up model.

5.17 The benefits of using a top-down model are that prices are set using actual costs, this reduces the scope for margin squeezes and benefit end users. The disadvantage is that it may take more time than the alternatives of benchmarking or bottom up modelling exercise to implement.

5.18 For Vodafone and O_2, ComReg believes that the use of a top-down methodology may be appropriate because of its robustness due to the use of real accounting data. In addition, these operators are currently more likely to have the most efficient costs due to economies of scale. Given Meteor and '3''s current market shares, ComReg believes that the accounting burden of a top-down approach may be overly burdensome on these operators, as the relative cost to implement such a system is likely to be substantially higher on these operators as compared to Vodafone and O_2. For these reasons, ComReg believes that it is more appropriate to benchmark Meteor and '3' against what is subsequently determined as the 'efficient charge' level cost based on a top-down analysis of the relevant costs of Vodafone and O_2. In reaching the 'efficient charge' level ComReg recognises that issues such as the glide path and/or a possible once-off adjustment need to be considered.

5.19 In terms of implementing the Top-Down approach following the imposition by ComReg of Accounting Separation and Cost Accounting Systems obligations, ComReg believes that both Vodafone and O_2 should commence preparing financial statements, when the remedy is notified. ComReg believes that the general format of the Financial Statements would follow that of the fixed sector where *eircom* produces separated accounts and should take into account the issues raised in the October 2002 Mobile Accounting Separation Consultation.[27] If Accounting Separation and Cost Accounting Systems obligations are imposed on Vodafone and O_2, ComReg believes that a consultation on the detailed requirements for these obligations will take place later this year.

5.20 Concerning the production of Financial Statements, ComReg would expect the first set of Financial Statements relating to Accounting Separation and Cost Accounting Systems to be available prior to October 2005 for the year ending March 31 2005. These Financial Statements would incorporate prior year figures because this is normally required by Generally Accepted Accounting Principles.

5.21 Given that the Financial Statements relating to Accounting Separation and Cost Accounting Systems are unlikely to be available prior to October 2005, ComReg believes that a benchmarking approach, as described in option 1, will be necessary until such time as the relevant data from the top down modelling exercise becomes available.

[27] ComReg Document No. 02/86.

Q. 34. Do you agree with ComReg's approach to a top down modelling exercise? Please elaborate on your response or suggest possible alternatives.

Q. 35. Do you foresee any specific problems with the use of data from Top-Down models built from Vodafone and O_2 data to set a target 'efficient charge' level?

Option 3: Bottom-up Approach

5.22 Voice call termination charges can be set without reference to a Top-Down model by using the alternative of a Bottom-Up Cost Model (BUCM). The principle advantage to a BUCM is that it is based on efficient operator costs and can be useful where there is limited data on operators' actual costs, minimising any potential time delay in determining cost-orientated termination charges via option 2(Top-Down approach). However, the principal disadvantages with this approach are that it does not relate to an operator's actual costs; OPEX calculations can be difficult and the figures do not reconcile to statutory accounts.

5.23 A BUCM can be developed in a number of ways each of which has a number of advantages and disadvantages. For example, ComReg could complete the modelling exercise in-house, in conjunction with MNOs or through an Industry Advisory Group (IAG). Given the potential diverging views on such a modelling exercise, ComReg believes it may be more appropriate to have industry involvement in setting some or all of the parameters for such a model. The use of an IAG may be relatively costly in terms of time and resources as it requires formal meetings, an independent chairman, etc. ComReg believes that an IAG will only function effectively if, other than MNOs, there is committed participation from the wider industry (e.g. fixed operators and for potential MVNOs). Another alternative would be for ComReg to develop the model itself.

5.24 The use of a BUCM may put ComReg in a position to set prices based upon cost information from September 2005 onwards. However, if this is not the case then, ComReg believes that a benchmarking approach, as described in option 1, will be necessary until such time as the relevant data from the BUCM exercise becomes available.

5.25 Under the BUCM approach ComReg intends on setting a target 'efficient charge' level based on an analysis of the relevant costs, most likely those of Vodafone and O_2, from the BUCM. In reaching the 'efficient charge' level, ComReg recognises that issues such as the glide path and/or a possible once-off adjustment need to be to be considered.

Q. 36. Do you agree with ComReg's approach to a bottom-up modelling exercise? Please on elaborate your response and state your preferred route as to how a BUCM might be developed.

Conclusions on options for the "efficient charge" level

5.26 There are advantages and disadvantages to the alternative approaches for setting the 'efficient charge' level. Given the strengths and weaknesses of both the top-down and bottom-up models to reach a reliable estimate of the cost of an efficient mobile operator, ComReg believes that the most reliable approach is to reconcile top-down and bottom-up approaches to calculating costs. However, this hybrid approach may be resource-intensive and require heavy commitment from both operators and ComReg. In that regard, ComReg believes that it may be more appropriate to use the alternative Top-Down approach supported by a relevant benchmarking exercise. This approach would reflect the costs of current activities carried out by the MNOs, and enable a comparison with an external price, independent of the organisation.

5.27 For the purposes of deriving a top-down model ComReg proposes to impose Accounting Separation and Cost Accounting Systems obligations on Vodafone and O_2. As stated in the previous section, however, imposing a cost-orientation obligation together with supporting cost accounting systems and accounting separation obligations on smaller operators can be disproportionate given the relative size of Meteor and '3' and the potential costs associated with the implementation of a suitable cost accounting system for the purposes of achieving cost-orientation. As stated earlier, ComReg believes that it is more appropriate to benchmark Meteor and '3' against what is subsequently determined as the 'efficient charge' level cost based on a top down analysis of the relevant costs of Vodafone and O_2.

5.28 ComReg's aim is to ensure that the mobile voice call termination charges are set at an efficient level. Having considered the market conditions on the wholesale mobile voice call termination market (i.e. the strong monopoly of the MNO and the lack of incentives that prevent competition at present and in the foreseeable future), ComReg believes that a cost orientation obligation on SMP mobile operators is appropriate and justified. Further, ComReg believes that its proposed application of the cost accounting remedies are proportionate and justified in light of ComReg's regulatory objectives. The approach outlined above will aim to ensure maximum benefit to end users, avoid discriminating in favour of particular MNOs in transition to a cost-based wholesale mobile voice call termination rate thereby promoting competition.

Q. 37. Do you agree with ComReg's proposed approach for setting a target 'efficient charge' level?

Options for reaching the target 'efficient charge' level

5.29 The purpose of the cost orientation obligation is to ensure that the voice call termination charges are set at the efficient level. In adjusting the voice call termination charges to the target 'efficient charge' level, ComReg will give careful consideration to balancing two objectives:

- Adjustments should be achieved sufficiently quickly in order to deliver substantial benefits to competition and to end-users; and
- Adjustments should allow sufficient time for operators, if appropriate, to adjust to the new voice call termination charges.

5.30 While ComReg aims to ensure that consumers benefit from lower end user charges, it recognises that any charge reductions required to achieve cost-orientated rates may be too large to achieve in one step. An immediate one-off downward adjustment may not be appropriate because of its poor dynamic incentive properties but also because of its possible disruption to the mobile sector and consumers generally. ComReg recognises that that pricing methodologies must promote efficiency and sustainable competition and maximise benefits to end users. In addition, ComReg recognises the need to take account of a reasonable rate of return. In that regard, ComReg believes that a phased adjustment to voice call termination charges can achieve the latter objectives by providing operators with greater incentives for cost reductions on the basis of efficiency gains.

5.31 Having identified an appropriate target level for wholesale mobile voice call termination using any of the alternative methodologies outlined above, alternative forms of Price Control can be used to achieve the required 'efficient charge' level. These include the use of a price cap and/or a glide path mechanism.[28] A price cap could be used to set a maximum level of charges over a number of years (e.g. CPI-X), thus adding a degree of certainty to these charges over the period of the price cap, benefiting consumers and giving efficiency incentives to the operators concerned.

5.32 More specifically, the alternative forms of Price Control might include:

- Maintaining the mobile termination charges as of September 2005 if the analysis shows these charges to be appropriate;
- Making a one-off percentage adjustment which may not be the full reduction to an 'efficient charge' level;
- Using a glide path. This may require a higher absolute reduction for Meteor and '3' given that their average charges are currently at a higher level than those of Vodafone and O_2;
- A combination of two or more of the above price control mechanisms.

5.33 Additionally in setting the target 'efficient charge' level, a number of additional alternatives are available:

- Immediately setting the target 'efficient charge' based directly on the output of any modelling exercises;
- Implementing a price cap in the longer term. In this instance ComReg would first establish that the model output costs are relatively stable. This could be achieved by running the models for more than one year before implementing such an obligation;

[28] Price Caps normally follow a CPI –X approach. This means that a price, once it is determined, is followed by successive annual changes depending on the relationship with the consumer price index which in an inflationary time produces an increase and the "X" which is a factor, based on volumes and efficiency, and will normally decrease the price.

- A combination of the above.

5.34 Considering the above, ComReg believes that the imposition of a price cap system or a glide path , whichever is appropriate, over a reasonable period of time may be the most appropriate Price Control for ComReg to impose. The reasonable period would be aimed at providing a transition towards efficient charging levels thereby promoting sustainable competition. It will also aim at preventing the continuance of any high charges to the benefit of end users. In the interests of consumers ComReg is of the opinion that this period should be as short as possible without creating possible adverse effects on MNOs.

5.35 Depending upon the size of a once-off adjustment, ComReg recognizes that a Price Control that immediately sets the mobile voice call termination charges at the target 'efficient charge' level may cause disproportionate problems for mobile operators, and in particular the smaller mobile operators. ComReg believes that a measured progressive approach to any reduction in mobile voice call termination charges is appropriate.

Q. 38. Do you agree that measured progressive approach to any reduction in mobile voice call termination charges is appropriate? Please elaborate on your response.

Summary on proposed implementation of cost-orientation obligation

5.36 ComReg has reached the conclusion that, given the finding of SMP for each operator in the relevant market, the obligation of cost-orientation should be imposed on each SMP MNO. The objective of a cost-orientation obligation is to ensure that voice call termination charges are lowered to an efficient level.

5.37 The proposed cost-orientation obligation is discussed in terms of two specific timeframes: until September 2005 and from September 2005 onwards.

5.38 Regarding the appropriate cost-orientation obligation to September 2005, ComReg proposes that the current voice call termination charges should be a ceiling on the mobile voice call termination charges of each SMP MNO. Additionally, as stated above, ComReg expects that O_2 and Vodafone to reduce their voice call termination charges in line with their existing undertakings. Once O_2 and Vodafone have reduced their voice call termination charges in line with their existing undertakings, ComReg believes that the resulting reduced voice call termination charges will now act as a ceiling on the voice call termination charges of these operators until September 2005.

5.39 From September 2005 onwards ComReg believes that the voice call termination charges should be set on the basis on an target 'efficient charge' level. There are a number of options for deriving the "efficient charge" level including, benchmarking, bottom up modelling, top down modelling or a combination of those. ComReg is seeking views as to the appropriateness of these alternatives for deriving the "efficient charge" level. However ComReg is minded for the reasons outlined above to use the Top-down approach supported by a relevant benchmarking exercise. For the purposes of this exercise ComReg proposes to impose Accounting Separation and Cost Accounting Systems obligations on Vodafone and O_2. Additionally ComReg believes that it is appropriate to benchmark Meteor and '3' against what is subsequently determined as the 'efficient charge' level cost based on a top-down analysis of the relevant costs of Vodafone and O_2.

5.40 Regarding the options available for reaching the target 'efficient charge' level, ComReg is aware that there are many alternatives including the use of a once-off step change and/or a glide path. ComReg believes that a measured progressive approach to any reduction in mobile voice call termination charges is appropriate.

5.41 Having considered the market conditions on the wholesale mobile call termination market, ComReg believes that a cost-orientation obligation on SMP mobile operators is appropriate and justified. Further, ComReg believes that its proposed application of the cost-orientation remedy, including the possible application of cost accounting system and accounting separation remedies, is proportionate and justified in light of ComReg's regulatory objectives and fulfills the requirements for a RIA in this market.

6 Submitting Comments

6.1 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.

6.2 The consultation period will run from 8th June to 20th July 2004 during which ComReg welcomes written comments on any of the issues raised in this paper.

6.3 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. Under Article 5(2) of the Framework Directive the European Commission can require ComReg to provide it with responses to the consultation and other information. ComReg can request the European Commission to keep that information confidential. For that reason 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.

6.4 Having analysed and considered the comments received, ComReg will review the implementation of remedies in the mobile voice call termination market and publish a report on the consultation which will *inter alia* summarise the responses to the consultation.

6.5 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.

Appendix A – Consultation Questions

Q. 1. Do you agree with ComReg's description of the potential competition problems arising in this relevant market and the possible adverse effects? 9

Q. 2. Do you agree with ComReg's objectives for remedies in this relevant market? 9

Q. 5. Do you agree with ComReg's assessment of forbearance? 14

Q. 6. Do you agree that ComReg should use the costs of an efficient operator as a basis for setting a uniform target voice call termination charge for all SMP operators? 15

Q. 7. Do you agree that the costs of an efficient 2G network should be used to set the uniform target voice call termination charge for operators with 3G networks, at this time? 15

Q. 8. Do you agree with ComReg that the detailed implementation of remedies may differ between mobile network operators depending upon issues such as proportionality and promotion of competition in the market? 16

Q. 9. Do you agree with ComReg that an access obligation is a necessary obligation to include in the remedies for this market? 17

Q. 10. Do you agree that an access obligation by itself will not be sufficient to address the competition problems in this market? 17

Q. 11. Do you agree with the details of ComReg's proposed Access obligation as set out above? 17

Q. 12. Do you agree with ComReg that a transparency obligation is a necessary obligation to include in the remedies for this market? 20

Q. 13. Do you agree that a transparency obligation is insufficient by itself to address the competition problems in this market? 20

Q. 14. Do you agree with the details of ComReg's proposed Transparency obligations as outlined above? 20

Q. 15. Do you agree with ComReg that a non-discrimination obligation is a necessary obligation to include in the remedies for this market? 23

Q. 16. Do you agree that a non-discrimination obligation either alone or in combination with transparency and/or access obligation is insufficient to address the competition problems in this market? 23

Q. 17. In relation to voice call termination charges, do you agree with ComReg's analysis of type A, B and C discrimination? 23

Q. 18. In relation to voice call termination charges, please provide your views on the appropriate form of non-discrimination obligation required for type D discrimination? Do you believe there are any circumstances where "on net" charges would not increase if Type "D" discrimination is prohibited?..... 23

Q. 19. In relation to other aspects involved in the provision of a voice call termination service (e.g. terms and conditions, etc.), do you agree with ComReg's Non-Discrimination obligation? 23

Q. 20. Do you agree that a price control remedy, namely a cost-orientation obligation, is a necessary obligation to include in the remedies for this market? 25

Q. 21. Do you agree with ComReg that a price control obligation, namely cost-orientation, in combination with transparency, access, and non-discrimination obligations is sufficient to address the competition problems in this market? 25

Q. 22. Do you believe that a benchmarking approach for setting termination charges, by itself or in combination with other price control mechanisms, is appropriate for setting mobile voice call termination rates at an efficient level? 26

Q. 23. What form of benchmark do you think is appropriate? 26

Q. 24. Do you agree with ComReg's proposal that a retail-minus approach is not appropriate for setting wholesale mobile voice call termination charges to an efficient level? 27

Q. 25. Do you agree with ComReg's proposal that a cost-model approach may be appropriate for setting wholesale mobile voice call termination charges to efficient levels? 27

Q. 26. Do you agree with ComReg that it is inappropriate to consider retail controls in the context of the mobile voice call termination market? 28

Q. 27. Do you believe that an accounting separation remedy is required to support ComReg's remedies for this market? 29

Q. 28. Do you believe that it is appropriate to impose an accounting separation remedy on the larger SMP MNOs, Vodafone and O_2, and not on the other SMP MNOs, Meteor and '3'? 29

Q. 29. Do you believe that a cost accounting systems obligation for the purposes of achieving cost orientated wholesale mobile voice call termination charges is required to support the remedies in this market? 30

Q. 30. Do you believe that it is appropriate to impose cost accounting systems obligation on the larger SMP MNOs, Vodafone and O_2, and not on the other SMP MNOs, Meteor and '3'? 30

Q. 31. Do you agree with ComReg's conclusion on market remedies? 31

Q. 32. Do you agree with ComReg's proposed price control obligation for the period up to September 2005? 33

Q. 33. Do you agree with ComReg's approach to a benchmarking exercise? Please elaborate on your response or suggest possible alternatives. 34

Q. 34. Do you agree with ComReg's approach to a top down modelling exercise? Please elaborate on your response or suggest possible alternatives. 36

Q. 35. Do you foresee any specific problems with the use of data from Top-Down models built from Vodafone and O_2 data to set a target 'efficient charge' level? 36

Q. 36. Do you agree with ComReg's approach to a bottom-up modelling exercise? Please on elaborate your response and state your preferred route as to how a BUCM might be developed. 37

Q. 37. Do you agree with ComReg's proposed approach for setting a target 'efficient charge' level? 37

Q. 38. Do you agree that measured progressive approach to any reduction in mobile voice call termination charges is appropriate? Please elaborate on your response. 39

Q. 39. Do you consider that a separate decision should be issued for each undertaking? 49

Q. 40. Do you agree with the wording of the draft Decision, including that for the options noted above. Please elaborate on your response................ 49

Appendix B – Proposed Decision on Voice Call Termination Remedies

Explanatory Notes:

1. ComReg has also included all four operators as designated undertakings, but may issue separate directions for each undertaking.
2. In paragraphs 24 - 27 the prices currently shown by [X] will be the ceilings that follow the voluntary reductions of Vodafone and O_2.
3. Since benchmarking will be carried out by ComReg, there is no need to have a specific obligation in the Decision for work to be done by any MNO.
4. ComReg has included sections related to Bottom-Up models, Accounting Separation, Cost Accounting, Benchmarking, which can be deleted depending on the results of the Consultation.
5. The Bottom-Up model section has two alternatives depending up on which bottom-up modelling option is chosen, if any. This applies for Vodafone and O_2 only.
6. The obligations that relate to top-down models are Accounting Separation and Cost Accounting Systems.

Statutory Powers Giving Rise to Decision

7. The Commission for Communications Regulation ('ComReg') in making this Decision and in imposing the obligations set out herein, has amongst other things:

- taken into account obligations under Regulation 6(1) of the Access Regulations29,
- acted in pursuit of the objectives set out in section 12(1) of the Communications Regulations Act, 2002[30] (the Act of 2002),
- taken in to account the factors set out in Regulation 13(4) of the Access Regulations and
- has (where appropriate) complied with the Policy Directions made by the Minister for Communications, Marine and Natural Resources[31]

8. ComReg has taken account of the European Commission's Recommendation32 and Guidelines.[33] This Decision is based on the market

[29] 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 ('the Access Regulations').

[30] No. 20 of 2002.

[31] Policy Directions made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February 2003.

definition, market analysis and reasoning conducted by ComReg in relation to the market for wholesale voice call termination services, as part of the consultation process arising from the Consultation Paper entitled Market Analysis: Mobile Voice Call Termination 03/127a (Response to Consultation Document and Decision 04/62a) dated 22nd October 2003. The said Consultation Paper forms part of this Decision.

9. The obligations set out in this Decision are imposed on designated SMP operators as specified pursuant to the provisions of Regulations 25[34], 26[35] and 27[36] of the Framework Regulations[37]; in accordance with Regulations 6[38], 9[39], 10[40], 11[41], 12[42], 13[43] and 14[44] of the Access Regulations and Sections 10[45] and 12[46] of the Act of 2002.

Market Definition

10. The relevant product market is defined as Mobile Voice Call Termination on the designated MNO's mobile network.

11. The relevant geographic market for Mobile Voice Call Termination is defined as the SMP operator's Mobile Network in Ireland.

Designation of Undertaking (s) with Significant Market Power ('SMP')

12. Vodafone, O_2, Meteor and '3' are designated as having SMP on the Mobile Voice Call Termination market and are referred to herein as the SMP MNOs (Mobile Network Operators).

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32 EU Commission Recommendation of 11 February, 2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

33 Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services.

34 Undertaking with Significant Market Power.

35 Market Definition Procedure.

36 Market Analysis Procedure.

37 The European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2003.

38 Functions of the Regulator with regard to access and interconnection.

39 Imposition, amendment or withdrawal of obligations.

40 Transparency.

41 Non-Discrimination.

42 Accounting Separation.

43 Obligation of access to and use of specific network facilities.

44 Price control and accounting obligations.

45 Statutory Functions of ComReg.

46 Statutory Objectives of ComReg.

General Obligations:

13. In accordance with Regulation 9 of the Access Regulations, ComReg has decided that all designated SMP operators shall have imposed on them, access, cost-orientation, non-discrimination and transparency obligations. These are detailed in the sections below.

Access

14. Each SMP MNO shall:

- provide access to Mobile Voice Call Termination services;
- negotiate in good faith with undertakings requesting access;
- not withdraw access to facilities already granted, and
- ensure that all reasonable requests for access are dealt with in a timely manner, not being longer than 3 months from the initial request for access.

Cost Orientation

15. SMP MNOs shall have an obligation to offer cost-oriented prices for Mobile Voice Call Termination. This obligation shall stand irrespective of any further obligations imposed.

Obligation of Non-Discrimination

16. The SMP MNOs shall have an obligation of non-discrimination as provided for by Regulation 11 of the Access Regulations.

17. The SMP MNO shall apply equivalent conditions in equivalent circumstances to other authorised undertakings providing equivalent services.

Transparency

18. Each SMP MNO shall file with ComReg all voice call termination agreements, including a description of all terms and conditions, and prices.
19. Each voice termination agreement is to be filed within 28 days of becoming effective. Updates to these agreements should also be filed within 28 days of becoming effective
20. All voice call termination charges shall be published on the SMP MNOs' website.
21. The SMP MNO shall send to ComReg, a notice of any amendment to the charges on which it provides voice call termination services, not less than 28 days before any such amendment takes place.
22. The SMP MNO shall notify all interconnected parties and ComReg of such change and should publish these details of the amendment on their websites at the same time as ComReg is notified

23. The SMP MNO shall ensure the publication of a suitable unbundled reference offer on their website.[47] Supporting records which detail any changes to the reference offer should be maintained for a period of 6 years, and shall be available to ComReg upon request.

Price Control

<u>Prices from September 2004</u>

24. The price for Mobile Voice Call Termination on its network for Vodafone shall be: [X]
25. The price for Mobile Voice Call Termination on its network for O_2 shall be: [X]
26. The price for Mobile Voice Call Termination on its network for Meteor shall be: [X]
27. The price for Mobile Voice Call Termination on its network for '3' shall be: [X]

<u>Changes to Prices from September 2005</u>

28. ComReg retains the right, but not the obligation, to issue Directions which impose a price control, glide path or a price cap on the SMP MNOs, after consultation, once the results of various models and benchmarking exercises are known. Any such further Decisions shall be complied with by the SMP MNOs.

Bottom Up Models

29. The SMP MNOs in this Direction shall either a) be members of the LRIC Model Development Industry Advisory Group, or b) contribute to any model prepared by ComReg as requested.

Obligations in Relation to Accounting Separation

30. Vodafone and O_2 shall have an obligation in relation to Accounting Separation as provided for by Regulation 12 of the Access Regulations. This shall follow ComReg's consultation on the detailed requirements for, and the practical implementation of, this obligation;

Obligations in Relation to Cost Accounting

31. Vodafone and O_2 shall have obligations in relation to cost accounting as provided for by Regulation 14 of the Access Regulations. This shall follow ComReg's consultation on the detailed requirements for, and the practical implementation, of this obligation.

[47] Regulation 10(2) of the Access Regulations states that "a reference offer that is sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested and such offer shall include: (a) a description of the relevant offerings broken down into components according to market needs; and (b) a description of the associated terms and conditions, including prices."

Period for which the Obligations shall remain in force

32. The obligations imposed under this Decision shall remain in force until the next market review has been completed

Effective Date

This Decision shall be effective from the date of its publication.

John Doherty

Chairman

The Commission for Communications Regulation

The [●] day of [●] 2004

Q. 39. Do you consider that a separate decision should be issued for each undertaking?

Q. 40. Do you agree with the wording of the draft Decision, including that for the options noted above. Please elaborate on your response.