



Office of the Director of  
**Telecommunications  
Regulation**

**DECISION NOTICE**

## Payphone Access Charge

### Response to Consultation Paper and Decision Notice

**Decision No:** D15/02  
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## **Foreword**

In Consultation Paper ODTR 02/68–Payphone Access Charge, I set out proposals for changing the methodology of the calculation of this charge. This Decision Notice seeks to address and summarise the views of the respondents on the range of issues and give the reasoning behind the decisions which I have taken.

The consultation process is designed to assist the ODTR in making decisions. I am keen to open debate from time to time on all material and relevant issues. This Decision Notice deals with the proposed methodology of calculating the Payphone Access Charge and will be followed up with a further publication setting out the charges for the relevant periods and the basis for the calculation of the charge.

**Etain Doyle,**

**Director of Telecommunications Regulation.**

## 1 INTRODUCTION

The Director of Telecommunications Regulation ("the Director") is responsible for the regulation of the Irish Telecommunications sector in accordance with European and national law.

In August 2002, the Office of the Director of Telecommunications Regulation (ODTR) published Consultation Paper 02/68. 8 organisations replied to the Consultation Paper, namely:

- Worldcom
- Nevada Telecom
- Dome Telecom
- ITG Group
- Eircom
- ESAT BT
- Roundel Associates T/A Silvertel Payphones.
- Vodafone

Two of the above respondents raised an issue, separate to those discussed in the consultation paper. Both of these respondents were payphone operators and claim that, like eircom they should be able to levy a PAC, however they cited a number of technical difficulties in levying the charge. While the Director is mindful of the concerns they have, she does not consider that this consultation paper is the appropriate method to deal with this issue. However she proposes that this issue be dealt with separately by the office in conjunction with the industry.

## 2 Payphone Access Charge:

### 2.1 Calculation of the Payphone Access Charge: Proposed Methodology

In Consultation Paper 02/68, the Director proposed to set a new PAC rate effective from the 1<sup>st</sup> October 2002 to the 31<sup>st</sup> March 2003 based on forecast costs and projected volumes, assuming that call volumes continue to decline at present trends. This rate would also reflect the shortfall in PAC revenues in the period from 1<sup>st</sup> April 2000 to 30<sup>th</sup> September 2002.

The Director also proposed that from 1<sup>st</sup> April 2003, inclusive, new rates should be set annually by reference to changes in the Consumer Price Index (CPI) for the previous calendar year. A new rate would be calculated in April 2003 by increasing the revised rate for the period from 1st October 2002 to 31st March 2003 referred to above by the change in CPI. These rates would not be subsequently revised for this period thereby providing certainty in the market.

The Director proposed that this procedure be subject to review within 3 years, without prejudice to the Director's discretion to invoke her powers under the relevant laws.

*Question 3.1 - Do you agree with the proposed method of calculating the PAC for the period from 1<sup>st</sup> October 2002 to 31 March 2003?*

#### 2.1.1 Views of Respondents

All of the respondents, with the exception of one, agreed with the Director's proposal.

Two operators required clarification on the following:

- The basis of the forecasts to be applied, and would such forecasts take account of reducing costs associated with reducing numbers of payphones?
- What would the effect be of the attempt to "reflect the shortfall in PAC revenues in the period from 1<sup>st</sup> April 2000 to September 2002" and for what period would that incremental amount apply in order to make up the shortfall?

Two respondents made general comments about the charge and about the issue of retrospection. One of these agreed that there should be certainty in the telecommunications market and that operators should be able to develop business plans without having additional risks caused by the potential for retrospective adjustment of interconnect charges.

One respondent considered that the charge should be cost based and subject to scrutiny. They stated that they would not object to some form of CPI index, however they would like to see it capped in some way. They objected to retrospection being granted, given the current financial difficulties for the industry as a whole and the impact of eircom's delays in producing separated accounts. They disagreed with the extent of and the nature of the retrospection

being suggested and consider that OLO's should not take this burden in its entirety.

Another respondent disagreed with the proposed method of calculating the PAC for the period from 1<sup>st</sup> October 2002 to 31 March 2003. They consider that, attempting to recover past losses by artificially loading the future PAC is unacceptable from a both a regulatory and commercial perspective. They also claim that it would be essential that operators receive an assurance that the ODTR has received full disclosure of details and greater transparency on how the charge has been arrived at. They also question the assumption that payphone minute volumes will continue to decline. They believe that mobile penetration has reached a plateau and there is no obvious impetus for further a fall in payphone usage.

### **2.1.2 Director's Position**

Having considered all the submissions, and in view of the fact that none of the respondents either put forward an alternative to that proposed by the Director or justified the current methodology of calculating the PAC, the Director considers her proposal to be the most effective means of creating stability in this market place at this time. The Director proposes to set a new rate effective from the 1<sup>st</sup> October 2002 to the 31<sup>st</sup> March 2003 based on forecast costs and projected volumes. In projecting future volumes of payphone calls, the ODTR will take into account all of the relevant aspects of the market, including the effect of mobile substitution. In considering the shortfall in PAC revenues in the period from the 1<sup>st</sup> April 2000 to 30<sup>th</sup> September 2002, the office will take into account the causes of the shortfall and the operation of this market during the period.

The Director will notify the industry of this rate and the basis for its calculation in the coming days.

**Direction 3.1- Eircom's adjusted Payphone Access Charge effective from the 1<sup>st</sup> October 2002 to 31<sup>st</sup> March 2003 will be based on forecast costs and projected volumes. This rate will reflect an appropriate portion of the shortfall in PAC revenues in the period from 1st April 2000 to 30<sup>th</sup> September 2002. This decision is made under Regulations 8(5), 8(9), 8(10) and 10(1), 10(3) and 10(5) of the European Communities (Interconnection in Telecommunications) Regulations, 1998, SI 15 of 1998.**

*Question 3.2 - Do you agree that the PAC should be revised annually from April 2003 by reference to an adjustment based on CPI?*

## 2.2 Views of Respondents

Four respondents supported this proposal, but suggested various constraints. Two respondents felt that this issue was insufficiently clear to respond definitely and two opposed it.

One respondent proposed that if the principle of PAC as an interconnection charge is maintained and thus retains the principle of cost orientation, transparency and non discriminatory, they propose that an X factor should be included in the indexation, where the rate would be adjusted not by CPI but by CPI +or- X. They also requested that they be afforded adequate opportunity to present forecast volumes and costs and that the CPI formula to be applied should acknowledge the social dimensions of changing usage patterns of the payphone business.

Two respondents agreed with the Director's proposal, but required clarification requesting that the following issues would be included in the derivation of the charge.

- Revenues received by Eircom for advertising space sold on payphones.
- The reduction in the number of payphones expected by Eircom and the cost reduction associated with the lower numbers of terminals.
- They also asked whether the increased level that is designed to "reflect the shortfall in the PAC revenues from 1<sup>st</sup> April 2000 to 30<sup>th</sup> September 2002" is to be maintained throughout the whole period or just for a similar period.

Another respondent agreed that insofar as it applies to an operator with SMP, the PAC should be revised annually by reference to an adjustment based on the CPI.

Two respondents did not agree that PAC rates should be revised annually by reference to an adjustment based on CPI. One of these respondents considered the market to be too dynamic for rates to be fixed in this way. They considered that the PAC should vary directly with developments in the payphone business and that common and consistent principles should apply to the telecommunications market as a whole.

The other respondent who disagreed with the proposal commented that if the industry had 100% clarity and agreement on the cost base and volumes used to assess the PAC, and was in a position to accept that these costs were consistent with a well-run-business, some form of link with the CPI could possibly be entertained. They also believed that the CPI control on the PAC as proposed would provide little incentive for eircom to manage costs down. In their opinion a CPI-X (where  $X > \text{CPI}$ ) control might provide the appropriate incentive and may be more likely to deliver the cost reductions and efficiency that the industry is looking for.

### **2.2.1 Director's Position**

The Director would like to clarify that she proposed that the Payphone Access Charge be set by reference to an adjustment based on CPI to be effective from 1<sup>st</sup> April 2003 and not the 1<sup>st</sup> April 2002, as referred to in a typographical error in the consultation paper.

The Director is of the view that to achieve stability in this particular market place, that from the 1<sup>st</sup> April 2003, inclusive, a new rate should be set annually by reference to an adjustment based on the Consumer Price Index (CPI). This new rate will not be subject to revision within the year to which it applies, thereby providing certainty in the market. The Director proposes that this procedure be subject to review within 3 years, without prejudice to the Director's discretion to invoke her powers under the relevant laws.

The Director is also conscious of the social function of payphones and the need for their widespread availability, while at the same time the need to provide an incentive for efficiency in a declining market and considers an adjustment by reference to changes in the CPI to be appropriate in these circumstances.

**Direction 3.2 : From 1<sup>st</sup> April 2003, eircom's Payphone Access Charge will be adjusted annually by reference to changes in the Consumer Price Index (CPI) for the previous calendar year. This decision is made under Regulations 8(5), 8(9), 8(10) and 10(1), 10(3) and 10(5) of the European Communities (Interconnection in Telecommunications) Regulations, 1998, SI 15 of 1998.**



## APPENDIX 1 - LEGISLATION

Both EU and Irish legislation recognise that, in the interests of developing and sustaining competition in the telecommunications sector, the ability of new entrants to the market to interconnect with the network of an incumbent operator is essential.

The most relevant legislative provisions in relation to interconnection are:

- *Council Directive 97/33/EC on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (“the Interconnection Directive”), and*
- *The European Communities (Interconnection in Telecommunication) Regulations, 1998, S.I. No. 15 of 1998, transposing the above directive (“the Interconnection Regulations”).*

Under the legislation, a telecommunications industry operator providing fixed public telephone networks and designated as having Significant Market Power (SMP) in that market is required to publish a Reference Interconnect Offer (RIO) which is based on market needs and to which the Director may direct changes.

The pay phone access charge is a charge for interconnection services between the payphone and the terminating operator for 1800 free phone calls. The charge is levied on the terminating operator for those services.

*eircom* as a SMP operator in the public fixed telephony services and networks market is obliged to publish such interconnection charges as part of the RIO under Regulation 8 of the Interconnection Regulations and the Director has the power to direct *eircom* to justify its charges and where appropriate, direct they be adjusted to ensure transparency and cost-orientation. The Director also has the power under Regulation 10 of the Interconnection Regulations to intervene on her own initiative to “specify issues which shall be included in an interconnection agreement or to lay down specific conditions to be observed by one or more parties to such an agreement”.

The Director may set conditions or make changes under 10(3) in relation to the following:

- Conditions designed to ensure effective competition
- Directions or conditions relating to tariffs
- Supply and usage conditions
- Conditions as to compliance with relevant standards and/or essential requirements

This is not an exhaustive list.

In exercising her functions under Regulation 10 the Director must take into account a number of factors including the need to stimulate a competitive market in telecommunications services and the need to ensure satisfactory communications for users.

In summary, the Interconnection Directive and Regulations place special obligations on an operator who is designated by the Director as having SMP in the market for fixed telephony networks and services. These obligations include:

- interconnection charges should follow the principles of transparency, non-discrimination and cost-orientation;
- the Director may direct an organisation to justify its charges and to adjust these charges where they are not in compliance with these principles;
- a RIO based on market needs shall be published and the Director may direct changes to this offer; and
- charges for interconnection shall be sufficiently unbundled, so that applicants are not required to pay for anything not strictly related to the service requested.

*eircom* is the only operator to have been designated as having SMP in the relevant market to date.