



Response to Consultation & Consultation on Draft Decision

Market Analysis – Interconnection markets
Response to Consultation 04/106 and Draft Decision

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All responses to this consultation should be clearly marked:-
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1 Executive Summary

- 1.1 The new communications regulatory framework requires that ComReg define relevant markets appropriate to national circumstances, including relevant geographic markets within its territory, in accordance with the market definition procedure outlined in the *Framework Regulations*.¹
- 1.2 On 22 October 2004, ComReg issued a national consultation on its market analysis for interconnection markets (ComReg Document 04/106). ComReg received submissions from the seven respondents listed below by the close of the consultation period:
- Alto
 - Chorus
 - eircom
 - BT Ireland
 - Hutchison 3G Ireland
 - MCI
 - Vodafone
- 1.3 ComReg thanks all respondents for their submissions. Having considered the views of all respondents, ComReg sets out in this document its conclusions regarding the market analysis process.

Market definition

- 1.4 ComReg proposes to define four interconnection markets:
- National market for wholesale call origination services provided over public telephone networks at a fixed location;
 - National markets for wholesale call termination services used to provide retail calls to end-users on each public telephone network, provided at a fixed location;
 - National market for wholesale call termination services used to provide retail calls to service providers on public telephone networks, provided at a fixed location; and
 - National market for wholesale national call transit services on the public telephone networks provided at a fixed location.
- 1.5 In the consultation, ComReg suggested that international transit was in a separate market, and the information which was available at that time suggested that this market was effectively competitive. Responses to the consultation analysed by ComReg support the finding that international transit is in a separate market, but has raised questions about the level of competition in this market. ComReg therefore proposes to undertake a separate national consultation on the market for international transit.

¹ S.I. No. 307 of 2003.

Market analysis

- 1.6 The analysis of the **wholesale market for call origination on the fixed public telephone network** found that eircom has Significant Market Power (SMP). eircom's market share has ranged between 81-86% over the last three years. In addition, other criteria, such as the absence of countervailing buyer power and the existence of high and non-transitory entry barriers, are strong indicators of the existence of SMP in this market. ComReg does not think it is likely that any current service provider can or will impose a competitive constraint on eircom, and does not believe that any entity will develop the ability to do so within the lifetime of this review.
- 1.7 The analysis of the **wholesale market for call termination for calls to end-users** found that each fixed network operator should be designated as having SMP on its fixed public telephone network. The market share of each network operator is 100%.
- 1.8 In the **wholesale market for call termination of calls to service providers**, eircom has a market share of 80%, and should be designated as having SMP.
- 1.9 Other criteria, such as market behaviour and the absence of countervailing buyer power, are also strong indicators that the relevant operators enjoy SMP in both of the termination markets.
- 1.10 The market analysis of the **wholesale national transit** market shows that eircom has SMP with a market share ranging between 68-70% over the last three years. ComReg has also relied on other indicators such as pricing behaviour, absence of countervailing buyer power, economies of scale and scope and existence of entry barriers in determining the level of competition in this market.

Remedies

- 1.11 ComReg identified potential competition problems in the interconnection markets associated with single market dominance, and with vertical and horizontal leveraging. ComReg proposes that remedies are required to address these problems.
- 1.12 In the markets for **call origination** and **national transit**, where eircom has SMP, ComReg proposes that appropriate remedies to address market failure are :
 - An obligation of transparency, which will ensure the continued publication of a Reference Interconnect Offer (RIO), and will specify its contents and processes for evolution;
 - An obligation of non-discrimination;
 - An access obligation to provide call origination and national transit services on a reasonable request basis;
 - An access obligation detailing how access should be implemented, covering issues such as the need to grant open access to relevant information and key technologies and to provide access to operational support systems ('OSS'); and
 - the obligation not to withdraw access to facilities already granted, except where ComReg has approved this withdrawal;
 - A price control and cost accounting obligation, which will continue to apply FL-LRIC pending the outcome of further consultation on a wholesale price cap;

- An obligation to maintain existing accounting systems, accounting separation and associated methodologies pending the outcome of further consultation.
- 1.13 In the market for **call termination to end-users**, where all operators are found to have SMP on their own networks, ComReg recognises the different competitive conditions faced by eircom and OAOs, and proposes that proportionate remedies should be designed to reflect these differences.
- 1.14 ComReg proposes that appropriate remedies for OAOs are :
- An obligation of transparency;
 - A non-discrimination obligation;
 - An access obligation to ensure that all operators meet reasonable requests for access to and use of their network facilities for the purposes of call termination
 - A price control obligation.
- 1.15 ComReg proposes that appropriate remedies for eircom are :
- An obligation of transparency;
 - A non-discrimination obligation;
 - An access obligation detailing how access should be implemented, covering issues such as the need to grant open access to relevant information and key technologies and to provide OSS; and
 - the obligation not to withdraw access to facilities already granted, except where ComReg has approved this withdrawal;
 - A price control and cost accounting obligation, which will continue to apply FL-LRIC pending the outcome of further consultation on a wholesale price cap;
 - An obligation to maintain current cost accounting systems, accounting separation and associated methodologies pending the outcome of further consultation.
- 1.16 In the market for **termination of calls to service providers**, ComReg has found eircom to have SMP. Remedies in this market are designed to ensure that OAOs have access to the wholesale products required to offer termination of calls to service providers, on an equivalent basis to that offered by eircom wholesale to its downstream arms.
- 1.17 ComReg proposes that appropriate remedies are :
- An obligation of transparency;
 - A non-discrimination obligation;
 - An obligation to maintain current cost accounting systems, accounting separation and associated methodologies pending the outcome of further consultation.
- 1.18 ComReg proposes to impose all of these remedies as of the effective date of the decision. ComReg is publishing in Annex B its proposed Draft Measure to implement the remedies detailed above. ComReg is consulting on the measure as detailed in Annex B and would welcome comments on the provisions prior to their final adoption.

Other services necessary for the provision of interconnection

- 1.19 ComReg proposes to mandate the provision of capacity based interconnection products outside the market review process; that is without a designation of SMP or

definition of a relevant market. ComReg considers its approach in mandating such products to be consistent with the approach set out in the *Access Regulations* and the *Explanatory Memorandum*. It is ComReg's view that the provision of these products is essential to ensure adequate access, interconnection and interoperability. ComReg also proposes that it is not necessary to impose additional remedies on fixed SMS. Finally, the information available to ComReg does not indicate that the supply of wholesale Directory Enquiry services is effectively competitive. However, ComReg wishes to consider the matter further by means of an additional consultative stage. In the meantime all existing obligations on eircom will be maintained.

- 1.20 ComReg believes the remedies set out in this market review support the objectives outlined in the Communications Regulation Act 2002 as to how ComReg should exercise its functions. The remedies address market failure in the interconnection markets, and in so doing, promote the best interests of Irish consumers through the promotion of additional competitive activity.

2 Introduction

Objectives under the Communications Act 2002

- 2.1 Section 12 of the Communications Regulation Act 2002 outlines the objectives of ComReg in exercising its functions. In relation to the provision of electronic communications networks, electronic communications services and associated facilities these objectives are:
- (i) to promote competition
 - (ii) to contribute to the development of the internal market, and
 - (iii) to promote the interests of users within the European Union.
- 2.2 This review is in line with the objectives set out in the Communications Regulation Act 2002, in particular as ComReg seeks to promote competition and ensure that end-users derive the maximum benefit in terms of price, choice and quality.

Regulatory Framework

- 2.3 Four sets of Regulations,² which transpose into Irish law four European Community directives on electronic communications and services,³ entered into force in Ireland on 25 July 2003. The final element of the EU electronic communications regulatory package, the Privacy and Electronic Communications Directive, was transposed into Irish law on 6 November 2003.
- 2.4 The new communications regulatory framework requires that ComReg define relevant markets appropriate to national circumstances, including relevant geographic markets within its territory, in accordance with the market definition procedure outlined in the Framework Regulations.⁴ In addition, ComReg is required

² Namely, the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 (S.I. No. 307 of 2003), ("the *Framework Regulations*"); the European Communities (Electronic Communications) (Authorisation) Regulations, 2003 (S.I. No. 306 of 2003), ("the *Authorisation Regulations*"); the European Communities (Electronic Communications) (Access) Regulations 2003 (S.I. No. 305 of 2003), ("the *Access Regulations*"); the European Communities (European Communications) (Universal Service and Users' Rights) Regulations 2003 (S.I. No. 308 of 2003), ("the *Universal Service Regulations*").

³ The new regulatory framework for electronic communications networks and services, comprising of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, ("the *Framework Directive*"), OJ 2002 L 108/33, and four other Directives (collectively referred to as "the *Specific Directives*"), namely: Directive 2002/20/EC of the European Parliament and of the Council on the authorisation of electronic communications networks and services, ("the *Authorisation Directive*"), OJ 2002 L 108/21; Directive 2002/19/EC of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and services, ("the *Access Directive*"), OJ 2002 L 108/7; Directive 2002/22/EC of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services, ("the *Universal Service Directive*"), OJ 2002 L 108/51; and the Directive 2002/58/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector, ("the *Privacy and Electronic Communications Directive*"), OJ 2002 L 201/37.

⁴ Regulation 26.

to conduct an analysis of the relevant markets to decide whether or not they are effectively competitive⁵. Where it concludes that the relevant market is not effectively competitive (i.e. where there are one or more undertakings with significant market power (“SMP”)), the Framework Regulations provide that it must identify the undertakings with SMP on that market and impose on such undertakings such specific regulatory obligations as it considers appropriate⁶. Alternatively, where it concludes that the relevant market is effectively competitive, the Framework Regulations oblige ComReg not to impose any new regulatory obligations on any undertaking in that relevant market. If ComReg has previously imposed sector-specific regulatory obligations on undertakings in that relevant market, it must withdraw such obligations and may not impose new obligations on those undertaking(s).⁷

- 2.5 The Framework Regulations further require that the market analysis procedure under Regulation 27 be carried out subsequent to ComReg defining a relevant market, which is to occur as soon as possible after the adoption, or subsequent revision, of the Recommendation on relevant product and service markets (“*the Relevant Markets Recommendation*”) by the EU Commission⁸. In carrying out market definition and market analysis, ComReg must take the utmost account of the Relevant Markets Recommendation and the Commission's Guidelines on Market Analysis and Significant Market Power (“*The SMP Guidelines*”).

Consultation

- 2.6 ComReg is consulting on the draft measures detailed in Annex B of this document. All comments to this Public Consultation are welcome.
- 2.7 The consultation period will run from 19th May 2005 to 15th June 2005 .
- 2.8 Any confidential information that is to be considered as part of a response to the consultation should be in an annex to the non-confidential comments.
- 2.9 As required by Regulation 20 of the Framework Regulations, the relevant draft measure related to the markets discussed will be made accessible to the European Commission and the national regulatory authorities in other member states of the European Community prior to adopting the measure.

ComReg procedure

- 2.10 ComReg has collected market data from a variety of internal and external sources, including users and providers of electronic communications networks and services (“ECNS”), and from consumer surveys commissioned by ComReg, in order to carry out its respective market definition and market analysis procedures based on established economic and legal principles, and taking the utmost account of the Relevant Markets Recommendation and *the SMP Guidelines*.
- 2.11 On 22 October 2004, ComReg issued a national consultation on its market analysis for interconnection markets (ComReg Document 04/106). ComReg received

⁵ Regulation 27.

⁶ Regulation 27(4).

⁷ Regulation 27(3).

⁸ Regulations 26 and 27.

submissions from the seven respondents listed below by the close of the consultation period:

- Alto
- Chorus
- eircom
- BT Ireland
- Hutchison 3G Ireland
- MCI
- Vodafone

2.12 ComReg thanks all respondents for their submissions. Having considered the views of all respondents, ComReg sets out in this document its conclusions regarding the market analysis process.

Liaison with Competition Authority

2.13 There is a requirement on National Regulatory Authorities (NRAs) to co-operate with National Competition Authorities (NCAs) throughout the process of market definition and analysis. In December 2002, ComReg signed a co-operation agreement with the Competition Authority for a period of three years.⁹ To facilitate market review decision-making, a Steering Group including a representative from the Competition Authority was established by ComReg. Through this forum, the Competition Authority has been informed and involved throughout the market review decision making process.

2.14 The Competition Authority were asked for their views on this market review and their opinion is included in Annex A.

Structure of this document

2.15 The remainder of this consultation document is structured as follows:

- **Section 3** presents ComReg's conclusions on the definition of the interconnection markets. This section consists of a review of the market definition procedure and its scope, as well as demand- and supply-side assessment;
- **Section 4** presents ComReg's market analysis for the interconnection markets and presents ComReg's view on whether these markets are effectively competitive;
- **Section 5** presents ComReg's view on those undertakings with significant market power in the interconnection markets;
- **Section 6** provides a discussion of the general principles associated with remedies and proposes remedies to be implemented under the new regulatory framework;

⁹ ComReg Document No. 03/06

- **Section 7** provides a discussion of the treatment of other services necessary for the provision of interconnection services;
- **Section 8** outlines the regulatory impact assessment that was conducted in relation to proposed regulatory intervention regarding these markets;
- **Section 9** sets out the procedure for submitting comments on the draft directions
- **Annex A** contains the response of the Competition Authority;
- **Annex B** consists of the proposed draft measures;
- **Annex C** contains a summary of views of respondents, and ComReg's discussion on points raised;
- **Annex D** includes an illustration of call case diagrams and wholesale payment flows;
- **Annex E** contains mapped illustrations of call case scenarios with market boundaries;
- **Annex F** provides a list of undertakings with SMP in the market for termination of calls to end users;
- **Annex G** contains a list of products for which eircom is mandated to give access to interconnection, and
- **Annex H**: provides an example of the retention model for NTC type calls.
- **Annex I**: Notification of Draft Measures pursuant to Article 7(3) of the Directive 2002/21/EC

3 Relevant Market Definitions

Scope of Review

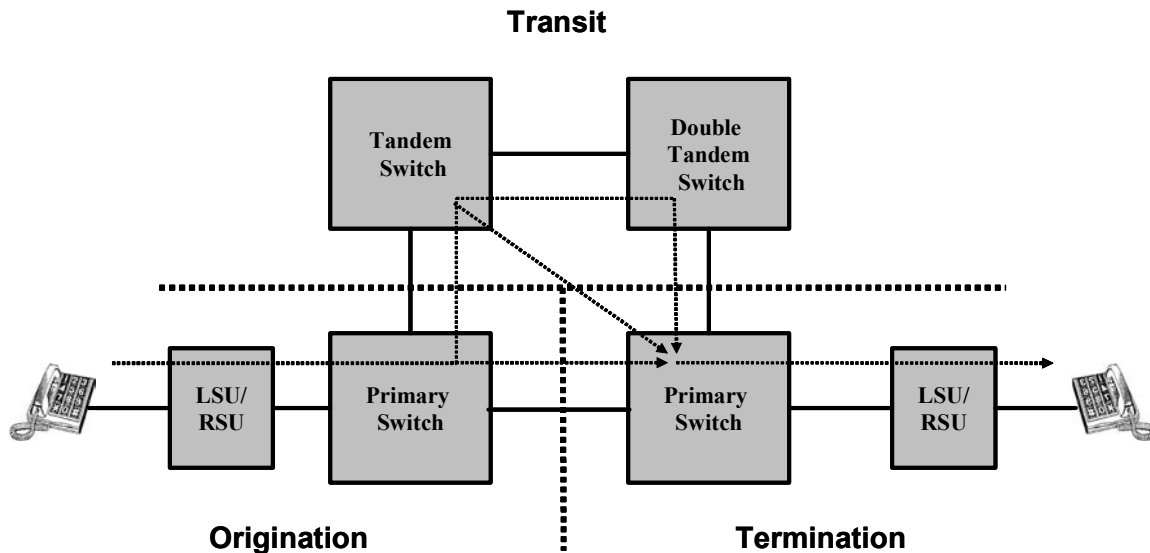
- 3.1 The markets considered in this review encompass a range of wholesale services provided over fixed public narrowband networks that are necessary inputs for entities seeking to provide fixed public narrowband retail services.
- 3.2 The EU Commission recommends, in its Relevant Markets Recommendation, that NRAs should analyse the relevant wholesale markets for:
- Call origination on the public telephone network provided at a fixed location
 - Call termination on individual public telephone networks provided at a fixed location and
 - Transit services in the fixed public telephone network
- 3.3 ComReg has considered the appropriateness of these three market definitions and the appropriate delineation of the boundaries between the relevant markets for Ireland.
- 3.4 The nature of interconnection means that the market cannot be analysed in isolation from the downstream markets which rely on wholesale inputs. In related consultations¹⁰, ComReg has considered the retail markets which require interconnection services as inputs. ComReg has also considered a range of the issues surrounding termination, in the context of wholesale voice call termination on individual mobile networks¹¹.
- 3.5 In the consultation, ComReg proposed that the boundaries between call origination, call termination and transit could be defined as follows :
- Origination services incorporate carriage from the end-user's local loop, including the concentrator, but excluding the subscriber's line card in its entirety, through the primary switching stage to the next element in the call routing. The total cost of the line card is ascribed to the access network, and none ascribed to the core network
 - Transit conveyance then comprises all other elements of call routing, involving at least one tandem exchange. Tandem/transit conveyance should be defined by reference to the routing of the call rather than the items of equipment used to route the particular call. For this reason, ComReg intended to correlate the EC's terminology with eircom's existing definitions of primary, single tandem and double tandem conveyance.
 - ComReg proposed to functionally define the boundaries of the relevant markets for 'origination' and 'termination' as congruent with those functions performed by a local exchange, directly connected to a customer in originating and

¹⁰ Retail Fixed Narrowband Access (04/94, response to consultation 05/25); Retail Fixed Calls (04/95, response to consultation 05/26) Wholesale unbundled access (including shared access) to metallic loops and sub-loops (04/40).

¹¹ Response to consultation and Notification to the EC on wholesale voice termination on individual networks (04/62a).

terminating a call, in exactly the same way that eircom currently defines its primary origination and primary termination conveyance.¹²

3.6 The elements of the relevant wholesale services can be illustrated as follows:



3.7 The definition of boundaries between call origination, call termination and transit services is discussed in more detail in Annex C, and is illustrated by reference to common fixed call routings in Annex E.

3.8 All but one of the respondents agreed with the scope of ComReg’s review of the interconnection market, and agreed that it was consistent with the *Relevant Markets Recommendation*. The respondent who did not agree proposed alternative definitions for origination, transit and termination markets, and these are dealt with in the relevant sections below.

3.9 ComReg believes that the scope of this review has broad support, and that it is consistent with the *Relevant Markets Recommendation*.

Market Definition: Call Origination

3.10 In the consultation, ComReg proposed that there was a relevant market for wholesale call origination services on the public telephone network provided at a fixed location.

3.11 In defining the relevant wholesale origination services market, ComReg addressed the following issues:

- whether fixed origination services, self-provided access and origination services using owned facilities, and/or purchased facilities and/or leased facilities belong in the same relevant product market;
- whether self-supply should be included in the relevant product market, together with wholesale services provided to third party retail service providers;

¹² www.eircomwholesale.ie – eircom Reference Interconnect Offer, Annex A of the Standard Contract

- whether wholesale services provided over different fixed networks belong in the same relevant product market;
- whether the supply of wholesale metered and unmetered call origination services belong in the same market;
- whether origination services provided for the provision of retail calls to end-users and calls to service providers fall within the same relevant market; and
- whether origination services for retail calls to DQ and OA services (and subsequent call completion) fall into the market into which other origination services to service providers fall.

Do fixed origination services, construction of alternative facilities and purchased or leased network connections belong in the same relevant product market?

- 3.12 In the consultation, ComReg proposed that the construction of alternative facilities and/or purchased and/or leased network connections are not in the same relevant product market as fixed origination services.
- 3.13 ComReg considered the possibility of the construction of green field alternative end-user network connection, by cable or by narrowband Fixed Wireless Access (FWA). ComReg notes that cable construction designed to offer telephony as well as cable television has been limited and is likely to remain so during the lifetime of this review. The use of narrowband FWA tends to be limited geographically, and is unlikely to become ubiquitous in the short term. Thus, the construction of alternative ubiquitous networks is not a viable substitute for origination services for providers seeking to provide retail voice call services.
- 3.14 ComReg considered whether OAOs could acquire wholesale leased lines or partial private circuits (PPCs) to extend their networks to the customer's premises. The initial investment required, and differentials in the pricing of origination services and terminating segments of leased lines lead to the conclusion that leased lines and PPCs also are not substitutes for fixed origination services.
- 3.15 ComReg considered whether Local Loop Unbundling (LLU) could substitute for fixed call origination. It found that there is a significant difference in the functionality provided by wholesale switched call origination and by Unbundled Loop Metallic Path (ULMP), and while ULMP can be used to provide voice services, current use is predominantly for broadband access. In addition, there is a substantial pricing differential between wholesale call origination services and unbundled local loops. This indicates that LLU cannot substitute for fixed call origination.
- 3.16 Although one respondent argued that ULMP and leased line services do fall within the wholesale call origination market (due to the limited use of such products to provide retail voice services), for the reasons set out above, ComReg maintains its position that these services should not included in the same wholesale market as fixed call origination services.

Should self-supply be included in the relevant product market, together with wholesale services provided to third party retail service providers?

- 3.17 ComReg proposed that self-supply should be included in the relevant product market, together with wholesale services provided to third party retail service providers. It is clear that suppliers of wholesale origination services both self-supply origination functionality and supply wholesale origination services to third parties (in addition to the underlying local access service).
- 3.18 One respondent drew attention to the European Commission's decision on TKK in Austria¹³.
- 3.19 It is important to appreciate that in the Austrian example the EC was seeking to distinguish between the supply of interconnection by direct linkage, such as Customer Sited Interconnect Links or In Span Interconnect Links, and the supply of interconnection by switched transit. In ComReg's opinion the provision of direct linkages between operators constitutes a withdrawal of demand from the market for interconnection rather than a substitute for it. This is discussed in more detail in the section on transit.
- 3.20 All respondents who commented on this agreed that self-supply should be included in the call origination market.

Is there a single relevant market for the supply of wholesale metered and unmetered call origination services?

- 3.21 ComReg proposed that wholesale metered and unmetered call origination services fall within the same relevant market.
- 3.22 On the demand side, it is technically and functionally feasible for retail service providers to use either metered or unmetered wholesale origination services to provide retail metered or unmetered services. Differences are entirely a function of the pricing model.
- 3.23 It is ComReg's view that a hypothetical monopolist supplier of metered wholesale fixed origination services would be unable to profitably raise prices by 5 to 10%, because suppliers of unmetered wholesale fixed origination services would be in a position to enter the market immediately, at virtually no cost.

Is there a single relevant market for the supply of origination to suppliers of retail calls to end-users and calls to service providers?

- 3.24 ComReg proposed that there is a single relevant product market for wholesale origination services for calls to end-users and calls to service providers. This

¹³ Case AT/2004/0090: Transit services in the fixed public telephone network, Opening of Phase II investigation pursuant to Article 7(4) of Directive 2002/21/EC

includes origination services provided for directory enquiry services, operator assisted services and call completion services.

- 3.25 ComReg's view is that wholesale call origination for calls to end-users is a multi-network operator market which includes wholesale call origination provided by a nationwide network, and self-provided calls provided by all operators (independent of network size).
- 3.26 In the case of calls to service providers, an end-user chooses to purchase a bundle of call services. Directory enquiry services (including call completion services) can be considered to be a call to a service provider. The wholesale inputs required to provide other services such as operator assisted services and related call completion services are purchased at the wholesale level in the same way that such inputs are acquired for other calling-party-pays services.
- 3.27 On the supply-side, there is one-way substitutability between the OAOs and eircom, as eircom can switch to supply origination services in response to a price increase of 5 to 10% by a hypothetical monopolist, quickly and at little cost.
- 3.28 ComReg concludes that there is a single relevant market for the supply of origination to suppliers of retail calls to end-users and calls to service providers?

Geographic market

- 3.29 ComReg proposed that there is a single national market for supply of wholesale origination services.
- 3.30 Origination services are offered to and by all operators in Ireland on terms that do not differentiate by reference to geographic location. Charges are geographically averaged. Geographic averaging at the retail level exerts an indirect uniform pricing constraint on wholesale call origination pricing.

Conclusion

- 3.31 ComReg has decided to maintain its definition of the call origination market. Respondents broadly agreed with ComReg's definition of the call origination market. One respondent, while agreeing with ComReg's definition, proposed that additional markets should be defined for operators who offered exclusive access to users in specific locations. In the respondent's view, in such cases, the operator had bottleneck control over access, and the end-user had no choice of origination provider.
- 3.32 ComReg is of the view that the price setting behaviour of such operators is constrained by both demand-side and supply-side substitution pressures exerted in the market place. ComReg notes also that suppliers building to a specific location tend to be offering retail broadband access rather than wholesale call origination. While there may be instances of exclusive access, it is ComReg's view that other operators could easily enter the market in response to a small but significant price increase, and so the provision of such services falls within the national call origination market defined. However, ComReg notes the respondent's views and will monitor developments in the market during the lifetime of the review.

Market Definition: Call Termination

- 3.33 ComReg proposed that there were two markets for the termination of calls :
- Termination services for calls to end-users, provided on individual fixed networks

- Termination services for calls to service providers
- 3.34 ComReg notes that there was some confusion amongst respondents over the market definition of termination of calls to service providers, and the text below clarifies the boundaries and characteristics of this market.
- 3.35 In defining the wholesale call termination market(s), ComReg considered the following factors:
- whether termination services for calls to end-users and calls to service providers fall within the same relevant product market;
 - whether relevant markets for termination of calls to end-users and termination of calls to service providers are single-network markets
 - whether self-supply should be included in the relevant markets;
 - whether the relevant market for wholesale call termination for calls to service providers on the public telephone network provided at a fixed location includes voice and data calls;
 - whether the relevant market for termination of calls to service providers includes all call types
 - the scope of the relevant geographic market.

Do termination services for calls to end-users and calls to service providers fall within the same relevant product market?

- 3.36 ComReg proposed that termination of calls to end-users was not in the same market as termination of calls to service providers.
- 3.37 Termination services involve the final link in the supply of end-to-end connectivity. In the consultation, ComReg considered whether there was a single market for termination services, or whether there were different markets according to the nature of the service provided. A key differentiating factor considered was that termination of calls to end-users requires geographic call termination, while termination of calls to service providers requires non-geographic termination.
- 3.38 An assessment of retail demand for termination suggests that termination of calls to end-users and termination of calls to service providers are distinct products. Termination of a call to an end-user is purchased as part of a call service, and the caller pays for the whole cost of the call. A service provider, on the other hand, buys a facility (other than termination) to offer a value added or information service to its customers. While there are different payment mechanisms and flows associated with different categories of service, the ability of the service provider to negotiate with the terminating network operator acts to differentiate the pricing of termination to end-users from termination to service providers. Therefore, while at the network level we can consider both to be functionally equivalent termination services, the products are distinct, and there is no demand side substitution.
- 3.39 On the supply side, termination for calls to end-users requires geographic call termination. This means that a nationwide local access network is needed. In contrast, termination for calls to service providers requires non-geographic termination and thus can be provided without ubiquitous coverage (e.g. in a concentrated area such as a business park).

- 3.40 The economics of supplying access points for calls to service providers, which are likely to handle a lot of traffic, are different from those of supplying a nationwide network of low-traffic geographic termination points.
- 3.41 ComReg proposed that, while a hypothetical monopolist provider of call termination services for end-users could, theoretically, enter the market for termination services for calls to service providers (non-geographical termination), in response to a price increase of 5 to 10%, the reverse is not also the case. Although there are indeed high barriers to entry to the provision of calls to service providers, there are quite significant long-term barriers to entry to the provision of termination services for calls to end-users. Given the different payment flows which operate in the market and the fact that there is only possibly one-way supply side substitution, we consider that there are separate relevant markets for termination on single networks for calls to end-users and for termination on multiple networks for calls to service providers.
- 3.42 Most respondents agreed that termination of calls to end-users and calls to service providers were in different markets. One respondent suggested that, while it agreed that there were two different markets, in its view there was no wholesale market for termination to service providers, and that this market was in fact a retail market.
- 3.43 In order to clarify the proposed definition of this market, ComReg notes that termination of calls to service providers is the termination to non-geographic numbers. The purchase by service providers of the service, such as premium rate or dial-up internet, from an operator, does not fall within the scope of this market analysis. ComReg is not concerned with this element of the market, except in understanding that its characteristics shape demand at a wholesale level. The wholesale interconnection market for termination of calls to service providers concerns the ability of operators to purchase the wholesale inputs necessary to offer information or value added services to their customers, who are the service providers. The operators are not buying a retail service, and this is not a retail market.
- 3.44 ComReg maintains its view, therefore, that termination of calls to service providers is a wholesale market, and that both demand and supply side characteristics indicate that termination to end-users and termination to service providers are in different markets. Having defined a market for termination of calls to service providers, a market not listed in the Commissions Recommendation, ComReg must assess whether this is a market that is potentially susceptible to ex-ante regulation using the Three Criteria test¹⁴:
- Whether there are high and persistent barriers to entry
 - Whether the market is one that tends towards a competitive outcome
 - Whether competition law is sufficient to address any competition problems
- 3.45 ComReg has addressed this in the Market Analysis section below.

Are the relevant markets for termination of calls to end-users and termination of calls to service providers single-network markets?

- 3.46 ComReg proposed that the relevant product market for wholesale fixed termination services for calls to end-users was defined by each individual fixed termination

¹⁴ The *Relevant Markets Recommendation* sets out the three criteria for identifying markets that are potentially susceptible to ex-ante, in accordance with competition law principles.

provider. This is a single network market structure. The relevant product market for wholesale fixed termination service for calls to service providers was characterised as a multi-network market.

- 3.47 The provision of non-geographic termination, which does not require a ubiquitous network, means that entry in response to a price rise in the range of 5 to 10%, by a hypothetical monopolist, would be possible relatively promptly when compared with termination to end-users. Given that market entry is possible in response to a price rise by a hypothetical monopolist supplier, the market structure for termination of calls to service providers is multi-network.
- 3.48 An operator wishing to terminate a call to a particular fixed number can only terminate it on the network to which that number is assigned, whether or not the call is delivered to the terminating network directly from the originating network or by an intermediate third party transit provider. The call would be unsuccessful if an attempt were made to terminate it on another network. There is no technical alternative by which a call could be terminated. Therefore, each operator's termination service falls within its own distinct market, and is not substitutable for the termination service provided by other operators.
- 3.49 ComReg considers that there are relevant product markets for wholesale fixed termination services provided by each individual fixed termination provider for the provision of retail calls to end-users. That is, each operator's termination service falls within its own distinct market, and is not substitutable for the termination service provided by other operators. Any provider of retail fixed narrowband services cannot acquire termination services on a network other than the network to which the terminating number is assigned. Accordingly, it would be profitable for a hypothetical monopolist supplier of wholesale termination services to increase its termination charges by 5 to 10%.

Is self-supply included in the relevant markets for termination of calls to end-users and calls to service providers?

- 3.50 ComReg proposed that self-supply for termination of calls to end-users (geographic termination) and calls to service providers (non-geographic termination, in so far as it can be self-supplied between the wholesale and retail arm of an operator) should be included in the relevant product market.
- 3.51 All respondents who commented on this point agreed that self-supply should be included in the relevant markets for termination of calls to end-users and calls to service providers.

Does the relevant market for wholesale call termination for calls to service providers on the public telephone network provided at a fixed location include termination of voice and data calls?

- 3.52 ComReg proposed that, in Ireland, termination services for calls to service providers include termination services for voice and data calls¹⁵.
- 3.53 ComReg noted that its assessment of the Retail Calls Market concluded that dial-up calls to the Internet were in the same market as other calls. One respondent disagreed with this view, largely because it believed that, at the retail level, a voice

¹⁵ The inclusion of dial-up calls to internet in the retail fixed narrowband market is discussed in detail in ComReg Doc. 05/26, Market Analysis – retail fixed calls markets

call could not substitute for a data call. While ComReg recognises that there is no demand side substitution at the retail level between termination of a voice or data call, it is ComReg's view that supply side substitution maintains common pricing constraints between termination of voice and data calls.

- 3.54 ComReg notes that retention rates associated with termination do not differentiate between voice and data calls. The settlement fee between the originating and terminating operators is calculated by deducting the originating operator's call origination costs from the retail price for the call, and this applies to all calls to service providers of any type. In the Irish context, the retention rate of eircom has historically been regulated and it imposes the same rate on all other operators through the "deemed to be" regime. Please see Annex H for an illustrative example of the "deemed to be" regime and the retentions rates associated.
- 3.55 A provider of termination of voice calls to a service provider would readily be able to switch to provide termination of data calls, given a small but significant price increase, and vice versa. ComReg therefore maintains that the market for the termination of calls to service providers includes voice and data calls.

Does the relevant market for termination of calls to service providers include all call types?

- 3.56 As part of the consultation process, ComReg has considered whether the market for termination of calls to service providers includes all types of call, and concludes that it does.
- 3.57 At the retail level, a service provider wants to be able to provide callers with information or value-added services using non-geographic numbers. The caller may pay a variable charge depending on the type of service used. Services provided through the use of non-geographic numbers include sales and marketing, customer support, information services and dial-up internet access. In order to offer these services, the service provider may purchase termination services to allow freephone, or premium rate services, or local rate access.
- 3.58 The question to be considered is the extent to which different types of service constitute different markets. ComReg's assessment is that, on the demand side, acquirers are likely to view the range of services as complementary rather than substitutable. While some services could be seen to substitute for others – for example, a service provider offering local rate access could easily switch to national rate access in response to a price increase - this would not be the case for all services. This is likely to be determined by the associated pricing mechanism, so that, for instance, premium rate services, which are used by the service provider to generate revenue, would be unlikely to substitute for freephone services.
- 3.59 However, on the supply side, ComReg considers that there is a high level of potential substitution in response to a small but significant, non-transitory increase in the price of one category of service. An operator which can terminate one type of non-geographic call can terminate all types, and indeed operators generally do offer a range of service types. This suggests that operators do practise supply-side substitution.

Relevant Geographic Market

3.60 Termination services are offered to and by all operators in Ireland on terms that do not differentiate by reference to geographic location. Thus, ComReg proposed that there is a single national market for supply of wholesale termination services.

Conclusion

3.61 ComReg will maintain its definition of the market for termination of calls, such that there are two separate markets, one concerned with termination of calls to end-users, and one concerned with termination of calls to service providers. Both markets include self-supply. The market for the termination of calls to end-users is a single network market, while the market for termination of calls to service providers is multi-network in structure. The key differentiating feature between the markets is on the supply side, and is to do with different requirements for terminating geographic and non-geographic calls. The market for terminating calls to service providers includes the termination of all types of call, and includes the termination of both voice and data calls.

Market Definition: Transit

3.62 ComReg proposed that there is a relevant market for wholesale national call transit services on the public telephone network provided at a fixed location.

3.63 In the consultation, ComReg proposed that, based on information which had been supplied at that time, the market for international transit was competitive. However, further information provided by respondents during the consultation process questions that assumption. ComReg now intends to consult further on the market for international transit. Pending the outcome of that consultation process, current obligations on eircom in the international transit market will apply.

3.64 ComReg's analysis to define the relevant product market for call transit on public telephone networks provided at a fixed location entails consideration of the following factors:

- whether transit interconnection services fall into a distinct relevant product market not including alternative facilities;
- whether self-supply should be included in the relevant product market(s), together with wholesale services provided to third party retail service providers;
- whether the relevant market is a multi-network market;
- whether international transit services fall within the same relevant market; and
- the geographic scope of the relevant market.

Do transit interconnection services fall within a distinct relevant product market to carriage over alternative facilities?

3.65 ComReg proposed that transit interconnection services fall within a distinct relevant product market to carriage over alternative facilities. ComReg considered the extent to which wholesale leased line trunk circuits, fibre optic networks, direct connection,

and switched transit over mobile should be defined within the same relevant market as transit interconnection.

- 3.66 ComReg considered whether wholesale transit interconnection services and wholesale leased line trunk circuits fall within the same relevant product market. Functional differences, primarily the difference between a dedicated point-to-point link and a switched service, are reflected in pricing differentials. It is unlikely that purchasers would switch between wholesale transit services and leased lines, or *vice versa*, in response to a 5 to 10% increase in price.
- 3.67 ComReg assessed the extent to which fibre optic networks are in the same relevant product market. ComReg notes that the fibre optic networks being developed in Ireland generally aim to deliver broadband services. ComReg has therefore considered the impact of such services in the market review of leased line markets and in particular that of wholesale trunk segments¹⁶.
- 3.68 ComReg also considered the provision of direct interconnection as a possible substitute for wholesale fixed transit services. Direct interconnection requires substantial commitment and planning, and takes time as well as significant investment. There is no evidence that network operators purchasing transit services could promptly shift to the provision or purchase of direct interconnection in response to price changes.
- 3.69 ComReg examined whether switched transit services provided over mobile networks are in the same market as switched transit services over fixed networks. ComReg notes that there has been more build out by mobile operators who are now generally using direct interconnection between their mobile networks as opposed to transit or conveyance on fixed networks. However, to compete with eircom in the provision of third-party switched transit services would require further significant investment. These costs would only be justified with sufficient levels of traffic, which may not be present on all routes and at each point of interconnection.
- 3.70 Most respondents agreed with this element of ComReg's definition of the market. However one respondent proposed that the national transit market should be split between trunk transit (transit originating or terminating on eircom's network) and pure transit (terminating and originating on third party networks). The same respondent argued that pure transit should be split into three further segments: transit to geographic numbers, transit to mobile numbers (including mobile to mobile) and transit to NTC. The justification for this further segmentation of pure transit was based on the varying nature of traffic conveyance and charging regimes associated with each segment.
- 3.71 ComReg has considered this proposal in detail in Annex C. ComReg maintains the view that there is no significant functional difference between the tandem conveyances of fixed domestic calls beyond the primary exchange. The proposal to further split a 'pure transit' market based on the varying technical requirements associated with each segment is undermined by the acknowledged ability of other fixed operators to either self-provide these services or provide these services to third parties. ComReg, thus, takes the view that the supply side characteristics of all such fixed transit services are sufficiently homogenous to justify defining a single national wholesale transit market.

¹⁶ ComReg document 05/03

Is self-supply of transit services included in the relevant product market?

- 3.72 ComReg proposed that self-supply should be included in the relevant product market(s), together with wholesale services provided to third party retail service providers. ComReg notes that a number of undertakings self-supply transit functionality, and that both eircom and BT Ireland supply wholesale transit services to third parties.
- 3.73 In the consultation ComReg argued that, as with call origination, self supply by a vertically integrated operator would constrain the actions of a hypothetical monopoly supplier of wholesale call transit services so that self supply should be considered to be in the same market.
- 3.74 ComReg asked respondents for views on whether the indirect pricing constraint imposed by the retail market on wholesale transit services was sufficiently strong to merit the inclusion of self supply of transit in the market definition, given that the price sensitivity that transit exhibits would require a relatively large loss of transit volume to render a 5 to 10% price increase unprofitable. Further, transit costs make up a relatively small proportion of the total costs of retail calls, and the retail prices of such calls.
- 3.75 Most respondents who commented on self supply agreed that self supply should be included in the relevant market. However, one respondent suggested that self supply of transit services should not be included, because there is no interconnection involved, and it asserted that an integrated operator does not have a competitive advantage over another retail operator in setting its retail pricing based on self-supply of transit services. In the absence of regulation, ComReg believes that an integrated operator would have just such an advantage over another operator which was not so integrated.
- 3.76 ComReg notes that, as the largest user of the incumbent's wholesale capacity is its own retail arm it is not possible to allocate costs or recover charges without taking full account of this consumption of capacity. This has always been done by treating traffic from all sources as equivalent, that is to say treating external interconnect and self-interconnect as identical.
- 3.77 ComReg notes further that its market definition does not include every self supply on-net minute for every OAO as transit. OAO self supply of on-net minutes (i.e. those arising from and terminating on customers directly connected to an OAO network) are only included in the transit market if the call is not completed by call origination and subsequent termination – that is to say that a transit switching stage is included - but all indirectly connected OAO calls are indeed captured by this definition.
- 3.78 In addressing the respondent's concern that no interconnect is involved, ComReg notes that the exclusion of self-supply would eliminate the principal source of demand for transit on the incumbent's network, discriminate between traffic from internal and external sources, and mask the supply of service from its wholesale to its retail arm.

- 3.79 Another respondent, while agreeing that self-supply should be included in the market, suggested that the argument was not well-justified and referred ComReg to the European Commission's decision on TKK in Austria¹⁷.
- 3.80 It is important to appreciate that in the Austrian example the EC was seeking to distinguish between the supply of interconnection by direct linkage, such as Customer Sited Interconnect Links or In Span Interconnect Links, and the supply of interconnection by switched transit. In ComReg's opinion the provision of direct linkages between operators constitutes a withdrawal of demand from the market for switched transit rather than a substitute for it. An essential feature of switched transit can be characterised by its 'fire and forget' nature, that is to say the originating operator delivers traffic to the transit operator relying on that operator to correctly route it to its destination. With direct interconnect links the originating operator selects the link to the required terminating operator. To construct direct linkages to all operators even in a small market like Ireland is burdensome for new entrants and would constitute a significant barrier to market entry.
- 3.81 It is ComReg's view that self-provision of interconnection through direct interconnect links is a very different matter from the inclusion of self-provision of switched transit between wholesale and retail arms of a vertically integrated operator. The EC's conclusion that self-provision through direct interconnection is outside the transit market is one that ComReg entirely agrees with, having sought to make it clear throughout its market definitions that direct interconnection using interconnect links reduces demand for switched transit services and constitutes a withdrawal from the market and not a substitute for it.

Is the relevant market a multi-network market?

- 3.82 ComReg proposed that the relevant market for wholesale transit services is a multi network market.
- 3.83 A third party provider of retail voice call telephony services to end-users does not require access to every network in Ireland that is capable of providing transit services. Retail services can be provided once it has access to transit services necessary for end-to-end connectivity. Such services allow it to ensure connectivity between the switching functionality that forms the boundary of the wholesale origination service that is necessary to originate the retail calls, and the wholesale termination service that is necessary to supply the termination element necessary for end-to-end connectivity. This is discussed further in Section 7.
- 3.84 While eircom is the main provider of third party transit services in Ireland, BT Ireland has also been providing transit services to both fixed and mobile operators since early 2002.

Are international transit services in the same market as national transit service?

¹⁷ Case AT/2004/0090: Transit services in the fixed public telephone network, Opening of Phase II investigation pursuant to Article 7(4) of Directive 2002/21/EC

- 3.85 ComReg proposed that international transit services do not fall within the same wholesale market as national transit services.
- 3.86 ComReg noted that, while international transit services may be acquired together with national transit and origination or termination services, they are not functional substitutes for these or any other interconnection product.
- 3.87 Functionally, international transit services entail the routing of an Irish originating or terminating switched call to or from an international termination or origination point. The national component of such transit services entails switching and related transmission to an international gateway.
- 3.88 The key distinctions between national and international transit for fixed calls are:
- National transit needs widespread interconnect with eircom to be commercially viable. Very few operators are in a position to offer such a service without significant investment.
 - International Transit needs an international gateway switch, international transmission capability, and correspondent agreements with operators in terminating countries, but interconnect with eircom can be minimal. A number of operators can provide such services.
- 3.89 It is ComReg's view that a supplier of national transit services would not be able to enter the market for the supply of international transit services in response to a small but significant price increase. For a supplier of international transit services to enter the market for national transit, the level of investment to build out to eircom's primary interconnect points would be substantial and the rates are capped by eircom's regulated transit price. ComReg therefore concludes that national and international transit are in separate markets.
- 3.90 ComReg notes that all respondents agreed that national and international transit services belonged in separate markets.

The relevant geographic market

- 3.91 Transit services are offered to and by all operators in Ireland on terms that do not differentiate by reference to geographic location. ComReg proposed that there is a single national market for supply of wholesale national transit services.

Conclusion

- 3.92 ComReg maintains that there is a market for national transit services. This is a distinct product market, which includes self-supply, and is multi-network in character. The market for national transit is separate from the market for international transit.

Summary of conclusions on market definition

- 3.93 ComReg has carried out the above market definition exercise in accordance with the principles of competition law and has taken the utmost account of the *Relevant Markets Recommendation*, as well as the *SMP Guidelines*.

3.94 The wholesale fixed narrowband interconnect markets which ComReg proposes to define are as follows:

- National market for wholesale call origination services on the public telephone network provided at a fixed location;
- National markets for wholesale call termination services used to provide retail calls to end-users on each public telephone network, provided at a fixed location;
- National market for wholesale call termination services used to provide retail calls to service providers on public telephone networks, provided at a fixed location; and
- National market for wholesale national call transit services on the public telephone network provided at a fixed location.

3.95 ComReg notes that most respondents agreed with the market definition. Disagreement was generally on the basis that the origination and transit markets should be narrower.

3.96 ComReg notes that, in the original consultation on interconnection, it was proposed that the market for national transit was separate from the market for international transit, and that data supplied at that time suggested that the international transit market was competitive. More recent data questions the level of competition in the international transit market. ComReg therefore proposes to undertake a separate national consultation on the international transit market. Existing obligations on eircom in the international transit market will be maintained, pending the outcome of that consultation.

4 Relevant Market Analysis

Introduction

4.1 Having identified the relevant interconnection markets, ComReg is required to conduct an analysis of whether these markets are effectively competitive by reference to whether any given undertaking or undertakings is/are deemed to hold SMP in these markets. Recital 27 of the Framework Directive states that a relevant market will not be effectively competitive “where there are one or more undertakings with significant market power”. Regulation 25(1) of the Framework Regulations states that:

“A reference in these Regulations ... to an undertaking with significant market power is to an ... undertaking (whether individually or jointly with others) [which] enjoys a position which is equivalent to dominance of that market, that is to say a position of economic strength affording it the power to behave to an appreciable extent, independently of competitors, customers, and, ultimately, consumers”.

4.2 Accordingly, an undertaking may be designated as having significant market power (‘SMP’) either individually or jointly with other undertakings in a relevant market. In addition, where an undertaking has SMP on a relevant market, it may also be designated as having SMP on a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the undertaking.¹⁸

4.3 ComReg is obliged under the Framework Regulations to assess SMP in accordance with European Community law and to take the “utmost account” of *the SMP Guidelines*¹⁹.

Market structure: interconnection

4.4 Wholesale call origination, transit and termination services are the wholesale inputs used to provide retail calls to end-users and service providers in Ireland. Wholesale call origination services are either self-supplied by all operators or purchased directly from eircom. eircom is the only undertaking that provides call origination services to third parties in Ireland, through Indirect Access services such as Carrier Pre Select, Carrier-Select, and Carrier Access.

4.5 BT Ireland is the only OAO currently offering wholesale transit services to third-parties, although the scale of this service is limited. Otherwise, transit services are either to some extent self-supplied or purchased from eircom in the form of switched minutes.

4.6 Each fixed network operator provides termination services on its own network for retail calls to end-users, as it is only the entity controlling the network terminating point which can terminate calls to that number. The market for terminating calls to service providers is still growing, and while some OAOs have entered the market, their share is relatively small.

¹⁸ Framework Regulations, Regulation 25(3).

¹⁹ Regulation 25(2).

- 4.7 eircom, as the only undertaking with a ubiquitous fixed switched network in Ireland, conveys the majority of switched calls across its network either for third-parties or as self-provided traffic. All OAOs must interconnect with the eircom network at various levels in order to provide retail call services to end-users. The terms on which eircom offers these wholesale services are set out in its Reference Interconnect Offer (RIO).
- 4.8 A description of the main players in the interconnection markets is provided in Annex C to this document.

Market Analysis: Call Origination

Market share

- 4.9 ComReg's data indicates that eircom provides approximately 85% of all wholesale call origination services.
- 4.10 ComReg notes that eircom's market share of retail calls is around 87% of domestic calls and 68% of international calls.²⁰
- 4.11 The European Commission has indicated that a dynamic, rather than a static approach is required when carrying out a prospective, or forward-looking, market analysis.²¹ ComReg's data indicates that, including self supply, eircom's market share in the wholesale origination market has remained stable over the last four years, ranging between 81 and 86%.

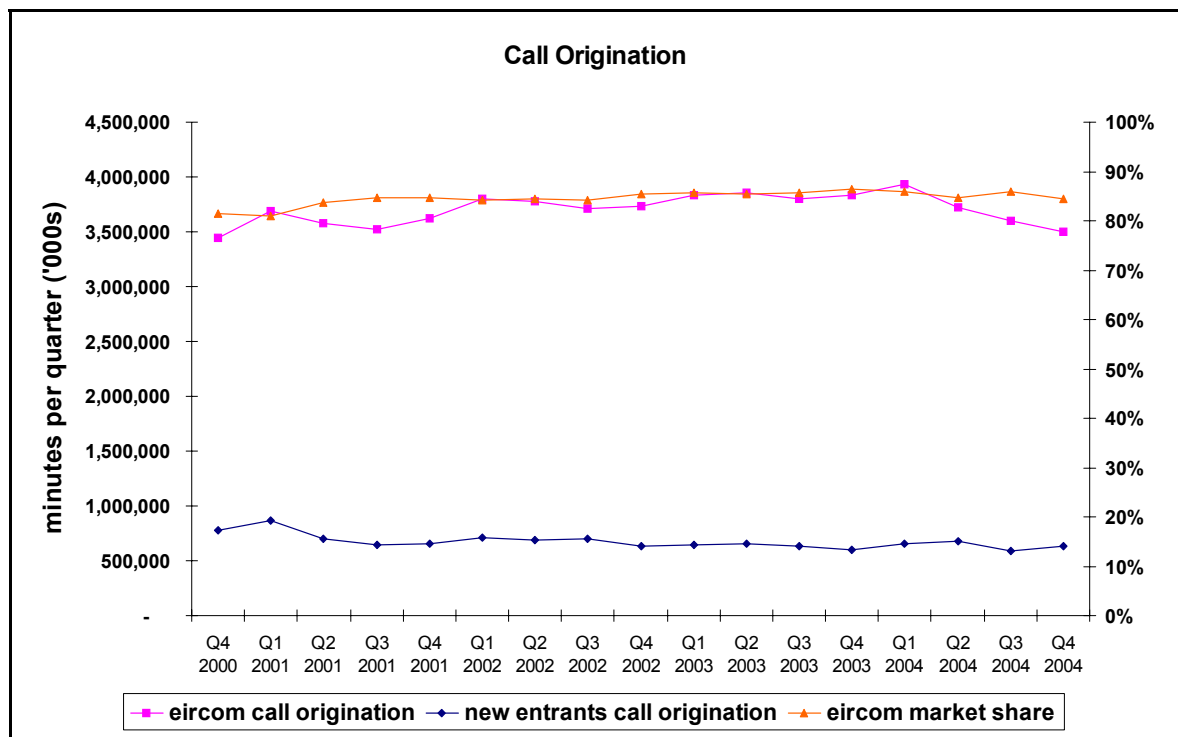


Figure 4.1: Market shares by volume for the Wholesale Call Origination Market

²⁰ ComReg Doc. 05/26, Market Analysis – retail fixed calls markets

²¹ See Michelin v. Commission [1983] ECR 3461

4.12 Taking into account eircom's control of approximately 85% of the wholesale call origination market, the stability of its market share and the absolute level of such shares, ComReg believes that, in the absence of appropriate regulatory intervention, eircom's market share will not change significantly within the timeframe of this review.

Pricing Behaviour

4.13 In some instances, pricing behaviour will be indicative of the exercise of market power. However, eircom's current prices are regulated. The forward looking costing model used allows for the recovery of cost of capital in addition to the costs of an efficient operator. In essence, it allows for a margin above the cost of provision, reflecting the cost of capital.

4.14 eircom's origination charges, both those charged to CPS operators (CPSO) and those charged to terminating operators, are regulated under the cost model described above. eircom's charges reflect its costs of conveyance (i.e. the transmission and switching required for call origination), together with other costs such as carrier billing and administration.

4.15 Where eircom provides call origination services to a CPSO's customer, the CPSO pays eircom for that service. The CPSO raises the retail charge (if any) on the calling party (in the case of a call to an end-user) and then either pays for termination and transit; or in the case of calls to service providers retains a portion of the retail charge to cover its costs of billing, bad debt management, credit control, cash collection and conveyance (i.e. routing and transmission) and passes the balance to the next operator along the route for termination or transit as appropriate. In this latter case the CPSO's costs are currently 'deemed to be' equal to eircom's costs of providing the equivalent services.

4.16 ComReg takes the view that, in the absence of regulation, an originating operator with a market share of approximately 85% would not be constrained in setting prices in negotiating with CPS and terminating operators.

Countervailing buyer power

4.17 In some circumstances, customers might be in a position to exert countervailing buyer power when purchasing from an entity that would otherwise be expected to be in a position to exercise market power. However, countervailing buyer power can only impose a constraint where customers have the ability (within a reasonable timeframe) to resort to credible alternatives (e.g., not to purchase, or to switch supplier) in response to a price increase or threatened price increase.

4.18 ComReg has seen no evidence that supports the existence of countervailing buyer power in the market for call origination. On the contrary, it would appear that the purchasers of such wholesale services have no alternative credible suppliers. CPS and terminating operators must, therefore, reach agreement with eircom to be able to provide service.

Barriers to entry and potential competition

- 4.19 The threat of market entry is one of the main potential competitive constraints on incumbent firms, and may prevent a dominant incumbent from raising prices above competitive levels. The threat of entry will be reduced by the existence of barriers to entry.
- 4.20 ComReg believes that economies of scale and scope present very real barriers to entry. Sunk costs are costs which must be incurred to enable entry to a market, but which cannot be recovered on exit. A new entrant must consider whether there is potential to recover sunk costs as well as costs of service provision, whereas an incumbent has already recovered sunk costs. Sunk costs inevitably create barriers which can deter market entry.
- 4.21 In relation to fixed wholesale origination services, the density and ubiquity of eircom's network results in eircom typically incurring lower transmission costs than competing network operators. The effect of such economies of scale on new entrant operators seeking to use owned facilities to offer retail services (and, therefore, self-providing wholesale origination services), is that such an operator is likely to be unable to match the fixed incumbent's prices, unless the new entrant prices at a level that does not allow it to cover its costs.
- 4.22 Economies of scale are likely to be achieved not only in the supply of access and wholesale origination, but in the supply of associated support services. This means that the incumbent also achieves lower costs in network support, such as maintenance charges, etc.
- 4.23 eircom also has a cost advantage resulting from the economies of scope that it enjoys in relation to the common costs that it incurs in supplying a range of different services using common underlying facilities and wholesale services. Economies of scope become increasingly relevant as the range of services sharing costs increases, so that an operator providing service across the broadest possible range of telecommunications services is both able to reduce the portion of common costs to be recovered from any particular service and to improve its ability to recover all of its common costs without having to significantly increase retail prices.
- 4.24 Taking these barriers to entry into account, ComReg does not consider it likely that a new entrant would build a new network replicating all or part of eircom's local access network, or that sufficient investment will be made in existing infrastructure to upgrade it to the extent that it can provide an alternative local access network during the timeframe of this review.

Ability to leverage and vertical integration

- 4.25 eircom is the dominant provider of the local access network in Ireland. It is the only entity with the ubiquitous local access facilities which are necessary to provide wholesale fixed origination services. eircom therefore has the potential to leverage its market power for the provision of wholesale fixed origination services into other adjacent markets.

Conclusion

4.26 eircom should be designated as having SMP in the wholesale market for call origination on the fixed public telephone network. It is ComReg's view that no current service provider can or will impose a competitive constraint on eircom, and that no entity will develop the ability to do so within the lifetime of this review.

Market Analysis: Call Termination on Individual Fixed Networks for Retail Calls to End-Users

Market shares

4.27 ComReg has identified single network markets for the provision of wholesale termination services for retail calls to end-users. As it is not possible for any entity other than the entity controlling the network terminating point with which the geographic number is associated to terminate calls to that number, each fixed network operator has a 100% share of wholesale termination on its network.

4.28 All respondents accepted ComReg's analysis of market shares, and agreed that in a single network structure, each operator has 100% share of termination on its own network.

Pricing and profitability

4.29 The graph below illustrates the absolute and relative wholesale termination services pricing for a three minute call at peak rate to a geographic number for eircom and the OAOs. It also confirms the relative stability of these prices, and shows the number of price changes that have occurred over the last four years. In essence, the OAO charges are higher than eircom's. The current rate charged by all of NTL, Energis and COLT is within 11% of eircom's rates. ComReg notes that the NTL and Energis rates dropped from a level that was approximately 80% above eircom's rate in single reductions in 2002 and 2003, respectively. However, the next cluster of operators charge geographic termination rates that are approximately 60 to 80% above eircom's rates, and have remained static at that level since the year 2000. Finally, BT Ireland's geographic termination charge was approximately 180% above eircom's, and had remained static at that level since the year 2000. However, in April 2005 all BT Ireland geographic termination rates were reduced and are now 52% above eircom's for this particular call type.

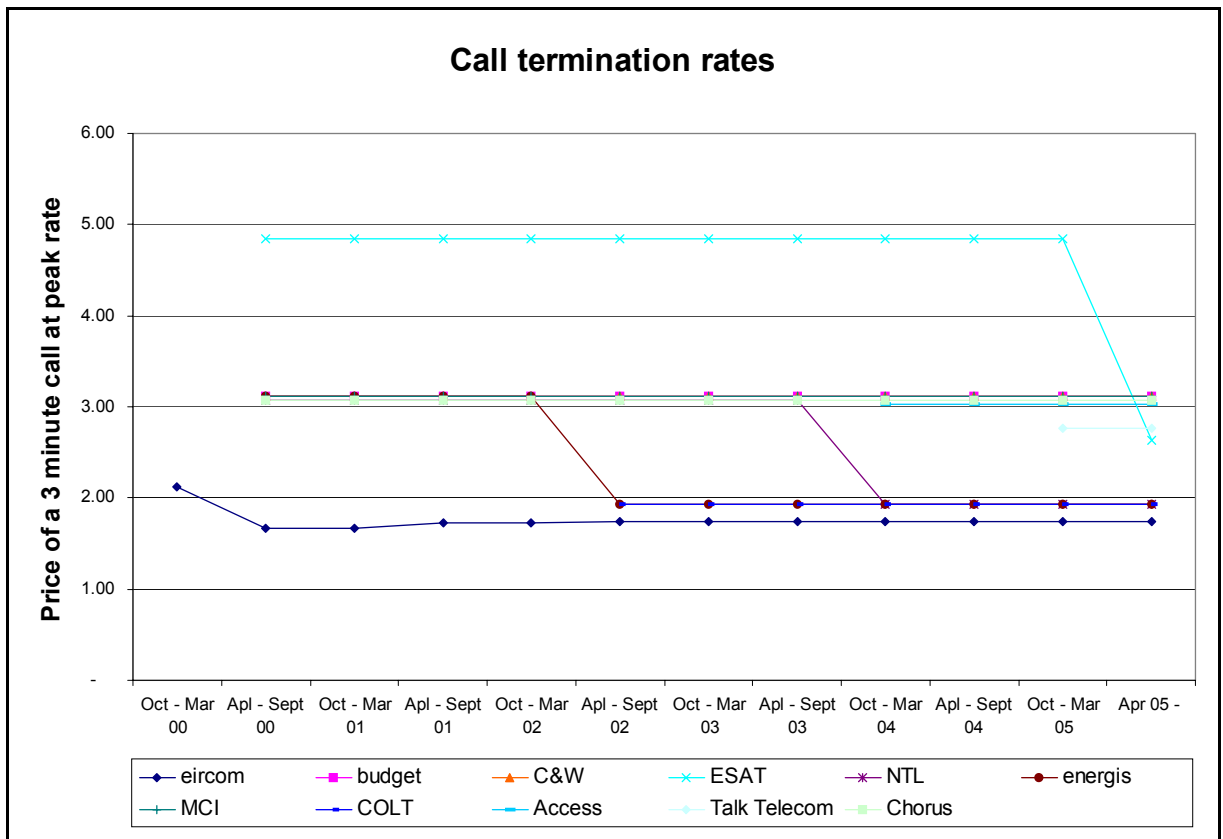


Figure 4.2: Call termination rates for a 3 minute call at peak rate to a geographic number

Absence of Countervailing buyer power

4.30 All providers of termination services negotiate with eircom, as the provider of the bulk of origination services, or in a small number of cases, CPSOs (where the CPSOs are effectively "reselling" origination services) or OAOs with directly connected customers.

4.31 ComReg has considered the extent to which countervailing buyer power at the wholesale level is exerted by purchasers of termination services. Such operators purchase terminating services in order to enable their customers to make calls to an end-user connected to the network termination point controlled by the terminating operator.

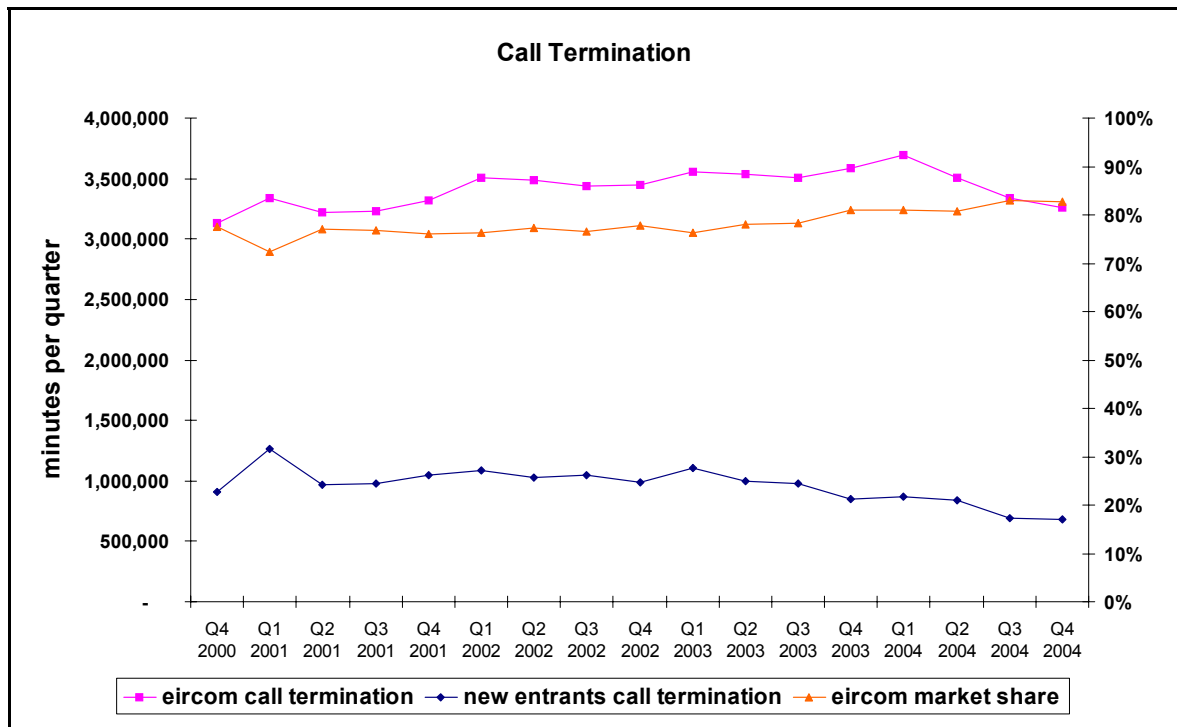


Figure 4.3: share of overall traffic for termination of calls to end users

4.32 The key motivation that gives rise to the incentive to raise call termination charges is that the calling party pays entirely for the call and that there is no potential for demand or supply-side substitution in the provision of such services. This market power could, for the most part, only be reduced or removed through the exercise of countervailing buyer power. A purchaser could exercise buyer power either by threatening to raise their own termination rates or by threatening not to purchase. Only eircom (absent regulation) could credibly exercise either type of buyer power, as eircom is the biggest purchaser of termination services and the vast majority of termination services are purchased from eircom (see figure 4.3 above). However, eircom termination rates are regulated and due to the mandatory requirements for all undertakings to negotiate interconnection in order to ensure end-to-end connectivity (as required by the regulatory framework), no operator, including eircom, could threaten to refuse to purchase.

4.33 In addition, while eircom rates have been regulated in the past, it can be clearly seen that the smaller operators are capable of exercising some market power, as the OAO termination rates charged to eircom have varied greatly and have been consistently at levels that are higher than the eircom regulated termination rate.

4.34 ComReg is, therefore, of the view that there is no evidence of the exercise of countervailing buyer power in this market.

Barriers to entry

4.35 Alternatives for demand or supply substitution do not provide sufficient discipline on call termination at fixed locations or an argument in favour of a wider market definition, so that the relevant market is call termination on individual networks. It is not possible for another operator to enter such a market and compete with the operator in the provision of termination services to end users. Such a market definition is, in itself, evidence of high and non-transitory absolute barriers to entry.

Conclusion

- 4.36 Each fixed network operator should be designated as having SMP in the wholesale market for call termination for calls to end-users on its fixed public telephone network.

Market Analysis: Call Termination for Retail Calls to Service Providers**Three criteria**

- 4.37 In Chapter 3 ComReg identified a market for wholesale call termination to service providers. As this market deviates from the *Recommendation on Relevant Markets*²², ComReg has considered the three criteria outlined by the European Commission in the *Recommendation*. The Commission has set out these criteria to be used when identifying markets which are potentially susceptible to *ex-ante* regulation.

Barriers to entry

- 4.38 The first criterion relates to whether a market is subject to high and non-transitory entry barriers. In the market for termination of calls to service providers potential new entrants face barriers to entry flowing from their inability to take advantage of the same economies of scope and scale that can be enjoyed by an operator with a ubiquitous local access network. ComReg's conclusion is that barriers to entry are significant.

Tendency towards effective competition

- 4.39 This second criterion relates to whether or not the market has characteristics such that it will tend towards effective competition without the need for ex ante regulatory intervention.
- 4.40 While the market initially experienced entry, this entry has not been effective in reducing the market power enjoyed by eircom. For example, BT Ireland acquired market share relatively rapidly after the introduction of Non-Geographic Number Portability in November 1999. However, this has recently been more than offset by eircom's success with capped flat rate Internet access services. The limited success of such entry would, in itself, act as a deterrent to further entry, in addition to the barriers described above.
- 4.41 eircom's market share is currently around 80%. Further, it has been over 65% since the 4th quarter of the year 2000, and has not dropped below 70% since the 1st quarter of 2003. It has not only remained remarkably stable, it has actually grown consistently over the last four years. Market shares of this level and this stability can indicate a position of dominance.
- 4.42 As ComReg describes in greater detail below, there is some, but very limited, evidence of countervailing bargaining power in the market for termination of calls to service providers.
- 4.43 Although this market has been subject to *ex-ante* regulation in the past, there has been limited entry and this entry has, to date, been ineffective. While ComReg is hopeful that this market will tend towards an effectively competitive outcome in the

²² Commission Recommendation of 11.02.2003, C(2003)497

long term, the characteristics and trends in the market do not indicate that this will happen within the timeframe of this review.

Sufficiency of competition law

- 4.44 The third criterion relates to the appropriate role of competition law and ex-ante regulation in reducing or removing the barriers to entry described above or in facilitating effective competition. It appears that the application of competition rules is likely to be insufficient (absent ex ante regulation) to address the lack of effective competition in the relevant wholesale market for termination of calls to service providers because competition law requires evidence of abuse of a dominant position whereas the imposition of ex ante regulation requires a lack of effective competition, which is a lower threshold for intervention. The market for termination of calls to service providers has been characterised by a very small degree of new entry and persistently high market shares for the incumbent. Existing ex-ante regulation allows ComReg to observe developments in this market and identify competition problems at an early stage and, where appropriate, impose detailed technical remedies and monitor these remedies effectively, on an ongoing basis.
- 4.45 ComReg considers that *ex ante* regulation is best positioned to address the competitive failures arising from provision of wholesale termination services for calls to service providers, and should at the very least be considered to be an appropriate complement to competition law in the short to medium-term.

Conclusion

- 4.46 Thus, ComReg holds the view that the market for termination of calls to service providers is a relevant wholesale market for the purposes of market analysis under the new regulatory framework, and that the continuing barriers to entry and persistent high market share held by eircom indicate that this market is not yet tending towards effective competition.

Market analysis

- 4.47 In the case of wholesale termination charges relating to calls to service providers, the originating operator retains (or is paid) a portion of the retail charge collected and the balance of the retail revenue is paid to the terminating operator. After deducting its own costs, the terminating operator pays the residual balance to the service provider.
- 4.48 If the retail revenues are insufficient to cover its costs, as, for example, for freephone calls, the terminating operator recovers these costs and its own from the service provider. In all calls to service providers, the originating operator recovers its costs – the retention - and the terminating operator makes do with the balance of the retail revenues, with a resulting positive or negative settlement to the service provider. eircom's retention is regulated and eircom requires other operators to reciprocate at the same rate as set out in its RIO, and the accompanying price list.
- 4.49 eircom describes the regime as the 'deemed to be' settlement regime where other operator's costs are deemed to be equivalent to those of eircom for the provision of an equivalent service.

Market share

4.50 ComReg has identified a multi-network market for the provision of wholesale termination services for calls to service providers (including Internet Service Providers). ComReg's data, as illustrated in the graph below, include a reclassification of traffic between categories by the incumbent²³, but nevertheless indicate that eircom's market share (including self-supply) has climbed from 70% to 80% in recent quarters. BT Ireland acquired market share relatively rapidly after the introduction of Non-Geographic Number Portability in November 1999. However, this has recently been more than offset by eircom's success with capped Internet access services.

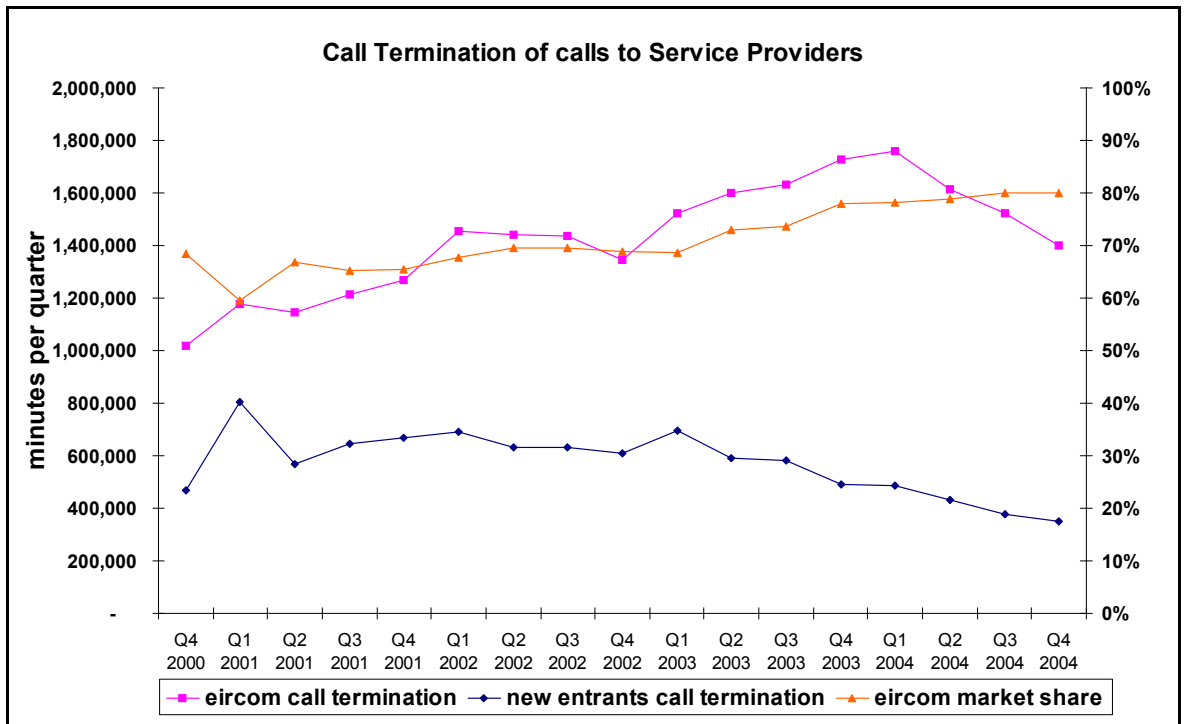


Figure 4.4: market share by volume in the market for termination of calls to service providers

4.51 As the graph makes clear, eircom's market share is currently 80%. Further, it has been over 65% since the 4th quarter of the year 2000, and has not dropped below 70% since the 1st quarter of 2003. It has not only remained remarkably stable, it has actually grown consistently over the last four years. Market shares of this level and this stability can indicate a position of dominance.

Countervailing buyer power

4.52 eircom currently originates approximately 85% of all minutes terminating on any network in Ireland. All providers of termination services negotiate with eircom, as the provider of 85% of origination services, or in a small number of cases, CPSOs (where the CPSOs are effectively "reselling" origination services) or OAOs.

²³ ADSL and bitstream turnover and volumes were reclassified from Data communications to Access in the financial year ended 31 March 2004

- 4.53 ComReg has considered the extent to which countervailing buyer power at the wholesale level is exerted by purchasers of termination services in the relevant markets. Such operators purchase terminating services in order to enable their customers to make calls to an end-user or service provider connected to the network termination point controlled by the terminating operator.
- 4.54 The competitive dynamics of supply of termination to services providers are shaped, to a large part, by the payment flows. In the market for call termination on multiple networks for calls to service providers, there are varying degrees of countervailing buyer power depending on the payment flows. In the case of calls which are calling-party-pays, such as those for internet access, the relationship between the terminating operator and the service provider is outside the scope of this market review because the Service Provider is providing services beyond the network terminating unit and the commercial relationship between it and its terminating network operator is a retail relationship, not a wholesale relationship between operators. This "buyer" relationship does influence the behaviour of the terminating operator in that it provides incentives to maximise the revenue share that can be offered to the service provider (to "win" the service provider from other terminating operators). However, the terminating operator negotiates the termination charge (and the origination retention) with the originating operator. In the absence of regulation, such as regulatory rules to ensure end-to-end connectivity, the call origination operator would, theoretically, be able to exercise its bargaining power over the terminating operator and set the level of retention at its own discretion. However, as such rules are already required under the regulatory framework, this bargaining power is negated.
- 4.55 Termination services acquired to provide called-party-pays calls to service providers are provided in a broader context in which the service provider has clear incentives to minimise the charges that it pays (or to maximise the fees received). Depending on the mobility of service providers and terminating operators, a service provider may be able to choose between a limited number of potential suppliers or negotiate with the terminating operator. This pressure is exerted outside the inter-operator relationship relating to the termination retention and the originating charge. However, the nascent competition amongst terminating operators to offer the service provider the best terms may have the effect of reducing, to some extent, the total revenue that is the subject of negotiation between the originating and terminating operator.
- 4.56 ComReg's view, therefore, is that there is some, but limited, evidence of countervailing bargaining power in the market for termination of calls to service providers.

Barriers to entry and potential competition

- 4.57 The main barriers to entry faced by potential new entrants are those of economies of scale and of scope. Depending on the type of service, new entrants may be able to "cluster" the called parties on concentrated local access facilities, and so reduce the nature and extent of the investment required to enter the market. However, the advantages enjoyed by an operator with a ubiquitous local access network remain a considerable barrier to entry. In addition, the limited success of the market entry to date would, in itself, act as a deterrent to any further entry, adding to the barriers described above.

Conclusion

4.58 eircom should be designated as having SMP in the multi-network wholesale fixed market for call termination of calls to service providers.

Market Analysis: Transit

4.59 ComReg has defined a single relevant market for the provision of fixed transit services. It has taken the view that all providers of such services operate within a single multi-network relevant market.

Market shares

4.60 ComReg calculates that, including self supply, eircom provides 69% of all fixed transit services in Ireland. Further, the data indicates that this share has remained stable at between 68 and 70% over the last three years.

4.61 All respondents, except one, agreed with ComReg’s assessment of market share. The respondent which did not agree proposed that, if the market were segmented, it would show that eircom had different levels of market share in different segments, and that at least some of these segments would show evidence of competition. ComReg recognises the points made by this respondent and has responded in detail in Annex C. However, ComReg reiterates its reasoning from the market definition that the supply side characteristics of all fixed transit services are sufficiently homogenous to justify defining a single national wholesale transit market.

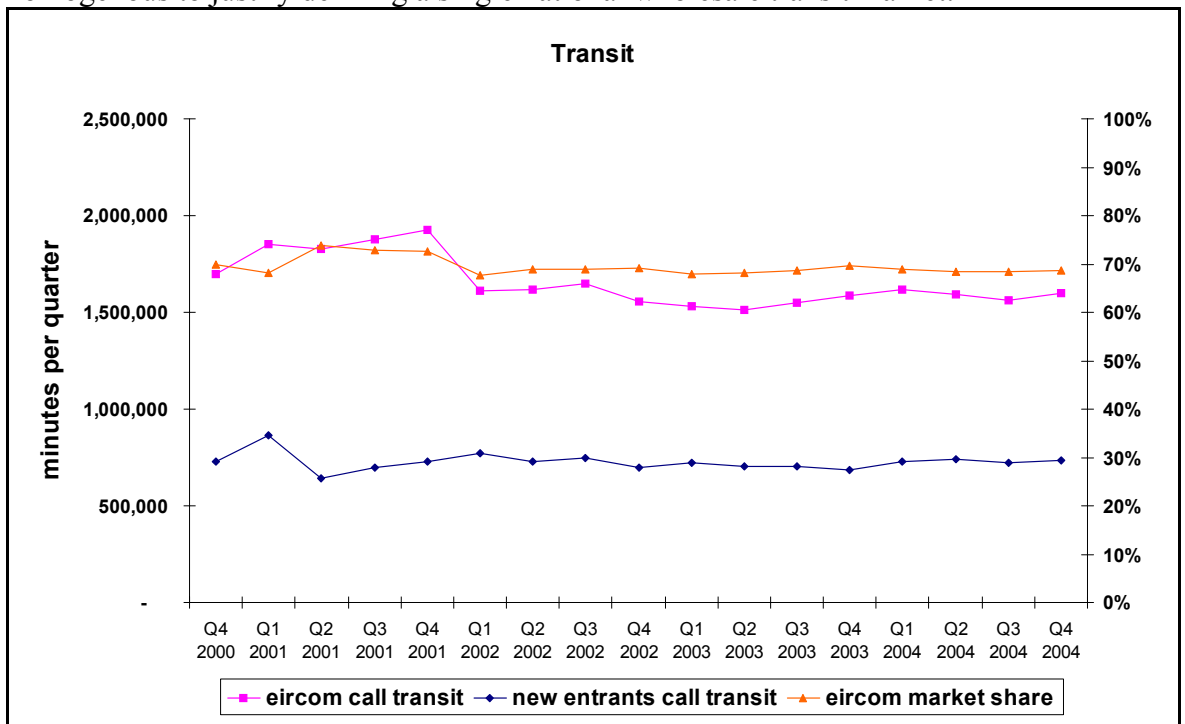


Figure 4.5: market share by volume in the transit market

Pricing behaviour

4.62 eircom accepts transit traffic destined for OAO geographic number ranges and for mobile networks at both the Secondary and Tertiary switches and hands off the call

to the OAO/MNO at either the Secondary or Tertiary level depending on where the OAO/MNO has interconnect. Non-geographic transit traffic (e.g. NTC and 1891/1892) and transit to network specific codes (e.g. DQ) other than mobile numbers can only be delivered to the eircom network at the Tertiary switches but can be handed off at the Secondary or Tertiary level depending on where the OAO has interconnect.

- 4.63 Currently, eircom call origination and termination services (which include Primary, Tandem and Double Tandem call routing and, thus, differ from the markets as defined in Section Three) are charged to third parties at cost oriented prices. Rates are derived by means of a top-down LRIC model. Transit charges (as set out below) are also derived using the same model, on the basis of the appropriate routing characteristics. Some pricing elements that eircom has previously included as components of call origination and termination (i.e. Tandem and Double Tandem) will now fall into the transit market.
- 4.64 The following graph shows the price of a three minute call at peak period and illustrates the high level of stability in eircom’s transit pricing for the last three years.

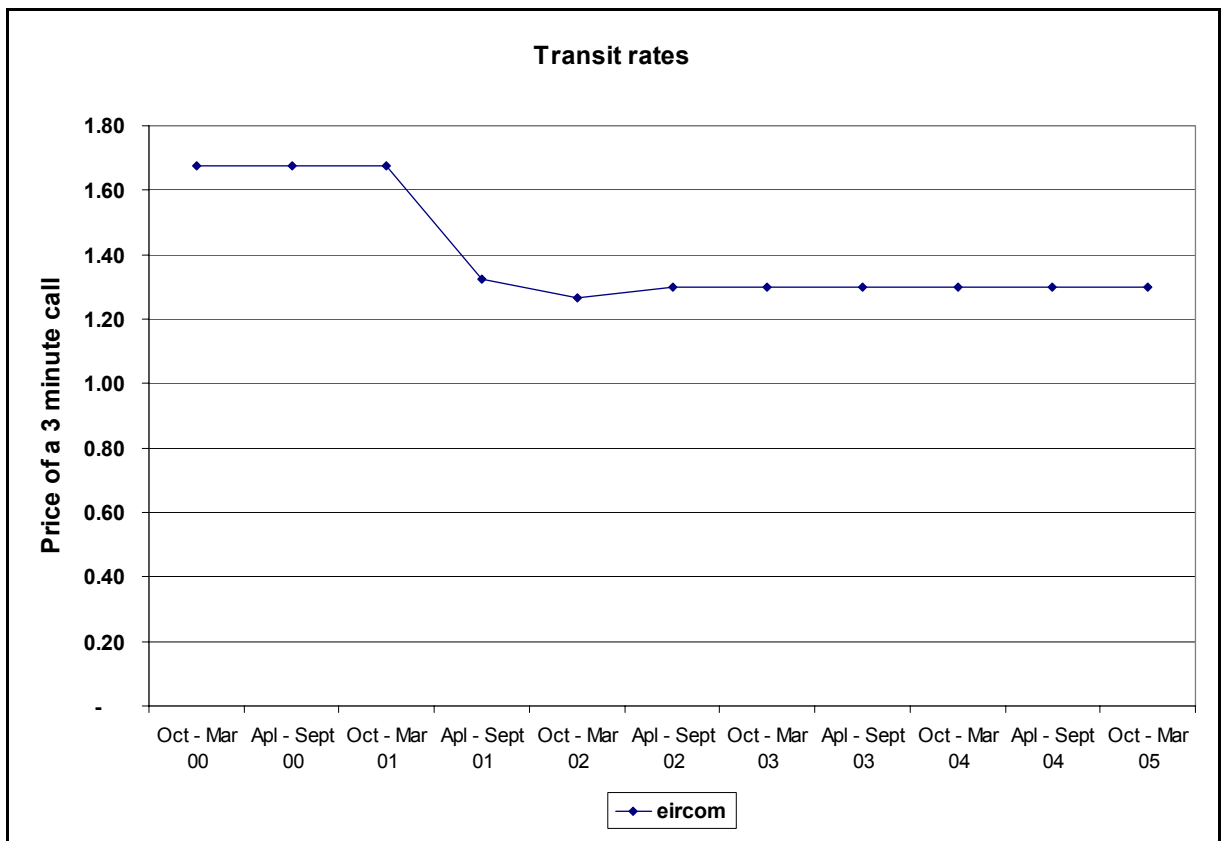


Figure 4.6: eircom’s wholesale transit rates for a 3 minute call at peak periods

- 4.65 Competition in the supply of third party transit is extremely limited, and only one operator other than eircom supplies small amounts of third party transit services.
- 4.66 It was the view of one respondent that some deeply interconnected OAOs (and MNOs) were capable of offering transit services, but were not entering the market because regulated prices were set too low. As far as ComReg is aware, OAOs are interconnected with eircom at less than 50% of the incumbent primary nodes, making them unlikely to be in a position to constrain eircom's pricing. ComReg does not find it credible that market entry is restricted because the regulated price is

too low. One OAO has already entered the market, and ComReg has been presented with no information which would support the assertion that the price levels are commercially unattractive.

Countervailing buyer power

- 4.67 ComReg has considered the existence of countervailing buyer power in the fixed transit market, and the circumstances in which wholesale or retail customers that can influence the behaviour of any supplier of transit services that would appear to have market power.
- 4.68 ComReg is of the view that countervailing buyer power does not yet exist in relation to the supply of fixed transit services in Ireland. It is possible that, as alternative suppliers enter the market over time, customers will acquire the supply alternatives that allow them to credibly threaten to change suppliers.

Barriers to entry and expansion, and potential competition

- 4.69 The relevant market for fixed transit in Ireland is characterised by high and non-transitory entry barriers. While these barriers are somewhat lower than those present in relation to the provision of wholesale fixed origination and fixed geographic termination services, they remain significant. In particular, ComReg takes the view that the high costs (a large portion of which are sunk costs) and relatively low volumes of traffic that can be 'contested' by new entrant operators preclude such market entry, at least in the medium term.
- 4.70 The relatively small volume of traffic for which a potential new entrant can compete inhibits the ability of a potential new entrant to create the economies of scale and scope that are necessary to successfully provide transit services. Building the facilities to provide or acquiring the appropriate underlying capacity requires a significant underlying investment from the potential entrant (particularly in relation to the construction of such facilities). Such investments will only be made where the risk that the costs will be recoverable through retail sales is justifiable.
- 4.71 In addition, the narrower range of retail services that new entrant providers provide (at least initially) adds further pressure to cost recovery, increasing the portion of the cost base that would have to be recovered from the provision of each service.
- 4.72 To date, there has been limited roll out of OAO infrastructure with primary and/or tandem switching capability that could potentially compete with eircom in the provision of switched calls to third parties. With the exception of small levels of traffic provided by BT Ireland, all traffic conveyed through these switches is self-supplied. Maps showing the locations of primary and secondary switches belonging to the eircom are provided in Annex C. Currently eircom have 33 primary switches and 16 tandem switches, while BT Ireland has 4 tandem switches and MCI has 1. BT Ireland has in the past also engaged in a joint venture with CIE to build additional fibre networks along its railway infrastructure, although this is more appropriately dealt with in the market review of leased line markets.
- 4.73 ComReg considers that the limited roll out and third-party provision of OAO infrastructure with primary and/or tandem switching capability will continue to be insufficient to exert a competitive pressure on eircom's transit services within the timeframe of this review.

- 4.74 Metropolitan Area Networks (MANs) are currently being developed to deliver broadband services to high density clusters of users (such as business parks) and to provide basic infrastructure for deploying other technologies such as DSL. However, these MANs are not used to provide retail fixed narrowband services.
- 4.75 The Electricity Supply Board (ESB) was also awarded funding under the National Development Plan 2000-2006, to build a national backbone infrastructure. Fibre has been deployed around the existing ESB electricity network. ESB manages the network as a 'carriers' carrier' meaning it will lease capacity to other operators rather than engaging in the retail market itself. However, this project is aimed at enabling high-speed broadband packages to be available to towns on the ESB Telecom fibre optic network and would not compete with eircom in the provision of narrowband switched calls to third parties. In addition, services have only recently become available on the ESB network and take up is believed to be limited at this stage of development.
- 4.76 The mobile network operators have begun to self-provide transit services (at least in relation to high volume routes on which they are confident that there is sufficient traffic to warrant the investment). However, they do so largely using leased capacity, and generally acquire sufficient capacity to meet their own needs on specific routes. They clearly lack both the spare capacity and the necessary ubiquity to enter the market in the short-term. Further, they do not have the billing, account management and similar ancillary systems that would be necessary to sell services to wholesale customers.
- 4.77 ComReg considers that there is little potential competition that could enter the market in the relevant timeframe.

Conclusion

- 4.78 eircom should be designated as having SMP in the wholesale market for transit services on the fixed public telephone network. ComReg does not believe that it is likely that any current provider or potential entrant will impose a competitive constraint on eircom within the timeframe of this review. ComReg's analysis shows evidence that, in the absence of regulation, market forces would be unable to constrain the pricing of transit.

5 Designation of Undertakings with Significant Market Power

- 5.1 Having regard for the sections above, particularly Sections 3 and 4, ComReg is of the view that, in accordance with the Framework Regulations, eircom Ltd should be designated as having SMP in the:
- National market for wholesale call origination services on the public telephone network provided at a fixed location;
 - National market for wholesale call termination services used to provide retail calls to end-users on each public telephone network, provided at a fixed location;
 - National market for wholesale call termination services used to provide retail calls to service providers on public telephone networks, provided at a fixed location; and
 - National market for wholesale national call transit services on the public telephone network provided at a fixed location.
- 5.2 In addition, ComReg is of the view that all undertakings providing fixed call termination services for retail calls to end-users on its fixed public telephone network shall be designated as having SMP (these undertakings are set out in Annex F).
- 5.3 A reference in this section to any given undertaking shall be taken to include any and all undertakings which are affiliated with, or controlled by, the undertaking in question.
- 5.4 This market review has defined four relevant markets in Ireland which are concerned with interconnection to the public telephone network. For each market, ComReg has analysed the market characteristics, and has concluded that eircom has SMP in all markets while all fixed terminating operators have SMP in the market for fixed call termination services on their own networks.

6 Proposed Market Remedies

Background

- 6.1 ComReg proposes to designate eircom as having SMP in the markets for call origination, national transit (hereafter transit), call termination to end-users and call termination to service providers. ComReg proposes to designate all undertakings providing call termination services for calls to end-users on their fixed networks as having SMP.
- 6.2 Pursuant to the *Framework Regulations*, ComReg is obliged to impose specific obligations as it considers appropriate where a designation of SMP has been made pursuant to Regulation 27 (4). These SMP obligations are set out in Regulations 10-14 of the *Access Regulations*.
- 6.3 ComReg may also propose additional obligations. For SMP operators, ComReg may, in exceptional circumstances, propose to apply additional obligations to those set out in Regulations 10-14 of the *Access Regulations*. In such circumstances ComReg must obtain permission from the European Commission. Regulation 6 of the *Access Regulations* allows for the application of other access and interconnection obligations, so-called non-SMP obligations, which, for example, may be designed to ensure end-to-end connectivity.
- 6.4 In determining the appropriateness of SMP obligations, ComReg is guided by the objectives set out in Section 12 of the *Communications Regulation Act 2002* and those set out in Regulation 6 of the *Access Regulations*.

Potential Obligations

- 6.5 The *Access Regulations* provide ComReg with a number of obligations it can apply to SMP designated operators. The specific obligations that can be applied by ComReg include:
 - Transparency (Regulation 10);
 - Non-Discrimination (Regulation 11);
 - Accounting Separation (Regulation 12);
 - Access to, and use of, specific network facilities (Regulation 13); and
 - Price Control and Cost Accounting (Regulation 14).
- 6.6 Regulation 9(6) of the *Access Regulations* states any obligations imposed by ComReg in accordance with the *Access Regulations* shall:
 - be based on the nature of the problem identified;
 - be proportionate and justified in the light of the objectives laid down in section 12 of the *Communications Regulation Act 2002*, and
 - only be imposed following consultation in accordance with Regulations 19 and 20 of the *Framework Regulations*.
- 6.7 In assessing the appropriateness of obligations to apply to undertakings designated as having SMP in any of the markets in this review, ComReg needs first to identify the nature of the problems that may exist or arise in these markets.

- 6.8 The problems in these markets of concern to ComReg are those which adversely affect competition. Where competition is adversely affected, efficiency tends to be undermined and end-users tend not to enjoy the maximum possible benefits.

Competition problems in general

- 6.9 ComReg believes that there are considerable entry costs associated with the markets in this review, and that these present formidable barriers to entry. However, the architecture of telecoms networks is such that the transit market benefits more from economies of density relative to origination and termination. Accordingly, the transit market has witnessed market entry in the provision of transit services to third parties in a small scale, and may well witness the progressive evolution of competition at a faster pace than the origination and termination markets. While ComReg is hopeful that the market for termination to service providers will tend towards an effectively competitive outcome in the long term, the characteristics and trends in the market do not indicate that this will happen within the timeframe of this review. It is not expected that any of the interconnection markets will become effectively competitive over the lifetime of this review.
- 6.10 In dealing with competition problems therefore ComReg will seek, where appropriate, to apply remedies that promote infrastructure based competition in the wholesale transit market which is regarded as being relatively more contestable, over the lifetime of this review, than the markets for origination and termination.
- 6.11 In the Consultation, ComReg identified that competition problems in the markets in this review are likely to fall into three broad categories:²⁴
- Leverage;
 - Single market dominance; and
 - Matters relating to termination.
- 6.12 Vertical leverage may arise when a firm controls an input that is essential for a potentially competitive downstream industry. The upstream bottleneck owner can then alter downstream competition by denying access or limiting access to its input. Many of the 'upstream' wholesale interconnect products in this review are essential inputs in the potentially competitive downstream retail markets. Hence, an undertaking identified as having SMP in any one of the markets in this review and which also operates in one or more of the potentially downstream competitive markets, has the potential to engage in vertical leverage. The most obvious illustration of vertical leverage is denial of access or refusal to deal.
- 6.13 Vertical leverage can also be applied via price and non-price means whereby an SMP operator may attempt to leverage its market power by being prepared to supply a good or a service only on unreasonable terms.
- 6.14 In particular where mandated access is required there are increased incentives for SMP operators to engage in non-price leveraging strategies. These include discriminatory use or withholding of information; delaying tactics; undue requirements such as adverse contractual arrangements; quality discrimination;

²⁴ These categories are in accordance with the problems outlined in "ERG Common Position on the approach to appropriate remedies in the new regulatory framework", April 2004.

strategic design of product characteristics to suit the SMP operator's downstream arm; and undue use of information about competitors.

- 6.15 Examples of leveraging by pricing means include margin squeeze, price discrimination, and predatory pricing. An example of using price to affect vertical leverage is the application of a price squeeze. A price squeeze involves an SMP operator setting a price for a wholesale input such that the buyer of an input, who is equally as efficient as the wholesale provider in the related downstream market, is unable to operate profitably and is squeezed out of the related potentially competitive downstream market.
- 6.16 Horizontal leverage occurs when market power is transferred by an undertaking from one market in the value chain to another related potentially competitive market at the same level in the value chain. Examples of horizontal leverage of relevance to the markets in this review include product bundling/tying and cross-subsidisation.
- 6.17 The significant market power arising out of a position of single dominance can be exercised to the detriment of competitors and end users. Examples of single market dominance would include the erection of entry barriers (entry deterrence) and the setting of prices in excess of costs (exploitative behaviour). Single market dominance may also give rise to productive inefficiencies, where an undertaking identified with SMP could, because of an absence of sustainable or effective competition, produce outputs inefficiently.
- 6.18 Termination problems are specific to call termination markets. For example, an undertaking having SMP on a call termination market may apply its market power by setting excessive prices for terminating calls onto its network.
- 6.19 All of the above general problems are relevant to the markets considered in this review.

Principles to be applied when selecting obligations

- 6.20 Regulation 9 of the *Access Regulations* requires that any obligations imposed by ComReg must be based on the nature of the problem identified, and be proportionate and justified in the light of the objectives laid down in Section 12 of the *Communications Regulation Act 2002*.
- 6.21 On the basis of its market analysis ComReg does not believe that there will be any significant development leading to sustainable competition in any of the markets in this review. Where problems are identified in specific markets and an undertaking(s) has been designated as having SMP, ComReg will select obligations based on the nature of the problem identified and will ensure that these are proportionate. Where possible, consideration will be given to a range of obligations and the least burdensome effective set of obligations will be selected. An effective obligation is one that remedies the problem identified and promotes sustainable competition.
- 6.22 ComReg believes that sustainable competition in the markets in this review is more likely to emerge where the replication of infrastructure occurs. ComReg will therefore seek to design obligations in these markets in such a way that takes account of infrastructure investment incentives and the effect such investments have on sustainable competition.
- 6.23 Where ComReg's market analysis suggests that replication of an SMP operator's infrastructure is feasible and desirable with regard to the promotion of sustainable competition, obligations will be designed where possible to assist in the transition process to a sustainable competitive market. ComReg may therefore design access

obligations to enable non-SMP operators to make incremental steps along the ‘investment ladder’.²⁵

- 6.24 ComReg emphasises that in designing obligations to promote sustainable competition in these markets, and in particular where obligations are designed to enable access to and use of specific network elements and associated facilities, it will take account of the requirements outlined in Regulation 13(4) of the *Access Regulations*. In this regard ComReg will take due account of the implications of access obligations on facility owners.
- 6.25 Where ComReg’s market analysis suggests that significant infrastructure competition is not likely to be feasible within the period under review, remedies may be chosen to ensure that there is sufficient access to wholesale inputs to enable service based competition to flourish.
- 6.26 In general, obligations will be designed by ComReg to exhibit predictability and transparency. By so doing, this should provide greater comfort to businesses when making long-term investment decisions. ComReg will also take account of potential effects on related markets and will also include a Regulatory Impact Analysis of the proposed obligations.
- 6.27 Finally, ComReg will seek to design and apply obligations in these markets that are incentive compatible. The means that, wherever possible, each SMP operator will have an incentive to comply with obligations.
- 6.28 Respondents who commented on principles to be used when selecting remedies broadly agreed with ComReg’s approach. One respondent suggested that ComReg could have placed more emphasis on the need for investment. In this respondent’s view, barriers to entry were less significant than suggested by ComReg, particularly in the transit market. A second respondent asked for clarification on how ComReg proposed to encourage efficient investment and innovation.
- 6.29 In establishing a cost oriented price for a wholesale product or service, ComReg allows for an appropriate rate of return on capital employed to be earned by the wholesale supplier such that investment in such wholesale products will not worsen the overall return on capital of the enterprise.

Proposed Remedies

The Call Origination Market

- 6.30 ComReg believes that, for the lifetime of this review, OAOs in Ireland will need to interconnect with eircom to be able to supply a retail telephone service to end-users. ComReg does not believe that replication of the local loop is feasible in the period of this review. Further, while LLU will promote further competition and benefit for end-users, it will not be sufficient to maximise consumer benefits within the timeframe of this review.
- 6.31 This conclusion indicates that remedies should be designed in the first instance to provide OAOs with sufficient access to wholesale inputs.

²⁵ See “ERG Common Position on the approach to appropriate remedies in the new regulatory framework”, April 2004.

Competition problems in the call origination market

- 6.32 In the Consultation, ComReg identified a number of actual and potential competition problems in the call origination market. These are discussed in detail in Annex C.
- 6.33 ComReg notes that all respondents who commented on the analysis of competition problems agreed with that analysis. One respondent noted further that, in its view, experience of dealing with a range of non-price problems had the effect of undermining competition and investment in the retail telephony market.

Appropriate obligations: call origination

- 6.34 ComReg has established failure in the market for providing call origination services. ComReg believes that, without an appropriate ex ante regulatory framework, eircom would have little incentive to offer fair and reasonable interconnection terms to OAOs it competes against in related downstream markets.
- 6.35 ComReg has considered the application of the following obligations:
- Transparency
 - Non-discrimination
 - Access
 - Price control and cost accounting
 - Accounting separation

Transparency

- 6.36 While a transparency obligation is insufficient on its own for dealing with the competition problems identified in the call origination market, ComReg proposed that transparency is a necessary obligation to make effective other obligations.
- 6.37 Specifically, ComReg proposed that it would be necessary to impose obligations of transparency in support of any accounting separation obligations, as this would allow the calculation of costs and prices (i.e. internal price transfers) to be rendered visible. This would also allow ComReg to monitor compliance with any non-discrimination obligations, and address competition problems relating to cross subsidisation, price discrimination and the application of price squeezes.
- 6.38 Three respondents agreed that a transparency obligation was necessary, and supported ComReg's view of the need to impose transparency as a means of ensuring the effectiveness of other remedies. One respondent said that, in its opinion, the current level of documentation was sufficient to fulfil the transparency obligation and that there was no evidence to the contrary.
- 6.39 ComReg does not agree with the latter respondent, and has identified actual and potential competition problems which would be addressed by a transparency obligation. ComReg notes that all other respondents agreed with the need for this obligation.
- 6.40 **Conclusion : a transparency obligation will be imposed on eircom.**

- 6.41 Having established the need for a transparency obligation, ComReg then considered elements of its implementation. This involved firstly the perceived requirement to publish a Reference Interconnect Offer (RIO), then the specification of the contents of the RIO, and finally the processes associated with its evolution.
- 6.42 ComReg proposed that eircom should be required to publish a reference offer that is sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested. This should include 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. (In line with the access obligation on eircom not to withdraw access to facilities already granted) ComReg believes that eircom should continue to publish a Reference Offer containing details of access to facilities already granted. ComReg considers that this obligation would be met by the continued publication of call origination service schedules, prices, product descriptions and inter-operator process manuals contained in Core RIO document Version 3.13 (as amended from time to time) and eircom RIO Price List Version 1.54 (as amended from time to time).
- 6.43 Three respondents indicated that eircom should be obliged to publish a reference offer. One of these respondents noted past difficulties in ensuring that a comprehensive RIO was published and accurately maintained.
- 6.44 ComReg notes that eircom stated in its response a commitment to maintaining the current document set.
- 6.45 **Conclusion : eircom will be obliged to publish a RIO.**
- 6.46 Having established that eircom should be obliged to offer and maintain a comprehensive RIO, ComReg considered in the consultation the detail of how the obligation would be implemented. This included the following :
- eircom should continue to publish as part of the RIO information which is necessary for the provision of new and existing call origination services²⁶
 - eircom should be required to provide and publish appropriate manuals, order forms and processes for new and existing services, the details to be determined on a case by case basis.
 - eircom should be required to publish the Reference Offer on its wholesale website.
 - processes²⁷ which currently apply to the publication of eircom's RIO should be maintained, as they are necessary to provide OAOs with sufficient notice of any changes to the eircom RIO, and should apply to all the documents which apply to the call origination market.

²⁶ Main body clauses, Annex A definitions, Billing and Payments Annex, located in the eircom Core RIO Document Version 3.13 (as amended from time to time), Billing forms, Network Plan, Technical Manual, CLI CoP, Call Origination and Termination Routing Scheme, Non Disclosure Agreement, as published as stand alone documents on eircom's wholesale website and the prices contained in the eircom RIO Price List Version 1.54 (as amended from time to time).

²⁷ - these include the re-publication of the RIO when any price changes have been approved by ComReg, a text process that was mandated in D10/02, a process for the introduction of new interconnection and associated retail products, and the application of version control to RIO documents.

- eircom should provide itemised billing to OAOs and a formal process should be introduced.
- 6.47 All respondents who commented agreed that eircom should be required to publish information as defined, and that the RIO should be published on eircom's website. One of these respondents noted that publication of information was a necessary requirement for OAOs to be able to build competing services. Another respondent, while broadly supporting publication, qualified this by proposing that eircom should be required to publish the minimum level of detail necessary. This respondent suggested that an industry agreed interface protocol was needed to define the level of interconnection between eircom and the OAO.
- 6.48 On the issue of itemised billing, two respondents believed that itemised billing should be provided. One of these respondents indicated that it was currently not possible to carry out the correct analysis to resolve differences in records that emerge in reconciliation. Both respondents who proposed itemised billing suggested it should be in electronic format, with one suggesting monthly and one quarterly. It was further suggested that the costs of an efficient itemised billing approach would not provide any greater burden than the current method of billing.
- 6.49 ComReg notes broad support for proposals to require eircom to publish specified information in its RIO on its website. ComReg notes also that its proposals incorporate the evolution of the RIO, by addressing the process and management of change, and regards this as a means of addressing specific issues raised by respondents in areas such as the definition of the interface between eircom and OAOs. On the question of itemised billing, ComReg agrees that previous industry discussion postponed itemised billing, but notes that this was several years ago. Respondents to this consultation have raised the requirement again, and ComReg proposes to consult further following this market review.
- 6.50 **Conclusion : eircom will be obliged to continue to publish on its website information which is necessary for the provision of call origination services, and to publish the appropriate manuals and supporting documentation. Current processes which apply to the management of change in the RIO should be maintained. ComReg will consult further on itemised billing following the completion of the Interconnection Market Review.**

Non-discrimination

- 6.51 While a transparency obligation may address some competition problems it cannot by itself remedy all competition problems such as those caused by vertical foreclosure. ComReg believes therefore that in addition to transparency, a non-discrimination obligation should be imposed on eircom. The application of a non-discrimination obligation requires eircom to offer equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and would require eircom to 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.
- 6.52 In the consultation, ComReg proposed that eircom be required to provide information and services to alternative operators in timescales, on a basis, and of a

quality, which are at least as good as those provided to eircom's retail arm and associates²⁸.

- 6.53 It is important that information gained by eircom as a result of their provision of wholesale call origination services to another operator is not improperly used by eircom's downstream arms in any manner. This means that eircom's downstream arms should not have privileged access to the relevant eircom departments or associated information held therein.
- 6.54 ComReg proposed further that eircom should be required to apply a standard process for the development and introduction of new call origination services and elements, including standard documentation and timescales. This should ensure that cost allocations etc to these new services are such to ensure that OAO's and eircom's retail arm are presented with the same costs for equivalent services in a transparent manner.
- 6.55 Three respondents agreed that a non-discrimination obligation should be imposed. One of these respondents expressed concern over the definition and implementation of "equivalence". Another, while supporting the obligation not to discriminate, noted that the application of this obligation should minimise disincentives for eircom to innovate through the introduction of new services.
- 6.56 One respondent proposed that a non-discrimination obligation was unnecessary. In the respondent's view, there was no evidence of past discrimination, and competition law could deal with any future complaints.
- 6.57 In assessing what would be viewed as an equivalent product, ComReg's concern is that OAOs should be able to offer a fit-for-purpose product, and this requires access to the same wholesale products and services as is available to the SMP operator's retail arm. This access must be provided in such a way that OAOs can offer to end users services which are equivalent to those offered by the SMP operator's retail arm, with regard to, for example, timescales for provision, and repair (both standard and enhanced), ease of ordering by the customer and comprehensive oversight of wholesale processes, allowing the customer's expectations to be managed by OAOs. This is not to say that all OAOs will match the offerings of eircom's retail arm in every aspect, but that they should not be prevented from doing so by limitations of the wholesale product.
- 6.58 ComReg agrees with most respondents that an obligation of non-discrimination is an essential remedy to target the kinds of actual and potential competition problems which have been identified in the call origination market. ComReg believes that there is evidence of past behaviour which could have been addressed by a non-discrimination obligation, and that, coupled with the potential for an SMP operator to discriminate, justifies the imposition of non-discrimination as an obligation.

Conclusion : a non-discrimination obligation should be imposed on eircom

²⁸ ComReg considers that this obligation would be met by the maintenance of the process for the introduction of new RIO services directed in D10/02 ODTR document 02/55.

Access to and use of specific network elements and associated facilities

- 6.59 Given the considerable barriers to entry arising from sunk costs, ComReg is of the view that infrastructure competition in the call origination market is unlikely to become sustainable during the lifetime of this review. This means that access obligations will play a crucial role in the emergence of sustainable competition. ComReg intends to promote an access regime that balances the interests of all operators in the market, which promotes service level competition, and encourages infrastructure based competition. By adopting this approach, ComReg hopes that it will be able to roll back the obligations applicable to this market in future reviews.
- 6.60 In the consultation, ComReg considered two approaches when mandating an access obligation. One option is that ComReg could mandate access to, and use of, all of eircom's call origination facilities. ComReg suggested that this option would be overly interventionist and prescriptive.
- 6.61 A second option is that ComReg could require eircom to offer access to and use of its wholesale call origination services on a reasonable request basis. Under this option OAOs could specify the particular access and/or interconnection arrangements that they require. Such an access obligation would require eircom to meet reasonable requests for access to, and use of, specific network elements and associated facilities.
- 6.62 All respondents agreed that an access obligation should be imposed. All respondents agreed that the preferred approach would be to oblige eircom to offer access on a reasonable request basis. This option is preferable as it allows OAOs the flexibility to request products according to their needs, and requires eircom to only develop products for which there is interest.

Conclusion : an access obligation should be imposed on eircom obliging access to call origination services on a reasonable request basis.

- 6.63 Having established the need for an access obligation, ComReg then considered the detail of its content and implementation. ComReg proposed that a number of specific issues should be addressed as follows :
- eircom should be required to interconnect networks or network facilities²⁹. This is necessary to maintain eircom's obligation to interconnect with existing and new OAOs and ensure that the market functions.
 - eircom should have an obligation not to withdraw access to facilities already granted³⁰. This is necessary to ensure that OAOs have the certainty to provide retail services to the marketplace and so compete with eircom. There are circumstances where it may be desirable to withdraw access to facilities, for example when a facility is no longer needed and it is an undue burden on eircom to maintain it. ComReg therefore proposed to qualify the obligation on eircom, allowing it to withdraw access to facilities already granted with prior ComReg approval, and following a public consultation.

²⁹ Pursuant to Regulation 13 (2) (i) of the *Access Regulations*

³⁰ Pursuant to Regulation 13 (2) (c) of the *Access Regulations*

- eircom should continue to provide call origination services in accordance with existing terms and conditions and specifications, in accordance with the current RIO³¹
- eircom should be obliged to meet reasonable requests from OAOs for wholesale products. This obligation is supported by Regulation 13 of the Access Regulations
- eircom should be obliged to negotiate in good faith with undertakings requiring access, and call origination services must be provided on terms and conditions which are fair, reasonable and timely.
- eircom should provide access to and information necessary for access to call origination services to competitors at least equivalent times and standards as it provides to its retail arm
- eircom should provide call origination services on an unbundled basis as part of its Access obligation
- eircom should be required to grant open access to technical interfaces, protocols, or other key technologies and systems and should also be required to provide access to such OSS or similar software necessary to ensure fair competition in the provision of services

6.64 ComReg notes broad agreement amongst most respondents on the overall approach³². Detailed responses are provided in Annex C. Particular concern was focused on two areas.

Adequacy of existing practice

6.65 One respondent indicated that, in several areas where ComReg proposed obligations, existing practice met the needs of industry, and there was therefore no need for regulation. The respondent cited the provision of information necessary to offer call origination services and the implementation of SLAs as particular examples.

6.66 ComReg does not agree that current practice satisfies industry needs. In the market analysis and in the introduction to this section, ComReg outlined its assessment of competition problems in the call origination market. ComReg has been generally supported by other respondents in its assessment of actual and potential difficulties. ComReg can therefore not accept the proposal that there have been no problems in this market, and that there will therefore be no problems in the future.

Withdrawal of access

6.67 Two respondents raised questions about the proposed obligation not to withdraw access to facilities already granted. One respondent believed that this constituted a new obligation, and was not justified. The respondent stated that the current practice

³¹ Main body clauses, Annex A definitions, Billing and Payments annex, located in the eircom Core RIO Document Version 3.13 (as amended from time to time), Billing forms, Network Plan, Technical Manual, Calling Line Identification Code of Practice (CLI CoP), Call Origination and Termination Routing Scheme, Non Disclosure Agreement as published as stand alone documents on eircom's wholesale website and the prices contained in the eircom RIO Price List Version 1.54 (as amended from time to time).

³² In the consultation, a question was included in this section on compensation payments and SLAs. This issue, and responses to this question, are now dealt with in Section 7.

was that eircom provided notice to OAOs if it wanted to withdraw a product, and if the OAO objected, there was a recognised disputes procedure. Another respondent suggested that it was not practical to initiate a public consultation every time a product was to be withdrawn. ComReg considers that it is necessary to balance the need to provide OAOs with certainty regarding products against the practicalities of ensuring this certainty.

- 6.68 ComReg has considered whether relying on ex post disputes on the withdrawal of facilities would be an adequate safeguard for OAOs, and believes that it would not. ComReg believes that there is validity in the point raised by one respondent that it may not be practical to initiate a public consultation automatically should access to a facility be withdrawn.
- 6.69 ComReg therefore considers that the SMP operator should be required not to withdraw access to facilities already granted, except with ComReg approval. ComReg's response would be based on appropriate consultation, which may, but not necessarily, include public consultation.
- 6.70 **Conclusion: an access obligation should be imposed on eircom. eircom should be required to interconnect with networks or network facilities, have an obligation not to withdraw access, continue to provide services in accordance with existing terms and conditions and specifications, meet reasonable requests from OAOs for wholesale products, negotiate in good faith, provide access to and information necessary for competitors, provide services on an unbundled basis, grant open access to technical interfaces, protocols, or other key technologies and systems, and provide access to such OSS or similar software necessary to ensure fair competition in the provision of services.**

Price control and Cost Accounting

- 6.71 ComReg believes that transparency, non-discrimination and access obligations are necessary but not sufficient to overcome competition problems in the call origination market. In addition, a price control obligation is necessary to promote competition in the retail market and safeguard end-users against excessive prices.
- 6.72 ComReg outlined its principles on price control, and emphasised the need to consider common costs, particularly where costs are shared between products across an SMP and a non-SMP market. ComReg noted the importance of recovering only efficiently incurred costs. ComReg believes that any new services introduced into the call origination market subsequent to this market review will be covered by the same pricing principles.
- 6.73 ComReg has taken into account the cost recovery principles commonly applied in order to decide on the level of price control necessary at this stage. The main principles are as follows;
- Cost causation
 - Cost minimisation
 - Distribution of benefits
 - Development of competition

• Practicality

- 6.74 eircom is currently required to offer a number of interconnection services and these are published on the eircom website (www.eircomwholesale.ie). ComReg is proposing to continue to mandate the provision by eircom of access to these interconnect origination services. (See Annex G for a list of these products.)
- 6.75 The services included in this market include both origination charges and regulated retention rates associated with the origination portion of calls delivered to service providers. In the case of regulated retention rates the retention will recover both the costs of the network elements used and the costs associated with collecting the retail revenue such as billing costs and bad debt. It was proposed that all new services would include interconnection rates which were consistent with the pricing regime in place.
- 6.76 ComReg proposed that eircom should be obliged to continue to provide current pricing mechanisms³³ associated with:
- Near End Handover
 - FRIACO
 - PAC
- 6.77 Most respondents agreed with the continuation of pricing mechanisms for Near End Handover, FRIACO and PAC. One respondent suggested that the inclusion of these products in this consultation was unnecessary, as they were already offered in the market on industry agreed terms.
- 6.78 All respondents agreed with the principle of moving towards a wholesale price cap. Most respondents agreed that the current price control regulations applied in this market, which mandated cost oriented tariffs based on a Forward Looking-Long Run Incremental Costing (FL-LRIC) methodology, should be maintained until a wholesale price cap could be introduced. One respondent disagreed strongly with the continuation of FL-LRIC. The respondent contended that the use of FL-LRIC had resulted in an obligation to price interconnection services below cost. In the respondent's view, this had serious implications for competition in the market, and for future investment.
- 6.79 ComReg notes widespread support for the principle of a wholesale price cap, and intends to consult further on the mechanism of its implementation.
- 6.80 ComReg believes that there is no evidence to substantiate any of the concerns expressed by one respondent that FL-LRIC may result in pricing services below cost. eircom have implemented a complex and sophisticated top-down model which derives LRIC costs directly from its statutory accounts and to which they are periodically reconciled throughout the process. The network structure is eircom's own and the costs are eircom's own, adjusted to Current Cost and using Cost Volume Relationships derived from eircom's existing operational practice.
- 6.81 The use of FL-LRIC ensures that in the case where costs incurred may be inefficient, this costing mechanism provides incentive to the incumbent to become more

³³ For current mechanisms associated with these services see latest version of the eircom Reference Interconnect Offer (Annex C) – www.eircomwholesale.ie

efficient in order to ensure that it recovers the efficient costs through the wholesale price charged.

- 6.82 **Conclusion : eircom should be obliged to provide existing pricing mechanisms associated with NEH, FRIACO and PAC. ComReg proposes to continue to apply current FL-LRIC based price controls in this market and intends to consult further on the mechanism and implementation of a wholesale price cap.**

Accounting Separation

- 6.83 ComReg proposed to consult further on the detailed implementation of accounting separation under the new framework. In the interim, ComReg proposed that eircom should be required to maintain the existing level of accounting separation, until such time as any further consultations are completed.
- 6.84 In addition, ComReg indicated that where an obligation for accounting separation or cost orientation is proposed, a parallel obligation should be required to maintain the appropriate cost accounting systems.
- 6.85 All respondents agreed that further consultation on accounting systems was required. One respondent indicated that these obligations constituted an undue burden, and was therefore not justified. A second respondent proposed that accounting separation was relevant only for the purpose of ensuring that internal transfer pricing reflect the cost orientated prices that have been established for those elements that are mandated as wholesale offerings.
- 6.86 ComReg welcomes support for this further consultation, and notes that points raised by respondents will be addressed at that time.

Conclusion: ComReg is currently consulting on accounting separation and appropriate cost accounting systems³⁴. Pending the outcome of that consultation, current accounting separation obligations should be maintained

The market for call termination to end-users

- 6.87 ComReg has found that all operators have SMP on their own networks. The impact of this in the market differs substantially according to the size of the network in question.

Competition problems in the market for call termination to end-users

- 6.88 eircom is currently significantly larger than its rivals. OAOs purchase most of their fixed end user termination services from eircom, while the vast majority of end-user traffic terminating on OAO networks originates on the eircom network. Without regulation, eircom could, for example, set rates at a level that would considerably weaken competition in related markets. Thus, some level of regulation on eircom is required in this market.
- 6.89 ComReg notes that termination rates charged by OAOs to eircom are higher than the eircom regulated rate, which indicates that the smaller operators are capable of

³⁴ ComReg documents 05/18, 05/18A, 05/18B, 05/18C

exercising some market power in the current situation where remedies are imposed on eircom only. In order to address this, it is necessary to impose some level of regulation on OAO termination rates also. In determining the level of remedies to impose on each of the operators in this market, ComReg has taken into account issues of proportionality.

- 6.90 To date ComReg has regulated eircom's call termination services via price control in accordance with a FL-LRIC methodology. This requires accounting separation. In the consultation, ComReg considered whether it would be appropriate and proportionate to apply a similar suite of obligations on every operator that has SMP for the termination of calls to end users on their own network.

Appropriate Obligations: call termination market for calls to end users

Approach

- 6.91 ComReg proposes to designate all operators in the call termination market for calls to end-users, as having SMP (the list of terminating operators it is proposed to designate as having SMP is set out in Annex F).
- 6.92 The European Commission Guidelines on Market Analysis and SMP state that where an NRA finds an operator with SMP, it is obliged to impose one or more regulatory obligations outlined in the Access Directive, taking into account the principle of proportionality and other factors outlined in the Access Directive. Thus, ComReg is under an obligation to impose appropriate SMP access obligations on all operators which are designated as having SMP in this market.
- 6.93 Furthermore, when imposing obligations ComReg must ensure, inter alia, that the obligations are proportionate and based on the nature of the problems identified. Where possible, the least burdensome and most effective set of remedies should be selected.
- 6.94 Respondents had mixed views on the proposal to impose asymmetric regulation. While all agreed that obligations should be proportionate, two respondents interpreted this to mean that similar obligations should be imposed on all operators, while two believed that this meant that the market structure should be reflected in the level of obligations imposed. Respondents who were in favour of asymmetric regulation noted that no evidence was presented of instances of anti-competitive behaviour on the part of OAOs. Respondents who were opposed to asymmetric regulation based this largely on the continuing high termination rates of OAOs. One of these respondents also believed that asymmetric regulation of termination may act to hinder economic efficiency, by encouraging inefficient market entry and persistent high costs.
- 6.95 It is ComReg's view that the termination rates of all operators should be oriented towards costs. For this reason, ComReg intends to impose a price control obligation on all operators in the market for the termination of calls to end-users. In considering the implementation of this obligation, ComReg is mindful of the need to ensure that remedies are appropriate and proportionate to the market failure identified.
- 6.96 ComReg recognises the concern of respondents over the interpretation of proportionality. ComReg's aim in this market is to balance the requirement to address a market failure, arising as a result of all operators being found to have SMP

on their own networks, against the need to ensure that any remedy proposed does not impose a burden in excess of the potential benefits.

Proposals for Remedies for OAOs in the call termination market

6.97 ComReg proposes to impose the following obligations on OAOs :

- An obligation of transparency
- An obligation of non-discrimination
- An access obligation
- A price control obligation

Transparency

6.98 ComReg proposes that the OAOs listed in Annex F be required, in accordance with Regulation 10 of the *Access Regulations*, to make public, in detail, the termination rates they apply to all other operators in this market. This would take the form of requiring the publication of rates on a publicly accessible website. ComReg does not regard this to be an onerous burden and by making transparent prices that apply in the market, it will make it easier for customers to make informed choices. Furthermore, the disclosure of termination rates will also enable ComReg to monitor more easily the state of competition in the call termination market.

6.99 For most of the OAOs listed in Annex F, the imposition of this obligation would only result in them being required to publish the termination charges that they levy on eircom, as traffic is only received by them from the eircom network. However, where an OAO with SMP in this market is directly interconnected with operators other than eircom, the OAO will be required to also publish the termination charges that they levy for such termination.

6.100 Furthermore, ComReg believes that the imposition of a transparency obligation would enable negotiations between operators to be undertaken more speedily and would reduce potential complaints. The disclosure of termination rates will also enable ComReg to monitor more easily the state of competition in the call termination market.

6.101 With regard to the costs that may be incurred as a result of the imposition of a transparency remedy, ComReg believes that these are few and that the benefits of a transparency remedy far outweigh any such costs. Indeed, by only requiring the OAOs to publish their prices on their websites the cost is minimised. Thus, ComReg believes that a transparency obligation on SMP operators is appropriate for this market.

6.102 Respondents had mixed views on a transparency obligation for OAOs, largely in line with their views on the overall approach to regulation in this market. One respondent expressed concern that the publication of price information could lead to tacit collusion to increase prices, and could only be done in parallel with direct regulation of prices. One respondent reiterated its opposition to all obligations imposed on OAOs, and one respondent believed that transparency was an appropriate obligation.

6.103 For the reasons set out above, ComReg believes that an obligation for OAOs to publish termination rates would benefit the market. ComReg believes that the benefits of this obligation far outweigh the costs.

- 6.104 **Conclusion : a transparency obligation should be imposed on OAOs, such that their termination prices will be published on their websites fifteen working days before they come into effect. ComReg should be notified of any changes at the time of publication.**

Non Discrimination

- 6.105 In the consultation, it was proposed that every OAO would be required, in accordance with Regulation 11 of the Access Regulations, to apply similar terms and conditions on interconnecting operators where they avail of call termination services having equivalent characteristics.
- 6.106 Responses were mixed, as one respondent agreed that this was a proportionate and appropriate remedy for OAOs, one believed that it was not proportionate, and one suggested that it was unnecessary and could be addressed under competition law.
- 6.107 ComReg notes the range of views from respondents, and maintains that a non-discrimination obligation is an important safeguard in this market, in which OAOs have been found with SMP on their own networks.

Conclusion : a non-discrimination obligation should be imposed on OAOs

Access to and use of specific network facilities

- 6.108 In order to terminate a voice call from another operator's network, the operators must have interconnection agreements. Currently, all operators are required to enter into negotiations on interconnection, and eircom is subject to a more detailed set of requirements concerning how the access obligation should be implemented.
- 6.109 Under the new regulatory framework, there is provision under Regulation 5 of the *Access Regulations* to ensure that all operators have an obligation to negotiate interconnection for the purpose of providing publicly available electronic communications services when requested to do so by another operator. There is also provision under Regulation 13 of the Access Regulations to impose on an SMP operator the obligation to meet reasonable requests for access.
- 6.110 ComReg believes that an access obligation that requires all operators to meet reasonable requests for access to and use of their network facilities for the purposes of call termination is a necessary condition for the interoperability of services, and is therefore appropriate for this market. In considering how OAOs should be obliged to implement an access obligation, ComReg believes that every operator should be obliged to provide network access for the provision of call termination services to every public electronic communications network provider who reasonably requests such access. Network access should be provided together with any services, facilities or arrangements which are necessary for the provision of electronic communications services over that interconnection. ComReg believes that that the provision of network access should occur as soon as reasonably practical, and should be provided on fair and reasonable terms and conditions.

- 6.111 **Conclusion : an access obligation should be imposed on all operators**

Price control and Accounting Separation

- 6.112 ComReg has reached the conclusion that, given the finding of SMP for each OAO in the relevant market, a price control obligation should be imposed on each SMP operator. The objective of a price control

obligation is to ensure dominant operators do not set prices at an excessively high level or apply a price squeeze to the detriment of end users. ComReg believes that a form of price control which prevents excessive pricing for charges for call termination is, when properly designed, proportionate and justified. ComReg is of the view that it is likely that comprehensive cost accounting or cost modelling exercises, which are necessary and justified in the context of large operators, are likely to be unduly burdensome in the case of smaller operators.

- 6.113 The form of price control should, if possible, be relatively light, and should ensure that rates are fair and reasonable. This is likely to be achieved by benchmarking rates against those of other operators of a comparable size both in Ireland and in other countries and also by taking account of the costs of operators which have implemented more detailed cost accounting or cost modelling measures. ComReg is of the view that if this approach proved unworkable or ineffective, that it may then proceed to implement more onerous measures such as accounting separation or cost modelling. This could be done on an operator by operator basis if it transpired that there was a problem of excessive pricing associated with particular operators. It could also be the case that such additional measures might have to be applied on all operators or all operators of a particular category (for example larger OAOs). However ComReg proposes for the time being to proceed with a lighter form of a price control obligation as described above and will monitor developments in the market.
- 6.114 Two respondents disagreed, on the basis that all obligations imposed on eircom should also be imposed on OAOs. Two respondents agreed that it would not be proportionate to impose accounting separation obligations on OAOs.
- 6.115 **Conclusion : a price control obligation will be imposed on OAOs which in the first instance will be a form of benchmarking and if this price control proves insufficient ComReg will consider more onerous obligations.**

Proposals for remedies for eircom

- 6.116 As already discussed, ComReg recognises the concern of respondents over the interpretation of proportionality in relation to obligations in this market. ComReg's aim in this market is to balance the requirement to address a market failure, arising as a result of all operators being found to have SMP on their own networks, against the need to ensure that any remedy proposed does not impose a burden in excess of the potential benefits.
- 6.117 For this reasons it is ComReg's view that that there is a need to impose stronger remedies on eircom than on OAOs.

Transparency

- 6.118 ComReg proposed that an obligation of transparency should be imposed on eircom which would include the following provisions:

- eircom should be required to publish a reference offer for call termination services that is sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested. This would include a description of the relevant offerings broken down into components according to market needs; and a description of the associated terms and conditions, including prices³⁵.
- eircom should be required to publish specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and price which is necessary for the provision of new and existing end user call termination services³⁶. ComReg believes that this information should be published as part of the Reference Offer.
- eircom should be required to provide and publish appropriate manuals, order forms and processes for new and existing services, the details of which would be determined on a case by case basis.
- eircom should be required to publish the Reference Offer for end-user call termination on its wholesale website so as to allow for easy and predictable access to this by interested parties.
- processes which currently apply to the publication and evolution of eircom's RIO should be maintained, and should apply to all the documents which apply to eircom call termination services³⁷.
- obligations of transparency should be imposed in support of any accounting separation obligation, as this would allow the calculation of costs and prices (i.e. internal price transfers) to be rendered visible. This would also allow ComReg to monitor compliance with any non-discrimination obligations that may be imposed and help address competition problems relating to cross subsidisation, price discrimination and the application of price squeezes.
- eircom should be required to provide itemised billing to other authorised operators. The introduction of this would allow for a level of granularity that would enable operators to be in a position to reconcile amounts billed on a wholesale level to that billed on a retail level and ensure there are no discrepancies. This is currently provided on an ad hoc basis.

³⁵ ComReg considers that this obligation would be met by the continued publication of the eircom end-user call termination service schedule and prices contained in the eircom Core RIO Document Version 3.13 (as amended from time to time) and eircom RIO Price List Version 1.54 (as amended from time to time).

³⁶ ComReg considers that this obligation would be met by the continued publication of the relevant facilities in accordance with the terms, conditions and specifications contained in the Main body clauses, Annex A definitions, Billing and Payments annex, located in the eircom Core RIO Document Version 3.13 (as amended from time to time), Billing forms, Network Plan, Technical Manual, CLI CoP, Call Origination and Termination Routing Scheme, Non Disclosure Agreement as published as stand alone documents on eircom's wholesale website and the prices contained in the eircom RIO Price List Version 1.54 (as amended from time to time).

³⁷ these include the republication of the RIO when any price changes have been approved by ComReg, a text process that was mandated in D10/02, a process for the introduction of new interconnection and associated retail products, and the application of version control to RIO documents.

- 6.119 All respondents who commented agreed that eircom should be required to publish information as defined, and that the RIO should be published on eircom's website. One of these respondents believed that the current provision of technical and operational OSS information was not sufficient. A second respondent believed that the current level of publication was adequate, and that no further requirement was necessary. Another respondent, while broadly supporting publication, qualified this by proposing that eircom should be required to publish the minimum level of detail necessary. This respondent suggested that an industry agreed interface protocol was needed to define the level of interconnect between eircom and the OAO.
- 6.120 On the issue of itemised billing, two respondents believed that itemised billing should be provided. One of these respondents indicated that it was currently not possible to carry out the correct analysis to resolve differences in records that emerge in reconciliation. Both respondents who proposed itemised billing suggested it should be in electronic format, with one suggesting monthly and one quarterly. It was further suggested that the costs of an efficient itemised billing approach would not provide any greater burden than the current method of billing.
- 6.121 One respondent did not believe that the requirement for itemised billing had been fully justified. Another respondent proposed that a previous consultation³⁸ had established an industry consensus that itemised billing was an unreasonable requirement in the wholesale context.
- 6.122 ComReg notes broad support for proposals to require eircom to publish specified information in its RIO on its website. ComReg notes also that its proposals incorporate the evolution of the RIO, by addressing the process and management of change, and regards this as a means of addressing specific issues raised by respondents in areas such as the definition of the interface between eircom and OAOs.
- 6.123 On the question of itemised billing, ComReg agrees that previous industry discussion postponed itemised billing, but notes that this was several years ago. Respondents to this consultation have raised the requirement again, and ComReg proposes to consult further on itemised billing following this market review.
- 6.124 **Conclusion : eircom will be obliged to continue to publish on its website information which is necessary for the provision of call termination services, and to publish the appropriate manuals and supporting documentation. Current processes which apply to the management of change in the RIO should be maintained. ComReg intends to consult further on itemised billing following this market review.**

Non- discrimination

- 6.125 ComReg proposed that a non-discrimination obligation should be imposed on eircom. This would ensure that eircom should provide information and services to alternative operators in timescales, on a basis, and of a quality, which are at least as good as those provided to eircom's retail arm and associates.
- 6.126 The application of a non-discrimination obligation would require eircom to offer equivalent conditions in equivalent circumstances to other undertakings providing equivalent services and require eircom to provide services and information to others

³⁸ Document 01/30 - Itemised Billing by Telecommunications Operators

under the same conditions and of the same quality as it provides for its own services or those of its subsidiaries or partners.

- 6.127 It is important that information gained by eircom as a result of their provision of call termination services to another operator is not used by eircom's downstream arms in any manner. ComReg believes that eircom's downstream arms should not have privileged access to eircom wholesale.
- 6.128 ComReg proposed also that eircom should be required to apply a standard process for the development and introduction of new call termination services and elements, including standard documentation and timescales.
- 6.129 One respondent stated that it did not believe that there was evidence of past discrimination, and that there was no justification for ex ante regulation. All other respondents agreed that there should be a non-discrimination obligation.
- 6.130 One respondent suggested that there was a need for further separation between eircom's wholesale and retail arms, so that eircom's retail divisions would be required to obtain wholesale elements in the same way as an OAO. This would extend to ordering systems and so on.
- 6.131 On the application of standard processes for product development, two respondents were in favour of this, and a further respondent agreed, but suggested that this needed to be imposed at a high level to allow for the range of effort required. One respondent believed that there was no need for this requirement, as there is an industry agreed process set out in the RIO.
- 6.132 ComReg agrees with most respondents that an obligation of non-discrimination is an essential remedy to target the kinds of actual and potential competition problems which have been identified in the call termination market. ComReg believes that there is evidence of past behaviour which could have been addressed by a non-discrimination obligation, and that, coupled with the potential for an SMP operator to discriminate, justifies the imposition of non-discrimination as an obligation.
- 6.133 **Conclusion : a non-discrimination obligation should be imposed on eircom³⁹.**

Access to and use of specific network facilities

- 6.134 ComReg believes that the transparency and non-discrimination obligations discussed above are necessary but insufficient on their own for dealing with the entire range of competition problems in this market. In the consultation, ComReg proposed that an access obligation should be imposed on eircom to ensure that eircom would continue to offer wholesale call termination services on terms and conditions which are fair, reasonable and timely.
- 6.135 All respondents agreed that this was reasonable.
- 6.136 **Conclusion: an access obligation for call termination services to end users should be imposed on eircom.**
- 6.137 ComReg then proposed a series of elements which should be included in the access obligation, as follows:
- eircom should be required to interconnect networks or network facilities

³⁹ For further discussion on ComReg's strategy relating to non-discrimination see ComReg Doc 05/30 – Forward Looking Strategic Review of the Irish Telecommunications Sector

- eircom should have an obligation not to withdraw access to facilities already granted⁴⁰.
- eircom should be required to continue to provide specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices which is necessary for the provision of existing end-user call termination services⁴¹
- eircom should have an obligation to meet reasonable requests for access from OAOs for future call termination products
- eircom should have the obligation to negotiate in good faith with undertakings requesting access
- eircom's call termination services must be provided on terms and conditions which are fair, reasonable and timely.
- eircom should be required to provide an unbundled call termination service to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested. The level of unbundling should be the same as that offered at the time to its retail division or subsidiaries.
- eircom should be required to provide access to call termination services to competitors at an equivalent standard and at an equivalent time as the retail arm.
- eircom should be required to grant open access to technical interfaces, protocols, or other key technologies and should also be required to provide access to such OSS or similar software necessary to ensure fair competition in the provision of services

6.138 ComReg notes broad agreement amongst respondents on the overall approach⁴². Detailed responses are provided in Annex C. As in the call origination market, particular concern was focused on two areas: the adequacy of existing practice and the withdrawal of access.

Conclusion : an access obligation should be imposed on eircom. eircom should be required to interconnect with networks or network facilities, have an obligation not to withdraw access, required to continue to provide specified information, meet reasonable requests for access, negotiate in good faith, access should be fair, reasonable and timely, should provide service on an unbundled

⁴⁰ ComReg considers that this obligation would be met by the continued offering of the eircom call termination service schedule and prices contained in the eircom Core RIO Document Version 3.13 (as amended from time to time) and eircom RIO Price List Version 1.54 (as amended from time to time).

⁴¹ ComReg considers that this obligation would be met by the continued offering of the relevant facilities in accordance with the terms, conditions and specifications contained in the Main body clauses, Annex A definitions, Billing and Payments annex, located in the eircom Core RIO Document Version 3.13 (as amended from time to time), Billing forms, Network Plan, Technical Manual, CLI CoP, Call Origination and Termination Routing Scheme, Non Disclosure Agreement as published as stand alone documents on eircom's wholesale website and the prices contained in the eircom RIO Price List Version 1.54 (as amended from time to time).

⁴² In the consultation, a question was included in this section on compensation payments and SLAs. This issue, and responses to this question, are now dealt with in Section 7.

basis, provide access at an equivalent standard and at an equivalent time as the retail arm, grant open access to technical interfaces, protocols, or other key technologies and provide access to such OSS or similar software necessary to ensure fair competition in the provision of services.

Price control and Cost Accounting

- 6.139 ComReg believes that transparency, non-discrimination and access obligations are necessary but not sufficient to overcome competition problems in the call termination market. In addition, a price control obligation is necessary to promote competition in the retail market and safeguard end-users against excessive prices.
- 6.140 ComReg outlined its principles on price control, and emphasised the need to consider common costs, particularly where costs are shared between products across an SMP and a non-SMP market. ComReg noted the importance of recovering only efficiently incurred costs. ComReg believes that any new services introduced into the call origination market subsequent to this market review will be covered by the same pricing principles.
- 6.141 ComReg has taken into account the cost recovery principles commonly applied in order to decide on the level of price control necessary at this stage. The main principles are as follows;
- Cost causation
 - Cost minimisation
 - Distribution of benefits
 - Development of competition
 - Practicality
- 6.142 ComReg has previously consulted on the possibility of moving from an annual review regime to a multi-year wholesale price cap regime. ComReg noted industry support for this in principle. However, in the interim, ComReg proposed to continue with the current price control regulations applying in this market, which mandate cost oriented tariffs based on a Forward Looking-Long Run Incremental Costing (FL-LRIC) methodology.
- 6.143 All respondents agreed with the principle of moving towards a wholesale price cap. Most respondents agreed that FL-LRIC should be maintained until a wholesale price cap could be introduced. One respondent disagreed strongly with the continuation of FL-LRIC. The respondent contended that the use of FL-LRIC had resulted in an obligation to price interconnection services below cost. In the respondent's view, this had serious implications for competition in the market, and for future investment.
- 6.144 Another respondent suggested that it was not possible to introduce a blanket ex ante obligation to apply cost-oriented price obligations to all new services, as it may not be proportionate. New services should be judged on a case by case basis.
- 6.145 ComReg notes widespread support for a wholesale price cap, and intends to consult further on its potential implementation. ComReg notes further that FL-LRIC was agreed by industry, and that no other interim solution was proposed. FL-LRIC generally applies to all new services under all conditions, but ComReg recognises that practical implementation may require other approaches.

- 6.146 The use of FL-LRIC ensures that in the case where costs incurred may be inefficient, this costing mechanism provides incentive to the incumbent to become more efficient in order to ensure that it recovers the efficient costs through the wholesale price charged.
- 6.147 **Conclusion : ComReg proposes to continue to apply current FL-LRIC based price controls in this market while consulting on the mechanism and implementation of a wholesale price cap.**

Accounting Separation

- 6.148 ComReg proposed to consult further on the detailed implementation of accounting separation under the new framework. In the interim, ComReg proposed that eircom should be required to maintain the existing level of accounting separation, until such time as any further consultations are completed.
- 6.149 In addition, ComReg indicated that where an obligation for accounting separation or cost orientation is proposed, a parallel obligation should be required to maintain the appropriate cost accounting systems.
- 6.150 All respondents agreed that further consultation on accounting systems was required. One respondent indicated that these obligations constituted an undue burden, and was therefore not justified. A second respondent proposed that accounting separation was relevant only for the purpose of ensuring that internal transfer pricing reflect the cost oriented prices that have been established for those elements that are mandated as wholesale offerings.
- 6.151 ComReg welcomes support for further consultation, and notes that points raised by respondents will be addressed at that time.
- 6.152 **Conclusion : ComReg is currently consulting on accounting separation and appropriate cost accounting systems⁴³. Pending the outcome of that consultation, current accounting separation obligations should be maintained**

The call termination market for calls to service providers

- 6.153 ComReg has identified that eircom has SMP in the market for the termination of calls to service providers.

Competition problems in the market for calls to service providers

- 6.154 ComReg has noted that the market for termination of calls to service providers is characterised by high barriers to entry with limited countervailing buyer power. While the market initially experienced entry, this entry has not been effective in reducing the market power enjoyed by eircom.

Appropriate Obligations: call termination market for calls to Service Providers

⁴³ ComReg documents 05/18, 05/18A, 05/18B, 05/18C

- 6.155 ComReg has found eircom to have SMP in this market. However, ComReg recognises that competitive conditions in the market for termination to service providers differ significantly from those in the market for termination to end-users. These differences are reflected in the level of remedies proposed.
- 6.156 The competition problems to be addressed in this market are to do with ensuring that OAOs are able to offer an equivalent product to service providers. This means that the relationship between eircom wholesale and retail must be transparent.
- 6.157 ComReg proposed the following obligations :
- Transparency
 - Non-discrimination
 - Accounting separation

Transparency

- 6.158 ComReg proposed that an obligation of transparency should be imposed on eircom. It is ComReg's view that this obligation would be met by the continuation of the current requirement to publish prices in eircom's separated accounts.
- 6.159 **Conclusion : an obligation of transparency should be imposed on eircom.**

Non-discrimination

- 6.160 While a transparency obligation may address some competition problems it cannot by itself remedy all competition problems. ComReg believes therefore that in addition to transparency, a non-discrimination obligation should be imposed on eircom. The application of a non-discrimination obligation requires eircom to offer equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and would require eircom to 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.
- 6.161 In the consultation, ComReg proposed that eircom be required to provide information and services to alternative operators in timescales, on a basis, and of a quality, which are at least as good as those provided to eircom's retail arm and associates⁴⁴.
- 6.162 It is important that information gained by eircom as a result of their provision of wholesale termination services to another operator is not improperly used by eircom's downstream arms in any manner. This means that eircom's downstream arms should not have privileged access to the relevant eircom departments.
- 6.163 **Conclusion : a non-discrimination obligation should be imposed on eircom**

Accounting Separation

- 6.164 ComReg proposed to consult further on the detailed implementation of accounting separation under the new framework. In the interim, ComReg proposed that eircom should be required to maintain the existing level of accounting separation, until such time as any further consultations are completed.

⁴⁴ ComReg considers that this obligation would be met by the maintenance of the process for the introduction of new RIO services directed in D10/02 ODTR document 02/55.

- 6.165 In addition, ComReg indicated that where an obligation for accounting separation or cost orientation is proposed, a parallel obligation should be required to maintain the appropriate cost accounting systems.
- 6.166 All respondents agreed that further consultation on accounting systems was required. One respondent indicated that these obligations constituted an undue burden, and was therefore not justified. A second respondent proposed that accounting separation was relevant only for the purpose of ensuring that internal transfer pricing reflect the cost orientated prices that have been established for those elements that are mandated as wholesale offerings.
- 6.167 ComReg welcomes support for further consultation, and notes that points raised by respondents will be addressed at that time.
- 6.168 **Conclusion : ComReg is currently consulting further on accounting separation and appropriate cost accounting systems⁴⁵. In the meantime, current accounting separation obligations should be maintained.**

The Transit Market

- 6.169 The transit market is defined as the transmission of switched calls between tandem exchanges. ComReg recognises that the transit market is characterised by the concentration of traffic at a relatively small number of geographic locations, and therefore the economies of scale available to competing operators are such that one would expect to see the development of competing infrastructure to occur in this market before it occurs in the other interconnection markets.
- 6.170 ComReg is aware that a certain amount of alternative transmission network investment has been made, including the government backed investments in the MANs and ESB's network. However, the market for transit services is currently overwhelmingly characterised by self supply with very little scope for alternative operators to win market share in the wholesale transit market except by gaining market share in the retail market. As such ComReg does not believe that the alternative networks will provide effective competition in this market in the timeframe of the review.
- 6.171 ComReg would, over the longer term, hope to see the gradual emergence of infrastructure based competition in this market. When applying obligations on eircom in this market ComReg is aware of the need to avoid discouraging efficient investment by other operators in the longer term while promoting competition in the retail market and delivering maximum benefits to end-users in the short to medium term.

Competition problems in the Transit market

- 6.172 In the absence of *ex ante* regulation, it is very unlikely that eircom would have any incentive to offer access to its facilities on reasonable terms to a competing OAO. ComReg considers that eircom could refuse to deal or indeed could offer access on terms and conditions which amount to constructive denial of access. In late 2000, a multi-operator dispute which arose due the introduction of a price change for a transit service by eircom, caused an overall revision by ComReg and industry to the transit process. However the industry working group which was established in 2001

⁴⁵ ComReg doc 05/18, 05/18A, 05/18B, 05/18C

failed to resolve the process for transit services and it still remains an outstanding issue. It is ComReg's view that the potential for future disputes and competition problems remains very real in the absence of an agreed process. These could include discriminatory use or withholding of information; delaying tactics; undue requirements; quality discrimination; strategic design of products; and undue use of information about competitors. ComReg has also been involved in setting charges on the basis of FL-LRIC for transit calls from the inception of the service.

- 6.173 With mandated access it is also possible that problems of a price nature such as margin squeeze (price discrimination) could occur. Currently the charges which eircom can levy are regulated at a wholesale level and ComReg believes that this regulation has to date ensured that such problems have been minimised.

Appropriate Obligations: transit

- 6.174 eircom is the only network operator to be in a position to provide wholesale transit to higher points in the network. ComReg therefore believes that appropriate *ex ante* regulation of eircom's wholesale transit products is essential to lay the foundations for establishing sustainable competition in fixed retail telecoms markets.

Transparency

- 6.175 A transparency obligation would allow ComReg and OAOs to observe price and non-price terms and conditions for eircom's transit products, and is necessary to ensure that discriminatory practices are not applied by the SMP operator.
- 6.176 ComReg proposed that eircom should be required to publish a reference offer that is sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested. This should include 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.
- 6.177 ComReg believes that eircom should continue to publish a Reference Offer containing details of access to facilities already granted. ComReg considers that this obligation would be met by the continued publication of transit service schedules, prices, product descriptions and inter-operator process manuals contained in Core RIO document Version 3.13 (as amended from time to time) and eircom RIO Price List Version 1.54 (as amended from time to time).
- 6.178 ComReg has imposed a similar unbundling obligation on eircom in both the call origination market and the end-user call termination market. ComReg proposes that the optimal way to meet this obligation in the three markets is to require eircom to continue publishing the services that fall within these markets, in the same format as they are published in the current RIO Version 3.13 (as amended from time to time). ComReg further proposes that the reference offer for the three markets- call origination market, eircom end-user call termination and transit – should be published as one offer.
- 6.179 All respondents who commented agreed that eircom should be obliged to publish a reference offer. ComReg notes that eircom stated in its response a commitment to maintaining the current document set.
- 6.180 However, one respondent believed that the national transit market is now competitive, and so there should be no *ex ante* regulation. ComReg does not agree

that this market is competitive, and refers back to the analysis of the market and discussion of competition problems.

6.181 **Conclusion : eircom will be obliged to publish a RIO. The Reference Offer for call origination, call termination to end-users and transit shall continue to be published as a single offer.**

6.182 Having established that eircom should be obliged to offer and maintain a comprehensive RIO, ComReg considered in the consultation a number of specific elements of its implementation. These are :

- eircom should continue to publish as part of the RIO information which is necessary for the provision of new and existing transit services⁴⁶
- eircom should be required to provide and publish appropriate manuals, order forms and processes for new and existing services, the details to be determined on a case by case basis.
- eircom should be required to publish the Reference Offer on its wholesale website.
- processes⁴⁷ which currently apply to the publication of eircom's RIO should be maintained, as they are necessary to provide OAOs with sufficient notice of any changes to the eircom RIO, and should apply to all the documents which apply to the call origination market.
- obligations of transparency should be imposed in support of any accounting separation obligations, as this would allow the calculation of costs and prices (i.e. internal price transfers) to be rendered visible. Further, this would also allow ComReg to monitor compliance with any non-discrimination obligations, and address competition problems relating to cross subsidisation, price discrimination and the application of price squeezes.
- eircom should provide itemised billing to OAOs and a formal process should be introduced.

6.183 All respondents who commented agreed that eircom should be required to publish information as defined, and that the RIO should be published on eircom's website. One of these respondents noted that publication of information was a necessary requirement for OAOs to be able to build competing services. Another respondent, while broadly supporting publication, qualified this by proposing that eircom should be required to publish the minimum level of detail necessary. This respondent suggested that an industry agreed interface protocol was needed to define the level of interconnect between eircom and the OAO.

⁴⁶ Main body clauses, Annex A definitions, Billing and Payments Annex, located in the eircom Core RIO Document Version 3.13 (as amended from time to time), Billing forms, Network Plan, Technical Manual, CLI CoP, Call Origination and Termination Routing Scheme, Non Disclosure Agreement, as published as stand alone documents on eircom's wholesale website and the prices contained in the eircom RIO Price List Version 1.54 (as amended from time to time).

⁴⁷ - these include the republication of the RIO when any price changes have been approved by ComReg, a text process that was mandated in D10/02, a process for the introduction of new interconnection and associated retail products, and the application of version control to RIO documents.

- 6.184 On the issue of itemised billing, two respondents believed that itemised billing should be provided. One of these respondents indicated that it was currently not possible to carry out the correct analysis to resolve differences in records that emerge in reconciliation. Both respondents who proposed itemised billing suggested it should be in electronic format, with one suggesting monthly and one quarterly. It was further suggested that the costs of an efficient itemised billing approach would not provide any greater burden than the current method of billing.
- 6.185 One respondent did not believe that the requirement for itemised billing had been fully justified.
- 6.186 Another respondent proposed that the previous consultation⁴⁸ had established an industry consensus that itemised billing was an unreasonable requirement in the wholesale context.
- 6.187 ComReg notes broad support for proposals to require eircom to publish specified information in its RIO on its website. ComReg notes also that its proposals incorporate the evolution of the RIO, by addressing the process and management of change, and regards this as a means of addressing specific issues raised by respondents in areas such as the definition of the interface between eircom and OAOs. On the question of itemised billing, ComReg agrees that previous industry discussion postponed itemised billing, but notes that this was several years ago. Respondents to this consultation have raised the requirement again, and ComReg proposes to consult further following this market review.
- 6.188 **Conclusion: eircom will be obliged to continue to publish on its website information which is necessary for the provision of call transit services, and to publish the appropriate manuals and supporting documentation. Current processes which apply to the management of change in the RIO should be maintained. ComReg will consult further on itemised billing following the completion of the Interconnection Market Review.**

Non-discrimination

- 6.189 While a transparency obligation may address some competition problems it cannot by itself remedy all competition problems. ComReg believes therefore that in addition to transparency, a non-discrimination obligation should be imposed on eircom. The application of a non-discrimination obligation requires eircom to offer equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and would require eircom to 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.
- 6.190 In the consultation, ComReg proposed that eircom be required to provide information and services to alternative operators in timescales, on a basis, and of a quality, which are at least as good as those provided to eircom's retail arm and associates⁴⁹.
- 6.191 It is important that information gained by eircom as a result of their provision of wholesale termination services to another operator is not improperly used by eircom's downstream arms in any manner. This means that eircom's downstream arms should not have privileged access to the relevant eircom departments.

⁴⁸ Document 01/30 - Itemised Billing by Telecommunications Operators

⁴⁹ ComReg considers that this obligation would be met by the maintenance of the process for the introduction of new RIO services directed in D10/02 ODTR document 02/55.

- 6.192 ComReg proposed further that eircom should be required to apply a standard process for the development and introduction of new termination services and elements, including standard documentation and timescales. This should ensure that cost allocations etc to these new services are such to ensure that OAO's and eircom's retail arm are presented with the same costs for equivalent services in a transparent manner.
- 6.193 Three respondents agreed that a non-discrimination obligation should be imposed. One of these respondents expressed concern over the definition and implementation of "equivalence". Another, while supporting the obligation not to discriminate, noted that the application of this obligation should minimise disincentives for eircom to innovate through the introduction of new services.
- 6.194 One respondent proposed that a non-discrimination obligation was unnecessary. In the respondent's view, there was no evidence of past discrimination, and competition law could deal with any future complaints.
- 6.195 In assessing what would be viewed as an equivalent product, ComReg's concern is that OAOs should be able to offer a fit-for-purpose product, and this requires access to the same wholesale products and services as are available to the SMP operator's retail arm.
- 6.196 ComReg agrees with most respondents that an obligation of non-discrimination is an essential remedy to target the kinds of actual and potential competition problems which have been identified in the call origination market. ComReg believes that there is evidence of past behaviour which could have been addressed by a non-discrimination obligation, and that, coupled with the potential for an SMP operator to discriminate, justifies the imposition of non-discrimination as an obligation.
- 6.197 **Conclusion : a non-discrimination obligation should be imposed on eircom**

Access to and use of specific network facilities

- 6.198 The transparency and non-discrimination obligations proposed above are necessary but insufficient on their own for dealing with the competition problems in this market.
- 6.199 ComReg has considered and concluded that the competition problems in this market can not be addressed by the remedy of non discrimination on its own as there may be situations where an operator may require a service which eircom retail does not. Furthermore, in the case of single (third party) transit, the majority of OAOs rely on eircom to deliver calls from/ to their network to/ from alternative operators' networks and have to purchase transit for this. However, eircom has direct interconnection arrangements with almost all electronic communications network providers in Ireland and therefore would generally not need to avail of single (third party transit). In the absence of an access obligation, eircom would be free to refuse to supply to requesting operators.
- 6.200 Therefore a requirement on the SMP provider to provide wholesale access to its networks is required to facilitate competition in downstream markets by enabling competitors to compete without the need to invest in a ubiquitous network.
- 6.201 ComReg has concluded that an access remedy pursuant to Regulation 13 of the *Access Regulations* is required to address the competition problems present in the transit market. It considers that mandating access to transit services is based on the nature of the problem identified, is proportionate and is justified.

- 6.202 It is unlikely within the timeframe of this review that OAOs will build a transit network that could replicate eircom's network and be a comprehensive substitute. Considerable investment is needed to provide networks in competition with eircom. It may be economically viable to build backbone networks covering some parts of Ireland. However the level of investment that would be needed to achieve the same ubiquitous coverage as eircom is likely to be very high.
- 6.203 Currently and within the period of this review, it is clear that OAOs will need access to eircom's transit network in order to deliver retail voice telephony services to end-users and compete with eircom in the downstream market.
- 6.204 All respondents agreed that an access obligation should be imposed.
- 6.205 **Conclusion : an access obligation will be imposed on eircom**
- 6.206 Having established the need for an access obligation, ComReg then considered the detail of its content and implementation. ComReg proposed that a number of specific issues should be addressed as follows :
- eircom should be required to interconnect networks or network facilities⁵⁰. This is necessary to maintain eircom's obligation to interconnect with existing and new OAOs and ensure that the market functions.
 - eircom should have an obligation not to withdraw access to facilities already granted⁵¹. This is necessary to ensure that OAOs have the certainty to provide retail services to the marketplace and so compete with eircom. There are circumstances where it may be desirable to withdraw access to facilities, for example when a facility is no longer needed and it is an undue burden on eircom to maintain it.
 - eircom should be required not to withdraw access to facilities already granted, except with ComReg approval. ComReg's response would be based on appropriate consultation, which may, but not necessarily, include public consultation.
 - eircom should continue to provide transit services in accordance with existing terms and conditions and specifications, in accordance with the current RIO⁵²
 - eircom should be obliged to meet reasonable requests from OAOs for wholesale products. This obligation is supported by Regulation 13 of the Access Regulations
 - eircom should be obliged to negotiate in good faith with undertakings requiring access, and transit services must be provided on terms and conditions which are fair, reasonable and timely.

⁵⁰ Pursuant to Regulation 13 (2) (i) of the *Access Regulations*

⁵¹ Pursuant to Regulation 13 (2) (c) of the *Access Regulations*

⁵² Main body clauses, Annex A definitions, Billing and Payments annex, located in the eircom Core RIO Document Version 3.13 (as amended from time to time), Billing forms, Network Plan, Technical Manual, Calling Line Identification Code of Practice (CLI CoP), Call Origination and Termination Routing Scheme, Non Disclosure Agreement as published as stand alone documents on eircom's wholesale website and the prices contained in the eircom RIO Price List Version 1.54 (as amended from time to time).

- eircom should provide access to and information necessary for access to transit services to competitors at least equivalent times and standards as it provides to its retail arm
- eircom should provide transit services on an unbundled basis as part of its Access obligation
- eircom should be required to grant open access to technical interfaces, protocols, or other key technologies and systems and should also be required to provide access to such OSS or similar software necessary to ensure fair competition in the provision of services

6.207 ComReg notes broad agreement amongst respondents on the overall approach⁵³. Detailed responses are provided in Annex C. As noted in the call origination section, particular concern was focused on three areas: the adequacy of existing practice, the withdrawal of access and service level agreements.

6.208 **Conclusion : an access obligation should be imposed on eircom.**

Price control and Cost Accounting

6.209 ComReg believes that transparency, non-discrimination and access obligations are necessary but not sufficient to overcome competition problems in the call transit market. In addition, a price control obligation is necessary to promote competition in the retail market and safeguard end-users against excessive prices.

6.210 ComReg outlined its principles on price control, and emphasised the need to consider common costs, particularly where costs are shared between products across an SMP and a non-SMP market. ComReg noted the importance of recovering only efficiently incurred costs. ComReg believes that any new services introduced into the call origination market subsequent to this market review will be covered by the same pricing principles.

6.211 ComReg has taken into account the cost recovery principles commonly applied in order to decide on the level of price control necessary at this stage. The main principles are as follows;

- Cost causation
- Cost minimisation
- Distribution of benefits
- Development of competition
- Practicality

6.212 ComReg has previously consulted on the possibility of moving from an annual review regime to a multi-year wholesale price cap regime. ComReg noted industry support for this in principle. However, in the interim, ComReg proposed to continue with the current price control regulations applying in this market, which mandate cost oriented tariffs based on a Forward Looking-Long Run Incremental Costing (FL-LRIC) methodology.

⁵³ In the consultation, a question was included in this section on compensation payments and SLAs. This issue, and responses to this question, are now dealt with in Section 7.

- 6.213 All respondents agreed with the principle of moving towards a wholesale price cap. Most respondents agreed that FL-LRIC should be maintained until a wholesale price cap could be introduced. One respondent disagreed strongly with the continuation of FL-LRIC. The respondent contended that the use of FL-LRIC has resulted in an obligation to price interconnect services below cost. It was the respondent's view that this has serious implications for competition in the market, and for future investment.
- 6.214 Another respondent believed it was necessary to continue price control in the transit market, as transit makes up an essential input to an end to end service that can not feasibly be replicated by OAOs. This respondent suggested that ComReg should develop a wholesale price-cap, using FL-LRIC to derive the cap.
- 6.215 The use of FL-LRIC ensures that in the case where costs incurred may be inefficient, this costing mechanism provides incentive to the incumbent to become more efficient in order to ensure that it recovers the efficient costs through the wholesale price charged. Currently ComReg is involved in the development of a bottom-up model of the eircom core network, and this will be used to critique the top down model, and will allow for an informed view of a proposed wholesale price cap.
- 6.216 ComReg notes widespread support for a wholesale price cap, and intends to consult further on its potential implementation.
- 6.217 **Conclusion : ComReg proposes to continue to apply current FL-LRIC based price controls in this market. ComReg intends to consult further on the mechanism and implementation of a wholesale price cap.**

Accounting Separation

- 6.218 ComReg proposed to consult further on the detailed implementation of accounting separation under the new framework. In the interim, ComReg proposed that eircom should be required to maintain the existing level of accounting separation, until such time as any further consultations are completed.
- 6.219 In addition, ComReg indicated that where an obligation for accounting separation or cost orientation is proposed, a parallel obligation should be required to maintain the appropriate cost accounting systems.
- 6.220 All respondents agreed that further consultation on accounting systems was required. One respondent indicated that these obligations constituted an undue burden, and were therefore not justified. A second respondent proposed that accounting separation was relevant only for the purpose of ensuring that internal transfer pricing reflect the cost orientated prices that have been established for those elements that are mandated as wholesale offerings.
- 6.221 ComReg welcomes support for further consultation, and notes that points raised by respondents will be addressed at that time.
- 6.222 **Conclusion : ComReg is currently consulting on accounting separation and appropriate cost accounting systems⁵⁴. Pending the outcome of this consultation, current accounting separation obligations should be maintained.**

⁵⁴ ComReg doc 05/18, 05/18A, 05/18B, 05/18C

7 Other services necessary for the provision of Interconnection

Capacity Based Interconnection Products

- 7.1 ComReg proposed to mandate the provision of capacity based interconnection products outside the market review process; that is without a designation of SMP or without definition of a relevant market.
- 7.2 This is provided for in Regulation 6 of the *Access Regulations* which states that ComReg must encourage and ensure adequate access, interconnection and interoperability. In particular, without prejudice to measures that may be taken regarding undertakings with significant market power, ComReg is able to impose, to the extent that it is necessary to ensure end to end connectivity, obligations referred to in Regulations 10 to 14 inclusive on undertakings that control access to end-users, including in justified cases the obligation to interconnect their networks where this is not already the case.
- 7.3 Furthermore, in its *Explanatory Memorandum to the Recommendation on Relevant Markets*, the European Commission dealt with the question of imposing remedies in an area outside a defined market. The Commission recognised that in dealing with lack of effective competition in an identified market, it may be necessary to impose several obligations to achieve an overall solution. The *Explanatory Memorandum* states:

“For instance, it may often be the case that adjacent or related remedies are applied to technical areas as part of the over all obligation that addresses SMP on the analysed market. If specific remedies are thought to be necessary in a specific narrow technical area, it is not necessary or appropriate to identify each technical area as a relevant market in order to place obligations in that area.”

- 7.4 ComReg considers its approach in mandating capacity based interconnection products to be consistent with the approach set out in the *Access Regulations* and the *Explanatory Memorandum*.
- 7.5 ComReg interprets this to mean that the products described in Service Schedules 002 (Interconnect Paths) and 005 (In Span Interconnection) in eircom’s current Reference Interconnect Offer (Version 3.13)(as amended from time to time) and eircom RIO Network Price List (Version 2.1)(as amended from time to time) as well as the Interconnect O&M Manual, the SLA for Interconnect Paths and the Traffic Designation for Inbound & Outbound Interconnection Paths document published on eircom’s wholesale website, will continue to be supplied under the current terms and conditions. This means the current obligation to provide such products on a reasonable request basis continues. Obligations in respect of transparency and non discrimination also continue. These products will remain subject to price control, as in the current regime of LRIC based pricing.
- 7.6 Three respondents commented on ComReg’s approach to the regulation of capacity-based products. Two of these respondents agreed that these products should be mandated as proposed by ComReg. It was the view of one of the respondents who agreed with ComReg’s approach that eircom’s dominance in the entire interconnection market allowed excessive pricing of capacity-based services. The respondent emphasised the need to continue to mandate these products.

- 7.7 One respondent disagreed with ComReg's approach, and indicated that in its view, these products should not be mandated in a blanket fashion without a consideration of market share and SMP. The respondent believed that there was choice, and therefore competition, in the market.
- 7.8 Two respondents raised questions to do with the content and implementation of SLAs. One respondent's view was that a consideration of the content of SLAs was not appropriate in this consultation. A second respondent argued that ComReg does not have the power to impose penalties. Other respondents fully supported SLAs, noting that compensation payments should be sufficient to provide an incentive to eircom to meet the SLA.
- 7.9 It is ComReg's view that a key purpose of the SLA is a means of ensuring that there is no discrimination between the SMP operator's retail arm and the OAOs. Further, the SLA also dictates the quality of wholesale inputs available to the OAOs, and this shapes the service which can be offered. In ComReg's view, the SLA is key to making the product fit for use.
- 7.10 On the issue of the inclusion and enforcement of compensation payments within the SLA, ComReg notes that there are mechanisms for the payment of compensation in place within other SLAs, and these are a critical component for ensuring that any standards/commitments set out are met. It was not ComReg's intention to suggest that it would directly impose specific levels of compensation – the payment of compensation via an SLA is a contractual matter between the SMP operator and the OAO. However, in principle, ComReg supports the use of compensation payments as a means of making sure that the SLA is effective.
- 7.11 It is ComReg's view that the provision of products identified in this section are essential to ensure adequate access, interconnection and interoperability. As such, they can be mandated outside the market review process.

Fixed SMS

- 7.12 ComReg proposed that it was not necessary to impose additional remedies on fixed SMS. Fixed SMS has of yet not been made available by any operator. Once this service does become available any request from another operator for the provision of the service would be considered a reasonable request and will be covered through the Wholesale Line Rental provision for Non Discrimination.
- 7.13 All respondents agreed with ComReg's proposal.

Calls to directory enquiry and operator assisted services and subsequent call completion services for calls originating on the eircom network

- 7.14 ComReg noted that one respondent had indicated that they considered the market for the provision of DQ services to be effectively competitive and as a consequence the labour element of these costs should not be subject to regulation. The charges for access to eircom's DQ and OA services in its RIO include both the costs of conveyance and the labour costs of the operator.

- 7.15 A second respondent agreed, and one strongly disagreed. The respondent who disagreed argued that eircom had a persistent high market share, and that all operators were obliged to provide access to DQ. It was the respondent's view that all obligations on eircom should be maintained.
- 7.16 The information available to ComReg does not indicate that the supply of wholesale Directory Enquiry services is effectively competitive. However, ComReg wishes to consider the matter further by means of an additional consultative stage. In the meantime all existing obligations on eircom will be maintained.
- 7.17 One respondent raised a new issue, that of the market for 999/112 emergency service calls. The respondent noted that eircom was the monopoly provider of these calls, but that each OAO had an obligation to carry the calls. The respondent claimed that eircom had published a notification of intent to transit all calls to these numbers exclusively to eircom for termination, and believed that this was an example of the leverage of market power in the transit market to gain advantage in an associated market.
- 7.18 ComReg notes that calls from networks other than eircom's to the emergency services have two constituent elements: conveyance through the eircom network and operator answering of the call. The first of these attracts the normal obligations associated with conveyance, the second is not seen as a regulated telecommunications service, rather it is being provided under specific arrangements established by the Department of Communications, Marine and Natural Resources.

8 Regulatory Impact Assessment

- 8.1 The Ministerial Direction (issued by the Minister for Communications Marine & Natural Resources in accordance with S13 of the Communications Regulation Act, 2002) published in February 2003, directs:
- “The Commission before deciding to impose regulatory obligations on undertakings in the market for electronic Communications or for the purposes of the management and use of the radio frequency spectrum or for the purposes of the regulation of the postal sector, shall conduct a Regulatory Impact Assessment in accordance with European and International best practice and otherwise in accordance with measures that may be adopted under the Government’s Better Regulation programme.”*
- 8.2 ComReg is obliged by the Framework Regulations to impose an obligation on undertakings with significant market power⁵⁵. ComReg is obliged further to impose obligations listed in Articles 9 to Article 13 inclusive of the Access Directive⁵⁶ which are as follows:
- Obligation of Transparency
 - Obligation of Non-discrimination
 - Obligation of accounting separation
 - Obligation of access to, and use of, specific network facilities
 - Price control and cost accounting obligations
- 8.3 ComReg is obliged under Article 8(4) of the Access Directive to impose obligations which are based on the nature of problem identified, proportionate and justified in the light of the objectives laid down in Article 8 of 2002/21/EC (Framework Directive)
- 8.4 ComReg believe the market analysis process is a comprehensive review of the sector under consideration and is approximate to a regulatory assessment as considered by the Ministerial Direction quoted above.
- 8.5 ComReg has upheld the principles outlined in the Government White Paper of Better Regulation⁵⁷. The impact and alternatives have been discussed throughout this consultation process and review of the market and the implications of regulatory compliance have been considered, particularly in light of any departure from the existing regulatory regime.
- 8.6 At the outset it is important to note that ComReg has endeavoured to select the appropriate level of intervention. A comprehensive consultation process has been undertaken. The remedies proposed take into account the dynamics between the retail and the wholesale market and have been adapted to ensure that there is no distortion at either level of the market.

⁵⁵ Article 16.4 states ‘Where a national regulatory authority determines that a relevant market is not effectively competitive, it shall identify undertakings with significant market power on that market. and the national regulatory authority shall on such undertakings impose appropriate specific regulatory obligations...’

⁵⁶ Article 8(2) of Access Directive.

⁵⁷ Regulating Better: A Government White Paper setting out six principles of Better Regulation”. Appendix 1 – Regulatory Impact Analysis.

Respondents are asked to provide views on whether the remedies in Section 6 are proportionate and justified and offer views on what factors ComReg should consider in completing its Regulatory Impact Assessment in terms of the impacts of these remedies on end-users, competition, the internal single market and technological neutrality, having regard for the different stages of development of market players.

Views of respondents

- 8.7 Of the respondents who commented on this question, two believed that ComReg had fulfilled all obligations in carrying out a RIA, and that the remedies which were proposed were proportionate and justified.
- 8.8 Two other respondents, while supporting the principle of assessing regulatory impact, raised questions regarding the process. Both respondents suggested that it was essential to clarify the timeframe of the review process, as this would affect the assumptions made, particularly about likely change in the market. One respondent believed that a RIA should involve a cost benefit analysis of different options for achieving particular outcomes. The other respondent believed that a RIA should be carried out as a means of informing the decision-making process, and that, in its view, ComReg had deferred its assessment of regulatory impact until after the decision had already been made.

ComReg's position

- 8.9 ComReg's approach to Regulatory Impact Assessment is based on the guidelines proposed in "Regulating Better: A Government White Paper setting out six principles of Better Regulation"⁵⁸. The criteria to be considered when undertaking a regulatory impact assessment include:
- Identification or quantification (where possible) of impacts;
 - Structured consideration of alternatives to regulation and of different regulatory approaches;
 - Built-in comprehensive, consultation processes; and
 - Formal consideration of compliance issues.
- 8.10 ComReg agrees with respondents that potential changes in the market should be considered within the timeframe for the review. As with other market reviews, ComReg's forward-looking assessment is based on a timeframe of around two years. This should not be interpreted as a commitment to carry out market reviews on a rigid timetable, but rather, as an indication of ComReg's perspective when considering market change.

⁵⁸ "Regulating Better: A Government White Paper setting out six principles of Better Regulation". Appendix 1 – Regulatory Impact Analysis.

- 8.11 It is ComReg's view that the assessment of the impact of regulation informs all stages of the market review process. ComReg has carried out an extensive review of the interconnection market and concludes that the costs and benefits of regulatory intervention have been considered. As part of the review ComReg has assessed the impact of regulation and deems that it should be no greater than the current regulatory burden.
- 8.12 Having considered the market structure and the dynamics of competition through the market analysis, ComReg believes that the key competition problems are those associated with economies of scale and of scope, and with vertical and horizontal leverage of market power. ComReg notes that the underlying issue is the ability to compete against an operator which has a ubiquitous network, and the benefits which such a network confers in the interconnection market. ComReg does not believe that market forces alone would be sufficient to eliminate the potential competition problems and hence forbearance is not a regulatory solution.
- 8.13 Despite encouraging signs in some parts of the interconnection markets, particularly in the transit market, ComReg's past intervention has not been sufficient to eliminate eircom's market power. eircom's persistently high market shares continue to merit intervention. An alternative regulatory approach, particularly forbearance, would not address the issues that span these markets.
- 8.14 In this review, ComReg has found eircom to have SMP in the markets for call origination, call termination to end-users (on its own network), call termination to service providers, and national transit. The remedies proposed by ComReg have taken account of the relative strengths of operators in the market, and of the competitive conditions in the four markets identified. Thus, remedies proposed for eircom in the markets for call origination, termination to end-users, and national transit address access issues as well as transparency, non-discrimination and price control and accounting. In the market for termination of calls to service providers, ComReg proposes a lighter range of remedies focusing on transparency, non-discrimination and accounting separation.
- 8.15 In assessing the market for the termination of calls to end-users, ComReg has found all operators to have SMP on their own networks. ComReg recognises that OAO traffic makes up a very small proportion of all traffic, and recognises the relative strengths in the marketplace of eircom and the OAOs. However, ComReg notes that there are competition problems associated with OAO SMP in this market, and these problems must be addressed. ComReg notes the persistent high termination rates charged by some OAOs, and views this as evidence of market power. In order to address this, ComReg has proposed that OAOs should be subject to obligations of transparency, non-discrimination, a requirement to negotiate in good faith, and price control.
- 8.16 The Government White paper on better regulation proposes that an adequate consultation process be followed. The conclusions of this market review have incorporated evidence and views submitted by respondents to the consultation.
- 8.17 ComReg notes that response to this consultation has provided new information about the level of competition in the international transit market. In order to ensure that any competition problems in this market are appropriately addressed, ComReg intends to undertake a separate national consultation on international transit. ComReg will also be consulting separately on its procedures for accounting separation and cost accounting systems.

- 8.18 Respondents are further invited to submit their views on the draft measure pertaining to the obligations for these markets.
- 8.19 ComReg has considered the various regulatory options and the burden of compliance associated with these measures. The suite of remedies for eircom proposed by ComReg is to a large extent, a continuation of the regime in place and hence should not place an additional burden on the SMP operator, nor should they cause any market distortion. ComReg recognises that it is placing new obligations on OAOs who are deemed to have SMP in the market for termination of calls to end-users on their own networks. It is ComReg's view that the benefits to the market of imposing these remedies outweigh the costs which OAOs will incur.

9 Submitting Comments on the Draft Directions

- 9.1 The draft text of the proposed decisions are presented in Annex B. All comments are welcome.
- 9.2 The consultation period will run from 19th May 2005 to 15th June 2005 during which ComReg welcomes written comments on the question below.

Q. 1. Do respondents believe that the draft text of the proposed decisions set out in Annex B are, from a legal, technical and practical perspective, sufficiently detailed, clear, precise and intelligible with regard to the specifics of the remedies proposed? Please elaborate on your response.

- 9.3 Should confidential information be provided, it should be clearly identified as such.

Annex A: Opinion of the Competition Authority

[See separate Doc – ComReg 05/37d]

Annex B: Draft Measures

Draft Decision - wholesale call origination services on the public telephone network at a fixed location

1 STATUTORY POWERS GIVING RISE TO DECISION

- 1.1 In making this Decision and imposing the obligations set out herein, ComReg has taken account of, amongst other things, assessed the proportionality of these obligations relative to the objectives of ComReg set out in section 12 of the Act of 2002,⁵⁹ has taken in to account the factors set out in Regulation 13 (4) of the Access Regulations, has taken the utmost account of the EU Commission's Recommendation⁶⁰ and the Guidelines⁶¹ and has (where appropriate) complied with and taken in to account the Policy Directions made by the Minister.⁶² This Decision 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 Paper entitled *Market Analysis: Interconnection Markets* ('Document No. 04/106') dated 22 October 2004. Document Nos 05/37a, 05/37b, 05/37c and 05/37d form part of this Decision.
- 1.2 This Decision is made pursuant to Regulations 25, 26 and 27 of the Framework Regulations⁶³, Regulations 9, 10, 11, 12, 13 and 14 of the Access Regulations and having regard to sections 10 and 12 of the Act of 2002.

2 MARKET DEFINITION

- 2.1 This Decision relates to the market for call origination services on the public telephone network at a fixed location, as identified in the EU Commission's Recommendation. The market in this Decision 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.
- 2.2 The relevant geographic market for the market for wholesale call origination services on the public telephone network at a fixed location is defined as Ireland.

3 DESIGNATION OF UNDERTAKINGS WITH SMP

⁵⁹The Communications Regulation Act 2002.

⁶⁰EU 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.

⁶¹Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services.

⁶²Policy Directions made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February 2003 and 26 March 2004.

⁶³S.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.

3.1 [e]ircom Limited (“Eircom”) is designated as having significant market power in the market for wholesale call origination services on the public telephone network at a fixed location in Ireland.

4 SMP OBLIGATIONS⁶⁴

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

5 OBLIGATION TO PROVIDE ACCESS

5.1 Eircom shall have an obligation to meet reasonable requests for access to, and use of, such wholesale access products, features or additional associated facilities by undertakings requesting access or use of such access products, features or additional associated facilities, which form part of the market for wholesale call origination services on the public telephone network at a fixed location.

5.2 Without prejudice to the generality of the foregoing, Eircom shall:-

- I. negotiate in good faith with undertakings, requesting access;
- II. not withdraw access to facilities already granted without the prior approval of ComReg and continue to provide such facilities in accordance with existing terms and conditions and specifications;
- IV. grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;
- V. provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;
- VI. interconnect networks or network facilities.

5.3 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 (Interconnect Paths) and 005 (In Span Interconnection) in Eircom’s current Reference Interconnect Offer (Version 3.13)(as amended from time to time);
- II. Eircom’s RIO Network Price List (Version 2.1)(as amended from time to time);

⁶⁴ComReg 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.

- 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 Eircom's wholesale website.

6 CONDITIONS ATTACHED TO ACCESS OBLIGATIONS

- 6.1 Eircom shall develop and offer, or where appropriate continue to offer, SLAs in respect of those products and services referred to in paragraph 5.3.

7 OBLIGATION OF NON-DISCRIMINATION

- 7.1 Eircom shall have an obligation of non-discrimination as provided for by Regulation 11 of the Access Regulations 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. provide a wholesale equivalent for retail offerings;
- II. apply 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 Eircom provides for its own services or those of its subsidiaries or partners; and
- III. ensure that information and services are provided to OAOs 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 paragraph 7.1, Eircom shall provide access to other undertakings (requesting access in accordance with paragraphs 5.1 and 5.2 of this Decision) 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 Eircom shall have an obligation of transparency as provided for by Regulation 10 of the Access Regulations.

- 8.2 Without prejudice to the generality of paragraph 8.1, Eircom shall:

- publish on its wholesale website, and keep updated, a reference offer ("RO") in respect of the services and facilities referred to in section 5;

- publish a RO that is sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested;
 - ensure that the RO 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
 - publish a RO which contains details of the terms and conditions of access in respect of facilities already granted.
- 8.3 Without prejudice to the generality of paragraphs 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 3.13 (as amended from time to time) and eircom RIO Price List Version 1.54 (as amended from time to time)⁶⁵.
- 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 sections 5, as specified by ComReg from time to time.
- 8.5 Eircom shall continue to comply with the processes developed in accordance with ComReg Decision Note D10/02.

9 OBLIGATION FOR ACCOUNTING SEPARATION

- 9.1 Eircom shall have an obligation to keep separated accounts as provided for by Regulation 12 of the Access Regulations. All of the obligations in relation to accounting separation applying to Eircom in force immediately prior to the effective date of this Decision, 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. Without limiting the generality of the obligation to comply with all accounting separation obligations in force immediately prior to the effective date of this Decision, Eircom shall continue to comply with inter alia, the obligations described in the following Decision Notices previously issued by ComReg:-
- D5/99 – Accounting Separation and Publication of Financial Information for Telecommunication Operators.
 - D8/99 – Costing Methodology for use in Accounting Separation.
 - D10/99 – Accounting Separation and Publication of Financial Information for Telecommunications Operators.
 - D9/00 – Accounting Separation and Publication of Financial Information for Telecommunications Operators.

⁶⁵ These documents are currently published on the eircom wholesale website – www.eircomwholesale.ie

- D10/00 – Accounting Separation and Publication of Financial Information for Telecommunications Operators, Supplemental Information referring to Decision Notice D9/00.
- D2/01- Accounting Separation for Internet Service provision and Report on Investigation into Indigo and Eircom.net.
- D7/01- Eircom’s Reference Interconnection Offer & Accounting Separation and Publication of Financial Information for Telecommunications Operators.
- D12/01- Revision of Timetable for Publication of Separated Accounts and Financial Information by Eircom.

10 OBLIGATIONS RELATING TO PRICE CONTROL AND COST ACCOUNTING

- 10.1 Eircom’s charges 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’).
- 10.2 Eircom shall continue to apply the existing pricing mechanisms, described in Annex C to the current version of Eircom’s RO for Interconnection, in respect of charges for PAC, Near End Handover and FRIACO.
- 10.3 Eircom shall continue to comply with the obligations in relation to cost accounting applicable to it prior to the date of this Decision until such time as ComReg makes a decision consequent to further consultation in relation to accounting separation obligations and cost accounting obligations.

Isolde Goggin
Chairperson
The Commission for Communications Regulation

Dated the [●] day of [●] 2005

Draft Decision - wholesale call termination services used to provide retail calls to end-users on each public telephone network provided at a fixed location

1 STATUTORY POWERS GIVING RISE TO DECISION

- 1.1 In making this Decision and imposing the obligations set out herein, ComReg has taken account of, amongst other things, assessed the proportionality of these obligations relative to the objectives of ComReg set out in section 12 of the Act of 2002,⁶⁶ has taken in to account the factors set out in Regulation 13 (4) of the Access Regulations, has taken the utmost account of the EU Commission's Recommendation⁶⁷ and the Guidelines⁶⁸ and has (where appropriate) complied with and taken in to account the Policy Directions made by the Minister.⁶⁹ This Decision is based on the market analysis and reasoning conducted by ComReg in relation to the market for wholesale call termination services used to provide retail calls to end-users on each public telephone network provided at a fixed location related to the Consultation Paper entitled *Market Analysis: Interconnection Markets* ('Document No. 04/106') dated 22 October 2004. Document Nos 05/37a, 05/37b, 05/37c and 05/37d form part of this Decision.
- 1.2 This Decision is made pursuant to Regulations 25, 26 and 27 of the Framework Regulations⁷⁰, Regulations 9, 10, 11, 12, 13 and 14 of the Access Regulations and having regard to sections 10 and 12 of the Act of 2002.

2 MARKET DEFINITION

- 2.1 This Decision relates to the market for wholesale call termination services used to provide retail calls to end-users on each public telephone network provided at a fixed location and is a market which differs from any market defined in the *Relevant Markets Recommendation*. The market in this Decision is defined as the market for wholesale call termination services used to provide retail calls to end-users on each public telephone network provided at a fixed location and is a relevant market defined in accordance with Regulation 26 of the Framework Regulations.
- 2.2 The relevant geographic market for the market for wholesale call termination services used to provide retail calls to end-users on each public telephone network provided at a fixed location is defined as Ireland.

⁶⁶The Communications Regulation Act 2002.

⁶⁷EU 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.

⁶⁸Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services.

⁶⁹Policy Directions made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February 2003 and 26 March 2004.

⁷⁰S.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.

3 DESIGNATION OF UNDERTAKINGS WITH SMP

- 3.1 [e]ircom Limited (“Eircom”) is designated as having significant market power in the market for wholesale call termination services used to provide retail calls to end-users on each public telephone network provided at a fixed location in Ireland.
- 3.2 Each of the operators listed in Annex F to this Document [05/37a] (the ‘Other Fixed Call Termination Service Providers’) is designated as having significant market power in the market for wholesale call termination services used to provide retail calls to end-users on each public telephone network provided at a fixed location in Ireland.

4 SMP OBLIGATIONS⁷¹

- 4.1 ComReg has decided to impose specific obligations, as provided for by Regulations 10, 11, 12, 13 and 14 of the Access Regulations, on Eircom and as provided for by Regulations 10, 11, 13 and 14 of the Access Regulations on each of the Fixed Call Termination Service Providers. These specific obligations are described further in the sections below.

5 OBLIGATION TO PROVIDE ACCESS

- 5.1 Each Other Fixed Call Termination Service Provider shall have an obligation to meet reasonable requests for access to, and use of, such wholesale access products, features or additional associated facilities by undertakings requesting access or use of such access products, features or additional associated facilities, which form part of the market for wholesale call termination services used to provide retail calls to end-users on each public telephone network provided at a fixed location.
- 5.2 Eircom shall have an obligation to meet reasonable requests for access to, and use of, such wholesale access products, features or additional associated facilities by undertakings requesting access or use of such access products, features or additional associated facilities, which form part of the market for wholesale call termination services used to provide retail calls to end-users on each public telephone network provided at a fixed location.
- 5.3 Without prejudice to the generality of the foregoing, Eircom shall:-
- I. negotiate in good faith with undertakings, requesting access;
 - II. not withdraw access to facilities already granted without the prior approval of ComReg and continue to provide such facilities in accordance with existing terms and conditions and specifications;
 - IV. grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;

⁷¹ComReg 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.

VI. provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services; and

VI. interconnect networks or network facilities.

5.4 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 (Interconnect Paths) and 005 (In Span Interconnection) in Eircom's current Reference Interconnect Offer (Version 3.13)(as amended from time to time);

II. Eircom's RIO Network Price List (Version 2.1)(as amended from time to time);

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 Eircom's wholesale website.

6 CONDITIONS ATTACHED TO ACCESS OBLIGATIONS

6.1 Eircom shall develop and offer, or where appropriate, continue to offer SLAs in respect of those products and services referred to in paragraph 5.4.

7 OBLIGATION OF NON-DISCRIMINATION

7.1 Each Other Fixed Call Termination Service Provider shall apply 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.

7.2 Eircom shall have an obligation of non-discrimination as provided for by Regulation 11 of the Access Regulations in respect of those products and services referred to in Section 5. Without prejudice to the generality of the foregoing, Eircom shall:-

I. provide a wholesale equivalent for retail offerings;

II. apply equivalent conditions in equivalent circumstances to other undertakings providing equivalent services; and

III. provide services and information to others under the same conditions and of the same quality as Eircom provides for its own services or those of its subsidiaries or partners.

8 OBLIGATION OF TRANSPARENCY

- 8.1 Each Other Fixed Call Termination Service Provider shall publish the prices for the services it provides, which form part of the market for wholesale call termination services used to provide retail calls to end-users on each public telephone network provided at a fixed location, fifteen working days before such prices come into effect and shall notify the Commission for Communications Regulation of any changes to such prices at the time of publication of such price changes. For the purpose of this section 8.1, ‘working day’ means a day (other than a Saturday or Sunday) on which clearing banks are generally open for business in Ireland.
- 8.2 Eircom shall have an obligation of transparency as provided for by Regulation 10 of the Access Regulations.
- 8.3 Without prejudice to the generality of paragraph 8.2, Eircom shall:
- publish on its wholesale website, and keep updated, a reference offer (“RO”) in respect of the services and facilities referred to in section 5;
 - publish a RO that is sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested;
 - ensure that the RO 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
 - publish a RO which contains details of the terms and conditions of access in respect of facilities already granted.
- 8.6 Without prejudice to the generality of paragraphs 8.2 and 8.3, Eircom shall continue to publish the call termination schedules, prices, product descriptions and inter-operator process manuals contained in ‘Core RIO document Version 3.13 (as amended from time to time) and eircom RIO Price List Version 1.54 (as amended from time to time)’⁷².
- 8.7 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.
- 8.8 Eircom shall continue to comply with the processes developed in accordance with ComReg Decision Note D10/02.

9 OBLIGATION FOR ACCOUNTING SEPARATION

⁷² These documents are currently published on the eircom wholesale website – www.eircomwholesale.ie

9.1 Eircom shall have an obligation to keep separated accounts as provided for by Regulation 12 of the Access Regulations. All of the obligations in relation to accounting separation applying to Eircom in force immediately prior to the effective date of this Decision, 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. Without limiting the generality of the obligation to comply with all accounting separation obligations in force immediately prior to the effective date of this Decision, Eircom shall continue to comply with inter alia, the obligations described in the following Decision Notices previously issued by ComReg:-

- D5/99 – Accounting Separation and Publication of Financial Information for Telecommunication Operators.
- D8/99 – Costing Methodology for use in Accounting Separation.
- D10/99 – Accounting Separation and Publication of Financial Information for Telecommunications Operators.
- D9/00 – Accounting Separation and Publication of Financial Information for Telecommunications Operators.
- D10/00 – Accounting Separation and Publication of Financial Information for Telecommunications Operators, Supplemental Information referring to Decision Notice D9/00.
- D2/01- Accounting Separation for Internet Service provision and Report on Investigation into Indigo and Eircom.net.
- D7/01- Eircom’s Reference Interconnection Offer & Accounting Separation and Publication of Financial Information for Telecommunications Operators.
- D12/01- Revision of Timetable for Publication of Separated Accounts and Financial Information by Eircom.

10 OBLIGATIONS RELATING TO PRICE CONTROL AND COST ACCOUNTING

- 10.1 Eircom’s charges 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’).
- 10.2 Each Other Fixed Call Termination Service Provider’s charges shall not be excessive or shall not result in the application of a price squeeze to the detriment of end-users.
- 10.4 Eircom shall continue to comply with the obligations in relation to cost accounting applicable to it prior to the date of this Decision until such time as ComReg makes a decision consequent to further consultation in relation to accounting separation obligations and cost accounting obligations.

Isolde Goggin
Chairperson
The Commission for Communications Regulation

Dated the [●] day of [●] 2005

Draft Decision - wholesale call termination services used to provide retail calls to service providers on public telephone networks provided at a fixed location

1 STATUTORY POWERS GIVING RISE TO DECISION

- 1.1 In making this Decision and imposing the obligations set out herein, ComReg has taken account of, amongst other things, assessed the proportionality of these obligations relative to the objectives of ComReg set out in section 12 of the Act of 2002,⁷³ has taken in to account the factors set out in Regulation 13 (4) of the Access Regulations, has taken the utmost account of the EU Commission's Recommendation⁷⁴ and the Guidelines⁷⁵ and has (where appropriate) complied with and taken in to account the Policy Directions made by the Minister.⁷⁶ This Decision is based on the market analysis and reasoning conducted by ComReg in relation to the market for wholesale call termination services used to provide retail calls to service providers on the public telephone network provided at a fixed location related to the Consultation Paper entitled *Market Analysis: Interconnection Markets* ('Document No. 04/106') dated 22 October 2004. Document Nos 05/37a, 05/37b, 05/37c and 05/37d form part of this Decision.
- 1.2 This Decision is made pursuant to Regulations 25, 26 and 27 of the Framework Regulations⁷⁷, Regulations 9, 10, 11, 12, 13 and 14 of the Access Regulations and having regard to sections 10 and 12 of the Act of 2002.

2 MARKET DEFINITION

- 2.1 This Decision relates to the market for wholesale call termination services used to provide retail calls to service providers on public telephone networks provided at a fixed location and is a market which differs from any market defined in the *Relevant Markets Recommendation*. The market in this Decision is defined as the market for wholesale call termination services used to provide retail calls to service providers on public telephone networks provided at a fixed location and is a relevant market defined in accordance with Regulation 26 of the Framework Regulations.
- 2.2 The relevant geographic market for the market for wholesale call termination services used to provide retail calls to service providers on public telephone networks provided at a fixed location is defined as Ireland.

⁷³The Communications Regulation Act 2002.

⁷⁴EU 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.

⁷⁵Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services.

⁷⁶Policy Directions made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February 2003 and 26 March 2004.

⁷⁷S.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.

3 DESIGNATION OF UNDERTAKINGS WITH SMP

3.1 [e]ircom Limited (“Eircom”) is designated as having significant market power in the market for wholesale call termination services used to provide retail calls to service providers on public telephone networks provided at a fixed location in Ireland.

4 SMP OBLIGATIONS⁷⁸

4.1 ComReg has decided to impose specific obligations, as provided for by Regulations 10, 11, and 12 of the Access Regulations, on Eircom. These specific obligations are described further in the sections below.

5 OBLIGATION OF NON-DISCRIMINATION

5.1 Eircom shall have an obligation of non-discrimination as provided for by Regulation 11 of the Access Regulations. Without prejudice to the generality of the foregoing, Eircom shall:-

- I. apply equivalent conditions in equivalent circumstances to other undertakings providing equivalent services; and
- II. provide services and information to others under the same conditions and of the same quality as Eircom provides for its own services or those of its subsidiaries or partners.

6 OBLIGATION OF TRANSPARENCY

6.1 Eircom shall have an obligation of transparency as provided for by Regulation 10 of the Access Regulations.

7 OBLIGATION FOR ACCOUNTING SEPARATION

7.1 Eircom shall have an obligation to keep separated accounts as provided for by Regulation 12 of the Access Regulations. All of the obligations in relation to accounting separation applying to Eircom in force immediately prior to the effective date of this Decision, 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. Without limiting the generality of the obligation to comply with all accounting separation obligations in force immediately prior to the effective date of this Decision, Eircom shall continue to comply with inter alia, the obligations described in the following Decision Notices previously issued by ComReg:-

- D5/99 – Accounting Separation and Publication of Financial Information for Telecommunication Operators.

⁷⁸ComReg 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.

- D8/99 – Costing Methodology for use in Accounting Separation.
- D10/99 – Accounting Separation and Publication of Financial Information for Telecommunications Operators.
- D9/00 – Accounting Separation and Publication of Financial Information for Telecommunications Operators.
- D10/00 – Accounting Separation and Publication of Financial Information for Telecommunications Operators, Supplemental Information referring to Decision Notice D9/00.
- D2/01- Accounting Separation for Internet Service provision and Report on Investigation into Indigo and Eircom.net.
- D7/01- Eircom’s Reference Interconnection Offer & Accounting Separation and Publication of Financial Information for Telecommunications Operators.
- D12/01- Revision of Timetable for Publication of Separated Accounts and Financial Information by Eircom.

Isolde Goggin
Chairperson
The Commission for Communications Regulation

Dated the [●] day of [●] 2005

Draft Decision - wholesale national call transit services on the public telephone network at a fixed location

1 STATUTORY POWERS GIVING RISE TO DECISION

- 1.1 In making this Decision and imposing the obligations set out herein, ComReg has taken account of, amongst other things, assessed the proportionality of these obligations relative to the objectives of ComReg set out in section 12 of the Act of 2002,⁷⁹ has taken in to account the factors set out in Regulation 13 (4) of the Access Regulations, has taken the utmost account of the EU Commission's Recommendation⁸⁰ and the Guidelines⁸¹ and has (where appropriate) complied with and taken in to account the Policy Directions made by the Minister.⁸² This Decision is based on the market analysis and reasoning conducted by ComReg in relation to the market for wholesale national call transit services on the public telephone network at a fixed location related to the Consultation Paper entitled *Market Analysis: Interconnection Markets* ('Document No. 04/106') dated 22 October 2004. Document Nos 05/37a, 05/37b, 05/37c and 05/37d form part of this Decision.
- 1.2 This Decision is made pursuant to Regulations 25, 26 and 27 of the Framework Regulations⁸³, Regulations 9, 10, 11, 12, 13 and 14 of the Access Regulations and having regard to sections 10 and 12 of the Act of 2002.

2 MARKET DEFINITION

- 2.1 This Decision relates to the market for national call transit services on the public telephone network at a fixed location, as identified in the EU Commission's Recommendation. The market in this Decision 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.
- 2.2 The relevant geographic market for the market for wholesale national call transit services on the public telephone network at a fixed location is defined as Ireland.

⁷⁹The Communications Regulation Act 2002.

⁸⁰EU 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.

⁸¹Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services.

⁸²Policy Directions made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February 2003 and 26 March 2004.

⁸³S.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.

3 DESIGNATION OF UNDERTAKINGS WITH SMP

- 3.1 [e]ircom Limited (“Eircom”) is designated as having significant market power in the market for wholesale national call transit services on the public telephone network at a fixed location in Ireland.

4 SMP OBLIGATIONS⁸⁴

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

5 OBLIGATION TO PROVIDE ACCESS

- 5.1 Eircom shall have an obligation to meet reasonable requests for access to, and use of, such wholesale access products, features or additional associated facilities by undertakings requesting access or use of such access products, features or additional associated facilities, which form part of the market for wholesale national call transit services on the public telephone network at a fixed location.
- 5.2 Without prejudice to the generality of the foregoing, Eircom shall:-
- I. negotiate in good faith with undertakings, requesting access;
 - II. not withdraw access to facilities already granted without the prior approval of ComReg and continue to provide such facilities in accordance with existing terms and conditions and specifications;
 - III grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;
 - IV provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;
 - V. interconnect networks or network facilities.
- 5.3 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 (Interconnect Paths) and 005 (In Span Interconnection) in Eircom’s current Reference Interconnect Offer (Version 3.13)(as amended from time to time);
 - II. Eircom’s RIO Network Price List (Version 2.1)(as amended from time to time);

⁸⁴ComReg 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.

III. Eircom's Interconnect O&M Manual;

IV. Eircom's service level agreement (SLA) for Interconnect Paths; and

VI. Eircom's document on Traffic Designation for Inbound & Outbound Interconnect Paths published on Eircom's wholesale website.

6 CONDITIONS ATTACHED TO ACCESS OBLIGATIONS

6.1 Eircom shall develop and offer, or where appropriate, continue to offer, SLAs in respect of those products and services referred to in paragraph 5.3.

7 OBLIGATION OF NON-DISCRIMINATION

7.1 Eircom shall have an obligation of non-discrimination as provided for by Regulation 11 of the Access Regulations in respect of those products and services described in Section 5. Without prejudice to the generality of the foregoing, Eircom shall:-

- I. provide a wholesale equivalent for retail offerings;
- II. apply 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 Eircom provides for its own services or those of its subsidiaries or partners; and
- III. ensure that information and services are provided to OAOs 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 paragraph 7.1, Eircom shall provide access to other undertakings (requesting access in accordance with paragraphs 5.1 and 5.2 of this Decision) 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 Eircom shall have an obligation of transparency as provided for by Regulation 10 of the Access Regulations.

8.3 Without prejudice to the generality of paragraph 8.1, Eircom shall:

- publish on its wholesale website, and keep updated, a reference offer ("RO") in respect of the services and facilities referred to in section 5;
- publish a RO that is sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested;

- ensure that the RO 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
 - publish a RO which contains details of the terms and conditions of access in respect of facilities already granted.
- 8.3 Without prejudice to the generality of paragraphs 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 3.13 (as amended from time to time) and eircom RIO Price List Version 1.54 (as amended from time to time)’⁸⁵.
- 8.9 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.
- 8.10 Eircom shall continue to comply with the processes developed in accordance with ComReg Decision Note D10/02.

9 OBLIGATION FOR ACCOUNTING SEPARATION

- 9.1 Eircom shall have an obligation to keep separated accounts as provided for by Regulation 12 of the Access Regulations. All of the obligations in relation to accounting separation applying to Eircom in force immediately prior to the effective date of this Decision, 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. Without limiting the generality of the obligation to comply with all accounting separation obligations in force immediately prior to the effective date of this Decision, Eircom shall continue to comply with inter alia, the obligations described in the following Decision Notices previously issued by ComReg:-
- D5/99 – Accounting Separation and Publication of Financial Information for Telecommunication Operators.
 - D8/99 – Costing Methodology for use in Accounting Separation.
 - D10/99 – Accounting Separation and Publication of Financial Information for Telecommunications Operators.
 - D9/00 – Accounting Separation and Publication of Financial Information for Telecommunications Operators.

⁸⁵ These documents are currently published on the eircom wholesale website – www.eircomwholesale.ie

- D10/00 – Accounting Separation and Publication of Financial Information for Telecommunications Operators, Supplemental Information referring to Decision Notice D9/00.
- D2/01- Accounting Separation for Internet Service provision and Report on Investigation into Indigo and Eircom.net.
- D7/01- Eircom’s Reference Interconnection Offer & Accounting Separation and Publication of Financial Information for Telecommunications Operators.
- D12/01- Revision of Timetable for Publication of Separated Accounts and Financial Information by Eircom.

10 OBLIGATIONS RELATING TO PRICE CONTROL AND COST ACCOUNTING

- 10.1 Eircom’s charges 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’).
- 10.2 Eircom shall continue to comply with the obligations in relation to cost accounting applicable to it prior to the date of this Decision until such time as ComReg makes a decision consequent to further consultation in relation to accounting separation obligations and cost accounting obligations.

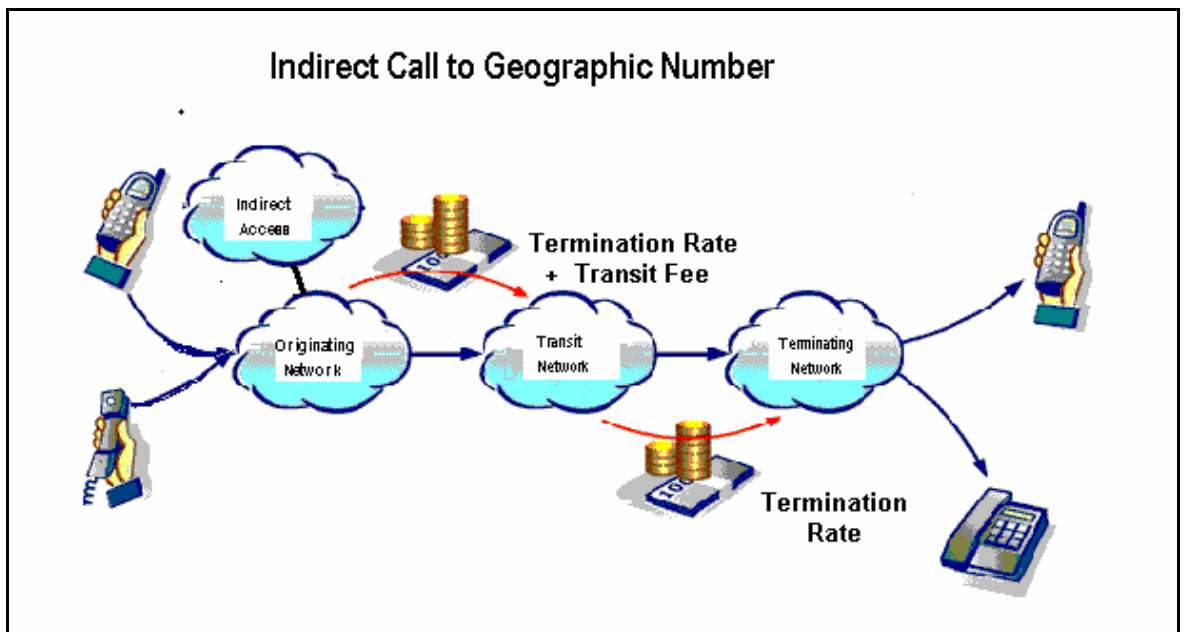
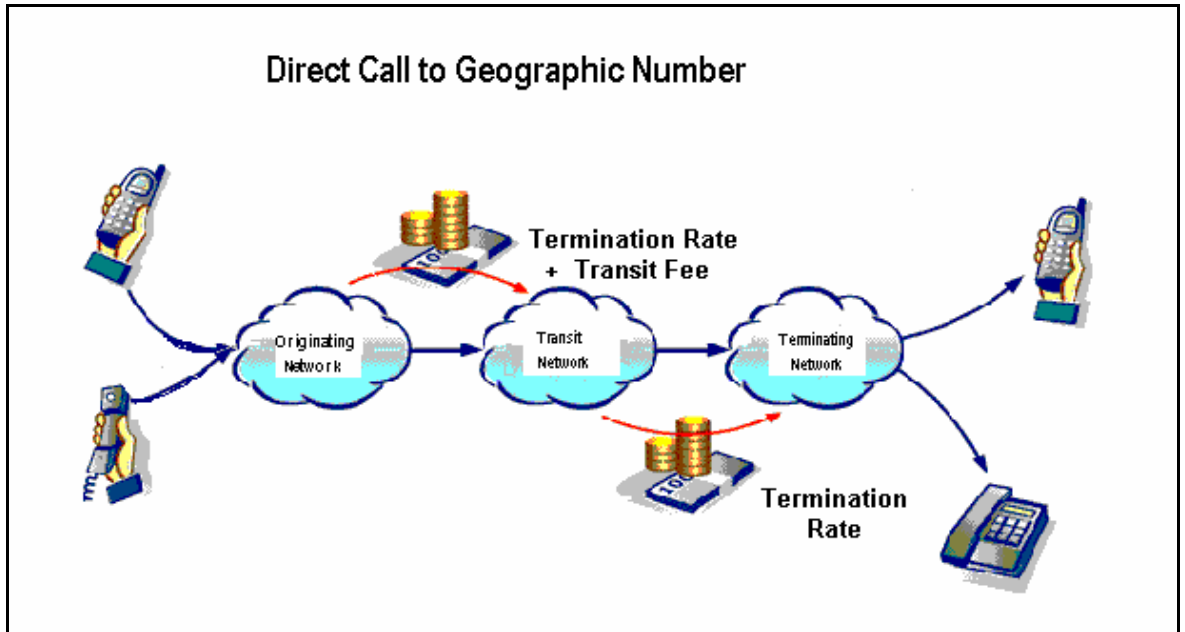
Isolde Goggin
Chairperson
The Commission for Communications Regulation

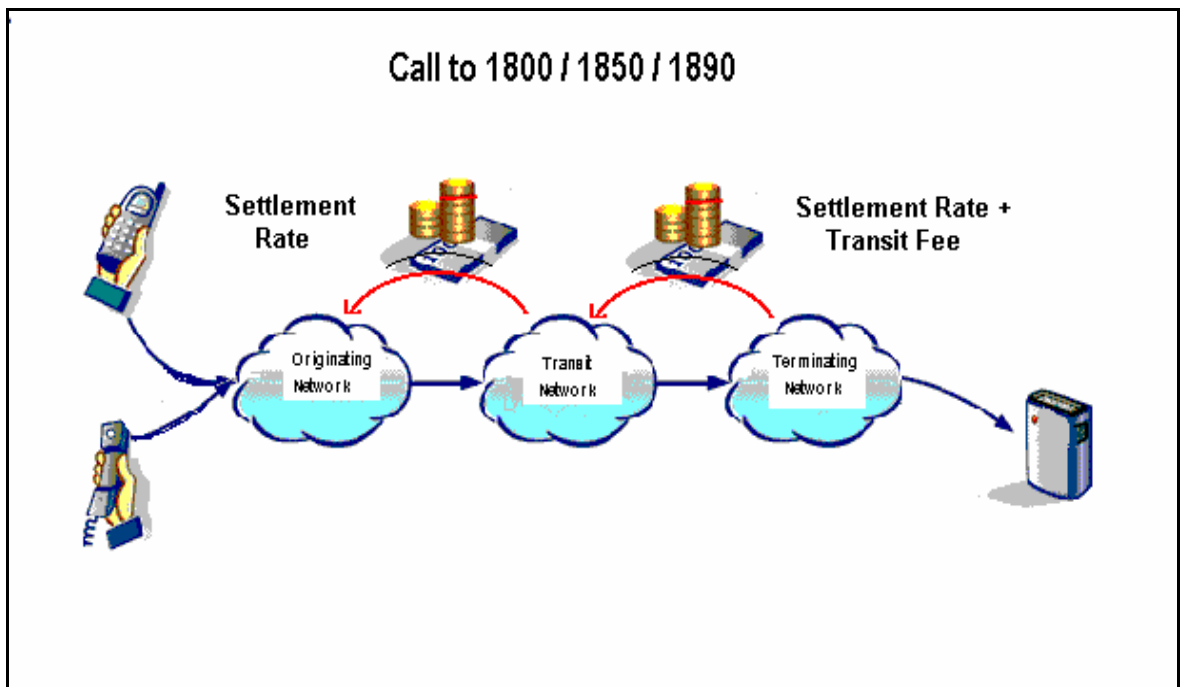
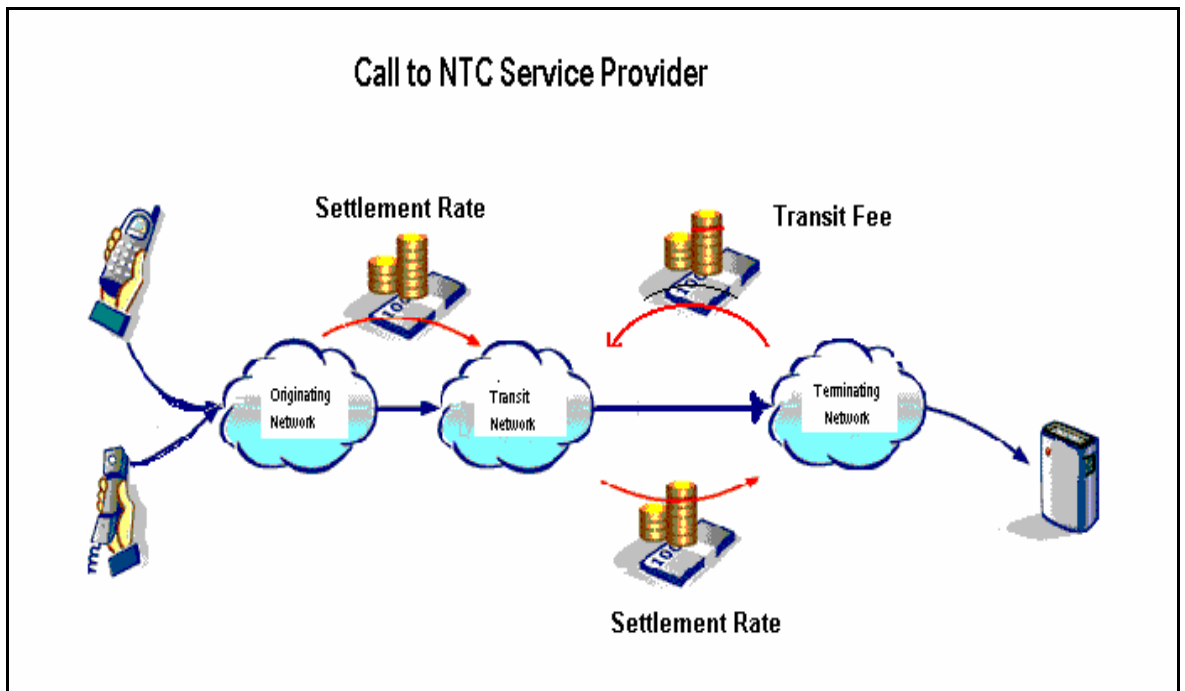
Dated the [●] day of [●] 2005

Annex C: Views of Respondents

[See separate Doc – ComReg 05/37b]

Annex D: Call Case Diagrams





Annex E: Mapped Illustrations of Switched Call Case Scenarios

[See separate Doc – ComReg 05/37c]

Annex F: List of Operators with SMP in the Market for Termination of calls to end-users

ComReg is of the view that all authorised operators that provide fixed call termination services for retail calls to end-users on a fixed public telephone network shall be designated as having SMP. The list below is a preliminary list of such operators but is not exhaustive and may change during the timeframe of the review.

1. Access Telecom
2. Budget Telecom
3. Cable & Wireless
4. Chorus Communications
5. Colt Telecom
6. eircom
7. Energis
8. BT Ireland
9. MCI
10. NTL
11. Swiftcall Centre Ltd
12. Talk Telecom

Annex G: List of products for which eircom is mandated to give access to interconnection

Call Origination Services

Serv No.	Service Name
	<u>Eircom Services</u>
103	Call Origination
	<u>Operator Services</u>
205	Access to operator Premium Rate Services (15XX)
206	Access to operator Freefone Service (1800)
207	Access to operator LoCall Service (1890)
208	Access to operator Callsave Service (1850)
209	Access to Operator Universal Number Access (0818)
210	<i>Access to Personal Numbering Access (0700)</i>
221	Access to Operator Internet Service – 1891
222	Access to Operator Internet Service – 1892
223	Access to Operator Internet Service – 1893

Call Termination Services

Serv No.	Service Name
	<u>Eircom Services</u>
102	Call Termination
105	Access to eircom Premium Rate Services (15XX)
106	Access to eircom Freefone Service (1800)
107	Access to eircom LoCall Service (1890)
108	Access to eircom Callsave Service (1850)
109	<i>eircom Universal Number Access (0818)</i>
110	<i>eircom Personal Numbering Access (0700)</i>
111	<i>eircom National Directory Enquiries</i>
112	<i>eircom International Directory Enquiries</i>
113	<i>eircom National Operator Assistance</i>
114	<i>eircom International Operator Assistance</i>
115	Emergency Services (999 \ 112)
116	Packet Services Access
117	Paging Services Access
118	<i>eircom Customer Care Access</i>
119	International Access including Northern
121	Access to eircom Internet Service – 1891
122	Access to eircom Internet Service – 1892
123	Access to eircom Internet Service – 1893

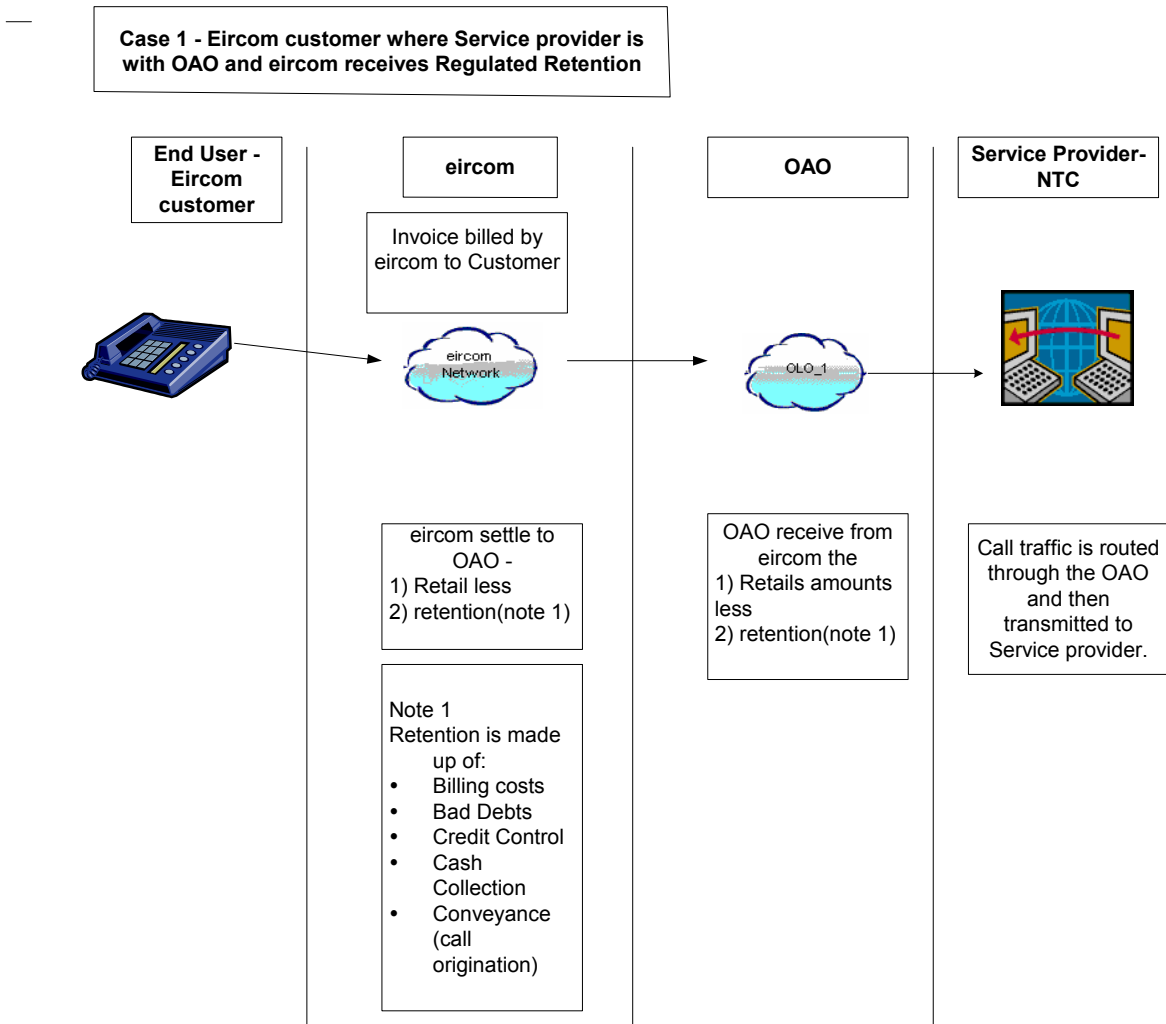
Call Transit Services

Serv No.	Service Name
	<u>Eircom Services</u>
104	National Transit

Other non Conveyance Services

Serv No.	Service Name
	Other Services
	Payphone Access Charge
302	Data Amendments

Annex H: Example of Retention model for NTC type calls



Annex I: Notification of Draft Measures Pursuant to Article 7(3) of the Directive 2002/21/EC

In accordance with Article 16 of the Directive 2002/21/EC, ComReg has conducted an analysis of the markets for fixed wholesale call origination, transit and termination.

In accordance with Article 6 of the Directive 2002/21/EC, ComReg has conducted a national consultation, contained in ComReg document 04/106. This consultation ran from 22nd October 2004 to 6th December 2004. The responses to this consultation have been taken into consideration and ComReg has now reached decisions in market definition, designation of SMP and regulatory obligations, which are contained in ComReg document 05/37.

ComReg hereby notifies the Commission of its proposed remedies and obligations in accordance with Article 7(3) of Directive 2002/21/EC. These remedies and obligations are set out in the attached summary notification form. Under Regulation 27(1), ComReg is required to liaise with the Competition Authority in its definition and analysis of markets. The views of the Competition Authority are attached in Annex A.

Section 1 - Market Definition

Please state where applicable:

1.1	The affected relevant product/service market (s). Is this market mentioned in the Recommendation on relevant markets?	ComReg proposes to define four wholesale fixed interconnection markets : <ul style="list-style-type: none"> • Call Origination • Call Termination to End Users • Call Termination to Service Providers • National Call Transit Services Three are mentioned in the Recommendation, while the market for call termination to service providers is not	Pages 12 - 26
1.2	The affected relevant geographic market (s)	<ul style="list-style-type: none"> • Ireland 	Pages 16, 20 and 25
1.3	A brief summary of the opinion of the national competition authority where provided;	The Authority supports the approach and findings of this market definition exercise.	Annex A
1.4	A brief overview of the results of the public consultation to date on the proposed market definition (for example, how many	Seven responses to the consultation were provided by : <ul style="list-style-type: none"> • ALTO 	Annex C

	comments were received, which respondents agreed with the proposed market definition, which respondents disagreed with it)	<ul style="list-style-type: none"> • eircom • MCI • BT Ireland • Vodafone • Hutchison Ireland • Chorus <p>There was general agreement among respondents on the market definition and conclusions reached. While one respondent disagreed with the market definition for three of the markets, no robust alternative market definition was put forward. Overall, the proposed conclusions remained unchanged after the consultation.</p>	
1.5	Where the defined relevant market is different from those listed in the recommendation on relevant markets, a summary of the main reasons which justified the proposed market definition by reference to Section 2 of the Commission's Guidelines on the definition of the relevant market and the assessment of significant market power ⁸⁶ , and the three main criteria mentioned in recitals 9 to 16 of the recommendation on relevant markets and Section 3.2 of the accompanying Explanatory Memorandum ⁸⁷ .	<p>The market for termination of calls to service providers has high and non-transitory entry barriers.</p> <p>This market is not tending towards an effectively competitive outcome: eircom has an 80% (and increasing) market share, enjoys economies of scale and scope, there is limited evidence of countervailing buyer power and the new entry to date has been ineffective in reducing the market power enjoyed by eircom.</p> <p>The relative efficiency of Competition Law is discussed in Chapter 4 of the Response to Consultation</p>	Pages 35-37

Section 2 - Designation of undertakings with significant market power

Please state where applicable:

2.1	The name(s) of the undertaking(s) designated as having individually	eircom Ltd is designated as having SMP in all four markets.	Page 42
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⁸⁶ Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications and services, OJ C 165, 11.7.2002, p. 6.

⁸⁷ Commission Recommendation of 11.2.2003 on Relevant Product and Service Markets with the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for ECNs and ECSs, C (2003) 497

	or jointly significant market power. Where applicable, the name(s) of the undertaking(s) which is (are) considered to no longer have significant market power	All other providers of wholesale fixed termination services to end users are designated with SMP in that market (see Annex F for list of undertakings).	
2.2	The criteria relied upon for deciding to designate or not an undertaking as having individually or jointly with others significant market power	<ul style="list-style-type: none"> • Market Share • Barriers to Entry • Absence of Countervailing Bargaining Power • Ability to leverage and vertical integration • Pricing and profitability 	Pages 28-41
2.3	The name of the main undertakings (competitors) present/active in the relevant market.	BT Ireland, MCI, Chorus, Ntl, Energis	Pages 38-39 of Annex C
2.4	The market shares of the undertakings mentioned above and the basis of their calculation (e.g., turnover, number of subscribers)	<ul style="list-style-type: none"> • Call origination: Total OAO market share = 15% based on volume. No OAO had a market share in excess of 10%. • Call termination to end users: Each undertaking has 100% market share • Call termination to service providers: Total OAO market share = 20% based on volume. Closest competitor has 15% market share. • Call transit: Total OAO market share = 31% based on volume. Closest competitor has 18% market share while no other has in excess of 10%. 	Pages 28, 31, 35 and 38

Please provide a brief summary of:

2.5	The opinion of the national competition authority, where provided	The Authority supports the approach and findings of this market analysis exercise.	Annex A
2.6	The results of the public consultation to date on the proposed designation(s) as undertaking(s) having significant market power (e.g., total number of comments received, numbers agreeing/disagreeing)	Seven responses to the consultation were provided by : <ul style="list-style-type: none"> • ALTO • eircom • MCI 	Annex C

		<ul style="list-style-type: none"> • BT Ireland • Vodafone • Hutchison 3G Ireland • Chorus <p>There was general agreement among respondents on the analysis and conclusions reached. Although there was some disagreement relating to the designation of OAOs with SMP in the market for termination of calls to end users, no robust alternative was put forward. Overall, the proposed conclusions remained unchanged after the consultation.</p>	
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Section 3 - Regulatory Obligations

Please state where applicable:

3.1	The legal basis for the obligations to be imposed, maintained, amended or withdrawn (Articles 9 to 13 of Directive 2002/19/EC (Access Directive))	Under the Access Regulations which transpose Articles 9 to 13 of Directive 2002/19/EC (Access Directive): <ul style="list-style-type: none"> • Transparency – Regulation 10 • Non-discrimination – Regulation 11 • Accounting Separation – Regulation 12 • Access to, and use of, specific network facilities – Regulation 13 • Price Control and Cost Accounting – Regulation 14 	Page 43
3.2	The reasons for which the imposition, maintenance or amendment of obligations on undertakings is considered proportional and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC (Framework Directive). Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found	Such information can be found in sections 6 & 7 and Appendix C of this document.	Pages 43-74 and Annex C
3.3	If the remedies proposed are other than those set out in Articles 9 to 13 of Directive 2002/19/EC	Not Applicable	

	(Access Directive), please indicate which are the 'exceptional circumstances' within the meaning of Article 8(3) thereof which justify the imposition of such remedies. Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found		
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Section 4 - Compliance with international obligations

In relation to the third indent of the first subparagraph of Article 8(3) of Directive 2002/19/EC (Access Directive), please state where applicable:

4.1	Whether the proposed draft measure intends to impose, amend or withdraw obligations on market players as provided for in Article 8(5) of Directive 2002/19/EC (Access Directive)	Not Applicable	
4.2	The name(s) of the undertaking(s) concerned	Not Applicable	
4.3	Which are the international commitments entered by the Community and its Member States that need to be respected	Not Applicable	