Office of the Director of
Telecommunications
Regulation

CONSULTATION PAPER

Review of the Price Cap on Certain Telecommunications Services – Consultation III

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Oifig an Stiúrthóra Rialála Teileachumarsáide

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Foreword

This is the third and last consultation on a new price cap to replace the price cap introduced in 1999. I urge all interested parties to respond in the two months set aside for comment, so that the final decision may be taken against a full range of views.

A price caps is a regulatory tool which provides a more flexible way than straightforward price control, for squeezing out excess profits and encouraging efficiency in utilities which are subject to inadequately strong competition. The framework is designed to require a company to achieve certain overall targets: if the company exceeds these it gets the benefit in profits. This forces companies to reduce prices and provides a strong incentive for companies to reduce costs and increase efficiency because this is the main avenue for them to increase profits, thereby providing a more efficient as well as a cheaper service to consumers.

Retail price capping provides some substitute for the limitations of competition at the early stages of liberalisation, enabling users to enjoy the benefits that competition will bring earlier than would otherwise be the case. The 1999 price cap was fixed at CPI-8%, meaning that Telecom Éireann (now eircom) was to reduce the prices covered by the price cap (mainly national and local calls and line rental) in real terms by 8% in each year. A number of sub-caps for various services meant that eircom could not increase the prices of any such services by more than 2% each year, while also achieving the overall reduction required by the headline cap. There was also a cap at the rate of inflation (CPI-0) on what is known as the lowest quartile bill, which provided protection against substantial increases for those who make little use of the phone, many of whom were seen as vulnerable users.

The 1999 cap has achieved substantial reductions in call charges: in the first year of operation, eircom reduced the minimum call charge from 14.6c per call to 6.35c per call and daytime and evening national call charges have also fallen significantly over the period. The basket of Irish business and residential domestic charges are also in or around the average of EU charges for the last 2 years. Progress in terms of increased efficiency (for which a price cap gives an incentive rather than a statutory imperative) has been less satisfactory. eircom has continued to reduce staff numbers over the last few years, has an-ongoing systems and management programmes which are intended to improve efficiency, and has made some changes to improve service quality – in the delivery of leased lines for example. However, the rate of change has only held costs constant, and as prices fall and volume growth slowed, profits have been affected. (They have also been affected by other matters such as the eircell demerger and the growth of and then withdrawal from most multimedia and international services.) The access network appears now to be the least efficient part of eircom's business and it is notable that the line rental has increased by the full CPI plus 2 in each of the years of the cap and is among the highest in Western Europe.

The theory of competition is that it exerts pressures in two ways – encouraging additional market entry when margins are very high, and forcing changes to benefit users as companies in the market compete for their business, offering lower prices/better quality of service, greater choice. Even the realistic threat of market entry and expansion can exert substantial pressure. The mirror image of this is unfortunately, that when these threats are subdued due to the strength of the main player as well as to the kind of international and national downturn we are currently facing, that the pressure to change reduces. There is pressure among the OLOs to end or relax the price cap, so that they can achieve the increasing returns expected by their financiers. The markets have changed from seeming never to mind if an investment would be profitable to insisting on very quick returns.

In developing its strategy in respect of the price cap, the ODTR is dealing with contrary pressures

(1) From the point of view of users and the competitiveness of the economy generally, Irish communications costs must not exclude the most vulnerable in the community from making a minimum use of the phone. The current, 'lowest quartile bill' protection has been reviewed, and while it does assist many people in low income categories who make few calls and do not benefit from the Department of Social and Family Affairs allowances, it is something of a blunt instrument and also gives rise to some technical problems given the ratio of call to line rental charges.

In response to a request from the ODTR, which indicated a willingness to consider an alternative, eircom has proposed a scheme which is being put to consultation in this paper. Under this scheme, eircom would provide €5 worth of free national/local calls for around €22.50 per month, with no line rental charge. If a customer exceeded the free call allowance, they would pay local/national call charges at double the standard rate, though in cases where their usage was so much higher than €5 worth, that they would have been better off under the normal eircom terms, the size of their bill would be restricted to a normal bill plus a €1 handling charge. The average participant bill would not exceed CPI-0, which is the cap on the current scheme. Comments are requested from interested parties on this scheme in this consultation paper.

Irish communications costs must compete in terms of price, choice and quality with those in other countries. While very, very large sums have been spent on investment over the years, there is an on-going need for investment, and the proposed price cap allows the possibility of significant returns of 11-12%.

(2) With changes in technology and management practices, the potential for efficiency in all utilities, in particular in telecommunications services, is increasing all the time. Many utilities suffer now from the effects of having been 'job creation' targets in earlier periods, and progress generally has been slow in dealing with these problems. However it is clear that going forward, the pace of technological and management/systems change will increase constantly and there will be a sharply declining need for employees in these companies to deliver ever increasing capacity.

It is critical from the point of view of competitiveness of the Irish economy generally and for sustainable job creation, particularly in the areas where the marginal costs of utility services are highest (low density, more remote areas) that there is a commitment to ever increasing efficiency on a comparable scale to the best of Ireland's competitors. We note the position of incumbents in many EU countries and the responses that are coming from them in terms of programmes of increased efficiency to deal with their debt problems. Costs that are embedded in the eircom 'platform', its network, flow through to competitors (on an efficient operator basis only where the ODTR can require this) and to users. This is a critically important issue.

The issue on line rental (which is the cost most closely associated with the access network, or last mile) is particularly difficult, where eircom indicate that costs are not covered by revenues on a fully allocated basis (includes all costs, including those that have been inefficiently incurred). It has indicated to the ODTR an intention to gradually increase line rental starting early in the next price cap period. The ODTR accepts the principle of rebalancing to ensure that efficient costs are recovered in an appropriate way. However, I am conscious also of the over-riding need to protect consumers in market where eircom are dominant, and also of the need to incentivise efficiency. Accordingly, it is proposed to include the line rental and calls in a single price cap and to tighten the compliance control on the price cap to ensure that any increases in line rental are compensated for immediately by reductions in call charges to the extent that the final CPI – X formula permits.

(3) - from the point of view of competition, competitors in Ireland need some breathing room if they are to grow and in future provide increasingly sharp edged competition to eircom which is needed if users are to get what they need on a sustainable basis. Further, the changes in the treatment of line rental need to be matched by the implementation of the wholesale line rental product already mandated in the CPS decision (ODTR 02/64) this year. This is essential to enable competitors to continue to operate and expand in the very important CPS market. It is also the case that access network costing is under review at present. A series of glide paths may be needed to ensure that whatever the necessary adjustments may be, are introduced in a way that protects users and enables competition. It is also noted that partial private circuits which are available now in about half the other EU states, should substantially reduce the cost of provisioning leased lines for OLOs. These are also due to come into effect in the period of consultation and are also be key to operator margins.

The CPI – X range proposed at this stage – CPI – 0 to CPI – 2 and the removal of the sub-caps would provide some greater flexibility to eircom and the industry in terms of pricing, which I would wish to see put to good use in developing products and upgrading networks. Most particularly, eircom has the opportunity to tackle efficiency issues. As noted in page 23 of the consultation paper, it would be my intention that this price cap would run for 3 years, but may be reviewed earlier if special circumstances warrant. While the decision will be one for the future Commission rather than for the Director, it may be well to signal that failure to tackle this effectively could be such an issue.

Etain Doyle
Director of Telecommunications Regulation

1 INTRODUCTION

This document represents the third in a series of consultation documents published in relation to the Director of Telecommunications Regulation's ("The Director's") review of the price cap in telecommunications services in Ireland. It follows the document "Review of the Price Cap on Certain Telecommunications Services - Consultation II" that the Office of the Director of Telecommunications Regulation (the ODTR) published on 28 June 2002. The second consultation document sought views from interested parties on the Director's proposed methodology for setting a new price cap on certain eircom services.

The Director received comments on the second price cap consultation document from 5 organisations and would like to thank those respondents for their detailed comments, which have been studied by her office. The organisations that responded were:

- Association of Licensed Telecoms Operators (ALTO);
- Eircom;
- Esat BT;
- Telecommunications and Internet Federation (TIF);
- WorldCom.

The director is disappointed that there were no responses from consumer representatives, and readers should take into account that references to 'respondents' all refer to operators or operator representative groups. In taking her decisions, the Director has taken account of the need to protect consumers.

The responses are available for inspection at the ODTR's office, excluding confidential material that respondents specifically asked to be withheld.

2 BACKGROUND

2.1 Irish Legislation

The Office of the Director of Telecommunications Regulation (ODTR) was established in 1997 under the terms of the Telecommunications (Miscellaneous Provisions) Act 1996 "the Act" (SI No 34 of 1996). The Act transferred to the Director a range of powers previously held by the Minister, including the making of orders specifying a price cap in respect of one or more than one basket of telecommunications services after the expiration of a period of 5 years after such an order is made by the Minister, or earlier on receipt of a request from the Minister.

Under Section 7 of the Act, the Director may introduce a price cap in respect of a basket (or more than one basket) of telecommunications services where the Director believes that there is no competition or that the provider of those services holds a dominant position. Before doing so, there is a statutory requirement that she must give the provider to whom the Order is to apply two months to make representations on the terms of the proposed order.

The Minister introduced a tariff regulation order which came into force on 1 January 1997[1] and, following a request from the Minister, the Director reviewed that Order, introducing a modified Order which came into force on 1 January 2000.[2] This is the tariff regulation order that is currently in force. During the previous review of the price cap the Director indicated that she would intend to review the price cap again in three years.

Following this Consultation Paper the Director will issue a new Tariff Regulation Order to replace the Telecommunications Tariff Regulation (Modification) Order, 1999 (S.I. No 438 of 1999) and the Telecommunications Tariff Regulation Order, 1996 (S.I. No. 393 of 1996). This consultation is on the text of the proposed order.

A price cap is defined in the Act[3] as an overall limit on the price rises of one or more baskets of telecommunications services using the formula (ΔCPI – X) per cent where:

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[1] The Telecommunications Tariff Regulation Order, 1996 (S.I. No. 393 of 1996).

[2] The Telecommunications Tariff Regulation (Modification) order, 1999 (S.I. No. 438 of 1999).

[3] Telecommunications (Miscellaneous Provisions) Act 1996, Section 7.

"ΔCPI" means the annual percentage change in the Consumer Price Index;
"X" means the adjustment specified by the Director.

Table 1 below shows which services are included in the current price cap basket, together with the caps that apply to the whole basket and each individual service under the current tariff regulation order.

Table 1 – The Current Price Cap

Telecommunications Service	**Price Caps**
The Price Cap Basket[4]	CPI – 8%
Provision of telephone exchange lines and ISDN lines	CPI + 2%
Telephone exchange line and ISDN connection and takeover	CPI + 2%
Local dialled calls	CPI + 2%
Trunk dialled calls	CPI + 2%
Operator calls	CPI + 2%
Payphone calls	CPI + 2%
Directory enquiry calls	No sub cap
Lower quartile bill	CPI + 0%

The way in which the current price cap works can be explained through an example: the Central Statistics Office (CS0) reports that inflation, as measured by the CPI, in the year 2000 was 5% and the 'X' value in the formula ΔCPI – X is 8%. Following on from this, the capped operator would then be obliged to reduce prices for its basket of services overall in the year 2001, by 3% (calculated by 5% minus 8% = -3%).

Despite this required reduction overall, the capped operator is still allowed to increase prices for individual services within the basket eg local dialled calls has a sub-cap of CPI + 2%. Therefore from the same example, in the year 2001 the operator would be permitted to increase charges for local calls by 7% (5% + 2%) provided the overall basket fell by the 3% stated earlier.

4 The price cap basket includes all of the listed services except the lower quartile bill. This is capped separately.

The lower quartile (LQ) represents the 25% of residential customers who have the lowest bills. The lower quartile bill is a representative bill paid by the customer at the top end of these customers. For example, say the bill at the first quartile might be €80, the second quartile €65, the third quartile €50, and the fourth quartile (or lower quartile) €35. In this case the bill of the representative fourth or lower quartile customer is not permitted to increase in any year by more than CPI + 0% i.e. 5% + 0%. So from the above example, in the year 2001 the lower quartile bill would not be permitted to increase to more than €36.75 (calculated as $35*1.05 = €36.75). At present a sample of 4000 bills from residential customers in this lower quartile is used to calculate the representative bill.

A control on this notional bill was introduced by the Minister as part of the initial price cap on eircom as a means of protecting vulnerable users from potentially adverse effects of sudden price movements in the basket of services normally consumed by such customers. The LQ bill was regarded as representative of such a basket of services. In certain instances, parties other than vulnerable users benefit from such a control but in the absence of an acceptable alternative at the time of the last modification to the Tariff Regulation Order, the Director maintained the LQ control in order to meet the office's objective of protecting vulnerable users.

2.2 Developments in EU legislation

A new EU regulatory framework was adopted by the Council of the European Union on February 14th 2002 for the provision of electronic communications throughout the internal market. The new framework consists of a package of Directives which reflect technological and economic changes and which attempt to further harmonise the regulation of electronic communications:

- a common regulatory framework for electronic communications networks and services (Framework Directive);
- authorisation of electronic communications networks and services (Authorisation Directive);
- access to, and interconnection of, electronic communications networks and associated facilities (Access Directive);

- universal service and users' rights relating to electronic communications networks and services (Universal Service Directive);
- processing of personal data and the protection of privacy in the electronic communications sector (Data Protection Directive).

All Member States are now obliged to adapt national legislation implementing this 'telecoms package' by 24 July 2003 except for the Data Protection Directive which has to be implemented before 31 October 2003[5].

As with the current framework, a mechanism has been included which triggers various regulatory obligations on markets such as access and interconnection. In the new framework this mechanism, still called significant market power (SMP), closely relates to the competition law concept of dominance.

The current price cap review is being carried out under existing Irish legislation. Given that the notion of SMP under the new EU framework has been strongly aligned to the concept of dominance, the Director takes note of those aspects of the new Directives that relate to SMP, including any accompanying guidelines, or recommendations with respect to the issues of market definition and assessment of dominance. The ODTR does not expect there to be a conflict on this point between existing Irish legislation and the new EU directives.

2.3 Regulatory Developments

This section indicates the main relevant ODTR documents that have been published since the second price cap consultation paper was published on 28th June 2002. An outline of their contents in included in Appendix 1.

- Review of eircom's Access Reference Offer – Sub Loop Unbundling (ODTR 02/60)
- Report on the comparison of cost models used to compute interconnect conveyance rates charged by eircom (ODTR 02/61)
- CPS in Ireland 2002 (ODTR 02/64)

[5] The Data Protection Directive 2002/58/EC was published in the Official Journal on 31 July 2002 after the publication of the other directives.

- ODTR Response to Department of the Taoiseach Consultation "Towards Better Regulation" (ODTR 02/65)

- Payphone Access Charge Consultation Paper (ODTR 02/68 & ODTR 02/73)

- European Commission's Draft Recommendation on Relevant Product and Service Markets within the Electronic Communications sector: Joint response of ODTR and the Competition Authority (02/74)

- Interconnection Rates in the Irish Telecommunications Sector: Interim Rates to apply from 1 October 2001 to 31 March 2002 & 1 April 2002 to 31 March 2003 (02/85)

- "off book" Pricing Investigation in Respect of eircom's Provision of Voice Services (02/87)

3 RELEVANT MARKETS & THE LEVEL OF COMPETITION

3.1 The Second ODTR Price Cap Consultation Paper[6]

The ODTR's second consultation paper outlined the Director's view of the relevant economic markets for fixed line telephony services and her assessment of market power. To summarise, the Director found eircom to be dominant in a number of retail and wholesale markets and proposed setting a retail price cap for the following retail services: PSTN and ISDN rental, connection, and takeover; local calls; national calls; fixed to mobile calls; and operator assisted calls. The Director stated that she needed further information before she could make a decision in relation to public payphones.[7] In terms of timing, the intention was to move to the new price cap in January 2003.

For wholesale services, the Director suggested that there may be potential benefits in moving from the current price control approach, (annual price setting in arrears), to a price cap mechanism. However, she did not believe that such a change could happen within the timescale of the current price cap and would review the scope for using a price cap control for fixed line wholesale services in the latter half of 2003 or, more likely, in 2004.

The Director explained that she intended to focus on fixed line telephony services only and would review the level of competition in mobile markets in the coming months in preparation for the introduction of the new EU framework legislation next year.

3.2 Overview of consultation responses

All respondents advocated the adoption of the following broad regulatory strategy in relation to fixed line telephony services:

- ***relaxation of eircom's retail price cap***, either through complete removal or by capping eircom's access services only;
- ***use of a price cap mechanism for controlling wholesale service prices***; and

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[6] ODTR 02/57.

[7] The payphone market is discussed in Appendix 2.

- ***introduction of a price squeeze (or stack of costs) test,*** in addition to which some respondents also called for controls on the size of eircom's discounts.

Views on the treatment of mobiles was mixed. A couple of respondents were disappointed to see that there were no proposals to regulate mobile termination rates. One of these argued that current mobile termination rates in Ireland were significantly above long run incremental costs. However, another respondent argued that mobile rates should not be subject to a price cap.

In terms of timing, eircom was concerned that if the new price cap were introduced on 1st January 2003, the ODTR might not be able to properly take into account other regulatory initiatives that would have an important bearing on the price cap. The other regulatory initiatives raised by eircom were the introduction of wholesale line rental (in January 2003) along with changes to CPS notification and win-back procedures; the introduction of other new wholesale services such as partial private circuits and ancillary services; amendments to the payphone access charge; and IAG2 which is looking at the application of LRIC to the access network, as well as the introduction of the new EU regulatory framework. Another respondent also commented that changes to the current system would need to take into account the new EU legislative framework and the development of cost-based wholesale prices.

The Director has been able to take these issues into account in preparing this Consultation Paper and many of them will have been resolved by the time she takes a final decision on the price cap. The Director expects, for example, that a wholesale line rental product will already be in place by the time a new price cap comes into force.

3.3 Fixed line retail markets

3.3.1 Respondents' Views

Respondents' views on market definitions and assessment of market power were mixed. Two organisations stated that they were in broad agreement with the ODTR's assessment of market power but disagreed with the proposed remedy of retaining a retail price cap. They (and others) considered that a retail price cap on eircom was seriously restricting retail competition, and risked introducing systematic price squeezes. eircom however did not support the Director's definition of markets, and in particular argued that there was strong evidence that fixed and mobile services were in the same retail markets, in which case no operator could be considered dominant. eircom also considers that neither operator assisted calls, nor calls from public payphones should be included in a price cap, because the former face competition from directly dialled calls and latter are loss making. Eircom argued that the ODTR should focus its attention on incentive regulation of payphones at the wholesale level (through the payphone access charge). Eircom took the view that high and low capacity leased lines were in separate markets and that any future price controls should be focused on low capacity leased lines only. For fixed to mobile calls, two respondents argued that only eircom's retention rate should be price capped. One respondent argued that including the entire rate would give eircom greater scope to target its price reductions; whilst eircom argued that the mobile termination rate element should be excluded, because this rate was set by mobile operators.

3.3.2 Director's Proposals

The Director's proposals are presented in Table 3.1.

In summary, the Director proposes to make the following changes to the services included in the existing cap:

- removal of directory enquiry services
- addition of fixed to mobile calls

The Director's view on the level of competition in these markets, and those markets that will remain subject to the price cap, is set out in the second price cap consultation paper (ODTR 02/57) and, having considered the views of respondents, remains unchanged. In their response to that paper, one of eircom's main arguments was that there was evidence that fixed and mobile telephony services were in the same market. Having considered eircom's views, the Director remains of the view that fixed and mobile telephony services are not in the same market for the reasons set out in the June consultation paper. The Director's views on the level of competition in the payphone market, which were not concluded at the time of the second price cap consultation paper, are set out in Annex 2 to this consultation paper.

The Director proposes to include the retail price of fixed to mobile calls in the price cap, rather than just the retention element of that price, as suggested by eircom in their response to the previous consultation. This approach is consistent with the approach taken for other call services that are terminated on other networks, eg national calls terminating on another fixed line network, and it allows eircom more flexibility to adjust prices in order to meet any cap.

In document 02/57 the Director stated that she would consider the issue of whether or not large business customers should be excluded from the price cap basket given that there was evidence that eircom was facing some competitive pressures in this market, even though eircom remained dominant in the provision of services to SME customers. However, having reviewed the available evidence, including new evidence on the size of eircom's market share for these customers, in the light of the fragility of the market generally, the Director believes that eircom, with its high market share, remains dominant in the provision of services to *all* business customers.

Whilst the Director understands the calls that respondents to the previous consultation have made for the removal of the retail price cap and the introduction of a wholesale price cap, combined with margin squeeze tests, she believes that eircom's continuing dominance in some markets, and the consequent need to protect consumers, means that a retail price cap needs to stay in place for the present. However, the Director's proposals for a revised cap represent a significant relaxation of the constraints provided by the current price cap. The Director also recognises that there are attractions in wholesale price caps, and is inclined to see these to be an alternative to the existing regime for controlling interconnect and other wholesale prices, rather than as an alternative to a retail price cap. This issue is discussed further in the next section.

Table 3.1

Proposals on price control of PSTN and ISDN retail services

Service	Director's proposal
Fixed line access (provision of PSTN and ISDN lines, connection and takeover)	Eircom is dominant and price cap should be retained.
Local, national and fixed to mobile residential calls	Eircom is dominant and price cap should apply.
Local, national and fixed to mobile business calls	Eircom dominant for provision of services to small to medium sized businesses, competitive pressures not deemed to be sufficient to exclude large business from the price cap basket i.e. eircom remain dominant for the provision of these services to all business customers.
International residential calls	Eircom is dominant but the prospect of competition means that these calls should be kept out of price cap and monitored by the ODTR.
International business calls	Eircom dominant for provision of services to SMEs, but competitive pressures evident for provision of services to large companies. These calls should be kept out of price cap and monitored by the ODTR.
Operator Assisted calls	Eircom is dominant and price cap should be retained.
Directory Enquiry calls	This market is prospectively competitive and should not be subject to price cap controls.
Public Payphone calls	Eircom remains dominant in the provision of public payphones on public property and so the price cap should be retained. (See Appendix 2)

Question 1: Do respondents agree with the range of services that the Director proposes to include in the revised price cap?

3.4 Fixed line wholesale markets

3.4.1 Respondents' Views

As noted above, all respondents were strongly in favour of moving to a system of wholesale price caps instead of rate setting in arrears, and for such a move to take place sooner rather than later. A number of respondents saw limited scope for further reductions in interconnection rates through the LRIC process and argued that a price cap control system would bring additional certainty to the market (due to the high rate of legal challenge to annual LRIC rate setting).

Two organisations argued that finding eircom dominant in the access market must lead to similar conclusions for the provision of bitstream, local loop unbundling (LLU), leased lines and partial private circuits (ppc). Another respondent argued that the ODTR should require eircom to offer separate wholesale offers in each wholesale market, including bitstream, LLU and ppc. The same respondent also urged the ODTR to examine the transit market where eircom is the only provider with a national footprint but where eircom and OLOs have been unable to agree transit schedule; and wholesale leased lines where it argues that prices are significantly above cost.

Eircom however argued that it faces competition in the provision of transit and leased lines. Whilst the costs involved in fixed call origination and termination are sufficiently understood for the ODTR to be able to move to a price cap, eircom does not believe that any other wholesale price caps should be applied until a thorough analysis of the relevant wholesale core and access network cost structures has been completed. Finally, eircom considers that it is the only operator able to provide LLU services but for bitstream, there are a number of additional inputs (e.g. backhaul, modem banks and servers for ISP access) that other operators would be able to provide in competition with eircom.

3.4.2 Director's Approach

The Director's view on the level of competition in these markets is set out in the second price cap consultation paper (ODTR 02/57) and remains unchanged.

The Director recognises the arguments in favour of introducing price caps for wholesale services and considers that there may be potential benefits from shifting the approach to wholesale price control from the current mechanism to a price cap. However, the Director continues to believe that such a change could not happen within the timescale of the current price cap. The recent and ongoing shift from historic cost based prices to prices based on long run incremental costs in the core and access networks, has led to a significant decline in rates. There are still a number of issues for the Office to work through with eircom following this change which may lead to further changes in rates. Once these issues are worked through and wholesale rates have stabilised the Director considers that it may be appropriate to review the scope for changing to a wholesale price control based on a price cap.

Respondents to the second ODTR price cap consultation also advocated the use of margin or price squeeze tests by the ODTR. The Director agrees that such tests provide a useful contribution to ensuring that eircom are not setting retail prices in an anti-competitive manner, and the Director will continue to use such tests for this purpose. However these tests do not necessarily give an indication of whether eircom are charging excessive prices to retail customers – the Director believes that the retail price cap remains an important regulatory tool for preventing this.

4 PROPOSAL FOR A REVISED PRICE CAP

4.1 Objectives for the Price Cap

4.1.1 Respondents' Views

eircom welcomed the Director's recognition of the importance of investment and innovation when providing telecommunications services, and her indication that these are factors that she will take into account when seeking to ensure that the principal objectives of the price cap do not endanger the continuing provision of high quality telecommunications services to customers.

Another respondent, whilst agreeing with the objectives suggested that the order of importance of the three objectives should be firstly ensuring that prices charged by dominant operators are brought closer to competitive prices than they would be in the absence of price controls; secondly, to encourage the rapid development of effective competition in the supply of telecommunications services; and thirdly, ensuring, where appropriate, affordable access to universal services and in particular addressing the needs of specific vulnerable social groups.

4.1.2 Director's Proposals

The Director accepts the suggestion above with regard to the order of importance of the objectives. She notes that competitive prices includes the concept of efficiency, as effective competition drives out inefficiency. Otherwise, the principal objectives for the ODTR's price cap review remain unchanged from those set out in the second consultative document (ODTR 02/57):

- to ensure that the prices charged by dominant operators to all customers are brought closer to competitive prices than they would be in the absence of price controls;
- to encourage the rapid development of effective competition in the supply of telecommunications services;
- where appropriate to ensure affordable access to a universal service and in particular to address the needs of specific vulnerable social groups.

The Director will aim to meet these objectives in such a way that they:

- do not endanger the continuing provision of high quality telecommunications services to customers;
- do not distort or restrict competition, including the development of future competition;
- encourage efficient provision of telecommunications services;
- ensure that there is no discrimination in the treatment of undertakings in the market.

Question 2: Do respondents agree with the Director's objectives for the price cap?

4.2 Weighted Average Cost of Capital

4.2.1 Respondent's Views

One respondent agreed with the use of WACC and CAPM but emphasised the need to look at a variety of data sources and markets and not to focus too narrowly on Irish debt and equity markets. This respondent also requested that the ODTR make publicly available the methodology, calculations and data used to all players.

Eircom agreed with the use of WACC and CAPM, with the qualification that the latter could involve the use of a considerable amount of judgement. This is particularly true when estimating eircom's cost of capital where, for example, there is no immediate historical data to estimate eircom's beta.

4.2.2 The Director's Proposal

For the purposes of determining what an appropriate return on capital for eircom would be, the Director proposes to continue to use a derivation of eircom's weighted average cost of capital (WACC) where the cost of equity will continue to be calculated on the basis of the Capital Asset Pricing Model (CAPM). Therefore, the Director's current methodology remains broadly similar to her previous approach, although she has also considered the use of optimal gearing as an alternative to actual gearing on this occasion. The Director also notes that since D9/00 was issued, there have been many changes in the markets generally but in particular, in telecommunications markets. The Director has also taken into account the change in the ownership of eircom, the relative stability of interest rates and the falling corporate tax regime in Ireland. Such considerations has led to some changes in the parameters that make up the cost of capital. Taking all these factors into account, the Director proposes that eircom's pre-tax nominal cost of capital for use in the price cap and in future regulatory decisions should lie in the range 11% to 12%.

Question 3: Do respondents agree that eircom's pre-tax nominal cost of capital for regulatory purposes should be set in the range 11% to 12%? Which specific value do respondents think is most appropriate?

4.3 Start Date and Duration of Controls

4.3.1 Respondents' Views

This issue, along with the view of respondents to the previous consultation, was discussed in the second price cap consultation (ODTR 02/57).

Two further comments were made with regard to the start date in addition to those reported in the second consultation paper (ODTR 02/57). First, eircom was concerned that if the new price cap were introduced on 1st January 2003, the ODTR might not be able properly to take into account other regulatory initiatives that would have an important bearing on the price cap. The other regulatory initiatives raised by eircom were the introduction of wholesale line rental (in January 2003) along with changes to CPS notification and win-back procedures; the introduction of other new wholesale services such as partial private circuits and ancillary services; amendments to the payphone access charge; and IAG2 which is looking at the application of LRIC to the access network, as well as the introduction of the new EU regulatory framework. Second, another respondent also commented that changes to the current system would need to take into account the new EU legislative framework and the development of cost-based wholesale prices.

In addition to its comments included in the second consultation paper (ODTR 02/57), eircom recommended that whilst the maximum duration should be 5 years, a review mechanism after three years should also be included.

4.3.2 Director's Proposals

The Director now expects to introduce the new price control early in 2003. The timing will depend on the introduction of an appropriately priced wholesale line rental product (see discussion in "Director's Proposals: Main Basket Control" below).

As before the new Tariff Regulation Order will set the price cap for an indefinite period, leaving the Director discretion as to when the price cap is next to be reviewed. The Director, however recognises the benefits to the industry of limiting uncertainty. The Director envisages that changes in market conditions may be such that the next review of the price cap is likely to take place in three years. However, she notes that there is considerable uncertainty in the market at present and if conditions changed there may be need for a review at an earlier date.

Question 4: Do respondents agree with the approach the Director proposes to take with regard to the start date and duration of the price cap?

4.4 Carryover

Of those respondents that commented, all but two were in favour of carryover during a price cap control period, recognising the benefit of allowing the price-controlled operator a greater degree of pricing flexibility. The two respondents that were against carryover were concerned that this additional flexibility could give the price-controlled operator sufficient scope to abuse its market power. Only eircom was in favour of allowing carryover from one price cap regime to the next. One respondent commented that if the Director decides to exercise her discretionary approval of any carryover she should by some process consult with the industry.

The Director agrees with the majority of respondents that allowing the price capped operator a greater degree of pricing flexibility than a strict annual application of the price cap can bring benefits, particularly if carryover encourages the operator to bring forward additional price reductions. The Director is in favour of only allowing carryover on a *discretionary* rather than an *automatic* basis. A discretionary approach, whereby the operator has to seek agreement from the ODTR before making use of a carryover facility, should minimise any scope that the operator would otherwise have to use this facility to abuse its market power. The Director agrees that operators should not be able to carry over unmade price increases or additional price reductions from one price cap to the next. In the event of non-compliance with the cap the Director would have to consider the most appropriate course of action in that circumstance.

Question 5: Do respondents agree with the Director's views on carryover?

4.5 Level and Structure of the Control

4.5.1 Respondents' Views: The Financial Model

Three respondents commented on the proposed approach. Eircom stated that it was in broad agreement with the approach put forward by the ODTR for setting price controls but advocated the use of sensitivity tests on the assumptions employed and suggested that the ODTR needed to take into account substitution between services as relative prices change. Eircom also emphasised that the value of X would be critically affected by the inputs and assumptions used as well as the overall approach taken.

Another respondent emphasised the importance of building a flexible model, which could take into consideration different price cap structures and interdependencies amongst the inputs as well as knock-on effects on the prices of services outside the cap. This respondent requested further, more detailed information on the data to be used and on whether X would be set so that the return on capital employed would equal the cost of capital at the end of the price cap. The third respondent was concerned about how the ODTR would determine whether eircom was managing its operating costs and level of capital employed efficiently.

4.5.2 Respondents' Views: The Efficiency Study

Again, three organisations commented on this question. Eircom emphasised the need to compare the costs of similar services; to look at the sensitivity of results to variations in the key assumptions; and to take into account eircom's operating environment and the constraints it faces overall when considering the scope for future productivity improvements. Eircom added that the interpretation and application of the results would be extremely important.

Other issues raised by respondents included: the need to compare eircom with other operators that are efficient and that operate, as far as possible, in a similar environment; to take into account both the extent to which eircom may be inefficient in relation to the most efficient companies and the scope for even the most efficient companies to make further improvements over the next few years; to use the output of the results with care, in particular the length of time it might take for eircom to close any efficiency gap; and to ensure that any network efficiency gain assumptions incorporated into the retail price cap are reflected in wholesale price regulation.

4.5.3 Respondents' Views: Level and Structure of the Control

Most of those that commented supported the ODTR's proposed approach, one adding that international trends could also be considered. An alternative two-stage approach put forward for regulating wholesale prices was as follows:

- first adjust all prices so that they are equal to cost; and then
- apply a price cap to the cost of the service.

One respondent argued against the use of sub-caps. Two went so far as to argue that there should be no basket price cap for wholesale services and instead the services should all be subject to individual price caps.

4.5.4 Director's Proposals: Main Basket Control

The financial modelling work has been used to help the Director to gain an understanding of how different levels of cap and different price cap structures might affect prices for individual services and might affect eircom's revenues and rates of return under a range of different assumptions and scenarios. Modelling work of this nature cannot alone tell the Director what X should be, but it does contribute to informing the Director about the nature of some possible impacts of alternative levels of X and alternative structures for the cap. The comparative efficiency analysis undertaken was used to provide useful background on how eircom's efficiency might compare with the efficiency of a range of US LECs.

As set out in Section 2.1, the current main basket cap is CPI-8. Since this cap came into force at the beginning of 2000, line rental charges have increased from €15.73 per month (including VAT) to €19.60, with eircom taking advantage of the CPI+2 cap on line rental. Call charges, however, have fallen significantly, mainly through the reduction of the minimum fee from 14.60c per call (including VAT) to 6.35c per call. National call charges have also made an important contribution over the period to this overall decline with daytime charges falling from 12.69c to 8.17c by the end of 2002 and evening charges falling from 8.45c to 4.92c by the end of 2002 (all VAT inclusive prices). The Director believes that it is appropriate to change the X factor, having regard to current circumstances in Irish telecommunications markets, progress made to date and to the objective of encouraging effective competition. She considers that it is important to retain a retail price cap, however, given eircom's dominant position in the market.

A price cap will continue to maintain pressure on eircom to make efficiency improvements, where market pressures may not on their own be sufficiently strong. The telecommunications market is characterised by ever improving equipment, capable of delivering larger capacity at lower costs. Several other western European telecommunications companies are carrying very significant debt burdens and further major cost restructuring is likely, and indeed already underway. It is important that users of telecommunications services in Ireland are not disadvantaged by higher telecoms costs embedded in eircom's base costs.

eircom indicate that line rental costs are not covered by revenues on a fully allocated basis. It has indicated to the ODTR an intention to gradually increase line rental starting early in the next price cap period. The ODTR accepts the principle of rebalancing to ensure that efficient costs are recovered in an appropriate way. In the light of the need to protect consumers in a market where eircom is dominant, and to incentivise efficiency, it is proposed to include the line rental and calls in a single price cap, but a prerequisite is that an appropriately priced wholesale line rental product is available to enable the further development of competition in access services, and that there is a pattern of evolution that enables competition.

In the light of eircom's dominant position in the markets considered for price cap controls, and the need to protect customers from the dangers of excessive prices, the Director believes that a main basket control remains necessary, but that the "X" value should be significantly less than 8.

The Director considers that a main basket cap in the range CPI-2 to CPI-0 is most likely to meet her objectives, including protecting consumers and encouraging the rapid development of competition without endangering the continued provision of high quality telecommunication services. However, as discussed above, the Director believes that this new cap should not be introduced until an appropriately priced wholesale line rental product is available.

Question 6:

(a) Do respondents agree that the Director's objectives are likely to be met with a main basket cap in the range CPI-2 to CPI-0?

(b) Which specific cap do respondents believe will best meet the Director's objectives?

(c) Do respondents agree that the new cap should not be introduced until an appropriately priced wholesale line rental product is available?

4.5.5 Director's Proposals: Sub-caps

As set out in Section 2.1, each of the services in the current price cap has a sub-cap of CPI+2, with the exception of directory enquiry services, for which there is no sub-cap.[8]

[8] The Director proposes to remove directory enquiry services from the cap and to introduce fixed to mobile call services into the cap.

Having reviewed the level of competition in retail fixed line markets, and noting the views of respondents to previous price cap consultations, the Director believes that her objectives will be best met if all of the current sub caps are removed (whilst retaining the main basket cap). This will have the effect of relaxing the detailed constraints on eircom in respect of specific call markets while maintaining an overall control.

Question 7: Do respondents agree with the Director's proposal to remove all sub-caps, including line rental?

4.5.6 Director's Proposals: Lower Quartile Cap

Telecommunication services are a basic necessity and provision is made in the legislation for the protection of the vulnerable groups. The Director feels strongly that protections for vulnerable customers need to remain in place. These should aim to protect vulnerable customers from rapid increases in their overall bills. At present the lower quartile cap, first introduced in the 1996, protects low use customers from rapid increases in their overall bills. In response to an invitation from the ODTR, eircom are proposing an alternative to ensure that low users continue to be protected under the new price cap in a more focussed way.

In the context of the overall price cap framework, eircom has proposed a tariff scheme which would provide €5 worth of free national/local calls for €22.50 per month, with no line rental charge. If a customer exceeded the free call allowance, they would pay local/national call charges at double the standard rate, though in case their usage was so much higher than €5 worth that they would have been better off under the normal eircom terms, the size of their bill would be restricted to a normal bill plus a €1handling charge. The average participant bill would not exceed CPI-0, which is the cap on the current lower quartile bill.

Those customers wishing to benefit from CPS services provided by other operators or from eircom discount schemes would become ineligible for this scheme. The aim of the scheme would be to assist vulnerable users to limit increases in the size of their telephone bills where they have relatively low levels of use.

The Director proposes to maintain the existing lower quartile cap, in addition to the proposed new main basket cap, until such an alternative tariff scheme is available for consumers.

In addition to the changes to reflect the proposals discussed above the Director proposes to include in the Tariff Regulation Order the stipulation that eircom is required to comply with the price cap at all times through each relevant year. This measure is aimed at further protecting consumers through limiting eircom's flexibility to introduce any price increases early in the relevant year and delaying the corresponding price reductions that are necessary for compliance with the price cap until late in the year.

Question 8

(a) Do respondents believe that a vulnerable user tariff scheme could provide suitable protection for vulnerable users?

(b) Do respondents agree with the Director's proposed approach with regard to the lower quartile cap? At what level do respondents believe such a cap should be set?

(c) Do respondents agree that the proposed change in the compliance requirements is appropriate?

4.6 Draft Tariff Regulation Order

A draft Tariff Regulation Order that aims to reflect the Director's proposed changes to the price cap is attached at Appendix 3. Where the Director is consulting on a range, eg on the X value, and where reference is made to the starting date for the application of the revised Order, square brackets have been included in the text of the draft Order.[9] The relevant year for the purposes of the price cap calculation in the second schedule of the draft Order will be the twelve month period starting on the date that the new Order comes into force.

Question 9: Do respondents agree that the draft regulation order adequately reflects the Director's proposals for the price cap?

5 SUBMITTING COMMENTS

The consultation period will run until 10 January 2003 by which time written comments on any of the issues raised in this paper will be welcome. It would be appreciated if comments were referenced to the relevant question numbers from this document, because this would make the task of analysing responses more straightforward.

Following receipt of comments, the Director will issue a new or revised Tariff Regulation Order and publish an Information Notice describing the new price cap. The Information Notice will also summarise the responses to this Consultation. In order to promote further openness and transparency, the ODTR will publish the names of all respondents and make responses to the consultation available at her Offices.

The Director appreciates that respondents may wish to provide confidential information to ensure that their comments are meaningful. Where this is the case, respondents are requested to clearly identify confidential material and if possible to include it in a separate Annex to the response. Such information would be treated as strictly confidential.

All responses to this consultation should be clearly marked "Reference: ODTR Price Cap Consultation 02/96" and sent by post, facsimile or e-mail to:

Louise Power
Market Operations Division
ODTR
Irish Life Centre
Lower Abbey Street
Dublin 1

powerl @odtr.ie

[9] This also applies where reference to the Director is made since the Commission for Communications Regulation may be in place by the time this Order is made.

APPENDIX 1 Regulatory Developments

Regulatory developments since the publication of the second consultation paper are summarised in this Appendix.

Review of eircom's Access Reference Offer – Sub Loop Unbundling (ODTR 02/60)

In this Decision Notice, the ODTR directed amendments to eircom's sub loop unbundling prices, as published in eircom's Service Schedule 104, part v1.10 of eircom's Access Reference Offer. In recognition of the short timeframe in which Service Schedule 104 was developed, the Director also invited access seekers to provide the ODTR with their comments on the product description or other related issues by 19th July 2002. The Service Schedule is to be discussed at the next LLU Review Forum.

Report on the comparison of cost models used to compute interconnect conveyance rates charged by eircom (ODTR 02/61)

The ODTR undertook a comparison of the Industry bottom-up and eircom's top-down interconnection cost models for financial year ending 31st March 2000. The main purpose of the comparison was to identify areas requiring modification or revision to ensure compliance with Irish regulations. This report summarised the results of the comparison, including the changes made to both models, as well as the ODTR's subsequent review of eircom's RIO submissions.

CPS in Ireland 2002 (ODTR 02/64)

In this paper, the ODTR summarised the responses to "Carrier Pre-Selection in Ireland" (ODTR 02/47), which discussed a number of potential changes to CPS in Ireland. The Director outlined her position on the issues raised and directed eircom to provide a range of "Single Billing for CPS by CPS operators" products. Eircom is required to produce detailed proposals by end September 2002 and the products themselves are to be introduced by the end of January 2003. These proposals have been submitted and are currently being reviewed by the office. Eircom is also directed to provide a range of different wholesale ancillary services; and a dedicated OLO complaint and fault handling facility for CPS customers. All licensed operators are directed not to use Loss Notification for the purposes of win-back from the date of the notice. In view of the range of disparate views and opinions on the inclusion of additional calls in the CPS "All calls" option, the Director intends to give the issue further consideration and the ODTR will include it as an agenda item for both the CPS Committee and the 1892 Working Group. The Director has also asked the CPS Committee to look at additional concerns voiced in relation to the Code of Practice and at issues relating to bad debt and Customer Authorisation Forms (CAFs).

ODTR Response to Department of the Taoiseach Consultation "Towards Better Regulation" (ODTR 02/65)

The ODTR's response stated that Irish citizens were entitled to fair, clear, efficient, helpful and effective delivery of public services. Competition is seen as the key to providing customers with price, choice and quality of service. Against this background, the ODTR considers that the two key regulatory issues in relation to consumers are: first, ensuring that there is adequate information and that effective redress procedures are in place; and, secondly, ensuring that where competition is not effective, regulation is used to promote efficiency and maintain quality of service.

Payphone Access Charge Consultation Paper (ODTR 02/68 & ODTR 02/73)

In 02/68, the Director launched a public consultation on the calculation of payphone access charges. This followed concerns raised by a number of operators in relation to the approach outlined by the ODTR in Information Notice 00/33. In 02/73, Decision Notice D15/02, the ODTR set out its position with regard to its proposed methodology of calculating the Payphone Access Charge. Direction 3.1 of this document stated that effective from the 1st October 2002 to 31st March 2003, eircom's payphone access charge would be based on forecast costs and projected volumes. To assist the ODTR in establishing an appropriate charge eircom provided the ODTR with a price submission for the period from 1 October 2002 to 31 March 2003. The ODTR undertook a detailed review of that submission and recommended that eircom make a number of amendments. A summary of details on the new access charge can be viewed in ODTR document 02/75.

European Commission's Draft Recommendation on Relevant Product and Service Markets within the Electronic Communications sector: Joint response of ODTR and the Competition Authority (02/74)

Following discussion with the Competition Authority the ODTR and the CA agreed on a joint response to the European Commission's consultation on its '*Draft Recommendation on Relevant Product and Service Markets within the electronic communications sector*'. The response dealt with comments on the methodology and approach used by the Commission, future revisions to the Recommendation, issues pertaining to market segmentation and also made reference to potential candidate markets for inclusion in the Recommendation.

Interconnection Rates in the Irish Telecommunications Sector: Interim Rates to apply from 1 October 2001 to 31 March 2002 & 1 April 2002 to 31 March 2003 (02/85)

The Director considers that the rate changes as outlined in this document published on October 2nd, 2002 should take immediate effect and should be applied retrospectively and settlement of arrears arising from the movement in these new RIO rates should be settled within 45 days

"off book" Pricing Investigation in Respect of eircom's Provision of Voice Services (02/87)

Following an investigation by the ODTR in to off book pricing by eircom and price compliance generally, the Office has issued a Decision Notice in respect of eircom's non-compliance with its legal obligations under the Voice Telephony Regulations in relation to pricing and discounts. eircom's discount schemes were not applied in a manner consistent with the published terms and conditions of those schemes. To ensure that there is no recurrence of such practices the ODTR has intervened to direct eircom to undertake specific measures to bring the matter to an immediate resolution. The ODTR will monitor the situation closely and reserves the right to take further steps on the matter in future if it deems such action to be necessary.

APPENDIX 2 The Director's Views on Competition in the Payphone Market

In the second consultation paper (ODTR 02/57), the Director stated that she had not yet reached any conclusions on the degree of competition in the payphone market. Since then further market evidence has been collected and the Director has concluded that *eircom* remains dominant in the provision of public payphones on public property.

The Director's analysis of competition in the payphone market considered the degree of competition in two categories of public payphone service:

- Public payphones on private land (where the payphone operator sets call charges and collects revenues and maintains the apparatus, and where the payphone is on private land, e.g. in a shopping centre or hospital);
- Public payphones on public land (where the payphone operator sets call charges and collects revenues and maintains the apparatus, and where the payphone is on public land, e.g. on the street).

The Director considers that *eircom* is not dominant in the supply of public payphones on private land. Entry in to this category of payphone services is relatively easy, where there is sufficient demand, and this is where other operators have focussed their activities. The widespread uptake of mobile phones may also constrain the prices of public payphones (on both public and private land), and may explain the fall in revenues from public payphones, though there is no specific evidence of this link.

In the area of public payphones on public land however the Director considers that *eircom* remains dominant. *eircom* has a large share of the public payphones on public land and further entry into this sector is likely to remain limited. The Director considered other factors which may mitigate *eircom's* dominance of this sector such as the use of mobile phones. However, she concluded that at the moment there is insufficient evidence of competition in this sector.

APPENDIX 3 Draft Tariff Regulation Order

[I, ETAIN DOYLE, Director of Telecommunications Regulation], in exercise of the powers conferred on me by section 7(2) of the Telecommunications (Miscellaneous Provisions) Act, 1996 (No. 34 of 1996), as extended by Regulation 8(3) and (8) of the European Communities (Voice Telephony and Universal Service) Regulations, 1999 (S.I. No. 71 of 1999), hereby make the following Order:

1. (1) This Order may be cited as the Telecommunications Tariff Regulation Order, 2002.

   (2) This Order shall come into operation on the [ ] day of [month] , 2003.

   (3) Telecommunications Tariff Regulation (Modification) Order, 1999 (S.I No. 438 of 1999) is revoked as and from [date], 2003.

   (4) Telecommunications Tariff Regulation Order, 1996 (S.I No. 393 of 1996) is revoked as and from [date], 2003.

2. (1) In this Order—

"the Act of 1996" means the Telecommunications (Miscellaneous Provisions) Act, 1996 (No. 34 of 1996);

"basket of telecommunications services" has the meaning assigned to it by Article 3;

"the company" means *eircom* Limited.;

"connection and takeover charge" means a charge made by the company for the connection of a customer to the company's networks or to services on the company's networks;

["the Director" means the director of Telecommunications Regulation appointed under the Act of 1996;]

“fixed to mobile calls” means calls from the public switched telecommunications network which supports the transfer between network termination points at fixed locations of speech and 3,1 kHz bandwidth audio information, to support *inter alia*: voice telephony, to a public telephone network where the network termination points are not at fixed locations;

"Integrated Services Digital Network" means a network whereby telephone calls are made over switched end to end digital transmission paths;

“light user scheme” means any discount scheme which has been approved as such by the Director and which is aimed at certain residential users whose bills for telecommunications services are, in the opinion of the Director, following consultation with the company, low in monetary terms;

"local dialled call" means a dialled call made from a telephone exchange line in the State to a telephone exchange line in the same telephone group or to a telephone exchange line in another telephone group in the State or in Northern Ireland which is regarded as adjacent to the first-mentioned telephone group;

"lower quartile bill" means a notional bill for telecommunications services (including telecommunications services other than those referred to in the First Schedule) which stands specified by the Director, following consultation with the company and is based on a representative sample of bills imposing charges for a specified period on residential users of such services;

"operator call" means a call which is completed with the assistance of an operator of the company for which a charge is made by the company;

"payphone call" means a call originating from a public pay telephone owned by the company on public property;

"the provision of Integrated Services Digital Network lines" means a service for which a recurring charge is made by the company for the availability of Integrated Services Digital Network lines and does not include connection and takeover charges;

"the provision of telephone exchange lines" means a service for which a recurring charge is made by the company for the availability of telephone exchange lines and does not include connection and takeover charges;

"relevant year" means any period of 12 months beginning on [date];

"trunk dialled call" means a dialled call made from a telephone exchange line in the State to a telephone exchange line in another telephone group in the State or in Northern Ireland which is not a local dialled call;

"vulnerable user scheme" means any tariff scheme which has been approved as such by the Director and which is aimed at vulnerable groups of users, within the meaning of Regulation 8(2) of the European Communities (Voice Telephony and Universal Service) Regulations, 1999 (S.I. No. 71 of 1999);

and any cognate words shall be construed accordingly.

(2) In this Order—

(a) a reference to an article or schedule is to an article of, or Schedule to, this Order unless it is indicated that reference to some other Order is intended;

(b) a reference to a sub-article is to the sub-article of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

3. The telecommunications services set out in the First Schedule to this Order shall be the basket of telecommunications services specified for the purposes of this Order and "basket of telecommunications services" shall be construed accordingly.

4. (1) The Director hereby specifies ΔCPI – [0 to 2] % to be the price cap in respect of the basket of telecommunications services to which this Order applies.

   (2) Without prejudice to sub-article (1) of this Article, the following adjustment to the price cap formula shall apply until a vulnerable or light user scheme is effective: in respect of the lower quartile bill the price cap shall be ΔCPI + 0 %.

5. (1) The restrictions and adjustments to the price cap formula, set out in Part I of the Second Schedule to this Order, shall be applied for the purpose of determining compliance with the price cap specified in Article 4. The Director hereby specifies that compliance shall be at all times throughout the relevant year.

(2) The restrictions and adjustments to the price cap formula, set out in Part 2 of the Second Schedule to this Order, shall be applied for the purpose of determining compliance with the adjustment to the price cap specified in Article 4(2). The Director hereby specifies that compliance shall be at all times throughout the relevant year.

6. Notwithstanding Article 4 of this Order, the Director may make the following adjustment to the price cap formula: to the extent that the company has made, during any relevant year, a reduction in charges that is greater than the reduction required by sub-article (1) of that Article, the difference may be taken into account by the Director in applying the said sub-article (1) in the relevant years subsequent to the relevant year in which the reductions were made.

FIRST SCHEDULE

The provision of telephone exchange lines and Integrated Services Digital Network lines;

Telephone exchange line and Integrated Services Digital Network connection and take-over;

Local dialled calls;

Trunk dialled calls;

Operator calls;

Payphone calls;

Fixed to mobile calls.

SECOND SCHEDULE

Part 1

$$\sum_{i=1}^{n} \Delta Pi \quad * \quad (Ri \;/\; Rt)$$

Where,

n is the total number of services in the basket of telecommunications services;

ΔPi is the percentage change in the tariff (before discounts, except for any light user scheme or vulnerable user scheme) for telecommunications service "i" calculated in accordance with a method to be specified by the Director after consultation with the company from either:

(i) the base of the tariff pertaining at the end of the year preceding the relevant year, or

(ii) on the basis of a representative sample (approved of by the Director after consultation with the company) of call records for the service "i" provided by the company;

Ri is the total revenue before discounts for the telecommunications service "i" in the financial year ending on or about 31 March in the relevant year;

Rt is the overall total revenue before discounts in the financial year ending on or about 31 March in the relevant year for all telecommunications services in the basket.

Part 2

$$\sum^{n}_{i=1} \Delta Pi \quad * \quad (LRi \ / \ LRt)$$

Where,

n is the total number of services in the basket of telecommunications services;

ΔPi is the percentage change in tariff (before discounts, except for any light user scheme or vulnerable user scheme) for telecommunications service "i" calculated in accordance with a method to be specified by the Director after consultation with the company from either:

(i) the base of the tariff pertaining at the end of the year preceding the relevant year, or

(ii) on the basis of a representative sample (approved of by the Director after consultation with the company) of call records for the service "i" provided by the company;

LRi is the amount charged for the telecommunications service "i" in the lower quartile bill in the financial year ending on or about 31 March in the relevant year;

LRt is the overall total charge for all telecommunications services in the lower quartile bill in the financial year ending on or about 31 March in the relevant year.

GIVEN under my hand,

this day of [month] 2003.

[ETAIN DOYLE.

Director of Telecommunications Regulation]