



Commission for  
**Communications Regulation**

## Response to Consultation Document and Final Direction and Decision

### **Response to Consultation Document No. 09/75 and Final Direction and Decision:**

#### **Accounting Separation and Cost Accounting Review of Eircom Limited**

<b>Decision No.</b>	<b>D08/10</b>
<b>Document No:</b>	<b>10/67</b>
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## **Contents**

1. Executive Summary .....	2
2. Introduction .....	8
3. Responses to ComReg Consultation Document No. 09/75 .....	9
4. Regulatory Impact Assessment.....	86
Appendix I – Legislative and Policy Background.....	105
Appendix II: The Decision Instrument .....	114

## 1. Executive Summary

- 1.1 The Commission for Communications Regulation (“ComReg”) is responsible for the regulation of the electronic communications sector in Ireland and this is largely achieved through the regulation of wholesale markets that are deemed not to be effectively competitive. ComReg is responsible for monitoring compliance with the relevant obligations imposed.
- 1.2 Following various market analysis processes, Eircom Limited (“Eircom”) has been designated as an operator with Significant Market Power (“SMP”) in a number of markets (Wholesale (Physical) Network Infrastructure Access, Wholesale Terminating Segments of Leased Lines, Wholesale Fixed Call Termination, Wholesale Call Origination and Transit Services, Wholesale Broadband Access and Retail Fixed Narrowband access). The SMP remedies of accounting separation and cost accounting have been imposed on Eircom on those markets.
- 1.3 On 5 October 2009<sup>1</sup> ComReg consulted on a set of proposed measures which were intended to improve and refine the current accounting separation and cost accounting obligations on Eircom (the “Draft Direction”).
- 1.4 A key objective of this consultation was to increase the level of transparency of the current separated accounts of Eircom, by improving the availability of adequate information on the costs and performance of the various parts of Eircom’s regulated business. This would also enable Eircom to demonstrate compliance with its regulatory and competition law obligations while facilitating ComReg in monitoring such compliance. The Draft Direction further specified how Eircom’s obligations to maintain separated accounts and cost accounting systems would be monitored by ComReg for compliance with these obligations going forward.
- 1.5 The current regulatory accounting requirements under which Eircom operates were devised over 10 years ago when regulatory reporting was at an early stage of development. In the intervening period there have been various changes which ComReg considers have necessitated the review of Eircom’s regulatory reporting requirements. These include, *inter alia*:
  - The length of time since the last review and recent changes in other jurisdictions
  - The experiences of ComReg and Eircom in the intervening period of assessing and understanding financial information used in the regulatory process
  - The completion of a number of market analyses
  - The need to reflect the market based structures in accordance with the European regulatory framework as transposed into Irish law in 2003 (the “Regulatory Framework”) and the European Commission’s (the

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<sup>1</sup> ComReg Document No. 09/75: Accounting Separation and Cost Accounting review - Draft Direction to Eircom Limited; published on 5 October 2009.

“Commission”) Recommendation on Relevant Product and Service Markets<sup>2</sup> in any revised separated accounts structure.

- 1.6 Following a review of responses to Consultation Document No.09/75 ComReg has made its decision as set out in this document. The direction and decision relating to accounting separation and cost accounting (the “Decision Instrument”) is at **Appendix II** of this document.
- 1.7 As the changes being made to Eircom’s reporting structure represent a significant change from those currently in force, ComReg has been cognisant throughout the process of the potential cost impact (and general disruption) these could cause to Eircom. ComReg considers that the Decision Instrument, once properly implemented, is sufficient for Eircom to demonstrate compliance with its regulatory obligations, provide sufficient transparency to the various stakeholders, and simultaneously should not disproportionately increase the regulatory reporting and cost burden on Eircom beyond that currently required. Additionally ComReg considers the Decision Instrument is sufficiently robust to meet ComReg’s future requirements and is in accordance with the revisions to the Regulatory Framework which are due to be transposed into Irish law in 2011.<sup>3</sup> ComReg is also of the view that the Decision Instrument adheres to international best practice.
- 1.8 The principal changes and improvements that ComReg has made to Eircom’s accounting separation and cost accounting structures relate to:
  - A move to market based reporting
  - The presentation, publication, and audit of information
  - How transfer pricing is reported
  - The improved documentation, by Eircom, of its cost accounting systems.

#### **A move to a market based reporting**

- 1.9 Under the Regulatory Framework the format and content of separated accounts must be aligned with the market structures identified by the Commission in its

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<sup>2</sup> Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation which replaced Commission Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services

<sup>3</sup> Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services and Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws

Recommendation on Relevant Product and Service Markets<sup>4</sup> and sufficient to enable Eircom demonstrate its compliance with specific obligations (e.g. transparency, non-discrimination and cost orientation) and for ComReg to monitor compliance in this regard. On this basis ComReg considers it necessary that Eircom update its current reporting process from its business split (i.e. Local Access Network, Core Network, Retail and Other Business) towards a market structure. This is consistent with and reflective of the product and service markets that the Commission has identified and where ComReg has designated Eircom, from time to time, with SMP and imposed accounting separation and cost accounting obligations.

1.10 ComReg, in revising the structure of how Eircom reports its regulated activities will now require it to produce the following (which will together comprise the Regulated Accounts):

- Separated Accounts to the market level
- Additional Financial Statements (“AFS”) for material services and products
- Additional Financial Information (“AFI”) for other financial data
- Accounting Documentation describing, in detail, Eircom’s regulatory accounting systems.

1.11 The relevant cost information and documentation of processes/procedures and methodologies applied should be sufficiently transparent for the various regulated markets to ensure ComReg has a greater understanding of how Eircom manages and accounts for its regulated activities.

### **The presentation, publication and audit of information**

1.12 The publication by Eircom of its Separated Accounts will ensure its adherence to its accounting separation obligation. ComReg is of the view that the revised format of the Separated Accounts is consistent with international best practice and meets the needs of the various stakeholders. The Separated Accounts will also contain details of the average revenues and average costs of material services and products and where relevant the associated volumes. This, ComReg considers, will contribute to an open and competitive market.

1.13 Associated with this ComReg will seek a “*Duty of Care*” from the auditor of the Separated Accounts to ensure that it provides an audit opinion on the Separated Accounts, addressed to both ComReg and Eircom, as to whether or not the Separated Accounts are compliant with the relevant parts of the Decision Instrument. This would allow ComReg place greater reliance on the audit report going forward.

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<sup>4</sup> The European Commission defined the relevant service and product markets in the Commission Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services. The 2003 recommendation has been replaced by Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services.

- 1.14 In ComReg's view it is necessary in the interests of transparency and non-discrimination, to obtain information below the market level as it is typically below the market level that wholesale prices and internal transfer charges are determined. As such ComReg requires Eircom to submit to it confidential AFS for material services and products. For certain services and products, due to their importance in the market place, it is likely that AFS will be required annually. For others these might only be required on an *ad hoc* basis (i.e. in times of price reviews). ComReg is of the view that these AFS will ensure that sufficient information is readily available to be used for assessing compliance with a price control obligation.
- 1.15 In association with this ComReg may, as required, request that an audit be performed on certain AFS. However, due to the complexity and cost of auditing below the market level, a lower level audit assurance may be procured compared to the opinion normally provided with the Separated Accounts. Alternatively ComReg may request that certain procedures, agreed between it, Eircom and a qualified independent body be conducted and reported upon for discrete regulatory reviews. It should be noted that Eircom's auditors could also be the qualified independent body. Through both of these mechanisms, which may be by way of a tri-partite arrangement, ComReg can receive a level of detail and assurance which it previously has not received from Eircom's auditors.
- 1.16 The new reporting structure will also mean that Eircom will not necessarily have to disclose unregulated information that was previously published. For example up until now it has been obliged to separately report on "*Retail local calls*" and "*Calls to Internet*". As these fall within unregulated markets it will no longer have to report these activities in their revised format.
- 1.17 ComReg, however, may require certain information from Eircom in relation to unregulated activities. This information will only be sought in specified circumstances (e.g. where there are margin/price squeeze or non-discrimination issues).

### **Transfer charging**

- 1.18 With the introduction of the new reporting structure ComReg is also introducing clearly defined means of accounting for transfer charges by Eircom within the Decision Instrument. A well defined, transparent and verifiable transfer charging system is necessary to demonstrate non-discrimination and to calculate internal costs and revenues. ComReg believes the method for accounting for transfer charges in the Decision Instrument achieves this. Eircom will be required to account for transfer charges between its wholesale and retail arms or between it and its subsidiaries in a method which (where possible) most closely represents charges as if they were sold externally to another operator. When accounting for a transfer charge Eircom will have to choose a price or a combination of prices from its published price lists that most closely reflects the technical capabilities of the service or product as if it were sold externally.
- 1.19 ComReg is aware that in certain cases the charges that Eircom would have levied upon itself would not necessarily be the same as those charged externally. In these cases ComReg still requires Eircom, where possible, when reflecting transfer charges to record in its accounts a price or prices that most closely matches the service or product as if it were offered externally and where internal

transfer charges are different these must be fully explained and justified to ComReg.

- 1.20 This information will assist ComReg in monitoring Eircom's compliance with the relevant non-discrimination obligations with regards to its wholesale prices as well as its internal transfer charges. This will also help detect and prevent unfair cross subsidisation.

### **Documentation by Eircom of its cost accounting systems**

- 1.21 Eircom is required to provide to ComReg enhanced documentation regarding its cost accounting systems. This Accounting Documentation will assist ComReg as it assesses the various elements of the Separated Accounts, AFS, and AFI submitted to it.
- 1.22 As such ComReg will be able to determine if a methodology currently in force is appropriate or if alternatives might be more suitable. In addition as investment in Next Generation Networks ("NGN") increases and as the lines between the traditional Core and Access networks become more blurred an accurate recording of how this investment is treated is necessary. This will ensure that the correct allocation of costs is made to the various regulated markets, services and products.
- 1.23 Where Eircom proposes to change material methodologies within its cost accounting systems it will be required to notify ComReg in advance of any changes. As such ComReg will be able to assess the suitability of Eircom's proposals and where appropriate agree or disagree with any such proposals before they are implemented in the cost accounting system.
- 1.24 While ComReg is mindful that the documenting of regulatory accounting systems could, conceivably, be open-ended it requires Eircom to address the more material aspects that drive costs within its regulatory accounting process. It is of the view that the enhanced documentation required will be in line with international best practice but also reflective of ComReg's own regulatory needs while at the same time being proportionate for Eircom.
- 1.25 ComReg also engaged consultants, Deloitte and Touche ("Deloitte"), to carry out a confidential review of Eircom's regulatory accounting models and related processes and procedures and also to assist in ensuring that the Decision Instrument was proportionate and in line with best practice. The conclusions of the Deloitte review are consistent with this Decision Instrument.
- 1.26 In accordance with the Commission's Recommendation on Accounting Separation and Cost Accounting<sup>5</sup> ComReg considers that the Decision Instrument facilitates the reporting of regulatory financial information to demonstrate compliance with regulatory obligations. In finalising the Decision Instrument ComReg measured the requirements against the qualitative criteria of relevance, reliability, comparability and materiality and is satisfied that it has been reasonable in all respects.
- 1.27 ComReg considers that the Decision Instrument is a proportionate and justifiable means by which ComReg requires Eircom to meet its accounting separation and

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<sup>5</sup> Commission Recommendation of 19 September 2005 on accounting separation and cost accounting systems under the regulatory framework for electronic communications (2005/698/EC)

cost accounting obligations. ComReg believes that it is a greatly improved means of reporting financial information which should serve the needs of all stakeholders for the foreseeable future. Additionally it provides a level of transparency which will facilitate ComReg in monitoring that Eircom has complied with its accounting separation, price control, cost accounting and non-discrimination obligations and in detecting any potential unfair cross-subsidy or potential margin squeeze issues.



## 2. Introduction

### Background

- 2.1 The Decision Instrument changes how Eircom reports its regulated activities. It replaces a process which has been in place for over ten years. ComReg is confident that it will meet the needs of all users of regulatory accounting information for many years to come.
- 2.2 As part of the process ComReg has engaged in detail, in recent months, with Eircom on how the Decision Instrument could be implemented by it in a timely, proportionate and cost effective manner.
- 2.3 The attached Decision Instrument (See **Appendix II**) is the culmination of a detailed analysis by ComReg of its regulatory needs, Eircom's obligations and the requirements of other users of its Separated Accounts. ComReg considers that the Decision Instrument meets each of these requirements while being proportionate and justifiable in light of ComReg's objectives as set out in section 12 of the Communications Regulation Act 2002 (the "2002 Act").<sup>6</sup> ComReg believes the obligations imposed can be implemented by Eircom in a reasonable timeframe. It also considers that the Decision Instrument will assist in ensuring Eircom is compliant with its regulatory obligations and will assist in the promotion of competition thereby benefiting consumers and the wider economy.
- 2.4 ComReg published Consultation Document No. 09/75 ('ComReg Document No. 09/75') on 5 October 2009. In that consultation document, ComReg discussed Eircom's regulatory accounting processes under the following main categories:
  - Accounting separation and cost accounting
  - Volume and revenue identification
  - Cost allocation and apportionment
  - Separated accounts
  - Accounting documentation
  - Audit
  - Regulatory Impact Assessment ("RIA").
- 2.5 **Section 3** of this document contains a summary of the main points made by respondents and ComReg's conclusions to each of the questions that were posed in ComReg Document No. 09/75 under the main categories mentioned above.
- 2.6 **Section 4** of this document contains the RIA in respect of the Decision Instrument as updated for information received during the review.
- 2.7 **Appendix I** of this document contains the Legislative and Policy Background.
- 2.8 **Appendix II** of this document contains the Decision Instrument.

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<sup>6</sup> As amended by the Communications Regulation (Amendment) Act 2007 (No. 22 of 2007) and the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 (No. 2 of 2010)

### 3. Responses to ComReg Consultation Document No. 09/75

- 3.1 As previously highlighted ComReg published ComReg Document No. 09/75 on 5 October 2009 to consult on the Draft Direction. ComReg received five responses to that consultation. The five respondents are listed below:
- Eircom Limited (“Eircom”)
  - BT Communications Ireland Limited (“BT”)
  - Chartered Accountants Ireland (“CAI”)
  - PricewaterhouseCoopers (“PwC”)
  - Association of Licensed Telecoms Operators (“ALTO”).
- 3.2 ComReg has taken all responses (both confidential and non confidential) into consideration when determining its final decision in this document. ComReg, on reflecting upon the preliminary conclusions that it had outlined in ComReg Document No. 09/75, taking into account the various responses received and assessing the outcome of its detailed engagement with Eircom, has amended its final position for some questions. For these questions, where amendments were required, some respondents had agreed with ComReg’s preliminary conclusions in ComReg Document No. 09/75. However, ComReg considers that the amendments made were necessary to add further clarity where respondents raised concerns in some areas and for the most part do not materially alter the proposed requirements set out initially in ComReg Document No. 09/75.
- 3.3 ComReg notified the European Commission, pursuant to its obligations under Article 7 of the Framework Directive<sup>7</sup> concerning the Decision Instrument. ComReg received a “no comments” letter from the European Commission<sup>8</sup>.
- 3.4 The full details of ComReg’s preliminary views and reasoning in this regard are set out in ComReg Document No. 09/75. However, the main preliminary views are summarised in this document. In **Section 3** of the document, ComReg has for each of the seven categories discussed in ComReg Document No. 09/75 (and listed below), restated the questions, summarised the views of the various respondents and stated its conclusion, having carefully considered the views of respondents.
- 3.5 As stated above, the seven categories under which ComReg conducted its consultation in ComReg Document No. 09/75 are listed below:
- Accounting separation and cost accounting
  - Volume and revenue identification
  - Cost allocation and apportionment
  - Separated accounts

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<sup>7</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services

<sup>8</sup> Commission decision concerning Case IE/2010/1104: modification of remedies imposed on regulated retail and wholesale markets; dated 6 August 2010

- Accounting documents
  - Audit
  - RIA.
- 3.6 Prior to dealing with the thirty-five questions that were posed in ComReg Document No. 09/75, ComReg will deal with the general points that were raised by one respondent, namely **Eircom**, outside its responses to the consultation questions.

### **General points raised by Eircom outside the consultation questions**

- 3.7 **Eircom** raised five points in its general section which have been summarised in the following paragraphs under the following five headings used by Eircom:
- Separate and distinct obligations
  - Alignment with current Regulatory Framework
  - Disproportionate and excessive reporting requirements
  - Analysis based on benchmark groups
  - Unwarranted regulation
- 3.8 ComReg will now respond to each of these five points separately after summarising the issues raised by Eircom.

### **Separate and Distinct Obligations**

- 3.9 **Eircom's first point** was that in its view ComReg has inappropriately combined the two obligations (accounting separation and cost accounting). Eircom sets out the relevant legislation that supports the obligations of accounting separation and cost accounting and explains its interpretation of that legislation.
- 3.10 In Eircom's view ComReg has imposed both of these obligations without consideration of the sufficiency of one or other and ComReg is therefore seeking to impose these obligations in such a manner that goes beyond what is envisaged in the legislation.
- 3.11 Eircom then considers that ComReg appears to be imposing accounting separation obligations upon Eircom in areas that should be subject to cost accounting obligations. Eircom cites paragraph 5.16 of ComReg Document No. 09/75 as an example, where ComReg is seeking disaggregated profit and loss accounts and balance sheets at a service level. According to Eircom, this obligation is "*wholly inappropriate*" as individual wholesale services are only subject to a cost accounting obligation.

### **ComReg's conclusions**

- 3.12 ComReg would like to clarify that it believes the consultation document was and is entirely clear on what is required to meet the proposed obligations set out in that document. Accounting separation is typically linked by an obligation to maintain cost accounting systems. For this reason ComReg considers that these obligations are linked in that they are both necessary in order to set out the regulatory reporting requirements. While the relevant obligations are separate, it

is not possible to look at them in isolation of each other. ComReg does not accept however that it inappropriately combined the two obligations. ComReg outlined clearly in the Legal Background at Section 11 in ComReg Document No. 09/75 the clearly separate and distinct obligations to which Eircom is subject.

- 3.13 ComReg, having considered all responses to its consultation questions, its ongoing bilateral engagement with Eircom and decisions made in other European countries, has modified some of its preliminary proposals in the Decision Instrument. Please refer to each of the subsequent response to consultation questions in this document for further detail of these and where ComReg has detailed Eircom's distinct obligations in line with the relevant legislation.
- 3.14 In relation to Eircom's specific example cited above about paragraph 5.16 of ComReg Document No. 09/75, ComReg would like to highlight that in the Decision Instrument, it is only seeking Separated Accounts (which will be audited and published) to the market level pursuant to the accounting separation obligation. The Separated Accounts, will however, contain details of average revenues and costs (and where relevant associated volumes) for material services and products.
- 3.15 The Decision Instrument only requires Eircom to prepare and submit detailed accounting information below the market level *on a confidential basis* to ComReg pursuant to the cost accounting obligation. This will incorporate further details on the material services and products, which if disclosed could place Eircom at a competitive disadvantage but which are necessary for ComReg's regulatory functions.

### **Alignment with the Regulatory Framework**

- 3.16 **Eircom's second point** was around aligning the current regulatory accounting requirements to meet the Regulatory Framework transposed into Irish law in 2003. Eircom detailed its agreement with ComReg that the current regulatory accounting reporting requirements needed to be updated to reflect the Regulatory Framework. It agreed that a system needed to be put in place to facilitate Eircom in demonstrating its compliance with its regulatory obligations while also facilitating ComReg in assessing such compliance.
- 3.17 Eircom then set out its interpretation of the obligations in particular Article 8 of the Access Directive<sup>9</sup> and Recital 6 of the Commission Recommendation on Accounting Separation and Cost Accounting.
- 3.18 In Eircom's view, the proposals contained in ComReg Document No. 09/75 do not meet the fundamental criteria or the objectives of the Regulatory Framework. It considers that ComReg's proposals are "*disproportionate*" and not required to monitor the remedies imposed as part of the relevant market analyses.

### **ComReg's Conclusions**

- 3.19 ComReg notes Eircom's acceptance that the current regulatory reporting structure (which reports by business unit) needs to be updated to reflect the Regulatory Framework where results must be reported in line with the designated markets.

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<sup>9</sup> Directive 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.

- 3.20 ComReg has made certain modifications to its preliminary proposals in ComReg Document No. 09/75 as relevant in line with the responses received. However, ComReg does not believe that its proposals are “*disproportionate*” or unnecessary. ComReg’s requests are all within the relevant legislation (as detailed in **Appendix I**) and where Eircom has made claims of disproportionality in responding to the individual questions, ComReg, has where relevant, demonstrated the proportionality of its conclusions but in some cases modified the requirement. Please refer in particular to the RIA that has been carried out in **Section 4** of this document which further demonstrates the proportionality of the Decision Instrument.

### **Disproportionate and Excessive Reporting Requirements**

- 3.21 Eircom, while recognising ComReg’s responsibility to monitor Eircom’s compliance with its obligations does not accept that the Separated Accounts should fulfil such a function. If Eircom’s Separated Accounts were to fulfil such a function, Eircom believes that the cost of compliance would increase significantly and could lead to more fundamental changes to Eircom processes and procedures.
- 3.22 This is further developed by Eircom in its response to Question 35.

### **ComReg’s Conclusions**

- 3.23 Separated Accounts are necessary to support and to complement other obligations of transparency, price control (e.g. cost orientation) and non-discrimination that are typically imposed on vertically integrated operators with SMP such as Eircom. They will also assist in monitoring and ensuring compliance with an obligation not to unreasonably bundle products or services and in preventing unfair cross subsidies. ComReg is not attempting to increase the regulatory burden on Eircom through additional financial reporting requirements. ComReg considers that the Decision Instrument (**Appendix II**) should reduce the regulatory burden over the medium to long term upon Eircom through the streamlining of the reporting process and the reduction of *ad hoc* requests for financial information. It is likely that in the short term there will be an increased burden on Eircom to allow it to bring its accounts and documentation in line with the Decision Instrument and the Commission Recommendation on Accounting Separation and Cost Accounting. However ComReg believes that this is more due to remedying deficiencies in current reporting and documentation rather than as a direct result of the Decision Instrument.
- 3.24 ComReg is not requiring Eircom to maintain Separated Accounts for every regulated service and product. Instead it has required Eircom to maintain Separated Accounts to the market level which will be audited and published. The Separated Accounts will also contain details of average revenues and average costs for material services and products and, where relevant, the associated volumes. In relation to services and products, ComReg requires confidential submissions to it in the form of AFS and AFI for specified services and products. Those services and products where ComReg requires a confidential submission will be discussed with Eircom and set out by ComReg annually in advance of Eircom’s financial period end.
- 3.25 ComReg has responded to Eircom’s concerns around the cost of compliance in its response to Question 35 in **Section 4** of this document.

### **Analysis based on Benchmark Groups**

- 3.26 Eircom noted a number of concerns in relation to the appropriateness of ComReg's benchmark group, in particular, the use of such a small telecommunication benchmark group, its reliance on Telecom New Zealand, the view that ComReg's proposals go beyond what is required in the UK and the use of reporting obligations in other industries as a guide to impose obligations on Eircom.
- 3.27 Eircom also carried out its own benchmarking exercise focussing on 15 telecommunications operators that it included in a separate appendix to its response.

### **ComReg's Conclusions**

- 3.28 It should be noted that ComReg used its benchmarking exercise for comparative purposes only. It has not taken the findings in other jurisdictions and mechanically applied them to an Irish case. Instead it has used its benchmarking exercise as an aid to understanding the similarities and indeed differences that arose compared to other similar jurisdictions. The benchmarking review was not used as the primary source of evidence but as part of the overall review of the regulatory reporting environment.

### **Unwarranted Regulation**

- 3.29 Eircom stated that ComReg is not entitled to regulate unregulated markets and noted that ComReg is only entitled to make a request for information that relates to unregulated markets in exceptional circumstances. Eircom pointed to specific sections in the Draft Direction where it noted that the scope of ComReg's information requests could be "*excessively burdensome*".
- 3.30 Eircom also noted that to date the SMP decisions referred solely to "*Eircom Limited*". Therefore, in its view the Decision Instrument should not attempt to extend these obligations to include Eircom's subsidiaries.

### **ComReg's Conclusions**

- 3.31 ComReg, in finalising its Decision Instrument, has taken all responses and relevant legislation into account. With regard to the application of the Decision Instrument, as noted above, "*Eircom Limited*" has been designated as an SMP operator in a number of markets. The SMP remedies of accounting separation and cost accounting have been imposed on Eircom in those markets and the Decision Instrument applies to those markets. ComReg may however require information relating to unregulated markets. It does not require however that such unregulated information be published. Such information may be necessary to ensure related regulated markets are not negatively impacted by accounting practice in those unregulated areas. Accounts by their nature cannot be looked at solely in regulated areas without understanding the totality of the company accounts. However, in requiring such information ComReg has taken Eircom's views on board and does not believe that future requests for information as a result of this Decision Instrument will be in any way excessive or disproportionate. As is normal practice, ComReg will fully outline why information outside the normal reporting requirements is requested.
- 3.32 Please refer to the Decision Instrument at **Appendix II** and refer also to Questions 31, 32, 33 and 35.

## Responses to consultation questions and ComReg's Conclusions

3.33 ComReg will now summarise the key points made by it in ComReg Document No. 09/75 to each of the main categories previously outlined. It will then:

- restate the relevant questions that accompany each of the individual seven categories
- summarise the responses received from the respondents to each of the thirty-five questions and
- finally outline ComReg's conclusions to each of the individual thirty-five questions.

3.34 The next section addresses the questions posed in ComReg Document No. 09/75 that were relevant to accounting separation and cost accounting.

### Accounting Separation and Cost Accounting

3.35 ComReg imposed accounting separation and cost accounting obligations on Eircom in markets where, through market analyses, Eircom has been found to have SMP. These obligations<sup>10</sup> have been imposed in accordance with Regulation 12 and 14 of the Access Regulations<sup>11</sup> as well as Regulation 14 of the Universal Service Regulations<sup>12</sup>.

3.36 Under the Regulatory Framework the format and content of separated accounts and cost accounting systems must be aligned with markets as set out in the Commission Recommendation on Relevant Product and Service Markets. They must also be sufficient for Eircom to demonstrate its compliance with specific obligations (i.e. transparency, non-discrimination, cost orientation, price control).

3.37 Eircom's obligation to maintain separated accounts at the market level derives from ComReg's power under Regulation 12 (1) of the Access Regulations to impose on an operator having SMP obligations for accounting separation in relation to specified activities related to interconnection, access or both interconnection and access. The purpose of imposing an obligation regarding accounting separation is to provide a higher level of detail of information than that derived from the statutory financial statements of the notified operator, to reflect as closely as possible the performance of parts of the notified operator's business as if they had operated as separate businesses, and in the case of vertically integrated undertakings, to prevent discrimination in favour of their own activities and to prevent unfair cross-subsidy.

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<sup>10</sup> Please refer to the Legislative Background of this document at Appendix I for further details of the legislation concerning the obligations of Accounting Separation and Cost Accounting.

<sup>11</sup> European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 – S.I. No. 305 of 2003, and amended by the European Communities (Electronic Communications Networks and Services) (Access) (Amendment) Regulations 2007 S.I. No. 373/2007. <sup>11</sup> European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 – S.I. No. 308 of 2003, and amended by the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) (Amendment) Regulations 2007 S.I. No. 374/2007.

<sup>12</sup> European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 – S.I. No. 308 of 2003, and amended by the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) (Amendment) Regulations 2007 S.I. No. 374/2007.

- 3.38 For the purpose of ex ante regulation, ComReg may, and has required Eircom, as a vertically integrated operator, to make transparent its wholesale prices and its internal transfer charges, *inter alia*, to ensure compliance with its obligations of non-discrimination (imposed under Regulation 11 of the Access Regulations) and to detect and prevent unfair cross-subsidies. Where ComReg imposes such an obligation on Eircom it may specify the format and accounting methodology to be used. In order to facilitate the verification of compliance by Eircom with its obligations of transparency (under Regulation 10 of the Access Regulations) and non-discrimination (under Regulation 11), Eircom also has a statutory obligation to provide accounting records, including data on revenues received from third parties, to ComReg at its request.
- 3.39 Accounting separation is itself typically supported by an obligation on the SMP operator to maintain appropriate cost accounting systems. Under Regulation 14 of the Access Regulations, ComReg has also imposed obligations on Eircom in regulated markets for Eircom to maintain appropriate cost accounting systems. The purpose of imposing an obligation to implement a cost accounting system on Eircom is to ensure that fair, objective and transparent criteria are followed by it in allocating its costs to services and products in markets and within markets where Eircom is found to have SMP. Eircom's accounting separation and cost accounting systems need to be capable of reporting regulatory financial information to demonstrate full compliance with the regulatory obligations mentioned. ComReg was also of the preliminary view that separated accounts can play an important role in the assessment of the non-discrimination obligation, in that, through transparency, they can assist in the monitoring of possible cross subsidisation/below cost selling and margin/price squeeze issues for example.
- 3.40 In view of these obligations (which are specified in detail in the Legislative Background at **Appendix I** of this document), concerns arose in relation to the suitability of the current format of the Regulated Accounts (which include the Separated Accounts) to meet the needs of the various stakeholders. ComReg detailed in its consultation that there is a lack of granularity in Eircom's current separated accounts as they are only produced to a business level (i.e. Core, Access, Retail and Other) with a further sub division for Retail and Other.
- 3.41 It is, however, within the Core and Access businesses that the majority of regulated wholesale prices are determined (e.g. Interconnection and Local Loop Unbundling) but for which detailed information is not readily or publicly available. Due to a lack of this detailed information, and for other reasons, ComReg has, in order to gain an understanding of financial information below the market level, had to request further *ad hoc* data from Eircom in relation to services and products in the Core and Access areas. This has placed a significant resource burden on both ComReg and Eircom. Furthermore, as financial information tends to be received in a piecemeal fashion there have been difficulties for ComReg in assessing the completeness of this data, as well as reconciling it to other data and data sources or comparing it to prior years or prior submissions.
- 3.42 ComReg was therefore of the preliminary view in ComReg Document No. 09/75 that any revised set of separated accounts should reflect the market structures as defined in the Regulatory Framework and the Commission Recommendation on



Relevant Product and Service Markets thereby replacing the current structure of Core, Access, Retail, and Other.

- 3.43 ComReg was also of the preliminary view that the separated accounts should be presented in a consistent format from one financial period to the next. However, it was also envisaged that additional financial information, often relating to specific issues, be submitted to ComReg together with enhanced documentation of the accounting systems. This should further reduce the necessity for clarification requests from ComReg to Eircom.
- 3.44 Because of the reasons summarised above ComReg considered that it was appropriate to carry out a consultation on Eircom's accounting separation and cost accounting obligations.
- 3.45 This was the first area outlined in ComReg Document No. 09/75 and it preceded Question 1.

#### **Consultation Question in ComReg Document No. 09/75**

**Q. 1.** *Do you agree or disagree that a review of the Accounting Separation and Cost Accounting obligations should take place at this time? Please detail your response in full.*

#### **Views of respondents to Question 1 in ComReg Document No. 09/75**

- 3.46 There were three responses to this question.
- 3.47 **Eircom, BT, and ALTO** agreed that it was appropriate to review Eircom's accounting separation and cost accounting obligations at this time.
- 3.48 Eircom however considered that the consultation failed to distinguish sufficiently between the accounting separation obligation and the cost accounting obligation.
- 3.49 Eircom also highlighted its concern that ComReg has imposed SMP obligations on Eircom based on regulatory reporting systems developed prior to the implementation of the Regulatory Framework.

#### **ComReg's conclusions**

- 3.50 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.
- 3.51 As outlined in ComReg Document No. 09/75, ComReg was of the preliminary view that it is appropriate to undertake this review at this time. ComReg remains of this view. ComReg considers, for the following main reasons, that it is appropriate to undertake this review at this time:
- Alignment of separated accounts to market definitions
  - The completion of a number of market reviews
  - The introduction of retail bundle offerings
  - The introduction of new technologies
  - Insufficient granularity for ComReg's regulatory needs.
- 3.52 In relation to Eircom's comments that ComReg has failed to distinguish sufficiently between the obligations of accounting separation and cost accounting,

ComReg notes that that these obligations are derived from the Access Directive<sup>13</sup>. ComReg notes that accounting separation is typically linked by an obligation to maintain cost accounting systems and for this reason while the obligations are distinguished in the Decision Instrument they are both necessary to set out the regulatory reporting requirements.

- 3.53 Eircom has obligations pursuant to Regulation 12 and Regulation 14 of the Access Regulations<sup>14</sup>. ComReg is of the view that it has treated the obligations of accounting separation and cost accounting separately and distinctly. Please refer to the Decision Instrument at **Appendix II** which clearly sets out these separate and distinct obligations.
- 3.54 Eircom expressed concern that the accounting separation and cost accounting obligations that ComReg proposed in the consultation document were based on regulatory reporting systems developed prior to the implementation of the Regulatory Framework. ComReg notes that the Decision Instrument is proportionate, consistent with the Regulatory Framework and the Commission Recommendation on Accounting Separation and Cost Accounting and is of the view that this addresses Eircom's concern.

**Conclusion in relation to the appropriateness of a review of the accounting separation and cost accounting obligations at this time:**

ComReg, for the reasons outlined above, is of the opinion that it is appropriate to review Eircom's accounting separation and cost accounting obligations at this time.

### Volume and Revenue Identification

- 3.55 In ComReg Document No. 09/75 ComReg considered that the distribution of revenues by market, service and product was of great importance from a cost recovery point of view as well as possible issues of margin squeeze or predatory pricing. ComReg was also of the preliminary view that there was a necessity to separately identify between volumes and revenues directly attributable and those attributable by statistical means. It was of the preliminary view that as the accurate calculation of unit costs is necessary so as to ensure compliance with the cost accounting obligation that for the accurate calculation of unit costs reliable volume data is also needed.
- 3.56 ComReg considered that in the current format of the separated accounts there was a lack of transparency in relation to how transfer charges had been calculated and this was affecting ComReg's ability to assess whether the charges were non-discriminatory. With regard to bundles, for example, ComReg considered that there was a need to have greater visibility as to how the bundled discount was assigned across markets, services and products and that this was fundamental to monitoring activities in both regulated and unregulated areas. It was also of the

<sup>13</sup> Directive 2002/19/EC of March 2002 on access to and interconnection of electronic communications networks and associated facilities (Access Directive)

<sup>14</sup> European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 – S.I. No. 305 of 2003

preliminary view that there was a need to ensure consistency of volume data submitted as part of the separated accounts with that from other sources and in particular the ComReg quarterly key data reports (“Quarterly Reports”) and that any differences were reconciled and explained.

- 3.57 In order to increase transparency within the separated accounts ComReg proposed that revenues be disclosed below the market level for certain services and products as identified by it.
- 3.58 ComReg considered that where sampling was used to allocate revenues and volumes the samples should be accurate. It also outlined what it considered to be the key principles to be followed when deriving samples.
- 3.59 This was the second area outlined in ComReg Document No. 09/75 and it preceded the following five questions (i.e. Questions 2 to 6).

### **Consultation Question 2 in ComReg Document No. 09/75**

**Q. 2.** *Do you agree or disagree with the preliminary proposals regarding the disaggregation of revenues by market, service and product with further analysis into (a) direct/apportioned and (b) internal/external revenues together with disclosure of bundled discounts? Please detail your response in full.*

### **Views of respondents to Question 2 in ComReg Document No. 09/75**

- 3.60 There were three responses to this question.
- 3.61 **BT** and **ALTO** agreed that it was appropriate that bundled discounts be disclosed and they agreed that sufficient information should be made available to detect and prevent from margin squeezes. Neither provided any comment on the proposals with regard to the direct allocation or apportionment of revenues.
- 3.62 **Eircom** agreed in principle with the proposals. It considered that disclosing internal and external revenues at an appropriate level would help demonstrate its compliance with its non-discrimination obligations.
- 3.63 It considered, however, that the requirement to separately disclose allocated and apportioned revenues to be excessive. In its view the issue of apportioned revenues is not significant for telecom operators unlike other utilities as revenues are generally allocated directly to products.
- 3.64 According to Eircom, bundles are effectively a form of discount that is attributed across the services in the bundle on the basis of service volumes and related revenues in a billing system. Therefore, Eircom does not believe that the issue of direct and apportioned revenues warrants disclosure in the separated accounts. However, it did agree with the requirement for transparency of the apportionment of discounts to regulated products and within bundles that contain regulated products.
- 3.65 It concluded that the confidential disclosure of bundles at a market level (but as part of unpublished additional financial information) was acceptable but that the disclosure for unregulated services and products was not and therefore should be removed from the final Decision Instrument. As an alternative Eircom suggested providing documentation on its approach to revenue identification and discount attribution in the secondary accounting documentation.

### **ComReg's conclusions**

- 3.66 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.
- 3.67 As outlined in ComReg Document No. 09/75, ComReg was of the preliminary view that it was necessary to disaggregate revenues by market, service and product as well as further analysis into internal and external revenues. ComReg remains of this view that it needs this disaggregation to monitor compliance for transparency and non-discrimination.
- 3.68 It should be highlighted that under the accounting separation obligation, the level of disaggregation for the Separated Accounts is to the market level. The cost accounting obligation allows for a further level of disaggregation to the service and product level as part of the AFS and AFI submitted to ComReg in confidence and where considered necessary ComReg can require that the information be published.
- 3.69 ComReg remains of the view that there is a need for Eircom to disaggregate its revenues. In ComReg Document No. 09/75, ComReg proposed that the level of disaggregation should be between internal and external revenues. ComReg has further defined the disaggregation of revenues to inter, intra and external in the Decision Instrument in **Appendix II**.
- 3.70 In ComReg Document No. 09/75, ComReg was of the preliminary view that there would be a need for Eircom to apportion certain revenues and volumes and that this would be done based on sampling. It also considered that reliable volume information was also important for the accurate calculation of costs which were then compared to associated revenues so as to ensure compliance with non-discrimination and cost orientation obligations.
- 3.71 Having considered the response of Eircom with regard to the allocation and apportionment of revenues and volumes ComReg is of the view that it is no longer necessary to require it to apportion revenues and volumes based on statistical sampling. As telecommunications revenues and volumes are generally based on data within the billing system these should be directly allocated. It is not ComReg's intention to increase the regulatory burden on Eircom, unless absolutely necessary, and in its view requiring it to disclose directly allocated revenues and those apportioned by sampling would not increase transparency.
- 3.72 In relation to Eircom's proposals on the disclosure of bundled discounts within unpublished information ComReg considers that this should be sufficient going forward. With the offering of bundles becoming more common, ComReg must balance the requirement to comply with the transparency and non-discrimination obligation while at the same time ensuring that such obligations do not place Eircom at an inappropriate competitive/commercial disadvantage. ComReg is of the view therefore that the annual confidential provision of bundled discounts by services and products within specified markets will provide it with sufficient information in order for it to carry out its regulatory duties in this regard. The provision of this information will be supported by:
- Enhanced Secondary Accounting Documentation describing the identification of revenues and attribution of discounts;

- Details of bundles that include regulated and unregulated services and/or products.

**Conclusion in relation to ComReg’s preliminary proposals regarding the disaggregation of revenues by market, service and product:**

ComReg, for the reasons outlined above, is of the opinion that:

- (a) it is appropriate to disaggregate revenues by relevant market in the Separated Accounts under the accounting separation obligation;
- (b) it is appropriate to disaggregate revenues by service and product under the cost accounting obligation with further analysis into inter, intra and external revenues;
- (c) as the majority of revenues and volumes can be allocated directly based on information contained in the billing system apportionment should not be required;
- (d) bundled discounts will be disclosed confidentially to ComReg as part of the unpublished AFS/AFI where those bundles include regulated services and products.

**Consultation Question 3 in ComReg Document No. 09/75**

***Q. 3** Do you agree or disagree that weighted average volume/total unit figures should be disclosed on the face of the Separated Accounts analysed into volumes directly attainable and volumes derived by statistical means? Please detail your response in full.*

**Views of respondents to Question 3 in ComReg Document No. 09/75**

3.73 There were three responses to this question.

3.74 **BT** and **ALTO** agreed that it was appropriate to disclose weighted average volume/total unit figures on the face of the separated accounts analysed into volumes directly attainable and volumes derived by statistical means.

3.75 **Eircom** while agreeing that the disclosure of appropriate volume information could aid transparency it disagreed with the extent of the proposed disclosures. Some markets contained services with differing bases for measurement. Therefore a market level disclosure might not be appropriate and might only be meaningful at a service level.

3.76 It also considered that as the majority of its volume information was directly attainable the issue was not material enough to justify a separate disclosure at the product and service level between those directly attainable volumes and volumes attained by statistical means. It referred to its response to Question 7 in this regard.

### ComReg's conclusions

- 3.77 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.
- 3.78 ComReg was of the preliminary view that transparent volume data was necessary especially for the calculation of unit costs upon which many regulated prices depend. It proposed that this disclosure take place at both a market, service and product level.
- 3.79 ComReg notes BT's and ALTO's agreement with ComReg's preliminary conclusion contained in ComReg Document No. 09/75. However ComReg also notes Eircom's comments in relation to the limited use of disclosing volumes at a market level. ComReg has therefore concluded that it may not be appropriate to disclose volumes purely at a market level, instead where relevant material services and their associated volumes will be published to show average revenues and costs.
- 3.80 ComReg also notes Eircom's comments that the majority of its volume information is directly attainable. Therefore ComReg no longer considers it necessary that Eircom differentiate between volumes which are directly attainable and volumes derived by statistical means. However, for material services and products, Eircom will be disclosing weighted average volumes as part of the Separated Accounts.

**Conclusion in relation to how the weighted average volume / total unit figures should be disclosed on the face of the Separated Accounts:**

ComReg is of the opinion, for the reasons outlined above, that volumes will be disclosed where relevant in the Separated Accounts.

ComReg is also of the opinion that volumes need not be distinguished between those directly attainable and those attained by statistical means.

### Consultation Question 4 in ComReg Document No. 09/75

***Q. 4 Do you agree or disagree with the preliminary proposal that the Additional Financial Information shall include a reconciliation statement of Quarterly Reports and Separated Accounts volumes together with detailed explanations? Please detail your response in full.***

### Views of respondents to Question 4 in ComReg Document No. 09/75

- 3.81 There were three responses to this question.
- 3.82 **BT** and **ALTO** agreed that it was appropriate that additional financial information would include a reconciliation statement of Quarterly Reports and separated accounts volumes together with detailed explanations.

- 3.83 **Eircom** disagreed with the proposal considering that a formal reconciliation statement would be disproportionate and in some cases inappropriate. Instead it considered the inclusion of a comparison of key volume drivers and an explanation of material differences to be more appropriate.

**ComReg's conclusions**

- 3.84 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.
- 3.85 In ComReg Consultation Document No. 09/75, ComReg outlined its preliminary reasons for the inclusion of a reconciliation statement of Quarterly Reports and separated accounts volumes, together with detailed explanations, within additional financial information. ComReg was of the preliminary view that accurate and transparent volume data was important for all operators. In particular it was needed for the calculation of unit costs upon which many regulated prices depend.
- 3.86 ComReg remains of the view that there is a need to understand volumes as submitted as part of the Quarterly Reports and volumes as included in the Separated Accounts.
- 3.87 However, ComReg notes Eircom's concerns that a formal reconciliation statement could prove disproportionate and may actually be impractical. Therefore ComReg is of the view that a financial period on period comparison of key volumes as reported in the Quarterly Reports together with supporting detailed explanations of key variances is more proportionate and appropriate and that this should be included in AFI. While noting BT's and ALTO's agreement with its preliminary conclusion in ComReg Document No. 09/75 regarding the inclusion of a reconciliation statement, ComReg considers that its final conclusion satisfies the initial objective in that any significant variance will be brought to ComReg's attention and fully explained.

**Conclusion as to whether the AFI should include a reconciliation statement of the Quarterly Reports and Separated Accounts volumes:**

ComReg, for the reasons outlined above, is of the opinion that the AFI should include a comparison, by financial period, of key volumes contained within the Quarterly Reports and Separated Accounts together with detailed explanations for material variances.

## Consultation Question 5 in ComReg Document No. 09/75

***Q. 5 Do you agree or disagree that all samples which drive costs to the market, service and product levels should be within a +/-1% margin of error at a 95% confidence level? Please detail your response in full.***

### Views of respondents to Question 5 in ComReg Document No. 09/75

- 3.88 There were two responses to this question.
- 3.89 **BT** agreed that it was appropriate all samples which drive costs to the market, service and product levels should be within a +/-1% margin of error at a 95% confidence level.
- 3.90 **Eircom** agreed with the proposal that sample data should be based upon either generally accepted statistical techniques or other methods. It also agreed with the key principles listed in ComReg Consultation Document No. 09/75 in paragraph 3.66.
- 3.91 However, Eircom disagreed that a numerical value could be placed on individual samples and considered that would be disproportionate. According to Eircom, in order to achieve the level of accuracy proposed by ComReg, the level of sampling that would be required to achieve this would add a significant cost burden on it and such a requirement is not required of any telecommunications operator across Europe.
- 3.92 Eircom proposed an alternative benchmark where the impact of a sample at statement level in the regulatory accounts should drive the level of sample accuracy (i.e. a sample with minimal impact on the accounts will be allowed a greater margin of error compared to a sample with a higher impact which would require more accuracy). Eircom proposed that it be allowed determine the approach and the appropriate level of statistical accuracy on a case by case basis thereby achieving an appropriate level of accuracy in the regulatory accounts.
- 3.93 It also noted that as the separated accounts are audited the audit opinion would take account of sampling and the accuracy of the samples. Furthermore Eircom considered that if a tri-partite agreement were put in place, as proposed by ComReg, it could highlight in advance to Eircom's regulatory auditors areas of particular concern that it considered needed to be addressed.

### ComReg's conclusions

- 3.94 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.
- 3.95 ComReg notes the agreement from respondents that sample data should be based upon either generally accepted statistical techniques or other methods. It also notes Eircom's agreement with the key principles (which are dealt with subsequently in Question 6) for sampling listed in ComReg Consultation Document No. 09/75 in paragraph 3.66.
- 3.96 However, having considered the responses received from the respondents to this question (BT and Eircom), ComReg has concluded that it is not appropriate to assign a numerical percentage to the margin of error or the confidence level to be



attained for any given sample. For example in relation to duct sampling, it would not be proportionate or indeed practical for ComReg to require Eircom to incur the cost of lifting practically every manhole in Ireland in order to satisfy a designated statistical margin of error and confidence level. If ComReg was to stipulate such percentages, then the consequences for non compliance with the specified percentages in the illustrative example of duct sampling would likely be disproportionate. While ComReg notes BT's agreement with ComReg's preliminary conclusion regarding the imposition of specific percentages for margins of error and confidence levels in statistical sampling, it believes that the approach adopted in the Decision Instrument achieves the same assurance over sampling techniques applied by Eircom.

- 3.97 ComReg is also of the view that while samples may be audited as part of the overall audit of the Separated Accounts the audit opinion is generally at a market level only. Therefore the level of granularity required by ComReg for regulated services and products may not be achieved through the audit process. ComReg is of the view that greatly enhanced transparency and granularity can be achieved through the inclusion of further details on the sampling process in the Secondary Accounting Documentation. Through this ComReg can assess the suitability of sample data and its potential impact on regulated services and products.
- 3.98 Furthermore, ComReg is of the opinion that it is more practical and indeed proportionate to stipulate that any sampling should be demonstrably representative of the overall population being sampled and that all samples driving material costs should be updated on a regular basis. The imposition of specific percentages to the margins of error and confidence levels of samples could result in the cost of reaching those percentages being disproportionately high.

**Conclusion in relation to samples and their margin of error and confidence level:**

ComReg, for the reasons outlined above, is of the opinion that it is not appropriate to assign a numerical percentage to the margin of error or the confidence level to be attained for any given sample. Any sampling should be demonstrably representative of the overall population being sampled. All samples which drive material costs to the market, service and product levels should be updated on a regular basis.

**Consultation Question 6 in ComReg Document No. 09/75**

***Q. 6 Do you agree or disagree with the key principles that should be applied in using sample data? Please detail your response in full.***

**Views of respondents to Question 6 in ComReg Document No. 09/75**

- 3.99 There were two responses to this question.

3.100 Both **Eircom** and **BT** agreed with the key principles that should be applied in using sample data.

3.101 **Eircom** also referred to its response to Question 5.

**ComReg's conclusions**

3.102 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.

3.103 In ComReg Consultation Document No. 09/75 ComReg outlined its preliminary view that sample data is based on either generally accepted statistical techniques or other methods. It further considered that this should result in an accurate allocation of revenue (including transfer charges), costs (including transfer charges), assets and liabilities. It was also of the preliminary view that the following were considered to be the key principles that should be applied in using sample data:

- The sample data is unbiased and objective
- The sample size has been assessed in a statistical manner and is statistically significant
- The sample data is representative of the entire population
- The sample data is not obscured by seasonal or other factors
- The sample data is updated annually

3.104 ComReg remains of the view that the above are the key principles that should be applied in using sample data. This is also consistent with the views of the respondents to this question.

**Conclusion in relation to the key principles that should be applied in using sample data:**

ComReg, for the reasons outlined above, is of the opinion that the following are the key principles that should be applied in using sample data:

- The sample data is unbiased and objective
- The sample size has been assessed in a statistical manner and is statistically significant
- The sample data is representative of the entire population
- The sample data is not obscured by seasonal or other factors
- The sample data is updated annually.

**Cost Allocation and Apportionment**

3.105 In ComReg Document No. 09/75 ComReg discussed the necessity to have the correct allocation or attribution of costs. It noted that within the telecommunications industry there is a high level of fixed costs as well as a

significant common cost base. These costs have to be correctly allocated across services and products. An incorrect allocation could affect the cost orientation of prices and result in inappropriate transfer charges. This in turn could impact upon competition and consumer welfare. Furthermore visibility is required in relation to costs so that the obligation of non-discrimination can be met and issues of margin squeeze and cross subsidisation do not arise.

3.106 ComReg considered therefore that costs should be allocated to services and products in the following manner:

- Costs that could be directly assigned
- Common costs that could not be directly assigned should be allocated by:
  - Where possible, on the basis of direct analysis of the origin of the cost
  - Where this is not possible, cost allocations should be done through an indirect linkage to other cost categories or groups where direct assignment is possible
  - Where neither direct nor indirect cost allocations are possible through the use of an *equi-proportional mark-up* computation (“EPMU”).

3.107 ComReg proposed that Eircom provide to it on a confidential basis the split of functional costs<sup>15</sup> and network element costs<sup>16</sup> according to whether they are direct, indirect, or common costs and that these should be allocated on a fully distributed cost (“FDC”) basis. This would ensure that all services and products receive their direct costs as well as an appropriate amount of indirect and common costs. It was ComReg’s preliminary view that the provision of this information would:

- Increase transparency and enable an assessment of potential cases of margin squeeze and discriminatory actions
- Increase confidence in the accuracy of financial data
- Improve the regulatory process by reducing the number of *ad hoc* requests for data and clarifications.

3.108 ComReg was also of the preliminary view that Eircom submit to it, annually, a list of manual journals and adjustments made to produce the separated accounts so that it could gain a greater understanding of regulatory processes between the production of the statutory accounts and the separated accounts.

3.109 ComReg considered that while there was likely to be an increased burden upon Eircom in the provision of more detailed cost analysis this would be outweighed by improvements in transparency and the overall regulatory process.

3.110 ComReg also proposed that the following schedules be prepared by Eircom and that *pro forma* schedules be submitted by it within four months of the effective date of the Draft Direction:

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<sup>15</sup> Functional costs include categories such as accommodation, marketing and sales, finance and billing.

<sup>16</sup> Network element costs include categories such as Distribution side network (D-Side), Exchange side network (E-side), provisioning and repair

- Schedule of network components
- Schedule of usage by service
- Network activity statement.

3.111 It was ComReg’s preliminary view that much of the information to be contained within the proposed schedules was already submitted by Eircom under current reporting requirements. The disclosure of these schedules would improve ComReg’s understanding of network components/elements as well as the process of allocation of costs at the service and product level.

3.112 ComReg was also of the preliminary view that it required costing information in certain unregulated markets where there could be issues of, *inter alia*, margin squeeze or discriminatory pricing. Furthermore ComReg also considered that there was a need for complete transparency in cost allocations between regulated and unregulated markets so as to ensure that cross subsidisation did not arise. As such, ComReg suggested that Eircom submit, confidentially, profit and loss accounts and balance sheets for certain unregulated markets, services and products and as agreed with Eircom in advance of its financial period end. ComReg considered that this information should be readily available to Eircom and therefore would not pose a significant regulatory burden to Eircom.

3.113 ComReg also proposed that the “*Transfer Charging Principles*” would be broadly based upon those currently in place<sup>17</sup>. In summary these are:

- Transfer charges should be attributed to the cost components which cause the revenues to be earned or the costs to be incurred
- The attribution should be objective
- There should be consistency in treatment from period to period
- The transfer charging methods should be transparent
- The internal transfer charges should be the product of usage and unit charges
- There should be equivalence between internal and external charges.

3.114 Finally ComReg was of the preliminary view that access boundary between networks remains at the switch side of the line card.

3.115 This was the third area outlined in ComReg Document No. 09/75 and it preceded the following seven questions (i.e. Questions 7 to 13).

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<sup>17</sup> See Decision 3.11 of ODTR Document No. 99/35

## Consultation Question 7 in ComReg Document No. 09/75

***Q.7 Do you agree or disagree that there is a need for greater transparency of costs split by the proposed functional cost category and network element for each service and product as part of the Additional Financial Information, distinguishing between direct, indirect and common costs? Please detail your response in full.***

### Views of respondents to Question 7 in ComReg Document No. 09/75

- 3.116 There were three responses to this question.
- 3.117 Both **ALTO** and **BT** agreed that there is a need for greater transparency of costs split by the proposed functional cost category and network element for each service and product as part of the additional financial information, distinguishing between direct, indirect and common costs.
- 3.118 **Eircom** agreed in principle with the need to provide a split of functional cost category and network element. However, it considered that this had to be done at a level that was reasonable and workable.
- 3.119 Eircom also proposed that it publish the following as part of the separated accounts:
- Network statement of costs and services
  - Network costs market summary
  - Statement of costs
  - Market group statements
- 3.120 Eircom further proposed to provide more detailed reports on specific network elements based on functional cost categories. These functional cost categories it considered would address ComReg's key transparency concerns. As such ComReg would be able to:
- Identify which are the most material network elements in a particular market or service
  - Have visibility on the functional cost component of each of the network elements.
- 3.121 It was of the view that the provision of functional cost categories by service would not provide additional transparency as services are ultimately based on network elements which in turn are derived from functional cost categories. However, it did propose to provide to ComReg (in confidence) a further breakdown of functional cost categories by market and when required by ComReg specific breakdowns by service. However, it was of the opinion that the exact nature of these additional requirements would have to be agreed annually.
- 3.122 Finally Eircom considered that the disclosure of "*non funds movement*" be more specifically redefined and narrowed to depreciation and amortisation only.

### ComReg's conclusions

- 3.123 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account

of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.

- 3.124 In ComReg Consultation Document No. 09/75 ComReg outlined its preliminary view that it had limited visibility of functional cost categories and network elements. This had reduced transparency and had resulted in difficulties for ComReg in reconciling various submissions of data to the separated accounts. ComReg, in order to address this situation, had submitted numerous requests for further information or clarification to Eircom, which in turn were causing delays within the regulatory process. In order to address this, ComReg proposed that Eircom submit to it, in confidence, functional cost categories and network elements for all markets, and certain specified services and products.
- 3.125 ComReg remains of the view that it requires an increased level of detail regarding functional cost categories and network elements. However, it also notes Eircom's comments in relation to its proposed statements. Eircom is required to submit revised schedules which are reflective of the requirements of the Decision Instrument to ComReg within four months of the effective date.
- 3.126 ComReg also outlined that it was of the preliminary view that there was a necessity to distinguish costs between those that were direct, indirect or common costs. These allocations it considered should be done on the basis of FDC thereby ensuring each service and product receives its direct costs and an appropriate share of indirect and common costs. ComReg remains of this view.
- 3.127 However, ComReg notes Eircom's comments in relation to the practical difficulties in disclosing these costs in that "*it is not possible to readily establish within a reporting hierarchy whether a cost is direct, indirect or common as this can and does change over the course of the allocation cycle.*" ComReg therefore requires Eircom, as part of its Secondary Accounting Documentation, to provide details on how it assigns direct, indirect and common costs. This documentation will enable ComReg understand how costs are allocated to various market, services and products.
- 3.128 However, ComReg may seek further details of the treatment of direct, indirect, and common costs as part of AFI on an *ad hoc* basis as part of (for example) price reviews.
- 3.129 ComReg remains of the view that there is a necessity to distinguish costs as direct, indirect or common costs and that a greater understanding can be obtained via the Secondary Accounting Documentation. ComReg may also submit an AFI request to gain a further understanding as and if required.

**Conclusion in relation to the need for greater transparency of costs split by the proposed functional cost category and network element for each service and product as part of the AFI, distinguishing between direct, indirect and common costs:**

ComReg, for the reasons outlined above, is of the opinion that:

- (a) Eircom shall submit detailed information with regard to functional cost categories and network elements.
- (b) Eircom document, in its Secondary Accounting Documentation, the process for assigning direct, indirect and common costs.

**Consultation Question 8 in ComReg Document No. 09/75**

***Q. 8** Do you agree or disagree with the preliminary proposal (together with disclosure in Accounting Document) regarding the allocation and apportionment of costs (i.e. direct, indirect and common on a fully distributed cost basis)? Please detail your response in full.*

**Views of respondents to Question 8 in ComReg Document No. 09/75**

- 3.130 There were three responses to this question.
- 3.131 Both **ALTO** and **BT** agreed with the proposal regarding the allocation and apportionment of costs (i.e. direct, indirect and common on a fully distributed cost basis) together with its disclosure in the accounting documentation.
- 3.132 **Eircom** referred to its answer to Question 7.

**ComReg's conclusions**

- 3.133 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.
- 3.134 In ComReg Consultation Document No. 09/75 ComReg outlined its preliminary view that costs (direct, indirect and common) should be allocated on a FDC basis. ComReg also proposed that accounting methodologies be documented by Eircom in its primary and secondary accounting documentation.
- 3.135 ComReg remains of the view that costs (direct, indirect and common) are allocated on a FDC basis. It also remains of the view that accounting methodologies be documented by Eircom in its Primary and Secondary Accounting Documentation.

**Conclusion in relation to the allocation and apportionment of costs:**

ComReg, for the reasons outlined above, is of the opinion that costs (direct, indirect and common) are allocated on a FDC basis.

**Consultation Question 9 in ComReg Document No. 09/75**

***Q. 9 Do you agree or disagree with the preliminary proposals with regard to the hierarchy of costs and listing of manual journals? Please detail your response in full.***

**Views of respondents to ComReg Document No. 09/75**

- 3.136 There were four responses to this question.
- 3.137 Both **ALTO** and **BT** agreed with the proposals regarding the hierarchy of costs and listing of manual journals.
- 3.138 **Eircom** referred to its response to Question 7 with regard to its views on the hierarchy of costs.
- 3.139 **PwC** did not respond to the preliminary proposal regarding the hierarchy of costs. It did however address its comments to the proposal regarding the listing of manual journals.
- 3.140 Both **Eircom** and **PwC** disagreed with ComReg's proposals regarding the listing of manual journal entries. **Eircom** highlighted that separated accounts already contain a reconciliation of the statutory accounts to the separated accounts which discloses the overall impact of adjustments. According to **Eircom**, providing a full list of all manual journals would be disproportionate and impractical. **Eircom** also underlined that all journals processed as part of the regulatory accounting process are within the scope of the regulatory audit and are therefore subject to testing on a sample basis. As a result, **Eircom** is of the view that ComReg is seeking to "*re-audit*" aspects of the accounts preparation process which, in its view, is not an efficient use of ComReg or **Eircom**'s resources.
- 3.141 **Eircom** considered that the majority of manual adjustments within the regulatory accounts were to ensure that final allocations relating to cost allocation bases and methodologies were consistent with underlying studies and that these were subject to internal review and independent audit. These cost allocation bases and methodologies are also disclosed to ComReg.
- 3.142 **PwC** was of the view that it was not normal practice for details of manual journals and adjustments to be included with the audited financial statements.

**ComReg's conclusions**

- 3.143 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.



3.144 In ComReg Consultation Document No. 09/75 ComReg outlined its preliminary view that it had limited visibility of functional cost categories. It considered that the following should be the minimum hierarchy of costs and that these be analysed into “pay” and “non pay”.

- Product Development & Management
- Marketing & Sales
- Repair/Maintenance
- Finance & Billing
- Installation/Provisioning
- Network support
- General support
- General management
- Accommodation
- Information Technology (IT)
- Transport
- Personnel & Administration
- Other operating expenses.

3.145 ComReg has amalgamated two of the items (namely “*Supply of customer lines*” and “*Connections*”) from the original list in ComReg Document No. 09/75 into the “*Installation/Provisioning*” category listed above as they represent similar cost categories. ComReg no longer requires that a split between “pay” and “non pay” costs be provided as it is of the view that sufficient transparency will be afforded by the functional cost categories above and if additional information is required it can be obtained as part of AFS/AFI confidential submissions.

3.146 ComReg was also of the preliminary view that accounting items not involving the movement of funds (e.g. depreciation) should also be disclosed separately. The above categories would also be applicable to both services and products.

3.147 ComReg remains of the view that these are the appropriate headings to be included in a cost hierarchy at this time; however these categories may be subject to change in later years if appropriate. In the interests of clarity ComReg proposes to also include the cost categories “*depreciation*”, “*amortisation*”, and “*CCA<sup>18</sup> adjustments*” instead of “*items not involving the movement of funds*”.

3.148 ComReg also remains of the view that there is a need for visibility of the allocations made within the Regulatory Accounts post period end. However, it also notes Eircom’s comments that the majority of manual adjustments were to ensure that final allocations relating to cost allocation bases and methodologies were consistent with underlying studies. While ComReg notes BT’s and ALTO’s agreement with the preliminary view that manual journals should be provided to ComReg, as ComReg will now be receiving enhanced documentation and

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<sup>18</sup> Current Cost Accounts

explanations in relation to the various studies undertaken by Eircom, ComReg no longer considers that it is necessary for Eircom to submit the manual journals and adjustments. Furthermore, given that the manual journals are audited as part of the period end regulatory audit process and the fact that ComReg has prior approval on the accounting documentation (which is submitted for ComReg's review before the period end with any changes to the original submission being submitted as they occur) this should alleviate the need for ComReg to physically see the list of manual journals. This, however, is based upon the effective implementation of the requirements of this Decision Instrument.

- 3.149 ComReg also notes PwC's comments that it is not normal practice for a list of manual journals and adjustments to be included within the audited financial statements and as such ComReg has taken this into consideration when making its final conclusion.

**Conclusion in relation to the hierarchy of costs and the listing of manual journals:**

ComReg, for the reasons outlined above, is of the opinion that:

(a) the proposed hierarchy of costs remains appropriate, however the following three categories have been added to those listed in ComReg Document No. 09/75:

- Depreciation
- Amortisation
- CCA adjustments

ComReg has amalgamated two of the items (namely "Supply of customer lines" and "Connections") in the original list in ComReg Document No. 09/75 into the "Installation/Provisioning" category listed above.

- (b) ComReg no longer requires functional cost categories to be split between "pay" and "non pay".
- (c) ComReg does not require a list of manual journals at period end because this is addressed as part of the enhanced Accounting Documentation.

**Consultation Question 10 in ComReg Document No. 09/75**

***Q. 10 Do you agree or disagree with the preliminary recommendation that Eircom be required to develop and submit to ComReg as part of its AFI a 'Schedule of Network Components', a 'Network Activity Statement' and a 'Usage by Service Schedule' for all markets, services, and products? Do you agree or disagree that the content of such schedules/statements should be prepared and submitted by Eircom to ComReg for its review within four months of the effective date of this Direction? Is there any additional information that you believe should also be provided? Please detail your response in full.***

**Views of respondents to Question 10 in ComReg Document No. 09/75**

- 3.150 There were three responses to this question.

3.151 Both **ALTO** and **BT** agreed with the proposal regarding the development and submission of the following schedules as part of the additional financial information:

- Schedule of Network Components
- Network Activity Statement
- Usage by Service Schedule

3.152 **Eircom**, **ALTO** and **BT** also agreed with the proposal to submit the schedules within four months of the effective date of the Draft Direction. Eircom noted that the changes would take time to implement.

3.153 Both **ALTO** and **BT** also requested that clarification be provided on the list of products and services to which the schedules were applied to and that Carrier Pre Select (“CPS”) and Wholesale Line Rental (“WLR”) should also be included. They were also of the view that ComReg reserves the right to amend information in the future.

3.154 **Eircom** was in general agreement with ComReg’s proposals on disclosures. It noted that it currently discloses the following:

- HCA statement of costs for access network services
- HCA statement of costs for core network services
- Statement of costs including CCA adjustments for the core network business
- Statement of costs of core network services.

3.155 Eircom however commented that it was concerned with the proposed increased in reporting requirements *vis à vis* its obligations in respect of non-discrimination and cost orientation. It also referred to its response to Question 7 where it considered its proposals addressed ComReg’s requirements.

3.156 Eircom considered that the following elements of the proposals were excessive and not necessary to demonstrate its compliance with obligations:

- Element Count (total number of such elements controlled by the service group)
- Location in Network (e.g. remote cabinet)
- Average Designed Maximum Capacity
- Average Capacity Utilisation (percentage)
- Region (i.e. geographic region).

3.157 These requirements it noted were based on a Draft Notification published by the Commerce Commission of New Zealand and which were subsequently excluded from its final notification. As such it considered that ComReg should also exclude these requirements in the final Decision Instrument.

#### **ComReg’s conclusions**

3.158 ComReg’s conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents’ views to its proposals. In some cases ComReg’s conclusions

reflect amendments to its initial proposals having taken into account respondents' views.

- 3.159 In ComReg Consultation Document No. 09/75 ComReg was of the preliminary view that Eircom submits *pro forma* schedules to it for its review within four months of the effective date of the Draft Direction. ComReg remains of this view. Eircom should make all reasonable endeavours to ensure that these schedules are “fit for purpose” prior to ComReg’s initial review.
- 3.160 ComReg was also of the preliminary view that the following schedules, which were very similar to Eircom’s existing reporting requirements, be submitted as part of additional financial information:
- Schedule of network components
  - Schedule of usage by service
  - Network activity statement
- 3.161 ComReg remains of the view that the information contained within these schedules is required but it is no longer specifying the format for presentation of this information. It considers, however, that there is merit to Eircom's proposals (as submitted by it in its response to Question 7) regarding the disclosure of financial information. However, ComReg requires Eircom to submit revised schedules which are reflective of the requirements of the Decision Instrument, to it within four months of the effective date.
- 3.162 However, it notes Eircom’s comments in relation to the exclusion of certain categories by the Commerce Commission of New Zealand (“ComCom”) in its final determination. ComReg would highlight that these categories were not specified in ComReg Document No.09/75 and have not been included in the Decision Instrument at **Appendix II** to this document.

**Conclusion regarding the AFI schedules and timelines within which they should be submitted to ComReg:**

ComReg, for the reasons outlined above, is of the opinion that Eircom submit to it within four months of the effective date of this Decision a full set of *pro forma* Separated Accounts and AFS for material services and products for each regulated market.

**Consultation Question 11 in ComReg Document No. 09/75**

***Q. 11 Do you agree or disagree with the preliminary recommendation that Separated Accounts for non regulated markets, services and/or products should be provided to ComReg as part of the Additional Financial Information determined on an annual basis as required? Please detail your response in full.***

**Views of respondents to Question 11 in ComReg Document No. 09/75**

- 3.163 There were three responses to this question.

- 3.164 Both **ALTO** and **BT** agreed with the proposal that separated accounts for non regulated markets and/or products are provided to ComReg as part of additional financial information and that this is determined on an annual basis.
- 3.165 **Eircom** disagreed with ComReg's proposal. It considered the proposal was only appropriate in limited cases, where there was a demonstrable need for data to ensure that there was no discrimination and that any request had to relate to the nature of the problem identified. Where information was required this could be provided as additional financial information in the form of an "*ad hoc* report".

#### **ComReg's conclusions**

- 3.166 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.
- 3.167 In ComReg Consultation Document No. 09/75 ComReg outlined its preliminary view that Eircom submit income statements (referred to as profit and loss accounts) in relation to unregulated markets, services and products. While taking into account Eircom's comments, ComReg remains of the view that certain income statements for unregulated markets, services and products are necessary. In order for complete transparency, ComReg requires Eircom to provide it with income statements at a market level for both regulated and unregulated markets.
- 3.168 As discussed in the ComReg Consultation Document No. 09/75, in order to provide certainty to the regulatory process ComReg will in advance of each financial period, outline the income statements that it requires for unregulated services and products. ComReg will discuss with Eircom the reasons it considers that these unregulated income statements are required. These will then be submitted to ComReg confidentially by Eircom as part of the AFS.
- 3.169 ComReg does not require Eircom to prepare income statements for all unregulated services and products. However, there may be certain unregulated income statements required for each financial period (for example where there might be potential margin/price squeeze issues). ComReg will indicate its requirement for this information in relation to the specified unregulated markets for any given financial period.
- 3.170 The provision of these income statements will enable ComReg to review, *inter alia*, common cost allocations or potential issues of margin squeeze or cross subsidisation. This information will be supported by detailed Secondary Accounting Documentation describing the cost attribution methodologies.
- 3.171 As mentioned in the consultation ComReg considers, that as this information should be readily available within Eircom's regulatory accounting systems thereby avoiding an increase in its regulatory burden.

**Conclusion in relation to Separated Accounts for non regulated markets, services and / or products that will be provided as AFI to be determined by ComReg in advance of each financial period:**

ComReg, for the reasons outlined above, is of the opinion that it will require, for a given financial period a confidential submission of specified income statements for specified unregulated markets, which will be outlined in advance of Eircom's relevant financial period end.

**Consultation Question 12 in ComReg Document No. 09/75**

***Q. 12 Do you agree or disagree ComReg's proposals regarding Transfer Pricing Principles? Please detail your response in full.***

**Views of respondents to Question 12 in ComReg Document No.09/75**

- 3.172 There were two responses to this question.
- 3.173 Both **BT** and **Eircom** generally agreed with ComReg's proposals regarding Transfer Pricing Principles.
- 3.174 BT considered that Eircom be required to publish its internal transfer prices so that full visibility was provided to the market *vis à vis* what it charged internally as compared to externally.
- 3.175 Eircom commented that the implementation of the proposals would require significant effort on its behalf. In its view it would have to:
- Collect an extensive amount of data and in particular for volumes
  - Set up a mechanism for the transfer charge calculation
  - Set up a mechanism for internal transfer charges.
- 3.176 Eircom also commented that for accounting separation the relevant terms of supply are pricing terms only and that these would be documented in the accounting documents. Other terms of supply would be irrelevant as they would relate to operational separation, functional separation, or external provision of services. It was also of the view that transfer charges would not arise within the same market groups.

**ComReg's conclusions**

- 3.177 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.
- 3.178 In ComReg Document No. 09/75, ComReg was of the preliminary view that transfer charges should be based upon the following principles and that these be included within the accounting documentation:

- Transfer charges (revenues and costs) shall be attributed to cost components, services, products and markets in accordance with the activities, which cause the revenues to be earned, or costs to be incurred
  - The attribution shall be objective and not intended to benefit any market, service, or product
  - There shall be consistency of treatment of transfer charges from year to year
  - The transfer charging methods used should be transparent. There should be a clear rationale for the transfer charges used and each charge should be supportable
  - The transfer charges for internal usage should be determined as the product of usage and unit charges
  - The charge for internal usage should be equivalent to the charge that would be levied if the product or service were sold externally rather than internally.
- 3.179 ComReg has also taken into consideration the European Regulators Group<sup>19</sup> (“ERG”) Common Position<sup>20</sup> regarding transfer charges. This notes that a well defined, transparent and verifiable transfer charging system is necessary for notified operators, such as Eircom, to demonstrate non-discrimination and calculate internal costs and revenues for both cost orientation and non-discrimination purposes.
- 3.180 The Decision Instrument, in accordance with the ERG Common Position, prescribes methodologies to ensure that Eircom charges itself on the same basis as it would charge other operators buying similar services.
- 3.181 In order to account for transfer charges Eircom is required to consider the following:
- Is there a direct equivalent between the service and product that it is using compared to that being purchased by another operator? If so, the relevant transfer charge for Eircom is the price or a combination of prices of the services and products per its published price lists.
  - If there is no direct equivalent Eircom must consider if there is a “*nearest equivalent*”. This would represent a price or combination of prices from Eircom’s price lists which most closely represent the technical capabilities of a service or product as if it were an external transaction. Where this is applied as the transfer charge Eircom must then explain the difference between the nearest equivalent charge and a direct equivalent. An example of where a nearest equivalent charge might apply would be to call conveyancing.
  - Where there is neither a direct equivalent nor a nearest equivalent charge Eircom will then use cost based transfers. This would most likely arise where services are provided within Eircom that are not available to other operators (e.g. voicemail platforms).

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<sup>19</sup> Now the Body of European Regulators for Electronic Communications (“BEREC”)

<sup>20</sup> ERG Common Position: Guidelines for implementing the Commission Recommendation C (2005) 3480 on Accounting Separation and Cost Accounting Systems for the regulatory framework for electronic communications ERG (05) 29

- 3.182 ComReg notes the general agreement of respondents to this question and remains of the view that these are the relevant principles for Transfer Charging.

**Conclusion in relation to transfer pricing principles:**

ComReg, for the reasons outlined above, is of the opinion that the transfer pricing principles as set out above are appropriate.

**Consultation Question 13 in ComReg Document No. 09/75**

*Q. 13 Do you agree or disagree that for cost allocation and network delineation purposes that the boundary between the Access and Core network should remain at the switch side of the line card? Please detail your response in full.*

**Views of respondents to Question 13 in ComReg Document No. 09/75**

- 3.183 There were three responses to this question.
- 3.184 Both **BT** and **ALTO** agreed with ComReg's proposal. However, both were unclear as to how this would work with the increased deployment of technologies such as Voice over Internet Protocols ("VoIP") over Ethernet.
- 3.185 **Eircom** also agreed with ComReg's proposal. However it was of the view that it is no longer appropriate to retain the Core and Access networks as separate network statements as in its view this distinction dates from the previous regulatory regime and more recent technological, product and regulatory developments have made this distinction less relevant.
- 3.186 Eircom, in its response to this question, proposes a single network statement. In its opinion this will maintain the line card boundary for line sensitive and traffic sensitive public switched telephone network ("PSTN") switching costs for the purposes of market attribution but otherwise it aggregates the Access and Core network statements.

**ComReg's conclusions**

- 3.187 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.
- 3.188 In ComReg Document No. 09/75 ComReg was of the preliminary view that for cost allocation and network delineation purposes the access boundary between what has traditionally been the Core and Access networks remains at the switch side of the line card which is in line with the demarcation set out in ComReg Document No. D07/01. For this reason ComReg considers, notwithstanding the fact that the Core and Access split is based on the regulatory regime preceding the Regulatory Framework, that the demarcation between Core and Access remains relevant. Where the current line card is replaced in the future its replacement should be considered as continuing this principle.



- 3.189 In relation to BT's and ALTO's comments regarding the increased deployment of new technologies ComReg considers that as Eircom has to document how it allocates costs it will be required to document the accounting treatment of new technologies where this is different to existing technology.
- 3.190 ComReg notes Eircom's comments in relation to the publication of separate network statements. This ComReg considers is dealt with under the *pro forma* Separated Accounts and AFS to be submitted by Eircom within four months of the effective date of this Decision Instrument (See Question 10 above).

**Conclusion in relation the boundary between the Access and Core network:**

ComReg, for the reasons outlined above, remains of the view that for cost allocation and network delineation purposes the boundary between the Core and Access networks should remain at the switch side of the line card (or its nearest equivalent).

**Separated Accounts**

- 3.191 In ComReg Document No. 09/75 ComReg discussed the necessity to have greater transparency and clarity within its separated accounts with regard to regulatory processes and procedures as well as the level of disclosure. Furthermore ComReg was of the preliminary view that there was a need to realign the separated accounts with the market structure in the Commission Recommendation on Relevant Product and Service Markets.
- 3.192 ComReg outlined that it was of the view that the level of detail within the current format of the separated accounts was insufficient to meet its regulatory needs. For the separated accounts to be meaningful there also had to be details of how costs were allocated and apportioned. As such it was of the preliminary view that any revised separated accounts provide the necessary level of transparency to ComReg while at the same time being cognisant of the commercial sensitivity of certain information. In the appendices to the consultation document ComReg included a possible format for a revised set of separated accounts.
- 3.193 In order to aid transparency ComReg also proposed that the "*regulated rate of return adjustment*" be removed from any revised set of separated accounts and that accounts be prepared on an "*as at*"<sup>21</sup> basis as opposed to the mean capital employed basis. To further support the revised set of separated accounts ComReg proposed the inclusion of detailed commentary and explanations, a reconciliation with the statutory financial statements and the disclosure of gains or losses on the disposal of non current assets.
- 3.194 ComReg also proposed that the following regulatory accounting principles be applied to the separated accounts and detailed in the accounting documentation (which were consistent with those from ODTR decision 99/35):
- Cost causality

<sup>21</sup> i.e. "as at" end of financial period i.e. a static date as opposed to an average of the start and end of the financial period

- Objectivity
  - Consistency
  - Transparency.
- 3.195 ComReg also considered the requirements to produce CCA accounts as part of the overall separated accounts. It noted that many regulated pricing decisions were based upon a forward looking assessment of costs and efficiencies but many of these decisions used as their basis CCA accounts. However, as CCA accounts are not available for the “Access” part of the network ComReg proposed that going forward these be prepared (to the service level) along with those for the Core side of the network. It suggested that the Financial Capital Maintenance (“FCM”) be used to prepare the CCA Accounts and that a reconciliation be performed between the Historical Cost Accounts (“HCA Accounts”) and CCA accounts.
- 3.196 Due to the extensive movements in holding gains and losses in recent years ComReg proposed that in order to reduce distortion between sets of CCA accounts that these gains be amortised over the lifetime of the relevant asset. ComReg was also of the preliminary view that certain forward looking costing data (mainly relating to pricing issues within the Core network) continue to be submitted to it annually.
- 3.197 ComReg also proposed that Eircom publish its separated accounts on its website within five months of the first financial year end and four months thereafter. ComReg also proposed that any additional financial information that it required be submitted to it in confidence within the same timeframes. This it considered was necessary so that the information contained within the separated accounts remained timely and relevant.
- 3.198 While it did not make any preliminary recommendations in this regard, ComReg suggested that Eircom be cognisant of any possible reporting requirements that might arise due to the introduction of NGN.
- 3.199 This was the fourth area outlined in ComReg Document No. 09/75 and it preceded the following thirteen questions (i.e. Questions 14 to 26).

**Consultation Question 14 in ComReg Document No. 09/75**

***Q. 14 Do you agree or disagree with the preliminary proposals regarding the level of disclosure in the published and audited Separated Accounts and the Additional Financial Information? Do you agree or disagree that Eircom be required to prepare and submit to ComReg for approval draft schedules within four months of the effective date of the Direction? Please detail your response in full.***

**Views of respondents to Question 14 in ComReg Document No. 09/75**

- 3.200 There were three responses to this question.
- 3.201 Both **ALTO** and **BT** agreed with the proposed levels of disclosure as well as the requirement for Eircom to submit draft schedules within four months of the effective date of the Draft Direction. Both also enquired as to why ComReg, if it had encountered problems with Eircom’s reporting obligations it had not taken compliance action against it.

3.202 **Eircom** had a number of disagreements with the proposed format. While it did welcome the proposal to submit financial information in confidence through additional financial information it considered that it was important to acknowledge that the purpose of this information is to facilitate ComReg's pricing reviews. Therefore, Eircom is of the view that this information should:

- have no permanent elements
- the form and content should be reviewed periodically
- be agreed in advance of Eircom's financial period end.

#### **ComReg's conclusions**

3.203 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.

3.204 In ComReg Document No. 09/75 ComReg presented a suggested format for the separated accounts and additional financial information which it considered could address its regulatory reporting requirements. It also proposed that Eircom should submit draft schedules to ComReg within four months of the effective date of the Draft Direction.

3.205 ComReg Document No. 09/75 proposed that the separated accounts contain income statements and balance sheets at both the market, service and product level. It was envisaged that this proposal would increase transparency and as a result only limited information would be required as part of the additional financial information. It was proposed that income statements would be available for services within markets that had not previously been disclosed.

3.206 In order to meet its regulatory reporting needs ComReg now considers that in order to adopt Eircom's proposals, as well as refining them to meet ComReg's needs, it is necessary for ComReg to clarify the regulatory reporting structure going forward. As such ComReg considers that the Regulated Accounts will contain the following:

- Separated Accounts which are audited (to a "*fairly presents in accordance with*" level) and published. These will be in line with international best practice;
- AFS (submitted in confidence);
- AFI (submitted in confidence);
- Accounting Documentation – Primary Accounting Documentation will be published and Secondary Accounting Documentation will be submitted in confidence.

3.207 ComReg remains of the view that it is necessary for Eircom to submit *pro forma* proposals, regarding schedules of financial information, to it. However, in order to afford Eircom sufficient time to prepare the required information ComReg considers that it is appropriate to allow it four months after the effective date of this Decision Instrument to submit draft schedules for review (see also Question 10).

- 3.208 In relation to Eircom's concern around "*permanent elements*" in the separated accounts, ComReg remains of the view that certain permanent elements will be required but these will only relate to specified services and products.
- 3.209 In relation to ALTO's and BT's comments querying why ComReg had not taken compliance actions against Eircom, ComReg considered the current process needed to be concluded and implemented. ComReg was of the view that Eircom's current separated accounts required significant amendment to reflect changes in reporting requirements as well as the experiences of both parties when assessing underlying financial data. Furthermore, in recent years ComReg has during various price reviews conducted detailed examinations of costs. During these reviews ComReg did not consider that compliance actions were necessary. Going forward it will be necessary for Eircom to implement the Decision Instrument in a timely and effective manner to ensure no compliance action is necessary.

**Conclusion regarding the level of disclosure in the published and audited Separated Accounts and the Additional Financial Information:**

ComReg, for the reasons outlined above, is of the opinion that Eircom prepares Regulated Accounts containing:

- Separated Accounts which will be audited and published,
- AFS which will be submitted to ComReg in confidence,
- AFI which will be submitted to ComReg in confidence,
- Accounting Documentation – Primary Accounting Documentation will be published and Secondary Accounting Documentation will be submitted to ComReg in confidence.

Eircom shall submit to ComReg *pro forma* proposals no later than four months from the effective date of this Decision Instrument.

**Consultation Question 15 in ComReg Document No. 09/75**

***Q. 15 Do you agree or disagree with the format and content of the draft Separated Accounts Schedules and draft Additional Financial Information Schedules as set out in Appendices B, C, D? Please detail your response in full.***

**Views of respondents to Question 15 in ComReg Document No. 09/75**

- 3.210 There were three responses to this question.
- 3.211 Both **ALTO** and **BT** agreed with the proposed. Both, however, commented that although Eircom and BT (UK) were of differing scales in terms of revenues and customers they did not consider that the level of disclosure should differ.
- 3.212 **Eircom** disagreed with the proposals and referred to its response to Question 7 where it had proposed alternative schedules.

### ComReg's conclusions

- 3.213 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views. ComReg requests that its position and conclusion in relation to Question 15 be read in conjunction with that of Question 14.
- 3.214 In ComReg Document No. 09/75 ComReg presented a suggested format for the separated accounts and additional financial information which it considered could address its regulatory reporting requirements. It notes BT's and ALTO's agreement with the draft separated accounts and AFI schedules as appended to ComReg Document No. 09/75. However it became apparent as part of this review that a considerable amount of work is required to bring the current separated accounts and schedules into line with this Decision Instrument. ComReg will continue to work with Eircom in this regard.
- 3.215 ComReg, as part of Eircom's response to consultation, has also received pro forma schedules from as part of its response to Question 7. Eircom is required to submit revise schedules, reflective of the requirements of the Decision Instrument, to ComReg within four months of the effective date.
- 3.216 As outlined in ComReg's conclusions to Question 14, ComReg is of the opinion that the Regulated Accounts will contain:
- Separated Accounts
  - AFS
  - AFI
  - Accounting Documentation (Primary and Secondary).
- 3.217 The Separated Accounts will include audited financial statements, to the market level, and accompanying commentary and narrative explanations (see also response to Question 18)<sup>22</sup>. The "*commentary and narrative explanations*" will be at the market level only for the Separated Accounts.
- 3.218 The Separated Accounts will also contain additional notes and schedules as previously highlighted in Questions 7 and 10.
- 3.219 They will also contain information regarding the average revenues and average costs of material services and products, and where appropriate, the associated volumes.
- 3.220 Due to the commercial sensitivity of certain services the AFS will be submitted to ComReg in confidence.
- 3.221 The AFS will only contain income statements for material services and products and not balance sheets as individual services are recorded on the basis of the allocation of revenues and costs and not assets and liabilities. Therefore, appropriate balance sheets would be very difficult to identify and may be meaningless at that level.

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<sup>22</sup> This is similar to the "director's report" in statutory financial statements.

- 3.222 ComReg will also receive a commentary and narrative explanation, in confidence, for the material services and products as part of the AFS.
- 3.223 The AFI will contain specified or *ad hoc* information (submitted in confidence) which will not readily sit within the AFS.
- 3.224 The Accounting Documentation is discussed in more detail in ComReg's conclusions in relation to Question 27. However, in summary ComReg remains of the view that Eircom publish Primary Accounting Documentation and submit in confidence detailed Secondary Accounting Documentation.

**Conclusion regarding the format and content of the Regulated Accounts and Additional Financial Information:**

ComReg, for the reasons outlined above, is of the opinion that Eircom will prepare Regulated Accounts containing:

- Separated Accounts audited to market level which includes income statements, balance sheets, notes, accompanying narratives and specified schedules;
- The Separated Accounts will also contain details regarding average revenues and average costs of material services and products and where relevant associated volumes.
- AFS to the service or product level which includes income statements, notes, accompanying narratives and specified schedules;
- AFI which includes specified or *ad hoc* information;
- Accounting Documentation which will include both Primary and Secondary Documentation.

***Consultation Question 16 in ComReg Document No. 09/75***

***Q. 16 Do you agree or disagree with the preliminary proposal that the Separated Accounts be reconciled with the statutory financial statements identifying all items (revenue and costs) relating to non regulated businesses and other items which are not relevant to the accounting period that have been excluded from the Separated Accounts? Please detail your response in full.***

**Views of respondents to Question 16 in ComReg Document No. 09/75**

- 3.225 There were three responses to this question.
- 3.226 **Eircom, BT, and ALTO** agreed with ComReg's proposals.

**ComReg's conclusions**

- 3.227 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views. ComReg requests that its position and conclusion in relation to Question 16 be read in conjunction with that of Question 15.

- 3.228 In ComReg Document No. 09/75 ComReg put forward the preliminary view that Eircom's Separated Accounts be reconciled to the statutory financial statements identifying all items (revenues and costs) relating to non regulated businesses and other items which are not relevant to the accounting period that have been excluded from the Separated Accounts. ComReg remains of this view.

**Conclusion in relation to a reconciliation of the Separated Accounts to the Statutory Financial Statements:**

ComReg, for the reasons outlined above, is of the opinion that Eircom's Separated Accounts be reconciled to the statutory financial statements identifying all items (revenue and costs) relating to non regulated businesses and other items which are not relevant to the accounting period that have been excluded from the Separated Accounts.

**Consultation Question 17 in ComReg Document No. 09/75**

***Q. 17 Do you agree or disagree with the preliminary proposal that the Separated Accounts no longer include a "Regulated rate of Return Adjustment" that the Balance Sheets are prepared on an "as at" basis and that Mean Capital Employed and the actual return on Mean Capital Employed are shown as supplementary information as a note to the Separated Accounts? Please detail your response in full.***

**Views of respondents to Question 17 in ComReg Document No. 09/75**

- 3.229 There were three responses to this question.
- 3.230 **BT** and **ALTO** agreed with ComReg's proposals in their entirety.
- 3.231 **Eircom** agreed with ComReg's proposal to remove the "*Regulated rate of return adjustment*".
- 3.232 **Eircom** disagreed with ComReg's proposals with regard to having balance sheets prepared on an "*as at*" basis with information in relation to the Mean Capital Employed being included by way of notes. It considered that this was not in line with either best practice or the ERG Common Position. As such, Eircom considered that balance sheets should continue to be prepared by way of Mean Capital Employed.

**ComReg's conclusions**

- 3.233 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.
- 3.234 In ComReg Document No. 09/75 ComReg proposed that the regulated rate of return adjustment be removed from the Separated Accounts. ComReg remains of this view.

- 3.235 In ComReg Document No. 09/75 ComReg proposed that balance sheets be prepared on an “*as at*” basis with supplementary information in relation to Mean Capital Employed being included by way of notes to the accounts. However, in order to accord with best practice and the ERG Common Position ComReg is now of the view that the balance sheets should continue to be prepared on the basis of Mean Capital Employed. By continuing to prepare accounts on a Mean Capital Employed basis they will reflect the average level of capital employed by Eircom.

**Conclusion in relation to the regulated rate of return adjustment and the basis of preparation for Balance Sheets in the Separated Accounts:**

ComReg, for the reasons outlined above, is of the opinion that:

- (a) Eircom’s Separated Accounts do not include a regulated rate of return adjustment;
- (b) Eircom’s Separated Accounts are prepared on a Mean Capital Employed basis.

**Consultation Question 18 in ComReg Document No. 09/75**

***Q. 18*** *Do you agree or disagree with the preliminary proposal that Eircom be required to provide commentary and narrative explanations as part of the Separated Accounts? Please detail your response in full.*

**Views of respondents to Question 18 in ComReg Document No. 09/75**

- 3.236 There were four direct responses to this question BT, ALTO, Eircom, and PwC. While CAI made reference to paragraph 5.36 on commentaries within separated accounts it did not respond directly to this question.
- 3.237 **BT** and **ALTO** agreed with ComReg’s proposals.
- 3.238 **Eircom** agreed in general with ComReg’s proposals that narratives were required on the financial performance of individual markets. However, it disagreed with the extent of them. It considered that a reporting structure similar to that imposed upon BT in the UK was appropriate. It suggested commentaries and explanations for “*Access Wholesale*”, “*Core Wholesale*” and a lesser level of disclosure for “*Retail*”.
- 3.239 **Eircom** did not agree with ComReg’s proposal to have commentaries and explanations included within the scope of the audit report.
- 3.240 **PwC** disagreed with ComReg’s proposals. It considered that information relating to commentary and explanations should be published with the separated accounts rather than as part of them. In its view it was not appropriate for an independent auditor’s report to cover commentaries and explanations and was of



the view that the proposed requirement exceeded the requirements in other jurisdictions.

- 3.241 PwC was also of the opinion that “*significant or large adjustments made to produce the Separated Accounts*” be excluded from the commentaries and explanations as it was not normal practice to include them. Instead it considered that these should be submitted as part of additional financial information.
- 3.242 While **CAI** did not respond directly to this question it made reference to paragraph 5.36 of ComReg Consultation Document No. 09/75 where ComReg suggested that the separated accounts include a detailed commentary. It stated that the information being required by ComReg normally accompanied financial statements rather than being contained within them.

#### **ComReg’s conclusions**

- 3.243 ComReg’s conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents’ views to its proposals. In some cases ComReg’s conclusions reflect amendments to its initial proposals having taken into account respondents’ views.
- 3.244 In ComReg Document No. 09/75 ComReg proposed that commentary and narrative explanations be included as part of the separated accounts. ComReg remains of the view that for transparency purposes commentary and narrative explanations are required.
- 3.245 However, in light of responses made it now considers that these commentary and narrative explanations accompany the audited Separated Accounts as opposed to being contained within them. This will still achieve the required level of transparency. As the audited regulated accounts will be to the market level, ComReg requires commentary and narrative explanations to this same level. However, as ComReg will also be receiving AFS (at the service and product level) ComReg will also require commentary and narrative explanations for these. ComReg does not consider that this will place an additional resource burden on Eircom as much of the information underpinning this requirement already exists within Quarterly Report data. The provision of this information will provide further clarity and transparency on the Separated Accounts. See also ComReg’s conclusions in relation to Question 4.
- 3.246 With regard to PwC’s comment regarding the inclusion of significant or large adjustments made to produce the separated accounts being included within the narrative, ComReg considers that sufficient transparency would be provided by relevant details being included as part of AFI. It should be noted that details regarding one off or exceptional adjustments will be contained in an explanatory report accompanying the Separated Accounts. These might include, *inter alia*:
- Consolidation adjustments
  - One off or exceptional events in the period.
- 3.247 The inclusion of narratives explaining these will aid transparency and provide clarity as to why the consolidation adjustments were made or one off or exceptional events occurred.

**Conclusion regarding the proposal that Eircom be required to provide commentary and narrative explanations as part of its Separated Accounts:**

ComReg, for the reasons outlined above, is of the opinion that commentary and narrative explanations will accompany both Eircom's Separated Accounts and AFS.

**Consultation Question 19 in ComReg Document No. 09/75**

***Q. 19** Do you agree or disagree with the preliminary proposals regarding the basis of preparation of the Separated Accounts and the Regulatory Accounting Principles that should be applied? Please detail your response in full.*

**Views of respondents to Question 19 in ComReg Document No. 09/75**

- 3.248 There were two responses to this question.
- 3.249 **BT** agreed with ComReg's proposals regarding the basis of preparation of the separated accounts and the regulatory accounting principles to be applied.
- 3.250 **Eircom** stated that it was unclear why this information should be repeated in both the separated accounts and the accounting documentation. In Eircom's view the requirements should either be completely removed or only have a high level summary within the separated accounts. The comprehensive documentation would remain within the separated accounts. Eircom also pointed to the BT accounts as a template.

**ComReg's conclusions**

- 3.251 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.
- 3.252 In ComReg Document No. 09/75 ComReg proposed that the separated accounts and accounting documentation include a description of the basis of preparation.
- 3.253 ComReg also proposed that the separated accounts be prepared in accordance with the following Regulatory Accounting Principles, details of which would be included in the Primary Accounting Documentation:
- Cost causality
  - Objectivity
  - Consistency of treatment
- 3.254 ComReg is also of the view that Eircom's Separated Accounts should also be prepared by following the Regulatory Accounting Principle of "*transparency*".
- 3.255 ComReg remains of the view that both the basis of preparation of the Separated Accounts and the Regulatory Accounting Principles to be applied need to be documented.

- 3.256 However, in the interests of clarity and to avoid duplication it now requires Eircom to detail the basis of preparation and the Regulatory Accounting Principles applied in the Accounting Documentation only. A high level description of the basis of preparation will be included in the Separated Accounts.

**Conclusion in relation to the basis of preparation of the Separated Accounts and the Regulatory accounting principles that should be applied:**

ComReg, for the reasons outlined above, is of the opinion that the basis of preparation of the Separated Accounts, and the Regulatory Accounting Principles to be applied, are documented in the Primary Accounting Documentation.

**Consultation Question 20 in ComReg Document No. 09/75**

***Q. 20** Do you agree or disagree with ComReg’s preliminary conclusion that any profits or losses on disposal of non current assets should be recognised at the market level (where the cost has been recovered) and disclosed on the face of the HCA profit and loss accounts? Please detail your response in full.*

**Views of respondents to Question in ComReg Document No. 09/75**

- 3.257 There were two responses to this question.
- 3.258 **BT** agreed with ComReg’s proposals and in agreeing expressed concern at how the cost of assets might be recovered.
- 3.259 **Eircom** disagreed with ComReg’s proposals as in its view it was disproportionate and not practised in other jurisdictions. It suggested that where there was a material disposal of assets the relevant information could be disclosed to ComReg in confidence.

**ComReg’s conclusions**

- 3.260 ComReg’s conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents’ views to its proposals. In some cases ComReg’s conclusions reflect amendments to its initial proposals having taken into account respondents’ views.
- 3.261 In ComReg Document No. 09/75 ComReg proposed that in the interests of transparency the profit or losses on the disposal of non current assets be disclosed in the HCA Accounts. ComReg remains of the view that there is a need for transparency with regard to the disposal of non current assets. In relation to the concern set out by BT above, Eircom must ensure that any profits or losses on assets are not treated in a discriminatory fashion. However, ComReg considers in the interests of proportionality that Eircom is only required to submit to ComReg in confidence details of exceptional and material disposals of non current assets by way of AFI.

**Conclusion in relation to how profits and losses on the disposal of non current assets should be disclosed:**

ComReg, for the reasons outlined above, is of the opinion that Eircom is required to disclose to ComReg in confidence details of exceptional and material disposals of non current assets by way of AFI.

**Consultation Question 21 in ComReg Document No. 09/75**

*Q. 21 Do you agree or disagree that CCA Separated Accounts should be provided by Eircom for wholesale access, LLU, WBA (in addition to Call Origination, Call Termination and Leased Lines) as part of its Separated Accounts together with CCA profit and loss accounts for each regulated service? If yes, do you believe that the FCM approach is appropriate? Please detail your response in full.*

**Views of respondents to Question 21 in ComReg Document No. 09/75**

- 3.262 There were three responses to this question.
- 3.263 **Eircom, BT, and ALTO** agreed that the FCM concept was the appropriate approach for the preparation of CCA accounts.
- 3.264 **BT** and **ALTO** also agreed that CCA separated accounts should be provided by Eircom for wholesale access, Local Loop Unbundling (“LLU”) and Wholesale Broadband Access (“WBA”).
- 3.265 Eircom disagreed that it should provide CCA separated accounts for wholesale access, LLU and WBA on the grounds of cost and also that it would represent a significant data gathering exercise. It was of the view that ComReg should only require these CCA accounts where it considered that there was a genuine regulatory need for them.

**ComReg’s conclusions**

- 3.266 ComReg’s conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents’ views to its proposals. In some cases ComReg’s conclusions reflect amendments to its initial proposals having taken into account respondents’ views.
- 3.267 In ComReg Document No. 09/75 ComReg proposed that Eircom expand the provision of CCA separated accounts to include wholesale access, LLU and WBA. In the interests of proportionality and in light of Eircom’s comments that the production of additional CCA accounts would be both a significant cost to it as well as requiring a detailed data gathering exercise ComReg no longer requires it to produce CCA accounts for Wholesale Physical Network Infrastructure Access (“WPNIA”) at this time. ComReg notes that certain regulated prices have recently been set in this market using bottom up models and that the production of CCA accounts would not provide additional benefits at this time. ComReg notes that Wholesale Unbundled Access (“WUA”) Line Share as referred to by

BT is now based on an incremental cost based approach. However, ComReg will continue to monitor its reporting requirements in this regard and may, in the future, if it considers that there is a need for CCA information require Eircom to produce CCA Separated Accounts for this market.

3.268 In relation to WBA, and as agreed by BT and ALTO ComReg remains of the view that it is appropriate to produce CCA accounts for this market. ComReg does not consider that there should be any significant cost burden to Eircom in this regard as many of the assets are either relatively new or are re-valued as part of CCA accounts for other markets.

3.269 ComReg considers that transparency can still achieved in areas where CCA accounts are not produced through other means. For example, in many of the recent pricing reviews within the wholesale access area, ComReg has gained insight and knowledge into the underlying cost base. Some of the wholesale local access prices have been set using bottom up models populated with actual Eircom data (i.e. current costs and engineering rules) which have then been adjusted for efficiencies. Furthermore, as part of some of these price setting exercises comparisons and reconciliations have been made between Eircom's actual costs incurred and those of an efficient operator.

3.270 ComReg remains of the view that Eircom continues to prepare CCA Separated Accounts for those areas included as part of the previous "*Current Cost and Long Run Incremental Cost Statements*". Therefore in moving to a market based reporting structure Eircom will provide CCA Separated Accounts for:

- Wholesale Fixed Wholesale Call Termination
- Wholesale Call Origination
- Wholesale Transit Services
- Wholesale Terminating Segments of Leased Lines

3.271 ComReg remains of the view that FCM is the most appropriate approach to use when preparing CCA accounts and notes the agreement of all respondents to this approach.

**Conclusion in relation to whether Eircom should provide CCA Separated Accounts for wholesale access, LLU and WBA and whether the FCM approach is appropriate:**

ComReg, for the reasons outlined above, is of the opinion that it would not be practical or proportionate for Eircom to provide CCA Separated Accounts for WPNIA at this time. However, ComReg will keep this under review and where there is a genuine regulatory need for CCA Accounts in the future it may require Eircom to provide them.

ComReg is of the opinion that CCA Separated Accounts are currently required for the following markets:

Wholesale Fixed Call Termination

Wholesale Call Origination

Wholesale Transit Services

Wholesale Broadband Access

Wholesale Terminating Segments of Leased Lines

ComReg is of the opinion that the FCM approach is appropriate.

**Consultation Question 22 in ComReg Document No. 09/75**

***Q. 22 Do you agree or disagree that life to date holding gains and losses should be amortised over the life of the asset? Please detail your response in full.***

**Views of respondents to Question 22 in ComReg Document No.09/75**

3.272 There were two responses to this question.

3.273 **BT** agreed that life to date holding gains and losses should be amortised over the life of the asset.

3.274 **Eircom** disagreed with ComReg's proposals as this was a deviation from the FCM approach<sup>23</sup> and was of the view that ComReg was attempting to align the CCA accounts to meet the needs of price setting models. It also stated that the ERG supported the use of FCM without modification and does not include such amortisation of holding gains and losses. Eircom provided examples as to why it does not agree with ComReg's proposals and concludes that such proposals would misstate the economic value of the assets and the annual capital costs flowing from the asset.

**ComReg's conclusions**

3.275 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.

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<sup>23</sup> See ComReg's position and conclusion in relation to Question 21 above.

- 3.276 In ComReg Document No. 09/75 ComReg proposed that life to date holding gains and losses be amortised over the life of the asset. While noting BT's agreement with ComReg's preliminary view, ComReg now considers that it is not appropriate to amortise life to date holding gains and losses over the life of the asset, as this is a deviation from the FCM concept.
- 3.277 Through the use of FCM and the fact that balance sheets are to continue to be prepared on a "*Mean Capital Employed*" basis the impact of life to date holding gains and losses will be averaged from one financial period to another. Therefore the impact of any significant increases or decreases in assets over time (as witnessed in the property market) will be reduced. This treatment is also consistent with international best practice.
- 3.278 It should also be noted that in certain pricing decisions, which use as their basis current cost accounting information, the trends in asset inflation/deflation is often assessed. Therefore the impact of significant variations and step changes is reduced.
- 3.279 However, where there are significant fluctuations in material holding gains and losses ComReg may assess these separately and in particular when deriving regulatory prices through the use of pricing models. As such the potential impact of these fluctuations is greatly reduced.

**Conclusion concerning how the life to date of holding gains and losses should be amortised:**

ComReg, for the reasons outlined above, is of the opinion that the treatment of life to date holding gains and losses is dealt with through the use of the FCM concept.

However, material holding gains and losses may be dealt with separately when deriving regulatory prices via pricing models.

**Consultation Question 23 in ComReg Document No. 09/75**

**Q. 23** *Do you agree or disagree with the preliminary proposal that Eircom be required to provide as part of its Separated Accounts a reconciliation of the HCA and CCA accounts (at the market level)? Please detail your response in full.*

**Views of respondents to Question 23 in ComReg Document No. 09/75**

- 3.280 There were three responses to this question.
- 3.281 **BT** and **ALTO** agreed with ComReg's proposals.
- 3.282 **Eircom** disagreed that there was a need to produce a separate reconciliation schedule between the HCA and CCA Accounts.

### **ComReg's conclusions**

- 3.283 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.
- 3.284 In ComReg Document No. 09/75 ComReg proposed that a reconciliation statement should be produced between the HCA and CCA accounts. ComReg considers that, in the interests of transparency, a reconciliation of HCA financial information to CCA financial information is still required but that this is contained within the Separated Accounts.

**Conclusion regarding whether Eircom should be required to provide a reconciliation of the HCA and CCA accounts as part of Eircom's Separated Accounts:**

ComReg, for the reasons outlined above, is of the opinion that a reconciliation of HCA financial data to CCA financial data, where relevant, at market level is required as part of Eircom's Separated Accounts.

### **Consultation Question 24 in ComReg Document No. 09/75**

***Q. 24** Do you agree or disagree with the preliminary proposal that the level of granularity of the CCA Separated Accounts (i.e. market and service levels) shall be consistent with that of the HCA Separated Accounts? Please detail your response in full.*

#### **Views of respondents to Question 24 in ComReg Document No. 09/75**

- 3.285 There were three responses to this question.
- 3.286 **BT** and **ALTO** agreed with ComReg's proposals.
- 3.287 **Eircom** disagreed with ComReg's proposals as Eircom does not see the regulatory need for the same level of granularity to be required in CCA as HCA.

### **ComReg's conclusions**

- 3.288 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.
- 3.289 In ComReg Document No. 09/75 ComReg proposed that Eircom produce CCA accounts to a sufficient level of granularity to facilitate reconciliations with costing information of various price reviews. ComReg remains of the view that granularity is required for specific markets.



- 3.290 However, as stated in ComReg's conclusions in relation to Question 21, ComReg does not require Eircom to produce CCA Accounts for WPNIA but does require them for WBA. As previously stated ComReg considers that transparency is still achieved in these areas through other means such as the reconciliation of bottom up models with HCA data. However CCA accounts are still required for certain markets (i.e. call origination, call termination, WBA, leased lines)
- 3.291 If required, a further level of granularity can be achieved through the AFS and AFI.

**Conclusion in relation to the level of granularity required for the CCA Separated Accounts:**

ComReg, for the reasons outlined above, is of the opinion that CCA Accounts are required at the specified, regulated market level.

**Consultation Question 25 in ComReg Document No. 09/75**

*Q. 25 Do you agree or disagree with the preliminary proposal that Eircom be required to submit a reconciliation of costing data (i.e. FL-LRIC) provided for pricing purposes with the CCA accounts by regulated service and/or product as part of the Additional Financial Information as required by ComReg (and consistent with when pricing reviews take place)? Please detail your response in full.*

**Views of respondents to Question 25 in ComReg Document No. 09/75**

- 3.292 There were three responses to this question.
- 3.293 **BT** and **ALTO** agreed with ComReg's proposals.
- 3.294 **Eircom** considered that a reconciliation of costing data provided for pricing purposes with the top down CCA Accounts was impractical and possibly unachievable. However, it suggested that it could demonstrate consistency, on an *ad hoc* basis, where costing data was taken directly from the separated accounts for inclusion in pricing models

**ComReg's conclusions**

- 3.295 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.
- 3.296 In ComReg Document No. 09/75, ComReg proposed that Eircom should submit a reconciliation of costing data provided for pricing purposes with the CCA accounts by regulated service and / or product as part of the AFI. While noting BT's and ALTO's agreement with ComReg's preliminary view ComReg has taken into account Eircom's comments that it believes it is not currently

possible to produce this information. Therefore, ComReg will keep this matter under review and require Eircom to provide this information where necessary for regulatory purposes.

**Conclusion regarding the requirement for Eircom to provide a reconciliation of costing data to the CCA Separated Accounts for certain products and services as part of the AFI:**

ComReg, for the reasons outlined above, will require Eircom to provide this information where there is a genuine regulatory need. ComReg will keep this matter under review.

**Consultation Question 26 in ComReg Document No. 09/75**

***Q. 26** Do you agree or disagree that Eircom be required to publish its Separated Accounts and submit its Additional Financial Information in confidence to ComReg within five months after the end of the first financial year and four months thereafter? Please detail your response in full.*

**Views of respondents to Question 26 in ComReg Document No. 09/75**

- 3.297 There were three direct responses to this question from BT, ALTO, and Eircom. PwC, while not answering directly to Question 26 included reference to the proposed timelines in its response to Question 32. However, for ease of reference a summary of its comments is included below.
- 3.298 **BT** and **ALTO** agreed with ComReg's proposals.
- 3.299 **Eircom** considered that the proposed timelines were unrealistic. It underlined that it found the current reporting deadlines of six months difficult to achieve and that it took a significant effort with the available resources to achieve this deadline.
- 3.300 Eircom also noted that BT in the UK had experienced difficulties meeting its four month deadline even though it had a dedicated team for this task. Eircom also stated that a survey it undertook of other jurisdictions indicated that six months was the most common reporting deadline. Eircom further stated that given the level of detail in the accounts that Eircom is required to produce in its view it will need more time than other jurisdictions.
- 3.301 Eircom proposed an alternative timeframe of seven months for the first production of the accounts, reducing to six months for the second financial period and then five months for the combined HCA / CCA statements in the third financial period.
- 3.302 **PwC** considered that the proposed timelines were very short and would be extremely challenging.

**ComReg's conclusions**

- 3.303 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.
- 3.304 In ComReg Document No. 09/75, ComReg was of the preliminary view that Eircom should publish its separated accounts and submit its AFI in confidence to ComReg within five months of the first financial period end and within four months of each subsequent financial period end.
- 3.305 However, having considered the views of respondents, the extent of the work to be completed by Eircom in conjunction with other statutory reporting deadlines, ComReg is now of the view that Eircom should publish its HCA Separated Accounts no later than five months after the financial period end and CCA Separated Accounts no later than six months after the financial period end. These dates are consistent with those currently in force. Furthermore as the statutory audit is completed four months after the end of the financial period Eircom does not think that it is possible for its auditors to complete the audit of the Separated Accounts at the same time. It should be noted that the Separated Accounts use certain information extracted from the statutory accounts, *inter alia*, the general ledger balances.
- 3.306 In relation to the submission of AFS and AFI Eircom is required to submit these within seven months of the financial period end.
- 3.307 While noting the agreement of both BT and ALTO to its preliminary conclusion regarding the publication of Separated Accounts, ComReg considers that its final conclusion takes into account statutory reporting requirements as well as being proportionate to Eircom.

**Conclusion in relation to the timetable for publication of Eircom's Separated Accounts and its submission of AFI to ComReg in confidence:**

ComReg, for the reasons outlined above, is of the opinion that Eircom shall:

- (a) Publish its HCA Separated Accounts no later than five months after the financial period end;
- (b) Publish its CCA Separated Accounts no later than six months after the financial period end; and
- (c) Submit its AFS and AFI in confidence to ComReg no later than seven months after the financial period end.

## Accounting Documentation

3.308 In ComReg Document No. 09/75 ComReg outlined its preliminary views as to the areas it considered needed to be documented by Eircom in order that:

- Eircom be able to prepare its separated accounts
- To facilitate ComReg in the monitoring of Eircom's regulatory obligations.

3.309 ComReg highlighted areas where it considered that improvements could be made by Eircom in its current documentation. These included, *inter alia*:

- Schedules of how operating costs are treated at the market level
- How functional cost categories and network elements are treated at the service and product level
- The process of determining the bases of the allocation of costs
- Details of changes in attribution methods from one period to another
- The process of revenue and volume identification
- The process of calculating and apportioning discounts for bundles
- The review of drivers for allocating connection fee revenue
- Details of the calculation of amounts receivable/payable from/to other operators
- Service and product listing by regulated market
- Details of network studies and samples.

3.310 ComReg proposed that Eircom produce two principal accounting documents to document Eircom's processes and procedures. The primary accounting documentation, which would be publicly available, would include details of *inter alia*:

- A description of Eircom's business
- Details of its accounting systems
- A description of how its separated accounts differ from its statutory financial statements
- The basis of preparation of the separated accounts
- A description of the cost allocation methodologies
- Details of transfer charges
- Financial period on period changes to the separated accounts and cost allocation methodologies.

3.311 In the secondary accounting documentation (which would be submitted in confidence) ComReg proposed that it contain *inter alia*:

- Details on the underlying transactions
- The means for identifying direct, indirect, or common costs

- The means for identifying avoidable, variable, and fixed costs
  - Cost driver definitions and calculations
  - A description of how cost allocation methodologies are updated
  - Details on sampling
  - The accounting treatment for NGN
  - Details of network studies conducted during the year to apportion indirect common costs
  - A list of services and products as per the regulated price lists
  - Details of how bundle discounts are calculated.
- 3.312 ComReg was of the preliminary view that the accounting documentation be reviewed by a qualified independent body annually to ensure its continuing appropriateness. It noted that the development of the accounting documentation was likely, in the immediate future, to place an additional resource burden on Eircom as the documentation was being compiled. However, over the medium to long term this initial cost would be outweighed by the greater transparency and regulatory certainty that such documentation would provide.
- 3.313 This was the fifth area outlined in ComReg Document No. 09/75 and it preceded Question 27.

#### **Consultation Question 27 in ComReg Document No. 09/75**

*Q. 27 Do you agree or disagree with ComReg’s preliminary proposals to require Eircom to document the policies and procedures to be used in the preparation of its Separated Accounts in Accounting Documents and to submit it to ComReg for its approval in advance of the start of each of the two years following the effective date of the accounting Direction and subsequently as part of the Separated Accounts? Do you agree that only the “Primary Accounting Documents” should be published by Eircom? Please detail your response in full.*

#### **Views of respondents to Question 27 in ComReg Document No. 09/75**

- 3.314 There were three responses to this question.
- 3.315 **BT** and **ALTO** agreed with ComReg’s proposals. Both, however, were of the view that:
- Eircom should be required to submit its accounting documents in advance of its financial year end beyond the initial two year limit; and
  - In the interests of transparency accounting for NGN should be in the primary document.
- 3.316 **Eircom** had a number of reservations with ComReg’s proposals and considered that the timescales were too onerous given the level of documentation being proposed:

- Should the Draft Direction become effective before 1 July 2010 Eircom would have the submission of accounting documents prior to this date may be impractical
- Details of certain items to be included in the secondary accounting documentation (i.e. allocation methods) are often not fully known until the end of the financial year. Therefore their inclusion in a document to be submitted before the year end is impractical
- In its view it is more common to submit draft methodologies to regulators for approval before the submission of accounts
- Accounting documentation submitted in advance of separated accounts cannot be finalised until the audit is completed. Therefore the documents will be provided in draft form.

### **ComReg's conclusions**

- 3.317 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.
- 3.318 In ComReg Document No. 09/75, ComReg set out its preliminary proposals to require Eircom to document the policies and procedures to be used in the preparation of its separated accounts in accounting documentation. This accounting documentation was then to be submitted to ComReg for its approval in advance of the start of the first two financial periods following the effective date of the Draft Direction and subsequently as part of the separated accounts.
- 3.319 Having considered the responses received in detail and reviewing the extent of the task for Eircom, ComReg remains of the view that the documenting of Eircom's policies and procedures remains necessary. However, it has made a number of refinements to the requirement which it considers still meet its regulatory needs while simultaneously addressing the concerns of Eircom.
- 3.320 Eircom is now required to submit a draft of both its Primary and Secondary Accounting Documentation to ComReg in advance of the financial period end for the first two financial periods.
- 3.321 Subsequent to the first two financial periods, Eircom is then required to submit the Primary Accounting Documentation no later than five months after the end of the financial period for the HCA Separated Accounts and no later than six months after the end of the financial period for the CCA Separated Accounts. Eircom is required to submit its Secondary Accounting Documentation no later than seven months after the end of the financial period.
- 3.322 However, where Eircom considers that changes are required to the Primary Accounting Documentation and that these changes may have a material impact on the Separated Accounts it is to advise ComReg at the earliest opportunity of these proposed changes. This will enable ComReg to assess the proposed changes and to determine their suitability. If the CCA Primary Accounting Documentation causes a material change to the HCA Primary Accounting Documentation (previously submitted) Eircom will be required to submit both documents for consideration no later than six months after the end of the financial period.

- 3.323 ComReg also requires enhanced documentation regarding the use of sampling. This is in place of the proposal to implement certain statistical thresholds regarding sampling (see Question 5).
- 3.324 ComReg also requires Eircom to document how it calculates usage factors for various services and products as well as how it accounts for direct, indirect and common costs. ComReg considers that the documentation of both of these is more appropriate than the production of schedules (which in any event may not be possible). This documentation will provide ComReg with greater insight into these two important means of allocating costs to services and products.
- 3.325 Where necessary ComReg may require the submission of schedules for direct indirect and common costs for certain services and products. However, this is likely to be on an *ad hoc* basis (such as a price review) and would form part of AFI.
- 3.326 ComReg does not consider that it is necessary to specifically refer to how Eircom accounts for new and ongoing investment and other expenditure relating to NGN as such expenditure and costs will have to be clearly documented in the Secondary Accounting Documentation. ComReg considers that it may not be appropriate to request Eircom to publicly disclose how it accounts for NGN as this may place it at an inappropriate competitive disadvantage. Disclosure to ComReg should be sufficient to ensure new services and products are accounted for correctly. However ComReg is of the view that expenditure on NGN should be accounted for separately to that of the existing network.
- 3.327 ComReg considers that the requirements for Eircom to document its policies and procedures are proportionate and feasible. Through the submission, in advance, of proposed changes to documentation ComReg will have a greater insight into how Eircom is maintaining its systems. This will enable ComReg to be proactive rather than reactive to changes.
- 3.328 ComReg remains of the view that Eircom should only publish its Primary Accounting Documentation and that this be done following ComReg's approval. The publication of the Secondary Accounting Documentation could place Eircom at a competitive disadvantage.

**Conclusion in relation to the preparation and publication of Accounting Documentation.**

ComReg, for the reasons outlined above, is of the opinion that:

- (a) it is necessary for Eircom to document the policies and procedures used to prepare the Separated Accounts in Accounting Documentation.
- (b) Eircom for the first two financial periods will submit both its Primary and Secondary Accounting Documentation in advance. Thereafter it will submit its HCA Primary Accounting Documentation no later than five months after the end of the financial period and its CCA Primary Accounting Documentation no later than six months after the end of the financial period. Subsequent to the first two financial periods Eircom will submit its Secondary Accounting Documentation no later seven months after the end of the financial period.
- (c) Eircom will publish its Primary Accounting Documentation following ComReg's approval.

**Audit**

3.329 In ComReg Document No. 09/75 ComReg considered the need to have an annual audit of the separated accounts.

3.330 It discussed its preliminary proposals in this regard under:

- Auditor independence
- Duty of care of the auditor
- Letter of engagement
- Audit report and opinion.

3.331 ComReg was of the initial view that a suitably qualified independent body conduct the audit of Eircom's separated accounts. In its view the regulatory auditor, which could be the same as the statutory auditor, should have the necessary expertise to conduct the audit.

3.332 ComReg also proposed that as much of the information contained within the separated accounts forms the basis of price applications and regulatory reviews, a duty of care be owed from the regulatory auditor to it. In its review of the audit report on Eircom's current separated accounts ComReg noted the following sentence which in its view gave little assurance:

*"[...] have not performed any additional tests of the transactions and balances recorded in the general ledgers and other accounting records beyond those already performed, for the purpose of our audit of the Statutory Financial Statements."*

3.333 ComReg also noted that CAI had, following representations from ComReg, set up a working group to consider the issue of a duty of care as well as other audit



related matters. ComReg believes that guidance from CAI to its members will be published shortly.

3.334 ComReg also considered, that as it made extensive use of the separated accounts, it should be party to a letter of engagement where the terms of reference of the regulatory auditor and the scope of its work be set out. It was of the preliminary view that the regulatory auditor be required to verify:

- Compliance with processes and procedures;
- Compliance with the Decision Instrument;
- That the separated accounts have been prepared in accordance with the accounting documentation;
- The appropriateness of the cost allocation and apportionment processes.

3.335 In relation to audit reports and opinions ComReg considered that a “*Fairly presents in accordance with [...]*” audit opinion would be the most suitable audit opinion on the separated accounts as it gives a high level of audit assurance. ComReg was also of the preliminary view that if an audit opinion could not be provided by the regulatory auditor then ComReg could seek assurance from a separate qualified independent body.

3.336 This was the fifth area outlined in ComReg Document No. 09/75 and it preceded the following 8 questions (i.e. Questions 28 to 35).

**Consultation Question 28 in ComReg Document No. 09/75**

***Q. 28 Do you agree or disagree with ComReg’s preliminary proposals with regard to Auditor Independence, Duty of Care, Auditors letter of engagement? Please detail your response in full.***

**Views of respondents to Question 28 in ComReg Document No. 09/75**

3.337 There were five responses to this question.

3.338 **BT** and **ALTO** agreed with ComReg’s proposals.

3.339 **PwC** had no objections to ComReg seeking information on the capability and independence of the auditors. It noted that a duty of care to ComReg would only arise if ComReg was party to an engagement contract between Eircom and its independent auditor. It stated that the terms of any letter of engagement were a matter for the contracting parties. If an audit opinion was being sought it was for the independent auditor to determine the necessary level of audit evidence required. A request to perform specific procedures would require a separate letter of engagement and the resulting report would not contain an audit opinion.

3.340 In its response to the consultation PwC also made reference to various points raised by ComReg in Section 7 “*Audit*”.

3.341 It noted ComReg’s comments at paragraph 7.4 that the audit report of the separated accounts could not be relied upon by third parties. This, it said, was standard reporting practice for auditors unless a duty of care was put in place through an engagement contract.

3.342 In relation to paragraph 7.5 PwC considered that ComReg had misunderstood the nature of the auditor’s report and that it was not true that limited comfort

could be placed on the accuracy or reliability of the separated accounts. It stated that its audit has been planned and performed to give reasonable assurance on the separated accounts.

- 3.343 As such PwC was of the opinion that its audit report on the separated accounts was consistent with the ERG Common Position and therefore ComReg's comments at paragraph 7.9 were incorrect.
- 3.344 In PwC's view, ComReg's misunderstanding with regard to the nature of the audit has resulted in it drawing erroneous conclusions at paragraphs 7.29 and 7.57. In conducting the audit of the separated accounts they have not re-audited any transactions contained within the statutory accounts. They have, however, conducted an extensive examination in order to arrive at their opinion on the separated accounts.
- 3.345 In relation to paragraph 7.23, PwC considered that ComReg was incorrect in suggesting that if verification of certain matters were required this could be addressed through a letter of engagement. It is for the auditors to determine how an audit is to be conducted and as such a letter of engagement will set out their responsibilities. A letter of engagement does not contain specific procedures.
- 3.346 In relation to ComReg's comments at paragraph 7.30 regarding the necessity to understand how the audit was conducted, PwC noted that the audit is conducted under International Standards on Auditing ("ISA") with which it is obliged to comply. Should specific procedures be required then a factual report would be issued and not an audit opinion.
- 3.347 At paragraph 7.6, ComReg noted that an audit report was not issued in relation to "*individual markets, services and products*". PwC commented that as there was no requirement for an opinion on these none was issued.
- 3.348 In relation to paragraph 7.26, where ComReg considered the possible different types of audit opinion PwC noted that an audit conducted under ISA is designed to provide reasonable assurance but that there are inherent limitations in any audit.
- 3.349 PwC made the following comments in relation to paragraph 7.67:
- The use of the term "*verify*" would imply guaranteeing full compliance which in turn would require exhaustive testing and would likely be unattainable
  - The term "*review*" is too vague to be of any practical value
  - No principles have been issued by the Irish accountancy profession with regard to cost allocation systems nor is PwC aware of any plans to do so
  - The Draft Direction does not require an audit of additional financial information which is contradictory to paragraphs 7.67 and 7.71
- 3.350 PwC commented that there was no definition provided in the consultation for a "*cost auditor*" and nor was it defined under Auditing Standards.
- 3.351 PwC agreed with ComReg's comments at paragraph 7.59 that the regulatory auditor should have the necessary skills. In its view this matter was already dealt with under existing auditing standards whereby an auditor has to ensure that it has the necessary capabilities, competence, time, and resources to undertake an audit.

- 3.352 PwC considered that ComReg’s comments at paragraphs 7.41 and 7.43 in relation to “*Miscellaneous Technical Statement M46*” were not relevant as this technical statement related to certain statutory duties of auditors.
- 3.353 CAI considered that the current audit report referred to at paragraph 7.4 of the consultation is appropriate (as there currently is no duty of care to ComReg) and is also consistent with audit reporting standards in Ireland. As there is not a tripartite agreement in place the auditors cannot accept responsibility to third parties.
- 3.354 CAI referred to paragraphs 7.14 and 7.31. It also noted that there was no definition of a “*cost auditor*”. While in-depth industry knowledge might be required this would not necessarily preclude an auditor from being independent. It stated that members of CAI were expected to adhere to the highest professional standards at all times.
- 3.355 In referring to paragraph 7.36 where ComReg considered it should be able to approve the appointment of the regulatory auditor, CAI noted that the statutory and regulatory audits were often undertaken by the same entity. The statutory auditor was appointed/removed by the shareholders to the company. It was of the view that without establishing criteria for appointing or removing the regulatory auditor by ComReg arbitrary decisions could be made and additional costs incurred.
- 3.356 CAI also commented that paragraphs 7.17 and 7.39 were “*completely out of context*” as the technical statements referred to were in relation to specific obligations arising under legislation. It also considered that references to legislation in New Zealand and the UK were irrelevant unless there was similar legislation in place in Ireland.
- 3.357 CAI noted that at paragraphs 7.20, 7.47 and 7.65 ComReg was of the preliminary view that it should be party to a letter of engagement. The CAI stated that without a letter of engagement an auditor cannot accept a duty of care to ComReg. It did, however, support the introduction of a letter of engagement but considered that the scope of some of the work proposed by ComReg in the consultation document (i.e. verification of procedures) to be somewhat unrealistic.
- 3.358 In relation to paragraph 7.29 (i.e. performance of audit tests) the CAI was of the view that as the audit was conducted in accordance with ISA it would address many areas thereby enabling the auditors to provide a “*fairly presents*” audit opinion.
- 3.359 At paragraph 7.59 it was of the view that a letter of engagement would not set out the audit procedures to be undertaken and in any event this would be impractical to do. If specific procedures were required these would be detailed under a separate engagement.
- 3.360 At paragraph 7.30 it was of the view that audits were conducted in accordance under ISA (UK and Ireland) and therefore the existing audit opinion was sufficient. The inclusion of any information beyond this within the audit report would be inconsistent with best practice.
- 3.361 **Eircom** agreed that it was necessary for an auditor to have the appropriate resources and capabilities to undertake an audit. As such if ComReg were party

to an audit relationship it could seek assurances on the suitability of the auditor. However, it did not agree that a separate audit of its cost allocation systems was justified.

- 3.362 Eircom was of the view, with regards to “*a duty of care*”, that there was some merit in introducing a tri-partite arrangement between it, its auditor, and ComReg and that there was already a precedent in the UK.
- 3.363 Eircom agreed that it was reasonable for ComReg to seek assurance over the regulatory financial statements and that this would be provided by the audit which would be conducted under ISA. The audit itself would also consider the costing systems, control environment as well as the financial data supporting the financial statements to the extent that this was necessary for the auditor to form an opinion.
- 3.364 It was of the view that if ComReg sought additional reviews in addition to those undertaken during the course of the audit of the regulatory financial statements this would be inconsistent with international best practice and also Regulation 24(1) of the Framework Regulation. While stating this it noted that it was not ComReg’s intention to impose an excessive cost burden on Eircom.

#### **ComReg’s conclusions**

- 3.365 ComReg’s conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents’ views to its proposals. In some cases ComReg’s conclusions reflect amendments to its initial proposals having taken into account respondents’ views.
- 3.366 In ComReg Document No. 09/75, ComReg was of the preliminary view that the auditor of Eircom’s separated accounts has the necessary skills to undertake the audit and therefore Eircom when appointing or reappointing its auditor should consult with ComReg.
- 3.367 ComReg was also of the preliminary view that it needed assurance (i.e. a duty of care) as to the accuracy and reliability of the separated accounts as they often formed the basis for price applications and reviews.
- 3.368 It was also of the preliminary view that, as a significant user of the separated accounts it should become party to a letter of engagement. The letter of engagement, it considered, should set out the terms of reference of the auditor and include the following:
- Verify compliance with the requirements of the Decision Instrument
  - Review the accounting documentation on an annual basis
  - Audit the separated accounts and additional financial information
  - Conduct an audit of Eircom’s cost allocation systems in accordance with the principles and guidance set out by bodies representative of the Irish accountancy profession
  - Review processes and procedures employed by Eircom
  - Review statistical sampling processes employed to identify volumes and/or revenues.

- 3.369 ComReg remains of the view that any auditor appointed to conduct an audit of Eircom’s Separated Accounts should have the necessary skills to do so. It also remains of the view that Eircom consult with it on the appointment/reappointment of this same auditor. This position is in line with the views of the majority of respondents who addressed this part of the question. When the regulatory auditor is being appointed/re-appointed ComReg will require significant assurance that it has the necessary skills to undertake the assignment. This could, for example, require the auditor to submit details of the experience and qualifications of its proposed audit team.
- 3.370 It notes CAI comments regarding the possible arbitrary removal or appointment of an auditor of the Separated Accounts. It is not ComReg’s intention to arbitrarily remove or appoint an auditor. ComReg would seek to work with the current auditors and this working relationship may be advanced if a duty of care is put in place. However, it should be noted that ComReg also reserves the right to appoint its own qualified independent body to conduct reviews of Eircom’s regulatory accounting processes and related financial data.
- 3.371 ComReg remains of the view that it is vital for Eircom’s regulatory auditors to owe ComReg (as well as Eircom) a duty of care in order for ComReg to place any reliance on the Separated Accounts. This could only be put in place if there was a tri-partite agreement entered into by Eircom, its auditors and ComReg. It notes that the views of all respondents supported the introduction of a tripartite letter of engagement. This is also consistent with the regulatory reporting regime in the UK. ComReg notes the views of respondents in relation to the possible contents of any letter of engagement that might be introduced.
- 3.372 The term “*verify*” is derived from Regulation 14(5) of the Access Regulations:  
*“Compliance with the cost accounting system shall, at the choice of the Regulator, be **verified** by the Regulator or a suitably qualified independent body.”*
- 3.373 While no definition is provided in the Access Regulations for the word “*verify*” ComReg considers that it is similar to the provision of “*reasonable assurance*” through the audit of financial statements. It notes that the “*scope paragraph*” in ISA 700<sup>24</sup> includes the following:  
*“[... ]that the audit was planned and performed to obtain **reasonable assurance** about whether the financial statements are free of material misstatement.”*
- 3.374 It further notes that audits are required to be conducted in accordance with ISA. Part of an audit requires the testing of the systems and controls in place which govern the financial statements being audited.
- 3.375 Therefore ComReg is of the view that if an audit of Eircom’s Separated Accounts is conducted under ISAs the auditors would have to obtain reasonable assurance on both the financial information and systems and controls supporting them before an audit opinion could be provided. This would indicate the Separated Accounts are compliant with the Decision Instrument and also providing reasonable assurance regarding the robustness of the systems and processes governing those accounts.

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<sup>24</sup> ISA (UK and Ireland) 700 The auditor’s report on financial statements

- 3.376 Section 8 of the ERG Common Position provides additional detail on “*audit scope and verification*”. The ERG considers that an audit involves:  
“[...] *checking and verifying the accounting information (ensuring the rules set out by the NRA are correctly applied).*”
- 3.377 Where ComReg requires assurance on aspects of the regulatory accounting process, beyond that offered by the audit opinion, it can engage its own qualified independent body to undertake specific reviews and report thereon. If a tri-partite arrangement were put in place ComReg could engage Eircom’s auditors to undertake specific “*Agreed Upon Procedures*”.
- 3.378 These “*Agreed Upon Procedures*” would be a limited scope assignment, as agreed between a qualified independent body, Eircom and ComReg, with the objective of reporting on factual findings. The same level of audit assurance is not expressed in an “*Agreed Upon Procedures*” engagement when compared to a “*Fairly Presents in Accordance with*” opinion. Instead, users of the report assess for themselves the procedures and findings reported by the qualified independent body and draw their own conclusions from its work. This is also consistent with the ERG Common Position.
- 3.379 It should be noted that the use of auditors and/or accountants may not be necessary or appropriate in conducting all “*Agreed Upon Procedures*”. Depending on the nature of the assignment an auditor/accountant may not be the most suitably qualified independent body. For example should ComReg consider that a detailed review was required of a specific statistical sample or engineering rule and not necessarily the costs associated with either, it may be preferable to employ the services of a statistician or engineer to conduct the “*Agreed Upon Procedures*”. These may have a more appropriate skill set and expertise than an auditor/accountant.
- 3.380 When considering which areas are to be subject to “*Agreed Upon Procedures*” ComReg will also consider what type of qualified independent body would be appropriate to undertake the assignment.
- 3.381 ComReg notes PwC’s comments in relation to the word “*review*”. ComReg has reconsidered this requirement together with certain other aspects of it (in particular manual journals – see Question 9 above). Instead of the auditor being required to review the Accounting Documentation ComReg now requires Eircom to submit any changes to the documentation to ComReg for approval. ComReg can then assess the suitability or otherwise of the proposed changes. It could also engage a qualified independent body to review the Accounting Documentation.
- 3.382 ComReg notes the comments of CAI and PwC in relation to various technical statements published in Ireland and other jurisdictions and referred to in the consultation and that these relate to various statutory obligations. References to these technical statements were included in the consultation by ComReg to highlight that in certain cases a “*duty of care*” could be owed by an auditor not only to shareholders but also to regulators.

**Conclusion in relation to Auditor Independence, Duty of Care and Auditor’s letter of engagement.**

ComReg, for the reasons outlined above, is of the opinion that:

- (a) The auditor of Eircom’s Separated Accounts be independent and have the necessary skills to undertake the audit.
- (b) There should be a “*Duty of Care*” to ComReg from Eircom’s regulatory auditors.
- (c) An auditor’s letter of engagement should be a tri-partite arrangement covering Eircom, ComReg and Eircom’s regulatory auditors.

**Consultation Question 29 in ComReg Document No. 09/75**

***Q. 29 Do you agree or disagree with the preliminary proposal that a “Fairly Presents in Accordance with audit opinion” is appropriate for both the Separated Accounts and Additional Financial Information? Do you agree or disagree with the preliminary proposal that there is a need for ComReg to obtain an opinion with regard to Eircom’s compliance with its Cost Accounting obligations, in addition to its compliance with the requirements of the accounting Direction? Please detail your response in full***

**Views of respondents to Question 29 in ComReg Document No. 09/75**

- 3.383 There were five responses to this question.
- 3.384 Both **BT** and **ALTO** agreed that a “*Fairly presents in accordance with*” audit opinion was appropriate for the separated accounts and additional financial information. Both also agreed that it was necessary for ComReg to obtain an opinion regarding Eircom’s compliance with its cost accounting obligations.
- 3.385 **Eircom** addressed its response to this question under four sub-headings:
- Nature of audit opinions
  - Granularity of audit opinions
  - Audit of additional financial information
  - Other Audit requirements
- 3.386 In relation to the “*nature of audit opinions*” Eircom considered that ComReg’s proposals to require a “*Fairly presents in accordance with*” opinion was based, in part, on a misunderstanding of the scope of Eircom’s regulatory audit. It cited ComReg’s comments that other audit opinions, namely a “*properly prepared in accordance with*” opinion are available in other jurisdictions. If a tri-partite arrangement was entered into then the nature of the audit could be properly understood.

3.387 It was of the view that ComReg had misunderstood the audit report where it stated that:

*“...have not performed any additional tests of the transactions and balances recorded in the general ledgers and other accounting records beyond those already performed, for the purpose of our audit of the Statutory Financial Statements.”*

3.388 This was because the separated accounts used the general ledgers of the statutory accounts as their starting point. This wording was also consistent with that in the audit report of BT (UK).

3.389 Eircom disagreed with ComReg’s comments that as an audit was not conducted of the cost allocation systems that the audit itself:

*“is not consistent with the guidelines of the ERG”*

3.390 Eircom, however, was of the view that a *“Fairly presents in accordance with”* opinion was appropriate for the separated accounts as a whole.

3.391 In its comments on *“granularity of audit opinions”* Eircom was of the view that if audit opinions were required below market level audit materiality and complexity would increase accordingly. It noted ComReg’s comments that in the UK a requirement to provide a *“Fairly presents in accordance with”* opinion on all regulated markets resulted in a number of technical qualifications to the audit opinion.

3.392 Eircom also considered that to provide audit opinions on smaller markets and individual services could result in numerous qualified audit reports as well as a significant increase in costs which was inconsistent with ComReg’s intention

*“[...] not to impose an excessive burden on Eircom, in the form of high audit costs.”*

3.393 Eircom was of the view that an audit regime similar to that imposed on BT (UK) was appropriate and that it was supported by:

- Detailed accounting documentation
- Individual audit reports on markets as required
- The use of *“Agreed Upon Procedures”* through the implementation of a tri-partite agreement
- A tri-partite agreement supporting the audit report on the separated accounts.

3.394 In relation to *“Audit of additional financial information”* Eircom was of the view that it was inappropriate to specify the type of audit opinion that could be imposed on additional financial information without understanding the nature and purpose of the data. It considered that its proposals above could provide a means for testing additional data.

3.395 For *“other audit requirements”* Eircom considered that if the following were to be subject to additional audit requirements beyond those of the audit of the separated accounts then the related cost would rise exponentially and also be out of line with best practice:

- ensure that the processes and procedures used by Eircom be subject to a review by a competent independent reviewer on an annual basis



- engage a competent independent body to conduct an audit of its cost allocation system
- engage a competent independent body to verify compliance with the Draft Direction
- ensure that any statistical sampling conducted to identify volumes and/or revenues be subject to an external and independent review on an annual basis
- ensure that the accounting document is subject to review by a competent independent body annually.

3.396 It noted that in order to provide an audit opinion on the separated accounts, in accordance with ISA, the auditors had to gain an understanding of the underlying information system and controls as well as making an assessment of risk. A separate audit opinion on the cost allocation systems would be significant, expensive and akin to a Sarbanes Oxley type reporting requirement.

3.397 It was of the view that the statistical sampling thresholds of +/-1% at a 95% confidence level were impractical and could not be met for audit purposes.

3.398 In relation to a review of Accounting Documentation it considered that an auditor had to understand methodologies underpinning the separated accounts in order to provide a “*Fairly presents in accordance with*” opinion and therefore a separate review was not necessary.

3.399 **CAI** was of the view that a “*Fairly presents in accordance with*” opinion was suitable for the separated accounts and provided a *pro forma* example with its response.

3.400 However, it was of the view that a “*Fairly presents in accordance with*” opinion was not always achievable for granular data and that other forms of audit opinion (i.e. Properly prepared in accordance with) could suffice and that this was consistent with the findings of Ofcom. It also considered “*Agreed Upon Procedures*” might be appropriate where either a “*Fairly presents in accordance with*” opinion or a “*Properly prepared in accordance with*” opinion was not possible.

3.401 In relation to paragraph 7.65 it considered that additional financial information would normally be outside the scope of an audit. Nor was it aware of any guidance on the audit of cost allocation systems.

3.402 It was of the view that the cost accounting obligations envisaged by ComReg could make the process very costly and noted ComReg’s comments that this was not its intention.

3.403 It considered that an auditor could provide the necessary assurance on the separated accounts without verifying compliance with its cost accounting obligations. As verification of compliance was not in auditing standards engagement by ComReg and/or Eircom with the auditors would be necessary to scope out the necessary work required to provide adequate comfort over the cost accounting obligations.

3.404 **PwC** was of the view that the use of a “*Fairly presents in accordance with*” opinion on the separated accounts would depend on the circumstances as outlined in paragraphs 7.53 and 7.54 of the consultation document and that it was in agreement with these comments.

3.405 It considered that it was inappropriate to verify compliance with the Draft Direction and therefore this requirement needed to be reviewed. Instead it suggested that the audit opinion contain a statement that the separated accounts had been properly prepared in accordance with the Draft Direction. This was consistent with the opinion provided on the statutory accounts. The Draft Direction required the auditors to provide an opinion on Eircom's compliance with it and this would be more extensive than providing an audit opinion on the separated accounts.

3.406 It did not consider it possible for an auditor to "*review and verify the appropriateness of the cost allocation/apportionment process*". The work that would be required to provide this type of opinion would be more extensive than that necessary to provide an audit opinion on the separated accounts. In this regard it made reference to paragraph 81 of ISA (UK and Ireland) 315 "*Understanding the Entity and its Environment and Assessing the Risks of Material Misstatement*"

#### **ComReg's conclusions**

3.407 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.

3.408 ComReg has, following a review of responses mainly from PwC and CAI, provided below clarity on the difference between a "*Fairly presents in accordance with*" opinion and a "*Properly prepared in accordance with*" opinion.

#### **"Fairly presents in accordance with" audit opinion**

3.409 ComReg considers that an unqualified "*Fairly presents in accordance with*" audit opinion in connection with the regulatory audits would provide it with a reasonable level of assurance that the Separated Accounts as a whole have been drawn up in accordance with the applicable Decision Instrument. In the context of the Decision Instrument this would mean that they are free from material misstatement.

3.410 It should be noted that the Decision Instrument under which the Separated Accounts have been prepared is specific to the particular circumstances in the market, legislative and regulatory environment in which Eircom operates.

3.411 ComReg is of the view that an "*Fairly presents in accordance with*" audit opinion would therefore provide it with reasonable but not absolute assurance that that the Separated Accounts, taken as a whole, have been drawn up in accordance with the prescribed Decision Instrument, *and only in the context of that Decision Instrument*, and are free from material misstatement.

3.412 Therefore in providing an unqualified "*Fairly presents in accordance with*" audit opinion the auditor would consider, *inter alia*, whether:

- The reasonableness of the apportionment methodologies
- The objectivity of the selection of those methodologies
- The appropriateness and robustness of the data sources supporting the apportionments.

**“Properly prepared in accordance with” audit opinion**

3.413 Where a “*Fairly presents in accordance with*” audit opinion may not be either necessary or obtainable a “*Properly prepared in accordance with*” audit opinion may be appropriate instead.

3.414 A “*Fairly presents in accordance with*” audit opinion may not be necessary where a higher level of assurance is not required by ComReg. For example ComReg might not require the auditor to form an opinion on the reasonableness of the apportionment methodologies but instead seek an opinion that the prescribed methodologies have been correctly applied. In other instances a “*Fairly presents in accordance with*” audit opinion may not be obtainable given the inherent difficulties in attributing relatively small proportions of large shared costs to relatively small markets, services, or products.

3.415 Therefore when applying a “*Properly prepared in accordance with*” audit opinion the accounting framework must be articulated in sufficient detail to allow the auditor to report, *inter alia*, whether:

- the separated accounts and/or the AFS have been compiled in accordance with that framework; and
- There are material issues of note exist regarding certain services and products.

3.416 As outlined in ComReg Document No. 09/75, ComReg was of the preliminary view that a “*Fairly presents in accordance with*” opinion was appropriate for the separated accounts. ComReg remains of this view and this is in line with the views of respondents.

3.417 This form of audit opinion, if considered, would provide a “*high level of audit assurance*”. However ComReg notes the concerns of respondents as to the practicalities, and in particular the cost, involved in obtaining this form of an audit opinion below the market level. It is also of the view that attempting to obtain a “*Fairly presents in accordance with*” opinion below the market level would be rendered ineffective if the result was a qualified audit report.

3.418 Instead ComReg considers that on an *ad hoc* basis it will require Eircom to either obtain a “*Properly prepared in accordance with*” opinion on specified services and products or else do alternative testing and reporting through the use of “*Agreed Upon procedures*”. Both of these approaches would involve the preparation by Eircom of detailed Accounting Documentation, which is a requirement of the Decision Instrument (see Question 27).

3.419 Through the use of a “*Properly prepared in accordance with*” opinion ComReg can obtain assurance that the methodologies documented by Eircom are being applied. It can then determine through a separate review (if required) whether or not the methodology itself is the appropriate one or if alternatives exist. ComReg considers that the use of a “*Properly prepared in accordance with*” opinion will be feasible because:

- If a “*Fairly presents in accordance with*” opinion has been obtained at the overall market level then in ComReg’s view substantial audit work has been done at the service and/or product level. However, as the auditors are not being required to provide an opinion on the suitability of methodology being applied the level of audit testing required should be greatly reduced;

- The request for a “*Properly prepared in accordance with*” opinion will only be requested on an *ad hoc* basis and primarily relate to material services and products. Furthermore it is likely that this form of audit opinion would be requested during periods of price reviews.
- 3.420 Through the use of “*Agreed Upon Procedures*” ComReg can request a qualified independent body (which could include Eircom’s auditors) to perform a specified review of certain services, products, or other financial data. The scope of the procedures to be assessed would be specified in advance. No audit opinion would result from this but instead a factual report would issue detailing whether or not the procedures were followed. ComReg considers that the use of “*Agreed Upon Procedures*” will be feasible because:
- Where a request for an audit opinion would provide either too costly, or result in a qualification its usefulness is greatly reduced.
  - Through the use of “*Agreed Upon Procedures*” ComReg can, unlike an audit, specify which areas of Eircom’s cost accounting systems it wants checked.
- 3.421 ComReg can also request, as required by it, that audits be conducted of individual markets and that either a “*Fairly presents in accordance with*” or a “*Properly prepared in accordance with*” audit opinion be issued.
- 3.422 ComReg considers that these requirements will continue to meet its regulatory needs while at the same time addressing the concerns of respondents.
- 3.423 In ComReg Document No. 09/75, ComReg was of the preliminary view that there was a need to obtain an audit opinion on Eircom’s compliance with its cost accounting obligations. Having reviewed the responses to consultation ComReg notes that for an auditor to provide an audit opinion upon the separated accounts it must have an understanding of the processes and procedures underpinning them (i.e. the cost allocation systems). Under the Decision Instrument the cost allocation system would be documented thereby greatly increasing transparency.
- 3.424 If ComReg requires any further details on the cost allocation systems it could request additional work be undertaken through “*Agreed Upon Procedures*”.
- 3.425 As a result ComReg no longer requires a separate audit opinion on Eircom’s cost allocation systems. Instead it considers that reasonable assurance can be provided to it and thereby meeting its regulatory needs, through:
- An unqualified “*Fairly presents in accordance with*” opinion on the Separated Accounts
  - Detailed Accounting Documentation
  - The use of “*Properly prepared in accordance with*” opinions or “*Agreed Upon Procedures*” where necessary.
- 3.426 ComReg also considers that the above also addresses the concerns of respondents. It also notes that this is the mechanism by which Ofcom obtains assurance over BT’s cost allocation systems. In ComReg’s view the audit of the Separated Accounts will be consistent with the ERG Common Position.
- 3.427 ComReg also notes the comments of some respondents on the wording in the audit report regarding general ledger balances. Through the responses submitted ComReg now has a greater understanding of the various stages of the

regulatory audit process. While balances obtained from general ledgers are not “re-audited” the allocation of these balances from the statutory accounts to the Separated Accounts is audited to ensure that they are appropriate. In any future tri-partite arrangements ComReg considers that further clarification on this point, if required, may be incorporated into any letter of engagement.

3.428 In relation to comments made regarding sampling ComReg considers that it has addressed these points in its response to Question 5.

**Conclusion in relation to audit opinions and compliance with Cost Accounting obligations.**

ComReg, for the reasons outlined above, is of the opinion that:

- (a) A “*Fairly presents in accordance with*” audit opinion is appropriate for the Separated Accounts.
- (b) A “*Fairly presents in accordance with*” or “*Properly prepared in accordance with*” audit opinion may also be provided for individual markets specified and required by ComReg.
- (c) A “*Properly prepared in accordance with*” audit opinion or a report based upon “*Agreed Upon Procedures*” is appropriate for the AFS and AFI as specified and required by ComReg.
- (d) Verification of Eircom’s compliance with its cost accounting obligations can be achieved through the use of qualified independent bodies and “*Agreed Upon Procedures*”.

**Consultation Question 30 in ComReg Document No. 09/75**

***Q. 30 Do you agree or disagree that the audit report should set out details of the systems testing conducted, auditor assessment of estimates and judgements and the application by Eircom of accounting policies? Please detail your response in full***

**Views of respondents to Question 30 in ComReg Document No. 09/75**

3.429 There were five responses to this question.

3.430 Both **BT** and **ALTO** agreed with ComReg’s proposals.

3.431 **Eircom** disagreed with the proposals as it believed they were inconsistent with ISA (UK and Ireland). It was of the view that ComReg may have misinterpreted the scope of the audit. In particular it noted the following comments made by ComReg in the consultation document:

*“...have not performed any additional tests of the transactions and balances recorded in the general ledgers and other accounting records beyond those*

*already performed, for the purpose of our audit of the Statutory Financial Statements.”*

*“is not consistent with the guidelines of the ERG”*

- 3.432 Eircom was of the view that the audit of the separated accounts used as its starting point the general ledger balances of the statutory accounts. It was also of the view that the audit was consistent with the ERG Common Position.
- 3.433 CAI disagreed with ComReg’s proposals as it was the duty of an auditor to form an opinion on the statements as a whole and not on each individual judgment. Specific tasks could be requested through “*Agreed Upon Procedures*”.
- 3.434 It referred to ComReg’s comments at paragraph 7.57. It was of the view that a requirement to confirm compliance with processes and procedures could be quite onerous and was not envisaged under ISRE 4400<sup>25</sup>.
- 3.435 It also considered that if there is disagreement between the auditor and Eircom over the selection of accounting policies this will be reflected in the audit opinion and as such there is no need to provide an additional report on these.
- 3.436 PwC disagreed with ComReg’s proposal. In its view an audit opinion would be framed in accordance with relevant standards. If specific details were required these would be reported under “*Agreed Upon Procedures*”.
- 3.437 An audit conducted under ISA (UK and Ireland) requires the design and performance of an audit so as to obtain sufficient audit evidence regarding estimates and that these have been reasonably disclosed. The auditor must also assess these estimates for consistency with other evidence. However, the audit opinion is on the separated accounts as a whole and not on individual estimates and judgements. It referred to ISA (UK and Ireland) 540<sup>26</sup> in this regard.

### **ComReg’s conclusions**

- 3.438 ComReg’s conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents’ views to its proposals. In some cases ComReg’s conclusions reflect amendments to its initial proposals having taken into account respondents’ views.
- 3.439 As outlined in ComReg Document No. 09/75, ComReg was of the preliminary view that an audit report should set out details of the systems testing conducted, auditor assessment of estimates and judgments and the application by Eircom of its accounting policies.
- 3.440 In light of the responses received ComReg no longer requires these details be specified in the audit report. The detailed documentation that is now going to be required as part of the Primary and Secondary Accounting Documentation will greatly aid transparency of the accounting systems (see Questions 7 and 8).
- 3.441 While noting the agreement of BT and ALTO with its preliminary view regarding the information to be contained within the audit report, ComReg is of

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<sup>25</sup> International Standard on Related Services

<sup>26</sup> Audit of Accounting Estimates

the view that its regulatory objectives can still be met through the use of the audit report but also the enhanced Accounting Documentation and, where necessary, *Agreed Upon Procedures*.

**Conclusion in relation to the content of audit reports.**

ComReg, for the reasons outlined above, is of the opinion that the audit report on the Separated Accounts is framed in accordance with the relevant auditing standards. If specific details are required beyond the Separated Accounts, these would be formally detailed and requested and ultimately reported through *Agreed Upon Procedures*.

**Consultation Question 31 in ComReg Document No. 09/75**

***Q. 31 Do you agree or disagree that the accounting Direction should include an obligation on the Board of Directors to include a statement in the Separated Accounts acknowledging their responsibilities for the preparation of the Separated Accounts and verifying Eircom compliance with the requirements of the accounting Direction? Please detail your response in full.***

**Views of respondents to Question 31 in ComReg Document No. 09/75**

3.442 There were four responses to this question.

3.443 **Eircom, CAI, BT and ALTO** all agreed with ComReg's proposals.

**ComReg's conclusions**

3.444 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.

3.445 As outlined in ComReg Document No. 09/75, ComReg was of the preliminary view that in the interests of maintaining good corporate governance the directors of Eircom should include a statement in its separated accounts which:

- Acknowledges their responsibilities to prepare separated accounts, and
- Verifies Eircom's compliance with its legal obligations (e.g. the Decision Instrument).

3.446 ComReg remains of the view that the directors of Eircom confirm their responsibilities for the preparation of the Separated Accounts as well as verifying Eircom's compliance with the requirements of the Decision Instrument.

3.447 ComReg still requires a statement by the directors of Eircom acknowledging their responsibilities with regard to the preparation of the Separated Accounts.

3.448 However, when providing a statement verifying Eircom's compliance with the Decision Instrument Eircom's directors will also be verifying the information

contained with the Regulated Accounts (i.e. the Separated Accounts, AFS, AFI, and Accounting Documentation).

- 3.449 As a result the two compliance statements will ensure accountability for the information contained within the submission of the Separated Accounts as well as the Regulated Accounts.

**Conclusion in relation to statements of compliance from the Eircom Board of Directors acknowledging compliance with the Decision Instrument.**

ComReg, for the reasons outlined above, is of the opinion that:

- (a) The Separated Accounts include a statement by the Board of Directors confirming compliance with the Decision Instrument.
- (b) The Regulated Accounts include a statement from the Board of Directors confirming compliance with the Decision Instrument.

**Consultation Question 32 in ComReg Document No. 09/75**

*Q. 32 What is your view of the preliminary proposed timelines for compliance? Please detail your response in full.*

**Views of respondents to Question 32 in ComReg Document No. 09/75**

- 3.450 There were five responses to this question.
- 3.451 **BT** and **ALTO** agreed with ComReg's proposals.
- 3.452 **CAI** was of the view that the timeframe for implementation should be appropriate for the efficient implementation of the relevant changes.
- 3.453 **PwC** was of the view that the proposed timelines could be misinterpreted. It suggested that the date for full compliance should include terminology such as "ending on or after" or "commencing on or after" thereby providing clarity.
- 3.454 It stated that the proposed timelines were shorter than those currently in place. Given the complexity of the separated accounts it considered that meeting the proposed timelines could prove very challenging.
- 3.455 **Eircom** in expressing concern at ComReg's proposed timelines was of the view that it could not produce a detailed plan of compliance without publication of the Decision Instrument. As the consultation process was unlikely to be concluded by the end of the current financial year (i.e. 30 June 2010) it would not be possible to have compliance by that date. However, in order to advance progress towards compliance it was prepared to submit enhanced documentation to ComReg.
- 3.456 It was of the view that 2011/12 would represent the earliest possible deadline for full compliance. It noted, however, that if ComReg considered its alternative



proposals contained elsewhere within its response to the consultation it would withdraw its objection to the 2010/11 deadline for full compliance.

### **ComReg's conclusions**

- 3.457 ComReg's conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents' views to its proposals. In some cases ComReg's conclusions reflect amendments to its initial proposals having taken into account respondents' views.
- 3.458 As outlined in ComReg Document No. 09/75, ComReg initially proposed the following dates for compliance and it notes the agreement of BT and ALTO with these:
- The Draft Decision Instrument be applicable to periods commencing on or after 1 July 2009
  - Full compliance to be achieved no later than 30 June 2011
  - Eircom to submit a draft plan of compliance by 28 February 2010.
- 3.459 In light of the concerns raised by some of the respondents to this question ComReg has reconsidered these timelines.
- 3.460 It notes that, currently, Eircom's statutory audit is completed four months after the end of the financial period end. As the Separated Accounts use the general ledger balances contained within the statutory accounts as their starting point Eircom and PwC believe that sign off on the Separated Accounts cannot coincide with that of the statutory accounts.
- 3.461 When finalising the Decision Instrument ComReg has had to reconsider certain wording within it. This is to ensure so that it is proportionate to Eircom while addressing ComReg's regulatory needs and also meeting the concerns of respondents. As such the issuing of a final Decision Instrument close to Eircom's 2009/10 financial period end would make full compliance by 30 June 2011 quite difficult to achieve as well as possibly being disproportionate to Eircom. Therefore in order to allow Eircom to achieve compliance in a reasonable and proportionate manner ComReg has included the following timelines in the Decision Instrument:
- The Decision Instrument is applicable to all financial periods commencing on or after 1 July 2010
  - Compliance with respect to all material matters is to be achieved for the accounting period ending 30 June 2011
  - Full compliance is to be achieved for the accounting period ending 30 June 2012.
- 3.462 For Eircom to achieve "*compliance with respect to all material matters*" it will have to prepare, *inter alia*, the following for the financial period ending 30 June 2011:
- Prepare a full set of Separated Accounts
  - Prepare a full set of AFS
  - Prepare the required AFI

- Complete the Primary Accounting Documentation
- Have documented the principle methodologies and cost allocation systems for the Secondary Accounting Documentation.

3.463 In addition ComReg has included the following timelines in the Decision Instrument:

- Submission of HCA Separated Accounts five months after the end of the financial period together with the directors statement acknowledging their responsibilities in the preparation of the Separated Accounts
- Submission of CCA Separated Accounts six months after the end of the financial period together with the directors statement acknowledging their responsibilities in the preparation of the Separated Accounts
- Submission of AFS and AFI seven months after the end of the financial period
- Submission of a statement by the directors of Eircom seven months after the end of the financial period confirming its compliance with the Decision Instrument.

**Conclusion in relation to the proposed timelines in the Decision Instrument.**

ComReg, for the reasons outlined above, is of the opinion that:

The Decision Instrument is applicable to all financial periods commencing on or after 1 July 2010.

Compliance with respect to all material matters is to be achieved for the accounting period ending 30 June 2011.

Full compliance is to be achieved for the following accounting period.

Eircom submits HCA Separated Accounts no later than five months after the end of its financial period.

Eircom submits CCA Separated Accounts no later than six months after the end of its financial period.

Eircom submits AFS, AFI and Directors' compliance statements no later than seven months after the end of its financial period.

**Consultation Question 33 in ComReg Document No. 09/75**

***Q. 33 Do you agree or disagree with the content of the proposed accounting Direction (including Annexes attached) and whether it is proportionate and justified? Please detail your response in full from a commercial, practical and legal perspective.***

**Views of respondents to Question 33 in ComReg Document No. 09/75**

3.464 There were three responses to this question.

3.465 **BT** agreed with the content of the Draft Direction. However, it suggested that clarity be provided in relation to:

*“Accounting treatment of NGN’s”*

3.466 **CAI**, while not commenting specifically on the proposed Draft Direction, suggested it required amendment for its comments made elsewhere in its response to the consultation.

3.467 **Eircom** stated that it held a number of fundamental objections to the Draft Direction. These were, in summary:

- Disclosure of separated accounts at a product level
- Disclosure of separated accounts for Non-SMP markets, services and/or products
- Application of a fixed level of statistical accuracy at an individual sample level.
- Disclosure of manual adjustments in the terms defined by ComReg
- Reconciliation of costing data provided for pricing purposes
- Split of costs for each service and product between Direct, Indirect and Common
- Potentially unprecedented requirement for documentation
- Proposed time line for publication of the separated accounts and additional financial information.

**ComReg’s conclusions**

3.468 ComReg’s conclusions have been arrived at having further considered the views it initially presented during consultation and having carefully taken account of respondents’ views to its proposals. In some cases ComReg’s conclusions reflect amendments to its initial proposals having taken into account respondents’ views.

3.469 ComReg has taken the views of respondents into consideration when assessing the requirements of the Decision Instrument, as well as the outcome of its detailed workshops with Eircom. While noting BT’s agreement with ComReg’s Draft Direction as contained in ComReg Document No. 09/75 ComReg has, where required, amended it. However, it considers that its amendments while addressing the concerns of respondents still meet its regulatory needs and is not a material change from the proposals made.

- 3.470 In relation to BT's comment on the need for clarity regarding the accounting treatment of NGN, in ComReg Document No. 09/75, ComReg outlined some broad principles in connection with accounting for NGN. NGN includes upgrades/investment in Access and Core networks.
- 3.471 ComReg is of the view that as long as adequate detail is maintained within the fixed asset register the identification and valuation of NGN assets should be possible.
- 3.472 As NGN is likely to have a high level of fixed costs which cannot be directly assigned to services and products the issue of allocating "*common costs*" arises. The development of appropriate allocation bases is important in this regard.
- 3.473 How the costs associated with NGN are reported is also important. As NGN is rolled out it may not be possible to determine which service is using the NGN platform which may pose difficulties in reporting these costs.
- 3.474 It was ComReg's preliminary view in ComReg Document No. 09/75 that it may need to regularly assess Eircom's compliance with its price control and cost accounting obligations in this regard. This it considered was necessary to ensure that:
- There is transparent accounting of costs
  - The choice of attribution methods is appropriate and
  - That there is adequate documentation of the various network components.
- 3.475 If changes were made to Eircom's systems of accounting for NGN these would also need to be documented and agreed with ComReg.
- 3.476 Included in this monitoring should be the ability for ComReg to perform margin/price squeeze tests and monitor transfer pricing in markets where Eircom is found to have SMP. ComReg is also of the view that Eircom should allocate costs based on objective criteria amongst the various wholesale and retail services and products relying on these inputs.
- 3.477 When estimating the cost of providing services and products consideration must be given to the incremental cost of providing access to the facilities concerned. These include, *inter alia*;
- Ordering costs
  - Costs associated with the provisioning of access to civil engineering infrastructure or fibre
  - Operating and maintenance costs for IT systems
  - Operating costs associated with wholesale product management
  - The allocation of these costs should be done on a proportionate basis between all entities that have access to the facilities concerned. This would include other authorised operators ("OAOs"), Eircom Wholesale, and Eircom Retail.
- 3.478 In relation to the points summarised by Eircom above ComReg notes the following:
- There is no longer a requirement for Eircom to publish Separated Accounts at the service and product level. Instead there is a requirement that average

revenues and average costs material services and products and where relevant associated volumes, be included within the Separated Accounts. It should also be noted that the audit of the Separated Accounts is to the market level only. As part of the AFS ComReg may require additional information for material services and products.

3.479 There is no longer a requirement for Eircom to disclose non-SMP services and products publicly. ComReg still requires Eircom to include information on non regulated markets within its Separated Accounts to ensure overall that Eircom's regulatory information reconciles with the audited statutory accounts. However these will be included as a single grouping and not as individual non regulated markets. This will provide transparency on those markets and is a continuation of an existing obligation. However, ComReg does not require Eircom to produce income statements for material services and products within these non regulated markets. Instead these will be requested on an *ad hoc* basis and as part of the AFS (for example if potential margin squeeze issues arise). (Again refer to Question 11).

- The requirement for a fixed level of statistical accuracy at an individual sample level has been removed. Instead any sampling carried out by Eircom should be demonstrably representative of the overall population being sampled. All samples which drive material costs to the market, service and product levels should be updated on a regular basis and this is described in more detail at Question 5.
- Eircom no longer has to disclose the “*manual adjustments*”. Instead, as part of enhanced documentation it will document the material changes to studies and allocation methods. ComReg will then review these prior to their implementation. This is described in more detail at Question 9.
- Eircom does not need to provide a reconciliation of all costing data provided for pricing purposes. There is a continued requirement for Eircom to produce a comparison of certain CCA costing data with other data provided for pricing purposes. This is described in more detail at Questions 21 and 23.
- As noted in Questions 7 and 8 Eircom's systems currently do not enable it to split costs for services and products between direct, indirect, and common costs. In ComReg's view it would be preferable if Eircom's systems could produce this information. However, ComReg considers that it would be disproportionate to have Eircom re-design its systems to incorporate this aspect. Instead ComReg requires Eircom to document how it treats these costs, as part of the Secondary Accounting Documentation. Furthermore, as and when required, ComReg can request this information as part of the AFI. This might arise, for example, as part of a pricing review.
- It was not part of the Draft Direction for Eircom to reproduce accounting documentation to the same level of detail as required in some other jurisdictions. Instead ComReg has directed Eircom to document its principle studies and methodologies. Furthermore ComReg has:
  - (a) Provided Eircom with an outline template for Accounting Documentation; and

(b) Spread the documenting of Eircom's systems over two financial periods.

3.480 ComReg has amended the timelines for publication of the various components within the Regulated Accounts. These are consistent with those currently in force. This is described in more detail at Question 32.

**Conclusion in relation to the Decision Instrument.**

ComReg, for the reasons outlined above, is of the opinion that the Decision Instrument is proportionate and justified.

## 4. Regulatory Impact Assessment

### Introduction

- 4.1 A Regulatory Impact Assessment (“RIA”) is an analysis of the likely effect of proposed new regulation or regulatory change. The RIA is a structured approach to the development of policy and analyses the impact of regulation options on different stakeholders. ComReg’s approach to RIA is set out in the guidelines, published in August 2007, in ComReg Document No. 07/56 & 07/56a. These guidelines identify five issues which have been addressed in this RIA:
- Describe the policy issue and identify the objectives
  - Identify and describe the regulatory options
  - Determine the impacts on stakeholders
  - Determine the impacts on competition
  - Assess the impacts and choose the best option.
- 4.2 In conducting the RIA, ComReg has also taken account of the RIA Guidelines<sup>27</sup>, adopted under the Government’s Better Regulation programme. Section 13(1) of the 2002 Act requires ComReg to comply with Ministerial directions issued. Policy Direction 6 of February 2003 requires that ComReg before deciding to impose regulatory obligations on undertakings shall conduct a RIA in accordance with European and international best practice and otherwise in accordance with measures that may be adopted under the Government’s Better Regulation programme.
- 4.3 In conducting this RIA ComReg has taken into account the six principles of Better Regulation:
1. Necessity
  2. Effectiveness
  3. Proportionality
  4. Transparency
  5. Accountability
  6. Consistency.
- 4.4 To ensure that the RIA is proportionate and does not become overly burdensome, a common sense approach has been taken. In this regard ComReg recognises that regulation by way of issuing decisions (e.g. imposing obligations or specifying requirements) may be different to regulation exclusively by way of enacting primary or secondary legislation. As noted by ComReg, in ComReg Document No. 09/75, as it is not imposing a new regulatory obligation on Eircom it is not mandatory therefore for it to provide a RIA. However in recognition that the Decision Instrument requires significant changes to be made to Eircom’s regulatory accounting practice (in particular the move to market based accounting) and also given that a revision to them has not taken place for more than 10 years ComReg considers it appropriate to conduct a RIA.

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<sup>27</sup> See “RIA Guidelines: How to conduct a Regulatory Impact Analysis”, October 2005, [www.betterregulation.ie](http://www.betterregulation.ie)

- 4.5 The RIA should be read in conjunction with other sections of this document which contain the detailed analysis and reasoning of ComReg’s decision in formulating the Decision Instrument.
- 4.6 In ComReg Document No. 09/75 ComReg discussed its proposed RIA on what it considered to be the relevant options available in terms of revising Eircom’s Regulated Accounts. It was of the preliminary view that there were two options:
- Option 1 – To do nothing and maintain the status quo
  - Option 2 – Impose the amended obligations on Eircom as detailed in the Draft Direction.
- 4.7 ComReg assessed the potential impact upon stakeholders through the imposition of its preferred option (option 2). It considers the stakeholders to be:
- Eircom
  - Other Operators/Competitors
  - Consumers and End Users
- 4.8 In ComReg Document No. 09/75, ComReg requested the views of respondents to its proposed RIA (Question 34) and the estimated cost of implementing its proposals (Question 35). A number of respondents to the consultation document provided comments to both of these questions and these are discussed below.
- 4.9 The RIA has also been updated accordingly for these responses and the Decision Instrument reflects these changes.

**Consultation Question 34 in ComReg Document No. 09/75**

***Q. 34 Respondents are requested to provide views on whether there are any other factors (if any) that ComReg should consider in completing its Regulatory Impact Assessment? Please detail your response in full.***

- 4.10 There were four responses to this question.
- 4.11 **BT** and **ALTO** said they were not aware of any other factors apart from those referred to by them in their responses to Question 32.
- 4.12 **CAI** said it was not aware of any other factors but that further issues may arise following discussion on the draft Information Sheet.
- 4.13 **Eircom** disagreed with ComReg’s RIA. It considered that there were alternative options available to ComReg other than options 1 and 2. It considered that ComReg’s assessment of the principles of “*Necessity*”, “*Proportionality*” and “*Consistency*” were insufficient.
- 4.14 Eircom also considered that ComReg had understated the potential impact and associated cost upon Eircom when assessing the “*impact upon stakeholders*” and that Eircom was best placed to assess this.
- 4.15 Eircom was also of the view that ComReg had not conducted a sufficient cost benefit analysis as in its view the costs of implementing the proposals would become a cost in all wholesale charges.



**Consultation Question 35 in ComReg Document No. 09/75**

**Q. 35** *Respondents are requested to provide views on the likely cost of full compliance with the proposed accounting Direction? Please detail your response in full.*

- 4.16 There were three responses to this question.
- 4.17 Both **BT** and **ALTO**, while not providing an estimate of the potential cost of full compliance considered that the Draft Direction was unlikely to add any significant additional burden to Eircom.
- 4.18 **Eircom** provided an estimated cost of compliance in confidence but stated in its response to the consultation that
- “The underlying high cost of implementation arises from a number of key cost drivers within the ComReg proposals [...]”*
- 4.19 It disagreed with ComReg’s view that much of the information required under the Draft Direction was readily available within its systems. It highlighted a number of areas where additional work would be required by Eircom to comply with the Draft Direction.
- 4.20 It considered that elsewhere in its response to the consultation it had suggested alternatives to ComReg’s proposals which it considered still met ComReg’s initial requirements.

**ComReg’s conclusions**

- 4.21 ComReg, having considered the responses received, continues its RIA under the following headings:
- Background, policy issues and objectives
  - Identify and describe regulatory options
  - Possible impacts where the level of financial data presented in the Regulated Accounts is too low
  - Possible impacts where the level of financial data presented in the Regulated Accounts is too high
  - Possible impacts where the level of financial data presented in the Separated Accounts is too low
  - Possible impacts where the level of financial data presented in the Separated Accounts is too high
  - Impact on stakeholders
  - Consideration of the six principles of Better Regulation
  - Conclusion
- 4.22 ComReg has also considered the impact of the possible options on competition at various stages in the RIA.

### **Background, policy issues and objectives**

4.23 The current regulatory accounting requirements under which Eircom operates were devised over 10 years ago when regulatory reporting was at an early stage of development. In the intervening period there have been various changes which ComReg considers have necessitated the review of Eircom's regulatory reporting requirements and the development of the Decision Instrument. These include, *inter alia*:

- The length of time since the last review and recent changes in other jurisdictions
- The experiences of ComReg and Eircom in the intervening period of assessing and understanding financial information used in the regulatory process
- The completion of a number of market analyses
- The need to reflect the market based structures in accordance with the Regulatory Framework and the Commission Recommendation on Relevant Product and Service Markets in any revised separated accounts structure.

4.24 One of ComReg's main objectives, *inter alia*, is to foster competition in the telecommunications industry. This has also informed the development of the Decision Instrument. One method of achieving this objective is through the encouragement of efficient infrastructure investment. The regulatory accounting process can assist in this through the preparation of robust, relevant and timely financial information focusing on areas where regulatory intervention (in a financial context) is needed most.

4.25 The comparability of financial data between Ireland and other jurisdictions can also foster competition. It allows potential investors assess the costs and possible returns of investing in Ireland when compared to other countries. It also enables them assess Ireland for consistency in the decision making process from one financial period to another as well as providing an insight into the transparency of the reporting environment.

4.26 When ComReg receives financial information pursuant to the Decision Instrument it should be able to make regulatory decisions in a streamlined, targeted manner, without significant delay. Therefore, where there are possibly areas of contention or areas where there appears to be insufficient competition, ComReg should have more robust financial data helping it inform its decisions. Ultimately many of ComReg's regulatory decisions, based upon financial data, flow through to the consumer through regulated prices and increased competition.

4.27 In this RIA ComReg has considered the scope and nature of the Decision Instrument and the revisions it has made to the Draft Direction following the consultation.

### **Identify and Describe the Regulatory Options**

4.28 ComReg considers that the key stakeholders are:

- The incumbent, Eircom
- OAOs and competitors
- Consumers and end users

4.29 ComReg has assessed the potential impact of the options available to it on each of the stakeholders and these take into account its statutory objectives to promote competition and to facilitate efficient investment. In doing so it has taken into account the comments received in relation to the draft RIA and the Draft Direction that were contained in Consultation Document No. 09/75.

4.30 The following options were considered by ComReg in determining an appropriate, reasonable and proportionate format of Regulated Accounts while at the same time ensuring Eircom demonstrates its compliance with its legal obligations.

- Option 1 – Do nothing and maintain the status quo
- Option 2 – Impose the obligations as set out in the Draft Decision Instrument

#### ***Option 1 – Do nothing and maintain the status quo (from ComReg document No. 09/75)***

4.31 Option 1 would have resulted in the current reporting framework being maintained. This in ComReg's preliminary view, as discussed throughout ComReg Document No. 09/75, was neither appropriate nor justified. One reason for not adopting Option 1 was the need to move to market based reporting in line with the Regulatory Framework. Also, one of the principle disadvantages of option 1 was, *inter alia*, a lack of transparency in the financial information being presented.

#### ***Option 2 – Impose the obligations as set out in the draft Accounting Direction (from ComReg document No. 09/75)***

4.32 In ComReg's preliminary view one of the principle advantages of Option 2 was greater transparency in the regulatory accounting process.

4.33 Following a review of the responses to consultation ComReg has on the grounds of, *inter alia*, "*proportionality*" modified option 2 as originally presented in ComReg Document No.09/75. This it considers still achieves its initial regulatory objectives while at the same time reducing the potential regulatory impact being placed upon Eircom and is therefore, more proportionate. ComReg also considers that the changes it has implemented are consistent with those proposed by Eircom.

4.34 While some of the information being supplied by Eircom to ComReg through option 2 would be confidential in nature ComReg would assess this information to inform the regulatory decision making process. This could include, for example, pricing reviews and compliance actions.

***Principal changes to the Draft Direction***

4.35 The principal changes ComReg has made to the Draft Direction (as consulted upon in ComReg Document No.09/75) are as follows:

***4.36 Level of disclosure in the Separated Accounts***

4.37 ComReg has amended the level of disclosure necessary in the Separated Accounts. The Separated Accounts will be prepared to the market level. However, the notes and schedules to the Separated Accounts will contain sufficient information to afford greater transparency to the users of them. This is consistent with international best practice and accords with Eircom's accounting separation obligation.

4.38 In addition, Eircom will be required to submit to ComReg, in confidence, AFS for its material services and products. These may be requested on an *ad hoc* basis, for example during price reviews. This will formalise an ongoing practice whereby ComReg has requested information from Eircom from time to time.

4.39 ComReg still requires Eircom to include information on non regulated markets within its Separated Accounts to ensure overall Eircom's regulatory information reconciles with the audited statutory accounts. However these will be included as a single grouping and not as individual non regulated markets. This will provide transparency on those markets and identify potential areas of discriminatory practice. However, ComReg does not require Eircom to produce income statements for material services and products within these non regulated markets. Instead these will be requested on an *ad hoc* basis and as part of the AFS (for example if potential margin squeeze issues arise).

4.40 The Separated Accounts will be prepared on a HCA basis. CCA Separated Accounts will be prepared for certain markets as required by ComReg. As a number of regulated prices have recently been set ComReg is of the view that it is not necessary, at this time, to have CCA Separated Accounts for all markets. While ComReg may consult upon this requirement in the future it considers that to enforce it at this time would represent an unnecessary financial burden upon Eircom.

4.41 Where there is a transfer of costs and/or revenues within Eircom Limited or with other Eircom subsidiaries, these transfers will be on the basis of an equivalent charge as per the regulated price lists. Where Eircom's transfer charge does not equal the equivalent charge a nearest equivalent charge will be used which most closely represents the technical capabilities of the service or product being offered as if it were an external transaction. In cases where there is neither an equivalent or nearest equivalent charge cost based transfers will be used. Where nearest equivalent and cost based transfers are used Eircom will explain its rationale for using these and therefore any differences will be transparent.

4.42 ComReg also considers that the revised format of the Separated Accounts will accord with international best practice while at the same time increasing transparency and usability from those that they are replacing.

***4.43 Statistical sampling***

- 4.44 ComReg has removed the requirement for Eircom's statistical samples to be accurate to +/- 1% at a 95% confidence level. It is likely that the imposition of this level of accuracy would have resulted in a disproportionate cost to Eircom whereby it would have had to undertake an extensive survey of its network and in particular its underground network.
- 4.45 Instead ComReg requires Eircom to be able to demonstrate that its statistical samples are representative of the overall population being sampled and that the material samples are updated regularly. Also Eircom is being required to provide enhanced documentation with regard to its samples and the overall sampling process which will provide greater visibility.
- 4.46 As a result of the above, Eircom will be adhering to international best practice while at the same time providing ComReg with details on sampling which heretofore it has not received.
- 4.47 ***Disclosure of "Manual Journals"***
- 4.48 ComReg no longer requires Eircom to disclose its manual journals. Instead ComReg will be receiving enhanced documentation from Eircom on its allocation processes as well as any proposed changes to them. This will enable ComReg to review these proposed changes before they are implemented as opposed to afterwards.
- 4.49 ComReg also notes that it is not normal practice to include a list of "manual journals" within the Separated Accounts.
- 4.50 ***Reconciliation of costing data for pricing purposes***
- 4.51 ComReg does not require Eircom to provide a reconciliation of costing data for pricing purposes for all regulated prices. It has only directed that Eircom provide certain reconciliations, which is the maintenance of the existing practice. ComReg will keep this matter under review and only require Eircom to provide this information where there is a genuine regulatory need.
- 4.52 ***Split of direct, indirect, and common costs***
- 4.53 In the Draft Direction, ComReg had proposed that Eircom provide a schedule of direct, indirect, and common costs. ComReg remains of the view that it would be preferable to have this information available. However, in light of Eircom's comments that the basis of costs could change as they moved through the cost allocation process the production of a schedule of direct, indirect, and common costs may not be possible. As such ComReg is of the view, for now, that it would be disproportionate to require Eircom to implement this requirement.
- 4.54 Instead ComReg requires that Eircom provide enhanced documentation with regards to how it accounts for direct, indirect, and common costs. Furthermore, as has been the case heretofore ComReg can on a case by case basis request that Eircom, as part of the AFI, identify costs associated with these categories. This could arise, for example, in the case of a pricing review.
- 4.55 ***Requirement for Eircom to document its systems***
- 4.56 Eircom expressed concern that the Draft Direction required it to document its systems to an unprecedented level.

4.57 ComReg reiterates that the requirement of its Decision Instrument for Eircom to document its systems is both necessary and proportionate. It is necessary so that the financial information produced under the new reporting format can be understood. However, it is also proportionate as the requirement reflects the size of Eircom when compared to other incumbent operators. ComReg has directed that Eircom document its principal methodologies and samples and in doing so ComReg has allowed Eircom do this over two financial periods (i.e. 2010/11 and 2011/12).

4.58 While there may be an upfront cost in bringing documentation up to an acceptable level, thereafter Eircom should just have to review and update the documentation on an annual basis.

4.59 In order to facilitate Eircom's documenting of its regulatory accounting processes ComReg has provided it with a template which it considers is suitable for the process.

4.60 ***Timelines***

4.61 ComReg has reviewed the timelines involved in implementing the Decision Instrument. It will apply for periods commencing on or after 1 July 2010 with full compliance to be achieved no later than the financial period ending on or after 30 June 2012.

4.62 These revised timelines reflect the fact that given the proposed changes to the reporting structure requiring Eircom to comply for the financial period 2009/10 could be considered disproportionate. Also the revised timelines will allow Eircom sufficient time to adequately implement the changes.

4.63 In relation to the submission of Separated Accounts ComReg now requires Eircom to submit the Separated Accounts in line with the existing timelines. Currently the statutory audit is completed four months after the end of the financial period. As the Separated Accounts use the statutory Accounts as their starting point it would not be possible to complete the audit of the Separated Accounts after four months.

4.64 Therefore, ComReg has directed that Eircom produce HCA Separated Accounts five months after the end of the financial period and CCA Separated Accounts six months after the end of the financial period. AFS and AFI will also be submitted seven months after the end of the financial period.

4.65 ***Directors' compliance statement***

4.66 In the Draft Direction ComReg had proposed that the directors provide a compliance statement in connection with the preparation of the Separated Accounts as well as Eircom's compliance with the requirements of the Decision Instrument.

4.67 Due to the amendments that ComReg has made to the Decision Instrument it has clarified the requirements of the compliance statements. There remains a requirement for the directors of Eircom to submit a compliance statement with regard to the preparation of the Separated Accounts. This is a continuation of the current practice.

4.68 The requirement for the directors to verify Eircom's compliance with the Decision Instrument remains. This statement now however, encompasses the Regulated Accounts.

4.69 Therefore the directors of Eircom will provide a statement confirming the validity of all information submitted as part of the Regulated Accounts.

4.70 *Audit requirements*

4.71 In the Draft Direction there was a proposal for Eircom to obtain a "*Fairly presents in accordance with*" audit opinion at the market level and also for certain products and services. Given the complexity of auditing below the market level it is likely that unqualified "*Fairly presents in accordance with*" audit opinions for services and products could be difficult to obtain thereby reducing the usability of accounts at this level. ComReg also considers that it could be disproportionate to require a "*Fairly present in accordance with*" audit opinion for products and services.

4.72 ComReg remains of the view that a "*Fairly presents in accordance with*" audit opinion at the market level is still necessary and appropriate. However, to direct that this type of audit report be provided below the market level may be disproportionate to Eircom and could result in qualified audit opinions.

4.73 Through the submission of AFS and AFI, as supported by the enhanced Accounting Documentation ComReg will receive detailed information at a service and product level. The submission of this data does not necessarily involve an audit and the related costs. However, if required, ComReg can then undertake further analysis of data supplied in this regard.

4.74 ComReg can request Eircom to have an audit conducted on individual markets, when and as required, and have a "*Fairly presents in accordance with*" or a "*Properly prepared in accordance with*" opinion issued.

4.75 Furthermore, ComReg may on an *ad hoc* basis require Eircom to obtain a "*properly prepared in accordance with*" audit opinion on certain services and products. This may arise for example during pricing reviews.

4.76 Alternatively, ComReg can request that "*Agreed Upon Procedures*" are undertaken by a qualified independent body on an *ad hoc* basis in respect of certain services and products. While Eircom's auditors could be the qualified independent body ComReg also retains the right to appoint its own advisors to undertake reviews.

4.77 ComReg considers that this approach is proportionate and should not impose a significant burden upon Eircom. ComReg acknowledges that there is likely to be an upfront cost to Eircom as it implements the requirements of the Decision Instrument. A substantial part of this cost relates to:

- (a) The required move to market based reporting
- (b) The necessity for Eircom to bring its Accounting Documentation up to date
- (c) A more transparent means of reporting transfer charges.

- 4.78 Once implemented ComReg is of the view that the ongoing costs of complying with the Decision Instrument should be greatly reduced and could actually be less than those incurred at present. This possible reduction could come about through:
- (a) Reduced audit costs through a more tailored audit approach and the possible use of a tri-partite agreement
  - (b) Consistency and comparability of data from one financial period to another
  - (c) Overall improvement in the regulatory decision making process.
- 4.79 ComReg also considers that there could be an increased benefit to all users of the Regulated Accounts. With the annual provision of timely and robust financial data, the presentation of which is also consistent with international best practice OAOs and other competitors will be in a position to make informed investment decisions. Where increased competition results from increased investment there is the possibility of reduced regulation.
- 4.80 As outlined above one of ComReg's statutory objectives is, *inter alia* to ensure the promotion of competition. To achieve this objective ComReg is obliged to take all reasonable measures including:
- ensuring that users derive maximum benefit in terms of choice, price and quality; and
  - encouraging efficient investment in infrastructure and promoting innovation.
- 4.81 ComReg considers that the Decision Instrument goes toward achieving this statutory objective. It should encourage more efficient investment by Eircom, OAOs and other competitors thereby leading to greater choice and differentiation for consumers. The services and products offered become more competitive which in turn can make Ireland more competitive thereby benefiting consumers and the wider economy.
- 4.82 **Possible impacts where the level of financial data presented in the Regulated Accounts is too low**
- 4.83 If the level of financial data presented to ComReg in the Regulatory Accounts is too low there may be a need for further information requests to Eircom thereby increasing its regulatory burden.
- 4.84 ComReg may be hindered in its regulatory decision making processes through the use of financial data which is not sufficiently robust or may not be comparable from one financial period to another. As outlined in the consultation the ever increasing need for *ad hoc* data requests and lack of comparability of data are some of the reasons that ComReg considered it necessary to revise the regulatory accounting process.
- 4.85 *Ad hoc* requests for financial information and a lack of comparability often require both ComReg and Eircom to seek additional assurance as to the appropriateness of the information. It can also result in delays and additional expense as this data may be subject to further discussion and analysis. This has arisen in recent times during pricing reviews.



**4.86 Possible impacts where the level of financial data presented in the Regulated Accounts is too high**

4.87 If the level of financial data presented to ComReg is too high there could be a greater regulatory burden being placed upon Eircom than that envisaged. Eircom would be obliged to annually produce data that might not be needed on an on-going basis or would be to such a granular level that disproportionate amounts of its resources would be consumed preparing it.

4.88 ComReg considers that it is necessary to have detailed financial information in order for it to be able to make informed decisions. However, it is of the view that the information being provided must be for particular needs and not just significant quantities of data that it may or may not use. Therefore should ComReg receive levels of information greatly in excess of that required its decision making process could be inhibited due to the necessity to review all information received.

**4.89 Possible impacts where the level of financial data presented in the Separated Accounts is too low**

4.90 If the level of detail within the Separated Accounts is too low other stakeholders, and in particular OAOs might be placed at a competitive disadvantage. If they are purchasing regulated services and products from Eircom they may need to be able to assess their underlying costs. A lack of data in this regard could inhibit their decision making process.

4.91 A decision by an OAO based on insufficient or inappropriate data could result in a poor investment decision or inappropriate pricing to retail customers. This would be contrary to the statutory objectives of ComReg as discussed above.

**4.92 Possible impacts where the level of financial data presented in the Separated Accounts is too high**

4.93 If the level of detail within the Separated Accounts is too high Eircom could be placed at a competitive disadvantage.

4.94 The presentation of transparent financial information in Eircom's Separated Accounts is intended to create a level playing field for both it and OAOs. Through the use of this information OAOs and Eircom should be able to make informed decisions. If, through the Separated Accounts, Eircom presented financial information of a commercially sensitive nature OAOs could be given an unfair advantage.

**Impact on Stakeholders**

4.95 In determining the impact on stakeholders in relation to the regulatory options above ComReg considered the following:

<i>Option 1 – Do nothing and maintain status quo</i>		
<b>Impact on Eircom</b>	<b>Impact on other operators and competitors</b>	<b>Impact on End Users and consumers</b>
No regulatory need to reassess or streamline regulatory accounting systems	Little transparency into regulatory accounting systems	
Internal resources consumed generating <i>ad hoc</i> requests for data thereby diverting them from main activities	Increase use of <i>ad hoc</i> data requests by ComReg delaying decision making process.	
Continued use of experts in connection with various financial projects	Necessity for use of experts by ComReg to help assess financial data received through <i>ad hoc</i> requests resulting in delays in decision making process	
Data submitted as part of regulatory process not necessarily used for management accounting purposes thereby increasing workload	Due to difficulties for ComReg in reconciling, comparing and assessing financial data there is a delay in the regulatory process	
	Due to difficulties for ComReg in assessing transfer charges there is reduced visibility on transfer pricing and therefore whether or not there could be non-discrimination, cost orientation or margin squeeze issues	Regulated prices, which feed into retail prices could be incorrectly set

<b>Impact on Eircom</b>	<b>Impact on other operators and competitors</b>	<b>Impact on End Users and consumers</b>
Delays in assessing cost orientation of services and products	Difficulties in assessing cost orientation of wholesale prices due to a lack of granularity of information could result in inappropriate OAO pricing	Possible lack of differentiation in market place due to inability of OAOs to price competitively
Expense incurred on accounts which are not relied upon by regulator	Accounts do not adequately support decision making process	
Diversion of internal resources to deal with <i>ad hoc</i> requests	Increased delays in regulatory decision making process	Potential negative impact on competition
On-going need to explain regulatory accounting processes. Potential loss of data should key personnel change.	Little documentation on regulatory accounting systems thereby inhibiting understanding of systems and insufficient transparency into significant accounting policies	

<b><i>Option 2 – Impose the obligations as set out in the Decision Instrument</i></b>		
<b>Impact on Eircom</b>	<b>Impact on other operators and competitors</b>	<b>Impact on End Users and consumers</b>
Documenting of accounting systems enabling possible streamlining of processes	Greater visibility and transparency provided into regulatory process.	
Greater value for money achieved through use of Separated Accounts.	Greater reliance placed upon Separated Accounts	
Proportionate and cost effective implementation of Decision Instrument	Cost of implementing Decision Instrument is proportionate and therefore not transferred to OAOs in the form of higher regulated prices	Cost of implementing Decision Instrument is proportionate and therefore not transferred to consumers in the form of higher retail prices
Reduction in time and resources being devoted to fulfilling <i>ad hoc</i> requests	Reduced level of <i>ad hoc</i> requests for data by ComReg thereby improving the decision making process	
Reduction in time and resources being devoted to deal with queries on financial data	Reduce time in assessing financial data with possible reduction in use of experts	
Greater certainty regarding annual reporting requirements	Presentation of additional financial data in a consistent format from year to year	
Regulatory decision making process is improved and greater understanding of ComReg’s regulatory reporting requirements	Regulatory decision making process is improved	Improvement in regulatory decision making processes impacting upon consumers

<b>Impact on Eircom</b>	<b>Impact on other operators and competitors</b>	<b>Impact on End Users and consumers</b>
Reduction in <i>ad hoc</i> data requests, consumption of internal resources and use of experts	More streamlined method of submitting data enabling better planning for forthcoming regulatory projects	
Submission of service and product level data in a consistent format	Relevant and transparent data is included in the Separated Accounts. Greater visibility is provided to ComReg below the market level which allows it in turn make improved decisions on behalf of OAOs	
Submission of data in a consistent fashion reducing requests for clarification	Improved comparability of data from varying sources which improves decision making process	
Assurance that Separated Accounts adhere to international best practice enabling certain cross country comparisons	Assurance that Separated Accounts adhere to international best practice enabling certain cross country comparisons	
Improvements in infrastructure investment as reporting structure is based upon markets	Improvements in infrastructure investment as reporting structure is based upon markets	Increased levels of competition and potential benefits to wider economy
Reduction in necessity to describe regulatory process both internally and to ComReg. Reduction in potential loss of data should key personnel change	Greater transparency into accounting policies through enhanced documentation. Ability to compare against international best practice.	

### Consideration of the principles of Better Regulation

- 4.96 ComReg has considered the Decision Instrument in light of the six principles of Better Regulation.
- 4.97 ComReg considered it was *necessary* to conduct a review of the regulatory accounting processes of Eircom at this time. The current format for the separated accounts had been set out in 1999 with various amendments to it in the interim but with most of these occurring between 1999 and 2001. However, much of the focus of these accounts was on “Retail” and “Other” activities which are often now unregulated or other services, such as payphones, which are greatly reducing in importance.
- 4.98 The current format of the separated accounts is based on business units.<sup>28</sup> The Regulatory Framework and the Commission Recommendation on Relevant Product and Service Markets require a market based approach to financial reporting.
- 4.99 Due to a lack of visibility into the regulatory accounting process to date, and the related audits, ComReg has been unable to place any significant level of reliance on the separated accounts. As such, this has proven to be frustrating for both ComReg and Eircom as alternative means had to be found in order to obtain robust financial data.
- 4.100 Furthermore, as a result of the lack of information regarding many regulated services and products ComReg has had to, on an ever increasing basis, request information from Eircom on an *ad hoc* basis. This is an inconvenience to both parties and has resulted in delays to the regulatory process. In recent years significant amounts of data have been collected for various price reviews. However, this data has not always been comparable from one review to another or from one period to another. Going forward, while there still will be a need to request data for various price reviews it is intended that this process will be greatly streamlined and that submitted data will be consistent and comparable from one period to another.
- 4.101 ComReg considers that it has been *effective* in its review. ComReg is of the view that the Decision Instrument will ensure that Eircom is compliant with its accounting separation and cost accounting obligations. The Decision Instrument clearly sets out Eircom’s obligations with regards to both.
- 4.102 Eircom under the accounting separation obligation is required to publish audited Separated Accounts to the market level. In order to be compliant with its cost accounting obligation it is required to document its systems as well as submitting certain data to ComReg at the service and product level thereby demonstrating that its regulated prices are cost oriented.
- 4.103 ComReg is of the view that it has been *proportionate* in its review. The Decision Instrument addresses Eircom’s concerns around ComReg’s initial proposals in ComReg Document No. 09/75 which in Eircom’s view were potentially disproportionate and could have resulted in substantial costs being incurred by Eircom. ComReg considers that the Decision Instrument continues to achieve its objectives regarding improvements to the regulatory accounting

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<sup>28</sup> Core, Access, Retail, Other

process while simultaneously enabling Eircom to implement it in an efficient and cost effective manner.

4.104 It is likely that there will be an initial increase in the regulatory burden for Eircom in the short term as it brings its regulatory accounting systems in line with the Decision Instrument. However, ComReg is of the view that in the medium to long term the benefits of the Decision Instrument will outweigh the costs. This will be through, *inter alia*, the following:

- The preparation of robust financial data
- Greater transparency in the financial data
- A greater understanding of the regulatory accounting process
- The streamlining of financial data and a reduction in *ad hoc* requests for information
- A reduction in delays in the regulatory decision making process
- Possibly a reduction in the cost of the regulatory audit.

4.105 As a result of the above ComReg considers that on an on-going basis Eircom's overall cost of compliance could reduce. Furthermore there could be increased benefits to all stakeholders as there could be an increase in investment and greater choice for consumers.

4.106 These, it considers will ultimately benefit all stakeholders, including consumers.

4.107 ComReg has also reviewed the timelines by which Eircom is required to implement the changes. Additional time has been provided to Eircom to allow it achieve compliance with the Decision Instrument. On an ongoing basis the timelines for the annual submission of separated accounts are consistent with those currently in force.

4.108 ComReg considers that the review has been *transparent*. ComReg, through the ComReg Document No. 09/75, has outlined its concerns with the current regulatory accounting process and published Separated Accounts.

4.109 It has held discussions with Eircom regarding its regulatory accounting systems in order to determine what could be achieved in the Decision Instrument without causing it to fundamentally and expensively overhaul its entire systems. Due to the confidential nature of these discussions ComReg is unable to disclose many of the details. However, the Separated Accounts to be published by Eircom will, in ComReg's view, accord with international best practice and will satisfy ComReg's own regulatory needs.

4.110 ComReg has also held discussions with other regulators and professional bodies in order to advance the Decision Instrument and to ensure that it adheres to best practice. Again, these discussions have been held in confidence but the outcomes are reflected in the Decision Instrument.

- 4.111 On 9 July 2010 ComReg also pre-notified its decision to the Commission in accordance with Article 7 of the Framework Directive. A “*no comments*” letter was received on 6 August 2010<sup>29</sup>.
- 4.112 ComReg considers that it has been *accountable* in its review. In ComReg Document No.09/75, it outlined its concerns with the current regulatory accounting process. It also outlined what it considered were the amendments and improvements necessary to achieve an appropriate Decision Instrument and presented this Draft Direction for comment from interested parties.
- 4.113 ComReg has taken the views of all respondents into consideration when finalising the Decision Instrument. ComReg considers that the Decision Instrument addresses the concerns and requirements of all interested parties. It is of the view that the Decision Instrument meets the needs of all stakeholders and does not disadvantage one over another.
- 4.114 ComReg is also of the view that it has been *consistent* in its approach. The review has focused solely on the accounting separation and cost accounting obligations of Eircom.
- 4.115 ComReg considers that its final Decision Instrument is also consistent with that of other regulators within the telecoms sector and in line with international best practice.
- 4.116 Where the Decision Instrument requires input from Eircom’s auditors the terminology used is consistent with the rules and regulations of the representatives of the accountancy profession in Ireland.

### **Conclusion**

- 4.117 As previously noted the RIA and the conclusions discussed below should be read in conjunction with other sections of this document. The detailed analysis and reasoning of ComReg’s decision in arriving at a revised regulatory accounting process are discussed in previous sections. In addition, the majority of points raised by respondents to the RIA have already been addressed in previous sections of this consultation.
- 4.118 Eircom in its response to the consultation considered that there are alternative options open to ComReg beyond Options 1 and 2 as discussed in ComReg Document No. 09/75. Eircom accepted that there was a need for the regulatory accounting format to change and therefore Option 1 was not acceptable. However, it considered that Option 2 did not represent the most appropriate choice.
- 4.119 ComReg, having reviewed the responses of the various respondents, including Eircom, has reconsidered the options available. This includes consideration of whether there are other options available to it.
- 4.120 ComReg remains of the view that Option 1 is not appropriate. In ComReg’s view, and the view of many of the respondents, the current regulatory accounting process has offered little transparency and therefore needs to change. Also the Regulatory Framework requires a move to market based reporting.

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<sup>29</sup> Commission decision concerning Case IE/2010/1104: modification of remedies imposed on regulated retail and wholesale markets; dated 6 August 2010



- 4.121 Having assessed the views of the various respondents ComReg now considers that the modification to option 2, in the form of the Decision Instrument, still achieves its regulatory accounting objectives while greatly reducing the regulatory burden being placed upon Eircom. ComReg considers that the Decision Instrument could, in the medium to long run, reduce Eircom's regulatory burden below what it currently is. It is likely, however, that there may be an increase in Eircom's regulatory burden in the short term as it amends and documents its systems in order to become compliant with the revised Decision Instrument.
- 4.122 On balance, ComReg considers that the modified option 2 is the most appropriate choice for Eircom's regulatory accounting process, going forward. ComReg is of the view that option 2 will ensure that:
- There is greater transparency in the regulatory accounting process for all stakeholders
  - There will be a streamlining of information and a reduction in *ad hoc* information requests
  - There will be comparability of data from various sources
  - The financial data presented will be robust and fit for purpose
  - Eircom will be able to implement the requirements in a proportionate and timely manner.
- 4.123 Overall, and as outlined in the RIA and this document, ComReg considers that the specification of accounting separation and cost accounting obligations in the Decision Instrument, is appropriate, proportionate and justified given the need for "fit for purpose" separated accounts, the need for Eircom to demonstrate its compliance with its legal obligations (i.e. transparency, non discrimination, price control e.g. cost orientation) and to facilitate ComReg in monitoring of such compliance.

## Appendix I – Legislative and Policy Background

The legal basis for the Decision Instrument is as follows:

### Access Regulations

Regulation 9 of the Access Regulations relates to the imposition of obligations.

It provides:

*“9. (1) Where an operator is designated as having a significant market power on a relevant market as a result of a market analysis carried out in accordance with Regulation 27 of the Framework Regulations, the Regulator shall impose on such operator such of the obligations set out in Regulations 10 to 14 as the Regulator considers appropriate.*

*(2) The Regulator may impose such of the obligations set out in Regulations 10 to 14 as the Regulator considers appropriate on an operator in order to ensure that the State can comply with an international agreement to which the State and the European Community are parties.*

*(3) Without prejudice to -*

*(a) Regulations 6(1) to (3) and 7(1) to (4),*

*(b) Part 5 of the Act of 2002, Condition 6 in Part B of the Schedule to the Authorisation Regulations as applied by virtue of Regulation 8 of the*

*Authorisation Regulations, Regulations 23, 24 and 26 of the Universal Service Regulations and the relevant provisions of Directive No.97/66/EC<sup>3</sup> of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector, containing obligations on undertakings other than those designated as having significant market power, or*

*(c) the need to comply with an international commitment referred to in paragraph (2),*

*the Regulator shall not impose the obligations set out in Regulations 10 to 14 on operators that have not been designated in accordance with paragraph (1).*

*(4) In relation to paragraph (2), the Regulator shall notify any decision to impose, amend or withdraw obligations on operators to the European Commission in accordance with Regulation 20 of the Framework Regulations.*

*(5) Where, in exceptional circumstances, the Regulator intends to impose on operators with significant market power obligations for access or interconnection other than those set out in Regulations 10 to 14, the Regulator shall submit to the European Commission a request for permission to impose such other obligations. The Regulator shall not impose such other obligations pending the decision of the European Commission in accordance with Article 14(2) of the Access Directive to authorise or prevent the Regulator from taking such measures.*

*(6) Any obligations imposed in accordance with this Regulation shall -*

*(a) be based on the nature of the problem identified,*

*(b) be proportionate and justified in the light of the objectives laid down in section 12 of the Act of 2002, and*

*(c) only be imposed following consultation in accordance with Regulations 19 and 20 of the Framework Regulations.”*

The Relevant portion of Regulation 10 of the Access Regulations which relates to transparency provides:

*“10. (1) The Regulator may in accordance with Regulation 9 impose on an operator obligations to ensure transparency in relation to interconnection, access or both interconnection and access, requiring such operator to make public specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices.”*

Regulation 12 of the Access Regulations includes obligations relating to accounting separation. It provides:

*“12 (1) The Regulator may in accordance with Regulation 9 impose on an operator obligations for accounting separation in relation to specified activities relating to interconnection, access or both interconnection and access.*

*(2) without prejudice to the generality of paragraph (1), the Regulator may require an operator which is vertically integrated to make transparent its wholesale prices and its internal transfer prices, inter alia, to ensure compliance with any obligation imposed under Regulation 11 or, where necessary, to prevent unfair cross subsidy and, where it does so, may specify the format and accounting methodology to be used.*

*(3) A requirement upon an operator under Regulation 17 of the Framework Regulations may, in order to facilitate the verification of compliance by an operator with any obligations of transparency under Regulation 10 and non-discrimination under Regulation 11, include a requirement that accounting records, including data on revenues received from third parties, are provided by any such operator to the Regulator on request.*

*(4) Subject to the protection of the confidentiality of any information which the Regulator considers confidential, the Regulator may publish any information obtained by it under paragraph (3) to the extent that*

*the Regulator considers that such information would contribute to an open and competitive market.”*

Regulation 14 of the Access Regulations includes obligations relating to cost recovery and price controls and the obligation for cost oriented prices. It also provides for obligations concerning cost accounting systems. It provides:

*“14. (1) The Regulator may in accordance with Regulation 9 impose on an operator obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection, access or both such interconnection and access in situations where a market analysis indicates that a lack of effective competition means that the operator concerned might sustain prices at an excessively high level, or apply a price squeeze to the detriment of end-users.*

*(2) When considering the imposition of obligations under paragraph (1), the Regulator shall, take into account any investment made by the operator in electronic communications networks or services or associated facilities which the Regulator considers relevant and allow the operator a reasonable rate of return on adequate capital employed, taking into account the risks involved.*

*(3) The Regulator shall ensure that any cost recovery mechanism or pricing methodology that it imposes under this Regulation serves to promote efficiency and sustainable competition and maximise consumer benefits. In this regard, the Regulator may also take account of prices available in comparable competitive markets.*

*(4) Where an operator has an obligation under this Regulation regarding the cost orientation of its prices, the burden of proof that charges are derived from costs, including a reasonable rate of return on investment shall lie with the operator concerned. For the purpose of calculating the cost of efficient provision of services, the Regulator may use cost accounting methods independent of those used by the*

*operator. The Regulator may issue directions requiring an operator to provide full justification for its prices, and may, where appropriate require prices to be adjusted.*

*(5) The Regulator shall ensure that, where implementation of a cost accounting system is imposed under this Regulation in order to support price controls, a description of the cost accounting system is made publicly available, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs. Compliance with the cost accounting system shall, at the choice of the Regulator, be verified by the Regulator or by a suitably qualified independent body.*

*(6) The Regulator shall cause to be published annually a statement concerning compliance with any cost accounting system imposed under this Regulation.”*

Regulation 17 of the Access Regulations relates to the issuing of directions and provides that ComReg may:

*“...for the purposes of specifying requirements to be complied with relating to an obligation imposed by or under these Regulations, issue directions to an undertaking to do or refrain from doing anything which the Regulator specifies in this direction”*

### **Universal Service Regulations**

Regulation 14 of the Universal Service Regulations entitled regulatory controls on retail markets includes obligations relating to accounting separation. It provides:

*“14.(1) Where - (a) the Regulator determines, as a result of a market analysis carried out by it in accordance with Regulation 27 of the Framework Regulations, that a given retail market identified in*

*accordance with Regulation 26 of the Framework Regulations is not effectively competitive, and (b) the Regulator concludes that obligations imposed under the Access Regulations or Regulation 16 of these Regulations would not result in the achievement of the objectives set out in section 12 of the Act of 2002, the Regulator shall impose such obligations as it considers appropriate to achieve those objectives on undertakings identified by the Regulator under Regulation 27(4) of the Framework Regulations as having significant market power on a given retail market.*

*(2) Any obligations imposed by the Regulator pursuant to paragraph (1) shall be based on the nature of the problem identified pursuant to the market analysis and be proportionate and justified in the light of the objectives set out in section 12 of the Act of 2002 and may include requirements to ensure that the undertaking concerned does not –*

- (a) charge excessive prices,*
- (b) inhibit market entry or restrict competition by setting predatory prices,*
- (c) show undue preference to specific end-users, or*
- (d) unreasonably bundle services.*

*(3) The Regulator may require an undertaking to which paragraph (1) applies to comply with -*

- (i) measures to control individual tariffs, or*
- (ii) measures to orient tariffs towards costs or prices on comparable markets,*

*in order to protect end-users' interests whilst promoting effective competition.*

*(4) The Regulator shall, on request, provide information to the European Commission concerning any retail controls applied and, where appropriate, the cost accounting systems used by the undertakings concerned.*

*(5) An undertaking that is subject to retail tariff regulation or other relevant retail control shall operate and maintain a cost accounting system that is-*

- (i) based on generally accepted accounting practices,*
- (ii) is suitable for ensuring compliance with this Regulation,*
- and*
- (iii) is capable of verification by the Regulator.*

*(6) The Regulator may specify the format and accounting methodology to be used by an undertaking to which paragraph (5) applies.*

*(7) Compliance by an undertaking with a cost accounting system referred to in paragraph (5) shall be verified by a qualified independent body. For this purpose, the Regulator may carry out an audit itself, provided it has the necessary qualified staff, or it may require an audit to be carried out by another qualified body, independent of the undertaking concerned.*

*(8) An undertaking to which paragraph (5) applies shall publish in its annual accounts a statement concerning compliance by it with a cost accounting system referred to in paragraph (5).”*

Regulation 31 of the Universal Service Regulations relates to the issuing of directions and provides that:

*“31. (1) The Regulator may, for the purpose of further specifying requirements to be complied with relating to an obligation imposed by*



*or under these Regulations, issue directions to a person to do or refrain from doing anything which the Regulator specifies in the direction.”*

**Framework Regulations:**

In addition it can be noted from Regulation 24 of the Framework Regulations that Eircom has a duty to maintain Separated Accounts in accordance with that provision.

Regulation 24 of the Framework Regulations, entitled accounting separation and financial reports, provides that:

*“24 (1) An undertaking providing a public communications network or a publicly available electronic communications service, that is also engaged in an activity other than the provision of such network or service on the basis of special or exclusive rights for the provision of that activity whether in the State or in another Member State shall -*

*(a) keep separate accounts audited in accordance with generally accepted auditing practices for the activities associated with the provision of that network or service, to the extent that would be required if those activities were carried out by one or more legally independent companies, so as to identify all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to its activities associated with the provision of electronic communications networks or services including an itemised breakdown of fixed asset and structural costs, or*

*(b) have structural separation for the activities associated with the provision of electronic communications networks or services.”*

Regulation 34 of the Framework Regulations relates to the issuing of directions and provides that:

*34. (1) The Regulator may, for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under these Regulations, issue directions to an undertaking to do or refrain from doing anything which the Regulator specifies in the direction.*

## Appendix II: The Decision Instrument

### 1. Statutory and Legal Powers

- 1.1 This Direction and Decision (together the “Decision Instrument”) relates to accounting separation and cost accounting and is issued by the Commission for Communications Regulation (“ComReg”):
- i. Pursuant to Regulations 9, 10, 12, 14 and 17 of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003<sup>30</sup>; and pursuant to Regulations 24 and 34 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003<sup>31</sup>; and pursuant to Regulations 14 and 31 of the European Communities (Electronic Communications Networks and Services) (Universal Service) Regulations 2003<sup>32</sup>;
  - ii. Having particular regard to the designation of Eircom as having Significant Market Power (“SMP”) on certain relevant markets under the provisions of Regulations 25, 26 and 27 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003, and the accounting separation and cost accounting obligations imposed on Eircom Limited further to Regulations 12 and 14 of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003, including as contained in:
    - a. *Wholesale (Physical) Network Infrastructure Access (Market 4), Decision D05/10, - ComReg document 10/39;*
    - b. *Wholesale Terminating Segments of Leased Lines, Decision D06/08 ComReg Document Number 08/103;*
    - c. *Wholesale Fixed Wholesale Call Termination, Decision D06/07, ComReg Document Number 07/109;*
    - d. *Wholesale Call Origination and Transit Services, Decision D 04/07, ComReg Document Number 07/80;*
    - e. *Wholesale Broadband Access Decision D03/05, ComReg Document Number 03/05 05/11r;*

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<sup>30</sup> European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 (S.I. No. 305 of 2003), amended by the European Communities (Electronic Communications Networks and Services) (Access) (Amendment) Regulations 2007 (S.I. No. 373 of 2007)

<sup>31</sup> European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 (S.I. No. 307 of 2003), amended by the European Communities (Electronic Communications Networks and Services) (Framework) (Amendment) Regulations 2007 (S.I. No. 271 of 2007)

<sup>32</sup> European Communities (Electronic Communications Networks and Services) (Universal Service) Regulations 2003 (S.I. No. 308 of 2003), amended by the European Communities (Electronic Communications Networks and Services) (Universal Service) (Amendment) Regulations 2007 (S.I. No. 373 of 2007)

*f. Retail Fixed Narrowband Access Markets, Decision D07/61, ComReg Document Number 07/61.*

- iii. Having, where appropriate, pursuant to section 13 of the Communications Regulation Act, 2002 complied with Policy Directions made by the Minister;<sup>33</sup>
- iv. Having taken account of the submissions received in relation to Document No. 09/75;<sup>34</sup>
- v. Having had regard to the analysis and reasoning set out in ComReg Document No. 09/75 which shall, where necessary, be construed together with this Decision Instrument;
- vi. Having had regard to the provisions of and the individual decisions in the Response to Consultation and Decision in ComReg Document No. 10/67 (Decision No. D08/10), which shall, where necessary, be construed together with this Decision Instrument;
- vii. Having notified the draft measure to the European Commission, further to Regulation 20 of the Framework Regulations, whereby it was also made accessible to national regulatory authorities in other EU Member States, and the European Commission, having informed ComReg that it had examined the draft measure and that it had no comments in relation thereto and that pursuant to Article 7 of the Framework Directive<sup>35</sup> ComReg could adopt the resulting draft measure; and
- viii. Having regard to its functions and objectives under sections 10 and 12 respectively of the Communications Regulation Act, 2002 and its powers under Regulation 17 of the Framework Regulations.

## **2. Definitions and Interpretation**

2.1 In this Decision Instrument, unless otherwise indicated:

- “Accounting Documentation” refers to the description of policies and methodologies used to produce the financial information contained within the Regulated Accounts.
- “Accounting Policies” means the specific policies and procedures used by a company to prepare its Regulated Accounts.
- “Act” shall mean the Communications Regulation Act 2002 as amended.
- “Additional Financial Information” means the information that shall be provided by Eircom, as determined by ComReg, on an annual basis.

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<sup>33</sup> Policy Directions made by the Minister for Communications, Marine and Natural Resources on 21 February, 2003 and 26 March, 2004

<sup>34</sup> ComReg Document No. 09/75 “Accounting Separation and Cost Accounting Review: Draft accounting direction to Eircom Limited”

<sup>35</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services

- “Additional Financial Statements” means the Income Statements for Services and Products as specified by ComReg from time to time.
- “Agreed Upon Procedures” means procedures agreed between relevant parties pursuant to a letter of engagement.
- “Attribution Methods” refers to the methods employed to allocate and apportion revenues, costs and capital employed to the Relevant Market, Service and Product levels.
- “Auditor(s)” means a firm(s) which is/are authorised to conduct the audit of financial statements of companies registered in Ireland.
- “ComReg” means the Commission for Communications Regulation established under section 6 of the Act.
- “Cost Component” means the accumulation of various costs (direct, indirect, and common) through the various cost allocation stages within the cost accounting system from initial input layer through to final Services and Products.
- “Effective Date” shall have the meaning prescribed in Section 12 of this Decision Instrument.
- “Equi-Proportional Mark Up” means the method of allocating the joint or common costs to a Service or Product in proportion to the costs already assigned.
- “Eircom” means Eircom Limited and its subsidiaries, successors and assigns and any undertaking which it owns or controls.
- “External” means the supply of Services and Products to parties outside of Eircom.
- “Financial Capital Maintenance Concept” means that the financial capital of the company is considered as maintained in current price terms. Capital is assumed to be maintained if shareholders’ funds at the end of the period are maintained in real terms at the same level as at the beginning of the period<sup>36</sup>.
- “Fixed Asset” means tangible and intangible items that are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes and which are expected to be used during more than one period.
- “Functional Cost Categories” means the various expense categories as set out in Section 6.4.2 of this Decision Instrument.
- “Income Statement” means a statement showing all items of income and expense recognised in a period.
- “Inter” means the supply of Services and Products between Eircom Limited and its subsidiaries.

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<sup>36</sup> ERG Common Position “Guidelines for implementing the Commission Recommendation C (2005) 3480 on Accounting Separation & Cost Accounting systems under the regulatory framework for electronic communications”, paragraph 3.2.3

- “Intra” means the supply of Services and Products within Eircom Limited.
- “Mean Capital Employed” is the mean of the assets and liabilities of Eircom, adjusted to amend for certain assets and liabilities which are excluded for regulatory purposes.
- “Nearest Equivalent Charge” means a price/prices from Eircom’s Regulated Price List which most closely represent(s) the technical capabilities of a Service or Product as if it were an external transaction.
- “Network Element” (network components) means the functional link between the network plant and equipment and the Services and Products that are provided to users of network plant.
- “ODTR” means the Office of the Director of Telecommunications Regulation, which was dissolved under Section 8 of the Act.
- “Primary Accounting Documentation” means those documents containing the information set out at Sections 7.2.1 and 7.4 of this Decision Instrument.
- “Product(s)” for the purpose of this Decision Instrument shall mean an offering from Eircom’s price lists. Products are subsets of Services (e.g. ULMP monthly rental is a Product).
- “Regulatory Accounting Principles” establish the key doctrines to be applied in the preparation of regulatory accounting information. They should include, *inter alia*, the principles of cost causality, objectivity, transparency and consistency of treatment.
- “Regulated Accounts” refers to the financial information referred to in Section 5.1 of this Decision Instrument.
- “Regulated Price List” means the price lists for regulated Services and Products as published by Eircom.
- “Relevant Markets” means the markets defined in the SMP Decisions on which Eircom has been found to have SMP.
- “Secondary Accounting Documentation” means those documents containing the information set out at 7.2.2 and 7.5 of this Decision Instrument.
- “Separated Accounts” means those accounts as described in Section 5.2 of this Decision Instrument.
- “Service(s)” for the purposes of this Decision Instrument shall mean a group of Product offerings from Eircom’s price lists (e.g. “*unbundled local metallic path Service*” is a Service).
- “SMP Decisions” mean ComReg Decisions, for so long as they are applicable, which found Eircom to have SMP under the provisions of Regulations 25, 26 and 27 of the Framework Regulations and which imposed on Eircom obligations in relation to accounting separation and cost accounting pursuant to Regulations 12 and 14 of the Access Regulations and include

- a. *Wholesale (Physical) Network Infrastructure Access (Market 4), Decision D05/10, - ComReg document 10/39;*
  - b. *Wholesale Terminating Segments of Leased Lines, Decision D06/08 ComReg Document Number 08/103;*
  - c. *Wholesale Fixed Wholesale Call Termination, Decision D06/07, ComReg Document Number 07/109;*
  - d. *Wholesale Call Origination and Transit Services, Decision D 04/07, ComReg Document Number 07/80;*
  - e. *Wholesale Broadband Access Decision D03/05, ComReg Document Number 03/05 05/11r;*
  - f. *Market Analysis: Retail Fixed Narrowband Access Markets, Decision D07/61, ComReg Document Number 07/61.*
- “Statutory Accounts” means the accounts of Eircom Limited, and its successors, which Eircom Limited is required to prepare pursuant to the Companies Acts.

### **3. Scope and application**

- 3.1 This Decision Instrument applies to Eircom.
- 3.2 This Decision Instrument is binding upon Eircom and Eircom shall comply with it in all respects.
- 3.3 This Decision Instrument is for the purposes of issuing a direction in relation to the preparation of Eircom’s Regulated Accounts and is issued pursuant to Regulation 17 of the Access Regulations, Regulation 34 of the Framework Regulations and Regulation 31 of the Universal Service Regulations for the purpose of further specifying requirements to be complied with by Eircom relating to obligations imposed on Eircom under Regulation 12 and Regulation 14 of the Access Regulations, Regulation 24 of the Framework Regulation and Regulation 14 of the Universal Service Regulations. This Decision Instrument is also for the purposes of withdrawing certain previous decisions of ComReg and the ODTR.
- 3.4 Eircom is hereby directed to comply with the requirements set out in Sections 4 to 12 (inclusive) of this Decision Instrument in preparing Eircom’s Regulated Accounts.
- 3.5 Decisions or Directions on accounting separation and cost accounting adopted by ComReg and the ODTR and set out in Annex 1 of this Decision Instrument are hereby withdrawn and/or superseded by this Decision Instrument.
- 3.6 For the avoidance of doubt, the Decisions or Directions on accounting separation and cost accounting adopted by ComReg or the ODTR, and set out in Annex 2 of this Decision Instrument, shall continue to apply.
- 3.7 For the avoidance of doubt this Decision Instrument applies in all circumstances where ComReg has found Eircom to have SMP under the provisions of

Regulations 25, 26 and 27 of the Framework Regulations (or such equivalent provision) and has imposed an obligation in relation to accounting separation pursuant to Regulation 12 of the Access Regulations and/or cost accounting pursuant to Regulation 14 of the Access Regulations and Regulation 14 of the Universal Service Regulations.

#### **4. Fundamental Requirements and Further Specification of SMP Obligations**

- 4.1 Eircom's financial records and accounting systems shall be sufficiently detailed and supported by sufficient data to ensure that:
- a) Eircom is in a position to comply with its transparency, non-discrimination, accounting separation, price control, and cost accounting obligations; and
  - b) Eircom is in a position to prepare Regulated Accounts which shall be maintained for each of the Relevant Markets and, where specified, for Services and Products.
- 4.2 The financial records and accounting information shall be maintained in sufficient detail on a market, Service and Product basis (regulated and unregulated), by Network Element and by Functional Cost Category, to facilitate the monitoring of Eircom's compliance with its SMP obligations, including obligations of transparency, price control, accounting separation, cost accounting and non-discrimination.

#### **5. Reporting and Transparency**

##### **5.1 Regulated Accounts**

- 5.1.1 Without prejudice to the generality of Section 4, Eircom shall prepare Regulated Accounts annually.
- 5.1.2 Eircom's Regulated Accounts shall contain:
- a) Separated Accounts (section 5.2);
  - b) Additional Financial Statements (section 5.3);
  - c) Additional Financial Information (section 5.4); and
  - d) Accounting Documentation (section 7).

##### **5.2 Separated Accounts**

- 5.2.1 Eircom's Separated Accounts may consist of Historical Cost Accounts ("HCA") and/or Current Cost Accounts ("CCA") as required by ComReg.
- 5.2.2 Eircom's Separated Accounts shall be disaggregated to the level of Relevant Markets and contain:
- a) A statement or reference to the Regulatory Accounting Principles followed when preparing the Separated Accounts which shall include but not be limited to the following terms:
    - cost causality;



- objectivity;
  - transparency;
  - consistency of treatment.
- b) Income Statements and Statements of Mean Capital Employed for Relevant Markets. The Income Statements within the CCA Separated Accounts (where relevant) shall separately distinguish between historic costs and adjustments associated with CCA.
- c) Notes to the Separated Accounts (as required).
- d) Eircom's Separated Accounts shall be accompanied by:
- (i) A signed statement from the directors of Eircom Limited acknowledging their responsibilities for the preparation of the Separated Accounts and confirming their compliance with the requirements of the Decision Instrument in this respect.
  - (ii) A report and opinion by an Auditor on the Separated Accounts and Eircom's compliance with the requirements of this Decision Instrument, in respect of the preparation of the Separated Accounts.
  - (iii) An explanatory report (containing notes or longer form narrative as may be necessary) setting out and clarifying:
    - Trends relating to Relevant Markets, including any significant future impact on Eircom's business of Regulatory Decisions which have been published by ComReg;
    - Trends relating to revenue, by Relevant Market;
    - Trends relating to volumes, by Relevant Market;
    - Significant period on period movements in the reported performance and balances;
    - One-off or exceptional events in the period; and
    - The impact of material changes in Accounting Policies, methodologies and estimation techniques (if any) and the extent to which this explains Eircom's Separated Accounts.
- 5.2.3 The Separated Accounts shall be prepared in accordance with Regulatory Accounting Principles and Accounting Policies. These Separated Accounts shall show data for Eircom's last complete financial period as well as the previous financial period and where these figures are not comparable, as a result of (for example) a material change in Accounting Policy, cost attribution methodology or material error, the figure for the preceding financial period must be adjusted to the extent that it is reasonable to do so.
- 5.2.4 The CCA Separated Accounts shall be prepared in accordance with Accounting Policies using the Financial Capital Maintenance Concept.

- 5.2.5 The Separated Accounts shall include reconciliation to the Statutory Accounts and contain (where relevant):
- Description of adjustments made between the Statutory Accounts and the HCA Separated Accounts; and
  - Description of adjustments made between the HCA Separated Accounts and the CCA Separated Accounts.
- 5.2.6 The Income Statements shall distinguish between External and Inter/Intra revenues and costs where relevant.
- 5.2.7 The Income Statements for each Relevant Market shall, where applicable, separately disclose the expenditure by Functional Cost Category as detailed under section 6.4.2.
- 5.2.8 The Statement of Mean Capital Employed for each Relevant Market shall be prepared on a Mean Capital Employed basis.
- 5.2.9 Eircom shall publish its HCA Separated Accounts and explanatory report on its website no later than five months after the end of the financial period. Eircom shall publish its CCA Separated Accounts on its website no later than six months after the end of the financial period.
- 5.2.10 Eircom shall include the report and opinion of the Auditor with the published Separated Accounts.

### **5.3 Additional Financial Statements**

- 5.3.1 Such Additional Financial Statements shall be prepared as required by ComReg in a format as requested by it and shall include the following:
- a) HCA Income Statements for each material regulated Service and Product (by Relevant Market and as required annually by ComReg). Eircom shall provide comparative prior period data, where possible and reasonable to do so.
  - b) HCA Income Statements for regulated Services and Products (not included in section 5.3.1(a)) as required by ComReg on an *ad hoc* basis. Eircom shall provide comparative prior period data where possible and reasonable to do so. The required Services and/or Products shall be determined annually by ComReg prior to the end of the financial period.
  - c) A single HCA Income Statement by Relevant Market for the remaining regulated Services and Products not included in section 5.3.1(a) or section 5.3.1(b). Eircom shall provide comparative prior period data where possible and reasonable to do so.
  - d) HCA Income Statement for unregulated markets, Services and Products (not included in the Separated Accounts on an annual basis) as required by ComReg on an *ad hoc* basis. Eircom shall provide comparative prior period data, where possible and reasonable to do so. The required markets, Services and/or

Products shall be determined annually by ComReg prior to the end of the financial period.

e) Eircom's Additional Financial Statements shall be accompanied, where material, by an explanatory report relating to the Additional Financial Statements (containing notes or longer form narrative as may be necessary) setting out and clarifying:

- Significant trends relating to Services and/or Products, including any significant future impact on Eircom's business of regulatory decisions which have been published by ComReg;
- Significant trends relating to revenue, by Services and/or Products;
- Significant trends relating to volumes, by Services and/or Products;
- Significant period on period movements in the reported performance and balances;
- One-off or exceptional events in the period; and
- The impact of material changes in Accounting Policies, methodologies and estimation techniques (if any) and the extent to which this explains Eircom's Additional Financial Statements.

5.3.2 Income Statements shall distinguish between External, Inter/ Intra revenues and costs.

5.3.3 Eircom's Additional Financial Statements shall follow the same Regulatory Accounting Principles as applied in the preparation of the Separated Accounts.

5.3.4 Eircom shall submit its Additional Financial Statements to ComReg, and, when required by it, the related opinion(s) of the Auditor or the report(s) from a qualified independent body, no later than seven months after the end of the financial period.

#### **5.4 Additional Financial Information**

5.4.1 Such Additional Financial Information (where available and reasonable to do so) shall include the following:

- a) Volume information (where appropriate) that shows weighted average volumes /total units by market (unregulated) and Service and Product (regulated and unregulated) as determined annually by ComReg based on regulatory requirements.
- b) Comparison (where appropriate) of ComReg quarterly key data report volumes with volumes disclosed in the Separated Accounts and/or Additional Financial Statements together with detailed explanations of any material differences.

- c) Details of bundled discounts allocated/apportioned by market (unregulated) and at the Service and Product level for Relevant Markets.
- d) Any material profit/loss on disposal of fixed assets and its impact on the relevant Income Statement during the financial period.
- e) Details and value of annual fixed asset investment under the asset categories listed in Appendix A (or as amended from time to time) of ComReg Document 09/65<sup>37</sup>. This shall be accompanied by a reconciliation statement to the fixed asset additions per the statutory accounts.
- f) Material holding gains and losses and their impact on the relevant Income Statement during the financial period, for areas where CCA information is available.
- g) A comparison of CCA costing data with other costing data, where relevant, provided for pricing purposes for specific material regulated Services and Products (as determined annually by ComReg prior to the end of the financial period).
- h) Other financial information as may be required on an *ad hoc* basis by ComReg.

5.4.2 Eircom shall submit its Additional Financial Information to ComReg, and, when required by it, the related opinion(s) of the Auditor or the report(s) from a qualified independent body, seven months after the end of the financial period.

5.4.3 The format and level of detail shown in the Additional Financial Information shall be determined by ComReg on an annual basis prior to the financial period end.

## 6. Accounting Principles

6.1 The collection of data and the basis on which it is to be allocated and apportioned between regulated and unregulated markets, Services and Products are detailed under the following headings:

- Volume and revenue identification (Section 6.2);
- Cost allocation and apportionment principles (Section 6.3);
- Cost allocation and apportionment rules (Section 6.4);
- Delineation of access network boundary (Section 6.5);
- Inter/Intra segment transactions (Section 6.6); and
- Sampling and survey techniques (Section 6.7).

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<sup>37</sup> ComReg Document 09/65: Response to consultation document No. 09/11 – Review of the regulatory asset lives of Eircom Limited. (ComReg Decision D03/09)

## **6.2 Volume and revenue identification**

6.2.1 Eircom shall allocate volumes and revenue to each of the Services and Products, as follows:

- a) Volumes and revenues which can be directly assigned to a particular Service or Product shall be so assigned; and
- b) Volumes and revenues that cannot be directly assigned to their use for specific Services or Products shall be apportioned on an appropriate basis which may include the use of sampling and survey techniques. Where sampling and survey techniques are applied the principles in Section 6.7 shall be followed.

## **6.3 Cost allocation and apportionment principles**

6.3.1 Eircom shall allocate costs to each Service or Product on a fully allocated cost basis, in the following manner:

- a) Where possible, costs which can be directly assigned to a particular Service or Product shall be so assigned.
- b) Common costs, which are costs that cannot be directly assigned to a particular Service or Product, shall be allocated as follows:
  - Whenever possible, common costs shall be allocated on the basis of direct analysis of the origin of the costs themselves;
  - When direct analysis is not possible, common cost categories shall be allocated on the basis of an indirect linkage to another cost category or group of cost categories for which a direct assignment or allocation is possible, the indirect linkage shall be based on comparable cost structures; and
  - When neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated on the basis of an Equi-Proportional Mark up, computed by using the ratio of all relevant expenses directly or indirectly assigned or allocated, to each Service or Product.

## **6.4 Cost allocation and apportionment rules**

6.4.1 Eircom shall ensure that costs are apportioned between the various Cost Components on the basis of factors/drivers which reflect the different impact of each item on the Network Elements and Functional Cost Categories. Where sampling and survey techniques are applied for the apportionment of costs the principles outlined in Section 6.7 shall be followed.

6.4.2 At a minimum and where relevant, Eircom shall ensure that the hierarchy of costs to be applied shall enable the cost of the following cost categories to be calculated:

- Product development and management;
- Marketing and sales;

- Repair/Maintenance;
- Finance and Billing;
- Installation/ Provisioning;
- Network support;
- General support;
- General management;
- Accommodation;
- Information technology;
- Transport;
- Personnel and administration;
- Other operating expenses; and
- Depreciation, amortisation and CCA adjustments shall also be separately identified by Eircom.

6.4.3 There shall be consistency in definitions of Functional Cost Categories between the Separated Accounts and the Additional Financial Statements.

6.4.4 ComReg reserves the right to amend this list as required from time to time.

## **6.5 Delineation of access network boundary**

6.5.1 Eircom shall for cost allocation purposes ensure that the access network boundary shall remain at the switch side of the line card (or its nearest equivalent).

## **6.6 Inter/Intra segment transactions**

6.6.1 Eircom shall comply with the following transfer charging principles:

- a) Transfer charges (revenues and costs) shall be attributed to Cost Components, for regulated and unregulated Services, Products and markets in accordance with the activities, which cause the revenues to be earned, or costs to be incurred.
- b) The attribution shall be objective and not intended to benefit any market (regulated or unregulated).
- c) The transfer charges for Inter/Intra usage shall be determined as the product of usage and unit charges.
- d) The charge for Inter/Intra usage shall be equivalent to the charge that is levied if the material Service or Product (regulated and unregulated) were an External sale rather than an Inter/Intra transaction. Where no equivalent charge exists the Nearest Equivalent Charge shall be charged and fully explained. Where no Nearest Equivalent Charge exists, a cost based transfer charge shall be used and fully explained.

- e) There shall be consistency of treatment of transfer charges from period to period.
- f) The transfer charging methods used shall be transparent. There shall be a clear rationale for the transfer charges used and each charge shall be justifiable (with supporting calculations available).

## **6.7 Sampling and survey techniques**

6.7.1 Eircom shall ensure that sample data is based on either generally accepted statistical techniques or other appropriate methods. This shall result in a fair and objective allocation of revenue (including transfer charges), costs (including transfer charges), assets and liabilities. In this regard, any sampling or survey techniques used to apportion volumes and revenues shall take account of the following:

- The sample data is unbiased and objective;
- Where appropriate, the sample size has been assessed in a statistical manner and is statistically significant;
- The sample data is representative of the entire population;
- The sample data is not obscured by seasonal or other factors; and
- The sample data is updated annually.

6.7.2 Where sampling and survey techniques are employed the material samples used shall be updated on a regular basis.

## **7.Accounting Documentation**

7.1 Eircom's Accounting Documentation shall be sufficiently transparent and shall explain, *inter alia*, the regulatory principles used and the methodologies applied, for the purpose of preparing:

- The Separated Accounts;
- The Additional Financial Statements; and
- The Additional Financial Information.

7.2 The Accounting Documentation shall consist of two principal documents:

7.2.1 'Primary Accounting Documentation' which shall set out the following:

- Regulatory Accounting Principles;
- Regulatory Accounting Policies;
- An overview of Attribution Methods;
- The transfer charge methodology; and
- An overview of any other methodology (e.g. CCA).

- 7.2.2 'Secondary Accounting Documentation' which shall set out details of the systems, processes and procedures, material methodologies (i.e. those having a material impact on any of the financial statements of the Relevant Markets, Services and Products) specifically those used for deriving or calculating the costs, revenues, assets and liabilities (including details of attribution methodologies, valuation methodology and other relevant methodologies) used to prepare the Separated Accounts, the Additional Financial Statements, and the Additional Financial Information.
- 7.3 Eircom shall:
- 7.3.1 Review and update the Accounting Documentation annually.
- 7.3.2 Publish the Primary Accounting Documentation on its website following ComReg's approval.
- 7.4 Without prejudice to the generality of Section 7.2.1, the Primary Accounting Documentation shall contain at least the elements listed below:
- a) An explanation of the basis of preparation of the Separated Accounts, including an explanation of the key Accounting Policies adopted by Eircom. This shall include, *inter alia*, details of Eircom's income recognition policy, depreciation policy, capitalisation policy, and its approach to dealing with issues such as cost allocation, prior period adjustments and changes in Accounting Policies.
  - b) A description of Eircom's business, explaining the main activities and functions performed by each of Eircom's key business units, indicating into which Relevant Markets they fit
  - c) Definitions in relation to Functional Cost Categories.
  - d) Definitions in relation to Network Elements.
  - e) Overview of the regulatory accounting systems, in terms of the underlying principles and the conceptual flow of costs and revenues from source financial systems to the Relevant Markets.
  - f) Overview of the basis of calculation of any Inter/Intra segment transactions.
  - g) A description of how the HCA Separated Accounts differ from the Statutory Accounts.
  - h) A description of how the CCA Separated Accounts differ from the HCA Separated Accounts.
  - i) An overview of the key cost allocation methodologies employed.
  - j) An overview of the process of deriving 'total unit' and 'weighted average volumes' including the basis of derivation of the usage factors applied.
  - k) Details of material period on period changes to the form and content of the Separated Accounts and changes to cost allocations methodologies having a material impact.



- 7.5 Without prejudice to the generality of Section 7.2.2, the Secondary Accounting Documentation shall contain at least the elements listed below:
- a) An explanation of how the underlying financial records supporting Eircom's business activities and functions are grouped to provide the costs, revenues, assets and liabilities used within the internal system to apportion costs, revenues, assets and liabilities to Network Elements, Functional Cost Categories, Relevant Markets, Services and Products.
  - b) A description of how material costs are treated at the Relevant Market level and the process of allocation/apportionment of each cost category at the Relevant Market, Service and Product levels. This shall also include an analysis of all material activities associated with each cost category together with its treatment as direct, indirect or common cost. Details and explanation of choice of cost driver shall also be disclosed.
  - c) The means by which Eircom identifies how costs are found to be directly or indirectly attributable or common including:
    - How costs are directly allocated to Relevant Markets, Services and Products;
    - How indirect costs have been apportioned on the basis of the associated cost driver; and
    - How common costs have been allocated on the basis of an Equi-Proportional Mark-Up.
  - d) Details regarding the following when used in the preparation of the Separated Accounts:
    - Cost driver definitions (i.e. basis of allocation) and calculations; and
    - The source of volume information.
  - e) Details of the internal safeguards that are implemented to ensure that the cost allocation system is free from material error
  - f) The means by which Eircom reviews, updates and verifies cost allocation drivers together with a description of changes in basis of allocation/apportionment from period to period, which have a material impact on the Separated Accounts.
  - g) The accounting treatment of bundled Services and Products, including how costs and discounts are allocated between Services and Products.
  - h) Details of the sampling and survey techniques employed, including the design, scope, objectives, methodology, and why these are considered appropriate.
  - i) Details of when samples were last updated, frequency of updating, reasons for updating.
  - j) A list of the Services and Products as per the Regulated Price List at the end of the financial period included within each Relevant Market.
  - k) Details of the basis of calculation of any Inter/Intra segment transactions.

- l) The process of deriving and updating usage factors for Services and Products and the basis for the usage factors applied to the Services and Products included in the Separated Accounts and/or the Additional Financial Statements.
- m) A description, where appropriate, of the material Services and Products offered within the Relevant Markets and how these relate to Eircom's key business units.

7.6 Eircom shall:

7.6.1 Submit to ComReg (in confidence and by email), for approval, an annual edition of the (Primary and Secondary) Accounting Documentation, detailing any amendments to the prior period version.

7.6.2 Where it considers that one off or exceptional adjustments are required for the preparation of the Separated Accounts, submit its proposals in this regard in advance to ComReg for consideration and approval. This shall detail any amendments to the relevant section of the Secondary Accounting Documentation, together with supporting files and/or workings where necessary. Eircom shall endeavour to inform ComReg of these proposed adjustments in sufficient time to allow for them to be reviewed. These one off or exceptional adjustments shall include (for example):

- a) Changes to study methodologies resulting in prior period adjustments;
- b) Changes to study methodologies resulting in significant changes to cost allocations; and
- c) Changes in Accounting Policies, methodologies and estimation techniques.

7.6.3 Eircom shall submit its Accounting Documentation to ComReg as follows:

- For the financial period commencing on or after 1 July 2010 a draft copy of the Accounting Documentation shall be submitted by 31 March 2011;
- For the financial period commencing on or after 1 July 2011 a draft copy of the Accounting Documentation (detailing any amendments to the prior period version) shall be submitted by 30 April 2012; and
- For financial periods commencing on or after 1 July 2012 the Accounting Documentation will be submitted (detailing any amendments to the prior year version) as follows:
  - a) no later than five months after the end of the financial period in the case of the HCA Primary Accounting Documentation
  - b) no later than six months after the end of the financial period in the case of the CCA Primary Accounting Documentation; and

- c) no later than seven months after the end of the financial period in the case of the Secondary Accounting Documentation.

## **8. Review and Confirmation of Compliance**

### 8.1 Eircom shall:

- a) Submit a statement signed by the directors of Eircom Limited acknowledging their responsibilities for the preparation of the Regulated Accounts and confirming Eircom's compliance with the requirements of this Decision Instrument. This signed statement shall be submitted to ComReg seven months after the end of the financial period.
- b) Engage an Auditor to perform an audit of the Separated Accounts, including considering compliance of the Separated Accounts with this Decision Instrument, in accordance with International Standards on Auditing (UK and Ireland) and the principles and guidance set out by bodies representative of the Irish accountancy professions from time to time. Such an audit opinion should be:
  - On a "Fairly presents in accordance with ..." basis in respect of the Separated Accounts as a whole;
  - On a "Fairly presents in accordance with ..." or a "Properly prepared in accordance with..." basis on an individual Relevant Market(s), as shall be notified in writing to Eircom from time to time by ComReg.
- c) Provide a report from a qualified independent body based on work conducted through "Agreed Upon Procedures" in respect of Additional Financial Statements and/or Additional Financial Information, where notified by ComReg from time to time.
- d) Consult with ComReg before the appointment/reappointment of the Auditor and provide assurance that its preferred Auditor has the necessary expertise.
- e) Procure a qualified independent body, to provide an appropriate opinion or report on the compliance of Eircom's Regulated Accounts, or part thereof, with the Decision Instrument, as required by ComReg from time to time. ComReg's requirements in this regard will be notified to Eircom in advance of its financial year end, or in exceptional circumstances where such an opinion or report is required.

### 8.2 Eircom shall ensure:

- a) That the Accounting Documentation is subject to review by a qualified independent body annually; and
- b) That the processes and procedures used by Eircom be subject to a review by a qualified independent body on an annual basis.

### 8.3 Eircom shall prepare and submit draft Separated Accounts schedules, Additional Financial Statement schedules and Additional Financial Information schedules

to ComReg within four months of the Effective Date of this Decision Instrument for ComReg's review. Eircom and ComReg shall endeavour to agree these schedules insofar as possible. ComReg however reserves the final right to determine and amend these schedules from time to time where agreement cannot be reached.

- 8.4 In this section, references to a qualified independent body may include an Auditor.

## **9. Timetable**

- 9.1 This Decision Instrument will be applicable to accounting periods beginning on or after 1 July 2010. Compliance shall, however, be achieved in all material respects for the accounting period ending on or after 30 June 2011 with full compliance for the following financial period.

## **10. Maintenance of Obligations**

- 10.1 If any section, clause or provision or portion thereof contained in this Decision Instrument 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 Decision Instrument and rendered ineffective as far as possible without modifying the remaining section(s), clause(s) or provision(s) or portion thereof of this Decision Instrument, and shall not in any way affect the validity or enforcement of the remainder of this Decision Instrument.

## **11. Statutory Powers not affected**

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

## **12. Effective Date**

- 12.1 The effective date of this Decision Instrument shall be the date of its notification to Eircom and it shall remain in force until further notice by ComReg.

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**Alex Chisholm**  
**Chairperson**  
**Commission for Communications Regulation**  
**Dated THE 31 DAY OF AUGUST 2010**

**Annex 1 to Decision Instrument: List of Directions now superseded and/or withdrawn.**

The following previous individual Decisions or Directions on Accounting Separation, Price Control and Cost Accounting either adopted by ComReg or the ODTR are hereby withdrawn and/or superseded

<b>Document No / Decision No</b>	<b>Text of Decision</b>
<i>Consultation Report and Issues for Further Consideration 99/35, Decision D5/99 'Accounting Separation and Publication of Financial Information for Telecommunications Operators'</i>	
Decision 3.1	Accounting separation is applicable to TE as set out in Section 4 of this document
Decision 3.2	The Definitions of the Main Business Areas are as set out in Appendix I. In summary they include Core, Local Access, Retail and Other Activities.
Decision 3.3	The Definitions of the Disaggregated Activities to be reported on in the separated accounts are set out in Appendix II.
Decision 3.4	The Guiding Principles for Separated Accounts decided by the Director are set out in Section 5 of this document.
Decision 3.5	These principles are restated in Appendix III of this document. (as per 99/10)
Decision 3.6	The separated accounts should be prepared in the format as set out in Appendix IV, which is consistent with the EU Recommendation. LRIC adjustments will be required to be shown from 1999/2000 onwards.
Decision 3.7	Telecom Éireann will publish additional information items as set out above, alongside its separated accounts.

<b>Document No / Decision No</b>	<b>Text of Decision</b>
Decision 3.8	<p>TÉ shall publish a statement of network component costs, as part of accounting separation information and this will contain the following information:</p> <ul style="list-style-type: none"> <li>• average per minute cost of each conveyance network component (inclusive of WACC)</li> <li>• average per minute cost of each non-conveyance network component</li> <li>• routing factors for traffic</li> <li>• Time of Day Gradients</li> <li>• Final Charges</li> <li>• Reconciliation ( if different to Telecom Éireann internal transfer charges)</li> </ul> <p><i>Pro forma</i> schedules are set out in Appendix V (Network Statement of Costs) and Appendix VI (Statement of Costs of Network Services – Transfer to Retail and Other Activities). A further schedule on volume information will be provided for ODTR use only.</p>
Decision 3.9	<p>The additional explanatory information to be published should consist of the following:</p> <ol style="list-style-type: none"> <li>i) a statement of the regulatory accounting principles followed when preparing the Accounts</li> <li>ii) complete definitions of the main business areas and their disaggregated activities</li> <li>iii) a description of the transfer charging system that is operated for accounting separation</li> <li>iv) details of significant changes which impact on the financial statements and on comparative figures</li> </ol>
Decision 3.10	<p>For the first year operation (1998/1999), accounting separation information is to be published within six months after the end of the period to which it relates. Thereafter (1999/2000 and future years) accounting separation information is to be published within two months after the date on which the SMP operator's annual statutory financial statements are published and, in any event within four months after the end of the period to which they relate.</p>

<b>Document No / Decision No</b>	<b>Text of Decision</b>
Decision 3.11	The Transfer Charging Principles decided by the Director are as set out above
<b><i>Decision Notice and Consultation Report 99/43 Decision D8/99 'Costing Methodologies for use in Accounting Separation</i></b>	
Decision 3.1	<p>A description of TÉ's costing system, together with its costs drivers will be made available to interested parties when it has been presented to the ODTR at the end of August.</p> <p>Telecom Éireann's cost, revenue and capital employed allocation principles should follow those high level principles as set out in the appendices attached. Alternative methods require prior approval by the ODTR before 31st August 1999.</p>
Decision 3.2	<p>The appropriate level of detail to be published in relation to Telecom Éireann's costing systems is to include the following:-</p> <ul style="list-style-type: none"> <li>• The cost standard being used (e.g. fully distributed costs, embedded direct costs, etc.) including the cost base(s) being used (e.g. historic costs, current costs, etc.);</li> <li>• General Principles;</li> <li>• A detailed analysis of the hierarchy of costs being used;</li> <li>• The allocation and apportionment rules being used to identify revenue, costs and capital employed of each service and network component;</li> <li>• Information on how each individual cost category is treated;</li> <li>• Identification of any deviations from the accounting policies used in TÉ's statutory accounts.</li> <li>• The degree to which sample data has been used in each of the apportionment bases. (This is discussed in Section 4.3)</li> </ul>
Decision 4.1	Allocation of costs, capital employed and revenue will be done in accordance with the principles of cost causation, materiality, objectivity, consistency and transparency, as described above. The audit report shall state that the separated accounts have been prepared in accordance with the costing methodology documents published with the accounting separation statements.

<b>Document No / Decision No</b>	<b>Text of Decision</b>
Decision 4.2	Unattributable costs should be allocated to products and services using an Equal Proportionate Mark-Ups method.
Decision 4.3	Sampling data may be used to allocate certain indirect costs, which have no comprehensive allocation base, to products and services. The use of sample data shall be kept to a minimum. The degree to which sample data has been used in each of the apportionment bases shall be disclosed in the description of the costing methodology.
Decision 4.4	The principles governing the use of sample data are the following:- <ul style="list-style-type: none"> <li>• it is unbiased/objective;</li> <li>• the sample size has been assessed in a statistical manner and is statistically significant;</li> <li>• representative of the entire population;</li> <li>• is not skewed by seasonal or other factors;</li> <li>• it is based on either generally accepted statistical techniques or other methods, which should result in the accurate allocation of revenue (including transfer charges), costs (including transfer charges), assets and liabilities; and</li> <li>• be updated annually.</li> </ul>
Decision 4.5	Non relevant costs shall be excluded when determining charges for services and these will be judged on a case by case basis.
Decision 4.6	Non-relevant costs for regulatory decision purposes should be disclosed as reconciling items after the 1999/2000 separated accounts.
Decision 5.1	TÉ will develop an appropriate costing methodology for its operations in accordance within the Regulatory Framework and principles set out in the appendices to this document (and as amended in the future by the Director) to be approved by the Director.
Decision 5.2	The operating costs allocation and attribution methods are outlined in Appendix II. They are at a high level and individual operators should develop cost allocation procedures specific to the way in which they currently capture and record costs, in line with these high level allocation principles (and as amended in the future by the Director).



<b>Document No / Decision No</b>	<b>Text of Decision</b>
Decision 6.1	TÉ will develop an appropriate revenue allocation methodology for its operations in accordance with the Regulatory Framework and high level principles set out in this document (and as amended in the future by the Director) to be approved by the Director.
Decision 7.1	TÉ will develop an appropriate costing methodology for its operations in accordance with the Regulatory Framework and principles set out in this document (and as amended in the future by the Director) to be approved by the Director.
Decision 7.2	The principles to be applied when considering the treatment of individual items of working capital are: - consistency between the treatment of assets and their associated costs and revenues - inclusion or exclusion of individual items ought, in principle, to have a corresponding impact on the return on capital employed.
Decision 7.3	Asset lives should be set on the basis of a network element and component basis and should be thoroughly reviewed on a yearly basis. The assets lives used in the statutory accounts should also be used in the separated accounts. The Director may adjust for inappropriate asset lives, when regulatory decisions are being made based on historical costs.
Decision 7.4	Different asset lives should be calculated for similar assets based on different technology.
Decision 7.5	In the year of acquisition the depreciation of assets shall be in accordance with the policies adopted in the statutory accounts.
Decision 7.6	In the year of disposal the depreciation of assets shall be in accordance with the policies adopted in the statutory accounts.
Decision 7.7	The treatment of excess depreciation shall be in accordance with the policies adopted in the statutory accounts.
Decision 7.8	Assets in the course of construction shall be depreciated on the same basis as that adopted in the statutory accounts.
Decision 8.1	The financial capital maintenance approach will be used when calculating current cost information.

<b>Document No / Decision No</b>	<b>Text of Decision</b>
Decision 8.2	The Net Replacement Cost valuation method shall be used when valuing assets on a current cost basis.
Decision 8.3	The separated accounts shall be adjusted for current cost information for the year 1999/2000 at a minimum for call origination, termination and transit. As additional information becomes available the accounts shall be adjusted accordingly.
<b><i>Decision Notice D10/99 (Document Number 99/52) 'Accounting Separation and Publication of Financial Information for Telecommunications Operators'</i></b>	
Decision 3.1	The relevant subsidiary activities of T� (see Decision 3.2) shall be included as part of the "Other Activities" category. This information shall be included in the 1998/99 set of accounting separation statements.
Decision 3.2	The "Other Activities" category should be further disaggregated to show separately the subsidiary activities of T� as outlined above.
Decision 3.3	<p>T� is required to publish a statement of network component costs, as part of accounting separation information and this should contain the following information:</p> <ul style="list-style-type: none"> <li>• Average per minute cost of each conveyance network component (inclusive of WACC)</li> <li>• Average per minute cost of each non-conveyance network component</li> <li>• Routing factors for traffic</li> <li>• Time of Day Gradients</li> <li>• Final Charges</li> <li>• Reconciliation ( if different to Telecom �ireann internal transfer charges)</li> </ul> <p><i>Pro forma</i> schedules are set out in Appendix III (Statement of Costs of Network Services – Transfer to Retail and Other Activities). A further confidential schedule on volume information must be provided to the ODTR only. This should be provided at the same time as the publication of separated accounts. The <i>pro forma</i> schedule for the Network Statement of Costs remains in the form outlined in ODTR 99/35.</p>

<b>Document No / Decision No</b>	<b>Text of Decision</b>
Decision 3.4	The details of internal transfers that TÉ is required to publish along with the separated accounts are as set out in Appendix IV and V.
Decision 3.5	The amended and additional disaggregated activities defined in Appendix II shall be incorporated into the accounting separation statements. The remaining definitions are as originally detailed in Decision Notice 5/99 (ODTR 99/35).
<b><i>Decision Notice D9/00 (Document Number 00/59) ‘Accounting Separation and Publication of Financial Information for Telecommunications Operators’</i></b>	
Decision 4.1.1	Decision 3.10 of ODTR 99/35 is replaced by the following text: “For the first year operation (1998/1999), Historical Cost Separated Accounting information is to be published within seven months after the end of the period to which it relates. For the second year of operation (1999/2000), Historical Cost Separated Accounting information is to be published within six months of the end of the period to which it relates. Current Cost Accounting and LRIC Separated Accounts are to be published within eight months after the end of the period to which they relate. Thereafter (2000/2001 and future years) Historic Cost Separated Accounts are to be published within two months after the date on which the SMP operator’s annual statutory financial statements are published and, in any event within four months after the end of the period to which they relate. Current Cost and LRIC Separated Accounts are to be published within six months after the end of the period to which they relate.”
Decision 4.1.2	eircom shall provide draft Separated Accounts for 1999/2000 to the ODTR as follows:- 1. HCA Separated Accounts by the 15th September 2000, 2. CCA Separated Accounts by the 31st October 2000, and 3. LRIC Separated Accounts by the 31st October 2000.

<b>Document No / Decision No</b>	<b>Text of Decision</b>
Decision 4.2	<p>Principle (f) in Section 5 'Format of Accounting Separation Statements' in ODTR 99/35 is modified by replacing the text with the following text:                      "Separated accounts shall be published annually and contain comparative information. Where there are material changes to Regulatory Accounting Principles, Cost Allocation Methodology, Attribution Methods, or to Accounting Policies that have a material effect on the information reported in the separated accounts of a main business area or a disaggregated activity, the parts of the previous year's separated accounts affected by the changes shall be restated."</p> <p>This principle shall apply except in the following cases: -                      The HCA Cost Separated Accounts for 1999/2000 shall contain the 1998/1999 results as comparative figures. These results do not have to be restated in accordance with the previous paragraph. The 1999/2000 CCA separated accounts and LRIC statements are not required to contain comparative information.</p>
Decision 4.3.1	<p>From 1999/2000 onwards, exceptional costs should be separately identified in the Separated Accounts statements.</p>
Decision 4.3.3	<p>The Network Statement of Costs should additionally identify the following network elements:-</p> <ul style="list-style-type: none"> <li>National Directory enquiries</li> <li>International Directory enquiries •</li> <li>Carrier Administration •</li> <li>Carrier Billing</li> <li>Intelligent Network (identifying deferred costs where relevant)</li> <li>National Operator Assistance</li> <li>International Operator Assistance</li> </ul> <p><i>Pro forma</i> statements for the Network Statement of Costs for HCA, CCA and LRIC are set out in Appendix I, II and III.</p>

<b>Document No / Decision No</b>	<b>Text of Decision</b>
Decision 4.3.5	<p>The Statement of Costs of Network Services should additionally identify the following network elements:-</p> <p>Payphone Access Charge.</p> <p>Retail costs applicable to Number Translation Code services.</p> <p>All RIO Services that are included in the RIO in effect during the period of the Separated Accounts as set out above.</p> <p>All Retail Services should be included as set out above.</p> <p>The individual services provided to the retail disaggregated activities, Internet Services Supply and Supplemental Services.</p> <p>The National Operator assistance service provided to eircom's retail business.</p> <p>The International Operator assistance service provided to eircom's retail business.</p> <p><i>Pro forma</i> statements for Statement of Costs of Network Services for HCA, CCA and LRIC are set out in Appendix IV, V and VI.</p>
Decision 4.3.6	<p>The same gradient as set out in D7/00 should be applied to all services included in the Statement of Costs of Network Services.</p>
Decision 4.4	<p>The "Other Activities" category in the 1999/2000 Separated Accounts shall be further disaggregated to show separately the activities of Indigo and shall include comparatives for 1998/1999.</p>
Decision 4.5	<p>The Current Cost Separated Accounts should be prepared in the format as set out in Appendix VII, where the information is available, which is consistent with the EU Recommendation. LRIC adjustments will be required to be shown on the face of the Profit and Loss statements.</p>
Decision 4.6	<p>The pro forma schedules for transfer charges have been amended to incorporate decision 3.2 and decision 3.5 as detailed in decision notice 10/99 (ODTR 99/52). See Appendix VIII.</p> <p>The virtual access charge arising from the Dispute Resolution Determination Numbers 01/99 and 02/99, shall be included as part of the transfer charges to the Frame Relay retail division.</p> <p>Charges relating to</p> <ul style="list-style-type: none"> <li>the use of shared premises/exchanges</li> <li>inter-company loans</li> <li>seconded staff and other operating overheads</li> <li>compensation for expenditure incurred by one group company on behalf of another group company, etc.</li> </ul> <p>shall be included as part of the transfer charges shown in the Separated Accounts.</p>

<b>Document No / Decision No</b>	<b>Text of Decision</b>
Decision 4.6.1	The Separated Accounts shall include a statement analysing the transfer charge to Retail - Public Payphones as set out in Appendix VIII.
Decision 5.1	The audit report on the separated accounts shall additionally state for the 2000/2001 separated accounts whether:- the separated accounts are fairly presented in accordance with eircom's Accounting Documents, • whether the Separated Accounts comply with the ODTR's Decision Notices in this area, as amended from time to time. whether the information specified by the Decision Notices to be published in the Separated Accounts has indeed been published in the separated accounts. Separate audit opinions should be issued on the HCA and the CCA/LRIC Separated Accounts.
Decision 5.2	eircom shall submit a list of appropriate independent persons/bodies to carry out the audit of the Separated Accounts to the ODTR at least 8 months before the Separated Accounts are due to be published, for the approval of the Director. This shall apply to Separated Accounts for 2000/2001 and onwards.
Decision 6.1	From 2000/2001 onwards, operating costs for the Core Network shall be the relevant costs as determined or agreed by the Director for the calculation of the rates in the RIO that is applicable to the accounting period. Non-relevant costs should be disclosed as a reconciling item in the statement of reconciliation between the Separated Accounts and the Financial Statements.
Decision 6.2	eircom shall publish a forecast Network Statement of Costs and a forecast Statement of Costs of Network Services which forms the basis of calculating the interim RIO rates currently in force. Only forecast relevant costs shall be included. These schedules shall be published in 1999/2000 for the first time at the same time as the publication of the Separated Accounts and shall be republished annually.
Decision 7	The costing system description should be extended to include CCA and LRIC.

<b>Document No / Decision No</b>	<b>Text of Decision</b>
Decision 8	<p>The Separated Accounts shall include, where relevant, the following reconciliation statements:-</p> <ul style="list-style-type: none"> <li>• Reconciliation statement of HCA profits\losses before taxation to CCA profits\losses before taxation,</li> <li>• Reconciliation statement of HCA mean capital employed to CCA mean capital employed,</li> <li>• Reconciliation of Statement of Costs of Network Services CCA to Statement of Costs of Network Services LRIC.</li> </ul>
Decision 9	<p>Half-yearly Separated Accounts shall be submitted to the ODTR within four months of the end of the period to which they relate. The half-yearly Separated Accounts should be prepared as set out above.</p>
Decision 9.1	<p>Volume data for all types of PSTN traffic shall be submitted to the ODTR four months after the quarter end.</p>
<p><b><i>Decision Notice D10/00 (Document Number 00/72) ‘Accounting Separation and Publication of Financial Information for Telecommunications Operators, Supplemental Information Referring to Decision D9/00</i></b></p>	
	<p>The Director considers that Eircom may discharge their obligations under Decision 4.1.1 of D9/00 by publication of the information as detailed in sections 2.2.1, 2.2.2 and 3 as unaudited Supplemental Information to the Separated Accounts on 15th December 2000, in addition to the publication of the Separated Accounts themselves on the 30th September 2000.</p>
	<p>The Director therefore requires Eircom to discharge its obligations under Decision 4.3.3 of D9/00 by publishing information on 15th December 2000 as Supplemental Information to the Separated Accounts relating to:</p> <p>Carrier Administration Carrier Billing  Intelligent Network (identifying deferred costs where relevant)  National Operator Assistance  International Operator Assistance</p> <p>in addition to publishing information on National directory enquiries and International Directory enquiries as part of the Separated Accounts on 30th September 2000.</p>

<b>Document No / Decision No</b>	<b>Text of Decision</b>
	Eircom may discharge their obligations under Decision 4.3.5 of D9/00 by publishing the costs of Network Services whose take-up was material during the year ended 31st March 2000, but for which data capture procedures were not in place in that period should be published as Supplemental Information to the Separated Accounts on 15th December 2000.
	Eircom can satisfy its obligations under Decision 6.2 of D9/00 by publishing a forecast Statement of Costs of Network Services together with the RIO rates that came into force in accordance with the Director's directions as set out in D7/00 (ODTR 00/31) as Supplemental Information to the Separated Accounts on 15th December 2000
<b><i>Decision Notice D2/01 (Document Number 01/10) 'Accounting Separation for Internet Service Provision and Report on Investigation into Indigo and eircom.net'</i></b>	
Decision 2.4.1	eircom will continue to present the business of Indigo as a disaggregated activity of the Other Activities business area.

<b><i>Response to Consultation &amp; Decision Notice D7/01 (Document Number 01/24) 'Eircom's Reference Interconnection Offer &amp; Accounting Separation and Publication of Financial Information for Telecommunications Operators'</i></b>	
Decision 7.1	For 2000/2001, operating costs for the Core Network as included in the Separated Accounts shall be the relevant costs as determined or agreed by the Director for the calculation of the rates in the RIO, applicable to that accounting period.
Decision 7.2	As indicated in D9/00, operating costs for the Core Network shall be the relevant costs as determined or agreed by the Director for the calculation of the rates in the RIO that is applicable to the accounting period. Non-relevant costs should be disclosed as reconciling items in the statement of reconciliation.
Decision 7.3	There are no alternative approaches to Accounting Separation which merit further consideration at this time.
Decision 8.3	The services listed in the published RIO applicable to the accounting period being reported should be accounted for separately in the published statements.



<b>Document No / Decision No</b>	<b>Text of Decision</b>
Decision 8.5	The statements described as (i) Inland Core Conveyance Network- Statement of Costs including CCA Adjustment Distributed LRIC, (ii) Inland Core Conveyance Network- Statement of Costs including CCA Adjustments Distributed Long Run Incremental Cost plus Recovery of Inter Increment Fixed Costs and Joint Costs and, (iii) Reconciliation of Incremental Cost Results above, are to be included in the Separated Accounts for 2000/2001 and subsequent years.
Decision 8.7	Eircom should submit detailed proposals for sub-divided Transit Call charges to the Director.
Decision 8.10	The Statement of Costs of Network Services shall be amended to include “Primary to Tertiary” links.
Decision 8.12	Internet Service Supply and Leased Lines shall be excluded from the Statement of Costs of Network Services
Decision 8.13	Eircom will be required to publish a memorandum note indicating the level of returns achieved by public payphones, including the returns earned elsewhere in Retail, Access and Core Network.
Decision 9	The access network boundary shall remain at the switch side of the line card. The definitions of the business areas will be those set out in Appendix II of this Decision Notice.
Decision 10.1	Notional Debtors and Creditors should not be included in the Separated Accounts. However, Debtors in respect of provision of interconnect services to wholesale customers (OLOs) is a real working capital requirement and should be included in the separated Accounts. Recovery by eircom of the cost of funding credit, provided to wholesale customers, will apply, except in exceptional circumstances, only to debtor levels based on standard credit terms.
Decision 11.1	The definitions of Disaggregated Activities are now as listed in Appendix III of this document.
Decision 11.2	The ISP business unit shall be separately disclosed in the Separated Accounts.

<b>Document No / Decision No</b>	<b>Text of Decision</b>
Decision 12.1	The Separated Accounts should contain a schedule in a format to be finalised but which will be similar to appendix IV, which will disclose the Return On Capital Employed in each of the business units, including retail businesses.
Decision 12.2	Allocation of core and access network assets to business activities should be based on a sufficient level of detail to ensure that the process generates a reasonably accurate attribution of costs. eircom is required to include the ROCE measure, calculated on the basis that the allocation criteria used, adequately reflect the cost components and the relationship of cost components to services.
Decision 13.1	Information in respect of the Network Statement of Costs in terms of National Operator Assistance, International Operator Assistance, Carrier Administration, Carrier Billing and Intelligent Network should be incorporated into the HCA Separated Accounts for 2000/2001
Decision 13.2	For reasons of commercial sensitivity, eircom is not required to publish a Forecast Network Statement of Costs.
Decision 13.3	eircom should continue to publish information on Payphone Access Charge in its current format, as outlined in Appendix V of this Decision Notice.
Decision 13.4	eircom will be required to identify retail costs applicable to Number Translation Services and 189X services in the format as outlined in Appendix VI of this Decision Notice.
Decision 14	For the year 2000/2001, eircom are directed to publish an Access Statement of Costs and a Statement of Costs of Access Services in respect of Local Loop Unbundling as supplementary information. Through consultation, the format of the statements will be refined during 2001/2002. The agreed format will be published in the Separated Accounts for year 2001/2002
Decision 15.1	HCA Separated Accounts are to be submitted to the ODTR by 31st July 2001. CCA and LRIC Separated Accounts are to be submitted to the ODTR by 30th.September 2001.
Decision 15.2	Draft HCA Separated Accounts are to be submitted to the ODTR by 30th.June 2001. Draft CCA and LRIC Separated Accounts are to be submitted to the ODTR by 31st.August 2001.

<b>Document No / Decision No</b>	<b>Text of Decision</b>
Decision 15.3	eircom are not required to produce half-year accounts for 2000/2001. Half-yearly Separated Accounts for the year 2001/2002 are to be submitted to the ODTR within four months of the end of the period to which they relate.
<b><i>Decision Notice D12/01 (Document Number 06/61) ‘ Revision of Timetable for Publication of Separated Accounts and Financial Information by Eircom ’</i></b>	
Decision 1	The time-table for publication of Separated Accounts and Financial Information for the year ended 31st March 2001 is as follows: Historic Cost Accounts - 30th September 2001 CCA and LRIC Statements - 30th November 2001 In addition to the above draft accounts will be presented to ODTR at the end of the prior month, i.e. Draft Historic Cost Accounts - 31st August 2001 Draft CCA and LRIC Statements - 31st October 2001
Decision 2	The time-table for publication of Separated Accounts and Financial Information for the year ended 31st March 2002 will be: Historic Cost Accounts - 31st August 2002 CCA and LRIC Statements - 30th September 2002
Decision 3	Eircom will provide to ODTR, no later than 30th September 2001, a project plan relating to the process leading to the publication of the Separated Accounts and Financial Information for 2001/2002 and appointment of auditors.

**Annex 2 to Decision Instrument: List of Directions maintained.**

The following previous individual Decisions or Directions, as contained in the following Decisions or Directions, in respect of Accounting Separation, Price Control and Cost Accounting, either adopted by ComReg or the ODTR, are hereby maintained in their entirety:

<b>Document No / Decision No</b>	<b>Text of Decision</b>
<i>Response to Consultation &amp; Decision Notice D7/01 (Document Number 01/24) 'Eircom's Reference Interconnection Offer &amp; Accounting Separation and Publication of Financial Information for Telecommunications Operators'</i>	
Decision 6	<p>Eircom is required to calculate the core conveyance rates based on LRIC for the following periods:</p> <ul style="list-style-type: none"> <li>• 1 December 1999 to 31 March 2000,</li> <li>• 1 April 2000 to 31 March 2001,</li> <li>• from 1 April 2001 onwards,</li> </ul> <p>In determining whether to accept eircom's justification, the Director will take into account compliance with this decision notice, earlier decisions not updated by this Decision Notice, and other guidance provided to eircom by ODTR. Eircom is to submit these rates and justification to ODTR no later than 9th May 2001.</p>
Decision 8.1	<p>Two part charging will be introduced on 1st October 2001. The RIO when republished shall include a one-part charge that will apply prior to 1st October 2001 and the two-part charge that will apply thereafter.</p> <p>When allocating costs to call set-up charges, only those components that are predominantly related to call set-up will be included.</p>
Decision 8.2	<p>Justification for separate termination and origination rates will be considered but may not be introduced before 1st October 2001. The revised RIO, with separate rates, will be published at least six weeks prior to this date.</p> <p>Proposals with justification should be presented to ODTR not later than mid-July 2001.</p> <p>When allocating costs to termination or origination, only those elements that are solely related to one service may be considered for separate treatment.</p> <p>In line with Decision 8.7 on routing factors, ODTR requires that forecast routing factors be used that assume efficient routing. This should be based on the assumption that all PoIs are available for use in either direction.</p>

<b>Document No / Decision No</b>	<b>Text of Decision</b>
Decision 8.4	Appropriate non conveyance costs, subject to review by the Director, including appropriate carrier billing and carrier administration, should be apportioned by product and reflected in the RIO rates for each respective service / product.
Decision 8.6	The Separated Accounts for a given year and the finalised RIO rates relating to those accounts are to be based on the same Routing Factors. Routing factors on which interims are based will be forward looking and reflect an efficient operator approach. The routing factors used to finalise rates will be based on appropriate efficient principles but shall be updated to reflect actual costs and volumes.
Decision 8.9	When eircom proposes new prices the gradient should be recalculated and detailed workings submitted to the ODTR. If any element of the gradient is more than 5% different then revised interconnect prices should be published applying the contemporary gradient. Notification of the change shall take place at least 21 days in advance of the change being effected and at the same time as the publication of the retail price. The interconnect gradient change will be published no later than 21 days after the retail price has been published.
Decision 8.11	The Separated Accounts should reflect the underlying service provision and be consistent with the RIO. Therefore the Separated Accounts should use a single double tandem rate.