



Commission for
Communications Regulation

Decision Notice

Local Loop Unbundling

Review of Charges

Decision No:	D12/03
Document No:	03/55R
Date:	28th May 2003

Contents

1	Introduction	2
2	Legislative Background.....	4
3	Background to the Decision.....	5
4	Review of the eircom Submission.....	8
5	Charges	10
6	Appendix 1	12
7	Appendix 2	13

1 Introduction

The “local loop” is the copper pair connecting an individual telephone subscriber to the nearest point of interconnection with the main telephone network at the local exchange. This “last mile” of network is accepted to be the most difficult for new entrants to replicate. “Local Loop Unbundling” implies that the network owner is required to provide access to this copper pair, so that new entrants can offer their services across the local loop. This allows new entrants to provide a full range of services directly to the customer. In particular, new entrants can offer the new range of broadband services (such as high-speed Internet access) even if the incumbent operator has not chosen to offer such services. As a result, Local Loop Unbundling has the potential to increase significantly the range of competitive services available to businesses and consumers.

At the Lisbon summit of March 2000, it was agreed that Local Loop Unbundling was required as a matter of urgency in order for Europe to reap the full benefits of the Internet and electronic commerce. In less than nine months, the European Parliament and Council had adopted Regulation 2887/2000 on unbundled access to the local loop, the “LLU Regulation.” The speed of this reaction underlines the importance of Local Loop Unbundling at EU level. Indeed the Lisbon summit noted that

“For Europe to fully seize the growth and job potential of the digital, knowledge-based economy, businesses and citizens must have access to an inexpensive, world-class communications infrastructure and a wide range of services. The Member States, together with the Commission, are called upon to work towards introducing greater competition in local access networks before the end of 2000 and unbundling the local loop in order to help bring about a substantial reduction in the costs of using the Internet.”

The LLU Regulation required eircom to publish a Reference Offer on unbundled access to the local loop and related facilities by 31 December 2000, and to answer reasonable requests from that date. Although eircom published an Access Reference Offer (ARO), significant intervention by this office was required to complete the Reference Offer. ODTR documentation¹ outlines the developments following this to bring the reference offer into compliance and to extend it appropriately to meet needs.

¹ • ODTR 00/99 of 22 December 2000 – Information Notice on work to that date and initial commentary on the draft Reference Access Offer.

• ODTR 01/01 of 31 January 2001 – Information Notice outlining changes to be made to the ARO and the work programme to complete tasks by end February 2001

• ODTR 01/15 of 9 March 2001 – Information Notice outlining progress and seeking a more focused approach to remaining items – new timetables to finish by end April 2001

• ODTR 01/21 of 2 April 2001 – Decision Notice D5/01 – directing changes to the ARO on supply of information and detailing timetables to finish work by end April 2001

• ODTR 01/27 of 30 April 2001 – Decision Notice D8/01 – setting interim rates for LLU services

• ODTR 01/35 of 18 May 2001 – Information Notice setting out arrangements for Service Level Agreements

• ODTR 02/24 of 7 March 2002 – Decision Notice D1/02 – directing the Copper Loop Frequency Management Plan

• ODTR 02/37 of 17 April 2002 – Decision Notice D4/02 – setting final prices

• ComReg 03/37 of 31 March 2003 – Decision Notice D7/03 – setting interim prices

Throughout the process there have been significant delays and a failure by eircom to provide reasonable, consistent and timely information. Following eircom's failure to provide acceptable pricing in 2001, this office issued Decision Notice D8/01 which set interim rates for LLU services. These charges were challenged by eircom; however this legal action was discontinued in 2002. Rates were finalised in Decision Notice D4/02 which set final rates for the period 1 January 2001 to 31 March 2002 and for the period 1 April 2002 to 31 March 2003. Bringing certainty to the market allowed access seekers to accelerate their programmes, and one operator has now collocated in 40 exchanges providing access to 25% of the lines in Ireland.

Decision Notice D4/02 signalled that charges would be reviewed following 31 March 2003 to take account of the advice given by eircom and the Industry during the Industry Advisory Group process. In addition, in order to allow eircom enough time to submit prices for LLU, these charges were subsequently set as interim charges for the period 1 April 2003 to 31 May 2003. eircom were required to produce revised charges for ComReg's approval for all LLU services. It should be noted that occupancy charges are not due for review until 1 November 2003.

Following the submission of eircom's proposed charges on 30 April 2003, ComReg reviewed these charges for compliance with the principles set out in the LLU Regulation. This review demonstrated that eircom's proposals and their underlying principals were both flawed and at odds with these objectives. Therefore this Decision Notice sets new rates for LLU rental charges for the period 1 April 2003 to 31 March 2004.

ComReg is satisfied that the new charges, as directed in this Decision Notice are set at a level that supports the strategy developed at the Lisbon summit of 2000. These charges will in ComReg's view foster fair and sustainable competition and consumers will be able to benefit from the new broadband services and cheaper access to the Internet.

2 Legislative Background

Regulation 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop ('the LLU Regulation') was published in the Official Journal of the European Communities (L 336 of 30 December 2000). eircom, as the only operator designated by the Commission as having significant market power in the provision of fixed public telephone networks and services under Annex 1, Part I, of Directive 97/33/EC, is a notified operator within the meaning given to that term in Article 2(a) of the LLU Regulation.

A "beneficiary" is defined in Article 2(b) of the LLU Regulation as a third party duly authorised in accordance with Directive 97/13 EC or entitled to provide communications services under national legislation, and which is eligible for unbundled access to a local loop.

Article 3(1) of the LLU Regulation requires eircom (as the notified operator) to publish from 31 December 2000, and keep updated, a Reference Offer for unbundled access to their local loops and related facilities. Article 3(3) states that charges are to be set on the basis of cost orientation. Recital 11 of the Regulation states that charges should be transparent, non discriminatory and objective in order to ensure fairness. The Annex to the LLU Regulation includes a minimum list of items to be included in such a Reference Offer, under the following headings: conditions for unbundled access to the local loop, collocation services, information systems, and supply conditions.

Additionally, Article 3(2) of the LLU Regulation requires eircom, from 31 December 2000, to meet reasonable requests from beneficiaries for unbundled access to their local loops and related facilities under transparent, fair and non discriminatory conditions. Requests may only be refused on the basis of objective criteria, relating to technical feasibility or the need to maintain network integrity. A reasonable request for unbundled access to the local loop implies that access is necessary for the provision of the services of the beneficiary and that refusal of the request would prevent, restrict or distort competition in this sector.

The LLU Regulation also obliges the National Regulatory Authority (NRA), under Article 4(1), to ensure that charging for unbundled access to the local loop fosters fair and sustainable competition. In the case of Ireland, ComReg is the NRA. Recital 10 enunciates the principle that an NRA may, in accordance with Community law, intervene on its own initiative in order to ensure fair competition, economic efficiency and maximum benefit for end-users. Article 4(2)(a) gives effect to this principle and provides that the NRA shall have the power to impose changes on the ARO, including prices, where such changes are justified; and under Article 4(2)(b) require notified operators to supply information relevant for the implementation of the Regulation. Under Article 4(3) the NRA may intervene on its own initiative in order to ensure non discrimination, fair competition, economic efficiency and maximum benefit for users.

3 Background to the Decision

The EU Commission in its Recommendation of 26 April 2000 entitled “Commission Recommendation on Unbundled Access to the Local Loop” stated in Article 1.5 that

“In order to avoid lengthy disputes on pricing between new entrants and notified operators that would delay the effective implementation of local loop unbundling, it is recommended that national regulatory authorities specify the pricing methodology and the relevant parameters used to calculate prices”

where in the State of Ireland the notified operator is eircom and the national regulatory authority is ComReg. In Article 1.6 of the same document, the EU Commission stated that

“For as long as the level of competition in the local access network is insufficient to prevent excessive pricing of unbundled access to local loops, it is recommended that prices for unbundled access to local loops follow the principle of cost orientation. In principle a forward looking approach based on current costs will foster fair and sustainable competition and providing alternative investment incentives”

Long Run Incremental Cost (LRIC) is the forward looking approach based on current costs used as a basis for cost orientation in the majority of EU countries. In D6/00², the Director, while stating that LRIC should form the core of the pricing formula for LLU, recognised that the application of LRIC was new to the Irish market and would take time to apply LRIC to access network costs, as it has to core network costs. The Director therefore indicated that she might employ other relevant information, including historic cost data, for a period of time.

Prior to the issue of D8/01, eircom had not provided an adequate cost justification of its proposed ARO prices on either a LRIC or a Historic Cost Accounting (HCA) basis, and the Director was obliged to set interim charges on the basis of benchmarks and expert opinion. Notwithstanding eircom’s legal challenge of D8/01, both the ODTR and eircom did make progress in developing historic costing models for the local loop. The charges set in D4/02 were based on new pricing proposals submitted by eircom on a historic cost basis. Those proposals were accepted by the ODTR.

D4/02 also reiterated the position that LRIC should form the core of the pricing formula and set up an Industry Advisory Group in order to expedite the introduction of LRIC, in line with the EU Recommendations.

The Industry Advisory Group 2, (I.A.G.2) was established under ODTR Decision Notice D4/02³, to advise the ODTR, (now ComReg) on the

² ODTR 00/30 of April 2000 – Report on the ODTR Consultation on local loop unbundling

³ ODTR 02/36 of 17 April 2002 – Local Loop Unbundling Review of eircom’s Access Reference Offer

development of a bottom-up LRIC model of the access network. Nominees for membership of the group were invited from across the telecommunications industry and business institutions by letter on 18 April 2002 and four Telecommunication Operators agreed to participate in the group, those being eircom, Esat BT, Nevada Tele.com, (now Energis) and ntl.

ComReg provided an independent Chairperson, Professor William Melody, to oversee the group⁴. Professor Melody convened the first meeting of the I.A.G.2 on 22 May 2002 and since that date the group has met on another five occasions under the Chairperson and a further four times as part of a Process Working Group set up by the Chairperson to debate detailed engineering and economic concepts. In addition, ComReg has met with the various group participants on a one-to-one basis on numerous occasions to discuss matters of a confidential nature pertinent to the I.A.G.2 work.

During the course of the I.A.G. 2 work, the group discussed and produced papers on model structure, network design rules, civil works design rules, equipment prices, depreciation methodologies, asset lives and a number of detailed economic inputs pertinent to Bottom-Up LRIC modelling of the access network.

Consensus was reached on a number of issues, namely but not limited to a 'scorched node' approach to the modelling and model structure, the boundary of the access network, use of the Tilted-annuity depreciation methodology, and use of the WACC that was to be directed under the auspices of the Retail Price Cap. In addition, ComReg and eircom agreed bi-laterally as to the treatment of a number of network design rules pertinent to the modelling. This resulted in eircom producing a Bottom-Up LRIC model of the Copper Local Access Network, the structure of which ComReg was happy to accept.

There remained important disagreements between eircom on the one hand, and the rest of the industry and ComReg on the other, over appropriate inputs to the model. The most important of these related to the appropriate level of Operating expenditure to be used in a Bottom-Up LRIC model and a number of equipment prices and network design rules to be used as inputs to the model.

The Chairman of I.A.G. 2 produced a report for the Commission, which was distributed to the I.A.G. 2 members, making his recommendations on how to proceed on those issues where consensus between the parties had not

⁴ Professor Melody participated in the earliest stages of telecom reform and computer/communication convergence as Senior and Chief Economist at the US FCC between 1966 and 1971. Professor Melody has produced research and policy literature for more than thirty years with more than 150 publications in books, reports and professional journals. He has held many academic appointments across the world including amongst others Founding Chair, Economics of Infrastructures at Delft University of Technology in the Netherlands from 1997 to 2002, Guest Professor and Founding Chair of the International Advisory Board, Centre for Tele-Information at Technical University of Denmark from 1995 to 2000 and Founding Director of the Centre for International Research on Communication and Information Technologies in Melbourne from 1989 to 1994.

been achieved. In making the current decision on LLU prices the Commission has given due regard to Professor Melody's recommendations.

4 Review of the eircom Submission

ComReg wrote to eircom on 10 March 2003 requesting a pricing submission on a LRIC basis for, amongst other things, Full loop Unbundled Local Metallic Path (ULMP) monthly rental, Full loop Line sharing monthly rental, Sub-loop ULMP monthly rental and Sub-loop Line sharing monthly rental by 22 April 2003. ComReg then further extended the deadline to 30 April 2003 to facilitate a request from eircom for more time. ComReg has received eircom's pricing submission for the above charges and has completed a detailed review. eircom submitted their cost justification on a Bottom-Up LRIC basis as discussed in the I.A.G. 2, but ComReg have concluded that a number of the inputs to the modelling of the underlying costs are not set at an appropriate level. In particular, ComReg are concerned as to the level of a number of equipment prices that have been used by eircom as inputs to the Bottom-Up LRIC model. Similarly, ComReg are also concerned as to the treatment of a number of network design rules that have been implemented into the modelling. Equally it is clearly inappropriate to include historic operating expenditure as an input to a Bottom-Up LRIC model. Including a set of forward-looking asset costs in tandem with actual historic operating expenditure in a Bottom-Up LRIC model is a contradiction in terms and it will lead to an over-recovery of the cost of the local access network.

ComReg has also reviewed the LLU charges submitted by eircom with LLU charges in other EU countries for comparative purposes. From our analysis of local access costs in the I.A.G.2, ComReg believes that while Ireland is unlikely to have one of the lowest cost bases in Europe, due to its particular demographics, there is considerable scope for price reductions in moving from Historic Costs to LRIC. (See Appendix 1 of this Notice, which shows a comparison between eircom's current LLU price and prices for LLU in other EU Countries). Given ComReg's analysis, and the trend across Europe of declining LLU prices, ComReg was therefore disappointed to see eircom propose that the move from Historic Costs to LRIC should involve a price increase for ULMP line rental from the current €16.81 per month to €27.00 per month. ComReg believes that eircom's proposal, which would be more than twice the European average and 70% higher than the next highest price, is unjustified and inappropriate. (See Appendix 2 of this Notice, which shows a comparison between eircom's proposed LLU price and prices for LLU in other EU Countries).

ComReg's obligations under the LLU Regulation require that it ensures that eircom's charges are set on the basis of cost orientation, foster fair competition, promote economic efficiency and maximum benefit to end-users. ComReg believes that eircom's proposal fails to meet all of these criteria.

Considering the 13 months of work already spent by ComReg, eircom, and the industry analysing Bottom-Up LRIC costs, eircom have agreed that further engagement on the outstanding areas of disagreement at this time is unproductive. Therefore, ComReg regrets that the only reasonable and proportionate action is to direct prices for LLU line rental charges. To that end ComReg has written to eircom directing a number of specific adjustments to their submission, which include a reduction in the level of

operating expenditure to reflect a reasonable level of efficiency, a reduction in the equipment prices of a small number of network components and a reduction to one set of costs that has been informally agreed between eircom and ComReg to correct an eircom modelling error.

The effect of those changes result in the prices in the next section.

5 Charges

The following charges shall be published in eircom's Access Reference Offer within seven days of the date of this Notice and shall be set as final for the period 1 April 2003 to 31 March 2004. All charges exclude VAT and are in Euro.

Full Loop ULMP Monthly Rental: €14.67
 Full Loop Line Sharing Monthly Rental: €8.17
 Sub Loop ULMP Monthly Rental: €13.37
 Sub Loop Line Sharing Monthly Rental: €7.52

Direction 5.1: Pursuant to the powers under Article 4 of Regulation 2887/2000, the Commission for Communications Regulation hereby directs eircom to publish the following four charges in the Access Reference Offer within seven days of the date of this Notice and set the charges as final for the period from 1 April 2003 to 31 March 2004. Full Loop ULMP Monthly Rental of €14.67, Full Loop Line Sharing Monthly Rental of €8.17, Sub Loop ULMP Monthly Rental of €13.37 and Sub Loop Line Sharing Monthly Rental of €7.52.

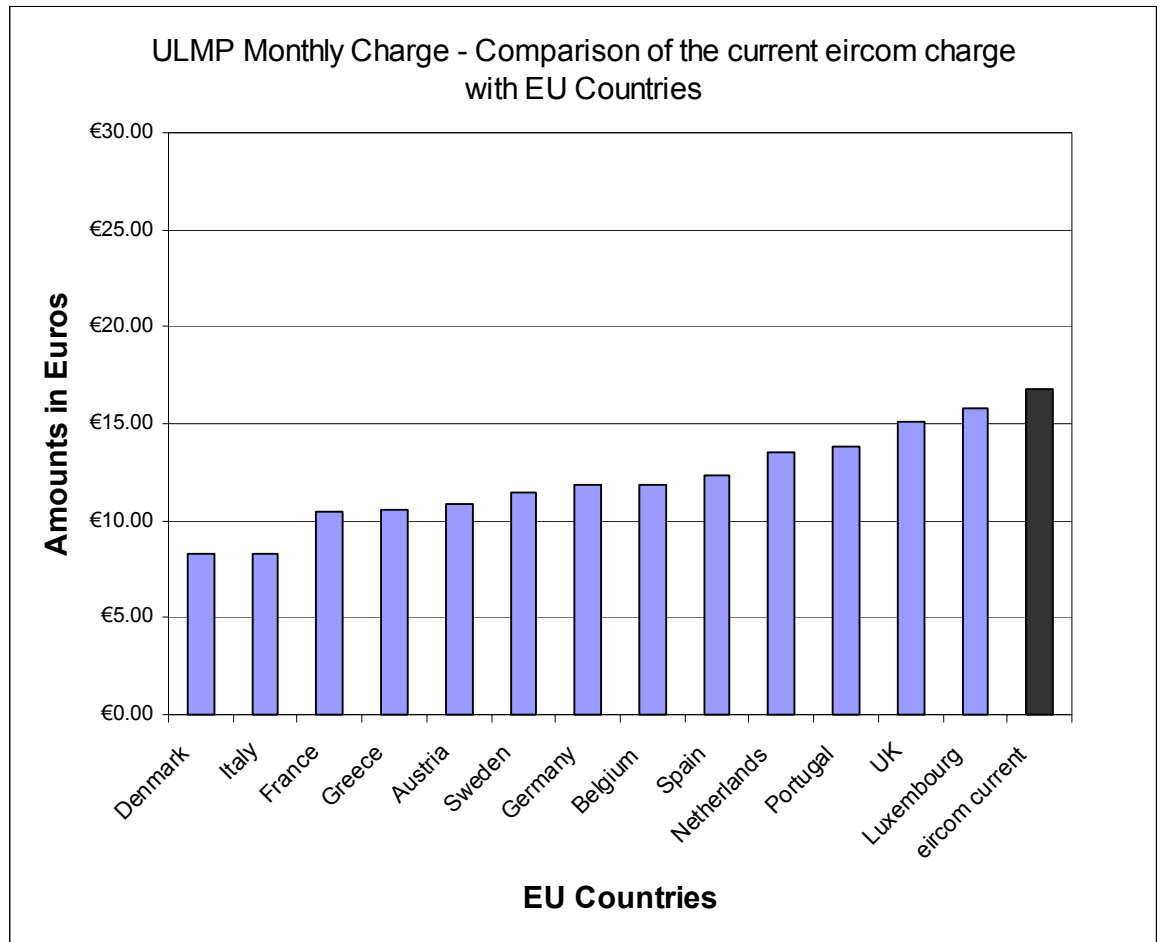
Decision Notice D7/03 set interim charges for Full Loop ULMP, Full Loop Line Sharing, Sub Loop ULMP and Sub Loop Line Sharing from 1 April 2003 to 31 March 2003 at a cost which is higher than the four charges directed above. Due to both the limited number of lines which have been unbundled regarding ULMP and Line Sharing and the short period of time between the setting of interim prices and final prices, ComReg believes that it would be inappropriate for there to be a retrospective payment in respect of the four charges described, as the absolute amount to be repaid to Other Licensed Operators is deemed to be immaterial.

In the letter of 10 March 2003, ComReg also requested a pricing submission for the various Ancillary services which support the Local Loop Unbundling product. eircom duly submitted the prices and ComReg is in the process of reviewing them. It is to be noted that the Occupancy charges in section 5.3 of Annex C of Service Schedule 101 are not due for review until 1 November 2003. Pending finalisation of the review of the Ancillary services, ComReg intends to extend the current charges and set these as interims for the period 1 June 2003 to 31 July 2003. At that date, ComReg will set new charges including retrospection if found to be material.

Direction 5.2: Pursuant to the powers under Article 4 of Regulation 2887/2000, the Commission for Communications Regulation considers that the charges published by eircom in its current Access Reference Offer, excluding the Occupancy charges in section 5.3 of Annex C of Service Schedule 101 and excluding the charges directed above in Direction 5.1, to be set as interim rates for the period from 1 June 2003 to 31 July 2003.

Amendment to Direction 5.1 :
In the context of the settlement of the judicial review proceedings between eircom Limited and the Commission for Communications Regulation bearing the title The High Court, 2003 No. 6822P, eircom Limited, v The Commission for Communications Regulation, and without prejudice to the claims made by eircom Limited in the proceedings and to its position as to what is the appropriate level of LLU prices or to the Commission's position and views on these matters, the Commission has on 26 September 2003, amended Direction 5.1 by the insertion of the prices of €16.81 for Unbundled Local Metallic Path Full loop, €9.00 for Line Share Full loop, €15.25 for Unbundled Local Metallic Path Sub loop and €8.22 for Line Share Sub loop. These prices are set as final for the period to 31 March, 2004

6 Appendix 1



7 Appendix 2

