Commission for
Communications Regulation

Submissions received in relation to Consultation

Further Input to Consultation Document No. 09/39 on Setting a Maximum Local Loop Unbundling ('LLU') and Sub Loop Unbundling ('SLU') Monthly Rental Charge

Submissions received from respondents

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Contents

1 Eircom Ltd.

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Response to ComReg Consultation of 09/62

Further Input to Consultation Document No. 09/39 on Local Loop Unbundling ('LLU') and Sub Loop Unbundling ('SLU') Monthly Rental Charges

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Introduction

This document constitutes eircom's response to ComReg's "Further Consultation" paper 09/62 in relation to LLU and SLU monthly rental charges. This Consultation paper followed ComReg's Consultation Paper 08/56, of July 2008, and its Draft Decision Paper 09/39, of May 2009 (both of which eircom responded to in great detail). Many of the questions raised here are similar to, or variations of, questions already raised by ComReg in the previous documents. As such, the responses provided by eircom in this document should be read in conjunction with the eircom responses to 08/56 and 09/39.

eircom is very disappointed that despite ComReg taking the unusual step of issuing a further consultation after publishing a Draft Decision it has still not consulted on the important economic and methodological concerns raised by eircom. In particular, there is still no consideration or explanation by ComReg for its position that annualising capital costs by means of a tilted annuity computation is the best approximation for economic depreciation for the assets that make up a local access network, and of how ComReg's proposed rising price trends are consistent with the recovery of costs on a forward looking basis.

EIRCOM RESPONSES TO COMREG QUESTIONS

1. **Do you agree that exchanges with working lines in excess of 2,500 is currently a reasonable threshold for those exchanges that are likely to be economically viable for OAOs to unbundle in the next three years? Please state the reasons for your response.**

eircom does not agree that there is a reasonable threshold, measured by number of lines served, for the economic viability of an exchange for unbundling. Any operator considering LLU will examine a number of factors – not just the number of lines – in assessing the viability of LLU in any particular area. These include:

- The type and number of customers served from the exchange (e.g. a city centre exchange with a high number of lines may be limited to a small number of multi-line corporate and government customers that have limited demand for LLU delivered services using high capacity fibre delivered Broadband services instead).
- The demand from those customers for high speed Internet access.
- The potential penetration of DSL-based broadband services. The presence of infrastructure competition in high-speed Internet access will limit the potential penetration of DSL. eircom broadband penetration (including Broadband and Bitstream) is much higher in areas outside the reach of competitors using alternative infrastructure such as cable companies. [redacted]

- The availability of transmission services for backhaul of LLU-delivered services to the OAO head end (ComReg acknowledges this factor is significant in section 5.6 of Consultation Paper 09/39).
- The availability of a government subvention to meet the once-off costs of locating the OAO equipment in the eircom exchange. The first OAO to avail of the eircom LLU offering unbundled loops in a number of provincial towns did so in a project that received government funding to encourage Broadband roll-out to rural areas. These exchanges are generally the smallest (measured by lines served) currently enabled for LLU. Accordingly, it might be possible for a provider of National Broadband Services (with Government support) to unbundle very small sites.

eircom therefore does not believe that the number of working lines in an exchange, taken in isolation, is a good indicator as to the economic viability of an LLU investment. Even if the OAOs believe that the number of working lines at an exchange is a reliable indicator, there is no indication that 2,500 (or 1,600, which is the level that ComReg had previously selected), is the level that they have selected to determine viability. Furthermore, the economics of unbundling full loops and sub-loops are not sufficiently different that ComReg can rationally sustain a 2,500 line cut-off for the former and a 300 line cut-off for the latter. A suburban exchange with less than 2,500 working lines but with a high level of demand for broadband services may have a better investment case for LLU than a larger city centre exchange with little DSL demand.

It should also be noted that ComReg is basing its deliberations on some quite erroneous assumptions. For example, at the top of Page 4 of 09/62, ComReg alludes to "high speed next generation broadband". We assume that ComReg is here referring to ADSL 2+ equipment. eircom would point out that, contrary to what ComReg says in 09/62, eircom has been rolling out ADSL 2+ to smaller exchanges. [redacted]

[redacted]

eircom also notes the final bullet on Page 5 of 09/62, which maintains that ComReg's threshold-based approach "*facilitates effective and fair competition between OAOs and Eircom*". eircom absolutely rejects that this is the case.

It is also of considerable concern to eircom that that the only competition considered by ComReg is that within DSL. No consideration is given to competition from cable, mobile, wireless, etc.

Finally, eircom would point out that the related issue of the 95%:5% weighting for short/long lines is not addressed at all in this Consultation. eircom previously requested the logical basis underpinning this weighting. We believe that the explanation provided in response clearly shows that there was no satisfactory quantitative analysis done to support 95:5 as the appropriate weighting to adopt.

2. **Given the current level of take-up of LLU in Ireland to date, the economies of scale referred to above, do you believe that, among other things, the current price of LLU plays a significant role when considering investing in LLU in the future? Please state the reasons for your response.**

eircom believes that a revised cost oriented charge (i.e. €16.52, as revealed by the LLU cost model before the adjustments resulting from this Consultation) is the appropriate measure to foster the provision of broadband by OAOs as it would eliminate disincentives to further investment in critical infrastructure brought about by current below cost pricing. This approach is justified in light of ComReg's statutory objectives.

ComReg has statutory objectives as defined under Section 12 of the Communications Regulation Act, 2002 as amended by the Communications Regulation (Amendment) Act 200711. ("the Act"). Under Section 12(1) and (2) of the Act These are, inter alia, to:

- Promote competition
- Promote the interests of users within the community;
- Ensure that there is no distortion or restriction of competition;
- Encourage efficient investment in infrastructure and promoting competition; and
- Encourage access to the internet at a reasonable cost to end-users.

If investment in LLU facilities by eircom or others does not promote these objectives, it should not be encouraged. ComReg has a duty to encourage efficient investment in infrastructure and avoid a risk of deterring investment in alternative infrastructure. The price for LLU must be considered in the light of the impact on investment in copper pairs or alternative fibre networks, by eircom and others (including fibre operators such as Magnet, Smart and UPC). Excessively low LLU prices might also deter investment in facilities such as mobile broadband, or Wireless Broadband.

Investors and OAOs take into account many different issues, and not just the price of LLU, when deciding to invest in technology. These include related issues such as the availability of efficient backhaul and capital expenditure considerations. ComReg must also be conscious of the other players in the market, both potential and actual competitors. Both eircom and OAOs must consider a range of costs including the collocation costs, equipment costs, service costs such as internet bandwidth and content, customer acquisition, service and retention, modem costs, and other broadband related costs, as well as LLU connection and rental charges. These costs have to be compared with the potential revenues. The revenues are limited by the customer willingness to pay, and the addressable market at each site. The presence of multiple LLU operators – some of whom have already invested in ADSL2+ equipment - may deter investment in ADSL2+ by a later entrant, or those who neglected to upgrade their equipment. We note that over 50% of unbundled sites have more than one LLU operator, and in many cases there are 4 operators present. The presence in the service area of alternative infrastructure, including cable TV networks, mobile broadband (evolving to LTE) and wireless networks, will also influence expectations of demand and potential revenues.

Technological change is also an important factor that cannot be neglected. The potential to migrate services to VDSL or FTTC, or eventually to FTTP will interact with the economics of LLU. The more successful LLU is, the lower the prospect of eircom or other operators investing in fibre networks. Conversely, the existence of fibre networks would deter investment in LLU by OAOs.

The current economic environment and the reduced appetite for highly risky investments with short payback window may also deter spending on obsolescent technology such as ADSL2+.

3. **Do you agree with ComReg's assessment that the recent declines (even though these declines have been faster than anticipated since the publication of Consultation Document No. 09/39) are largely a short-term phenomenon for the reasons set out above? Please state the reasons for your response.**

eircom does not agree with ComReg's assessment as set out in the question above. The household penetration for PSTN has been in continuous decline for some time – even during the growth phase in demand for residential Broadband with much of the market served with ADSL alongside PSTN. Until summer 2007 this effect was masked by the rapid and sustained increase in household formation leading to a much lower increase in demand for residential PSTN. Since then most of the growth in broadband services in Ireland has been provisioned on wireless networks – as is clear from ComReg's own quarterly reports. ComReg is also in possession of many reports on the increasing proportion of "mobile only" households for both broadband and telephony services. [redacted] An additional factor in the decline in the residential demand for eircom loops is the presence in telephony, broadband, and television markets in Ireland for the first time of a properly funded cable operator. Recent media campaigns have specifically targeted PSTN line rental in the areas of highest household penetration with an attractive proposition to take all three services from the cable network.

The following external references, for example, broadly support eircom's view of the future economic prospects in Ireland, and call into serious question ComReg's view of the future, as outlined above.

The <u>**Economic and Social Research Institute**</u> (ESRI) Quarterly Economic Commentary for July 2009 can be accessed via the following link.

http://www.esri.ie/publications/latest_publications/view/index.xml?id=2800

Some of the main findings of the analysis include the following:

"All of the Quarterly Economic Commentaries between Spring 2007 and Spring 2009 contained downward revisions to our [ESRI] *forecasts, first for 2008 and then for 2009. For this reason, possibly the most noteworthy feature of this Commentary is that our forecast for GNP growth in 2009 is almost unchanged from the spring issue, at -8.9 per cent. For 2010, we now expect GNP to contract by 2.3 per cent. While this is a downward revision on our Spring forecast for 2010 (which was -1.2 per cent), the broad conclusion to be drawn is that the size of the recession is becoming clearer.*

The contraction in the economy is expected to continue through this year and into next, with a very modest rate of growth now expected to emerge in mid-2010. At that time, output will be over 13 per cent below its peak in 2007 and will be lower than the level recorded in 2005. GNP per head will be lower than its value in 2002."

"Our forecast for unemployment in 2010 is now 16.1 per cent, down from 16.8 per cent in Spring. It should be stressed that this change does not result from a more favourable view on possible employment losses. Instead, we expect a faster fall in participation and also a higher rate of outward migration over the period of the forecasts. We now expect a net outflow of 40,000 in 2010, partly as a result of a sharp increase in unemployment among non-Irish nationals."

Also, the overview in the July 2009 Economic Commentary of the **Irish Central Bank** contains the following extract. (see http://www.centralbank.ie/pub_quar.asp)

"The Irish economy is in the second year of recession with the level of output, as measured by Gross Domestic Product (GDP), forecast to contract by 8.3 per cent this year, following a decline of 3 per cent in 2008. In GNP terms, the economy contracted by 2.8 per cent last year and is forecast to decline by 9.4 per cent this year. The downward trend in activity is expected to continue into the first half of next year, followed by a stabilisation and gradual recovery in the second half of the year. For next year as a whole, a decline in activity of about 2.7 per cent in GDP and 3.5 per cent in GNP terms is projected. This outlook is contingent on a gradual recovery in world demand next year. By contrast, the contraction in domestic demand is likely to continue. With forward-looking indicators pointing to a further contraction in housing output and declining disposable incomes likely to depress consumer demand, there is little prospect of any recovery in domestic demand before 2011. At that stage, however, the rebalancing of activity in the economy is likely to have run its course and the prospect of some recovery in domestic demand together with a further rebound in external demand should support a return to modest growth overall. The sharp decline in output over the past two years has had severe consequences for the labour market. Following a significant deterioration over the last year, a continued decline in employment and a corresponding increase in unemployment are in prospect for the remainder of this year and in 2010. Unemployment is likely to average 12 3⁄4 per cent of the labour force this year, rising to an average of 15 per cent in 2010. Reflecting the weakness of demand, there has been a significant moderation in domestic inflationary pressures which, combined with declining inflation internationally, is manifest in a decline in measured inflation both this year and next."

[redacted]

[redacted]

4. **What do you consider to be the appropriate minimum speed that should be available before you unbundle a particular line? In addition, please provide your definition of a broadband line over the fixed network.**

eircom does not understand the purpose of this question, and its relevance to LLU pricing, in view of the model being constructed by ComReg and its consultants. In particular, the model being constructed is clearly not that of a broadband network but that of a network designed to serve every building in the state with copper pair(s) from 1,172 eircom nodes. These nodes are located so as to serve the majority of the population with PSTN services, not broadband. In practice, however, eircom provides many customers with PSTN services using non-copper technologies where they cannot be reached economically from the copper network nodes. The model for a ubiquitous copper network accordingly does not provide an appropriate basis even for determining the cost of PSTN services in Ireland.

In any event, any OAO who avails of LLU will actually provide LLU based service on any loop served from the MDF where he has located equipment. To unbundle any loop, the OAO must first invest in equipment collocated in an eircom exchange. The fixed and sunk costs associated with this investment mean that the OAO will use an unbundled loop to provide any service to a customer connected to that exchange where the loop rental is less than the cost-of-sale for the wholesale variant of that service. In other words, unbundled loops once rented will be used to provide telephony, broadband, or telephony and broadband. So the OAO will take any length of loop from eircom because all loops will at least support telephony.

The eircom definition of a broadband line is one that will support at least 144 kbps downstream and 64 kbps upstream.

5. Do you agree that the existing ComReg methodology for calculating price trends, as set out in section 4.48 of Consultation Document No. 09/39, remains appropriate in determining the final LLU charge? Please state the reasons for your response.

In previous responses to Consultations and in bilateral correspondence, eircom has raised numerous concerns about both the application of a tilted annuity approach to annualising capital costs and to the plausibility of the long term price change forecasts that ComReg is applying in the formula. eircom is very disappointed that, despite taking the unusual step of issuing a further consultation after publishing a Draft Decision, ComReg has still not addressed the issue of whether or not a tilted annuity approach is the appropriate way to annualise the capital costs of the access network. Even if it were, it is inappropriate to use the outcome of the model to control prices for an initial period, without committing to apply the model in full for the lifetime of the asset. It does not appear to eircom that its concerns are being addressed in any way whatsoever by Vodafone's proposal for forecasting future price trends (which are difficult to assess in any detail in the absence of further information). In this regard we note that ComReg has given no reasoning as to why the result is better or worse than ComReg's proposal. We also that ComReg is claiming to use a price trend from 2000 to 2012 to determine a long term price trend. Prices for 2012 are not known: they are forecast from recent data. So, in fact, ComReg is using only data from 2000-2008 to determine a trend for 40 years

In conclusion, we note that ComReg has yet to address the issue of the plausibility of its long term forecasts. eircom accordingly continues to be of the view that ComReg's proposed methodology is not appropriate.

2 Vodafone Ireland Ltd.

Vodafone Response to the ComReg Consultation on Further Input to Consultation Document No. 09/39 on Local Loop Unbundling ('LLU') and Sub Loop Unbundling ('SLU') Monthly Rental Charges

Ref. ComReg Document 09/62 Response Date: 24 Aug 2009

Introduction

Vodafone welcomes the opportunity to respond to this ComReg further consultation on LLU and SLU monthly rental charges. Our views in relation to the four parameters of ComReg's cost model being consulted on are set out in detail in response to the consultation questions below.

Response to Consultation Questions

Q.1. Do you agree that exchanges with working lines in excess of 2,500 is currently a reasonable threshold for those exchanges that are likely to be economically viable for OAOs to unbundle in the next three years? Please state the reasons for your response.

Yes. The threshold for determining exchanges that are likely to be unbundled during the review period should ideally be based on evidence of costs that OAOs actually face in Ireland. Vodafone believes that ComReg's assessment of the evidence of how the unbundling of exchanges in Ireland has progressed to date is a valid approach in this regard. ComReg is correct that economies of scale are a key factor in determining the likelihood that a given exchange will be unbundled by an alternative operator. No exchange with less than 2,500 working lines has yet been unbundled in Ireland and it is highly unlikely that it will be economically feasible for alternative operators to unbundle exchanges with working lines below this threshold within the proposed three year time period for which the revised regulated price of the LLU monthly line rental charge is likely to be in place.

When one considers the smaller exchanges (in terms of working lines) in the Eircom network it is Vodafone's view that the constraint on the number of working lines is not the capacity of the exchange but the population within the catchment (based on the physical length of the access loop) of the access network associated with that exchange. Because of this these exchanges will have a higher proportion of "long lines" compared to larger exchanges as eircom attempts to maximise the utilisation of its fixed cost assets such as exchange premises, exchange equipment, power supply equipment, and inter-exchange transmission equipment. Conversely larger exchanges are likely to have their working lines capped due to either the proximity of a neighbouring exchange or some bottleneck in the exchange (equipment or physical). In addition, higher population densities mean that long lines are likely to be proportionately fewer.

In Vodafone's view these smaller exchanges are likely to be located outside of metropolitan areas with a higher proportion of lines served by overhead cable as the population density does not justify the higher costs of ducting. As ComReg has noted in its document Decision D03/09 such overhead lines are more susceptible to damage than underground cables. Therefore the operational costs in respect of unbundled lines in these exchanges will be higher due to the higher probability of faults due to extended cable length and the use of overhead cables. This provides an operational cost disincentive to unbundle smaller exchanges. In addition there are increased costs of backhaul from more remote locations and the smaller pool of potential customers from whom the fixed costs of unbundling an exchange must be recovered. All of these factors raise the economic breakpoint fro unbundling an exchange. Vodafone therefore agrees with ComReg's proposal to raise the cut-off for the number of working lines to exchanges with more than 2,500 working lines as this represents a better reflection of the economic decision making in respect of unbundling likely to be made over the period of the review.

Vodafone is strongly of the view that all elements of the cost of unbundling a line feed into the decision to unbundle. This includes the per line price, the cost of unbundling the exchange including co-location, repair pricing, the cost of backhaul and the operational costs associated with repair and provisioning which arise due to inefficient or cumbersome processes or systems used to interface to eircom.

Also in the context of a benchmarking approach, information from the U.K., the most relevant comparator country, indicates that an appropriate threshold should approximate 2,500 working lines. Vodafone therefore considers that a threshold of those exchanges with in excess of 2,500 working lines (for those exchanges that are considered likely to be economically viable for OAOs to unbundle) is reasonable and we welcome ComReg's proposal in the present consultation document to adopt this cut-off point in the probability weighting formula to determine the cost oriented LLU monthly rental charge. If there are any additional country specific factors identified by other respondents to this further consultation that support the conclusion that the appropriate cut-off point for exchange size should be higher than the 2,500 working lines level then ComReg should however take this into account in the determination of its final decision regarding the appropriate LLU monthly rental charge.

Q2. Given the current level of take-up of LLU in Ireland to date, the economies of scale referred to above, do you believe that, among other things, the current price of LLU plays a significant role when considering investing in LLU in the future? Please state the reasons for your response.

Yes, the level of the LLU monthly rental charge is a vital factor for operators in their decisions about the extent to which they will invest in LLU in the future. The LLU monthly rental charge per line is a key cost input that affects the decision about whether unbundling an exchange will allow an alternative operator to earn a competitive rate of return on its investment.

The current monthly rental charge per line of €16.43 for full LLU is substantially above the efficient cost oriented level and this has acted as a major disincentive to extensive unbundling of exchanges in Ireland to date, as reflected in the very low proportion of working lines unbundled (3.4%) when compared with other European countries that have much lower LLU charges. Vodafone therefore welcomes ComReg's proposals to significantly reduce the current regulated price of LLU and believes that this will provide a strong impetus for alternative operators to unbundle the larger exchanges on a more widespread basis over the short to medium term. This will facilitate innovation, efficient investment, and enhanced competition in the provision of fixed line broadband and other communications services. In particular, as LLU provides much greater scope for OAOs to differentiate their fixed line broadband offerings to consumers in terms of their non-price elements (broadband speeds etc.) when compared with use of wholesale Bitstream inputs, the nature of competition in the market will experience a qualitative improvement to the benefit of end users.

Vodafone must emphasis however that the revised LLU monthly rental charge per line proposed by ComReg in consultation document 09/39 is in our view significantly above the efficient cost oriented level. We would expect that the appropriate revisions to the parameters used in ComReg's pricing model should lead to a finalised regulated price for the LLU monthly line rental charge considerably below the level of €12.18 proposed by ComReg in the initial LLU consultation document.

Q3. Do you agree with ComReg's assessment that the recent declines (even though these declines have been faster than anticipated since the publication of Consultation Document No. 09/39) are largely a short-term phenomenon for the reasons set out above? Please state the reasons for your response.

Yes. Vodafone agrees that the recent decline in the number of working lines is a short term phenomenon. Growing broadband penetration, the increasing performance of broadband services in terms of speed and other attributes, and intensifying competition (particularly on the basis of more widespread provision of services using LLU inputs) in the fixed line broadband sector over the price control period will stimulate demand for working lines. The effect of these positive major underlying medium to longer term trends will become evident particularly as economic conditions begin to improve. This will cause the volume of working lines to first stabilise and then increase significantly over the next 3 years.

Q. 4. What do you consider should be the appropriate minimum speed that should be available before you unbundle a particular line? In addition, please provide your definition of a broadband line over the fixed network.

Vodafone agrees with ComReg that the ability of OAOs to provide broadband is a prerequisite for the ability to unbundle lines. As the new information on the breakdown of long lines, in terms of their capability to support broadband services, provided by eircom to ComReg has been provided on a confidential basis it is not possible for Vodafone and other stakeholders to observe and validate. However given the significance of this information in the determination of the regulated price of LLU, it is vital that this information is fully verified as being accurate.

The appropriate minimum speed that OAOs would require to feasibly unbundle a line is primarily driven by the expectations and requirements of retail customers, and the importance for OAOs of differentiating their broadband service offering from the incumbent, rather than by a minimum technical definition of what can be regarded as the provision of a broadband service over the fixed network. As the expectations and requirements of fixed broadband end users evolve over time, and are likely to change significantly within the 3 year time period for which the revised price of LLU monthly rental would be set, the conclusion on the minimum fixed broadband speed that customers consider appropriate should be forward looking.

Retail fixed line broadband products (stand alone or bundled) offering peak download speeds of up to 1 Mbps are currently provided by a number of operators in the market. These entry level broadband products therefore represent the current acceptable minimum in terms of meeting end user requirements for fixed broadband services. However there is an established trend, as observed in ComReg's Quarterly Key Data reports, of consumers moving over time toward increasing use of applications (gaming, video on demand etc.) that require high broadband speeds. ComReg must take account of this in the context of the three year period of review for which the revised price of LLU monthly rental is to be in place in terms of how the minimum speed considered acceptable by end users is likely to change.

It must also be taken into account that a significant, but not the only, factor in the decision of an OAO to unbundle a line to provide fixed broadband service rather than using Bitstream wholesale inputs to provide the service is the scope to differentiate the service offering in terms of providing higher speeds and superior quality on other dimensions of service performance than the incumbent.

Vodafone notes that eircom has provided information to ComReg on a confidential basis regarding the ability of the long lines in the local loop to support Broadband. Vodafone is of the view that this information relates to the technical characteristics of the LLU product offered by eircom (i.e. the percentage of lines that can support a variety of bitspeeds). It is clear that eircom has access to this product information and is using it to formulate its response to consultation i.e. it is using it for product planning in respect of this regulated market. Based on Eircom's existing obligations of non-discrimination and transparency, this information should also have been made available to OAOs. As such, it is Vodafone's view that ComReg has erred in accepting that this information is confidential.

The impact of eircom's submission based on this "confidential" information appears to be a fourfold increase in the number of long lines that can support broadband. This is based on the change in the denominator in the weighting factor for long lines from 6.4 to 1.54. This is a significant change and one that cannot be adequately assessed in the absence of more detailed information. There is a requirement for information which gives the lower speed limit used to define broadband, clarity regarding whether the data relates only to the exchanges above the working lines threshold or to the entire population of working lines (as has been outlined previously Vodafone believes that there are material differences between the long line profile in smaller exchanges as compared to larger exchanges), the percentage of long lines and some view of the likely pricing impact of this change. In summary, is the additional information supplied by eircom material?

Vodafone also notes that there appears to be an inconsistency in the approach proposed in respect of long lines and the use of a working lines cut-off. As has been set out previously, it is Vodafone's view that smaller exchanges will have proportionately more long lines than larger exchanges. Therefore in considering the percentage of long lines, it should not be the percentage of long lines in the overall network that is relevant but the percentage in the exchanges above the working lines cut-off.

If the weighting is to be changed by including long lines that only support lower speed broadband then it is not correct to only consider the technical feasibility of unbundling when deciding the weighting. By definition, such lines can only support lower speed broadband services and as such the Average Revenue Per User (ARPU) will be lower than the general customer base, diluting the overall ARPU and requiring more customers to recover the fixed costs associated with unbundling. This has the effect of making unbundling uneconomic in smaller exchanges as the necessary user volumes cannot be achieved. In addition and as has been set out earlier these lines will have a higher operational costs associated with repair. This higher cost must be recovered from these lower ARPU customers and there is an economic cut-off at which it is not viable to unbundle new long line customers. In the absence of detailed information it is not possible for Vodafone to comment on where this cut-off lies but given the magnitude of the weighting change proposed by eircom, Vodafone has concerns that the technical cut-off as proposed by eircom would result in costs being included for lines which cannot be economically unbundled. These costs therefore have a very low probability of being incurred in respect of LLU pricing.

Regarding the issue of the speed cut-off for unbundling, Vodafone notes that in 2002 ComReg's predecessor, the ODTR, defined broadband as speeds above 512kbit/s. (ODTR 02/79). In the intervening seven (7) years it is noticeable that in the fixed retail broadband market there are now almost no retail offerings below 1Mbit/s. Based on ComReg's callcosts website there are only four (4) packages below 1 Mbit/s (3 using Fixed Wireless Access and 1 using satellite) while in the range 1 to 3.9 Mbit/s there are over 50 packages on offer. This is clear market evidence of what is the lowest speed that should be considered when determining a cut-off for unbundling. However it is Vodafone's view that based on the market dynamics and the economics of cost recovery for the fixed costs of LLU (co-location etc), the potential for speeds higher than this are necessary across the vast majority of unbundled lines in an exchange in order to achieve retail package distribution to met the business case for unbundling. Even over the period of the review, this incorporates a shift to packages above 1Mbit/s. This is borne out by ComReg's NGB discussion paper Para 1.8 of which states "*Irish consumer patterns of Internet usage are changing, with more frequent and longer 'visits' to web-sites, greater demands for symmetrical broadband speeds, and a far higher proportion of video in the mix of traffic carried by networks. This trend is likely to persist with growth in bandwidth intensive applications such as, for example, RTE's online catch-up service which makes programmes which have previously been shown on television available for online viewing for a limited period.* " The same document at figure 4 shows that over the period from Q1 08 to Q1 09, there was a decline in residential broadband access under 1 Mbit from 3.7% to 0.7%, a decline in packages between 1 and 2 Mbit/s from 47.8% to 28.8% and an increase in packages above 2Mbit/s from 47.4% to 66.2%.

Therefore any cut-off below 2 Mbit/s would need to be appropriately de-rated to reflect the fact that the population of lines to be included would be significantly out of line with the general profile of residential packages and consequent revenue and cost recovery profile.

When all these factors are taken into consideration, Vodafone considers that a conservative assumption would be that operators would have to be able to provide a fixed broadband service with peak download speeds of between 2 Mbps and 3 Mbps before it would be feasible for them to unbundle a line.

Q. 5. Do you agree that the existing ComReg methodology for calculating price trends, as set out in section 4.48 of Consultation Document No. 09/39, remains appropriate in determining the final LLU charge? Please state the reasons for your response.

No. As set out in our submission to ComReg consultation document 09/39, Vodafone does not agree with the detail of the proposed adjustment to the historical price trend by the ratio of forecast price inflation to historical price inflation as set out in paragraph 4.47 of the consultation document.

It is easy to appreciate the problem with the formulae proposed by ComReg by considering an example of where the historical average labour inflation (or CPI) is very low, or even zero. Use of ComReg's formula would result in the estimated future average price trend being either extremely large or even infinite (due to a division by zero in the formula). This anomaly occurs simply because the ComReg formulation is multiplying (dividing) percentage changes. Price index arithmetic, however, requires that multiplication (or division) can only be applied to the absolute level of the indices. When dealing with percentage changes there is a requirement to add (or subtract) amounts.

Vodafone would reiterate our view that the adjustment should reflect the difference between the historical price trend and the forecast price trend, not the ratio as currently proposed by ComReg. This alternative approach, in Vodafone's view, remains the optimal method to adopt for the reasons set out in our response to the initial consultation.

3 BT Communications Ireland Ltd.

BT Communications Ireland Ltd Response to ComReg Consultation 09/62:

Further Input to Consultation Document No. 09/39 on Local Loop Unbundling ('LLU') and Sub Loop Unbundling ('SLU') Monthly Rental Charges

Non-Confidential Version

Issue 1 24th August 2009

1. Introduction

BT welcomes this consultation as we believe that LLU has a significant future in Ireland and will help to create a next generation broadband Ireland if the wholesale prices were to be at appropriate levels for all LLU price components.

As we have consistently set out in previous responses to consultation BT does not foresee any future for Sub-Loop Unbundling in the Irish market. We have previously set out our reasoning and do not repeat that in this response.

We agree with ComReg that LLU allows entrants competing with eircom access to the “last mile” into consumers’ homes / businesses. Unlike some other types of regulated access, it gives other authorised operators (“OAOs”) direct control over the hardware used to provide broadband services to consumers. This control over the hardware enhances the ability of OAOs to differentiate their services (for example, by offering higher speed broadband) thus helping to promote and increase consumer welfare and to ensure the long term sustainability of competition.

BT notes that ComReg has taken careful account of the responses received to Consultation Document No. 09/39 and further information submitted in confidence from eircom. ComReg would now like to offer respondents a further opportunity to provide input on four important parameters to the bottom-up, long run average incremental cost (“BU-LRAIC”) model of Eircom’s access network. We note and trust in ComReg’s belief that following further analysis of the responses it will shortly thereafter be in a position to publish a response to consultation and a final decision in relation to LLU pricing. BT notes that the four areas being further consulted on are:

1. Working line threshold;
2. Evolution of working line volumes;
3. Long lines; and
4. Price trends.

The rest of this paper provides our response to questions.

2. Response to Questions

Q. 1. Do you agree that exchanges with working lines in excess of 2,500 is currently a reasonable threshold for those exchanges that are likely to be economically viable for OAOs to unbundle in the next three years? Please state the reasons for your response.

A.1. In general Hard and fast rules can rapidly hit an anomaly. Economic viability depends on the volume take up in a particular exchange and the cost of backhaul to that exchange. Take up is dependent on the opportunity for effective competition which itself is dependent on the regulatory environment.

ComReg have shown in their latest market report that for the 1st quarter 2009 eircom enjoyed a 96.6% share of the DSL wholesale market and a 69.3% share of the retail DSL market demonstrating a persistent and almost complete lack of competition in the wholesale DSL market and a persistently dominant position in the DSL retail market.

It is clear that a threshold exists where it is not viable to invest in LLU and BT concludes that a 2,500 line exchange is currently a reasonable working threshold.

Q. 2. Given the current level of take-up of LLU in Ireland to date, the economies of scale referred to above, do you believe that, among other things, the current price of LLU plays a significant role when considering investing in LLU in the future? Please state the reasons for your response.

A.2. The current price is too high and is a barrier to investment as demonstrated by the poor take of LLU in Ireland. Annex A provides an example of what BT considers can we achieve with correct pricing, amongst other things. BT observes that where LLU pricing barriers have been resolved operators have invested in LLU infrastructure, created jobs and driven greater competition and innovation such as the increased convergence of television, voice and broadband services.

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Q. 3. Do you agree with ComReg's assessment that the recent declines (even though these declines have been faster than anticipated since the publication of Consultation Document No. 09/39) are largely a short-term phenomenon for the reasons set out above? Please state the reasons for your response.

A.3. There are a number of reasons for the declines as set out. Regulatory uncertainty of which price is a major component is one of the reasons. BT agrees with ComReg on its views for the numbers of lines reducing and BT considers that appropriate LLU pricing and fit for purpose performance provision and repair performance will stimulate greater investment in DSL based broadband and innovate combinations of converging products leading to the increased usage of eircom lines. It would also helpful if eircom wholesale could be more open and engaging and act as a true wholesaler of services. BT's perception is that eircom's poor behaviour and sub-standard repair performance has given it a poor reputation with many OAOs which will increasingly undermine its business.

The other reasons include; unchanging behaviour of eircom; annual eircom LLU price rises in a market where eircoms own BitStream prices have been reducing; significant eircom punitive financial barriers preventing the mass migration of OAO BitStream customers to LLU; lack of an independent adjudicator; concern about service levels and business level service levels; ability for the volume supply to be realised in given the previous points and the dominance of eircom in the DSL market.

BT considers that if pricing in Ireland were to be aligned with the modern internationally accepted regulatory accounting methodologies then significant growth in LLU would occur.

Q. 4. What do you consider to be the appropriate minimum speed that should be available before you unbundle a particular line? In addition, please provide your definition of a broadband line over the fixed network.

A.4. Broadband provision speed - BT considers that the attainable broadband speed is largely influenced by the characteristics of the copper telephone line from the telephone exchange to the customer premises and the most significant characteristic is the line length, i.e. the shorter the line the higher the expected broadband line speed.

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Operating experience has proven to BT that offering speeds on lines that cannot support rates above 1 Mbit/s can be problematic and the customer experience can sometimes be disappointing. BT would consider that a line should support a minimum of 1Mbit/s before it would unbundle a particular line.

However, BT is concerned that eircom may artificially restrict the market to above 1Mbit/s hence BT observes that although there is expected to be low demand for sub 1Mbit/s, the possibility of supplying sub 1Mbit/s services should not be prevented.

Definition of Broadband - The demand for increased broadband speed is growing with the increasing number of applications, wireless access devices in the home etc and thus the definition of Broadband Speed is also increasing. BT is aware that international opinion (such as the ITU definition of broadband) is fast moving to a position where Broadband will be defined as services of 2Mbit/s and above. However, at this time we consider that the working definition of Broadband in Ireland is 1Mbit/s and above due to the late introduction of mass market supply broadband into Ireland, however we expect the definition in Ireland to move to 2Mbit/s and above.

Q. 5. Do you agree that the existing ComReg methodology for calculating price trends, as set out in section 4.48 of Consultation Document No. 09/39, remains appropriate in determining the final LLU charge? Please state the reasons for your response.

A.5. We agree that the existing methodology remains appropriate as we are not aware of any fundamental variations to the surrounding environmental conditions.

We agree with the ComReg view the advantage of the approach is that it is closely linked to the path of historical prices, while simultaneously including a measure to account for the current economic slowdown.

End

Annex A – Example of what can be achieved with appropriate cost based pricing.

11|08|09

Broadband competition reaches 6 million milestone

Competition in the UK's broadband market has reached a significant milestone.

The number of unbundled lines - where rival communications providers such as Sky or Carphone Warehouse offers services over BT's copper telephone network - has reached the 6 million mark.

The spur for the surge in unbundling was a set of legally-binding Undertakings that Ofcom agreed with BT Group plc in September 2005.

These required BT to set up a new division, called Openreach, to provide services to rivals.

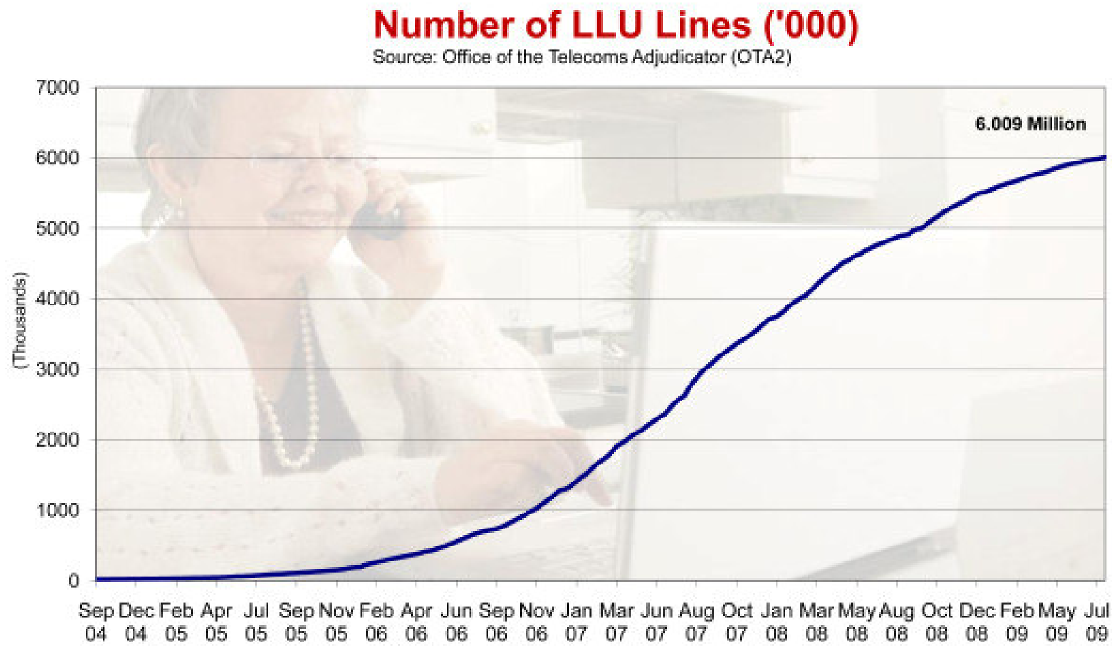
Unbundled lines

At the time there were just 123,000 unbundled lines in the UK and the majority of people could only get their broadband and landline telephone service from one provider - BT.

Today there are over 30 different companies offering unbundled services to homes and small businesses.

This has helped to drive up broadband take-up and drive down fixed-line prices.

In September 2005, 37 per cent of households and small businesses had broadband; today the figure is over 65 per cent.



Lower bills

Competition also means lower bills for consumers.

According to Ofcom research consumers were paying on average £23.30 a month (excluding VAT) for a broadband service delivered over a copper phone line at the end of 2005.

Today they are paying around £13.61 for the same service.

Ofcom Chief Executive Ed Richards said: 'in just four years unbundling has gone from a flicker on the dial to a major competitive force in telecoms.

'This has delivered the dual benefits of driving up broadband take-up and driving down prices.'

Annex B – Confidential Annex – Supplied Separately

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4 Magnet Networks Ltd.

Further Consultation on Local Loop Unbundling ('LLU') and Sub-Loop Unbundling ('SLU') Monthly Rental Charges

Q. 1. Do you agree that exchanges with working lines in excess of 2,500 is currently a reasonable threshold for those exchanges that are likely to be economically viable for OAOs to unbundle in the next three years? Please state the reasons for your response.

In principle Magnet Networks agree that 2,500 lines is the minimum number of lines required to make it attractive to unbundle an exchange. Magnet Networks has not unbundled an exchange with fewer than 3,300 lines (Crossgalla Exchange) and would not unbundle any exchange with fewer than 2,500 lines. Thus, proposing 2,500 lines as a reasonable threshold to be economically viable and allows some return on investment if LLU is priced correctly.

Q. 2. Given the current level of take-up of LLU in Ireland to date, the economies of scale referred to above, do you believe that, among other things, the current price of LLU plays a significant role when considering investing in LLU in the future? Please state the reasons for your response.

Magnet Networks believe that price is not the only issue when considering unbundling an exchange however it is one of the decisive factors. The current and proposed price would not encourage Magnet Networks to further unbundle exchanges in Ireland.

In a basic price comparison between some of the components of LLU and bitstream it is evident that the margin is very slight and means the return of investment can only be recovered over a very long period of time together with winning a high number of customers.

As can be seen from confidential information provided, to make any return on investment a lower LLU price is required and a larger number of customers to be acquired. However, supplying a bitstream product, which doesn't involve such extensive and long term investment, makes unbundling a very unattractive option and can give you a more instant profit. Magnet Networks will not unbundle any more exchanges even if the previously proposed price is invoked. Magnet Networks feels that the price needs to be reduced further again before the market sees any shift in the number of exchanges unbundled and the number of LLU customers.

Q. 3. Do you agree with ComReg's assessment that the recent declines (even though these declines have been faster than anticipated since the publication of Consultation Document No. 09/39) are largely a short-term phenomenon for the reasons set out above? Please state the reasons for your response.

Employment now stands at 12.2% which is a rise 2% from June 2009 to July 2009[1]. Thus Magnet Networks believes there will be a further decline in numbers utilising fixed line telecommunications. However, to blame unemployment as the sole reason for this is disingenuous, as the decline can also be attributed to the high monthly recurring cost of a fixed line, mobile broadband innovative offers e.g. O2's recent offering of free trial of broadband and of course mobile bundles that include broadband in the package. Also, UPC has announced a doubling of the number of telephone subscribers and a 33% increase in its broadband subscribers in 1 year[2]. This shows that customers are willing to use broadband and telephone but only at a particular price which obviously isn't being provided utilising the eircom infrastructure.

Q. 4. What do you consider to be the appropriate minimum speed that should be available before you unbundle a particular line? In addition, please provide your definition of a broadband line over the fixed network.

Magnet Networks believe that there is an appropriate minimum speed that should be available and this is 3.5Mbps. Magnet Networks are unaware of the potential speed the customer is capable of until the line is unbundled. Magnet Networks aspire to provide 10Mbps broadband to all customers however if a customer is unable to avail of at least 3.5Mbps Magnet Networks provide that customer with a price discount to reflect the lower service being provided. In these instances the customer is being provided with the fastest DSL service their line is capable of. The reason for this is to allow for product distinction from eircom's bitstream offering, to ensure the reliability of the service but also to ensure that businesses and customers are getting the best from their line.

ComReg's question concerning what is the definition of a broadband line is a philosophical one. Based on Magnet Networks offering it would be a copper line from the exchange which provides the customer with a minimum of 3.5Mbps. Magnet's lowest service offering for residential customers is 10Mbps. Magnet generally deems 3.5Mbps as a broadband connection with anything less than this speed being deemed poor enough to warrant a discount. If the line is not capable of a minimum of 1.9Mbps downstream Magnet deem the line sufficiently bad to warrant the customer being given the opportunity to exit a contract without receiving service.

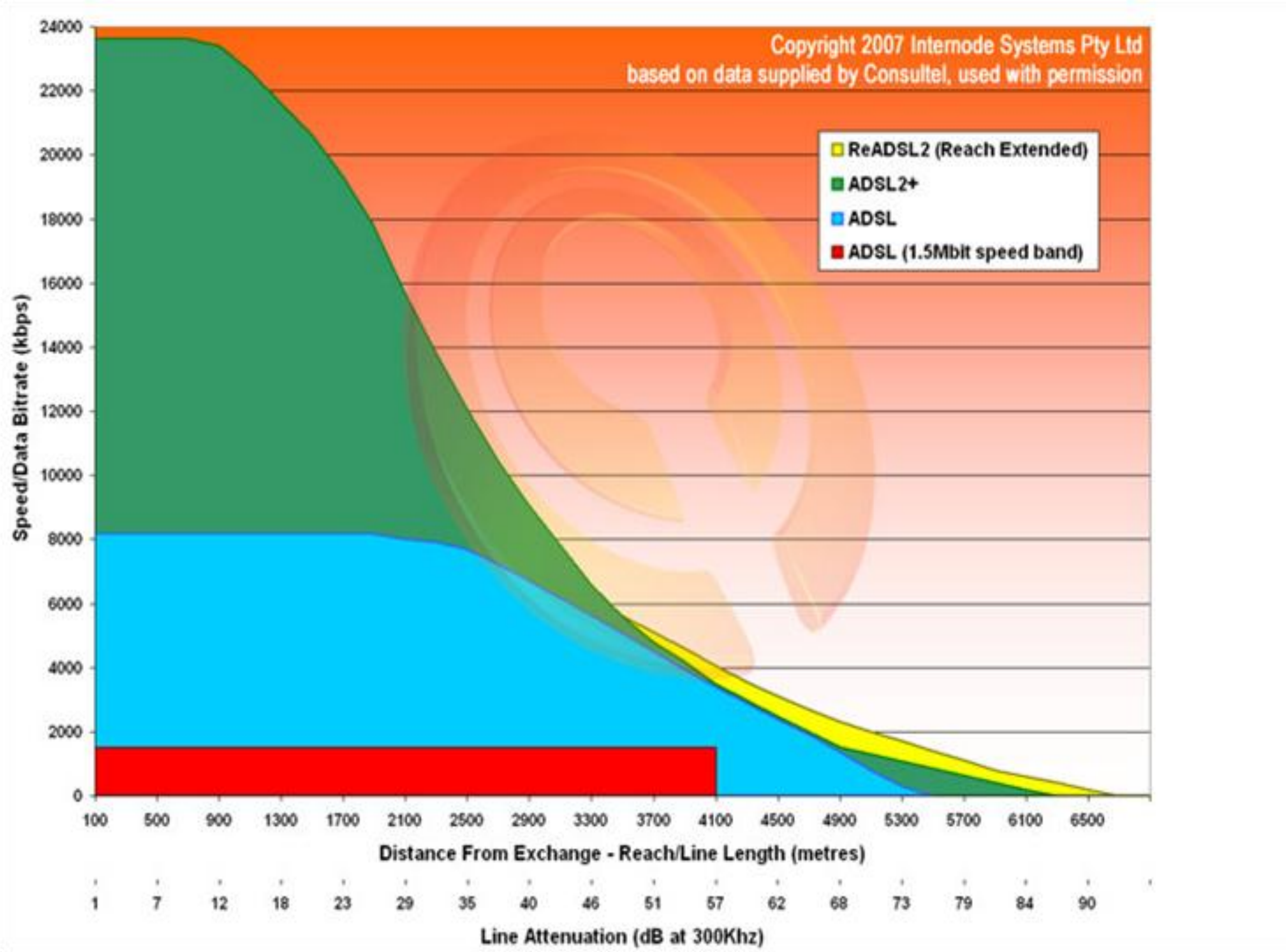
Magnet Networks feels that the information provided by eircom to ComReg relating to long lines and the length over which a line may be capable of supporting may be inaccurate depending on the technology being used over the line, the speed attainable at the end of the line and the quality of the copper cable.

Below is a chart that compares technologies and speeds of these technologies over distance and you will note that any line further than 5km sees a major degradation in line

[1] http://www.cso.ie/releasespublications/documents/labour_market/current/lreg.pdf

[2] http://www.irishtimes.com/newspaper/finance/2009/0806/1224252080412.html

speeds. Thus Magnet Networks feel that the original weighting of x%/6.4 should be utilised by ComReg in their calculation.



Q. 5. Do you agree that the existing ComReg methodology for calculating price trends, as set out in section 4.48 of Consultation Document No. 09/39, remains appropriate in determining the final LLU charge? Please state the reasons for your response.

Magnet Networks reiterates what it said in response to Consultation Document No. 09/39. Magnet Networks believes the response outlined in its previous response remains to hold true. Magnet Networks can go further and point out that in May, June 2009[3] the CPI has reduced further than Magnet Networks had predicted for the year and stands at negative 5.4, thus there may be an even further dramatic decline for the reminder of the year and into the beginning of next year.

June 2009

CPI and HICP

	CPI		HICP	
	% monthly change	% annual change	% monthly change	% annual change
Feb 2009	- 0.4	- 1.7	+ 0.2	+ 0.1
Mar 2009	-	- 2.6	+ 0.1	- 0.7
Apr 2009	- 0.8	- 3.5	+ 0.1	- 0.7
May 2009	- 0.5	- 4.7	- 0.4	- 1.7
Jun 2009	- 0.3	- 5.4	–	- 2.2

Magnet Networks agree a 12 year period is a reasonable length of time to evaluate the price trend of copper in light of the copper access network asset. However, the period chosen is one of the highest CPI'ed period in the history of the state. Thus, Magnet Networks suggest that a longer and more historic look at copper price trends should take place taking into account the rate of inflation in the last ten years.

Magnet Networks do not believe that the weighting at section 4.48 goes far enough to reflect current realities. The ESRI has indicated unemployment rates of up to 16.8%[4] by the end of 2010 causing a dramatic lowering of labour rates and associated benefits. Indeed many are predicting a period of up to ten years or more to see employment levels return to 2007 levels and longer for standards and rates of pay.

Magnet Networks also notes that CPI for 2009 is likely to be negative to the tune of 3.5% given recent announcements on CPI. "Services" for the period were running at negative 3.2%.

In this regard, and to reflect reality, we believe that the 2008-2012 period should have a factor weighting of an additional 50%. As BU-LRAIC models are forward looking (not regressive) this also matches the time frame to the model.

[3] http://www.cso.ie/releasespublications/documents/prices/current/cpi.pdf

[4] http://www.esri.ie/publications/latest_publications/view/index.xml?id=2738

Fig 1 – CPI& HICP –CSO

Consumer Price Index
April 2009

CPI and HICP

	CPI		HICP	
	% monthly change	% annual change	% monthly change	% annual change
Dec 2008	- 1.2	+ 1.1	- 0.7	+ 1.3
Jan 2009	- 1.7	- 0.1	- 0.8	+ 1.1
Feb 2009	- 0.4	- 1.7	+ 0.2	+ 0.1
Mar 2009	-	- 2.6	+ 0.1	- 0.7
Apr 2009	- 0.8	- 3.5	+ 0.1	- 0.7

5 IrelandOffline

From: eire.offline@gmail.com [mailto:eire.offline@gmail.com] **On Behalf Of** IrelandOffline
Sent: 24 August 2009 15:59
To: wholesaleconsult
Cc: IrelandOffline
Subject: Further Input to Consultation Document No. 09/39 on Local Loop Unbundling ('LLU') and Sub Loop Unbundling ('SLU') Monthly Rental Charges

In reference to:
http://www.comreg.ie/_fileupload/publications/ComReg0962.pdf

Question 1 "Do you agree that exchanges with working lines in excess of 2,500 is currently a reasonable threshold for those exchanges that are likely to be economically viable for OAOs to unbundle in the next three years? Please state the reasons for your response. "

We in IrelandOffline believe that the fixed cost stack that any operator is subjected to within an unbundled exchange is onerous. The years of prevaricating with shared and full LLU monthly rentals, though ongoing, has failed to see this cost stack addressed.

It is grossly unrealistic to assume that Comreg will get its regulatory mix right in the next 3 years and IrelandOffline is **strongly** of the view that only the approx 100 largest exchanges Nationwide and with c.4000 lines or greater right now will be on the LLU agenda over the next 3-5 years.

We shall additionally tell Comreg in our imminent response to the NGN consultation that the provisioning of redundant NGN backhaul from each of these 100 exchanges must be an explicit priority for Comreg in any NGN strategy over that time amongst other explicit policy objectives .

This has already been done in many cases but stakeholders need an explicit commitment to complete this task from Comreg in order to have any certainty.

Such a commitment will also benefit the deployment of Metro Ethernet from these locations over that time-frame, once Comreg have concluded what Metro Ethernet actually is and reduce their inevitable "permaconsult" phase of c 3-5 years to a more realistic time-frame.

Question 2 "Given the current level of take-up of LLU in Ireland to date, the economies of scale referred to above, do you believe that, among other things, the current price of LLU plays a significant role when considering investing in LLU in the future? Please state the reasons for your response. "

The take up of LLU/SLU has been pathetic, especially compared to later starters like France and the UK and the blame for this must be laid squarely at the door of Comreg.

We in IrelandOffline believe that this "painful drip of permaconsult but do nothing" is of more significance. Comreg started to consult on LLU in early 1999 and are still asking the same utterly basic questions of the stakeholders, however not actually doing anything of consequence. The dead weight of regulatory inertia weighs heaviest of all. Rather than asking these questions, an explanation from Comreg for their myriad past failures is long overdue. We may then find out whether Comreg has actually learnt anything since 1999.

Question 3 "Do you agree with ComReg's assessment that the recent declines (even though these declines have been faster than anticipated since the publication of Consultation Document No. 09/39) are largely a short-term phenomenon for the reasons set out above? Please state the reasons for your response. "

We in IrelandOffline also note that the Comreg observation "ComReg expressed the view that this decline (in Fixed lines) was a short-term phenomenon and that it would stabilise in 2010. New data is now available which shows that the decline in working lines has been occurring at a faster rate than was previously anticipated."

We in IrelandOffline believe that this phenomena will not stabilise in 2010 , the cost of basic line rental together intermixed with the appalling levels of service and fault clearance to which fixed line customers are subjected, will inevitably mean that mobile usage and reliance thereupon will grow .

Comreg have signally failed to note that almost a QUARTER of all fixed lines are now paid for by the state through social welfare schemes and that there is a considerable risk that these schemes will be withdrawn or capped before 2010 or during 2010 thereby leading to a yet more precipitous decline in fixed line penetration .

We would consider that in light of the high fixed costs that an averaging down of fixed lines from c.1.6m to c.1.2m is a wise assumption by end 2011 . If the social welfare schemes are withdrawn or severely curtailed one could knock another third off that assumption again thereby leading to a halving of working lines from c.1.6m to c.0.8m in around 3 years.

An illustration of this effect is that a basic broadband package (1Mbs) still costs upwards of €45. This is the most obvious reason for the decline in fixed line provision when compared to basic mobile midband solutions. If fixed line telecommunications companies are to be "rescued" and the hemorrhaging of lines stemmed then a more realistic pricing mix is necessary .

Question 4. "What do you consider to be the appropriate minimum speed that should be available before you unbundle a particular line? In addition, please provide your definition of a broadband line over the fixed network. "

We in IrelandOffline believe that a minimum 512k is required TOGETHER with a reasonable SLA (from eircom) that requires that the line be maintained in such a way that this speed is not allowed to degrade over time from lack of maintenance. We further believe that line outages are to be repaired in a timely manner, unlike the present situation. We are indifferent as to whether the package delivered is xDSL or Ethernet or by any other means.

In saying that we assume line lengths in the typically urban areas where the 100 largest exchanges are located will generally support 512k . In the other 1100 exchanges nationwide which tend to me more rural and where only Bitstream product will be available we would consider 256k an appropriate minimum owing to longer average line lengths.

Question 5 "Do you agree that the existing ComReg methodology for calculating price trends, as set out in section 4.48 of Consultation Document No. 09/39, remains appropriate in determining the final LLU charge? Please state the reasons for your response. "

Yes. It has taken years for Comreg to look at the "efficient operator" scenario. The current situation where Comreg has long tolerated the Highest Line Rental in the World is utterly counter productive and is inimical to all stakeholders in Ireland ...even to eircom at this stage.

It is a structural legacy from the Telecommunications companies obsession with "recurring revenue" (and endeavouring to service the debt mountain) that characterised the post dot-com bubble period in the early part of this decade.