



Commission for
Communications Regulation

Decision Notice

Response to Consultation 04/69 and Decision Notice

Finalisation of the 2002/03 Interim Interconnect Conveyance Rates

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1 Foreword by the Chairperson

A Consultation and Draft Direction was issued in relation to the finalisation of the 2002/03 interconnect conveyance rates and the setting of interim rates for 2003/04 on the 11 June 2004 ('ComReg 04/69'). The consultation sought the views of interested parties in relation proposed directions following issues raised by ComReg and following a review of the *eircom* pricing models of the origination, termination and transit conveyance rates since November 2003.

Responses were received from the following parties:-

- *eircom*;
- Esat BT;
- Vodafone;
- Energis;
- Smart Telecom; and
- Alto.

Set out in this document are extracts from the responses received to the draft directions in consultation 04/69.

ComReg wishes to thank all of the respondents to ComReg 04/69 for their contribution to the review of the interconnect conveyance rates. The responses are available for inspection at ComReg's office, excluding confidential material which respondents specifically asked to be withheld.

John Doherty,
Chairperson, Commission for Communication Regulation

August, 2004.

2 Introduction

The changes proposed in ComReg 04/69, related to the finalisation of the origination, termination and transit conveyance rates for the period April 2002 to March 2003 and the setting of new, revised interim conveyance rates for the period April 2003 to March 2004.

These proposed changes arose from a review carried out by ComReg since November 2003. They were discussed with *eircom* prior to the consultation publication but agreement was not reached on their implementation. This led to the publication of ComReg 04/69 to allow for an informed debate on the issues raised with industry.

ComReg received responses from the parties listed in the foreword to this Decision Notice. In the main, most OAOs were in agreement with the proposed directions. All responses have been considered in detail and further discussions have been held with *eircom* and an additional review of more up to date information has been carried out prior to making final decisions on what directions are now appropriate.

One of the main points to emerge from the responses was the desire to implement a wholesale price cap regime for the setting of interconnect conveyance rates. This has been considered before and is seen as the long term solution to the uncertainty that is inherent in the current review process due to the time taken to finalise rates in the market. ComReg is also in favour of this in the future, but will not be in a position to consult on the application of this regime until such time as the market reviews required under the Framework Regulations¹ have been completed for the interconnection market.

OAOs reiterated their view regarding the importance of the provision of timely information to the market and that the determination of these rates form the basis of business cases for expansion, both in relation to the consumer market and the interconnect infrastructure market. The importance of this is recognised by ComReg, and ComReg agrees that the provision of timely, accurate and cost orientated rates is vital in the interests of allowing for sustainable competition.

¹ S.I. No. 307 of 2003 the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 which transposes Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

3 Draft Directions and Responses to them

3.1 Draft Directions issued in ComReg 04/69

In ComReg 04/69 ComReg proposed amendments in relation to five aspects of the costing model as submitted by *eircom* in November 2003, together with other general proposals on the process for submitting costs for review by *eircom* to ComReg. The areas addressed in ComReg 04/69 which are discussed in more detail below were as follows:-

- Application of Gradients in the costing model;
- The recovery of Interconnect Link costs;
- The recovery of Bad Debts;
- The useful life of the Carrier Billing System;
- Potential for Discriminatory cost accounting practices;
- Proposal to impose additional requirements for management sign-off on *eircom* when submitting data to ComReg; and
- Whether ComReg should require *eircom* to amend the submissions made to ComReg for the proposed adjustments discussed.

3.2 Gradients

3.2.1 Proposed Direction

The text of the proposed direction and question in ComReg 04/69 was as follows:-

eircom is directed to apply parallel gradients to both its wholesale and retail charges, but to adjust the levels of the resulting prices so as to ensure that the amount recovered from each category independently is exactly those costs demonstrated by its LRIC submission (as amended by further Directions set out below) on a 24 hour basis. This Direction is to apply to 2002/03 and subsequent years.

Q. 1. Should ComReg issue the above Direction from section 3.1 of Document 04/69 in relation to the treatment of Gradients? Is it sufficiently clear and unambiguous to permit implementation? If necessary, please provide suggested amendments to the text with reasons and detailed explanations for your answer.

3.2.2 Views of Respondents

All operators except one agreed with ComReg's proposal in relation to the treatment of gradients above. One operator also commented that *"eircom must ensure that the interconnection tariff gradients (the relationship between day, evening and weekend rates) is within 5% of the retail tariff gradient"*. The proposed approach in the direction is seen as the most appropriate way of ensuring that *eircom* and the OAOs contribute appropriate amounts to costs and any possible over or under recovery is corrected while still maintaining the relationship between the retail time of day gradient and the interconnection time of day gradients.

One OAO commented that there was a lack of transparency in the overall process of setting the conveyance rates year on year, and commented that this was further highlighted by the issue surrounding the application of the gradient methodology.

Another OAO expressed concern at the ability of *eircom* to *"unilaterally influence the allocation of its network costs towards OAOs through the control of its retail gradient. The application of this gradient appears to be blatantly discriminatory and not cost orientated towards OAOs..."*

In response to the draft direction, one operator disagreed on the basis that the current methodology was as a result of a previous direction made by ComReg, Decision Notice D7/00. It also commented that *"Regulation 17 of the Access Regulations 2003 does not provide any legal basis for amending this principle, which can occur only following a market analysis."* This operator also commented that it is not *"possible to retrospectively amend the principles that governed eircom's cost orientation obligation in the period 2002/03."*

This operator also commented that the draft direction is a proposal to change the basis on which a time of day gradient is applied to interconnect conveyance rates. It then comments that ComReg proposes to use two different gradients, one for *eircom* retail and one for OAOs and that this is discriminatory and without objective justification.

This operator does accept that the gradient methodology is a mechanism for ensuring that 100% of the total allowed cost is recovered from *eircom's* own operations and other operators combined. However, it expresses concern at the proposed application of the gradient methodology in that it does not take in to account that the network costs are driven primarily by the capacity required at peak times versus other times. It comments that the proposed 24 hour flat rate recovery will not take account of the fact that *eircom* retail has more use of the network at "off peak" times.

The operator then sets out what they see as a set of objective criteria which should be considered in the application of gradients to interconnection rates. These are as follows:-

- Cost causation;
- Cost minimisation;

- Distribution of benefits;
- Development of competition;
- Reciprocity; and
- Practicality.

In considering the above, this operator believed that the proposed direction contravened these principles and that the current practice best served to achieve these objectives.

3.2.3 *ComReg's Position*

The application of parallel gradients to both wholesale and retail charges adjusted to ensure recovery based on the costs demonstrated by the LRIC model on a 24 hour basis was proposed by ComReg as the most appropriate and practical method of ensuring the correct allocation of network costs at the time of publishing ComReg Document 04/69. *eircom* has recently submitted a revised calculation of the gradients applied in their model submitted in November 2003. This submission reflects the impact of all traffic volumes for the full year, whereas *eircom*'s previous calculations reflected volumes on a sample basis. This indicates that there is now no material difference in monetary terms between the two approaches in this particular instance. As noted below, having taken account of the other directions in this Decision Notice, either method yields a result that is very close to current interim rates.

ComReg notes the comments of one operator about the use of different gradients for different operators. ComReg also acknowledges that under its proposal, gradients would not be set on an operator by operator basis and that the allocation of costs will not be 100% accurate. Some OAOs will still pay more or less than the amount of their usage on a 24 hour basis. ComReg still has concerns about the existing methodology; in particular its application to the principle of cost causation and also the potential competitive distortions caused by *eircom* retail's apparent effective control of wholesale gradients. ComReg would like to consider the matter further and may consult on this matter in the context of the 2003/04 interconnect rate review or the interconnection market analysis review process.

In relation to one operator's comments regarding ComReg's direction making powers under Regulation 17 of the Access Regulations, ComReg would comment that with respect to the first point, the operator's analysis of the legal position is incorrect. The market analysis process determines ultimately whether or not significant market power ('SMP') obligations should be maintained or amended. The SMP obligation under consideration is cost orientation. It is a pre-existing obligation imposed under S.I. No. 15 of 1998 European Communities (Interconnection in Telecommunications) Regulations, 1998 (as amended). By virtue of the transitional

provisions in the Access Regulations², it remains in force pending the outcome of a market review conducted by ComReg under the Framework Regulations. ComReg was not proposing to impose new regulatory obligations but to specify *requirements* in furtherance of obligations that already exist; this ComReg is empowered to do because of Regulations 8 and 17 of the Access Regulations. The specification of such requirements relating to pre-existing and maintained obligations does not require a market review involving market analysis under the Framework Regulations.

One operator also commented that it is not “*possible to retrospectively amend the principles that governed eircom’s cost orientation obligation in the period 2002/03.*”

ComReg does have the power to direct as it proposed and particularly where it is in relation to rates that are interim. To suggest otherwise, would be to effectively deprive ComReg of any powers to direct in relation to the RIO at all or to make improvements or refinements thereto. With regard to the suggestion that ComReg is attempting to ‘retrospectively’ change rules, it should be made clear that ComReg is not attempting to change a rule that was understood to be fixed and then seeking to apply it retrospectively prior to the date of the rule being changed, with the effect of depriving anyone of a benefit already conferred in the past. ComReg is therefore satisfied that it would be a lawful exercise of powers were it to direct in the manner proposed.

3.3 Interconnect Links

3.3.1 Proposed Direction

The text of the proposed direction and question in ComReg 04/69 was as follows:-

eircom is directed to adjust its interconnect charge submission for 2002/03 to eliminate all accruals referred to in section 3.2 of Document 04/69 that fall outside the two year window for collection of those charges.

eircom is directed to share its accrual calculations for the interconnection links referred to in section 3.2 of Document 04/69 with the companies to which these monies fall due.

² S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 which transposes Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities.

Q. 2. Should ComReg issue the above Directions from section 3.2 of Document 04/69 in relation to the cost of Interconnect Links? Is it sufficiently clear and unambiguous to permit implementation? If necessary, please provide suggested amendments to the text with reasons and detailed explanations for your answer.

3.3.2 Views of Respondents

Generally most respondents agreed that ComReg should direct *eircom* to eliminate any accruals that fall outside the two year window for collection and that the calculation for any accruals still available for collection should be made available to the relevant OAOs. The consensus was that this is the most cost reflective and transparent approach to this issue. One particular operator commented that *“Additionally, the action of eircom in raising the cost of interconnection rates by the creation of accruals for amounts that have not been subsequently billed by the relevant OAOs to their customers is in their opinion in clear contravention of the principles of clarity and transparency, in so far as eircom knowingly adjusted the cost of interconnect rates to the OAOs while at the same time not proactively highlighting to those relevant OAOs the increased liability that was being imposed upon them in relation to switch port use by eircom for “Outbound” or “eircom Owned” Interconnect capacity. The OAO would expect that ComReg act accordingly in protecting the OAOs from such activities and deal with eircom accordingly”*.

Another operator disagreed with the proposed direction as it believed it inappropriate to direct *eircom* to eliminate accruals because they are a legitimate cost and that it may be down to a process fault between OAOs and *eircom* which may just require additional time to bill and subsequently pay. It suggested that ComReg should instead *“request that eircom’s external auditors should specifically examine such provisions annually and certify that they are warranted.”*

One further operator also rejected the proposed directions, in the case of disallowing accruals outside the two year window of collection. It believes that at that time, i.e. March 2003, these accruals were within the collection period and as such, were a legitimate expense which (as per the “matching concept” in accounting terms) it was correct to accrue for these amounts. It comments that in the event that these accruals are not invoiced, that these accruals will be reversed in future accounting periods. It comments that it is not within ComReg’s powers to alter this accounting policy.

In relation to the second element of the direction requiring disclosure of accruals information, *eircom* comments that ComReg again is not within its powers to *“interfere in a commercial relationship of parties to an interconnect agreement in this manner, and the Draft Direction, if adopted, would accordingly be invalid and unenforceable”*.

3.3.3 ComReg's Position

As the review process has extended this far beyond the end of the period of review, ComReg must act where the incumbent has overstated the real cost of carrying traffic on the network. In the case of interconnect links which were payable, but which are now outside the required two year time frame for recovery by OAOs, ComReg must disallow these charges. Generally accepted accounting practice does indeed require that one makes provision for expenses that are uncertain but likely to be incurred. However we now know for certain that these amounts will never be paid and therefore should not be provided for.

In relation to the second half of the proposed direction, ComReg agrees that the calculations behind the charges are part of the commercial relationship between the incumbent and the OAO and that OAOs should pursue the resolution of this issue independently.

Decision No. 1. *eircom* is directed to adjust its interconnect charge submission for 2002/03 and subsequent years to eliminate all accruals referred to in section 3.2 of Document 04/69 that fall outside the two year window for collection of those charges at the time of this direction.

3.4 Bad Debts

3.4.1 Proposed Direction

The text of the proposed direction and question in ComReg 04/69 was as follows:-

eircom is directed to spread the cost of wholesale bad debts incurred across all traffic, i.e. including eircom retail. This Direction is to apply to 2002/03 and all subsequent years which include a charge for bad debts.

Q. 3. Should ComReg issue the above Direction from section 3.3 in relation to wholesale bad debts? Is it sufficiently clear and unambiguous to permit implementation? If necessary, please provide suggested amendments to the text with reasons and detailed explanations for your answer.

3.4.2 Views of Respondents

In relation to this proposed direction the majority of OAOs agreed that this would be the most fair and reasonable approach and that the current recovery from the wholesale sector is giving an unfair advantage to *eircom* retail over OAOs.

One operator expressed the view that charging *eircom* for bad debts incurred leaves it exposed to a greater than usual level of debt due to the nature of commercial agreements entered into by *eircom* in a regulated environment. It comments that “*since it is industry drivers which curtail eircom’s ability to make commercial agreements which fully take account of eircom’s assessment of the risks involved, it is reasonable that the industry should continue to bear the cost of such risk*”.

Another operator commented that “*Regulation 17 of the Access Regulations 2003 does not provide any legal basis for amending the principles that govern eircom’s cost orientation obligation in the period 2002/03, including in relation to the treatment of bad debts*”. *eircom* does not believe it is possible to retrospectively amend principles applied for 2002/03. The fact that the 2003/04 methodology applied to bad debts in the *eircom* submission subsequent to the 2002/03 model is as per the proposed direction and should make no difference to 2002/03.

3.4.3 ComReg’s Position

As bad debts are incurred as part of the wholesale business of *eircom*, it is only fair and reasonable in the opinion of ComReg that all clients of *eircom* wholesale should share the cost of these debts. This includes *eircom* retail. As noted in the responses the allocation of bad debt cost to any particular company or group of companies and not certain other competitors, i.e. *eircom* retail, is discriminatory and is anti-competitive.

With regard to analysis of the legal position, reference is made to section 3.2.3 of this Decision Notice.

Decision No. 2. *eircom* is directed to spread the cost of wholesale bad debts across all traffic for 2002/03, i.e. including *eircom* retail. This Direction is to apply to 2002/03 and future years.

3.5 Carrier Billing System Depreciation Period

3.5.1 Proposed Direction

The text of the proposed direction and question in ComReg 04/69 was as follows:-

eircom is directed to adjust the expected useful life of the carrier billing system to 6 years and adjust for the change in accordance with FRS 11 (Impairment of Fixed Assets and Goodwill). This Direction is to apply to 2002/03 and subsequent years.

Q. 4. Should ComReg issue the above Direction from section 3.4 of Document 04/69 in relation to the useful life of the current Carrier Billing system? Is it sufficiently clear and unambiguous to permit implementation? If necessary, please provide suggested amendments to the text with reasons and detailed explanations for your answer.

3.5.2 Views of Respondents

Two respondents agreed with the proposed direction, one respondent offered no opinion and two operators rejected the proposal on the basis that the current useful life applied is reasonable and there is no basis for amending it.

In agreement with the opinion of ComReg one operator added that:-

“given the eircom response to the request for demonstration that the current period of four (4) years is reasonable, and eircom’s response that it was eircom’s own initial expectation that the operational lifetime was to have been longer, (not to mention any further lengthening of the period arising from any change of vendor ownership and consequent upgrade or migration implications),believes that it is absolutely plausible that a level of usefulness of the existing carrier billing system will continue beyond the four (4) years asset class lifetime at present, and in conclusion holds that adjustment to a six (6) year asset class life time is conservative at best.”

3.5.3 ComReg’s Position

As set out in section 3.4 of ComReg 04/69, ComReg is of the opinion that the current useful life set for such a system is too short and should be set at a more reasonable period of six years which is still considered conservative. *eircom* has provided no additional evidence to suggest the contrary in its response.

Decision No. 3. *eircom* is directed to adjust the expected useful life of the carrier billing system to 6 years and adjust for the change in accordance with FRS 15 (Tangible Fixed Assets). This Direction is to apply to 2002/03 and subsequent years.

3.6 Discriminatory Cost Accounting

3.6.1 Proposed Direction

The text of the proposed direction and question in ComReg 04/69 was as follows:-

eircom is directed to reduce the costs of their Carrier Administration expense allocated to conveyance rates in the submission for 2002/03 by 20%.

Q. 5. Should ComReg issue the above Direction from section 3.5 of Document 04/69 in relation to disallowing Carrier Administration costs? Is it sufficiently clear and unambiguous to permit implementation? If necessary, please provide suggested amendments to the text with reasons and detailed explanations for your answer.

3.6.2 Views of Respondents

The majority of respondents expressed their surprise and disappointment at the fact that this issue has arisen in the 2002/03 submission and the problems encountered by ComReg in reconciling revenues and costs to the Separated Accounts. Concern was raised at the possibility of discrimination through the lack of transparency, especially given the length of time that has been available to *eircom* to provide the necessary detail. One operator commented that:-

“the burden of proof that eircom’s prices are cost orientated lies with eircom and that ample time and opportunity has been given to eircom to date to demonstrate either that eircom retail has contributed its share of the costs in the Separated Accounts for 2002/03 for services such as CPS, DQ and Ancillary Services, or that costs were not recovered twice across different products and services. They noted ComReg’s view that eircom has delivered no evidence supportive of ComReg not issuing the Direction and consequently, the operator believed that this is yet another delaying tactic on behalf of eircom and they would insist that eircom have been given ample opportunity to prove cost orientation, and have failed, and therefore this Direction should be implemented.”

Another operator raised the issue of the usefulness of the Separated Accounts and commented:-

“there appears to be no linkage between the interconnect rates and the Regulated Accounts and that because of lack of transparency, it de-values the information in the Regulated Accounts, since there is no understanding of how prices for interconnect services relate to the costs of interconnect services.”

One respondent disagreed with the approach taken by ComReg in that there was no basis for the 20% reduction provided and as such, had concerns over the causality, proportionality and transparency of the proposed measure.

One operator commented that in its opinion, all information necessary to prove that costs charged are cost orientated and that there is absolutely no discrimination has been provided to ComReg already during the review process. It also believes the proposed direction to be unlawful as there is *“no basis for the percentage suggested and that ComReg has no power to direct an arbitrary and unsupported reduction of recoverable costs in any circumstance.”*

This operator also commented that the level of Carrier Administration costs is clearly identified in the Statement of costs contained in the Historical Cost Separated

Accounts published by *eircom* for the 2002/03 financial year and also that such costs are recovered over wholesale minutes only as per ComReg Decision D14/03. In their opinion this demonstrates the level of costs, their recovery and that there is no possibility of double recovery of these costs. They also add that these have been fully audited independently and prepared on a fully allocated basis.

3.6.3 ComReg's Position

ComReg will not yet direct a reduction in the Carrier Administration costs at this stage but will however pursue the proper and transparent reconciliation of all costs, revenues and transfer charges until such time as it is satisfied that there is no possibility of discrimination.

3.7 Provision of Data by *eircom*

3.7.1 Proposed Direction

The text of the proposed direction and question in ComReg 04/69 was as follows:-

ComReg proposes that in relation to submissions for rates which are proposed to be final (Case A) the Chief Financial Officer ('CFO') sign-off should be in the following format:-

'I confirm that the attached submission fairly presents in accordance with the Accounting Documents of eircom the costs of service X in relation to period Y and complies with the relevant Decision Notices issued by the Commission for Communications Regulation and its predecessor the Office of the Director of Telecommunications Regulation.'

In relation to proposals for rates which are intended to be interim in nature and which may be based on forecasts, (Case B) ComReg proposes that the CFO sign off should be in the following format:-

'I confirm that the attached submission represents eircom's best endeavours to estimate the costs in relation to service X for the period Y in accordance with the relevant Decision Notices issued by the Commission for Communications Regulation and its predecessor the Office of the Director of Telecommunications Regulation'.

Q6 Do you agree with the proposed text for Case A above? If not please state your reasons and provide an alternative.

Q7 Do you agree with the proposed text for Case B above? If not please state your reasons and provide an alternative.

Q.8. Are there any other measures, which are within ComReg's powers, that should be considered in these circumstances?

3.7.2 Views of Respondents

Most respondents agreed with the proposed directions above and added their disappointment at the way in which *eircom* provided the most recent submission in relation to 2003/04. As one operator commented:-

"it appears highly suspicious to us that after realising the results of ComReg's changes, eircom has suddenly produced revised volume figures which would result in no back payment for any alternative operator for the 2003/04 period". The general conclusion was that *eircom* should be given incentives to forecast more accurately and revise rates in a more timely fashion in response to the more up to date data it has at hand within its organisation.

Another operator commented:-

"the sign-off procedure proposed by ComReg is both overdue and proportionate. The Industry has suffered substantially as a result of both tardy and inconclusive data provision by eircom to ComReg over the last number of years. Commercial organisations cannot function without certainty of cost. The current process of setting interim conveyance rates is not fit for purpose and can render some products unprofitable after the fact. This is not sustainable."

It was agreed that CFO sign-off should be required but that this should not allow *eircom* the opportunity to slow the process down further on account of such a requirement. It was suggested that a timeframe should be included in the proposed Direction regarding the resubmission of the cost models by *eircom* including sign-off.

In relation to the question regarding other measures, one operator believed that the introduction of a wholesale price cap should take place as soon as possible and that the problems highlighted in ComReg 04/69 with the current review process further support this argument.

One operator expressed concern about ComReg's proposal to find *eircom* in breach of cost orientation where final billed amounts are greater or less than preliminary billed amounts by more than 5% and that this might encourage *eircom* to make systematic upwards changes of less than 5% over different periods.

Another operator said:-

"The manner in which information is provided by the company to any third party is a matter for the company to determine. ComReg does not have the power to interfere with the corporate governance of the company [i.e. eircom], nor indeed to require compliance statements of this nature from eircom or from any individual employee [of eircom]."

This respondent is of the opinion that there is no basis for the proposition that any adjustment of greater than 5% would represent a breach of cost orientation by *eircom* and that ComReg should clarify this to the market.

In relation to the question on further measures that should be taken that are within ComReg's powers, the respondent's response to this was as follows:-

"X does not agree that ComReg has the requisite jurisdiction to adopt any of the measures set out in the consultation, nor indeed that these measures were susceptible to consultation in the first place. X is satisfied that it is fully compliant with its cost orientation obligation in respect of the RIO charges for the periods under review, and the only appropriate course of action by ComReg in the circumstances is, accordingly, forbearance from further intervention."

3.7.3 ComReg's Position

ComReg does not accept the assertion that ComReg cannot determine the manner in which information is provided. ComReg has a variety of general information and direction making powers which quite clearly, in order to be effective, extend to determining the form in which information must be provided.

In addition, ComReg must disagree strongly with the assertion, that this issue is merely a matter of corporate governance over which ComReg has no jurisdiction. On the contrary, it is clearly also a matter of compliance with regulatory law. It is ComReg's view therefore that it has clear jurisdiction in relation to the matter. Furthermore, in view of the experience that ComReg has had to date, requiring CFO sign-off is (and can be shown to be) a reasonable, proportionate and justified response to difficulties that have arisen to date. As a consequence, ComReg will request CFO sign-off on any future submission where appropriate and proportionate and where the outcome is material to the market.

3.8 Provision of Revised Submissions

3.8.1 Proposed Direction

The text of the proposed direction and question in ComReg 04/69 was as follows:-

eircom is directed to amend its submissions for interconnect conveyance rates for 2002/03 and 2003/04 originally submitted on 7 November 2003 and 19 December 2003 in accordance with the above Directions and resubmit them, otherwise unamended, within 7 working days of this direction. eircom is also directed to publish the amended rates in its RIO, unless otherwise directed by ComReg, within 10 working days of this Direction. Any amounts to be settled between operators as a result of these rate changes should be paid within 45 days of this Direction.

Q. 9 Should ComReg issue the above Direction from section 3.7 of Document 04/69 requesting revised submissions in relation to the calculation of the RIO rates for 2002/03 and 2003/04 amended for ComReg's proposed changes only? Is it sufficiently clear and unambiguous to permit implementation? If necessary, please provide suggested amendments to the text with reasons and detailed explanations for your answer.

3.8.2 Views of Respondents

Two respondents replied to the proposed direction. One agreed that the draft direction should be issued. However, it also believes that there are other issues which need to be addressed before the direction is issued. It believes that:-

“it is important that when the final Direction is issued that the timeframes for provision of the revised figures/process of sign-off required is clearly outlined at the very start of the Directions to ensure that there is no room for ambiguity”.

This respondent also raised a concern that the wording of the current proposed direction, in that the times allowed for resubmission and publication of the revised rates does not allow ComReg sufficient time to review the revised submissions.

The other respondent said:-

“X contests the legal basis for each of the Draft Directions set out previously in the Consultation, and it follows that eircom does not agree that its submission should be amended in the manner proposed in this Draft Direction. In addition, this Draft Direction is flawed in that, by the inclusion of the words “otherwise un-amended”, it purports to direct eircom use obsolete data, in circumstances where more up to date information is now available.”

3.8.3 ComReg's Position

ComReg calculates that the net impact of the changes set out in this paper is to leave rates for 2002/03 not materially different from current interim rates. Accordingly ComReg is now directing that current interim rates be set as final for the year 2002/03.

In relation to the resubmission of the 2003/04, ComReg takes the view that it would be premature to direct *eircom* to amend the submission for 2003/04 from December 2003 without making necessary changes which would have a material effect on the calculations. It believes that, at this stage, it would be better to wait until a revised submission on final rates is available from *eircom*.

ComReg will continue to review the issues unresolved from ComReg 04/69 and this Decision Notice in the coming months and is now directing *eircom* to provide a revised submission for 2003/04 as soon as possible following publication of the 2003/04 CCA and LRIC accounts. Should *eircom* propose any increase in rates and

in the event that, in ComReg's view, such proposed increases in rates have not been fully explained, justified and documented by 30 November 2004, ComReg reserves the right to direct at that point that current interim rates be set as final.

ComReg proposes to leave current interim rates for 2003/04 and 2004/05 in place until further notice.

Decision No. 4. *eircom* is directed to set current interim rates which are set out in Appendix B as final for 2002/03,

Decision No. 5. *eircom* is directed to provide a revised submission of the final 2003/04 interconnection conveyance rates within 15 working days of publication of the 2003/04 CCA and LRIC Accounts. This submission is to be accompanied by CFO sign off with wording as set out in section 3.7.1 of this document. The submission should include a detailed analytical review of movements in rates from 2002/03 to those proposed for 2003/04. Any and all changes in calculation methodologies from 2002/03 should be comprehensively documented and disclosed as part of the submission. *eircom* shall use best endeavours to ensure that all outputs are easily traceable back to source documentation and that all calculations are clear and transparent.

4 Next Steps

eircom will implement the changes directed in this paper and ComReg will follow up on the issues which have been left unresolved, primarily the Accounting Separation and the review of the changes made by *eircom* in its most recent submission. This will involve further discussions with *eircom* and OAOs where it is felt they can contribute to these discussions.

ComReg is currently in the process of carrying out market reviews of the Interconnect Markets for Call Origination, Termination and Transit as required under the Framework Regulations. The consultation document relating to this market review is due for publication later this year.

ComReg will consider the views of respondents in relation to requests for a wholesale price cap, as this appears to be in the interests of the market as a whole, of simplifying the process, adding certainty to the market and publishing rates in a timely manner.

Appendix A – Statutory Powers Giving Rise to this Decision Notice and Directions

The Directions contained in this Decision Notice are issued under Regulations 8 and 17 of S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 which transposes Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities ('the Access Regulations') for the purpose of further specifying requirements to be complied with relating to obligations imposed by and under the Access Regulations and having regard to Regulation 6 of the Access Regulations and sections 10 and 12 of the Communications Regulation Act, 2002.

The effective date of the Decisions and Directions contained in this Decision Notice is 22 September, 2004.

Appendix B – Final 2002/03 Conveyance Rates

Final 2002/03 Conveyance Rates

	24 hour c/min	Day c/min	Evening c/min	Weekend c/min
Call Termination				
Primary	0.235	0.306	0.171	0.153
Short Tandem	0.418	0.545	0.304	0.272
Long Tandem	0.628	0.819	0.456	0.409
 Call Origination				
Primary	0.228	0.298	0.166	0.149
Short Tandem	0.415	0.542	0.302	0.271
Long Tandem	0.555	0.725	0.404	0.362
 Transit	0.163	0.212	0.118	0.106
	24 hour c/call	Day c/call	Evening c/call	Weekend c/call
Call Termination				
Primary	0.627	0.818	0.456	0.409
Short Tandem	0.796	1.039	0.579	0.519
Long Tandem	0.871	1.136	0.633	0.567
 Call Origination				
Primary	0.607	0.791	0.441	0.395
Short Tandem	0.776	1.013	0.564	0.506
Long Tandem	0.813	1.060	0.591	0.530
 Transit	0.509	0.663	0.370	0.331

Appendix C – List of Directions and Decisions

List of Decisions

Decision No. 1. *eircom* is directed to adjust its interconnect charge submission for 2002/03 and subsequent years to eliminate all accruals referred to in section 3.2 of Document 04/69 that fall outside the two year window for collection of those charges at the time of this direction. 9

Decision No. 2. *eircom* is directed to spread the cost of wholesale bad debts across all traffic for 2002/03, i.e. including *eircom* retail. This Direction is to apply to 2002/03 and future years. 10

Decision No. 3. *eircom* is directed to adjust the expected useful life of the carrier billing system to 6 years and adjust for the change in accordance with FRS 15 (Tangible Fixed Assets). This Direction is to apply to 2002/03 and subsequent years. 11

Decision No. 4. *eircom* is directed to set current interim rates which are set out in Appendix B as final for 2002/03, 17

Decision No. 5. *eircom* is directed to provide a revised submission of the final 2003/04 interconnection conveyance rates within 15 working days of publication of the 2003/04 CCA and LRIC Accounts. This submission is to be accompanied by CFO sign off with wording as set out in section 3.7.1 of this document. The submission should include a detailed analytical review of movements in rates from 2002/03 to those proposed for 2003/04. Any and all changes in calculation methodologies from 2002/03 should be comprehensively documented and disclosed as part of the submission. *eircom* shall use best endeavours to ensure that all outputs are easily traceable back to source documentation and that all calculations are clear and transparent. 17