

Submissions to Consultation on Interconnection Market Review on Wholesale Call Origination and Transit Services



Commission for  
**Communications Regulation**

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Submissions to Consultation on Interconnection Market Review on Wholesale Call  
Origination and Transit Services

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Submissions to Consultation on Interconnection Market Review on Wholesale Call  
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**eircom Ltd.**

**Response to ComReg Doc. 07/02**

***Consultation: Market Analysis: –  
Wholesale Call Origination and Transit Services***

**23 March 2007**

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## EXECUTIVE SUMMARY

- It is important to note that eircom's wholesale fixed interconnection charges compare favourably by comparison with its peers in other European Union (EU) Member States. It is evident from published European Commission comparisons that eircom's charges are in general among the lowest for call origination and call termination.
- eircom calls upon ComReg for the timely completion of this market review process, one that commenced in October 2004. eircom reminds ComReg that the EU Regulatory Framework requires it to carry out analyses of the relevant markets "as soon as possible after the adoption of the recommendation, or any updating thereof," which came into effect in July 2003.
- In 2001, ComReg's predecessor, the ODTR, confirmed that regulation should be removed from eircom in the substantially competitive international transit market, and, having regard to perceived difficulties under the then prevailing regulatory regime, proposed a relaxation of regulatory obligations on the company.
- eircom maintains that a market analysis for the "wholesale market for outgoing international transit services on the public telephone network provided at a fixed location" is unnecessary, as these services have long been competitive. The European Commission did not consider them as relevant market to be subject to *ex ante* regulation, and no other national regulatory authority (NRA) has considered it necessary to conduct a separate market review for this specific type of services.
- eircom believes that the continued regulation of its network charges for outgoing international transit services are an anachronism, dating from the time when international settlement rates were included within an operators reference interconnection offer (RIO). Any regulatory obligations for eircom's services should be withdrawn as soon as possible – whether in the context of a market review or otherwise.
- Despite ComReg's claim that the current review, or the initial review for that matter, considers the market prospectively over the next two years, the market analyses rely mostly on historic data – and in particular, on market share data. Assessment of market power based too heavily on current market shares risks misrepresenting the real competitive situation, especially if markets are too narrowly defined.
- eircom calls upon ComReg to conduct a truly prospective market review, taking into account trends from advanced markets and forecasts for Ireland for supply- and demand-side market developments. Market analysis should be forward-looking, technologically neutral and objective.
- There should be a rolling back of *ex ante* regulation in the national transit markets to reflect their increasing competitiveness and the widespread availability of competing core networks in Ireland.
- In ComReg's approach to non-discrimination and the application of related regulatory remedies, eircom fundamentally disagrees with ComReg's attempts to present eircom's retail arm as an other authorised operator (OAO). eircom's retail arm is eircom.
- eircom is concerned to ensure that it is not obliged to provide information to another provider making a request for new network access unless and until we have sufficient understanding of the nature of the request to judge that it is genuine and reasonable.

- eircom calls for a withdrawal of the current regime of setting and finalising fixed interconnection rates on an annual basis. Under this regime, retrospection is applied asymmetrically with only unanticipated “excess” returns returned to OAOs.
- eircom calls for the timely introduction of a wholesale price cap (WPC), which has been a pending proposal of ComReg since 2002, as part of this market analysis process. With a WPC, eircom and the SMP-designated OAOs to which it will apply indirectly will be given incentives to increase its wholesale efficiency, as it was able to retain the profits created by increasing efficiency by more than expected.
- The accounting separation and cost accounting remedies currently proposed for wholesale fixed interconnection in ComReg’s separate consultation are unjustified and disproportionate.



## GENERAL REMARKS

### ComReg's market review methodology

#### **Empirical analyses**

Despite ComReg's claim that the current review, or the initial review for that matter, considers the market prospectively over the next two years, the market analyses rely mostly on historic data – and in particular, on market share data. eircom calls upon ComReg to conduct a truly prospective market review, taking into account trends from advanced markets and forecasts for Ireland for supply- and demand-side market developments.

#### **Regulatory analyses**

eircom is also concerned about ComReg's failure to analyse the state of the markets in the absence of regulation and the resulting circularity of its reasoning.

In addition, ComReg should follow the European Commission guidance known as the “modified greenfield approach” in this and other market reviews and in the imposition of proportional regulatory remedies. In doing so, ComReg would take into account the *ex ante* regulation imposed on relevant upstream market (if any) when assessing whether there still is SMP on a forward-looking basis and the need for additional regulatory remedies on the related downstream market(s).

#### **Non-discrimination remedies**

Another issue of concern in this market review is ComReg's approach to non-discrimination and the application of related regulatory remedies. eircom fundamentally disagrees with ComReg's attempts to present eircom's retail arm as an OAO. eircom's retail arm is eircom. It is not in the same position as an OAO.

It is important that ComReg bears this in mind when devising remedies designed to ensure that the wholesale services provided by eircom to OAOs allow them to compete effectively with eircom on retail markets. The emphasis in this context should be to ensure the technical and commercial replicability of eircom's offerings on the retail market -- achieved not only by an appropriate wholesale price but also by an appropriate quality of service and an adequate access to relevant information. It is eircom's belief in this context that imposing an obligations for access and non-discrimination with no reference to an assessment of replicability is not appropriate.

#### **Wholesale international transit: regulatory relief warranted since 2001**

In 2001, ComReg's predecessor, the ODTR, confirmed that regulation should be removed from eircom in the substantially competitive international transit market, and, having regard to perceived difficulties under the then prevailing regulatory regime, proposed a relaxation of regulatory obligations on the company<sup>1</sup>.

The new regulatory framework entered into force in July 2003. In light of previous findings by the Regulator that regulation was inappropriate and unwarranted in this market, the international transit market was expected to have been a priority market for review by ComReg. However, notwithstanding the clear imperative for action, and the clear evidence that eircom's capacity to compete was seriously hampered by its unjustified obligations, over three and a half years have elapsed since July 2003 without any change in eircom's regulatory position.

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<sup>1</sup> ComReg Doc. 01/24, Decision Notice D7/01, *eircom's Reference Interconnection Offer & Accounting Separation and Publication of Financial Information for Telecommunications Operators, Report on the Consultation & Decision Notice*, p. 22.

When the market analysis for interconnection markets finally commenced in October 2004, ComReg clearly stated that “the new regulatory framework provides the opportunity to deregulate [the international transit services market]”<sup>2</sup>.

However, instead of accelerating a change to the regulatory position, (as was incumbent on it), ComReg continued the regulation of eircom by concluding in May 2005<sup>3</sup> that it was necessary to carry out a further, separate analysis of the international transit market

Although surprised at ComReg’s seemingly unfounded conclusion, and frustrated at the lack of progress, eircom provided a complete set of data to ComReg to facilitate its new analysis of this market on 23 August 2005. The data provided by eircom once again confirmed the consistent findings of ComReg and the ODTR since 2001, that:

- “the market for international transit is now substantially open to competition” (2001);
- “there is in fact dynamic competition in the supply of international transit services” (2004).
- “Competition law provides an appropriate mechanism to ensure that pricing and the other terms and conditions of supply of international transit function competitively” (2004).

The persistent delay by ComReg in addressing this market is untenable from eircom’s perspective. In circumstances where the company faces aggressive competition from national and international carriers, its regulatory obligations put it at an unacceptable disadvantage in the market and threaten its ability to compete effectively or at all. This is causing serious and verifiable damage to the company.

eircom maintains that the continued regulation of its network charges for outgoing international transit services are an anachronism, dating back to the time when international settlement rates were included within an operator’s RIO. Any regulatory obligations for eircom’s services should be withdrawn as soon as possible – whether in the context of a market review or otherwise.

#### ***Unnecessary administrative costs being borne***

eircom maintains that this market review consultation and process is unwarranted and inefficient, as it is resulting in the wasteful use of resources in the Irish industry, at the European Commission and at ComReg itself. The European Commission does not consider “wholesale market for outgoing international transit services” to constitute a relevant market susceptible to *ex ante* regulation – in its original (2002) or its proposed revised (2006) *Recommendation on Relevant Markets*. No other NRA in the 26 other European Union Member States has found it necessary to conduct a separate market review for this specific type of services. And this despite the fact that wholesale international transit markets operate in a largely similar manner across the Member States. eircom challenges ComReg to demonstrate that there are unique national circumstances in Ireland that would justify this regulatory intervention..

By conducting this unnecessary market review, ComReg is making implementation of the EU Regulatory Framework even more burdensome that it already is.

#### **Wholesale origination: market definition**

eircom does not dispute the definition of the wholesale call origination market set out by ComReg in this consultation. However, eircom believes that due to the increasing provision of “exclusive” network access to end users by OAOs in private property development for residential and commercial premises, the definition of the relevant market for wholesale call origination needs to be augmented. eircom believes that ComReg is required to define additional relevant wholesale call origination markets (based on the geographic area covered by

<sup>2</sup> ComReg Doc. 04/106a, *Consultation: Market Analysis – Interconnection markets*, 22 October 2004.

<sup>3</sup> Section 3.96 of ComReg Doc. 05/37.

each agreement) for each OAO that had agreed “exclusive” arrangements with property developers to install access infrastructure. Each operator should then be found to have SMP and be subject to the same regulatory obligations that are imposed on eircom in the national call origination market. Precedent for “exclusive” access areas can be found in the wholesale fixed call origination market in the United Kingdom, where a separate geographic call origination market had been defined for the Hull area. eircom calls upon ComReg to address this “island of monopoly” market failure and to impose appropriate regulatory remedies.

As ComReg itself observes, “In some instances customers may not be able to easily switch their purchases and suppliers may not be able to easily switch their supplies across geographic areas.” This appears to match established European Commission guidance, where the definition of the relevant geographic market “can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas.”<sup>4</sup> ComReg is obliged, where a designation of SMP can be made in such a geographic market, to impose at least one *ex ante* regulatory obligation.

As for ComReg’s argument that “insufficient evidence has been provided to justify defining distinct geographic call origination markets for every instance of OAOs engaging in agreements with property developers/builders for the provision of electronic communications infrastructure in the State,” eircom maintains that it is ComReg’s responsibility in the context of a market analysis to ensure that sufficient evidence is gathered and that a thorough assessment of market power can be made.

### **Wholesale national transit: market definition**

eircom does not accept ComReg’s definition of the single multi-network transit market. On the contrary, it is eircom’s view that there are two distinct segments within the transit market as follows:

- A) “Trunk transit” traffic originating or terminating on eircom’s network;
- B) “Pure transit”: traffic that terminates and originates on third party networks.

Using this approach to market definition, eircom demonstrates below that there is effective competition in elements of the national transit market in Ireland by conducting a market analysis of each.

We also believe that ComReg’s inclusion of self-supply in the wholesale transit market results in a flawed market analysis.

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<sup>4</sup> European Commission’s Notice on Market Definition, para. 8.

## RESPONSE TO CONUSLTATION QUESTIONS

Q. 1. Are there additional factors that in your opinion require analysis by ComReg? If so, please indicate precisely what they are. In respect of the factors analysed, is there additional analysis that in your opinion must be carried out. If so, please indicate precisely what that is.

Yes. Please see the “ComReg’s market review methodology” entry in our “General Remarks” section above.

Q. 2. Do you agree with the above preliminary conclusions regarding the market definition exercise? Please provide a reasoned response, and refer to the relevant paragraph number(s) when submitting comments

No. Please see the “General Remarks” section.

Q. 3. Do you agree with ComReg’s preliminary assessment and conclusions on existing competition in the market for wholesale call origination? Please provide a reasoned response, supported with economic, technical and/or legal advice where relevant.

Yes.

Q. 4. Do you agree with ComReg’s preliminary assessment and conclusions on barriers to entry and potential competition in the market for wholesale call origination? Please provide a reasoned response, supported with economic, technical and/or legal advice where relevant.

No. Please see the “Wholesale origination: market definition” entry in our “General Remarks” section above.

Q. 5. Do you agree with ComReg’s preliminary conclusions on countervailing buyer power in the wholesale call origination market? Please provide a reasoned response supported by empirical and/or technical and economic evidence

Yes.

### Call Origination

Q. 6. Do you agree with the above preliminary conclusions regarding market analysis? Please provide a reasoned response

No, please see the “Wholesale origination: market definition” entry in our “General Remarks” section above.

### Wholesale National Transit

Q. 7. Do you agree with the above preliminary conclusions regarding market analysis? Please provide a reasoned response.

No, eircom explains why it does not agree with these preliminary conclusions below.

#### **The inclusion of self supply minutes in the transit market**

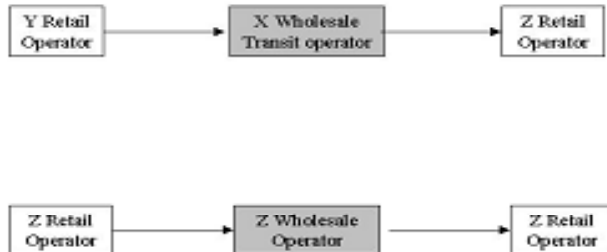
ComReg's preliminary view that self-supply minutes or, in other words, minutes that both originate and terminate on an operator's network (such as eircom), should be included in the transit market is flawed:

- as no interconnection between networks is involved in these calls, and
- in the case of eircom's originated traffic, no competitor's network has the capacity to accept and deliver the volume of traffic and as a result the traffic is not available to the transit market.

ComReg has quoted the EU administrative practice as on balance including the self supply for the purpose of defining markets. eircom, however, believes that the inclusion of self supply is flawed for a number of reasons:

- at a fundamental level eircom believes that on-net calls cannot be defined as transit as no third party operator is involved in the call. To define a market in this way would include every self supply on-net minute for every OAO as transit. There is clearly no interconnect involved in on-net calls and therefore such a definition of on-net calls as being part of the interconnect relevant markets is illogical. The only application of transit to calls that originate and terminate on the primary switches of a single operator is where the use of CPS involves the interconnection of networks and the resultant transit of calls in the call origination or termination element of the call. eircom therefore, believes that self supply or on-net minutes should be excluded from the interconnect market for transit;
- ComReg present the following argument to evaluate whether self supply by an integrated firm would fail the SSNIP test. With reference to the scenario in Fig.1 below, ComReg considers the potential decrease in market share that retail operator Y would incur if operator X were to increase its wholesale transit price. ComReg is of the view that this will result in a corresponding increase in market share for retail operator Z who avails of transit services from its integrated wholesale arm.

**Figure 1 The impact of self supply**



Source: eircom

Inherent in this argument is the assumption that retail costs are greatly affected by the underlying wholesale costs for operator Y. However, as ComReg notes the level of the transit charge is minimal compared to the level of the retail charge and therefore, it can be argued that a 10% increase in wholesale prices by operator Z would not impact the significant impact the retail price of operator Y. It follows that the integrated operator Z does not have a competitive advantage over operator Y in setting its retail pricing based on self-supply of transit services.

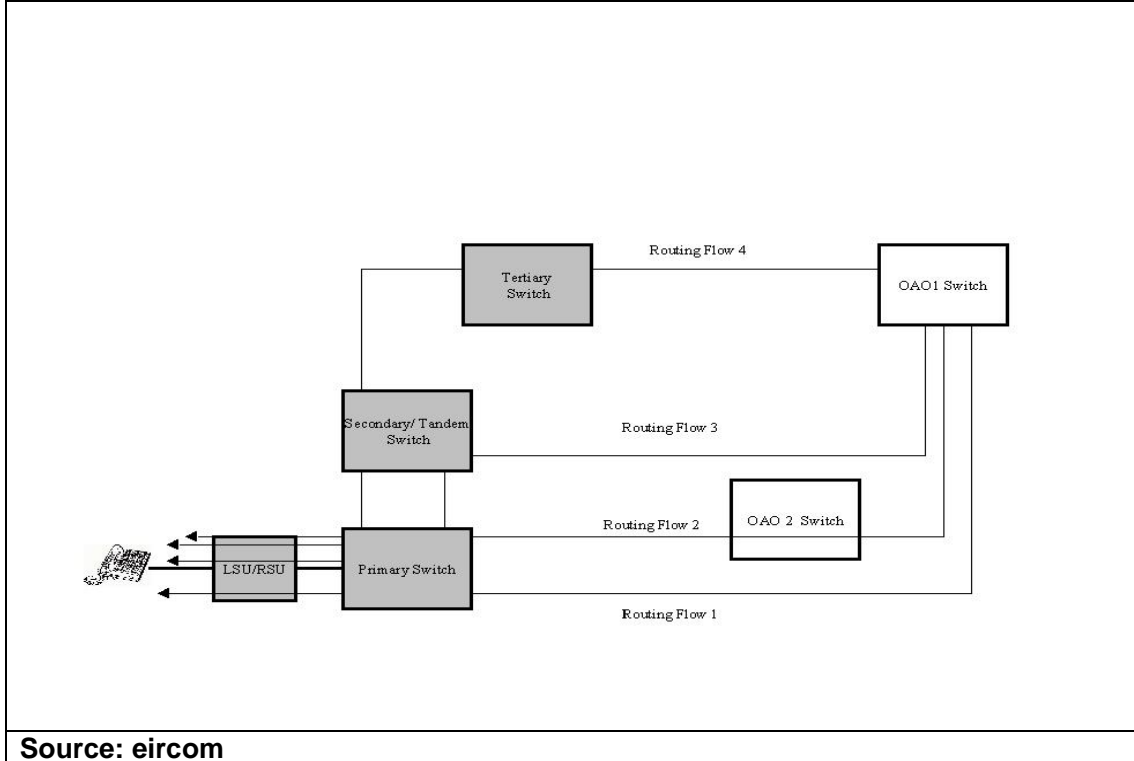
**Trunk Transit Market: Transit traffic originating or terminating – based on eircom’s network - market definition**

ComReg has defined the national market for transit as comprising of all other elements of call routing for national calls (i.e. not including primary origination and primary termination) and involving at least one tandem exchange. In other words, ComReg has chosen to define the national transit market widely as the transmission of switched calls between tandem (and possibly double tandem) exchanges. Furthermore, ComReg has proposed to include self-supply in the wholesale transit market, which eircom disagrees with as outlined above.

Currently, according to ComReg, eircom and BT Ireland are the main providers of third-party transit services in Ireland. eircom believes that there are two ways in which wholesale trunk transit market may be conveyed currently, each of which operates competitively. This is illustrated in Figure 2 below.

Figure 2 shows a call terminating on a RSU on eircom's network. If this customer is calling from an OAOs network (OAO1), there are three distinct choices OAO1 has in deciding how to route the call to the primary switch on eircom network.

**Figure 2 Call terminating on a RSU on eircom's network**



**Source: eircom**

It can be observed that OAO1 has four commercial options regarding how the call should be routed:

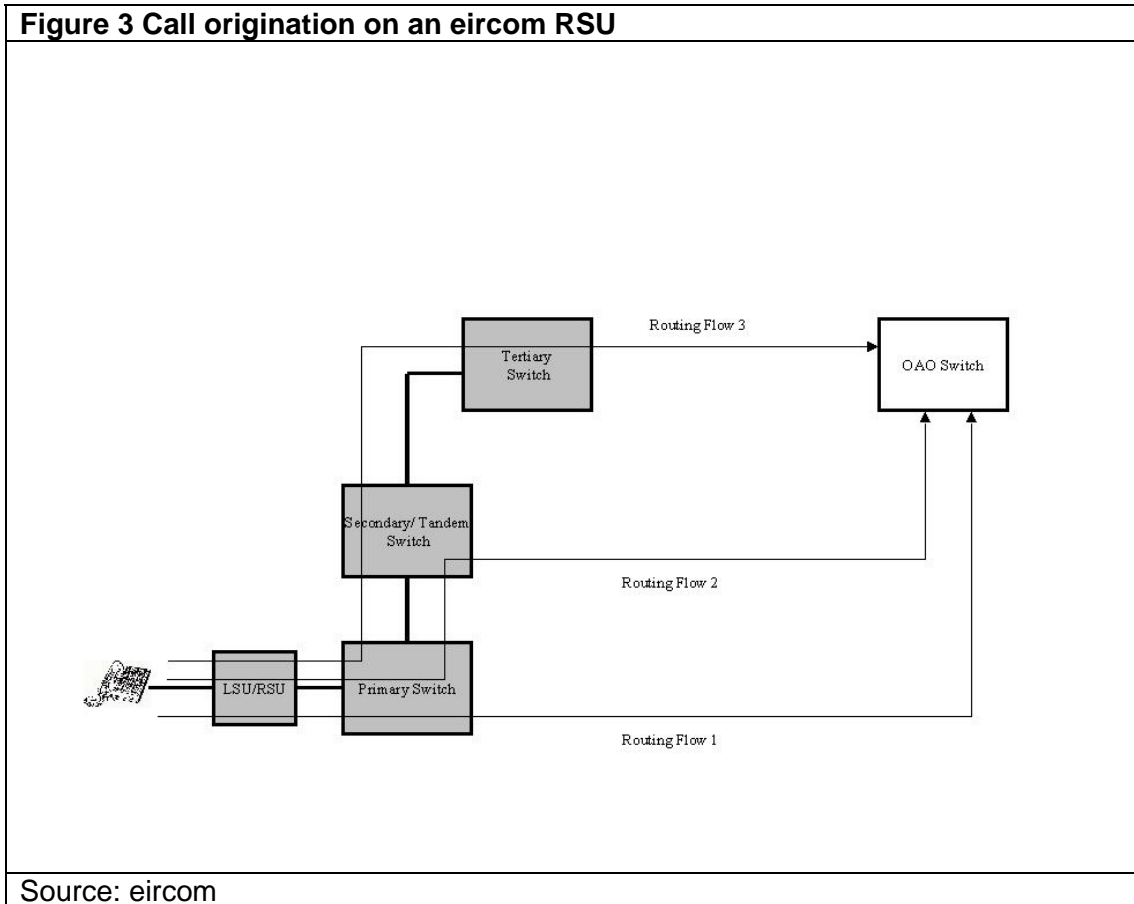
1. Using routing flow (1) OAO1 can choose to opt for direct interconnect with *eircom* at the primary switch level thereby availing of the cheapest interconnect termination rate offered by *eircom*.
2. Using routing flow (2) OAO1 can choose to transit the call via another OAOs network (OAO2) who has the ability to terminate the call at the primary switch level on *eircom* network due to its deeply interconnected network.
3. and 4. Using routing flow 3 and 4, OAO1 can choose to deliver the call at either the secondary /tandem or tertiary switch level and avail of transit on *eircom*'s network to the primary switch on which the call terminates.

*eircom* believes that this market is already effectively competitive because an OAO wishing to purchase transit services between two primary interconnection points can choose between any of the following three alternatives below:

- Direct interconnection with the relevant *eircom* primary exchanges
- Purchase of trunk transit services from *eircom*
- Purchase of transit services from BT Ireland or other OAOs with a deeply interconnected network, who currently provide such wholesale services.

A similar analysis of the routing flows associated with call origination on an *eircom* RSU is presented in Figure 3. This shows that the OAO also has a choice on which network it chooses to transit the call. Routing flow (1) shows the OAO has chosen to transit the call on its own network from the primary switch. Routing flows (2) and (3) show that the OAO can choose to use *eircom* to transit the call via the tertiary and tandem switches to the primary switch.

**Figure 3 Call origination on an eircom RSU**



Source: eircom

Therefore, for those operators who choose not to build out their network and instead to deeply interconnect with eircom network, it is clear that a market exists for the transit of calls between the switch originating the call or the switch terminating the call. The following choices are available to such operators

1. Transit using eircom’s tandem and tertiary switched network;
2. Transit using OAO switched networks.

eircom submits that when considering the market share analysis the OAO trunk transit traffic should therefore include:

- eircom call origination primary traffic;
- eircom call termination primary traffic.

Traffic, which avails of trunk transit on eircom’s network from or to the originating/ termination switch, may be considered eircom trunk transit. This means that the following call types account for eircom trunk transit traffic within this market segment:

- eircom call origination tandem traffic;
- eircom call origination double Tandem traffic;
- eircom call termination tandem traffic;
- eircom call termination double tandem traffic.

**Pure transit: traffic that terminates and originates on third party networks - market definition**

The “pure transit” market comprises traffic conveyed across an operator’s network that originates and terminates on third party operators’ networks.



Three different sub-segments can be defined based on the varying nature of the traffic conveyance and the characteristics of the charging regimes associated with each of these sub markets:

- Transit to mobile numbers (including mobile to mobile);
- Transit to geographic numbers;
- Transit to NTC.

#### **Pure transit: market sizing issues**

It is eircom's contention that ComReg has consistently understated the scale of the transit market by the exclusion of that traffic terminated (primarily with Mobile Operators) using Direct connections. For example, BT-originated traffic to Vodafone was formerly transited to Vodafone over eircom's network. On installation of a direct connection between BT and Vodafone, this transit traffic was no longer available to eircom. A similar situation exists between BT and O2 and O2 and Vodafone, etc.

Since by definition eircom no longer transits this traffic the analysis necessary to deduce a scale of the traffic otherwise ignored is difficult. The analysis presented takes the pre-direct Termination traffic volume as the minimum size of the market. On installation of the direct connection between the parties this traffic drops to zero or close to zero. The volume of traffic directly terminated over any link cannot be known (by eircom) but in all cases traffic is recorded on the transit routes later, presumably as overflow from the direct connections. This traffic must then constitute growth on the route and is successively added to the pre-direct termination traffic volume to give a view of the scale of the total traffic transited in this way.

Please see eircom's analysis in Appendix 1, which is performed for each of the identified routes where direct connection is a direct substitute for the wholesale transit offering. In each case a measure of the minimum scale of the potential market is derived. The combined data for the period analysed in this consultation is provided as an estimated minimum. It is an estimated minimum as, with the data available, there is no reasonable manner in which the volume of traffic that can be absorbed by the direct connection between installation and saturation (resulting in overflow) can be estimated. Thus the volume(s) presented are the combination of the known minimum and incremental traffic transited thereafter.

#### **Transit to mobile (Including mobile to mobile)**

The capability to provide transit to mobile numbers between third party operators is available to all OAOs who operate switched networks. The level of routing analysis required in routing these calls between OAO/MNO networks from an originating operator interconnect point to an MNO interconnect is down to the mobile number prefix only to route to the number blockholder and therefore no IN platform or complex data analysis is required.

However, the bad debt risk associated with this call type and the cash flow required to operate in a cascade accounting environment are very different to that of transit to geographic numbers as mobile termination rates are significantly higher than that of geographic termination rates.

#### **Transit to geographic numbers**

The capability to provide transit to geographic numbers between third party operators depends on the mechanism chosen to complete the number analysis. Given that digit analysis on geographic numbers is more complex than that of mobile numbers due to the number of digits that must be analysed the use of IN platform or complex data analysis may be required to transit these calls.

The charging arrangements for transit to geographic calls are quite straightforward and compared with mobile termination rates and PRS settlement rates, the level of bad debt risk to the transit operator in a cascade accounting environment is relatively low. Both the relatively

high network capability requirement and the low commercial risk associated with this type of transit service differentiate it from the other two market segments and justify its treatment and consideration for regulation as an individual market segment.

### **Transit to NTC**

The level of network analysis incurred in routing a call to an NTC code is generally high and requires the use of an IN platform resulting in a significant capital investment requirement. Currently eircom is the only operator in the Irish market who has invested in the capability to handle all NTC codes. The routing of the majority of NTC codes require significant use of the IN platform and this adds additional conveyance costs to this call type. As with transit to mobile the level of bad debt risk associated with this call type is high given the high level of settlement rates associated with PRS codes. The extra call conveyance, the high level of bad debt and the reversal of the charging arrangements compared with transit to geographic and mobile number differentiate this market segment and justify its treatment and consideration for regulation as an individual market.

In the case of traffic originating and terminating on eircom's own network, eircom considers that the inclusion of such traffic unreasonably inflates the size of the national transit market as measured by ComReg and as a result inordinately increases ComReg's estimation of eircom's market share.

The combined capacity of the OAOs' networks that could be available for the provision of a merchant transit service is relatively small with respect to the capacity of eircom's entire network. The proportion of eircom's traffic that originates and terminates on its own network that could conceivably be transported by an OAO, or all OAOs, is very small. Thus, only a very small proportion of eircom's traffic, which originates and terminates on eircom's own network, could in any circumstance be available to any or all OAOs for the provision of transit services. Consequently the inclusion of this On-Net traffic in estimation of the size of the market for the purposes of this market analysis distorts the perception of the scale of the market and all analysis deriving from that.

### **Sunk Costs**

In support of their conclusion that (4.78) "eircom controls infrastructure that is not easily replicated and which acts as both a barrier to new entry and to existing transit operators expanding in the transit market" ComReg states, inter alia:

"Economies of scale generally refer to the cost advantage, which a large-scale operator may have over a smaller operator in the situation where the marginal cost of production decreases as output quantity increases. Economies of scope refer to the potential efficiencies which may be gained through supplying a range of goods and services."(4.70)

"Fixed line ownership has remained relatively static over the past 6/7 years and indeed, according to recent survey data, appears to be declining in more recent years. The recent Trend Survey Series/Wave 3, 2006 report indicates that since 2003 there has been an overall trend towards reduced fixed lined subscriptions within the home."(4.80)

"a key factor cited by some respondents in their decision not to enter the fixed wholesale transit market is the mature nature of that market. As volumes are falling they do not consider it good commercial strategy to enter this market." (4.81)

From these citations, it is clear that ComReg must agree that for eircom to contemplate utilisation of other than its own network, for the termination of calls both originating and terminating on its own network, would be commercial and economic folly.

If an operator with both economies of scale and scope (by virtue of its history and planning processes) sought to seek an alternative to the most efficient available, the inevitable outcome could only be a less efficient and higher cost delivery service.

If, as quoted by ComReg, fixed line ownership is static or in decline, and, if OAOs “do not consider it good commercial strategy to enter this [transit] market”, then there is little opportunity for eircom to utilise an alternative transit path for the delivery of traffic originating and terminating on its own network.

It is clear that even if eircom wished to use another Operator for the transit of its own traffic it would be next to impossible for it to do so and to justify doing so. Since **there exists no realistic alternative** to the current self-supply arrangement available to eircom then it follows that the traffic so carried cannot form part of the transit market. Thus to consider self-supply traffic should be considered as part of the market further diminishes the relevance of this market analysis.

Similarly, since eircom’s existing ‘pure’ transit service could deliver all the traffic that is delivered by any, and all, OAOs by a system of self supply, then it is appropriate, and necessary, that that traffic be considered as part of the transit market for the purpose of this market analysis.

#### **The inclusion of non-discretionary transited minutes in the transit market**

As ComReg notes, “eircom is currently the only operator supplying wholesale call origination services to third party customers based on its own network inputs” (4.5)

Under regulation where a CPSO originates traffic, eircom is obliged to deliver that traffic to the closest point of interconnection with the CPSO’s network or a point of interconnection defined by the CPSO. If the closest point of interconnection, or the chosen point of interconnection, is not at the originating primary exchange, eircom has no option but to transit the traffic over its network to the closest (or chosen) point of interconnection. eircom, of course, will bill the CPSO for this transit service in the normal way. However, since eircom has no discretion about how this traffic could be routed, it is inappropriate that the traffic be considered part of the transit market for the purpose of this analysis.

If, for example, for the originating CPSO the closest point of interconnection was at the tertiary level, while another OAO had a point of interconnection at the same originating primary exchange; then unless the originating CPSO instructed eircom to pass the traffic to the other CPSO at the primary exchange, eircom would have no option but to transit the traffic to the tertiary exchange to affect the interconnection. This circumstance would apply even if the co-located CPSO at the primary exchange were also the OAO with whom the traffic was to terminate. Clearly, the inclusion of such traffic in any estimation of the transit market is inappropriate.

#### International Transit Services Market

Q. 8. Do you consider that the outgoing international transit services market is not subject to high and non-transitory entry barriers (in the presence of regulatory measures in other wholesale markets)? Please substantiate your response.

As stated in the “General Remarks” section above, eircom concurs with ComReg’s preliminary assessment that the outgoing international transit services market is not subject to high and non-transitory entry barriers.

Q. 9. Do you consider that the outgoing international transit services market has characteristics such that it will tend over time towards effective competition? Please substantiate your response

eircom agrees with ComReg's preliminary conclusion on market definition and with ComReg's belief that the international transit market is effectively competitive and therefore that no operator providing international transit services to and from Ireland has SMP. Back in 2001 and as early as 1999, ComReg's predecessor, the ODTR, was aware of the developing competition in international transit services when it remarked:<sup>5</sup>

"There is some evidence that the wholesale international voice market is now substantially open to competition and is served by a wide range of alternative carriers. The Director has already recognised the good prospects for development of effective competition in provision of retail international calls."

Since then, competition has increased even more, and we believe it would be appropriate for the regulator to remove all existing regulatory obligations regarding the provision of international transit services (including the requirement to publish RIO rates).

Q. 10. Do you envisage any potential competition problems/market failures in the outgoing international transit market? If so, please state clearly the nature of any such potential problems and outline whether you believe competition law is sufficient of itself (absent ex ante regulation) to address any such potential market failures? Please substantiate your response.

Ironically, it is the continued unjustified regulation of eircom's wholesale international transit charges that are resulting in actual competition problems in the market.

As ComReg is aware, the state of competition in a given market has strong implications both for the way in which prices are set and for the impact of regulatory obligations imposed on one market player.

In the market for international transit services, the variable cost consists of the international settlement paid to the foreign operator. The international access rate charged to other operators includes this cost to which a gross margin is added that contributes to the fixed costs of international connectivity, resulting in a market price which is slightly above marginal cost.

Because the international transit market is competitive, charging in the long term above the market price would attract only overflow traffic on certain routes or temporary traffic routed by a customer awaiting the conclusion of a contract at market price with another supplier.

In Ireland, the market price is also heavily impacted by eircom's published rates. In other words, as ComReg highlighted in its original market review in 2004:

"eircom's published prices have operated as a price ceiling, below which third parties supply and acquire international transit services."<sup>6</sup>

The practice of other operators of pricing relative to eircom's prices is reflected in eircom's declining market share over recent years. To illustrate this fact, eircom receives no international transit traffic from any of the main fixed line operators (other than some small amounts of overflow traffic). With regard to mobile originated traffic, the volume of traffic received (as measured in eircom's international settlements system) has fallen from 115 million minutes in 2000/01 to 99m in the 12 months ending September 2005. This fall has occurred in a period when mobile originated traffic volumes have increased dramatically. eircom estimates that its

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<sup>5</sup> See ODTR 01/24, p. 38.

<sup>6</sup> ComReg Doc. 04/106a at 3.141.

market share for international transit traffic originating in the mobile sector has fallen by approximately 55% during this period. Most notably the destination mix of this traffic has altered significantly from 63% to the United Kingdom (Dec. 1999) to 90% to the United Kingdom (Sept. 2005). This reflects the fact that mobile operators have access to lower prices for other destinations from operators other than eircom in Ireland and is indicative of the level of competition and choice in the market.

In order to remain active in this highly competitive market, eircom has had to offer quotations for lower prices based on traffic commitments for defined periods of time. eircom maintained transparency by clearly identifying this practice in its Reference Interconnect Offer, which is approved by ComReg. Indeed, this practice developed in response to the ODTR's view in 2001 that it was "sympathetic to less control" on eircom and its wish that "eircom [to] be able to avail of, and make available to OLOs wishing to interconnect with it, special rates available from time to time on the international conveyance market".

Although this was a welcome relaxation of the strictures of eircom's significant market power (SMP) obligations at the time, it is no longer sufficient to allow eircom to compete in the market.

In particular, over the past year, lower prices have been offered by eircom's competitors without any requirement in terms of volume commitments or term of contract. As a result, customers tender traffic more often and use least cost routing systems to rely on the cheapest supplier. The fact that eircom can only offer discounted prices from the published rates subject to volume commitment for defined periods of time means that eircom cannot respond to market developments and has further contributed to eircom losing market share.

Q. 11. Do you believe that the outgoing international transit services market meets all the three criteria and as such existing SMP obligations applying to this market should be removed? Or, is it your view that one/some of the criteria are not met. Please substantiate your response

Yes, eircom believes that the outgoing international transit services market meets all the three criteria, and as such existing SMP obligations applying to this market should be withdrawn.

Q. 12. Do you agree with the principles ComReg proposes to adopt when selecting obligations in this market?

While eircom agrees with the principles that principles ComReg proposes to adopt when imposing regulatory remedies, it does believe that ComReg actually follows these principles. And as we said in our recent response to ComReg's consultation on its approach to conducting RIAs<sup>7</sup>, eircom welcomes the statement, "ComReg does not want regulation to be overly burdensome and will, where possible, identify the opportunities to withdraw from or reduce regulatory intervention in the relevant markets in the transition to more effective competition." We look forward to ComReg putting this pledge into practice.

eircom does not accept that the Regulatory Impact Assessment (RIA) that it presents in Section 8 of this market analysis ensures that ComReg "will select remedies based on the nature of the potential competition problem identified and ensure they are proportionate and justified." ComReg's RIA is superficial and is not consistent with the guidelines of the European Regulators Group to conduct a regulatory options assessment in which a regulator weighs the net benefits which implementation of the obligation would bring to the national economy against the cost of implementing the measure.

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<sup>7</sup> ComReg Doc. 06/69, Consultation: ComReg's Approach to Regulatory Impact Assessment, 20 December 2006.

“Decisions should include, for any given problem, a consideration of alternative remedies wherever relevant, so that the least burdensome effective remedy that best meet the objectives can be selected. Each remedy may also achieve the objective of the NRA to a varying degree. This also needs to be considered.

Second, in order to assess whether a remedy is proportionate and justified in the light of the objectives set out in the Framework Directive, NRAs should balance the burden of the remedy imposed on the undertaking with SMP and other costs which the imposition of a remedy may entail against its prospective benefits. Both assessments are already required by some national systems of administrative law and form part of the proportionality assessment under Community law. However, in order to make the choices involved more transparent, NRAs may carry out an assessment of the regulatory options available, including a qualitative assessment of the anticipated benefits and potential costs of the option selected ("regulatory options assessment").

When carrying out a regulatory options assessment, the justification of regulatory measures will generally be based on a qualitative analysis taking into account economic theory and market experience. Further to this, NRAs can where reliable data is readily available also use quantitative methods to support the assessment. [our emphasis]

Nor does the RIA implement the guidance provided in the Better Regulation Department of the Taoiseach's "Regulating Better - A Government White Paper setting out six principles of Better Regulation" (January 2004).

Despite the availability of "robust, detailed and independently verifiable" (e.g., in eircom's and other SMP operators' regulatory financial statements), to date ComReg has not conducted a single full cost/benefit analysis. eircom finds this completely unacceptable and a violation of ComReg's duties as a regulator.

### Wholesale Call Origination

Q. 13. Do you agree that in the absence of *ex ante* regulation eircom would have little or no incentive to offer reasonable access to call origination services to OAOs competing against eircom's retail businesses?

No. In the context of fixed-mobile access and call substitution and of multi-modal infrastructure competition, eircom has an incentive to maximise the utilisation of its fixed network and to offer commercially attractive access to call origination services to OAOs.

Q. 14. In your opinion have there been any developments since the original response to consultation which may have an impact on ComReg's conclusion as stated above?

For the first time since market liberalisation at the end of 1998, the prospect of infrastructure competition is real, including inter-modal threats from:

- Intra-modal competition via local loop unbundling (LLU), e.g., Smart at retail level and BT Ireland at retail and wholesale levels;
- Fibre-to-the-premises (FTTP), e.g., Magnet;
- Cable, e.g., UPC (forthcoming re-branding of ntl Ireland and Chorus);
- fixed wireless access (FWA), e.g. Irish Broadband;
- wireless/mobile, e.g., Vodafone;
- alternative national backbone infrastructure providing connectivity for the above, i.e., Department of Communication ("The Department") revived plans for an alternative national network to rival eircom's, combining the state-funded metropolitan area networks (MANs), the networks of ESB Telecom and Aurora (Bord Gais) and others.

Q. 15. Do you agree that an access obligation for call origination should be imposed on eircom? Please provide details in support of your answer.

Yes.

Q. 16. Do you agree with ComReg's proposal to require eircom to interconnect networks or network facilities? Please provide details in support of your answer.

Yes. In addition to this being an SMP obligation, it is also a commercial imperative to facilitate national service and network interoperability.

Q. 17. Do you agree that eircom should be required not to withdraw access to facilities already granted, save without prior ComReg approval? Please detail your response.

The current regime that exists whereby eircom withdraws products after a period of notice to wholesale customers should be allowed to continue. eircom has always provided a reasonable notice period to all its customers where it intends to withdraw a product and the current industry agreed dispute process allows for issues to be referred to ComReg in the event that one party disagrees with the proposed withdrawal of a particular product.

This proposed remedy represents a new obligation being imposed on eircom without justification and, eircom believes it is unnecessary, disproportionate and damaging to the interest of the industry and/or consumers:

- unnecessary because eircom has never unilaterally and without advance warning withdrawn access to facilities for third parties once granted;
- disproportionate where this obligation applies to wholesale products availed of by a small number of OAOs, for a small absolute level of demand, or where demand is in rapid decline;
- damaging because eircom needs to retain the flexibility to discuss access with third parties when it is re-designing its network architecture and re-deploying network infrastructure. Without this flexibility eircom may be forced to maintain facilities, cables and infrastructure, which could be withdrawn and replaced elsewhere more efficiently. Some access facilities, if not withdrawn, could impede development completely. A decision to refuse the legitimate removal of a service would be unacceptable and tantamount to unnecessary interference by the regulator.

In an evolving market there is every likelihood that wholesale services that for which there is a 'reasonable request' and demand at one time are no longer demanded or 'reasonable' at a future date. In some cases, the cost of maintaining these services will outweigh their value. eircom should therefore be allowed to withdraw these types of services. In circumstances where a minority of customers remains on that service, reasonable notice would be given along with options for migration or cessation.

In addition, ComReg in determining that an earlier-imposed access or other obligation is no longer justified or proportionate, may itself want to mandate the withdrawal, whether immediate or gradual, access to facilities already granted, e.g., 'sunset clause' to encourage infrastructure investment or the withdrawal of 'legacy products' to encourage the transition to next-generation infrastructure. If ComReg imposes the proposed obligation, it could fetter its future policy-making discretion.

Q. 18. Do you agree with ComReg's proposal to require eircom to provide specified information which supports call origination services and to continue to provide such services in accordance with terms and conditions which are agreed by industry? Please detail your response

Yes, eircom is providing such information currently.

Q. 19. Do you agree that eircom should have an obligation to meet reasonable requests for access as described above? Please detail your response.

eircom could accept such an unbounded obligation without limits on what constitutes "reasonableness." We look to the Regulatory Framework for guidance. Under Article 13 of the *Access Regulations, 2003*:

"The Regulator may in accordance with Regulation 9 impose on an operator obligations to meet reasonable requests for access to, and use of, specific network elements and associated facilities inter alia in situations where the Regulator considers that the denial of such access or the imposition by operators of unreasonable terms and conditions having a similar effect –

- (a) would hinder the emergence of a sustainable competitive market at the retail level,
- (b) would not be in the interests of end-users, or
- (c) would otherwise hinder the achievement of the objectives set out in section 12 of the Act of 2002"

However, when considering whether to impose obligations, Article 13 goes on to state:

"when assessing whether such obligations **would be proportionate to the objectives set out** in section 12 of the Act of 2002, the Regulator shall take into account in particular the following factors:

- (a) the technical and economic viability of using or installing competing facilities, in the light of the rate of market development, taking into account the nature and type of interconnection and access involved;
- (b) the feasibility of providing the access proposed, in relation to the capacity available;
- (c) the initial investment by the facility owner, bearing in mind the risks involved in making the investment;
- (d) the need to safeguard competition in the long-term;
- (e) where appropriate, any relevant intellectual property rights; and
- (f) the provision of pan-European services."

#### **Proportionality, or reasonable demand, test**

The principle of proportionality should also extend to the conditions and the price at which the regulated supply of newly-requested wholesale service are to be offered. eircom calls upon ComReg to consider the development of a reasonable demand, or proportionality, test, in which:

- the expected reasonable demand is substantiated;
- commercial approaches are given preference over heavy-handed regulatory solutions;
- the price for a particular wholesale service include the development costs spread over the reasonably expected demand;
- the price also include the 'option value' created for OAOs and for the fact that eircom sinks the investment and takes the risk; those who choose to hire its capacity on a short term basis gain the benefits of not having to take that risk - but have to pay a higher short run access price as a consequence.

Such an approach is known to be taken, for example, in the UK and the Netherlands, with the SMP operator offering its demand projections and the regulator adjusting them where



necessary. As long as these demand projections are set at a reasonable level, the SMP operator is able to make a reasonable return on its investment. It also has incentives to achieve higher demand as this will increase its rate of return. This situation is desirable, not only to provide investment incentives for the SMP operator, but also because it helps to increase retail competition.

ComReg should consider obligations to supply wholesale products as something of a last resort that should be used when other approaches prove ineffective or impractical. SMP operators first should be allowed to consider requests for the development of wholesale products on commercial grounds. Will the operator as a wholesale supplier be able to recover its development costs and make a reasonable return on capital employed from the expected customers (including its own retail divisions)? Only if there is a commercial case with reasonable demand would it proceed.

In deciding whether to require an SMP operators to offer a regulated wholesale service, ComReg should always apply a “proportionality test” to determine whether the net benefits to the market of requiring such a product outweigh the costs of delivering it. Sometimes the commercial case for proceeding with wholesale product development would be only marginal. In these cases, the SMP operator would be cautious in its forecast of expected demand and rejects the request. Such a refusal may prompt the requesting operator/entrants(s) to raise a dispute with the NRA. The NRA would then review the SMP operator’s commercial evaluation and perhaps revise its demand forecast upwards and mandate to proceed with product development. The SMP operator then has to set a price for the wholesale product, which recovers development, costs spread over this increased customer base. So in these cases, the SMP operator bears the risk that it will not recover its development costs in full if OAOs’ demand forecasts are not met.

Q. 20. Do you agree that eircom must provide call origination services on terms which are fair, reasonable and timely? In addition do you agree with ComReg’s proposal that these terms and conditions should be supported by Service Level Agreements? Please provide detail in support of your response.

To date eircom has not found it necessary nor have OAOs requested service level agreements (SLAs) for eircom’s provision of wholesale fixed call origination or transit services. eircom does have a statement within its RIO that guarantees call routing on a non-discriminatory basis. We believe that this is sufficient and that any imposition of an SLA would represent unwarranted regulatory intervention.

Q. 21. Do you agree that ComReg should consult with industry on the terms and conditions of the SLA? Please provide detail in support of your response.

As there is no necessity for a SLA for these interconnection services, there would be no need for a consultation with industry.

Q. 22. Do you agree that eircom should provide access to and information necessary for call origination services to competitors at least equivalent times and standards as it provides to its own retail arm? Please provide detail in support of your response

eircom believes that this call for non-discrimination with reference to its own retail arm is inappropriate. eircom fundamentally disagrees with ComReg's attempts to present eircom's retail arm as an OAO. eircom's retail arm is eircom. It is not in the same position as an OAO, interconnecting with eircom’s network.

It is important that ComReg bears this in mind when devising remedies designed to ensure that the wholesale services provided by eircom to OAOs allow them to compete effectively with eircom on retail markets. The emphasis in this context should be to ensure the technical and commercial replicability of eircom's offerings on the retail market -- achieved not only by an appropriate wholesale price but also by an appropriate quality of service and an adequate access to relevant information

eircom is concerned to ensure that it is not obliged to provide information to another provider making a request for new network access unless and until we have sufficient understanding of the nature of the request to judge that it is genuine and reasonable.

Q. 23. Do you agree that where there will be a direct impact on OAOs, that both OAOs and ComReg should be notified of plans which eircom may have with regard to restructuring of their network? If so, what form should this take?

It has long been eircom's practice of informing interconnecting OAOs in a transparent and timely fashion of changes in its network architecture. This has been done via bilateral interactions with OAOs affected and/or in changes to the RIO.

Likewise, eircom will inform OAOs of any network restructuring or transition to a next generation network (NGN) that will impact interconnection or interoperability with eircom's network(s) or OAOs' use of eircom's fixed call origination services. For example, eircom commenced a series of bilateral meetings with OAOs the week of March 5<sup>th</sup>, 2007 to inform them about the first tranche of investment in its IP core.

eircom would propose the following principles regarding interconnection migration:

- Once legacy products are no longer absolutely necessary in relevant markets (i.e., SMP requirements no longer valid), their provision should no longer be the subject of regulatory intervention;
- Equitable but affordable commercial agreement will be needed for new interconnection services;
- eircom cannot indemnify OAOs for invest risk due to obsolescence, which should be considered a normal commercial uncertainty;
- There should be recognition by ComReg and all industry players that the transition to an NGN core network will be done gradually over several years. For example, the interconnection picture may even be changing between offer an implementation;
- There should also be recognition that the EU Regulatory Framework has an objective of encouraging infrastructure build.

Q. 24. Do you agree that eircom should provide call origination services on an unbundled basis as part of its Access obligation? Please provide detail in support of your response.

eircom believes that this call for unbundled call origination services with reference to its own retail arm is inappropriate.

As indirect access and interconnection is not provided to eircom's retail arm, it is difficult to understand the intent of this proposal but if it requires that call origination be offered at all primary switches, then that is already in place and further regulatory intervention is unnecessary.

Q. 25. Do you agree that eircom should be required to grant open access to technical interfaces, protocols, or other key technologies and

systems and should also be required to provide access to such OSS or similar software necessary to ensure fair competition in the provision of services? Please provide detail in support of your response.

eircom could not accept such an unbounded obligation without limits on what constitutes “open access.” eircom is concerned to ensure that it is not obliged to provide to “open access to technical interfaces, protocols, or other key technologies information” and “to OSS or similar software” to an OAO making a request for new network access unless and until eircom has sufficient understanding of the nature of the request to judge that it is genuine and reasonable.

The emphasis in this context should be the imposition of proportionate remedies for access to wholesale services only where eircom’s offerings on the retail market could not be technically and commercially replicated by other means.

Q. 26. Do you agree that transparency, and in particular the requirement to make public interconnection terms and conditions, is a necessary remedy to actual and prospective problems in this market? Please provide detail in support of your response

Yes. The existing level of publication by eircom satisfies the obligation for transparency. Indeed no evidence is presented that there is currently a lack of transparency and it is thus unnecessary to impose these remedies. eircom has published a RIO and a full suite of reference documentation in relation to interconnection services, including fixed call origination, and is committed to maintaining this document set going forward.

Q. 27. Do you agree that eircom should publish a Reference Offer for Call Origination services on its wholesale website? Please provide detail in support of your response.

Please see our response to Question 26.

Q. 28. Do you agree that eircom should publish specified information which supports call origination services? Please provide detail in support of your response

Please see our response to Question 26.

Q. 29. Do you agree that eircom should be required to publish appropriate manuals and documentation for new and existing Call Origination services? Please provide detail in support of your response.

Please see our response to Question 26.

Q. 30. Is there any additional information which eircom should provide to ComReg or industry or both to further support products and services in the RIO? Please provide detail in support of your response.

Please see our response to Question 26.

Q. 31. In your opinion is the current process for updating of the RIO adequate? Please provide detail in support of your response.

Yes.

Q. 32. Do you agree that the eircom billing reports for call origination services to wholesale customers are sufficiently granular so that operators are in a position to reconcile their bill in an efficient manner to their in-house systems? Please provide detail in support of your response.

Yes. ComReg has previously consulted on itemised billing (see ODTR Doc. 01/30 and eircom's detailed response on 1st June 2001) and the industry consensus was that it is a completely unreasonable requirement in a wholesale context. Industry has agreed the levels of billing information exchanged and the levels necessary to obtain dispute resolution. These levels were agreed following detailed engagement through a ComReg facilitated industry forum. It is unreasonable to raise this complex issue in this consultation. eircom do not propose to expand their views on this topic in this consultation but reserve its right to engage in a full industry analysis should a specific operator demand arise at some point in the future.

Q. 33. If you believe that the current level of detail for call origination services on eircom wholesale bills is not sufficient please demonstrate by example material shortfalls in the reconciliation process

Not applicable.

Q. 34. Do you agree that a non-discrimination obligation applied to eircom is necessary to remedy competition problems in the wholesale call origination market? Do you also agree that non-discrimination is a necessary complement to the other obligations needed to remedy competition problems in this market? Do you agree that, in addition to provision of reasonable requests, eircom should also be required to provide products on a non-discriminatory basis and, as such, should be required to provide to other operators at least an equivalent wholesale call origination product to those services it provides to its retail arm? Please provide detail in support of your response.

Again eircom believes that this call for non-discrimination with reference to its own retail arm is inappropriate. eircom fundamentally disagrees with ComReg's attempts to present eircom's retail arm as an OAO. eircom's retail arm is eircom. It is not in the same position as an OAO, interconnecting with eircom's network.

It is important that ComReg bears this in mind when devising remedies designed to ensure that the wholesale services provided by eircom to OAOs allow them to compete effectively with eircom on retail markets. The emphasis in this context should be the imposition of proportionate remedies for access to wholesale services only where eircom's offerings on the retail market could not be technically and commercially replicated by other means.

Q. 35. Do you believe that in light of the increased shift of local call costs towards cost that ComReg should consult further with industry on a proposed remedy similar to that reached in the UK in relation to local call disadvantage?

No. All of the OAOs that operate in this market are aware of the remedy that is available in the United Kingdom, and none have sought this remedy in Ireland. This is probably the case because they recognise that the additional complexities that it would entail for the

CPS services could not be justified by the limited improvements available in the ability to compete in the market for off-peak local calls.

Q. 36.ComReg invites respondents to submit arguments as to whether anything has changed since the last review to suggest that Near End Handover should not longer be provided to those Operators in a position to avail of it? Please provide detail in support of your response.

No. NEHO provides the appropriate additional incentive to the entrant to build a deeper interconnect into the eircom network by providing additional margins for networks hosting NTC service providers in line with the call origination costs avoided by eircom.

Q. 37.Do you think that the current charging mechanism for PAC is still appropriate given the change in recent years to the use of payphones? If not please provide details with your answer.

No. eircom proposes that the entire PAC regime be reviewed separate from this consultation. The decline in the volume of calls originating on payphones means that the capped level of PAC is substantially below cost. However, the application of a cost oriented PAC may have the effect of suppressing demand for payphone services further sending the service into a death spiral. A separate consultation across payphone providers is required to review the PAC regime.

Q. 38.In your opinion do you have believe that the current FL-LRIC Top Down model approach to setting call origination rates should be maintained pending the outcome of the consideration of a wholesale price cap? Please detail your response giving substantive arguments for or against as appropriate.

It is important to note that eircom's wholesale fixed interconnection charges for the services compare favourably by comparison with its equivalents in other EU Member States. It is evident from published European Commission comparisons that eircom's charges are in general among the lowest for call origination and call termination.

eircom agrees that the current Top Down FL-LRIC model is the appropriate basis to set termination rates in the period leading up to the period of implementation of a wholesale price cap (WPC) provided a number of adjustments are made to the model. Most of these adjustments arise from the fact that call origination services will be delivered over a hybrid NGN/TDM network both before and during the term of the WPC. In the first instance, there will be a pause in investment in the TDM network in the period before the initial rollout of the NGN. Modelling of only TDM costs would not allow full recover of the costs of call termination. There will also be an effect of higher routing factors arising from calls being handed over at a small number of interconnect – or gateway – points between the two networks.

From early 2008, eircom will start to connect customers to NGN line cards providing a PSTN Emulation Service (PES). At this point calls from such customers – whether terminating on the eircom PSTN or on an OAO network – must be routed through a small number of media gateways for termination. As a result of this requirement, the routing factor for call origination – and primary call origination in particular – will increase so increasing the number of network elements whose costs must be recovered from call origination revenues. For primary call origination in particular, eircom will require to route calls up the NGN to the gateway for hand over to the PSTN. From the gateway this call must then be routed back down the network to the interconnect point to which the OAO has built to qualify the traffic as primary origination.

Q. 39. Do you agree that ComReg should consider possible approaches to, and implementation of, a wholesale price cap?

From 1998 to the present, eircom's wholesale fixed interconnection charges have been determined annually, based on the actual costs that eircom has incurred. This pricing regime ensures that eircom can only earn its reasonably incurred costs (including a return on capital employed), but it does not give eircom much incentive to increase its efficiency, as by doing so it would not increase its profitability at the wholesale level.

Under the current regime, actual investment is not rewarded since hypothetical "replacement" assets, benchmarked costs and "retrospection" are applied asymmetrically, i.e., only when they result in lower allowed revenues.

As ComReg stated in its response<sup>8</sup> to a 2003 consultation<sup>9</sup> on fixed interconnection charging mechanisms which posited possible alternatives to the current regime, including the option of a conveyance rate price cap, there is a broad consensus on the benefit of a WPC:

- Spreading risk equitably between eircom and OAOs;
- Providing certainty for OAOs for their overall input costs;
- Providing eircom and OAOs with incentives to invest.
- Avoiding the need for retrospection
- Providing stability and predictability to the rates.
- Greater incentive for investment and efficiency gains.
- Wide support across the industry;
- Incentive that a price cap provides for cost reduction over time;
- Simplicity, avoids a costly and intrusive task on an annual basis;
- Past experience in the UK.

By moving to a WPC, eircom will be given incentives to increase its wholesale efficiency, as it was able to retain the profits created by increasing efficiency by more than expected.

eircom thus calls upon ComReg to advanced "prompt examination of the more detailed issues"<sup>10</sup> – as promised in 2003 – as soon as possible.

### **NGN issues**

While in principle eircom welcomes the introduction of a wholesale price cap regime, ComReg should note that the effectiveness of such a regime would be dependent on its ability to promote future investment and encourage sustainable competition. Such a price cap will apply over a period where eircom will roll out a next generation core network in parallel with the existing TDM network. Such an investment will lead to a surge in both operating and capital costs that will persist at least as long as the period of the control. Only after this surge is experienced can the additional efficiency be delivered. Any price control applied to this period must recognise these cost movements in order to send the correct signals to new entrants to make complementary investments.

Q. 40. Do you believe that the obligation to maintain cost accounting systems should be imposed on eircom? Please detail your response.

Yes, eircom accepts that where an obligation for cost orientation of prices for certain call origination services exists it is necessary for eircom to maintain an appropriate cost accounting system. The current cost accounting systems imposed on eircom to comply with

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<sup>8</sup> ComReg Doc. 03/57 and D14/03, *Decision Notice on Fixed Interconnection Charging Mechanisms*, 29 May 2003.

<sup>9</sup> ComReg Doc. 03/16, *Consultation Paper on Fixed Interconnection Charging Mechanisms*, 10 February 2003.

<sup>10</sup> See fn 1.

existing obligations of accounting separation and transparency are sufficient to inform the setting of wholesale prices for call conveyance services.

As eircom has stated in ComReg's H1 2005 consultation on accounting systems and associated methodologies, eircom currently operates accounting separation and cost accounting systems, pursuant to obligations imposed under the 1998 Regulatory Framework, that the EU Commission has acknowledged to be "best practice". eircom understands that these systems require adjustment to reflect differences between the structure of the 1998 regulatory framework and the New Regulatory Framework, specifically to reflect the movement to market-based regulation. However, they do not need to be redesigned in the manner proposed by ComReg in the consultation. eircom maintains that the obligations proposed in the pending consultation are not justified, reasonable or proportionate.

Q. 41. Do you believe eircom should have an obligation of accounting separation in the wholesale call origination market? Please provide detail in support of your response.

Yes, the obligation should only support the same level of separation as applies to existing call conveyance services.

### **Wholesale National Transit (Questions 42 to 73)**

Q. 42. Do you agree that an access obligation for wholesale national transit services should be imposed on eircom pursuant to Regulation 13? Please provide detail in support of your response.

Yes.

Q. 43. Do you agree with ComReg's proposal to require eircom to interconnect networks or network facilities? Please provide detail in support of your response

Yes. In addition to this being an SMP obligation, it is also a commercial imperative to facilitate national service and network interoperability.

Q. 44. Do you agree that eircom should be required not to withdraw access to facilities already granted, save without prior ComReg approval? Please provide detail in support of your response

The current regime that exists whereby eircom withdraws products after a period of notice to wholesale customers should be allowed to continue. eircom has always provided a reasonable notice period to all its customers where it intends to withdraw a product and the current industry agreed dispute process allows for issues to be referred to ComReg in the event that one party disagrees with the proposed withdrawal of a particular product.

This proposed remedy represents a new obligation being imposed on eircom without justification and, eircom believes it is unnecessary, disproportionate and damaging to the interest of the industry and/or consumers:

- unnecessary because eircom has never unilaterally and without advance warning withdrawn access to facilities for third parties once granted;
- disproportionate where this obligations applies to wholesale products availed of by a small number of OAOs, for a small absolute level of demand, or where demand is in rapid decline;
- damaging because eircom needs to retain the flexibility to discuss access with third parties when it is re-designing its network architecture and re-deploying network infrastructure. Without this flexibility eircom may be forced to maintain facilities, cables and infrastructure,

which could be withdrawn and replaced elsewhere more efficiently. Some access facilities, if not withdrawn, could impede development completely. A decision to refuse the legitimate removal of a service would be unacceptable and tantamount to unnecessary interference by the regulator.

In an evolving market there is every likelihood that wholesale services that for which there is a 'reasonable request' and demand at one time are no longer demanded or 'reasonable' at a future date. In some cases, the cost of maintaining these services will outweigh their value. eircom should therefore be allowed to withdraw these types of services. In circumstances where a minority of customers remains on that service, reasonable notice would be given along with options for migration or cessation.

In addition, ComReg in determining that an earlier-imposed access or other obligation is no longer justified or proportionate, may itself want to mandate the withdrawal, whether immediate or gradual, access to facilities already granted, e.g., 'sunset clause' to encourage infrastructure investment or the withdrawal of 'legacy products' to encourage the transition to next-generation infrastructure. If ComReg imposes the proposed obligation, it could fetter its future policy-making discretion.

Q. 45. Do you agree with ComReg's proposal to require eircom to provide specified information, which supports existing and new transit services? Please provide detail in support of your response.

eircom believes that this call for non-discrimination with reference to its own retail arm is inappropriate. eircom fundamentally disagrees with ComReg's attempts to present eircom's retail arm as an OAO. eircom's retail arm is eircom. It is not in the same position as an OAO, interconnecting with eircom's network.

eircom is concerned to ensure that it is not obliged to provide information to another provider making a request for new network access unless and until we have sufficient understanding of the nature of the request to judge that it is genuine and reasonable.

Q. 46. Do you agree that eircom should have an obligation to meet reasonable requests for access? Please provide detail in support of your response.

eircom could accept such an unbounded obligation without limits on what constitutes "reasonableness." We look to the Regulatory Framework for guidance.

Please see our response to Question 19.

Q. 47. Do you agree that eircom must provide call transit services on terms which are fair, reasonable and timely? In addition do you agree with ComReg's proposal that these terms and conditions should be supported by Service Level Agreements? Please provide detail in support of your response.

To date eircom has not found it necessary nor have OAOs requested service level agreements (SLAs) for eircom's provision of wholesale fixed call origination or transit services. eircom does have a statement within its Reference Interconnect Offer (RIO) that guarantees call routing on a non-discriminatory basis. We believe that this is sufficient and that any imposition of an SLA would represent unwarranted regulatory intervention.



Q. 48. Do you agree that ComReg should consult with industry on the terms and conditions of the SLA? Please provide detail in support of your response.

As there is no necessity for a SLA for these interconnection services, there would be no need for a consultation with industry.

Q. 49. Do you agree that eircom should provide unbundled transit services as part of its Access obligation? Please provide detail in support of your response.

eircom believes that this call for unbundled call origination services with reference to its own retail arm is inappropriate.

As wholesale national transit is not provided to eircom's retail arm, it is difficult to understand the intent of this ComReg proposal.

Q. 50. Do you agree that eircom should provide access to and information necessary for access to transit services to competitors at equivalent times and standards as it provides to its retail arm? Please provide detail in support of your response.

Yes. The existing level of publication by eircom satisfies the obligation for transparency. Indeed no evidence is presented that there is currently a lack of transparency and it is thus unnecessary to impose these remedies. eircom has published a RIO and a full suite of reference documentation in relation to interconnection services, including fixed national transit, and is committed to maintaining this document set going forward.

Q. 51. Do you agree that where there will be a direct impact on OAOs, that both OAOs and ComReg should be notified of plans which eircom may have with regard to restructuring of their network? If so, what form should this take?

It has long been eircom's practice of informing interconnecting OAOs in a transparent and timely fashion of changes in its network architecture. This has been done via bilateral interactions with OAOs affected and/or in changes to the RIO.

Likewise, eircom will inform OAOs of any network restructuring or transition to a next generation network (NGN) that will impact interconnection or interoperability with eircom's network(s) or OAOs' use of eircom's national transit services. For example, eircom commenced a series of bilateral meetings with OAOs the week of March 5<sup>th</sup>, 2007 to inform them about the first tranche of investment in its IP core.

Q. 52. Do you agree that eircom should be required to grant open access to technical interfaces, protocols, or other key technologies and should also be required to provide such OSS or similar software necessary to ensure fair competition in the provision of services? Please provide detail in support of your response.

eircom could accept such an unbounded obligation without limits on what constitutes "open access." eircom is concerned to ensure that it is not obliged to provide to "open access to technical interfaces, protocols, or other key technologies information" and "to OSS or similar software" to an OAO making a request for new network access unless and until eircom has sufficient understanding of the nature of the request to judge that it is genuine and reasonable.

The emphasis in this context should be the imposition of proportionate remedies for access to wholesale services only where eircom's offerings on the retail market could not be technically and commercially replicated by other means.

Q. 53. Do you agree that eircom should be required to provide specified services needed to ensure interoperability of end-to-end services to users? Please provide detail in support of your response.

Please see our response to Question 52.

Q. 54. Do you agree that eircom should be required to provide such operational support systems or similar software necessary to ensure fair competition in the provision of services? Please provide detail in support of your response.

Please see our response to Question 52.

Q. 55. Do you agree that an obligation of transparency should be imposed on eircom? Please provide detail in support of your response.

Yes. The existing level of publication by eircom satisfies the obligation for transparency. Indeed no evidence is presented that there is currently a lack of transparency and it is thus unnecessary to impose these remedies. eircom has published a RIO and a full suite of reference documentation in relation to interconnection services, including fixed national transit, and is committed to maintaining this document set going forward.

Q. 56. Do you agree that eircom should publish a Reference Offer for Call Transit services on its wholesale website? Please provide detail in support of your response.

Please see our response to Question 55.

Q. 57. Do you agree that eircom should publish specified information, which supports call transit services? Please provide detail in support of your response.

Please see our response to Question 55.

Q. 58. Do you agree that eircom should be required to publish a Reference Offer containing details of access to facilities already granted?

Please see our response to Question 55.

Q. 59. Do you agree that eircom should be required to publish appropriate manuals and documentation for new and existing Transit services? Please provide detail in support of your response.

Please see our response to Question 55.

Q. 60. Is there additional information eircom should provide to ComReg or industry or both? Please provide detail in support of your response.

No.

Q. 61. Do you agree that eircom should be required to publish the services that fall within the call origination, the eircom call termination and transit markets in the same format as they are published in the current RIO? Please provide detail in support of your response.

Yes, but only where the services are regulated.

Q. 62. Do you agree with ComReg's proposal to require eircom to publish one reference offer for three markets - call origination market, eircom call termination and transit?

Yes.

Q. 63. In your opinion is the current process for updating of the RIO adequate? Please provide detail in support of your response.

Yes.

Q. 64. Do you agree that the eircom billing reports for call transit services to wholesale customers are sufficiently granular so that operators are in a position to reconcile their bill in an efficient manner to their in-house systems? Please provide detail in support of your response.

Yes.

Q. 65. If you believe that the current level of detail on wholesale bills for call transit services provided by eircom is not sufficient please demonstrate by example material shortfalls in the reconciliation process.

Not applicable.

Q. 66. Do you agree that eircom should be required to provide transit information and services on a non-discriminatory basis to its retail arm and alternative operators? Please provide detail in support of your response.

eircom believes that this call for non-discrimination with reference to its own retail arm is inappropriate. eircom fundamentally disagrees with ComReg's attempts to present eircom's retail arm as an OAO. eircom's retail arm is eircom. It is not in the same position as an OAO, transiting traffic across eircom's network.

**Q. 67. Do you agree that eircom's downstream arms should have the same access to eircom wholesale as alternative operators? Please provide detail in support of your response.**

Please see our response to Question 66.

Q. 68. In your opinion do you believe that the current FL-LRIC Top Down model approach to setting call transit rates should be maintained pending the outcome of the consideration of a wholesale price cap? Please provide detail in support of your response giving substantive arguments for or against as appropriate.

eircom agrees that the current Top Down FL-LRIC model is the appropriate basis to set termination rates in the period leading up to the period of implementation of a wholesale price cap (WPC) provided a number of adjustments are made to the model. Most of these adjustments arise from the fact that call origination services will be delivered over a hybrid NGN/TDM network both before and during the term of the WPC. In the first instance, there will be a pause in investment in the TDM network in the period before the initial rollout of the NGN. Modelling of only TDM costs would not allow full recover of the costs of call termination. There will also be an effect of higher routing factors arising from calls being handed over at a small number of interconnect – or gateway – points between the two networks.

From early 2008, eircom will start to connect customers to NGN line cards providing a PSTN Emulation Service (PES). At this point calls from such customers – whether terminating on the eircom PSTN or on an OAO network – must be routed through a small number of media gateways for termination. As a result of this requirement, the routing factor for call origination – and primary call origination in particular – will increase so increasing the number of network elements whose costs must be recovered from call origination revenues. For primary call origination in particular, eircom will require to route calls up the NGN to the gateway for hand over to the PSTN. From the gateway this call must then be routed back down the network to the interconnect point to which the OAO has built to qualify the traffic as primary origination.

Q. 69. In light of the likely increase in competition in the transit market in the foreseeable future do you think that ComReg could relax any part of the price control obligation when compared to the call origination market? Please provide detail in support of your response.

Yes, there should be a rolling back of *ex ante* remedies such as cost orientation in the national transit markets to reflect their increasing competitiveness. eircom believes that remedies for transparency, accounting separation and cost accounting would be sufficient for the transit markets.

The transit market is made up of a number of different services characterised by very different levels of competition. The main categories are:

- Transit to fixed domestic;
- Transit to mobile;
- Transit to NTC.

The last two are clearly competitive in that several new entrants have built substantial interconnect capacity to the mobile network operators (MNOs) and to International transit and termination. Such operators offer service below the blended cost oriented rate charged by eircom. The competitive environment for transit to fixed domestic networks is much more mixed. There are a number of smaller domestic operators that can only be reached for call termination by transiting over the eircom network.

The range of services offered by eircom and the forms of price control should recognise this market structure.

Q. 70. Do you agree that ComReg should consider possible approaches to, and implementation of, a wholesale price cap?

From 1998 to the present, eircom's wholesale fixed interconnection charges have been determined annually, based on the actual costs that eircom has incurred. This pricing regime ensures that eircom can only earn its reasonably incurred costs (including a return on capital employed), but it does not give eircom much incentive to increase its efficiency, as by doing so it would not increase its profitability at the wholesale level.

By moving to a wholesale price cap, eircom will be given incentives to increase its wholesale efficiency, as it was able to retain the profits created by increasing efficiency by more than expected. The current regime – with the unprecedented practice of retrospection – eliminates such incentives.

As ComReg stated in its response<sup>11</sup> to a 2003 consultation<sup>12</sup> on fixed interconnection charging mechanisms which posited possible alternatives to the current regime, including the option of a conveyance rate price cap, there is a broad consensus on the benefit of a WPC:

- Spreading risk equitably between eircom and OAOs;
- Providing certainty for OAOs for their overall input costs;
- Providing eircom and OAOs with incentives to invest.
- Avoiding the need for retrospection
- Providing stability and predictability to the rates.
- Greater incentive for investment and efficiency gains.
- Wide support across the industry;
- Incentive that a price cap provides for cost reduction over time;
- Simplicity, avoids a costly and intrusive task on an annual basis;
- Past experience in the UK.

eircom calls upon ComReg to advanced “prompt examination of the more detailed issues”<sup>13</sup> – as promised in 2003 – as soon as possible.

Q. 71. Do you believe that the obligation to maintain cost accounting systems should be imposed on eircom? Please provide detail in support of your response.

Yes, eircom accepts that where an obligation for cost orientation of prices for certain call origination services exists it is necessary for eircom to maintain an appropriate cost accounting system. The current cost accounting systems imposed on eircom to comply with existing obligations of accounting separation and transparency are sufficient to inform the setting of wholesale prices for call conveyance services.

Q. 72. Do you believe eircom should have an obligation of accounting separation in the wholesale call transit market? Please provide detail in support of your response

Yes. The obligation should only support the same level of separation as applies to existing call conveyance services.

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<sup>11</sup> ComReg Doc. 03/57 and D14/03, *Decision Notice on Fixed Interconnection Charging Mechanisms*, 29 May 2003.

<sup>12</sup> ComReg Doc. 03/16, *Consultation Paper on Fixed Interconnection Charging Mechanisms*, 10 February 2003.

<sup>13</sup> See fn 1.

Q. 73. Do you agree that ComReg should mandate capacity based interconnection products in this manner? Please provide detail in support.

Yes.

Q. 74. Do you agree with the above position taken by ComReg in relation to Fixed SMS? Please provide detail in support of your response.

eircom accepts its current obligation to provide wholesale fixed SMS on a non-discriminatory basis “Single Billing through Wholesale Line Rental” construct.

eircom calls upon ComReg to apply under the principle of technology neutrality in the EU Regulatory Framework symmetric regulatory obligations for wholesale mobile SMS on mobile network operators found to have SMP in the wholesale market for mobile call origination and access.

Q. 75. Do you consider that in the period since the initial review that the market for the labour element of DQ services to be effectively competitive and therefore not suitable for ex-ante regulation? Please provide evidence to support your answer.

eircom concurs with ComReg's analysis of the directory inquiry (DQ) market as sufficiently competitive and therefore, not suitable to ex-ante regulation. The presence of alternative DQ providers to eircom in this market such as Conduit and the interconnect rates offered by these operators show clear evidence of the competitive nature of this market. In particular, the fact that the Vodafone and Meteor have put direct accounting arrangements in place with Conduit for transit traffic across eircom's network and the evidence of a direct interconnect between O2 and Conduit points to the existence of an alternative to eircom access to DQ service and therefore, to the competitiveness that exists in the market.

Q. 76. Respondents are asked to provide views on whether the remedies in section 6 of this consultation paper are proportionate and justified and offer views on what factors ComReg should consider in completing its Regulatory Impact Assessment in terms of the impact of these remedies on end-users, competition, the internal single market and technological neutrality.

Please see relevant comments in the “General Remarks” sections.

Q. 77. Do operators foresee any particular difficulties with moving to a wholesale price cap regime since the original consultation (03/16) given current and possible future changes in the proposed regulated interconnection markets? Please detail your response.

eircom finds that a WPC regime would indeed be appropriate for the coming period. The combined complexity of the migration from the current TDM network towards an IP network, together with changes to the proposed regulation of interconnect markets, indicate that annual setting of prices using a rate-of-return approach applied to a model of eircom's reported costs is no longer sustainable. The flexibility available from a price cap approach to price setting.

Q. 78. In your opinion what is the most appropriate modelling approach to take when modelling the core network, current network technology, complete NGN roll out or a hybrid approach of old and new? Please provide detail in support of your response.

Yes, a hybrid PSTN/NGN model of the core network is appropriate for the period to be covered by the wholesale price cap as the migration to a full NGN will not be complete by the end of the control period.

Please see our response to Question 68.

Q. 79. In the interests of reaching a wholesale price cap in a timely and efficient manner, do you agree that eircom and ComReg should enter into bi-lateral discussions on agreeing the most appropriate basis for a wholesale price cap to arrive at final rates for publication once agreement is reached? Please provide detail in support of your response.

Yes. As has been the norm under the current regime of setting and finalising fixed interconnection rates on an annual basis, eircom believes that bilateral discussion between itself and ComReg will result in reaching a wholesale price cap in a timely and efficient manner.

Q. 80. Where ComReg enter into a wholesale price process with eircom, do you agree that the year 2005/06 is the most appropriate base year on which to base a price cap setting model? Please provide detail in support of your response.

Yes.

Q. 81. What in your opinion would be the most appropriate time frame over which the price cap should be effective, two, three or four years? Please provide detail in support of your response.

A well-designed price cap should be of sufficient duration to allow a reasonable share of efficiency gains to be retained, and to allow for a reasonable prospect of out-performance to promote efficient operations. The cap must also use actual costs as its starting point to promote efficient investment.

eircom believes that a time frame of three to five years would provide this sufficient duration.

Q. 82. Do you agree that the Consumer Price Index should be used in setting "X" when arriving at the annual adjustment to most recent finalised interconnection rates? Please provide detail in support of your response.

Yes.

Q. 83. Do you agree that all interconnect rates as presented in the table 102/103/104 in the eircom RIO price list should be treated separately when applying the CPI +/-X control within the overall core network cost basket?

For the sake of consistency and efficiency, eircom calls for the inclusion of all interconnection rates as presented in the Table 101 in the eircom RIO price list also be included within the scope the WPC.

A well designed price cap should allow maximum pricing flexibility to allow more efficient pricing structures to evolve over time, i.e., involve a minimum number of sub-caps. eircom thus would support that introduction of a single core network cost basket with a single CPI +/-X control, believing that this will allow for . . .

Q. 84. The current rate of return allowed is 11.5% which was set based on a network efficiency study carried out some years ago, in your opinion do you think this rate is still appropriate or should a more up to date study be carried out in light of the changing telecoms environment? Please provide detail in support your response.

In light of ComReg's letter of 27 February, 2007, "Ref: Commencement of Cost of Capital Review," eircom will not comment here on its current allowed rate of return, or the weighted average cost of capital (WACC). Instead, eircom will provide relevant information or data that ComReg may require from eircom to progress its cost of capital review.

Q. 86. The eircom RIO price list also includes other interconnect services such as FRIACO, NEHO, NTC's, products necessary for the provision of interconnection such as ISI's, CSI's etc. Should these in your opinion also be subject to the wholesale price cap for the same period? Please provide detail in support of your response.

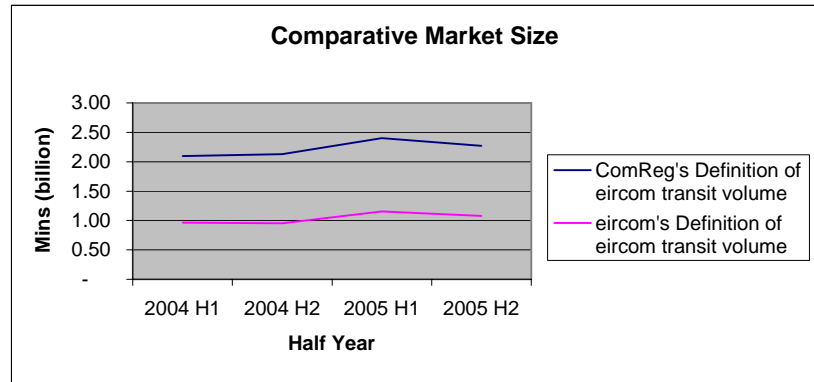
Please see our response to Question 83.



**Appendix 1**

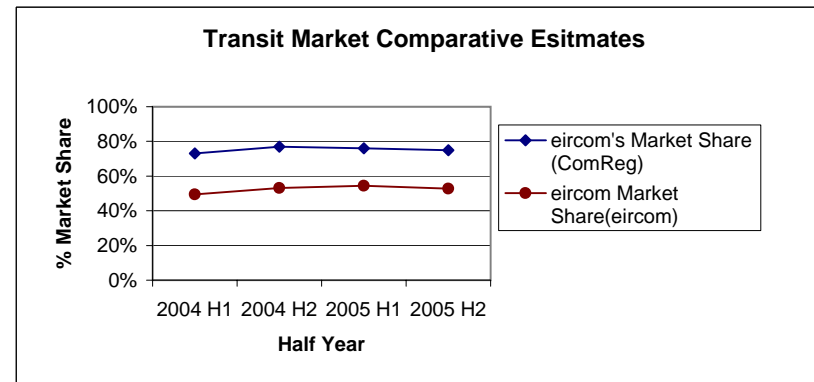
**eircom Response to ComReg Doc. 07/02 Consultation: Market Analysis: – Wholesale Call Origination and Transit Services**

	2004 H1	2004 H2	2005 H1	2005 H2
ComReg's Definition of eircom transit volume	2.10	2.13	2.40	2.27
eircom's Definition of eircom transit volume	0.96	0.95	1.16	1.08



	2004 H1	2004 H2	2005 H1	2005 H2
eircom's Market Share (ComReg)	73%	77%	76%	75%
ComReg's definition of Total Volumes of Transit Minutes in the Market	2.87	2.77	3.16	3.03
ComReg Definition of OAO transit Volume	0.78	0.64	0.76	0.76
eircom estimation of Total Transit Market	1.95	1.80	2.12	2.04

**eircom Market Share(eircom) 50% 53% 55% 53%**



Submissions to Consultation on Interconnection Market Review on Wholesale Call  
Origination and Transit Services

## 2 BT Communications Ireland Ltd.



# **BT Ireland response to ComReg Consultation 0702 Interconnection Market Review - Call Origination and Transit Services**

## ***Issue 1***

***23rd March 2007***

### ***1.0 Introduction***

BT welcomes the opportunity to comment on this important regulatory review which will impact the voice market over the next few years where change is going to be a prominent feature given the introduction of next generation networks. The structure of BT's response is firstly to provide a number of key comments followed by responses to the specific questions posed in the consultation. The extension to the timescales granted was welcomed given the size of this consultation and other consultations also underway. BT notes that the questions given in the consultation Annex D are one digit out of sync with the questions in the body of the consultation. The BT response follows the numbering in annex D of the consultation as this was used as the template for our response.

### ***2.0 Key Comments***

#### ***2.1 Regulatory Remedies***

BT acknowledges the considerable work and effort in producing this consultation and in the main agrees with the analyses of the markets and with most of the conclusions as to whether regulation is required. However, BT considers that the very good work to establish that regulation is required or not, is then let down by regulatory remedies that are not fully effective, dated, in serious need of a significant overhaul.

There is much said in the press that ComReg do not have enough regulatory powers and the passage of the Telecoms Amendment Bill should help this situation, however, a contribution to the problem is that the regulatory remedies being introduced during these critical market reviews are not up to standard and this restricts ComReg ability to regulate properly within the markets. I.e. we have a situation where the need to regulate

## BT Response to ComReg Consultation document 0702

for the correct reasons have been established and are proportionate, but the remedies are not fit for purpose.

The three areas that are particularly poor are the remedies concerning access, transparency and non-discrimination.

### Access Remedy

BT and other operators are constantly frustrated by eircom delaying tactics and push backs when new requirements are raised. On recent requests BT requested a service from eircom and wrote to its account manager, only to receive a response from eircoms regulatory team and on the next occasion BT sent a request to the regulatory team to receive the response to talk to the account manager.

In a normal business environment a wholesale operation would be falling over itself to take on new business and grow its market, our view is that eircom wholesale is not working in this way and this is reflected by its interface with its customer.

The market review in a number of areas introduces the concept of timeliness and this would be revolutionary if it were to happen – it does not and requests for services are dragged out which damages the market.

It is clear that the current regulation does not work and the market review is basically proposing more of the same – that is not good enough. BT proposes that it is now time for ComReg to impose an access request process that is both mandatory and prescriptive along the lines of shown in Annex A of this response. Many arguments will be put up why this is not practical, however this is known to work elsewhere as opposed to the current system which does not work and has no credibility in the market.

BT notes that ComReg has the regulatory powers and this is the correct time and place for the introduction of fit-for-purpose regulatory remedies. If this window of opportunity is not taken the market will continue to be stifled.

### Transparency Remedy

Whereas the market review correctly identifies the need for transparency the remedies proposed do not properly meet this requirement and it is possible to legitimately flout these rules whilst continuing to be compliant. The only ways to make such rules work is to flush into the open the different ways eircom provide services to themselves, understand the components, compare the differences to that which is provided to the OAOs and then to maintain this level of openness. The discussion in the consultation touches on this requirement but the remedies don't support it.

For example, BT notes that a lot of automation is being carried out in eircom at this time and hypothetically it would be extremely easy for eircom wholesale to provide automated facilities to eircom retail and semi-automated to the OAOs: it could easily be argued that this would still be equivalent and meet the requirements of the regulation, and if it did not there would be a long argument about the interpretation of the regulation over many months and nobody would be sanctioned. ComReg should be aware that if they don't flush out discrimination issues they will not be volunteered. BT has lost confidence that the regulatory remedies work. An example of this is that eircom appear to be able to offer service until around 8pm on week days, yet the gateway into eircom that all OAOs have to use closes at either 5pm or 5.30pm depending on what wholesale product is used. How is this achieved if there is equivalence? Why weren't the OAOs offered this?

BT notes that when asking eircom retail to supply services they appear to be easily able to activate an In-Situ line in real time, or certainly within a few hours. When BT tried to

## BT Response to ComReg Consultation document 0702

do this to help out smart customers the orders were generally bounced and it took weeks to get a line provided. Where is the equivalence? The regulations are not working.

As demonstrated for the Access discussion there is no excuse for having weak remedies, ComReg have the regulatory power, the market review is the appropriate vehicle for updating the regulatory remedies and this moment should be seized.

### Non-Discrimination

The term non-discrimination literally means no discrimination at all and not undue discrimination as implied in the regulation. BT is of the view that we should move to a world of equivalence of input in Ireland (EOI) which is where all parties including eircom retail take the same inputs both technically, process and T&Cs and this would go a long way to establishing confidence in the market that the playing field is level. There is no confidence at this time of a level playing field.

Without appropriate transparency regulation it is more often the case that the OAOs don't know that they are being discriminated, other than stumbling on issues through customer problems.

It is vital that the non-discrimination and the transparency regulations are closely linked where the non discrimination regulation sets the rules and the transparency regulation flushes out discriminations. Ofcom introduced such a linkage in its market reviews of around 2004 and BT recommends these should be applied in Ireland. An extract of effective regulation is extracted in Annex B of this response.

### NGN and NGA

BT welcomes that ComReg have started to address the subject of NGN and NGAs in its consideration and it is probably too early to discuss details. However, BT Ireland expects that the solution suggested by eircom will significant change the way Voice services are interconnected, removing the viability of voice interconnect below a core eircom network node. For example, the linkages from the VDSL DSLAM through the local exchange up into the core network will be Ethernet with no IP break-out; hence voice interconnection will not be possible. This market review needs to establish a clause or a trigger that major changes in the way services are delivered have to be managed in a fair and reasonable way. BT welcomes the Ovum work recently conducted for ComReg however it is not yet clear how these recommendations will tie into the market regulations. The Ovum recommendations must be linked into regulation appropriately otherwise they will not sustain an appeal or challenge. This market will be impacted by NGN and NGA and thus a regulatory linkage must be made at this time.

### NGN and non-discrimination

BT notes that there is a potential for eircom to argue that providing full equivalence to the OAOs is disproportionate as it is uneconomic to split its existing systems. The advent of NGN is a golden opportunity to ensure a regime of non-discrimination is baked into the design of the NGN. I.e. to design full equivalence of input [EOI] into the NGN where eircom provide exactly the same gateways and services to itself as it does to the OAOs. BT is strongly of the view that this and other market reviews should capture the opportunity ensure that non-discrimination is a design principle of the NGN. Once the NGN platform is designed and deployed it will be increasingly difficult to determine that players are getting the same services and facilities. BT has proposed some suggestions as how to cover this in Annex B of this response.

### SLAs

#### Full negotiation

BT is amazed that eircom take the view at industry meetings that OAOs are not allowed to negotiate the value of service credits (formally called penalties) with eircom on SLAs.

## BT Response to ComReg Consultation document 0702

It is completely disproportionate that one half of a contractual agreement is prohibited from negotiating elements of that contract. The correct approach should be that commercial negotiations on penalties take place, ideally with the regulator present, and if these achieve an amicable and fair outcome which is in the interests of all, including the consumer, then there should be no need for regulatory intervention. Where such discussion breaks down then it would be appropriate for the regulator to step in.

### SLAs contents

The general standard of SLAs is poor in Ireland in terms of the metrics to be achieved and the loop holes to avoid meeting the parameters, such as only 73% of customers being repaired in 2 working days for telephony and 73% repaired in 3 working days for LLU. The infamous 'non-standard' delivery has been a major problem area over recent times as orders can drop outside of the SLA. At this time we appear to have a 19<sup>th</sup> century level of repair service operating in a 21<sup>st</sup> century economy and major strides are needed to address this problem. The regulator has a role and the power to raise the bar. The OAOs and the consumer don't deserve the poor services they are getting.

### Subsidiary companies

BT is concerned that there is a loop hole in the regulations that would allow eircom to establish another trading entity to avoid regulation therefore a general regulation is required to ensure that the market review applies to eircom Ltd and any subsidiary companies that operate within this jurisdiction.

### Price Cap

BT agrees with the concept of establishing a price cap provided it is for a set period and re-evaluated every two years with both floor and ceiling prices controlled. This will bring stability to the market if managed correctly. BT is concerned that price squeeze can be as damaging to the market as excessive pricing hence both the floor and ceiling need to be monitored and potentially controlled.

BT would expect that any cap set would be based on sound regulatory costing principles such as FL-LRIC but appreciates that the introduction of NGN could cause a jump in capex spend for deployment followed by reduced capex cost (based on less equipment required) and reduced opex cost (based on less people required) going forward. At this time, eircom have not given enough details of their NGN deployment plans to evaluate the level of NGN deployment however the indications are that it will be a phased approach rather than big bang hence cost changes will be smoother.

## **3.0 Response to Detailed Questions**

Q. 1. Are there additional factors that in your opinion require analysis by ComReg? If so, please indicate precisely what they are. In respect of the factors analysed, is there additional analysis that in your opinion must be carried out. If so, please indicate precisely what that is.....10

### BT Response

As discussed in our introduction BT considers that a number of the regulatory remedies remain unfit for purpose as they are currently drafted and have limited impact. BT suggests that these are reviewed for European best in practice to improve their effectiveness. BT has provided more comments to this subject later in this response and in Annexes A&B.

Q. 2. Do you agree with the above preliminary conclusions regarding the market definition exercise? Please provide a reasoned response, and refer to the relevant paragraph number(s) when submitting comments.....38

## BT Response to ComReg Consultation document 0702

### BT Response

BT considers that ComReg has followed the guidelines for conducting market reviews and BT believes that the definition of the market is correct at this time. In the next period BT anticipates that the technologies available to the market will bring changes of how services are delivered, such as VoIP and the use of the NGN, however as regulation is agnostic to technology these replacement technical platforms should have little impact on the market definition, although they will trigger a significant debates on discrimination and transparency. i.e. The PSTN service will still be the PSTN service irrespective of whether it is carried over TDM, NGN, IP, MPLS, VoIP etc, however we are suspicious that eircom will extract the cost and service benefits of NGN and NGA which will not be passed on. The offer by eircom to continue to provide traditional interconnect is welcome and will be essential during the transition, but ultimately it will be detrimental if the newer and more functionally rich services within the eircom NGN are not properly broken out in a timely way through new interconnects such as carrier IP interconnect of MPLS and SIP etc

Q.3. Do you agree with ComReg's preliminary assessment and conclusions on existing competition in the market for wholesale call origination? Please provide a reasoned response, supported with economic, technical and/or legal advice where relevant. ....44

### BT Response

BT Ireland agrees with the ComReg assessment of the market for call origination as there is no viable alternative in the market to origination on the eircom wholesale platform. WLR and CPS are the only viably services available to the OAOs and these both involve origination on the eircom network. The problems experienced by the OAOs trying to grow LLU access are well documented, not least in ComReg's own progress reports, and at this time the LLU market is negligible compared to eircom network origination. A significant change is not foreseen in the next period.

Q. 4. Do you agree with ComReg's preliminary assessment and conclusions on barriers to entry and potential competition in the market for wholesale call origination? Please provide a reasoned response, supported with economic, technical and/or legal advice where relevant. ....49

### BT Response

BT Ireland agrees with the ComReg assessment on the barriers to entry for wholesale call origination. The introduction of VoIP service in Ireland are still in their infancy and the lack of progress negotiating a fit for purpose LLU product is stifling competition using this avenue. BT Ireland does not foresee any significant change in the coming period.

Q. 5. Do you agree with ComReg's preliminary conclusions on countervailing buyer power in the wholesale call origination market? Please provide a reasoned response supported by empirical and/or technical and economic evidence.....49

### BT response

BT Ireland takes the view that eircom Retail are the only organisation with countervailing buyer power and it is unlikely they will seek services elsewhere. It is highly probable that eircom Retail strongly influence eircom wholesale services and prices and where disagreements between eircom Retail and Wholesale emerge it is possible that the eircom board will decide on what is best outcome for eircom overall rather than what a wholesale market requires.

Q. 6. Do you agree with the above preliminary conclusions regarding market analysis? Please provide a reasoned response.....50

## BT Response to ComReg Consultation document 0702

### BT response

BT Ireland supports the preliminary conclusions as experience in this market suggests that there are no commercially viable alternatives to providing mass market access solutions.

ComReg needs to put in place stronger access and non discrimination remedies supported by extensive transparency remedies to automatically highlight discrimination issues. At this time regulation appears to be complaint led and ex-anti remedies are not working in this area. The remedies are so vague that any complaint will potentially flounder on interpretation issues.

Q. 7. Do you agree with the above preliminary conclusions regarding market analysis? Please provide a reasoned response.....62

### BT Ireland

BT Ireland agrees that eircom dominance of the market is entrenched and will not change in the foreseeable future without a significant structural change to the market. BT believes this and other market reviews is the best opportunity for ComReg to introduce up-to-date and effective remedies to correct the poor behaviour of eircom. Even the Minister has made comments at recent industry conference about the problems of negotiating LLU.

Q. 8. Do you consider that the outgoing international transit services market is not subject to high and non-transitory entry barriers (in the presence of regulatory measures in other wholesale markets)? Please substantiate your response.....67

### BT Response

The international transit market is already served by a number of players and this demonstrates that the market does not pose insurmountable barriers to entry.

Q. 9. Do you consider that the outgoing international transit services market has characteristics such that it will tend over time towards effective competition? Please substantiate your response.....70

### BT response

BT Ireland considers that the international outgoing transit market is demonstrating characteristics towards effective competition as demonstrated by the existence and sustainability of multiple players with their own global connectivity in the market. BT Ireland considers that even though the market is tending to effective competition, there is merit to continue to monitor the market to ensure it is working properly. Cheaper and more effective technologies will be deployed first where there is most to gain, and the constant drift towards IP will continue to impact the international market through the increasing use of internet by-pass or commercial internet telephony with local break-out. Hence the trend towards effective international transit competition is likely to continue, but may change in how it is delivered.

Q. 10. Do you envisage any potential competition problems/market failures in the outgoing international transit market? If so, please state clearly the nature of any such potential problems and outline whether you believe competition law is sufficient of itself (absent ex ante regulation) to address any such potential market failures? Please substantiate your response. ....73

### BT Response

At this time BT is not aware of issues that could lead to this market failing and thus ex post competition law is appropriate for single abuses.



## BT Response to ComReg Consultation document 0702

Q. 11. Do you believe that the outgoing international transit services market meets all the three criteria and as such existing SMP obligations applying to this market should be removed? Or, is it your view that one/some of the criteria are not met. Please substantiate your response.....74

### BT Response

BT does not believe in regulation where it is not required. BT notes ex post competition law is available for single abuses and if the market becomes non-competitive there is a route for a new market review in time.

Q. 12. Do you agree with the principles ComReg proposes to adopt when selecting obligations in this market?.....79

### BT Response

BT Ireland agrees with the principles that Comreg propose to adopt however BT Ireland considers that these principles have not been applied into the remedies proposed. The current remedies are weak in a number of areas and thus are not a proportionate way of meeting the need for remedies. Basically, a simple analysis needs to be carried out on the existing regulations that are in place and a check made as to whether they work properly. It does not appear this has been done, hence the current failures will continue. This is not good enough for the Irish communications industry.

Q. 13. Do you agree that in the absence of ex ante regulation eircom would have little or no incentive to offer reasonable access to call origination services to OAOs competing against eircom's retail businesses?.....81

### BT Response

Even with the current ex anti regulations in place BT does not consider that eircom have much of an incentive to offer fair access to the call originating services. Apparently eircom retail are able to provide services through to 8pm, presumably through the same gateway as offered to the OAOs, however that gateway shuts at 5pm for one wholesale product and 5.30pm for another. Hence where's the reasonableness and non-discrimination?

It is crystal clear that without fit-for purpose ex anti regulations eircom would have little or no incentive to offer reasonable access to call origination services.

Q. 14. In your opinion have there been any developments since the original response to consultation which may have an impact on ComReg's conclusion as stated above?.....81

### BT Response

The disgraceful progress in the LLU forum is having a major impact on the perception of eircom wholesale as an independent operation. An independent wholesaler would want to provide services rather than to stifle them.

Q. 15. Do you agree that an access obligation for call origination should be imposed on eircom? Please provide details in support of your answer. ....83

### BT Response

BT agrees that access obligations should be imposed on eircom.

Q. 16. Do you agree with ComReg's proposal to require eircom to interconnect networks or network facilities? Please provide details in support of your answer.

## BT Response to ComReg Consultation document 0702

### BT Response

BT agrees with ComRegs proposal. BT requires both physical interconnection of its networks such as connecting fibres together and also interconnects with network facilities such as call waiting etc on WLR. Basically BT wants to be able to offer the same set of services that eircom wholesale provide to eircom retail. These should be on the same term and conditions, processes and timescales.

Q. 17. Do you agree that eircom should be required not to withdraw access to facilities already granted, save without prior ComReg approval? Please detail your response.....84

### BT response

In the coming years with the development of NGN it is likely that some services will be withdrawn or have to change, or CPE may not inter-work properly with the NGN. It is essential that eircom are required to gain ComReg approval for both changes and withdrawal of services. The OAOs may have a significant base of customers that could be impacted by either the change or withdrawal of a wholesale service and it may take time to migrate these customers to a new platform or service. Recent experience gained by BT in Ireland of migrating a modest number of leased line type customers from one technology back to traditional leased lines has taken around two years to complete given problems with contacting customers, lack of response, reluctance to move, contract issues, practicalities of delivering leased lines to remote locations etc. Withdrawing or changing existing services where there is an established customer base is a very serious issue and should not be underestimated. BT is happy to discuss privately with Comreg the experience it encountered in making such a migration.

BT is also aware for NGN platforms that things that are expected to be straight forward can often cause a lot of unexpected issues due to signalling translations, timing etc. Some of these maybe due to a vendors network box not working totally as expected etc. It will be very important that a specialist team will be available to resolve such problems when they arise as it could impact systems such as burglar alarms etc.

Changing to an NGN platform will raise a significant number of these types of issue and any change of the technical specification including timing, delay, echo rules etc must be included in Comreg remit of service change. A service might look the same on the surface but a slight technical change has the potential to upset a lot of customers.

Q. 18. Do you agree with ComReg's proposal to require eircom to provide specified information which supports call origination services and to continue to provide such services in accordance with terms and conditions which are agreed by industry? Please detail your response

### BT Response

Yes as above it is vital that eircom provide details, technical and otherwise of all its access services to enable them to be used at their optimum performance.

Q. 19. Do you agree that eircom should have an obligation to meet reasonable requests for access as described above? Please detail your response.

### BT Response

The remedy that ComReg is proposing is not effective hence this means that ComReg is not properly implementing its own findings and BT has a significant issue with this. We know that there are glaring holes in the regulatory remedies of today and ComReg are proposing more of the same. That is not good enough and undermines the market analysis. I.e. ComReg are not properly implementing regulation.

## BT Response to ComReg Consultation document 0702

Poor access regulation in the LLU access regulations are partly to blame for the frustration being experienced in the LLU group. Serious lessons must be learnt from this debacle and regulations much be introduced to ensure it never happens again. Please see Annex A for further information.

Q. 20. Do you agree that eircom must provide call origination services on terms which are fair, reasonable and timely? In addition do you agree with ComReg's proposal that these terms and conditions should be supported by Service Level Agreements? Please provide detail in support of your response.

### BT Response

BT does agree with this statement, but it does not happen in practice hence the regulation does not work. BT suggests that ComReg should spend more time in industry groups to see how regulation can be completely frustrated. The perception of BT and others in the industry is that eircom wholesale are looking for problems with industry proposals rather than taking a 'can-do' approach. This clearly illustrates that eircom wholesale is not working properly – it is not looking after the interests of its customers. A foundation of regulation is to introduce remedies to substitute for the lack of equal competition. In Ireland the remedies are letting the industry and the economy down.

Q. 21. Do you agree that ComReg should consult with industry on the terms and conditions of the SLA? Please provide detail in support of your response.

### BT Response

BT welcomes this proposal and is very happy to contribute. Ireland needs a fit for purpose communications industry and fit-for-purpose SLAs will help achieve this. The current SLAs are littered with loop holes that either render metric useless or change the delivery target dates without any comeback. BT is aware of numerous areas where improvements are needed, such as getting rid of the loop holes like the non-standard definitions as well as removing masking where an efficient automated solution that is performing well can mask the abysmal performance of a smaller product. BT welcomes the very recent approach in the LLU forum to move towards some of these suggestions however this needs to spread across the whole portfolio.

BTs view is that operators should try to agree SLAs as far as possible with facilitation by ComReg and those issues where agreement can't be reached should be determined. However, given that it might be difficult to trigger a particular regulation to give ComReg the specific powers to determine these important issues, it maybe necessary to include a specific trigger in the regulatory remedies on this matter. i.e. as part of the remedy it could state that SLAs should be negotiated in the first instance and where issues cannot be resolved ComReg will have the final and binding view. This should be explicitly stated in the regulatory remedies given its importance.

If ComReg are planning to consult on guidelines for fit-for-purpose SLAs that would be very helpful to assist such negotiations and BT Ireland would support this initiative.

BT Ireland is of the view that it should be able to negotiate the level of service credits associated with SLAs as ultimately these form part of a legal contract between the two parties and it is highly unusual for one party being barred from negotiating a part of a contract.

Q. 22. Do you agree that eircom should provide access to and information necessary for call origination services to competitors at least equivalent times and standards as it provides to its own retail arm? Please provide detail in support of your response.

## BT Response to ComReg Consultation document 0702

### BT Response

Yes – and the current regulation does not force this to happen today and the proposed remedies in Annex A & B will make this happen in the future. Hence we don't believe ComReg have gone far enough to make the regulations effective. Please see Annex B for BT Ireland proposal to make this work.

E.g. eircom retail appear to have real-time or near real-time access to the status of wholesale lines and services, however that is not the case for OAOs. The in-situ database has been offered to help, however this is will only be updated every two weeks. If eircom retail has true real time access to information the same should be offered to the OAOs.

Q. 23. Do you agree that where there will be a direct impact on OAOs, that both OAOs and ComReg should be notified of plans which eircom may have with regard to restructuring of their network? If so, what form should this take?

### BT Response

This is a very major issue and is a subject in its own right. BT welcomes the initiative of ComReg to engage the respected organisation Ovum to recommend policy principles for the Irish NGN regulatory framework as recently published on the ComReg web site. These principles have been established at a very timely point in the process and should be considered as part of this market review.

BT and other industry players have made a significant investment in the Republic of Ireland (Billions of euros) and the OAOs support hundreds of thousands of customers hence it is absolutely critical that the OAOs are notified of changes to the eircom network as the loss or change of the underlying network could cause huge dissatisfaction on a scale that would put companies out of business. The recent Smart debacle where 10s of thousands of customers were cut off overnight caused a significant disruption to the telecoms market towards the end of 2006 and customer problems continued for several months after that. The scale of NGN disruption could potentially be many times greater and would register on the telecoms scales for national outages leading to potential government intervention.

eircom need to appreciate that they will not be able to progress NGN on their own; they will need the co-operation and collaboration of the industry to agree testing, the timing of handovers, changes to service performance, new interconnect types such as IP based etc. BT has made it clear that it believes that an industry group is required to bring people up to speed and evolve a joined up solution for Ireland. BT Ireland fully supports the initiative for NGN and welcomes ComReg initiative announced on the 8<sup>th</sup> of March 2007 to start such an industry group in the coming weeks.

This industry group will remove the level of surprise, allow operators to appreciate the potential changes ahead. At some point eircom will need to give formal notices of changes and these should allow sufficient time for operators to re-arrange their networks as appropriate. There will in some cases be issues of paying compensation for stranded assets caused etc and the details of this will have to be worked through. BT notes that Ovum have addressed notification issues and BT believes in the principle that timescales should be proportionate to the level of changes required – in some cases this will be years.

Q. 24. Do you agree that eircom should provide call origination services on an unbundled basis as part of its Access obligation? Please provide detail in support of your response.....87

### BT Response

## BT Response to ComReg Consultation document 0702

Yes BT believes that eircom should continue to provide unbundled access so that operators don't have to pay for things they don't need.

Q. 25. Do you agree that eircom should be required to grant open access to technical interfaces, protocols, or other key technologies and systems and should also be required to provide access to such OSS or similar software necessary to ensure fair competition in the provision of services? Please provide detail in support of your response.

### BT Response

Ultimately BT believes that equivalence of input (EOI) should be the desired goal where all parties have access to the same information and use the same gateways at the same time. As eircom move towards NGN this is an opportune time to start moving to the EOI approach as many developments will have to be carried out to integrate the new NGN platform. As regards providing direct access to the OSS, and until EOI is achieved eircom should provide the same information, availability and responses that it provides to itself. It would be acceptable to provide sufficient firewalls, or data extracts to ensure that an OAO could not damage the eircom system. Eircom retail should be required to use the same gateways as everybody else.

Q. 26. Do you agree that transparency, and in particular the requirement to make public interconnection terms and conditions, is a necessary remedy to actual and prospective problems in this market? Please provide detail in support of your response.

### BT Response

See earlier answer on transparency. BT believes that the requirement to regulate is being let down by weak regulatory remedies that are not effective. Please see annex B also.

Q. 27. Do you agree that eircom should publish a Reference Offer for Call Origination services on its wholesale website? Please provide detail in support of your response..

### BT response

Yes – publication and transparency is the only way to prevent discrimination. BT strongly believes the services offered to eircom retail should be included in this Reference Offer to prove non-discrimination.

Q. 28. Do you agree that eircom should publish specified information which supports call origination services? Please provide detail in support of your response.

### BT Response

Yes – Please see Annex B which gives a comprehensive list of details that should be published to enable connectivity and remove discrimination.

Q. 29. Do you agree that eircom should be required to publish appropriate manuals and documentation for new and existing Call Origination services? Please provide detail in support of your response.

### BT Response

Yes – the requirement to force the publication of information for call origination services will reduce the risk of discrimination – however these manuals should include how eircom retail obtain the services to avoid eircom discrimination in favour of eircom retail.

Q. 30. Is there any additional information which eircom should provide to ComReg or industry or both to further support products and services in the RIO? Please provide detail in support of your response.

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BT response

Yes, details of what eircom wholesale provide to eircom retail including timing, processes, charges and all comparable details in the existing reference offer. See Annex B for BT's proposal to require this.

Q. 31. In your opinion is the current process for updating of the RIO adequate?  
Please provide detail in support of your response

BT Response

NO. Often the industry is just sent an e-mail of changes. In the majority of cases there is no explanation why these have come about. As regards a major update we don't believe that eircom will introduce conditions necessary to deal with issues surrounding NGN and stranded assets.

Q. 32. Do you agree that the eircom billing reports for call origination services to wholesale customers are sufficiently granular so that operators are in a position to reconcile their bill in an efficient manner to their in-house systems? Please provide detail in support of your response.

BT response

BT is concerned that services credits are not fully itemised and it can be very difficult to establish what a credit is for. A process of investigation and checks has to be carried out where it would be much easier and less prone to error if they were properly itemised.

Q. 33. If you believe that the current level of detail for call origination services on eircom wholesale bills is not sufficient please demonstrate by example material shortfalls in the reconciliation process.....91

BT response

As above

Q. 34. Do you agree that a non-discrimination obligation applied to eircom is necessary to remedy competition problems in the wholesale call origination market? Do you also agree that non-discrimination is a necessary complement to the other obligations needed to remedy competition problems in this market? Do you agree that, in addition to provision of reasonable requests, eircom should also be required to provide products on a non-discriminatory basis and, as such, should be required to provide to other operators at least an equivalent wholesale call origination product to those services it provides to its retail arm? Please provide detail in support of your response. ....92

BT response

BT agrees that eircom should be required to offer services to other providers that are at least the same as it offers itself to ensure a level playing field. BT considers that the non-discrimination obligation currently in place and proposed don't work effectively due to weak transparency regulations. BT has proposed a solution to this situation that has been taken from proposals made by Ofcom – see Annex B.

Q. 35. Do you believe that in light of the increased shift of local call costs towards cost that ComReg should consult further with industry on a proposed remedy similar to that reached in the UK in relation to local call disadvantage?

BT Response

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Yes

Q. 36. ComReg invites respondents to submit arguments as to whether anything has changed since the last review to suggest that Near End Handover should not longer be provided to those Operators in a position to avail of it? Please provide detail in support of your response.

BT Response

BT is not aware of anything that should remove this facility as it is known to be in use and working. BT is concerned however that voice interconnect in an NGN platform may move towards the core given the lack of IP connectivity at the local exchange (likely to be Ethernet only) hence this matter will need to be discussed and reviewed over the coming years.

Q. 37. Do you think that the current charging mechanism for PAC is still appropriate given the change in recent years to the use of payphones? If not please provide details with your answer.

BT Response

Payphones have a place in society and it is reasonable and proportionate those payphone operators are correctly rewarded for their investment hence BT supports the continuation of the PAC. The PAC is currently measured using parameters within the signalling system number 7 coding and BT is concerned that the reliability of this may become an issue as eircom move to an NGN network. An alternative and potentially more reliable approach is possible using CLIs if such a problem were to be encountered.

Q. 38. In your opinion do you believe that the current FL-LRIC Top Down model approach to setting call origination rates should be maintained pending the outcome of the consideration of a wholesale price cap? Please detail your response giving substantive arguments for or against as appropriate.

BT Response

It is BT's view is that FL-LRIC is an established and proven regulatory costing methodology and should be maintained as to change model now could be highly disruptive for operation over a relatively short period in the light of a move towards price cap.

Q. 39. Do you agree that ComReg should consider possible approaches to, and implementation of, a wholesale price cap?

BT response

Today margins have become increasing tighter and there is a risk that operators business are becoming increasingly exposed to price changes by eircom given the inability to absorb the prices with profit margin. Such changes may increasingly be passed straight through to the consumer undermining OAOs existing advertising and competitiveness in the market. A price cap will provide pricing stability and aid certainty in the market.

Q. 40. Do you believe that the obligation to maintain cost accounting systems should be imposed on eircom? Please detail your response.

BT response

It is clear that eircom could choose cost accounting and allocation systems that both suit themselves and could portray compliance, whilst seriously undermining competition. The reason for this is that key assumptions and rules have to be applied, and the assumptions and rules chosen will be dependent on the outcome desired. It is therefore essential that

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ComReg maintain the obligation to maintain a cost accounting system and more importantly it is vital that ComReg take a view that the cost accounting system deployed is both transparent and fair. BT is particularly concerned with the allocations methodologies being adopted by eircom as these could distort the costs so as to give an unfair advantage to eircom.

Q. 41. Do you believe eircom should have an obligation of accounting separation in the wholesale call origination market? Please provide detail in support of your response.....99

### BT Response

Yes. Eircom are dominant in this market and accounting separation is vital to ensure that eircom are correctly allocating both costs and components to the appropriate services. Not to require such separation and transparency to the regulator runs the risk of cross subsidy through inadvertent placing of components or allocations.

Q. 42. Do you agree that an access obligation for wholesale national transit services should be imposed on eircom pursuant to Regulation 13? Please provide detail in support of your response.....103

### BT response

Eircom is dominant in national transit as demonstrated by ComReg in its analysis and there is little expectation that this will change given the coverage and ubiquity of the eircom platform. Additionally eircom will already be at the exchanges where transit may start or end whereas other operator will have to either dig or purchase connectivity to those sites which take time and considerable resource. Given this entrenched advantage and persistent dominance it is appropriate to regulate eircom national transit services and providing access obligations is an essential requirement to enable others to be able to use those services.

Q. 43. Do you agree with ComReg's proposal to require eircom to interconnect networks or network facilities? Please provide detail in support of your response.....103

### BT Response

Increasingly interconnect is moving to include both physical interconnect and the interconnection of network facilities such as look-up data bases etc. For example it is increasingly important to support equivalence that the OAOs are able to both know the current status of a telephone line, in service, in-situ, or simply not available so that they can advise customers in the same and timely way available to eircom retail. The recent offer from eircom to supply the In-Situ Database is a move in the right direction, however this will be supplied every two weeks and thus is not real time. What is needed is for the OAOs to have the same interconnection to eircom network facilities as eircom retail has. This would enable OAOs to compete with eircom on a level playing field, and more importantly benefit the consumer in that informed decisions can be taken at both the provision (including cease) and fault management stages of the process.

Q. 44. Do you agree that eircom should be required not to withdraw access to facilities already granted, save without prior ComReg approval? Please provide detail in support of your response.....104

### BT Response

See answer to Q23

Q. 45. Do you agree with ComReg's proposal to require eircom to provide specified information which supports existing and new transit services? Please



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provide detail in support of your response. ....104

### BT Response

Eircom should provide detailed information about its existing and new transit services as it is the dominant player and has the ability to act independently and to the detriment of its customers if it so wished. BT expects that NGN will require a major shift of the current voice interconnect arrangements towards the core of the network and OAOs will need to understand the impact of such a change on their business models. BT anticipates this change as IP which will carry speech services in future & will not break out at the local exchange level, hence voice interconnect at this level may no longer be possible in an NGN world.

Q. 46. Do you agree that eircom should have an obligation to meet reasonable requests for access? Please provide detail in support of your response. ....105

### BT Response

Please see BT's earlier views and Annex A.

Q. 47. Do you agree that eircom must provide call transit services on terms which are fair, reasonable and timely? In addition do you agree with ComReg's proposal that these terms and conditions should be supported by Service Level Agreements? Please provide detail in support of your response. ....105

### BT Response

Given eircoms dominance in this area eircom should be required to provide fair and reasonable national transit services as the barriers to entry are so high alternative providers may not have access where required. An OAO business will be dependent on providing high levels of services and it is essential that eircom products are supported by SLAs to maintain this. Please see BT's response to Q21 for further details.

Q. 48. Do you agree that ComReg should consult with industry on the terms and conditions of the SLA? Please provide detail in support of your response. ....105

### BT Response

Please see BT's detailed response to Q21.

Q. 49. Do you agree that eircom should provide unbundled transit services as part of its Access obligation? Please provide detail in support of your response.

### BT Response

Yes – OAOs should not be required to purchase components they don't need.

Q. 50. Do you agree that eircom should provide access to and information necessary for access to transit services to competitors at equivalent times and standards as it provides to its retail arm? Please provide detail in support of your response. ....106

### BT response

Eircom is the dominant player in transit services and eircom should provide transit services to all downstream players, including eircom retail on the same terms and conditions as other players. There is no reason why eircom retail should be given privileged treatment.

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BT is of the view that the OAOs and eircom retail should be able to avail of the same services as each other and the only way to make this happen effectively is for a transparency obligation on eircom to publish details of all the differences it offers itself including timescales, processes, prices and T&Cs. Please see Annex B for a proposed way of doing this.

Q. 51. Do you agree that where there will be a direct impact on OAOs, that both OAOs and ComReg should be notified of plans which eircom may have with regard to restructuring of their network? If so, what form should this take? ....106

BT Response

Please see BT's detail response to question Q23.

Q. 52. Do you agree that eircom should be required to grant open access to technical interfaces, protocols, or other key technologies and should also be required to provide such OSS or similar software necessary to ensure fair competition in the provision of services? Please provide detail in support of your response.....107

BT Response

BT agrees with this view as without such the OAOs can't compete on equal terms with eircom retail. The access to the OAOs should at least be equal to that which is available to eircom retail and this should include timing aspects, process steps, availability etc. On the surface it is easy to say that both eircom retail and OAOs can order the same products through the gateway, but what is not clear is whether both can order in the same timescales and do both have access to the same underlying information (within the same timescales) to be able to place orders. Please see Annex B for a proposal to achieve this.

Q. 53. Do you agree that eircom should be required to provide specified services needed to ensure interoperability of end-to-end services to users? Please provide detail in support of your response. ....107

BT Response

Yes so that operators can avail of the same wholesale services available to eircom retail.

Q. 54. Do you agree that eircom should be required to provide such operational support systems or similar software necessary to ensure fair competition in the provision of services? Please provide detail in support of your response .....107

BT Response

Yes otherwise the OAOs cannot operate on a level playing field and competition will be distorted. The availability of information about the status of a line has been very limited to date or takes several hours/days to obtain hence cannot be used at point of sale.

As regards to fault management, BT considers that it is not kept well informed about the status of faults. It is clear that there is an increasing use of supplying the information over the electronic gateway and that is welcomed, however there are concerns about the timeliness of the data available on the gateway. BT has experience that the eircom account managers have access to more up to date information as phoning them can often achieve up to date information that is not available electronically. BT considers that information should be flowed through more quickly.

Q. 55. Do you agree that an obligation of transparency should be imposed on eircom? Please provide detail in support of your response.....108

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### BT Response

Please see earlier views and also Annex B of this response.

Q. 56. Do you agree that eircom should publish a Reference Offer for Call Transit services on its wholesale website? Please provide detail in support of your response.....108

### BT response

Yes – this will ensure that OAOs have the opportunity to purchase the same services. Additionally, ComReg should carry out an investigation to ensure the published services are the same as provided to eircom itself, and if differences are found these should be added to the offering. Please see Annex B as how this may be achieved.

Q. 57. Do you agree that eircom should publish specified information which supports call transit services? Please provide detail in support of your response. 108

Yes – so that operators are aware of the services available and how they should be used. Eircom should also publish information on all services including timescales, T&Cs, prices etc of services it is offering itself.

Q. 58. Do you agree that eircom should be required to publish a Reference Offer containing details of access to facilities already granted?.....110

### BT Response

Yes eircom should publish such information as there may be services available to players such as eircom retail that others would be keen to use if they were known to be available.

Q. 59. Do you agree that eircom should be required to publish appropriate manuals and documentation for new and existing Transit services? Please provide detail in support of your response. ....110

### BT Response

Transparency is very important and such information should be made available so that we are all aware of what is available. Eircom should also include services details of the products they are offering eircom retail. See earlier responses on transparency.

Q. 60. Is there additional information eircom should provide to ComReg or industry or both? Please provide detail in support of your response.....110

### BT Response

Yes – eircom should provide information about the services it offers itself including the level of automation, terms and conditions, timescales, prices, fault performance etc.

Q. 61. Do you agree that eircom should be required to publish the services that fall within the call origination, the eircom call termination and transit markets in the same format as they are published in the current RIO? Please provide detail in support of your response. ....110

### BT Response

Yes – This will enable industry to be fully informed in a timely way and remove the risk of discrimination. Publication of the services offered to eircom retail should be included.

## BT Response to ComReg Consultation document 0702

Q. 62. Do you agree with ComReg's proposal to require eircom to publish one reference offer for three markets - call origination market, eircom call termination and transit?.....110

BT response

Yes – There are many aspects in common, particularly the remedies hence it makes a lot of sense to keep these together. The eircom offer to itself should be included in this reference offer.

Q. 63. In your opinion is the current process for updating of the RIO adequate? Please provide detail in support of your response.....111

BT Response

See earlier comment regarding reasons for the change.

Otherwise the process is adequate, however it would be helpful if the e-mail informing of the update included the changes being made so that these can be seen at a glance. It is acknowledged that a change matrix is supplied on the site but it would be helpful for busy people to see the changes instantly rather than having to go look for them.

Q. 64. Do you agree that the eircom billing reports for call transit services to wholesale customers are sufficiently granular so that operators are in a position to reconcile their bill in an efficient manner to their in-house systems? Please provide detail in support of your response. ....112

BT response

Yes – the service credit issue discussed earlier is not seen as a transit issue.

Q. 65. If you believe that the current level of detail on wholesale bills for call transit services provided by eircom is not sufficient please demonstrate by example material shortfalls in the reconciliation process.....112

BT response

See Q64

Q. 66. Do you agree that eircom should be required to provide transit information and services on a non discriminatory basis to its retail arm and alternative operators? Please provide detail in support of your response. ....112

BT response

All operators, including eircom retail, should be offered the same services on a non discriminatory basis. For the market to be properly competitive and sustainable there should be a level playing field otherwise companies are wasting their investment in a market that is stacked against them, and liable to change to their disadvantage. Failure to have a properly working competitive market will lead over time to market closure and companies going elsewhere. Eircom should be required to publish details of the service offered to eircom retail.

Q. 67. Do you agree that eircom's downstream arms should have the same access to eircom wholesale as alternative operators? Please provide detail in support of your response.....113

BT Response

eircom downstream should be allowed to trade the same as any other provider and thus they should be able to avail of the same wholesale products. However, eircom wholesale arms should not receive any preferential treatment, information or services as this would give them an unfair advantage in the market. BT is seeking full equivalence of input

## BT Response to ComReg Consultation document 0702

(EOI) where all downstream players are able to avail of the same services and conditions including eircom retail.

Q. 68. In your opinion do you believe that the current FL-LRIC Top Down model approach to setting call transit rates should be maintained pending the outcome of the consideration of a wholesale price cap? Please provide detail in support of your response giving substantive arguments for or against as appropriate.....115

BT Response

Yes as this is a structured and recognised costing model for regulated markets. See the BT response to Q38.

Q. 69. In light of the likely increase in competition in the transit market in the foreseeable future do you think that ComReg could relax any part of the price control obligation when compared to the call origination market? Please provide detail in support of your response.....115

BT response

Traditional transit traffic over the coming years may change given the emergence of new technologies and access mechanisms such as Broadband and internet bi-pass. However at this time it is too early to predict the impact of this change.

Q. 70. Do you agree that ComReg should consider possible approaches to, and implementation of, a wholesale price cap? .....116

BT Response

Yes – however, once NGN is in place the cost base within eircom will go down hence a price cap is only helpful if it acknowledges these changes through a regular review.

Q. 71. Do you believe that the obligation to maintain cost accounting systems should be imposed on eircom? Please provide detail in support of your response.....116

BT Response

Cost accounting systems are essential to prevent eircom cross subsidising through subtleties of allocations and business projections that are questionable. Therefore, not only should eircom be required to run cost account systems but these should be approved by ComReg and their operation inspected from time to time. Financial accounting is ultimately based on making reasonable projections as to future volumes and costs and ultimately assumptions are made. It is very important that the assumptions are reasonable. For example in the broadband market the costs of broadband today will be averaged over the next 3 to 5 years with an assumption of volumes achieved, however, the product will continuously change and new market projections will be made that might be considerably different. i.e. there is a risk that cost accounting systems can be engineered to give the answer you want.

Q. 72. Do you believe eircom should have an obligation of accounting separation in the wholesale call transit market? Please provide detail in support of your response.....118

BT response

BT strongly believes that accounting separation should be mandated as a means to ensure that components and services are being correctly costed and there is no cross subsidy through such things as allocations. See earlier responses.

Q. 73. Do you agree that ComReg should mandate capacity based

## BT Response to ComReg Consultation document 0702

interconnection products in this manner? Please provide detail in support .....120

BT response

A. Yes, BT Ireland agrees, in fact, it is absolutely critical that ComReg should continue to mandate capacity based interconnect products as described, i.e. products contained in Service Schedule 002 (Interconnect Paths) and ISI in eircom's current RIO and eircom RIO Network Price List as well as the Interconnect O&M and SLA for Interconnect Paths and Traffic designation for inbound and outbound Interconnect Paths document on the eircom Wholesale website.

Unless these services are maintain, at least under at the level as per the current terms and conditions, then the principle of "any to any" would rapidly fall down, the market would be placed in complete turmoil and consumers, businesses, corporates etc would be left floundering. It is an absolute necessary that the so called "capacity based interconnection products" are absolutely maintained. This seems to fall under the "facilities already provided" principles.

Q. 74. Do you agree with the above position taken by ComReg in relation to Fixed SMS? Please provide detail in support of your response. ....121

BT Response

Yes – The market is small and is not raising concerns at this time.

Q. 75. Do you consider that in the period since the initial review that the market for the labour element of DQ services to be effectively competitive and therefore not suitable for ex-ante regulation? Please provide evidence to support your answer. ....121

BT response

Unsure– There are a number of providers in the DQ market, however, prices are still high. It would not be unreasonable to review the costs of labour associated therefore. Such an issue would lead to considerable consumer frustration.

Q. 76. Respondents are asked to provide views on whether the remedies in section 6 of this consultation paper are proportionate and justified and offer views on what factors ComReg should consider in completing its Regulatory Impact Assessment in terms of the impact of these remedies on end-users, competition, the internal single market and technological neutrality.....129

The three areas where the remedies proposed are poor that are; access, transparency and non-discrimination.

Access Remedy

BT and other operators are constantly frustrated by eircom delaying tactics and push backs when new requirements are raised. On recent requests BT requested a service from eircom and wrote to its account manager, only to receive a response from eircoms regulatory team and on the next occasion BT sent a request to the regulatory team to receive the response to talk to the account manager.

In a normal business environment a wholesale operation would be falling over itself to take on new business and grow its market, our view is that eircom wholesale is not working in this way and this is reflected by its interface with its customer.

## BT Response to ComReg Consultation document 0702

The market review in a number of areas introduces the concept of timeliness and this would be revolutionary if it were to happen – it does not and requests for services are dragged out which damages the market.

It is clear that the current regulation does not work and the market review is basically proposing more of the same – that is not good enough. BT proposes that it is now time for ComReg to impose an access request process that is both mandatory and prescriptive along the lines of shown in Annex A of this response. Many arguments will be put up why this is not practical, however this is known to work elsewhere as opposed to the current system which does not work and has no credibility in the market.

BT notes that ComReg has the regulatory powers and this is the correct time and place for the introduction of fit-for-purpose regulatory remedies. If this window of opportunity is not taken the market will continue to be stifled.

### Transparency Remedy

Whereas the market review correctly identifies the need for transparency the remedies proposed do not properly meet this requirement and it is possible to legitimately flout these rules whilst continuing to be compliant. The only ways to make such rules work is to flush into the open the different ways eircom provide services to themselves, understand the components, compare the differences to that which is provided to the OAOs and then to maintain this level of openness. The discussion in the consultation touches on this requirement but the remedies don't support it.

For example, BT notes that a lot of automation is being carried out in eircom at this time and hypothetically it would be extremely easy for eircom wholesale to provide automated facilities to eircom retail and semi-automated to the OAOs: it could easily be argued that this would still be equivalent and meet the requirements of the regulation, and if it did not there would be a long argument about the interpretation of the regulation over many months and nobody would be sanctioned. ComReg should be aware that if they don't flush out discrimination issues they will not be volunteered. BT has lost confidence that the regulatory remedies work. An example of this is that eircom appear to be able to offer service until around 8pm on week days, yet the gateway into eircom that all OAOs have to use closes at either 5pm or 5.30pm depending on what wholesale product is used. How is this achieved if there is equivalence? Why weren't the OAOs offered this?

BT notes that when asking eircom retail to supply services they appear to be easily able to activate an In-Situ line in real time, or certainly within a few hours. When BT tried to do this to help out smart customers the orders were generally bounced and it took weeks to get a line provided. Where is the equivalence? The regulations are not working.

As demonstrated for the Access discussion there is no excuse for having weak remedies, ComReg have the regulatory power, the market review is the appropriate vehicle for updating the regulatory remedies and this moment should be seized.

### Non-Discrimination

The term non-discrimination literally means no discrimination at all and not undue discrimination as implied in the regulation. BT is of the view that we should move to a world of equivalence of input in Ireland (EOI) which is where all parties including eircom retail take the same inputs both technically, process and T&Cs and this would go a long way to establishing confidence in the market that the playing field is level. There is no confidence at this time of a level playing field.

Without appropriate transparency regulation it is more often the case that the OAOs don't know that they are being discriminated, other than stumbling on issues through customer problems.

## BT Response to ComReg Consultation document 0702

It is vital that the non-discrimination and the transparency regulations are closely linked where the non discrimination regulation sets the rules and the transparency regulation flushes out discriminations. Ofcom introduced such a linkage in its market reviews of around 2004 and BT recommends these should be applied in Ireland. An extract of effective regulation is extracted in Annex B of this response.

Q. 77. Respondents are asked to provide views on whether the proposed remedies in section 6 of this consultation paper are proportionate and justified and offer views on what factors ComReg should consider in completing its Regulatory Impact Assessment in terms of the impact of these remedies on end-users, competition, the internal single market and technological neutrality.....140

BT Response  
See answer to Q76

Q. 78. Do operators foresee any particular difficulties with moving to a wholesale price cap regime since the original consultation (03/16) given current and possible future changes in the proposed regulated interconnection markets? Please detail your response.....158

BT Response  
In view of the potential short term disruption of the cost base that could occur with an aggressive roll-out of the NGN a price cap would potentially bring more stability over that period, however it is expected that eircoms costs will then fall with a more concentrated and automated network and less manpower will be required to maintain it. It is expected that these saving should be passed on through lower regulated prices or a CPI-X. BT would see a two year review of the Cap to prevent costs deviating too far from the real cost. The only exception, which should be made public is if there were to be a huge jump in costs for the NGN deployment in which case a longer review period maybe need to smooth the impact. This should be an exceptional period and the normal criteria should be a two year review.

Q. 79. In your opinion what is the most appropriate modelling approach to take when modelling the core network, current network technology, complete NGN roll out or a hybrid approach of old and new? Please provide detail in support of your response.....158

BT Response  
FL-LRIC would be a suitable candidate as estimation of network costs must be part of the business case that eircom has for undertaking such a plan. Hence the information will be available to predict FL-LRIC.

Q. 80. In the interests of reaching a wholesale price cap in a timely and efficient manner, do you agree that eircom and ComReg should enter into bi-lateral discussions on agreeing the most appropriate basis for a wholesale price cap to arrive at final rates for publication once agreement is reached? Please provide detail in support of your response.....159

BT Response  
Yes however the avoidance of both margin squeezes and excessive pricings should be considered as both are very harmful to the industry. BT would expect to see costs and hence regulated prices falling with the introduction of the NGN particularly if it is a phased rather than a big bang change over as appears to be the case. BT would be very concerned if the basket were too large as eircom would then be incentivised to skew



## BT Response to ComReg Consultation document 0702

prices to suit themselves which might be to the detriment of the industry. Narrow baskets should be applied.

Q. 81. Where ComReg enter into a wholesale price process with eircom, do you agree that the year 2005/06 is the most appropriate base year on which to base a price cap setting model? Please provide detail in support of your response..159

BT Response

Yes as this is the most recent information.

Q. 82. What in your opinion would be the most appropriate time frame over which the price cap should be effective, two, three or four years? Please provide detail in support of your response.....159

BT Response

Two years otherwise the gap between true costs and the price cap may become too wide. We are entering a stage of telecoms network evolution where less equipment will be required and less sites and people will be required to house and maintain the network respectively, hence cost savings are possible. It is anticipated that not only will traffic flow require less manual configuration but the whole operation of network diagnostics and repair will become remotely controlled.

Q. 83. Do you agree that the Consumer Price Index should be used in setting "X" when arriving at the annual adjustment to most recent finalised interconnection rates? Please provide detail in support of your response.....159

BT Response

Yes as it relates to the cost of living and hence the controls the impact of the change.

Q. 84. Do you agree that all interconnect rates as presented in the table 102/103/104 in the eircom RIO price list should be treated separately when applying the CPI +/-X control within the overall core network cost basket?.....159

BT Response

Yes – otherwise masking can occur where eircom manipulate the prices in the basket to suit themselves to the disadvantage of other players.

Q. 85. The current rate of return allowed is 11.5% which was set based on a network efficiency study carried out some years ago, in your opinion do you think this rate is still appropriate or should a more up to date study be carried out in light of the changing telecoms environment? Please provide detail in support your response.....159

BT Response

There is merit in carrying out a more up to date study as the economy continues to change and the rate of growth in the economy may not be what it was some years ago. An incorrect rate of return will either over compensate or under compensate eircom.

Q. 86. The eircom RIO price list also includes other interconnect services such as FRIACO, NEHO, NTC's, products necessary for the provision of interconnection such as ISI's, CSI's etc. Should these in your opinion also be subject to the wholesale price cap for the same period? Please provide detail in support of your response.....160

BT Response

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Yes as this will bring stability to the market. Please see comment on NEHO in Termination paper.

## **Annex A – Example of a proven Mandatory Access Request Process**

It is painfully clear to BT and others in the industry that the process for requesting new services from eircom has completely broken down. When requests are made, there is no structure to how they are going to be progressed and indeed most don't progress unless they are brought to ComReg in the form of a complaint or to an industry group facilitated by the regulator. Even at the industry meetings it is very difficult to get estimates or commitments from eircom for delivery dates until a time that appears to suit them.

On the other side of the debate, eircom make changes to their key products such as the automation of the GNP process in January 2007, where they surprised the industry by introducing a new automation process. Normally BT would welcome such an improvement however the lack of appropriate notice meant that it was not even on our development program. BT welcomes the introduction of automation for order and process handling, but eircom have to appreciate that the OAOs also have to make considerable investments to develop automated systems and poor notifications and the lack of an industry roadmap destroys the industries ability to plan and work in sync with eircom. This is very damaging to the industry and tantamount to anti-competitive behaviour as the industry cannot be ready to support many new products at the time eircom make them available.

BT has tried on several occasions with the rest of industry and the good offices of ALTO and ComReg to maintain a roadmap of developments so that operators can align their development schedules with those of eircom to enable a synchronised improvement of the industry, however, eircom are so vague in their details, implying that lots of systems are involved etc that such roadmaps are poorly populated and not up-to-date. It is thus with great surprise that eircom can then announce huge advancements of their network to the press with clear timescales.

Basically BT and others have completely lost confidence in the existing Access Request System as it does not work even with ComReg involved. The time has come to mandate a prescriptive process to bring clarity and certainty to make the access regulations work. Ofcom took this approach some time ago in the UK as shown in the extract below.

### **Extract from an Ofcom Market review dealing with requests for new products**

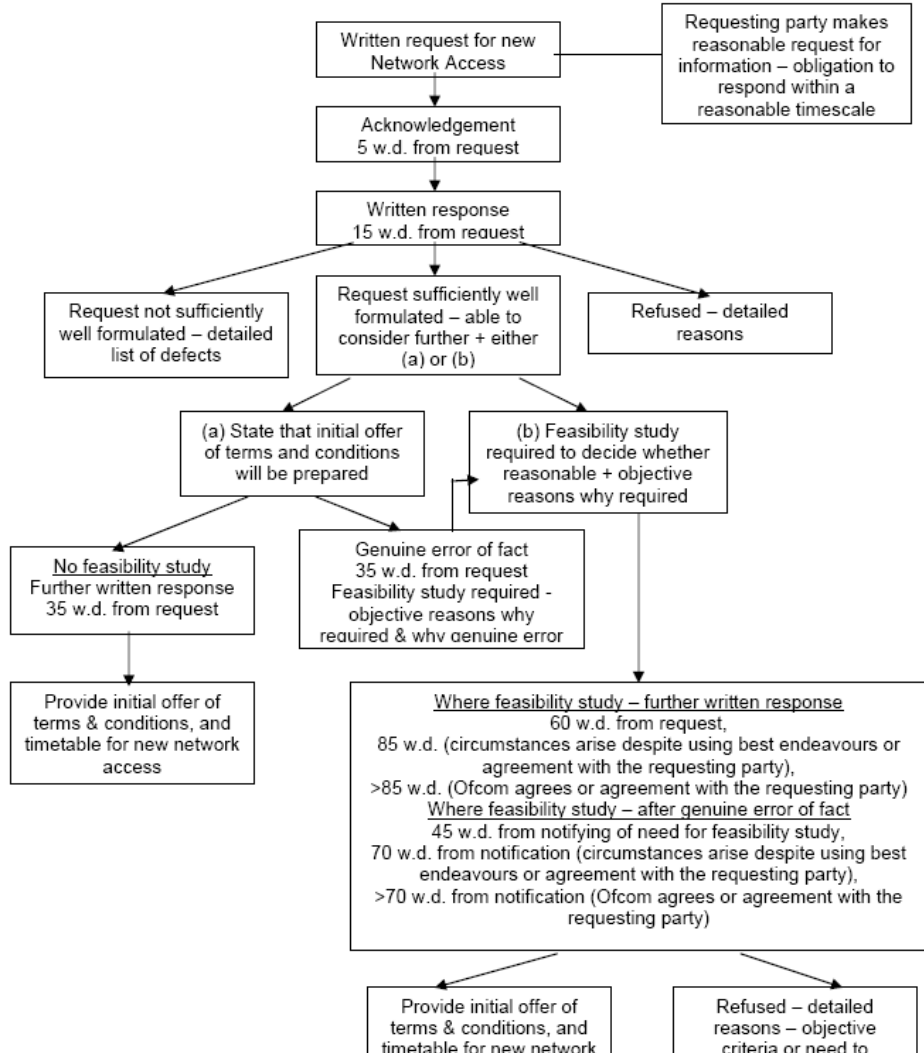
"6.163 Competing providers need clarity and certainty about the process for requests for new Network Access, otherwise known as the statement of requirements ("SOR") process. Clarity as to the necessary information for the purposes of making a request for new Network Access should speed up the SOR process to the benefit of providers that require wholesale inputs from BT. An improved process will also enable BT to set a reasonable standard for requests and

reject inadequate requests. It should also assist with the timely resolution of disputes, since the nature of the dispute should be clearer. Accordingly, Ofcom considers that *ex ante* regulation of BT's SOR process is appropriate.

6.164 Ofcom considers that the process should apply to modifications of existing Network Access, as well as to completely new forms of Network Access. Ofcom would not, however, expect the process to apply to requests for standard Network Access products offered by BT but where the requesting provider does not already have the product. Ofcom also notes that requests for modifications of existing Network Access are likely to be less complex than requests for entirely new forms of Network Access and should be dealt with relatively quickly.

6.165 The regulated process set out is designed to accompany the obligation for BT to meet all reasonable requests for Network Access. The requirement to follow the process applies in relation to some modifications to existing forms of Network Access, such as requests for a new pricing structure or the provision of certain billing information. However, the process would not cover general requests for modifications, not associated with specific requests for Network Access, such as requests to modify general contractual terms.

6.166 A summary of the condition is as follows and a detailed explanation of this condition is set out in Annex 3:'



## **Annex B – Examples of improved transparency regulatory remedies to make the non-discrimination remedy effective.**

The current remedy proposed by ComReg for transparency is not detailed or strong enough and can be easily flouted whilst maintaining compliance as its vagueness allows interpretation to undermine most disputes raised. It is also difficult for OAOs to get visibility of what is happening hence they will not know whether discrimination is taking place other than stumbling on it. In the first round of market reviews following the introduction of the new regulatory regime in 2003, Ofcom updated its regulatory remedies and of importance here are the changes to the access and transparency remedies. It is proposed ComReg should consider this comprehensive approach. In particular clauses FA4.4 and FA4.5 for service issues and FA5.5 for pricing and T&Cs would be very helpful in Ireland.

If eircom are operating in a fair and non discriminatory way this will be a small overhead as they should be able to declare compliance with the published reference offers and the work will be a relatively small additional admin overhead, however, if there are problems with discrimination compliance will be extremely difficult.

Extract of Ofcom text for Transparency Remedy

### **“Condition FA4**

#### ***Requirement to publish a Reference Offer***

FA4.1 Except in so far as Ofcom may otherwise consent in writing, the Dominant Provider shall publish a Reference Offer and act in the manner set out below.

FA4.2 Subject to paragraph FA4.10 below, the Dominant Provider shall ensure that a Reference Offer in relation to the provision of Network Access includes at least the following:

- (a) a description of the Network Access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of Network Access);
- (b) the locations of the points of Network Access;
- (c) the technical standards for Network Access (including any usage restrictions and other security issues);
- (d) the conditions for access to ancillary, supplementary and advanced services (including operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing);
- (e) any ordering and provisioning procedures;
- (f) relevant charges, terms of payment and billing procedures;

- (g) details of interoperability tests;
- (h) details of maintenance and quality as follows;
  - (i) specific time scales for the acceptance or refusal of a request for supply and for completion, testing and hand-over or delivery of services and facilities, for provision of support services (such as fault handling and repair);
  - (ii) service level commitments, namely the quality standards that each party must meet when performing its contractual obligations;
  - (iii) the amount of compensation payable by one party to another for failure to perform contractual commitments;
  - (iv) a definition and limitation of liability and indemnity; and
  - (v) procedures in the event of alterations being proposed to the service offerings, for example, launch of new services, changes to existing services or change to prices;
- (i) details of any relevant intellectual property rights;
- (j) a dispute resolution procedure to be used between the parties;
- (k) details of duration and renegotiation of agreements;
- (l) provisions regarding confidentiality of non-public parts of the agreements;
- (m) rules of allocation between the parties when supply is limited (for example, for the purpose of Co-Location or location of masts);
- (n) the standard terms and conditions for the provision of Network Access; and
- (o) the amount applied to:
  - (i) each Network Component used in providing Network Access with the relevant Usage Factors;
  - (ii) the Transfer Charge for each Network Component or combination of Network Components described above; reconciled in each case to the charge payable by a Communications Provider other than the Dominant Provider.

FA4.3 Subject to paragraph FA4.10 below, the Dominant Provider shall ensure that a Reference Offer in relation to the provision of Local Loop Unbundling Services also includes the following:

- (a) the location of MDF Sites;
- (b) the area within which Metallic Path Facilities could be made available from each of the MDF Sites listed under (a) above;
- (c) the availability of Co-Location at each of the MDF Sites listed under (a) above;
- (d) equipment characteristics, including any restrictions on equipment for the purposes of Co-Location at each of the MDF Sites listed under (a) above;

- (e) conditions for Site Access at each of the MDF Sites listed under
- (a) above, including conditions for access for staff of those Third Parties to whom the Dominant Provider provides Local Loop Unbundling Services;
- (f) conditions for the inspection of MDF Sites at which Co-Location is available or at which Co-Location has been refused on grounds of lack of capacity;
- (g) safety standards;
- (h) the relevant charges (or charging formulae) for each feature, function and facility involved in the provision of Local Loop Unbundling Services; and
- (i) anything which may reasonably be regarded as being likely to materially affect the availability of the relevant Local Loop Unbundling Services.

FA4.4 To the extent that the Dominant Provider provides to itself Network Access that:

- (a) is the same, similar or equivalent to that provided to any other person; or
- (b) may be used for a purpose that is the same, similar or equivalent to that provided to any other person, in a manner that differs from that detailed in a Reference Offer in relation to Network Access provided to any other person, the Dominant Provider shall ensure that it publishes a Reference Offer in relation to the Network Access that it provides to itself which includes, where relevant, at least those matters detailed in paragraphs FA4.2(a)-(o).

FA4.5 The Dominant Provider shall, within one month of the date that this Condition enters into force, publish a Reference Offer in relation to any Network Access that it is providing as at the date that this Condition enters into force.

FA4.6 The Dominant Provider shall update and publish the Reference Offer in relation to any amendments or in relation to any further Network Access provided after the date that this Condition enters into force.

FA4.7 Publication referred to above shall be effected by:

- (a) placing a copy of the Reference Offer on any relevant website operated or controlled by the Dominant Provider; and
- (b) sending a copy of the Reference Offer to Ofcom.

FA4.8 The Dominant Provider shall give Ofcom at least ten days prior written notice of any amendment to the Reference Offer coming into effect, unless such amendment is directed or determined by Ofcom or is required by a notification or enforcement notification issued by Ofcom under sections 94 or 95 of the Act.

FA4.9 The Dominant Provider shall send a copy of the current version of the Reference Offer to any person at that person's written request (or such parts which have been requested). The provision of such a copy of the Reference Offer may be subject to a reasonable charge.

FA4.10 The Dominant Provider shall make such modifications to the Reference Offer as Ofcom may direct from time to time.

FA4.11 The Dominant Provider shall provide Network Access at the charges, terms and conditions in the relevant Reference Offer and shall not depart therefrom either directly or indirectly.



FA4.12 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

**Condition FA5**

***Requirement to notify charges and terms and conditions***

FA5.1 Except in so far as Ofcom may otherwise consent in writing, the Dominant Provider shall publish charges, terms and conditions and act in the manner set out below.

FA5.2 Save where otherwise provided in Condition FA6, the Dominant Provider shall send to Ofcom and to every person with which it has entered into an Access Contract covered by Condition FA1 and/or Condition FA9 a written notice of any amendment to the charges, terms and conditions on which it provides Network Access or in relation to any charges, terms and conditions for new Network Access (an "Access Charge Change Notice") not less than 90 days before any such amendment comes into effect for existing Network Access, or not less than 28 days before any such charges, terms and conditions come into effect for new Network Access provided after the date that this Condition enters into force. This obligation for prior notification will not apply where the new or amended charges or terms and conditions are directed or determined by Ofcom or are required by a notification or enforcement notification issued by Ofcom under sections 94 or 95 of the Act.

FA5.3 The Dominant Provider shall ensure that an Access Charge Change Notice includes:

- (a) a description of the Network Access in question;
- (b) a reference to the location in the Dominant Provider's current Reference

Offer of the terms and conditions associated with the provision of that Network Access;

(c) the date on which or the period for which any amendments to charges, terms and conditions will take effect (the "effective date");

(d) the current and proposed new charge and the relevant Usage Factors applied to each Network Component comprised in that Network Access, reconciled in each case with the current or proposed new charge; and

(e) the information specified in sub paragraph (d) above with respect to that Network Access to which that paragraph applies.

FA5.4 The Dominant Provider shall not apply any new charge, term and condition identified in an Access Charge Change Notice before the effective date.

FA5.5 To the extent that the Dominant Provider provides to itself Network Access that:

(a) is the same, similar or equivalent to that provided to any other person; or

(b) may be used for a purpose that is the same, similar or equivalent to that provided to any other person, in a manner that differs from that detailed in an Access Charge

Change Notice in relation to Network Access provided to any other person, the Dominant Provider shall ensure that it sends to Ofcom an Access Charge Change Notice in relation to the Network Access that it provides to itself which includes, where relevant, at least those matters detailed in paragraphs FA5.3(a)-(e).”

Submissions to Consultation on Interconnection Market Review on Wholesale Call  
Origination and Transit Services

3 Vodafone Ireland Ltd.



**Vodafone Response to the ComReg Consultation:  
Market Analysis – Wholesale Call Origination and Transit Services**

## Introduction

Vodafone welcomes the opportunity to respond to the consultation on the Market Analysis of the Interconnect markets. We appreciate that the current review takes account of new elements and developments such as ComReg's review of price caps and welcome this opportunity to comment on the approach to price caps as part of the current consultation.

Many of the issues under consideration have not changed since the initial review however. Given that the initial review was completed in May 2005 with the acceptance by the EU Commission of the notified measure in June 2005, there is no clear justification for the delay in issuing a final decision on foot of the initial review. This creates uncertainty and while the threat of regulation may have prompted the reductions in the interconnect rates of Other Authorised Operators (OAO), the establishment of a glide path for these rates and the ultimate delivery of target efficient rates has been delayed.

Vodafone's views in relation to the matters raised in the present consultation are set out more fully in response to the questions below.

## Responses to Questions Raised

**Q. 1. Are there additional factors that in your opinion require analysis by ComReg? If so, please indicate precisely what they are. In respect of the factors analysed, is there additional analysis that in your opinion must be carried out. If so, please indicate precisely what that is.**

Vodafone appreciates the fact that ComReg has updated its analysis of this market since the initial review, however Vodafone is surprised that ComReg has chosen to limit this to December 2005. As a result the information that is being used to inform ComReg's decisions and those participating in this consultation is already over a year old. Vodafone considers that it is important that ComReg should use the most recent available data in carrying out its market analysis.

**Q. 2. Do you agree with the above preliminary conclusions regarding the market definition exercise? Please provide a reasoned response, and refer to the relevant paragraph number(s) when submitting comments.**

Vodafone agrees with ComReg's preliminary conclusions on market definition with respect to the call origination and wholesale transit services markets. In regard to the wholesale fixed call origination market Vodafone considers that it does not include alternative facilities such as wholesale broadband access in the current review period. Vodafone also agrees that both metered and unmetered call origination services are in the same market as the distinction is primarily a

function of the pricing model rather than any differences in terms of demand or supply side substitutability between the two services. There is a single market for the provision of wholesale fixed call origination services for both end-users and service providers primarily on the basis of the ease of supply side substitution between provision of services to these customer segments.

Vodafone generally agrees with ComReg's preliminary market definition conclusions in respect of fixed wholesale transit services. The relevant market is a multi-network market and Vodafone accepts that there is a separate market for outgoing international transit services.

Vodafone agrees that the scope of each of the markets defined is national as the conditions of competition (pricing behaviour, marketing etc.) are essentially homogeneous throughout the country.

**Q. 3. Do you agree with ComReg's preliminary assessment and conclusions on existing competition in the market for wholesale call origination? Please provide a reasoned response, supported with economic, technical and/or legal advice where relevant.**

Vodafone broadly agrees with ComReg's preliminary conclusions in respect of existing competition in the market for wholesale call origination. The very high and static market share held by eircom and the fact that OAOs are essentially confined to reselling eircom's wholesale call origination services to other providers mean that there is no material constraint on the SMP operator's ability to act to significant degree independently of its competitors at the wholesale level.

**Q. 4. Do you agree with ComReg's preliminary assessment and conclusions on barriers to entry and potential competition in the market for wholesale call origination? Please provide a reasoned response, supported with economic, technical and/or legal advice where relevant.**

Vodafone agrees that there are significant barriers to entry in the market for wholesale call origination. In particular Vodafone considers that it would be very difficult for OAOs to feasibly replicate the SMP operator's access network given the very high sunk costs that would of necessity have to be incurred, and because these costs would have to be recovered in charges from a likely much smaller customer base than that currently held by eircom

Vodafone considers that there is very considerable uncertainty about the prospects for potential competition using alternative platforms such as NGNs, FWA and cable. While potential competition on the basis of such alternative platforms has not been significant to date, and is currently at a low level of development, ComReg should be cognisant that competition from alternative access facilities could progress in a non-linear fashion, growing much more rapidly in future compared to past performance. While Vodafone considers that it is unlikely that competition through alternative platforms is likely to act as a significant competitive constraint on the SMP operator in the current

two year period of review, the fact that some alternative access facilities offer much lower entry barriers than current entry via direct access mean that developments in respect of potential competition must be continuously monitored by ComReg.

**Q. 5. Do you agree with ComReg’s preliminary conclusions on countervailing buyer power in the wholesale call origination market? Please provide a reasoned response supported by empirical and/or technical and economic evidence.**

Vodafone agrees that there is insufficient countervailing buyer power in the wholesale call origination market as eircom is the sole supplier of wholesale call origination services using its own network infrastructure and because it is not financially feasible, given high sunk costs and existing technology, for OAOs to develop their networks to self-provide or offer wholesale call origination services themselves.

**Q. 6. Do you agree with the above preliminary conclusions regarding market analysis? Please provide a reasoned response.**

Vodafone generally agrees with ComReg’s preliminary conclusions regarding market analysis. The very high market share held by eircom in the context of high entry barriers caused by the prohibitive costs of replicating the SMP operator’s network indicate that, in the absence of regulation, it is in a position to act to a significant degree independently of its suppliers, customers and competitors in the relevant market. While there is considerable uncertainty around the prospects for potential competition on the basis of alternative access facilities, it is currently reasonable to conclude that potential competition is unlikely to act as a significant competitive constraint on eircom within the timeframe of the present review. Vodafone therefore agrees that eircom has SMP in this market.

**Q. 7. Do you agree with the above preliminary conclusions regarding market analysis? Please provide a reasoned response.**

Vodafone broadly agrees with the preliminary conclusions regarding the analysis of the defined market for wholesale transit services in Ireland. The very high market share held by eircom in the context of high entry barriers caused by the wide dispersion of the eircom primary nodes and the prohibitive costs of replicating the SMP operator’s network indicate that, in the absence of regulation, eircom is in a position to act to a significant degree independently of its suppliers, customers and competitors in the relevant market.

While BT has extensive but incomplete connectivity to the majority of the eircom primary nodes Vodafone considers that this is not likely to act as a significant competitive constraint on eircom in

the time period of the present market review. Vodafone therefore agrees that eircom has SMP in this market.

**Q. 8. Do you consider that the outgoing international transit services market is not subject to high and non-transitory entry barriers (in the presence of regulatory measures in other wholesale markets)? Please substantiate your response.**

Yes. Vodafone believes that the outgoing international transit services market is not subject to high and non-transitory entry barriers and therefore that the first criterion of the three criteria test is not met. No significant structural barriers to entry are present. Also the infrastructural and other elements required for entry are modest and can be readily replicated. From the perspective of buyers of outgoing international transit services, Vodafone agrees that switching costs are low.

**Q. 9. Do you consider that the outgoing international transit services market has characteristics such that it will tend over time towards effective competition? Please substantiate your response.**

Vodafone contends that the outgoing international transit services market is currently effectively competitive and the most recently available market data indicate that the characteristics of the market are such that the trend is toward increasing competition. Therefore the second criterion of the three criteria test is not met. The clearly evident trend toward a decline in eircom's market share and the large magnitude of its market share decline since 2002 strongly support this conclusion. The large decline in the price of international transit services and their current level further indicate a market that is characterised by effective competition. Also, as identified by ComReg, barriers to expansion in terms of switching costs for purchasers of international transit services are low.

**Q. 10. Do you envisage any potential competition problems/market failures in the outgoing international transit market? If so, please state clearly the nature of any such potential problems and outline whether you believe competition law is sufficient of itself (absent ex ante regulation) to address any such potential market failures? Please substantiate your response.**



Vodafone does not envisage any potential competition problems/market failures given that it has been established that the market environment for the provision of outgoing international transit services is competitive. Even on the assumption that the other two criteria of the three criteria test were met, Vodafone considers that competition law in most cases provides an appropriate mechanism for dealing with any competition problems that could arise.

**Q. 11. Do you believe that the outgoing international transit services market meets all the three criteria and as such existing SMP obligations applying to this market should be removed? Or, is it your view that one/some of the criteria are not met. Please substantiate your response.**

As set out in response to questions 8-10, Vodafone believes that none of the three criteria are met in this market. Consequently, Vodafone considers that all existing SMP obligations in this market should be removed.

**Q. 12. Do you agree with the principles ComReg proposes to adopt when selecting obligations in this market?**

Vodafone agrees with the principles that ComReg proposes to use in the selection of appropriate regulatory remedies in this market.

**Q. 13. Do you agree that in the absence of *ex ante* regulation eircom would have little or no incentive to offer reasonable access to call origination services to OAOs competing against eircom's retail businesses?**

**Q. 14. In your opinion have there been any developments since the original response to consultation which may have an impact on ComReg's conclusion as stated above?**

Q13.

Vodafone agrees that in the absence of *ex ante* regulation eircom would have little incentive to offer reasonable access to call origination services to OAOs competing with it.

Q14.

Vodafone does not consider that there have been any developments since the original response to consultation that would have a material impact on ComReg's conclusion.

**Q. 15. Do you agree that an access obligation for call origination should be imposed on eircom? Please provide details in support of your answer.**

Vodafone agrees that an access obligation on a reasonable request basis should be imposed on eircom. It is vital that OAOs specify the particular access arrangements that they require and that the SMP operator should not be required to offer quasi consultancy or advice services that extend beyond the provision of the essential technical and support information.

**Q. 16. Do you agree with ComReg's proposal to require eircom to interconnect networks or network facilities? Please provide details in support of your answer.**

Vodafone agrees with ComReg's proposal to require eircom to interconnect networks or network facilities.

**Q. 17. Do you agree that eircom should be required not to withdraw access to facilities already granted, save without prior ComReg approval? Please detail your response.**

If within the current period of review it becomes clear that certain facilities have become redundant across the industry then Vodafone would consider it adequate that eircom be required to provide sufficient notice to the industry and ComReg that it plans to withdraw the facility in question. If no objection is raised by any party during the notice period then the withdrawal of the facility should proceed without the initiation of a public consultation.

**Q. 18. Do you agree with ComReg's proposal to require eircom to provide specified information which supports call origination services and to continue to provide such services in accordance with terms and conditions which are agreed by industry? Please detail your response**

Vodafone agrees that eircom should be required to provide specified information which supports call origination services and to provide these services on the basis of terms and conditions agreed by the industry. The information required to be provided should be the minimum necessary to

effectively support the provision of call origination services for OAOs and should not equate to technical advice or support.

**Q. 19. Do you agree that eircom should have an obligation to meet reasonable requests for access as described above? Please detail your response.**

Vodafone agrees that eircom should have an obligation to meet reasonable requests for access as described. Requests from OAOs should be subject to commercial negotiation and the access remedy should only be enforced where negotiations pursuant to a reasonable access request are unsuccessful.

**Q. 20. Do you agree that eircom must provide call origination services on terms which are fair, reasonable and timely? In addition do you agree with ComReg's proposal that these terms and conditions should be supported by Service Level Agreements? Please provide detail in support of your response.**

**Q. 21. Do you agree that ComReg should consult with industry on the terms and conditions of the SLA? Please provide detail in support of your response.**

Q20.

Vodafone agrees that the SMP operator should provide call origination services on terms which are fair, reasonable and timely. These conditions should be supported by SLAs, however the SLAs should encompass only those transactions that are key to the functioning of the wholesale offering in a non-discriminatory manner. SLAs should merely be a means for establishing that discrimination is not taking place between the SMP operator's retail arm and OAOs. Therefore the SLA should only cover the requirements on the SMP operator and the agreed industry interface to meet those differences between the internal process of the OAO operations and the SMP operator's retail operation.

Q21.

Vodafone considers that, in the interests of transparency and consideration of the interests of all stakeholders, ComReg should consult with industry on the terms and conditions of any SLA. Vodafone would welcome the opportunity to participate in such a consultation.

**Q. 22. Do you agree that eircom should provide access to and information necessary for call origination services to competitors at least equivalent times and standards as it provides to its own retail arm? Please provide detail in support of your response.**

**Q. 23. Do you agree that where there will be a direct impact on OAOs, that both OAOs and ComReg should be notified of plans which eircom may have with regard to restructuring of their network? If so, what form should this take?**

Q22.

Vodafone considers that a requirement on the SMP operator to provide access to competitors to origination services under equivalent conditions to those applicable to its own retail arm is a basic requirement of the non-discrimination obligation. As ComReg proposes to impose a non-discrimination obligation on eircom in the origination market, with which Vodafone agrees, specifying this requirement in the access obligation would appear to be superfluous.

Q23.

Vodafone agrees that where OAOs are directly impacted in terms of interconnection services by plans to restructure the network, both ComReg and OAOs should be pre-notified.

**Q. 24. Do you agree that eircom should provide call origination services on an unbundled basis as part of its Access obligation? Please provide detail in support of your response.**

Yes. Vodafone agrees that the level of unbundling that applies to wholesale call origination services should be not less than that offered by eircom to its retail division or subsidiaries.

**Q. 25. Do you agree that eircom should be required to grant open access to technical interfaces, protocols, or other key technologies and systems and should also be required to provide access to such OSS or similar software necessary to ensure fair competition in the provision of services? Please provide detail in support of your response.**

Vodafone does not agree that open access to technologies and systems should be required. The information that is required from the SMP operator should be defined at the point of interconnection. Therefore information about those technical interfaces and protocols that are essential to support access to wholesale call origination services should be provided, however information about technologies, systems and software that may be specific to eircom's retail activities and replicated by OAOs should not be subject to open access requirements. Indeed, such information may be subject to intellectual property rights.

**Q. 26. Do you agree that transparency, and in particular the requirement to make public interconnection terms and conditions, is a necessary remedy to actual and prospective problems in this market? Please provide detail in support of your response.**

Vodafone agrees that the obligation of transparency is a necessary and appropriate obligation to impose on the SMP operator. An obligation of transparency is necessary where, as in this consultation, a non-discrimination obligation is proposed in order to verify that the SMP operator is not engaging in discriminatory practices.

**Q. 27. Do you agree that eircom should publish a Reference Offer for Call Origination services on its wholesale website? Please provide detail in support of your response.**

Vodafone agrees that a Reference Offer for call origination services should continue to be published. Vodafone considers the RIO, published in its entirety, to be an important facilitator of transparency in the market.

**Q. 28. Do you agree that eircom should publish specified information which supports call origination services? Please provide detail in support of your response.**

Vodafone agrees that eircom should publish specified information which supports the provision of call origination services. In order to determine the level of information necessary on technical interfaces, protocols, the point of interconnect between the SMP operator and the OAO should be clearly delineated at the outset and an industry agreed interface protocol should be determined. The SMP operator should not be mandated to provide information to the level that would equate to technical advice or support.

**Q. 29. Do you agree that eircom should be required to publish appropriate manuals and documentation for new and existing Call Origination services? Please provide detail in support of your response.**

**Q. 30. Is there any additional information which eircom should provide to ComReg or industry or both to further support products and services in the RIO? Please provide detail in support of your response.**

Q29.

Vodafone agrees that eircom should be required to publish appropriate manuals and documentation for new and existing call origination services. In the case of new services the format and level of detail provided in publications should be consistent with that currently provided for existing services. The publication obligation should apply only to the extent that the costs involved are properly balanced against the number of interconnected parties and the rate at which changes are made to the document set.

**Q. 31. In your opinion is the current process for updating of the RIO adequate? Please provide detail in support of your response**

Vodafone agrees that the current process for updating of the RIO is sufficient.

**Q. 32. Do you agree that the eircom billing reports for call origination services to wholesale customers are sufficiently granular so that operators are in a position to reconcile their bill in an efficient manner to their in-house systems? Please provide detail in support of your response.**

**Q. 33. If you believe that the current level of detail for call origination services on eircom wholesale bills is not sufficient please demonstrate by example material shortfalls in the reconciliation process.**

Q32.

Vodafone is satisfied that eircom has maintained a high level of accuracy, and sufficient granularity, in its wholesale billing so that OAOs are in a position to reconcile their bills in an efficient manner.

**Q. 34. Do you agree that a non-discrimination obligation applied to eircom is necessary to remedy potential competition problems in the wholesale call origination market? Do you also agree that non-discrimination is a necessary complement to the other obligations needed to remedy potential competition problems in this market? Do you agree that, in addition to provision of reasonable requests, eircom should also be required to provide products on a non-discriminatory basis and, as such, should be required to provide to other operators at least an equivalent wholesale call origination product to those services it provides to its retail arm? Please provide detail in support of your response.**

Vodafone agrees that a non-discrimination obligation applied to eircom is necessary to remedy competition problems in the wholesale call origination market and this is complementary to other obligations proposed to remedy competition problems in this market. However, Vodafone believes that the requirement to provide an equivalent wholesale call origination product should be applied in such a way as to maximise the incentives for eircom to innovate through the introduction of new services. In this respect ComReg should be mindful of ensuring that requests from other operators are indeed reasonable where the obligation is imposed.

**Q. 35. Do you believe that in light of the increased shift of local call costs towards cost that ComReg should consult further with industry on a proposed remedy similar to that reached in the UK in relation to local call disadvantage?**

Vodafone considers that it would be beneficial if ComReg were to consult further with industry in relation to possible remedies for local call disadvantage. Vodafone would welcome the opportunity to participate in a future consultation process on this issue.

**Q. 36. ComReg invites respondents to submit arguments as to whether anything has changed since the last review to suggest that Near End Handover should not longer be provided to those Operators in a position to avail of it? Please provide detail in support of your response.**

**Q. 37. Do you think that the current charging mechanism for PAC is still appropriate given the change in recent years to the use of payphones? If not please provide details with your answer.**

Vodafone considers that the current charging mechanism for PAC to be appropriate.

**Q. 38. Do you think that the current review process is still appropriate? If not please provide details with your answer.**

Vodafone consider that the current review processes are still appropriate and should be retained as these have proven effective for the purposes of both review and notification.



**Q. 39. In your opinion do you have believe that the current FL-LRIC Top Down model approach to setting call origination rates should be maintained pending the outcome of the consideration of a wholesale price cap? Please detail your response giving substantive arguments for or against as appropriate.**

Vodafone welcomes ComReg's commitment to preparing for a move to a wholesale price cap and given that ComReg expects to be making a decision on this in a matter of months Vodafone considers that is reasonable to maintain the status quo in the interim.

**Q. 40. Do you agree that ComReg should consider possible approaches to, and implementation of, a wholesale price cap?**

Vodafone agrees that ComReg should consider the possible approaches to a price cap regime. Vodafone comments further on the details of an optimal approach to the setting of a multi-year wholesale price cap in our response to subsequent relevant questions in this consultation.

**Q. 41. Do you believe that the obligation to maintain cost accounting systems should be imposed on eircom? Please detail your response.**

Vodafone agrees that appropriate cost accounting systems are necessary to support the accounting and price control obligations. However the cost of complying with such an obligation should not be underestimated by ComReg.

**Q. 42. Do you believe eircom should have an obligation of accounting separation in the wholesale call origination market? Please provide detail in support of your response.**

Vodafone considers that the obligation of accounting separation in the wholesale call origination market should be maintained in respect of the SMP operator on existing terms as it supports other proposed obligations such as that of non-discrimination.

**Q. 43. Do you agree that an access obligation for wholesale national transit services should be imposed on eircom pursuant to Regulation 13? Please provide detail in support of your response.**

Vodafone agrees that an access obligation for wholesale national transit services should be imposed on eircom. Given the level of development of the national transit market, Vodafone considers that there is scope for competition problems to emerge if the existing obligation were withdrawn.

**Q. 44. Do you agree with ComReg's proposal to require eircom to interconnect networks or network facilities? Please provide detail in support of your response.**

Vodafone agrees with ComReg's proposal to require eircom to interconnect networks or network facilities for the reasons given in response to the preceding question.

**Q. 45. Do you agree that eircom should be required not to withdraw access to facilities already granted, save without prior ComReg approval? Please provide detail in support of your response.**

If within the current period of review it becomes clear that certain facilities have become redundant across the industry then Vodafone would consider it adequate that eircom be required to provide sufficient notice to the industry and ComReg that it plans to withdraw the facility in question. If no objection is raised by any party during the notice period then the withdrawal of the facility should proceed without the initiation of a public consultation.

**Q. 46. Do you agree with ComReg's proposal to require eircom to provide specified information which supports existing and new transit services? Please provide detail in support of your response.**

Vodafone agrees that eircom should be required to provide specified information which supports transit services and to provide these services on the basis of terms and conditions agreed by the industry. The information required to be provided should be the minimum necessary to effectively support the provision of transit services for OAOs and should not equate to technical advice or support.

**Q. 47. Do you agree that eircom should have an obligation to meet reasonable requests for access? Please provide detail in support of your response.**

Vodafone agrees that eircom should have an obligation to meet reasonable requests for access as described. Requests from OAOs should be subject to commercial negotiation and the access remedy should only be enforced where negotiations pursuant to a reasonable access request are unsuccessful.

**Q. 48. Do you agree that eircom must provide call transit services on terms which are fair, reasonable and timely? In addition do you agree with ComReg's proposal that these terms and conditions should be supported by Service Level Agreements? Please provide detail in support of your response.**

**Q. 49. Do you agree that ComReg should consult with industry on the terms and conditions of the SLA? Please provide detail in support of your response.**

Q48.

Vodafone agrees that the SMP operator should provide call transit services on terms which are fair, reasonable and timely. These conditions should be supported by SLAs, however the SLAs should encompass only those transactions that are key to the functioning of the wholesale offering in a non-discriminatory manner. SLAs should merely be a means for establishing that discrimination is not taking place between the SMP operator's retail arm and OAOs. Therefore the SLA should only cover the requirements on the SMP operator and the agreed industry interface to meet those differences between the internal process of the OAO operations and the SMP operator's retail operation.

Q49.

Vodafone considers that, in the interests of transparency and consideration of the interests of all stakeholders, ComReg should consult with industry on the terms and conditions of any SLA. Vodafone would welcome the opportunity to participate in such a consultation.

**Q. 50. Do you agree that eircom should provide unbundled transit services as part of its Access obligation? Please provide detail in support of your response.**

Yes. Vodafone agrees that the level of unbundling that applies to wholesale call transit services should be not less than that offered by eircom to its retail division or subsidiaries.

**Q. 51. Do you agree that eircom should provide access to and information necessary for access to transit services to competitors at equivalent times and standards as it provides to its retail arm? Please provide detail in support of your response.**

**Q. 52. Do you agree that where there will be a direct impact on OAOs, that both OAOs and ComReg should be notified of plans which eircom may have with regard to restructuring of their network? If so, what form should this take?**

Q51.

Vodafone agrees that any operator found to have SMP in this market should be required to provide call transit information and services on a non-discriminatory basis. Vodafone considers that this obligation would follow from the imposition of the proposed non-discrimination obligation on eircom.

Q52.

Vodafone agrees that where there is a direct impact on OAO's, that both OAOs and ComReg should be notified of plans which eircom may have with regard to restructuring of its network. In the case of OAO's, eircom should provide the maximum notice possible as part of the ongoing network planning process and in line with the terms of Interconnect agreements. Where changes are of such an order as to be industry affecting (as in the case of the move to NGNs), then the timing and means by which such changes are implemented should form part of a wider industry consultation process under the auspices of ComReg.

**Q. 53. Do you agree that eircom should be required to grant open access to technical interfaces, protocols, or other key technologies and should also be required to provide such OSS or similar software necessary to ensure fair competition in the provision of services? Please provide detail in support of your response.**

Please see Vodafone's response to Q.25 which applies equally to the call transit market.

**Q. 54. Do you agree that eircom should be required to provide specified services needed to ensure interoperability of end-to end services to users? Please provide detail in support of your response.**

Vodafone agrees that the SMP operator should be required to provide certain services essential to ensure interoperability of end-to-end services to users.

**Q. 55. Do you agree that eircom should be required to provide such operational support systems or similar software necessary to ensure fair competition in the provision of services? Please provide detail in support of your response**

Please see Vodafone's response to Q.25 which applies equally to the call transit market.

**Q. 56. Do you agree that an obligation of transparency should be imposed on eircom? Please provide detail in support of your response.**

Vodafone agrees that the obligation of transparency is a necessary and appropriate obligation to impose on the SMP operator. An obligation of transparency is necessary where, as in this consultation, a non-discrimination obligation is proposed in order to verify that the SMP operator is not engaging in discriminatory practices.

**Q. 57. Do you agree that eircom should publish a Reference Offer for Call Transit services on its wholesale website? Please provide detail in support of your response.**

Yes. In the interests of simplicity and in order to minimise the administrative burden on the SMP operator, Vodafone believes that a single offer combining products in the defined call origination, termination, and transit markets should be published and welcomes ComReg's proposal to do this as set out in paragraph 6.196 of the consultation.

**Q. 58. Do you agree that eircom should publish specified information which supports call transit services? Please provide detail in support of your response.**

Vodafone agrees that eircom should be required to publish such support information on its wholesale website provided that this extends no further than the obligation already met by the continued publication of the relevant facilities in accordance with the terms, conditions, and specifications contained in RIO and associated documents.

**Q. 59. Do you agree that eircom should be required to publish a Reference Offer containing details of access to facilities already granted?**

**Q. 60. Do you agree that eircom should be required to publish appropriate manuals and documentation for new and existing Transit services? Please provide detail in support of your response.**

**Q. 61. Is there additional information eircom should provide to ComReg or industry or both? Please provide detail in support of your response.**

**Q. 62. Do you agree that eircom should be required to publish the services that fall within the call origination, the eircom call termination and transit markets in the same format as they are published in the current RIO? Please provide detail in support of your response.**

**Q. 63. Do you agree with ComReg's proposal to require eircom to publish one reference offer for three markets - call origination market, eircom call termination and transit?**

Q59.

Vodafone considers that the potential for abuse exists if the existing obligations were removed and therefore agrees that eircom should be required to publish a RIO containing details of access to facilities already granted.

Q60.

Vodafone agrees that eircom should be required to provide and publish appropriate manuals, and order forms and processes for new and existing services on an unbundled basis

Q62.

Yes. Vodafone believes that the potential for abuse exists if the existing obligations were removed and therefore agrees that information should be published to the same level of detail and in the same format as currently provided in the RIO.

Q63.

For simplicity and to minimise the administrative burden on the SMP operator, Vodafone believes it is appropriate that a single combined offer be published. In the event that separate offers were published this would give rise to separate contracts and billing, which would be inefficient.

**Q. 64. In your opinion is the current process for updating of the RIO adequate?  
Please provide detail in support of your response.**

Vodafone agrees that the current process for updating of the RIO is sufficient.

**Q. 65. Do you agree that the eircom billing reports for call transit services to wholesale customers are sufficiently granular so that operators are in a position to reconcile their bill in an efficient manner to their in-house systems? Please provide detail in support of your response.**

**Q. 66. If you believe that the current level of detail on wholesale bills for call transit services provided by eircom is not sufficient please demonstrate by example material shortfalls in the reconciliation process.**

Q65.

Vodafone is satisfied that eircom has maintained a high level of accuracy, and sufficient granularity, in its wholesale billing so that OAOs are in a position to reconcile their bills in an efficient manner.

**Q. 67. Do you agree that eircom should be required to provide transit information and services on a non discriminatory basis to its retail arm and alternative operators? Please provide detail in support of your response.**

Vodafone agrees that such a non-discrimination obligation applied to eircom is necessary to remedy competition problems in the wholesale call origination market and is complementary to other obligations proposed to remedy competition problems in this market. However, Vodafone

believes that the requirement to provide an equivalent wholesale call origination product should be applied in such a way as to minimise disincentives for eircom to innovate through the introduction of new services. In this respect ComReg should be mindful of ensuring that requests from other operators are indeed reasonable where the obligation is imposed.

**Q. 68. Do you agree that eircom's downstream arms should have the same access to eircom wholesale as alternative operators? Please provide detail in support of your response.**

Vodafone agrees that eircom's downstream arms should not have a different level of access to eircom wholesale than OAOs.

**Q. 69. In your opinion do you believe that the current FL-LRIC Top Down model approach to setting call transit rates should be maintained pending the outcome of the consideration of a wholesale price cap? Please provide detail in support of your response giving substantive arguments for or against as appropriate.**

**Q. 70. In light of the likely increase in competition in the transit market in the foreseeable future do you think that ComReg could relax any part of the price control obligation when compared to the call origination market? Please provide detail in support of your response.**

Q69.

Vodafone welcomes ComReg's commitment to preparing for a move to a wholesale price cap and given that ComReg expects to be making a decision on this in a matter of months Vodafone considers that is reasonable to maintain the status quo in the interim.

**Q. 71. Do you agree that ComReg should consider possible approaches to, and implementation of, a wholesale price cap?**

Vodafone agrees that ComReg should consider the possible approaches to a price cap regime. Vodafone comments further on the details of an optimal approach to the setting of a multi-year wholesale price cap in our response to subsequent relevant questions in this consultation.



**Q. 72. Do you believe that the obligation to maintain cost accounting systems should be imposed on eircom? Please provide detail in support of your response.**

Vodafone agrees that appropriate cost accounting systems are necessary to support the accounting and price control obligations. However the cost of complying with such an obligation should not be underestimated by ComReg.

**Q. 73. Do you believe eircom should have an obligation of accounting separation in the wholesale call transit market? Please provide detail in support of your response.**

Vodafone considers that the obligation of accounting separation in the wholesale call origination market should be maintained in respect of the SMP operator on existing terms as it supports other proposed obligations such as that of non-discrimination.

**Q. 74. Do you agree that ComReg should mandate capacity based interconnection products in this manner? Please provide detail in support**

**Q. 75. Do you agree with the above position taken by ComReg in relation to Fixed SMS? Please provide detail in support of your response.**

Vodafone agrees that any obligations would be covered under the non-discrimination obligations applicable to the wholesale line rental offering and that specific further obligations would not be appropriate given the stage of development of this market.

**Q. 76. Do you consider that in the period since the initial review that the market for the labour element of DQ services to be effectively competitive and therefore not suitable for ex-ante regulation? Please provide evidence to support your answer.**

Vodafone agrees that the market for the labour element of DQ services is effectively competitive and therefore should not be subject to ex-ante regulation.

**Q. 77. Respondents are asked to provide views on whether the remedies in section 6 of this consultation paper are proportionate and justified and offer views on what factors ComReg should consider in completing its Regulatory Impact Assessment in terms of the impact of these remedies on end-users, competition, the internal single market and technological neutrality**

Vodafone agrees that the remedies proposed to be imposed on the SMP operator in the wholesale call origination market are proportionate and justified although this position is subject to the remedies being applied in a manner that is not unduly burdensome for the SMP operator.

Vodafone considers that in completing its RIA ComReg should have regard to factors such as the impact of the proposed regulatory remedies on the incentives for investment and innovation and any impact on the development of potential competition using alternative access platforms. Vodafone considers that ComReg should also quantify any costs of the proposed accounting separation and cost accounting obligation that would be avoided if these obligations were not imposed and compare these to estimates, in terms of ranges, of the magnitude of the benefits for end users in terms of lower prices and increased choice.

**Q. 78. Respondents are asked to provide views on whether the proposed remedies in section 6 of this consultation paper are proportionate and justified and offer views on what factors ComReg should consider in completing its Regulatory Impact Assessment in terms of the impact of these remedies on end-users, competition, the internal single market and technological neutrality**

Vodafone agrees that the remedies proposed to be imposed on the SMP operator in the defined national transit market are proportionate and justified although this position is subject to the remedies being applied in a manner that is not unduly burdensome for the SMP operator.

As the defined outgoing international transit services market is effectively competitive, no operator can be designated with SMP. It is therefore appropriate that all regulatory obligations in this market be withdrawn.

Vodafone considers that in completing its RIA for the national transit market ComReg should have regard to factors such as the impact of the proposed regulatory remedies on the incentives for investment and innovation and any impact on the development of potential competition using alternative access platforms. Vodafone considers that ComReg should also quantify any costs of the proposed accounting separation and cost accounting obligation that would be avoided if these obligations were not imposed and compare these to estimates, in terms of ranges, of the magnitude of the benefits for end users in terms of lower prices and increased choice.

**Q. 79. Do operators foresee any particular difficulties with moving to a wholesale price cap regime since the original consultation (03/16) given current and possible future changes in the proposed regulated interconnection markets? Please detail your response.**

Vodafone considers that current and prospective changes in the regulated interconnection markets, particularly with regard to the transition to next generation technologies, present some complications for cost modelling. Vodafone believes however that the difficulties in assessing the implications of technological and other market changes for cost modelling would in many instances occur irrespective of whether the current annual review approach based on top down FL-LRIC were retained by ComReg or a multi-year wholesale price cap regime were adopted as currently proposed. Moreover, Vodafone considers that the difficulties involved can be adequately managed.

The principal issue faced by ComReg will be to set a value for 'X' in a CPI-X price cap format that allows for cost recovery and full recovery of the cost of capital while also approximating to the costs of an efficient operator in the context where two generations of technology are being simultaneously maintained by the SMP operator. Extensive discussions with industry stakeholders will be necessary and data from eircom's separated accounts will serve as a useful starting point. Reasonable assumptions together with the use of data from independent academic and international sources wherever possible will maximise the probability of developing a price control that encourages innovation and investment while also properly focusing on the costs of an efficient operator rather than the actual costs of SMP undertakings.

**Q. 80. In your opinion what is the most appropriate modelling approach to take when modelling the core network, current network technology, complete NGN roll out or a hybrid approach of old and new? Please provide detail in support of your response.**

Vodafone considers that an appropriate modelling approach must take explicit account of both generations of network technology in its approach. It would be optimal to set a blended overall cap

based on a single cost model that would reflect the transition from the legacy network to the NGN. The model should take into account the transition/migration costs, such as the lower network utilisation arising from the operation of two parallel networks during the transition period.

ComReg should carefully assess the merits of applying an overall price cap, with few or no sub-caps given that flexibility would permit the operator of both the legacy network and the NGN to optimally adjust prices in response to the evolution of traffic volumes and associated underlying costs over the period for which a price cap is in force. It should be in the interests of the operator to preserve an efficient price structure regardless of its market power, with competitive concerns around the level of prices charged by the SMP operator being addressed by the overall wholesale price cap.

**Q. 81. In the interests of reaching a wholesale price cap in a timely and efficient manner, do you agree that eircom and ComReg should enter into bi-lateral discussions on agreeing the most appropriate basis for a wholesale price cap to arrive at final rates for publication once agreement is reached? Please provide detail in support of your response.**

Yes. Vodafone considers that a wholesale price cap reached on a negotiated basis that meets the stated regulatory objectives would, where possible, be optimal.

**Q. 82. Where ComReg enter into a wholesale price process with eircom, do you agree that the year 2005/06 is the most appropriate base year on which to base a price cap setting model? Please provide detail in support of your response.**

Vodafone considers that the most recent available data should be used in formulating the appropriate price cap setting model. At present the most recent available separated accounts data available from eircom is for the financial year ending March 30<sup>th</sup> 2006. Vodafone therefore agrees that 2005/06 is currently the most appropriate base year on which to base a price cap setting model. However in the event that the publication of a finalised wholesale price cap approach was delayed beyond October 2007, Vodafone considers that 2006/07 would be the most appropriate base year to use.

**Q. 83. What in your opinion would be the most appropriate time frame over which the price cap should be effective, two, three or four years? Please provide detail in support of your response.**

Vodafone would favour a price cap applicable for a period of at least 4 years as this time period would provide the greatest incentives for the SMP operator to innovate and improve its efficiency.

**Q. 84. Do you agree that the Consumer Price Index should be used in setting “X” when arriving at the annual adjustment to most recent finalised interconnection rates? Please provide detail in support of your response.**

Vodafone considers that the Consumer Price Index (CPI) should be used in the proposed wholesale price cap model. The CPI is the most widely publicised and monitored metric of changes in the general price level in Ireland and therefore has clear benefits in terms of transparency relative to alternative metrics.

Vodafone would acknowledge that there is a minor methodological concern around using the CPI, a gauge of changes in retail prices, in the determination of a wholesale price cap. As a practical matter however, given the inevitable strong linkages between wholesale and retail prices, there is little basis to conclude that trends in the level of wholesale prices differ significantly from trends in retail prices over the medium term. Vodafone contends that there would be no material difference between using a wholesale price index as opposed to a retail/consumer price index in terms of the impact on the calculation of a wholesale price cap. This is particularly the case in the context of the multi-year wholesale price cap proposed. Given the clear transparency advantages of the CPI, on balance its use should be favoured over alternative metrics.

**Q. 85. Do you agree that all interconnect rates as presented in the table 102/103/104 in the eircom RIO price list should be treated separately when applying the CPI +/-X control within the overall core network cost basket?**

Vodafone considers that ComReg should implement an overall CPI-X wholesale basket cap and should, where feasible, forebear from imposing sub-caps on individual interconnect products. The application of sub-caps to individual products removes flexibility and risks fostering an inefficient price structure where market conditions change in ways that are not readily foreseeable. Vodafone acknowledges however that the imposition of a CPI – X price caps on individual services within the overall core network cost basket may be necessary in some circumstances.

**Q. 86. The current rate of return allowed is 11.5% which was set based on a network efficiency study carried out some years ago, in your opinion do you think this rate is still appropriate or should a more up to date study be carried out in light of the changing telecoms environment? Please provide detail in support your response.**

Vodafone considers that a more up to date study should be undertaken to establish whether the current allowable rate of return remains appropriate in the context of current and prospective investment in NGNs.