



## Consultation Paper

### **Consultation Paper on Fixed Interconnection Charging Mechanisms**

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All responses to this consultation should be clearly marked:-

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## **1 Foreword [by the Chairperson]**

This consultation paper will seek the views of interest parties on a range of topics relating to the current regime of calculating interconnection rates. It is our intention that these issues would be subject to a further consultation which would elaborate on specific proposals before any decision would be taken. We also wish to take the opportunity to evaluate a number of other issues underlying the calculation of interconnection rates and charges which are important to the competitive environment.

The telecommunications market has developed and matured significantly. It has expanded as new products have been introduced to meet industry demands. Nonetheless the matters under consideration are of substantial importance and represent an opportunity to improve upon existing arrangements for the benefit of all parties involved in interconnection.

The consultation process is designed to assist ComReg in making decisions and to seek the views of industry. I am keen to open the debate from time to time on all material and relevant issues but, necessarily, I have to make decisions in a practical and effective way. A balance has to be struck in deciding the optimum quantity and content of issues that may be productively and effectively put to consultation. This Consultation Paper represents our best endeavours to achieve this balance.

Responses to this consultation document will be accepted up to 21 March 2003 and a Response to Consultation will be issued in April 2003.

**Etain Doyle,**

Chairperson, Commission for Communications Regulation

## 2 Background

Since LRIC costing for interconnection was introduced in December 1999, eircom's top down LRIC model has played a major role in the setting of interconnection rates. Because certain inputs into this model use actual Eircom data for a given period, it has proved necessary to set rates on an interim basis, based on forecast outturns for that period. These rates have until now only been finalised at a later stage in the light of actual outturns for the period in question. ComReg believes that in the circumstances and given the relatively recent introduction of LRIC into the process, that this approach was appropriate in order to ensure cost orientation. However it also acknowledges that delays have inevitably occurred during the finalisation process. ComReg is cognisant of the extra difficulty caused to operators by the consequent increase in uncertainty in revenue streams (for eircom) and input costs (for OLOs). It is also cognisant of the risks associated with potential year on year changes in interconnection rates for OLOs.

The Commission is also conscious of the strong support expressed by industry generally for the introduction of a wholesale price cap previously (ODTR 02/96)<sup>1</sup> and this is one of the options discussed in this paper. In that paper it was stated that the Director recognised the "attractions in wholesale price caps, and is inclined to see these to be an alternative to the existing regime for controlling interconnect and other wholesale prices, rather than as an alternative to a retail price cap."

A further issue relates to claims that eircom have made that the present system does not provide it with sufficient incentive to invest in its interconnection business, because ODTR/ComReg has up to now retrospectively adjusted its rates, such that it earns its regulated return on interconnection. ComReg is of the opinion that eircom is incentivised in that it can earn its regulated return on any investment made and, of course, benefits directly from any improvement in its own cost base. Nevertheless ComReg is prepared to open a discussion on the issue as to whether the current system is likely to be the optimal arrangement in the future.

In D99/38<sup>2</sup> the Director of Telecommunications Regulation stated that her objectives in introducing LRIC were to 1) encourage efficient competition, 2) send appropriate signals that promote forward looking investment decisions, 3) enable cost recovery by the incumbent, 4) facilitate effective means of interconnection, 5) be sufficiently transparent and 6) be non-discriminatory and non-preferential. These objectives are unchanged. It is with these objectives and the issues described above in mind that ComReg now believes that it is time to revisit the issue of how interconnection rates are set.

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<sup>1</sup> Review of the Price Cap on Certain Telecommunication Services- Consultation III.

<sup>2</sup> The Development of Long Run Incremental Costing for Interconnection – Decision Notice D6/99 & Report on Consultation Paper ODTR 99/17

It is ComReg's intention that the issues raised in Sections 3 and 4 below would be subject to further consultation which would elaborate on specific proposals before any decision would be taken.

ComReg also wishes to take the opportunity to evaluate a number of issues underlying the calculation of interconnection rates and other charges which are important to the competitive environment.

This paper is based on current legislation and takes account of the objectives in the 2002 Communications Act and the new EU directives. It is not possible at this time to anticipate the outcome of the market review process. For an overview of the legal background refer to the appendix.

## **3 The Process of Setting and Finalising Interconnection Rates**

### **3.1 Conveyance Rates**

A number of possible options in relation to the process of setting interconnection rates are described below. The purpose of this exercise is to stimulate investment and competition in the industry by a) streamlining the process for setting interconnection conveyance rates so as to minimise uncertainty to industry as a whole and b) providing appropriate incentives to all operators. All of the options described envisage setting rates in advance of any particular period and eliminating the practice of retrospective settlements.

ComReg at this point does not propose to make a recommendation on this issue. Instead it would prefer to hear the views of industry and other interested parties using the options below as the basis for discussion. If it is decided to pursue the matter further, a further consultation will follow with a more detailed examination of the issues.

ComReg believes that the use of LRIC must be retained regardless of the option used. It also believes that any new proposals must take into account the following considerations.

- Cost orientation: eircom has an obligation to offer cost oriented rates.
- Efficiency: To the extent that rates are set in advance they must take account of forecast reasonable efficiency gains due to technological, management and other improvements over the relevant period. On the other hand, one way that eircom could be incentivised to improve its efficiency, would be to allow it to retain the benefits of extra efficiency over a certain target.
- Volumes: As volumes grow unit costs should, on average, fall. Any alternative method of setting rates must take account of this growth and allow OLOs to share in its benefits.
- Margins: Until 3<sup>rd</sup> February 2003, eircom was subject to a retail price cap which meant that it must, inter alia, reduce its prices for a basket of retail products by CPI-8 each year. In ComReg 03/14<sup>3</sup> it was announced that the overall basket cap would be CPI – 0 effective from 4<sup>th</sup> February 2003 with all sub caps being removed. Whatever mechanism may be adopted on interconnection prices, it must ensure that all retail operators must equally be protected from problems relating to margin squeeze on a non discriminatory basis.
- Rate of Return: Currently a nominal rate of return is applied to eircom's LRIC accounts. It is arguable that in the interests of consistency a CCA rate of return should be applied instead.

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<sup>3</sup> Review of the Price Cap on certain Telecommunication Services- ComReg 03/14

**Q 1** Are current arrangements in relation to interconnection charges satisfactory? Is change warranted?

**Q 2** Do you agree with the list of considerations above? Do you think ComReg should have regard to any other matters?

### **3.2 Possible Options**

#### **OPTION 1**

*Set rates for the year on a forward looking basis, based on most recent LRIC separated accounts, this process to be repeated annually.*

This would mean, for example, that rates for the year to 31st March 2005 would be based, not on eircom's accounting information for the year to 31st March 2005 applied retrospectively (as would be the case now), but on accounts from an earlier period which would be declared to be final rates in advance. In practice, because of the time lags involved in producing separated accounts and related interconnection submissions, it is probable that the base year in this example would be the eircom's accounts for the year ended 31st March 2003 (available September 2003). Rates derived from accounts for year  $n$  would apply for year  $n+2$ .

This option does mean that operators would be aware of rates applicable on a rolling basis one year into the future. However a serious problem would be that the accounting information upon which rates for any period are based would be significantly out of date. It would also delay the benefit to OLOs of unit cost reductions due to efficiency gains or volume growth. In the past, when rates have tended to fall year on year, this would have provided a considerable benefit to eircom since it would effectively have deferred price reductions.

#### **OPTION 2**

*Set rates for the year ahead based on forecast.*

Under this arrangement eircom would propose rates in advance of an accounting period using forecast estimates on costs and volumes as inputs into LRIC calculations for the period in question. For example, rates for the year to 31st March 2005 might be set in advance based on forecasts which would take as their starting point separated accounting information for the year to 31st March 2003 and other relevant information. This proposal is similar to the current process for setting interim rates except that rates set in this way would not be subject to retrospective finalisation.

In principle this process could be extended over a number of years at which point it would come to resemble option 3 below.

While this would address the problem of uncertainty to some degree, ComReg sees two key difficulties with this approach on an annual basis. Firstly setting rates based on forecast is likely to be a difficult exercise and one that may not be practical on an annual basis. Secondly revisiting rates annually would tend to limit the incentive effect on eircom given that investment programmes to improve efficiency may often yield a return over a longer time period.

### **OPTION 3**

#### *Conveyance rate price cap*

Price cap type regulation of the format CPI-X has the merits of providing visibility of prices over an extended period and also of giving the incumbent an extra incentive in that it knows it can keep the benefits of over achieving unit cost reductions. OLOs on the other hand, assuming reasonable efficiency improvements and volume growth, will have guaranteed real price reductions over the time frame of the cap. The financial forecasts used to facilitate the setting of X would use the LRIC costing methodology.

A number of additional considerations would need to be addressed under this option:

- **Duration:** A longer price cap period increases certainty, increases the incentive to the incumbent and is administratively simpler. On the other hand it also increases the risk that prices will not be cost oriented at the end of the period.
- **Structure and flexibility:** Retail price caps usually allow the incumbent some flexibility in terms of an overall price basket target. This may be restricted by the use of individual service sub caps. In general, the greater the flexibility for eircom in setting rates, the greater the uncertainty for OLOs. In this case a decision will need to be made as to whether each individual service (origination, termination and transit) is capped separately or whether some form of basket – possibly with sub caps - would be allowed.
- **New Technology:** Because of the lengthened duration of the control period it is possible that new technology may have a significant impact on interconnection – for example IP based networks. This will need to be addressed.
- **The appropriate index for price control:** The consumer price index has been used as part of the formula to determine retail rates. A decision will be required to establish if this is also appropriate for wholesale rates such as interconnection.
- **Initial Rates:** ComReg is of the opinion that the initial starting rates to which a price cap formula would apply, would need to be thoroughly documented and derived from principles that ensure no material issues



of non discrimination exist and that means that underlying LRIC rates are unlikely to be volatile from year to year.

- The relationship to the retail price cap would be critical both in terms of timing and duration and in terms of permitted price movements.
- The extent to which eircom would still be required to submit detailed periodic cost submissions.

**Q 3 If you think the current process in relation to the setting and finalisation of interconnection rates needs to be changed which of the 3 options described is your preferred option and why?**

**Q 4 If you think it is appropriate to implement a system based on Option 3 do you agree with the list of additional considerations above? Are there any other issues that need to be considered?**

### 3.3 NTCs

Similar considerations apply to number translation codes, which are also currently finalised in arrears and retrospectively. In simple terms NTC rates are comprised of the underlying conveyance rate plus an allowance for appropriate billing costs and bad debt charges.

Under the current system NTC rates change :

- a) as conveyance rates are updated.
- b) when actual cost details for billing and bad debts become available from the separated accounts.
- c) when operators have availed of individual operator average values (i.e. Near End Handover) as a basis for calculation of NTC settlements.<sup>4</sup>

If any of options 1 to 3 for conveyance rates were implemented in such a way that the price of individual services were known in advance, ComReg would consider simplifying the process of setting NTC rates by setting rates annually in advance using conveyance rates as derived above plus billing and a bad debt charge derived from the most recently available set of separated accounts. If some flexibility in the setting of individual conveyance rates were allowed (for example by the use of a basket cap) some extra simplification could still be achieved by setting the non conveyance elements in advance. NEHO is a special case as the rate setting process has only recently been agreed and allows

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<sup>4</sup> Inter-Operator Itemised Billing- Response to Consultation and Decision Notice- D9/02- ODTR 02/54

for quarterly reviews of rates based on most recent actual traffic flows. However, even here the approach to underlying conveyance rates and billing and bad debts charge could possibly be simplified.

**Q 5 Do think there is a need to review the method of setting rates for NTCs?**

**Q 6 Do you agree with ComReg's proposal in relation to NTCs (excluding NEHO)? Please comment in detail.**

**Q7 Do you think that ComReg should also examine the case for simplifying the process for setting NEHO rates?**

## 4 Delays in the publication of Conveyance Rates

This section is intended to apply to those situations where retrospection continues to apply. As noted in the introduction, interconnect prices do provide eircom with a return on its investment. However, ComReg would welcome views as to whether there should be further incentives in the form of interest on retrospective settlements. ComReg recognises that the publication of interconnect charge rates is not always timely and that this creates uncertainty for all players in the market. ComReg accepts that the fixed telecommunications market SMP operator has an obligation to provide cost justified charges for interconnection and ComReg has instituted a programme of requests for submissions from eircom to ensure annual re-evaluation of the cost calculations. While the submissions have often been timely they have rarely been adequate to justify the charges to the satisfaction of the Commissioners (or the Director of Telecommunications Regulation in earlier periods) without lengthy and detailed enquiry, analysis and amendment. While detailed analysis is inevitable, the process could be accelerated by full provision of supporting information as an integral part of the submission. eircom's separated accounting / LRIC charge computation system is finite although large, so this would not be an open ended requirement. With full supporting information and documentation of all computational links the analytical process could be significantly accelerated.

In periods of falling nominal prices eircom benefits from delay, so negative incentives may be appropriate. Two possibilities suggest themselves:

- Interest on monies owed due to retrospective adjustment of prices – payable at normal commercial rates of interest. These interest charges would be reciprocal so that it could also potentially apply to OLOs, if the retrospective adjustment meant that an OLO owed Eircom for underpayment of interconnection rates.
- Interest on monies owed by eircom due to delays in publication of revised interconnect rates – payable at a rate of three month Euribor + 4% (as set out in D10/02<sup>5</sup> for amounts in default). These payments would be applicable to eircom only.

In each case the base period for the interest calculation would need to be defined. For example for a) above interest could apply from the normal date of settlement of the first interconnection settlements subject to the revised rates; or they could apply to the mid point or the end of the financial year in question. In the case of b) the higher rates, if applied, could possibly take effect from a set number of months after the publication of the separated accounts.

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<sup>5</sup> Eircom's Reference Interconnect Offer – ODTR Doc 02/55.

**Q 8** Are negative incentives on eircom's support of the interconnect market desirable?

**Q 9** Is interest on retrospective adjustments payments desirable? If so should the rates be commercial?

**Q 10** Is interest on late adjustment payments desirable? If so, should the interest rate be as set out in D10/02 (i.e. 3 month Euribor + 4%)?

**Q 11** Are there any other negative incentives which would be appropriate? Please describe any proposals & give reasons for your answer?

**Q12** From what date should either type of interest rate apply?

## 5 Allocation of Carrier Services and Carrier Billing Costs

Carrier Services (eircom's administrative costs associated with interconnection services) and Carrier Billing Costs (billing costs for the same services) have become an increasingly significant element of Interconnect call conveyance rates. Notwithstanding ComReg's concern about the absolute level of these charges, there is also an issue as to how these charges are allocated across eircom's traffic. Currently these costs are allocated on the basis of interconnect minutes only. This treatment accords with a strict interpretation of the cost causation principle.

However there is also an argument that the current treatment is discriminatory in favour of Eircom's retail arm in that it benefits from the fact that it does not receive actual invoices from its network business/wholesale arm and therefore does not bear the cost of interconnection billing systems as OLOs must. If eircom's network business were completely independent, then it would have to have proper billing arrangements and not rely on transfer charges. Dividing these costs by OLO interconnect minutes only (the current situation) would result in strict cost orientation, whereas the dividing the costs by total wholesale and retail minutes including eircom's self interconnected calls would be a less discriminatory approach.

ComReg believes that these costs should be recovered on the basis of total interconnect minutes (i.e. OLO interconnection minutes plus eircom's self interconnected calls) and would like to hear the views of industry and other interested parties.

**Q 12** Across which group of call minutes – (total minutes or OLO interconnection minutes only) should Carrier Billing costs be recovered? Please give the reasons for your response?

**Q 13** Across which group of call minutes – (total minutes or OLO interconnection minutes only) should Carrier Services costs be recovered? Please give the reasons for your response?

## 6 Order Handling and Other Charges

There are certain services where demand for the product is likely to start high and fall off subsequently. Order handling charges for Carrier Pre-Selection (CPS) and Number Portability (NP) are just two examples of these types of services. If the costs for these services stay constant, charges will be inversely proportional to volumes, and there is danger of a vicious circle with high charges depressing demand for the service. In the past ComReg has determined that each operator should bear its own start-up costs and that transaction costs should be borne by the operator causing the transaction. This has been interpreted as capital expenditure being borne by each operator with operating costs being covered by transaction charges. This interpretation has run into difficulties when volumes have fallen, or never taken off, leaving transaction charges unmanageably high. There is a practical need to assign payment for operating costs at zero or close to zero transaction volumes so that unit order costs do not get set at prohibitive levels and prevent effective use of the service.

The current association of per line costs with expenses and set-up costs with capital expenditure produces an unstable system for the calculation of charges, generating uncertainty in the marketplace and may cause higher prices to the detriment of the development of competition. It is important to recognise the benefit that competition brings to all consumers, not just those who directly avail of the service of a competing supplier. Easing the transition between suppliers increases downward pressure on prices and upward pressure on services to consumers who remain with their existing operator as well as those who transfer to another operator.

In this context the Commission is minded to restrict the identification of costs to be recovered from per line charges to the administrative costs of implementing CPS for individual customer lines, with all system costs being spread across all network elements used in providing interconnected calls, including eircom's "self-interconnected" calls, such that the costs are recovered from all such network elements. This would apply to all costs involved in enabling the service, and whose costs do not significantly alter with fluctuations in the volumes of orders. Services such as the dedicated fault handling service required by Direction 5.1 of D13/02<sup>6</sup> would, however, be considered to be interconnect-specific and recovered across all interconnect calls.

For the purpose of this consultation, ComReg is concerned with order handling charges in relation to CPS and Number Portability. However the same principles could equally apply to other similar services.

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<sup>6</sup> CPS in Ireland -2002 – D13/02

## 6.1 Current Calculation Methodology - (Carrier Pre-Selection Costs-CPS)

There are once-off and recurring costs associated with the provision of services such as CPS and Number Portability. Directive 98/61/EC and the European Communities (Interconnection in Telecommunications) (Amendment) Regulations, 1999, S.I. No. 249 of 1999, place special obligations on a telecommunications operator providing a fixed public telephone network who is designated by ComReg as having SMP. eircom has been so designated. The Directive and the Regulations require that eircom's pricing for interconnection relating to the provision of CPS must be cost oriented and direct charges to consumers, if any, must not act as a disincentive for use of the CPS facility.

In D2/99<sup>7</sup>, the Director of Telecommunications Regulation set out the following position in relation to the calculation and charging of CPS order handling charges.

## 6.2 Cost Categories

Three broad cost categories are associated with the provision of CPS: -

*General system provisioning costs:* These are once-off costs mainly incurred by the incumbent operator in modifying network and support systems to enable CPS. System provisioning costs are independent of operator demand.

*Operator-specific enabling costs:* These are the costs of enabling CPS for any individual operator, including the setting up of commercial arrangements for the electronic transfer of customer orders.

*Per-line enabling (order handling) costs:* These are the mainly computer system operating and administrative costs of implementing CPS for individual customer lines.

### 6.2.1 Current Allocations of Per-Line and Operator-Specific Enabling costs

The Director previously determined that per-line and operator-specific enabling costs should be recovered from CPS operators. The Director further proposed that these costs should be recovered from CPS operators directly, not through conveyance charges. CPS operators are free to pass the per-line costs on to their customer directly or to recover it in some other way.

Per-line and operator-specific charges were to include only the costs of an efficient operator using an efficient technical solution.

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<sup>7</sup> Introducing Carrier Pre-Selection in Ireland – D2/99.

### 6.2.2 *Applying the Principles to General System Provisioning Costs*

The Director considered that justified and appropriate costs incurred in system set up and provisioning for CPS should be recovered from all operators, including eircom. The costs would be spread across all network elements used in providing interconnected calls, including eircom's "self-interconnected" calls, such that the costs are recovered from all such network elements.

In identifying appropriate costs for CPS order handling charges as elements of eircom's Separated Accounts ODTR/ComReg has taken system set up and provisioning costs to be equivalent to eircom's system development costs allocated to CPS, and per-line and operator-specific enabling costs to be equivalent to eircom's operating costs allocated to CPS. These operating account costs include both system operating costs and administrative costs.

## **6.3 Industry Concerns**

In the context of the recent consultation of the development of the CPS regime, and elsewhere, OLOs have stated their dissatisfaction with the level of CPS order handling charges, particularly when compared with those prevailing in other EU countries. They have also noted the consequence of significant computer system running costs (licence costs etc) being categorised as per line costs. Thus as the volume of orders fall the cost of each order rises and this acts as a disincentive to additional orders, causing a further decline in volumes. Taken to its limit this system would generate a prohibitive price for processing low volumes of orders. Even moderate volumes, as might be anticipated from a relatively mature marketplace, would bear a considerable cost penalty.

## **6.4 Calculation of CPS Order Handling Charges: Proposed Methodology**

ComReg proposes to restrict the identification of costs to be recovered from per line charges to the administrative costs of implementing CPS for individual customer lines, all system costs being spread across all network elements used in providing interconnected calls, including eircom's "self-interconnected" calls, such that those system costs are recovered from all such network elements

## **6.5 Calculation of Number Portability Order Handling Charges: Current Methodology**

The Director set out the following position in relation to the calculation and charging of Number Portability order handling charges.

Four broad cost categories are associated with the provision of number portability: -

- System Set-up Costs



- Transaction Costs
- Conveyance Costs
- Costs of the industry's ported number database

#### 6.5.1 *Allocation of system set-up costs*

Applying a similar approach to that used in considering CPS costs The Director determined in D1/99<sup>8</sup> that each operator should meet its own system set up costs when making its network and support systems NP capable.

#### 6.5.2 *Allocation of Transaction Costs*

There are three elements to the transaction costs involved in porting an individual number from one operator to another.

- the administrative cost to the donor operator of exporting the number.
- the administrative cost to the recipient operator of importing the number.
- the cost of changing routing data for all operators who carry out re-routing functions.

The Director decided:

- to allow the exporting operator to levy a transaction charge which recovers its administrative transaction costs from the importing operator. The transaction charge should only recover the costs of an efficient operator using an efficient technical solution. The transaction charge should exclude: -
  - costs of changes in routing, since correct routing is the operator's responsibility for calls originating on its own network.
  - costs which the exporting operator would incur if it were to relinquish the customer to another operator without NP. Such costs are part of the process of losing a customer but not additional costs generated by NP.
- to require all originating operators to bear their own costs for changes to routing data, including any changes made by other operators on their behalf.

#### 6.5.3 *Allocation of Additional Conveyance Costs*

ComReg decided to require the first operator in the call path which has control over routing (originating operators) to bear any additional conveyance costs from the date of introduction of geographic and non-geographic NP. This requirement applies to both fixed and mobile operators. The current consultation addresses order handling charges so the inclusion of references to conveyance charges is for the sake of a complete treatment of costing issues and plays no further part in the discussion.

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<sup>8</sup> Introducing Number Portability in Ireland - D1/99 ODTR Doc 99/24.

#### 6.5.4 *Allocation of the costs of Operating and Funding the Database*

ComReg determined that for the long-term operation and funding on the independent database:-

- an independent database operator should be selected by a tendering process.
- a legal constitution for the operation and management of the database should be developed by the operators and approved by ComReg.
- the operator of the database should manage and co-ordinate all activities related to the database and provide support services to the operators.

### **6.6 Industry Concerns**

OLOs have also made clear to ComReg their dissatisfaction with the level of number portability order handling charges. In a parallel with the CPS situation they have noted the consequence of the costs of operating the industry ported number database being included within the administrative per transaction cost to be borne by the recipient operator. Thus as the volume of orders falls the cost of each order rises and that this acts as a disincentive to additional orders, causing a further decline in volumes. Donor operator systems are currently manual and significant costs are not incurred if no ports take place, but as computerised systems are introduced the problem will be exacerbated.

### **6.7 Calculation of Number Portability Order Handling Charges: Proposed Methodology**

ComReg proposes to restrict the identification of costs to be recovered from transaction charges to the costs directly generated by that transaction and excluding those costs which will be incurred even if no ports take place. Each operator would bear its own system operating costs as well as its system set-up costs. The costs of common, industry databases would be recovered from all Licensed Operators in proportion to their turnover in Ireland's telecommunications market so that the costs are recovered from all users of telecommunications services.

**Q14** Is the current approach of calculating order handling charges for CPS and Number Portability satisfactory in principle? Please give reasons for your answer.

**Q 15** Do you agree with ComReg’s proposal to restrict the identification of costs to be recovered from per line charges to the administrative costs of implementing CPS for individual customer lines, all system costs being spread across all network elements used in providing interconnected calls, including eircom’s “self-interconnected” calls, such that the costs are recovered from all such network elements? Please give the reasons for your response and indicate any alternative approach which could better develop competition?

**Q 16** Do you agree with ComReg’s proposal to restrict the identification of costs to be recovered from transaction charges to directly generated administrative costs of a port, all system costs being spread across all Licensed Operators? Please give the reasons for your response and indicate any alternative approach which could better develop competition?

**Q17** Are there other services i.e. where charges increase significantly when order volumes decline which should be treated in a similar fashion to that specified above?

## **7 Payment for Interconnect Links to and from eircom's network**

### **7.1 Current Methodology**

Appendix 4 of Annex E of eircom's RIO details the current arrangements for assessing the responsibility for providing and paying for interconnect links between OLO networks and eircom to carry particular types of calls. The logic followed is to assign ownership of each call type and to require the owner of the call to pay for the interconnect links required to carry those calls. The owner of the call is identified as the recipient of the retail revenue for that type of call:-

“This means that calls by customers of an operator, eircom for example, to another network operator's geographic numbers are owned by eircom. Likewise calls made by an OLO customer calling NTC numbers in *eircom's* network would also be eircom owned traffic as eircom receives the retail revenue less the origination cost for the originating network.”

One consequence of this approach is that CPS Operators pay for interconnect paths both from and to the eircom network for ordinary calls to geographic numbers on eircom's network. The CPSO is defined as the owner of the call and eircom provides call origination and call termination but does not pay for any interconnect paths over which that call is carried.

### **7.2 Other Possible Arrangements**

This is in contrast to other approaches which could be adopted, for example an operator could pay for the links to carry all call types outbound from their network or, conversely, all call types inbound to their network. Either of these principles would align payment for interconnect links with the need for communication between networks, rather than the specific handling of individual call types as is the case at present.

**Q18** Is the current approach whereby Operators pay for interconnect links carrying call types that they own, in both directions, satisfactory in principle? Please give reasons for your answer.

**Q 19** Would an alternative approach based on payment for interconnect links either to or from a network be preferable? Please give the reasons for your response and indicate any alternative approach which could better develop competition?

## **8 Submitting Comments**

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

The consultation period will run from 5 February 2003 to 21 March 2003 during which the Commission welcomes written comments on any of the issues raised in this paper.

Having analysed and considered the comments received, ComReg will publish a report in April 2003 on the consultation which will, inter alia, summarise the responses to the consultation.

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

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

## 9 Appendix- Legislative Background

The rules governing interconnection and charges for interconnection are set out principally in the following legislation:-

Council Directive 97/33/EC on interconnection in Telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP) (“the Interconnection Directive”); and

The European Communities (Interconnection in Telecommunication) Regulations 1998, SI No. 15 of 1998, transposing the above directive (“the Interconnection Regulations”).

Licensed operators are also subject to certain obligations (and the Commission possesses additional powers) relevant to interconnection under the provisions of:-

Council Directive 97/13/EC on a common framework for general authorisations and individual licences (“the Licensing Directive”);

The European Communities (Telecommunications Licences) Regulations 1998, SI No. 96 of 1998 transposing the above directive (“the Licensing Regulations”); and

The terms and conditions contained in operators’ General Telecommunications Licences.

### **The Interconnection Directive**

Article 7 of the Interconnection Directive permits the Commission to impose changes on the Reference Interconnection Offer where justified. Changes to the Reference Interconnect Offer are subject to approval by the Commission.

### **The Interconnection Regulations**

Under the Interconnection Regulations, the Commission must in the exercise of its functions encourage and secure adequate interconnection in the interests of all users in a manner that promotes economic efficiency and gives the maximum benefit to users and in doing so it must have regard to the need to stimulate a competitive market in telecommunications services.

Under Regulation 8 (10), the Commission is required where appropriate to direct that the Reference Interconnect Offer is adjusted so that it is transparent and cost oriented and complies with the Regulations.

When negotiations over the terms and conditions to be included in an interconnection agreement are ongoing, Regulation 10 (3) permits the Commission to intervene, either of its own initiative or at the request of any party, to specify issues which must be included in interconnection agreements or to set specific conditions that must be included in those interconnection agreements and that must be observed by one or more parties to such

interconnection agreements. The specific conditions set by the Commission may relate to tariffs. In exceptional cases, the Commission may direct that changes be made to an interconnection agreement in order to ensure effective competition or interoperability of services for users. The changes made by the Commission may relate to tariffs.

### **The Licensing Directive**

Article 8 (4) of the Licensing Directive provides that the conditions contained in a licence may be amended in objectively justified cases and in a proportionate manner. The Commission must give appropriate notice of its intention to do so and enable interested parties to express their views on the proposed amendments.

### **The Licensing Regulations**

Under Regulation 5 of the Licensing Regulations 1998 the Commission may amend the conditions of a licence in a proportionate manner in cases that are objectively justified. The Commission must also allow the holder of a licence the opportunity to make representations prior to amending a licence.

### **Operators' licences**

Condition 4 of the pro-forma General Telecommunications Licence permits amendments to be made to the licence by the Commission from time to time, where such an amendment is objectively justifiable and done in a proportionate manner.

### **New EU regulatory framework**

A new EU regulatory framework was adopted by the Council of the European Union on February 14th 2002 for the provision of electronic communications throughout the internal market. The new framework consists of a package of Directives which reflect technological and economic changes and which attempt to further harmonise the regulation of electronic communications:

- a common regulatory framework for electronic communications networks and services (Framework Directive);
- authorisation of electronic communications networks and services (Authorisation Directive);
- access to, and interconnection of, electronic communications networks and associated facilities (Access Directive);
- universal service and users' rights relating to electronic communications networks and services (Universal Service Directive);
- processing of personal data and the protection of privacy in the electronic communications sector (Data Protection Directive).

All Member States are now obliged to adopt national legislation implementing this ‘telecoms package’ by 24 July 2003 except for the Data Protection Directive which has to be implemented before 31 October 2003<sup>9</sup>.

As with the current framework, a mechanism has been included which triggers various regulatory obligations on markets such as access and interconnection. In the new framework this mechanism, still called significant market power (SMP), closely relates to the competition law concept of dominance.

The provisions of the new access directive require that the national regulatory authorities of member states be able to intervene of their own initiative in order to secure the policy objectives of Article 8 of the Framework Directive<sup>10</sup>. National regulatory authorities must, when required follow the consultation procedures referred to in Articles 6 and 7 of the Framework Directive. Article 13 of the Access Directive<sup>11</sup> provides for the national regulatory authorities of member states being able to impose obligations in relation to cost recovery and price controls on organisations designated as having significant market power under the provisions of the Framework Directive.

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<sup>9</sup> The Data Protection Directive 2002/58/EC was published in the Official Journal on 31 July 2002 after the publication of the other directives.

<sup>10</sup> Directive 2002/21/EC of the European Parliament and the Council on a common regulatory framework for electronic communications networks and services.

<sup>11</sup> Directive 2002/19/EC of the European Parliament and the Council on access to and interconnection of electronic communications networks and associated facilities.