Commission for
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Submissions received in relation to Consultation

Further specification of the price control obligation, the transparency obligation and the access obligation in relation to the market for wholesale terminating segment of leased lines

Submissions received from respondents

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Response to ComReg Doc. 10/70:

Further Specification of the Price Control Obligation, the Transparency Obligation and the Access Obligation in Relation to the Market for Wholesale Terminating Segments of Leased Lines

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OVERVIEW

- eircom welcomes the form of this Pricing Consultation, in that ComReg consults on the appropriate costing methodologies and pricing principles to apply when determining the detail of the price control remedy.

- eircom finds that there is no compelling reason to move away from the retail-minus price control for the legacy Wholesale Leased Line (WLL) product, and further that an unwarranted move to a cost based control for a simple resale product is at odds with ComReg's objective of encouraging infrastructure-based competition.

- The modelling approach proposed by ComReg to determine the cost oriented pricing for leased line wholesale access services – for both Partial Private Circuits (PPCs) and Next Generation Wholesale Ethernet Access – as a preliminary view, has certain merits. However, in eircom's view, it is disproportionate, based on the extremely low level demand to date, to develop a model for Wholesale Ethernet Access.

- eircom agrees that, as the introduction of the eircom NGN represents a step change in the network capacity and reach for high bandwidth Ethernet leased line services, prices should be based on forward-looking projections for costs and volumes which could be reviewed, if necessary, during the period of the price control.

- eircom agrees with ComReg's findings that the economics of Ethernet leased line services delivered over the eircom NGN require prices that are differentiated by geographic density, and distinguished between "real time" and "best effort" conveyance of data packets.

- eircom does not agree with ComReg's finding that an ex ante margin squeeze test is necessary or "important" in circumstances where ComReg is developing a LRAIC-based pricing model for the enforcement of eircom's obligation of cost-orientation.

- eircom finds that ComReg has no sound basis to direct a change in the billing terms for leased line services. However, in the event that ComReg does direct such a change (which eircom would object to), the modelling informing the cost basis for access services in the market for the wholesale terminating segments of leased lines does not reflect the increased working capital requirement and the increased transaction costs arising from the billing change.

- eircom considers that any mandated change to current practices in terms of the publication of the price for WLLs is unwarranted and unnecessary. In particular, eircom does not agree that it should be required to publish the price of WLLs above 2MB including WLLs of 10MB.

- eircom finds that the Regulatory Impact Assessment included in this Consultation suffers from the absence of sound quantitative evaluation of the decisions between the options considered in the Consultation. As such, the assessment merely amounts to a qualitative justification of the preliminary position taken by ComReg on each Consultation issue.

RESPONSE TO CONSULTATION QUESTIONS

Q. 1. Do you agree that in general a LRAIC plus approach on the basis of a BU model is the most appropriate costing methodology to use for determining the cost oriented wholesale charges for the products, service and associated facilities in the market for wholesale terminating segment of leased lines? Please provide reasons for your response.

eircom agrees with the principle of using a LRAIC+ approach on the basis of a BU model for the purpose of determining cost oriented charges for terminating segments of leased lines (that is, PPCs) including in an NGN environment.

However, a number of issues arise in practice with the approach proposed by ComReg.

First of all, some cost elements in the model being built by ComReg are not assessed on a LRAIC basis. This should be reviewed.

Second, very significant difficulties will arise in establishing the cost increments of terminating segments of leased lines in a context where the definition of trunk and terminating segments is not, in fact, based on a boundary established by reference to the topology of eircom's (or even OAOs') network but by reference to services provided within given bandwidth ranges and on specific defined network routes. This means that the same network infrastructure is used for the purpose of providing unregulated trunk segments of leased lines and "terminating" segments of leased lines. It is difficult to see how to establish the cost "increment" for the purpose of determining the Long Run Average Incremental Cost associated with the provision of services in the regulated market. This is because there are no clear logical rules that can be followed for the purpose of allocating common costs between regulated and unregulated services. This is a serious hindrance to the cost modelling for price setting purposes as well as cost reporting for accounting separation purposes.

Insofar as wholesale Ethernet access products provided on the legacy network are concerned, eircom is of the view that it would be disproportionate to develop a LRAIC BU model for these. Since the launch of these products in November 2009, only one OAO has availed of the copper service and only for three access circuits. The same OAO has also ordered the NGN Ethernet product. eircom would reasonably expect that the OAO concerned will migrate these circuits to the NGN Ethernet product over time. There are currently no customers on either the Dublin Ethernet product or the Regional Ethernet product.

Q. 2. Do you agree that the WLL charges should be based on the PPC costs, WLL network costs and WLL specific costs while taking into account the appropriate economic space between PPCs and WLLs? Please provide reasons for your response.

eircom does not agree. ComReg seeks to justify its proposal to move to a form of cost-based pricing for WLLs by reference to the removal of regulation at the retail level, which would make retail-minus regulation impossible, and a requirement to ensure that there is sufficient "economic space" between WLLs and PPCs. eircom does not agree that either of these reasons is valid.

- Contrary to what ComReg suggests, the absence of regulation at retail level is no bar to a retail-minus price control. This is clear from some of the price controls mandated by ComReg itself. For instance, in 2005, the retail-minus price control was maintained for WLLs above 2 Mbps although eircom's SMP designation for retail leased lines above 2 Mbps was removed. The price for Wholesale Broadband Access is based on retail-minus although the retail broadband access market has never been regulated. The absence of retail regulation is accordingly entirely inadequate to justify the move to cost-based pricing for WLLs.
- In the light of the continuing decreasing trend in relation to the purchase of WLLs by OAOs, it is clear that the current pricing mechanism has ensured the existence of an adequate margin between WLLs and PPCs, such that OAOs have been encouraged to build out and expand their core networks and purchase PPCs rather than WLLs wherever possible. ComReg in this regard has failed to demonstrate the need for any sort of margin test between PPCs and WLLs.
- eircom does not believe that the concept of "economic space" is useful to the understanding of the relationship between WLLs and PPCs. It is clear that ComReg has imported this concept from its review of the price control for WBA. ComReg has proposed that the price for WBA should be set so as to maintain an "appropriate economic space" between LLU/LS and WBA, that is, so that the price for WBA does not act as a disincentive to LLU roll-out and that OAOs rolling out LLU are able to compete on the market for WBA. Whatever the merits of this approach, PPCs, however, are not equivalent to LLU. In the context of terminating segments of leased lines, encouraging infrastructure based competition would mean ensuring that OAOs roll-out their network (using LLU or their own fibre or other cables) to the customer premises wherever justified, rather than purchasing PPCs. This important aspect of regulation is masked as a result of the market definitions for trunk and terminating segments of leased lines, and results in ComReg's inability to recognise properly the existence and scope of OAOs' networks and the decreasing relevance of WLLs.
- Amending the pricing mechanism of WLLs would be a change in the nature of the remedy imposed on eircom and this would have a serious impact on the retail market. This is because WLLs are nothing but a creation of regulation. Unlike a PPC, which is a connection between an end customer and an OAO network, a WLL is simply an end-to-end link between two end-user premises, provided entirely on the eircom network. There is no practical difference between retail and wholesale leased lines, other than the discount which eircom is obliged to grant authorised operators purchasing end-to-end legacy leased lines. In other words, it is purely the mandated retail-minus based price for OAOs which makes a circuit a WLL. It would be entirely inappropriate to seek to base the price for WLLs on some notional "wholesale network costs" and "wholesale specific costs" and ComReg cannot lawfully do so.
- Finally, it is clear that any decrease in the current price for WLLs which could result from the change in the price control mechanism for WLLs would act as a very serious disincentive to investment in infrastructure-based competition by sending the wrong buy/build signal to OAOs.

Q. 3. Do you agree with ComReg's preliminary views, as set out above, on the main principles for the appropriate economic space assessment between WLLs and PPCs? Please provide reasons for your response.

For the reasons set out in response to Question 2 above, eircom is of the view that the current retail-pricing mechanism should be maintained and that there is no need to seek to establish what constitutes the appropriate margin for WLLs and PPCs.

Q. 4. Do you agree with ComReg's preliminary views, as set out above, on the main principles in relation to an assessment of the appropriate economic space between the other related wholesale products i.e. wholesale NGN Ethernet leased line products in the market for wholesale terminating segment of leased lines? Please provide reasons for your response.

It is not clear what ComReg means by the "*other related wholesale products i.e. wholesale NGN Ethernet leased line products in the market for wholesale terminating segment of leased lines*". eircom notes that the main principles referred to by ComReg concern the assessment of the appropriate margin between WLLs and PPCs. However, and for the avoidance of doubt, eircom is of the view that its obligation to continue to provide WLLs does not include an obligation to provide Ethernet based end-to-end circuits on a wholesale basis. The issue of "economic space" between regulated Ethernet-based wholesale products will not therefore arise.

To the extent that this question concerns the margin squeeze test proposed by ComReg between wholesale and retail products, please see eircom's response to Question 19.

Q. 5. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the leased lines access network? Please provide reasons for your response.

eircom agrees with modelling a mix of the copper access network and the fibre access network, as this will reflect the reality and the gradual migration to NGN over the next few years.

eircom is also in agreement with the use of the existing LLU cost model to determine the per loop costs incurred in delivering leased line services over the copper loop network. However, it would be necessary to consider the possible requirement to have a number of local loops at each termination point, as both bandwidth and the simplex communication process used often require more than one local loop at terminal points on each leased line.

eircom also agrees that the model should deploy the fibre access lines to reflect the location by MDF site, as they are currently located in eircom's network. However, eircom is concerned that ComReg proposes to assume that all access fibre leased lines are located within "housing areas" in the model. This is often, but not always, the case and there is evidence of deployment of access fibres to isolated dwellings. As access fibres to isolated dwellings will have different unit costs than access fibres in housing areas, the model should reflect the actual distribution of access fibres between housing areas and isolated dwellings to ensure an appropriate level of cost recovery.

With regard to the level of fibre access volumes that should be modelled, eircom agrees that the volumes associated with capacity for backhaul to MNOs should be included to determine appropriate unit costs. eircom believes that the assumption that access fibre volumes will increase by circa 3% per annum over the next three years is reasonable in the current circumstances. However actual growth should be monitored, especially in the light of the current economic downturn. The modelling exercise should also recognise the effect that the replacement by fibre access leased lines of existing copper services will have on the unit costs of both services.

ComReg suggests three cost allocation options for the allocation of duct infrastructure costs. The second option (i.e. allocation based on the cable surface), which is favoured by ComReg, is to share duct costs across cables based on the cross sectional area of duct space consumed by each cable type. eircom has reservations about using this approach. ComReg recognises that, in some parts of the network, there will not be enough spare bores in trench deployed in the copper network to accommodate fibre cable (para. 4.50). In such circumstances additional civil works will need to be undertaken to support the deployment of fibre. Such civil works will also involve trenching and re-instatement in addition to laying the required duct and so will represent a significant additional cost to the operator. As a consequence eircom would favour using option 3 (i.e. allocation based on the number of cables) as this recognises that the need to deploy additional cables is the key reason for considering additional investment in a duct network.

eircom accepts the assumption that the preliminary LFI rate for fibre cable faults should be 5% per annum, as it appears reasonable, although it is untested due to the low density of such cables in the access network. Also the fault incidence on access fibre cables is likely to differ from core fibre cables. In this context, ComReg should review this statistic based on actual experience as the access fibre cable population increases in the coming years.

Q. 6. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the leased lines legacy core network? Please provide reasons for your response.

eircom agrees with ComReg's preliminary view that the provision of legacy PPCs and WLLs should be based on a pure legacy core network model, whereas the provision of Ethernet technology should be modelled on a full NGN core network. eircom also agrees with the view that a 'scorched node' approach should be used in modelling the network costs, as it most closely reflects the level of costs that needs to be recovered.

In relation to the traffic volumes on the legacy core network, eircom agrees that ComReg should use the current level of traffic on eircom's core legacy network, as it is this level of traffic that generates the revenues needed to finance the network.

eircom also agrees that the core network switching costs for leased lines are 100% dedicated to the leased line network, and so should be calculated on the total costs of the node, the traffic carried on the node and associated routing factors.

While eircom is in general agreement with the modelling approach proposed for transmission costs, ComReg must ensure that it is applied in an appropriate manner. The modelling approach proposes to calculate SDH transmission costs for each level of the transmission layer in terms of usage per service and the length of the network, i.e. €/kbps/km. While this approach appears to recognise that €/kbps/km costs will differ depending on which level of the transmission layer the circuit is carried on, it is also necessary to recognise that the cost per kbps/km will not be linear in terms of the various circuit speeds carried within each transmission layer. For example, the cost of an STM-1 will not be 63 times the cost of carrying a single 2 Mbps circuit even though an STM-1 has the capacity to carry 63 2Mbps circuits.

eircom agrees with ComReg's proposal to use the operating cost data from eircom in the modelling exercise. However, since eircom already operates an efficient core network, we do not believe that these data need to be significantly adjusted, contrary to what ComReg appears to indicate at paragraph 4.28, stating that ComReg will apply "*a number of adjustments …. deemed necessary to reflect current market costs and the engineering rules of an efficient operator*".

Q. 7. Do you agree with ComReg's proposed approach regarding the traffic volumes for the NGN core network for the next three years? Please provide reasons for your response.

eircom agrees that it is appropriate, when looking at the cost basis for charges for a new access service that uses a new platform with substantial spare capacity at launch, to analyse costs and volumes based on projections over a reasonable period. eircom finds that the approach of setting charges based on volumes projected forward three years strikes the right balance between setting charges so high as to suppress demand by only considering early life volumes and unit costs, and setting charges so low as to risk deterring investment in competing networks and access services. Again eircom finds that an early review of projected volumes is appropriate to ensure that correct economic signals continue to be sent by the access charges.

Q. 8. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the leased lines NGN core network? Please provide reasons for your response.

eircom agrees that voice services will for now remain on the legacy network and the costs of the legacy network will need to be allocated between the various services on it, i.e. voice, broadband and legacy leased lines (section 4.75 refers).

In relation to the allocation of NGN core network costs, eircom also agrees that consistency should be maintained between the WBA price control review and the leased line pricing review, and with using eircom's forecast peak traffic rates by service to allocate core NGN costs to the different services, i.e. leased lines, broadband and voice (section 4.77). Adopting a consistent approach to the pricing of the various services carried on a network should minimise the risk of any overall over- or under-recovery of costs by eircom.

However, in section 4.76 ComReg appears to indicate that the NGN model will calculate the costs of the nodes and WDM equipment, only in relation to both leased lines and broadband services, while calculating the costs of trenches and fibre on the basis of these services plus voice. This appears inconsistent as voice services would also use the node and WDM equipment and so should also be included in determining the appropriate level of these costs.

As regards the appropriate level of operating costs (section 4.79), eircom agrees with ComReg that the level of operating costs in the NGN core network will reduce over time and these should be ultimately lower than the operating costs levels of the core legacy network. Indeed the projected level of future efficiencies modelled for the NGN core network, relative to the observed level of costs in the core legacy networks, could prove a useful cross check to validate the level of modelled NGN operating costs.

Q. 9. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the WEA product? Please provide reasons for your response.

eircom agrees that the proposed modelling approach for the WEA product should be a "LRAIC plus" approach on the basis of a BU NGN core network model using IP switching layer.

Q. 10. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted in relation to the common areas between the leased lines core and access network? Please provide reasons for your response.

eircom agrees that the leased lines modelling should be consistent with the LLU modelling approach and allocate 50% of trench and chamber costs between core and access where there is a core network presence, and also allocate the costs of a section of fibre cable that is being used to support both core and access services 50:50 between the core and access networks.

eircom also believes that the payment terms need to include a time lag between the outpayments of the investment and the revenue generation for the services sold on the network. (Section 4.88) This is particularly the case as ComReg appears to recognise that the network needs to be scaled to meet future volume increases (Section 4.73), and that a level of instability and uncertainty exists in terms of volume demands (Section 4.98). In such circumstances, the 12 month gap outlined under Option 3 in Section 4.87 seems the most conservative of the proposed options as the required level of revenue generation is likely to take years rather than months to achieve.

In terms of the price trends, eircom is in broad agreement with ComReg's proposals to use longer terms for civil costs and shorter terms for equipment type costs for the reasons outlined by ComReg. eircom also agrees that the asset lives should be consistent with ComReg Decision D03/09 (Document No. 09/65), to ensure consistency between the leased line pricing model and the LLU pricing model.

Any future updates to volumes, costs or cost trends, asset lives or other parameters should be made consistently across the services.

Q. 11. Do you agree with the duration and future review of the price control? Please provide reasons for your response.

eircom agrees that it is appropriate for ComReg to conduct an early review for those same reasons as are outlined in the answer to question 7 above. The wholesale prices at launch should stay in place for at least two years so that there is a substantial indication as to the trend of volumes and unit costs. This would also allow OAOs to judge the appropriate role for the eircom access services in their portfolio of data services. A review at the end of the first of these two years will provide early indications of any potential problems with cost and volume levels used to set prices at launch.

In view of the time that would have elapsed since the last market analysis for terminating segments of leased lines, any review of the price control should be preceded by, or concomitant with, a new market analysis.

Q. 12. Do you agree that the pricing approach for legacy WLL and PPC products should continue on the basis of nationally averaged prices? Please provide reasons for your response.

eircom agrees that the pricing approach for legacy WLLs and PPC products should continue in all current respects. In particular eircom agrees with a single national set of rates. This is because both these sets of charges derive in different ways from the retail charges for traditional leased lines. In the WLL case the charges reproduce the leased line price structure exactly and simply offer a discount of 8% off the retail level. The PPC EUL annual rentals derive from an analysis of the network costs of the leased line infrastructure and track the structure of WLL prices closely with the two small exceptions of the distance dependent charge for circuits between 20 km and 30 km in length and the variation in charges for the Main Link Access where the main link distance is zero. Any attempt to introduce geographically de-averaged charging at this stage in the life of the traditional retail leased line, WLL, and PPC portfolios of services would risk setting up margin anomalies – by, for instance, reducing margins between retail and wholesale offerings in high cost rural areas and increasing them in lower cost urban regions.

Q. 13. Do you agree that real-time traffic conveyance has an additional associated cost compared with best efforts traffic conveyance? Please provide reasons for your response.

eircom agrees that, for NGN access services, the network handles traffic packets in specific queues and allocates network resources differently to these queues at times of contention. eircom has, during recent cost modelling projects, shared with ComReg the engineering rules for dimensioning these queues and the associated investment cost drivers. There is also the consideration that retail customers – and, as a result, their service providers who buy in access services - attach a higher value to real-time conveyance of data traffic. It is a well established pricing principle that setting charges to reflect this additional value leads to higher utilisation and lower unit costs to the benefit of all consumers.

Q. 14. Do you agree that geographic density is one of the main cost drivers in terms of the provision of leased lines services on the core network? Please provide reasons for your response.

eircom agrees that the density of demand in any particular geographic area is a key driver of the unit cost of delivering that demand. This is the case because there is a minimum level of investment required to install the nodes, routers and transmission facilities that will enable the offering of Next Generation leased line services in any locality. Where the density of demand is low – as it tends to be in the less densely populated parts of the state – the unit costs that can be achieved in conveying leased line demands across the network in that region will be higher than the average.

Conversely, in areas of high demand the network investment will be higher to deliver the additional capacity to serve the higher levels of demand. However the initial fixed level of investment to deliver minimal service volume represents a high proportion of the total investment even in areas of high demand. That is to say that additional capacity can be added to the initial base network with low incremental expenditure. As a result areas of high demand density have much lower unit costs for conveying leased line traffic than do areas of low demand density.

Q. 15. Do you agree that the pricing approach for 'high density' areas should be extended to 'medium density' areas, where there is demand envisaged in those medium density areas? Please provide reasons for your response.

eircom agrees with the pricing approach proposed. This approach should be used because the demand density (and so the unit costs achieved) do not depend solely on the population density but rather on the demand density. When a sparsely populated area is the site of a cluster of businesses with large demands for business data services and these services are delivered over the eircom NGN then unit costs in that region will drop and eircom is in agreement with adjusting prices to reflect that drop. The price structure agreed at launch provides an appropriate mechanism to address this change in demand. Where such increased demand density exists, eircom will change the prices charged for services connected from the node(s) in the affected region from “medium density” rates to the lower level “high density” rates.

Q. 16. Do you believe that the assessment of demand for those medium density areas should be determined by footprint, bandwidth or determined by ComReg on a case-by-case basis? Please provide reasons for your response.

eircom believes that demand for services in medium density areas should be determined jointly by ComReg and eircom on a case-by-case basis. This is because the unit cost of conveying Ethernet packets across the eircom NGN depends on a number of local factors that include – but are not limited to – bandwidth demand and footprint.

A more complete list of the factors that affect the unit cost includes:

- The geographic coverage footprint of the NGN node at issue
- The demand for total traffic bandwidth within that footprint
- The number of individual demands (ports required)
- The priority profile – as between contended and uncontended – of those traffic demands
- The cost of the transmission resource required to serve the node where the demand originates, and
- The network distance between origination and termination of the traffic demanded

Each of these factors will affect the unit costs differently. If the OAO buying WSEA services to serve a cluster of business customers, served from a single node, collects the traffic using an interconnect circuit at the same node, the resulting traffic crosses only that node (and uses no core transmission resources). In that case only the unit costs of that node are affected. The costs of conveying traffic between that node and others in the region are unaffected.

As discussed above, real time traffic demands drive network costs at a higher rate than do best effort traffic demands so the proportion of real time traffic in the local demand is an important factor in determining the effect of that demand on unit costs. Similarly, because of the bandwidth gradient applied in charging network costs into prices, 10 x 100MB demands will have a greater effect in reducing network unit costs than a single 1GB demand, even though the total traffic conveyed may be the same for the two forms of demand.

The level of complexity outlined above requires a case-by-case analysis of any proposals to re-classify nodes or regions due to step changes to demand. As this will involve re-visiting the cost modelling for the eircom NGN to introduce changes to the component volumes, with a possible consequent change in the investment required, eircom believes that the previous joint approach used to set initial prices will be appropriate again.

Q. 17. Do you agree with the application of a gradient to set leased line charges in the market for wholesale terminating segment of leased lines is reasonable so long as the SMP operator recovers its efficiently incurred costs and does not create a margin (price) squeeze? Please provide reasons for your response.

The use of value gradients in access pricing is a very important tool in arriving at the optimal demand, by recognising that the value of any one product may vary according to circumstances, including, for example, according to uses and users, and by guiding the allocation of joint and common costs to different products on this basis. Value gradients are one way of approaching the maximisation of consumer welfare pursued by Ramsey pricing.[1] In a price setting context, they facilitate the derivation of *a set of different prices* from a *single set of costs*.

eircom is in no doubt that the use of value gradient is both necessary and desirable for the purpose of pricing leased lines services, including terminating segments of leased lines. Insofar as the use of gradients allows for the optimal apportionment of costs between various services so as to recover all of those costs, it is difficult to understand why ComReg would separately subject their use to a requirement that "*the SMP operator recovers its efficiently incurred costs*". In this regard, a price calculated on the basis of an allocation of cost remains a cost oriented price, even if it differs from the average cost – once the component volumes priced at each point along the gradient curve allow full cost recovery. eircom agrees that care around the use of similar value gradients for wholesale and retail offerings is necessary to avoid margin squeeze - or arbitrage - effects. For instance, the use of a flatter gradient for a retail service than for a wholesale service would give rise to lower than average margins at one end of the portfolio and higher margins at the other. However, this is an issue which arises in terms of the pricing of leased lines services on the unregulated retail market and does not affect as such the validity of the use of gradients for the purpose of wholesale pricing.

While eircom entirely supports the use of gradients in access pricing, eircom does not necessarily accept that the regulator alone is best placed to determine the optimum slope of gradients. The network operator, in co-operation with ComReg, is better placed to understand the likely profile of demands that will inform an appropriate gradient to demonstrate cost recovery across the portfolio.

[1] eircom has explained previously in a different context why it does not agree with the conclusions reached in ComReg Doc. 09/66b.

Q. 18. Do you believe that principle of cost orientation should be applied at a high level of aggregation, i.e. the price structure to be adopted should ensure that total revenues recover the total costs for the various elements of the wholesale NGN Ethernet leased lines products? Please provide reasons for your response.

For the avoidance of doubt, eircom understands this question to concern the application of cost orientation obligation to the prices charged for wholesale NGN Ethernet access and interconnect products, offered in the market for the wholesale terminating segments of leased lines. eircom does not offer "wholesale NGN Ethernet leased lines products" where this product is characterised as a wholesale variant of an end-to-end Ethernet data service providing connectivity between customer sites and such products do not fall within the scope of the remedies imposed on eircom in Decision D06/08.

When access and interconnect services are delivered over an entirely new network, it is appropriate, and necessary, to test for cost orientation at the highest level. This is the case because forecasts of demand have been used to determine the unit costs that feed into price levels and inevitably the reality of demands carried will vary from the forecast in several dimensions. Total cost recovery is determined by the interaction of:

- the number of demands,
- the bandwidth sought for each demand,
- the class-of-service mix for each demand,
- and the distance each demand is conveyed across the eircom NGN.

Because of this complexity it is meaningless, and accordingly unreasonable, to test for cost orientation at the level of a single service – and so is only appropriate to test at the highest level by comparing the total of revenues evaluated at the level of wholesale charges for access and interconnect services to the modelled costs of delivering the same mix of demands.

Q. 19. Do you agree with the proposed approach set out above (EEO, LRAIC plus. and product-by-product basis) for an ex-ante margin (price) squeeze test between the prices in the market for wholesale terminating segment of leased lines and the corresponding prices in the retail market? Please provide reasons for your response.

While under Section 11.6 of ComReg Decision D6/08 eircom "*shall have an obligation not to cause a margin squeeze*" when setting prices for services in the market for wholesale terminating segments of leased lines, the scope of this obligation must be assessed having regard to eircom's obligation of cost-orientation of prices. In particular, in the presence of an obligation of cost-orientation at the wholesale level leading to maximum prices being set by the regulator on the basis of a cost/pricing model, the application in practice of the obligation not to margin squeeze becomes quite limited. In presence of cost-orientation, enforcing a margin squeeze test under the regulatory rules is tantamount to a review of the level of retail prices and accordingly to re-introducing ex-ante remedies in the retail market. In this regard, it would be helpful if ComReg could explain what the consequences would be in terms of price setting were eircom found to fail the test that ComReg proposes.

Depending on this, it may be helpful for eircom to have visibility of the components of the test that ComReg would follow ex post. In terms of the test itself, eircom reserves its position pending clarification of the consequences that would follow from a finding that eircom does not meet the test, except to say that any such test should be assessed on a portfolio basis and not a product-by-product basis. A product-by-product assessment would seriously limit eircom's ability to compete in the retail market, thereby stifling competition in that market to the detriment of end-users. eircom believes that ComReg would, at the very least, be required to recognise in any test the growing level of competition at the wholesale level (paragraph 5.48 refers).

Q. 20. Do you consider that the application of the transparency obligation in relation to the publication of Wholesale Leased Lines pricing information for circuits of bandwidth greater than 10Mb/s in general, should be adjusted so that Eircom should not be obliged to publish the pricing information for these WLLs? Please provide reasons for your response.

eircom considers that any mandated change to current practices in terms of the publication of the price for WLLs is unwarranted and unnecessary. In particular, eircom does not agree that it should be required to publish the price of WLLs above 2MB including WLLs of 10MB. eircom's reasons for this are set out below:

- First, eircom reserves its position regarding whether the transparency obligation set out in section 9 of D06/08 includes an obligation to publish the price of WLLs. WLLs have been imposed as a remedy but cannot be considered to fall within the market for wholesale terminated segments of leased lines.
- Second, ComReg has provided no valid reason why eircom's practice to publish WLLs up to 2MB should be amended. On the contrary, ComReg found that the fact that pricing information for any WLL above 2MB was not available "*has not been a hindrance to industry or in the day to day operation of this part of the market"* (at para, 7.14). It appears that ComReg believes that the speed should be extended to 10MB because it anticipates that eircom could be required by regulation to offer Ethernet-based WLLs at these speeds. eircom does not accept that ComReg could lawfully require it to provide Ethernet-based WLLs.

Consistent with this position, eircom agrees that the publication of the prices for WLLs may dampen competition contrary to the interests of end-users. Not only can the publication of the price for WLLs serve to exclude eircom from the retail market, as its competitors will easily be able to undercut eircom's published rates, but the prices that the customer would pay would, in general, be higher than in the case where there are no published prices and each service provider bids to win business based on their own costs plus a reasonable return.

Also, the absence of a publication obligation will allow eircom to tune offers to the local cost characteristics and to the degree of infrastructure competition. Both of these factors will deliver more competitive prices for customers than a misguided transparency obligation applied to a portion of the market where competition is very different in character from the mass of the leased lines market – even if eircom has been found to have SMP.

In this context, it is particularly important that eircom not be required to publish the price for 10MB WLLs. The trend in the leased line market is towards higher bandwidths. As customers invest increasingly in IT and build LANs, the demand for higher bandwidth is increasing. This is especially true in urban areas where larger firms are located. The economies of Ethernet technology allow 10MB symmetrical service to be delivered at prices close to traditional 2MB leased lines. LANs, for the most part, operate at 10MB and connecting LANs together is simplified using a 10MB leased line. Volumes at 10MB are expected to grow at a greater pace than above 10MB. Requiring eircom to publish 10MB WLLs would effectively reduce the level of competition in this area.

To deliver a "nearly symmetrical 10MB" service requires, in most cases, the use of fibre networks. ADSL cannot deliver up to 10MB symmetrically; SDSL can only do so over very short distances and with bonded copper pairs. Typically two pairs (in good condition) can deliver 10MB up to 1km from the serving exchange. 4 copper pairs would be required to deliver 8MB up to 3km from the serving exchange. So, copper networks have limited use in delivering 10MB or above. In rural areas the economics of fibre delivery make it more feasible for OAOs to deliver service on fibre or radio. eircom has little advantage where new build fibre or radio is required and accordingly in relation to the supply of 10MB or higher speed services. The remedy of transparency should therefore apply at 2MB or below, but not at 10MB or above.

Q. 21. Do you consider that the application of the transparency obligation in relation to the publication of Wholesale Leased Lines pricing information for circuits of less than STM 1 between the "urban centres", should not be adjusted so that Eircom should be obliged to publish the pricing information for these WLLs (insofar as these WLLs are of a bandwidth of less than and equal to 10Mb/s)? Please provide reasons for your response.

eircom offers WLLs at speeds of 2MB and at 34MB and at no speeds between these. eircom has no intention of extending the WLL portfolio to provide service between these speeds, as this range is covered by wholesale Ethernet access services, with prices published in the leased lines reference offer. eircom will continue to publish the prices for WLLs up to an including 2MB in the form of the current leased line price list. This price list does not distinguish between services offered between and outside urban centres - but rather has one set of national prices with charges based on distance and speed. eircom does not and will not publish the prices for WLLs at and above 34MB. For these reasons the issue raised in Q. 21 does not arise.

Q. 22. Do you agree that a billing period of one month in advance with 30 days credit are reasonable payment terms from Eircom to other operators for the provision of wholesale leased line products i.e. WLLs, PPCs and NGN Ethernet leased lines, within the market for wholesale terminating segment of leased lines? Please provide reasons for your response.

Leased lines products provided by eircom are billed quarterly in advance and subject to a 30 day credit term. eircom is firmly of the view that those payment terms are fair and reasonable and the question as asked by ComReg of whether other payment terms would be reasonable does not accordingly arise.

eircom is also of the view that the finding of ComReg that eircom's current terms of payment are not fair and reasonable is based on an assessment of facts which is inaccurate and wrong. In this regard, heavy reliance is placed by ComReg on the findings of Ofcom in the dispute between THUS and BT in the UK. While eircom agrees that the principles set out by the British regulator may be used by ComReg in deciding whether current payment terms are fair and reasonable, this does not mean that the findings of Ofcom can be readily transposed in Ireland. There appears to be crucial differences between the Irish and British situation.

Ofcom applied, in essence, a two-limb test, examining both whether the practice concerned was susceptible to affect competition and whether existing payment terms had been taken into account in arriving at cost-oriented prices. On the basis of the facts presented to it, Ofcom found, first, that the payment terms were susceptible to affect competition and second, that BT's cost-oriented prices for the products concerned did not reflect the payment terms actually offered. The situation differs in Ireland.

The finding of Ofcom that BT's payment terms were capable of harming competition followed the finding that there were differences between less onerous payment terms that THUS was able to enforce at the retail level, as compared with the more onerous payment terms that BT was able to enforce at the wholesale level and that BT did not face the same discrepancy. By contrast, in Ireland, eircom believes that wholesale payment terms are mirrored at the retail level and notes that ComReg has provided no evidence that this is not the case.

In addition, eircom's costs underpinning its PPC and NGN Ethernet prices reflect the impact on working capital costs of revenue being charged quarterly in advance. A consequence of this is that any change in current payment terms would inevitably lead to increases to product prices.

It is clear, on a close analysis of the THUS decision, that this decision does not, in fact, support ComReg's findings. ComReg's additional arguments purporting to support its findings that current payment terms may be anti-competitive "in the long term" are similarly flawed. eircom notes the following:

- First of all, it is not correct that OAOs "*typically have a higher cost of capital than Eircom's retail arm*". On the contrary, eircom's main competitors are subsidiaries of very large multinationals which typically would have lower cost of capital than eircom. The costs of capital have been assessed for BT, Vodafone and O2 by Ofcom, and for Telefonica and Verizon. In all cases, the net post-tax cost of capital is lower for each operator than the figure calculated by ComReg for eircom.
- Second, the Regulatory Impact Assessment of ComReg's proposed changes as set out in the table p. 113 of Doc. 10/70 is flawed and wrong. In particular, ComReg appears to believe that the proposed measure could both free some capital that OAOs could then invest, as well as allowing OAOs to offer their customers better payment terms. This is not logical. In practice, the likely outcome would be that one operator will offer monthly billing to end users, and all will be forced to follow. This may mean a significant benefit for end users, but it will not encourage investment by OAOs, and will reduce eircom's ability to invest. Unless the benefits to end users outweigh the damage caused by reduced investment, the existence of any net impact on the Irish economy is unclear.

For those reasons, eircom is of the view that ComReg has not demonstrated that current payment terms are unfair and unreasonable. In addition, ComReg has failed to explain why the payment terms preferred by another regulator in another jurisdiction would be fairer and more reasonable. As explained by both ComReg and Ofcom, there is a range of terms which may be fair and reasonable, depending on the circumstances of the case, rather than one set of narrowly defined fair and reasonable payment terms. ComReg however has failed to apply this principle and instead sought to transpose the solution of Ofcom to a significantly different situation. To the extent that ComReg could have found that current payment terms are unfair and unreasonable (and eircom does not believe that this is the case), ComReg should have sought to establish what fair and reasonable terms in the circumstances of the Irish market should be. This ComReg has failed to do.

eircom as a result of the above is of the view that ComReg's proposed change is disproportionate and unjustified.

Q. 23. Do you agree that in the interests of proportionality and reasonableness eircom's new billing terms should be effective from the next billing cycle twelve months from the date of the decision? Please provide reasons for your response.

eircom does not believe that a change to payment terms is warranted.

Without prejudice to this, if ComReg requires such a change, then a significant period of time of at least twelve months would be required for the transition to new payment terms. eircom notes, in particular, that in addition to the changes to business and billing system, the current prices for PPCs and Ethernet access products would have to be reviewed in that eventuality. In those circumstances, any resultant price increases would need to be implemented within the same timescale as any billing changes.

Q. 24. Do you have any views on this Regulatory Impact Assessment and is there other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment? Please explain your response and provide details of any additional factors that should be considered by ComReg.

ComReg's Regulatory Impact Assessment (RIA) contains no explicit or systematic analysis of the coherence or consistency of their proposals. The RIA, in fact, simply reiterates general theoretical propositions, and avoids any detailed or balanced discussion of its particular proposals.

eircom notes the six core principles listed by ComReg in section 9.4, on which it bases its assessment of the various options (i.e. necessity, effectiveness, proportionality, transparency, accountability and consistency). eircom concurs with these general principles for the conduct of the assessment. However, we do not believe that the RIA which ComReg produced in Section 9 of Document 10/70 is adequate or fit for purpose, nor is it clear from the RIA how ComReg contends that it has met each of the core principles listed.

Furthermore we are surprised by ComReg's assertion at section 9.4 that a RIA is not needed because ComReg "*is not imposing a new regulatory obligation*". This is clearly not the case. For example, ComReg proposes to alter eircom's billing arrangements for WLLs. We also note that in 07/56, ComReg commits to "*conduct RIAs in respect of any proposed statutory instruments which would impose regulatory obligations*", so clearly ComReg has already committed to producing a RIA in such an instance as this.

Despite its view that no RIA is required, ComReg has however attempted to demonstrate some impacts on various stakeholders of certain options. While this is welcome, several important options are omitted. For example, the "do nothing" option is, in many instances, ignored or given only superficial consideration.

In addition, no effort is made by ComReg in its RIA to quantify the predicted effect on stakeholder welfare of the various options identified. As a general point, ComReg should apply objective cost-benefit analysis principles in its RIAs. Moreover, there is no discussion of the appropriate weight that should be attached to the various costs and benefits experienced by each of the relevant stakeholders. (e.g. How is a negative impact on eircom balanced against a positive impact on an OAO? How is a negative impact on a rural customer balanced against a positive impact on an urban customer? etc.). An example of where ComReg failed to quantify the regulatory impacts is their proposal to shorten eircom's billing period from quarterly in advance to monthly in advance. Such a proposal would clearly have significant cash-flow implications for eircom. Yet ComReg made no effort in its RIA to recognise or quantify this material effect.

The RIA also frequently quotes general statements of opinion as facts, without any basis or supporting material. For example, the table on page 107 deals with national average costing for legacy products and states as an effect on the consumer that this "*ensures that no distortions are created in the marketplace*". One could equally make the case that nationally averaged pricing, which causes urban prices to be higher and rural prices to be lower (than if prices were geographically de-averaged) is, in itself, a market distortion.

The analysis of the impacts also appears, in some instances, to be selective. For example, "Option 2" on page 113 (i.e. eircom billing monthly in advance) is clearly preferred by ComReg to Option 1 (eircom billing quarterly in advance). In this context, we note the impacts listed by ComReg for option 2. This option (with 12 bills per annum) would certainly have larger transaction costs for both eircom and the OAO than would option 1. Yet, this certain impact is listed as a possibility ("*may increase the transaction costs*...") for eircom and the impact is completely ignored in the case of the OAOs.

Similarly, option 2 would obviously have working capital implications, when compared to option 1 (positive for OAOs and correspondingly negative for eircom). Again, the positive effects on the OAOs are considered in ComReg's RIA (with a potential "knock-on" positive impact on consumers) while the negative working capital effect on eircom is ignored. In other words, a potential (but uncertain) positive impact is factored into the RIA, while a definite negative effect on eircom is ignored. Inevitably such analysis will lead to the results being skewed in a particular direction.

Q. 25. Do you believe that the draft text of the proposed decision (in Appendix A) in relation to the transparency obligation and the access obligation is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain your response and provide details of any specific amendments you believe are required.

eircom is of the view that the appropriate legal basis in relation to ComReg's proposals in relation to the obligation of transparency and the conditions attached to the Access Obligations is Regulation 17 of the Access Regulations which allows ComReg to specify an obligation imposed on an SMP operator (provided always and subject to all other relevant requirements being met). In particular, ComReg may not, by the proposed Decision Instrument, purport to amend obligations imposed in D06/08. It is very clear from the provisions of the Access Directive and the Access Regulations that an SMP obligation may only be amended following a market analysis. This ComReg has not done. It does not appear to eircom, however, that ComReg is seeking to amend the transparency obligation. Rather ComReg is clarifying, or specifying, how this obligation applies in practice. This should be reflected in the Decision Instrument.

Without prejudice to eircom's position on this matter as set out in response to Question 20, any specification of the obligation of transparency should not have the effect of requiring eircom to publish WLL prices for speeds above 2Mbs.

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2 BT Communications Ireland Ltd.

BT Communications Ireland Ltd ("BT") Response to Consultation on price control, transparency, and access obligations and the market for the wholesale terminating section of leased lines Ref: 10/70

Issue 1 – 29th October 2010

Introduction

We are pleased to respond to this comprehensive consultation on ComReg's price control, transparency, and access obligations for the wholesale terminating section of leased lines market. This is a key market sector in Ireland and it's important that eircom supply is fair and reasonable.

We welcome the depth of the study as this has shed further light on ComReg's thinking and we have taken the opportunity to comment and would like to summarise the following areas.

1. The proposals for 'LRAIC plus' need to be qualified as to how common costs are allocated to the 'plus' element so that only valid costs and valid valuations of those common costs are applied. We are concerned that a lack of rigor in cost allocations and valuations could undermine ComReg's modelling.
2. Price control period – we have sympathy with ComReg's view to set the price control period for one year, however such a short period is problematic as most customer contracts will be longer than a year and changing the pricing too often exposes the OAOs to absorbing losses unless the price review is downwards.
3. We consider that it's not possible for an OAO in Ireland to replicate eircom's cost base given eircom enjoy benefits of scale, scope and externalities. We consider that the appropriate model to use is the Reasonably Efficient Operator (REO) model rather than the Equally Efficient Operator (EEO) as this will compensate for the gap between an efficient OAO and eircom.
4. We also consider that a change to the way ComReg decisions are enacted in eircom Reference Offers (see Q25) needs to be urgently changed as eircom

are using such to pass ComReg regulation onto the OAOs without the OAOs being subject to the obligations or OAO agreement.

Response to Consultation Questions:

Given the depth of this consultation and the number of different issues being addressed we have included the section titles from the Consultation to help keep the questions and answers in context.

Section 3 Proposed Further Specification of the Price Control Obligation

Q. 1. Do you agree that in general a 'LRAIC plus' approach on the basis of a BU model is the most appropriate costing methodology to use for determining the cost oriented wholesale charges for the products, service and associated facilities in the market for wholesale terminating segment of leased lines? Please provide reasons for your response.

A. 1. We agree with the 'LRAIC plus' approach based on a bottom up model. A forward looking approach is beneficial to the alternative historic HCA view as it more accurately reflects the current costs experienced in the market and is a better signal for investment. With regards to the 'plus' element we consider that ComReg need to pay particular attention to what common costs are included and to verify in detail the systems, allocations and valuations that eircom is applying. We believe that the Bottom Up approach will provide a more accurate view of costs as this will be more focused on the services concerned and this aligns with international practice. We therefore agree the ComReg proposal for determining the cost oriented wholesale charges for the products, service and associated facilities in the market for wholesale terminating segment of leased lines

Q. 2. Do you agree that the WLL charges should be based on the PPC costs, WLL network costs and WLL specific costs while taking into account the appropriate economic space between PPCs and WLLs? Please provide reasons for your response

A. 2. Broadly we are supportive of the ComReg proposal; however we have some concern around the ComReg proposals for WLL for the following reasons.

In locations where it is viable for operators to install interconnects to eircom's platform there is merit in the ComReg proposal as the PPC End User Link (EUL) is a viable alternative to WLLs. However, there are regions of the country where investment in Interconnect is not yet, and unlikely to be viable in the foreseeable future and the only viable alternative to purchasing eircom retail a leased line is to purchase WLLs. It's not clear in the ComReg proposal how the costing of WLL would relate in locations where PPCs are not viable.

Q. 3. Do you agree with ComReg's preliminary views, as set out above, on the main principles for the appropriate economic space assessment between WLLs and PPCs? Please provide reasons for your response

A. 3. We agree with ComReg's preliminary view that the assessment of economic space using the margin test should be conducted on a product by product basis between WLLs and PPCs. The reason for our view is to avoid the situation where niche products in a bundle could skew the margin test for a mainstream product. We consider that the bundle or basket should also be tested in addition to the individual products particularly if non-regulated or other regulated facilities are also bundled into the package.

Q. 4. Do you agree with ComReg's preliminary views, as set out above, on the main principles in relation to an assessment of the appropriate economic space between the other related wholesale products i.e. wholesale NGN Ethernet leased line products in the market for wholesale terminating segment of leased lines? Please provide reasons for your response.

A. 4. We broadly agree with ComReg proposal in relation to the appropriate model.

Section 4 – Proposed Model inputs, engineering rules and assumptions

Q. 5. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the leased lines access network? Please provide reasons for your response.

A. 5. We welcome ComReg's modelling work, however we are concerned that

Option 2, which is based on every cable taking a cost based on cross sectional area will overvalue eircom's costs. We consider there is a forth 'blended' solution.

It's difficult for us to provide a definitive view as to the costing of access fibre in Ireland without knowing more detail of spare capacity (duct space and unlit fibre) within the eircom access network. However eircom have been installing fibre in their access network for many years to serve existing business parks and industrial centres so they have considerable experience of the issues and the costs.

Good engineering practice and an efficient operator would plan some degree growth hence in key routes there should exist un-lit fibre and the costs of incremental growth for lighting these fibres should be low. We would also agree with ComReg that in many instances the incremental cost of adding a new cable, copper or fibre would be only be the pull through and splice costs whereas in some locations the duct systems would be full.

Blended solution

Whilst considering that a cable is a cable irrespective of whether it contains fibre or copper the more obvious answer would be to develop a blended solution that takes into account the quantity of incremental installations together with the situations where new capacity has to be installed. We believe that as a minimum ComReg should compare the Option 2 proposal with a blended approach, particularly when the growth rate is available as discussed in the consultation.

We'd also like to address the Fault Index discussed in the preliminary decision in clause 4.58. Whilst we accept that the fault index of fibre cables should be less that copper, it's not clear what is forming the basis of the 'assumed' 5%. We believe that a fault index should be set assuming no faults and eircom should be required to prove the value based on actual figures.

Q. 6. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the leased lines legacy core network? Please provide reasons for your response.

A. 6. We welcome the depth that ComReg is considering and would like to offer the following to inform the modelling approach.

1. Ref. 4.64. With regards to the terminating segments of leased lines market there is a reasonable expectation that NGN Ethernet will form a strong substitute to traditional leased lines in the coming years, not least due to reduced pricing. We would thus expect future growth of the traditional leased lines platform to be limited and the platform managed for cash over the next period. Given the age of the network, we would also expect significant portions to have been written down or coming close to being written down hence the cost of the network will reduce and capacity will become available as customers migrate to the NGN.

2. Ref. 4.66. We believe ComReg is trying to determine what allocation of the eircom transmission platform costs should be allocated to the terminating segments of leased lines. We think there is an easier and more correct way to determine the allocation rather than busy hour traffic.

   The SDH legacy transmission platform and its predecessor PDH are both dedicated capacity technologies. In simple terms dedicated circuits of fixed capacity are 'bolted' up across the SDH network for individual services when the network is configured. I.e. one service cannot interact with another within this type of network. Hence the concept of the capacity varying by time of day, such as a busy hour calculation is not appropriate. A simpler approach is to obtain from eircom what capacities have been allocated for each service as each service has to stay within the capacity allocated whether its busy or not. The capacity would only be varied by engineer intervention as new services are added/deleted or if increased capacity needed to be assigned to a particular service.

   Although not part of this study, **more modern** networks such as IP, ATM and Ethernet work on a sharing of capacity basis and use queues to delay traffic until capacity is available, hence these tend to be more efficient and cheaper than the traditional approach. A traffic based calculation would be appropriate on these types of platform.

   In conclusion, for the reasons above we fully agree with ComReg's aim of trying to allocate the costs by usage of resource (cost causation principle), but believe a simpler and more correct approach is to obtain the allocation of resource profile from eircom for their legacy SDH. We do not consider the busy hour approach is valid for an SDH technology platform, but acknowledge it could be appropriate in an Ethernet network.

Q. 7. Do you agree with ComReg's proposed approach regarding the traffic volumes for the NGN core network for the next three years? Please provide reasons for your response.

A. 7. We broadly agree with ComReg's logic regarding estimating traffic volumes for the eircom core however we would like to make the following comments.

- Ref. Clause 4.70. eircom have been publishing the locations of the core and other NGN nodes over the past few months hence the ComReg model should consider these rather than using the PPC legacy network as a proxy.
- Ref. Clause 4.72. We would expect mobile operator backhaul, particularly over core networks to be subject to competitive supply rather than automatically using the eircom core platform, hence all the mobile traffic should not be factored into the eircom platform costs.
- We agree that the trend is for increasing bandwidth.

Q. 8. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the leased lines NGN core network? Please provide reasons for your response.

A. 8. We agree with the need to model the eircom NGN and would like to offer the following comments. We remain of the view that busy hour calculations don't apply to low level transmission networks such as the physical fibre layer, the DWDM and the SDH layers as capacity is allocated and dedicated at these layers.

With regards to the NGN core busy hour traffic this can be modelled but it's important to consider the following:

- The volume of traffic
- The assigned traffic type, I.e. Expedited, Assured and Standard.

- The Network Quality of Service Parameters. Telecoms queuing theories apply and the QOS of the NGN platform will be a factor of eircom's queuing dimensioning, i.e. when will traffic be dropped. Our understanding from the NGN Wholesale Ethernet technical Manual is that the NGN Standard traffic is contended 5 to 1.

Q. 9. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the WEA product? Please provide reasons for your response.

A. 9. We consider that it should be clarified whether the WEA uses the NGN core. If it does then we would agree with ComReg's preliminary view of the modelling for the WEA product.

Q. 10. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted in relation to the common areas between the leased lines core and access network? Please provide reasons for your response

A. 10. We agree with ComReg's preliminary view in relation to the common areas between leased lines in the core and access network as some ducts will be shared.

Q. 11. Do you agree with the duration and future review of the price control? Please provide reasons for your response.

A. 11. Leased lines and NGN Wholesale Ethernet service are used by OAOs for network infill or for serving business customers. Given that business customer contracts are normally longer than 1 year in duration, we think that a 1 year price review brings uncertainty to the market as prices will be seen as unstable and the OAOs will have to absorb any price increases. We therefore consider a minimum of two years should be set for the price control.

Section 5 – Proposed Pricing Approach

Q. 12. Do you agree that the pricing approach for legacy WLL and PPC products should continue on the basis of nationally averaged prices? Please provide reasons for your response.

A. 12. We agree to maintain the current national averaged pricing approach for legacy WLL and PPC products should continue to maintain price stability and not to undermine existing long term customer contracts.

Q. 13. Do you agree that 'real-time' traffic conveyance has an additional associated cost compared with "best efforts traffic conveyance? Please provide reasons for your response.

A. 13. For "Real Time", substitute "Assured". No, the additional costs of establishing and maintaining more than one class of service within a network should be recovered equally between the classes. It cannot be reasonably argued that either class incurs the cost of having more than one class.

"Best effort" traffic is characterised as subject to a network planning ratio of 5:1. The costing of "Best Effort" service should be a function of the forecast loading of the network and not (as is now the case) pretending that the network will be perfectly loaded at exactly the maximum allowed by the planning ratio and so taking only 20% of the cost of assured bandwidth!

The pricing of EF and AF (as a function of the price for assured service) should reflect the fact that the two are inextricably linked and EF (to have any meaning) must incur a price premium (if they are both the same price then everyone orders priority and if everyone has priority no one has priority). We believe they are currently set at 0.9P for AF and 1.1P for EF. This is reasonable where the forecast split between EF & AF sales is 50/50. If (for example) AF outsells EF by a factor of 2, then the pricing could be rebalanced to AF @ 0.94P and EF @ 1.14P

Q. 14. Do you agree that geographic density is one of the main cost drivers in terms of the provision of leased lines services on the core network? Please provide reasons for your response.

A. 14. The leased lines market in Ireland has worked well on a national pricing basis and we consider this should be extended to eircom's Wholesale Ethernet Solutions.

Q. 15. Do you agree that the pricing approach for ‘high density’ areas should be extended to “medium density’ areas, where there is demand envisaged in those medium density areas? Please provide reasons for your response.

A. 15. Yes we believe there should only be one national price regardless of density. A single pricing approach (density) would encourage infrastructure investment from other operators in what are currently high and medium density areas, and confer lower prices into the low density areas.

Q. 16. Do you believe that the assessment of demand for those medium density areas should be determined by footprint, bandwidth or determined by ComReg on a case-by-case basis? Please provide reasons for your response

A. 16. As we have indicated in our answers 14 and 15 we consider there should be national price as has worked successfully for many years in the leased lines services in Ireland.

Q. 17. Do you agree with the application of a gradient to set leased line charges in the market for wholesale terminating segment of leased lines is reasonable so long as the SMP operator recovers its efficiently incurred costs and does not create a margin (price) squeeze? Please provide reasons for your response.

A. 17. We have sympathy with the concept of gradient however we consider the gradient provided by eircom is excessive.

Q. 18. Do you believe that principle of cost orientation should be applied at high level of aggregation, i.e. the price structure to be adopted should ensure that total revenues recover the total costs for the various elements of the wholesale NGN Ethernet leased lines products? Please provide reasons for your response

A.18. A key aim is that costs incurred by eircom in the core and network management systems should not be inappropriately loaded into the access parts of the network. We consider that there exists a motive for eircom to do this as there are a number of alternative operators with core facilities and the motive would exist for eircom to keep its core prices low, whereas there is very limited alternative infrastructure in the access elements of the service, hence eircom still enjoy a monopolistic position and could raise access prices unhindered. Our view is that a high level of aggregation carries the risk that costs will be shifted by eircom from the core and management features to the access network. We are concerned that this ComReg proposal is not without risk and eircom have the motive and ability to abuse this to the detriment of competition in Ireland.

Section 6 – Proposed Margin (Price) Squeeze Test between the market for Wholesale terminating Segments of Leased Lines and Retail Leased Lines market (ex-ante test)

Q. 19. Do you agree with the proposed approach set out above (EEO, 'LRAIC plus' and product-by-product basis) for an ex-ante margin (price) squeeze test between the prices in the market for wholesale terminating segment of leased lines and the corresponding prices in the retail market? Please provide reasons for your response

A. 19. We have provided our answer to this question in three categories as below.

1. Operator efficiency - We have a number of concerns surrounding the choice of EEO. Our view is that in Ireland with the continuing strong vertical integration in eircom we cannot achieve the status of equally efficient operator with eircom for the following reasons:

    - Eircom enjoy the benefits of scale and scope. Scale in pure volume and scope in terms of the benefits they accrue for offering a very wide portfolio of associated and complementing products. We consider that eircom are also providing to themselves very high bandwidth NGN Ethernet products (10Gbit/s and above) that are not available in the market. Larger bandwidth circuits provide additional benefits such as less hardware, increased reliability (in statistical terms as there is less to go wrong) and statistical gain on larger circuits (standard engineering benefit). These services and hence the benefits are not available and achievable for the OAOs.

- Owned facilities – eircom own the exchanges, ducts, fibres and have ubiquitous access in Ireland. This gives them the ability to augment their network to meet their own demands to their own timescales. Over the years the OAOs have suffered continued poor behaviour from eircom when it comes to OAOs requests for services. It took some two years, 18 months of which included two formal regulatory disputes from different operators and a ComReg decision to force eircom to offer Wholesale Ethernet Services to compete with eircom Retail services. Given the delay the services offered were only 10Mbit/s when the industry had moved to 1Gbit/s. It then took several new complaints and many more months before higher speeds were offered; then with so many technical and product issues that we considered they were not fit for purpose and unfit for us to purchase. Although eircom are saying they have changed their behaviour, there is no sign of any change at the working level. Our experience is we have to go through an onerous and extended SOR process to request new products and eircom rarely deliver services when they are actually required.
- Eircom also benefit from externalities from operating so many products and different markets. For example when they come to change an element in their product they have the mechanisms, websites etc to issue the changes quickly to industry.
- Restricted facilities – we node that eircom have provided themselves NGN Ethernet facilities for backhauling their 'Uncongested' Broadband services, yet if another party were to try to replicate the same on the eircom NGN there are barriers that are appearing to make such impossible.

Our view in Ireland given the current state of vertical integration of eircom and the status of the market is that the most appropriate model is the reasonably efficient operator (REO) model. We are not implying that the OAOs are inefficient in what they do, but acknowledging that the REO model will allow for the eircom efficiencies that cannot be attained by an OAO to be fully considered in the calculation.

2. Pricing Model – We agree with ComReg that the LRAIC plus model should be

used as this gives the long run incremental cost element whilst acknowledging some common costs. However, we are concerned that ComReg should pay detailed attention to the allocation methodologies and the figures eircom supply. Appropriate accounting separation transparency should be mandated to ensure only reasonable common costs are taken into this product.

3. Margin Test – We strongly agree with ComReg that the Margin test should be conducted on a product by product basis to avoid the potential for 'basket or bundle skewing' where niche products mask margin squeezes on high volume mainstream products. We also believe the basket as a whole should pass a bundling test, similar to the one used in the unreasonable bundles court case modified for this market if appropriate.

Section 7 – Proposed Transparency Obligations

Q. 20. Do you consider that the application of the transparency obligation in relation to the publication of Wholesale Leased Lines pricing information for circuits of bandwidth greater than 10Mb/s in general, should be adjusted so that Eircom should not be obliged to publish the pricing information for these WLLs? Please provide reasons for your response

A. 20. In our view transparency is an under rated regulatory remedy in Ireland and when not deployed seriously undermines the discrimination obligations. We see little point in ComReg mandating processes to establish the value of WLL prices as prescribed in the earlier part of the consultation only for those prices not to be published. We consider strongly that the eircom pricing information for all WLLs should be subject to transparency publication obligations.

Q. 21. Do you consider that the application of the transparency obligation in relation to the publication of Wholesale Leased Lines pricing information for circuits of less than STM 1 between the "urban centres", should not be adjusted so that Eircom should be obliged to publish the pricing information for these

WLLs (insofar as these WLLs are of a bandwidth of less than and equal to

10Mb/s)? Please provide reasons for your response.

A. 21. We consider that the existing rules should be continued for the reasons explained in our response to question 20. However, we consider that the 10Mbit/s limit should be raised to 20Mbit/s. Comreg acknowledge that the rates could go up and we are aware that the technology is capable of supporting up to 20Mbit/s. ComReg also discuss that the next SDH rate is 34Mbit/s, hence increasing the limit to 20Mbit/s does not have an onerous impact on the current WLL services. We are of the view that this change brings both clarity and certainties of the regulatory treatment were the rate increased as we expect to happen. Given the time to consult we also consider it's a good use of ComReg's time to make the change now.

Section 8 – Other related Issues - Billing

Q. 22. Do you agree that a billing period of one month in advance with 30 days credit are reasonable payment terms from Eircom to other operators for the provision of wholesale leased line products i.e. WLLs, PPCs and NGN Ethernet leased lines, within the market for wholesale terminating segment of leased lines? Please provide reasons for your response.

A. 22. We are not offering a response to this question.

Q. 23. Do you agree that in the interests of proportionality and reasonableness Eircom's new billing terms should be effective from the next billing cycle twelve months from the date of the decision? Please provide reasons for your response.

A. 23. We are not offering a response to this question.

Section 9 Regulatory Impact Assessment

Q. 24. Do you have any views on this Regulatory Impact Assessment and is there other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment? Please explain your response and provide details of any additional factors that should be considered by ComReg.

A. 24. We consider the regulatory impact assessment has considered the key issues and our comments to earlier preliminary decisions also apply to the Regulatory

Impact Assessment.

Q. 25. Do you believe that the draft text of the proposed decision (in Appendix

A) In relation to the transparency obligation and the access obligation is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain your response and provide details of any specific amendments you believe are required.

A. 25. We have the following comments:

1. We believe the scope and application is too narrow and the decision should also apply to subsidiaries etc of eircom, where such exist.
2. We consider that eircom should be required to publish WLL prices for all bandwidths and associated facilities.
3. Re: clause 3.3. The Reference Offer forms the basis of the contract that eircom enter into with all the other operators. These contracts form key supply contracts to the industry, potentially impacting 10's of millions of Euro worth of business. We acknowledge ComReg have the authority to modify eircom's reference offer, however eircom then interpret ComReg's decision and impose the changes into OAO contracts. We therefore consider that by implication ComReg is unreasonably mandating a regulatory remedy on the OAOs as our contracts are being changed. We are seeking that the decision notice should be modified so that where eircom is mandated to alter the Reference Offer; it should publish a draft to industry and seek the agreement of operators within a reasonable fixed period (1 calendar month) before the final version is published. I.e. we consider it reasonable and proportionate for the OAOs to be able to take a view as to whether the changes being made into their contracts <u>are</u> fair and reasonable. We have had recent occasion (LLRO) to challenge such and do not want to see such happening again.

3 Magnet Networks Ltd.

Consultation Questions – ComReg D10/70:

Magnet Networks welcomes the consultation but would like to highlight the excessive length of the consultation. We understand the importance of the consultation but feel that such length acts as a hindrance more than a help to respondents. Magnet Networks propose a longer more detailed executive summary with the supporting documentation referred to and annexed to this summary. This would allow respondents not to feel daunted and overwhelmed by the length of the consultation.

Q. 1. Do you agree that in general a "LRAIC plus" approach on the basis of a BU model is the most appropriate costing methodology to use for determining the cost oriented wholesale charges for the products, service and associated facilities in the market for wholesale terminating segment of leased lines? Please provide reasons for your response.

Magnet Networks agree that the LRAIC plus approach the best approach to adopt as costing methodology. There are numerous reasons for this the first being to maintain consistency by ComReg between consultations. The next reason is more important, LRAIC plus model takes variable costs into account and allow for reasonable flexibility.

Q. 2. Do you agree that the WLL charges should be based on the PPC costs, WLL network costs and WLL specific costs while taking into account the appropriate economic space between PPCs and WLLs? Please provide reasons for your response

Overall, Magnet Networks agree. This decision ties in with ComReg's proposal in the WBA pricing review to maintain a requisite amount of space between the 2 products to allow OAO's to climb up the ladder of investment.

Q. 3. Do you agree with ComReg's preliminary views, as set out above, on the main principles for the appropriate economic space assessment between WLLs and PPCs? Please provide reasons for your response.

This market is not sufficiently diverse to utilize any other costing methodology but REO. In the Consultation ComReg state "it is important to note the lower level of platform competition from OAO's in Ireland to date." This indicates that though market is mature in age it is not a diverse market. The REO prevents leveraging of economies of scale in costs which may occur if the SEO method is used. However, SEO may be used if it becomes a hybrid with REO and economies of scale are adjusted for. However, the question of efficiencies does arise. The Commission recommends the utilization of the REO methodology for NGA.[1]

Q. 4. Do you agree with ComReg's preliminary views, as set out above, on the main principles in relation to an assessment of the appropriate economic space between the

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1 http://ec.europa.eu/information_society/policy/ecomm/doc/library/public_consult/nga_2/090611_nga_recommendation_spc.pdf

other related wholesale products i.e. wholesale NGN Ethernet leased line products in the market for wholesale terminating segment of leased lines? Please provide reasons for your response.

There are 5 main principles that are outlined:-
1. Appropriate operator cost base: -To reiterate above Magnet Networks believe the REO model should be used.
2. Operator volume base: - 25% is too high and 10% is a more realistic base for OAO's to acquire.
3. Cost Standard: - Overall agree with LRAIC plus model.
4. Model type: - Magnet Networks agree with the static model to allow replicability in the market.
5. Product by Product or Portfolio: - The only option is product by product for a number of reasons. Firstly to ensure that replicability as OAO's won't provide the same suite of products as eircom. Secondly, to prevent leveraging of products if a portfolio was being used.

Q. 5. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the leased lines access network? Please provide reasons for your response.

Again this needs to be assessed on a number of points and Magnet Networks view is as follows on each point.
1. Modelling approach: - Magnet Networks agree to a mixed fibre/copper approach.
2. Location of fibre: - Magnet Networks agree as we doubt that eircom are laying fibre in rural areas.
3. Fibre Access Volume: - Magnet Networks don't agree as eircom are being presumptive relating to mobile operators backhaul. Backhaul is a commercial offering and an investment decision for the mobile operator. The can approach numerous operators to provide the service and thus, eircom should not include it in their volume calculations.
4. Civil works - Magnet Networks agree with ComRegs proposal.
5. Allocation of Civil Works between copper/fibre: - Overall, Magnet Networks agree.
6. Operation Costs:- Magnet Networks do not understand where ComReg got 5% fault index from. Seems like a figure plucked from the air. Magnet Networks believe that there should be 0% faults on the line but do understand that fibre faults can occur but should only be at about 1% of lines not 5 times higher as proposed in this consultation.

Q. 6. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the leased lines legacy core network? Please provide reasons for your response.

This needs to be assessed on each principle set out in the consultation. Magnet Networks view on each principle is as follows:-
1. Modelling approach: - Magnet Networks agree that it should be a pure legacy approach.
2. Traffic Volumes: - These should decrease on legacy as the move to NGN increases.
3. Allocation of legacy: - SDH gives allocation to each service and such allocation

cannot be transferred between services. Magnet Networks don't agree with the busy hour approach and feel a 95 percentile approach is more appropriate as it is an industry used standard.
4. Operations costs: - Magnet Networks agree but would be better if an example of a contended and uncontended product.

Q. 7. Do you agree with ComReg's proposed approach regarding the traffic volumes for the NGN core network for the next three years? Please provide reasons for your response.

Magnet Networks believe that eircom's presumption of winning mobile backhaul contracts should be discounted. Magnet Networks agrees that there is a correlation between cost and bandwidth.

Q. 8. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the leased lines NGN core network? Please provide reasons for your response.

Comreg set out the following preliminary views and Magnet Networks considers the following on each:
1. Capacity requirement for voice: - Magnet Networks agree.
2. Allocation re NGN: - This should be at the 95th percentile.
3. Operating costs: - Magnet Networks agree that it should be lower and that as the NGN is substantially built at this stage there should be an indication of future costs. If the core is not fully NGN then a business plan is in place with an update to date cost analysis which will outline any costs to upgrade the network.

Q. 9. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the WEA product? Please provide reasons for your response.

As far as Magnet Networks are concerned with the launch of WEIL and WSEA WEA has become a legacy product and thus does not agree with ComReg's view.

Q. 10. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted in relation to the common areas between the leased lines core and access network? Please provide reasons for your response.

Comreg set out the following preliminary views and Magnet Networks considers the following on each:
1. Tilted Annuity and Price trend: - Magnet Networks agrees with Option 2 and feel that the 6 month timeline is more appropriate.
2. Asset Lives: Overall agree with previous consultation on this.
3. Common costs between core and access: - Magnet Networks overall agrees with ComReg's proposal.
4. Civils allocation between core and access: - Magnet Networks does not agree with the 50% split and feel the core is more likely to have more civils then the access paths.
5. Fibre cable between core and access: - Again the 50/50 split does not sit well with Magnet Networks and a 65% core and 35% access is more accurate as there would be

more fibre in the core as the access may still be run over copper.

Q. 11. Do you agree with the duration and future review of the price control? Please provide reasons for your response.

Magnet Networks agree that duration of 2 years is best to review the price control. However, there has to be a commitment to start the review process at between 14 to 18 months into the 2 year period.

Q. 12. Do you agree that the pricing approach for legacy WLL and PPC products should continue on the basis of nationally averaged prices? Please provide reasons for your response.

Magnet Networks agree with the nationally averaged pricing approach.

Q. 13. Do you agree that "real-time' traffic conveyance has an additional associated cost compared with "best efforts' traffic conveyance? Please provide reasons for your response.

First WEA/WDEA/WREA can now be considered as legacy products and there is now only one NGN product and that would be WEIL/WSEA.

Magnet Networks agree that as different services require different levels of packet security transference e.g. television and voice need more guaranteed conveyance more so than data. However, I feel this question is confused. Eircom offer 3 types of traffic conveyance, real time, best effort and assured. Thus, eircom have pitched assured traffic conveyance in between the other two, however, assured will be sufficient to convey both TV and voice. TV signal may utilize real time depending on the cost implications.

Q. 14. Do you agree that geographic density is one of the main cost drivers in terms of the provision of leased lines services on the core network? Please provide reasons for your response.

Geographic density occurs due to industries being present in a particular location. Industry is what is the driver to provision leased lines as a residential customer is not a leased lines user. Thus geographic density and industrial locations are interlinked. However, if there is a large industry in a low density area there would still be a demand for leased lines. However, this feeds in to question 15.

Q. 15. Do you agree that the pricing approach for "high density' areas should be extended to "medium density' areas, where there is demand envisaged in those medium density areas? Please provide reasons for your response.

Overall Magnet Networks agree as outlined at question 14 once significant demand is confirmed.

Q. 16. Do you believe that the assessment of demand for those medium density areas should be determined by footprint, bandwidth or determined by ComReg on a case-

by-case basis? Please provide reasons for your response.

All of the 3 potential determinations are acceptable. However, it should be noted that political lobbying should not be listened to when requested to reclassify a medium density exchange. It is imperative that there is confirmation of such increase in demand to merit reclassifying the exchange.

Q. 17. Do you agree with the application of a gradient to set leased line charges in the market for wholesale terminating segment of leased lines is reasonable so long as the SMP operator recovers its efficiently incurred costs and does not create a margin (price) squeeze? Please provide reasons for your response.

This question is hard to know, the concept of gradients in itself is sound and responsible in certain situations, however, in this particular situation no examples were put forward. Magnet Networks believes if there is an individual fibre going to a premises then a gradient is not required as the cost recovery is on the fibre and not on the speeds over that fibre i.e. the speed could be 1MB or 1Gb but the install cost and cost to recover the fibre build is the same irrespective of speed.

Q. 18. Do you believe that principle of cost orientation should be applied at high level of aggregation, i.e. the price structure to be adopted should ensure that total revenues recover the total costs for the various elements of the wholesale NGN Ethernet leased lines products? Please provide reasons for your response.

Magnet Networks agrees that the principle of cost orientation should be applied at high level of aggregation, because if revenue didn't recover costs then there would be below cost selling.

Q. 19. Do you agree with the proposed approach set out above (EEO, "LRAIC plus' and product-by-product basis) for an ex-ante margin (price) squeeze test between the prices in the market for wholesale terminating segment of leased lines and the corresponding prices in the retail market? Please provide reasons for your response.

Magnet Networks agree with the LRAIC plus and product by product approach, however, Magnet Networks do not agree with the EEO. Again Magnet Networks believe the REO is the most appropriate methodology to determine costings when accessing margin squeeze. EEO requires an OAO to have invested to the same extent as eircom and this has not occurred in either the retail or the wholesale market.

Q. 20. Do you consider that the application of the transparency obligation in relation to the publication of Wholesale Leased Lines pricing information for circuits of bandwidth greater than 10Mb/s in general, should be adjusted so that Eircom should not be obliged to publish the pricing information for these WLLs? Please provide reasons for your response.

To ensure transparency Magnet Networks believe that eircom should be obliged to publish all their pricing information irrespective of bandwidth.

Q. 21. Do you consider that the application of the transparency obligation in relation to the publication of Wholesale Leased Lines pricing information for circuits of less *than STM 1 between the "urban centres", should not be adjusted so that Eircom should be obliged to publish the pricing information for these WLLs (insofar as these WLLs are of a bandwidth of less than and equal to 10Mb/s)? Please provide reasons for your response.*

To ensure transparency Magnet Networks believe that eircom should be obliged to publish all their pricing information irrespective of bandwidth.

Q. 22. Do you agree that a billing period of one month in advance with 30 days credit are reasonable payment terms from Eircom to other operators for the provision of wholesale leased line products i.e. WLLs, PPCs and NGN Ethernet leased lines, within the market for wholesale terminating segment of leased lines? Please provide reasons for your response.

Magnet Networks agrees and feels it will make budgeting easier.

Q. 23. Do you agree that in the interests of proportionality and reasonableness Eircom's new billing terms should be effective from the next billing cycle twelve months from the date of the decision? Please provide reasons for your response.

Overall Magnet Networks does not agree with new billing from the next billing term in 1 years' time. Magnet Networks feel that by the next quarter would be sufficient time to implement such change. However, if there is back dating of pricing to the date of the decision then allowing eircom a year to transfer their billing and the first bill contains a refund to the OAO's then the long run in time may be acceptable.

Q. 24. Do you have any views on this Regulatory Impact Assessment and is there other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment? Please explain your response and provide details of any additional factors that should be considered by ComReg.

The RIA complies with ComReg's obligations. Magnet Networks does not agree with some of the methodologies proposed and have outlined why in the preceding part of the consultation.

Q. 25. Do you believe that the draft text of the proposed decision (in Appendix A) in relation to the transparency obligation and the access obligation is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain your response and provide details of any specific amendments you believe are required.

The draft text complies with ComReg's obligations.

4 e-net

Specification of regulatory obligations relating to the market for wholesale terminating segments of leased lines

Response to ComReg's Consultation Paper 10/70

by

e|net

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CONTENTS

1 INTRODUCTION AND SUMMARY

e|net welcomes the opportunity to respond to ComReg's Consultation Paper on the price control, transparency and access obligations relating to the market for wholesale terminating segments of leased lines (ComReg document 10/70 published on 10th September). ComReg has clearly put a significant amount of time and thought into its consideration of the various regulatory measures it is proposing in this Consultation Paper. Such diligence can only improve the decision-making process in relation to this important facet of the communications market in Ireland.

e|net is, in the main, very supportive of the proposals set out by ComReg in its Consultation Paper and we believe that, once these measures are implemented, the supply conditions (both price and non-price) facing alternative operators of the various wholesale leased line products should be improved. This, in turn, should help competing operators to enhance their own retail offerings, to the benefit of end-users.

ComReg's proposals deal with setting the regulated price not only of leased lines provided over legacy technologies but also that of NGN-based products, typically provided over Ethernet. While these latter services are still largely in their infancy, they are growing in importance all the time and so setting the regulated price for such services is of crucial importance to operators, as it will have a major impact on the market in future years as the transition to NGN gathers pace.

In doing so, ComReg needs to balance a number of competing requirements. It must enable Eircom to recover efficiently incurred costs of provision but ComReg also need to be mindful of the impact that the resultant price has on competition. If regulated prices are set too high, competition could be stifled in those areas where wholesale leased lines are an important input (an important consideration at a regional level within the country) while too low a price could cause issues in relation to predatory pricing by the incumbent and so harm competition for the supply of retail leased line products and services.

e|net believes that ComReg has struck a sensible balance in relation to its proposals but we recognise – as ComReg will also need to – that it is how these proposals are implemented in practice that will matter. ComReg will need to keep this area under close review and must be prepared to act swiftly if any of its proposed measures have unforeseen anti-competitive consequences.

In the remainder of this document, e|net provides its response to the various questions posed by ComReg in its Consultation Paper. e|net would be happy to expand further on these responses or to discuss them directly with ComReg, if ComReg deems this would be helpful to it in finalising its decisions in this area.

2 RESPONSES TO CONSULTATION QUESTIONS POSED BY COMREG

Q.1. Do you agree that in general a "LRAIC plus" approach on the basis of a BU model is the most appropriate costing methodology to use for determining the cost oriented wholesale charges for the products, service and associated facilities in the market for wholesale terminating segment of leased lines? Please provide reasons for your response.

Yes. The principle of using a costing methodology based on LRAIC principles to determine cost oriented wholesale charges for communications products and services is a well-established one. As ComReg points out, using a current cost standard developed using a bottom-up (BU) approach provides better 'build-buy' incentives for operators. The 'LRAIC plus' standard is therefore the more appropriate one for ComReg to use also bearing in mind that this approach allows for the recovery of fixed and common costs.

Q.2. Do you agree that the WLL charges should be based on the PPC costs, WLL network costs and WLL specific costs while taking into account the appropriate economic space between PPCs and WLLs? Please provide reasons for your response.

Yes. As ComReg points out, the usage of WLLs by competing operators has declined in recent years, as operators have migrated to PPCs. Pricing of PPCs is therefore a matter of key concern for competing operators and given that the regulated price of WLLs was previously set on a 'retail-minus' basis, it makes sense for ComReg to peg this wholesale price to PPC costs, while also factoring in WLL network costs and WLL specific costs and also taking account of the appropriate economic space between the two products.

Q.3. Do you agree with ComReg's preliminary views, as set out above, on the main principles for the appropriate economic space assessment between WLLs and PPCs? Please provide reasons for your response.

e|net agrees in general with ComReg's preliminary views on the main principles for the assessment of what constitutes the appropriate economic space between WLLs and PPCs.

e|net would, however, have a slight reservation about the use of the SEO approach upon which to base the costs of a model which should provide the appropriate 'build-buy' signal to new entrants. As ComReg notes, this approach is based on Eircom's data and so ComReg will face the kind of information asymmetries it has encountered in other areas when forced to use data from the SMP operator as the basis for estimating regulated wholesale costs.

e|net agrees that, in assessing the appropriate operator volume base, an adjustment for economies of scale should be carried out to determine the WLL charges. e|net agrees that basing this assessment on an operator with 25% market share would be appropriate.

e|net also agrees that usage of the 'LRAIC plus' cost standard would be appropriate when assessing the appropriate economic space between any of the wholesale leased lines products and services.

Q. 4. Do you agree with ComReg's preliminary views, as set out above, on the main principles in relation to an assessment of the appropriate economic space between the other related wholesale products i.e. wholesale NGN Ethernet leased line products in the market for wholesale terminating segment of leased lines? Please provide reasons for your response.

Yes. As ComReg rightly points out, technology in the WLL market is moving the market towards services based on NGN Ethernet. Given the need for ComReg to be able to take account of these technology changes, any future assessment of the appropriate economic space between wholesale products in the terminating segment of leased lines market should be undertaken on a product-by-product basis.

Q.5. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the leased lines access network? Please provide reasons for your response.

Yes. e|net agrees that it makes sense for the approach that is used to model the costs relating to Eircom's leased lines access network to be one comprising a mix of copper and fibre technologies. As ComReg points out, such an approach will reflect the reality on the ground, taking account of the current mix between the two technologies and the gradual migration to NGN over the coming years.

Q.6. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the leased lines legacy core network? Please provide reasons for your response.

Yes. e|net agrees that it is appropriate to base its model of legacy PPCs and WLLs on the assumption that it is a pure legacy core network. e|net supports ComReg's proposal to use current traffic volumes on Eircom's core legacy as a basis for modelling traffic on the legacy core network but it also believes that this assumption needs to be kept under review and that Eircom's traffic volume data will need to be regularly updated. In saying this, e|net would also issue a reservation in terms of using busy-hour data to model SDH transmission costs, given the dedicated nature of SDH-based services. In addition, while it makes sense to use Eircom's operating cost data as a starting point, ComReg will, as it states, itself, need to make some adjustments to these costs to reflect current market costs and the engineering rules of an efficient operator.

Q.7. Do you agree with ComReg's proposed approach regarding the traffic volumes for the NGN core network for the next three years? Please provide reasons for your response.

e|net is broadly in agreement with ComReg's proposed approach to modelling traffic volumes for the NGN core network for the coming three years. e|net would, however, request that ComReg give close consideration to the proposal that mobile operator backhaul traffic volumes should be reflected in the model, given that it is not at all clear to what extent (if any) such traffic will be carried over Eircom's network.

Q.8. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the leased lines NGN core network? Please provide reasons for your response.

e|net is broadly in agreement with ComReg's proposed approach to modelling the leased lines NGN core network.

Q.9. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the WEA product? Please provide reasons for your response.

Yes. e|net agrees that in order to be consistent with the MEA concept and the approach proposed for wholesale NGN Ethernet leased lines, the WEA product should be based on an NGN core network model.

Q.10. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted in relation to the common areas between the leased lines core and access network? Please provide reasons for your response.

e|net is of the view that it would be desirable to refine the 50:50 split of fibre cable and duct costs proposed to weight the costs taking account of fibre count used for different purposes. e.g. if a single fibre pair is used for core network in a duct that had several 96-fibre cables in it, where all the other fibres are used for access, splitting the costs 50:50 would be likely to have the effect of overstating core costs and understating access costs. ComReg needs to ensure that relative costs are not skewed in this way by any inappropriate split in costs between core and access network elements.

Q.11. Do you agree with the duration and future review of the price control? Please provide reasons for your response.

While an initial one-year price control period may be the most appropriate one to use, bearing in mind the migration to NGN and the fact that the rollout of NGN technology is still very much in its early stages, this should, as ComReg proposes, be subject to an early pricing review. e|net believes that, following this review, the control period should shift to a two-year one, in order to provide greater certainty to OAOs regarding their own input costs and bearing in mind the contract lengths of their own downstream retail products.

Q.12. Do you agree that the pricing approach for legacy WLL and PPC products should continue on the basis of nationally averaged prices? Please provide reasons for your response.

Yes. e|net supports the proposal that the regulated price of legacy WLL and PPC products should continue to be set on a nationally averaged basis. This has been the practice for several years and, as ComReg points out, there is a large installed customer base that avails of these products. As a result, a move away from nationally averaged prices for these products could cause significant disruption to customers and it is not clear that such disruption is warranted.

Q.13. Do you agree that 'real-time' traffic conveyance has an additional associated cost compared with 'best efforts' traffic conveyance? Please provide reasons for your response.

Yes. Real time traffic requires a higher performance and quality of service compared to traffic conveyed on a 'best efforts' basis. There are additional costs involved in providing services on a real time basis compared to those based on 'best efforts' and so it follows that this cost difference ought to be recognised in the wholesale charges that are set for each service.

Q.14. Do you agree that geographic density is one of the main cost drivers in terms of the provision of leased lines services on the core network? Please provide reasons for your response.

Yes. As ComReg points out, if density is accounted for then the fixed costs relating to the provision of leased lines are spread into different amounts of volume, depending on the geographic location of the handover nodes. It follows that geographic density must be an important cost driver for the core network provision of leased lines. That said, ComReg needs to balance its desire to achieve regulated prices for leased lines that accurately reflect underlying costs with the need to ensure that more remote parts of the country are not significantly disadvantaged compared to urban centres (see our response to Q.15 below).

Q.15. Do you agree that the pricing approach for 'high density' areas should be extended to 'medium density' areas, where there is demand envisaged in those medium density areas? Please provide reasons for your response.

In allowing for geographically de-averaged prices, it is important that leased line connectivity to the regions does not become significantly more expensive than in high density urban areas. ComReg's proposal to deal with this problem by reclassifying as high density the aggregation nodes for those medium density regions where increased demand for connectivity is being experienced.

While ComReg's proposal to ensure that medium density areas could be reclassified as high density is a welcome one, e|net questions if it will be significant to ensure that rural and less-developed urban areas are not disadvantaged vis-à-vis urban centres. The MANs programme was specifically designed to deal with a lack of advanced broadband infrastructure within the regions and procuring competitively priced backhaul has been an ongoing issue for e|net, in particular where it comes to connecting MANs located in more remote areas. e|net would therefore be concerned if pricing principles based on density considerations were to drive an even greater wedge between less developed regions of the country and urban centres in terms of the price of leased line services.

Q.16. Do you believe that the assessment of demand for those medium density areas should be determined by footprint, bandwidth or determined by ComReg on a case-by-case basis? Please provide reasons for your response.

e|net believes that this kind of assessment will require careful consideration and, as such, that it could only sensibly be done on a case-by-case basis.

Q.17. Do you agree with the application of a gradient to set leased line charges in the market for wholesale terminating segment of leased lines is reasonable so long as the SMP operator recovers its efficiently incurred costs and does not create a margin (price) squeeze? Please provide reasons for your response.

Yes. e|net agrees that it would be reasonable to apply a gradient in order to determine the charges for leased line products providing Eircom complies with its other regulatory obligations, including its cost orientation obligation and its obligation not to create a margin squeeze. As ComReg points out, the charges for existing legacy leased line products are priced using gradients and this method of pricing is commonly used in other EU Member States.

Q.18. Do you believe that the principle of cost orientation should be applied at a high level of aggregation, i.e. the price structure to be adopted should ensure that total revenues recover the total costs for the various elements of the wholesale NGN Ethernet leased lines products? Please provide reasons for your response.

No. While oversight at a high level of aggregation provides a useful starting point to confirm whether or not Eircom is complying with its regulatory obligations, e|net believes that a greater level of scrutiny involving increased granularity of costs and how they apply to particular NGN Ethernet leased line products will be necessary – at least in the short-to-medium term – for

ComReg to have sufficient confidence that Eircom is in full compliance with all relevant obligations.

Q.19. Do you agree with the proposed approach set out above (EEO, 'LRAIC plus' and product-by-product basis) for an ex-ante margin (price) squeeze test between the prices in the market for wholesale terminating segment of leased lines and the corresponding prices in the retail market? Please provide reasons for your response.

Yes. In monitoring possible anti-competitive pricing by the SMP operator, ComReg needs to guard against both excessive and predatory pricing practices and so its approach needs to be one that takes account of both.

e|net is happy that ComReg's proposed approach constitutes an effective *ex ante* margin squeeze test between the prices of wholesale terminating segments of leased lines and the corresponding retail leased line prices. e|net believes that it is particularly important for ComReg to be able to apply the test on a product-by-product basis as not doing so would give Eircom far too much latitude to price on an anti-competitive basis for particular leased line products, depending on the competitive position that pertains in each segment of the market.

Q.20. Do you consider that the application of the transparency obligation in relation to the publication of Wholesale Leased Lines pricing information for circuits of bandwidth greater than 10Mb/s in general, should be adjusted so that Eircom should not be obliged to publish the pricing information for these WLLs? Please provide reasons for your response.

Yes. e|net agrees with ComReg's assessment that the current operation of this market segment is satisfactory from a competition point of view and hence that Eircom should not be obliged to publish WLL pricing information for circuits of bandwidth greater than 10 Mbps.

Q. 21. Do you consider that the application of the transparency obligation in relation to the publication of Wholesale Leased Lines pricing information for circuits of less than STM 1 between the "urban centres", should not be adjusted so that Eircom should be obliged to publish the pricing information for these WLLs (insofar as these WLLs are of a bandwidth of less than and equal to 10Mb/s)? Please provide reasons for your response.

Yes. e|net endorses ComReg's view that that there is no reason to differentiate the application of the transparency obligation to WLLs on the basis of geographical location or their routing i.e. if an end-to-end circuit qualifies as a regulated WLL rather than an unregulated trunk link, then the relevant obligations and remedies (including the transparency obligations) should continue to apply to it.

Q.22. Do you agree that a billing period of one month in advance with 30 days credit are reasonable payment terms from Eircom to other operators for the provision of wholesale leased line products i.e. WLLs, PPCs and NGN Ethernet leased lines, within the market for wholesale terminating segment of leased lines? Please provide reasons for your response.

Yes. e|net supports ComReg's assessment that Eircom, as the SMP operator, has a competitive advantage in setting payment terms for other operators. Given that Eircom's credit terms mirror those offered by BT in the UK and the fact that the UK regulatory Ofcom has recently moved to compel BT to alter its policy of charging quarterly in advance for wholesale leased line services, it makes sense for ComReg to oblige Eircom to move away from using such credit terms as well.

Q.23. Do you agree that in the interests of proportionality and reasonableness Eircom's new billing terms should be effective from the next billing cycle twelve months from the date of the decision? Please provide reasons for your response.

Yes. e|net supports ComReg's proposal to grant Eircom a period of twelve months within which to implement this change.

Q.24. Do you have any views on this Regulatory Impact Assessment and is there other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment? Please explain your response and provide details of any additional factors that should be considered by ComReg.

e|net is happy that ComReg's Regulatory Impact Assessment is sufficiently comprehensive and deals with all relevant factors impinging on the proposed decision.

One additional factor that e|net would like to have considered by ComReg is that Eircom’s standard terms of business include a provision that on cessation of a service the “Operator shall give to eircom in writing at least one month's notice, expiring on the last day of the calendar month following that in which the notice is given …” This provision probably adds an average of about 15 days to a notice period of one month. e|net suggests that this cessation notice should simply be set at one month.

Q.25. Do you believe that the draft text of the proposed decision (in Appendix A) in relation to the transparency obligation and the access obligation is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain your response and provide details of any specific amendments you believe are required.

e|net has no specific comments on the draft text of the proposed decision.

5 ALTO

alto

alternative operators in the communications market

Response to Consultation on price control, transparency, and access obligations and the market for the wholesale terminating section of leased lines Ref: 10/70

Submission By ALTO

Date: October 22nd 2010 (New submission date: 29th October, 2010)

ALTO is pleased to respond to the Consultation on ComReg's price control, transparency, and access obligations and the market for the wholesale terminating section of leased lines.

ALTO welcomes the opportunity to comment on these comprehensive and significant proposals from ComReg relating to price control, transparency, and access obligations.

ALTO is strongly supportive of ComReg's Draft Decision Instrument to be found at Appendix A of the consultation paper. In particular we highlight that Ireland is now joining the rest of Europe in terms of facilitating new entrant operator cash flow, curbing unfair incumbent payment and credit vetting terms, and mandating transparency in the communications market.

ALTO generally welcomes ComReg's approach to the 'Ladder of Investment' approach and efforts to maintain the competitive dynamic between Leased Lines, Partial Private Circuits, and Ethernet products. We also welcome ComReg's approach in relation to de-averaging of prices between Low, Medium and High Density areas for Ethernet services.

ALTO has some concerns in relation to ComReg's Modern Equivalent Assets approach that are addressed below.

General Observations:

ALTO welcomes the depth of the study as this has shed further light on ComReg's thinking and we have taken the opportunity to comment. We would also like to highlight the following areas:

1. The proposals for 'LRAIC plus' need to be qualified as to how common costs are allocated to the 'plus' element so that only valid costs and valid

valuations of those common costs are applied. We are concerned that a lack of rigor in cost allocations and valuations could undermine ComReg's modelling. A review timetable will also be required by industry. This is particularly important given that the cost model adopted is out of line with the recommendations from the European Commission. The adoption of a pure LRIC model underpins the EC objective of ensuring costs are based on efficiency to ensure the best possible outcomes for consumers. Whilst recognising the constraints in this particular case, ALTO would urge ComReg to adopt the pure LRIC approach in future market reviews where there is a greater need to impose strict charge controls.

2. Price control period – we have sympathy with ComReg's view to set the price control period for one year, however such a short period is problematic as most customer contracts will be longer than a year and changing the pricing too often exposes the OAOs to absorbing losses unless the price review is downwards. A more reasonable duration might be two-year cycles.

3. We consider that it's not possible for an OAO in Ireland to replicate eircom's cost base given eircom enjoy benefits of scale, scope and externalities. We consider that the appropriate model to use is the Similarly Efficient Operator – SEO, model rather than the Equally Efficient Operator – EEO, as this will compensate for the gap between an efficient OAO and eircom.

4. We are of the view that there are three Ethernet traffic classes that ComReg should consider in Q. 13 rather than just 'real time' and 'best efforts' to align more closely with the eircom NGN offering.

5. We also consider that a change to the way ComReg decisions are enacted in eircom Reference Offers (see Q. 25) needs to be urgently changed as eircom are using such to pass ComReg regulation onto the OAOs without the OAOs being subject to the obligations or OAO agreement.

Response to Consultation Questions:

Given the depth of this consultation and the number of different issues being addressed we have included the section titles from the Consultation to help keep the questions and answers in context.

Section 3 Proposed Further Specification of the Price Control Obligation

Q. 1. Do you agree that in general a 'LRAIC plus' approach on the basis of a BU model is the most appropriate costing methodology to use for determining the cost oriented wholesale charges for the products, service and associated facilities in the market for wholesale terminating segment of leased lines? Please provide reasons for your response.

A. 1. ALTO's view is that the LRIC is the best model long run costs implying that all inputs are considered variable. In other words, even capital equipment can vary in response to a change in demand. In the context of the ComReg proposal and the logic in relation to the investment markets and the *caveat* mentioned above, we are willing to accept the LRAIC plus approach for a limited period of time (e.g., two years maximum). We highlight the EU Commission's endorsement of the LRIC approach[1] and make the following points.

We consider that LRIC cost modelling has a very important ongoing role in regulation of SMP operators.

In particular, LRIC enables:

- efficient use of SMP operators' networks;
- a degree of protection against price-squeeze
- An efficient degree of competitive entry; and
- Optimal build/buy incentives.

[1] 2009/396/EC

Prices to customers should reflect the actual cost of that choice as prices act as signals for customer behaviour. In determining prices on a bottom up basis, LRIC pricing has the attractive property that it provides an approximation for the outcome of a competitive market. Cost signals should be forward looking as they are signals for future decisions – past decisions have been made and cannot be altered according to current incentives.

To date, the use of robust LRIC models throughout Europe has, with limited exceptions, been very poor. This is a serious problem as the development of competition in the EU depends on the availability of interconnection at cost-reflective prices.

ALTO believes ComReg should be strongly encouraged to develop LRIC models for the following types of service:

- Leased Lines
- DSL bitstream
- Mobile Termination
- PSTN interconnection

In stating the above, ALTO is willing to conditionally agree with the 'LRAIC plus' approach based on a Bottom Up – BU, model. A forward looking approach can be and generally is beneficial to the alternative historic or Historic Cost Accounting – HCA, view as it more accurately reflects the current costs experienced in the market and is a better signal for investment. With regard to the 'plus' element we consider that ComReg need to pay particular attention to what common costs are included and to verify in detail the systems, allocations and valuations that eircom is applying. We believe that the Bottom Up approach will provide a more accurate view of costs as this will be more focused on the services concerned and this aligns with international practice.

We therefore agree the ComReg proposal for determining the cost oriented wholesale charges for the products, service and associated facilities in the market for wholesale terminating segment of leased lines. This conditional agreement is given on the understanding that this determination will be subject to a timely review, and not remain in force for more than a period of two years in duration.

Q. 2. Do you agree that the WLL charges should be based on the PPC costs, WLL network costs and WLL specific costs while taking into account the appropriate economic space between PPCs and WLLs? Please provide reasons for your response

A. 2. Broadly ALTO is supportive of the ComReg proposal; however we have some concerns around the ComReg proposals for Wholesale Leased Line – WLL, for the following reasons.

In locations where it is viable for operators to install interconnects to eircom's platform there is merit in the ComReg proposal as the Partial Private Circuits – PPC, End User Link – EUL, is a viable alternative to WLLs. However, there are regions of the country where investment in Interconnect is not yet, and unlikely to be viable in the foreseeable future and the only viable alternative to purchasing eircom retail a leased line is to purchase WLLs. It is not very clear in the ComReg proposal how the costing of WLL would relate in locations where PPCs are not viable.

Q. 3. Do you agree with ComReg's preliminary views, as set out above, on the main principles for the appropriate economic space assessment between WLLs and PPCs? Please provide reasons for your response

A. 3. We agree with ComReg's preliminary view that the assessment of economic space using the margin test should be conducted on a product by product basis between WLLs and PPCs. The reason for our view is to avoid the situation where niche products in a bundle could skew the margin test for a mainstream product.

We consider that the bundle or basket should also be tested in addition to the individual products particularly if non-regulated or other regulated facilities are also bundled into the package.

Q. 4. Do you agree with ComReg's preliminary views, as set out above, on the main principles in relation to an assessment of the appropriate economic space between the other related wholesale products i.e., wholesale NGN Ethernet leased line products in the market for wholesale terminating segment of leased lines? Please provide reasons for your response.

A. 4. We broadly agree with ComReg proposal in relation to the appropriate model.

Section 4 – Proposed Model inputs, engineering rules and assumptions

Q. 5. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the leased lines access network? Please provide reasons for your response.

A. 5. ALTO welcomes ComReg's modelling work, however we are concerned that Option 2, which is based on every cable taking a cost based on cross sectional area will overvalue eircom's costs. We consider there is a forth 'blended' solution.

It is difficult for us to provide a definitive view as to the costing of access fibre in Ireland without knowing more detail of spare capacity (duct space, unlit fibre, etc.) within the eircom access network. However eircom have been installing fibre in their access network for many years to serve existing business parks and industrial centres and so they have considerable experience of the issues and the costs.

Good engineering practice and an efficient operator would plan some degree growth hence in key routes there should exist un-lit fibre and the costs of incremental growth for lighting these fibres should be low. We would also agree with ComReg that in many instances the incremental cost of adding a new cable, copper or fibre would be only be the pull through and splice costs whereas in some locations the duct systems would be full.

Blended solution

Considering that a cable is a cable irrespective of whether it contains fibre or copper the more obvious answer would be to develop a blended solution that takes into account the quantity of incremental installations together with the situations where new capacity has to be installed. ALTO believes that as a minimum ComReg should compare the Option 2 proposal with a blended approach, particularly when the growth rate is available as discussed in the consultation.

We would also like to address the Fault Index discussed in the preliminary decision in clause 4.58. While we accept that the fault index of fibre cables should be less that copper, it's not clear what is forming the basis of the 'assumed' 5%. We believe that a fault index should be set assuming no faults and eircom should be required to prove the value based on actual figures.

Q. 6. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the leased lines legacy core network? Please provide reasons for your response.

A. 6. We welcome the depth that ComReg is considering and would like to offer the following to inform the modelling approach.

1. Ref. 4.64. With regards to the terminating segments of leased lines market there is a reasonable expectation that NGN Ethernet will form a strong substitute to traditional leased lines in the coming years, not least due to reduced pricing. We would thus expect future growth of the traditional leased lines platform to be limited and the platform managed for cash over the next period. Given the age of the network, we would also expect significant portions to have been written down or coming close to being written down hence the cost of the network will reduce and capacity will

become available as customers migrate to the NGN.

2. Ref. 4.66. We believe ComReg is trying to determine what allocation of the eircom transmission platform costs should be allocated to the terminating segments of leased lines. We think there is an easier and more correct way to determine the allocation rather than busy hour traffic.

   The SDH legacy transmission platform and its predecessor PDH are both dedicated capacity technologies. In simple terms dedicated circuits of fixed capacity are 'bolted' up across the SDH network for individual services when the network is configured, i.e., one service cannot interact with another within this type of network. Hence the concept of the capacity varying by time of day, such as a busy hour calculation is not appropriate. A simpler approach is to obtain from eircom what capacities have been allocated for each service as each service has to stay within the capacity allocated whether its busy or not. The capacity would only be varied by engineer intervention as new services are added/deleted or if increased capacity needs to be assigned to a particular service.

   Although not part of this study, **more modern** networks such as IP, ATM and Ethernet work on a sharing of capacity basis and use queues to delay traffic until capacity is available, hence these tend to be more efficient and cheaper than the traditional approach. A traffic based calculation would be appropriate on these types of platform.

   In conclusion, for the reasons above we fully agree with ComReg's aim of trying to allocate the costs by usage of resource (cost causation principle), but believe a simpler and more correct approach is to obtain the allocation of resource profile from eircom for their legacy SDH. We do not consider the busy hour approach is valid for an SDH technology platform, but acknowledge it could be appropriate in an Ethernet network.

Q. 7. Do you agree with ComReg's proposed approach regarding the traffic volumes for the NGN core network for the next three years? Please provide reasons for your response.

A. 7. We broadly agree with ComReg's logic regarding estimating traffic volumes for the eircom core however we would like to make the following comments.

- Ref. Clause 4.70. eircom have been publishing the locations of the core and other NGN nodes over the past few months hence the ComReg model should consider these rather than using the PPC legacy network as a proxy.
- Ref. Clause 4.72. We would expect mobile operator backhaul, particularly over core networks to be subject to competitive supply rather than automatically using the eircom core platform, hence all the mobile traffic should not be factored into the eircom platform costs.
- We agree that the trend is for increasing bandwidth.

Q. 8. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the leased lines NGN core network? Please provide reasons for your response.

A. 8. We agree with the need to model the eircom NGN and would like to offer the following comments. We remain of the view that busy hour calculations don't apply to low level transmission networks such as the physical fibre layer, the DWDM and the SDH layers as capacity is allocated and dedicated at these layers.

With regards to the NGN core busy hour traffic this can be modelled but it's important to consider the following:

- The volume of traffic
- The assigned traffic type, i.e. Expedited, Assured and standard.
- The Network Quality of Service Parameters. Telecoms queuing theories apply and the QOS of the NGN platform will be a factor of eircom's queuing dimensioning i.e., when will traffic be dropped. Our understanding from the NGN Wholesale Ethernet technical Manual is that the NGN Standard traffic is contended 5 to 1. We consider that Expedited and Assured traffic will not

be dropped.

Q. 9. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted for the WEA product? Please provide reasons for your response.

A. 9. We consider that it should be clarified whether the WEA uses the NGN core. If it does then we would agree with ComReg's preliminary view of the modelling for the WEA product.

Q. 10. Do you agree with ComReg's preliminary views, as set out above, in relation to the modelling approach adopted in relation to the common areas between the leased lines core and access network? Please provide reasons for your response

A. 10. We agree with ComReg's preliminary view in relation to the common areas between leased lines in the core and access network as some ducts will be shared.

Q. 11. Do you agree with the duration and future review of the price control? Please provide reasons for your response.

A. 11. Leased lines and NGN Wholesale Ethernet service are used by OAOs for network infill or for serving business customers. Given that business customer contracts are normally longer than 1 year in duration, we think that a 1 year price review brings uncertainty to the market as prices will be seen as unstable and the OAOs will have to absorb any price increases. We therefore consider a minimum of two years should be set for the price control.

Section 5 – Proposed Pricing Approach

Q. 12. Do you agree that the pricing approach for legacy WLL and PPC products should continue on the basis of nationally averaged prices? Please provide reasons for your response.

A. 12. We agree to maintain the current national averaged pricing approach for legacy WLL and PPC products should continue to maintain price stability and not to undermine existing long term customer contracts.

Q. 13. Do you agree that 'real-time' traffic conveyance has an additional associated cost compared with "best efforts" traffic conveyance? Please provide reasons for your response.

A. 13. The eircom product offered to OAOs has three traffic classes and not two as implied in the consultation. These are:

1. Expedited Traffic Class up to a max of 150Mbit/s
2. Assured Traffic Class up to a max of 300Mbits (150 Expedited traffic is included in this).
3. Best Effort.

When considering how to cost the network, the assured traffic should have a significant impact on the network costs as 'Assured' means guaranteed throughput so the network must be dimensioned to carry this traffic. The expedited traffic class (real time) merely jumps the queue to reduce latency, but it does not necessarily need more bandwidth than the assured class. The product from eircom sets the Expedited traffic (150Mbit/s) as a subset of the Assured traffic class (300Mbit/s) which aligns with this view. However, we agree that Expedited traffic should attract a small premium hence a blending of the Assured and Expedited traffic should be built into the model. It's not clear from the analysis how the standard traffic is being dimensioned and shown to be cost orientated and it would be helpful if ComReg could share their modelling with dummy numbers. We could then properly comment in a lot more detail.

Q. 14. Do you agree that geographic density is one of the main cost drivers in terms of the provision of leased lines services on the core network? Please provide reasons for your response.

A. 14. We agree that in Ireland where the economics of different areas varies, geographic density is one of the main cost drivers as ducts and fibres will most likely already exist.

Q. 15. Do you agree that the pricing approach for 'high density' areas should be extended to 'medium density' areas, where there is demand envisaged in those medium density areas? Please provide reasons for your response.

A. 15. eircom's price list contains considerable differences between the medium and high-density areas and it would be beneficial to extend the high density pricing approach to medium density areas where demand it's envisaged. There will be less competition from other operators in these medium density areas so customers will have no option but to pay higher prices.

Q. 16. Do you believe that the assessment of demand for those medium density areas should be determined by footprint, bandwidth or determined by ComReg on a case-by-case basis? Please provide reasons for your response

A. 16. At this time the Wholesale Ethernet Market is nascent as its just commenced in Ireland and it's difficult to predict the key element for determining demand, hence the availability should be on a case by case basis.

Q. 17. Do you agree with the application of a gradient to set leased line charges in the market for wholesale terminating segment of leased lines is reasonable so long as the SMP operator recovers its efficiently incurred costs and does not create a margin (price) squeeze? Please provide reasons for your response.

A. 17. Our view is there are aspects of the NGN service where price gradients are valid and others where they are not. An example of where price gradients are not valid is for the access fibre from the customer premises to the network as there is no sharing of the fibre, hence on a cost orientation basis the cost should lead to a single price irrespective of speed rather than a gradient. To do otherwise contravenes the obligation for cost orientation.

The situations where price gradients are valid are where the service moves towards the core of the network as the service is shared and the amount of usage becomes quantifiable. In this situation, price gradients can be developed to reflect costs and additionally to provide controls on the levels of traffic in the core.

Q. 18. Do you believe that principle of cost orientation should be applied at high level of aggregation, i.e. the price structure to be adopted should ensure that total revenues recover the total costs for the various elements of the wholesale NGN Ethernet leased lines products? Please provide reasons for your response

A.18. A key aim is that costs incurred by eircom in the core and network management systems should not be inappropriately loaded into the access parts of the network. We consider that there exists a motive for eircom to do this as there are a number of alternative operators with core facilities and the motive would exist for eircom to keep its core prices low, whereas there is very limited alternative infrastructure in the access elements of the service, hence eircom still enjoy a monopolistic position and could raise access prices unhindered. Our view is that a high level of aggregation carries the risk that costs will be shifted by eircom from the core and management features to the access network. We are concerned that this ComReg proposal is not without risk and the appropriate safeguards should be considered.

Section 6 – Proposed Margin (Price) Squeeze Test between the market for Wholesale terminating Segments of Leased Lines and Retail Leased Lines market (*ex-ante* test)

Q. 19. Do you agree with the proposed approach set out above (EEO, 'LRAIC plus' and product-by-product basis) for an *ex-ante* margin (price) squeeze test between the prices in the market for wholesale terminating segment of leased lines and the corresponding prices in the retail market? Please provide reasons for your response

A. 19. We have provided our answer to this question in three categories as below.

1. Operator efficiency - We have a number of concerns surrounding the choice of EEO. Our view is that in Ireland with the continuing strong vertical integration in eircom we cannot achieve the status of equally efficient operator with eircom for the following reasons:

    - Eircom enjoy the benefits of scale and scope. Scale in pure volume and scope in terms of the benefits they accrue for offering a very wide portfolio of associated and complementing products. We consider that eircom are also providing to themselves very high bandwidth NGN Ethernet products (10Gbit/s and above) that are not available in the market. Larger bandwidth circuits provide additional benefits such as less hardware, increased reliability (in statistical terms as there is less to go wrong) and statistical gain on larger circuits (standard engineering benefit). These services and hence the benefits are not available and achievable for the OAOs.

    - Owned facilities – eircom own the exchanges, ducts, fibres and have ubiquitous access in Ireland. This gives them the ability to augment their network to meet their own demands to their own timescales. Over the years the OAOs have suffered continued poor behaviour from eircom when it comes to OAOs requests for services. It took some two years, 18 months of which included two formal regulatory disputes from different operators and a ComReg decision to force eircom to offer Wholesale Ethernet Services. Given the delay the services offered were only 10Mbit/s when the industry had moved to 1Gbit/s. It then took several new complaints and many more months before higher speeds were offered with so many problems that we considered they were not fit for purpose and unfit for us to purchase. Although eircom are saying they have changed their behaviour, there is no sign of any change at the working level. Our experience is we have to go through an onerous and extended SOR process to request new products and eircom rarely deliver services when they are actually required.

- Eircom also benefit from externalities from operating so many products and different markets. For example when they come to change an element in their product they have the wholesale mechanisms, websites etc to issue the changes quickly to industry.
- Restricted facilities – we node that eircom have provided themselves NGN Ethernet facilities for backhauling their Broadband services, yet if another party were to try to replicate the same on the eircom NGN there are barriers that are appearing to make such impossible.

Our view in Ireland given the current state of vertical integration of eircom and the status of the market is that the most appropriate model is the Similarly Efficient Operator – SEO, model. We are not implying that the OAOs are inefficient in what they do, but acknowledging that the SEO model will allow for the eircom efficiencies that cannot be attained by an OAO to be fully considered in the calculation.

2. Pricing Model – We agree with ComReg that the LRAIC plus model should be used as this gives the long run incremental cost element whilst acknowledging some common costs. However, we are concerned that ComReg should pay detailed attention to the allocation methodologies and the figures eircom supply. Appropriate accounting separation transparency should be mandated to ensure only reasonable common costs are taken into this product.
3. Margin Test – We strongly agree with ComReg that the Margin test should be conducted on a product by product basis to avoid the potential for 'basket or bundle skewing' where niche products mask margin squeezes on high volume mainstream products. We also believe the basket as a whole should pass a bundling test, similar to the one used in the unreasonable bundles court case modified for this market if appropriate.

Section 7 – Proposed Transparency Obligations

Q. 20. Do you consider that the application of the transparency obligation in relation to the publication of Wholesale Leased Lines pricing information for circuits of bandwidth greater than 10Mb/s in general, should be adjusted so that Eircom should not be obliged to publish the pricing information for these WLLs? Please provide reasons for your response

A. 20. In our view transparency is an under rated regulatory remedy in Ireland and when not deployed seriously undermines the discrimination obligations. We see little point in ComReg mandating processes to establish the value of WLL prices as prescribed in the earlier part of the consultation only for those prices not to be published. We consider strongly that the eircom pricing information for all WLLs should be subject to transparency publication obligations.

Q. 21. Do you consider that the application of the transparency obligation in relation to the publication of Wholesale Leased Lines pricing information for circuits of less than STM 1 between the "urban centres", should not be adjusted so that Eircom should be obliged to publish the pricing information for these WLLs (insofar as these WLLs are of a bandwidth of less than and equal to 10Mb/s)? Please provide reasons for your response.

A. 21. We consider that the existing rules should be continued for the reasons explained in our response to question 20. However, we consider that the 10Mbit/s limit should be raised to 20Mbit/s. Comreg acknowledge that the rates could go up and we are aware that the technology is capable of supporting up to 20Mbit/s. ComReg also discuss that the next SDH rates is 34Mbit/s, hence increasing the limit to 20Mbit/s does not have an onerous impact on the current WLL services. We are of the view that this change brings both clarity and certainties of the regulatory treatment were the rate increased as we expect to happen. Given the time to consult we also consider it's a good use of ComReg's time to make the change now.

Section 8 – Other related Issues - Billing

Q. 22. Do you agree that a billing period of one month in advance with 30 days credit are reasonable payment terms from Eircom to other operators for the provision of wholesale leased line products i.e. WLLs, PPCs and NGN Ethernet leased lines, within the market for wholesale terminating segment of leased lines? Please provide reasons for your response.

A. 22. ALTO and a significant number of operators (though not all members) have requested this from eircom within the industry forum and eircom has firmly rejected the proposal following a considerable delay, hence we do not foresee eircom offering the proposed change voluntarily. We note that ALTO's paper submitted to ComReg and that aspects of the UK experience feature in this consultation. We agree with, and welcome this proposal.

Q. 23. Do you agree that in the interests of proportionality and reasonableness Eircom's new billing terms should be effective from the next billing cycle twelve months from the date of the decision? Please provide reasons for your response.

A. 23. ALTO agrees that some minor work will be required to change the billing period and believe we can work with the proposed transition. Any time in excess of the finalisation of this decision instrument should be subject to retrospection on the part of eircom from the date of the decision until such time as the new billing cycle(s) are fully implemented (**Note**: not all members share this particular view).

In addition and linked to this issues, we consider that the leased line and network elements cease processes must urgently be revised to shorten the process to align with customer expectations i.e., a cease should apply within a reasonably short time. The current cease process is not acceptable sometimes taking up to sixty working days to process a cease if an opportunity is missed. ComReg must consider brining Ireland in-line with the UK, France and other EU countries where target times are about 7 days in duration. In the current economic climate ALTO calls on ComReg to take this request seriously. ALTO members have raised this matter at the industry forum meetings and in similar circumstances to the payment and billing period review requests, the item seems to have vanished from the agenda.

Section 9 Regulatory Impact Assessment

Q. 24. Do you have any views on this Regulatory Impact Assessment and is there other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment? Please explain your response and provide details of any additional factors that should be considered by ComReg.

A. 24. We consider the regulatory impact assessment has considered the key issues and our comments to earlier preliminary decisions also apply to the Regulatory Impact Assessment.

Q. 25. Do you believe that the draft text of the proposed decision (in Appendix

A) In relation to the transparency obligation and the access obligation is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain your response and provide details of any specific amendments you believe are required.

A. 25. We have the following comments:

1. We believe the scope and application is too narrow and the decision should also apply to subsidiaries of eircom, where such exist.
2. We consider that eircom should be required to publish WLL prices for all bandwidths and associated facilities.
3. Re: clause 3.3. The Reference Offer forms the basis of the contract that eircom enter into with all the other operators. These contracts form key supply contracts to the industry, potentially impacting 10's of millions of Euro

worth of business. We acknowledge ComReg have the authority to modify eircom's reference offer, however eircom then interpret ComReg's decision and impose the changes into our contracts. We therefore consider that by implication ComReg is unreasonably mandating a regulatory remedy on the OAOs as our contracts are being changed. We are seeking that the decision notice should be modified so that where eircom is mandated to alter the Reference Offer; it should publish a draft to industry and seek the agreement of operators within a reasonable fixed period (1 calendar month) before the final version is published, i.e., we consider it reasonable and proportionate for the OAOs to be able to take a view as to whether the changes being made into their contracts are fair and reasonable. Industry has had recent occasion (LLRO) to challenge such and do not want to see such happening again.

4. ALTO generally calls for ComReg to review Service Level Agreements – SLAs, across all areas of the Leased, Wholesale, and Ethernet markets whether new or emerging. Many members struggle with high-end business customer expectations and either cannot meet them or face difficulties in explaining the national process and regimes in respect of that. ALTO welcomes further development of robust SLAs in order to truly facilitated ComReg's transparency initiatives.

ALTO

29th October 2010

6 IDA Ireland

Introduction:

In March 2010, IDA Ireland published 'Horizon 2020', its strategic blueprint for attracting Foreign Direct Investment (FDI) into Ireland in the coming decade. FDI has been, and will continue to be, a key element in the export led recovery of the economy.

'Horizon 2020' sets out a compelling argument for the need for ongoing 'transformation' in our approach to secure leading FDI here in Ireland. 'Horizon 2020' sets out a road-map of what is needed to fuel Ireland's future success with leading global corporations over the coming decade. The investment targets for this strategy include the creation of 105,000 new jobs in Ireland from the period 2010-2014 and 50% of these investments are to be based in locations outside of Dublin and Cork. Building on existing regional strengths to ensure Ireland's economic development and optimising regional spread, in line with the NSS Gateway and Hubs, of overseas investments is central to IDA's core activities. The Strategy is being implemented over a five year period (2010-2014).

To date, in 2010, IDA Ireland has secured 75 investments which have the potential to create 6,000 jobs. IDA foresee a strong growth in services investments globally. IDA has repositioned Ireland's value proposition to win employment intensive services FDI driven by an improvement in relative international cost competitiveness. We also anticipate an increasing contribution from manufacturing particularly Medical Technologies and Engineering. This is at least partly a response to Ireland's improved competitiveness.

In order to maximise the effectiveness of FDI, Ireland must ensure that we quickly enhance our broadband infrastructure and deploy Next Generation Networks which are extremely important for the ongoing development of the enterprise base. We must also ensure that the regulatory environment of Ireland is fit for purpose. Regulation must be strong, credible and flexible to adapt to changing conditions to maximise the opportunities for job creation, innovation and the emergence of new sectors.

In this difficult economic environment, Ireland must continuously focus on improving its competitiveness. We must ensure that our prices and costs base makes us a highly attractive location for a variety of employment and capital intensive projects with multinational companies.

Comreg Consultation Paper on Price Control Obligations:

With reference to Comreg's recent Consultation Paper on the further specification of the price control obligation, the transparency obligation and the access obligation in relation to the market for the wholesale terminating segment of leased line IDA, as the Agency for attracting FDI to Ireland, welcomes the proposal to consult on price control and transparency obligations.

IDA recognises that there has been significant investment made in broadband services in recent years which has resulted in greater availability of broadband country wide. However, IDA would welcome the capability for enterprises and home users to avail of greater speeds, reduced costs, instant access and levels of quality comparable to those in other advanced countries.

IDA has established business parks in the key Gateway and Hub towns in line with the NSS. In addition, we also have established a number of land banks which in some cases are located close to but perhaps not within the boundary of the high density areas, as defined in the consultation process. IDA would be supportive of a mechanism whereby these sites can avail of the proposed discounted high density regions pricing structure given their role as a provider of investment, exports, jobs and innovation in the economy.

In addition, IDA recognises that in exceptional circumstances some of our clients may be located in a privately owned business park, or on their own property, which is not located in the high density regions pricing structure. Where these clients rely significantly on telecoms infrastructure and cost models to support their business, IDA would support a mechanism which facilitates these enterprises availing of the high density regions pricing structure.

IDA would welcome the opportunity to explore this area in more detail.