



Commission for  
**Communications Regulation**

## **Decision Notice and Decision Instrument - Designation of SMP and SMP Obligations**

### Market Analysis: Retail Fixed Narrowband Access Markets

Decision No:	D07/61
Document No:	07/61
Date:	24 August, 2007

**Contents**

1 Introduction ..... 2

2 Background to Decision ..... 4

3 Market Review ..... 6

4 Response to Consultation on the Draft Decision Instrument ..... 8

**ANNEX – DECISION INSTRUMENT ..... 16**

## 1 Introduction

- 1.1 The new EU electronic communications regulatory framework requires that ComReg define relevant communications markets appropriate to national circumstances, in particular relevant geographic markets within its territory, in accordance with the market definition procedure outlined in the Framework Regulations.<sup>1</sup> In addition, ComReg is required to conduct an analysis of the relevant markets to decide whether or not they are effectively competitive.
- 1.2 The Framework Regulations further require that the market analysis procedure under Regulation 27 be carried out as soon as possible after ComReg defines a relevant market, which takes place as soon as possible after the adoption, or subsequent revision, of the European Commission's Recommendation<sup>2</sup> by the European Commission.<sup>3</sup> In carrying out market definition and market analysis, ComReg must take the utmost account of the European Commission's Recommendation and the SMP Guidelines<sup>4</sup>.
- 1.3 ComReg adopted the approach set out in the European Commission's Recommendation as its starting point for defining the relevant product market, such that the review was concerned with the ability of customers to access the public fixed telephone network.
- 1.4 ComReg formed the view that there are two access markets:
  - A national market for **lower level retail narrowband access**, including access via analogue exchange lines and ISDN BRA<sup>5</sup> carried over copper, cable or FWA<sup>6</sup>; and
  - A national market for **higher level retail narrowband access**, including access via ISDN FRA<sup>7</sup> and PRA<sup>8</sup>.

ComReg is of the view that this market differentiation is justified since there is limited demand and supply-side substitution between lower level and higher level narrowband access. This arises from differing functional characteristics along with the absence of a common pricing constraint. In addition, ComReg considers that there are different conditions of supply present in the two markets.

---

<sup>1</sup> The European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003.

<sup>2</sup> European Commission Recommendation of 11 February, 2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

<sup>3</sup> Regulations 26 and 27.

<sup>4</sup> Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic networks and services, OJ 2002 C 165/3.

<sup>5</sup> Integrated Services Digital Network Basic Rate Access.

<sup>6</sup> Fixed Wireless Access.

<sup>7</sup> Integrated Services Digital Network Fractional Rate Access.

<sup>8</sup> Integrated Services Digital Network Primary Rate Access.

- 1.5 ComReg conducted an analysis of the relevant markets to decide whether or not they are effectively competitive. ComReg used a wide range of criteria including market share, absence of potential competition, high barriers to entry and expansion, absence of or low countervailing buyer power and also conducted a prospective analysis of the relevant markets.
- 1.6 Having regard to the above, ComReg is of the view that, in accordance with the Framework Regulations, eircom Ltd (“eircom”) should be designated as having Significant Market Power (“SMP”) in the market for lower level retail narrowband access and in the market for higher level retail narrowband access. Within the period of this review, there is nothing to suggest to ComReg that the SMP which eircom has will be diluted in any meaningful way, in the absence of appropriate and proportionate SMP obligations.
- 1.7 ComReg undertook full public consultation and considered all comments in arriving at its preliminary conclusions in relation to market definition, market analysis and SMP obligations. As required by Regulation 20 of the Framework Regulations, the draft measure containing these preliminary conclusions was made accessible to the European Commission and the national regulatory authorities (“NRAs”) in other EU member states. ComReg considered all comments on the draft measure and notified the response to the European Commission.
- 1.8 Having determined that the relevant markets reviewed are not effectively competitive, ComReg is now designating eircom with SMP, in accordance with Regulation 27 (4) of the Framework Regulations. This document also contains the final decision instrument setting out the SMP obligations to be imposed on eircom as a consequence of the SMP designation. The final decision instrument is set out as an Annex to this document and the SMP obligations therein are effective, from the date of publication.

## 2 Background to Decision

- 2.1 The decisions contained in this document (ComReg D07/61) relate to the lower and higher level retail narrowband access markets. In making the decisions set out in this document, ComReg has, taken account, of amongst other things, its objectives set out in section 12 of the Communications Regulation Act, 2002 and has taken the utmost account of the European Commission's Recommendation and the SMP Guidelines.
- 2.2 ComReg concluded (as detailed in the SMP decision and the notification document<sup>9</sup>) that there are two access markets:
- A national market for **lower level retail narrowband access**, including access via analogue exchange lines and ISDN BRA carried over copper, cable or FWA; and
  - A national market for **higher level retail narrowband access**, including access via ISDN FRA and PRA.
- 2.3 ComReg is of the view that this market differentiation is justified since there is limited demand and supply-side substitution between lower level and higher level narrowband access. This arises from differing functional characteristics, together with the absence of a common pricing constraint. In addition, ComReg considers that there are different conditions of supply present in the two markets.
- 2.4 This decision is based on the market definition, market analysis and reasoning conducted by ComReg in relation to the market for lower level and higher level retail fixed narrowband access, as part of the consultation process arising from the ComReg documents entitled *Market Analysis: Retail Narrowband Access Markets*, dated 17 August, 2006 ("Document No.06/39") and *Market Analysis: Retail Fixed Narrowband Access Markets*, dated 4 May, 2007 ("Document No. 07/26").
- 2.5 The measures contained in this decision were notified to the European Commission in accordance with Regulation 20 of the Framework Regulations and the provisions of the Article 7 Recommendation.<sup>10</sup> They were registered by the European Commission on 8 May, 2007. The notified measures were accepted by the European Commission, in correspondence to the Chairperson of ComReg dated 7 June, 2007.
- 2.6 Pursuant to Article 7 (3) of the Framework Directive<sup>11</sup>, the European Commission examined the notification and noted that further consultations would be undertaken by ComReg relating to certain SMP obligations including i) the SB-WLR price control obligation, ii) the accounting separation and cost accounting obligations and iii) the current retail price cap order. The European Commission invited ComReg to complete all the consultations, to notify them under Article 7 (3) of the Framework Directive and to adopt the final measures within the shortest possible timeframes in

---

<sup>9</sup> ComReg Document Number 07/26.

<sup>10</sup> Commission Recommendation of 23 July 2003 on notifications, time limits and consultation provided in Article 7 of Directive 2002/21/EC of the European Parliament and the Council on a common regulatory framework for electronic communications networks and services.

<sup>11</sup> Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

order to increase legal certainty and transparency, in line with the objectives of the Framework Directive.

- 2.7 In Document No. 07/26, ComReg consulted upon its draft decision instrument and asked if respondents believed that the text of the draft decision instrument was from a legal, technical and practical perspective, sufficiently detailed, clear, precise and intelligible with regard to the specifics of the remedies proposed. All comments in relation to Document No. 07/26 were carefully considered by ComReg. The final decision instrument is contained in the Annex to this document.

### 3 Market Review

#### Market Definition

- 3.1 ComReg has decided that the relevant product markets are the markets for lower level retail narrowband access<sup>12</sup> and higher level retail narrowband access<sup>13</sup>.
- 3.2 ComReg adopted the European Commission's Recommendation as its starting point for defining the markets, such that the review was concerned with the ability of customers to access the public fixed telephone network.
- 3.3 ComReg has concluded that there are not separate markets for residential and non-residential users in Ireland. It was determined that its separation of the markets for higher and lower level access more usefully captures the different needs of larger and smaller users of access, primarily by defining them in terms of the services they use, rather than in terms of other features that they may have in common.
- 3.4 ComReg has decided that the relevant geographic market for the product markets is defined as Ireland.

#### Designation of Undertaking with Significant Market Power

- 3.5 The criteria used to assess SMP in the lower level and higher level retail narrowband access markets include:
  - i. Market shares;
  - ii. Barriers to entry and expansion;
  - iii. Economies of scale and scope;
  - iv. Countervailing buying power; and
  - v. Absence of potential competition.
- 3.6 ComReg has decided that eircom is to be designated as having SMP in the markets for lower level and higher level fixed retail narrowband access markets to the public telephone network.

#### SMP Obligations

- 3.7 ComReg is required to impose *ex ante* regulatory obligations that are, appropriate, based on the nature of the problem identified, proportionate and justified in the light of the objectives set out in Article 8 of the Framework Directive. ComReg has identified the SMP obligations that it considers would be appropriate to impose on a SMP operator in these markets. These were the obligations of access to and use of, specific network facilities, transparency, non-discrimination, accounting separation, price

---

<sup>12</sup> Lower Level Access – including services over PSTN, cable connection for telephony, narrowband FWA and ISDN BRA.

<sup>13</sup> Higher Level Access – including services over ISDN FRA and PRA.

control and cost accounting obligations. ComReg has decided to impose these obligations on eircom<sup>14</sup>.

- 3.8 In Document 07/26, ComReg consulted upon the draft decision instrument formally imposing these SMP obligations and asked if respondents believed that the text of the decision instrument was from a legal, technical and practical perspective, sufficiently detailed, clear, precise and intelligible with regard to the specifics of the proposed SMP obligations. The comments of respondents were carefully considered and the final decision instrument formalising the SMP obligations to be imposed on eircom is set out in the Annex to this document.

---

<sup>14</sup> A parallel consultation is underway in relation to appropriate price controls that may be imposed on eircom.



## 4 Response to Consultation on the Draft Decision Instrument

### Introduction

- 4.1 Two responses were received in relation to the consultation on the draft decision instrument contained in Document No. 07/26. ComReg received detailed submissions from the two respondents listed below by the close of the consultation period:
- BT Ireland Ltd; and
  - eircom.
- 4.2 ComReg would like to thank both respondents for their submissions. ComReg has taken all of their comments into account in arriving at its final conclusions. ComReg would note that the amendments to the decision instrument do not involve substantial changes to the nature, or type of SMP obligations that it originally proposed to impose in Document No. 07/26.
- 4.3 This document sets out ComReg’s responses to comments received on foot of Document No. 07/26.
- 4.4 This document also finalises the decision instrument in relation to SMP to be imposed, on (or withdrawn from) eircom. The SMP obligations applicable to eircom in relation to the relevant markets (as outlined in the Annex) will be imposed and effective from the date of publication of this document.

### **Responses to consultation and ComReg’s Position**

- 4.5 One respondent agreed that existing obligations on eircom should continue and that eircom must provide open access to information and other systems. The respondent also agreed that ComReg should conduct a further consultation in relation to Service Level Agreements (“SLAs”) although the respondent expressed concern that ComReg did not appear to wish to intervene more directly to resolve ongoing issues and to improve SLAs going forward. With regard to bundling, the respondent expressed disappointment that ComReg had not chosen to take a much tougher line with eircom, given the level of dissatisfaction in the market regarding the unfair advantage that eircom’s ability to bundle afforded it.
- 4.6 In relation to bundling, ComReg (as noted in the response to consultation) is cognisant that although bundling has the potential to provide net welfare gains to end users, it could also in certain circumstances be used to foreclose and/or dampen competition in the retail narrowband access markets, and possibly related markets (e.g. retail calls). ComReg believes that its approach balances these dual concerns by ensuring that regulatory intervention would take place where it is considered that bundling is being implemented by the SMP operator in an anti-competitive manner.
- 4.7 A second respondent made a detailed submission describing certain aspects of the draft decision instrument, which they considered required clarification and in some instances, further assessment and amendment. These comments in relation to the relevant sections of the draft decision instrument are set out below and are, followed by ComReg’s views on whether the proposed changes are justified and should be

adopted. In each case, the section numbers refer to those in the draft decision instrument contained in Document No. 07/26.

- 4.8 **Section 5.1:** The respondent noted that the draft decision instrument did not refer to Carrier Access (“CA”). If it was intended to continue eircom’s obligations in respect of CA, the draft decision instrument should be amended to explicitly refer to it in section 5.1. ComReg has amended the draft decision instrument to refer to CA where applicable, in order to carry over eircom’s obligations in relation to CA, pending a review of the product use.
- 4.9 **Section 5.2:** The respondent stated that in relation to the term “indispensable for the interoperability of services or virtual network services”, no definitions were provided. In the interest of certainty, practicability and clarity they suggested that they be deleted and replaced with the words “indispensable for the interoperability of the services set out in 5.1”. ComReg is not minded to adopt this proposal. ComReg notes that this term is derived directly from Regulation 13 (2) (h) of the Access Regulations as cited in the text. ComReg does not consider that it would be appropriate to delimit the scope of this legislative provision. ComReg is in particular, cognisant of the need to “future-proof” the wording of the decision instrument, so as to ensure that the obligations imposed on eircom now, remain in force and relevant over the timeframe of the review. For example, should the suite of products within the relevant markets change, or should new product variants/subsets be introduced, ComReg does not consider that it would be required, or justified that a *new market analysis* be conducted, or that a new set of SMP obligations be imposed, in order for such new product variants/subsets on the markets to be properly subject to regulatory obligations *already* imposed on eircom.
- 4.10 **Section 5.3:** The respondent expressed the view that this section must be confined to the requirements set out in section 5.1. In addition, they noted that the obligation to “take all necessary and appropriate measures to fulfil and implement the requirements of OAOs” was far too broad and that it needed to be made conditional on the requirement being reasonable and proportionate, with a sufficient market demand to support it. ComReg accepts the respondent’s observation that this section should be confined to the requirements set out in section 5.1 and has amended the text accordingly. In relation to the respondent’s second point, ComReg does not consider that it would be appropriate to amend the wording of the decision instrument as proposed. ComReg notes and accepts the respondent’s views that the requirement must be reasonable, feasible and possible. It acknowledges the amount of work involved in assessing an individual request, but also notes that this provision is not intended to encourage operators to make what might be termed as “spurious” requests. However, ComReg considers that it would not be possible, or practicable to delineate in advance what is “reasonable”. Each request would need to be considered on a case by case basis. In particular, ComReg notes that eircom is not the final arbiter of what is reasonable. That is a question that might if circumstances so dictated, be referred to ComReg, or indeed the courts. However, if there were demonstrably no demand for the requirement, common sense would suggest that it could not be reasonable. In this regard however, ComReg has concerns regarding the proposed reference by the respondent to “sufficient market demand”. ComReg considers that this is a potentially very subjective term, which could be open to abuse by eircom, in a manner that could discriminate against smaller market players.

- 4.11 **Sections 5.4 and 5.5:** The respondent noted that eircom did not use carrier pre-selection (“CPS”) to provide services to the retail market and that sections 5.4 and 5.5 should be removed, on the basis that it was not capable of implementation by eircom. If the intent was to reference the call services provided over CPS, the respondent noted that these services were covered in the separate market for retail calls and were as such, outside of the scope of the draft decision instrument. In relation to these issues, ComReg notes that the respondent is focussing on CPS in relation to its calls function. However, ComReg notes that CPS is also used as an access mechanism to facilitate call origination and routing which eircom self-provides (i.e. the ability to offer call origination rather than the calls themselves) which is the context in which it is referred to in these sections. For example, the standard by which eircom self-provides these services (e.g., fault handling and order handling) should be equivalent to those provided to other authorised operators (“OAOs”) in relation to the CPS product. Accordingly, ComReg does not believe that it is appropriate to remove these provisions.
- 4.12 **Section 5.6:** The respondent maintained that section 5.6 should be removed from the draft decision instrument on the basis that it was unreasonable and unnecessary. They maintained that any SLA obligations should reflect the simplicity of the activity involved; the imposition of the proposed detailed obligations as set out in the draft decision instrument on this simple wholesale service represented unjustified and disproportionate regulation. ComReg notes that there are three variants of the product – CA, CS<sup>15</sup> and CPS<sup>16</sup>. A published SLA applies in relation to CPS. However, there is no SLA in place for CA/CS. ComReg considers that the existing SLA for CPS should be mandated, since it contains provisions for order handling and provisioning, faults and statistical reporting on performance (to ComReg and OAOs) etc. which are essential product elements. In relation to CA and CS, there does not currently appear to be sufficient justification for requiring a SLA in relation to these products and therefore, this provision has been amended so that it now relates solely to a SLA for CPS.
- 4.13 **Section 5.7:** The respondent stated that the obligation imposed by section 5.7 was far too broadly stated and that in the interests of certainty, practicability and clarity it should be limited to the obligations imposed by section 5 of the draft decision instrument. ComReg notes the requirement to future-proof these obligations as discussed in paragraph 4.9 above. Accordingly, it considers that the scope of the decision instrument should not be unduly delimited. However, ComReg has further defined the scope of this provision by amending the text to refer to “the provision of the services referred to in section 5.1”.
- 4.14 **Sections 5.10 and 6.11<sup>17</sup>:** The respondent noted that there were exceptions to the basic notification procedures and timelines for changes to the text of eircom’s reference interconnect offer (“RIO”) text (as set out in Decision Notice D10/02<sup>18</sup>) and in relation to changes made in the price lists supporting the RIO<sup>19</sup>, and in the interests of

---

<sup>15</sup> Carrier Select.

<sup>16</sup> Carrier Pre Select.

<sup>17</sup> Section 6.10 of the revised Decision Instrument.

<sup>18</sup> ComReg Document 02/55, 26 June 2002.

<sup>19</sup> Reference Interconnect Offer.

certainty and practicability, they should be explicitly referenced here. ComReg has accordingly, amended the text of the provisions to reflect this.

- 4.15 **Section 5.12:** The respondent expressed the view that the obligation imposed by section 5.12 was far too broadly stated. They maintained that the current obligations on eircom in relation to CA/CS and CPS were fully discharged through the offerings published in its RIO and if something more than this was intended, that it should be explicitly stated in the decision instrument. ComReg notes the need to ensure that the regulatory obligations imposed are sufficiently flexible to operate over the timeframe of the review, as highlighted in paragraph 4.9 above. If completely static obligations - tied to current market circumstances (or a current version of the RIO) were imposed, they would be unable to account for dynamic changes in the markets over the period of the review. As such, a level of flexibility in the decision instrument is required.
- 4.16 **Section 5.13**<sup>20</sup>: The respondent stated that if additional obligations in excess of those referenced in paragraph 5.14 were intended here, then those obligations should be explicitly set out in the decision instrument. ComReg again notes the need for flexibility in the decision instrument and as such, this provision is unchanged.
- 4.17 **Section 6:** The respondent noted that the relevant obligation was to provide “Single Billing through Wholesale Line Rental” (“SB-WLR”) and that references to WLR throughout section 6 of the draft decision instrument should be changed to SB-WLR. ComReg welcomes the respondent’s clarification in relation to this point and has amended all references to “WLR” to now read “SB-WLR”.
- 4.18 **Section 6.1:** The respondent suggested that the obligation imposed by section 6.1 was far too broadly stated. For example, the respondent did not accept, as ComReg proposed in paragraph 6.39 of the response to consultation that “the coexistence and migration (to and from) SB-WLR would be provided to OAOs in a non-discriminatory manner”. They were of the view that in respect of the generally stated access obligations in the draft decision instrument, specific additional obligations could only arise in the future, following an assessment of reasonableness. They did not accept that there was an obligation to do so, given that this consultation did not contain any analysis that would justify the imposition of an obligation. ComReg notes that eircom has agreed to provide all requested migration paths, including those paths where an operator migrates its own customer base currently provided over indirect access products, such as wholesale line rental (“WLR”) and Bitstream, to both full unbundling and line share.<sup>21</sup> ComReg notes that section 6.1 states that “eircom shall meet all reasonable requests for access” and that as noted in paragraph 4.10 above, it would not be possible to delineate in advance what is “reasonable”. Each request would need to be considered on a case by case basis. In particular, ComReg would again note that eircom is not the final arbiter of what is reasonable. Furthermore, while ComReg accepts that in general, requests for access must be reasonable, it will be vigilant in ensuring that the issue of reasonableness is not deployed tactically, to hinder, or delay legitimate requests for access that ought to properly be viewed as being reasonable.

---

<sup>20</sup> Section 5.12 of the final Decision Instrument.

<sup>21</sup> Status Update on Local Loop Unbundling – Issue 8, ComReg Document 07/25, 3 May 2007, page 3.

- 4.19 **Section 6.2:** The respondent observed that in light of ComReg’s determination that the SB-WLR Code of Practice was withdrawn; the reference in section 6.2(ii) to the SB-WLR Code of Practice should be deleted. ComReg notes that it is currently engaged in a Code of Practice review the effect of which is that the SB-WLR Code of Practice will be superseded by new regulatory guidelines. Therefore, the reference to the SB-WLR Code of Practice has been removed from the final decision instrument. Furthermore, it is recognised that codes of practice still exist within the industry, and that other statutory obligations arising from other overarching legislation, would mean that many of the current provisions in the Code of Practice will still have to be adhered to.
- 4.20 **Section 6.3:** The respondent noted that this section referred to previous decisions and directions containing obligations which may now be obsolete. They suggested that eircom’s current obligations in relation to SB-WLR were fully discharged through the offerings published in its RIO and that if something wider than this was intended, then additional obligations should be explicitly stated in the decision instrument. ComReg notes the need for a level of flexibility in the decision instrument as highlighted in paragraph 4.15 above.
- 4.21 **Section 6.4<sup>22</sup>:** The respondent noted that no definitions were provided for the terms “indispensable for the interoperability of services or virtual network services” and suggested that they should be replaced with “indispensable for the interoperability of services set out in 6.1”. In addition, they referred to the requirement under sub-section (iii) and explained that they did not understand the proposal to extend this requirement to development programmes. They maintained that the output of planned development programmes would be captured by the obligations imposed in respect of items 1 and 2 and that as such the reference to development programmes should be deleted. In relation to the respondent’s first comment, ComReg refers to the discussion of this issue in paragraph 4.9 above and therefore, this provision is unchanged. In relation to the respondent’s second observation, ComReg has reconsidered the issue of notification of proposed changes to development programmes and considers that any concerns regarding potential competition problems which may arise, should be adequately addressed by eircom’s non-discrimination obligation. Accordingly, the reference to development programmes is now deleted from the final decision instrument.
- 4.22 **Section 6.6<sup>23</sup>:** The respondent did not agree with what it described as the unbounded terms of the obligation to “provide a wholesale equivalent for retail offerings offered by eircom in the Markets”. They indicated that the emphasis in this context should be to ensure the technical and commercial replicability, or the “technical and economic viability of using or installing competing facilities” (as per Regulation 13 (4) of the Access Regulations) of eircom’s offerings on the retail market – achieved through own supply of necessary inputs, or wholesale supply of inputs by eircom and third parties. The respondent expressed the view that imposing obligations for access and non-discrimination with no reference to an assessment of proportionality – and in particular – replicability – was not appropriate. In relation to this point, ComReg notes that one of the key principles underlying its assessment of regulatory obligations

---

<sup>22</sup> Section 6.3 of the final decision instrument.

<sup>23</sup> Section 6.5 of the final decision instrument.

is that of proportionality. Further, ComReg considers that it would not be appropriate for eircom to be given the discretion to itself carry out an assessment of proportionality and/or replicability, due to the inherent subjectivity of such an exercise. It must be borne in mind in this context that the purpose of these regulatory obligations is to address potential competition problems which may arise from eircom’s position of SMP in these markets.

- 4.23 **Section 6.7<sup>24</sup>**: The respondent expressed serious concerns about the proposed approach to SLAs in the draft decision instrument. The respondent outlined that they fully understood the importance of appropriate SLAs between eircom and its customers. However, the approach outlined in the response to consultation (paragraph 6.123) and reflected in section 6.7 of the draft Decision Instrument fundamentally misunderstood the nature of a SLA. It could not at the same time be a contract between supplier and customer, and a regulatory obligation enforceable by ComReg. If eircom did not meet the terms of a SLA for a regulated product, then the SLA provided a remedy for the operator concerned. If ComReg intended to impose quality of service obligations on eircom, then that was a different matter entirely and should be addressed by ComReg following appropriate consultation. Without prejudice to the respondent’s serious reservations about section 6.7, they noted that the reference in i) should refer to 6.1 instead of 5.1. In addition, the respondent noted that subparagraph viii) appeared to impose a requirement to report separately for PSTN and ISDN. The respondent maintained that this was not a requirement of the current SLA and had not been raised by OAOs at the industry forum. The respondent believed that it should not be imposed as an obligation, as it would create substantial additional systems development and administrative costs for eircom, which would have to be recovered from industry through higher transaction charges. ComReg notes that the need for further consultation on the detailed contents of SLAs in respect to the CPS and SB-WLR products was signalled in the response to consultation. In relation to the respondent’s other comments, ComReg has amended the reference in i) to refer to 6.1 and 6.2. Sub-section vii) has also been amended to allow eircom to demonstrate to ComReg that the provision of full accurate and comprehensive performance statistics as specified would not be proportionate, or reasonable.
- 4.24 **Section 6.8<sup>25</sup>**: The respondent maintained that the obligation imposed by section 6.8 was far too broadly stated and that in the interest of certainty, practicability and clarity it should be limited to the obligations imposed by section 6.1. As noted above, ComReg wishes to once again underline the necessity to ensure that the regulatory obligations imposed under this decision instrument are worded in such a way so as to ensure that they are sufficiently flexible over the timeframe of the review. Notwithstanding this, for clarity the decision instrument has been amended to refer to “the services and facilities referred to in sections 6.1 and 6.2”.
- 4.25 **Section 6.12<sup>26</sup>**: The respondent stated that section 6.12 should be amended to reflect the fact that certain transaction charges are cost oriented and not based on the retail minus 10% calculation. ComReg accepts this point and has amended the decision instrument accordingly.

---

<sup>24</sup> Section 6.6. of the final decision instrument.

<sup>25</sup> Section 6.7 of the final decision instrument.

<sup>26</sup> Section 6.11 of the final decision instrument.

- 4.26 **Section 6.13<sup>27</sup>**: The respondent expressed the view that the seven week notification period was excessive and that the rationale supporting it was inconsistent with that provided in respect of the withdrawal of the obligation to publish retail price changes, and with that set out in respect of cost oriented charges. The respondent also noted that at the time of the initial review and in the publication of its subsequent consultation (DocumentNo.06/39) that ComReg made no reference to implementation of Regulation 17 (4) of the Universal Service Regulations<sup>28</sup> and proposed to oblige eircom to publish changes to wholesale prices 15 days before they came into effect. The respondent stated that this was a very significant issue with serious repercussions for all operators, as well as the serious negative consequence of dampening competition by encouraging price following and deterring more dynamic price setting by both eircom and its competitors. In the interests of transparency, the respondent requested that ComReg provided a fuller explanation as to why it has further considered its proposed approach and that ComReg reconsider the application of Regulation 17 in the context of the decision instrument. The respondent noted that, even assuming the proposed notification period remained unchanged, the notification requirement should at a minimum apply only to permanent price and tariff increases to existing customers of eircom services. They suggested that advance notification should in any event; only apply to recurring charges such as rental. One-off charges driven by customers ordering new product elements, such as connection charges, should be excluded from this obligation, as should elements such as promotions. ComReg notes that the need for compatibility with the provision of Regulation 17 (4) of the Universal Service Regulations was highlighted by one of the respondents to consultation and that a thoroughgoing rationale for this change was given in Document No.07/26. In relation to the respondent’s comments, ComReg has amended the provision to allow price changes to be excluded from this requirement, on a case by case basis, where eircom believes the nature of the change would not have a significant impact on the market and there is no necessity for pre-notification of retail customers under the Universal Service Regulations.
- 4.27 **Section 7**: In light of the significant obligations imposed on eircom to provide wholesale inputs to enable OAOs to compete in the retail market, the respondent did not believe that it was necessary or appropriate to impose SMP obligations in respect of eircom’s retail activities. ComReg considers that a complete explanation of why obligations at the retail level are both justified and proportionate has been provided in Document No.07/26. In particular, the need for regulatory controls at the retail level - in addition to those imposed at the wholesale level - was fully justified.
- 4.28 **Section 7.3**: The respondent referred to footnote 35 of the draft decision instrument in relation to the meaning to be given to the term “undue preference”. The respondent expressed the view that the explanation provided did not capture the various different circumstances in which the concept arose and should be removed from the decision. In relation to this comment, ComReg has removed footnote 35 from the final decision instrument.
- 4.29 **Section 9**: The respondent noted that the effect of section 9 was to maintain in force the obligations imposed on eircom immediately prior to the date of the ultimate

---

<sup>27</sup> Section 6.12 of the final decision instrument.

<sup>28</sup> The European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2003

decision to the extent they related to products and services within the scope of the decision instrument. In the interests of clarity, practicability and certainty, the respondent suggested that ComReg should articulate which of the obligations concerned were, and were not, continued in force by way of section 9. They suggested that this could be achieved by way of producing a compendium containing the relevant parts of the decisions and directions. In relation to this point, ComReg notes the inclusion of the wording in this section – “in force immediately prior to the effective date of this Decision Instrument” – which was intended to establish the scope of obligations intended to continue in force once the decision instrument became effective. ComReg has given consideration to producing a compendium containing previous decisions and direction in relation to CA, CS, CPS and SB-WLR. Having carefully considered the issue, it would appear that as eircom is currently providing these products and services through the development of its reference offers and industry documentation and has therefore in practice, implemented ComReg’s previous decisions and directions and as such, it should not be necessary to impose these decisions and directions anew<sup>29</sup>. A more practical approach appears to be, that in furtherance of its general obligations to provide those products and services (as provided for by the decision instrument) eircom should be explicitly required, by the terms of the final decision instrument, to continue to provide those products and services in the manner currently being provided and in accordance with eircom’s reference offers and all relevant industry documentation – while allowing for the fact that product and service specifications and the requirements of OAOs can be dynamic and that eircom’s reference offers and industry documentation would need to be amended as the occasion requires (and with regulatory oversight) to reflect this. Accordingly, (what was the existing) section 9 of the decision instrument is now removed and the requirement for eircom to continue to provide those products and services in the manner currently being provided and in accordance with eircom’s reference offers and all relevant industry documentation is reflected in amended sections 5.1 and 6.2 of the final decision instrument in relation to the ongoing provision of CA, CS, CPS and SB-WLR, respectively.

---

<sup>29</sup> This observation is made without prejudice to any investigations by ComReg in relation to compliance by eircom with its current obligations and those imposed under this Decision Notice and Decision Instrument, that may be either pending, or that may arise in the future.



## **ANNEX – DECISION INSTRUMENT**

### **1 STATUTORY POWERS GIVING RISE TO THIS DECISION INSTRUMENT**

1.1 This Decision Instrument relates to the markets for higher and lower level retail narrowband access from a fixed location<sup>30</sup> and is made by the Commission for Communications Regulation (“ComReg”):

- i. Having had regard to sections 10 and 12 of the Communications Regulations Act, 2002;
- ii. Having taken account, of its functions under Regulation 6 (1) of Access Regulations<sup>31</sup>;
- iii. Having (where appropriate) complied with the Policy Directions made by the Minister<sup>32</sup>;
- iv. Having taken the utmost account of the European Commission’s Recommendation<sup>33</sup> and the SMP Guidelines<sup>34</sup>;
- v. Having had regard to the market definition, market analysis and reasoning set out in Document No. 07/26 and the reasoning and individual decisions set out therein and in the preceding parts of this Decision Notice and Decision Instrument, both of which shall where necessary, be construed with this Decision Instrument;
- vi. Having taken account of the submissions received in relation to Document No. 06/39<sup>35</sup>; and
- vii. Pursuant to Regulations 25, 26 and 27 of the Framework Regulations<sup>36</sup>, Regulations 14 and 16 of the Universal Service Regulations<sup>37</sup> and Regulations 9, 10, 11, 12, 13 and 14 of the Access Regulations.

---

<sup>30</sup> Higher Level Access – including services over ISDN FRA and PRA. Lower Level Access – including services over PSTN, cable connection for telephony, narrowband FWA and ISDN BRA.

<sup>31</sup> The European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003.

<sup>32</sup> Policy Directions made by Dermot Ahern T.D. (the then) Minister for Communications, Marine and Natural Resources on 21 February, 2003 and 26 March, 2004.

<sup>33</sup> European Commission Recommendation of 11 February, 2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

<sup>34</sup> Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services.

<sup>35</sup> Consultation – Market Analysis: Retail Narrowband Access Markets, dated 17 August, 2006.

<sup>36</sup> The European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003.

## **2 MARKET DEFINITION**

- 2.1 Pursuant to Regulation 26 of the Framework Regulations, the product markets in this Decision Instrument are defined as the markets for higher and lower level retail narrowband access from a fixed location (“the Markets”) and differ from any defined in the European Commission’s Recommendation.
- 2.2 Pursuant to Regulation 26 of the Framework Regulations, the relevant geographic market with respect to the Markets is defined as Ireland.

## **3 DESIGNATION OF UNDERTAKING WITH SIGNIFICANT MARKET POWER (“SMP”)**

- 3.1 Pursuant to Regulation 25 and Regulation 26 (4) of the Framework Regulations, eircom Limited (“eircom”) is designated as having SMP on the Markets.
- 3.2 A reference in this section to eircom shall be deemed to include that undertaking and any undertaking which is associated with, or is controlled by, or controls, directly or indirectly, the undertaking in question and which carries out business activities in Ireland, where the activities engaged in (either directly or indirectly) are activities falling within the scope of the Markets.

## **4 SMP OBLIGATIONS**

- 4.1 eircom shall have SMP obligations in accordance with and pursuant to Regulations 9, 10, 11, 12, 13 and 14 of the Access Regulations, and Regulations 14 and 16 of the Universal Service Regulations, as set out hereunder.

## **5 WHOLESALE OBLIGATIONS (1): CARRIER SELECTION AND PRE-SELECTION**

### **Carrier selection (“CS”) carrier pre-selection (“CPS”) and carrier access (“CA”)**

- 5.1 As required by Regulation 16 (1) of the Universal Service Regulations, eircom shall enable its subscribers to access the services of any interconnected providers of publicly available telephone services:
- i. On a call by call basis by dialling a carrier selection code;
  - ii. By means of pre-selection, with a facility to over-ride any pre-selected choice on a call-by-call basis by dialling a carrier selection code; and
  - iii. Carrier access.

---

<sup>37</sup> The European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2003.

Without prejudice to the generality of this section 5.1, and its obligations in this Decision Instrument, eircom shall continue to offer and provide CS, CPS and CA in accordance with a reference offer (“RO”) (as referred to in section 5.9) and all industry documentation related thereto, as published on its website.

### **Additional CS, CPS and CA obligations**

- 5.2 Without prejudice to the generality of section 5.1, eircom shall in relation to those services referred to in section 5.1:
- i. Pursuant to Regulation 13 (2) (c) of the Access Regulations, not withdraw access to products, services, features, or additional associated facilities granted without the prior approval of ComReg;
  - ii. Pursuant to Regulation 13 (2) (e) of the Access Regulations, grant open access to technical interfaces, protocols and other key technologies that are indispensable for the interoperability of services or virtual network services; and
  - iii. Pursuant to Regulation 13 (2) (h) of the Access Regulations, provide access to operational support systems (“OSS”) or similar software systems necessary to ensure fair competition in the provision of services.
- 5.3 Pursuant to Regulation 13 (2) (e), 13, 2 (h) and Regulation 10 (1) of the Access Regulations, eircom shall consult fully with undertakings (allowing sufficient time for such consultation) in relation to the development programme for the evolution of access to OSS, fully take in to account representations made by undertakings and take all necessary and appropriate measures to fulfil and implement the requirements of undertakings in relation to those services referred to in section 5.1.

### **Non-discrimination**

- 5.4 Pursuant to Regulation 11 of the Access Regulations, eircom shall have an obligation of non-discrimination in respect of the provision of those services referred to in section 5.1.
- 5.5 Without prejudice to the generality of section 5.4, eircom shall:
- i. Provide a wholesale equivalent for retail offerings offered by eircom in the Markets;
  - ii. Apply equivalent conditions in equivalent circumstances to other undertakings providing equivalent services and provide services and information to others under the same conditions and of the same quality as eircom provides for its own services or those of its subsidiaries or partners; and
  - iii. Ensure that information and services are provided to undertakings according to timescales, on a basis, and of a quality, which are at least equivalent to those provided to eircom’s retail arm and associates.

### **Service level agreement (“SLA”)**

- 5.6 Pursuant to its obligation of non-discrimination under section 5.4 and pursuant to Regulation 13 (3) of the Access Regulations, it shall be a condition of the obligation to provide CPS (referred to in section 5.1, ii) related to fairness, reasonableness and timeliness, that eircom shall:
- i. Conclude legally binding and fit-for-purpose SLAs with undertakings in respect of CPS;
  - ii. Negotiate in good faith with undertakings in relation to the conclusion of a legally binding and fit-for-purpose SLA;
  - iii. Ensure that the SLA includes provision for service credits arising from a breach thereof. Until further notice from ComReg, agreed service credits shall be a matter of negotiation and agreement between eircom and undertakings and recovery of service credits shall be in the first instance, a matter for undertakings and eircom to resolve. This shall not preclude the possibility of ComReg exercising its dispute resolution powers, or of intervening on its own initiative;
  - iv. Update the industry SLA as required, which updates may also be required by ComReg;
  - v. Publish the industry SLA (and any updates thereto) on its website;
  - vi. Until further notice from ComReg, maintain the detailed contents (including performance metrics) of the existing SLA; and
  - vii. Provide to ComReg, on a monthly basis, performance statistics in respect of the provision of CPS. ComReg may at its discretion publish such statistics in its Quarterly Reports. In addition, ComReg may if it deems necessary, conduct audits of the reported performance statistics.

### **Transparency**

- 5.7 Pursuant to Regulation 10 (1) of the Access Regulations and in furtherance of its obligation of non-discrimination under section 5.4 and for the purpose of ComReg monitoring compliance with that obligation, eircom shall, ensure that it is transparent in relation to the provision of the services referred to in section 5.1 .
- 5.8 Without prejudice to the generality of the obligation in section 5.7, ComReg may issue Directions to eircom requiring it to publish specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use and prices.

### **Documentation: Publication of RO**

- 5.9 Pursuant to Regulation 10 (2) of the Access Regulations, eircom shall publish a RO on its website for the services and facilities referred to in section 5.1. The RO shall be sufficiently unbundled so as to ensure that other undertakings availing of such services and facilities are not required to pay for services, or facilities which are not necessary for the service requested and the RO shall include:
- i. A description of the relevant offerings broken down into components according to market needs; and
  - ii. A description of the associated terms and conditions, including prices.
- 5.10 Subject to the exceptions set out in Decision Notice D10/02<sup>38</sup>, eircom shall publish a notice of proposed changes to the RO text on its website for the purpose of notifying all interested parties of such changes. All comments received in relation to the proposed changes by undertakings shall be submitted by eircom to ComReg within 21 (twenty one) calendar days of any such notice and ComReg will either approve, or amend the proposed changes within a further 3 (three) weeks. eircom shall amend and re-publish its RO in accordance with the obligations set out in this section. As provided for by Regulation 10 (5) of the Access Regulations, ComReg may issue Directions requiring eircom to make amendments to the RO to give effect to obligations imposed in this Decision Instrument and to publish the RO with such changes.

#### **Price Control: Cost-orientation of prices**

- 5.11 As required by Regulation 16 (3) of the Universal Service Regulations, eircom shall ensure that its pricing for access and interconnection related to the provision of the services referred to in section 5.1 is cost oriented and that direct charges to its subscribers, if any, do not act as a disincentive for the use of those services.

#### **Accounting separation**

- 5.12 Pursuant to Regulation 12 of the Access Regulations, eircom shall have an obligation to maintain separated accounts. All of the obligations in relation to accounting separation applying to eircom and in force immediately prior to the effective date of this Decision Instrument in respect of access and interconnection related to the provision of the services referred to in section 5.1, shall be maintained in their entirety and eircom shall comply with all of those obligations, pending a further decision to be made by ComReg (following further consultation) in relation to the details of and the implementation of accounting separation obligations and cost accounting obligations.

### **6 WHOLESALE OBLIGATIONS (2): SINGLE BILLING WHOLESALE LINE RENTAL (“SB-WLR”)**

---

<sup>38</sup> ComReg Document 02/55, 26 June, 2002, at page 21. In addition, with regard to pricing (excluding international access rates), under the current process for updating the RIO eircom advises ComReg 7 days in advance of its intention to publish an updated RIO price list. The updated RIO price list is circulated to OAOs 21 days before the changes come into effect.

## **Access**

6.1 Pursuant to Regulation 13 (1) of the Access Regulations, eircom shall meet all reasonable requests for access to and use of such wholesale access products, services, features, or additional associated facilities, by undertakings requesting access or use of such access products, services, features, or additional associated facilities in the Markets, which enable such other undertakings to provide retail equivalents to the retail products offered by eircom in the Markets.

## **SB-WLR**

6.2 Without prejudice to the generality of section 6.1 and its obligations in this Decision Instrument, eircom shall, pursuant to Regulation 13 (2) (d) of the Access Regulations, continue to offer and provide SB-WLR for resale by third parties in accordance with a RO, as currently published on its website (and as referred to in section 6.9) and in accordance with all industry documentation related thereto (and the processes described therein) as published on its website.

## **Additional WLR and SB-WLR obligations**

6.3 Without prejudice to the generality of sections 6.1 and 6.2, eircom shall in relation to those services and facilities referred to in section 6.2:

- i. Pursuant to Regulation 13 (2) (c) of the Access Regulations, not withdraw access to products, services, features, or additional associated facilities granted, without the prior approval of ComReg;
- ii. Pursuant to Regulation 13 (2) (e) of the Access Regulations, grant open access to technical interfaces, protocols and other key technologies that are indispensable for the interoperability of services or virtual network services; and
- iii. Pursuant to Regulation 13 (2) (h) of the Access Regulations, provide access to OSS and similar software systems necessary to ensure fair competition in the provision of services. Proposed changes to any of the following shall not be implemented without adequate prior notification to ComReg and undertakings:
  - The mechanism for access e.g. the Universal Gateway (or other similar mechanism (s)); and
  - The detailed specification of the access mechanism e.g. nature, data fields and content.

## **Non-discrimination**

6.4 Pursuant to Regulation 11 of the Access Regulations, eircom shall have an obligation of non-discrimination in respect of the provision of those services and facilities referred to in section 6.2.

- 6.5 Without prejudice to the generality of section 6.4, eircom shall:
- i. Provide a wholesale equivalent for retail offerings offered by eircom in the Markets;
  - ii. Apply equivalent conditions in equivalent circumstances to other undertakings providing equivalent services and provide services and information to others under the same conditions and of the same quality as eircom provides for its own services or those of its subsidiaries or partners; and
  - iii. Ensure that information and services are provided to undertakings according to timescales, on a basis, and of a quality, which are at least equivalent to those provided to eircom's retail arm and associates.

### **SLAs**

- 6.6 Pursuant to its obligation of non-discrimination under section 6.4 and pursuant to Regulation 13 (3) of the Access Regulations, it shall be a condition of the obligation to provide the services referred to in sections 6.1 and 6.2, related to fairness, reasonableness and timeliness, that eircom shall:
- i. Conclude legally binding and fit-for-purpose SLAs with undertakings in respect of those services referred to in sections 6.1 and 6.2;
  - ii. Negotiate in good faith with undertakings in relation to the conclusion of legally binding and fit-for-purpose SLAs;
  - iii. Ensure that all SLAs include provision for service credits arising from a breach of the SLA. Until further notice from ComReg, service credits shall be a matter of negotiation and agreement between eircom and undertakings and recovery of service credits shall be in the first instance, a matter for undertakings and eircom to resolve. This shall not preclude the possibility of ComReg exercising its dispute resolution powers, or of intervening on its own initiative;
  - iv. Update the industry SLA as required, which updates may also be required by ComReg;
  - v. Publish the industry SLA (and any updates thereto) on its website;
  - vi. Until further notice from ComReg, maintain the detailed contents (including performance metrics) of the existing SLA; and
  - vii. Provide to ComReg, on a monthly basis, performance statistics in writing in respect of the services provided to undertakings for PSTN and ISDN services. Where eircom does not provide full accurate and comprehensive performance statistics in fulfilment of this obligation, it shall demonstrate to ComReg's satisfaction that it was not proportionate, or reasonable to do so. ComReg may at its discretion publish such statistics in its Quarterly

Reports. In addition, ComReg may, if it deems necessary, conduct audits of the reported performance statistics.

### **Transparency**

- 6.7 Pursuant to Regulation 10 (1) of the Access Regulations and in furtherance of its obligation of non-discrimination under section 6.4 and for the purpose of ComReg monitoring compliance with that obligation, eircom shall, ensure that it is transparent in relation to the provision of the services referred to sections 6.1 and 6.2.
- 6.8 Without prejudice to the generality of the obligation in section 6.7, ComReg may issue Directions to eircom requiring it to publish specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use and prices.

### **Documentation: Publication of RO**

- 6.9 Pursuant to Regulation 10 (2) of the Access Regulations, eircom shall publish a RO for the services referred to in section 6.2. The RO shall be sufficiently unbundled so as to ensure that other undertakings availing of such services and facilities are not required to pay for services, or facilities which are not necessary for the service requested and the RO shall include:
- i. A description of the relevant offerings broken down into components according to market needs; and
  - ii. A description of the associated terms and conditions, including prices.
- 6.10 Subject to the exceptions set out in Decision Notice D10/02<sup>39</sup>, eircom shall publish a notice of proposed changes to the RO text on its website for the purpose of notifying all interested parties of such changes. All comments received in relation to the proposed changes by undertakings shall be submitted by eircom to ComReg within 21 (twenty one) calendar days of any such notice and ComReg will either approve, or amend the proposed changes within a further 3 (three) weeks. eircom shall amend and re-publish its RO in accordance with the obligations set out in this section. As provided for by Regulation 10 (5) of the Access Regulations, ComReg may issue Directions requiring eircom to make amendments to the RO to give effect to obligations imposed in this Decision Instrument and to publish the RO with such changes.

### **Price Control: Retail-minus pricing**

- 6.11 Pursuant to Regulation 14 (1) of the Access Regulations, the prices charged by eircom to any other undertaking for access to or use of the services and facilities

---

<sup>39</sup> ComReg Document 02/55, 26 June 2002. See page 21. In addition, with regard to pricing (excluding international access rates), under the current process for updating the RIO eircom advises ComReg 7 days in advance of its intention to publish an updated RIO price list. The updated RIO price list is circulated to OAOs 21 days before the changes come into effect.



referred to in section 6.2 (except those that are subject to a cost orientation SMP obligation) shall be at least 10% less than the retail price charged by eircom to its end-users for retail access to the public telephone network at a fixed location or as amended, which is the retail equivalent of such services and facilities. In addition, eircom shall comply with the obligations described in the following Decision Notices issued by ComReg:

- D03/24. Wholesale Line Rental - Pricing Issues.
- D 04/34 Wholesale Line Rental - Pricing Issues, Margin.

### **Price notification**

6.12 eircom shall:

- i. Notify ComReg in writing of any proposed amendments to wholesale prices for the services referred to in section 6.2, no later than 2 (two) months prior to its retail price amendment taking effect;
- ii. Publish any amendments to wholesale prices for the services referred to in section 6.2, no later than 7 (seven) weeks prior to the retail price amendment taking effect; and
- iii. Amendments to prices may be excluded from this requirement on a case by case basis, where eircom demonstrates that the nature of the amendment would not have a significant impact on the market and there is no necessity for pre-notification of retail customers under the Universal Service Regulations.

### **Accounting separation and cost accounting**

6.13 Pursuant to Regulation 12 of the Access Regulations, eircom shall have an obligation to make transparent its wholesale prices and its internal transfer prices by maintaining separated accounts in respect of the services and facilities referred to in section 6.2. All of the obligations in relation to accounting separation applying to eircom and in force immediately prior to the effective date of this Decision Instrument in respect of access and interconnection related to the provision of the services and facilities referred to in section 6.2, shall be maintained in their entirety and eircom shall comply with all of those obligations, pending a further decision to be made by ComReg (following further consultation) in relation to the details of and implementation of accounting separation obligations and cost accounting obligations. Without limiting the generality of the obligation to comply with all accounting separation obligations in force immediately prior to the effective date of this Decision Instrument, eircom shall continue to comply with *inter alia*, the obligations described in the following Decision Notices previously issued by ComReg:

- D5/99 – Accounting Separation and Publication of Financial Information for Telecommunication Operators.

- D8/99 – Costing Methodology for use in Accounting Separation.
- D10/99 – Accounting Separation and Publication of Financial Information for Telecommunications Operators.
- D9/00 – Accounting Separation and Publication of Financial Information for Telecommunications Operators.
- D10/00 – Accounting Separation and Publication of Financial Information for Telecommunications Operators, Supplemental Information referring to Decision Notice D9/00.
- D2/01- Accounting Separation for Internet Service provision and Report on Investigation into Indigo and eircom.net.
- D7/01- eircom’s Reference Interconnection Offer & Accounting Separation and Publication of Financial Information for Telecommunications Operators.
- D12/01- Revision of Timetable for Publication of Separated Accounts and Financial Information by eircom.

## **7 RETAIL CONTROLS ON THE MARKETS**

### **Price control**

- 7.1 eircom shall continue to comply with all obligations applicable to it under Regulation 21 of the European Communities (Voice Telephony and Universal Service) Regulations, 1999 and the Telecommunications Tariff Regulation Order, 2003, pending a decision by ComReg (following further consultation) in relation to price controls on the Markets.
- 7.2 For the avoidance of doubt, nothing in this Decision Instrument is intended to nor shall it in any way (either expressly or by implication) affect, the continuing validity of the Telecommunications Tariff Regulation Order, 2003, which, remains in full force and effect, unless expressly amended or revoked by ComReg pursuant to s 7 of the Telecommunications (Miscellaneous Provisions) Act, 1996.

### **Undue preference**

- 7.3 Pursuant to Regulation 14 (2) (c) of the Universal Service Regulations, eircom shall not show undue preference to specific end-users.

### **Transparency**

- 7.4 Pursuant to Regulation 14 (1) of the Universal Service Regulations, eircom shall notify ComReg no later than 5 (five) working days in advance of proposed changes to the terms and conditions of supply within the Markets. In this section, the

expression “working day” means any day other than Saturday, Sunday, a bank holiday or a public holiday.

- 7.5 eircom shall publish in its public offices and on its website, all changes in relation to terms and conditions of supply promptly, once such changes come into effect.
- 7.6 eircom shall, in respect of services within the Markets, supply such services only at the published price.
- 7.7 Pursuant to Regulation 18 (1) of the Universal Service Regulations, eircom shall ensure that transparent information in relation to applicable prices and tariffs and standard terms and conditions in respect of access to and use of publicly available telephone services is available to end users and consumers and published.

### **Unreasonable bundling**

- 7.8 Pursuant to Regulation 14 (2) (c) of the Universal Service Regulations, eircom shall not unreasonably bundle services<sup>40</sup>.
- 7.9 Without prejudice to the generality of section 7.8, where eircom offers a number of services within a bundle, it shall ensure that end-users are able to purchase an individual service included in any such bundle without being required by contractual, or non-contractual means to purchase the entire bundle of services and that tariffs for the individual services comprising any such bundle, comply with the principle that end-users should not be required to pay for services, or facilities which are not necessary for the service requested.

### **Cost accounting**

- 7.10 Pursuant to Regulation 14 (5) of the Universal Service Regulations, eircom shall operate and maintain a cost accounting system that is:
- i. Based on generally accepted accounting practices;
  - ii. Suitable for ensuring compliance with the obligations imposed under section 7; and
  - iii. Is capable of verification by ComReg.
- 7.11 eircom shall continue to comply with all of the obligations in relation to cost accounting applying to eircom and in force immediately prior to the effective date of this Decision Instrument, pending a decision by ComReg (following further consultation) in relation to accounting separation obligations and cost accounting obligations.

## **8 STATUTORY POWERS NOT AFFECTED**

---

<sup>40</sup> Guidance in relation to what constitutes “unreasonable bundling” for the purposes of section 7.6 of this Decision Instrument and ComReg’s approach to this issue is set out in paragraphs 6.135 – 6.142 of this document.

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

## **9 EFFECTIVE DATE**

- 9.1 This Decision Instrument is effective from the publication date of this decision notice<sup>41</sup>.

**MIKE BYRNE  
CHAIRPERSON  
THE COMMISSION FOR COMMUNICATIONS REGULATION  
THE 24<sup>TH</sup> DAY OF AUGUST 2007**

---

<sup>41</sup> Under the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 (as amended) a user or an undertaking affected by a decision of ComReg has a period of 28 days, from the date they are notified to it (that date being the publication date) to appeal the decisions herein.