



Office of the Director of
**Telecommunications
Regulation**

Decision on *eircom*'s introduction of a transit charge for freephone traffic from mobile networks to OLO networks

Draft for Consultation

Document No. ODTR 01/08

February 2001

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1. Introduction

This Draft Decision Notice concerns the introduction by eircom of new charging arrangements for the handling of calls to freefone numbers where:

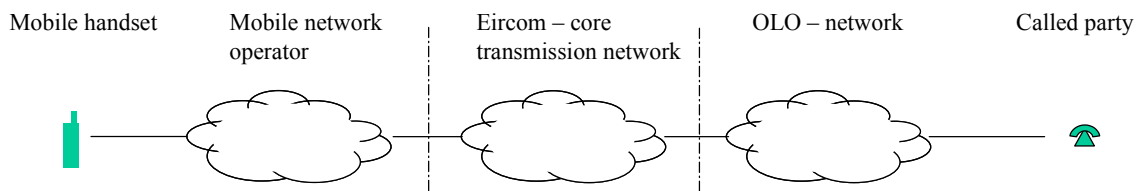
- these calls are originated from a mobile handset, and
- terminate on a freefone number operated by a licensed operator other than eircom.

The Director of Telecommunications Regulation (“the Director”) is responsible for the regulation of the Irish telecommunications sector in accordance with national and EU legislation. The Director has been making concerted efforts over a considerable period to reach a pragmatic resolution of the complex issues at the heart of the matter. She considers that continued failure to resolve concerns will prevent effective competition and the interoperability of services. Having concluded that no agreement will be reached by the parties involved, the Director is therefore invoking powers under the Interconnection Regulations¹ to resolve the impasse in a manner that balances the conflicting interests of the parties.

The document describes the background to this Decision, the Director’s approach, an analysis of the issues of concern and the Director’s view on these and, in appendix, events taken to date and the legal framework underpinning this Decision.

2. Background to this Decision

This Decision relates to the payments made between operators when handling calls to freefone numbers made from a mobile handset. The situation is different from ordinary telephone calls because of the nature of payment and the number of operators involved. A schematic diagram of the elements used to complete the end-to-end connection is presented below.



The call is made from a mobile handset but, because an 1800 (freefone) number is dialled, the mobile network operator (MNO) adds no charge to the customer’s bill.

¹ European Communities (Interconnection in Telecommunications) Regulation, 1998 (SI 15 of 1998).

As MNOs do not yet interconnect directly with other licensed operators (OLOs)², the call then passes to eircom. A particular situation arises when an OLO rather than eircom has allocated the freefone number either directly to a customer or, as in the case for Budget Telecom for example, where the freefone number is used as a means of accessing a separate service³. The call in this case merely *transits* the eircom network and is terminated by the OLO who then charges its customer for the call. Nevertheless, both the originating MNO and eircom incur costs in handling the call.

Within the telecommunications industry charges are often passed between operators in a 'cascade'. Under this system, the originating MNO would seek reimbursement from eircom which in turn would seek transparent reimbursement for this cost (and, additionally, its own legitimate costs in handling the call) from the OLO. Separate interconnection agreements between eircom and MNOs, and eircom and OLOs exist. For the cascade to work properly these agreements must be aligned. The alternative to the cascade approach would be direct billing where the terminating OLO pays the originating MNO directly without using eircom as intermediary. No such arrangements are currently used in Ireland for mobile calls going to freefone numbers.

Although transit from mobile handsets to freefone numbers has been possible for some time eircom did not initially pass on MNO origination charges to the terminating OLO. It is noted that eircom did, during this period, make a charge covering its own network costs that were incurred as a result of the call transiting its network. The Director understands that this decision was, at least in part, due to the small volumes of traffic involved and technical difficulties and cost in billing calls correctly. As a consequence, interconnection agreements were not in alignment. However, as time progressed eircom, considered it commercially imperative to seek to recover these origination charges from the terminating OLOs.

It is evident that this decision has in part been influenced by a rapid growth in traffic volumes as competing operators (for example Budget) sought to develop new services that relied on freefone access. Indeed, it appears that no operator predicted that the growth in mobile traffic to freefone numbers would reach the levels which they have. Accordingly, eircom first sought formally to modify its transit charge to include the MNO origination charges on 1 July 2000.

The principle of recovering these costs in accordance with correct procedures is fully accepted by the Director and, indeed, the appropriateness of such a charge by MNOs is accepted by affected parties. The issue under consideration in this Decision Notice relates specifically to the manner in which notification of intention to charge was provided and to the correct identification of calls incurring the charge. These matters and the Director's opinion on them are addressed in section 5 of this Decision Notice.

² For the purpose of this Decision notice Other Licensed Operators (OLOs) refers to all fixed licensed operators other than eircom affected by this Decision.

³ Budget Telecom uses freefone numbers as a means of access to a service that allows Budget Telecom customers to make calls from their mobile handsets at lower rates than if they had made the call directly. Provided that the customer's account with Budget Telecom is in credit, the customer is connected to the required number and charges are deducted from that account. Part of this revenue is used to pay relevant interconnection charges. This service is of relevance because of the volumes of traffic it has generated and the competitiveness of the service.

The matters addressed in this document first came to the attention of the Director as part of a specific request by *eircom* for the Director to intervene in a matter involving Budget Telecom. To begin with, the Director treated the matter as a dispute and a draft determination on the matter was issued on 1st December 2000. A full description of events is given in appendix B. It should be noted that this Decision Notice supersedes the draft determination.

3. The Director's approach

The legal framework underpinning this Decision is set out in Appendix A.

Despite her investigations commencing on foot of a dispute between *eircom* and Budget Telecom, the Director has determined that the issues raised in this dispute affect not only *eircom* and Budget Telecom but the whole industry and that any solution requires the co-operation of all parties, including MNOs, if effective interconnection is to work. The introduction of new points (for example, signalling information) raised since the draft determination and requiring further industry-wide discussion highlights this point.

The Director believes that failure to resolve these issues will hinder effective competition and interoperability of services. In particular, the Director has noted the statements made by the MNOs to discontinue mobile services to freephone numbers transited over *eircom* networks and terminated on OLO networks if payments are not released. The Director has also noted *eircom*'s stated intention to cease to provide a cascade accounting service for 1800 and (additionally) 1850 services. If this were to materialise, the OLOs would immediately have to establish interconnection agreements directly with MNOs and would have to implement new call recording and billing procedures which in turn would have an impact on their IT systems. This process is likely to take some time to implement. The possibility that the disagreement may extend to 1850 services broadens further the competitive impact. If either of these positions were to be put into practice, serious obstacles to the provision of new competing services would arise.

The Director believes that continued uncertainty will impinge upon competition for certain services and possibly preclude market entry. It could also, if the positions mentioned above are realised, stop these services. This, the Director concludes, will have adverse effects on the users of these services in downstream markets (including markets not subject to regulation), whose interest the Director is obliged to take into account.

The Director considers that the matter must be regarded as exceptional for the following reasons:

- a resolution that maintains everyone's position is not possible;
- the distance which still separates the parties' positions is considered unlikely to be bridged by further discussion and ODTR needs to define an appropriate compromise;

- the ODTR has already exerted considerable efforts to advance a resolution of this matter;
- further delays in resolving the issues will only compound the damaging uncertainty that has already arisen;
- the complexity of the technical and legal issues involved, which involve MNOs, *eircom* and OLOs terminating traffic requires an expert treatment that evaluates and balances conflicting submissions;
- a fair resolution of the issue requires the ODTR to exercise its power to require changes to interconnection agreements signed by the operators concerned.

Having regard to these exceptional circumstances and having regard to the legal framework set out in Appendix A, the Director has resolved to invoke powers under the Interconnection Regulations, including Regulation 10(4), to require the actions set out in section 5 of this document.

The Director considers that this Decision will not only deal with the issues raised in the original dispute between *eircom* and Budget but also allow the market to move forward.

The licensees immediately affected by the matters addressed in this Decision are *eircom*, Budget Telecom, Chorus, Eircell, Esat Digifone, GTS, Esat Telecom (Esat & Ocean), Interoute, Meteor, Nevadatele.com, Swiftcall, Swiftcom and Worldcom. In addition, however, the Director has also taken into consideration the need to protect new entrants attempting to enter the Irish market for the provision of telecommunications services. The Director is particularly conscious of the legal obligations on operators designated with SMP in respect of the imposition of charges, which are required to be transparent under Article 8(3) of the Interconnection Regulations.

Notwithstanding this background, the Director – recognising the importance to the industry of the issues raised, their exceptional nature, and the process adopted to date – is issuing this Decision Notice in draft form. This is to allow for further and final comments to be made and considered by the Director but is without prejudice to the Director’s power and obligation to regulate the market generally. Furthermore, it implies no commitment or intention on the part of the Director to issue future decision notices or document in draft form.

All communications pursuant to this Draft Decision Notice should be clearly marked “Draft Decision of the Director regarding *eircom*’s introduction of a charge arising from the transit of freefone traffic from mobile networks to OLO networks” and sent by post, facsimile or e-mail to:

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to arrive on or before 5.30 p.m. on Wednesday 28th February, 2001.

Unless major new matters arise, the Director would envisage making her final decision by Wednesday 7th March 2001.

In the rest of this document, any reference to the Decision Notice should be taken to mean this draft.

4. Actions to date

As has been mentioned, this Decision Notice results from a process that commenced on foot of a dispute. However, the complexity of the issues (as described in section 3) has required the Director, in the interest of competition and interconnectivity, to take a pragmatic approach to reach an effective resolution. This has involved considerable contact between the ODTR and affected parties which has included bilateral and multilateral meeting, telephone conversations, exchange of correspondence and written briefings, and opportunities to comment on process and findings. A detailed chronology of events is set out in Appendix B.

Previously, when issuing a Decision Notice, the Director has issued a consultation document to elicit comments, which she has then considered. In this case, she considers that the process to date has already amounted to a full consultation. Nevertheless, as mentioned in section 3, she is providing a further and final opportunity for affected parties to comment on her draft conclusions by issuing this Decision in draft.

5. The Issues

In this section, the substantive issues raised are addressed. There are two broad areas to address. The first concerns the procedures regarding the notification of the charge and, in particular, the date on which the charge comes into effect. The second broad area is the issue of how parties can identify calls that will be subject to the charge. This is largely a technical issue and it is important to note that the solution is in part reliant on MNOs who would otherwise be unaffected by the Director's conclusions. Concerning the notification of the charge, the Director addresses the following issues:

- Whether the charge is indeed an interconnection charge;
- What notification procedures would have been appropriate;
- The date on which it would have been appropriate for charges to come into effect.

As mentioned in section 2 these questions are unusually complex and the Director is obliged to strike a reasonable balance between the conflicting interests of those involved.

5.1 Interconnection charge

eircom has contended that the ODTR is wrong to treat the charge in question as *eircom*'s charge, or an interconnection charge. *eircom*'s position is that OLOs benefit from the service for which the MNOs raise the origination charge and which *eircom* bears as a *de facto* cost arising from its interconnection agreements with the MNOs. *eircom* says that it only included other operators' origination and termination charges in its schedule for the sake of transparency, even though these formed no part of its own charges. A third party (MNOs) sets the charge, and as such *eircom* has nothing to do with it other than pass the charge on to the OLOs. The third party must be able to vary the charge at its own discretion. The OLO receiving the service can (i) refuse to accept the service, and/or (ii) accept the service and opt for (a) direct billing or (b) cascade system. In the majority of cases OLOs opt for cascade billing but *eircom* considers that it can have no liability for this element of the charge. If the third party element of the transit charge is deemed to be part of *eircom*'s interconnection charge it becomes subject to regulation even though it may be set by an "unregulated" operator.

The OLOs state that they do not have interconnection agreements with the MNOs. Their agreement is made with *eircom*. Therefore, they state that the mobile transit charge is an *eircom* interconnection charge which *eircom* sought to introduce without amending its individual interconnection agreements with OLOs. While the OLOs accept the principle of paying *eircom* for this charge, they nevertheless contend that they do not have to pay anything for the service provided to date and indeed, argue that no payment may be required by a unilateral change of the terms.

The Director's views are as follows.

The definition of interconnection in Regulation 2(1) of the Interconnection Regulations is "the physical and logical linking of telecommunications networks used by the same or a different organisation in order to allow the users of one organisation to communicate with the users of the same or another organisation or to access services provided by another organisation".

eircom, as an SMP operator, has an obligation to interconnect with licensed operators, which, since this may occur at both the originating and terminating end of the call, requires a transit service to be offered. There is no direct physical connection between MNOs' networks and those of the OLOs, nor is there direct payment. Instead both the flow of traffic and the flow of payment pass through *eircom*. However, the definition of interconnection does not require direct physical links between two networks for them to be interconnected – hence the reference to "logical" links in the definition. As a result, when a mobile user makes a call which terminates on an OLO network, the network of the MNO and that of the OLO are linked for the duration of call.

eircom in paying the origination charge to MNOs incurs a cost, which it may legitimately pass on to the OLOs benefiting from the service. The cost is one that

arises from interconnection and is included in the interconnection agreements between *eircom* and the MNOs. *eircom* recovers these costs through another interconnection agreement with OLOs. As the charge in question arises from the physical and logical linking between MNOs' networks and those of the OLOs via the *eircom* network, it is an interconnection charge.

In order to provide interoperability to users, all operators must accept traffic and pay for the services they receive from other operators. OLOs are not entirely free, as *eircom* argues, to refuse the traffic or to pay directly. Refusing the traffic would be contrary to the principle of interoperability (i.e. users of all networks should be able to call all numbers). In theory, a terminating operator could put in place arrangements to pay the originating operator directly, but these would have to be negotiated commercially. As such negotiations would take some time, this would not provide a solution to the problems raised.

eircom, by including the charge within its RIO, appears to accept the charge is an interconnection charge.

Finally, as regards the effects on "unregulated" operators, it should be noted that this is simply a consequence of the fact that the charge is an interconnection charge. If the terminating operator is entitled to notice of changes in interconnection charges, this has an inevitable effect on the duties of the transiting operator (here, *eircom*) and the originating operator.

Director's Position

The Director has determined that the charge is an interconnection charge for the purpose of interconnection arrangements between *eircom* and OLOs.

5.2 Notification Issue

eircom has emphasised at all times that the level of rates set for either termination or origination by OLOs has not been controlled by it. *eircom* argues that neither MNOs nor OLOs have any obligation to provide any notice of the introduction or amendment of any of their charges. Therefore, *eircom* argues that it is unreasonable to expect it to have an obligation to provide notification of such changes. If any notification obligation exists, it must rest with the operator who introduces or amends its charge. *Eircom* now contends that its letter of 26 June 2000 to OLOs merely served to advise the OLOs that the charges for mobile origination were now being passed on to the operator liable for such charges.

The OLOs considered in any event that the period of notice provided by *eircom* was wholly unreasonable. OLOs received notification of this proposed charge after *eircom* had completed all its systems upgrades. OLOs received a letter dated 26 June 2000

advising them that the new charge would commence from 1 July 2000. In addition OLOs were not provided with any technical information with regards to how these calls could be identified. The OLOs stated that *eircom* in providing four working days notice of this new charge, could not, by any reasonable viewpoint, have been said to have given adequate notice to OLOs. The majority of OLOs stated that had *eircom* advised them of its intentions at the time it commenced its system upgrades to pass on the charge, OLOs could also have commenced systems upgrades and interconnection negotiations. OLOs should not be asked to bear the burden of *eircom*'s failure to advise them.

Prior to 1 July 2000, *eircom* did not, as part of any arrangement of which the Director is aware, purport to impose the charge concerned on OLOs.

The Director has had to consider whether the purported introduction of the charge by *eircom* with effect from 1 July 2000 complied with *eircom*'s obligations, procedural and substantive, under the Interconnection Regulations. In exercising her power under Regulation 10(4) of the Interconnection Regulations to require changes to interconnection agreements, the Director is necessarily required to decide when those changes are to take effect and has accordingly sought to establish what would be a reasonable date.

Both *eircom* and the OLOs advanced arguments in support of their respective positions that the contractual arrangements were or were not followed by *eircom* in respect of the revision to the charge in question.

Before this matter was brought to the attention of the Director the interconnection agreements between *eircom* and OLOs provided for a particular process to be followed when altering the contract between the parties.

eircom in Annex A of its interconnection agreements with OLOs defines "interconnection agreements" as "the agreement between *eircom* and the Operator for the purposes of interconnect and shall include the main body of this Interconnect Agreement, the Annexes, Schedules and Appendices thereto".

Any purported amendment to the Service Schedules is a purported amendment to the interconnection agreement as defined.

Through Clause 9.2 of the individual interconnection agreement, both *eircom* and the OLOs concerned have already agreed that no charges shall be payable thereunder by one party to the other unless such charges are specifically referred to in the interconnection agreement.

The parties to the interconnection agreements have already agreed *inter se* as per Clause 29 that amendments and supplements thereto, including its Annexes, Appendices and Service Schedules shall in order for them to be valid be drawn up in writing, dated and signed by the parties.

However, the Director recognises that there has been a practice whereby new services and revised rates have been implemented by *eircom*, with the agreement of OLOs, in advance of the final amendment of the interconnection agreements to provide for such

changes. In most cases to date, this has been to the benefit of OLOs in that this has enabled them to launch services more quickly than otherwise would have been the case. The Director also recognises that prior to the dispute between *eircom* and Budget Telecom arising, no party had sought to require *eircom* to follow strictly the provisions of its interconnection agreement when amendments of this nature were introduced.

The Director accepts that in certain circumstances it may be difficult for *eircom* and OLOs to amend their individual interconnection agreements immediately when a change is agreed in principle between the parties.

Constructive flexibility in their commercial relationship with *eircom* has been of benefit to OLOs, where both *eircom* and OLOs are in broad agreements to the nature and/or revision of flexibility of charges to be introduced. The Director recognises that such a constructive approach is beneficial to the development of the Irish telecommunications sector.

However, where agreement does not exist between interconnecting parties (as was the case here), *eircom* cannot purport to amend unilaterally the terms of its interconnection agreements with OLOs without the consent of those parties and in breach of the provisions of its existing agreements.

Director's Position

1. In any event, given the complexity of the matter and the need to modify procedures and systems, a four-day notice period is considered by the Director to be inadequate.
2. In the circumstance the Director considers it appropriate to exercise her powers to direct changes to the interconnection agreements to include these charges between the parties.

5.3 The date on which the charge became applicable

OLOs have argued that, whilst they may accept the principle underlying the need to make this charge, they should not be liable for this charge because they have not consented to the unilateral amendment by *eircom* of their respective interconnection agreements whereby it seeks to pass on the charges.

There are a number of issues associated with this stance that the Director believes require clarification.

The charge in question is an origination charge imposed by MNOs on freefone calls to OLO numbers, such numbers having been assigned to the OLOs from the national numbering plan by this Office.

Without prejudice to any future decision that the Director might make (for example flowing from Article 7(2) of Directive 97/33/EC), the existing origination charge levied by Eircell is a legitimate interconnection charge. Similarly, Esat Digifone's interconnection charge is a legitimate interconnection charge.

However it falls now to the Director to propose a resolution in order to advance the issue and to ensure that the market can move forward in addressing the issues that have given rise to the dispute to prevent a re-occurrence. There have also been a number of wide industry related issues that have been identified that require an all-industry forum to address and these are dealt with later in this document.

In deciding upon the appropriate date from which this charge should apply, the Director has taken into account a number of factors, and has sought to achieve a reasonable balance for liability of charges in arriving at her chosen date. The factors she has considered include the following:

1. *Reasonableness of the charge*

- The Director believes that eircom is entitled to seek reimbursement for charges it legitimately incurs in call origination. This is without prejudice to the Director's rights and obligations to regulate any such charges. Furthermore the Director notes that the proposed RIO amendment, including charges, has been accepted;
- The Director notes that OLOs are challenging, not the principles behind such a charge, but the manner in which the charge was introduced;

2. *Date at which OLOs might reasonably have expected to have been aware of the need for a significant change*

- Eircom failed to provide OLOs with reasonable notice in respect to this amended charge, even though it has itself been aware of this charge since December 1999;
- Representations made to the Director indicate that OLOs were aware of eircom's proposal to introduce the charge from a time earlier than 1 July 2000;
- Eircom as an SMP operator has obligations to publish and amend a Reference Interconnection Offer (RIO). eircom published an amendment to its RIO on 11 October 2000, but OLOs should certainly have been aware of the change and its consequences considerably earlier than this date;

3. *Reasonable time to respond*

- the technical adjustments, which may involve major network and billing system adjustments, that OLOs will need to make to account for this revised charge will take time;
- OLOs nevertheless appear to have failed to engage sufficiently with eircom in relation to amendment of their interconnection agreements or (with certain exceptions) sufficient steps to make adjustments to their billing systems between June 2000 and October 2000;

4. *Consequences of failure to agree new procedures*

- The large and increasing amount of disputed bills and the consequences of this on operators;

- The suggestion from MNOs that they might discontinue mobile services to freephone numbers transited over *eircom* networks terminated on OLO networks for non-payment of all outstanding charges;
5. *Billing issues*
- The issues associated with, for example, incomplete records and the verification of charges considered below in section 5.4.
6. *General*
- The development of the market generally and the need to advance this issue to enable the associated issues be addressed.

Director's Position

Having considered all the factors outlined above, the Director pursuant to her powers under Regulation 10(4) of the Interconnection Regulations directs that the charge shall be a condition of the interconnection agreement between *eircom* and OLOs as from 15 October 2000

5.4 Technical Issue

This section addresses the identification of calls to which the charge should apply. The issue is of concern as OLO providing freephone numbers will receive calls from a variety of sources. The additional charges under consideration in this Decision are only due from calls originated on mobile networks. It is therefore important that billing systems can distinguish the source of the call.

The ODTR has received representation from OLOs to the effect that, to continue offering existing services, they require certain signalling information with each mobile originated call. This information is of the same kind as that presented by *eircom* with calls from payphones to special numbers (e.g. those requiring number translation services) to make possible identification of calls attracting the Payphone Access Charge (PAC).

The interim technical solution proposed is to use Calling Party Category (CPC) to identify the originating MNO. It is suggested that each of the MNOs is assigned a CPC from the range that have been reserved for national use under ITU-T. 32 such codes are available for use by the MNOs. The originating MNO would set all calls originating from their network with the appropriate CPC for that network. *eircom* would transit these calls unaltered to the terminating OLO. OLOs could then identify which operator the calls are originating using the same technique as is currently used to identify payphone calls.

eircom and the MNOs both state that analysis of each call A number should be sufficient for the OLOs' call recording and billing requirements and that the implementation of the Calling Party Category codes is neither necessary or desirable. However, they acknowledge that when full mobile number portability is introduced the A number will not be sufficient to identify traffic.

The ODTR's investigations have revealed that the A number analysis is not a sufficient solution for all services to all call types. Calls can be wrongly identified, or not identified at all which could result in billing inaccuracies. The level of such calls has been variously estimated as being 4 – 30 % of all calls.

It therefore appears that A number analysis provides sufficient information only in the very short term as a palliative while on the way to a more satisfactory solution. In the medium term a CPC signalling field will provide a solution for all calls, but one whose long term consequences in the wider context of number portability and other developments have yet to be fully thought through.

Director's Position

1. The Director determines pursuant to paragraphs 3 and 5 of Regulation 10 of the Interconnection Regulations that, in advance of CPC flags being available, OLOs will use A number analysis to effect onward billing and interconnect reconciliation from 1 April 2001 or earlier. The Director considers that a partial solution should be implemented at the earliest practical date (i.e. the beginning of a billing period) subsequent to the issue of this determination.
2. Separately, the Director, pursuant to her powers under paragraphs 3 and 5 of Regulation 10 of the Interconnection Regulations determines that all MNOs will provide CPC flags 224 / 225 / 226 for Eircell, Esat Digifone, and Meteor respectively from 1 May 2001, or earlier if practicable.
3. The Director will establish an industry-working group to evaluate and propose long term solutions to this and related inter-operator signalling problems.

5.5 Notification for Future Changes

The Director recognises that the notice period implied by this decision may not be appropriate in respect to other alterations in rates or arrangements. She believes that an Industry Working Group is best placed to address this issue and to put in place a framework to ensure that a repeat of the difficulties associated with this amendment are not repeated.

Appendix A – The Legal Framework

On 1 December 1998, the Director granted a General Telecommunications Licence (a “Licence”) to *eircom* (formerly called Telecom Eireann) under Section 111(2) of the Postal and Telecommunications Services Act, 1983, as amended (“the 1983 Act”). The Director also granted General Telecommunication Licences to a number of OLOs, including the MNOs, pursuant to Section 111(2) and 111(3) of the Act of various dates.

By Decision D15/99 the Director designated *eircom* with significant market power (SMP) in the fixed telephone network and services market, the leased lines market and the national market for interconnection.

Telecommunications law, national and European requires the liberalisation and harmonisation of national telecommunications markets through the imposition on operators designated with SMP of *ex ante* legal obligations more onerous than those imposed on other operators.

Under the Telecommunications (Miscellaneous Provisions) Act 1996, read in the light of Regulation 19(5) of the Interconnection Regulations, the Director’s functions include ensuring that:

- (i) *eircom* complies with its licence obligations as an SMP operator, and
- (ii) all other licensed operators comply with their own licence conditions

The European Communities (Interconnection in Telecommunications) Regulations 1998 (“the Interconnection Regulations”)

Regulation 2 (1) defines “interconnection” as:

”the physical and logical linking of telecommunications networks used by the same or different organisation in order to allow the users of one organisation to communicate with the users of the same or another organisation, or to access services provided by another organisation;

and “interconnection agreements” as “the technical and commercial arrangements between two organisations in relation to interconnection”.

Regulation 4(1)(b) obliges *eircom*, when requested by any organisation to negotiate an interconnection agreement with that organisation.

Regulation 8(3) obliges *eircom*, when imposing charges for interconnection, to follow the principle of transparency and cost orientation.

As a mechanism to facilitate conclusion of interconnection agreements the Interconnection Regulations oblige *eircom* at Regulation 8(7) to publish a standard offer setting out the minimum it offers/is required to offer as an SMP operator (“Reference Interconnection Offer”).

Further, Regulation 8(7) obliges *eircom* to republish its Reference Interconnection Offer where there is any change made to the offer.

Regulation 8(7) also requires *eircom* to notify the Director as to the manner in which such information is published, and it is obliged to include the elements as included in Annex IV of Directive 97/33/EC as appropriate.

Regulation 8(10) provides that where an organisation adjusts its reference interconnection offer and the Director subsequently directs it to implement changes to the adjusted offer in accordance with the Interconnection Regulations, the changes required by the Director may be retrospective in effect to the date of introduction of changes in the interconnection offer by the organisation.

Regulation 10(1) obliges the Director to encourage and secure adequate interconnection in the interests of all users in a manner that promotes economic efficiency and gives the maximum benefit to all users.

Regulation 10(3) states that the “Director may, from time to time, intervene in his or her initiative, and shall intervene if requested by any party concerned, in order to specify issues which shall be included in an interconnection agreement or to lay down specific conditions to be observed by one or more parties to such an agreement and the Director may direct that those issues or conditions be included in the interconnection agreement and it shall be an offence to fail to comply with a direction of the Director under this paragraph”.

Regulation 10(4) provides that in exceptional cases, the Director may direct changes to be made to an interconnection agreement in order to ensure effective competition or interoperability of services for users.

Regulation 10(5) provides that changes directed by the Director pursuant to Regulation 10(4) may include *inter alia*

- conditions designed to ensure effective competition
- technical conditions
- tariffs
- supply and usage conditions;
- conditions as to compliance with relevant standards
- compliance with essential requirements
- or maintenance of end-to-end quality of service

Appendix B – Chronology of events

The following set out the major events that have occurred to date.

eircom has concluded interconnection agreements with the MNOs, Eircell, Esat Digifone and Meteor, in which it has agreed to pay an origination charge for calls to freefone numbers originating on mobile networks and terminating on OLO networks. Other Licensed Operators (OLOs), with the exception of *eircom*, have not concluded interconnection agreements with the MNOs.

eircom has concluded interconnection agreements with other licensed operators. *eircom* has agreed with all licensed operators that, as an SMP operator, it will transit calls from mobile networks across its own network, including calls to freefone numbers, to the networks of all other licensed operators

eircom is required as an SMP operator to publish a Reference Interconnection Offer (RIO) which sets out a minimum set of interconnection services available to any licensed operator whereby, it as a designated holder of significant market power, as a set of minimum offers to other licensed operators offered to pay an origination charge for calls to freefone numbers originating on mobile networks and terminating on OLO networks.

Prior to its proposed introduction from 1 July 2000 to impose unilaterally a charge on all notified OLOs to cover a cost incurred by it arising from its interconnection agreements with the MNOs, *eircom*, (neither in its Reference Interconnection Offer or its interconnection agreements with OLOs) had not provided the imposition of the said charge.

On 16th May 2000, *eircom* issued OLOs with revised draft schedules for interconnection services for certain number translation services.

eircom, by letter on 26 June 2000, advised OLOs that it had revised the Interconnection Service Schedules for Number Translation Code traffic with operators offering these services and purported to introduce in its respective Interconnection Agreements with OLOs a charge for the transit over its networks of freefone calls from mobile networks (“hereafter referred to as the charge”) by serving notice to the OLOs of its intention to introduce separate charges for all transit services with effect from 1 July 2000.

On 7 July 2000, six days after the purported introduction of the charge, *eircom* formally advised the ODTR of its intention to introduce the charge with effect from 1 July 2000.

A number of operators raised concerns with the means by which *eircom* purported to introduce this charge with effect from 1 July 2000. The correspondence between OLOs and *eircom* in the possession of the Director highlights that they were engaged in correspondence from 26 June 2000 without resolution of the matters *inter se*. In a series of letters between July and October 2000, Budget Telecom repeatedly

disputed the introduction of the charge. Budget complained by letter to the ODTR on 5 September 2000. On 2 October 2000, *eircom* lodged a formal dispute with the ODTR against Budget Telecom for its refusal to pay the charge.

The ODTR met with Budget and *eircom* separately on 4 and 6 October 2000 respectively to examine the issues pertaining to their particular dispute.

Following these meetings the ODTR wrote to both parties on 6 October 2000 stating that it appeared to the ODTR that Budget and *eircom* had not exhausted all opportunities for discussion on and resolution of this dispute *inter se* and recommended that *eircom* and Budget meet at the earliest opportunity to negotiate arrangements for payment of the charge and all outstanding related matters between the parties.

eircom, following informal discussions with the ODTR re-published on 11 October 2000 its Reference Interconnection Offer to make provision for the proposed charge in accordance with its legal obligations as an SMP operator under Regulation 8(7) of the Interconnection Regulations.

eircom and Budget Telecom met on 12 October 2000. They failed to reach any agreement at their meeting.

Additionally, Worldcom contacted the ODTR on the 6 September 2000 requesting ODTR intervention regarding the proposed *eircom* transit charge. On 17 October 2000, Nevadatele wrote to the ODTR requesting the ODTR's intervention in assisting with an industry-wide resolution of the mobile transit issue.

The ODTR held a conference call with *eircom* on the 24 October 2000 to discuss the charge.

On 25 October 2000, the ODTR met with a number of OLOs to ascertain their views on *eircom*'s transit charge and surrounding issues, i.e. technical problems. Budget Telecom, Chorus, Esat Telecom & Ocean (Esat) GTS, Nevadatele, Swiftcall, Swiftcom, Worldcom and Interoute were the OLOs that attended

The Director formally approved *eircom*'s amendment to its Reference Interconnection Offer on the 3 November 2000 without further adjustment pursuant to Regulation 8(10) of the Interconnection Regulations

The ODTR wrote to all parties individually on 6 November 2000 requesting information relating to the various issues raised in connection with the proposed introduction by *eircom* of the charge from 1 July 2000. All parties were given until close of business on the 8 November 2000 to respond.

After considering the responses and the information provided at the aforementioned meetings, the ODTR issued a draft determination on the matter on 1 December 2000. The addressees of the draft determination were given until 14 December 2000 to submit comments on the draft determination. Respondents were Budget Telecom,

Chorus, Esat Telecom (Esat & Ocean), *eircom*, GTS, Interoute, Nevadatele, Swiftcall and Worldcom.

One operator raised objections to the procedures followed by the ODTR and in particular an alleged failure to follow the ODTR's own dispute resolution procedure..

The ODTR is of the view that the procedures followed and to be followed were fully compatible with the administrative law requirement of natural justice. However, the ODTR also took the view that the issues did not lend themselves to the procedures devised for bilateral disputes, in part because of their complexity and in part because a solution required co-operation whole industry (in particular the MNOs). As a result another procedure had to be devised up to the date of the draft determination.

In order to seek a resolution of the issues and to resolve the procedural points raised, the ODTR proposed a procedure by which all parties would have a full opportunity to consider the comments made by the others, subject to legitimate questions of commercial confidentiality. This was intended to ensure that all parties were treated fairly.

A series of meetings ensued before Christmas 2000, wherein the ODTR outlined its proposal for advancing the issue. An ODTR proposal on the way forward to resolving the issues was agreed by *eircom* and concerned OLOs. The proposed mechanism would include ODTR facilitated direct discussions involving *eircom* and the non-mobile licensed operators:

- The ODTR would arrange for the views of *eircom* and concerned OLOs be made available to each other. In particular provision would be made for *eircom* and concerned OLOs to inspect all submissions made in response to the ODTR's letter of 6th November 2000.
- On 3 January 2001, the Director facilitated the inspection of the said documents at the ODTR.
- The ODTR agreed to and did in fact convene separate meetings with the OLOs and *eircom* during the week ending 5 January 2001. An additional meeting was held in the same week with the three MNOs.
- The ODTR proposal for an all-industry meeting to cover the areas of concern was scheduled for 7 January 2001 to follow the aforementioned meetings.
- The Director, however, having regard to the outcome of the meetings held during the week ending 5 January 2000 considered that an industry-wide meeting would not bridge the differences between certain of the operators.

The Director, having exhausted all reasonable efforts to facilitate a face-to-face resolution of the issues postponed any further ODTR-facilitated meetings of all the parties.

The ODTR in accordance with the way forward agreed pre Christmas 2000 presented the technical and commercial proposals submitted to it by the OLOs to *eircom* in further meetings that took place after 5 January 2001.

The ODTR invited comments from the MNOs.

eircom formally responded on 19 January 2001 to the proposals presented by OLOs 19 January 2001. Its response included a counter proposal.

The MNOs also submitted their views on 10 January 2001. The ODTR relayed all responses received by it to the OLOs. The Director requested comments by 23 January 2001. The OLOs submitted their comments by 23 January 2001.

Appendix C

Summary of Proposals offered by the Parties in an effort to resolve this Dispute.

The summaries outlined in this Appendix are by way of information only. The original proposals have been communicated already to the various parties concerned. The proposals, and responses thereto, are outlined in chronological order.

1. OLOs' Proposal

The OLOs proposed that OLOs would agree to pay the charges set out in the table below for calls originated by Eircell and Esat Digifone customers which transit the eircom network terminated on the freefone services of OLOs within 21 days of the fulfilment of the following (the "implementation date"):

It would be agreed between the parties that such calls will be handed over to OLOs with a CPC code (as set out in the OLOs technical proposal outlined in Section 4.3) to be implemented to an agreed short timescale plan.

It would be agreed between the parties that prior to the introduction of the CPC code provision billing will take place, on the provision of the A number by eircom, which identifies the specific originating operator. It would be agreed between the parties that those calls which do not provide such level of detail can be rejected and not paid by the OLO on provision of call record information.

Agreement to a specific schedule to amend the interconnect agreements on this single issue. For the avoidance of doubt OLOs reject the proposed RIO transit schedule, as it is not fit for purpose.

For the avoidance of doubt operators accept no liability for the proposed charges for calls in this dispute prior to the "implementation date" as set out above.

Operators commit to engaging fully in the work of the industry forum (as described below) examining these and related issues with a view to identifying and implementing satisfactory long term solutions in as short a timescale as possible.

Operators seek the commitment of the ODTR to the setting up of an industry forum and to undertaking as a matter of urgency a comprehensive review of the following matters and any other relevant matters:

- Concerns raised regarding the charges and arrangements for all NTC calls originated by mobile customers and which transit to OLOs.
- Procedures covering the introduction and amendment of transit services
- Procedures covering the introduction of new and amendment of existing interconnect services

- Concerns raised in relation to this Dispute about possible discrimination between eircom's treatment of OLOs and its treatment of all of its own downstream arms including eircom UK.
- Interconnect rates for services provided by mobile designated with SMP in the interconnection market.
- Concerns regarding eircom's failure to provide an approach to interconnection arrangements and documentation which facilitate the development of effective competition e.g. failure to provide separation of prices from contract schedules, failure to bring forward proposed interconnection contracts based on the current RIO and failure to provide transit arrangements which are fit for purpose in a competitive market.

Table of Rates – Freefone NTC calls originated from Digifone and Eircell which transit the eircom network and which are terminated on OLOs

	Peak (ppm) Peak (ppm)	Off-peak (ppm)	Weekend (ppm)
Eircell (Interim rates – subject to determination) Effective from the “implementation date”	14.5	9.5	7.5
Esat Digifone Effective from the “implementation date”	27	14.75	12

In addition to these charges, OLOs would pay eircom the standard transit charges.

2. Eircom's response to the OLOs' proposal

Eircom stated that the OLOs' proposal was quite limited in that it addressed only the OLOs' issues and positions and thereby presented terms that *eircom* is not in position to be able to accept.

The effect of this proposal would be to require either that *eircom* bear sole responsibility for the cost or that the MNOs provide such services below the price that they have set for access to this service, notwithstanding that the industry had been advised of the relevant charges and continued to avail of the service. This result is disproportionately harsh.

3. Eircom's Counter Proposal

For the purpose of illustrating the current reliability of the information (based on the A number) provided by the MNOs and forwarded by *eircom*, *eircom* has analysed in detail a single day's traffic (10/1/01), which originated on the Eircell or Digifone network for termination on fixed operators' freefone numbers. On this day, 26,650 mobile originating calls to OLO freefone numbers took place.

Eircell originated 17,196 calls to freefone and Digifone originated 9,454 calls. In order for the terminating operator to identify the number as originating from the Eircell network, the following numbers would need to be passed along to the terminating operator, 88, 088, 35388, 87, 087 or 35387. This format of "A" number was forwarded to the terminating operator from this sample for **98.1%** of the Eircell originating calls. For the terminating operator to recognise the calls originating from the Digifone network the following identifier would need to be presented 86, 086 or 35386. This format of "A" number was forwarded for **96.1%** of the calls originating on the Digifone network.

Eircom stated that this analysis clearly demonstrates that the "A" number provides sufficiently reliable information to the terminating operators to real time onward bill to their customers the charges associated with providing this service to them. In their subsequent responses the MNOs and one OLO concurred with *eircom*'s view.

eircom counter-proposal consisted of the following;

Historical Charges

In respect of the amounts outstanding the following apportionment of responsibility of all parties involved should apply from 1st July through 30th November 2000:

80% of the amount each operator owes will be paid by that operator.

10% of the total amount outstanding will be borne by *eircom*

10% of amount to outstanding to each MNO will be borne by that operator

From the 1st December 2000 through 31st January 2001, the OLOs will be responsible for 100% of the charges associated with this service.

Charges going forward

For the reasons outlined herein, the "A" number currently provides sufficiently reliable basis for billing purposes. Therefore, from 1st February, 2001 fixed OLOs who wish to continue to offer this service to their customers may either:

- agree to use the *eircom* bill based on technical practice in place and will be liable for all such charges, or
- will have to move to direct method of accounting with the MNOs for call origination charges for the 1800 and 1850 services.
- *eircom* will bill fixed operators for only the transit charges associated with such calls and OLOs agree to make payment for such calls to *eircom*.

eircom's preference would be to continue to provide cascade accounting for transit services. However, *eircom* cannot find itself in a position going forward where OLOs will avail of services for which they do not agree to pay. *eircom* will work with the industry to find acceptable and administratively practical processes for price changes made by the originating or terminating operators for transit services offered using the cascade accounting method.

eircom will participate in any industry forum which addresses billing for transit services. However, the industry must acknowledge and accept that for transit services the originating and terminating operators bear responsibility for developing and implementing technical standards/fixes in respect of the services. This is necessary to enable *eircom*, as the transit operator, to pass such information along to facilitate billing for the service provider to bill customers.

4. MNO's Responses to the OLO's proposals.

In responding to the OLOs' proposal, Esat Digifone stated that it rejected the notion that parties refusing to pay the correct charges for these calls should attempt to dictate the terms under which they would be willing to pay these charges before agreeing to do so. Furthermore, for any industry solution to be acceptable to Digifone, full payment of all outstanding charges must be provided for.

Eircell in its response stated that it finds itself with serious business exposure and cannot continue to have this exposure. Eircell stated that it will take action to recover all unpaid monies. Eircell has offered direct interconnection to OLOs and to date none of the OLOs party to this dispute have taken up the offer. Eircell would ask why the OLOs are putting complex and expensive solutions forward when there is a simple solution available of direct interconnection.

Without prejudice to Eircell's position, Eircell stated that it would be able to negotiate the absorption of 10% [as proposed by *eircom*] of the outstanding charge between 1st July 2000, and if it helps the ODTR to resolve the dispute. Eircell would in general be able to agree to *eircom*'s proposal on charges only if it resolves the full issue and allows the market to move forward with all operators paying relevant charges and not permitting operators to dictate the terms of payment after they have launched services and availed of interconnection arrangements

In its response, Meteor states that historical charges do not apply to them. Regarding charges going forward, Meteor agrees with Eircom that the A number is a sufficient form of identification prior to Full Mobile Number Portability being implemented.