Commission for
Communications Regulation

Response to Consultation and Decision

Rental Price for Shared Access to the Unbundled Local loop

Response to Consultation Document 08/23 and Decision

Decision No:	D03/08
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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation
Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland
Telephone +353 1 804 9600 *Fax* +353 1 804 9680 *Email* info@comreg.ie *Web* www.comreg.ie

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1 Executive Summary

The local loop is the physical path, usually copper, which connects a local exchange to an end user. It is the most difficult part of a telecoms network for Eircom's competitors to replicate economically. Because of this, Eircom is legally required to allow competing operators to gain access to it, in order to allow them to provide communications services. This process is known as Local Loop Unbundling, ("LLU"). When availing of LLU, the alternative operator has the option to rent either the entire loop ("full unbundling"), or, alternatively, to rent only the high capacity frequencies within the loop which are then used to provide Broadband services ("LLU Line Share"). This latter option leaves the low capacity frequencies to Eircom to be used to provide voice services on either a Retail or a Wholesale basis. In summary LLU Line Share allows an alternative operator to provide its own Broadband products without having to resell Eircom's Wholesale Broadband and without having to provide its own voice capability. There are therefore distinct advantages to LLU Line Share for Eircom's competitors. This paper is concerned specifically with the price of the monthly rental charge from Eircom for LLU Line Share.

Until now the price of line share has been governed by a decision made by the Office of the Director of Telecommunications Regulation ("ODTR")[1] in 2001, as published in ODTR Decision No. D8/01. This decision has resulted in the current price of €8.41. On 19 March 2008, ComReg published Document No. 08/23[2] which proposed, based on benchmarked data, a new maximum price of €2.94 per month, pending a full review of the methodology for LLU pricing which is being conducted in parallel. This proposal was launched as a result of evidence of an increased demand for the product. ComReg's view is supported by a 65% increase in the number of new LLU Line Share connections over the period December 2007 to April 2008 based on ComReg data collected in quarterly report questionnaires[3].

Having considered the responses to this Consultation, ComReg has now decided that the initial proposal to revoke the previous ODTR Decision Notice D8/01[4], insofar as it relates to LLU Line Share recurring charges and the methodology for the calculation of LLU Line Share recurring charges, as the current mechanism for arriving at the price of LLU Line Share, is still appropriate. ComReg has also decided to proceed to impose a maximum price of €2.94 per month for an interim period of one year. This decision corrects the current anomaly in the way in which Eircom recovers the cost of the local loop which could give rise to an over recovery of network costs from other operators availing of LLU Line Share.

[1] ODTR is the predecessor of the Commission for Communication Regulation ("ComReg").

[2] ComReg Document No. 08/23, Consultation on the price of shared access to the unbundled local loop, dated 19th March 2007

[3] ComReg Quarterly Report Questionnaires – Q1 2008-06-26.

[4] Local Loop Unbundling – Eircom's Access Reference Offer (ARO); Decision Notice D8/01; Document No. ODTR01/27R, dated September 2001.

ComReg is also in the process of a full review of all LLU related prices and it is expected that this will be finalised towards the end of 2008. However, ComReg firmly believes that given the current and potential demand from industry for LLU Line Share, that the price should be revised now, to ensure operators are not exposed to excessive wholesale prices.

2 Introduction

ComReg Consultation Document No. 08/23 addressed the issue of how the price of shared access to the local loop (referred to in this document as "LLU Line Share") for alternative operators, is to be determined. It suggested a number of methodologies which can be adopted for LLU Line Share pricing and also proposed that the price of LLU Line Share could be based on an average of comparable prices across the EU 15[5] for an interim period, in the event that an alternative approach cannot be adopted in a timely manner. The revised price, based on this benchmark,[6] would be a maximum of €2.94 per month[7] and would represent a reduction of 65% from the current level.

In ComReg Decision No. D8/04[8] ("the SMP Decision") Eircom was designated with significant market power ("SMP") in the market for Wholesale Unbundled Access to the Local Loop. As a consequence of this, certain SMP obligations were imposed on Eircom. Accordingly, Eircom is obliged to offer cost oriented prices for LLU (both fully unbundled and shared lines) services and associated facilities on the basis of forward looking long run incremental costs, ("FL-LRIC") pursuant to the SMP Decision and Regulation 14 of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 ("the Access Regulations[9]"). The Access Regulations transpose Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities ("the Access Directive"[10]).

LLU comes in two main forms, full unbundling (also known as unbundled local metallic path or "ULMP") and shared access to the local loop (also known as LLU Line Share). ComReg determined the price of ULMP in Decision D15/04.[11] This Consultation Document is concerned with the pricing for LLU Line Share.[12]

[5] EU15, being the number of Member countries in the European Union prior to the expansion to include the twelve candidate countries on 1 May 2004.

[6] Directive No.2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, provides for the use of benchmarking as a form of price control. Article 13 defines "*National regulatory authorities shall ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote efficiency and* sustainable competition and maximise consumer benefits. In this regard national regulatory authorities may also take into account of prices available in comparable competitive markets".

[7] Shared access - Monthly rental charges 2007: http://www.cullen-international.com/ Western Europe / Cross Country Analysis / 4. Local Loop Unbundling charges / ………… Note: Finland: Taken simple average of 2 regulated line share prices (Elisa & Sonera). Note: Cullen International updated revalued GBP to EURO June 2008. As a result, of the appreciation of the EURO to GBP, the LLU Line Share price for UK has decreased from €1.91 to €1.62. This would change the EU15 average to €2.92. As there is no material difference, ComReg will proceed with EU15 benchmarked price of a maximum of €2.94.

[8] Designation of SMP and Decision on Obligations – Market Analysis: Wholesale unbundled access (including shared access) to metallic loops and sub-loops; Document 04/70; D8/04; published on 15 June 2004.

[9] S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003.

[10] Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities.

[11] Decision Notice and Direction: Local Loop Unbundling – Review of Eircom's ULMP monthly rental charge; D15/04; Document No.04/110; published on 5 November 2004.

A product description of LLU Line Share is provided in Appendix 1 to Service Schedule 103, Product Description for Line Sharing, of the Eircom Access Reference Offer (**"the ARO"**).[13] It provides that:

'The Line Sharing product allows the services provided by Eircom and a DSL service offered by an Access Seeker, to be integrated over the same two wire metallic path. The points of demarcation for Eircom will be the Network Termination Unit ("NTU") in the customers' premises and the Access Seeker's connection blocks on the MDF…'

Responses from a number of Other Authorised Operators ("OAOs") to this Consultation together with recent volumes processed by the incumbent, clearly indicates that there is sufficient demand for LLU Line Share to justify regulatory intervention at this stage. ComReg also believe that OAOs and consumers will benefit from the ability of operators to provide Broadband over OAOs infrastructure which will allow differentiation at the service level rather than being constrained to the Wholesale Bitstream offers of the incumbent Eircom. LLU Line Share may also allow OAOs the choice of giving the customer, that they currently service through Single Billing Wholesale Line Rental ("SB-WLR") and Bitstream, a more smooth transition to full unbundling. Full unbundling has additional complexities in relation to jumpering the full telephone line at the local exchange of the customer and porting a customer's fixed line number.

ComReg in the Direction attached to this paper revokes the ODTR Decision Notice D08/01, insofar as it relates to LLU Line Share recurring charges and the methodology for the calculation of LLU Line Share recurring charges. ComReg is also imposing a revised maximum LLU Line Share rental price of €2.94 per month for an interim period as a result of this Consultation, pending completion of a full LLU price review.

ComReg received eight responses in relation to its Consultation Document. These responses were received from the following:

1. Alternative Operators in the Communications Market ("ALTO")
2. BT Communications Ireland Limited ("BT Ireland")
3. Eircom Limited
4. Magnet Networks Limited
5. Meteor Communications Limited
6. O2 Communications (Ireland) Limited ("O2")
7. Smart Telecom
8. Vodafone Ireland Limited

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[12] Directive No.2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, Annex II defines shared access as *'…the provision to a beneficiary of access to the local loop or local sub-loop of the notified operator, authorising the use of non voice band frequency spectrum of the twisted metallic pair; the local loop continues to be used by the notified operator to provide the telephone service to the public.'*

[13] Access Reference Offer from Eircom Ltd; Appendix 1 to Service Schedule 103; Product description for line sharing; page 74, version 1.18.

In the following section, ComReg has summarised the key points of each response in relation to each of the questions raised in the Consultation Document. ComReg has then responded to any significant points raised by the respondents and given its final view in relation to each of the questions posed in ComReg Consultation Document No. 08/23. The Direction which shall be issued to Eircom is attached in Annex A.

3 Setting a revised Rental Price for Shared Access to the Unbundled Local Loop

3.1 Summary of Consultation Proposal

Despite recent progress, Ireland still has one of the lowest Broadband penetration rates of the EU 15 countries[14]. One of the contributing factors for this is the limited usage of LLU products in Ireland, which is the lowest as a % of total DSL lines in the EU 15[15]. The price of LLU Line Share is the most expensive within the EU 15 countries, where the monthly charge is €8.41, compared to a low in the Netherlands of €0.37 per month and an EU 14 average (i.e. EU 15 excluding Ireland) of €2.94 per month. It is very possible that this relatively high price has, amongst other factors discouraged the use of LLU Line Share.

Clearly, given current demand for Broadband, the matter can no longer remain unaddressed and it is therefore timely to revisit the issues raised in ComReg Consultation Document No. 04/111[16] and ComReg Consultation Document No. 05/04[17].

The existing methodology for calculating the LLU Line Share monthly rental charge was set out in ODTR Decision Notice D8/01[18]. Under this treatment, the underlying cost of the entire local loop was to be shared equally between voice and data with lines rented under LLU Line Share effectively being treated as half lines. This was reflected in the price methodology where LLU Line Share was determined as being 50% of the cost of ULMP, plus wholesale billing and administration costs.

In assessing the appropriateness of this methodology, one consideration is that Eircom's own Broadband products appear to be relatively cheap compared to the price of LLU Line Share. For example the price of Eircom's 1mb/s Wholesale Broadband product is €9.48[19] per month as compared to €8.41 for LLU Line Share.

Another important consideration is that the cost of a local loop on a bottom up ("BU") long term incremental cost ("BU-LRIC") basis is already fully recovered through the price charged for narrowband access services whether via retail access, Wholesale Line Rental or via full local loop unbundling.

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[14] OECD Broadband Portal, May 2008. Broadband penetration figures as of December 2008.

[15] European Commission, COCOM07-50, "Broadband access in the EU: situation at 1 July, 2007".

[16] ComReg Consultation Document No. 04/111 - Local loop unbundling line share, Consultation on pricing principles, dated 12th November 2004.

[17] ComReg response to Consultation, further Consultation and draft direction, Document No 05/04 – Rental price for shared access to the unbundled local loop, dated 21st March 2005.

[18] Local Loop Unbundling – Eircom's Access Reference Offer (ARO); Decision Notice D8/01; Document No. ODTR01/27R, dated September 2001.

[19] Eircom Wholesale Bitstream Price List 3.9
http://www.Eircomwholesale.ie/dynamic/pdf/bitpricelistv3.9_v2.pdf

The Consultation Document No. 08/23 proposed that because voice and Broadband services must in total recover the cost of the loop in aggregate, it would be better to conduct a final review of these prices simultaneously. Nevertheless, because there appears to be a manifest over recovery of the cost of the loop, ComReg believes that in default of an appropriate alternative proposal from industry it must take action. On review of the responses from industry (as summarised in the following sections) and the lack of a more appropriate alternative to the benchmark price proposed by ComReg, ComReg has therefore decided to implement a final maximum price of €2.94 for an interim period of one year until such time as parallel work streams on the full LLU pricing are completed. This maximum price is to be based on the simple average of LLU Line Share prices currently available across the EU 15, excluding Ireland. The current LLU Line Share pricing methodology and the actual price is set out in ComReg Decision Notice D08/01[20].

3.1.1 CONSULTATION QUESTION

Q.1. Do you agree or disagree with the reasoning set out above? In particular do you agree or disagree that current LLU Line Share pricing may represent an over recovery of cost by Eircom and may make it unduly difficult for LLU Line Share users to compete against Eircom's Wholesale Broadband product? Please detail your response and where possible supported with evidence.

3.1.2 View of respondents

ComReg received eight responses to this question.

Four respondents agreed that the current LLU Line Share price appears to represent an over recovery of cost by Eircom and makes it extremely difficult, if not impossible for LLU Line Share users to compete against Eircom's Bitstream product offering. A further two respondents generally agreed that a price review was warranted, but this price review should be completed in the context of a full LLU review. Two other respondents disagreed with ComReg's approach.

Below is a summary of the substantive points made by respondents.

One of those respondents noted that the high price of LLU Line Share, since the introduction of LLU in the market, has discouraged market entry and encouraged the purchase of Bitstream. The respondent argues that should the price now fall, then the question of migration from one product to another arises. The respondent believes that the low current margin, coupled with the unacceptably high price of migrations, means that migration is simply out of the question thus denying competitive development and consumer choice.

A second respondent believes that the current LLU Line Share rental price is excessive and expensive compared to other EU / OECD countries. The respondent believes it represents an over recovery of the cost of the local loop and the existing methodology is out of date and not reflective of current market trends and

[20] Local Loop Unbundling – Eircom's Access Reference Offer (ARO); Decision Notice D8/01; Document No. ODTR01/27R, dated September 2001.

comparisons. The respondent maintains that Eircom's own product (Bitstream Connect) is cheaper than LLU Line Share, thus making it uneconomic to provide a LLU Line Share service. This respondent also considers that the introduction of migration to the LLU market is welcomed, but the cost of migrating from Bitstream to LLU Line Share is currently prohibitive and the respondent considers this to represent a margin squeeze. The respondent believes that connection charges should address the physical work to set up a connection and order handling to process the order. The respondent claims the rental charge is for the use of the asset and that the maintenance and the process costs should be low. The respondent believes OAOs should have the ability to make a return on investment.

A third respondent believes that LLU Line Share represents an over-recovery of costs. The respondent maintains that the difference in price between Bitstream and LLU Line Share rental charges, make it uneconomic for an OAO to provide Line Share services. In addition, the respondent believes the costs of migrating from Bitstream products to LLU Line Share products make it prohibitive. The respondent considers that this is effectively a margin squeeze.

A fourth respondent stated that, Ireland should be a market leader in the information and communication technologies (“ICT”) sector. The respondent believes that LLU Line Share should only include incremental costs, but the respondent accepts an EU Benchmarked average as an interim solution.

A fifth respondent agrees that current LLU Line Share price method warrants review. The respondent believes that there could be an over-recovery of costs, but price determination should be set on basis of proper and comprehensive analysis. The respondent maintained that this has not been carried out yet.

A sixth respondent considers the optimal approach is to set the price of LLU Line Share, following a comprehensive review of the full LLU price and associated prices. The respondent believes this would set prices on the basis of revealed efficient costs and would have due regard for striking the appropriate balance between efficient service based competition and efficient infrastructure based competition.

A seventh respondent believes that demand has been expressed in very limited terms in ComReg Consultation Document No. 08/23. The respondent believes that necessity through market developments and demand can only be demonstrated through a comprehensive market analysis. The respondent cites Regulation 9 of the Access Directive, where there is an imposition or amendment of an Access Obligation, ComReg is obliged to ensure that any imposition or amendment of an Access Obligation is proportionate, justified and imposed following Consultation in accordance with Regulation 19 and 20 of Framework Regulations[21]. The respondent argues that Regulation 27(6) of the Framework Regulation obliges ComReg to take

[21] 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.

into account market developments by carrying out further market analysis of a relevant market after such period as it considers appropriate. The respondent claims that the latest market analysis was 2004, and this immediate move to revise Eircom's obligation is not justified, or consistent with the EU Framework.

The eighth respondent questions the Broadband statistics put forward in the Consultation. The respondent believes that Ireland is not at the end of the scale of Broadband roll-out, and per European Commission COMCOM07-50 Broadband in EU report[22], Ireland is 3rd in growth (lines per 100 users), the respondent claims Ireland is conducive to rapid growth of fixed Broadband. The respondent claimed that there had been a factual inaccuracy in the initial Consultation Document No. 08/23 where it stated that "there are 2,111,814 fixed lines in Ireland". This respondent argues that because of the presence of ISDN lines the number of lines available for sharing is closer to 1.5 million. This respondent also disagrees that the methodology set out in D8/01 allows for over recovery of costs and results in high prices, compared to other countries.

The respondent believes there is no evidence of over recovery of costs or margin squeeze with other Eircom wholesale product offerings. It describes a margin squeeze as occurring when "*the price charged in the upstream market by a vertically integrated operator does not enable its competitors to operate profitably in the downstream market….*" A situation that, it claims, does not prevail in this case. The respondent believes that OAOs are most likely to utilise the LLU Line Share product to deliver services based on ADSL2+ technology delivering speeds in excess of 2Mb/s, therefore these offerings are more comparable to Eircom's 12 Mb/s Bitstream products, currently €75 per month and therefore there is no issue of margin squeeze.

The respondent made some general observations on the co-existence of regulated wholesale prices such as LLU, Wholesale Line Rental and Bitstream and the various price controls imposed such as cost based and retail minus. This respondent argues that regulated prices should be cost based and that regulated prices cannot be reviewed independently of each other. The respondent also maintains that the current price for LLU Line Share does not allow for the recovery of incremental costs arising from the fact that the line is shared. The respondent refers back to Decision Notice D8/01, where the ODTR discounted using the economic theories of Ramsey Pricing and Efficient Component Pricing ("ECPR"), but endorsed the use of Shapely allocation, Co-operative Bargaining theory and the Share of Stand Alone costs to endorse the conclusion that common costs should be equally shared by the two services using the same facility.
The respondent argues that operators should decide their strategies having regard to regulatory framework, including available regulated products, not the other way around. The respondent claims that according to the ERG's common position on the remedies paper[23]; "*The NRA has the ability to change the incentive properties of the*

[22] COMCOM07-50 – European Commission, Communications Committee – Broadband access in the EU: situation at 1 July 2007.

[23] ERG (06) 33 – Revised ERG common position on remedies, approved at Plenary, 18th May 2006.

regulatory framework over time, but must do so in a predictable and transparent manner, so that business decisions can be planned accordingly".

3.1.3 ComReg's Position & Conclusion

ComReg has considered all responses and remains of the view that the current LLU Line Share price does not reflect a cost oriented price. As such it is necessary to review the price now. Alternative operators indicated in their responses their demand for a LLU Line Share product that is appropriately priced, together with a fit for purpose migration process.

Quarterly report questionnaire data supports ComReg's view that there is a current demand for LLU Line Share. The number of LLU Line Share connections has risen by 65% between December 2007 and April 2008, albeit from a small starting point. The low initial base can be attributed to, among other things the lack of a fit for purpose migration process from other wholesale products, which were mainly resolved in late 2007. ComReg believes that it is quite likely that the trend in uptake is likely to continue because of the in situ base of customers with OAOs who are currently served by means of Eircom's Bitstream product. It is important that the price of Line Share should not unfairly discourage further migration by virtue of a price which is not cost oriented. This makes it all the more important to address the 50% allocation of the full LLU price which ComReg believes is not an appropriate representation of the incremental costs of providing LLU Line Share.

This Response to Consultation and Decision is concerned with an existing SMP obligation and how that obligation of cost orientation should be complied with. The respondent is incorrect to state that a market analysis is required in order to do this. Even the imposition of an SMP obligation does not require an additional market analysis, but rather a justification that the obligation in question is proportionate in relation to the nature of the problem identified[24]. Clearly it cannot be the case that a new market analysis is required here, no new obligation is being imposed in this case. The market analysis and the cost orientation obligation are contained in ComReg Decision No. D8/04. Decision No. D8/04 found Eircom to have SMP in the market for wholesale access (including shared access) to metallic loops and sub-loops. Section 9 of that Decision imposed on Eircom obligations in relation to price control and cost orientation as provided for by Regulation 14 of the Access Regulations. Under Regulation 17 of the Access Regulations, ComReg may issue a direction for the purposes of further specifying requirements to be complied with relating to an obligation imposed by or under the Access Regulations to an undertaking to do or refrain from doing anything which ComReg specifies in the direction. ComReg is issuing Eircom with such a direction. ComReg complied with the obligations under Regulation 9 of the Access Regulations and Regulations 19, 20 and 27 of the Framework Regulations when it imposed SMP on Eircom together with the SMP obligations in decision D8/04. In this Direction ComReg is proposing to specify the requirement that the cost orientation obligation already imposed on Eircom further to Regulation 14 of the Access Regulations in Decision D8/04 be interpreted in the manner outlined in this Response to Consultation and Decision

[24] Recital 15 of the Access Directive 2002/19/EC

attached in Annex A, as a maximum final benchmarked price for an interim period of one year. This is pending a full review of all LLU related prices.

While ComReg notes the concerns raised by some respondents that a fully analysed price should be complete, rather than a benchmarked price, ComReg believes that the current proposal strikes the right balance between a cost oriented price and that which is currently being charged. The proposed price of a maximum of €2.94 does not appear to be materially out of line with the proposals made by operators which were submitted as part of the responses to Consultation.

ComReg acknowledges that Ireland has preformed well in terms of Broadband roll-out over recent years and is above the EU average Broadband growth, however this recent growth cannot be viewed in isolation, without consideration of absolute Broadband penetration rates. Growth has occurred from a very low base and Ireland's current position[25] is also reflected in COMCOM07-50, where Ireland was ranked 14th in EU27 and 13th in EU15, with Broadband penetration rate of 15.6%. Ireland is ranked below the EU27 average of 18.2% and below the EU15 average of 22% for Broadband penetration. According to ComReg's latest quarterly report, Ireland's broadband penetration has improved further over the period of 2007, however, as of December 2007; Ireland is still ranked at the lower end of the EU15[26].

ComReg notes that there are 2,118,323 fixed paths in Ireland, of which 1,653,229 are direct access fixed paths, with a Digital subscriber Line ("DSL") Broadband subscriber base of 507,100[27]. In relation to the inaccuracy pointed out by one of the respondents in relation to the number of fixed lines in Ireland, ComReg does not believe that this discrepancy is material for the purposes of this Consultation.

ComReg believes that the incumbent has an obligation to ensure no margin squeeze is evident between any of its retail and wholesale offerings, including 1Mb/s and 2Mb/s products. In reference to respondents' claims of a margin squeeze being evident, ComReg has not made any findings, within this Consultation process, in respect to any of the claims made by OAOs.

In addition, ComReg has not received any information in the submissions, either based on costs submitted or on any economic rational which demonstrates that the cost of Line Share is anywhere close to the current price. ComReg therefore believes this demonstrates further the need to review the cost which ComReg believe does not comply with cost orientation obligations currently imposed on the incumbent Eircom.

ComReg notes one respondent's view that wholesale prices should not be reviewed independently of each other and broadly agrees with this view. It is precisely this consideration that has prompted the current review in that the current LLU Line

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[25] I.e. Penetration rate. Lines per 100 population.

[26] ComReg Quaterly Reports – ComReg Document No. 08/43.

[27] Source ComReg quarterly key data report: http://www.comreg.ie/_fileupload/publications/ComReg0767.pdf.

Share price appears to be inconsistent with current pricing of Wholesale Broadband, and also for the reasons described below, with the price for full unbundling.

ComReg has considered the methodology of the previous Decision D8/01 in the context of the respondent's comments. One of the possible key implications of such a methodology is to the extent that line share recovers a share of the common costs of the network, PSTN prices (both Wholesale and Retail) and whether these should be reduced accordingly if over recovery of cost is to be avoided. There appears to be universal agreement that the cost of the local loop should be recovered between voice and broadband services *in aggregate*. ComReg notes that one of the respondents who is in clear disagreement with ComReg's proposal agrees in its response that the avoidance of over recovery is a legitimate principle. ComReg also notes that in practice no PSTN price in Ireland has been adjusted to account for this consideration. If, for example, an operator is using LLU Line Share and Wholesale Line rental, ComReg believe that an over-recovery will occur on this line unless the wholesale Access price for the lower frequency product is reduced by the amount of common cost by which LLU Line Share has been marked up. Similarly, if an operator is using LLU Line Share and Eircom continues to provide voice services on that line there will be a similar over-recovery. It follows that where the full cost of a local loop has already been recovered via the charge from full unbundling and wholesale or retail voice services, the price for line share should approximate its incremental cost. ComReg is of the view that its benchmark proposal is very unlikely to be below any incremental cost calculation. This is because ComReg is aware that some of the countries within the benchmark allocate a share of common cost to LLU Line Share while at least some of those that use incremental costing include fault repair in the monthly price. In Ireland fault repair is charged for separately.

As regards the existence or otherwise of possible competition problems in the context of the relationship to the market for Wholesale Broadband Market, ComReg has two observations worth noting. Firstly, European Commission guidance[28] states "*According to Article 14(3) of the framework Directive*, "*where an undertaking has significant market power on a specific market, it may also be deemed to have significant market power 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*".

Furthermore, these guidelines also state "*The foregoing considerations are also relevant in relation to horizontal markets. Moreover, irrespective of whether the markets under consideration are vertical or horizontal, both markets should be electronic communications markets within the meaning of Article 2 of the Framework Directive*".

[28] Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (2002/C 165/03).

ComReg also notes that Eircom has also been designated with SMP in the market for Wholesale Broadband Access[29]. ComReg is of the view that it is entirely legitimate for ComReg to be concerned about possible horizontal leverage from one wholesale market to another. In this case there is a clear risk that the current pricing of LLU Line Share relative to the price of wholesale Broadband serves to foreclose operators who may wish to use LLU Line Share.

The second observation is that prices in the market for wholesale Broadband are determined by a formula which provides a discount against Eircom's retail prices, on a retail minus basis.[30] This discount (minus) against retail prices is intended to reflect the avoidable retail costs of an efficient operator of a certain scale. This means that to the extent that the price of wholesale broadband prevents an LLU Line Share operator from competing against products based on wholesale Broadband, there is also, by implication, the increased possibility that Eircom's own retail prices could cause a margin squeeze when set against an inappropriate price for LLU Line Share.

3.1.4 Consultation Question

Q.2. Do you agree or disagree that ComReg should now revoke previous ComReg Decision Notice D8/01, insofar as it relates to LLU Line Share recurring charges and the methodology for the calculation of LLU Line Share recurring charges, as it is no longer appropriate, given the changes in the Broadband market and the demand for LLU Line Share and the over recovery of cost that this decision gives rise to? Please detail your response and where possible supported with evidence.

3.1.5 View of respondents

ComReg received seven responses to this question.

Four respondents generally agreed that ComReg should immediately revoke D8/01 insofar as it relates to LLU Line Share recurring charges and the methodology for the calculation of LLU Line Share recurring Charges. It is no longer appropriate for the calculation of LLU Line Share, given current market conditions. A further two respondents generally agreed that D8/01 may be revoked, but only once a price review is completed in the context of a full LLU review. A final respondent disagreed with ComReg's position.

Below is a summary of the substantive points made by respondents.

One respondent believes that continuation with LLU Line Share pricing in the current dynamic market would result in continuing an over recovery of Eircom's costs as the market continues to grow. The respondent believes that the inherent cost advantage of Bitstream distorts competition in the market and will not be reversible given the high costs of migration.

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[29] ComReg decision D03/05 24 February 2005.

[30] ComReg Document 06/01, Decision D1/06.

A second respondent believes that the high price of LLU Line Share has acted as a barrier to entry and can be seen from ComReg's quarterly reports. The respondent believes that the high price also represents an over recovery by Eircom and considers that it has given rise to a potential margin squeeze between LLU Line Share and Bitstream.

Another respondent believes that ComReg should immediately revoke D8/01, and set prices based on average prices in comparable EU countries, but only when an assessment of the associated costs and benefits are clearly demonstrated and there is a net benefit.

An additional respondent agrees that current LLU Line Share price and method warrants review, but it should only be replaced following a proper review and Consultation on an appropriate methodology for determining the price.

A final respondent believes there is no over recovery of costs. To revoke D8/01 would constitute a decision in excess of ComReg's powers and would be unlawful. The respondent cites the Framework Regulations, where prior to imposing, withdrawing or amending SMP, a market analysis in accordance with Regulation 27(2) needs to be carried out. The respondent believes the purpose of a market analysis is precisely to take account of changes in the market; therefore it is not possible for ComReg to argue about changes in market dynamics, until the market analysis of relevant markets has been completed. The respondent further claims that interim measures can only be adopted pursuant to Regulation 20(8) of the Framework Regulation.

3.1.6 ComReg's Position & Conclusion

In general, respondents agreed that it is appropriate to revoke a decision which now appears to be out of date given the significant changes in the electronic communications market since it was made in 2001. Broadband in Ireland was virtually non existent at that time and as such, LLU Line Share was not in demand. The dynamics of the electronic communications market have clearly changed given the take up of Broadband in Ireland

Regulation 20(8) of the Framework Regulations provides that where the Regulator considers that there are exceptional circumstances justifying an urgent need to act by way of derogation from the procedures set out in Regulations 20(3), (4), (5) and (6) in order to safeguard competition and protect the interests of users, it may immediately adopt a proportionate measure on a provisional basis. Regulations 20(3) and (4) apply to measures falling within the scope of Regulations 26 or 27 if the Framework Regulations or Regulations 6 or 9 of the Access Regulations and which affect trade between Member States. Regulation 20(5) deals with a draft measure to define a relevant market or a proposed decision to designate an undertaking with SMP, which would affect trade between Member States. Regulation 20(6) refers to the European Commission having taken a decision under a procedure referred to in Article 22(2) of the Framework Directive[31] requiring the

[31] 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.

Regulator to withdraw a draft measure. None of these regulatory provisions are relevant here and accordingly ComReg has not invoked Regulation 20(8) of the Framework Regulations.

Regulation 20(8) refers to a new finding of SMP, a new market definition, or the imposition of a new SMP obligation under Regulation 9. There is no new finding of SMP in relation to this consultation. There is also no new imposition of an SMP obligation pursuant to Regulation 9. Eircom has been designated with SMP pursuant to ComReg Decision No. D8/04 and has had an obligation of price control pursuant to Regulation 14 of the Access Regulations imposed upon it in Section 9 of that Decision. ComReg in this consultation is further specifying a requirement to be complied with in relation to that price control obligation and is directing Eircom to apply a benchmarked maximum final price in respect of LLU Line Share for a period of one year pending the outcome of the full review of all LLU prices.

In relation to the response regarding ComReg's powers to actually revoke its decisions, ComReg does indeed have the power to revoke one of its decisions or a part of a decision as in the case of this consultation, where ComReg will revoke part of Decision No. 08/01, in so far as it relates to LLU Line Share charges.

3.2 Broadband in Ireland

According to ComReg Consultation Document No. 08/23, ComReg summarises **international benchmarks** for the price of LLU Line Share, reviews the **Investment Ladder** approach for OAOs and looks at **inter-platform issues** in the Irish Broadband market

International Benchmarks

On review of the 'Cullen International' benchmark for LLU Line Share pricing in the EU in 2007[32], Ireland is at the top end with a €8.41 LLU Line Share monthly rental charge, compared to a low in the Netherlands of €0.37 and an EU 15 average of €2.94, excluding Ireland.

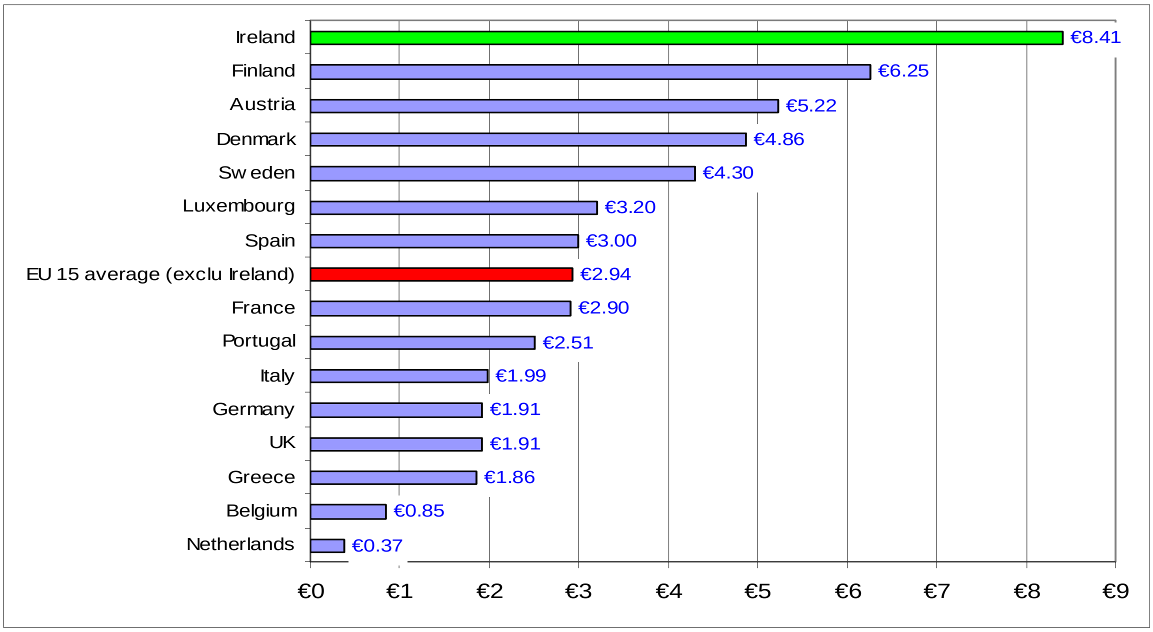
[32] Shared access - Monthly rental charges 2007: http://www.cullen-international.com/ Western Europe / Cross Country Analysis / 4. Local Loop Unbundling charges / ………… Note: Finland: Taken simple average of 2 regulated line share prices (Elisa & Sonera).

Figure 1 - EU 15 LLU / LLU Line Share Monthly Rental (€) Benchmark (excl. Ireland)

Country	LLU rental (€)	Line Share rental (€)	Line share as % of LLU
Netherlands	€8.00	**€0.37**	5%
Belgium	€9.29	**€0.85**	9%
Greece	€8.48	**€1.86**	22%
UK	€9.82	**€1.91**	19%
Germany	€10.50	**€1.91**	18%
Italy	€7.64	**€1.99**	26%
Portugal	€8.99	**€2.51**	28%
France	€9.29	**€2.90**	31%
EU 15 average (exclu Ireland)	€9.36	**€2.94**	**36%**
Spain	€9.72	**€3.00**	31%
Luxembourg	€10.75	**€3.20**	30%
Sweden	€7.72	**€4.30**	56%
Denmark	€9.72	**€4.86**	50%
Austria	€10.70	**€5.22**	49%
Finland	€10.35	**€6.25**	60%

Source: Cullen International

Figure 2 - EU 15 LLU Line Share Monthly Rental (€) Benchmark

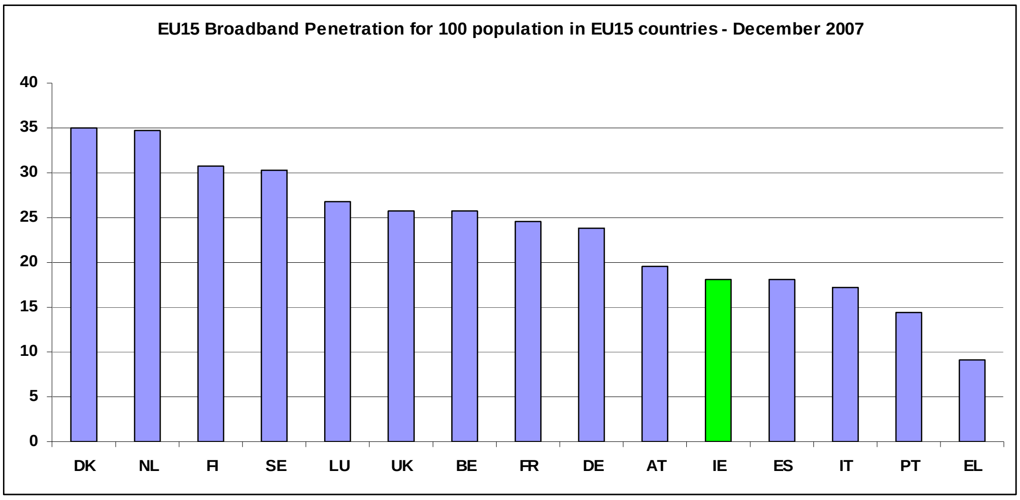


Source: Cullen International

Ireland is also at the lower end of the EU15 benchmark for Broadband penetration[33]. ComReg acknowledges that Ireland has achieved significant Broadband growth in recent years, but this is growth from a low base and must be kept in perspective.

[33] OECD Broadband Portal, May 2008. - December 2007 statistics. The previous figures put forth in Consultation Document No. 08/23 were derived from COCOM07-50, “Broadband access in the EU at July 2007. Ireland.

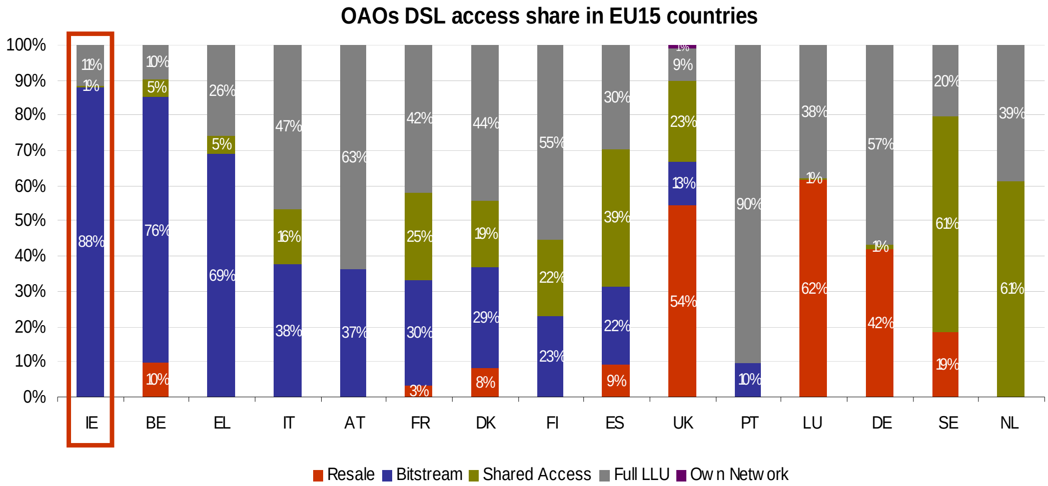
Figure 3 - EU-15 – Broadband penetration



Source: OECD, May 2008

The predominant delivery technology of DSL, in Ireland, is Bitstream, with only 1% delivered utilising LLU Line Share[34]. Another feature of the Irish Broadband market is the extensive use of Bitstream products instead of local loop unbundling by OAOs. While demand for LLU Line Share has grown significantly since December 2007[35], it is also growing from a low base, where Wholesale Bitstream still remains the predominant Wholesale DSL access delivery product for new entrants[36].

Figure 4 - EU-15 – DSL access shares



Source: European Commission – COCOM07-50 'Broadband access in the EU: situation at 1 July 2007'

[34] European Commission, COCOM07-50, " Broadband access in the EU: situation at 1 July 2007.

[35] Based on ComReg data collected in quarterly report questionnaires.

[36] ComReg Quarterly Reports – ComReg Document No. 08/43.

3.2.1 Consultation Question

Q.3. Do you agree or disagree that based on the above comparison to other countries that LLU Line Share in Ireland is expensive? Please detail your response and where possible supported with evidence.

3.2.2 View of respondents

ComReg received six responses to this question.

Four respondents generally agreed that LLU Line Share in Ireland is expensive, in comparison to other countries. The other two respondents generally disagreed with the use of a simple EU15 benchmark to determine that the LLU Line Share price is expensive.

Below is a summary of the substantive points made by respondents.

One respondent believes that the current LLU Line Share price is excessive and should be reduced immediately. The respondent agreed that when comparing Broadband penetration in Ireland with higher penetration rates in Belgium and Netherlands, a major difference has to be price. The respondent believes that corresponding reduction in Ireland would likely see increased Broadband demand.

A second respondent believes LLU Line Share is too expensive based on benchmarked comparisons and more so, based on the cost of providing the service and the over recovery aspect.

Another respondent believes that the price comparison with the EU15 shows that Ireland has the highest price, and this is fine as an indicator, that should signal ComReg to carry out further work. The respondent, however, believes that it is not possible to make a judgement on whether a price is too high simply on benchmarked data, this requires full analysis.

The final respondent believes the figures set forth in the Consultation are too narrow and ComReg's conclusion that the LLU Line Share price is expensive is too simplistic. The respondent believes Ireland is a high cost country, and there was no consideration to purchasing power parity ("PPP") in benchmark figures. The respondent believes ComReg ignored the fact that the (cost-based) price for ULMP in Ireland is higher than in the other EU15 member states, and that, in this context, the price for LLU Line Share, as compared with the price of full ULMP, is similar and even lower than in other countries[37]. The respondent claims that the range of LLU Line Share price as % of the full ULMP price is broad across EU15 (5% to 60%), where the mean is 47.7%. The respondent further notes that Denmark, Finland and Sweden are among the top four countries with the highest Broadband penetration rates per 100 populations and these countries have an LLU Line Share price as a % of the full ULMP price of 50%, 60% and 56% respectively. The respondent argues that the other country in the top four, with the second highest

[37] COMCOM07-50 – European Commission, Communications Committee – Broadband access in the EU: situation at 1 July 2007.

penetration rate, the Netherlands, has a LLU Line Share price that is 5% of full ULMP price. The respondent's conclusion is that there is no correlation between absolute level of LLU Line Share Price as a % of LLU and Broadband penetration.

3.2.3 ComReg's Position & Conclusion

ComReg acknowledges the views of the first four respondents who generally agreed that LLU Line Share in Ireland is expensive, in comparison to other countries.

ComReg has assessed the cost recovery associated with the local loop, and it is clearly within the full ULMP monthly rental. ComReg has also looked at the likely incremental costs of providing LLU Line Share, and these are not material. In fact they could be well below the EU15 benchmarked figure of a maximum of €2.94.

ComReg has intentionally chosen to benchmark the EU15 as opposed to the EU27, as the EU15 countries represent a more comparable sample group. The price of LLU Line Share as a % of LLU is irrelevant, as ComReg has based its benchmark purely on the actual prices of LLU Line Share across the EU15 and ComReg re-emphasises its view that the full cost is recovered through ULMP. The argument made by the respondent that there is no correlation between Broadband penetration and the LLU Line Share price, is irrelevant, as it is ComReg's intention to ensure that the cost orientation obligation is respected by the SMP operator when pricing LLU Line Share, and to ensure operators are not exposed to excessive wholesale prices.

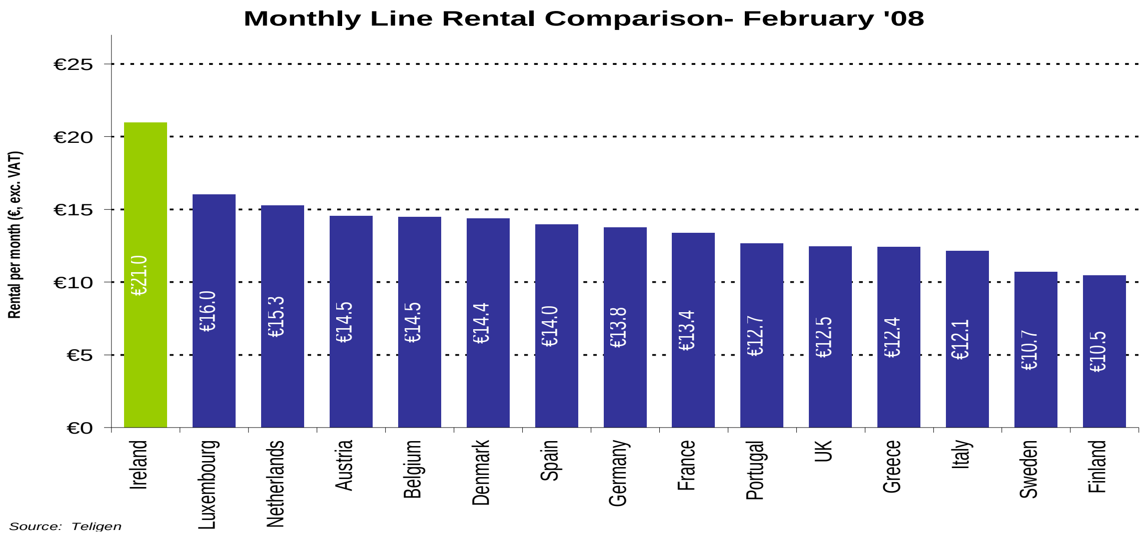
Undertaking a benchmarking exercise and using a benchmarked figure is provided for in Article 13 of the Access Directive, under Directive No. 2002/19/EC and Regulation 14(3) of the Access Regulations.

ComReg has selected objective criteria for the comparison with other countries. These countries have a similar Electronic Communications Regulatory regime as Ireland over a similar period. In general, these countries tend to have the most developed telecommunications sectors in terms of Broadband in Europe. Most of these countries have a much higher Broadband penetration rate, however Ireland is moving in the right direction to reach similar levels. Also the relative levels of cost in these countries are more similar to Ireland than the twelve "enlargement" countries given their differing economic histories. In particular, pay scales, which are likely to be an important component of administrative costs are more likely to be comparable than in the case of the twelve enlargement countries. A benchmark based on these countries is therefore more relevant to Ireland. ComReg decided not to look beyond Europe to benchmark LLU Line Share prices in this case because differences in the underlying regulatory regimes would create difficulties in comparison without any material benefit.

Accordingly the EU 15 member states is the comparative set of countries used by ComReg. Please see Section 3.4.3 for further analysis in this regard.

In the context of Ireland being a high cost country, ComReg notes this fact, but believes that Eircom is already compensated for this. This is evident when comparing the price of Eircom's retail line rental of €21.10 (excluding VAT) to other countries in the European Union[38].

Figure 5 - EU 15 monthly retail line rental (€) Benchmark



Source: Teligen

As regards factoring PPP into the benchmark figures, the results for the EU15 will interpret a figure for an EU benchmark price of similar proportions to the proposed maximum price of €2.94. In interpreting PPP data it should be noted that the data may not be suitable for use for strict ranking purposes[39]. Both Eurostat and the OECD issued advice relating to the use of data in this manner[40]. PPP weightings are also based on a basket of consumer goods. They are not necessarily relevant to the costs in question in this exercise. In summary PPP weightings are unlikely to provide any greater degree of accuracy than a simple unadjusted average.

Please refer further to ComReg's views regarding the EU 15 countries and the LLU Line Share prices adopted in Section 3.4.3.

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[38] Source: Teligen, February 2008. Using the standard package across all countries.

[39] From OECD Purchasing Power Parities and Real Expenditures – 1996 Results.

[40] 'There is roughly a +/-5% error margin involved in PPP…The reason is that PPPs are statistical constructs rather than precise numbers. The error margins surrounding PPPs depend on the reliability of the expenditure weights and the price data as well as the extent to which the particular goods and services selected for pricing by participating countries truly represent the price levels in each country'.

The Ladder of Investment concept

The 'Ladder of Investment' concept is a recognised approach for regulatory interventions in telecommunications markets where competitors are encouraged progressively to make efficient investments in network assets which are less and less easily replicable, thus climbing the ladder of investment.[41]

Currently there are two main options for OAOs to provide Broadband only services using DSL over Eircom's network:

- to use Eircom's Bitstream offer;
  Or
- to use Eircom's LLU Line Share offer.

The difference of price between Bitstream and LLU Line Share is one aspect that could affect an OAOs decision whether or not to take up unbundling at an exchange.

Facility-based competition may be more sustainable than service-based competition, and should certainly lead to more intensive competition because alternative operators will have greater control over service levels and product specifications. A review of LLU Line Share prices is essential; to ensure that Eircom's wholesale Broadband product is not unduly favoured over LLU.

3.2.4 Consultation Question

Q.4. In the context of the 'Ladder of Investment' approach, do you agree or disagree that ComReg's policy should be to encourage investment in LLU products where viable? Please detail your response and where possible supported with evidence.

3.2.5 View of respondents

ComReg received seven responses to this question.

Four respondents generally agreed that ComReg's policy should be to encourage investment in LLU products where viable. An additional two respondents agreed that ComReg should be encouraging investment in LLU, but were wary of the possible impact of a low LLU Line Share price on investment decisions by OAOs. The final respondent did not agree with ComReg's approach and rejects the concept of the ladder of investment, as cited in the initial Consultation.

Below is a summary of the substantive points made by respondents.

One respondent believes the difference in price between Bitstream and LLU Line Share affects the access seekers decision on whether to unbundle an exchange or not. The respondent would welcome the opportunity to unbundle more lines and sell LLU Line Share products as a result of a price reduction. The respondent believes ComReg has a responsibility to encourage innovation in the market place. The

[41] 'Making the ladder of investment operational', Martin Cave, November 1994 and 'Investment incentives and local loop prices', Martin Cave, August, 1995.

respondent refers to ComReg Strategy Document 07/104[42], where ComReg outlined one of its high level goals as promoting "*innovation in converging platforms and technologies by creating a supportive and predictable regulatory environment which enables industry and either stakeholders to make informed decisions on future investments, roll-out and deployment of new technologies*". The respondent believes a lower LLU Line Share price will send a strong signal to access seekers to encourage innovation and promote investment in LLU products.

A second respondent believes that encouraging investment by OAOs in LLU enables intense competition. The respondent believes that LLU allows for differentiation of products as well as price and is compatible with the Ladder of Investment approach.

A third respondent believes the behaviour of the SMP operator's, product, process, service and price has all played their part in what some would describe as a "market failure". The respondent believes that LLU has provided a real spur for competition and innovation in many countries in Europe with the notable exception of Ireland.

A fourth respondent believes ComReg should encourage investment in LLU. The respondent believes LLU is a failure to date, but it is the only mechanism currently available to drive mass market innovation based competition and partial infrastructure based competition.

A fifth respondent acknowledged that ComReg's policy should be to encourage investment in LLU products where economically viable, however, prices must reflect real underlying economic costs of providing access. The respondent argued that it must not be the function of ComReg to encourage take-up of LLU by market entrants without regard to setting prices that create the incentives for efficient investment. The respondent continues to argue that the basis of competition in the market can be distorted by inefficient over-investment or under-investment further up the value chain. The respondent believes that decisions should be based on access prices that reflect the **real underlying costs** together with considerations around functionality and the ability to differentiate the service offering. The respondent believes that OAO investment decisions should not be influenced by regulated access prices set below cost for LLU products or any other form of access. The respondent argues that any proposed regulator assisted access for operators in the form of an artificially low price for LLU Line Share would be neither desirable or necessary.

A sixth respondent noted that Regulation 6 of the Access Regulations sets out certain requirements on ComReg regarding Access and Interconnection:
a) Promote efficiency
b) Promote sustainable competition, and
c) Give maximum benefit to end-users.

The respondent believes that platform based competition is of the greatest long-term benefit to consumers, and promotes investment. The respondent believes that

[42] Document No 07/104, ComReg Strategy Statement (2008 – 2010), published on 17 December 2007.

ComReg should be cognisant when setting terms for access that regulated pricing does not act as a disincentive to investment.

A seventh respondent continues to reject the promotion by ComReg and ERG of the concept of "Ladder of Investment". The respondent argues that the "Ladder of Investment" theory does not support distorting the market purely to increase the number of unbundled loops in Ireland. This respondent quoted the ERG common position on remedies paper[43], highlighting that "*when implementing the ladder, NRAs need to customise it in terms of timing, pricing and product design to national circumstances and take account structural / exogenous factors such as disparity of population density or the existence / non-existence of alternative network infrastructures as well as the development of the market*". The respondent alleges that none of this analysis and considerations appears to have been considered by ComReg.

3.2.6 ComReg's Position & Conclusion

As quoted by one respondent, ComReg has stated in its Strategy Statement, Document No. 07/104, that one of its goals is to ensure "*innovation in converging platforms and technologies by creating a supportive and predictable regulatory environment which enables industry and either stakeholders to make informed decisions on future investments, roll-out and deployment of new technologies*".

Under this goal, ComReg is committed to *"encourage both investment in networks and competition by providing appropriate regulatory controls and pricing structure"*. There is evidence of a demand for LLU Line Share based on the volume of recent orders processed by the incumbent. ComReg does not believe that the current price structure of LLU Line Share is consistent with these goals and could act as a barrier to current and future growth of the LLU Line Share service, where it is not a correct reflection of underlying costs.

Facility-based competition may be more sustainable than service-based competition, and can lead to more intensive competition because alternative operators will have greater control over service levels and product specifications to meet particular consumer requirements. ComReg must ensure that prices are set appropriate to the regulated products or services on offer and the incumbent must ensure that they meet their obligation of cost orientation. ComReg disagrees with the respondent who believes that ComReg is distorting the market, purely to increase the number of unbundled loops in Ireland. The incumbent has a price control obligation of cost orientation and ComReg has reviewed the current position and has come to the conclusion that the current price if maintained would lead to an over recovery of costs by the incumbent. There is no evidence that would indicate that the price proposed could lead to a distortion of the market should take up of LLU Line Share grow further in the coming months. It is also clear from industry that pricing is one element of the equation when making strategic business decisions and that a change in the wholesale price for LLU Line Share may be a stimulant, but that there are

[43] ERG (06) 33 – Revised ERG common position on remedies, approved at Plenary, 18th May 2006.

many other factors to be considered such as capital investment decisions, customers service quality control, advertising, staffing, overhead expenditure etc.

ComReg must ensure that regulatory obligations are met and in the case of LLU Line Share, this means that the price should reflect the real underlying cost of providing LLU Line Share. ComReg has assessed the cost recovery associated with the local loop as part of the parallel LLU Price review, and it is clear that the full network cost is recovered within the full ULMP monthly rental. ComReg has also looked at the likely incremental costs of providing LLU Line Share, and these are not considered to be material. ComReg believes a maximum price of €2.94 is more than sufficient to cover any such incremental costs. In fact the incremental costs could be well below the EU15 benchmarked figure of €2.94.

ComReg notes that the ERG endorses the 'Ladder of Investment' concept as part of its common position on remedies[44]. "*Competition resulting in market differentiation also improves a markets efficiency and wider penetration of Broadband*"

The European Commission's concept of the "Ladder of Investment"[45] links pro-competitive regulation with investment which in turn is pushing Broadband penetration, in other words a virtuous circle is created. The positive interaction of;

Regulation → Competition → Investment → Broadband penetration

The European Commission recognise that this concept has been working in practice; "*While many factors that contribute to Broadband rollout and take-up, competition is one of the most important, as it stimulates investments of both incumbents and new entrants.*" [46]

According to the ERG common position on remedies paper; "*Choosing the access point and access price are probably the most crucial decisions by which an NRA can influence the investment incentives of the alternative operator as well as the incumbent.*"[47] Setting a price too high can lead to statically inefficient investment decisions, while setting a price too low can distort the decision to invest in infrastructure competition.

ComReg is very conscious of the price setting effect, and is now setting a mid-range EU15 benchmarked price of a maximum of €2.94, until the full LLU price review is completed. This price is significantly above the incremental costs of billing and administration proposed previously by ComReg when providing LLU Line Share and ComReg believes that given the current prices for full LLU, Wholesale Line Rental and Bitstream that the proposed price strikes the correct balance between the current excessive price and a price that could lead to inefficient entry. Moreover, ComReg are also not convinced that a price as low as that proposed in Consultation

[44] ERG (06) 33 – Revised ERG common position on remedies, approved at Plenary, 18th May 2006.

[45] 11th implementation report, Annex 1, COM (2006)68, SEC (2006)193, p.9.

[46] 11th implementation report, Annex 1, COM (2006)68, SEC(2006)193, p.36.

[47] ERG (06) 33 – Revised ERG common position on remedies, approved at Plenary, 18th May 2006

Document No. 04/110 in 2004, of €0.39, would give rise to inefficient entry once the incumbent recovers the entire cost of the network through the full LLU price.

ComReg has carried out the appropriate level of analysis. This paper does not assess whether dominance exists and if so, what the appropriate remedies should be. This has already been done in previous Market Analysis in ComReg Decision D8/04. Rather ComReg wishes to address a pricing anomaly which is acting to discourage operators from “climbing the ladder” i.e. to invest in the provision of broadband using a wholesale service (LLU and its variants) which provides a greater intensity of competition compared to using wholesale broadband from the incumbent.

ComReg does not consider that end-to-end connectivity issues are present here and that Regulation 6 of Access Regulations would be relevant. Regulation 6(2) allows for the imposition of obligations pursuant to Regulations 10 to 14 of the Access Regulations where it is necessary for end-to-end connectivity. Eircom already has obligations pursuant to Regulations 10 to 14 of the Access Regulations pursuant to a finding of SMP contained in ComReg Decision No. D8/04.

ComReg does have regard to its objectives as set out in Section 12 of the Communications Regulation Act 2002 and in particular to its obligations to promote efficiency, to promote sustainable competition and to give the maximum benefit to end users and has had regard to these obligations as part of its decision making process in this response to consultation and decision.

3.2.7 Consultation Question

Q.5. Do you agree or disagree with ComReg’s conclusion which states inter-platform competition should not be negatively impacted by ComReg decision to amend the anomaly in price of LLU Line Share that exists with previous decision D8/01? Please detail your response and where possible supported with evidence.

3.2.8 View of respondents

ComReg received eight responses to this question.

Four respondents generally agreed inter-platform competition should not be negatively impacted by ComReg’s decision to amend the anomaly in the price of LLU Line Share that exists with previous decision D8/01. These respondents generally agree that price is only one factor, service and product specification also contribute to a competitive market. The other four respondents generally disagreed. These respondents generally believed that inter-platform competition could be negatively impacted by ComReg’s decision to amend the anomaly in the price of LLU Line Share.

Below is a summary of the substantive points made by respondents.

One respondent believes there is no evidence to support the view that true inter-platform infrastructure competition could be impacted by a low LLU Line Share price. The respondent also believes that no other infrastructure provider offers a wholesale version of services at this level.

A second respondent agrees with ComReg, that there are a range of factors which lead to competitive outcomes in other countries, where price is an important factor. The respondent believes if pricing encourages market entry then a greater weight of momentum is placed in breaking down incumbent behavioural, service, product and process issues, which in the opinion of the industry represent a significant barrier to progress in Ireland.

Another respondent believes a price reduction of this magnitude will not only have a significant impact on supply and demand of LLU Line Share, but impact competitors in the downstream market for retail Broadband. Cable, wireless and mobile Broadband providers are also likely to be impacted. The respondent claims that if a maximum price of €2.94 proves to be too low, this will make it unduly difficult for alternative methods of supply of Broadband to compete against Broadband services offered over LLU Line Share. The respondent believes that ComReg's drive to promote market entry though LLU products should not detract from potentially more efficient entry through other platforms. The respondent claims that ComReg seeks to promote 'viable' offerings through investment in LLU products, but setting LLU Line Share prices at a maximum of €2.94 offers no guarantee that inefficient entry will not be facilitated. The respondent disagrees with implicit economic assumptions in the Consultation Document, where if the price charged by Eircom does not capture sufficient apportionment of common costs, distortion of inter-platform competition is inevitable. The respondent claims that this only holds true across those Broadband offerings dependant on a local loop connection. The respondent believes for all other competing Broadband offerings including mobile, the degree to which local loop costs are recovered by Broadband offerings has a significant impact on the ability of an efficient mobile or other platform operator to compete against those availing of LLU Line Share. The respondent notes that ComReg has proposed that there can be no distortion to inter-platform competition, if the costs of the network are recovered on costing principles, such as BU LRIC, however the respondent notes that ComReg then proposes a simplistic benchmark figure as the interim LLU Line Share price.

A final respondent agreed with the principle that competition will not be distorted if the full cost of a fully unbundled loop and shared loop, is recovered in aggregate. However the respondent disagrees, to the extent that no distortion in inter-platform competition will take place, based on a simple EU averaged price. The respondent claims that the appropriate costs of the shared loop should encompass both the incremental costs of line sharing and an appropriate share of common costs, if the proposed price is too high, LLU Line Share would be discouraged and alternative inefficient solutions may be adopted. The respondent claims if the price is too low, inefficient use of LLU Line share would be erroneously encouraged. The respondent is of the view that by moving to a price based on a faulty benchmark, and to commit to using a different unspecified methodology within the next twelve months, market distortion is absolutely certain. The respondent made reference to ERG common position on remedies paper[48], "*The setting of access prices is a complex task If access prices are too low, there is a danger of inefficient firms entering industry ...... If access prices are too high, otherwise efficient new entrants may be dissuaded from*

[48] ERG (06) 33 – Revised ERG common position on remedies, approved at Plenary, 18th May 2006

entry and there is a danger of inefficient investment. ...... NRAs may have to signal in their reviews that they view some remedies as bridging a gap so that new entrants can more easily make incremental investment but that market players cannot base their long-term business models on the basis of these remedies alone." The respondent believes that by mandating a significant reduction in price, not based on rigorous economic analyses, but instead on erroneous assumptions of over recovery of costs and simple benchmarking, ComReg may encourage inefficient investment in local loop based assets (competing with other platforms), ultimately to the detriment of consumer welfare. The respondent argues that these price signals may be damaging in the long run and proposed reductions and further reductions may be anticipated by OAOs, driving decision making. The respondent claims if the forthcoming LLU Consultation were to result in an increase in LLU Line Share price, even a small upward change, may prove that operators made wrong investment decisions, based on misleading market signals.

3.2.9 *ComReg's Position & Conclusion*

ComReg acknowledges the four respondents who agreed that inter-platform competition should not be negatively impacted by ComReg's decision to amend the anomaly in price of LLU Line Share that exists with previous decision D8/01.

ComReg agrees that price is only one factor, service and product specification also contribute to a competitive market. The growth in use of LLU products, including LLU Line Share, encourages alternative operators to invest in infrastructure, and allows alternative operators the opportunity to provide more innovative and advanced services to end users, through facility based competition, rather than service based competition.

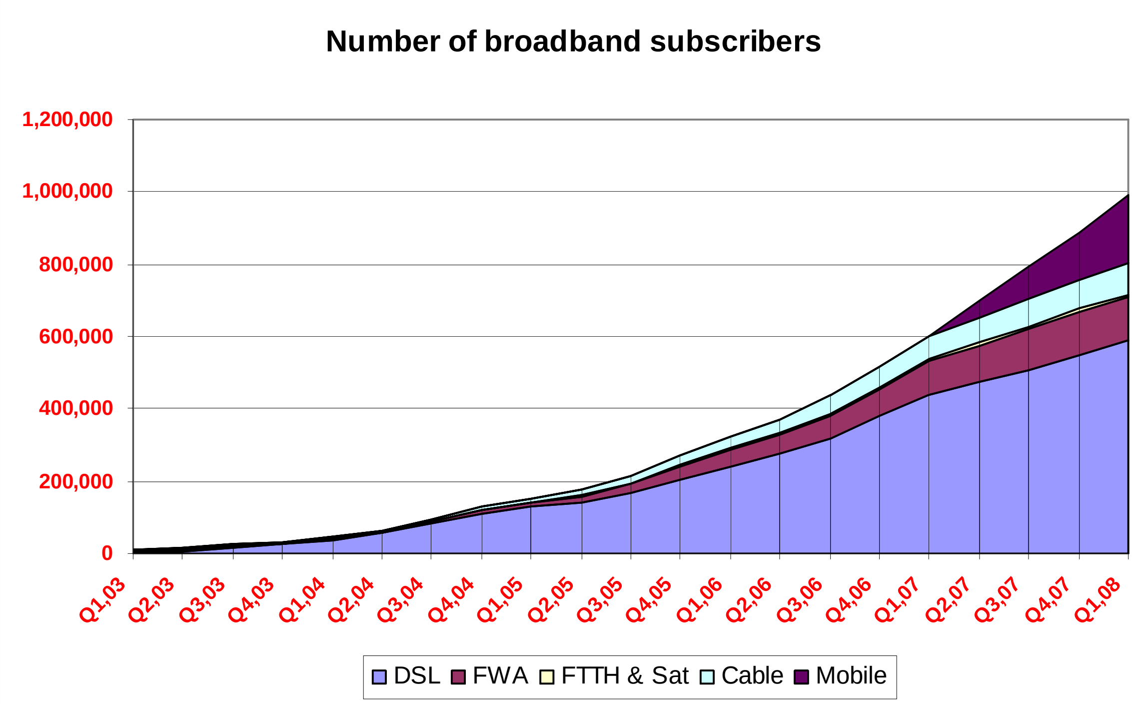
ComReg notes that one respondent in its response to Question 1, questioned the rationale for ComReg's review at this point, when the respondent claimed that there is no demand for LLU Line Share. However, in response to this question, the respondent notes that this proposed price change could have not only a significant impact on supply and demand of LLU Line Share, but impact competitors in the downstream market for retail Broadband. Again ComReg has clear evidence of current demand by way of orders processed by the incumbent and believes that there are a number of operators who clearly intend to use LLU Line Share in the coming months. The existing price is a significant source of aggravation for operators who believe they are being overcharged. Based on a review of all the information to hand ComReg agrees that the current price of €8.41 is not cost oriented and is therefore excessive.

ComReg notes that no cable or wireless operator except for those mentioned in the introduction section have responded to this proposed price change.

There has been significant growth in alternative infrastructure in Ireland over the last number of years[49] and ComReg is mindful of the need to set regulated prices in such a way that these alternative platforms are not unfairly discriminated against.

[49] *Source : ComReg Quarterly Reports.*

Figure 6 - Broadband subscribers in Ireland Q1 2003 – Q1 2008



Source: ComRegQuarterlyReports

It is ComReg's view that, in principle, no distortion in inter-platform competition should arise as long as the cost of a fixed loop is recovered in aggregate. In Ireland it is not currently possible for end users to avail of broadband over DSL without paying for line rental together with broadband. For the reasons noted below, ComReg believes that because the total cost of the loop is recovered in a manner consistent with the promotion of inter-platform competition, no distortion of inter-platform competition should result from the new price which is being mandated.

Currently the local access network is costed using an engineering cost model using the forward looking long run incremental cost ("FL-LRIC") methodology. In this regard ComReg notes the case of *Arcor AG & Co. KG v Federal Republic of Germany* (Case C-55/06)[50] and the recent ruling of European Court of Justice ("the ECJ"). The opinion of the Advocate General Poiares Maduro[51] in this case approved the use of this methodology in circumstances where independent platform competition is an important consideration.

ComReg's conclusion is that currently the local access network is costed in a manner that is conducive to inter-platform competition. Once the total cost of the local access network *in aggregate* is recovered from subscribers on costing principles not unfavourable to platform competition it would appear that there can be no distortion

[50] Case C-55/06, European Court of Justice, the case of *Arcor AG & Co. KG v Federal Republic of Germany, 24 April 2008.*

[51] In paragraphs 48 and 63 of the Advocate General Opinion delivered on 18 July, 2007.

of inter-platform competition, caused by lowering LLU Line Share price once that resulting price is above the incremental cost of provision.

3.3 Cost Recovery

ComReg, in Consultation Document No. 08/23, addressed costing methodologies and costing principles employed in other jurisdictions, relating to LLU Line Share. ComReg also revisited responses to previous Consultation Document No D04/111, in relation to the potential over recovery of costs and sets out ComReg's preliminary position on over-recovery principles.

There is no one constant costing methodology applied across the EU for LLU / LLU Line Share.

ComReg stated in Consultation Document No. 04/111 that the allocation of costs common to the low frequency and high frequency portions of the local loop should entirely be allocated to the low frequency. The line rental revenues associated with the narrowband services are already recovering the cost of the local loop, and therefore the inclusion of line costs in LLU Line Share represents an over-recovery of costs.

When setting charges for shared access to the unbundled local loop, a number of National Regulatory Authorities ("NRAs") have decided that the costs common to the low frequency and high frequency portions of a local loop should be entirely allocated to the low frequency portion (i.e. voice telephony). ComReg sets out the most recent decisions and methodologies adopted in United Kingdom[52], France[53] and Italy[54]. In *Arcor*, the Advocate General refers to *KPN Telecom* as follows: "*In that judgment, the Court held that costs connected with gathering or supplying basic subscriber data should, in any event, be borne by the provider of a voice telephony service and that they are already included in the costs of and earnings from such a service. Under these circumstances, transferring the cost of gathering and supplying these data to persons requesting access to them, would result in unjustifiable overcharging for the costs in question and, therefore, would be incompatible with cost-orientation. According to the judgment in KPN Telecom,* ***it is inherent in the concept of cost-orientation of charges that it prohibits a party whose charges are required to be set on the basis of cost-orientation to receive remuneration several times for providing the same service.***" **(ComReg emphasis)**

It is therefore ComReg's conclusion that any decision it makes arising from this Consultation should properly and fairly reflect the principle of cost orientation. In addition, there would appear to be broad agreement amongst alternative fixed operators in Ireland with this principle.

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[52] UK – Ofcom (review of wholesale access market, chapter 7, LLU, 12[t] May, 2004).

[53] List of relevant costs established in application of article D. 99-24 of the Post and Telecommunications Code http://www.arcep.fr/uploads/tx_gsavis/00-1171ann1-eng.htm

[54] Resolution 24/01/CIR; Measures for the implementation of shared local loop access and unbundled local sub-loop access services - http://www.agcom.it/eng/resolutions/2001/d24_01_CIR.pdf

3.3.1 Consultation Question

Q.6. Do you agree or disagree with ComReg's proposed approach and preliminary conclusion? Please detail your response and where possible supported with evidence.

3.3.2 View of respondents

ComReg received seven responses to this question.

Four respondents agreed with ComReg's proposed approach and preliminary conclusion that there should be no over recovery of costs. A further three respondents agreed that there should be no over recovery of costs, but generally disagreed that this could be achieved by imposing a simple EU 15 benchmarked average price, without further analysis.

Below is a summary of the substantive points made by respondents.

One of the respondents believed that there should be no over recovery in the current LLU Line Share and Line Rental prices. The respondent believes if two or more services are provided over the same infrastructure, overall costs should be recovered, but each service should be priced as to make some contribution to the common costs. The respondent claims that Ramsey Pricing is the optimal methodology, consistent with all services using common infrastructure, making appropriate contribution to common costs. The respondent does recognise the practical difficulties in implementing this approach, for the proposed interim period. The respondent is not opposed to the principle of benchmarking, subject to sufficient justification being provided.

Another respondent agreed with the principle that there should be no over recovery of costs, as per *KPN Telecom v OPTA,* Case C. The respondent does not agree that this can be achieved through a simple benchmarking exercise.

A further respondent agrees in principle that there should be no over recovery of costs, but considers the main issue to be the implementation. The respondent believes that no valid arguments are put forward as to why previous decision D8/01 is now deemed invalid or how a simple EU benchmark can constitute an appropriate level of cost recovery. The respondent also claimed that the international precedents of cost recovery principles used are dated, noting the example of Article D. 99-24 of French Code of Post and Telecommunications, cited by ComReg in Consultation Document No. 08/23, was revoked on 30 May 2004. The respondent also claims that the more cost is allocated to the low frequency (voice) services, the lower the Broadband service price. The respondent argues that in the short term, it may be appropriate to allocate a high proportion of common costs to the low frequency to encourage adoption, however, in the long term with shifts in customer behaviour to using mobile telephony or voice over internet protocol ("VoIP") for voice services, this will mean the majority of common cost will need to be allocated to the high frequency (Broadband). The respondent believes reducing the % allocation at this time would be a long term strategic mistake. The respondent claims that Ramsey pricing is the method that could be used to determine the allocation of common cost to the high and low frequency services. The respondent believes it to be perverse that the direction of the price change proposed is running opposite to the direction in marginal utility derived by consumers of copper loop services.

3.3.3 ComReg's Position & Conclusion

ComReg acknowledges the first four respondents generally agreed with ComReg's proposed approach and preliminary conclusion. There should be no over recovery of costs.

As regards the concerns raised by one respondent who declared that international precedents used are dated. ComReg confirms that the precedents quoted for Italy and the UK are still relevant today. ComReg notes that Article D. 99-24 of French Code of Post and Telecommunications cited by ComReg, in Consultation Document No. 08/23, has since been revoked.[55] However, the revocation of the previous decision did not affect the principle of allocation of common costs to the low frequency. Per ARCEP Decision No. 05-0834[56], "*the cost of the copper pair is completely covered by retail line rental. The tariff structure for shared access to the local loop should not continue to remunerate France Telecom twice for the cost of the copper pair*".

A full LLU price review is currently being conducted, and rigorous costing models and economic analyses are being developed and analysed by ComReg. ComReg believes that there is an over recovery of costs of the local loop, through current LLU prices. The international precedents are being used to demonstrate that there is widespread consideration that retail line rental does recover the cost of the local loop. Services such as Voice over Broadband and VoIP are in their infancy in Ireland and volumes to date are very low. This is not expected to change significantly in the next six to twelve months, given the current stage of Next Generation roll out by industry based on information received by ComReg over the past year. ComReg does not therefore agree that this price change is premature and that the spread of costs between lower band and higher band should be taken into account right now. ComReg agrees that this is a regulatory challenge going forward and will discuss with industry in detail any proposals that are brought forward when regulatory wholesale prices are being set, as a result of the full LLU price review. To date no proposals have been put forward which would go further to show that this may not be the most appropriate time to make such significant modifications in methodologies until such time as the current review of LLU pricing is completed later this year.

[55] Pursuant to an order dated February 25, 2005, the *Conseil d'État* cancelled ARCEP's Decision 02-323 of April 16, 2002 that sets the rates for access to the local loop, since ARCEP committed a legal error by breaching the obligation to publish the long run incremental cost method (LRIC) applying to it under Article D. 99-24 of the CPCE. The *Conseil d'État* ruled that in this case it was appropriate to repeal the principle of retroactive effectiveness of a disputed cancellation and thus imposed a time restriction on the effects of the cancellation. To determine the consequences of this cancellation, in March 2005 ARCEP published a new method of calculating LRIC relative to access to the local loop (Decision 05-0267).

[56] ARCEP Decision Notice No. 05-0834, published on 15th December 2005

Nothing has come to the attention of ComReg, from all the detailed analysis of the incumbent's costs to date through various regulatory reviews, to indicate that Eircom could not recover its costs by changing the current LLU Line Share price to that proposed, of a maximum of €2.94.

3.4 Determining the price of LLU Line Share

ComReg, in Consultation Document No. 08/23, addressed the principles of cost recovery and puts forward a number of cost recovery options and a EU15 benchmarked LLU Line Share price, as a final price for an interim price for LLU Line Share.

Where LLU Line Share is used, the situation will frequently arise where two different operators share the copper pair from a customer's premises to the main distribution frame ("MDF"). One operator will use the copper pair to provide standard voice services, while the other will use it to provide Broadband services via asymmetric digital subscriber line ("ADSL") for example. Moreover, it will be possible to provide the two types of services simultaneously. Under these circumstances, the local loop is a common fixed cost. The costs are fixed in the sense that they do not vary with the amount of use made of them. They are also common to the two services in the sense that they would be required in their entirety if just voice services were provided, or if just Broadband services were required or if both services were required. The question is how such common fixed costs should be attributed between the user services.

ComReg suggested three cost recovery options that might be considered when looking at common costs. In addition, ComReg has also put forward a proposal to apply an interim price, through benchmarking.

1. Incremental carrier billing and administration charges only

This option was previously consulted upon in Consultation Document No. 04/111. Under this option, the only incremental costs to be recovered are the incremental carrier billing and administration costs, since all other costs are recovered either via narrowband services and full LLU, or via other charges (for example repairs or co-location).

2. No charge

If one accepts the logic of Option 1 one could decide simply not to charge for LLU Line Share since the cost of doing so may exceed, or come close to, the incremental revenues.

3. Attribution of fixed costs between user services using Economic Principles

There are a number of economic principles that could be adopted when reviewing the price of LLU Line Share. These are complex by nature and will invariably give different answers depending on the various considerations that are taken for each. ComReg has not undertaken a detailed economic study of the advantages and disadvantages of each method and the probable prices that could arise from them. However a detailed study of LLU pricing in general is currently underway and this will include detailed consideration of LLU Line Share under the various economic methods such as Ramsey Pricing, Efficient Component Pricing, Shapley-Shubik etc. The review of the recovery of cost over the full LLU price must also be taken into consideration when looking at these principles of cost recovery. This is a challenging exercise and ComReg is currently engaged in this work with external consultants and will consult with industry once this work is complete.

4. Benchmarking

ComReg is of the preliminary view that it may be unwise to impose a definitive methodology without considering the impact on the price of full unbundling and without a view as to how the cost of the access network should be recovered over the medium term. These matters are in fact being considered as part of the full review of LLU pricing, currently ongoing. However, this review will not be completed until Autumn 2008 at the earliest. ComReg is, however, firmly of the view that the current anomalies described in Consultation Document 08/23 must be addressed in a timely manner. Accordingly, ComReg proposed in that Document to **set a price on a benchmarked basis** , based on EU 15 (excluding Ireland) average price. This would entail a final price of a maximum of €2.94 per month for LLU Line Share until the full review is completed.

ComReg proposed to use the EU 15 nations as a benchmark because in general these countries tend to have the most developed telecommunications sectors in terms of Broadband in Europe. Also the relative levels of cost in these countries are likely to be more similar to Ireland than in the twelve countries given their differing economic histories. In addition, these countries have been operating under the EU Electronic Communications Framework for the liberalisation of electronic communications (previously referred to as telecommunications) for the same length of time as Ireland. A benchmark based on these countries is therefore more likely to be relevant to Ireland.

ComReg decided not to look beyond Europe to benchmark LLU Line Share prices in this case because it believes that the differences in some of the underlying regulatory regimes would create difficulties with such a comparison. Please see section 3.4.3 for further details on benchmarking.

3.4.1 Consultation Question

Q.7. Do you agree or disagree with ComReg's proposal to apply a benchmark price of €2.94 per month to LLU Line Share until a full review of LLU pricing has been completed by ComReg, failing an appropriate alternative being proposed by industry? Please detail your response and where possible supported with evidence.

3.4.2 View of respondents

ComReg received eight responses to this question.

Four respondents agreed with ComReg's proposal to apply a benchmark price of a maximum of €2.94 per month to LLU Line Share until a full review of LLU pricing has been completed by ComReg, failing an appropriate alternative being proposed by industry. Three other respondents disagreed with the basis of the benchmark used. These respondents generally believed the benchmark basis was too narrow and did not take into account economic and market conditions, comparable to Ireland without further analysis by ComReg. The final respondent strongly disagreed with ComReg's approach.

Below is a summary of the substantive points made by respondents.

One respondent believes it addresses the current problem with LLU price levels expeditiously and being interim in nature will allow for appropriate adjustments when considered in the full LLU price review.

A second respondent believes the approach outlined by ComReg to address the current market anomaly, appears to be reasonable and fair. The respondent believes in light of the future full LLU Consultation, it is reasonable to implement a revised price for an interim period based on an EU benchmark.

A third respondent supports a benchmarked price for the purposes of speed and expediency. The respondent believes it is hard to justify any charge other than that of administration and bill production, but accepts €2.94 as an interim measure.

A fourth respondent believes that Eircom is over recovering at the current price level and is possibly engaged in a margin squeeze. The respondent claims LLU has, to date, failed to achieve any traction in Ireland. The respondent believes as a consequence it would be of great concern and unacceptable to the competitive industry if there were to be any uncertainty that the benchmark price could increase following the full review. The respondent claims that new entrants require regulatory certainty if they are to invest.

A fifth respondent stated that it does not have sufficient information to determine whether a benchmark price of €2.94 is appropriate. The respondent believes that the benchmark methodology may need to be refined, taking into account a narrower group of reference countries with characteristics and market conditions similar to Ireland.

The sixth respondent believes it is not possible to determine a cost-based price using a benchmark exercise that does not take into account country specific factors such as geography, population density, different scale economies, different network size, using different technologies, offering different service quality and with different underlying costs in the economy. The respondent believes it is difficult to see how benchmarked pricing complies with ComReg's obligation under the Access Regulations, to set prices that are objective and proportionate. The respondent claims it is not clear whether the proposed interim price will be actual prices set for an interim period, or interim prices that will be retrospectively adjusted when ComReg has carried out its full LLU analysis. The respondent believes that this is an important difference, influencing operator's investment decisions. The respondent does not understand the urgency of an interim LLU Line Share price.

A seventh respondent believes it is not an appropriate benchmark, and due consideration was not made to benchmark parameters. The respondent argues that no provision was made to varying economic, demographic, population densities, infrastructural and topological conditions. The respondent claims that no consideration was made to relative cost of operating in each country, where this could be done by factoring in Purchasing Power Parity ("PPP") adjustments.

The eighth respondent believes that ComReg's approach is unnecessary, inappropriate, arbitrary, and unlawful. The respondent believes ComReg cannot replace the methodology set out in Decision Notice D8/01, without first completing a LLU market analysis. This respondent also believes that revoking Decision D8/01 without first completing a market analysis and setting a price on the basis of benchmarking is not permitted under Regulation 14(3) of Access Regulations. The respondent argues that if Benchmarking were available, benchmarking (under Regulation 14(3)) must be chosen from 'comparable competitive markets' and the respondent believes this criteria is not met. The respondent refers to Case DK/2005/0204[57] and argues that ComReg has not chosen the comparator countries on the basis of carefully selected objective criteria, but on the basis of general, irrelevant and at times inaccurate observations. The respondent claims that the benchmark approach is totally arbitrary and totally unacceptable. The respondent believes that prices selected, as part of the EU15 benchmark, are not actually based on costs themselves and are determined using consistent methodologies. The respondent references the ERG report on best practices, ERG (07)53rev1b[58].

The respondent has attempted to demonstrate the arbitrary nature of a benchmark figure by interpreting the figures of EC 13th implementation report[59] and came up with varying benchmark figures:

a) €3.60 - simple average of EU27,
b) €5.91 - simple average of Line Share as a % of LLU for EU14 (36%)
c) €6.22 - simple average of Line Share as a % of LLU for EU27 (37.9%)

The respondent also claims that if the total costs were included (connection + rental), the simple average of LLU Line Share as a % of LLU for EU27 would equal 47.7%.

The respondent believes there is no urgency such that a review of LLU Line Share price cannot wait for the completion of the forthcoming full LLU review. A temporary solution for one option (i.e. of LLU, Line Share, Bitstream, Wireless, Cable, Fibre, etc) could send seriously misleading signals to the market.

3.4.3 ComReg's Position & Conclusion

ComReg intentionally uses the EU15 countries as a benchmark because in general these countries tend to have the most developed telecommunications sectors in terms of broadband in Europe. The majority of the countries in the EU 15 have also arrived

[57] Case DK/2005/0204: Wholesale Voice Call Termination on Individual Mobile Networks in Denmark.

[58] ERG (07) 53rev1b – Report on ERG best practices on regulatory regimes in wholesale unbundled access and Bitstream access, Annex – Evidence based analysis and benchmark

[59] European Commission - Progress Report on the Single European Electronic Communications Market 2007(13th Report), published on 19th March 2008

at their LLU Line Share price through a cost based methodology which ComReg views as the most appropriate proxy for arriving at a cost based LLU Line Share price in Ireland for an interim period until the full assessment of a cost based price specific to Ireland is complete. It is clear to ComReg that using a benchmark of cost based prices to set a price which should be based on cost (and where the existing price clearly is not) is a reasonable approach.

In addition, the relative levels of cost in these countries are likely to be more similar to Ireland than in the twelve "enlargement" countries given their differing economic histories. In particular, pay scales, which are likely to be an important component of administrative costs are more likely to be comparable than in the case of the twelve enlargement countries. Furthermore, these countries have been operating the EU Regulatory Framework including the Access Directive and Framework Directive in respect of Electronic Communications for a similar length of time as Ireland. A benchmark based on these countries is therefore most likely to be relevant to Ireland.

ComReg decided not to look beyond Europe to benchmark LLU Line Share prices in this case because differences in the underlying regulatory regimes may create difficulties in comparison.

Article 13 provides that "*National regulatory authorities shall ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote efficiency and sustainable competition and maximise consumer benefits. In this regard national regulatory authorities may also take into account of prices available in comparable competitive markets*". Regulation 14(3) of the Access Regulations allows for bench-marking provides that "*the Regulator may also take account of prices available in comparable competitive markets*." ComReg considered case DK2005/0204 where the European Commission provided the following guidance to the Danish national regulatory authority ("NRA") on benchmarking. The Danish NRA in this case had only chosen three countries as its comparative countries, namely, Sweden, Finland and Norway;

"*The Commission considers that if a NRA decides to impose price regulation on the basis of a comparison with other countries, it should carefully select the objective criteria and clearly justify the reasons for which it believes that the relevant market(s) in these countries are, on the background of those criteria, most suited as the basis for the comparison, taking into account differences between conditions prevailing on the relevant market(s) in the countries compared and its home market.*"

ComReg are confident it has selected objective criteria for the comparison with other countries as countries with a similar European Regulatory regime as Ireland over a similar period and in general these countries tend to have the most developed telecommunications sectors in terms of Broadband in Europe.

Current best practice suggests that NRAs may use benchmarking in order to establish the appropriate wholesale access price[60]. "*The relevance of comparator*

[60] ERG (06) 33 – Revised ERG common position on remedies, approved at Plenary, 18th May 2006

figures is key to the use of benchmarks for setting an access price. If an NRA decides to impose price regulation on the basis of a comparison with other countries, it needs to have reason to believe that relevant prices are relevant to its own case". This may be problematic if market conditions in other countries are fundamentally different or different cost standards are used in other countries, as per Case DK/2005/0204. "*Nevertheless, benchmarking should not be ruled out because a perfect comparison cannot be verified. Other methods also have their disadvantages and the NRA will need to choose the method which strikes the right balance, taking into account the regulatory objectives and the practical considerations of implementing each possible method*."

ComReg considers that setting a maximum final price for a period of one year on the basis of benchmarking is permitted under Regulation 14(3) of Access Regulations. Eircom was designated with SMP in the market for wholesale unbundled access to the local loop, per Consultation Document No. 08/24. Eircom had the SMP obligation of price control as set out in Regulation 14 of the Access regulations imposed upon it as part of that SMP designation.

ComReg acknowledged in ComReg Consultation Document No. 08/23 that no single costing methodology is applied across the EU for ULMP and LLU Line Share. ComReg notes a number of interesting points from the ERG best practices report, ERG (07) 53rev1b[61], as referred to by a respondent, where a table displays the varying cost standards, cost basis and modelling approaches employed for wholesale unbundled access. Firstly it must be noted that the ERG best practices paper referred to, is a Draft for Consultation Document and only highlights 21 of the 27 EU member states (only 12 of EU15 countries) and there are gaps in data for a number of the EU15 countries that are included in ComReg's benchmarked price. However within the report, the German modelling approach is based on Benchmarking and if ComReg were to exclude Germany; there would be no material difference to the benchmark price (i.e. €3.01), as opposed to ComReg's maximum price of €2.94. If ComReg were to narrow the benchmark to countries that only use a consistent long run incremental costs ("LRIC") cost standard, ComReg would derive a benchmark figure of €2.78. For countries that only employ a top-down modelling approach, ComReg would derive a figure of €3.15. If it were to narrow its approach to countries who use current costs as a cost basis, it would result in a benchmarked price of €2.52. However, by using a EU15 benchmark, ComReg captures a reasonable and accurate average price of LLU Line Share, across comparable markets.

ComReg is basing its benchmark price on actual prices within the EU15 (excluding Ireland), so the use of the price of LLU Line Share as a percentage of full ULMP price is irrelevant. ComReg is also of the view that by extending the benchmark to the EU27 makes the sample less comparable. ComReg also notes, that within the EU27, only Bulgaria, with an LLU Line Share price of €9.40, is higher than Ireland. From the information available it is not clear how Bulgaria arrived at this price.

[61] ERG (07) 53rev1b – Report on ERG best practices on regulatory regimes in wholesale unbundled access and Bitstream access, Annex – Evidence based analysis and benchmark

ComReg is currently engaged in a full review of Eircom's access network for the pricing of LLU. ComReg does not believe that the geography / demographic profile is relevant in this particular case of LLU Line Share as this Consultation is about respecting the obligation of cost orientation already imposed on an SMP operator. The current monthly rental price for LLU captures the full cost of Eircom's access network, which takes account of all the factors mentioned by one of the respondents. LLU Line Share should not recover additional network costs on top of the monthly LLU price which is set on the basis of full cost recovery. It is only the incremental cost of providing the service that is recoverable for LLU Line Share. ComReg does not believe that the proposed price will give misleading signals to the market and ComReg is of the view that the current price is not cost orientated and has concluded that that €8.41 is excessive. ComReg believes the price proposed in ComReg Document 08/23 is a conservative figure based on the available information considered to date, and believes it strikes a balance between a price too high leading to an under recovery of cost by Eircom or lead to inefficient investment by OAOs by a price point that is too low.

ComReg notes that benchmark price figures put forward by one respondent offers only a snapshot of prices as of October 2007, however, it should be noted that there have been reductions of LLU Line Share prices in a number of countries since October 2007, Italy, Austria and Finland among others. The only price in the EU27 with a higher LLU Line Share price is Bulgaria with a price of €9.40 per month, but the 13th implementation report of the European Commission referenced in the section above, notes that this price is not compliant with the Bulgarian National Regulator's decision of July 2006, where a price of €4.57 was prescribed.

ComReg's view on the use of purchasing power parity ("PPP") indexing in benchmarking is set out in Section 3.2.3.

3.4.4 Consultation Question

***Q.8*. Do you agree or disagree that if Benchmarking is rejected outright that Option 1 would still be the next appropriate alternative? Please detail your response and where possible supported with evidence.**

3.4.5 View of respondents

ComReg received seven responses to this question.

Four respondents generally agreed that if benchmarking is rejected outright that Option 1 (Incremental carrier billing and administration costs only) would still be the next appropriate alternative. A further three respondents generally disagreed that if benchmarking is rejected outright that Option 1 would still be the next appropriate alternative. The general consensus among these respondents, accepting the inclusion of incremental costs, is that there should be due consideration given to attribution of common costs to the two services (high and low frequency) supplied over the local loop.

Below is a summary of the substantive points made by respondents.

One respondent agrees that if benchmarking were to be rejected outright then Option 1 (incremental pricing) should be adopted as it is impossible to foresee any other approach that would lead to a relatively prompt outcome.

A second respondent agreed with ComReg in the context of it being an interim measure. The respondent welcomes the forthcoming full review of LLU, as the differential in price between full LLU should not be so great as to influence one choice over another.

Another respondent proposes that Ramsey Pricing is the optimal approach to price setting. The respondent believes this approach should occur in the context of a wider LLU review.

A fourth respondent believes there should be no over recovery of costs, and that it does seem as though there may be over recovery in current LLU Line Share and line rental prices. The respondent believes that if the cost of providing LLU Line Share is recovered through Line rental, then just the carrier billing and administration costs remain, however, two separate services are provided by two separate operators, each gaining benefit from use of the line. The respondent claims in this case it may not be appropriate to allocate all of the cost of providing the line to one service or operator. The respondent believes further analysis is required.

The final respondent strongly disagrees with Options 1 and 2. The respondent claims price setting in the regulatory context should be based on economic principles, not on simple accounting, as it matters how costs are recovered. The respondent believes users of different services may respond differently to pricing signals and externalities may exist. The respondent believes that Option 3 was not sufficiently developed. The respondent refers back to Decision Notice D8/01, where the ODTR discounted using the economic theories of Ramsey Pricing and Efficient Component Pricing (“ECPR”), but endorsed the use of Shapely allocation, Co-operative Bargaining theory and Share of Stand Alone costs, to endorse the conclusion that common costs should be equally shared by the two services using the same facility. The respondent believes the full price for LLU Line Share should therefore have regard to economic theory, and take into account billing and administration costs, direct incremental costs, and the allocation of common cost.

3.4.6 *ComReg’s Position & Conclusion*

ComReg notes the comments of the four respondents who agreed that if a benchmark approach is rejected outright that Option 1 would still be the next most appropriate alternative. There was general consensus among a further three respondents, accepting the inclusion of incremental costs, but there should be due consideration given to attribution of common costs to the two services (high and low frequency) supplied over the local loop. A detailed study of LLU pricing in general is currently underway and this will include detailed consideration of LLU Line Share under the various economic methodologies such as Ramsey Pricing, Efficient Component Pricing, Shapley-Shubik etc.

ComReg is of the preliminary view that it may be unwise to impose a definitive methodology without considering the impact on the price of full unbundling and without a view as to how the cost of the access network should be recovered over the medium term. These matters are in fact being considered as part of the full review of LLU pricing, which is currently ongoing. However this review will not be completed until Autumn 2008 at the earliest. ComReg is, however, firmly of the view that the current anomalies described in Consultation Document No. 08/23 must be addressed in a timely manner.

ComReg believes that there is an over recovery of costs of the local loop, through current prices. The international precedents are being used to demonstrate that there is widespread consideration that retail line rental does recover the costs of the local loop, and considering the LLU Line Share service can only be availed of with the full loop services, and then the price should reflect this.

In conclusion ComReg has considered all responses and does not believe the Option 1 of incremental costs of billing and administration is the best available option at this time and that the proposed option of a benchmark price of a maximum of €2.94 is the most appropriate.

3.4.7 Consultation Question

***Q.9*. What do you believe is a reasonable price for LLU Line Share, taking into account the concerns and principles outlined in this Consultation? Please detail your response, where possible supported with evidence.**

3.4.8 View of respondents

ComReg received eight responses to this question.

One respondent would find it hard to justify any charge other than that of administration and bill production overhead, as full line rental cost is recovered. The respondent would welcome a slightly more favourable position than just the EU average. Therefore, it would prefer an interim price of approx €2.60 monthly, to be reviewed at time of the full LLU Consultation.

The second respondent believes a price anywhere between €1.50 and €2.50 would be sufficient to attract investment by LLU Operators, encourage innovation and stimulate competition in the market place.

The third respondent believes a price of €2.00 would recover costs and at the same time boost competition by the provision of differentiated products as attractive prices, increasing Broadband penetration and attract investment.

The fourth respondent believes that a reasonable price for LLU Line Share should be under €2.00. Given the competitive advantage enjoyed by Eircom (as can be seen in ComReg's statistics of Eircom DSL penetration at and Eircom's some 70% market share of the retail DSL market) by virtue of behavioural, price, process and service issues with LLU, a vital boost to the competitive industry is much needed, according to the respondent.

A fifth respondent believes prices must reflect real underlying economic costs of service provision using the form of wholesale access while allowing efficient operators to earn a reasonable rate of return. The respondent does not have sufficient information to determine an appropriate price.

A sixth respondent cannot determine the correct LLU Line Share price. The respondent believes only ComReg, having obtained necessary supporting data from Eircom, can make this determination.

A seventh respondent claimed that apart from Eircom, no-one has sufficient data to determine an appropriate price.

An eighth respondent believes that pending the completion of LLU market analysis, the only reasonable price that can be determined is according to the current methodology,ie per D8/01.

3.4.9 ComReg's Position & Conclusion

ComReg welcomes the submissions of the four respondents who made a pricing proposal. The figures quoted by these respondents range between €1.50 and €2.60; however it must be noted that the respondents did not provide workings for these figures.

ComReg acknowledges that three other respondents did not have sufficient data to determine an appropriate price.

Nothing has been provided to ComReg in any response documents to substantiate the current price of €8.41 or anything close to this price. This goes further to demonstrate that this is an anomalous figure.

As ComReg believes there is an over recovery of cost, then the decision relating to LLU Line Share price, per D8/01, where the price of LLU Line Share is 50% of cost of LLU plus wholesale billing and administration costs, is no longer valid. Nothing has come to ComReg's attention to date in the current workstreams on LLU pricing that would suggest this proposal is inappropriate.

ComReg believes based on current volumes being processed and the responses received from operators that the LLU Line Share product will be availed of by OAOs in the next six to twelve months. As such any monthly payment by OAOs to Eircom based on an excessive price is wholly inappropriate and an unfair cashflow burden, which must be rectified. Quarterly report questionnaire data support ComReg's view that there is a current demand for LLU Line Share. The number of LLU Line Share connections has risen by 65% between December 2007 and April 2008.

3.5 Direction and Decision

ComReg has decided to impose the Direction, contained in Annex A, on Eircom. The Direction will apply to Eircom Limited, and will be binding upon Eircom and Eircom shall comply with the Direction in all respects.

The SMP Decision[62] imposed *inter alia ex ante* regulatory obligations on Eircom. The obligations imposed on Eircom under Regulation 14 of the Access Regulations include obligations relating to **price control** and **cost orientation** of prices. Under Regulation 17 of the Access Regulations, ComReg may issue a Direction for the purposes of further specifying requirements to be complied with relating to an obligation imposed by or under the Access Regulations to an undertaking to do or refrain from doing anything which ComReg specifies in the Direction. ComReg is now issuing Eircom with such a Direction.

The Direction will set a maximum price of €2.94 per month as a recurring charge for LLU Line Share for a period of one year.

Decision D8/01 of the ODTR entitled Local Loop Unbundling – Eircom's Access Reference Offer Decision Notice D8/01 and Document Number ODTR01/27R dated September 2001 will be revoked insofar as it relates to LLU Line Share recurring charges and the methodology for the calculation of LLU Line Share recurring charges.

The Direction shall be effective from the date of its publication and shall remain in force for one year known as the relevant year. The relevant year commences 28 calendar days after the effective date.

3.5.1 Consultation Question

***Q.10**. Do you agree or disagree that the above proposed Decision Instrument is clear, unambiguous and practical? Please detail your response and where possible supported with evidence.*

3.5.2 View of respondents

ComReg received six responses to this question.

Four respondents generally agreed that the proposed Decision Instrument is clear, unambiguous and practical.

A fifth respondent generally agreed, but had some concerns that confusion might arise should the LLU price review not be conducted and implemented in the "Relevant Year". The respondent believes this would result in a lack of regulatory certainty for access seekers.

[62] Designation of SMP and Decision on Obligations- Market Analysis: Wholesale unbundled access (including shared access) to metallic loops and sub-loops; Document 04/70, Decision No. D8.04 published on 15 June 2004

A sixth respondent does not agree that the decision is clear and unambiguous. The respondent claimed that this exercise by ComReg is in excess of its powers and would be unlawful. The respondent notes that ComReg based its draft decision based on Regulations 14 and 17 of the Access Regulations. The respondent cites the Framework Regulations, where prior to imposing withdrawing or amending SMP, a market analysis in accordance with Regulation 27(2) is carried out. The respondent claims the purpose of the market analysis is precisely to take account of changes in the market, therefore it is not possible for ComReg to argue that there are changes in market dynamics, until a market analysis of relevant markets has been completed.

The respondent further notes that interim measures can only be adopted pursuant to Regulation 20(8) of Framework Regulations ("*there are exceptional circumstances justifying an urgent need to act - such that the regulator is dispensed with the need to consult*") which in any case ComReg has not invoked. The respondent argues that there is no reference to notification to the European Commission.

The respondent also cites other difficulties with the text. The respondent claims the meaning of "relevant year" is not clear. The respondent believes there is a need to clarify the meaning of "interim". The respondent believes that there is a need to clarify the timeframes for implementation of wholesale price changes by Eircom. The respondent also believes there is a need for clarification of the effective dates of revised pricing, to avoid disputes. The respondent claims that the Decision does not consider the implication for Eircom's regulatory accounts.

3.5.3 ComReg’s Position & Conclusion

The “relevant year” is the year commencing 28 (calendar) days after the effective date of the price change.

ComReg has decided to set the benchmark price as a maximum final price for a period of one year. ComReg no longer uses the word interim in its Direction. By the end of the “relevant year”, ComReg fully intends to have the current LLU Pricing and Line Share review complete. As such the benchmark price being set by this decision may change during the relevant year should the conclusion of the LLU review indicate that a revised price is more appropriate. Should the full LLU Price review still be outstanding at the end of the “relevant year”, ComReg will carry out an updated review of the benchmark on which this revised price is based and amend according to the mid range at that time and consider whether a new Direction is required.

Eircom currently bills LLU Line Share one month in advance similarly to how Retail Line Rental is billed.

As such the price change will affect all bills issued 30 (calendar) days after the commencement of the relevant year (which itself commences 28 (calendar) days after the effective date of the price change). This is to facilitate Eircom to be able to make the required adjustments to its billing processes.

ComReg does not believe that this price change will have any significant implications regarding regulatory accounts. ComReg is not at this time insisting on any change in presentation of the accounts as a result of this decision. The format of Eircom's regulatory accounts will be the topic of a separate workstream.

In relation to ComReg's obligation to notify the European Commission, ComReg is cognisant of its obligations in respect of the European Commission.

Decision:

ComReg has decided to issue Eircom with the Direction contained in Annex A.

4 Annex A: Direction

1 STATUTORY AND LEGAL POWERS

1.1 This Direction is made by the Commission for Communications Regulation:

1. Pursuant to Regulation 17 of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003[63];

2. Pursuant to and having regard to the SMP designation on Eircom contained in ComReg Decision No. D8/04;[64] which found Eircom to have SMP for wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services, under the provisions of Regulations 25, 26 and 27 of the Framework Regulations[65];

3. Pursuant to and having regard to the obligation of price control imposed upon Eircom in Section 9 of the Decision contained in ComReg Decision No. D8/04 entitled "Obligations in Relation to Price Control and Cost Orientation" as provided for in Regulation 14 of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003;

4. Having taken account of Regulation 14(3) of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003;

5. Having, where appropriate, complied with Policy Directions made by the Minister[66];

6. Having taken account of the submissions received in relation to Document No. 08/23[67]

7. Having had regard to the analysis and reasoning set out in ComReg Document No. 08/46 (Decision No. D03/08) which shall, where necessary, be construed together with this Direction; and

8. Having regard to its functions and objectives under sections 10 and 12 respectively of the Communications Regulation Act, 2002.

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[63] S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003.

[64] Designation of SMP and Decision on Obligations- Market Analysis: Wholesale unbundled access (including shared access) to metallic loops and sub-loops; Document 04/70, Decision No. D8.04 published on 15 June 2004.

[65] S.I. No. 307 of 2003 the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003.

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

[67] Consultation on the Rental Price for Shared Access to the Unbundled Local Loop Document No. 08/23 of 19 March 2008

2 DEFINITIONS AND INTERPRETATION

2.1 In this Direction:

"Access Regulations" means European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003, S.I. No. 305 of 2003;

"ComReg" means the Commission for Communications Regulation, established under section 6 of the Communications Regulation Act, 2002;

"LLU Line Share" means a methodology whereby the voice frequency service provided by Eircom and the high frequency service provided by the Access Seeker may be integrated over the same two-wire metallic path as more fully described in Annex C, Service Schedule 103 Appendix 1 to Eircom's Access Reference Offer;

"ODTR" means the Office of the Director of Telecommunications Regulation which was dissolved under section 8 of the Communications Regulation Act, 2002 on the establishment day of ComReg;

"**Recurring Charge**" means the LLU Line Share monthly rental charge, as currently set out in the Price List contained in Section 1.3 of Annex C, Service Schedule 103 to Eircom's Access Reference Offer under the heading Recurring Charge;

"Relevant Year" means the period of 12 calendar months commencing 28 days from the effective date;

"SMP Decision" means ComReg Decision No. D8/04;[68] which found Eircom to have significant market power (SMP) for wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services, under the provisions of Regulations 25, 26 and 27 of the Framework Regulations;

2.2 The provisions of ComReg Decision No. D8/04 and the individual decisions in the Response to Consultation and Decision in ComReg Document No. 08/46 (Decision No. D03/08) shall where necessary be construed as forming part of this Direction.

3 SCOPE AND APPLICATION

3.1 This Direction applies to Eircom Limited and its successors and assigns ("Eircom").

3.2 This Direction is binding upon Eircom and Eircom shall comply with it in all respects.

[68] Designation of SMP and Decision on Obligations- Market Analysis: Wholesale unbundled access (including shared access) to metallic loops and sub-loops; Document 04/70: Decision No. D8.04 published on 15 June 2004.

4 PRICE CONTROL

4.1 The SMP Decision imposed inter alia ex ante regulatory obligations pursuant to Regulation 14 of the Access Regulations. The obligations imposed on Eircom under Regulation 14 of the Access Regulations include obligations relating to price control and cost orientation of prices.

4.2 Under Regulation 17 of the Access Regulations, ComReg may issue directions to Eircom to do or refrain from doing anything which ComReg specifies in the direction, for the purpose of further specifying requirements to be complied with by Eircom relating to its obligations under the Access Regulations.

4.3 This Direction is issued pursuant to Regulation 17 of the Access Regulations, for the purpose of further specifying requirements to be complied with by Eircom relating to obligations imposed on Eircom, under Regulation 14 of the Access Regulations and Section 9 of the SMP Decision.

4.4 Eircom is hereby directed for the Relevant Year to apply no more than a maximum of €2.94 per month as an LLU Line Share Recurring Charge.

4.5 Section 4.4 shall apply to all bills issued by Eircom 30 days after the commencement of the Relevant Year and to all bills issued at any time thereafter during the Relevant Year.

5 REVOCATION OF ODTR DECISION D08/01

5.1 Decision D8/01 of the ODTR entitled Local Loop Unbundling – Eircom's Access Reference Offer Decision Notice D8/01 and Document Number ODTR01/27R dated September 2001 is hereby revoked insofar as it relates to LLU Line Share Recurring Charges and the methodology for the calculation of LLU Line Share Recurring Charges.

5.2 Section 5.1 shall take affect on the commencement of the relevant year.

6 MAINTENANCE OF OBLIGATIONS

6.1 For the avoidance of doubt, nothing in this Direction shall in any way (either expressly, or by implication) affect the continuing validity of Decision D8/01 of the ODTR entitled Local Loop Unbundling – Eircom's Access Reference Offer; Decision Notice D8/01 and Document Number ODTR01/27R dated September 2001 insofar as it does not relate to LLU Line Share Recurring Charges and the methodology for the calculation of LLU Line Share Recurring Charges.

6.2 If any section, clause or provision or portion thereof contained in this Direction is found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, that section, clause or provision or portion thereof shall, to the extent required, be severed from this Direction and rendered ineffective as far as possible without modifying the remaining section(s), clause(s) or provision(s) or portion thereof of this Direction, and shall not in any way affect the validity or enforcement of this Direction.

7 STATUTORY POWERS NOT AFFECTED

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

8 EFFECTIVE DATE

8.1 This Direction shall be effective from the date of its publication and shall remain in force until further notice by ComReg.

JOHN DOHERTY
CHAIRPERSON
THE COMMISSION FOR COMMUNICATIONS REGULATION
THE 27 DAY OF June 2008