Commission for
Communications Regulation

Decision Notice

Review of the Price Cap on Certain Telecommunications Services

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1 Foreword

On behalf of ComReg, I am pleased to announce the conclusion of our review of the Price Cap, following a process involving three Consultation Papers issued during the course of 2002.

In setting the level of the price cap on eircom we have sought to find the best balance between the interests of consumers and the long term sustainability of the industry. We have concluded that a price cap of CPI-0 will best achieve this balance.

During the period since the current price cap of CPI-8% was introduced at the beginning of 2000, prices for services protected by the cap have fallen by over 20% in real terms. By allowing average prices to rise with inflation, the new cap of CPI-0 will ensure that those real gains are maintained over the next three years. As noted in our third consultation paper, Eircom has indicated an intention to gradually increase line rental, starting soon after the new price cap comes into force. In line with European and Irish legislation, ComReg accepts the principle of rebalancing to ensure that efficient costs are recovered in an appropriate way. The price cap will mean that if there are any significant increases in line rental, they will need to be accompanied by reductions in call prices.

Without further measures to protect vulnerable customers, the impact of this rebalancing of line rental and call charges, would fall heavily on those with low bills. In order to minimise these effects, the CPI-0 cap on the notional lower quartile bill will remain in place until a suitable alternative tariff scheme is agreed between eircom and ComReg. An outline of the main features of such a scheme was set out for consultation in our third price cap consultation paper. Discussions on the detail of such a scheme will be held with eircom in the coming months, and together with consultation responses already received on this matter, will form the basis for a decision by the Commission on whether or not to remove the lower quartile cap.

As well as providing adequate protection for consumers, ComReg believes that the relaxation of the cap from CPI-8 to CPI-0 will contribute to enabling competition in price-capped services to consolidate and grow. However, there are many factors that affect the ability of other operators to compete with a dominant incumbent such as eircom. These include the level of interconnect charges, the availability of reasonably priced wholesale equivalents to eircom's retail products and the absence of below cost selling of those retail products. ComReg will be continuing its work in these areas over the coming months. Our work programme includes consultation papers on interconnection charging principles and on the way that retail prices will be regulated (other than through the price cap) under the new European legislation, which is expected to be incorporated into Irish law later this year. A further key development will be the availability of wholesale line rental products by the end of April that should enable eircom's competitors in the CPS market to provide single bills to their customers, including both call charges and line rental.

As part of the price cap review process, ComReg has also been assessing eircom's cost of capital. In addition to being useful as an input into the price cap decision, the cost of capital is used in a wide range of regulatory decisions. ComReg has decided that for all relevant regulatory purposes, a figure based on a pre-tax nominal cost of capital of 11.5% will be used. This replaces the 12% cost of capital that is currently used.

ComReg's concerns about eircom's level of efficiency remain. In the longer run competitive forces will force eircom to improve its levels of efficiency. In the mean time, the price cap provides eircom with an additional incentive to better manage its costs since it has an opportunity to profit from future improvements in efficiency.

Etain Doyle,
Chairperson, Commission for Communications Regulation.

2 Introduction

This document follows on from the final consultation paper "Review of the Price Cap on Certain Telecommunications Services – Consultation III" issued on November 10, 2003.

This final decision has been taken following a lengthy and continuous working process over the last 12-14 months of extensive data gathering, quantitative and qualitative analysis where due consideration was given to the full range of issues covered in the three consultations.

The Director has received comments from 17 respondents over the past 3 consultations. All responses to each of the consultations were helpful in informing the Commission on the market reaction to the existing cap and on the nature and structure of the new control.

- Association of Licensed Telecoms Operators (Alto) (II & III);
- Conduit Europe (I);
- David Campbell, Co Dublin (III);
- Digifone MMO2 (I & III);
- Dublin Chamber of Commerce (III);
- Eircom (I, II & III);
- Nevada Tele.com/Energis (I, III);
- Esat Telecommunications (joint submission with Ocean Telecommunications) Esat BT; (I, II & III);
- IBEC Telecommunications and Internet Federation (TIF) (I, II & III);
- IBEC Telecommunications User Group (TUG) (III);
- Meteor (III);
- NTL (I);
- Swiftcall (I);
- Vodafone (I); and
- Worldcom (I, II & III).

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

3 Background

3.1 Legislation

The Commission for Communications Regulation (ComReg) was formed on December 1 2002 in accordance with section 6 of the Communications Regulation Act, 2002. Section 9 of the same Act transferred to the Commission all the functions of the Director of Telecommunications Regulation.

The Office of the Director of Telecommunications Regulations (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 could 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 at that time indicated that she would intend to review the price cap again in three years.

On foot of this Decision Notice the Commission, on 4 February 2003, 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).

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:

"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.

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.

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.

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

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

Order, the Director maintained the LQ control in order to meet the office's objective of protecting vulnerable users.

3.2 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 adopt 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 Commission 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 Commission does not expect there to be a conflict on this point between existing Irish legislation and the new EU directives.

[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.

3.3 Regulatory Developments

This section indicates the main relevant ODTR/ComReg documents that have been published since the third price cap consultation paper was published on 10th November 2002. An outline of their contents are included in Appendix 2.

- Measuring Licensed Operators Performance programme Issue 3: Business and Residential Market Results January – June 2002 (ODTR 02/103)

- Irish Communications Market Review (ODTR 02/106)

- D17/02 Implementation of Partial Private Circuits (02/110R)

- The Future Framework for Regulation of Universal Service in the Irish Market (02/116)

- Implementation of Partial Private Circuits – Pricing Principles and Structure (02/118)

- Decision Notice D1/03 – Implementation of Flat Rate Internet Access Call Origination – FRIACO (03/02)

- ComReg response to draft Ministerial Direction of 2/12/2002 (03/04)

- Decision Notice D2/03 – Implementation of CPS Single Billing Products: Wholesale Line Rental (SB-WLR), Agency Rebilling (SB-AR), Wholesale Ancillary Services (WAS)

4 Responses to Consultation and Commission's Position

In Consultation III, respondents were asked nine questions on issues ranging from the services to be included in the main basket to the actual level of the cap. Each of these issues will be dealt with in this section in the order as they appeared in the consultation. In each case a summary of the respondent's views is presented together with the final position of the Commission. There is also one Direction pertaining to eircom's cost of capital (WACC).

4.1 Price Control on PSTN and ISDN retail services

4.1.1 Summary of Consultation Issues

The last consultation proposed the inclusion and exclusion of the following services in the retail price cap basket:

Service	Include/Exclude
Fixed line access (provision of PSTN and ISDN lines, connection and takeover)	Include
Local, National and Fixed to Mobile Calls (Business and Residential)	Include
Operator Assisted Calls	Include
Public Payphone Calls	Include
International Calls (Business and Residential)	Exclude
Directory Enquiry Calls	Exclude

Reasons for the proposed inclusion/exclusion of services were discussed in section 3.3.2 of the consultation. Respondents to the third consultation were then asked:

Q. 1.	**Do respondents agree with the range of services that the Director proposes to include in the revised price cap?**

4.1.2 Views of Respondents

In general the majority of respondents agreed with the inclusion of rental, connections, local and national call services in the basket. One respondent felt that the national calls market was prospectively competitive to the same degree as international calls and should be excluded. Another believed that operator assisted calls should not be capped, while two respondents disagreed with the inclusion of payphone calls in the cap.

A number of respondents felt that either fixed to mobile calls should not be capped at all or in the event that a price control on the service is to be introduced, it should only be on eircom's retention rate. This view was based on the fact that eircom do not control the mobile termination element of this service's price. A similar number of respondents reiterated calls for the removal of retail price caps and price capping of wholesale services while some endorsed the use of transparent margin squeeze tests.

4.1.3 Commission's Position

The Commission notes respondents' views on price capping wholesale services but must maintain the office's position in relation to this matter in the context of the current review as outlined in section 5.2 of Consultation II. The current work in progress and timing issues precludes giving consideration to wholesale price capping as part of this review.

The Commission understands the views expressed in relation to controlling the whole price of fixed to mobile calls as opposed to eircom's retention on such calls. However, the Commission's proposed approach is consistent with the treatment of other off-network calls in the price cap basket. The Commission believes that this price needs to be regulated and that the price cap is the most appropriate way of regulating it.

One respondent expressed concerns that price capping payphone calls could result in eircom removing payphone boxes. The Commission believes that the Universal Service Obligations are the most appropriate mechanism for regulating the number of payphone boxes. This, in addition to allowing a reasonable rate of return on capped services, should alleviate any concerns in this regard. ComReg is consulting separately on universal service obligations (see ComReg 02/116).

Having reviewed all available evidence and responses to each of the price cap consultations the Commission sees no reason to alter its opinion as expressed in the last consultation with respect to what services should be included in the new retail price cap basket. The complete list of the services to be capped shall be as outlined in the box below.

Services to be included:

The provision of telephone exchange lines and ISDN lines (Rental)

Telephone exchange line and ISDN connection and takeover (Connection)

Local Dialled Calls

Trunk Dialled Calls (National)

Operator Calls

Payphone Calls

Fixed to Mobile Calls

4.2 Objectives for the Price Cap

4.2.1 Objectives as proposed in the third consultation

The Director proposed that the principal objectives of the office for the price cap should be, in order of importance:

- 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.

These were proposed to be met 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.

Respondents were asked if they agreed with this slightly revised set of objectives

Q. 2. Do respondents agree with the Director's objectives for the price cap?

4.2.2 Views of Respondents

All respondents that answered this question directly, agreed with the objectives of the office as outlined above. One respondent felt that the overriding concern should be the development of a sustainable telecom's sector in Ireland while another suggested that the main priority should be that prices are charged at close to the competitive rates.

4.2.3 Commission's Position

The Commission is satisfied that the set of objectives as proposed represents the best checklist of criterion as a basis for guidance in setting a price cap.

4.3 Weighted Average Cost of Capital

4.3.1 WACC and CAPM

There was broad consensus that WACC and CAPM should continue to be used by the office as a basis for determining what an appropriate return on capital for eircom would be. The office has analysed all available data on each of the parameters in the formulae and on this basis had proposed a range of 11-12% for the pre-tax nominal cost of capital.

Q. 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?

4.3.2 Views of Respondents

There were mixed views at both ends of the spectrum on the issue. One respondent felt that eircom's true cost of capital lay in a range of 12-15% while another felt that a WACC of this order granted eircom a cost of capital premium on its competitors. Of the five respondents that answered this question directly, two felt that it was an appropriate range, one of which suggested the figure should be 11% given the recent decline in interest rates and corporate tax. Another felt that the recent decline in corporate tax should not be taken into account because this ran counter to one of the Governments objectives when introducing the new tax regime i.e. to encourage investment.

4.3.3 Commission's Position

The Commission is satisfied that the appropriate cost of capital should lie in the range as proposed. The Commission do not agree that, in setting the cost of capital, reductions in the tax rate should be ignored. The calculation of WACC has followed widely accepted standard approaches for this well established concept, which do take account of changes in the tax rate. The Commission's approach allows eircom to earn a reasonable rate of return on its investment in price-capped services. The lower corporate tax rate for 2003 onwards means that eircom can achieve a higher post tax rate of return on a lower level of pre-tax profit.

The range that was proposed for the WACC has already taken account of the fact that potentially, the detrimental effects of setting a cost of capital that is too low could outweigh those of a cost of capital that is set too high. For these reasons the Commission feels that a specific value for the cost of capital that is most appropriate is the mid-point of the proposed range, 11.5%.

Decision 4.3

An eircom nominal pre-tax cost of capital of 11.5% will be used in eircom's separated accounts for 2003/4, and as the basis for allowing eircom an adequate rate of return for regulatory purposes, including the setting of wholesale and interconnect rates, until the Commission decides otherwise. This supersedes the 12% figure set out in ODTR Decision Notice D9/00.

4.4 Start and Duration of the Control

In Consultation III the office indicated that it intended to introduce the new price cap in early 2003. It was suggested at that time that this depended on the introduction of an appropriately priced wholesale line rental product. It was also the opinion of the office that the cap should run for an indefinite period but at this time another review would be envisaged after three years. In the event that there was evidence that conditions had changed in the market before this time the office may need to review the cap before this period.

Q. 4.	**Do respondents agree with the approach the Director proposes to take with regard to the start and duration of the price cap?**

4.4.1 Views of Respondents

Two respondents felt that the introduction of a new cap should not take place until a proven wholesale line rental product was operating in the market. One respondent believed the new cap should be introduced as soon as possible while another suggested there should be no link between the retail price cap and a wholesale line rental product.

With respect to the Duration of the cap two respondents agreed that the cap should be reviewed after a period of three years, one of which felt the cap should not be extended beyond five years. The majority of respondents did not comment on the duration of the cap.

4.4.2 Commission's View

As stated in the previous consultation, the Commission are satisfied that the new price cap should be introduced early in 2003. At the time of the last consultation it was anticipated that a wholesale line rental product would be available on the market in January 2003. However, the process of developing and agreeing on terms and conditions of this product is taking considerably longer than expected. The product is now expected to be available at the end of April, with the capability of handling quantities of orders increasing over the following months. In the light of potential impacts on eircom, customers, and the development of competition, the Commission believes that the most appropriate approach now is to introduce the price cap immediately. It is also worth noting in this regard that the new cap will include the cap on the lower quartile bill until such time as the Commission accepts an appropriate alternative tariff scheme (see 4.8 below). The Commission at this stage consider that it would be appropriate to review the new cap after a three year period. This is without prejudice to the rights and obligations of ComReg to regulate the market as appropriate in accordance with all relevant legislation.

4.5 Carryover

In Consultation III the office indicated that it preferred a process whereby carryover should be allowed on a discretionary rather than automatic basis. The office in general supported the view that allowing carryover granted the regulated operator greater flexibility that could be to the benefit of consumers. It also was of the opinion that carryover of unmade increases or additional price reductions from one price cap to the next should not be allowed.

Q. 5. Do respondents agree with the Director's views on carryover?

4.5.1 Views of Respondents

Views ranged from those that felt carryover should be automatic, to those that felt it should be discretionary or not permitted at all. One respondent felt that allowing carryover would give eircom the flexibility to abuse its market power while two respondents commented only that carryover should not be permitted from one cap to the next. It was apparent from some of the responses that the proposal on carryover may not have been entirely clear. One respondent specifically referred to the fact that it was not clear what the Commission's position would be in relation to carryover where eircom has not made any reductions but instead have made price increases that were less than allowed under the cap.

4.5.2 Commission's position

It is ComReg's opinion that unmade price increases as well as price reductions should be considered in the context of what should constitute an element of carryover. Where eircom does not make price increases to the permitted level for the cap of CPI-X, this is effectively a real price reduction. Although the draft Tariff Regulation Order does make allowance for carryover of such reductions, the Commission notes from the consultation responses that this is not explicit and has added the highlighted text to article 6 of the amended order to address this issue of clarity, as follows:

"Notwithstanding Article 4 of this Order, the Commission may make the following adjustment to the price cap formula: to the extent that a company has made, during any relevant year, a reduction in charges that is greater than the reduction required **or an increase in charges that is less than the increase that is permitted** by sub-article (1) of that Article, the difference may be taken into account by the Commission in applying the said sub-article (1) in the relevant years subsequent to the relevant year in which the reduction was made **or the allowable increase was not availed of**."

In relation to the issue of whether or not carryover from one price cap to the next should be allowed the Commission's position remains unchanged from the view expressed in the consultation document i.e. it should not be permitted. The Commission also believes allowing carryover on a discretionary rather than automatic basis will defuse concerns that some respondents have expressed in relation to the flexibility that the provision of carryover affords eircom.

4.6 Level and Structure of Control

As pointed out in the last consultation, the financial modelling work has been useful in terms of assessing how different levels of cap and structures of the same might affect prices for individual services and how these might affect eircom's revenues and rates of return. However, it was pointed out that while such modelling work can contribute to the process of developing an informed opinion, it is not in itself a means to an end. This is also true of the efficiency study which was commissioned by the office to allow comparisons to be made against the efficiency of a wide range of US LECs. The Director was of the opinion that while the level of X probably needed to be relaxed it was still important that a retail price control on eircom was maintained where it held a dominant position in the provision of a service. A cap in the range of CPI-0 to CPI-2 was proposed as one which would most likely meet the objectives of the office.

Q. 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 be 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?**

4.6.1 Views of Respondents

Again, a wide range of views were expressed from maintaining X at its current level to introducing a price cap with a positive level of X, to a number of specific points in between this range. Respondents also re-echoed their views with respect to wholesale line rental as outlined in 4.5.1 above.

4.6.2 Commission's Position

The Commission sees no reason to alter its views on setting a cap in the proposed range of CPI -2 to CPI -0 based on the responses to this consultation. In forming this opinion the Commission has also taken account of developments in the market and the economy as a whole since Consultation III was issued e.g. eircom reduced national call charges in December and the Government's proposed corporate tax reduction was introduced in the last budget. The Commission are of the view that the cap that is most likely to meet its objectives is CPI-0, which will allow average prices for the relevant basket of services to rise in line with inflation.

4.7 Sub Caps

In Consultation III the office indicated that it intended to remove all sub caps from services in the new price cap.

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

4.7.1 Views of Respondents

Although there was wide acceptance for the removal of sub-caps in the previous consultation, a number of respondents this time expressed concern about the liberty the removal of sub caps would afford eircom. One respondent believed that there should be a provision for the reintroduction of sub caps in the event eircom abused this additional flexibility. Another respondent felt that the lower quartile cap should be removed in addition to all other sub caps. One respondent again raised the issue of transparent stack testing in relation to this subject.

4.7.2 Commission's Position

While the Commission appreciates the concerns about the greater flexibility afforded to eircom in terms of rebalancing, it is confident that the overall cap coupled to ComReg continuous monitoring of retail prices should act as a sufficient deterrent to anti-competitive practices. In this regard the Commission is also satisfied that under existing voice telephony regulations and the proposed new framework directive, it will have the ability to intervene in USO designated markets where a problem might be perceived. Such an intervention might take place, for instance, if tariffs departed from those provided under normal conditions or where eircom had a requirement to maintain affordability, in markets such as fixed access or public payphones. In consequence, the Commission has decided to remove all sub-caps (for position on the lower quartile cap see below).

4.8 Vulnerable Users Scheme and the Lower Quartile Bill

As stated in the consultation it was suggested that some form of protection should be maintained in the new cap for vulnerable customers. The Commission has given eircom an opportunity to initiate a vulnerable user's scheme and while there is some visibility as to what this might look like, full details pertaining to the same have yet to be finalised. Consequently, it was proposed that the office retain the lower quartile requirement until such time as a suitable vulnerable user's scheme is put in place. In addition respondents were asked their views on requiring eircom to comply with the new price cap on a constant rather than just at the end of the year basis.

Q. 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?

4.8.1 Views of Respondents

A number of respondents have expressed caution about the use of a vulnerable user scheme in place of the current lower quartile control but only one respondent argued that no such scheme should be introduced, citing that the Government's Free Telephone Rental Allowance scheme was sufficient to protect vulnerable users. One respondent noted that care should be taken that any such scheme could not be used as a 'shield' for anti-competitive practices while another suggested the scheme should only be introduced on a trial basis. There was also a suggestion that a vulnerable users scheme should count towards any compliance obligations.

On the question of the proposed level of the lower quartile cap at CPI-0 and whether or not it should be maintained until a suitable scheme was put in place to protect vulnerable users, there were only three clear responses. One suggested the new scheme should be monitored with a view to reintroducing the lower quartile cap if it was not working while another argued that the cap should be removed as soon as possible. The other respondent agreed with the proposed level of the cap and the proposal of the office with respect to a new vulnerable user's scheme.

On the subject of constant compliance with the cap throughout the year, again there were only three clear views presented. One felt that this seemed inflexible unless the office had evidence that eircom consistently introduced price reductions long after price rises while another argued that such a measure was required in order to protect consumers. The third respondent believed that it would be unusual to expect anything other than constant compliance with the cap.

4.8.2 Commission's Position

The Commission believes that a suitable vulnerable/low user's scheme could potentially be a more effective means of targeting and protecting vulnerable consumers than was the case under the lower quartile cap. However, it is also conscious of the fact that no such scheme is currently available and maintains its position that the lower quartile cap of CPI-0 should remain in place until such time as a suitable sustainable scheme is available to consumers. The Commission also views the lower quartile cap as an effective tool in terms of protecting consumers and eircom's competitors alike, until such time as an appropriately priced wholesale line rental product becomes available

The Commission also believes that eircom should be obliged to comply with the price cap all year round so as to avoid a situation whereby all price increases would be made at the beginning of the relevant year followed by reductions only at the year's end.

4.9 Tariff Regulation Order

Q. 9.	**Do respondents agree that the draft regulation order adequately reflects the Director's proposal for a price cap?**

4.9.1 Views of Respondents

Of the four respondents that answered this question directly, three agreed that the draft order did adequately reflect the proposals in the consultation document. However, one respondent questioned the text in relation to carryover. The same respondent also felt that the issue of triggers such as WLR and the vulnerable user's scheme were not adequately dealt with and also suggested that there should be a reference to compliance under the current order in 2003.

4.9.2 Commission's Position

The Commission is anxious to ensure that its intentions in respect of carryover are clear and unambiguous, and in the light of comments made, additional text as outlined in section 4.5 of this document has been included to take account of this concern. The Commission is confident that the trigger of replacing the lower quartile bill with a suitable vulnerable user's scheme is adequately dealt with in the draft, while the matter of the WLR trigger has been discussed in section 4.4 of this document. The Commission does not believe that reference to compliance in 2003 under the old order is relevant to the newly amended order. Consequently, save the changes as discussed in section 4.5 of this document and the insertion of a value for X in the CPI-X formula, the Commission believes that no further material changes to the draft amending order are necessary in order to reflect the proposals of the Commission for the new price cap. It should be noted however that the text of the order has been amended to reflect that the ODTR has now been replaced by ComReg and typographical errors have been corrected.

5 Next Steps

The Telecommunications Tariff Regulation Order (SI 393 of 1996) and the Telecommunications Tariff Regulation (Modification) Order, (SI 438 of 1999) will be replaced by the new Telecommunications Tariff Regulation Order with effect from 4 February 2003.

The text of the new Tariff Regulation Order is provided in Appendix 3 to this document. As an aid to readers, the main changes to the amended Order currently in force have been indicated through underlining of text in Appendix 3. Where text has been removed, this is indicated with an asterisk (*). Nevertheless, for a comprehensive view of the changes, readers should refer to the texts of the Orders.

Appendix 1 - List of Decisions

For ease of reference, the following sets out a list of Decisions set out in this Decision Notice.

Decision 4.3: An eircom nominal pre-tax cost of capital of 11.5% will be used in eircom's separated accounts for 2003/04, and as the basis for allowing eircom an adequate rate of return for regulatory purposes, including the setting of wholesale and interconnect rates, until the Commission decides otherwise. This supersedes the figure of 12% set out in Decision Notice D9/00.

Appendix 2 Regulatory Developments

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

Measuring Licensed Operators Performance programme Issue 3: Business and Residential Market Results January – June 2002 (ODTR 02/103)
This is the third MLOP report in a programme initiated by the ODTR and to be carried forward by ComReg in co-operation with leading fixed line telecommunications operators in the Irish Market. The consumer publication aims to inform business and residential consumer s of an operator's quality of service performance results for the periods from January to March 2002 and April to June 2002.

Irish Communications Market Review (02/106)
This report, covering the period July to September 2002 is the final review of the Irish Communications Sector for 2002. The Report is the first document to be issued by the Commission for Communications Regulation (ComReg). It contains information on the key regulatory developments over the quarter with reference to issues such as the price cap review, off book pricing and technological developments. There is also a special focus, following a consumer survey, on the Small to Medium sized Enterprises sector (SMEs).

D17/02 Implementation of Partial Private Circuits (02/110R)
After repeated failure to reach agreement between eircom and the other licensed operators (OLOs) for a wholesale data tail product known as a Partial private circuit, ComReg believed it was neither necessary nor helpful to continue discussions. ComReg considers the availability of Partial Private Circuits (PPCs) will help to stimulate a competitive market, provide for effective competition, encourage economic efficiency, and provide benefit to end users. ComReg therefore issued this Decision Notice to intervene in order to freeze the product description in the form set out in the document and new dates for the negotiation of terms and conditions and the submission of cost oriented pricing submissions has been set.

The Future Framework for Regulation of Universal Service in the Irish Market (02/116)
Following the recent adoption by the EU of the new Directive on Universal Service and End Users' rights and the subsequent publication by the Department of Communications, Marine and Natural Resources of draft transposing regulations, ComReg is currently addressing the question of developing the future regulatory framework for the provision of universal service in Ireland. Response to the consultation were due on December 19 2002 and ComReg intends to utilise these to focus on the issues regarding universal service provision and, based on the comments received, to publish a report which will propose a defined universal obligation which will apply in future, along with an approach to designation.

Implementation of Partial Private Circuits – Pricing Principles and Structure (02/118)
Following the publication of D17/02 (discussed above) ComReg met with eircom to discuss the appropriate pricing principles and structure that should be applied to PPCs. Agreement of the appropriate principles and structure was achieved at this meeting and these are set out in this Information Notice.

Decision Notice D1/03 – Implementation of Flat Rate Internet Access Call Origination – FRIACO (03/02)

In light of technical and commercial constraints surrounding the proposed Single Tandem FRIACO product description ComReg felt that it is was necessary and expedient and in the interests of users, to intervene in the negotiations between eircom and OLOs and introduce FRIACO on a phased basis, by freezing the product description for phase 1(Primary level FRIACO) in the form as set out in this Decision Notice. ComReg considers that this product description will allow operators connected at Tandem level to offer an equivalent service to those connected at primary level by utilising Interconnect Extension Circuits. ComReg will also continue to work with the industry in seeking to introduce a commercial and technically viable product offering for Single Tandem FRIACO.

ComReg response to draft Ministerial Direction of 2/12/2002 (03/04)
In this document the Commission for Communications Regulation (ComReg) provide comment on Minister Ahern's recent draft Policy Directive, which offers a general overview of current Government policy in the telecommunications and postal sectors. The draft Policy Direction highlights the Minister's key objectives and priorities. The Commission notes the challenging nature of the Government's goals and believes that such ambitions are critical if Ireland is to achieve its key economic objective of becoming a leading knowledge economy.

Decision Notice D2/03 – Implementation of CPS Single Billing Products: Wholesale Line Rental (SB-WLR), Agency Rebilling (SB-AR), Wholesale Ancillary Services (WAS)

This Decision Notice sets a revised completion date of 30th April 2003 for both single billing products and also defines milestones for process development, negotiation of terms and conditions, submission of pricing elements and completion of testing. eircom have agreed to work with ComReg to ensure that fully fit-for-purpose offerings are available on or before the 30th April 2003.

Appendix 3 - Tariff Regulation Order

The Commission for Communications Regulation, in exercise of the powers conferred on it 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, 2003.

(2) This Order shall come into operation on the 4th day of February, 2003.

(3) Telecommunications Tariff Regulation (Modification) Order, 1999 (S.I No. 438 of 1999) is revoked as and from 4 February, 2003.

(4) Telecommunications Tariff Regulation Order, 1996 (S.I No. 393 of 1996) is revoked as and from 4 February, 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 Commission" means the Commission for Communications Regulation established under section 6 of the Communications Regulation Act of 2002, (No 20 of 2002);

“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 Commission and which is aimed at certain residential users whose bills for telecommunications services are, in the opinion of the Commission, 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 Commission, 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 4 February;

"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 Commission 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 Commission hereby specifies ΔCPI – 0 % 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 (1). The Commission 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 Commission hereby specifies that compliance shall be at all times throughout the relevant year.

6. Notwithstanding Article 4 of this Order, the Commission may make the following adjustment to the price cap formula: to the extent that a company has made, during any relevant year, a reduction in charges that is greater than the reduction required or an increase in charges that is less than the increase that is permitted by sub-article (1) of that Article, the difference may be taken into account by the Commission in applying the said sub-article (1) in the relevant years subsequent to the relevant year in which the reduction was made or the allowable increase was not availed of.

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

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

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 Commission 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 Commission 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

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

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 Commission 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 Commission 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.