



Commission for
Communications Regulation

Decision Notice - Designation of SMP and Related Remedies

**Market Analysis: Retail Leased Lines and
Wholesale Terminating and Trunk Segments of
Leased Lines (National)**

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An Coimisiún um Rialáil Cumarsáide

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1 Introduction

- 1.1 The new EU electronic communications regulatory framework requires that ComReg define relevant communications markets appropriate to national circumstances, in particular relevant geographic markets within its territory, in accordance with the market definition procedure outlined in the Framework Regulations.¹ In addition, ComReg is required to conduct an analysis of the relevant markets to decide whether or not they are effectively competitive.
- 1.2 The Framework Regulations further require that the market analysis procedure under Regulation 27 be carried out as soon as possible after ComReg defines a relevant market, which takes place as soon as possible after the adoption, or subsequent revision, of the Recommendation on relevant product and service markets ('the Relevant Markets Recommendation'²) by the EU Commission.³ In carrying out market definition and market analysis, ComReg must take the utmost account of the Relevant Markets Recommendation and the EU Commission Guidelines on Market Analysis and Significant Market Power ('The SMP Guidelines'⁴).
- 1.3 The Relevant Markets Recommendation which defines distinct markets for trunk and terminating segments. Together terminating and trunk segments enable the provision of wholesale leased line capacity. The Relevant Markets Recommendation also provides⁵ that a market review must be undertaken for the purposes of Article 18 of the *Universal Service Directive*, which covers controls on the provision of the minimum set of leased lines. This obligation applies to both the relevant markets identified in the Relevant Markets Recommendation and to additional relevant markets that ComReg may consider to merit investigation.
- 1.4 Taking account of the Relevant Markets Recommendation ComReg concluded that there are distinct relevant markets in Ireland for:
 - The minimum set of leased lines
 - Retail leased lines above 2 Mb/s
 - Wholesale terminating segments of leased lines
 - Wholesale trunk segments of leased lines.
- 1.5 As a starting point of its review, ComReg established that the functional characteristics of a leased line are: *'point to point symmetric capacity between*

¹ S.I. No. 307 of 2003 the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 which transposes Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

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

³ Regulations 26 and 27.

⁴ Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic networks and services, OJ 2002 C 165/3, ('the SMP Guidelines').

⁵ See paragraph 7 of the Annex to the Relevant Markets Recommendation.

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network termination points, whether contended or uncontended, which does not include ‘on demand switching’ or routing functions controlled by the end user.

- 1.6 Hence as part of the market definition process, the functional characteristics of a leased line were used to assess the intended use of products offering a service similar to a traditional (i.e. dedicated) leased line. Where demand-side substitution is evident, then the market is broadened to include products similar to a traditional leased line.

Retail Markets for leased lines

- 1.7 ComReg has defined distinct markets for retail national and international leased lines - a separate review was carried out by ComReg for retail international leased lines⁶.
- 1.8 The national retail market has been divided into leased lines up to and including 2 Mb/s, (i.e. the minimum set of leased lines as described in the Universal Service Regulations) and leased lines above 2 Mb/s. The evidence presented to ComReg shows that there is a chain of substitution within the minimum set. There is a distinct break between 2 Mb/s and high bandwidth leased lines, which suggests that from a demand-side point of view, there are distinct markets for the minimum set of leased lines and for leased lines above 2 Mb/s.
- 1.9 The minimum set of leased lines includes both analogue and digital leased lines as these are used interchangeably.
- 1.10 Leased lines provide point to point capacity. ComReg has concluded that the appropriate boundary point of a leased line is the network terminating point (NTP). The NTP can be at the customer site or a service provider access point.
- 1.11 ComReg examined whether other managed services fall within the retail market for leased lines. ComReg notes that when describing leased lines, the Relevant Markets Recommendation refers to ‘dedicated’ capacity and connections. However ComReg considers that within the Irish market, point to point capacity is also available over managed services which may not necessarily be dedicated but which offer services, or could enable services, functionally similar to traditional leased lines. Following a detailed assessment of the functional characteristics of traditional leased lines and managed services, ComReg established that point to point IPVPNs, ATM, Ethernet and SDSL can offer a functionally equivalent service to a traditional leased line. Frame Relay, however does not offer the same functionality.
- 1.12 The data available to ComReg showed that within the minimum set of leased lines, from a demand-side analysis, there is an emerging trend towards managed services at the margin, but this was not yet sufficiently strong to warrant their inclusion in the market. ComReg has therefore defined the retail market for leased lines up to and including 2 Mb/s in accordance with the Relevant Markets Recommendation and has limited the scope of the relevant market to point to point dedicated capacity.
- 1.13 The geographic market for the minimum set is national in scope. The geographic market is not broken down on a route by route basis.

⁶ ComReg Document (04/120) Market Review: International Leased Line.

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- 1.14 Based on its market analysis, ComReg intends to designate eircom Ltd. as an undertaking having significant market power ('SMP') on the market for the provision of the minimum set of leased lines. The main criteria considered by ComReg when reaching this conclusion on SMP include: market share⁷, price developments, technological advantages, infrastructure advantages, economies of scale and scope, vertical integration, barriers to entry, potential competition and countervailing buyer power.
- 1.15 ComReg also examined the retail market above 2 Mb/s, to see if the existing regulation continued to be proportionate and justified. In conclusion the market was found to be effectively competitive, as no one operator has a market share over 40% and there is evidence of strong countervailing buyer power with large customers. Suppliers in this market face high barriers to entry, however on a relative basis the barriers are mitigated by the potential returns available in the provision of high bandwidths over fibre. As far as managed services are concerned, ComReg concluded on the basis of substitutability from a demand and supply-side perspective that certain contended capacity based products (ATM, IP VPN and Ethernet) are to be included in the scope of the market for retail leased lines for bandwidths above 2 Mb/s. ComReg holds the view that any threat of eircom leveraging market power from the wholesale market into the retail market should be mitigated through regulation at the wholesale level – as outlined in the Final Decisions contained in Annex C and D.

Wholesale market

- 1.16 In relation to the definition at the wholesale level, ComReg examined whether wholesale leased lines ('WLL') and partial private circuits ('PPCs') are substitutable products. ComReg notes that when combined with own infrastructure PPCs do provide functionality equivalent to WLLs. ComReg maintains that an operator of a WLL is technically able to supply a PPC and vice versa. In addition, ComReg is of the view that considering a price increase in PPCs or WLL, suppliers and customers would be able to switch from one product to the other. Therefore ComReg concludes PPCs and WLLs to be in the same product market.
- 1.17 In line with the Relevant Markets Recommendation, ComReg considers that terminating and trunk segments constitute separate product markets. Indeed from the demand side ComReg states that both products are complements, rather than substitutes, ComReg finds that in the case of a SSNIP and due to significant investment needed, suppliers would not be able to switch from one product to another.
- 1.18 ComReg maintains from the initial consultation that the appropriate boundary split between trunk capacity and terminating segments occurs at the customer's leased line serving exchange.
- 1.19 In ComReg's view terminating and trunk segments constitute separate markets with no further divisions according to different bandwidths. Since trunk segments are part of an operators core network and used to carry aggregated traffic, both from the demand and supply-side perspective ComReg does not find reason to break down the market by bandwidths. Regarding terminating segments, ComReg reached the same

⁷ eircom Ltd has a market share of around 70% in terms of revenue and around 80% in terms of circuits (with inter alia a market share of 100% in number of circuits for analogue lines and over 70% for leased lines of 64 kb/s)

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conclusions, since Other Authorised Operators (‘OAOs’) provide terminating segments primarily over fibre infrastructure (irrespective of bandwidth) and even when purchasing leased lines from the incumbent over legacy copper infrastructure, OAOs have the ability to use protocols/platforms and compression technology to provide greater retail capacity over particular bandwidths. Thus, OAOs are in a position to switch circuits of different capacities in response to a SSNIP.

- 1.20 ComReg concluded that there are two distinct markets at the wholesale level for terminating and trunk segments of wholesale leased lines, which do not include contended services and are not segmented by bandwidth. ComReg considers the wholesale market for the provision of trunk and terminating segments of leased lines are national in scope.
- 1.21 Based on market analysis, ComReg intends to designate eircom Ltd. as an undertaking having SMP on the markets for the provision of both terminating and trunk segments of leased lines. The main criteria considered were market share⁸, price development, technological advantages, economies of scale and scope, vertical integration, barriers to entry and potential competition.

Process

- 1.22 ComReg conducted a national consultation and considered all comments in coming to its preliminary conclusions in relation to market definition, market analysis and where appropriate SMP remedies. As required by Regulation 20 of the Framework Regulations, the draft Decisions containing these preliminary conclusions was made accessible to the EU Commission and the national regulatory authorities (‘NRAs’) in other member states of the EU. ComReg considered all comments on the draft Decisions and notified the response to the EU Commission.
- 1.23 Having determined that the relevant markets reviewed (for the minimum set of leased lines, terminating and trunk segment of leased lines) are not effectively competitive, ComReg is now designating the undertaking with SMP, in accordance with Regulation 27 (4) of the Framework Regulations. This document also contains the final Decisions in relation to regulatory obligations to be imposed further to the SMP designation. The final Decisions is set out as Annex A, C and D to this document and the obligations therein are binding on the designated SMP operator, *eircom Ltd.*, from the date of publication.
- 1.24 ComReg has also defined a market comprising retail leased lines above 2 Mb/s. ComReg has made a determination, in accordance with Regulation 27(2) of the Framework Regulations,⁹ that the market is effectively competitive and, accordingly, that those obligations imposed on eircom Ltd, in relation to the market, by Regulation 13 of the *Universal Service Regulations*, be withdrawn. In this document ComReg finalises the Decision in relation to regulatory obligations to be removed from eircom. The Decision is set out as an Annex B to this document and the obligations previously applicable to eircom in relation to the market by virtue of

⁸ eircom holds over 85% market share in terms of circuits and 80% in terms of revenue. Since terminating and trunk segments on wholesale leased lines are only sold together in Ireland, there are no separate turnover figures available for each of these markets. The aforementioned market share in terms of revenue is therefore an aggregated market for both markets.

⁹ European Communities (Electronic Communications Network and Services (Framework) Regulations) 2003.

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Regulation 13 of the Universal Service Regulations will be withdrawn two weeks from the date of publication of this document.

2 Background to Decision

- 2.1 The Decision contained in this document (ComReg D7/05) relates to the Final Decisions for the relevant retail leased line or wholesale segment markets; these are contained in Annex A to D of this document. In making this Decision, the Commission for Communications Regulation ('ComReg') has, taken account, of amongst other things, its objectives set out in section 12 of the Communications Regulation Act 2002 has (where appropriate) complied with the Policy Directions made by the Minister for Communications¹⁰ under section 13 of the Communications Regulation Act 2002; and has also taken the utmost account of the EU Commission's Recommendation¹¹ and the SMP Guidelines.¹²
- 2.2 ComReg concluded (as detailed in the SMP decision and notification document *ComReg Document Number 05/03*), that the markets for; the minimum set of leased lines, wholesale terminating segments and wholesale trunk segments of leased lines should not deviate from that specified in the Relevant Markets Recommendation. ComReg also examined the retail market above 2 Mb/s which is not a market contained in the Relevant Markets Recommendation, to see if the existing regulation continued to be proportionate and justified. ComReg concluded that, upon analysis, no operator had SMP in the relevant market.
- 2.3 This Decision is based on the market definition, market analysis and reasoning conducted by ComReg in relation to the market for retail leased lines and terminating and trunk segments of wholesale leased lines,¹³ as part of the consultation process arising from the ComReg document entitled *Market Analysis: Retail Leased Lines and Wholesale Terminating and Trunk Segments of Leased Lines (National) (Document No. 05/03)*, dated 17 January 2005. That document forms part of this Decision.
- 2.4 The measures imposed under this Decision were notified to the EU Commission in accordance with Regulation 20 of the Framework Regulations and the Article 7 Recommendation,¹⁴ and were registered by the EU Commission on 17 January 2005. The notified measures were accepted by the EU Commission, in correspondence to the Chairperson of ComReg dated 16 February 2005.
- 2.5 Pursuant to Article 7 (3) of the Framework Directive the EU Commission examined the notification and commented that a further consultation will be held on the details

¹⁰ Policy Directions made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February 2003 and Policy Directions made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 26 March 2004.

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

¹² Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services.

¹³ As referred to in the EU Commission's Recommendation.

¹⁴ Commission Recommendation of 23 July 2003 on notifications, time limits and consultation provided in Article 7 of Directive 2002/21/EC of the European Parliament and the Council on a common regulatory framework for electronic communications networks and services.

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and implementation of accounting separation and cost accounting obligations. The Commission reminded ComReg that draft measures relation to these regulatory obligations are required to be notified under Article 7(5) of the Framework Directive.

- 2.6 In Document 05/03, ComReg consulted upon its Draft Decisions and asked if respondents believed that the draft text of the proposed decision was from a legal, technical and practical perspective, sufficiently detailed, clear, precise and intelligible with regard to the specifics of the remedies proposed. Comments were considered and the Final Decision is contained in Annexes A-D.

3 Market Review

Market Definition

3.1 This Decision relates to the markets for:

- The minimum set of leased lines
- Retail leased lines above 2 Mb/s
- Wholesale terminating segments of leased lines
- Wholesale trunk segments of leased lines.

3.2 ComReg has defined the retail market for leased lines up to and including 2 Mb/s, wholesale trunk segments and wholesale terminating segments in accordance with the Relevant Markets Recommendation. ComReg also examined the retail market above 2 Mb/s, to see if the existing regulation continued to be proportionate and justified. In conclusion the market was found to be effectively competitive.

3.3 The relevant geographic market for the product markets is defined as Ireland.

Designation of Undertaking with Significant Market Power ('SMP')

3.4 The criteria used to assess SMP in the retail leased line markets and wholesale trunk and terminating segments markets include:-

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

3.5 *eircom Ltd.* is designated as having SMP in the markets for:

- The minimum set of leased lines
- Wholesale terminating segments of leased lines
- Wholesale trunk segments of leased lines.

3.6 A reference in this section to *eircom Ltd.* shall be deemed to include that undertaking and any undertaking which is associated with, or is controlled by, or controls, directly or indirectly, the undertaking in question and which carries out business activities in Ireland, where the activities engaged in (either directly or indirectly) are activities falling within the scope of the relevant markets defined in section 2 of this Decision.

SMP Obligations

3.7 ComReg is required to impose *ex ante* regulatory obligations that are, appropriate, based on the nature of the problem identified, proportionate and justified in the light of

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the objectives set out in Article 8 of the Framework Directive. ComReg has previously identified remedies it considers may be appropriate to impose on a SMP operator in these markets. These were the obligations of access to and use of specific network facilities, transparency, non-discrimination, accounting separation, price control and cost accounting obligations. Details of the obligations for accounting separation and price control will be subject to an additional consultation and interim measures have been outlined. However, ComReg has consulted fully on the remedies to be imposed and the details to attach to those considered suitable in this instance.

- 3.8 Additionally, ComReg is required to remove *ex ante* regulatory obligations that are no longer appropriate. ComReg examined the retail market above 2 Mb/s, to see if the existing regulation continued to be proportionate and justified and concluded that the market was effectively competitive. ComReg has made a determination, in accordance with Regulation 27(2) of the Framework Regulations,¹⁵ that the Market is effectively competitive and, accordingly, is required in accordance with Regulation 27(3) of the Framework Regulations to withdraw those obligations imposed on eircom, in relation to the Market, by Regulation 13 of the *Universal Service Regulations*.
- 3.9 In Document 05/03, ComReg consulted upon its Draft Decisions and asked if respondents believed that the draft text of the proposed decision was from a legal, technical and practical perspective, sufficiently detailed, clear, precise and intelligible with regard to the specifics of the remedies proposed. Comments were considered and the Final Decision is contained in Annex A-D.

¹⁵ European Communities (Electronic Communications Network and Services (Framework) Regulations) 2003.

4 Response to Consultation on the Draft Decisions

Introduction

- 4.1 One response was received in relation to the consultation on the Draft Decisions contained in the document entitled *Market Analysis: Retail Leased Lines and Wholesale Terminating and Trunk Segments of Leased Lines (National) (Document No. 05/03)*, dated 17 January 2005. For reasons of confidentiality the name of the respondent will not be disclosed. ComReg would like to thank the respondent for its submissions and has taken it into account when arriving at its conclusions.
- 4.2 In this document ComReg sets out its Response to Consultation to the Draft Decisions relating to:
- The minimum set of leased lines
 - Retail leased lines above 2 Mb/s
 - Wholesale terminating segments of leased lines
 - Wholesale trunk segments of leased lines.
- 4.3 It also finalises the Decision in relation to regulatory obligations to be imposed or removed from eircom Ltd. The Decisions are set out as Annexes A to D to this document. The obligations applicable to eircom in relation to the relevant Markets (outlined in Annex A, C and D) will be imposed from the date of publication of this document. Additionally obligations in relation to the relevant Market (outlined in Annex B) will be withdrawn, after a reasonable period of notice, that being two weeks from date of publication. .

Decision Notice Issues

Responses to consultation and ComReg's Position

- 4.4 One respondent noted that while it disagreed with the inclusion of contended bandwidth services within the market of high bandwidth retail leased lines; it requested that if ComReg concluded that such products were included in the relevant market definition it should make a clear and unambiguous statement in the Final Decision, outlining this conclusion. ComReg has addressed this point and has included a text to clarify its conclusions relating to the inclusion of contended services within the relevant product market for high bandwidth retail leased lines. This is now contained in the Final Decision contained in Annex B.
- 4.5 In ComReg's response to the EU Commission's request for information, ComReg has clarified that contended services are not included in the notified wholesale markets for terminating and trunk segments and that it does not intend to impose any regulation of contended capacity.

Annex A – Decision - Minimum Set of Leased Lines

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 2002,¹⁶ has taken the utmost account of the EU Commission’s Recommendation¹⁷ and the Guidelines¹⁸ and has (where appropriate) complied with and taken in to account the Policy Directions made by the Minister.¹⁹ This Decision is based on the market analysis and reasoning conducted by ComReg in relation to the market for the minimum set of leased lines²⁰ related to the Consultation Paper entitled *Market Analysis: Wholesale Terminating and Trunk Segments of Leased Lines and Retail Leased Lines (National)* (‘Document No. 04/59’) dated 4 June 2004 and document entitled *Market Analysis: Retail Leased Lines and Wholesale Terminating and Trunk Segments of Leased Lines (National) (Document No. 05/03)*, dated 17 January 2005. These documents form part of this Decision.
- 1.2 This Decision is made pursuant to Regulations 25, 26 and 27 of the Framework Regulations²¹, Regulation 15 of the Universal Service Regulations²² 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 the minimum set of leased lines, as defined in document entitled *Market Analysis: Retail Leased Lines and Wholesale Terminating and Trunk Segments of Leased Lines (National) (Document No. 05/03)*, dated 17 January 2005 and identified in the EU Commission’s Recommendation. The market defined takes utmost account of the SMP Guidelines and the EU Commission’s Recommendation.

¹⁶The Communications Regulation Act 2002.

¹⁷EU 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.

¹⁸Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services.

¹⁹Policy Directions made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February 2003 and 26 March 2004.

²⁰As identified in the list of standards published in the Official Journal of the European Communities pursuant to Article 17 of the Framework Directive

²¹S.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.

²²S.I. No. 308 of 2003 the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2003 which transposes Directive 2002/22/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

2.2 The relevant geographic market for the market for the minimum set of leased lines is defined as Ireland.

3 DESIGNATION OF UNDERTAKINGS WITH SMP

3.1 eircom Limited (“eircom”) is designated as having significant market power in the market for the minimum set of leased lines in Ireland.

4 SPECIFIC OBLIGATIONS

4.1 ComReg has found that the market for the provision of the minimum set of leased lines in Ireland is not effectively competitive and, accordingly, shall impose those obligations regarding the provision of the minimum set of leased lines and regarding the conditions for such provision, which are set out in Schedule 3 to the Universal Service Regulations, on eircom.

5. OBLIGATION OF NON DISCRIMINATION

5.1 eircom shall adhere to the principle of non-discrimination when providing leased lines referred to in Regulation 15 of the Universal Service Regulations. eircom shall apply similar conditions in similar circumstances to organisations providing similar services, and shall provide leased lines 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. OBLIGATION OF COST ORIENTATION

6.1 eircom’s tariffs for leased lines, referred to in Regulation 15 of the Universal Service Regulations, shall be cost oriented and such costs shall be calculated using a pricing model based on fully distributed historic costs.

6.2 eircom shall continue to comply with all 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.

6.3 In order to fulfil its obligations of cost orientation and its obligations in relation to cost accounting, eircom shall keep separated accounts. All of the obligations in relation to accounting separation applying to eircom in force immediately prior to the effective date of this Decision, 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.

7 OBLIGATION OF TRANSPARENCY

7.1 eircom shall ensure that the following information in respect of the minimum set of leased lines referred to in Regulation 15 of the Universal Service Regulations is published in the eircom Telecommunications Scheme:-

- I. Technical characteristics, including the physical and electrical characteristics as well as the detailed technical and performance specifications which apply at the network termination point. References to technical characteristics shall, where possible, match those contained in Commission Decision 2003/548EC of 24 July 2003 on the minimum set of leased lines with harmonised characteristics and associated standards.
- II. Tariffs, including the initial connection charges, the periodic rental charges and other charges. Where tariffs are differentiated, this must be indicated. Where, in response to a particular request, eircom considers it unreasonable to provide a leased line in the minimum set under its published tariffs and supply conditions, it must seek the agreement of ComReg to vary those conditions in that case.
- III. Supply conditions, including at least the following elements:-
 - information concerning the ordering procedure,
 - the typical delivery period, which is the period, counted from the date when the user has made a firm request for a leased line, in which 95 % of all leased lines of the same type have been put through to the customers.

This period will be established on the basis of the actual delivery periods of leased lines during a recent time interval of reasonable duration. The calculation must not include cases where late delivery periods were requested by users,

- the contractual period, which includes the period which is in general laid down in the contract and the minimum contractual period which the user is obliged to accept,
- the typical repair time, which is the period, counted from the time when a failure message has been given to the responsible unit within eircom, up to the moment in which 80 % of all leased lines of the same type have been re-established and in appropriate cases notified back in operation to the users. Where different classes of quality of repair are offered for the same type of leased lines, the different typical repair times shall be published,
- any refund procedure.

7.2 Where ComReg considers that the achieved performance for the provision of the minimum set of leased lines does not meet users' needs, it may define appropriate targets for the supply conditions listed above at paragraph 7.1 III.

7.3 Without prejudice to the generality of the foregoing, eircom shall implement tariff changes on the 20th working day after notice of such changes have been given to ComReg. For the purpose of this paragraph 7.3, 'working day' means a day (other than a Saturday or Sunday) on which clearing banks are generally open for business in Ireland.

Isolde Goggin
Chairperson
The Commission for Communications Regulation

Dated the 30th day of March 2005

Annex B – Decision – Retail leased lines above 2 Mb/s

1 STATUTORY POWERS GIVING RISE TO DECISION

- 1.1 In making this Decision and removing the obligations set out herein, ComReg has had regard to the objectives of ComReg set out in section 12 of the Act of 2002,²³ has taken the utmost account of the Relevant Markets Recommendation²⁴ and the *Guidelines*²⁵ and has (where appropriate) complied with and taken in to account the Policy Directions made by the Minister.²⁶ This Decision is based on the market analysis and reasoning conducted by ComReg in relation to the market for retail leased lines²⁷ above 2Mb/s related to the Consultation Paper entitled *Market Analysis: Wholesale Terminating and Trunk Segments of Leased Lines and Retail Leased Lines (National)* ('Document No. 04/59') dated 4 June 2004 and document entitled *Market Analysis: Retail Leased Lines and Wholesale Terminating and Trunk Segments of Leased Lines (National) (Document No. 05/03)*, dated 17 January 2005 forms part of this Decision.
- 1.2 This Decision is made pursuant to Regulations 25, 26 and 27 of the *Framework Regulations*²⁸ and Regulation 14 of the *Universal Service 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 retail leased lines above 2Mb/s and is defined in document entitled *Market Analysis: Retail Leased Lines and Wholesale Terminating and Trunk Segments of Leased Lines (National) (Document No. 05/03)*, dated 17 January 2005 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 retail leased lines above 2Mb/s²⁹ and is a relevant market defined in accordance with Regulation 26 of the Framework Regulations.

²³ The Communications Regulation Act 2002.

²⁴ EU Commission Recommendation of 11 February, 2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

²⁵ Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services.

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

²⁷ Referred to in the EU Commission's Recommendation.

²⁸ S.I. No. 307 of 2003 the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 which transposes Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

²⁹ Certain contended capacity based products (ATM, IP VPN and Ethernet) are included in the scope of the market for retail leased lines for bandwidths above 2 Mb/s. All capacity based products, used to provide services above 2 Mb/s with the following functional characteristics are considered to be included in the relevant product market. These characteristics are: *'point to point symmetric capacity between network termination points, whether contended or uncontended, which does not include 'on demand switching' or routing functions controlled by the end user.*

2.2 The relevant geographic market for the market retail leased lines above 2Mb/s is defined as Ireland.

3 FINDING THAT THE RELEVANT MARKET IS EFFECTIVELY COMPETITIVE

3.1 ComReg concludes that the relevant market for retail leased lines above 2Mb/s is effectively competitive.

4 WITHDRAWAL OF OBLIGATIONS³⁰

4.1 ComReg concludes that the relevant market for retail leased lines above 2 Mb/s in Ireland (the ‘Market’) is effectively competitive and, accordingly, withdraws, with effect from two weeks from the date of this Decision, those obligations, in relation to the Market, which are currently applicable to *eircom Limited* by virtue of Regulation 13 of the *Universal Service Regulations*.

Isolde Goggin
Chairperson
The Commission for Communications Regulation

Dated the 30th day of March 2005

³⁰Where ComReg concludes that a relevant market is effectively competitive, in cases where an undertaking has previously been designated as having significant market power in such market and specific obligations are applicable to such undertaking, ComReg is required by Regulation 27(3) of the Framework Regulations, after giving reasonable notice to any parties which it considers to be affected by such withdrawal, withdraw such obligation from the undertaking concerned.

Annex C – Decision – Terminating Segments of Leased Lines

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 2002,³¹ 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 Recommendation³² and the Guidelines³³ and has (where appropriate) complied with and taken in to account the Policy Directions made by the Minister.³⁴ This Decision is based on the market analysis and reasoning conducted by ComReg in relation to the market for wholesale terminating segments of leased lines³⁵ related to the Consultation Paper entitled *Market Analysis: Wholesale Terminating and Trunk Segments of Leased Lines and Retail Leased Lines (National)* (‘Document No. 04/59’) dated 4 June 2004 and document entitled *Market Analysis: Retail Leased Lines and Wholesale Terminating and Trunk Segments of Leased Lines (National)* (Document No. 05/03), dated 17 January 2005. These documents form part of this Decision.
- 1.2 This Decision is made pursuant to Regulations 25, 26 and 27 of the Framework Regulations³⁶, 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 terminating segments of leased lines defined in document entitled *Market Analysis: Retail Leased Lines and Wholesale Terminating and Trunk Segments of Leased Lines (National)* (Document No. 05/03), dated 17 January 2005 and as identified in the EU Commission’s Recommendation. The market in this Decision is defined as the market for wholesale terminating segments of leased lines taking utmost account of the SMP Guidelines and in accordance with the EU Commission’s Recommendation.

³¹The Communications Regulation Act 2002.

³²EU 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.

³³Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services.

³⁴Policy Directions made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February 2003 and 26 March 2004.

³⁵Referred to in the EU Commission’s Recommendation.

³⁶S.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.

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2.2 The relevant geographic market for the market for wholesale terminating segments of leased lines is defined as Ireland.

3 DESIGNATION OF UNDERTAKINGS WITH SMP

3.1 *eircom Limited* (“eircom”) is designated as having significant market power in the market for wholesale terminating segments of leased lines in Ireland.

4 SMP OBLIGATIONS³⁷

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 terminating segments of leased lines. For the avoidance of doubt this includes the continued provision of wholesale terminating segments of leased lines and terminating segments of Partial Private Circuits.

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

- I. negotiate in good faith with undertakings, requesting access;
- II. give third parties access to specified network elements, facilities or both such elements and facilities;
- III. not withdraw access to facilities already granted without the prior approval of ComReg;
- 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.

5.3 It shall be a condition of the obligations contained in section 5.1 that eircom conclude legally binding, fit for purpose, Service Level Agreements (‘SLAs’) with Other Authorised Operators (‘OAOs’) in respect of relevant products and appropriate process points.

³⁷ ComReg is legally obliged to impose ex ante SMP obligations that are appropriate, based on the nature of the problem identified, proportionate and justified in the light of the objectives set out in Article 8 of Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications.

6 CONDITIONS ATTACHED TO ACCESS OBLIGATIONS

6.1 Pursuant to Regulation 13 (3) of the Access Regulations, eircom shall conclude service level agreements ('SLAs') in respect of relevant services and facilities and appropriate process points if SLAs have not already been concluded.

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. 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;
- 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;
- IV. conclude legally binding SLAs with OAOs in respect of appropriate products and relevant process points.

7.2 Without prejudice to the generality of paragraph 7.1 and having regard to the designation of eircom as having SMP in the market for wholesale trunk segments of leased lines, eircom shall:

- I. 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 leased lines to end-users;
- II. offer access to wholesale trunk and terminating segments of leased lines as a single wholesale leased line offering, such offering to be a wholesale equivalent of retail offerings of end to end leased lines being provided by eircom. For the avoidance of doubt, such offerings shall include offerings for end to end leased lines with capacities in excess of 2Mb/s; and
- III. continue to make available the in-situ transfer of end to end leased lines in accordance with the "In-Situ Transfer Of Leased Lines Inter-Operator Process Manual - Eircom To Other Authorised Operator"³⁸.

³⁸ As published at http://www.eircomwholesale.ie/dynamic/pdf/interop_insitu_transfer_1.3.pdf and as amended from time to time.

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 and keep updated a reference offer (“RO”) in respect of the services and facilities referred to in sections 5 and 7 that is sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested. eircom shall 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.
- 8.3 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 and 7, as specified by ComReg from time to time.
- 8.4 eircom shall publish all SLAs concluded (and as from time to time amended) in accordance with this Decision.

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 obligations¹⁸ 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.

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- 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 The prices charged by eircom to any other undertaking for access to or use of a wholesale leased line of capacities up and including 2Mb/s offered in accordance with paragraph 7.2 II shall be at least 8% less than the retail price charged by eircom to its end-users for an end to end leased line, which is the retail equivalent of such wholesale leased line. Wholesale leased lines of capacities above 2Mb/s shall be offered to other operators on terms and conditions equivalent to those offered to eircom's retail arm.
- 10.2 eircom's prices for PPCs shall be cost oriented and such costs shall be calculated using a pricing model based on forward looking long run incremental costs ('FL-LRIC').
- 10.3 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 30th day of March 2005

Annex D – Decision – Trunk Segments of Leased Lines

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, has taken the utmost account of the EU Commission’s Recommendation³⁹ and the Guidelines⁴⁰ and has (where appropriate) complied with and taken in to account the Policy Directions made by the Minister.⁴¹ This Decision is based on the market analysis and reasoning conducted by ComReg in relation to the market for wholesale terminating segments of leased lines⁴² related to the Consultation Paper entitled *Market Analysis: Wholesale Terminating and Trunk Segments of Leased Lines and Retail Leased Lines (National)* (‘Document No. 04/59’) dated 4 June 2004 and document entitled *Market Analysis: Retail Leased Lines and Wholesale Terminating and Trunk Segments of Leased Lines (National) (Document No. 05/03)*, dated 17 January 2005. These documents form part of this Decision.
- 1.2 This Decision is made pursuant to Regulations 25, 26 and 27 of the Framework Regulations⁴³, 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 trunk segments of leased lines, as defined in document entitled *Market Analysis: Retail Leased Lines and Wholesale Terminating and Trunk Segments of Leased Lines (National) (Document No. 05/03)*, dated 17 January 2005 and identified in the EU Commission’s Recommendation. The market in this Decision is defined as the market for wholesale terminating segments of leased lines taking utmost account of the SMP Guidelines and in accordance with the EU Commission’s Recommendation.
- 2.2 The relevant geographic market for the market for wholesale trunk segments of leased lines is defined as Ireland.

³⁹EU 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.

⁴⁰Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services.

⁴¹Policy Directions made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February 2003 and 26 March 2004.

⁴²Referred to in the EU Commission’s Recommendation.

⁴³S.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 eircom Limited (“eircom”) is designated as having significant market power in the market for wholesale trunk segments of leased lines in Ireland.

4 SMP OBLIGATIONS⁴⁴

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 trunk segments of leased lines. For the avoidance of doubt this includes the continued provision of wholesale trunk segments of leased lines and trunk segments of Partial Private Circuits.

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

- I. negotiate in good faith with undertakings, requesting access;
- II. give third parties access to specified network elements, facilities or both such elements and facilities;
- III. not withdraw access to facilities already granted without the prior approval of ComReg;
- 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.

5.3 It shall be a condition of the obligations contained in section 5.1 that eircom conclude legally binding, fit for purpose, Service Level Agreements (‘SLAs’) with Other Authorised Operators (‘OAOs’) in respect of relevant products and appropriate process points.

6 CONDITIONS ATTACHED TO ACCESS OBLIGATIONS

⁴⁴ComReg 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.

- 6.1 Pursuant to Regulation 13 (3) of the Access Regulations, eircom shall conclude service level agreements ('SLAs') in respect of relevant services and facilities and appropriate process points if SLAs have not already been concluded.

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. 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;
- 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;
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- 7.2 Without prejudice to the generality of paragraph 7.1 and having regard to the designation of eircom as having SMP in the market for wholesale terminating segments of leased lines, eircom shall:

- I. 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 leased lines to end-users;
- II. offer access to wholesale trunk and terminating segments of leased lines as a single wholesale leased line offering, such offering to be a wholesale equivalent of retail offerings of end to end leased lines being provided by eircom. For the avoidance of doubt, such offerings shall include offerings for end to end leased lines with capacities in excess of 2Mb/s; and
- III. continue to make available the in-situ transfer of end to end leased lines in accordance with the "In-Situ Transfer Of Leased Lines Inter-Operator Process Manual - Eircom To Other Authorised Operator"⁴⁵.

8 OBLIGATION OF TRANSPARENCY

⁴⁵ As published at http://www.eircomwholesale.ie/dynamic/pdf/interop_insitu_transfer_1.3.pdf and as amended from time to time.

- 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 of this Decision, eircom shall publish and keep updated a reference offer (“RO”) in respect of the services and facilities referred to in sections 5 and 7 of this Decision that is sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested. eircom shall 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.
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- 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 obligations¹⁸ 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:-

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- 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 30th day of March 2005