



Commission for
Communications Regulation

Decision Notice and Direction

Local Loop Unbundling

Review of eircom's ULMP Monthly Rental Charge

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Contents

1 Foreword [by the Chairperson] 2

2 Review of eircom's ULMP Monthly Rental Charge 3

 2.1 DRAFT DIRECTION 3

 2.2 RESPONSES RECEIVED TO DRAFT DECISION NOTICE AND DIRECTION (04/91) 3

 2.3 COMREG'S DECISION 4

Appendix A – Schedule of Charges 6

Appendix B – Statutory Powers and Legal Background Giving Rise to Response to Draft Direction and Decision Notice 7

1 Foreword [by the Chairperson]

This Decision Notice and Direction is the response to ComReg's consultation and draft direction 04/91. In that paper ComReg proposed to direct eircom to set a price for full unbundling of its local loop (also known as Unbundled Local Metallic Path, ULMP, or LLU) of €14.65 per month. ComReg also proposed to fix the ceiling for this price in real terms for a period of three years. The background to this proposal and the detailed reasoning behind it were set out in that paper in some detail.

ComReg has now evaluated the responses to that paper and has decided to implement its proposal without amendment. The ceiling for this price will remain fixed in real terms until 1 December 2007. ComReg is now directing that eircom be allowed to increase the price by no more than the rate of consumer inflation by reference to the consumer price index ('CPI') in each year up to December 2007.

In addition to ULMP monthly rental, ComReg is currently reviewing prices for other LLU related services, particularly Line Share, and other associated charges.

We look forward to these initiatives re-energising the market and enabling the provision of competitive products and services for consumers. The deployment and take-up of local loop unbundling is a key priority for ComReg and we will be taking all necessary steps to ensure its success.

**John Doherty,
Chairperson.**

2 Review of eircom's ULMP Monthly Rental Charge

2.1 Draft Decision Notice and Direction (04/91)

ComReg has completed its review of the eircom LRIC model submitted on 19 December 2003.

In two separate consultations, ComReg sought the views of eircom and industry and set out its own preliminary views in relation to specific issues regarding the appropriate inputs to use in the LRIC costing exercise for LLU pricing¹. ComReg has set out its conclusions with regard to the matters under consideration in both of those consultations in the document entitled *LLU: Responses to Consultations on Operating Costs, Equipment Costs and Network Design Parameters – Responses to Consultation Papers 04/21 and 04/31* ('the Response to Consultation').

ComReg proposed, in its Draft Decision Notice and Direction (04/91), to direct that, effective from 1 December 2004, the price of the monthly rental for ULMP should be reduced to €14.65. In the interests of providing stability to the market, ComReg also proposed that on each of 1 December 2005, 1 December 2006 and 1 December 2007 eircom would be permitted to increase the ULMP price by no more than the rate of consumer inflation by reference to CPI. ComReg proposed that it would review the situation during 2007 and depending on market circumstances and cost data available at that time, might direct a new price any time after 1 December 2007.

2.2 Responses received to Draft Decision Notice and Direction (04/91)

ComReg received five responses from operators and industry bodies and five responses from private individuals. The operators and industry bodies who responded were:

- a) Alto;
- b) Eircom;
- c) Esat-BT;
- d) Ireland Offline; and
- e) NTL.

Three of the operator / industry body respondents held the view that the price for monthly ULMP rental was too high. One of these respondents strongly disagreed with the proposed price as they believed Ireland would consequently rank at the top of the LLU pricing scale on a long term basis. A second respondent echoed the view that the ULMP monthly rental would be amongst the highest in Europe. This respondent further highlighted that this would not encourage the take-up of LLU. This respondent also argued that this would have consequences for competition within the broadband market. Both of these respondents also underlined their belief that there was a need for a review of other ancillary charges. A third respondent also indicated that this price may hinder meaningful competition in the broadband market.

¹ (i) Loop Unbundling Costing Consultation Direct and Indirect Operating Expenditure Econometric Modelling Document No: 04/21 Date: 27 February 2004; and (ii) Local Loop Unbundling Costing Consultation Access Network Design Parameters and Costs of Certain Access Network Elements (Document No: 04/31 Date: 18 March 2004.

Similar views were also expressed by the private individuals who responded.

A fourth industry respondent was supportive of the proposed price. This respondent indicated that the proposed price was in fact reflective of the real cost in the market. It also stated that the price would send the right signals to investors about investment in local access infrastructure. Such investment, it believed, would enhance and encourage diversification and competition in terms of local access infrastructure and the choices available to the end consumer. This respondent also noted that pricing below the true cost might lead to maximum take up in the short term, but that it might lead to underinvestment in repair, maintenance and upgrading work which would have serious consequences in the long term.

A fifth respondent emphasised its view that the price was too low. This respondent focused on its previous objections to the principles set out in the Response to Consultation (04/90). However, this respondent conceded that index linking the ULMP monthly rental prices for the future did make sense in economic terms.

2.3 ComReg's Decision

ComReg would like to thank the operators, industry groups and private individuals who responded to its Draft Decision Notice and Direction (04/91). ComReg is aware of the views of many respondents that the proposed price is still too high. However, it notes that many of the respondents expressed their opinions purely in terms of a comparison with other EU countries. While such a comparison is very useful in helping to assess the reasonableness of the price, it is not the only criterion. ComReg has previously described how the LRIC model used was designed taking in to account the expert consensus of industry as a whole. The areas of contention revolved entirely around the inputs to that model. The overall objective was to set a price that reflected the costs that would be faced by an efficient operator using modern techniques and technology in the particular circumstances of Ireland today. The draft direction arose from a lengthy process dating back to the IAG², subsequent consultations, directions, more recent consultations (04/21 and 04/31), Response to Consultation (04/90), and the obligations imposed on eircom as a result of the Market Analysis review process³. All the evidence suggests that this price is the best estimate available. ComReg would suggest that some respondents have not taken account of ComReg's responsibilities to encourage efficient market entry and to allow the incumbent a reasonable return on its efficient costs.

In relation to the particular operator which expressed the view that the price is too low, ComReg believes that all of the substantive arguments have already been addressed in the previous Response to Consultation and Draft Direction, and refers readers interested in more detail to that document (ComReg 04/91). ComReg does not believe that any new points have been made that would convince it that prices for LLU are too low.

This Response to Draft Direction and Decision Notice directs that eircom amend its Access Reference Offer ('ARO') in accordance with the updated ULMP charges

² Industry Advisory Group

³ D8/04 Market Analysis: Wholesale Unbundled Access (including Shared Access) to Metallic Loops and Sub-Loops; Document No: 04/70; Date: 15 June 2004.

Local Loop Unbundling/Review of eircom's ULMP monthly rental charge

listed in Appendix A. ComReg will review the evolution of the market during this entire period and, in the unlikely event that substantial unanticipated circumstances arise, may issue further directions in relation to this matter.

The relevant legal background and the statutory powers of ComReg giving rise to this Decision Notice and Direction are set out in Appendix B of this Decision Notice.

Direction

eircom is directed to amend its ARO on each of 1 December 2004, 1 December 2005, 1 December 2006 and 1 December 2007 in accordance with Appendix A.

This Direction is issued under the statutory powers referred to in Appendix B.

The effective date of this direction is 5 November 2004.

Appendix A – Schedule of Charges

The following charges shall be published in eircom's ARO and shall be set as final for the relevant periods listed. All charges are exclusive of VAT and are denominated in euro.

ULMP Charge	Period	€ Price (VAT exclusive)
Monthly rental	Effective from 1 December 2004 to 30 November 2005	€14.65
Monthly rental	Effective from 1 December 2005 to 30 November 2006	No greater than €14.65 adjusted by the change in CPI in the year to 31 October 2005.
Monthly rental	Effective from 1 December 2006 to 30 November 2007	No greater than price from previous period adjusted by the change in CPI to the year to 31 October 2006.
Monthly rental	Effective from 1 December 2007	No greater than price from previous period adjusted by the change in CPI to the year to 31 October 2007

Appendix B – Statutory Powers and Legal Background Giving Rise to Decision Notice and Direction

A. Legal Background to Decision Notice and Direction

Under the terms of the settlement of the judicial review proceedings⁴ ('the Settlement') between eircom Limited ('eircom') and the Commission for Communications Regulation ('ComReg') it was agreed and consented amongst other things, that ComReg would forthwith initiate a new process for the purpose of agreeing with eircom new LLU prices effective from 1 April 2004 or, in default of such agreement, making a new decision fixing LLU prices to be effective from 1 April 2004.

Having regard to the Settlement, ComReg published two consultation documents ('the Consultations'), a Response to Consultation document and a Draft Decision Notice and Directions. These documents are listed below:-

1. Loop Unbundling Costing Consultation Direct and Indirect Operating Expenditure Econometric Modelling (Document No: 04/21 Date: 27 February 2004);
2. Local Loop Unbundling Costing Consultation Access Network Design Parameters and Costs of Certain Access Network Elements (Document No: 04/31 Date: 18 March 2004);
3. Response to Consultation (Document No: 04/90; Date: 30 August 2004); and
4. Draft Decision Notice & Direction (Document No: 04/91; Date 30 August 2004).

The purpose of the Consultations was to seek the views of eircom and industry in relation to the costs of an efficient operator, having regard to operating expenditure costs and the costs of certain access network elements. The Response to Consultation summarised, where possible, the responses received from industry. This document also outlined ComReg's conclusions on the core issues. The Draft Decision Notice and Direction detailed ComReg's conclusion on the ULMP monthly rental price and again sought the views of eircom and industry.

In parallel to the Consultations and subsequent documents arising from the Settlement, ComReg, as required by EU law, has also been engaged in the process of carrying out a detailed review of wholesale and retail markets for the provision of electronic communications services⁵. In the document entitled *Market Analysis: Wholesale unbundled access (including shared access) to metallic loops and sub-loops (Designation of SMP and Decision on Obligations)*. Date: 15 June, 2004 ('the SMP Decision') eircom was designated with significant market power on the market

⁴ The High Court, 2003 No. 6822P, eircom Limited, Applicant v The Commission for Communications Regulation, Respondent.

⁵ See 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.

for wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services, under the provisions of Regulations 25, 26 and 27 of the Framework Regulations⁶. The SMP Decision also imposed the *ex ante* regulatory obligations on eircom which are set out in Regulations 10, 11, 12, 13 and 14 of the Access Regulations⁷. The obligations imposed on eircom under Regulation 14 of the Access Regulations include obligations relating to cost recovery and price controls and the obligation for cost orientation of prices. ComReg may under Regulation 14 of the Access Regulations, require prices to be adjusted. Under Regulation 17 of the Access Regulations ComReg may issue directions to eircom to do or refrain from doing anything which ComReg specifies in the direction, for the purpose of further specifying requirements to be complied with by eircom relating to its obligations under the Access Regulations, including those under Regulation 14 thereof.

B. Statutory Powers Giving Rise to Direction

The Direction contained in this Decision Notice is issued under Regulations 14 and 17 of the Access Regulations, for the purpose of further specifying requirements to be complied with by eircom relating to obligations imposed on eircom, under Regulations 14 of the Access Regulations, pursuant to sections 9 and 12 of the SMP Decision, having regard to sections 10 and 12 of the Communications Regulation Act, 2002, the relevant terms of the Settlement and having taken into account the responses to the Consultations.

⁶ S.I. No. 307 of 2003 the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 which transposes Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

⁷ S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 which transposes Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities. These obligations are respectively transparency, non-discrimination, accounting separation, obligations of access to and use of specific network facilities and price control and cost accounting obligations.