



Commission for
Communications Regulation

Information Notice

Final Determination No. 02/03.

Summary of Investigation into FRIACO Constraints

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Summary of final determination No. 02/03 of the Commission for Communications Regulation arising from the Commission for Communications Regulation own initiative investigation regarding the *eircom* FRIACO constraints.

In January 2003 ComReg issued Decision Notice D1/03 which mandated the introduction of Flat Rate Internet Access Call Origination (“FRIACO”). The Decision Notice set out a detailed timescale to enable the provision of a retail offering by 27 June 2003.

On 26 March 2003 *eircom* submitted a document to ComReg and Esat BT. The document gave an overview of the Esat BT FRIACO Interconnection orders, coupled with the associated *eircom* network constraints. ComReg was unable to confirm to its satisfaction the justification of these constraints. In order to ensure a competitive market and non discrimination, ComReg considered it necessary to carry out an own initiative investigation regarding the *eircom* FRIACO Constraints.

On 15 April 2003 ComReg invited formal submissions from Esat BT and *eircom* regarding, as appropriate, the Esat BT request for FRIACO capacity, details of the *eircom* constraints for each individual element of the orders which could not be met and associated rationale for such constraints. The correspondence included the procedures ComReg required the parties to follow during its investigation.

In its submission Esat BT stated that it was their belief that *eircom* should have been reasonably able to provide the FRIACO orders (provided over a mix of CSI, Channelised STM-X and ISI transmission), tested and ready for service, in time for the FRIACO product launch on 27 June 2003 and that Esat BT should not be financially or operationally disadvantaged as a result of having to replace the FRIACO ISI orders with FRIACO CSI orders.

eircom submitted their response regarding the Esat BT FRIACO orders, *eircom* stated that there were no constraints associated with the CSI style transmission orders but that the ISI style Interconnect paths produced a transmission network constraint. The constraint was that the ISI transmission systems which were ordered on the 23 December 2002 would not be delivered in time to incorporate a delivery date of 27 June 2003. In addition, the Channelised STM-1 Interconnect Access bearers produced a Constraint, the constraint being, Channelised systems such as these, command a lead time of six to nine months, and the lead time of 12 March 2003 to 27 June 2003 was not sufficient.

In arriving at this determination, the Case Officer in accordance with the own initiative investigation Procedures has considered the comments received from both parties to this investigation.

The Case Officer is aware of Esat BT’s position in relation to the FRIACO orders placed with *eircom* on March 12 2003 i.e. that *eircom* should have been able to provide all FRIACO orders by 27 June 2003 and further that Esat BT should not be operationally or financially disadvantaged as a result of having to replace its FRIACO ISI orders with FRIACO CSI. It is the Case Officer’s opinion that the alleged constraint that *eircom* have described for the March 12 orders have a direct

relation with the Esat BT transmission order of December 2002 which by the process followed was un-forecasted. The Case Officer notes that *eircom* is not refusing a request for access but has described a technical difficulty which may jeopardise the delivery of the requested access prior to June 2003.

Esat BT in their submission raised concerns regarding spliced ISI specifically, Esat BT stated, in light of ODTR 02/44 (Final Determination 02/02) they placed orders for spliced ISI paths on 4 June 2002. In Esat BT's opinion *eircom* would not accept that they could potentially deliver orders for ISI splice on the grounds that they had not developed the product. The Case Officer has noted these comments and given the passage of over a year, is concerned that *eircom* have failed to make ISI splice available in its RIO despite being directed to do so in Final Determination 02/02.

With regard to paths to be delivered as ISI style interconnects, *eircom* in their submission stated that the orders produced a transmission network constraint. The constraint being the ISI transmission systems which were ordered by Esat BT in December 2002 would not be delivered in time to incorporate a delivery date of 27 June 2003. The Case Officer maintains that *eircom* have not provided sufficient analysis to enable ComReg to be in a position to confirm the legitimacy of the constraint. With regard to the Channelised STM-1 orders *eircom* in their submission stated that delivery of Channelised systems such as these command a lead time of six to nine months and the lead time was not sufficient. The Case Officer maintains that *eircom* have failed to supply sufficient analysis to support the alleged six to nine month timeframe, therefore it is the Case Officers opinion that *eircom* have failed to substantiate the legitimacy of their network constraint.

Therefore, as *eircom* have failed to substantiate the legitimacy of their constraints and as a result of *eircom*'s failure to comply so far with Final Determination 02/02 the Case Officer directs the following:

- *eircom* must agree a program with Esat BT for the migration of Esat BT's FRIACO paths provided by CSI to FRIACO paths provided on ISI/ISH should Esat BT wish to migrate some or all of the relevant FRIACO CSI paths. This program must be agreed no later than 31 October 2003.
- Esat BT will not have to pay the connection charges for any applicable FRIACO circuits they choose to migrate to ISI transmission. However, the ISI/ISH transmission must be in place when Esat BT request the migration.
- Esat BT will not have to pay any cancellation fees for the FRIACO CSI provided circuits that are migrated on to ISI/ISH transmission.
- Should Esat BT require project management for the migration program, Esat BT will be liable to pay *eircom* 50% of the associated project management fees. In addition, *eircom* must submit the project management costs to ComReg for review. The level of project management should be consistent with the specific requirements of Esat BT.

This Decision has been notified to the parties who have a right of appeal.