Office of the Director of
Telecommunications
Regulation

DECISION NOTICE

Treatment of Discounts in the Calculation of Settlement Rates for Number Translation Codes

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Oifig an Stiúrthóra Rialála Teileachumarsáide
Office of the Director of Telecommunications Regulation
Abbey Court, Irish Life Centre
Lower Abbey Street, Dublin 1, Ireland
Tel. +353 1 804 9600 Fax. +353 1 804 9680 E-mail info@odtr.ie

Contents

1 INTRODUCTION

The Director of Telecommunications Regulation ("the Director") is responsible for the regulation of the Irish telecommunications sector in accordance with national and EU legislation. A specific issue of importance to the sector is that of interconnection to services provided over Number Translation Codes (NTCs). These services are important as they provide customers and services providers with a mutually beneficial means to, via the telecommunications network, access and promote a wide range of services – including accessing the Internet.

In February 2000, the ODTR published Decision Notice D4/00 on "Interconnect for calls destined for Internet services and Number Translation Codes[1] ("D4/00").

In the Decision Notice D4/00, the Director outlined her position on the minimum set of retail cost elements associated with eircom's retail retention for these services. One of the subjects examined was the manner in which eircom's retail discounts should be treated in terms of their potential to impact on OLO settlement rates. The Director's position in this regard was set out in Decision 4.8.7 which stated:

Director's Position: The Director considers that eircom's retail discounts should not affect the charges for conveyance of calls to internet and other NTCs without appropriate consent and scrutiny. She will consider individual proposals on a case by case basis.

In other words, in calculating settlement rates to OLOs for these services, eircom must pay settlement rates on the basis of gross revenues as opposed to net revenues (where net revenue = gross revenue – discounts). Consequently, settlement rates are calculated through the formula:

Settlement = Gross Revenue – Retention

The use of gross revenue in this formula will result in a higher settlement rate being paid to the OLO than if net revenue is employed (because Net Revenue = Gross Revenue – Discount). However, there may be cases where using a net revenue figure in the above formula would be justified and the Director noted this in Decision Notice D4/00.

[1] ODTR Document 00/17; Interconnection for Calls destined for Internet Services and other Number Translation Codes, Decision Notice D4/00.

In May, 2001, the Director invited interested parties in Document 01/42, to submit views in relation to the issue of the passthrough of discounts (allow eircom to use a net revenue figure in the above formula) where NTCs are concerned and more specifically sought views in relation to eircom's discount schemes involving calls to NTCs.

The office received three responses in writing to the consultation document, as listed (alphabetically) below:

- *eircom plc*
- *Esat Telecommunications Limited & Ocean Telecommunications Limited*
- *Worldcom*

The Director would like to thank the organisations that responded to the consultation paper. The comments received have provided valuable input into the Director's consideration of the issues raised in the consultation. The responses received to the consultation paper can be viewed in this Office (where the information is not confidential).

2 BACKGROUND

2.1 LEGISLATION

The substantive issue under consideration is that of the appropriate access arrangements with respect to the underlying interconnection regime for NTCs. The issue for consideration and consultation therefore relate largely to the interconnection arrangements, specifically with respect to the treatment of discounts, between eircom, OLOs and/or ISPs that may, or may not also be licensed telecommunications operators.

There is a body of EU and Irish legislation that governs the provision of interconnection in telecommunications. The most relevant pieces of legislation are:

- Directive 97/33/EC of the European Parliament and Council of 30 June 1997 on interconnection in Telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision ("ONP") (the "Interconnection Directive");

- The European Communities (Interconnection in Telecommunications) Regulations, 1998; S.I. No. 15 of 1998 (the "Interconnection Regulations") which transpose the Interconnection Directive into Irish law.

The Directive and Regulations place special obligations on an operator who is designated by the Director as having Significant Market Power ("SMP"). Among these are the following:

- The obligation to publish a Reference Interconnection Offer ("RIO") that is defined as: *an offer to provide an interconnection facility that includes a description of the interconnection offerings setting out the particular components according to market needs and all of the terms and conditions for interconnection to be satisfied by a person wishing to enter into an interconnection agreement*[2]. The Director may, in certain circumstances, direct changes be made to the RIO;

- The obligation, in providing interconnect services, to adhere *inter alia* to the principles of non-discrimination, cost-orientation and transparency as described in the Interconnect Directive and Regulations.

eircom is currently the only operator that has been designated as having SMP in the relevant market and therefore subject to these requirements.

[2] Paragraph (17) of Regulation 8 of the European Communities (Interconnection in Telecommunications) Regulations, 1998, S.I. No. 15 of 1998.

3 TREATMENT OF DISCOUNTS

3.1 Consultation Issues – Questions 1-12

At the time of consultation eircom were offering 12 discount schemes that were relevant to 3 NTCs, namely, 1850, 1890 and 1891. The Director asked interested parties to examine each of the discount schemes listed below and comment as to whether or not it might be appropriate to calculate settlement rates, in relation to any of these schemes, on the basis of net rather than gross retail revenues bearing in mind the principles as outlined in D4/00. The relevant discount schemes were:

- Total Volume
- Business Selections Discount
- Multisite
- *eircom* Multisite
- *Circle of Friends*
- *Business Circle*
- *Talksaver & Business Saver*
- *eircom* options 15, 30 & 50
- *eircom* optimiser *value, plus & extra*
- *eircom* optimiser levels 1-4
- *eircom* performance levels 1-3
- *eircom* Multiline

3.1.1 Summary of Responses - Questions 1-12

Three operator's responded to the consultation. One party believed that discounts should be passed through in all cases given that discounts were in the interest of end-users and in general had the effect of increasing total outpayments to the service provider. They also believed that discounts should be passed through in order to comply with competition law principles. Another party felt that discounts should not be passed through in any circumstances because eircom gain a marketing benefit from the discounts schemes that is not enjoyed by other operators. In addition they believed that volumes did not increase as a consequence of the discount schemes and consequently, interconnecting operators earned lower revenues because of the schemes. A third respondent did not answer questions 1-12 as they felt that the issue of discounts should be considered within the context of a wider consultation on NTCs generally.

3.1.2 Director's Position

Whilst the Director is at present unconvinced by eircom's argument that paying on the basis gross revenues is in contravention of competition law, it is for eircom to ensure that its commercial decisions including those relating to retail discounts, are in compliance with the principles of competition law. (It should also be noted that the Director does not mandate discounts for NTCs and a decision to offer the same is a matter from *eircom*).

In general the Director is of the view that the discount schemes referred to in the consultation is of more benefit to *eircom* than other interconnecting parties, as a marketing or advertising tool. Nevertheless, even if this is the case, she believes that where discounts are of benefit to the interconnecting operator/service provider there might be a case for allowing passthrough of discounts in the calculation of NTC settlements in certain circumstances. One way in which this could be shown would be to demonstrate that the price elasticity of demand required to return an OLO to *at least* the same level of revenue as prior to the discount is relatively low e.g. a required price elasticity of at least less than -1. This type of analysis would take account of average call holding times, distribution of local and national calls (in the case of 1850 and 1890), revenues earned from both callers and call recipients and the increase in volumes required to achieve the same level of revenue had the discount not been in place. In certain circumstances higher elasticities might be deemed to be reasonable e.g. it is reasonable to assume that a Circle of Friends (residential) subscriber is likely to be more price sensitive than an eircom performance (business) subscriber and consequently would have a higher price elasticity of demand.

As certain issues relevant to NTCs are currently under review and in particular, a review of the treatment of the Intelligent Network costs, the ODTR feels an analysis such as prescribed above would be premature at this time. However, following a resolution of this matter and with due consideration to the new interconnect pricing regime, namely 2 part charging, the ODTR would be willing to review any submission from *eircom* which indicates that NTC discounts are of benefit to the interconnecting party as outlined by this type of analysis. However, until such time as the ODTR decides otherwise, all NTC settlements should continue to be calculated on the basis of gross rather than net revenues in accordance with D4/00.

Director's Decision: In cases where the Director is satisfied that discounts could reasonably be expected to increase the revenues of interconnecting parties generally, the Director may at her discretion, recommend passthrough of that discount in the calculation of the NTC settlement rate. Each discount would be considered on a case by case basis following an appropriately justified submission for such a request from *eircom*. *eircom* will also be required to give a reasonable period of notification to the industry in the event that the Director has approved passthrough of a discount for an NTC.

3.2 Consultation Issues – Questions 13-14

Interested parties were asked whether they believed that the appropriate method to calculate the discount that should apply to an NTC for all calls, with due respect to time of day (i.e. day, evening and weekend), in the event that passthrough was deemed appropriate, should be as follow:

$$Dntc_t = \Sigma^n{}_{i=1}\ d_{it}/GR_t$$

Where, $Dntc_t$ is the Discount that should apply, in calculating settlement rates, for all calls to an NTC for time of day t (day, evening and weekend rates)

n is the number of discount schemes for which passthrough is permitted

d_{it} is the discounted revenue (difference between net and gross revenue) for all calls made under discount scheme i for time of day t

and GR_t is Gross Revenue from all calls to an NTC for time of day t

Furthermore, respondents were asked to consider whether an appropriate period for reviewing this effective discount rate would be on a quarterly basis?

3.2.1 Summary of Responses - Questions 13-14

One respondent did not refer to questions 13 or 14 as they did not feel discounts should be passed through in any circumstances. Another felt that the suggested equation was an appropriate way in which to calculate an effective discount for an NTC and that this figure should only be reviewed on a quarterly basis and in the event that there was a material change in the discount. A third respondent suggested that amendments to *eircom's* NTC discounts should only be permitted at predetermined intervals i.e. on a quarterly/biannual/ or annual basis.

3.2.2 Director's position

The Director believes that an appropriate period for *eircom* to review this calculation would be on a quarterly basis and that the rate only needs to be revised in the event that a material difference is highlighted from one quarter to the next (i.e. a greater than 10% change in the base rate). She does not believe, however, that amendments to NTC discounts themselves should be constrained to predetermined intervals as interconnecting operators will only face, at most, quarterly adjustments to the effective discount rate (as calculated above) that will apply to their settlements, regardless of how often eircom adjusts its discount schemes in an interim period.

The Director also believes the appropriate means of calculating the discount that should apply is as was suggested in the consultation

Director's Decision: The Director believes that the appropriate means of calculating the discount that should apply to an NTC for all calls, with due respect to the time of day (i.e. day evening and weekend calls, in the event that passthrough is deemed appropriate, should be as follows:

$$Dntc_t = \Sigma^{n}_{i=1} d_{it}/GR_t$$

Where, $Dntc_t$ is the Discount that should apply, in calculating settlement rates, for all calls to an NTC for time of day t (day, evening and weekend rates)
n is the number of discount schemes for which passthrough is permitted
d_{it} is the discounted revenue (difference between net and gross revenue) for all calls made under discount scheme i for time of day t
and GR_t is Gross Revenue from all calls to an NTC for time of day t