



Commission for
Communications Regulation

Decision Notice and Decision Instrument –
Designation of SMP and SMP Obligations

Market Analysis – Interconnection Market
Review Wholesale Call Origination & Transit
Services

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1 Introduction

- 1.1 The new EU electronic communications regulatory framework requires that ComReg define relevant communications markets appropriate to national circumstances, in particular relevant geographic markets within its territory, in accordance with the market definition procedure outlined in the Framework Regulations¹. In addition, ComReg is required to conduct an analysis of the relevant markets to decide whether or not they are effectively competitive.
- 1.2 The Framework Regulations further require that the market analysis procedure under Regulation 27 be carried out as soon as possible after ComReg defines a relevant market, which takes place as soon as possible after the adoption, or subsequent revision, of the European Commission's Recommendation² by the European Commission³. In carrying out market definition and market analysis, ComReg must take the utmost account of the European Commission's Recommendation and the SMP Guidelines⁴.
- 1.3 In May 2005 ComReg notified the European Commission of the measures relating to the interconnection markets and following from this the European Commission accepted the notified measures. However following a decision by the Irish appeals panel ComReg decided not to adopt the final measures until it carried out a further review on its procedures and data. On 19 January 2007 ComReg issued its consultation document 07/02⁵. The consultation ran until 16 March 2007 and ComReg received three responses. The response to consultation and draft decision⁶ was published on 31 July 2007.
- 1.4 ComReg defined the following relevant markets:
 - National wholesale market for call origination services on the public telephone network provided at a fixed location;
 - National wholesale market for call transit services on the public telephone network provided at a fixed location (including incoming international transit services); and
 - Wholesale market for outgoing international transit services on the public telephone network provided at a fixed location.
- 1.5 ComReg conducted an analysis of the relevant markets to decide whether or not they are effectively competitive. ComReg used a wide range of criteria including

¹ The European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003.

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

³ Regulation 26 and 27.

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

⁵ Market Analysis – Wholesale Call Origination and Transit Services.

⁶ Document No. 07/51.

market share, existing and potential competition, barriers to entry and expansion, and countervailing buyer power.

- 1.6 Having regard to the above, ComReg is of the view that, in accordance with the Framework Regulations, eircom Ltd. (“eircom”) should be designated as having Significant Market Power (“SMP”) in the market for wholesale call origination and wholesale national call transit. With regard to the wholesale market for outgoing international transit services, ComReg is of the view that this did not meet the three criteria set out in the Relevant Markets Recommendation and as such ex ante regulatory intervention is unwarranted.
- 1.7 ComReg has considered all responses received to its public consultation (Document No. 07/02) in arriving at its preliminary conclusions in relation to market definition, market analysis and SMP, in accordance with Regulation 27(4) of the Framework Regulations. As required by Regulation 20 of the Framework Regulations, the draft measure containing these preliminary conclusions was made accessible to the European Commission and the national regulatory authorities (“NRAs”) in other EU member states. ComReg considered all comments on the draft measure and notified the response to the European Commission.
- 1.8 Having determined that the wholesale call origination market and the wholesale national call transit market are not effectively competitive, ComReg is now designating eircom with SMP, in accordance with Regulation 27(4) of the Framework Regulations. All existing SMP regulatory obligations currently imposed on eircom in the outgoing international transit market should be withdrawn, in accordance with Regulation 27(3) of the Framework Regulations. This document also contains the final decision instrument setting out the SMP obligations to be imposed on eircom as a consequence of the SMP designation. The final decision instrument is set out as an Annex to this document and the SMP obligations therein are effective, from the date of publication.

2 Background to Decision

- 2.1 The decisions contained in this document relate to the wholesale call origination market, wholesale national call transit market and the market for outgoing international transit services. In making the decisions set out in this document, ComReg has, taken account, of amongst other things, its objectives set out in section 12 of the Communications Regulation Act, 2002 and has taken the utmost account of the European Commission’s Recommendation and the SMP Guidelines.
- 2.2 ComReg concluded (as detailed in the SMP decision and the notification document⁷) that the following are relevant interconnection markets:
- National wholesale market for call origination services on the public telephone network provided at a fixed location;
 - National wholesale market for call transit services on the public telephone network provided at a fixed location (including incoming international transit services); and
 - Wholesale market for outgoing international transit services on the public telephone network provided at a fixed location.
- 2.3 This decision is based on the market definition, market analysis and reasoning conducted by ComReg in relation to the call origination market, the national call transit market and the outgoing international transit market, as part of the consultation process arising from the ComReg document entitled: Market Review – Interconnection: Wholesale Call Origination and Transit Services, dated 19 January, 2007 (“Document No. 07/02”) and Market Analysis – Interconnection Market Review Wholesale Call Origination and Transit Services, dated 31 July, 2007 (“Document No. 07/51”).
- 2.4 The measures contained in this decision were notified to the European Commission in accordance with Regulation 20 of the Framework Regulations and the provisions of the Article 7 Recommendation⁸. They were registered by the European Commission on 2 August, 2007. The notified measures were accepted by the European Commission, in correspondence to ComReg dated 31 August, 2007.
- 2.5 Pursuant to Article 7 (3) of the Framework Directive⁹, the European Commission examined the notification and in summary communicated that it would like to invite ComReg to monitor the developments in the market for wholesale national call transit closely, in terms of replication of the transit network, and revisit the situation as necessary.

⁷ Document 07/51.

⁸ Commission Recommendation of 23 July 2003 on notifications, time limits and consultation provided in Article 7 of Directive 2002/21/EC of the European Parliament and the Council on a common regulatory framework for electronic communications networks and services.

⁹ 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.

- 2.6 In document No 07/51, ComReg consulted upon its draft decision instrument and asked if respondents believed that the text of the draft decision instrument was from a legal, technical and practical perspective, sufficiently detailed, clear, precise and intelligible with regard to the specifics of the remedies proposed. All comments in relation to document No. 07/51 were carefully considered by ComReg. The final decision instrument is contained in the Annex to this document.

3 Market Review

Market Definition

3.1 ComReg has defined the following relevant markets:

- National wholesale market for call origination services on the public telephone network provided at a fixed location;
- National wholesale market for call transit services on the public telephone network provided at a fixed location (including incoming international transit services); and
- Wholesale market for outgoing international transit services on the public telephone network provided at a fixed location.

3.2 The defined markets are in line with the European Commission's recommendation on Relevant Markets and with the new Draft Recommendation¹⁰.

3.3 It should be noted that the outgoing wholesale international transit services market is a single, separate market to the wholesale national transit market.

3.4 ComReg has decided that the relevant geographic market in the case of both the wholesale call origination market and the wholesale national transit market is defined as Ireland.

Designation of Undertaking with Significant Market Power

3.5 The criteria used to assess SMP in the wholesale call origination market, the wholesale national transit market and the international outgoing transit market include the following:

- i) Market shares;
- ii) Barriers to entry and expansion;
- iii) Economies of scale and scope;
- iv) Countervailing buying power; and
- v) Existing and potential competition.

3.6 ComReg has decided that eircom is to be designated as having SMP in the markets for wholesale call origination and wholesale national transit services. The market

¹⁰

http://ec.europa.eu/information_society/policy/ecomm/doc/info_centre/public_consult/review/recommendation_final.pdf

for outgoing international transit does not satisfy the three criteria and as such existing SMP obligations applying to this market should be removed.

SMP Obligations

- 3.7 ComReg is required to impose ex ante regulatory obligations that are, appropriate, based on the nature of the problem identified, proportionate and justified in the light of the objectives set out in Article 8 of the Framework Directive. ComReg has identified the SMP obligations that it considers would be appropriate to impose on a SMP operator in these markets. These were the obligations of access to and use of, specific network elements and associated facilities, transparency, non-discrimination, accounting separation, price control and cost accounting obligations. ComReg has decided to impose these obligations on eircom in the wholesale call origination market and the wholesale national transit market.
- 3.8 In the document 07/51, ComReg consulted upon the draft decision instrument formally imposing these SMP obligations and asked if respondents believed that the text of the decision instrument was from a legal, technical and practical perspective, sufficiently detailed, clear, precise and intelligible with regard to the specifics of the proposed SMP obligations. The comments of respondents were carefully considered and the final decision instrument formalising the SMP obligations to be imposed on eircom is set out in the Annex to this document.

4 Response to Consultation on the Draft Decision Instrument

Introduction

- 4.1 One response was received in relation to the consultation on the draft decision instrument contained in Document No. 07/51. This response was received from eircom Ltd.
- 4.2 ComReg would like to thank eircom Ltd. for their submission. ComReg has taken all their comments into account in arriving at its final conclusions. ComReg would note that the amendments to the decision instrument do not involve substantial changes to the nature, or type of SMP obligations that it originally proposed to impose in Document No. 07/51.
- 4.3 This document sets out ComReg's responses to comments received on foot of Document No 07/51.
- 4.4 This document also finalises the decision instrument in relation to SMP to be imposed on (or withdrawn from) eircom Ltd. The SMP obligations applicable to eircom in relation to the relevant markets (as outlined in the Annex) will be imposed and effective from the date of publication of this document.

Responses to consultation and ComReg's position

Detailed below are the main issues raised by the respondent in its response to Document No. 07/51:

Wholesale outgoing international transit market:

- 4.5 The respondent welcomed the withdrawal of existing obligations on eircom in the wholesale market for fixed international transit, which it believes is long overdue.
ComReg's Position:
- 4.6 ComReg would like to point out to the respondent that the withdrawal of existing obligations relates to the outgoing international transit market only. This has been referred to in section 11.1 of the decision instrument (wholesale national transit).
- 4.7 Transit for incoming international traffic is in the same relevant market as national transit and therefore subject to ex ante regulation.

Wholesale market for directory enquiries:

- 4.8 The respondent welcomed the withdrawal of existing obligations on eircom in the wholesale market for Directory Enquiries.
ComReg's Position:
- 4.9 ComReg would like to point out that the withdrawal of existing obligations relates to the wholesale market for the labour element of DQ services. This has been referred to in section 10.7 of the decision instrument (wholesale call origination).

Price Control on the Payphone Access Charge (“PAC”):

- 4.10 With regard the price control for the Payphone Access Charge (“PAC”) eircom commented that there is uncertainty under the draft decision as to what price control would apply to the PAC once Decision 15/02 is revoked. eircom therefore requested ComReg to provide clarification on this point. The respondent also believed with regard to the PAC that the entire regime should be reviewed separate to this consultation and in a timely manner. It further added that the decline in the volume of calls originating on payphones means that the capped level of PAC is substantially below cost. It believed that the application of a cost-oriented PAC may have the effect of suppressing demand for payphone services further sending the service into a ‘downward spiral’. It then commented that a separate consultation across payphone providers is required to review the PAC regime.

ComReg’s Position:

- 4.11 In the interim, it is considered necessary that eircom maintain the current PAC (per Service Schedule 106, Table 2 of the eircom, RIO price list). This is referred to in section 10.4 of the decision instrument (wholesale call origination).
- 4.12 The PAC is currently subject to an ongoing review between ComReg and eircom. This review will be finalised by ComReg once all the relevant information on PAC is received from eircom. Once that review is completed, ComReg may then decide, depending on the outcome of that review, to issue a direction, or decision in relation to the PAC, or it may decide to conduct a public consultation in relation to the most appropriate price control mechanism to implement, going forward. If ComReg decides to conduct a consultation, it may, as a result thereof, issue a direction, or decision in relation to PAC. This is referred to in section 10.5 of the decision instrument (wholesale call origination).

Roll back of ex-ante regulation on the national transit market:

- 4.13 The respondent believed that there should be a rolling back of ex ante regulation in the national transit markets to reflect their increasing competitiveness and the widespread availability of competing core networks in Ireland.

ComReg’s Position:

- 4.14 ComReg’s views in this regard have been noted in the market analysis section of Document No.07/51, referring specifically to section 4, paragraphs 4.57 to 4.123. Based on the points made in those sections, ComReg believe that this market should continue be subject to ex ante regulation. As noted in section 2.5 above, ComReg will monitor the developments in the market for wholesale national call transit closely, in terms of replication of the transit network, and revisit the situation as necessary.

The position of eircom retail versus an OAO:

- 4.15 The respondent disagreed with it saw as ComReg’s attempt to present eircom’s retail arm as a other authorised operator (“OAO”) in its approach to non-discrimination and the application of related regulatory remedies.

ComReg’s Position:

- 4.16 ComReg has already pointed out in Document No. 07/51 that it believes that this misrepresents its views. eircom has presented no evidence that ComReg attempts to present eircom’s retail arm as a OAO. It is obvious that eircom’s retail arm is not in fact an OAO and it is unclear why eircom should suggest that ComReg thinks otherwise. The issue being examined is the position of eircom’s retail arm, versus an OAO’s retail arm not the notion that they are both the same. The point is in fact that they are not always the same. In some cases, they may be in the same position and in other cases, they are not. The object of non-discrimination obligation is to oblige eircom’s wholesale arm to give equality of treatment to eircom Retail on the one hand and OAOs on the other, so that the latter is not placed unduly at a disadvantage relative to eircom Retail and insofar as is possible is afforded a level playing field and equality of treatment. The ERG Remedies document for example, states that: *‘In general non-discrimination requires that the SMP undertaking ‘applies equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and provide services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners’. This shows that the scope of the non-discrimination obligation clearly covers a firm’s internal processes. The general non-discrimination obligation requires that third party access seekers are treated no less favourably than the operator’s internal divisions.’*¹¹

Implementation of a Wholesale Price Cap (“WPC”):

- 4.17 The respondent called for the timely introduction of a wholesale price cap (“WPC”) which has been a pending proposal of ComReg’s since 2002, as part of the market analysis process. The respondent believed that with a WPC, eircom and the SMP designated OAOs to which it will apply indirectly will be given incentives to increase its wholesale efficiency.

ComReg’s Position:

- 4.18 ComReg has commenced the process in relation to the WPC. This is much welcomed by industry and could be in place by mid 2008.

Obligation of accounting separation and cost accounting system:

- 4.19 The respondent believed that the accounting separation and the cost accounting remedies currently proposed for the wholesale fixed interconnection in ComReg’s separate consultation are unjustified and disproportionate.

¹¹ ERG Common Position on the approach to appropriate remedies in the new regulatory framework.

ComReg's Position:

- 4.20 As discussed in Document No 07/51, the obligation for accounting separation is a supporting obligation to verify compliance with the obligation of non-discrimination, price control and transparency. The obligation to maintain cost accounting systems could provide greater assurances in monitoring non-discrimination and to address the potential competition problems identified.
- 4.21 Detailed justification for the accounting separation and cost accounting system obligations will be provided in a separate consultation once the market reviews are completed. In the meantime the existing obligation of accounting separation and cost accounting system should be maintained by the SMP designated operator.

Clarification requested on sections of the decision instrument:

- 4.22 The respondent described certain aspects of the draft decision instrument, which it considered required clarification and in some instances, further assessment and amendment. These comments in relation to the relevant sections of the draft decision instrument are set out below and are, followed by ComReg's views on whether the proposed changes are justified and should be adopted. In each case, the section numbers refer to those in the draft decision instrument contained in document No 07/51.
- 4.23 **Section 7.1:** The respondent argued that the first bullet "eircom shall provide a wholesale equivalent for retail offerings to undertakings" in both draft decision instruments should be deleted as this instrument relates to a wholesale market and there are no retail offerings in this market.

ComReg's position:

- 4.24 This reference is now deleted from the final decision instrument.
- 4.25 **Section 10.3:** The respondent questioned the meaning of this section in the call origination draft decision instrument, which it believed seemed to relate to the services listed in section 10.2 but then referred to the PAC and did not include an action in relation to either. It also suggested that this section be deleted.

ComReg's position:

- 4.26 ComReg considers that this section is appropriate as it may be necessary for ComReg to consult with regard to the pricing mechanisms in respect of charges for Near End Handover and FRIACO. As pointed out by the respondent, section 10.3 did not include an action in relation to either 10.2 or the PAC. The text of section 10.3 has now been slightly amended to include the fact that if following a consultation that ComReg decides to amend the pricing mechanisms referred to in section 10.2 that eircom shall comply with any such direction or decision in relation thereto. PAC is now dealt with separately in section 10.4 and 10.5.

ANNEX A: DECISION INSTRUMENT (WHOLESALE CALL ORIGINATION)

1 STATUTORY POWERS GIVING RISE TO THIS DECISION INSTRUMENT

1.1 This Decision Instrument relates to the market for call origination services on the public telephone network at a fixed location, as identified in the EU Commission's Recommendation¹² and is made by the Commission for Communications Regulation ("ComReg"):

- i. Having had regard to sections 10 and 12 of the Act of 2002¹³;
- ii. Having taken account, of its functions under Regulation 6 (1) of Access Regulations¹⁴;
- iii. Having taken account of and assessed the proportionality of the obligations herein, relative to the objectives of ComReg set out in section 12 of the Act of 2002;
- iv. Having taken in to account the matters set out in Regulation 13 (4) of the Access Regulations;
- v. Having (where appropriate) complied with the Policy Directions made by the Minister¹⁵;
- vi. Having taken the utmost account of the EU Commission's Recommendation and the SMP Guidelines¹⁶;
- vii. Having taken account of the submissions received in relation to Document No. 07/02; and

¹² EU Commission Recommendation of 11 February, 2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

¹³ The Communications Regulations Act, 2002 (as amended).

¹⁴ 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.

¹⁵ Policy Directions made by the Minister for Communications, Marine and Natural Resources on 21 February, 2003 and 26 March, 2004.

¹⁶ Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services.

- viii. Pursuant to Regulations 25, 26 and 27 of the Framework Regulations¹⁷, and Regulations 9, 10, 11, 12, 13 and 14 of the Access Regulations.

1.2 This Decision Instrument is based on the market analysis and reasoning conducted by ComReg in relation to the market for wholesale call origination services on the public telephone network at a fixed location, related to the consultation in Document No. 07/02 and the reasoning set out in the body of this decision, which shall be construed together with this Decision Instrument.

1.3 A reference in this Decision Instrument to an Act or Statutory Instrument includes a reference to that Act or Statutory Instrument as amended, repealed or revoked.

2 MARKET DEFINITION

2.1 The relevant product market in this Decision Instrument is defined as the market for wholesale call origination on the public telephone network at a fixed location in accordance with the EU Commission’s Recommendation (“the Market”).

2.2 The relevant geographic market for the Market is defined as Ireland.

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

3.1 Pursuant to Regulation 25 and Regulation 26 (4) of the Framework Regulations, eircom Limited (“eircom”) is designated as having SMP in the Market in Ireland.

3.2 In this Decision Instrument, any reference to eircom includes a reference to any undertaking which is associated with, or is controlled by, or controls, directly or indirectly, eircom and which carries out business activities in Ireland, where the activities engaged in (either directly or indirectly) are activities within the scope of the relevant markets defined in this Decision Instrument.

4 SMP OBLIGATIONS¹⁸

4.1 ComReg has decided to impose SMP obligations, as provided for by Regulations 10, 11, 12, 13 and 14 of the Access Regulations, on eircom. The SMP obligations are described further in the sections below.

5 OBLIGATION TO PROVIDE ACCESS

5.1 Pursuant to Regulation 13 (1) of the Access Regulations, eircom shall meet all reasonable requests by undertakings¹⁹ for access to, and use of, such wholesale

¹⁷ The European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 which transpose 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.

¹⁸ ComReg is legally obliged to impose ex ante SMP obligations that are appropriate, based on the nature of the problem identified, proportionate and justified in the light of the objectives set out in Article 8 of Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications.

access products, features or additional associated facilities, by undertakings requesting access or use of such access products, features or additional associated facilities, included in the Market.

5.2 Without prejudice to the generality of the foregoing, eircom shall:

- i. Pursuant to Regulation 13 (2) (b) of the Access Regulations, negotiate in good faith with undertakings, requesting access;
- ii. Pursuant to Regulation 13 (2) (c) of the Access Regulations, not withdraw access to facilities already granted and continue to provide such facilities in accordance with existing terms and conditions and specifications;
- iii. If eircom proposes a withdrawal of facilities already granted, it shall notify ComReg of its proposal one (1) calendar month in advance of so doing, giving detailed reasons for the proposal, but shall not withdraw such facilities unless it has obtained the prior approval of ComReg in writing. In certain cases of withdrawal, ComReg may consult with relevant parties, prior to making a decision on whether to grant or to withhold the approval referred to in this section 5.2;
- iv. Pursuant to Regulation 13 (2) (e) of the Access Regulations, grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;
- v. Pursuant to Regulation 13 (2) (h) of the Access Regulations, provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services; and
- vi. Pursuant to Regulation 13 (2) (i) of the Access Regulations, interconnect networks or network facilities.

5.3 Pursuant to Regulation 13 (1) and 13 (2) of the Access Regulations, eircom shall have an obligation to meet reasonable requests for access to, and use of the wholesale access products, features or additional associated facilities, which are described in:

- i. Service schedules 002 and 005 and all the other eircom services listed under “eircom services” in Annex C of the RIO;
- ii. eircom’s RIO Network Price List;
- iii. eircom’s Interconnect O&M Manual;
- iv. eircom’s service level agreement (“SLA”) for Interconnect Paths; and
- v. eircom’s document on Traffic Designation for Inbound & Outbound Interconnect Paths published on its wholesale website.

¹⁹ An undertaking has the same meaning as that contained in the Framework Regulations.

References to each of the documents referred to in this section 5.3 are references to the most up to date version of each of those documents and as amended from time.

6 CONDITION ATTACHED TO ACCESS OBLIGATIONS

6.1 Pursuant to its obligation of non-discrimination under section 7 and pursuant to Regulation 13 (3) of the Access Regulations, it shall be a condition of the obligations referred to in section 5 that eircom shall conclude legally binding SLAs with undertakings in respect of those facilities referred to in section 5. eircom shall develop and offer, or where appropriate continue to offer, SLAs in respect of those products and services referred to in section 5.

7 OBLIGATION OF NON-DISCRIMINATION

7.1 Pursuant to Regulation 11 of the Access Regulations, eircom shall have an obligation of non-discrimination in respect of the provision of those services and products described in section 5. Without prejudice to the generality of the foregoing, eircom shall:

- i. Apply equivalent conditions in equivalent circumstances to undertakings providing equivalent services and provide services and information to undertakings under the same conditions and of the same quality as eircom provides for its own services or those of its subsidiaries or partners; and
- ii. Ensure that information and services are provided to undertakings according to timescales, on a basis, and of a quality, which are at least equivalent to those provided to eircom's retail arm and associates.

7.2 Without prejudice to the generality of section 7.1, eircom shall provide access to undertakings (requesting access in accordance with sections 5.1 and 5.2 of this Decision Instrument) to any additional wholesale inputs which are necessary to enable those undertakings to provide end to end services which are the equivalent of those offered by eircom's retail division.

8 OBLIGATION OF TRANSPARENCY

8.1 Pursuant to Regulation 10 (1) of the Access Regulations and in furtherance of its obligation of non-discrimination under section 7 and for the purpose of ComReg monitoring compliance with that obligation, eircom shall, ensure that it is transparent in relation to interconnection and access in the Market.

8.2 Without prejudice to the generality of section 8.1, eircom shall:

- i. Publish on its wholesale website, and keep updated, a RIO in respect of the services and facilities referred to in section 5;

- ii. Ensure that the RIO is sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested;
 - iii. Ensure that the RIO includes a description of the relevant offerings broken down into components according to market needs and a description of the associated terms and conditions, including prices; and
 - iv. Ensure that the RIO contains details of the terms and conditions of access in respect of facilities already granted.
- 8.3 Without prejudice to the generality of sections 8.1 and 8.2, eircom shall continue to publish the call origination schedules, prices, product descriptions and inter-operator process manuals contained in “*Core RIO document Version 3.14*” (as amended from time to time) and eircom RIO Price List Version 1.64 (as amended from time to time)²⁰.
- 8.4 eircom shall make public such information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices, in respect of the services and facilities referred to in section 5, as specified by ComReg from time to time.
- 8.5 eircom shall comply with the processes developed in accordance with ComReg Decision Notice D10/02.

9 OBLIGATION OF ACCOUNTING SEPARATION

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

10 OBLIGATIONS RELATING TO PRICE CONTROL AND COST ACCOUNTING

- 10.1 Pursuant to Regulation 14 (1) of the Access Regulations, the prices charged by eircom to any undertaking for those products and services described in section 5 shall be cost oriented and such costs shall be calculated using a pricing model based on forward looking long run incremental costs (“FL-LRIC”) or an alternative pricing model, if ComReg decides, following consultation, to adopt such an alternative pricing model.

²⁰ These documents are currently published on the eircom wholesale website – www.eircomwholesale.ie

- 10.2 Without prejudice to the generality of section 10.1, eircom shall continue to apply the existing pricing mechanisms, described in Annex C to the current version of the RIO, in respect of charges for *Near End Handover* and *FRIACO*.
- 10.3 If following consultation ComReg decides by way of direction, or decision to amend the pricing mechanisms referred to in section 10.2, eircom shall comply with any such direction, or decision in relation thereto.
- 10.4 Without prejudice to section 10.1, direction 3.2 of ComReg decision D15/02, insofar as it applies to the PAC, is revoked, but for the avoidance of doubt, eircom shall maintain the current PAC charge (as per Service Schedule 106, Table 2 of the current RIO price list).
- 10.5 Following its current review of the PAC charge,²¹ ComReg may either issue a direction, or decision in relation to the PAC charge, which eircom shall comply with, or it may decide to conduct a public consultation in relation thereto. If ComReg conducts such a consultation, it may, as a result thereof, issue a direction, or decision in relation to the PAC charge, which eircom shall comply with.
- 10.6 Pursuant to Regulation 14 (1) of the Access Regulations, eircom shall continue to comply with all of the obligations in relation to cost accounting in force immediately prior to the effective date of this Decision Instrument, until such time as ComReg makes a decision, following further consultation in relation to accounting separation obligations and cost accounting obligations.
- 10.7 Pursuant to Regulations 8 and 9 of the Access Regulations, the existing SMP price obligation insofar as it relates to the market for the labour element of the directory enquiry service, is hereby withdrawn.

11 STATUTORY POWERS NOT AFFECTED

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

12 EFFECTIVE DATE

- 12.1 This Decision Instrument shall be effective on the date hereof, until further notice by ComReg.

Mike Byrne
Chairperson
The Commission for Communications Regulation
Dated this the 5th day of October, 2007

²¹ See Section 4, Paragraphs 4.11-4.12

ANNEX B: DECISION INSTRUMENT (WHOLESALE CALL TRANSIT)

1 STATUTORY POWERS GIVING RISE TO THIS DECISION INSTRUMENT

1.1 This Decision Instrument relates to the market for wholesale national call transit services on the public telephone network at a fixed location, as identified in the EU Commission's Recommendation²² and is made by the Commission for Communications Regulation ("ComReg"):

- i. Having had regard to sections 10 and 12 of the Act of 2002²³;
- ii. Having taken account, of its functions under Regulation 6 (1) of Access Regulations²⁴;
- iii. Having taken account of and assessed the proportionality of the obligations herein, relative to the objectives of ComReg set out in section 12 of the Act of 2002;
- iv. Having taken in to account the matters set out in Regulation 13 (4) of the Access Regulations;
- v. Having (where appropriate) complied with the Policy Directions made by the Minister²⁵;
- vi. Having taken the utmost account of the EU Commission's Recommendation and the SMP Guidelines²⁶;
- vii. Having taken account of the submissions received in relation to Document No. 07/02; and
- viii. Pursuant to Regulations 25, 26 and 27 of the Framework Regulations²⁷, and Regulations 9, 10, 11, 12, 13 and 14 of the Access Regulations.

²² EU Commission Recommendation of 11 February, 2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

²³ The Communications Regulations Act, 2002 (as amended).

²⁴ 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.

²⁵ Policy Directions made by the Minister for Communications, Marine and Natural Resources on 21 February, 2003 and 26 March, 2004.

²⁶ Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services.

1.2 This Decision Instrument is based on the market analysis and reasoning conducted by ComReg in relation to the market for wholesale call transit services on the public telephone network at a fixed location, related to the consultation in Document No. 07/02 and the reasoning set out in the body of this decision, which shall be construed together with this Decision Instrument.

1.3 A reference in this Decision Instrument to an Act or Statutory Instrument includes a reference to that Act or Statutory Instrument as amended, repealed or revoked.

2 MARKET DEFINITION

2.1 The relevant product market in this Decision Instrument is defined as the market for wholesale national call transit services on the public telephone network at a fixed location, in accordance with the EU Commission’s Recommendation (“the Market”).

2.2 The relevant geographic market for the Market is defined as Ireland.

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

3.1 Pursuant to Regulation 25 and Regulation 26 (4) of the Framework Regulations, eircom Limited (“eircom”) is designated as having SMP in the Market in Ireland.

3.2 In this Decision Instrument, any reference to eircom includes a reference to any undertaking which is associated with, or is controlled by, or controls, directly or indirectly, eircom and which carries out business activities in Ireland, where the activities engaged in (either directly or indirectly) are activities within the scope of the relevant markets defined in this Decision Instrument.

4 SMP OBLIGATIONS²⁸

4.1 ComReg has decided to impose SMP obligations, as provided for by Regulations 10, 11, 12, 13 and 14 of the Access Regulations, on eircom. The SMP obligations are described further in the sections below.

5 OBLIGATION TO PROVIDE ACCESS

5.1 Pursuant to Regulation 13 (1) of the Access Regulations, eircom shall meet all reasonable requests by undertakings²⁹ for access to, and use of, such wholesale

²⁷ The European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 which transpose 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.

²⁸ ComReg is legally obliged to impose ex ante SMP obligations that are appropriate, based on the nature of the problem identified, proportionate and justified in the light of the objectives set out in Article 8 of Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications.

²⁹ An undertaking has the same meaning as that contained in the Framework Regulations.

access products, features or additional associated facilities, by undertakings requesting access or use of such access products, features or additional associated facilities, included in the Market.

5.2 Without prejudice to the generality of the foregoing, eircom shall:

- i. Pursuant to Regulation 13 (2) (b) of the Access Regulations, negotiate in good faith with undertakings, requesting access;
- ii. Pursuant to Regulation 13 (2) (c) of the Access Regulations, not withdraw access to facilities already granted and continue to provide such facilities in accordance with existing terms and conditions and specifications;
- iii. If eircom proposes a withdrawal of facilities already granted, it shall notify ComReg of its proposal one (1) calendar month in advance of so doing, giving detailed reasons for the proposal, but shall not withdraw such facilities unless it has obtained the prior approval of ComReg in writing. In certain cases of withdrawal, ComReg may consult with relevant parties, prior to making a decision on whether to grant or to withhold the approval referred to in this section 5.2;
- iv. Pursuant to Regulation 13 (2) (e) of the Access Regulations, grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;
- v. Pursuant to Regulation 13 (2) (h) of the Access Regulations, provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services; and
- vi. Pursuant to Regulation 13 (2) (i) of the Access Regulations, interconnect networks or network facilities.

5.3 Pursuant to Regulation 13 (1) and 13 (2) of the Access Regulations, eircom shall have an obligation to meet reasonable requests for access to, and use of the wholesale access products, features or additional associated facilities, which are described in:

- i. Service schedules 002 and 005 and all the other eircom services listed under “eircom services” in Annex C of the RIO;
- ii. eircom’s RIO Network Price List;
- iii. eircom’s Interconnect O&M Manual;
- iv. eircom’s service level agreement (“SLA”) for Interconnect Paths; and
- v. eircom’s document on Traffic Designation for Inbound & Outbound Interconnect Paths published on its wholesale website.

References to each of the documents referred to in this section 5.3 are references to the most up to date version of each of those documents and as amended from time.

6 CONDITION ATTACHED TO ACCESS OBLIGATIONS

6.1 Pursuant to its obligation of non-discrimination under section 7 and pursuant to Regulation 13 (3) of the Access Regulations, it shall be a condition of the obligations referred to in section 5 that eircom shall conclude legally binding SLAs with undertakings in respect of those facilities referred to in section 5. eircom shall develop and offer, or where appropriate continue to offer, SLAs in respect of those products and services referred to in section 5.

7 OBLIGATION OF NON-DISCRIMINATION

7.1 Pursuant to Regulation 11 of the Access Regulations, eircom shall have an obligation of non-discrimination in respect of the provision of those services and products described in section 5. Without prejudice to the generality of the foregoing, eircom shall:

- i. Apply equivalent conditions in equivalent circumstances to undertakings providing equivalent services and provide services and information to undertakings under the same conditions and of the same quality as eircom provides for its own services or those of its subsidiaries or partners; and
- ii. Ensure that information and services are provided to undertakings according to timescales, on a basis, and of a quality, which are at least equivalent to those provided to eircom's retail arm and associates.
- iii. Without prejudice to the generality of section 7.1, eircom shall provide access to undertakings (requesting access in accordance with sections 5.1 and 5.2 of this Decision Instrument) to any additional wholesale inputs which are necessary to enable those undertakings to provide end to end services which are the equivalent of those offered by eircom's retail division.

8 OBLIGATION OF TRANSPARENCY

8.1 Pursuant to Regulation 10 (1) of the Access Regulations and in furtherance of its obligation of non-discrimination under section 7 and for the purpose of ComReg monitoring compliance with that obligation, eircom shall, ensure that it is transparent in relation to interconnection and access in the Market.

8.2 Without prejudice to the generality of section 8.1, eircom shall:

- i. Publish on its wholesale website, and keep updated, a RIO in respect of the services and facilities referred to in section 5;
- ii. Ensure that the RIO is sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested;

- iii. Ensure that the RIO includes a description of the relevant offerings broken down into components according to market needs and a description of the associated terms and conditions, including prices; and
 - iv. Ensure that the RIO contains details of the terms and conditions of access in respect of facilities already granted.
- 8.3 Without prejudice to the generality of sections 8.1 and 8.2, eircom shall continue to publish the call transit schedules, prices, product descriptions and inter-operator process manuals contained in “*Core RIO document Version 3.14*” (as amended from time to time) and eircom RIO Price List Version 1.64 (as amended from time to time)³⁰.
- 8.4 eircom shall make public such information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices, in respect of the services and facilities referred to in section 5, as specified by ComReg from time to time.
- 8.5 eircom shall comply with the processes developed in accordance with ComReg Decision Notice D10/02.

9 OBLIGATION OF ACCOUNTING SEPARATION

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

10 OBLIGATIONS RELATING TO PRICE CONTROL AND COST ACCOUNTING

- 10.1 Pursuant to Regulation 14 (1) of the Access Regulations, the prices charged by eircom to any undertaking for those products and services described in section 5 shall be cost oriented and such costs shall be calculated using a pricing model based on forward looking long run incremental costs (“FL-LRIC”) or an alternative pricing model, if ComReg decides, following consultation, to adopt such an alternative pricing model.
- 10.2 Pursuant to Regulation 14 (1) of the Access Regulations, eircom shall continue to comply with all of the obligations in relation to cost accounting in force immediately prior to the effective date of this Decision Instrument, until such time as ComReg makes a decision, following further consultation in relation to accounting separation obligations and cost accounting obligations.

³⁰ These documents are currently published on the eircom wholesale website – www.eircomwholesale.ie

**11 WITHDRAWAL OF EXISTING SMP OBLIGATIONS ON THE
OUTGOING INTERNATIONAL TRANSIT MARKET**

11.1 Pursuant to Regulations 8 and 9 of the Access Regulations, all existing SMP obligations imposed on the market for international outgoing transit are hereby withdrawn.

12 STATUTORY POWERS NOT AFFECTED

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

13 EFFECTIVE DATE

13.1 This Decision Instrument shall be effective on the date hereof, until further notice by ComReg.

Mike Byrne
Chairperson
The Commission for Communications Regulation
Dated this the 5th day of October, 2007.