Voice Termination Rates in Ireland

Proposed Price Control for Fixed and Mobile Termination Rates

Consultation and Draft Decisions

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Additional Information

All responses to this consultation should be clearly marked:- "Submissions to ComReg 12/67", and sent by post, facsimile or email, or submitted on-line at www.comreg.ie (current consultations), to arrive on or before **10 August 2012**, to:

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Chapter 1

1 Introduction

1.1 The termination of a call to a subscriber on a fixed or mobile network is a basic function of all telephony networks. Prior to market liberalisation, national telecom companies were required to interconnect with international operators to facilitate end to end international calls. However, the advent of liberalisation has brought many operators into national markets all requiring interconnection with the incumbent operator and with each other.

1.2 While many operators have interconnected relatively seamlessly as various networks were rolled out, the level of charging by operators for access to their networks has been problematic due to what have been seen as wholesale termination rates (**'Termination Rates'**) for both mobile and fixed networks which are above efficient cost. While ComReg has intervened over the years to reduce the Termination Rates charged by fixed service providers (**'FSPs'**) and mobile service providers **('MSPs')**, in 2009 the European Commission found it necessary to intervene and issue a Termination Rate Recommendation[1] ('**2009 Termination Rate Recommendation**' or '**Recommendation**') to National Regulatory Authorities ('**NRAs**') across Europe in light of diverging regulatory approaches across the EU. The 2009 Termination Rate Recommendation provides guidance for NRAs on the appropriate cost-based methodology that should be used when calculating the Termination Rates charged by FSPs and MSPs (referred to collectively for the purposes of this Consultation Document as '**Service Providers**') designated as having significant market power ('**SMP**'), so as to avoid competitive distortions to ensure a common EU approach to regulating these important wholesale charges between networks.

1.3 To date, the Termination Rates charged by Eircom Limited (**'Eircom'**) and the main MSPs, Vodafone Ireland Limited **('Vodafone'**), Telefónica Ireland Limited (**'O2'**), Meteor Mobile Communications Limited (**'Meteor'**) and Hutchison 3G Ireland Limited (**'H3GI'**), have been based on a price control in the form of a cost orientation obligation[2]. As a result, these Service Providers have had regulatory restrictions on the Termination Rates that they could charge other FSPs and MSPs for terminating calls on their network.

[1] European Commission Recommendation: "*The Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC)*"; dated 7 May 2009 **('2009 Termination Rate Recommendation').**

[2] Chapter 3 sets out the current cost orientation obligations imposed respectively on SMP FSPs and SMP MSPs.

1.4 It should be noted that in ComReg Document No 12/46 - which is currently subject to public consultation - ComReg proposes to designate two further MSPs (i.e. Tesco Mobile Ireland Limited and Lycamobile Ireland Limited) with SMP in the wholesale mobile voice call termination ('**MVCT**') market and to impose a price control obligation on each of them. In addition, this Consultation Document proposes that each of the FSPs other than Eircom who were designated with SMP in the wholesale fixed voice call termination ('**FVCT**') market in 2007 should also be made subject to a price control obligation i.e. BT Communications Ireland Limited, Verizon Ireland Limited, NTL Communications (Ireland) Limited/Chorus Communications Limited (now UPC Communications Ireland Limited), Colt Telecom Ireland Limited, Smart Telecom Holdings Limited and Magnet Networks Limited.

1.5 There is, currently in Ireland, a significant net flow of revenues from FSPs to MSPs due primarily to the fact that mobile termination rates ('MTRs) are currently significantly higher than fixed termination rates ('FTRs'). There are also revenue flows between MSPs, as MTRs represent both outbound costs and inbound revenues for MSPs. It should also be noted that depending on the usage profiles of mobile end users, their MSPs could either be net beneficiaries or net payers on cross network mobile to mobile traffic.

1.6 In relation to the MVCT market in Ireland, some MSPs have end user mobile packages that include free or heavily discounted on-net minutes (i.e. calls to other end users that use the same MSP) compared to the price of off-net mobile to mobile calls (i.e. calls to end users that use a different MSP to that of the end user making the call). Economics literature recognises that such network-based price discrimination involving free or heavily discounted on-net tariffs relative to off-net tariffs which are charged at a higher rate create what is known as a tariff-mediated network externality[3]. This is explained as the benefit that particular end users gain from being with a MSP that provides them with free or heavily discounted calls to other end users that are also using the same MSP's mobile network. Therefore, there is a disadvantage for end users that are off-net if they are subject to higher differentiated charges relative to those end users that are on-net.

1.7 In relation to the FVCT market in Ireland, there is a similar situation between FSPs; however the revenue flows are a smaller proportion of the overall fixed line revenues compared to those of the MSPs.

[3] David Harbord and Marco Pagnozzi March 2010 Network-Based Price Discrimination and 'Bill-and-Keep' vs. 'Cost-Based' Regulation of Mobile Termination Rates, The Berkeley Electronic Press 2010.

1.8 ComReg is now consulting in this Consultation Document on the appropriate price control methodology to be used for the purposes of regulating both FTRs and MTRs. This Consultation Document will consider a range of potential price control options while taking upmost account of the 2009 Termination Rate Recommendation.

1.9 In addition, ComReg is also consulting in this Consultation Document on how best the proposed methodology should be implemented taking into account ComReg's statutory objectives and other factors including, Termination Rates in the market today, the relative size of Service Providers and the time at which they entered the market, and relevant developments across Europe.

1.10 The structure of this Consultation Document is as follows:

- Chapter 2 of this Consultation Document contains the executive summary.
- Chapter 3 of this Consultation Document contains background in the specific context of Ireland.
- Chapter 4 of this Consultation Document contains the possible regulatory approaches to setting Termination Rates.
- Chapter 5 of this Consultation Document contains the Assessment Criteria for assessing the regulatory approaches set out in Chapter 4.
- Chapter 6 of this Consultation Document contains the assessment of the regulatory approaches set out in Chapter 4.
- Chapter 7 of this Consultation Document sets out ComReg's proposals in relation to the implementation of the preferred price control.
- Chapter 8 of this Consultation Document contains the draft Decision Instrument in relation to FTRs.
- Chapter 9 of this Consultation Document contains the draft Decision Instrument in relation to MTRs.
- Chapter 10 of this Consultation Document contains the regulatory impact assessment ('**RIA**').
- Chapter 11 of this Consultation Document contains the next steps.

Chapter 2

2 Executive Summary

2.1 In accordance with the Communications Regulation Acts 2002 to 2011[4], ComReg has a number of regulatory objectives including, to promote competition, to contribute to the development of the internal market and to promote the interests of users within the Community. These objectives are discussed in more detail throughout this Consultation Document.

2.2 Since the implementation of a regular system of review of electronic communications markets across the EU, the wholesale termination of calls on individual mobile and on fixed networks have been considered as separate "recommended markets" warranting ex-ante regulation. Currently, the wholesale market for call termination on individual public telephone networks provided at a fixed location is referred to as Market 3[5] (also referred to in this Consultation Document as the fixed voice call termination ('**FVCT**') market). The wholesale market for voice call termination on individual mobile networks is referred to as Market 7 (also referred to in this Consultation Document as the mobile voice call termination ('**MVCT**') market).

2.3 In 2006/07, ComReg conducted a market review in relation to the FVCT market. The market reviews for MVCT were completed in 2004/5 and in 2008. ComReg is currently updating both the FVCT and MVCT market reviews. It has recently published its consultation document on the MVCT market review which is set out in ComReg Document No 12/46[6]. A ComReg consultation on the FVCT market will be published shortly.

[4] Communications Regulation Act 2002 (No. 20 of 2002), as amended by the Communications Regulation (Amendment) Act 2007 (No. 22 of 2007), the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 (No. 2 of 2010) and the Communications Regulation (Postal Services) Act 2011 (No. 21 of 2011).

[5] Commission Recommendation dated 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services.

[6] ComReg Document No 12/46: Market Review: Voice Call Termination on Individual Mobile Networks; published on 23 May 2012.

2.4 As part of the market review process, ComReg may impose obligations (also referred to as remedies) on operators which it designates as having SMP in a particular market, in order to address competition problems. The remedies available include the obligation to provide access to the SMP operator's network as well as obligations of transparency and non discrimination which may also be imposed where appropriate. ComReg may also, where considered necessary, impose further obligations relating to the prices that can be charged and whether the SMP operator should maintain separated accounting information and cost accounting systems to support these obligations.

2.5 This Consultation Document is ultimately concerned with the detailed nature and implementation of an appropriate price control remedy where Service Providers have been designated with SMP in the FVCT and / or MVCT markets.[7]

2.6 In 2005 and 2008 ComReg imposed a price control obligation of cost orientation on MSPs designated as having SMP in the relevant MVCT markets. ComReg did not specify in detail in the 2005 decision how the obligation was to be implemented, except that the burden of proof that such charges were derived from costs, including a reasonable rate of return on investment, would lie with the relevant SMP MSPs (i.e. Vodafone, O2 and Meteor).[8] As regards H3GI, the 2008 decision imposed a price control obligation of cost orientation and also imposed a price cap for H3GI's MTRs. Further details in relation to MTR trends to date are set out in paragraphs 6.19 to 6.33 of ComReg Document No 12/46.[9]

[7] As noted in paragraph 3.5 below, ComReg Document No 12/46 proposed the imposition of a cost orientation obligation in the relevant MVCT markets. However, that document did not contain any proposals regarding the detailed nature or implementation of that obligation and noted that ComReg would issue a further consultation in that regard (i.e. this present Consultation Document). This Consultation Document considers the range of possible price control options in light of the annexed Analysys Mason Report, but ultimately confirms ComReg's preliminary view as set out in Document No 12/46 that cost orientation is the appropriate price control remedy in the MVCT markets.

[8] ComReg stated in the 2005 decision that the average price weighted by traffic volumes for the most recent financial year offered by the relevant SMP MSPs for MVCT on their respective networks was not to exceed a specified level.

[9] ComReg Document No 12/46: Market Review – Voice Call Termination on Individual Mobile Networks ('**ComReg Document No 12/46**'), published on 23 May 2012.

2.7 In 2007, ComReg also imposed a price control obligation on SMP operators in the relevant FVCT markets, except the cost orientation obligation was only imposed on Eircom Limited. Other authorised operators ('**OAOs**') designated with SMP were allowed a derogation from a specific obligation of cost orientation until such time as they reached a 5% share of total direct access paths. Where the OAO did not reach the 5% share of the market, within a five year timeframe, ComReg may, following a consultation impose a price control regulation. The specific obligation imposed on Eircom in 2007 was to ensure FTRs were calculated using a pricing model based on forward looking - long run incremental costs ('**FL-LRIC**'). Eircom has to date applied this methodology.

2.8 To date, the imposition of these obligations has had mixed results. The FTRs charged by Eircom have not given rise to any complaints by OAOs in recent years. As explained in Chapter 3, section 3.3 below, ComReg has not to date reached a determination as to whether any FSP has in fact reached the 5% threshold referred to in the preceding paragraph and accordingly the FTRs charged by OAOs have not to date been subject to any price control obligations. This is because the OAO FTRs are generally higher than the Eircom FTRs which are based on FL-LRIC. On the other hand, the MTRs charged by MSPs have been the source of a dispute that required significant intervention by ComReg. Up until 2010 the average Irish MTR was significantly above the simple average MTR across the twenty-seven states monitored by the Body of European Regulators for Electronic Communications ('**BEREC**') (previously known as the European Regulators Group or ERG).

2.9 Diverging regulatory approaches to Termination Rates across European Member States led to intervention by the European Commission. It considered that these high Termination Rates could lead to competitive distortions due to, among other things, distortions in competition arising from the substantial transfer of revenue between FSPs and MSPs and consequent pricing distortions for consumers. It was also evident that Termination Rates varied significantly from one Member State to another which could again create significant barriers to the functioning of the internal market. As a result, the European Commission considered it necessary to investigate the issues in detail to see whether these differences were justified and, if not, whether a harmonised approach across all Member States should be recommended. The outcome of the European Commission's review gave rise to the 2009 Termination Rate Recommendation.

2.10 The 2009 Termination Rate Recommendation stated that Termination Rates should be set in accordance with a cost orientation obligation based on the costs incurred by an efficient operator. The 2009 Termination Rate Recommendation sets out that the evaluation of efficient costs should be based on a bottom-up modelling approach using long-run incremental costs ("LRIC") as the relevant cost methodology. The approach favoured by the European Commission in the Recommendation is referred to as a pure LRIC approach in which the relevant increment is the wholesale call termination service and which includes only avoidable costs, i.e. all fixed and variable costs which are incremental to the provision of the wholesale call termination service. The ultimate result of such a methodology is to change significantly the Termination Rates which MSPs and FSPs can legally charge to each other. In Member States where this methodology has been implemented, Termination Rates have dropped significantly.

2.11 This Consultation Document investigates, based on the collection of significant data, both at a wholesale and retail level, from the industry players, whether the 2009 Termination Rate Recommendation is appropriate to Irish circumstances and whether it is consistent with the goals and objectives of ComReg. ComReg is required to take utmost account of the 2009 Termination Rate Recommendation.

2.12 In this Consultation Document, ComReg, having regard to the report prepared by its external consultants, Analysys Mason (a copy of which is separately published in ComReg Document No 12/67a), considers the possible regulatory approaches available when imposing a price control obligation on Service Providers. ComReg also, with the assistance of Analysys Mason, and based on a set of identified assessment criteria, assesses which approach is most appropriate to Ireland and how this might be implemented by the Service Providers designated with SMP in the FVCT and MVCT markets.

2.13 The analysis carried out shows that the current Termination Rates in both the FVCT and MVCT markets, in particular MTRs, do not allow for effective competition, can be to the detriment of end users and can cause harm to the proper functioning of the internal market.

2.14 In this Consultation Document, ComReg provides its preliminary view that there is no reason for Ireland to diverge from the methodology recommended by the European Commission, i.e. (i) the appropriate price control is a cost orientation obligation, and (ii) the cost orientation obligation should be implemented for all Service Providers designated with SMP in the FVCT and MVCT markets by means of the pure LRIC cost recovery methodology.

2.15 In relation to the FVCT market, ComReg has over recent months prepared a preliminary draft BU model of an appropriate pure LRIC FTR based on a next generation modern equivalent asset ('**MEA**') cost structure. The current proposed pure LRIC FTR ranges from the current draft BU LRIC model are between 0.02 and 0.07 cent per minute and between 0.00 (zero) and 0.07 cent per call. The current draft BU pure LRIC model and the associated model inputs are subject to consultation which may result in a change to the pure LRIC FTR ranges, which will then be reflected as part of any final decision.

2.16 In relation to FVCT, ComReg has access to its existing bottom up model as well as a top down model based on Eircom's separated accounts. It has used both of these models in setting FTRs for Eircom in the past. To date, Eircom has been the only Service Provider subject to FTR price regulation in Ireland. However, it is proposed in this Consultation Document that other FSPs designated with SMP in the FVCT market would also be made subject to the proposed FTR price control regime. Therefore, as part of this consultation process and as set out in Chapter 7, ComReg is inviting FSPs to provide any relevant and sufficiently granular information to justify a pure LRIC FTR that reflects an efficient operator as referred to in the 2009 Termination Rate Recommendation. In the absence of any such information, ComReg proposes to set the maximum FTR for the additional FSPs based on the information it has, to date, received from Eircom (with the relevant adjustments to ensure it is based on an efficient operator) as explained in Chapter 7 of this Consultation Document.

2.17 Given the specific circumstances of the FVCT market, in particular the fact that it will be the first time that FSPs other than Eircom will be subject to a regulated FTR, ComReg is minded towards an implementation date of 1 July 2013 (rather than 1 January 2013) for a pure LRIC FTR, subject to consultation responses. In addition, it is Eircom's understanding that the current FTRs will remain in place until 30 June 2013. ComReg is also of the view, as set out in Chapter 7 of this Consultation Document, that there should be synchronisation of the implementation dates for the Decision Instruments relating to both FTRs and MTRs to minimise distortions in both the FVCT and MVCT markets.

2.18 In relation to the MVCT market, ComReg has not yet modelled the appropriate pure LRIC MTR and is proposing in this Consultation Document to continue with an amended benchmark approach. However, where MSPs have sufficient granular information available from their own accounting systems regarding the pure LRIC costs of MVCT, then ComReg would welcome the submission of such information as part of this consultation process where it is consistent with the efficient MSP outlined in the 2009 Termination Rate Recommendation.

2.19 On the basis of the benchmarking approach which ComReg proposes to apply, MSPs would be required to charge no more than the pure LRIC MTR modelled by other EU Member States that have implemented the 2009 Termination Rate Recommendation. It should be noted that the MTR that ComReg is proposing to set would be calculated in accordance with a benchmarking approach based on the MTRs applied in EU Member States that have set pure LRIC MTRs based on a BU model at the time of adoption of ComReg's final decision. For the moment ComReg has calculated a pure LRIC MTR range from 0.80 cent per minute to 1.27 cent per minute which is based on 6 EU Member States that have modelled the pure LRIC MTR. However, as of the date of publication of this Consultation Document only one of these EU Member States (France) has a decision in force. Some of the decisions of those EU Member States considered by ComReg are currently under appeal. When ComReg reaches its final decision, the pure LRIC MTR will be based only on those EU Member States with a decision in force on a pure LRIC MTR based on a BU model. Similar to the implementation timelines for the Decision Instrument relating to FTRs, ComReg is minded towards an implementation date of 1 July 2013 for the Decision Instrument relating to MTRs. Subject to consultation responses ComReg is minded to allow the continuation of a glide-path from 1 January 2013 to 30 June 2013 before the new proposed pure LRIC MTR comes into effect on 1 July 2013. The revised glide-path from 1 January 2013 would replace the current voluntary glide-path in the MVCT market to allow maximum rates starting at 2.42 cent per minute (based on the lower end of the range) on 1 January 2013 and reducing, on a straight line glidepath, to the pure LRIC MTR that ComReg is proposing to implement on 1 July 2013.

2.20 While certain Service Providers may face significant reductions to their MVCT revenues as a result of the proposed new approach to Termination Rates, it has been clear for some time now that this might be the potential outcome given the 2009 Termination Rate Recommendation and the evolution of Termination Rates in other Member States. In addition, there have been significant communications/comments from the European Commission since 2009 and from NRAs indicating that Service Providers should prepare for the eventuality of such Termination Rate cuts. Ultimately, consumers should benefit from the reductions in Termination Rates that should result from a more competitively neutral environment across both fixed and mobile markets and the ability of Service Providers to offer more converged services without the distortions that can result from high and/or asymmetric Termination Rates.

Chapter 3

3 Background

3.1 Overview

3.1 This section sets out the legal and regulatory framework for imposing price control obligations on Service Providers designated with SMP in Market 3[10] and Market 7[11].

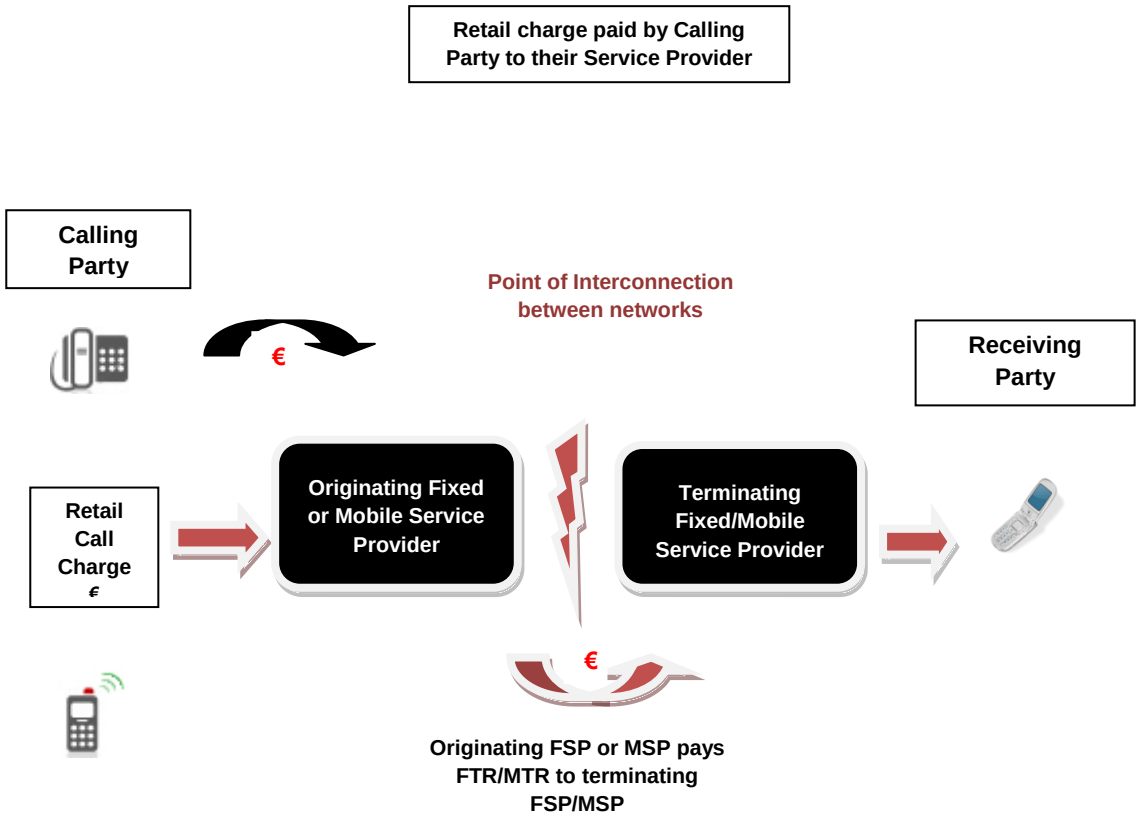
3.2 Voice termination is a simple function of all calls made, either:

- fixed to fixed,
- fixed to mobile,
- mobile to mobile or
- mobile to fixed.

3.3 All voice calls made must terminate either on the same network or on another network. The termination of calls on the network of a FSP or MSP is illustrated in Figure 3.1 below[12].

[10] ComReg Decision Notice D06/07 (ComReg Document No. 07/109): Decision Notice and Decision Instrument – Designation of SMP and SMP Obligations. Market analysis: Interconnection market review fixed wholesale call termination services; published on 21 December 2007.
[11] ComReg Decision Notice D11/05 (ComReg Document No. 05/78.): Imposition of SMP obligations. Market analysis: Wholesale voice call termination on individual mobile networks; published 13 October 2005 and ComReg Decision Notice D05/08 (ComReg Document No.08/92), Market Analysis Voice Call Termination on Hutchison 3G Ireland's Mobile Network, published on 1 December, 2008.
[12] Note, that the scenario presented is where there is direct interconnection between the originating network and the terminating network.

Figure 3.1: Retail charging and MTR/FTR interconnect arrangements



3.4 ComReg is currently in the process of reviewing both the wholesale market for FVCT (i.e. Market 3) and the wholesale market for MVCT (i.e. Market 7). It recently published a consultation document and draft decision in relation to Market 7 (see ComReg Document No 12/46), and will shortly publish a consultation document and draft decision regarding Market 3.

3.5 ComReg Document No 12/46 proposed the imposition of a cost orientation obligation in each of the relevant MVCT markets. However, that document did not contain any proposals in relation to the detailed nature or implementation of that obligation and noted that ComReg would be issuing a further consultation in that regard. This Consultation Document, while considering the range of possible price control options in light of the Analysys Mason Report set out in ComReg Document No 12/67a, confirms ComReg's preliminary view as set out in ComReg Document No 12/46 that cost orientation is the appropriate price control remedy in the relevant MVCT markets. In addition, this Consultation Document also now considers the detailed nature and implementation of the proposed cost orientation obligation.

3.6 This Consultation Document proposes the further specification of the proposed price control obligation for SMP MSPs in the MVCT market as set out in ComReg's draft decision annexed to ComReg Document No 12/46. In addition, this Consultation Document proposes amendments to the price control obligation imposed on Eircom in the FVCT market in 2007 as well as proposing the imposition, for the first time, of a price control obligation on the other FSPs currently designated with SMP in the FVCT market.

3.7 This Chapter is divided into the following sections:

1. Current (and Proposed) MVCT Price Control Obligation
2. Current FVCT Price Control Obligation
3. 2009 Termination Rate Recommendation
4. The European Context - Other NRAs
5. Overview of Chapter 3.

3.2 Current (and Proposed) Mobile Voice Call Termination Price Control Obligation

3.8 The MVCT market is currently regulated in Ireland pursuant to three separate decisions.

3.9 The first decision was adopted in 2004[13] when ComReg designated Meteor, O2, Vodafone and H3GI with SMP. H3GI subsequently appealed its SMP designation. H3GI's appeal against ComReg Decision No. D9/04 led to the Electronic Communications Appeals Panel ('ECAP') annulling ComReg's designation of H3GI with SMP in September 2005.[14] H3GI was ultimately designated with SMP and made subject to a range of SMP obligations in ComReg Decision No. D05/08 following a further review of the wholesale market for voice call termination on H3GI's mobile network.[15]

3.10 Under a separate decision adopted in 2005 (i.e. Decision D11/05), ComReg imposed a range of SMP obligations on Vodafone, O2 and Meteor.[16]

[13] ComReg Document No. 04/82: Decision D9/04: Market Analysis – Wholesale Voice Call Termination on Individual Mobile Networks; published on 24 July 2004.
[14] ECAP Decision No 02/05 in respect of Appeal No ECAP 2004/01 (26 September 2005).
[15] ComReg Document No. 08/92: Decision D05/08: Market Analysis: Voice Call Termination on Hutchison 3G Ireland's Mobile Network; published on 1 December 2008.
[16] ComReg Document No. 05/78: Decision D11/05: Decision Notice – Imposition of SMP Obligations, Market Analysis: Wholesale Voice Call Termination on Individual Mobile Networks; published on 13 October 2005.

3.11 One of the regulatory obligations imposed in 2005 under ComReg Decision D11/05 on the relevant SMP MSPs (i.e. Vodafone, O2 and Meteor) was a price control obligation based on cost orientation. Section 6.2 of the Decision contained in Appendix A of Decision D11/05 imposes that obligation in the following terms:

"SMP [Mobile Network Operators (MNOs)] shall each have an obligation to offer cost-oriented prices for MVCT. The burden of proof that charges are derived from costs, including a reasonable rate of return on investment shall lie with SMP MNOs."

3.12 Section 6.5 of the Decision contained in Appendix A of ComReg Decision D11/05 provides that:

"As and from the effective date of this Decision and prior to the establishment of a definitive level of cost oriented prices for each of the SMP MNOs, ComReg may, in pursuance of the aim of establishing such prices, issue directions to the SMP MNOs for the purposes of establishing a glide path (that is to say, a graduated step approach) towards cost orientation or a price cap in respect of MVCT prices. In doing so, ComReg may amongst other options, employ benchmarking."

3.13 A price control obligation based on cost orientation was imposed on H3GI by ComReg Decision No. D05/08. Section 7.1 of the Decision Instrument annexed to that decision set out that H3GI:

"…shall have an obligation of cost orientation with respect to its prices for MVCT, to take effect in accordance with the provisions of this section."

Section 7 of the Decision Instrument annexed to Decision D05/08 further specified the triggers applicable in respect of H3GI's price control obligation.

3.14 The current MTR price control regime is based on a voluntary glide-path arrangement whereby Irish MTRs have been set in line with the expected European average using the BEREC[17] six monthly snapshot reports together with other information publicly available from other countries regarding future reductions to MTRs. The most recent reductions are highlighted in ComReg Information Notice No. 10/82[18]. This Information Notice also includes references to previous ComReg Information Notices concerning reductions in MTRs. Further details in relation to MTR trends to date are set out in paragraphs 6.19 to 6.33 of ComReg Document No 12/46.

[17] Body of European Regulators for Electronic Communications (**BEREC**) as established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009.
[18] ComReg Information Notice No. 10/82: Further reductions in mobile termination charges by Vodafone, O2, Meteor and Hutchison 3G (Ireland); published on 8 October 2010.

3.15 The ongoing market review for Market 7 proposes to replace the previous SMP designations and obligations with a new decision designating certain MSPs with SMP and imposing a range of SMP obligations. The current draft decision, which is annexed to ComReg Document No 12/46, proposes the designation of Vodafone, O2, Meteor, H3GI, Tesco Mobile and Lycamobile with SMP. Section 6 of ComReg Document No 12/46 has identified what ComReg regards as the key competition problems in the MVCT market. It discusses the fact that SMP MSPs have the ability and incentive to set their prices associated with access to MVCT at an excessive level, thereby impacting on downstream competition to the detriment of consumers. ComReg therefore considers that the imposition of obligations of price control on all SMP MSPs is justified and proportionate.

3.16 Section 12 of the Draft Decision Instrument annexed to ComReg Document No 12/46 states:

"*12.1. Pursuant to Regulation 13(1) of the Access Regulations, each SMP Mobile Service Provider shall be subject to a cost orientation obligation as regards MTRs and prices charged by that SMP Mobile Service Provider to any other Undertaking for Access to or use of those products, services or facilities referred to in Section 8.*

12.2. The cost orientation obligation referred to in Section 12.1 shall be subject to the requirements further specified by ComReg in the document entitled [….], Decision No. [D…], Document No. […]".

3.17 This Consultation Document, while considering the range of possible price control options in light of the Analysys Mason Report set out in in ComReg Document No 12/67a, confirms ComReg's preliminary view as set out in ComReg Document No 12/46 that cost orientation is the appropriate price control remedy in the relevant MVCT markets. In addition, this Consultation Document also now considers the detailed nature and implementation of the proposed cost orientation obligation.

3.3 Current Fixed Voice Call Termination Price Control Obligation

3.18 The FVCT market is currently regulated under ComReg Decision No. D06/07.[19] The price control obligation in that decision is divided into two sections: (i) Eircom's price control obligation and (ii) the price control obligation imposed on OAOs.

3.19 In relation to Eircom's price control obligation, Section 10.1 of the Decision Instrument annexed to ComReg Decision D06/07 states that:

"…the prices charged by Eircom to any other undertaking for those products and services described in section 5 shall be cost oriented and such costs shall be calculated using a pricing model based on forward looking long run incremental costs ('FL-LRIC') or an alternative pricing model, should ComReg decide, following consultation, to adopt such an alternative pricing model."

3.20 In relation to OAOs, Section 10.3 of the Decision Instrument annexed to ComReg Decision D06/07 states that:

"…the OAOs shall have price control obligations: once a OAO reaches 5% share of the Market (as determined by ComReg in accordance with statistics to be obtained and compiled by it) of total direct access paths, it shall, from a date to be determined by ComReg, become subject to a price control obligation taking the form of a glide path towards an efficient rate. ComReg will consult on the appropriate period for such a glide path period and the appropriate level of the regulated price to be achieved by the OAO, once ComReg has determined that the OAO has reached the 5% share of the Market threshold."

3.21 Section 10.4 of the Decision Instrument annexed to ComReg Decision D06/07 further stipulates that:

"If a OAO does not reach the 5% share of the Market of total direct access paths within a five-year timeframe, ComReg may decide to impose a price control regulation, following consultation on an appropriate glide path and an appropriate level of a regulated price to be achieved at the end of the glide path period."

[19] ComReg Document No. 07/109: Decision D06/07: Market Analysis – Interconnection Market Review Fixed Wholesale Call Termination Services; published on 21 December 2007.

3.22 As indicated above, in ComReg Decision D06/07, ComReg stated that it would consult on an appropriate price control once an OAO reached the 5% share of the market threshold. ComReg has not to date determined that any OAO has officially reached the 5% threshold and accordingly the FTRs charged by OAOs have not to date been subject to any price control obligations. Accordingly, OAOs have to date set their FTRs based on commercial negotiations and their FTRs have not been subject to any price control obligations[20].

3.23 The specific obligation imposed on Eircom in 2007 was to ensure FTRs were calculated using a pricing model based on FL-LRIC. Eircom has to date applied this methodology.

3.24 ComReg Information Notice No. 10/14[21] refers to the current FTRs charged by Eircom. It states that:

"The Commission for Communications Regulation ('ComReg') welcomes the latest update by Eircom Ltd. ('Eircom') of the Reference Interconnect Offer ('RIO') price list relating to interconnection rates for the period from 1 April 2010 to at least 1 January, 2012. This update will adjust Call Origination and Call Termination interconnection rates downwards by 7% on average effective from 1 April 2010 and by a further 7.6% on average from 1 January 2011[1], a total reduction of nearly 15% over the next year."

3.25 ComReg Information Notice No 11/99[22] announced further reductions in FTRs by Eircom for the period from 1 July 2012.

"The Commission for Communications Regulation ('ComReg') welcomes the latest update by Eircom Ltd. ('Eircom') of the Reference Interconnect Offer ('RIO') price list relating to interconnection rates for the period from 1 July 2012. This update will adjust Call Origination and Call Termination interconnection rates downwards by 5% on average from 1 July 2012. Given the past reductions of 15% since early 2010, this further reduction will give a total average saving of 20% on Call Origination and Call Termination rates over the past two years."

3.26 It is ComReg's intention to issue a public consultation in relation to the FVCT market early in Q3 2012.

[20] European Commission comments letter Case IE/2007/0701: Call termination on individual public telephone networks provided at a fixed location; dated 16/11/2007.
[21] ComReg Information Notice No 10/14: Reduction of Call Origination and Call Termination rates by Eircom, 19 February 2010.
[22] ComReg Information Notice No 11/99: Reduction of Call Origination and Call Termination rates by Eircom, 15 December 2011.

3.4 2009 Termination Rate Recommendation

3.27 Having set out the Irish context, this section now sets out the European context which underpins it. In May 2009[23], the European Commission issued its 2009 Termination Rate Recommendation and its accompanying Explanatory Note[24] as well as the staff working document detailing the implications for industry, competition and consumers ('**Staff Working Document**')[25]. ComReg is obliged by virtue of Article 19(2) of the Framework Directive[26], as transposed by Regulation 30(1) of the Framework Regulations[27], to take "utmost account" of the 2009 Termination Rate Recommendation.

3.28 The 2009 Termination Rate Recommendation essentially states that by the end of 2012, NRAs should mandate symmetric Termination Rates for FSPs and MSPs respectively and that any asymmetry should be objectively justified. The 2009 Termination Rate Recommendation recommends that Termination Rates should be set in accordance with a cost orientation obligation based on the costs incurred by an efficient operator and using a bottom-up LRIC model. The 2009 Termination Rate Recommendation also states that the evaluation of efficient costs should be based on current costs and on the most efficient technologies available in the timeframe considered by the model. The approach favoured by the European Commission in the 2009 Termination Rate Recommendation is referred to as a "pure LRIC" approach in which the relevant increment is the wholesale call termination service (i.e. which includes all those fixed and variable costs which would be avoided if the wholesale termination service were no longer supplied) and excludes a mark-up for those common costs which would not be avoided absent the wholesale termination service being supplied.

3.29 In the accompanying Staff Working Document detailing the impacts on industry, competition and consumers, the European Commission noted that a key objective for issuing the 2009 Termination Rate Recommendation is to "*consolidate the development of the internal market for telecoms services."* It further highlighted in section 3.4, page 15 that:

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[23] European Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC) (OJ L124/67 20.5.2009) (the '**2009 Termination Rate Recommendation**').

[24] Commission Staff Working Document accompanying the Commission Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU – Explanatory Note SEC(2009)599 (**'Explanatory Note'**).

[25] Commission Staff Working Document accompanying the Commission Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU – Implications for Industry, Competition and Consumers.SEC(2009)600 ('**Staff Working Document**').

[26] Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services, as amended by Directive 2009/140/EC (the '**Framework Directive**').

[27] European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011) (the '**Framework Regulations**').

"A common approach to call termination markets based on efficient costing principles should help foster a stable and effective regulatory environment for future investments and contribute to a more level playing field and enhanced competition between different operators and networks (e.g. fixed and mobile networks)."

It further underlined that *"It is important that all European consumers should have the opportunity to benefit from such enhanced competition and investment through lower prices and innovative services."*

3.30 The European Commission outlined in its Explanatory Note, accompanying the 2009 Termination Rate Recommendation, the practical experience that had been recorded by the ERG (now BEREC) back in February 2008. The Explanatory Note refers in section 3.2 to the inconsistencies observed by ERG in the regulation by different NRAs of both MTRs and FTRs.

3.31 The European Commission concluded in the Explanatory Note that:

"…as a consequence of the diverse approaches taken on regulating both mobile and fixed termination rates, these rates differ more between Member States and between operators than may be justified by different national circumstances or by exogenous cost factors."

3.32 The Explanatory Note then set out the common principles in relation to cost determination (which built on what was detailed in the 2009 Termination Rate Recommendation) and the application of the cost based remedies taking into account forward looking considerations.

3.33 ComReg has also had regard to more recent relevant European Commission comments/serious doubts decisions (some of which have been summarised in the paragraphs below) made pursuant to Article 7/Article 7a of the Framework Directive, with respect to NRAs' market analyses and the implementation of the price control remedies imposed by those NRAs.

3.34 ComReg has also taken account of any relevant common positions adopted by BEREC[28] and has had regard to some specific BEREC reports[29] regarding MTRs as described in section 3.2 of this Chapter and in Chapter 7.

[28] Body of European Regulators for Electronic Communications (**BEREC**) as established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 the Body of European Regulators for Electronic Communications (BEREC) and the Office.

[29] Please refer to the following link for BEREC published documents surrounding BEREC opinions where provided - http://erg.eu.int/documents/berec_docs/index_en.htm#board.

3.35 ComReg has therefore taken utmost account of all of the relevant analysis provided to date by the European Commission. ComReg has also undertaken an analysis of the specific Irish context (via the currently imposed and ongoing market analyses of Market 3 and Market 7 referred to earlier in this section) in assessing the most appropriate approach to regulating FTRs and MTRs in an Irish context.

3.5 The European Context: Other NRAs

3.36 Since the introduction of the 2009 Termination Rate Recommendation, a number of NRAs have issued decisions in relation to both FTRs and MTRs. The European Commission has initiated a number of second phase cases in respect of claimed inconsistencies between draft call termination rate decisions in Member States (including Poland, the Netherlands, Spain and France) and the 2009 Termination Rate Recommendation; some of which are discussed in this section.

3.37 It should also be noted that, despite appeals in the UK, Ofcom's[30] decision to set MTRs in line with a pure LRIC model as detailed in the 2009 Termination Rate Recommendation MTRs, was recently upheld by the Competition Appeal Tribunal (but is currently under appeal on a point of law to the Court of Appeal). The Competition Appeal Tribunal effectively upheld Ofcom's decision to adopt a LRIC model for setting the price control and as to the level of the price control based on LRIC[31]. This is also true in Belgium, where an appeal by certain operators against an NRA decision adopting a pure LRIC approach was rejected by the Brussels Court of Appeal (although the court upheld one procedural point of appeal)[32].

3.38 In cases where a NRA notifies a draft measure to the European Commission aimed at imposing, amending or withdrawing an SMP obligation, Article 7a of the Framework Directive provides that the European Commission may notify the NRA concerned and BEREC of its reasons for considering that the draft measure would create a barrier to the single market or its serious doubts as to the compatibility of the draft measure with Community law. In such cases, the European Commission opens a three-month "Phase II" investigation by issuing a "serious doubts letter" to the relevant NRA (pursuant to Article 7a) in which it informs the NRA of its reasons for considering that the draft measure would create a barrier to the single market or its serious doubts as to the compatibility of the draft measure with Community law.

3.39 All European Commission comments / serious doubts letters can be viewed on its website[33]; however, this section will provide a few examples of some of the published letters that are relevant to the Irish context.

[30] Independent regulator and competition authority for the UK communications industries.
[31] Please refer to the following link: http://catribunal.org.uk/167-7586/Judgment.html.
[32] Please refer to the following link: http://ibpt.be/ShowDoc.aspx?levelID=637&objectID=3778&lang=en.
[33] Please refer to the following websites: http://circa.europa.eu/Public/irc/infso/ecctf/library and https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp.

3.40 In relation to MTRs, ComReg refers in particular to a recent European Commission serious doubts letter in relation to the Spanish NRA, CMT[34]. CMT planned to extend the transitional period by one year (i.e. to 1 January 2014 rather than adhering to the 31 December 2012 timeframe specified in the 2009 Termination Rate Recommendation) before imposing MTRs based on a bottom-up pure LRIC methodology. It proposed two different glide paths (for specified operators) in order to prevent any disruptive impact of steeper reductions for the MNOs.

3.41 In response the European Commission President stated in a press release dated 5 March 2012 that: [35]

"Spanish consumers should not have to pay over the odds for mobile calls, especially when domestic finances are so tight. Industry has already had 3 years to adapt and a further delay of one year is unjustifiable."

3.42 The European Commission serious doubts letter[36] dated 5 March 2012 to CMT went on to state that:

"whilst the Commission takes note of the considerable reductions in termination income, which could affect all mobile operators, it would like to point out that CMT failed to set out in sufficient detail why the potentially negative impacts on mobile operators are…so disruptive that a steeper than proposed decrease of MTRs would be disproportionate and not outweighed by the evident and significant consumer benefits resulting from lower mobile termination rates."

3.43 In April 2012, CMT withdrew the original notification and re-notified a summary notification form which set out a glide path for the main MNOs until July 2013 at which point it would reach the pure LRIC rates. The subsequent European Commission comments letter[37] to CMT dated 30 April 2012 acknowledged that:

"…the Commission appreciates that regulators are confronted with the need to strike a balance between protecting consumer welfare and avoiding a disruptive impact on the operators. To that end, the Commission acknowledges that NRAs have a certain margin of discretion, which could allow them to delay to a degree the introduction of fully cost-oriented rates."

[34] Comisión del Mercado de las Telecomunicaciones.
[35] European Commission – Press Release IP/12/217: Digital Agenda: Commission insists Spain must not delay cheaper mobile rates; dated 5 March 2012.
[36] European Commission letter reference C(2012) 1541; SG-GREFFE (2012) D/4105; Commission decision concerning case ES/2012/1291: Voice call termination on individual mobile networks in Spain dated 5 March 2012.
[37] European Commission letter reference C(2012) 3056; SG-GREFFE (2012) D/7685; Commission decision concerning case ES/2012/1314: Voice call termination on individual mobile networks in Spain dated 30 April 2012.

The European Commission went on to say that *"…a delay – if very limited – in the implementation of cost oriented rates is acceptable, taking account of the need to minimise business and regulatory uncertainty in the Spanish markets flowing from an important decrease in MTRs."*

3.44 In relation to both FTRs and MTRs, ComReg refers to recent cases involving the Netherlands and France. As regards the Netherlands, a decision regarding FTRs and MTRs adopted by the Dutch NRA (OPTA[38]) on 7 July 2010 was partially annulled by the Dutch Trade and Industry Appeal Tribunal (**"the Tribunal"**) on 31 August 2011. The Tribunal ordered OPTA to adopt a new decision regarding both the price caps for FTRs and for direct interconnection rates on the basis of Bottom Up **("BU")**-LRIC plus[39] methodology. The Tribunal ordered OPTA to set the price cap for MTRs with specified rates and timelines on the basis of the BU-LRIC plus methodology and OPTA's own calculations. Therefore, subsequent to the Tribunal ruling, OPTA issued a national consultation in the final quarter of 2011 to take account of the orders from the Tribunal. This led to the European Commission serious doubts letter[40] on 13 February 2012 which stated that:

"The Commission has serious doubts as to the compatibility with EU law of OPTA's draft decision…While the Commission recognises that the NRAs have a margin of discretion to propose any alternative methodology to regulate termination rates, it underlines that any alternative methodology has to be duly justified, in order to show that it fully complies with the policy objectives and regulatory principles of the Regulatory Framework…The Commission further notes that if the termination rates are set by one NRA above the efficient level, the terminating operators in this Member State will be able, on the basis of the calling party pays principle, to benefit from this rate at the expense of the operators, and ultimately consumers, in the Member State from which the call originates. Hence, the considerable difference in absolute terms derived from price cap based on methodologies which would not ensure a cost-efficient level would be incurred at the expense of operators, and eventually consumers, in the Member States from where the fixed / mobile calls originate."

[38] Onafhankelijke Post en Telecommunicatie Autoriteit.
[39] Bottom up long run incremental costs plus an appropriate apportionment of joint and common costs.
[40] Commission decision concerning case NL/2012/1284: Call termination on individual public telephone networks provided at a fixed location in the Netherlands; and Commission decision concerning case NL/2012/1285: Call termination on individual mobile networks in the Netherlands; dated 13 February 2012.

3.45 As regards France, the French NRA (ARCEP[41]) notified a draft measure to the European Commission concerning the wholesale market for voice call termination on the individual mobile networks of three MSPs[42] on 13 April 2012. The notified measure allowed asymmetric MTRs for new entrants. The European Commission welcomed the move to implement pure LRIC based MTRs. However, it criticised, amongst other points, ARCEP's proposal to maintain asymmetric MTRs for new mobile entrants.

3.46 In relation to FTRs in France, the European Commission comments letter[43] relates to ARCEP's proposal to recover some of the common costs no longer recouped from the FTRs from origination services, including wholesale origination services. It states that:

3.47 *"The Commission notes that although PSTN based-costs are considered inefficient for the provision of call termination services, ARCEP may, however, allow their recoupment on other (regulated) wholesale markets, which is contrary to the Termination Rates Recommendation[44] according to which other (inefficiently incurred) costs should be recouped on non-regulated retail services. The Commission requests ARCEP to carefully consider its approach with respect to the reallocation of PSTN costs and align it with the principles of the Termination Rates Recommendation.*

3.48 In relation to FTRs in Belgium, the European Commission commented on a draft measure notified by the Belgian NRA (IBPT[45]) on the FTR price control remedy[46]. IBPT committed to developing a pure LRIC model but proposed to maintain the current level of Belgacom's FTRs until a BU-LRIC costing model is developed in 2013. The European Commission commented that:

[41] Autorité de Régulation des Communications Électroniques et des Postes.
[42] European Commission Case FR/2012/1304: Voice call termination on individual mobile networks of Free Mobile, Lycamobile and Oméa Télécom in France, letter from European Commission dated 13 April 2012.
[43] European Commission decision concerning Case FR2011/1234: access to the public telephone network at a fixed location for residential and non-residential customers in France; Case FR/2011/1235: call origination on the public telephone network provided at a fixed location in France and Case FR/2011/1236: call termination on individual public telephone networks provided at a fixed location in France; dated 11 July 2011.
[44] Explanatory Note page.17.
[45] Institut Belge des Service Postaux et des Telecommunications.
[46] European Commission letter concerning Case BE/2011/1279: Call termination on individual public telephone networks provided at a fixed location in Belgium; dated 30 January 2012.

"IBPT must make sure that any alternative methodology used to set the termination rates by 2013 should be in line with the Termination Rates Recommendation, i.e. that the outcome of the use of an alternative methodology should not exceed the average of the termination rates set by NRAs implementing the recommended cost methodology. Market players should not, in any case, face a lack of certainty concerning the levels of FTRs to be applied from 2013 onwards".

3.49 There have been numerous other comments / serious doubts expressed by the European Commission since the introduction of the 2009 Termination Rate Recommendation. ComReg notes the above examples, as well as others that are published on the European Commission website[47], in view of their relevance to the Irish context.

3.50 The examples referred to in this section relate to comments / serious doubts letters from the European Commission regarding timelines, the recommended implementation date as well as the recommended approach that NRAs should use which is described as a BU pure LRIC model or in its absence, an alternative that essentially provides BU pure LRIC Termination Rates. ComReg's proposed implementation approach is elaborated in Chapter 7 of this Consultation Document.

3.6 Overview of Chapter 3

3.51 This Chapter has set out the background to this Consultation Document and provides an overview of the price control obligations contained in the current ComReg SMP Decisions relating to Market 3 (FVCT) and Market 7 (MVCT), as well as in the Draft Decision relating to Market 7 (MVCT) contained in ComReg Document 12/46. This Chapter also provides an overview of the approach recommended by the European Commission in the 2009 Termination Rate Recommendation, as well as a summary of some recent European Commission comments/serious doubts letters regarding NRA decisions in relation to Termination Rates. In view of the competition problems identified by ComReg in the previous market analyses relating to the FVCT[48] and MVCT markets, as well as the competition problems identified in the current ComReg MVCT market analysis consultation (i.e. ComReg Document 12/46), the remainder of this Consultation Document will look at the most appropriate and proportionate remedies to mitigate the competition problems that have been identified in these market reviews.

[47] Please refer to the following websites: http://circa.europa.eu/Public/irc/infso/ecctf/library and https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp.

[48] As previously noted, ComReg is currently in the process of carrying out a review of the FVCT market. That market review will be published shortly.

3.52 Chapter 4 will look at the possible regulatory approaches and examine the extent to which they could mitigate any such competition problems.

Chapter 4

4 Possible regulatory approaches: principles and methodologies

4.1 Overview

4.1 In Chapter 3, ComReg set out the background to this Consultation Document, including an overview of Termination Rates in the Irish and European contexts.

4.2 In this Chapter, ComReg will set out the possible regulatory approaches that could be implemented as part of the price control remedy to mitigate the potential competition problems which may arise for both Market 3 and 7.

4.3 This Chapter is discussed under the following headings:

1. Potential competition problems identified in the MVCT and FVCT markets
2. Possible Regulatory Approaches to set Termination Rates in Ireland
3. Principle of Symmetry

4.2 Potential competition problems identified in the MVCT and FVCT markets

4.4 In determining what form of ex ante regulatory remedies are warranted in the FVCT and MVCT markets, ComReg has previously carried out assessments of potential competition problems that are likely to arise, assuming SMP regulation is absent and taking account of the structure and characteristics of the relevant markets.

4.5 Those assessments of potential competition problems that could arise in the relevant MVCT and FVCT markets are set out, in particular, in the following ComReg market analysis documents:

- ComReg Decision D9/04 "Market Analysis: Wholesale Voice Call Termination on Individual Mobile Networks – Final Decision[49]

[49] ComReg Decision D9/04, Document No 04/82 (29 July 2004). Further analysis of potential competition problems is set out in the following documents which were published prior to Decision D9/04: (i) ComReg Document No. 03/127a; published on 22 October 2003 – please refer, in particular to Chapter 4; (ii) ComReg Document No. 04/62a, published on 8 June 2004 – please refer, in

- ComReg Decision D05/08 – Voice Call Termination on Hutchison 3G Ireland's Mobile Network – Designation of SMP and SMP Obligations.[50]

- ComReg Document No 12/46 "Market Review: Voice Call Termination on Individual Mobile Networks" – see Chapter 7 of that document for ComReg's preliminary views on competition problems in the MVCT markets.

- ComReg Decision D06/07 "Market Analysis: Interconnection Market Review Fixed Wholesale Call Termination Services" – Final Decision[51]

4.6 There are a number of types of potential competition problem which may arise involving conduct by an SMP operator that is aimed at:

- exploiting customers or consumers by virtue of an SMP position

- leveraging its market power into adjacent vertically related or horizontally related markets by engaging in exclusionary practices;

4.7 In considering the types of competition problem which could arise, absent regulation, ComReg has also been guided by past experience in the FVCT and MVCT markets. Although it is not necessary per se to demonstrate actual abuse, examples of competition problems which have previously arisen, even in the presence of existing regulation, can help ground the analysis in actual experience. ComReg considers that, absent regulation, the pricing problems which could arise in the relevant markets include, for example, excessive and discriminatory pricing.

4.8 It should be noted that ComReg Document No 12/46 (referred to above) is currently under public consultation and the views expressed in it are ComReg's preliminary views in relation to the MVCT market. It is ComReg's intention to issue a public consultation in relation to the FVCT market early in Q3 2012.

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particular to Chapter 4; and (iii) ComReg Document No. 04/62b, published on 8 June 2004 – please refer, in particular, to Chapter 3.

[50] ComReg Decision D05/08, Document No 08/92 (1 December 2008). Further analysis of potential competition problems is set out in the following documents which were published prior to Decision D9/04: (i) ComReg Document No 07/01, published on 11 January 2001- please refer, in particular to Chapters 4 and 5; and (ii) ComReg Document No 08/06, published on 8 January 2008 – please refer, in particular, to Chapter 4.

[51] ComReg Decision D06/07, Document No 07/109 (21 December 2007). Further analysis of potential competition problems is set out in the following documents which were published prior to Decision D06/07: (i) ComReg Document No. 07/03, published on 19 January 2007 – please refer, in particular, to Chapters 4 and 6; and (ii) ComReg Document No. 07/83, published on 17 October 2007 – please refer, in particular, to Chapters 4 and 6.

4.9 In previous ComReg documents (consultations and final decisions) certain Service Providers (i.e. both FSPs and MSPs) have been found to have (or ComReg has formed the preliminary view that such Service Providers are likely to have) SMP in the relevant MVCT or FVCT markets within which they operate. Where a Service Provider has been found to have SMP (or where ComReg has formed the preliminary view that such SMP exists), ComReg has assessed the potential competition problems that could arise, absent the imposition of the price control remedy. This Consultation Document should therefore be read in conjunction with the competition problems identified in the documents referred to in paragraph 4.5 above.

4.3 Possible Regulatory Approaches to set Termination Rates in Ireland

4.10 ComReg engaged the consultancy firm, Analysys Mason Limited ('Analysys Mason'), to assist it in assessing the most appropriate form of price control remedy to impose on Service Providers designated with SMP in the FVCT and MVCT markets. Analysys Mason prepared a report (the '**Analysys Mason Report**') for ComReg, a non-confidential version of which is published at ComReg Document No 12/67a. In section 3 of the Analysys Mason Report, the possible regulatory approaches to set a price control are discussed in detail.

4.11 The Analysys Mason Report identifies five potential regulatory approaches for setting price controls[52] in the FVCT and MVCT markets in Ireland. In this Chapter, ComReg will briefly summarise each of the five approaches. In Chapter 5, we will briefly outline the assessment criteria that were used by Analysys Mason to assess each of these approaches and tie these assessment criteria to ComReg's statutory objectives. In Chapter 6, ComReg assesses each of the regulatory approaches against each of the assessment criteria identified in the Analysys Mason Report.

4.12 The five potential regulatory approaches identified in the Analysys Mason Report for setting price controls in the FVCT and MVCT markets in Ireland are:

- No price control
- 'Fair and reasonable' SMP remedy
- Bill & Keep
- Receiving Party Pays

[52] Analysys Mason Report, Section 3.

- Cost Orientation

4.13 Each of these potential approaches is now briefly discussed below. As previously highlighted, ComReg returns to the evaluation of each of these potential approaches in light of ComReg's statutory objectives and other considerations in Chapters 5 and 6 below.

4.3.1 No price control

4.14 Under this approach, there would be no price control imposed on Service Providers designated with SMP in the MVCT or FVCT markets. Both MSPs and FSPs with SMP would effectively decide what MTRs and FTRs to charge. As highlighted in the Analysys Mason Report, this approach would facilitate market forces being exploited by all Service Providers to their own interest. This approach could potentially be to the detriment of consumers (for example if Termination Rates above an efficient level of cost were set by some or all Service Providers).

4.15 As noted in the underlying market analyses, Service Providers designated with SMP in these markets have been identified as having the ability and incentives to charge prices which exceed an efficient level of cost and/or engage in outright or constructive refusals to supply access. This implies that an option of "no price control" would not be appropriate in light of the competition problems which have been identified. Furthermore to date, ComReg has had to intervene on a number of occasions in the relevant MVCT and FVCT markets, resulting in significant reductions in FTRs and MTRs. This would indicate that Service Providers, left to their own devices, will not negotiate to ensure Termination Rates are set at an appropriate level that is in the interests of promoting competition and ultimately of consumers.

4.16 As highlighted in the Analysys Mason Report[53], this approach would not be consistent with the 2009 Termination Rate Recommendation. However, this approach has been considered in order to provide a 'baseline' comparison for other regulatory approaches as well as to facilitate a comprehensive evaluation of potential approaches.

[53] Analysys Mason Report – Section 3.1.1

4.3.2 'Fair and reasonable' SMP remedy

4.17 A 'fair and reasonable' approach essentially involves the parties involved finding a resolution, within the confines of specific, defined, parameters that is perceived to be 'fair and reasonable' to the parties involved. The Analysys Mason Report[54] characterises this approach as 'light – touch' regulation in that it reduces the direct involvement of the NRA in setting Termination Rates until a dispute is raised. Once a dispute is raised, the extent of the NRA's involvement would vary in accordance with the scale and potential impacts of a dispute.

4.18 The Analysys Mason Report notes that this approach has been proposed in other jurisdictions, for example, in the UK where the terms 'fair and reasonable" have been defined in the UK Communications Act 2003. Under section 74(1) of the UK Communications Act 2003, the NRA (i.e. Ofcom) may impose specific types of access-related conditions to ensure that access is provided on terms which are fair and reasonable. An assessment of what constitute "fair and reasonable" terms was carried out by the UK Competition Appeal Tribunal in a 2008 decision[55].

4.19 Ofcom has adopted this approach for smaller MSPs[56]. Although Ofcom has published guidance on its treatment of disputes in relation to MTRs which in itself would manage the expectations of the parties involved in a dispute, Ofcom also has a model against which it could assess MTRs in the event of a dispute.

4.20 It should be noted that Regulation 12(3) of the Access Regulations allows ComReg to attach to obligations imposed under Regulations 12(1) and 12(2) conditions covering fairness, reasonableness and timeliness. ComReg may specify such conditions when imposing SMP obligations under Regulation 12 or may consider the application of such conditions when exercising its dispute resolution powers under Regulation 31 of the Framework Regulations. For an example of the use by ComReg of such dispute resolution powers, see the final determination in the H3GI dispute detailed in ComReg Document No 09/98[57].

[54] Analysys Mason Report – Section 3.1.2.
[55] T-Mobile (UK) Ltd v Office of Communications [2008] CAT 12.
[56] Ofcom, *Wholesale Mobile Voice Call Termination: Statement*, 15 March 2011.
[57] ComReg Document No 09/98: Final determination in the dispute between Hutchison 3G (Ireland) Limited and Tesco Mobile (Ireland) Limited regarding an alleged failure by Tesco Mobile to negotiate interconnection by virtue of an alleged failure to negotiate Mobile Termination Rates for the provision of mobile voice call termination services, published on 18 December 2009.

4.21 However, it should be noted that use of the "fair and reasonable" approach would constitute a deviation from the 2009 Termination Rate Recommendation. The "fair and reasonable" approach is discussed in this Consultation Document in order to provide a comprehensive evaluation of potential approaches.

4.3.3 Bill and keep

4.22 The Analysys Mason Report[58] describes this approach as one where the call originating Service Provider bills the calling party and does not pay anything to the terminating Service Provider. In essence it reduces the Termination Rate to zero in that Service Providers do not have to pay anything to each other for fixed or mobile termination.

4.23 The 2009 Termination Rate Recommendation does not necessarily preclude bill and keep as a potential approach. Its Explanatory Note in section 6.1.2 explains that this approach has potential merits but it also notes potential drawbacks both of which would have to be "*carefully considered".* This section of the Explanatory Note also states that where bill and keep is being used, it is generally as a result of "*voluntary agreement between the interested parties*". The Analysys Mason Report points to the example of France where 'bill and keep' was used by the MSPs prior to 2005.

4.24 However, the Analysys Mason Report also notes that "bill and keep" could potentially lead to an increase in the volume of unsolicited phone calls or unsolicited bulk messages (commonly referred to as spam) as calling parties would no longer have to pay Termination Rates on these calls. Furthermore, the Analysys Mason Report states that there may also be other consequences in relation to non-geographic and premium rate payments which rely on the existence of an interconnect payment system for setting charges between originating and terminating Service Providers. However, "bill and keep" also has what could be perceived as a benefit as it removes the need for Service Providers to bill for interconnection.

4.25 This approach is discussed in greater detail in section 3.1.3 of the Analysys Mason Report.

[58] Analysys Mason Report – Section 3.1.3.

4.3.4 Receiving party pays

4.26 The Analysys Mason Report[59] describes this approach as a retail pricing approach whereby the call terminating Service Provider bills the receiving party while the originating Service Provider bills the calling party. According to the Analysys Mason Report, this approach would allow retail prices to directly reflect the benefits of receiving the call and, as highlighted in section 6.1.4 of the Explanatory Note to the 2009 Termination Rate Recommendation, such an approach would thereby recognise the existence of a positive call externality[60] (i.e. the benefit you gain when someone calls you) to the receiving party.

4.27 The 2009 Termination Rate Recommendation does not necessarily preclude 'receiving party pays' as a potential approach. Its Explanatory Note in section 6.1.4 explains how it has potential merits but it also notes potential drawbacks. In particular, the Explanatory Note recognises that it is difficult to envisage such a settlement system emerging in the current environment in view of the established calling party pays system and the historical evolution of Termination Rates in the EU.

4.3.5 Cost orientation

4.28 The 2009 Termination Rate Recommendation notes that given the potential competition problems identified in both the fixed and mobile termination markets, cost orientation is the most appropriate *"intervention"* as elaborated in point 7 of the 2009 Termination Rate Recommendation:

"in light of the ability and incentives of terminating operators to raise prices substantially above cost, cost orientation is considered the most appropriate intervention to address this concern over the medium term."

[59] Analysys Mason Report – Section 3.1.4.

[60] Footnote 36, page 17 of the Explanatory Note to the Recommendation states that*"…a call externality which refers to the fact that it is not only the calling party but also the called party which obtains benefit from receiving a call. The externality arises in this instance because under the calling party pays principle (CPP) such benefits accruing to the called party are not taken into account, but only the calling party is charged for the call."*

4.29 Recital 7 of the 2009 Termination Rate Recommendation makes reference to Recital 20 of Directive 2002/19/EC which notes that the "*method of cost recovery should be appropriate to the particular circumstances"*. The Analysys Mason Report[61] notes that the 2009 Termination Rate Recommendation makes reference to two possible methodologies to implement a cost orientation approach; namely, cost modelling and benchmarking. ComReg is also of the view that these are the most favourable methodologies to implement a cost orientation approach and has used both of these in implementing a price control remedy imposed via a cost orientation obligation in the past in other markets.

4.30 Cost modelling and benchmarking are both discussed as potential means of implementing a cost orientation methodology in section 4.3.6 and section 4.3.7 of Chapter 4 below.

4.3.6 Cost orientation: Cost modelling

4.31 The Analysys Mason Report makes reference to three questions, which are in ComReg's view key to building a cost model:

- How should assets be valued?
- Is the model bottom-up ('BU') or top-down ('TD')?
- Which accounting methodology allocation and increment should be used?

4.32 These three questions can be summarised in the following table in Figure 4.1.

Figure 4.1[62]: Possible methodologies for cost modelling

	Historic costs		Current costs or MEA	
	Bottom-up	Top-down	Bottom-up	Top-down
FAC[63]	n/a[64]	Historic cost accounting (HCA)	n/a	Current cost accounting (CCA)
Forward looking	n/a	n/a	BU LRAIC+ / BU LRAIC / BU LRIC+ / BU pure LRIC	TD LRAIC TD LRAIC+

Source: Analysys Mason, 2012

[61] Analysys Mason Report – Section 3.1.4.
[62] This table is included as Figure 3.1 in the Analysys Mason Report.
[63] FAC means fully allocated cost.
[64] A technical bottom-up HCA model is sometimes built alongside the regulatory bottom-up forward-looking model in order to allow reconciliation to historic accounting costs. This might be used to cross-check the results of the bottom-up model vs. historical costs but is not used to set regulated prices as it would conflict with the forward looking, efficient, and economic costs principles.

4.33 Historic Cost Accounting ('**HCA**') is based on the actual reported financial results of an operator for a given period which has expired. These results are directly reconcilable with the statutory financial statements of the operator. HCA does not generally reflect the current market valuation of assets.

4.34 If the Current Cost Accounting ('**CCA**') methodology is preferred, then adjustments need to be made from historic costs to current costs. Under the CCA methodology, the costs of the operator are calculated using the operator's accounts, with the assets being revalued at their current cost. However, the change from the gross book value of the assets in the operator's balance sheet implies a change in depreciation charges in the operator's income statement. For example, if the price of an asset has increased since the time it was acquired, the CCA depreciation charge related to this asset will be greater than the HCA depreciation charge.

4.35 As noted in the Analysys Mason Report[65], the straight line depreciation calculation is modified to take into account the changes in replacement cost for an asset. Therefore, as the asset price decreases (for example, due to technological evolution), CCA depreciation is front-loaded because the replacement cost of the asset is declining (and its historically higher investment cost must be recovered earlier as the current price declines).

4.36 In a top-down **("TD"**) model, there may be efficiency adjustments and potential MEA cost adjustments. The Analysys Mason Report notes that TD models can be useful for an operator to determine its own cost base but TD models do not necessarily represent the best modelling approach to determine the costs of an efficient operator in a regulatory context. The Explanatory Note to the 2009 Termination Rate Recommendation explains on page 13 that *"TD models are said to avoid disincentives to invest since incurred costs are usually allowed to be recovered, even if it does not necessarily promote efficiency."*

[65] Analysys Mason Report – Section 3.2.1.

4.37 The Analysys Mason Report surmises that BU LRAIC or LRIC (without, or with mark-ups often indicated as a "+")[66] models provide the most commonly used approach to determine the costs of an efficient operator. A BU model is an analytical model that calculates the cost for an efficient operator to build a network. The network is built from the bottom up starting with the traffic carried by the operator modelled. Only the assets necessary to handle this traffic, in a forward looking environment, are taken into account (so inefficiencies are excluded). The Analysys Mason Report notes that the level of efficiency can be "selected" by the choice of technologies modelled and assets used and various other parameters. The Explanatory Note to the 2009 Termination Rate Recommendation states that "*BU models use demand data as a starting point and determine an efficient network capable of serving that demand by using economic, engineering and accounting principles."* The Explanatory Note also notes that a BU model does not guarantee that all the costs that were actually incurred are recovered because it focuses on the theoretical concept of developing a network of an "efficient" operator using the relevant equipment rather than taking account of the equipment actually provided or the associated legacy costs.

[66] The key differences in the four variants of long run (average) incremental costing have been summarised in the following table:

Methodology	Key points noted in Analysys Mason Report
Long run average incremental cost ('LRAIC')	Considers a large increment (for example all traffic services provided by the operator) and allocates the incremental costs to these services using average traffic routeing factors. Each service, including voice termination, receives a share of intra-traffic network common costs
LRAIC+	In addition to the LRAIC, it includes one or more common cost mark-ups to network costs, for example overhead costs.
Pure long run incremental cost ('pure LRIC')	A small increment model (where each individual service is considered as an increment). The 2009 Termination Rate Recommendation sets out that an NRA should calculate the incremental cost of only wholesale voice termination as the traffic-sensitive costs of a full network (providing all services) minus the traffic-sensitive costs of a network providing all services except wholesale termination.
LRIC +	In addition to LRIC, it includes one or more common cost mark-ups

4.38 In section 4 of ComReg Document No. 08/56[67], ComReg outlined that a BU model should calculate the costs of an efficient operator because the level and type of equipment and their characteristics are matched to demand. In contrast, the TD approach may include extra unused equipment, or equipment of a technologically out-dated type, creating inefficiencies. Unused equipment may exist because the demand has reduced, or anticipated growth in demand has not materialised.

4.39 ComReg has previously implemented price control remedies by means of cost modelling in which such questions have been considered and concluded on for other regulated wholesale markets. For example, ComReg has a BU LRAIC + model for Local Loop Unbundling (**"LLU"**) and for leased lines, see ComReg Decision D01/10[68] and ComReg Decision D02/12[69].

4.3.7 Cost orientation: Benchmarking

4.40 The 2009 Termination Rate Recommendation specifically envisages the use of benchmarking in recital 22 where it states that:

"… if an NRA is able to demonstrate that a methodology (e.g. benchmarking) other than a bottom – up LRIC model based on current costs results in outcomes consistent with this Recommendation and generates efficient outcomes consistent with those in a competitive market, it could consider setting interim prices based on an alternative approach until 1 July 2014."

4.41 Therefore, it is ComReg's preliminary view, as recommended in the Analysys Mason Report, that it is appropriate, in the absence of a BU model, to base the benchmark on either the prices decided by other NRAs or the costs resulting from the modelling analyses performed by other NRAs. This preliminary view will be further explored by ComReg in Chapter 7 of this Consultation Document.

[67] ComReg Document No 08/56: Proposals for Local Loop Unbundling Pricing Methodologies; published on 10 July 2008.
[68] ComReg Document No 10/10; Decision No D01/10: Response to Consultation Document Numbers 09/39 and 09/62: Local Loop Unbundling ("LLU") and Sub Loop Unbundling ("SLU") Maximum Monthly Rental Charges; published on 9 February 2010.
[69] ComReg Document No 12/03; Decision No D02/12: Response to Consultation Document Numbers and 10/70 and 11/32: A final Decision further specifying the price control obligations in Market for wholesale terminating segments of leased lines; published on 2 February 2012.

4.42 Section 3.2.2 of the Analysys Mason Report discusses both of these approaches. ComReg will discuss its proposed implementation in Chapter 7 of this Consultation Document. To date, ComReg has extensive experience of benchmarks for its recent MTRs. This is discussed in more detail in section 7.2 of Chapter 7 below. In relation to the current FTRs, as previously highlighted in Chapter 3 a benchmark approach has not been used by ComReg to date.

4.43 Please see the table below which sets out the cost standard and the implementation methodology currently used by NRAs in other EU Member States for the purposes of setting both MTRs and FTRs.

Figure 4.2 MTRs as of 1 January 2012 and methodologies applied to determine MTRs

	Member State	1 January 2012	Cost standard	Cost Standard	Methodology
AT	Austria	€0.020	LRAIC	CC[71]	TD[72]
BE	Belgium	€0.028	LRAIC+	CC	BU
BG	Bulgaria	€0.064	Benchmarking		
CY	Cyprus	€0.018	LRIC	CC	TD
CZ	Czech Republic	€0.043	FDC[73]	HC[74]	TD
DK	Denmark	€0.035	LRAIC	CC	R[75]
EE	Estonia	€0.070	Benchmarking		
FI	Finland	€0.038	FDC	HC	TD
FR	France	€0.015	Pure LRIC	CC	BU
DE	Germany	€0.034	LRIC	CC	TD
EL	Greece	€0.050	LRIC	HC	BU
HU	Hungary	€0.031	LRIC	CC	BU
IE	Ireland	€0.044	Benchmarking		
IT	Italy	€0.054	LRIC	HC	TD
LV	Latvia	€0.037	FDC	HC	TD
LT	Lithuania	€0.018	LRIC+	CC	BU
LU	Luxembourg	€0.085	Benchmarking		
MT	Malta	€0.042	Benchmarking		
NL	Netherlands	€0.027	LRIC+	CC	BU
PL	Poland	€0.037	Benchmarking		
PT	Portugal	€0.035	Benchmarking		
RO	Romania	€0.051	LRIC	CC	BU
SI	Slovenia	€0.039	LRIC+	CC	BU
SK	Slovak Republic	€0.055	Benchmarking		
ES	Spain	€0.041	FDC	HC / CC	TD
SE	Sweden	€0.023	LRIC	CC	R
UK	United Kingdom	€0.035	LRIC	CC	R

Source: Methodologies based on Cullen International data and rates based on BEREC termination rates snapshot report

[70] BEREC termination snapshot report: January 2012 - http://erg.eu.int/documents/berec_docs/index_en.htm
[71] CC means current cost.
[72] TD means top down.
[73] FDC means fully distributed costs.
[74] HC means historical cost.
[75] R means reconciliation between top-down and bottom-up model.

Figure 4.3 FTRs (primary interconnection) as of 1 January 2012 and methodologies applied to determine FTRs

	Member State	1 January 2012	Cost standard	Cost Standard	Methodology
AT	Austria	€0.007	LRAIC	CC	R
BE	Belgium	€0.005	FDC	CC	TD
BG	Bulgaria	€0.005	FDC	CC	TD
CY	Cyprus	€0.000	LRIC	CC	TD
CZ	Czech Republic	€0.009	LRIC	CC	BU
DK	Denmark	€0.002	LRAIC	CC	R
EE	Estonia	€0.006	FDC	HC /CC	TD
FI	Finland	€0.024	FDC	CC	
FR	France	€0.003	Pure LRIC	CC	BU
DE	Germany	€0.004	Benchmarking		
EL	Greece	€0.003	LRAIC	CC	TD
HU	Hungary	€0.003	LRIC+	CC	TD
IE	Ireland	€0.004	LRIC	CC	TD
IT	Italy	€0.003	FAC[77]	CC	TD
LV	Latvia	€0.010	FDC	HC /CC	TD
LT	Lithuania	€0.005	LRIC	CC	R
LU	Luxembourg	€0.006	LRIC	CC	TD
MT	Malta	€0.007	FDC	CC	BU
NL	Netherlands	€0.007	LRIC+	CC	BU
PL	Poland	€0.005	FDC	CC	TD
PT	Portugal	€0.005	FDC	CC	TD
RO	Romania	€0.008	LRIC	CC	R
SI	Slovenia	€0.004	LRIC	CC	TD
SK	Slovak Republic	€0.004	LRAIC	CC	BU
ES	Spain	€0.006	FDC	HC /CC	TD
SE	Sweden	€0.003	LRIC	CC	R
UK	United Kingdom	€0.002	FDC	CC	TD

Source: Methodologies based on Cullen International data and rates based on BEREC termination rates snapshot report

4.44 These options are further considered and assessed (against the assessment criteria set out in Chapter 5 of this Consultation Document) in Chapter 6 of this Consultation Document.

[76] BEREC termination snapshot report: January 2012, available at http://erg.eu.int/documents/berec_docs/index_en.htm

[77] FAC means fully allocated costs.

Q. 1 Do you agree with the five regulatory approaches considered or are there any other approaches that respondents consider should be assessed in the context of this Consultation Document? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

4.4 Principle of symmetry

4.45 The 2009 Termination Rate Recommendation clearly makes reference to symmetry of Termination Rates where it states in point 1 that:

"…NRAs should set termination rates based on the costs incurred by an efficient operator. This implies that they would also be symmetric…"

4.46 This is further reinforced in the 2009 Termination Rate Recommendation in point 11 where it outlines that:

"…NRAs should ensure that termination rates are implemented at a cost-efficient, symmetric level by 31 December 2012…"

4.47 The 2009 Termination Rate Recommendation does allow for some level of flexibility on the 31 December 2012 deadline but only in very specific circumstances as highlighted in point 10 which stipulates that:

"In case it can be demonstrated that a new mobile entrant operating below the minimum efficient scale incurs higher per-unit incremental costs than the modelled operator, after having determined that there are impediments on the retail market to market entry and expansion, the NRAs may allow these higher costs to be recouped during a transitional period via regulated termination rates. Any such period should not exceed four years after market entry."

4.48 Section 4.2 of the Explanatory Note to the 2009 Termination Rate Recommendation notes that the key argument in support of temporary asymmetric rates in favour of late entrants is that it forms part of an "*overall entry assistance policy*". However, section 3.1.3 of the Explanatory Note points out that the European Commission has emphasised that the fact that an operator entered the market later and that it therefore has a smaller market share *"can only justify higher termination rates for a limited transitory period"*. Section 4.2 also highlights the arguments relating to *"economies of scale…..(and) traffic imbalances"* specifying the higher unit costs initially incurred on entry as well as the expectation that a new entrant would initially have lower traffic volumes.

4.49 However, the Explanatory Note emphasises that the key rationale for symmetric rates over asymmetric remains that asymmetric rates could foster inefficient entry which would ultimately negatively impact on consumers.

4.50 In Ireland all the currently designated SMP MSPs have been in the market for four years or longer. Such a transitional period referred to above would therefore not appear to apply to such MSPs.

4.51 In ComReg Document No12/46, ComReg is also proposing to designate two Mobile Virtual Network Operators ('**MVNOs**') with SMP for the first time, namely Tesco Mobile Ireland Limited ('**TMI**') and Lycamobile Ireland Limited ('**Lycamobile**'). In general, it is difficult to envisage a scenario as to why, absent any objective exogenous cost differences (which ComReg is open to considering), an MVNO could be justified in levying an MTR that differs from that of its host network, particularly as the MVNO has obtained the scale economy advantages accruing to the host network[78]. ComReg further notes that TMI has been in the retail market for over four years, with Lycamobile just having entered the retail market.

4.52 FSPs currently designated with SMP have also been in the market for longer than four years. The transitional period referred to above would therefore not appear to apply to such FSPs.

4.53 Overall, it is consequently difficult to envisage a scenario to justify implementing asymmetric Termination Rates for those MSPs and FSPs. Section 3.3 of the Analysys Mason Report highlights that an MSP would have to prove that the very specific circumstances set out in point 10 of the 2009 Termination Rate Recommendation (above) applied to it in order to be allowed to charge a higher MTR.

4.54 Please refer also to section 6.8 of Chapter 6 below in relation to the assessment of symmetry versus asymmetry, as well as Section 6 of the Analysys Mason Report.

[78] Refer to footnote 42 of the Explanatory Note which notes that "*In the case of mobile virtual network operators, the opportunity to lease relevant network inputs from the mobile network operators may reduce the impact of economies of scale implying that low unit costs could potentially be achieved at low levels of output."*

Chapter 5

5 Assessment criteria

5.1 Overview:

5.1 In Chapter 4, ComReg set out possible approaches that could be used to set the charged by Service Providers for FVCT and MVCT in Ireland. In this Chapter, we will set out the appropriate assessment criteria that have used been by ComReg (and in the Analysys Mason Report) for the purposes of this consultation in assessing the regulatory approaches set out in Chapter 4. The assessment of the possible regulatory approaches will be set out in Chapter 6 of this Consultation Document.

5.2 The Analysys Mason Report identifies a set of criteria (the '**Assessment Criteria**'), set out on the right hand side of Figure 5.1 below, which are the key criteria ComReg uses in this Consultation Document to assess the five regulatory approaches and to determine the most appropriate approach in the context of FTRs and MTRs in Ireland. The Assessment Criteria have also been mapped to ComReg's statutory objectives set out in the Communications Regulation Acts 2002 to 2011.

Figure 5.1: Assessment Grid for Regulatory Approaches

<table>
<tr><th colspan="2">ComReg's statutory criteria</th><th colspan="2">Criteria applied by Analysys Mason</th></tr>
<tr><td rowspan="6">Promotion of competition</td><td rowspan="3">Ensuring no distortion or restriction of competition</td><td rowspan="3">Competition</td><td>Fixed–fixed</td></tr>
<tr><td>Mobile–mobile</td></tr>
<tr><td>Fixed–mobile</td></tr>
<tr><td rowspan="3">Encouraging efficient investment and innovation</td><td rowspan="3">Efficiency</td><td>Allocative</td></tr>
<tr><td>Productive</td></tr>
<tr><td>Dynamic</td></tr>
<tr><td colspan="2">Contributing to development of an internal market</td><td colspan="2">Taking utmost account of the EC Recommendation</td></tr>
<tr><td colspan="2">Promoting interests of end users</td><td colspan="2">Equity</td></tr>
<tr><td colspan="2" rowspan="2">Other issues</td><td colspan="2">Ease of decision and implementation of the approach</td></tr>
<tr><td colspan="2">Transparency and regulatory certainty</td></tr>
</table>

Source: Analysys Mason

5.3 The rest of this Chapter will briefly summarise the main Assessment Criteria used in the Analysys Mason Report, making reference to Section 4 of the Analysys Mason Report as well as ComReg's statutory objectives. The assessment of the regulatory approaches is carried out on the basis of all of the Assessment Criteria without assigning specific weights to individual criteria. This is illustrated further in Figure 5.2 below.

Figure 5.2: Assessment grid for regulatory approaches

Criteria		No price control	Fair & reasonable	Bill and keep	RRP	Cost orientation	
						LRAIC+	**Pure LRIC**
Need to take utmost account of the EC Recommendation							
Efficiency	Allocative						
	Productive						
	Dynamic						
Competition	F-F						
	M-M						
	F-M						
Equity							
Ease of decision and implementation of the approach							
Transparency / regulatory certainty							

Source: Analysys Mason, 2012

5.4 This Chapter will be discussed under the following headings:

1. Efficiency Criteria
2. Impacts on Competition
3. Equity Criteria
4. Need to take utmost account of the EC Recommendation / Contribution to Internal Market
5. Ease of decision and implementation of the approach
6. Transparency and regulatory certainty

5.2 Efficiency Criteria

5.5 Section 4.2 of the Analysys Mason Report notes that traditional economic thinking is that cost-oriented Termination Rates maximise efficiency. However, it notes that departures from traditional understandings of cost orientation may be justified in the context of network externalities[79] (i.e. the benefit of greater penetration) and call externalities (the benefit of receiving a call).

5.6 There are three types of efficiency that are important for maximising economic welfare:

- Allocative efficiency
- Productive efficiency
- Dynamic efficiency.

5.7 Each one of the above is briefly discussed below and further elaborated on in Section 4.2 of the Analysys Mason Report.

5.2.1 Allocative Efficiency

5.8 The 2009 Termination Rate Recommendation notes that allocative efficiency (i.e. the promotion of efficient production and consumption) is one of the goals in moving to a pure incremental approach, where it states in paragraph 13 that:

> *"An incremental cost approach which allocates only efficiently incurred costs that would not be sustained if the service included in the increment was no longer produced (i.e. avoidable costs) promotes efficient production and consumption)."*

5.9 Pursuing allocative efficiency is a fundamental aim of the further regulation of MTRs and FTRs in Ireland, and is achieved by an allocatively efficient set of prices that recover the Service Providers' costs in the least distortionary way to competition and end-users. In a multi-service environment, as in the case of network industries such as telecoms which have intrinsically large network and business common costs, there are different mechanisms available for recouping costs.

[79] Page 27 of the Explanatory Note to the 2009 Termination Rate Recommendation notes that it is argued that in the presence of network externalities *"…the addition of a marginal subscriber to a mobile network may also be of value to other subscribers…The externality arises because the benefit to other subscribers is not taken into account when the decision of whether or not to join the network is made."* It provides the example that other fixed and mobile subscribers derive a benefit from being able to contact and be contacted by this additional subscriber.

5.10 Ensuring that consumers who are willing to purchase the service at the effective cost of producing it can avail of the service in question implies that common costs be recovered more from services with lower price elasticity and less from services with higher elasticity. This may ultimately enhance welfare through expanding availability of the service to more price-sensitive customers, albeit at the expense of some consumer surplus extracted from less price sensitive customers. However, as noted in Section 4.2 of the Analysys Mason Report, difficulties in obtaining precise elasticity estimates (neither ComReg nor the Service Providers have robust information on price elasticities) render any price discrimination strategies imperfect. Furthermore, possible equity concerns could arise if price discrimination resulted in significantly higher prices for certain categories of consumers (such as in the case of off-net wholesale termination charges). There is however evidence of retail price discrimination strategies being employed by Service Providers with a wide array of tariff options available to different customer segments. Such retail price discrimination, whilst imperfect, is still relatively sophisticated in segmenting different consumer groups with differing willingness to pay thereby providing operators with opportunities for common cost recovery.

5.11 Allocative efficiency is affected by three important factors in telecoms services:

A. Network externalities (the benefit gained by (subsidising) more subscribers to the network);

B. Call externalities (the benefit you gain when someone calls you); and

C. Price differentiation (the ability of operators to (imperfectly) target a more efficient recovery of common costs on users or groups of users with differentiated prices).

5.12 The Analysys Mason Report discusses in detail the economic arguments around allocative efficiency, including issues where a single product/service exists in the market; where more than one product/service exists in the market; allocation of costs common to retail services; allocation of costs common to retail and wholesale services; and allocation of costs common to wholesale services. Please refer to Section 4.2 of the Analysys Mason Report for further details.

A. Network externalities

5.13 As described in the Analysys Mason Report, network externalities occur when, as the number of users on a network increases, the value of that network to other users increases. However, an argument based on network externalities is only likely to be valid if the market is unsaturated and if some possible subscribers need a subsidy to join the network, or in the situation where the

costs of maintaining a subscription to a network are heavily subsidised and a large proportion of the user base would disconnect without this ongoing subsidy. In addition, the argument does not take account of the cost to society of higher Termination Rates which can result in substantial financial payments and competitive distortions for operators (and consumers) with significant (off-net) traffic outflows to other networks. Subsidising services to one group of consumers via two-way interconnection payments ultimately comes at the expense of another group of consumers, i.e. those users making off-net calls to the 'subsidised' networks. Financial and competitive distortions generated by high inter-operator wholesale payments further implies that consumers as a group will ultimately pay more in terms of reduced competition, innovation and higher prices. It is important to recognise these distortions that a one-dimensional pricing policy focused solely on perceived network externalities can pose to the proper functioning of the competitive process.

5.14 Most mobile networks in developed countries are now highly penetrated and any possible arguments regarding the need for ongoing subsidies to stimulate further take-up would not seem justified or necessary at this stage of market development. Furthermore, as noted in the Analysys Mason Report, in light of inter alia the low network cost of keeping a user on the network, cheaper SIM-only packages and the development of a second-hand market for handsets, as well as the positive network effects that marginal users potentially generate for other (higher volume) network users, it would not appear necessary or justified to provide additional financial subsidies to maintain marginal users on mobile networks on a forward-looking basis.

5.15 As noted in Section 4.2.1 of the Analysys Mason Report, with regard to the network externality for fixed networks, evidence points to these networks being largely saturated, with those countries that have a developed telecoms infrastructure demonstrating high penetration levels and slowing (or in some cases falling) subscription numbers. Furthermore, in many countries the marginal fixed users are protected by universal service legislation which provides “social offers” entailing lower prices for customers on lower incomes. Such marginal users are likely to continue to have access to cheap voice services regardless of any impact that a change in mobile or fixed Termination Rates might have on general telephony service prices. These points are also discussed in more detail in Section 4.2.1 of the Analysys Mason Report.

B. Call Externalities

5.16 Two-way access such as wholesale termination refers to access arrangements that imply a degree of reciprocity or interdependency between operators whereby each provides access services to the other. This is distinct from one-way access which generally refers to a situation where access to important inputs is provided one-way by a single operator (i.e. infrastructure owner) to a number of access seekers and cost recovery for the provision of such access services is thus also one-way, i.e. from the access seekers in question. Two-sided markets are a related concept to two-way access and refer to markets where platforms provide services to two or more sets of customers with interdependent demand, i.e. callers and receivers in telephony. What distinguishes a 'two-sided' from a 'one-sided' market is that consumers on either side derive value from the presence of the other group (in other words, their demands are linked by "cross-group externalities", according to which demand on one side depends on participation or usage on the other side). A critical insight in the case of two-sided markets is that overall output depends not only on the overall price charged to the two sides, but also on the relative prices between the two.[80]

5.17 Both parties involved in a phone call (i.e. the calling party and the receiving party) can derive some utility from the interaction, and if this two-sided aspect to calling relationships is not taken into account in any pricing decision then externalities can arise, and an inefficiently low level of calls may result.[81] This is particularly true where a 'calling party pays' principle is in operation since under this type of regime the calling party pays for the entire cost of the call and thus the welfare of the receiving party is not typically taken into account in the decision of whether or not to make a call. In the scenario where the call externalities are not fully internalised, welfare can be improved by ensuring that the pricing system takes into account the utility of the phone call to the receiving party as otherwise a suboptimal level of calls may be initiated from the receiving party's perspective. These points are reflected in Section 4 of the Analysys Mason Report.

[80] See Ofcom April 2010 Consultation, Wholesale Mobile Voice Call Termination Annex 12. See also Rochet, J.C. and Tirole, J., "Two-Sided Markets: A Progress Report", RAND Journal of Economics, 37, 2006, 645-667.

[81] See for example, Harbord and Hoernig, http://www.market-analysis.co.uk/PDF/Academic/HarbordHoernigWelfare_MergerPaper04Aug2011.pdf.

5.18 The Analysys Mason Report[82] also refers to the theory of Armstrong[83] which states that the presence of such call externalities suggests that Termination Rates ought to be set below costs in order to encourage calls from other network subscribers and maximise welfare. This result applies across fixed and mobile networks. As also recognised by Harbord and Pagnozzi (2010, p. 4), "(….) the existence of receiver benefits fundamentally changes the analysis of interconnection charges…Rather than the traditional focus on how the terminating network's costs should be recovered from the sender, the key economic issue becomes how prices should be set to recover (…) networks' costs in a way that efficiently internalizes the two-sided benefits. As shown by De- Graba (2003), Hermalin and Katz (2009) and others, this typically entails call prices less than the marginal cost of making a call and, even in the absence of strategic effects (….), implies that welfare- maximizing MTRs will be (weakly) less than the marginal cost, and frequently less than zero".

5.2.2 Productive Efficiency

5.19 Productive efficiency is achieved when output at a particular moment in time is produced at minimum average cost, and can be described as firms minimising their total costs with respect to production technology. As discussed in Section 4 of the Analysys Mason Report, the level of productive efficiency achieved by a market depends on the ability or desire of firms to fully exploit the economies of scale and scope available to them. The level of competition is important to productive efficiency. In the case of FVCT and MVCT, there is a retail market and a wholesale market, and the regulated Termination Rates form only part of the Service Providers' revenues, assuming they receive net incoming revenues. Also, the network used by the retail customer is generally the same as that used for providing wholesale FVCT or MVCT. Accordingly, competition in the retail market (as long as it is sufficiently strong) will presumably also exert pressure for cost efficiency on the network, which would also impact on the cost efficiency of inputs used to deliver wholesale termination. Therefore, while reductions in Termination Rates can be expected to have a positive impact on productive efficiency, the magnitude of this impact will depend on the competitive structure of the retail market. This position is supported in the Analysys Mason Report[84].

[82] Analysys Mason Report – section 4.2.1.
[83] The theory of access pricing and interconnection (Armstrong, 2002).
[84] Analysys Mason Report – section 4.2.2.

5.20 If the retail market alone does not provide sufficient incentives for efficient service operation, low wholesale costs and a termination charge based on the incremental cost of providing termination for an efficient operator would be likely to provide some encouragement to operators to be efficient. For example, this situation could arise if the prospect of no longer recovering unavoidable common costs from termination increased the priority given to cost control.

5.2.3 Dynamic efficiency

5.21 Dynamic efficiency is a measure of a firm's productive efficiency over time. Termination Rates paid between Service Providers can partly influence dynamic efficiency in three ways:

- The competitive balance between Service Providers due to inflows or outflows of termination payments
- Whether a Service Provider seeks to use higher-or-lower-cost technology
- Whether a Service Provider undertakes additional investment (in existing or newer technologies and services).

5.22 The European Commission recognises that the setting of Termination Rates should take into account that efficient investment and innovation should be encouraged sustainably across all telecoms markets e.g. by ensuring FTRs and MTRs do not distort or restrict competition. This is discussed in Section 4.2.3 of the Analysys Mason Report.

5.23 If Termination Rates to be set are in line with the costs of an efficient Service Provider, this would create the correct economic environment for dynamic efficiency as it would minimise the impact of financial imbalances and competitive distortions between operators with different on-net/off-net traffic profiles. Termination Rates set at an efficient level of cost would thus lower the financial barriers to entry/expansion faced by late entrants with large off-net traffic outflows. As noted by the Analysys Mason Report, rivalries among suppliers are expected to encourage innovation thereby reducing future costs and improving the quality and variety of products. The extent to which dynamic efficiency is affected by the competitive balance of termination payments between Service Providers with different traffic profiles is discussed further below.

5.24 As noted in the section 5.2.2 above, setting Termination Rates at efficient cost would also give the correct incentives for less efficient Service Providers to improve their efficiency, while the more efficient Service Providers would be able to realise profits from investment and innovation. Such improvements in productive efficiency could also contribute to dynamic improvements in wholesale and retail price levels of services and increase subscriber welfare.

5.25 The Analysys Mason Report notes how regulatory certainty is key to promoting investment. Perceived regulatory instability reduces investment as a change in policy will change the value of assets specific to that policy and make specific investments appear more risky. This will ultimately reduce the Service Provider's incentive to invest and innovate, thus restricting dynamic efficiency. The commitment of the European Commission and NRAs across Europe to reduce Termination Rates over time has been very stable and the fact that the European Commission published its Recommendation in 2009 has given Service Providers sufficient notice to anticipate its potential application. These points are also reflected in Section 4 of the Analysys Mason Report[85].

5.3 Impacts on Competition

5.26 This section sets out the impact of Termination Rates on the level of competition in the fixed and mobile telecoms market. This will be discussed under the following three headings:

- Impact of FTR and MTR regulation on Mobile Competition
- Impact of FTR and MTR regulation on Fixed Competition
- Impact of FTR and MTR regulation on Fixed-Mobile Competition.

5.27 One of ComReg's statutory objectives, as set out in the Communications Regulation Acts 2002 to 2011, is to ensure no distortion or restriction of competition with a view to promoting the interests of end users in terms of price, choice and quality of service. It is frequently argued however that above-cost Termination Rates create a floor to retail pricing. Where Termination Rates exceed an efficient level of cost they tend to make it difficult for carriers to offer flat-rate calling plans involving off-net calls due to the uncertainty regarding the likely level of customer take-up of such plans.[86]

[85] Analysys Mason Report – Section 4.2.3.

[86] See J Scott Marcus, July 2004, "Call Termination Fees: The U.S. in global perspective", presented at 4th ZEW Conference on the Economics of Information and Communication Technologies, Mannheim, Germany. See also Patrick DeGraba, December 2000, "Bill and Keep at the Central Office As the Efficient Interconnection Regime", OPP Working Paper no. 33, "… because carriers will view traffic-sensitive interconnection charges as raising their marginal costs, they will tend to raise their

5.28 Reducing Termination Rates to the efficient cost of providing this service should help provide Service Providers with greater scope for developing new retail packages as a lower wholesale cost will reduce their exposure in the event of a significant increase in usage at the retail level. Where larger or even unlimited off-net bundles are developed, this should further contribute towards reducing tariff-mediated network externalities (which are discussed below) and thus ease associated financial barriers to entry/expansion thereby promoting competition. This is also further assessed as part of the RIA in Chapter 10 of this Consultation Document.

5.3.1 Impact of FTR and MTR regulation on Mobile Competition

5.29 The Analysys Mason Report refers to the work of Genakos and Valletti[87], where it suggests that the nature of mobile competition is oligopolistic, meaning that "*Mobile markets worldwide are dominated by a small number of firms. Competition among them is expected to be somewhere between the two extreme scenarios of perfect competition and monopoly*".

5.30 One of the observed profit-maximising approaches used by MSPs is to set MTRs and retail off-net charges above cost and to discriminate between retail price for on-net and off-net calls, as referred to in Appendix B to ComReg Document No 12/46. Such price discrimination, with low on-net and high off-net charges, generates "tariff-mediated externalities[88]" resulting in a competitive advantage for larger Service Providers and a potential reduction in the degree of competition that can be brought to bear by smaller Service Providers. This is discussed in more detail in the Analysys Mason Report[89]. Economic literature indicates that, in the presence of call externalities, mobile networks have strong incentives to implement on-net/off-net price differentials due to: (i) high mobile-to-mobile termination charges which exceed marginal costs; and (ii) their strategic incentives to reduce the number of calls that subscribers on rival networks receive, reducing the attractiveness of rival networks, and hence their ability to compete. Tariff-mediated externalities stemming from on-net/off-net price differentiation strategies (which are further facilitated by high off-net wholesale termination charges) can thus reinforce barriers to entry/expansion and put smaller networks at a disadvantage, while benefitting networks that have a larger customer base. This is discussed in more detail in the Analysys Mason Report[90].

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traffic-sensitive retail prices, even though the underlying cost structure of the networks may be non traffic-sensitive".

[87] Testing the "Waterbed" Effect in Mobile Telephony; Genakos and Valetti; 2008.

[88] Tariff-mediated externalities are defined in the Analysys Mason Report in Section 4.2.1 as *"the benefit subscribers to one network gain from being able to make calls to other members of the same network at lower prices, if there is price discrimination between on-net and off-net calls".*

[89] Section 4.3.2 of the Analysys Mason Report.

[90] Section 4.3.2 of the Analysys Mason Report.

5.31 As noted above, a late entrant could be disadvantaged in offering retail access and outgoing call services given its asymmetric position and initially significant off-net traffic outflows. NRAs have thus previously not intervened so new entrants have benefitted from higher asymmetric Termination Rates relative to the more established incumbents. However, higher MTRs for smaller MSPs also help the larger MSPs to justify higher off-net retail tariffs, which again reinforces tariff-mediated network externalities. Thus asymmetric MTRs would tend to reinforce larger mobile operators' incentives to exploit tariff-mediated network effects, i.e. they lead to further differentiation in on-net and off-net mobile call tariffs

5.32 The Analysys Mason Report anticipates only potentially minor effects on mobile competition from changes to FTRs. The difference between the impact of FTRs on MSPs and the impact of MTRs on FSPs can be attributed to the relative importance of the Termination Rates within their costs. These points are reflected in Section 4 of the Analysys Mason Report[91].

5.3.2 Impact of FTR and MTR regulation on Fixed Competition

5.33 An incumbent FSP, formerly a monopoly service provider with a full network, has profit-maximisation incentives to set its FTR charges at high levels in the same way as MSPs. Later entrant FSPs designated with SMP have also been identified as having the ability and incentives to set above-cost FTRs. NRAs have therefore found it necessary to intervene in setting FTRs in order to address such potential competition problems.

5.34 Setting FTRs at LRIC (with no mark-up for non-avoidable common costs) could have a particular effect on incumbents. This is because the (one-way access) market for fixed call origination is also subject to ex-ante regulation and an obligation of cost orientation. For its wholesale call origination customers, the incumbent would have little or no opportunity to recover common costs from retail services. This could allow a Service Provider to purchase wholesale origination and termination services from the incumbent without fully contributing to the common costs. These points are discussed in more detail in Section 4 of the Analysys Mason Report[92].

5.35 Regulation of FTRs at efficient cost should help promote competition among FSPs given that a lower symmetric FTR helps alleviate the impact of tariff-mediated externalities. Fixed penetration is very high and network externalities are therefore likely to have a limited effect on fixed networks.

[91] Section 4.3.2 of the Analysys Mason Report.
[92] Section 4.3.3 of the Analysys Mason Report.

5.36 Although MTRs have no direct impact on fixed competition (as all FSPs pay the same MTR to a given MSP), there is an indirect impact. As stated in the Analysys Mason Report[93], this indirect impact arises from the way MTRs constrain what FSPs can do on the retail side.

5.37 A fall in MTRs would provide scope for developing "flat-rate" tariffs incorporating off-net calls to mobile networks which could create opportunities for FSPs to provide more innovative retail offers for calling mobile subscribers, to the benefit of consumers. Although it is difficult to predict the precise impact on retail prices, lower MTRs will help ease barriers to building packages incorporating off-net mobile calls and thus more differentiated/innovative retail packages may promote retail competition by FSPs to some extent. These points are also reflected in Section 4.3.3 of the Analysys Mason Report.

5.3.3 Impact of FTR and MTR regulation on Fixed-to-Mobile Competition

5.38 Wholesale MTRs are higher than FTRs, resulting in net transfers of resources from the fixed to the mobile sector. Where such financial transfers from fixed to mobile networks are magnified by above-cost MTRs, this could delay or impede important investments and innovations in the fixed sector. Above-cost MTRs also limit the extent to which calls to mobile networks can be included within FSPs' retail packages. Mobile and fixed networks are involved in some degree of competition because their services, mobile and voice calls respectively, may be partially substitutable for certain subscribers. As recognised in the Analysys Mason Report[94], certain households have given up their fixed line and are "mobile only", while some other households do not have a mobile phone, although the predominant trend still appears to be towards complementary fixed line and mobile ownership. To the extent that MTRs are above efficient costs large transfers from fixed to mobile networks and customers thus leave FSPs at an investment and competitive disadvantage.

5.39 The history of Termination Rate regulation for fixed and mobile networks has evolved differently with cost based pricing for the fixed networks having been implemented some time ago. Please refer to the discussion on distortion of competition in ComReg Document No 12/46, section 7.

[93] Section 4.3.3 of the Analysys Mason Report.
[94] Section 4.3.4 of the Analysys Mason Report.

5.4 Equity Criteria

5.40 In addition to efficiency and competition issues, a third issue recognised in Section 4 of the Analysys Mason Report[95] is the equity or distributable impact of the proposed approaches. Therefore, different groups of users or Service Providers can be impacted to a greater or lesser degree.

5.41 One of ComReg's statutory objectives, as set out in the Communications Regulation Acts 2002 to 2011, is to promote the interests of end-users. The assessment of the equity criterion is based on the potential impact of a reduction in MTRs and FTRs to efficiently incurred costs which may benefit various consumer groups. This is further discussed below and also assessed as part of the RIA set out in Chapter 10 of this Consultation Document.

5.42 These impacts are discussed under the following sub-headings:

- Effects on retail prices and consumer choice;
- Effects on different user groups and how they result in welfare transfers between groups.

5.4.1 Effects on retail prices and consumer choice

5.43 Above-cost MTRs may enable retail mobile services to be subsidised, which could distort consumer choices with regard to subscriptions and call minutes. As a result there could be inefficiently high consumption of certain services (e.g. on-net calls) at the expense of other services (e.g. fixed voice subscriptions, off-net calls). A reduction in MTRs may result in a fall in cross-subsidisation of mobile subscriptions, which could remove distortions on consumer behaviour and lower the price of fixed-to-mobile calls or off-net calls (depending on the pass-through).

[95] Section 4.4 of the Analysys Mason Report.

5.44 While some MSPs have argued that lower MTRs will make certain customer groups unattractive to service this may not be the case. It may be argued that if MTRs (and associated subsidies from fixed networks) fall, retail mobile prices may rise slightly over time, as a result of the waterbed effect[96] and this might cause subscription levels to decline modestly (however penetration impacts are more complex as there are many end users with two or more subscriptions which may be partially attributable to tariff-mediated externalities). At the current stage of market development where mobile networks are already highly penetrated, incentives to retain existing marginal mobile customers must however be assessed in a much more dynamic context. This depends inter alia on the incremental costs of maintaining existing pre-pay customers on the network, possible network effects which marginal pre-pay users' generate for other (possibly higher-usage) customers on the network, and other revenue opportunities such marginal customers may present over time, etc.

5.45 The current relatively high level of on-net calls means that at least in the short term, any waterbed effect resulting from reductions in off-net wholesale Termination Rates may not be as significant as might be thought. Furthermore, it should be recalled that if the termination rate is at or above avoidable cost, the incremental costs of terminating off-net calls for marginal users would continue to be recovered. In addition, as noted in paragraph 5.14 and 5.15 above, the costs of maintaining customers which make few calls on the network are relatively low. These points are reflected further in Section 4 of the Analysys Mason Report[97].

5.4.2 Effects on different user groups and how they result in welfare transfers between groups

5.46 In this section we discuss the potential impact of changes in Termination Rates on different user groups. This is discussed under the following sub-headings:

- Mobile versus fixed user groups
- Off-net versus on-net user groups

[96] Analysis by Genakos and Valletti identifies a significant but incomplete waterbed effect on mobile retail prices resulting from fixed-to-mobile termination rate reductions with a more diluted effect for pre-paid than for billpay customers. The authors acknowledge however that their analysis falls short of showing the precise channels that may have led to an increase in mobile retail bills following regulatory cuts to termination rates. They also clarify that the research focuses on the impacts of fixed-to-mobile termination rate reductions but acknowledge that the effect of reducing mobile-to-mobile termination rates is less clear-cut given that such reductions may also impact the intensity of competition in retail mobile markets. Please refer to the following website: http://cep.lse.ac.uk/pubs/download/dp1045.pdf. to see the CEP Discussion Paper No 1045, dated February 2011 "Seesaw in the Air: Interconnection Regulation and the Structure of Mobile Tariffs", Christos Genakos and Tommaso Valletti.

[97] Section 4.4 of the Analysys Mason Report.

- Impact on vulnerable groups.

A. Mobile versus fixed user groups

5.47 A fall in MTRs could reduce the utility of both mobile-only and mobile-and-fixed customers if mobile retail prices may rise. However, if the retail price increases are targeted at specific products, this utility loss may not be felt at all.

5.48 It may be argued that a fall in MTRs is likely to benefit fixed-only consumers (depending on the extent of pass-through), and mobile-only consumers may lose on average via the waterbed effect as their Service Providers face a reduction in revenues from inbound fixed-to-mobile calls. However, this depends on how sensitive the mobile-only subscribers are to retail price changes and whether they subscribe to late entrant or more established incumbent mobile networks. Such a static assessment does not take into account important dynamic competition effects which may be expected to flow from a re-balancing of off-net wholesale Termination Rates. The reduction in tariff-mediated network externalities (by alleviating the extent to which off-net wholesale Termination Rates contribute to differential on-net/off-net retail charges) should help alleviate financial barriers to entry/expansion faced by later mobile entrants and contribute to a stronger competitive dynamic in the retail mobile market between mobile networks of different sizes (and different traffic profiles). Such enhanced inter-network competition should ultimately benefit all mobile subscribers in terms of price and service innovation over time.[98] These points are discussed in more detail in the Analysys Mason Report[99].

B. Off-net versus on-net user groups

5.49 Termination Rates that are above efficient cost not only shift welfare between consumers of fixed and mobile services, but also between those making on-net and off-net calls. On-net mobile-to-mobile calls are not subject to any explicit MTRs, which reduce the marginal costs associated with such calls. This results in utility transfers within the group of mobile consumers. Customers on smaller mobile networks that make a lot of off-net mobile-to-mobile calls are disadvantaged vis-à-vis those customers on larger networks that make a lot of on-net mobile-to-mobile calls.

[98] Such price and service innovations may also pave the way for increased customer usage (depending on demand elasticity) thereby providing additional revenue opportunities for the Service Providers over time.
[99] Section 4.4 of the Analysys Mason Report.

5.50 On-net discounts have been justified by some as not being potentially anti-competitive or necessarily harmful to certain consumer groups, but rather as a rational reaction to call externalities within the operator's own network. This could enable the internalising of these call externalities, since on-net calls provide the call externality to the networks' own subscribers and therefore, on-net discounts would be an efficient and potentially welfare-maximising decision. However, as pointed out in the Analysys Mason Report, where subscribers of larger Service Providers benefit more from these on-net discounts, the attractiveness of smaller Service Providers to consumers will be reduced and competition from smaller/newer entrants may be weaker. Tariff-mediated externalities thus put smaller networks and their users at an economic disadvantage, while benefitting networks that have a larger customer base. This is discussed in more detail in the Analysys Mason Report[100].

C. Impact on vulnerable groups

5.51 Changes in Termination Rates could raise equity ("Fairness") concerns, particularly with regard to vulnerable consumer groups. Certain disadvantaged consumer groups such as the elderly are likely to use more fixed services and thus gain from any downward regulation of MTRs to efficient costs, to the extent that these users call mobile networks. In Section 4.4 of the Analysys Mason Report, Analysys Mason assessed some of ComReg's survey data in relation to equity data for Ireland. In summary, the statistics showed that:

- There is a strong age trend in (increasing) fixed-line usage and (decreasing) mobile-only households.
- There is a reasonably uniform trend in fixed and mobile-only usage by social segment. It is users who are mid-range mobile spending users that are typically mobile-only. Low-spending and high-spending mobile users tend to have both fixed and mobile connections.

5.52 Therefore, equity effects on fixed-only users will be emphasised in the older segments of the population and effects on mobile-only users should not be prominent in low-spending segments of society.

5.53 Much of the elderly group of users can also avail of the free line rental available from the Department of Social Protection. Furthermore, easing the magnitude of financial transfers from fixed-to-mobile networks (resulting from reductions in MTRs) should contribute to ensuring ongoing fixed line service provision to more marginal users. In addition, any pass-through of fixed-to-mobile termination rate reductions into fixed-to-mobile call charges implies that such fixed line users are likely to benefit from reductions in MTRs to efficient costs.

[100] Section 4.4 of the Analysys Mason Report.

5.54 While mobile-only users tend to be more mid-range spending customers, it is nonetheless important to highlight that mobile handsets are relatively cheap, mobile penetration rates are well over 100%, costs of maintaining users on the network are relatively low and, as noted in section 5.4.1 above, incentives to continue servicing different user groups are driven by a complex range of factors, including the incentives to build and maintain communities of users and associated revenue opportunities such communities present over time. As also noted in paragraph 5.48 above, dynamic competition effects stemming from reduced financial barriers associated with tariff-mediated network externalities in the retail mobile market should also contribute to delivering more sustained pricing and innovation benefits to all mobile consumers over time.

5.5 Need to take utmost account of the EC Recommendation / Contribution to Internal Market

5.55 As previously set out in Chapter 3, in 2009 the European Commission issued its 2009 Termination Rate Recommendation and its accompanying Explanatory Note as well as its paper detailing the implications for industry, competition and consumers. As an NRA, ComReg is obliged to take "utmost account" of the 2009 Termination Rate Recommendation.

5.56 The 2009 Termination Rate Recommendation essentially states that by the end of 2012, NRAs should set symmetric FTRs and symmetric MTRs and that any asymmetry should be fully justified. It specifies that the costs should be based on the costs incurred by an efficient operator and these costs should be calculated using a bottom up "pure" LRIC model based on current costs and based on the most efficient technologies available in the timeframe considered by the model.

5.57 In the accompanying Staff Working Document detailing the impacts on industry, competition and consumers, the European Commission noted that a key objective for issuing the 2009 Termination Rate Recommendation is to "consolidate the development of the internal market for telecoms services." It further highlighted in section 3.4, page 15 that:

> "*A common approach to call termination markets based on efficient costing principles should help foster a stable and effective regulatory environment for future investments and contribute to a more level playing field and enhanced competition between different operators and networks (e.g. fixed and mobile networks*)."

5.58 It further outlined that "*It is important that all European consumers should have the opportunity to benefit from such enhanced competition and investment through lower prices and innovative services*."

5.59 The Analysys Mason Report uses compliance with the 2009 Termination Rate Recommendation as one of its assessment criteria. This was so as to ensure that ComReg meets its statutory objectives including the objective of contributing to the development of the internal market. It also ensures that ComReg has taken "utmost account" of the 2009 Termination Rate Recommendation while also assessing compliance with relevant European Directives. At the same time, the assessment of the various options against other effects-based criteria, such as effects on efficiency, competition and investment as well as on different user groups, ensures that ComReg is also giving due consideration to the economic merits of each individual approach in an Irish context.

5.6 Ease of decision and implementation of the approach

5.60 Having regard to proportionality considerations, another of the assessment criteria used in the Analysys Mason Report is whether the approach was easy to implement and this includes such factors as:

- Resource requirements i.e. financial and staffing
- Time consumption.

5.61 The approaches that require minimal resources and that are not time consuming achieve higher scores under this assessment criterion. These are discussed in more detail in Section 6 of the Analysys Mason Report[101].

5.7 Assessment against transparency and regulatory certainty

5.62 Another of the assessment criteria used in the Analysys Mason Report includes whether the particular approach is transparent and whether it would provide regulatory certainty. The approaches that provide more transparency and certainty to Service Providers and consumers score particularly well under this assessment criteria. These have been discussed in more detail in Section 6 of the Analysys Mason Report[102].

Q. 2 Do you agree with the assessment criteria, as set out above, as being appropriate criteria to use to evaluate the five possible regulatory approaches identified in Chapter 4? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

[101] Section 6.5 of the Analysys Mason Report.
[102] Section 6.6 of the Analysys Mason Report.

Chapter 6

6 Assessment of the regulatory approaches

6.1 Overview

6.1 Chapter 3 set out the background to this Consultation Document and the price controls that are currently in place for the MVCT market (i.e. Market 7) in section 3.2 and the FVCT market (i.e. Market 3) in section 3.3. Chapter 4 set out the five approaches that could potentially be used to set Termination Rates in a fixed and mobile context. These include approaches that could be implemented as part of the price control remedy to mitigate the potential competition problems which may arise for both Market 3 and 7. Chapter 5 set out the Assessment Criteria against which each of the five approaches will be assessed. This Chapter now summarises the assessment and it includes ComReg's preliminary views on the most appropriate regulatory approach to setting a price control for both MTRs and FTRs in Ireland.

6.2 The table below provides a summary of the assessment in the Analysys Mason Report using 'Harvey' balls to represent the suitability of each approach to fulfil the Assessment Criteria.

6.3 The following symbols are used in the table to illustrate how the various regulatory approaches score in terms of the suitability of each approach to fulfil the assessment criteria.

 Zero, Unsuitable, Minimum

 Low

 Medium

 High

 Very high, Very suitable, Maximum

6.4 This table is used in the Analysys Mason Report, as part of its conclusions.

Figure 6.1: Summary of Assessment Criteria

Criteria		De-regulation	Fair & Reasonable	B&K	RPP	Cost orientation	
						LRAIC+	Pure LRIC
Need to take utmost account of EC Recommendation							
Efficiency	Allocative						
	Productive						
	Dynamic						
Competition	F-F						
	M-M						
	F-M			Neutral or			
Equity							
Ease of deciding on and implementing approach						(for mobile model) (for fixed model) (for benchmark)	(for model) (for mobile benchmark) (for fixed benchmark)
Transparency / regulatory certainty						(for model) (for price benchmark)	(for model) (for price benchmark)

Source: Analysys Mason, 2012

6.5 The table above summarises the assessment of the six possible approaches to price control. Cost orientation has now been split into two variants i.e. cost orientation under a LRAIC+ methodology and cost orientation under a pure LRIC methodology. In the following sections, ComReg will assess each of the six possible approaches making reference to the Analysys Mason Report and the Assessment Criteria contained in it. This Chapter will also provide ComReg's preliminary views.

6.6 This Chapter considers the following possible approaches to setting Termination Rates in a fixed and mobile context :

1. No price control
2. Fair and reasonable
3. Bill and keep
4. Receiving party pays
5. Cost Orientation: LRAIC +
6. Cost Orientation: Pure LRIC
7. Symmetry versus Asymmetry

6.2 No price control

6.7 No price control essentially means that both MSPs and FSPs with SMP would set their own MTRs and FTRs. There would be no regulatory involvement in setting the Termination Rates. This is also discussed in Chapter 4, section 4.3.1 of this Consultation Document.

6.8 This approach did not score well against the Assessment Criteria – see the table in Figure 6.1 in Chapter 6 of this Consultation Document.

6.9 As a starting point, this approach of "no price control" would not be consistent with the proposals contained in the 2009 Termination Rate Recommendation as it does not impose any price control. As cost orientation of Termination Rates is provided for in most Member States (recital 2 of the 2009 Termination Rates Recommendation), non-imposition of a price control would not be consistent with general EU regulatory practice and with ComReg's responsibility to contribute to the development of an internal market for electronic communications. This approach did not score well in the Analysys Mason Report against this Assessment Criterion relating to the need to take utmost account of the EC Recommendation.

6.10 It did not score well assessed against any of the efficiency Assessment Criteria set out in the Analysys Mason Report and in Chapter 5 of this Consultation Document. As MSPs and FSPs would be free under this approach to set their own Termination Rates, there would be no real consideration of the promotion of welfare. The incentives for productive efficiency might be reduced as MSPs and FSPs would be free to set their own Termination Rates above the efficient cost of production and so any incentives to reduce their cost of production could also be reduced. In relation to dynamic efficiency, the fact that MSPs and FSPs would be free to set their own Termination Rates could facilitate the continuance of tariff mediated network externalities[103] to the benefit of large Service Providers.

[103] Tariff-mediated externalities are defined in the Analysys Mason Report in Section 4.2.1 as *"the benefit subscribers to one network gain from being able to make calls to other members of the same network at lower prices, if there is price discrimination between on-net and off-net calls"*

6.11 This approach did not score well in the Analysys Mason Report when assessed against the "competition" Assessment Criteria set out in Chapter 5. The potential for very high Termination Rates and continuance of tariff mediated network externalities (as discussed Chapter 5, section 5.3 of this Consultation Document and in Section 4 of the Analysys Mason Report) is increased under the "no price control" approach. As indicated in the Analysys Mason Report, MSPs may have the opportunity to charge very high MTRs and benefit from the cross-subsidies from FSPs which would have a negative effect on fixed-to–mobile competition. As noted in the underlying market analyses, Service Providers designated with SMP in call termination markets have been identified as having the ability and incentives to charge prices which exceed an efficient level of cost. This implies that an option of "no price control" would not be appropriate in light of the competition problems which have been identified.

6.12 Section 6.4 of the Analysys Mason Report looks at the assessment of the equity criteria or in essence the distributional impact on different user groups. Under a 'no price control' approach, MSPs and FSPs would set Termination Rates in order to maximise profits rather than consider the distributional impact on all end users. It points to the example where mobile only customers could benefit from subsidies if MSPs can charge high MTRs.

6.13 This approach of "no price control" however did score well in assessing its easiness to decide and implement in that it does not require any resources to implement or to monitor. This, however, does not take account of a potentially higher incidence of disputes concerning the level of Termination Rates between operators which could contribute to time delays and regulatory costs involved in resolving such disputes.[104]

6.14 When assessed against transparency and regulatory certainty, the option of "no price control" did not score well in the Analysys Mason Report because it does not provide any transparency as each Service Provider sets its own Termination Rates to suit its own agenda and may change those Termination Rates at its own discretion. It does not provide regulatory certainty in that Service Providers may have knowledge of their own pricing strategy; however, they will have no visibility as to what other Service Providers will charge them.

[104] In 2011 the European Commission expressed serious doubts regarding the proposal of the Polish regulator, UKE, not to impose legally binding MTRs and to intervene only by way of individual dispute settlement decisions. According to the European Commission in cases PL/2011/1255-1258: "The lack of legally binding MTRs would further unnecessarily enlarge intervention of public administration (in this case UKE), which will be resolving individual disputes at the expense of operators seeking access to mobile call termination services in Poland. Such operators would also be obliged to engage in time consuming negotiations concerning MTRs".

6.15 ComReg considers that this approach may not be a viable option in Ireland given it is inconsistent with contributing towards the development of the internal market and would not be justified in light of the competition problems referenced in the relevant publications in Chapter 4 of this Consultation Document including those detailed in the recently published ComReg Document No 12/46 on MVCT.

6.16 It is ComReg's preliminary view that this approach could negatively impact on competition and ultimately consumers, as described throughout this Consultation Document and in the Analysys Mason Report set out in ComReg Document No 12/67a. It would fail to mitigate against the potential competition problems in Ireland referenced in Chapter 4. In particular, it would fail to mitigate against the key potential competition problem identified for both Market 3 and Market 7, namely excessive pricing. ComReg has, as referenced in the relevant publications cited in Chapter 4, previously investigated allegations of high pricing in both these markets through compliance investigations and previous disputes.

6.17 To date, ComReg has had to intervene in both the FVCT and MVCT markets with significant reductions to MTRs and FTRs resulting. This indicates that Service Providers, left to their own devices, will not through negotiations arrive at Termination Rates that are set at an efficient level that is in the interests ultimately of consumers.

6.18 ComReg is also of the preliminary view that without an effective price control mechanism, Service Providers could face enduring barriers to entry/expansion associated with tariff-mediated network externalities resulting in competitive distortions and end up effectively subsidising inefficient investment in competing networks. As Service Providers would be free to set their own Termination Rates (because there is no price control and ineffective competitive constraints for call termination on their networks) they could set such Termination Rates at such a level that they would be compensated for their entire network and not just the incremental cost of terminating calls.

6.19 Equally, if Service Providers, where there is no price control, set Termination Rates that are not reflective of cost, they could be insulated from the need to innovate or indeed the need to improve efficiency. This would ultimately limit the choice available to end users.

ComReg's Preliminary View

6.20 ComReg is of the preliminary view that the option of *No price control* is not currently deemed appropriate in the context of a pricing approach for Termination Rates in Ireland for the reasons set out in paragraphs 6.7 to 6.19 above.

6.3 Fair and reasonable

6.21 A 'fair and reasonable' approach essentially involves the parties involved finding a resolution, within the confines of specific, defined, parameters that is perceived to be 'fair and reasonable' to the parties involved. It may require involvement from an NRA. This is also discussed in Chapter 4 in section 4.3.2 of this Consultation Document.

6.22 Section 6 of the Analysys Mason Report assesses this approach against the Assessment Criteria.

6.23 This approach is unlikely to be consistent with the approach recommended in the 2009 Termination Rate Recommendation in that it could facilitate different approaches being adopted on a case by case basis and could ultimately lead to asymmetry. The 'fair and reasonable approach' did not score well in the Analysys Mason Report when assessed against the Assessment Criterion relating to the need to take utmost account of the EC Recommendation. Furthermore, the European Commission expressed serious doubts concerning a proposal by the Polish regulator to only publish non-binding recommended levels of MTRs in terms of its compatibility with the single market objective. In cases PL/2011/1255-1258 the European Commission noted its view that "UKE's approach of not adopting legally binding, immediately enforceable measure(s) for SMP operators creates a significant barrier to the development of a single market for electronic communications services".

6.24 In terms of the efficiency assessment criteria set out in the Analysys Mason Report (in Section 6.2) and in Chapter 5 of this Consultation Document, this approach did not score well. Section 6.2 of the Analysys Mason Report notes that given the uncertainty on what constitutes 'fair and reasonable', allocative efficiency therefore *"cannot be guaranteed"*. In general, termination accounts for only a small share of the Service Providers' revenues. Therefore, in a competitive retail market, retail activities lead to productive efficiency. Dynamic efficiency also depends on the level of the Termination Rate that is set as "fair and reasonable". In summary, this approach does not score well under the efficiency criteria.

6.25 In assessing against the competition criteria, section 6.3 of the Analysys Mason Report states that low Termination Rates would limit the tariff mediated network externalities and promote both fixed-to-fixed and mobile-to-mobile competition although this depends on exactly what is meant by a "fair and reasonable" Termination Rate. As already noted in Chapter 5, deviations from efficient cost can result in important barriers to entry/expansion for smaller networks with significant traffic outflows to other networks. The impact on fixed-to-mobile competition is again dependent on the MTR and FTR and whether there is a significant difference between the two. Therefore, this approach did not score well against the competition criteria in the Analysys Mason Report.

6.26 The Analysys Mason Report notes in section 6.4 that under a 'fair and reasonable' approach, Termination Rates could be higher than under other approaches and it concludes that the net effect on equity is not obvious and is dependent on the actual level of the Termination Rates set.

6.27 This approach scores well when assessed against its easiness to decide and implement. The 'fair and reasonable' approach is potentially less time consuming for the NRA but it requires some initial disputes in order to test the understanding of what constitutes 'fair and reasonable'.

6.28 When assessed against transparency / regulatory certainty, this approach scores poorly. There is no predetermined rate and it is dependent on resolving disputes in order to determine what constitutes a 'fair and reasonable' Termination Rate in a particular set of circumstances.

6.29 Taking account of the persistent risk of excessive pricing as identified in the relevant market analyses, ComReg considers that such an approach in isolation would not be appropriate or viable given the potential variances in the number and scale of disputes, the potential frequency of disputes, the potential variances in the timescales to resolve the disputes, the manpower requirements etc. It could therefore generate regulatory uncertainty and ultimately negatively impact on consumers as well as MSPs and FSPs. This view is supported by the low score generated by this approach when evaluated in the Analysys Mason Report against the Assessment Criteria.

6.30 As previously mentioned in Chapter 4, Regulation 12(3) of the Access Regulations allows ComReg to attach to obligations imposed under Regulations 12(1) and 12(2) conditions covering fairness, reasonableness and timeliness. ComReg may specify such conditions when imposing any SMP obligations or through its dispute resolution powers which are set out in Regulation 31 of the Framework Regulations (see, for example, the final determination in the H3GI dispute detailed in ComReg Document No 09/98[105]).

6.31 However, ComReg considers that this approach may not be a viable option in Ireland given it is inconsistent with contributing towards the development of the internal market and it would not be justified in light of the competition problems referenced in the publications cited in Chapter 4 of this Consultation Document in relation to the FVCT and MVCT markets.

6.32 This approach would not adequately mitigate against the potential competition problems for Market 3 and Market 7 that have been identified in the publications referenced in Chapter 4 of this Consultation Document.

ComReg's Preliminary View

6.33 ComReg is of the preliminary view that the option of using a *Fair and Reasonable* approach is not currently appropriate in the context of a regulatory pricing approach for Termination Rates in Ireland for the reasons set out in paragraphs 6.21 to 6.32 above.

[105] ComReg Document No 09/98:Final Determination: Final determination in the dispute between Hutchison 3G (Ireland) Limited and Tesco Mobile (Ireland) Limited regarding an alleged failure by Tesco Mobile to negotiate interconnection by virtue of an alleged failure to negotiate Mobile Termination Rates for the provision of mobile voice call termination services; published on 18 December 2009.

6.4 Bill and keep

6.34 Bill and keep is essentially a settlement arrangement for two-way interconnection where there is no charge for terminating calls[106]. This is described in Chapter 4 in section 4.3.3 of this Consultation Document.

6.35 This approach scored better than the previous two approaches set out above (i.e. no price control and "fair and reasonable") when evaluated in the Analysys Mason Report against the Assessment Criteria. Under this approach, Service Providers do not recover any costs from the Service Provider who originated the call which, according to a TERA/Hogan Lovell's report cited in section 6.1 of the Analysys Mason Report, raises questions regarding potential compatibility with the EU Access Directive. Section 6.1 of the Analysys Mason Report assesses this approach against the need to take utmost account of the EC Recommendation. It notes that this method is discussed as a possibility by the 2009 Termination Rate Recommendation.

6.36 In its allocative efficiency assessment, section 6.2 of the Analysys Mason Report notes that this approach of 'bill and keep' under which there is no charge for Termination Rates could be better or worse than lower Termination Rates depending on the size of the call externality (the benefit you gain when someone calls you). As regards productive efficiency, section 6.2 of the Analysys Mason Reports notes that "*a rate of zero provides no stronger incentive than a rate set at the efficient cost of production.*"

6.37 This approach scores highly in terms of competition in that it essentially removes all the tariff-mediated network externalities and promotes competition in terms of fixed-to-fixed and mobile-to-mobile calls. The effect on fixed–mobile competition would depend on whether bill and keep also applies to payments between FSPs and MSPs. If that was the case, this would create a level playing field between MSPs and FSPs.

6.38 The equity or distributional impact of a bill and keep approach could result in low usage customers with high inbound calls potentially turning loss-making for Service Providers. However, this does not appear to be the case in Ireland. Section 5.5.1 of the Analysys Mason Report points out that *"low usage customer groups…broadly experience the same effect as other user groups of the same operator with a reduction of wholesale termination rates."*

[106] *"According to the OECD, Bill and Keep is defined as "A pricing scheme for the two-way interconnection of two networks under which the reciprocal call termination charge is zero - that is, each network agrees to terminate calls from the other network at no charge"* http://stats.oecd.org/glossary/detail.asp?ID=6727.

6.39 In terms of easiness to decide and implement, this approach scores well in the Analysys Mason Report. Bill and Keep is also transparent and provides regulatory certainty in that Service Providers know that they do not receive any termination revenues as the call termination charge is essentially zero because each network agrees to terminate calls from the other network at no charge.

6.40 While some of its merits have been noted in the Analysys Mason Report and accordingly rewarded in its evaluation, the Explanatory Note to the 2009 Termination Rate Recommendation recognises that there is no record of Bill and Keep having been mandated by a regulatory authority to date. It notes further that the historical evolution of Termination Rates, in particular MTRs, in the EU implies difficulties with envisaging the commercial introduction of such a settlement system in the near future. However, the Explanatory Note notes further in section 6.1.2 on page 30 that:

"… a significant reduction in termination rates from current levels might create appropriate incentives for voluntary inter-operator agreements and consequently bill and keep type arrangements."

6.41 At the same time the European Commission points out further in section 6.1.2, page 30 of the Explanatory Note that:

"…setting the price of any service at zero may cause distortionary behaviour, bring arbitrage opportunities, lead to inefficient traffic routing and inefficient network utilisation."

6.42 ComReg considers that while "Bill and Keep" could mitigate to some extent against the competition problems referenced in Chapter 4, it could in parallel create a new set of potential competition problems, for example those set out above in the Explanatory Note, which might require additional regulatory controls. Implementation of "Bill and Keep" could also give rise to initial practical problems, for example, potential increases in SPAM traffic, although the TERA/Hogan Lovells report notes (on page 258) the possibility of certain consumer protection measures such as SPAM filters. "Bill and Keep" is also more likely to be implemented commercially between networks exchanging similar traffic patterns and, as far as ComReg is aware, there is no example of "Bill and Keep" being mandated as a market-wide settlement policy through regulation.

ComReg's Preliminary View

6.43 ComReg is of the preliminary view that "Bill and Keep" price control is not currently deemed appropriate in the context of a regulatory pricing approach for Termination Rates in Ireland for the reasons set out in paragraphs 6.34 to 6.42 above.

6.5 Receiving Party Pays

6.44 Receiving Party Pays is based on the concept that the receiving party pays for the call. It is essentially a retail pricing approach. This is the reverse of what currently happens in Ireland where the person making the call pays for the call (calling party pays). This is also discussed in Chapter 4, section 4.3.4 of this Consultation Document.

6.45 This approach, similar to Bill and Keep, also scored relatively well in the Analysys Mason Report. Indeed a retail pricing structure based on Receiving Party Pays could evolve as a response to a Bill and Keep system to facilitate wholesale cost recovery. As previously noted, the Receiving Party Pays approach internalises the call externality in that it transfers some or all of the costs of the call to the receiving party which is the inverse of the current scenario in Ireland.

6.46 This approach has similar positive competitive effects to Bill and Keep for fixed-fixed competition and mobile-mobile competition and ultimately makes it easier for FSPs to compete on a more level playing field contributing to a more neutral competitive and investment framework between fixed and mobile networks. It also benefits all consumers who would pay lower prices, such as fixed only consumers. As also noted in the Explanatory Note in section 6.1.4:

"Under RPP (receiving party pays) the receiving network terminates calls without charging the originating operator the full cost of that termination service, leading the operator to potentially recover part of the termination costs from their own retail customers. Since this charge is now noticeable to the consumer, there is an incentive for the consumer to respond to that charge where more competitive alternatives exist."

6.47 The Explanatory Note further underlines the potential merits of this approach in that it "*avoids the deficiencies of the CPP (Calling Party Pays) system, e.g. high termination rates resulting from the monopoly on termination markets and which thus produce negative competitive consequences both at the wholesale and retail level. If subscribers are charged for incoming calls, they can be expected to be more sensitive to the price charged for them. Thus, competition between operators for mobile subscribers could be expected to exert a constraint on the setting of wholesale termination charges with associated implications for retail prices."*

6.48 The Receiving Party Pays price control approach would however fundamentally change the way the retail market operates and would require significant resources to implement. Therefore, it has not scored well against the ease of deciding on and implementing Assessment Criterion, as set out in section 6.5 of the Analysys Mason Report. This approach does provide regulatory certainty and transparency; however, it is initially more complicated for consumers due to the significant changes in retail pricing structures.

6.49 This approach would require a relatively radical overhaul of the retail pricing structure which would require significant resources at least in the transition phase as consumers would have to be re-educated in how their calls are costed and ultimately the value they place on receiving calls. Therefore, it would require a fundamental shift in mindset for consumers in that subscribers would move from the existing and long established approach of Calling Party Pays to Receiving Party Pays

6.50 Given the fact that the core change would have to happen at the retail level, mandating such a change through regulation could lead to confusion in the retail market (at a very minimum during the early stages of the changeover). This could negatively impact consumers in the short term. While acknowledging the competitive merits of this approach, ComReg considers that, in any event, this approach may not be feasible as a regulatory requirement at this time in Ireland. Receiving Party Pays is a retail mechanism, and as neither fixed nor mobile retail calls are regulated it is not clear whether it could be mandated as a regulatory requirement. As far as ComReg is aware, there is no record of Receiving Party Pays being specifically mandated through regulation elsewhere to date. As it would be a significant departure from the current Calling Party Pays convention; it could initially create significant disruption and cost to the industry and consumers to introduce.

ComReg's Preliminary View

6.51 ComReg is of the preliminary view that the option of Receiving Party Pays is not currently appropriate in the context of a regulatory pricing approach for Termination Rates in Ireland for the reasons set out in paragraphs 6.44 to 6.50 above.

6.6 Cost orientation: LRAIC +

6.52 Section 3.2.1 of the Analysys Mason Report describes "LRAIC" as an average costing approach that considers a large increment (e.g. all traffic services provided by the operator) and allocates the incremental cost of traffic to these services, using "average traffic routing factors". Each service, including voice termination, therefore receives a share of intra-network common costs. LRAIC + in addition to LRAIC, includes one or more common cost mark-ups to network costs, for example overhead costs. In ComReg Document No 12/03, LRAIC + has been explained as *"the average efficiently incurred directly attributable variable and fixed costs, plus an appropriate apportionment of joint and common costs"*.[107]

6.53 Section 6 of the Analysys Mason Report evaluates this approach against the Assessment Criteria. This approach has been further subdivided under two implementation methods, namely:

- Cost orientation: LRAIC + via a cost model
- Cost orientation: LRAIC + via a benchmark

6.6.1 Cost orientation: LRAIC + implemented via a cost model

6.54 LRAIC is understood to include the average of all of the costs of the service(s) provided within an increment. LRAIC + includes one or more common costs mark-ups, for example overhead costs, in addition to the directly attributable (fixed and variable) costs of providing the service(s) which make up the increment in question. This is also discussed in Chapter 4 in sections 4.3.5 and 4.3.6.

6.55 Firstly, while LRAIC + was traditionally used by a number of NRAs, the European Commission noted divergences in the implementation of this price control methodology (see recital 2 of the 2009 Termination Rate Recommendation) underlining the need for a common approach to regulating Termination Rates. LRAIC + is not considered to be in line with the 2009 Termination Rate Recommendation which recommends LRIC as the appropriate methodology. However, implementation of a given price control, via a BU cost model, does meet other criteria set out in the 2009 Termination Rate Recommendation.

[107] ComReg Document No 12/03: Response to Consultation Documents No 10/70 and 11/32: A Final decision further specifying the price control obligation in the market for wholesale termination segments of Leased Lines; published on 2 February 2012.

6.56 In relation to the efficiency criteria, section 6.2 of the Analysys Mason Report states that LRAIC + facilitates the recovery of some of the common costs. However, it notes arguments that allocative efficiency could be better served if the common costs were allocated using Ramsey Pricing principles as opposed to using Equi-Proportional Mark-Up ('EPMU'). The Analysys Mason Report highlights that the absence of precise elasticity data available in relation to Irish consumers means that a Ramsey Pricing allocation would not likely be feasible. ComReg notes that such a pricing policy could also generate possible distributional concerns. In addition, there is evidence of retail price discrimination strategies being employed by Service Providers with a wide array of tariff options available to different customer segments with differing willingness to pay. Such retail price discrimination, whilst imperfect, provides some opportunities for common cost recovery. Furthermore, the Analysys Mason Report does not consider there to be a strong efficiency case for a material network externality mark-up at this stage of market development.

6.57 As previously mentioned, retail activities are the key driver of productive efficiency. The Analysys Mason Report notes as an example that where smaller Service Providers can charge asymmetric Termination Rates, it gives larger Service Providers a potential justification for tariff-mediated network externalities which negatively impact on the development of a more effective retail market as well as the incentives for productive efficiency. Overall, this methodology scored well in terms of efficiency (as evident in Figure 6.1 above)

6.58 In assessing the impacts on competition, the Analysys Mason Report recognises that LRAIC + would allow MSPs and FSPs to recover only the termination costs of an efficient operator thereby reducing the impact of above cost transfers. This facilitates an increase in fixed-to-fixed and mobile-to-mobile competition and ultimately fixed-to-mobile competition where it reduces the termination revenues paid between Service Providers. ComReg notes however that any reduction in the magnitude of financial transfers across operators depends on the level of the (+) mark-up applied for common costs. While it reduces the revenues paid out, it does not reduce the out-payments to other Service Providers to the same extent as other methodologies, for example, pure LRIC. ComReg thus notes that tariff-mediated network externalities may be more pronounced under LRAIC + than under pure LRIC and thereby pose a higher barrier to entry and expansion than under a pure LRIC methodology.

6.59 Given the two-way access nature of termination markets and the fact that interconnect partners are, to a certain degree, in some competition with each other for customers, Termination Rates can have key strategic and competitive connotations. Therefore, given ComReg's statutory objective to promote competition, it is essential that Service Providers are only allowed to recover efficient Termination Rates. The Explanatory Note to the Recommendation notes on page 15 that:

> *"Termination rates which are set above efficient cost can create substantial transfers of wholesale termination revenues from: – fixed network operators to mobile network operators, creating an effective cross-subsidy between fixed and mobile markets and consumers."*

6.60 In terms of the concept of equity, LRAIC+ allows Service Providers to recover some of the common costs therefore even marginal consumers with few originating minutes should remain profitable without having to increase retail charges. This ultimately implies that, under this approach, marginal mobile consumers would be protected. The Analysys Mason Report notes however in section 6.4 *"compared to a pure LRIC approach, MTRs would stay relatively high which would have a detrimental effect on fixed-only subscribers or those wishing to make high volumes of off-net calls."*

6.61 A LRAIC + cost model would require significant resources to build. The costs associated with building a cost model could be higher in Ireland for a MTR model compared to a FTR model as ComReg already has a fixed Next Generation Network (**"NGN"**) core model, which ComReg now proposes to update as part of this consultation (see Chapter 7 of this Consultation Document for further details in this regard). ComReg has used LRAIC + models in the past in setting other regulated wholesale prices (for example LLU and leased lines). In this context, Service Providers would also have participated in consultation processes around building such models and would therefore be familiar with such a methodology.

6.62 In relation to FTRs specifically, ComReg recognises that LRAIC+ avoids the pricing anomaly that arises for fixed origination (as elaborated in Chapter 7 of this Consultation Document) as it does not require the exclusion of common costs which then have to be reallocated to other services (as under a pure LRIC approach). This is also referred to in section 7 of the Analysys Mason Report which sets out that LRAIC + is easier to implement and would avoid the complication of unrecovered common costs that arise under a pure LRIC approach.

6.6.2 Cost orientation: LRAIC + implemented via a benchmark

6.63 The 2009 Termination Rate Recommendation does, as previously mentioned in Chapter 4, allow for an 'alternative methodology' as regards implementation. It specifically references benchmarking as an example of an alternative methodology, which may be used in the short term and where there are limited resources available. Therefore, the benchmark element of this approach is likely to be compliant with the 2009 Termination Rate Recommendation but only in the short term; however, as highlighted in section 6.6.1, LRAIC + is not in line with the methodology set out in the 2009 Termination Rate Recommendation (see point 2 of the 2009 Termination Rate Recommendation which specifies LRIC as "*the relevant cost methodology*").

6.64 As stated in sections 6.2, 6.3 and 6.4 of the Analysys Mason Report, the assessment against efficiency, competition and equity criteria would all be the same for LRAIC + methodology irrespective of whether it was implemented via a cost model or via a benchmark. Therefore, see section 6.6.1 for the key arguments.

6.65 LRAIC+ implemented via a benchmark would not require significant resources when compared to a cost model in section 6.6.1. However, benchmarks can prove time consuming in that they have to be reviewed at regular defined intervals to take account of any changes relating to the benchmarked countries. This is assessed in greater detail in Chapter 7 of this Consultation Document. Implementation via a benchmark also allows for a high level of transparency in that the countries that make up the benchmark would have adopted decisions that are in the public domain. Regulatory certainty can however be compromised with the need for revisions at defined time periods in the future.

ComReg's Preliminary View

6.66 ComReg is of the preliminary view that cost orientation using a *LRAIC+* methodology is not the most appropriate approach to set Termination Rates in Ireland irrespective of how it is implemented and for the reasons set out in paragraphs 6.52 to 6.65 above.

6.7 Cost orientation: Pure LRIC

6.67 Section 3.2.1 of the Analysys Mason *Report* describes "pure LRIC" as a cost methodology that considers a small increment model (where each individual service is considered as an increment). Section 6 of the Analysys Mason Report evaluates this approach against the Assessment Criteria. This has been evaluated under two implementation methods:

- Cost modelling
- Benchmarking.

6.7.1 Cost orientation: Pure LRIC implemented via a cost model

6.68 Pure LRIC can be defined more narrowly than LRAIC + (which looks at a large increment) to include a small increment, for example the costs of adding or removing a defined quantity of traffic, or the addition or removal of a smaller set of services, such as local calls, within the broader LRAIC increment. This is also discussed in Chapter 4, sections 4.3.5 and 4.3.6 of this Consultation Document.

6.69 Pure LRIC implemented via a cost model is fully compliant with the 2009 Termination Rate Recommendation and accordingly this approach scores full marks in the Analysys Mason Report under the Assessment Criterion related to the "need to take utmost account of the EC Recommendation". It is the specified methodology set out in the 2009 Termination Rate Recommendation in point 2 where it refers to *"(LRIC) as the relevant cost methodology".*

6.70 The compatibility of pure LRIC with allocative efficiency is underlined in the Explanatory Note, page 15, where it concludes that such an approach *"…promotes efficient production and consumption decisions."* The Analysys Mason Report also considers pure LRIC to be closer to a definition of allocative efficiency than LRAIC +.

6.71 The non-recovery of unavoidable common costs under a pure LRIC methodology, however, raises the question of how common costs should be recovered between retail and wholesale services. The Analysys Mason Report concludes that *"…a higher proportion of retail revenues would be retained by the operators…(which) means that operators have opportunities to recover more of their costs from their own customers, rather than from subscribers of other networks."* The Analysys Mason Report also notes that Service Providers have defined user groups, for example the most obvious being pre pay and post pay for MSPs. This means that Service Providers can manage a greater proportion of cost recovery from their own customers taking into account factors such as willingness to pay, affordability etc.

6.72 ComReg considers that pure LRIC appears to have better allocative efficiency characteristics than LRAIC + due also to the presence of call externalities (i.e. the benefit you gain when someone calls you). Given that the person making the call pays for the entire costs of the call implying it is only their welfare that is ultimately considered in making the call, setting Termination Rates above incremental costs could result in the calling party initiating an inefficiently low number of calls from the called party's perspective. The quantitative benefit of the call externality is unknown; however, in qualitative terms the person receiving the call also derives some benefit from the call as otherwise they would presumably not answer the call. A pure LRIC methodology potentially goes further in recognising this call externality than a LRAIC + methodology. This point is reinforced in the Analysys Mason Report in section 4.2.1 and in its evaluation in section 6.2.

6.73 A recent European Commission serious doubts letter addressed to the Spanish NRA (CMT)[108] regarding a Phase II investigation pursuant to Article 7a of the Framework Directive makes reference to the Explanatory Note to the Recommendation where it states in footnote 24 on page 8 that:

> *"…due to the particular nature of the termination markets characterised on one hand by "two-way" interconnection and on the other hand by monopolies in each relevant market, which create the incentives of terminating operators to raise prices substantially above cost, cost-orientation obligations based on a BU-LRIC methodology are the most appropriate intervention to address productive and allocative efficiency concerns as well as maximising consumer welfare."*

6.74 Pure LRIC also, according to the Analysys Mason Report, improves dynamic efficiency in that the closer the Termination Rate moves to zero, the better the dynamic efficiency as the tariff-mediated network externalities are removed or reduced. In terms of competition this means that incentives for the larger Service Providers to implement differential on-net/off-net retail pricing policies are reduced and ultimately smaller Service Providers face lower financial barriers to entry/expansion. The impact of tariff-mediated network externalities has been clearly evident in Ireland to date where the two key MSPs have been able to broadly maintain their market shares.

[108] European Commission letter reference C(2012) 1541; SG-GREFFE (2012) D/4105; Commission decision concerning case ES/2012/1291: Voice call termination on individual mobile networks in Spain dated 5 March 2012.

6.75 Therefore, it is ComReg's view that a pure LRIC methodology will help to mitigate any potential competition problems associated with above-cost pricing and distortions to competition. For example, in the Irish mobile market, the three largest MSPs have approximately 90% of the mobile market as evident from section 4.6 of ComReg's quarterly key data reports and referred to earlier in Chapter 4 of this Consultation Document. There could be reluctance for consumers to leave their current MSP for fear of the increased charges they would incur to call their family and friends that may remain with their previous MSP as many of the current retail offers, make it attractive for family and friends to be on the same network.

6.76 A pure LRIC approach would result in reduced Termination Rates as it only considers relevant incremental costs. This would facilitate mobile-to-mobile competition in Ireland, in that smaller Service Providers would have a more level playing field due to the reduced impact of financial imbalances. A move to pure LRIC would also see FTRs reduce; however, the positive impact on fixed-to-fixed competition would be less than for mobile-to-mobile competition due in part to how the unrecovered common costs are recovered (see Chapter 7) as well as the fact that FTRs are currently lower than MTRs so the effect on fixed to fixed competition would be less in absolute terms. The effect on fixed-to-mobile competition would also be positive. The Analysys Mason Report considers that Termination Rates set at pure LRIC would increase *"the ability of operators to put together converged fixed-mobile packages including (an unlimited or large bundle of) calls to all off* network operators[109]."

6.77 ComReg considers that lower Termination Rates achieved under a pure LRIC methodology could translate into greater retail pricing flexibility for calls and other services and ultimately greater competition and diversity for consumer offerings, for example, by possibly facilitating more off net calls (including fixed to mobile calls) being offered in packages and bundles. This is because a lower wholesale cost will reduce the exposure of Service Providers in the event of a significant increase in usage of such offers at the retail level.

6.78 The Analysys Mason Report also indicates that a move to pure LRIC Termination Rates would mean that MSPs would no longer be able to rely on a net inflow of termination revenues from FSPs. However, the Analysys Mason Report notes that this revenue loss could be somewhat offset by reducing offers that are not strongly related to competition for basic voice calling services. The Analysys Mason Report includes, amongst others, as an example the case where MSPs continue to regularly subsidise mobile handsets while at the same time consumers are already in possession of a large number of working handsets.

[109] Analysys Mason Report, section 6.3; page 75.

6.79 A more effective retail market can be facilitated by a lowering of financial barriers to entry/expansion (associated with above-cost wholesale transfers) improving the ability of smaller operators to compete for customers and thereby improving the dynamic efficiency. These competitive distortions are also referenced in the Explanatory Note to the 2009 Termination Rate Recommendation where it states on page 18 that *"applying a pure LRIC approach should in any case facilitate a more efficient distribution of these financial transfers between operators and thereby contribute to a level playing field between all fixed and mobile operators."*

6.80 The benefits of a cost orientation remedy based on a pure BU LRIC approach are also noted in a recent EC serious doubts letter to CMT[110] which states on page 8 that :

"a cost orientation remedy based on pure BU LRIC methodology and symmetrical termination rates would best promote competition by, among other things, ensuring that all users derive maximum benefit in terms of choice, price and quality…"

6.81 This letter also states on the same page that:

"Moreover…mobile termination rates…which are based on a BU LRIC model set at an efficient level contribute to a level playing field among operators, by eliminating competitive distortions between fixed and mobile calls respectively, and between operators with asymmetric market shares in the provision of their on / off-net offers."

[110] European Commission letter reference C(2012) 1541; SG-GREFFE (2012) D/4105; Commission decision concerning case ES/2012/1291: Voice call termination on individual mobile networks in Spain dated 5 March 2012.

6.82 In its assessment of the equity or the fairness towards different user groups, section 6.4 of the Analysys Mason Reports notes that low usage mobile consumers in Ireland appear to have a high spend per minute even after removing the effect of reduced termination payments. The Analysys Mason Report sets out that "*there would appear to be no strong reason for mobile operators to increase their retail prices further for this group of customers*." This implies that it is high mobile users that pay the lowest price per minute in Ireland. This accordingly means that low usage mobile consumers are not offered the lowest possible calling prices. If low usage mobile customers reduce further the number of calls that they make but they remain on the network, the Analysys Mason Report indicates that the network externality benefits of being able to contact those subscribers would persist, and it would be efficient for other customers to subsidise this benefit not through the wholesale Termination Rates that they pay to other operators, but directly through the (higher) retail prices they pay to their own operator. The Analysys Mason Report also notes that the concerns that older or housebound people (who tend to be fixed line users) have in relation to the cost of calling mobile numbers would be "significantly reduced with this price control option". The Analysys Mason Report supports its findings through ComReg's most recent ICT survey.[111]

6.83 In its assessment against transparency and regulatory certainty, the Analysys Mason Report notes that pure LRIC would be a new approach for Ireland. As detailed in section 6.5, ComReg has previously used LRAIC + models, but to date a pure LRIC model has not been used. However, the 2009 Termination Rate Recommendation has been published for over three years and many of the key players in the mobile market in Ireland have already been involved in the pure LRIC debate in other European countries where NRAs have either set or are in the process of setting pure LRIC MTRs.

6.84 In relation to FTRs, as previously noted, ComReg already has a LRAIC+ model in place which could be adapted to provide a pure LRIC FTR. There is no MTR cost model currently in place and therefore ComReg would have to build a model to produce a pure LRIC MTR under this approach for the first time. These issues are discussed in further detail in Chapter 7 of this Consultation Document.

[111] ComReg Document No 11/96a: ICT usage among residential consumers; published on 7 December 2011: http://www.comreg.ie/publications/ict_usage_among_residential_consumers.583.103988.p.html

6.7.2 Cost orientation: Pure LRIC implemented via a benchmark

6.85 As previously noted in section 6.6.2 and in Chapter 7, the 2009 Termination Rate Recommendation allows for an 'alternative methodology', as regards implementation. It specifically references benchmarking as an example of an alternative methodology, which may be used in the short term and where the NRA has limited resources *av*ailable. Therefore, the benchmark element of this approach would be compliant with the 2009 Termination Rate Recommendation but only in the short term.

6.86 Pure LRIC is also the methodology set out in point 2 of the 2009 Termination Rate Recommendation which specifies LRIC as *"the relevant cost methodology*". Therefore, a pure LRIC benchmark appears to be acceptable in the short term under the 2009 Termination Rate Recommendation as it states in point 12 that:

"In exceptional circumstances where an NRA is not in a position, in particular due to limited resources, to finalise the recommended cost model in a timely manner and where it is able to demonstrate that a methodology other than a bottom-up LRIC model based on current costs results in outcomes consistent with this Recommendation and generates efficient outcomes consistent with those in a competitive market, it could consider setting interim prices based on an alternative approach until 1 July 2014."

6.87 The assessment for efficiency, competition and equity would all be the same for pure LRIC methodology irrespective of whether it was implemented via a cost model or via a benchmark. Therefore, see section 6.7.1 above for the key arguments.

6.88 Pure LRIC implemented via a benchmark would not require significant resources when compared to a cost model in section 6.7.1 above. However, benchmarks can prove time consuming in that they have to be reviewed at regular defined intervals to take account of any changes relating to the benchmarked countries. This is assessed in greater detail in Chapter 7 of this Consultation Document. Implementation via a benchmark also allows for a high level of transparency in that the countries that make up the benchmark would have their decisions in the public domain. Regulatory certainty can however be compromised with the need for revisions at defined time periods in the future.

6.89 Furthermore, there are a number of publically available pure LRIC results for mobile networks in Europe which could populate a benchmark. However, there are fewer pure LRIC FTRs currently published which would make a pure LRIC FTR benchmark difficult to populate. This is again discussed in greater detail in Chapter 7 of this Consultation Document.

ComReg's Preliminary View

6.90 ComReg is of the preliminary view that *cost orientation* by means of a pure LRIC methodology is the most appropriate approach to set Termination Rates in Ireland for the reasons set out in paragraphs 6.67 to 6.89 above. However, ComReg is proposing that the implementation of this approach would be different for Market 3 and 7. Please refer to Chapter 7 for detailed explanations on how ComReg proposes that the proposed pure LRIC price controls should be implemented.

Q. 3 Do you agree that cost orientation by means of a pure LRIC methodology is the most appropriate approach to set Termination Rates in Ireland? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

6.8 Symmetry versus Asymmetry

6.91 The Analysys Mason Report also evaluates the principle of symmetry against the Assessment Criteria. Please refer also to Chapter 4, section 4.4 of this Consultation Document which discusses the principle of symmetry.

6.92 The adoption of an approach based on symmetrical FTRs and symmetrical MTRs scored well in relation to the assessment concerning the contribution to the development of the internal market as symmetry is the approach that is specified in the 2009 Termination Rate Recommendation.

6.93 As regards the efficiency criteria, it depends on the rate at which the symmetry is set. Symmetry at low rates tends to increase consumption compared to asymmetry or symmetry at high rates.

6.94 Symmetry for MSPs would have positive connotations for mobile-to-mobile competition due to reducing incentives for tariff-mediated network externalities; while symmetry for FSPs would have positive connotations for fixed-to-fixed competition. As noted in Chapter 5 above, higher MTRs for smaller MSPs also help the larger MSPs to justify higher off-net retail tariffs, which again reinforce tariff-mediated network externalities. Thus asymmetric Termination Rates would tend to reinforce larger Service Providers' incentives to exploit tariff-mediated network effects, i.e. they lead to further differentiation in on-net and off-net mobile call tariffs. However, given that FTRs and MTRs would be asymmetric, the same level of positive competitive impacts would not be found in fixed-to-mobile competition. However, there would be some improvements, for example in Ireland where the differences in some of the currently asymmetric MTRs are material. If all SMP Service Providers have symmetric Termination Rates, the materially higher MTRs would no longer prevent bundles incorporating calls to all mobiles rather than excluding MSPs with materially higher MTRs.

6.95 In addition to potentially reinforcing barriers to entry/expansion associated with tariff-mediated network externalities, asymmetric Termination Rates could send the wrong signals to potential new entrants and generate uncertainty and lead to possible disputes between new entrants and existing Service Providers. ComReg's experience to date with regard to MVNOs for example would indicate that a clear message that only a maximum rate can be applied regardless of the Service Provider and the time of entry, which will mitigate the possibility of disputes which can be disruptive to the market.

6.96 In assessing the equity impact of symmetric MTRs and symmetric FTRs, the Analysys Mason Report notes that in the short term there may be consequences for some consumer groups but in the long term all consumers are likely to benefit from the positive competitive effects.

6.97 In relation to regulatory certainty and transparency, all Service Providers are treated the same and the Termination Rates set are in the public domain.

6.98 The implementation of symmetric MTRs and symmetric FTRs, for Service Providers designated with SMP in the relevant markets, is further considered in Chapter 7 of this Consultation Document which sets out ComReg's proposals in relation to the implementation and determination of FTRs and MTRs.

ComReg's Preliminary View

6.99 ComReg is of the preliminary view that symmetry of Termination Rates, in Market 3 and 7 respectively, is appropriate for the reasons set out in paragraphs 6.91 to 6.98 above. While the 2009 Termination Rate Recommendation states that asymmetry should potentially be allowed under certain specified circumstances, ComReg does not consider (subject to the views of respondents to this Consultation Document) that there is merit to allowing asymmetric Termination Rates going forward.

Q. 4 Do you believe that asymmetry should be allowed for any FSPs or MSPs going forward? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

Chapter 7

7 Implementation of the Preferred Price Control

7.1 Overview

7.1 As set out in Chapter 6, ComReg proposes that a pure LRIC methodology is the most appropriate form of cost orientation going forward for the purposes of setting Termination Rates in Ireland. While the 2009 Termination Rate Recommendation sets out clear guidelines to NRAs on the timelines that should be adopted, it is also necessary for ComReg to set out how and when the proposed methodology should take effect in the relevant Irish markets. The earliest possible date for ensuring the relevant MSPs and FSPs comply with the proposed methodology, if adopted, is 2013 as it is not expected that any final decisions will be made by ComReg in relation to FTRs and MTRs until later in 2012. This takes account of the time that will be required by operators to respond to this Consultation Document, and the time required by ComReg to consider responses received and any views expressed by the European Commission. The options available to ComReg for implementing the proposed methodology of pure LRIC for the FVCT and MVCT markets are set out in detail in this Chapter.

7.2 This Chapter will therefore set out ComReg's preliminary views in relation to the following:

- Further specifying the existing price control obligation of cost orientation in relation to the MVCT market;
- Amending the existing price control obligations on Eircom in relation to the FVCT market;
- Imposing a cost orientation obligation on the other SMP fixed OAOs not currently subject to this obligation (referred to in this Consultation Document as the '**other SMP FSPs'**), in relation to the relevant FVCT markets in which they operate; and
- How common costs, previously recovered via FTRs and MTRs, can be recovered going forward if a pure LRIC cost methodology for setting FTRs and MTRs is ultimately adopted by ComReg.

7.3 In summary, ComReg's proposed approach in relation to FTRs and MTRs is as follows:

7.4 In relation to MTRs, as previously highlighted in Chapter 3, ComReg does not currently have a pure BU-LRIC model for MTRs. Therefore an alternative approach is required, in the short to medium term, in order to implement MTRs based on a pure LRIC methodology in line with the timelines set out in the 2009 Termination Rate Recommendation. ComReg does, however, intend to commence a pure BU-LRIC cost modelling exercise in respect of MTRs in 2013. As part of this, ComReg will gather data from the MSPs in order to build an appropriate pure BU-LRIC model for MTRs in Ireland to ensure that the maximum MTR from July 2014 is in line with the modelled approach.

7.5 In the absence at present of an appropriate model or models from MSPs, ComReg considers that it is necessary to use an alternative approach based on benchmarking. Regulation 13(3) of the Access Regulations provides that, as regards any cost recovery mechanism or pricing methodology that it imposes, ComReg may take account of prices available in comparable competitive markets. The proposed benchmarking approach would mean analysing the modelled pure BU-LRIC MTRs in other EU Member States, in order to arrive at an appropriate MTR for SMP MSPs in Ireland from 2013, which is consistent with the 2009 Termination Rate Recommendation.

7.6 In relation to the regulated FTRs, which to date have only been applied to Eircom, ComReg has, from previous reviews of Eircom's fixed call origination rates and FTRs, an in house BU LRIC + model. That BU LRIC + model is based on Eircom's fixed line network infrastructure and includes its related costs and volumes. The BU LRIC + model, while based on Eircom's costs, has been adjusted to reflect the costs of an efficient operator.

7.7 As the existing BU LRIC + model was built some years ago, ComReg considers it necessary to update the model to take into account the changes required in order to apply a pure BU-LRIC methodology. ComReg proposes to use this newly updated model to arrive at an appropriate pure BU-LRIC FTR for FSPs going forward from 2013.

7.8 ComReg has consulted bi-laterally with Eircom over the past number of months in relation to the proposed updated FTR model as most of the data in the current model relates to Eircom's core network. ComReg sets out below the changes that it proposes to make, the reasons for these changes together with a range of pure LRIC FTRs that would result from the proposed model. While we believe there is sufficient information set out in this Consultation Document to allow a considered response to the proposals made, ComReg will – upon request by any respondent to this Consultation Document – share further details of the proposed BU-LRIC FTR model, including its make-up (in a non-confidential format). If necessary, ComReg will facilitate explanatory sessions with interested parties at ComReg's offices where this would be of value.

7.9 While the current wholesale fixed call origination, fixed call termination and fixed call transit rates for Eircom are set using a top-down ('**TD**') model using Eircom's current cost accounting data, in more recent years ComReg has also used the BU-LRIC+ model, referred to above, to cross check the validity of these rates. In recent years this has given rise to significant reductions to the relevant regulated wholesale rates of Eircom.

7.10 While Eircom has very detailed accounting separation and cost accounting obligations imposed on it by ComReg in a number of regulated markets, other SMP FSPs do not. Therefore, the relevant network information may not be available from other SMP FSPs and it may be disproportionate for ComReg to require models from them. Therefore, ComReg is proposing in this Consultation Document that all other SMP FSPs in the FVCT market should charge no more than the FTR derived from the proposed updated pure BU-LRIC model (referred to above). Where, in response to this Consultation Document, the other SMP FSPs provide ComReg with robust costing data to support an alternative rate to that derived from the proposed updated pure BU-LRIC model, ComReg will consider such data prior to adopting any final decision on FTRs.

7.11 The rest of this Chapter is discussed under the following three main headings:

1. Implementation of the cost orientation obligation in the MVCT market
2. Implementation of the cost orientation obligation in the FVCT market
3. Treatment of common costs not recovered under pure LRIC.

7.2 Implementation of the cost orientation obligation in the MVCT market

7.2.1 Regulatory approach to date

7.12 As set out in Chapter 3 of this Consultation Document, to date, the MTRs of SMP MSPs in Ireland have been set on the basis of a benchmarked voluntary glide path approach. The benchmark has been based on European average MTRs, where that average was derived from the BEREC six monthly snapshot reports, generally published in March and October each year. The most recent reductions to the MTRs in Ireland are set out in Information Notice No. 10/82[112], which also refers to previous Information Notices on reductions in MTRs.

7.13 The benchmark voluntary glide-path approach for the current SMP MSPs in Ireland has to date resulted in reductions every six months, where the Irish MTRs would approximate to the European average MTR. While this approach was appropriate up to now, the 2009 Termination Rate Recommendation and indeed correspondence to date from the European Commission to other NRAs, have made it clear that such an approach would not be consistent with the 2009 Termination Rate Recommendation after 31 December 2012.

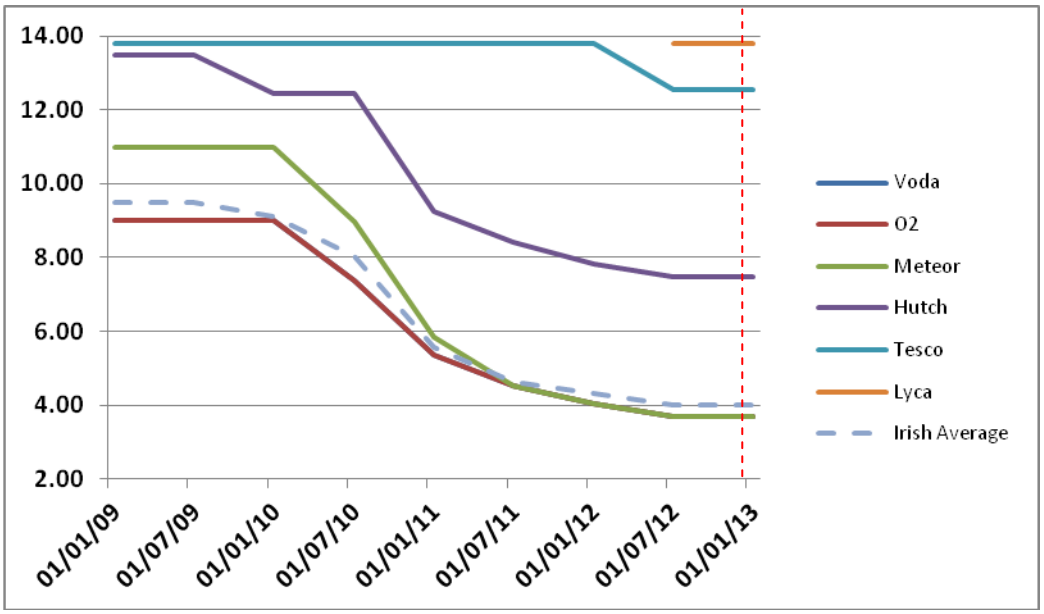
7.14 By the end of 2012 Vodafone, O2 and Meteor will have a symmetrical weighted average MTR of 3.68 cent per minute. H3GI will continue to have an asymmetric weighted average MTR of 7.44 cent per minute up to the end of 2012. Tesco Mobile and Lycamobile, who have not to date been designated with SMP, currently have asymmetric weighted average MTRs of approximately 12.55 and 13.79 cent per minute, respectively. (It should be noted that ComReg Document No 12/46 proposes that Tesco Mobile and Lycamobile should be designated with SMP in the relevant MVCT market in which each operates.)

7.15 Figure 7.1 below illustrates the evolution of MTRs in Ireland up to the end of 2012.

[112] Information Notice No. 10/82: Further reductions in mobile termination charges by Vodafone, O2, Meteor and Hutchison 3G (Ireland); published on 8 October 2010.

7.16 The current benchmark approach in place with the SMP MSPs for MTRs means that from January 2013, all MSPs currently with SMP will have symmetrical MTRs which will approximate to the European average. While Vodafone, O2 and Meteor have been symmetric for some time now, a steeper reduction will be required for H3GI at the end of 2012 under the current glide path, given its current asymmetrical MTR. However, given the proposal set out in this Consultation Document to move to a pure LRIC methodology, all SMP MSPs will see a steep decline from their current position if the proposed pure LRIC methodology comes into effect in 2013.

Figure 7.1: Evolution of MTRs in Ireland



Source: ComReg

7.17 As illustrated in the figure above, MTRs in Ireland have reduced significantly since 2009. The average Irish MTR has reduced from 9.5 cents per minute as of 1 July 2009 to an expected rate of approximately 4.01 cents per minute as of 1 July 2012, representing approximately a 58% cumulative reduction. ComReg believes that these reductions have been to the benefit of consumers and may have been a key consideration for many FSPs when deciding on amendments to tariff plans that include fixed to mobile minutes and for MSPs considering tariff plans that include calls to other mobile networks.

7.2.2 Proposed implementation approach for cost oriented MTRs

7.18 Chapter 6 set out ComReg's preliminary view that all MSPs designated (or currently proposed to be designated) with SMP should comply with the obligation to set MTRs on the basis of a pure LRIC methodology. This section sets out ComReg's proposals on how - where a pure LRIC methodology is implemented - this methodology should be applied in the Irish context from the effective date of any final decision.

7.19 Taking into consideration Regulation 13(3) of the Access Regulations and the guidance from the 2009 Termination Rate Recommendation, ComReg considers there are two options, either:

1. Calculate the MTRs using a pure BU-LRIC model; or
2. Base the MTRs on a benchmark derived from EU Member States in which NRAs have already adopted pure BU-LRIC models

Option 1: Calculate the MTRs using a BU pure LRIC model

7.20 As previously discussed in Chapter 3 and as set out above, ComReg does not currently have a pure BU-LRIC model to determine MTRs in Ireland and our understanding is that neither do any of the MSPs in Ireland. Based on ComReg's previous experience of building network cost models, it could take from 12 to 18 months to develop an appropriate pure BU-LRIC model to determine the MTRs in Ireland. It may also be necessary to consult on any such model.

7.21 As the 2009 Termination Rate Recommendation requires NRAs to implement the pure BU-LRIC methodology by 1 January 2013, we consider that it will not be possible – given resource constraints currently affecting ComReg – to have a pure BU-LRIC model built by that date. However, it is ComReg's intention, following this consultation process, to commence a modelling exercise to establish an appropriate pure BU-LRIC model for MTRs to meet the timelines as set out in the 2009 Termination Rate Recommendation, i.e. 1 July 2014.

7.22 Where MSPs have sufficient granular information available from their own accounting systems regarding the pure LRIC costs of MVCT, then ComReg would welcome the submission of any such information as part of this consultation process. Where information is submitted to ComReg, we will review and consider the information submitted, which may potentially provide a reasonable alternative to the proposed benchmarking approach so long as the costing information provided is a reasonable reflection of the pure LRIC cost of terminating a call on an efficient network in line with the criteria set out in the 2009 Termination Rate Recommendation.

7.23 In any event, Regulation 13(4) of the Access Regulations provides that where a cost orientation obligation is imposed on an operator, the burden of proof that charges are derived from costs, including a reasonable rate of return on investment lies with the operator concerned.

7.24 It should be noted that in the context of its market review of the MVCT market (as set out in ComReg Document No 12/46) ComReg is not proposing to impose any cost accounting obligation on SMP MSPs. ComReg considers that the obligation of cost accounting may not be proportionate at this point in time and may in fact be burdensome for the SMP MSPs.

7.25 Regulation 13(5) of the Access Regulations requires that where implementation of a cost accounting system is imposed, ComReg must ensure that a description of the cost accounting system is made publicly available showing at least the main categories under which costs are grouped and the rules used for the allocation of costs. Again from previous experience in ComReg, imposing this obligation on an SMP operator can be quite intrusive, can require very detailed financial data and can be resource intensive and costly.

7.26 However, it may be necessary as part of a future detailed mobile network modelling exercise for ComReg to require such detailed information from the SMP MSPs. ComReg expects that the main SMP MSPs would have such information to hand without the need for ComReg to impose detailed accounting separation and cost accounting obligations on them. Therefore, ComReg has refrained from imposing such obligations in ComReg Document No 12/46. ComReg will keep this under review and may revisit this issue if any data gathering exercise required to arrive at a pure BU-LRIC model shows that accounting separation and/or cost accounting obligations might be appropriate.

Option 2: Base the MTRs on a benchmark of pure LRIC based on a BU model

7.27 ComReg notes that benchmarking is an approach allowed under the Access Regulations in order to implement a cost orientation remedy. Regulation 13(3) of the Access Regulations provides that:

"*The Regulator shall ensure that any cost recovery mechanism or pricing methodology that it imposes under this Regulation serves to promote efficiency and sustainable competition and maximise consumer benefits. In this regard, the Regulator may also take account of prices available in comparable competitive markets*".

7.28 The 2009 Termination Rate Recommendation specifically mentions benchmarking as an example of an alternative methodology in the short term and where an NRA has limited resources. On page 7, paragraph 22, the 2009 Termination Rate Recommendation states that:

"For NRAs with limited resources, an additional transitional period may exceptionally be needed in order to prepare the recommended model. In such circumstances, if an NRA is able to demonstrate that a methodology (e.g. benchmarking) other than a bottom – up LRIC model based on current costs results in outcomes consistent with this Recommendation and generates efficient outcomes consistent with those in a competitive market, it could consider setting interim prices based on an alternative approach until 01 July 2014."

7.29 In the absence of any sufficient information received from the SMP MSPs to date which would assist in determining the actual pure LRIC cost of MVCT on their networks, and given the resource constraints which it currently faces, ComReg considers that it is left with no option but to proceed on the basis of a benchmark of pure LRIC rates, based on the result of pure BU-LRIC models adopted by NRAs in other EU Member States. The proposed benchmarking approach is further discussed below, after ComReg's consideration of the benchmark approach used by other NRAs and the comments from the European Commission to those NRAs in that context.

Review of the benchmarking approach implemented by other NRAs

7.30 ComReg, as part of this consultation process, has considered the implementation of the 2009 Termination Rate Recommendation by other NRAs. ComReg has also considered the subsequent comments made by the European Commission to those NRAs. An overview of some of these comments has already been set out in Chapter 3.

7.31 In addition to the matters noted in Chapter 3, ComReg now discusses the relevant points made by the European Commission to other NRAs in the context of using a benchmark approach for setting MTRs.

7.32 In particular, ComReg notes the case of the Estonian Competition Authority **("ECA")** and the subsequent comments from the European Commission, which ComReg considers have significant relevance and provide guidance as regards the application of a benchmarking approach to determine MTRs in Ireland.

7.33 The ECA recently notified the European Commission of its proposed MTRs for the period 1 July 2012 to 30 June 2013[113]. The proposed MTRs, based on a benchmark of 12 other EU Member States using a combination of "BU LRAIC plus" and "pure BU-LRIC", as of 1 January 2013 resulted in a MTR of 3.89 cent per minute. The ECA did not propose any specific rates after 30 June 2013 but instead it proposed to set/publish annually the MTRs for the period after 30 June 2013 no later than three months before the effective date of the relevant MTRs, based on a benchmark approach. It proposed that this would be communicated by way of a public information notice.

7.34 The European Commission responded to the ECA by opening a phase II investigation. The main concerns raised by the Commission were:

- The need for transparency in the notification of remedies (for the periods post 30 June 2013)
- Inappropriate benchmarking methodology and non-imposition of cost efficient MTRs. The European Commission considered that the benchmark to be applied from 1 January 2013 to 30 June 2013 incorrectly included:
  - Non EU countries
  - BU-LRIC plus MTRs
  - Use of historical instead of forward looking BU pure LRIC MTRs

[113] See Commission decision concerning Case EE/2012/1305: Voice call termination on individual mobile networks (16 April 2012).

7.35 The European Commission did not disagree with the benchmarking approach as long as the approach demonstrated that it promoted efficiency, enhanced competition and maximised consumer benefits. The European Commission did provide additional comments on the implementation of a benchmark approach:

> "*Therefore, if the alternative methodology chosen is benchmarking, it should be performed by taking into account average MTRs of those Member States which have implemented the most efficient cost methodology as of 1 January 2013, which is pure BU-LRIC and not BU-LRIC plus. Such an approach has also been recently endorsed by BEREC*[114].

7.36 While the ECA withdrew its draft measures, ComReg considers that the European Commission's comments regarding the ECA draft measures provide a reasonable guideline as to the appropriate means by which a pure BU-LRIC benchmark should be derived and implemented.

7.37 The Slovakian NRA, Telekomunikačný úrad Slovenskej republiky **("TÚSR**"), recently proposed a benchmark approach based on the MTRs of 15 EU Member States citing, amongst other reasons, a lack of resources as a key factor for implementing a benchmark approach.[115] TÚSR proposed that the MTR set by means of a proposed benchmark should apply to the period from 31 May 2012 to 1 June 2013. TÚSR also provided assurances to the European Commission that it would apply pure BU-LRIC for the period thereafter.

7.38 In this Slovakian case, the European Commission made reasonably similar comments to those it had made in the earlier Estonian case (discussed above). The European Commission disagreed with the rate / basis being proposed, but welcomed the fact TUSR committed to implementing a pure BU-LRIC model from 1 June 2013. The European Commission did specifically comment that "*in order to bring more quickly the benefits of lower MTRs to the consumers and avoid excessively steep drops in MTRs at the end of the transition, the Commission asks TÚSR to modify its benchmarking method in such a way that it would lead already in the period preceding 31 May 2013 to a reduction of MTRs in line with the Termination Rates Recommendation*". [ComReg emphasis added]

[114] See BEREC's opinion in Phase II investigation in cases NL/2012/1284 and NL/2012/1285 on fixed and mobile termination markets in the Netherlands.

[115] See European Commission decision concerning Case SK/2012/1313: Voice call termination on individual mobile networks in Slovakia - modification of remedies (30 April 2012).

7.39 While not related to a benchmarking approach, ComReg also notes the measures put forward by the Spanish NRA, La Comisión del Mercado de las Telecomunicaciones **("CMT")** with respect to the implementation timelines of pure LRIC MTRs. CMT proposed a pure BU-LRIC MTR of 1.09 cent from 1 July 2013, with a glide path to that pure LRIC rate[116].

7.40 The European Commission commented[117] on the possibility of further reducing the price level of the initial steps of the glide path, as the current proposal meant that the main reductions were to take place in the latter stages. In terms of the implementation timelines, the European Commission recognised that a certain amount of delay, if limited, may be acceptable for implementing pure BU-LRIC MTRs in order to minimise business and regulatory uncertainty. CMT justified its delay on the basis of the disruptive impact on MNOs.

> *"…….the Commission appreciates that regulators are confronted with the need to strike a balance between protecting consumer welfare and avoiding a disruptive impact on the operators. To that end, the Commission acknowledges that NRAs have a certain margin of discretion, which could allow them to delay to a degree the introduction of fully cost-oriented rates". [ComReg emphasis added]*

[116] CMT glidepath to pure LRIC

	Current rate	16/10/12 - 29/02/13	01/03/13 - 30/06/13	from 01/07/13
Movistar, Vodafone & Orange	3.42	3.16	2.76	1.09
Yoigo	4.07	3.36	2.86	1.09

[117] Ref: Commission decision concerning Case ES/2012/1314: Voice call termination on individual mobile networks in Spain (30 April 2012).

ComReg's proposed approach for benchmarking MTRs in Ireland

7.41 As already set out above, given the resources constraints affecting ComReg and in the absence of any sufficient information provided by the SMP MSPs to date in order for ComReg to determine the actual pure LRIC cost of MVCT on their networks, ComReg considers that it should proceed on the basis of a benchmark of pure LRIC rates, based on the result of pure BU-LRIC models adopted by NRAs in other EU Member States.

7.42 ComReg considers that a direct benchmark[118] should be based on the simple average of the MTRs applied in the EU Member States[119] that have set pure LRIC MTRs based on a BU model. Therefore, it is proposed that when ComReg reaches its final decision, the pure LRIC MTR will only be based on those EU Member States with a final and binding decision in place on a pure LRIC MTR based on a BU model.

7.43 As of the date of publication of this Consultation Document, there is only one EU Member State, France, that has a final and binding decision in place regarding a pure LRIC MTR based on a pure BU-LRIC model. The UK, Belgium, Portugal and Italy have each taken a final decision on the pure LRIC MTR based on a BU pure LRIC model but the relevant decisions are currently under appeal. ComReg understands that Spain has issued its final decision on a pure LRIC MTR based on a pure BU-LRIC model but that the appeal period has not yet elapsed. The relevant Dutch decision has been annulled. Please refer to Figure 7.2 below in subsection 7.2.3 for full details.

7.44 ComReg considers that the results from either a pure BU-LRIC model or from a benchmarking approach based on the modelled pure BU-LRIC MTRs in place in other EU Member States should not result in any material differences based on ComReg's review of model results presented to date by NRAS in the EU Member States where final or draft decisions have been adopted.

7.45 Both France and the UK have undertaken very detailed modelling exercises to arrive at a pure BU-LRIC rate and the results from both countries were not materially different. The results from NRAs in other EU Member States, as shown later in this Chapter, while not complete, also show a reasonable degree of consistency of results. On this basis ComReg would expect that the model result of an efficient pure LRIC rate for MTRs in Ireland would be in the same range as the results from other EU Member States in which pure BU-LRIC models have been adopted for MTRs. However, ComReg would welcome views from respondents as to whether they consider that pure BU-LRIC models

[118] A direct benchmark is the preferred approach set out in Section 3.2.2 of the Analysys Mason Report
[119] http://europa.eu/about-eu/countries/index_en.htm

established in other EU Member States that are in line with the 2009 Termination Rate Recommendation provide a reasonable proxy for the purposes of setting a benchmarked Irish MTR and if not why not.

ComReg's Preliminary view on MTRs

7.46 ComReg is of the preliminary view that MTRs in Ireland should be set using the pure LRIC methodology (as discussed in Chapter 6 of this Consultation Document).

7.47 In the absence of a 'fit for purpose' cost model that complies with the 2009 Termination Rate Recommendation, and given the resource constraints currently affecting ComReg, ComReg is of the preliminary view that the pure LRIC methodology for MTRs should be implemented by means of a benchmarking approach. The benchmark should be based on the simple average of the pure LRIC MTRs, calculated using a pure BU-LRIC model, that are in place in EU Member States where the NRA has adopted a final and binding decision. This benchmark MTR will be a maximum MTR until such time as a fit for purpose pure BU-LRIC cost model is available for MTRs in Ireland. It is ComReg's intention that such a model will be available for review prior to July 2014 (i.e. the maximum timeframe for using the benchmark approach, as recommended in the 2009 Termination Rate Recommendation).

Q. 5 Do you agree or disagree with the proposed benchmarking approach for MTRs set out above? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

7.2.3 Results of the Benchmarking approach and application of the MTRs

7.48 Following ComReg's preliminary view above that a benchmarking approach (Option 2) based on a pure LRIC MTR modelled by other EU Member States is the most appropriate approach, ComReg now considers how benchmarking can be adopted in order to determine the MTRs for the SMP MSPs in Ireland.

7.49 ComReg considers that the EU Member States identified in the table below are the only EU Member States that should be considered as options for the purposes of benchmarking given that their pure LRIC MTRs are based on a BU pure LRIC model.

Figure 7.2: MTRs (cent per minute) BU pure LRIC - Decisions / Draft Decisions / Under appeal: Glide Paths

Country	01 Jan 13	01 Jul 13	01 Jan 14	Status of Final Decision	EC comments	Consider in benchmark
Netherlands	1.20	1.20	1.20	Decision annulled	Yes[120]	No
Belgium	1.08	1.08	1.08	Decision under appeal[121]	Yes[122]	Yes
France	0.80	0.80	0.80	Final and binding decision[123]	Yes[124]	Yes
Italy	1.55	0.98	0.98	Decision under appeal[125]	Yes[126]	Yes
Spain	3.20	1.09	1.09	Final Decision but period for appeal has not yet elapsed[127]	Yes[128]	Yes
UK	2.02	0.86	0.86	Decision under appeal [129]	Yes[130]	Yes
Portugal	1.27	1.27	1.27	Decision under appeal [131]	No	Yes

Source: ComReg

[120] European Commission decision concerning case NL/2010/1080: Voice call termination on individual mobile networks

[121] BIPT Decision 29 June 2010 - http://www.bipt.be/ShowDoc.aspx?levelID=70&objectID=3293&lang=nl

[122] European Commission decision concerning case BE/2010/1086: voice call termination on individual mobile networks in Belgium

[123] Arcep Décision n° 2011-0483, 5 may 2011. Decision on the definition of price control obligation for voice call termination on mobile operators Orange France, SFR and Bouygues Telecom for the period 1 July 2011 to 31 December 2013. http://www.arcep.fr/uploads/tx_gsavis/11-0483.pdf

[124] European Commission decision concerning Case EE/2012/1305: Voice call termination on individual mobile networks in France

[125] Agcom Decision of 17 November 2011 - http://www.agcom.it/default.aspx?DocID=7756

[126] Ref**:** SG-Greffe (2011) D/10210. Commission decision concerning case IT/2011/1219: Voice call termination on individual mobile networks in Italy

[127] CMT Final Decision of 10 May 2012 - http://www.cmt.es/c/document_library/get_file?uuid=a3967e78-254a-4fc6-a789-5c0f784f0680&groupId=10138. Operators have until 6 July 2012 to appeal CMTs decision.

[128] European Commission decision concerning Case ES/2012/1314: Voice call termination on individual mobile networks in Spain

[129] Ofcom Mobile call termination: Adoption of revisions to SMP Conditions in accordance with the directions of the Competition Appeal Tribunal of 8 May 2012 http://stakeholders.ofcom.org.uk/binaries/consultations/mtr/statement/smp_conditions.pdf. However Everything Everywhere have appeal the CAT MTR Judgement - http://catribunal.org.uk/167-7631/Order-of-the-Chairman-Permission-to-appeal.html

[130] European Commission decision concerning case UK/2010/1068: Voice call termination on individual mobile networks. EC made comments with respect to the timeframe to implement pure LRIC MTRs in UK

[131] Anacom final decision of 30 April 2012 - final decision on the specification of the price control obligation on wholesale markets of voice call termination on individual mobile networks Refer to: http://www.anacom.pt/render.jsp?contentId=1125693

7.56 Based on the EU Member States set out in Figure 7.2 above, the table below demonstrates the MTR ranges, highlighting the highest to lowest pure LRIC MTR based on those EU Member States with a pure BU-LRIC model in place. This range is based on a simple average of 6 of the EU Member States, as indicated in Figure 7.2, and it excludes the Netherlands given that its decision was annulled. It should be noted that the MTRs in those 6 EU Member States are not differentiated by peak, off-peak and weekend but rather the NRA in each Member State sets one permitted maximum MTR.

Figure 7.3: Possible MTR ranges (in cent per minute) based on benchmark approaches

Benchmark Basis	1 Jan 2013		1 July 2013	
	High	Low	High	Low
Average pure LRIC Cost of EU Member States using BU pure LRIC	1.27	0.8	1.27	0.8

Source: ComReg

7.57 However, as highlighted in the footnotes to Figure 7.2 and also as discussed by ComReg in subsection 7.2.2, the pure BU-LRIC MTRs set in some of those EU Member States are not contained in final and binding decisions (e.g. in some cases the decisions in question are currently under appeal). This means that as of the date of publication of this Consultation Document, there is a very limited range of EU Member States that have a final and binding decision in place on modelled BU pure LRIC MTRs.

7.58 It is anticipated that, given the deadlines set out in the 2009 Termination Rate Recommendation, the number of EU Member States that will have pure BU-LRIC MTRs in place may in fact increase by the time ComReg makes its final decision. It is proposed that when ComReg reaches its final decision, the pure LRIC MTR will only be based on those EU Member States with a final and binding decision in place on a pure LRIC MTR based on a BU model. Currently, France is the only EU Member State with a final and binding decision in place regarding BU pure LRIC MTRs, based on a BU pure LRIC model, which ComReg could use as a benchmark for the MTRs in Ireland if ComReg were to adopt its proposed decision today.

7.59 Once ComReg's final decision is in place, ComReg intends to keep the benchmarked pure LRIC MTR under review every six months by monitoring the list of EU Member States in which there are decisions in force based on a pure BU-LRIC model for MTRs. As NRAs in more Member States adopt the pure BU-LRIC models for MTRs, the benchmark MTR in Ireland may subsequently need to be revised.

7.60 The proposed MTR ranges set out are symmetrical rates which ComReg proposes should apply to all SMP MSPs. Please refer to Chapter 4 (section 4.4) for discussion in relation to symmetry and asymmetry.

7.61 ComReg considers that in determining the appropriate benchmark to use for setting the pure LRIC MTRs in Ireland, there are a two options to consider in terms of implementation:

1. A benchmark approach, with effect from 1 January 2013, based on the MTRs applied in those EU Member States who have a final and binding decision in place, based on a BU pure LRIC model.
2. A benchmark approach, with effect from 1 July 2013, based on the MTRs applied in those EU Member States who have a final and binding decision in place, based on a BU pure LRIC model.

Option 1: Benchmark based on implementation of pure LRIC MTRs from 1 January 2013

7.62 Option 1 means setting the MTR in Ireland, with effect from 1 January 2013, based on a benchmark of the results of the BU pure LRIC models used by those EU Member States with a final and binding decision for MTRs in place.

7.63 ComReg is mindful that the 2009 Termination Rate Recommendation specifies 1 January 2013 as the deadline for implementing the pure LRIC methodology and correspondence to date from the European Commission to other NRAs has made it clear that the Commission has limited tolerance for any significant divergence from this deadline. The current MTR glide path in place with the current SMP MSPs in Ireland expires at the end of 2012. Therefore one option is to implement pure LRIC MTRs from 1 January 2013.

7.64 It is clear from the European Commission comments to Slovakia and Spain, in particular, that NRAs are allowed some discretion in terms of the timeline to introduce pure BU-LRIC cost oriented MTRs. This is particularly important when considering the appropriate implementation date of the pure LRIC methodology in Ireland and the level of discretion allowed to ComReg when making its final decision. The correspondence to date from the European Commission to other NRAs tends to indicate that there is little or no tolerance for any extensions to existing glide paths which allow MTRs to continue in the market which are inconsistent with the methodology prescribed in the 2009 Termination Rate Recommendation.

7.65 However, ComReg also has to consider whether it is proportionate to introduce fully compliant pure LRIC cost-oriented rates from 1 January 2013, in circumstances where a final decision is only likely to be taken by ComReg towards the end of 2012. ComReg is very conscious of striking a balance between protecting consumer welfare, on the one hand, and considering the least disruptive impact any final decision may have on MSPs, on the other.

7.66 The MTRs for SMP MSPs in Ireland have reduced by around 50% over the last two years and the average MTRs in Ireland for the four current SMP MSPs as of 30 June 2012 will be approximately 4.01 cent per minute. ComReg believes that implementing a benchmarked pure BU-LRIC MTR from 1 January 2013 would have a significant financial impact on MSPs and therefore it may be reasonable to allow sufficient time for MSPs to adjust their business plans accordingly.

7.67 ComReg is aware that most financial year ends of FSPs and MSPs are either March or June and it is possible, even though the 2009 Termination Rate Recommendation has been in the public domain since 2009, that FSPs and MSPs have not budgeted for the significant MTR reductions that would arise

from the proposed pure LRIC methodology. It is also likely that consumers may not see the full benefits of a change to MTRs from January as FSPs and MSPs may not have sufficient time to adjust the retail tariffs and strategies to pass any benefits between the time that ComReg may implement its final decision later in the year and the date on which that decision enters into force. ComReg therefore considers that another option is to implement pure BU-LRIC MTRs from 1 July 2013 instead. This is discussed below.

Option 2: Benchmark based on implementation of a straight line reduction to pure LRIC MTRs from 1 July 2013

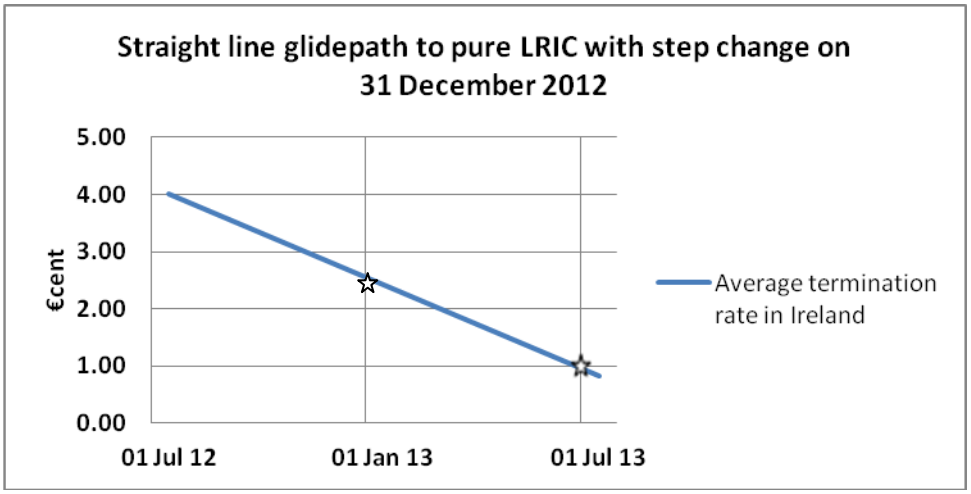
7.68 Option 2 means setting the MTR in Ireland, with effect from 1 July 2013, using a benchmark of the MTRs set by NRAs in other EU Member States which have adopted final and binding decisions based on pure BU-LRIC models.

7.69 The current voluntary glide path in place with the four existing SMP MSPs in Ireland runs until the end of 2012. If ComReg were to implement the benchmark approach from 1 July 2013, it would be necessary for it to extend the current glide path approach that is in place for the four existing SMP MSPs from 1 January 2013 to 30 June 2013 by making a step change to the MTRs. This step change would be a straight line cut from the MTR on 1 January 2013 to reach the compliant pure LRIC MTR by 1 July 2013. As regards the two additional MSPs that ComReg proposes to designate with SMP in ComReg Document No 12/46 (i.e. Tesco Mobile and Lycamobile), ComReg proposes that these two MSPs would be subject to the same MTR applicable to the four existing SMP MSPs as at 1 January 2013. In other words, all six MSPs would be subject to a symmetric MTR at 1 January 2013 and would reduce to the symmetric benchmarked pure LRIC MTR on 1 July 2013.

7.70 This would mean that if the MTR with effect from 1 July 2013 is based on a pure LRIC rate at the lower end of the range set out above (i.e. at 0.8 cent per minute) (Figure 7.3), then a straight line glide path towards that rate from a current average MTR of 4.01 cent per min, would mean that a MTR of 2.42 cent per minute could be reasonable for the period from 1 January 2013 to 30 June 2013.

7.71 This approach is illustrated graphically in Figure 7.4 below. ComReg believes that where discretion is allowed by the European Commission this option could be a reasonable compromise for the initial period after the effective date of any final decision. ComReg also notes that this approach would appear to be consistent with recent comments from the European Commission with respect to notifications related to Spain and Slovakia.

Figure 7.4: Illustration of the option (2) of a straight line reduction to pure LRIC rates on 1 July 2013 (taking the pure LRIC rate of 0.8 cent per minute)

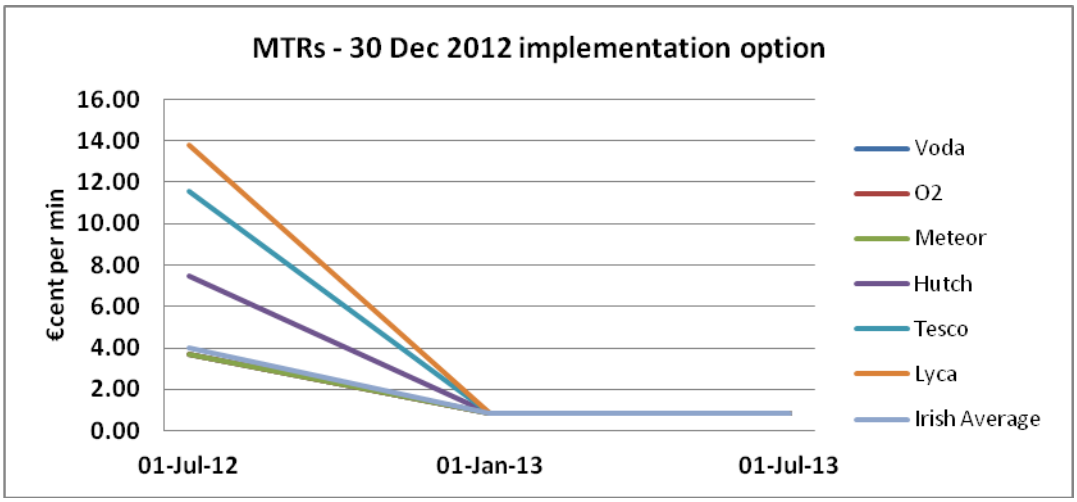


Source: ComReg

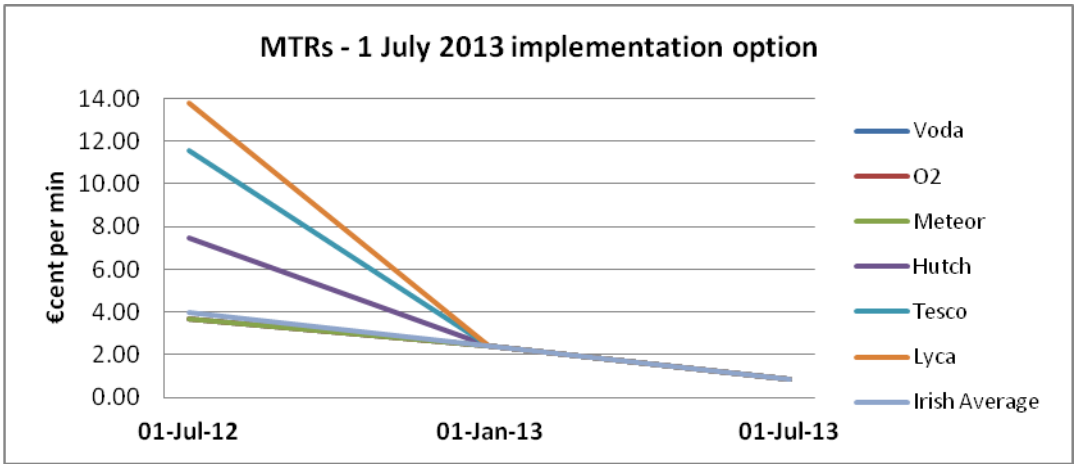
7.72 The proposed implementation options discussed above are also illustrated in the graphs below.

Figure 7.5: Graphed results of implementation options (cent per minute) (taking the pure LRIC rate of 0.8 cent per minute)

Option 1



Option 2



Source: ComReg

Weighted average MTR

7.73 MTRs levied by MSPs for MVCT on respective mobile networks are generally differentiated by peak[132], off-peak[133] and weekend[134] usage and often different rates are applied. Currently, it is the responsibility of each SMP MSP to ensure that the weighted average of its peak, off-peak and weekend MTRs complies with the overall weighted average MTR permitted under the current voluntary glidepath approach.

[132] Peak is typically the rate applied during normal working hours.
[133] Off-peak is typically the rate applied outside of normal working hours.
[134] Weekend is typically the rate applied during Saturday, Sunday and bank holidays.

7.74 While it might have been important for MSPs to have flexibility when setting MTRs for different times of the day when MTRs were higher, this may no longer be the case where the MTRs are proposed to be much lower going forward. ComReg proposes that where MSPs wish to continue with this approach of setting different MTRs for different times of the day, and where such an approach is not likely to give rise to any unintended gaming in terms of time of day rates around the weighted average MTR, then this approach should continue to be permitted. However, ComReg reserves its rights to intervene at a later date where it considers that this approach is being used in a manner that is not consistent with the spirit of the regulatory regime for MTRs.

7.75 ComReg considers that the SMP MSPs should use their actual volumes (in minutes) of termination traffic for peak, off-peak and weekend over the six month period prior to the entry into force of any final ComReg decision as a basis for determining whether the weighted average of their peak, off-peak and weekend MTRs complies with the maximum rate that ComReg proposes to impose. ComReg considers that the proposed formula set out in the table below should clarify any ambiguity that MSPs may have in terms of setting Peak MTRs, Off-peak MTRs and Weekend MTRs that complies with the weighted average MTR.

Figure 7.6: Proposed formula for calculating the Weighted Average Mobile Termination Rate

Weighted Average Mobile Termination Rate (MTR) shall be calculated as follows:

(Peak MTR * X%) + (Off-peak MTR * Y%) + (Weekend MTR * Z%)

Whereby:

X = Peak Terminating Minutes as a percentage of the total Terminating Minutes, on the MSP's network for the provision of MVCT

Y = Off-peak Terminating Minutes as a percentage of total Terminating Minutes, on the MSP's network for the provision of MVCT

Z = Weekend Terminating Minutes as a percentage of total Terminating Minutes, on the MSP's network for the provision of MVCT

Terminating Minutes for the purpose of calculating the Weighted Average Mobile Termination Rate shall mean the actual terminating minutes on the MSP's network for the provision of MVCT during the six month period prior to the date set out in Section 7.2 of the Decision Instrument at Chapter 9 of this Consultation Document.

However, in cases where an MSP is proposing to amend its MTR(s) subject to Section 4.3 of the Decision Instrument at Chapter 9 of this Consultation Document, the Terminating Minutes for the purpose of calculating the Weighted Average Mobile Termination Rate shall mean the actual terminating minutes on the MSP's network for the provision of MVCT during the six month period prior to the date of notification to ComReg, in accordance with Section 4.5 of the Decision Instrument at Chapter 9.

Notification procedures

7.76 ComReg proposes that the MSPs should pre-notify ComReg of any proposed MTR changes by submitting a compliance statement two months in advance of the proposed revised MTR becoming effective, demonstrating that the weighted average of their proposed peak, off-peak and weekend MTRs complies with the overall weighted average MTR imposed by ComReg.

7.77 ComReg proposes that a compliance statement should be in the format of a Microsoft Excel worksheet, which clearly demonstrates the proposed MTRs for peak, off-peak and weekend with back-up workings (reflecting the proposed formula at Figure 7.6) to show compliance with the weighted average MTR applicable for that specified period as set out in Figure 7.3 above. It is proposed that ComReg will review the compliance statement submitted by MSPs and it reserves the right to seek further clarifications and workings if required.

7.78 Once the compliance statement submitted by the MSP is reviewed by ComReg, it is proposed that the MSP should pre-notify and publish the new peak, off-peak and weekend MTRs at least 35 days in advance of the proposed revised MTR becoming effective (it should be noted that this has also been proposed in ComReg Document 12/46). In line with the transparency obligation, as set out in Section 11 of the Draft Decision Instrument annexed to ComReg Document 12/46, it is proposed that the proposed revised MTR should be published by the MSP on its website and should also be communicated to Eircom Wholesale for publication in the Eircom Wholesale STRPL at least 35 days in advance of the proposed revised MTR becoming effective. ComReg considers that the proposed 35 day notice period is appropriate as it allows sufficient time for Eircom and other Service Providers to amend their billing systems in advance of the new MTRs becoming effective. It may also be necessary, in some instances, for Service Providers to adjust retail prices for calls on foot of any reductions to MTRs. It is proposed, however, that ComReg will reserve the right to allow derogation from the two-month timeline set out where necessary and appropriate.

ComReg's Preliminary View on MTRs

7.79 ComReg has set out two preliminary options in terms of the implementation date for pure LRIC MTRs. The first option is a proposed implementation of pure LRIC MTRs on 1 January 2013 and the second option is a proposed implementation of pure LRIC MTRs on 1 July 2013. ComReg is minded towards the option of 1 July 2013 for implementation of a pure LRIC MTR, for the reasons already set out above in Chapter 7.

7.80 ComReg is of the preliminary view that each SMP MSP should pre-notify ComReg of any proposed changes to its MTRs by submitting a statement of compliance two months in advance of those changes becoming effective. ComReg is of the preliminary view that the SMP MSPs should pre-notify other Service Providers and publish the new peak, off-peak and weekend MTRs at least 35 days in advance of the proposed revised MTRs becoming effective, including at least 35 days prior notice to Eircom for publication in the Eircom Wholesale STRPL.

7.81 However, it is proposed that ComReg will reserve the right to allow derogation from the two-month prior notification requirement where necessary and appropriate.

Q. 6 Do you consider that it is appropriate for ComReg to impose, with effect from 1 January 2013, a maximum weighted average symmetric MTR calculated on the basis of a benchmark approach which uses the MTRs imposed by NRAs in other EU Member States where there is a decision in force on MTRs based on a pure BU-LRIC model? Alternatively, do you consider that it would be appropriate for ComReg to apply that approach instead with effect from 1 July 2013 and to adopt the proposed glide path approach for the period from 31 December 2012 to 1 July 2013? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

7.3 Implementation of the cost orientation obligation in the FVCT market

7.3.1 Regulatory approach to date

7.82 As set out in Chapter 3, the FVCT market is currently regulated under ComReg Decision No. D06/07. However, the price control obligation on FSPs is divided into Eircom's obligation and the obligation imposed on other authorised operators (OAOs) designated with SMP ('**SMP OAOs**') at that time (also referred to as the '**other SMP FSPs**' in this Consultation Document).

7.83 In relation to Eircom's price control obligation, Section 10.1 of the Decision Instrument annexed to ComReg Decision No D06/07 states that:

"…the prices charged by Eircom to any other undertaking for those products and services described in section 5 shall be cost oriented and such costs shall be calculated using a pricing model based on forward looking long run incremental costs ('FL-LRIC') or an alternative pricing model, should ComReg decide, following consultation, to adopt such an alternative pricing model."

7.84 ComReg Information Notice No. 11/99[135] set out the most recent reduction to FTRs by Eircom from 1 July 2012.

"This update will adjust Call Origination and Call Termination interconnection rates downwards by 5% on average from 1 July 2012[136]**"**

7.85 In relation to the other SMP FSPs (known as SMP OAOs in ComReg Decision D06/07), Section 10.3 of the Decision Instrument annexed to ComReg Decision No D06/07 states that:

"…the OAOs shall have price control obligations: once a OAO reaches 5% share of the Market (as determined by ComReg in accordance with statistics to be obtained and compiled by it) of total direct access paths, it shall…become subject to a price control obligation taking the form of a glide path towards an efficient rate…"

7.86 Section 10.4 of the Decision Instrument annexed to ComReg Decision No D06/07 further stipulated that:

[135] ComReg Information Notice 11/99: Reduction of Call Origination and Call Termination rates by Eircom; published on 15 December 2011

[136] Full details are available on Eircom's Reference Interconnect Offer price list v. 2.59 at www.Eircomwholesale.ie

"If a OAO does not reach the 5% share of the Market of total direct access paths within a five-year timeframe, ComReg may decide to impose a price control regulation, following consultation on an appropriate glide path and an appropriate level of a regulated price to be achieved at the end of the glide path period."

7.87 The other FSPs designated with SMP under Decision D06/07 includes BT Ireland, NTL/Chorus (now UPC), and Magnet. While the other FSPs designated with SMP under Decision D06/07 (i.e. Verizon, Colt and Smart) would also be impacted by the proposed change to FTRs, given the amount of traffic these FSPs terminate on their networks, the impact is likely to be small relative to the other larger SMP FSPs.

7.88 Eircom's current FTRs are set using a TD model based on the current cost of Eircom's legacy public switched telephone network ("**PSTN**") switching equipment over a Synchronous Digital Hierarchy ("**SDH**") transmission layer. Currently, Eircom's national Termination Rates (contained in Service Schedule 102 of the Reference Interconnection Offer[137] and as set out in Annex 3 to this Consultation Document) comprise of primary, tandem and double tandem Termination Rates. The majority of traffic is exchanged between the other SMP FSPs and Eircom at the Primary level. The FTRs that are currently applicable for the other SMP FSPs, are published in Eircom Wholesale's RIO and STRPL, which are set out in Annex 3 of this Consultation Document.

7.89 For the purposes of this consultation, it is only the primary FTR that is relevant. The tandem and double tandem Termination Rates are defined as "transit" and currently subject to the regulatory regime applicable to the wholesale market for call transit services, as set out in ComReg Decision D04/07 (ComReg Document No 07/80[138]). Tandem and double tandem Termination Rates will be considered in further detail in ComReg's upcoming consultations in relation to the review of the wholesale call origination, wholesale call transit, and wholesale call termination markets.

[137] www.eircomwholesale.ie
[138] Market analysis – Interconnection Market Review Wholesale Call Origination and Transit Services

7.3.2 Proposed Implementation Approach for FTRs

7.90 Chapter 6 set out ComReg's preliminary view that FTRs should be set on the basis of a pure LRIC methodology. This section sets out the proposed implementation approach on how a pure LRIC methodology can be applied to FVCT in the Irish context.

7.91 ComReg considers there are two possible options available to ComReg in order to set FTRs using the pure LRIC methodology, either:

1. Set the FTRs using a benchmark approach that derives an approximate rate to a pure BU-LRIC model based on an efficient operator.
2. Set the FTRs on a BU pure LRIC model based on an efficient operator.

7.92 Each option is now discussed below.

Option 1: Set the FTRs using a pure LRIC benchmark approach

7.93 As set out in Chapter 6, benchmarking is an option (referred to in Regulation 13(3) of the Access Regulations) in order to implement a cost orientation remedy. The 2009 Termination Rate Recommendation also specifically allows for benchmarking as an example of an alternative methodology to implement a pure LRIC approach.

7.94 At the date of publication of this Consultation Document, ComReg is only aware of two EU Member States (listed in the table below) that have taken a final decision or draft decision resulting in the implementation of pure BU LRIC FTRs. However, the decision by OPTA in the Netherlands was annulled by a Dutch court. Therefore, if a benchmark approach for FTRs was considered appropriate by ComReg, similar to that proposed for MTRs, France may be the only EU Member State on which to base the benchmark FTR.

Figure 7.7: BU LRIC Final Decisions / Draft Decisions taken in other European Countries as the date of this Draft Decision

European Country	FTR (€ cent)	Implementation Date
The Netherlands[139]	0.36	01/09/2012
France	0.08	01/01/2103

Source: ComReg

[139] It should be noted that in the Netherlands a national court annulled OPTAs pure LRIC rate and is subject to further consultation.

7.95 However, given that Eircom's fixed network has been subject to regulation over the past ten years with Eircom having been designated with SMP in many of the recommended telecoms markets, there is a relatively significant amount of costing/network information available to ComReg on which to arrive at a BU pure LRIC FTR. For this reason, ComReg considers that a benchmarking approach is not appropriate in the context of setting a pure LRIC FTR in Ireland.

Option 2: Set the FTRs using a BU pure LRIC model

7.96 ComReg has developed a number of BU cost models for Eircom's core and access network over the past number of years. With this experience, ComReg proposes, with the additional information received from Eircom in recent weeks, to update the existing BU core model for FTRs available to ComReg in a much shorter timeframe than would be required for a mobile network. The remainder of this section will set out the cost modelling and pricing approach proposed in order to determine the pure BU-LRIC FTRs for an efficient operator in Ireland and the resulting maximum FTRs that the FSPs with SMP on their fixed network would be permitted to charge going forward.

7.97 Given the lack of costing/network information for other SMP FSPs available to date, ComReg proposes that the FTRs for the SMP FSPs in the FVCT market should be set on the basis of the pure BU-LRIC FTR which ComReg would arrive at by using the proposed updated pure BU-LRIC model (referred to in section 7.1 above) which ComReg believes would be representative of an efficient FSP in Ireland. As the other SMP FSPs may not have the resources to build such a BU-LRIC model, ComReg believes this is the most pragmatic approach to take. However, if any of the other SMP FSPs have data available to determine the efficient pure LRIC of FVCT of a fixed voice network, then ComReg would welcome the submission of this information as part of this consultation process. In the absence of any such proposals or data from other SMP FSPs, ComReg considers that the FTR derived from the proposed updated pure BU-LRIC model, based on a pure BU-LRIC methodology of an efficient operator, would be the appropriate FTR to impose on all FSPs.

7.98 In any event, Regulation 13(4) of the Access Regulations provides that where a cost orientation obligation is imposed on an operator, the burden of proof that charges are derived from costs, including a reasonable rate of return on investment lies with the operator concerned.

ComReg's Preliminary View

7.99 ComReg is of the preliminary view that for FVCT the BU-LRIC methodology should be implemented by means of a BU-LRIC model based on an efficient operator in order to determine the appropriate pure LRIC FTR.

7.100 In the absence of submissions from other SMP FSPs regarding the LRIC of an efficient operator, ComReg is of the preliminary view that for all SMP FSPs the maximum FTR that such FSPs should be permitted to charge going forward with effect from 2013 should be the FTR produced by the proposed updated pure BU-LRIC FTR model.

Q. 7 Do you agree with the proposed BU pure LRIC modelling approach for FTRs? Please provide reasons for your response. Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

7.3.3 Key BU Pure LRIC Model inputs and assumptions

7.101 The 2009 Termination Rate Recommendation sets out a specific set of principles and methodologies to be applied when developing a pure BU-LRIC model for voice termination. In summary a pure BU-LRIC model should be developed based on the principles set out below.

(a) An incremental costing principle should be adopted;

(b) The output of the BU model should be a pure LRIC cost for terminating a call on an efficient network;

(c) An economic depreciation methodology should be used for capital cost recovery, verified where possible to top down information;

(d) The costs of efficient network assets only should be included in the model comprising of an NGN core network;

(e) The "pure" incremental cost of terminating traffic should only be the last increment and should exclude common cost mark ups;

(f) The network should be scaled to reflect an efficient operator.

7.102 In developing the pure BU-LRIC model of a core network for FVCT, ComReg has set out below what it considers to be the main areas of cost or inputs to consider before arriving at an appropriate FTR for terminating a call on a fixed network which accords to the principles above:

A. The appropriate efficient network topology

B. The likely demand

C. The efficient network costs

D. The treatment of depreciation

E. The appropriate level of efficient operating costs

F. The appropriate allocation of costs to services

G. Determining the results

7.103 Each one of the above is discussed in more detail below. It is important to note that while many of the inputs and principles above might also be relevant where a model is considered for a mobile network, any such exercise would potentially be subject to a separate detailed consultation on the inputs, principles and other areas more specific to mobile networks at an appropriate future date.

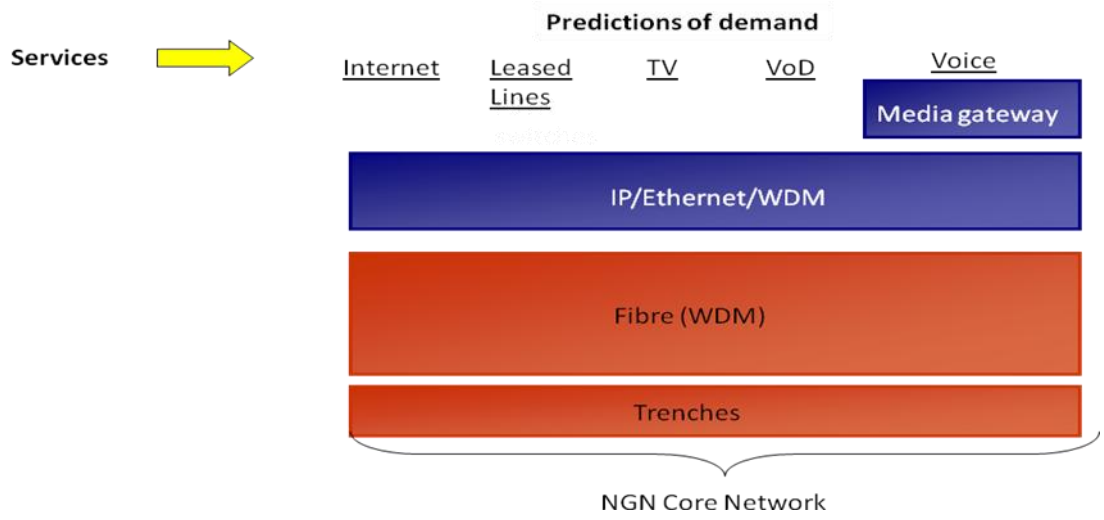
7.104 ComReg has, with the assistance of TERA Consultants ("**TERA**"), reviewed the majority of key inputs to the BU model for setting FTR(s). Subject to the views of respondents, ComReg believes the current proposals above are consistent with the 2009 Termination Rate Recommendation.

A. The appropriate efficient network topology

7.105 ComReg proposes that the pure BU-LRIC model for FTRs should be based on an NGN core network. It is proposed that internet protocol ("**IP**") switching equipment at the switching layer and wavelength division multiplexing ("**WDM**") at the transmission layer will be used as the modern equivalent assets ("**MEA**") in the model. However this is subject to confirmation from Eircom/other FSPs that this is likely during the lifetime of this review. In line with a related decision on Leased Lines in ComReg Decision D01/12[140] which relates to the model of data services over the Eircom network[141], ComReg proposes to use the existing fibre and trench of Eircom in the pure BU-LRIC model for FTRs.

7.106 The illustration below in Figure 7.8 gives an overview of the typical network topology for an NGN core network.

Figure 7.8: Overview of Network topology



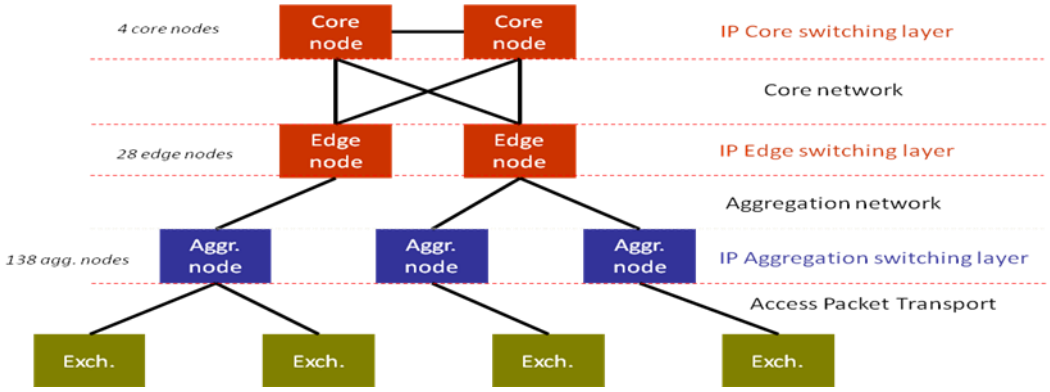
Source: TERA Consultants

7.107 ComReg proposes that the network topology in the pure BU-LRIC model for FTRs should be based on a scorched node approach. Therefore, the network would be modelled based upon Eircom's current deployment of NGN nodes as

[140] Response to Consultation Documents No 10/70 and 11/32: A Final decision further specifying the price control obligation in the market for wholesale termination segments of Leased Lines; 2 February 2012 (ComReg Document No 12/03, ComReg Decision No D02/12).
[141] Response to Consultation Document No. 11/32 and Final Decision (D02/12): Further specification of the Price Control Obligation in the wholesale market for the terminating segment of leased lines.

set out below. ComReg believes this is representative of an efficient network topology over which fixed voice will be delivered over the next few years and beyond.

Figure 7.9: Scorched earth approach: Eircom's current NGN network



Source: TERA Consultants

B. The likely demand

7.108 An efficient NGN network carries more services than a traditional time division multiplexing ("**TDM**") voice network; therefore more of the costs of the NGN network are shared among other services like leased lines, internet and TV. Demand for voice is calculated based on current demand and the likely future demand, however for Termination Rates the accuracy of these forecasts is less relevant as the materiality of costs recovered from pure LRIC Termination Rates may be very low, as illustrated below.

7.109 It is proposed that the inputs such as routing factors be determined based on Eircom's experience of fixed call routing to date but amended as appropriate for an NGN type network structure.

C. The efficient network costs

7.110 As stated above, ComReg is proposing to use a pure BU-LRIC model for FTRs based on an efficient NGN network, therefore NGN transmission, switching and control equipment are considered as the MEA. ComReg considers this is consistent with the 2009 Termination Rate Recommendation as follows:

"*The cost model should be based on the efficient technological choices available in the time frame considered by the model, to the extent that they can be identified. Hence, a bottom-up model built today could in principle assume that the core network for fixed networks is Next-Generation-Network (NGN)-based*"[142]

7.111 The proposed NGN transmission equipment costs would include the costs of network management equipment (Multi Service Access Network ("**MSANs**") and IP routers) and conventional wavelength-division multiplexing ("**CWDM**") / dense wavelength-division multiplexing ("**DWDM**") equipment. The NGN control equipment would include such costs as media gateway controllers etc.

7.112 However, while the 2009 Termination Rate Recommendation makes it clear that the most efficient network deployment should be considered, it is not so clear on how this might work in practice. It is clear from the 2009 Recommendation that the technology should be available within the timeframe of the relevant review. It is not currently clear when voice carried over the traditional fixed network will be fully IP enabled. In Ireland there has been no progress at an industry level to date on how best an IP interconnection solution for Ireland might work in a seamless way to replace current arrangements. It is likely that significant industry engagement will be required to agree interconnection arrangements and standards and interim solutions may be necessary. For example, each NGN node may have to deploy a Media Gateway with C7[143]/TDM technology to allow IP conversion capability. It appears to ComReg that some of these costs will be specific to termination of calls and it is proposed that they should be allowed to be recovered.

7.113 Therefore, ComReg does not believe that it is yet appropriate to model FTRs based on a fully enabled IP network as it is not yet clear when and how such a network will evolve in practice in Ireland over the next number of years and whether it will be during the timeframe of this review. ComReg will keep this matter under review and where necessary adjustments may be made (following consultation where appropriate) to the pure BU-LRIC FTR model to reflect network developments which have been agreed by the FSPs.

[142] Recital 22 - European Commission Recommendation: "*The Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC)*"; dated 7 May 2009.
[143] Common Channel Signalling System No. 7 (CS7) is a set of telephony signalling protocols which are used to set up most of the world's public switched telephone network telephone calls.

7.114 While an IP voice network is likely to emerge in the coming years, it is not yet clear what form this will take. Therefore, it is not clear how to model exactly what the "efficient" network might be and the likely true efficient cost to fairly reflect such a network. ComReg has therefore, using relevant inputs from Eircom, made certain proposed assumptions, set out in more detail below, on the likely costs of deploying an NGN network and the likely cost drivers for terminating calls that allow for an estimate of the likely true incremental cost of terminating a call on the likely efficient fixed voice network.

D. The treatment of depreciation

7.115 ComReg proposes that the depreciation is determined based on a tilted annuity approach. This approach has been consistently applied by ComReg for modelling the Eircom core network. Please refer to the details contained in ComReg's most recent Decision in relation to the price control obligation in the wholesale market for the terminating segment of leased lines, ComReg Document No 12/03, ComReg Decision No D2/12.

7.116 The proposed tilted annuity formula is set out below.

Economic Depreciation formula with Price Trend

$$Annuity(Age) = \frac{Invest}{Fi} * \frac{(1+PriceTrend)^{(Age-1)}}{(1-PriceTrend)}$$

where

$$Fi = \frac{1-(1+h)^{(-AssetLife)}}{h}$$

$$h = (1+WACC)*(1-PriceTrend)-1$$

Age: *Age of the asset*
Invest: *Initial investment for the asset*
WACC: *nominal WACC since the cost model is in nominal terms (designed to set the CPI – X formulae)*

7.117 As presented below the pure incremental cost of terminating a voice call is likely to be quite small where capital costs do not generally vary under the methodology. Therefore, the impact of the depreciation approach is not likely to be material. However, to be consistent with other regulatory Decisions relating to the Eircom core network, ComReg proposes that the approach above should be maintained for the proposed updated pure BU-LRIC FTR model. The most material capital costs that might be incremental to FVCT relate to software licence costs, general IT development associated with terminating calls, media gateways etc. Only a proportion of these costs however might relate to FVCT.

E. The appropriate level of efficient operating costs

7.118 It is proposed that the operating costs ("**OPEX**") are determined on a top down basis using Eircom's actual historical operating costs but adjusted for efficiencies to reflect the likely costs of operating a forward looking IP based network. Again the most likely costs relevant to FVCT relate to administration, billing and a contribution to certain network development of the IP network

which is specific to FVCT such as intelligent network ("IN") technology management.

F. The appropriate allocation of costs to services

7.119 Allocating costs to the appropriate and relevant products and services of an operator is an important factor to consider when regulating multiple products and services carried over the same core network. This is particularly true for Eircom where voice and data services are regulated. As mentioned previously, Eircom also has an obligation to provide separated accounts and maintain detailed cost accounting systems that are sufficiently detailed to allow an assessment of cost allocations. ComReg Decision D08/10[144] set out detailed requirements in this regard. In the proposed updated pure BU-LRIC FTR model, ComReg has used the engineering rules from Eircom, critically assessed by TERA Consultants in the field of network cost modelling, and arrived at what it considers to be the appropriate allocation of capital and operating costs to the various services that accord to the principles of cost causation, non discrimination and transparency.

7.120 While the above is relevant to modelling multiple products and services carried over the same core network, it is less relevant when calculating the pure increment of carrying a particular service as it may not be appropriate to recover common costs. It is necessary to establish the costs that are specific to the wholesale service in question, in this case voice termination. ComReg's understanding of the specific costs is discussed in more detail below.

G. Determine the results

7.121 In order to determine the proposed FTR as result of the BU modelling exercise, a number of calculations are relevant in the model.

7.122 As described above, the first step involves the calculation of the total capital costs ("**CAPEX**") (which includes an appropriate rate of return) and the total OPEX costs, adjusted where appropriate for efficiencies.

7.123 The next step is to determine what the pure LRIC cost of the FVCT is. The 2009 Termination Rate Recommendation considers the increment to be all traffic associated with a single service, in this case FVCT:

[144] ComReg Document 10/68 (Decision D08/10) Accounting separation and cost accounting review of Eircom Limited.

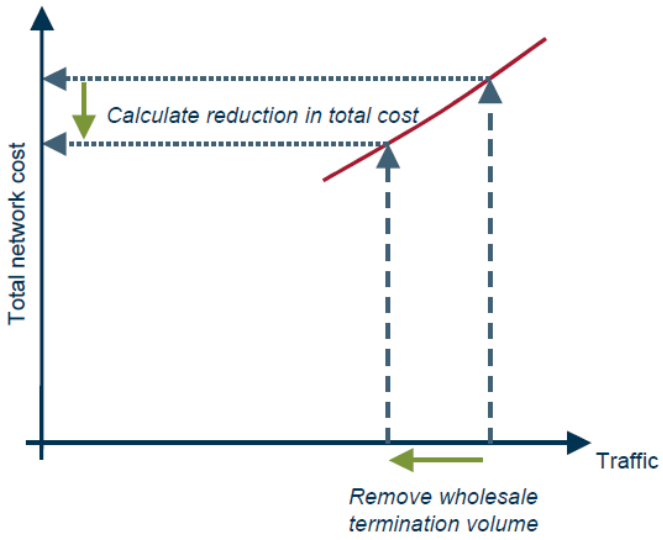
"Within the LRIC model, the relevant increment should be defined as the wholesale voice call termination service provided to third parties. This implies that in evaluating the incremental costs NRAs should establish the difference between the total long-run cost of an operator providing its full range of services and the total long-run costs of this operator in the absence of the wholesale call termination service being provided to third parties. A distinction needs to be made between traffic-related costs and non-traffic-related costs, whereby the latter costs should be disregarded for the purpose of calculating wholesale termination rates. The recommended approach to identifying the relevant incremental cost would be to attribute traffic-related costs firstly to services other than wholesale voice call termination, with finally only the residual traffic-related costs being allocated to the wholesale voice call termination service. This implies that only those costs which would be avoided if a wholesale voice call termination service were no longer provided to third parties should be allocated to the regulated voice call termination services"[145].

7.124 Based on the avoidable cost principle, the incremental costs are defined as the costs avoided when not offering the service. The proposed pure BU-LRIC model could be used to calculate the incremental cost: by running it with and without the increment in question, and thus determine the pure LRIC cost increment for FVCT.

7.125 The FVCT unit costs are then determined by dividing that cost increment by the total service volume, as illustrated in Figure 7.10 below. In the case of fixed calls the total cost of terminating a call may be priced based on whether the call is terminated during peak, off peak or weekend periods. This will again be driven by capacity on the network and demand by the time of day gradient applicable to a FSP. ComReg proposes to use the time of day gradient provided by Eircom but would welcome submissions from other SMP FSPs on their time of day gradient for comparison.

[145] Recital 6 - European Commission Recommendation: "*The Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC)*"; dated 7 May 2009.

Figure 7.10: Calculating pure LRIC

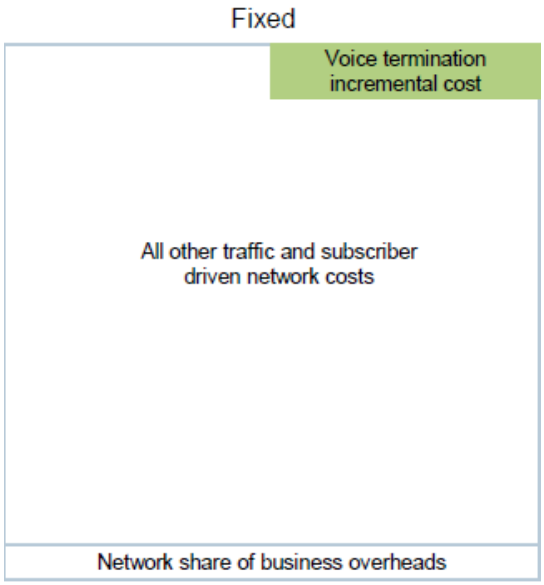


Source: ComReg

7.126 In order to produce the pure LRIC costs, it is important to determine the relevant increments to be considered.

- The relevant increment is the wholesale termination service (or FVCT in this context), which includes only the avoidable costs. The costs are determined by calculating the difference between total long-run costs of an operator providing all services and the total long-run costs of an operator providing all services except voice call termination (or FVCT in this case).
- Non-traffic related costs, such as subscriber-related costs, should be disregarded.
- For Eircom, costs that are common such as network common costs and business overheads should not be allocated to the wholesale voice terminating increment.

Figure 7.11: The relevant increment



Source: ComReg

7.127 ComReg considers that the relevant increment of fixed voice termination can be determined based on the costs associated with transport across the NGN core network and the costs arising from the NGN voice control layer. ComReg considers that specific costs such as administration and interconnection may not depend on termination traffic, therefore these costs should not be considered as relevant increments unless there are discrete costs associated with the termination of call. However, the relevant increments will also depend on the network modelled, in the case of a full IP network the relevant increment may be transport only, whereas the relevant increment for a IP/TDM hybrid voice network may include other costs of transport and other NGN voice control layer costs over and above those associated with a full IP voice network. This may be the case where it is necessary to interconnect with operators who do not yet have a full IP voice network.

Transport increments

7.128 With respect to transport costs, the costs of NGN nodes are generally not traffic sensitive, however there is a relevant increment associated with the costs of links that are traffic driven and these may need to be taken into account when assessing the increment.

7.129 With respect to the NGN voice control layer, there are also relevant increments associated with call per minute and per call costs. These are explained in detail below and can be summarised as follows:

Per minute increments	Per call increments
NGN media gateway costs	Session border controller costs
VoIP software costs	Next generation intelligent network costs

Voice Control Layer: per minute increments

7.130 It is not clear when voice carried over the traditional fixed network will be fully IP enabled by all FSPs in Ireland. ComReg proposes that, for the purposes of the pure BU-LRIC model for FTRs, Eircom's network will be based on a full IP enabled network, however as it is unlikely that all FSPs will have fully IP enabled networks, Eircom would therefore have to deploy a Media Gateway with C7[146]/TDM technology to allow IP conversion capability. Whereas the C7/TDM infrastructure will continue to be recovered from charges for interconnect paths the NGN Media gateway costs should in part be recovered from voice termination. The relevant increment to be considered is the cost per port of the NGN Media gateway at busy hour traffic divided by the associated traffic.

7.131 There may also be costs associated with software call processing. These VoIP software related costs are driven by volumes of traffic. VoIP software costs could be based on supplier prices which clearly identify both a fixed and volume driven license fee. The relevant increment is the VoIP software costs divided by the associated traffic.

Voice Control Layer: Per call increments

7.132 Session border controllers ("**SPCs**") is a device regularly deployed in (VoIP) networks to exert control over the signalling[147] and usually also the media streams involved in setting up, conducting, and tearing down telephone calls or other interactive media communications. The costs of SPCs are likely to be driven by busy hour call attempts and the more traffic that is added to the network this results in an incremental cost per call. The relevant increment would be driven by the purchase price of the SPCs, the volume of calls and based on an estimated average call duration of 2.66 minute.

[146] Common Channel Signalling System No. 7 (CS7) is a set of telephony signalling protocols which are used to set up most of the world's public switched telephone network telephone calls.
[147] i.e. the use of signals for controlling communications

7.133 There are also costs associated with a next generation intelligent network ("**NGIN**") where resources are driven in part by the complex analysis required by the nature of the termination service in the presence of extensive and continuing number portability. The relevant NGIN increment is essentially the routing costs associated with FVCT. Therefore the relevant NGIN increment is driven by the purchase price of the NGIN,the volume of calls and based on an estimated average call duration of 2.66 minute.

ComReg's Preliminary View

7.134 ComReg is of the preliminary view that the proposed cost model inputs and assumptions, as set out above in subsection 7.3.3, are appropriate in order to determine a pure BU-LRIC model for FTRs in Ireland.

Q. 8 Do you agree with the cost model inputs and assumptions proposed by ComReg in relation to the pure BU-LRIC model for FTRs? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

7.3.4 Results of the BU-LRIC Model and application of the FTRs

7.135 On the basis of the proposed BU-LRIC modelling exercise as discussed above, the pure BU-LRIC weighted average FTR for FVCT would be in the range set out in Figure 7.12 below. A pure BU-LRIC approach where voice traffic is terminated on a NGN network rather than a traditional TDM network would have the single biggest impact on FTRs. The ranges set out below are then determined on the modelled network and depending on the relevant increments considered.

7.136 The time of day gradient (i.e. peak, off-peak and weekend) could then be applied to this to arrive at an appropriate peak FTR, off-peak FTR and weekend FTR to be applied by the FSPs.

Figure 7.12: Range of weighted average FTRs based on network modelled

Network modelled	Weighted average FTR per minute (cent)	Weighted average FTR per call (cent)
BU pure LRIC based on full NGN core / full IP network where the relevant increments are associated with: • NGN transport cost only	0.02	0.00
BU pure LRIC based on full NGN network / hybrid IP/TDM network where the relevant increments are associated with: • NGN transport costs • Media gateway costs • VoIP software costs • SBC costs • NGIN costs	0.07	0.07

Source: ComReg

7.137 The range of FTRs on a per call and a per minute basis as set out above are currently based on a weighted average rates. ComReg believes that FSPs providing FVCT on fixed networks generally levy charges on their wholesale customers by peak, off-peak and weekend usage and are likely to continue with this approach regardless of the change to the FTRs they are permitted to charge going forward. ComReg proposes that peak, off-peak and weekend FTRs determined as a result of the pure BU-LRIC modelling exercise should be the maximum rates applicable and the Eircom Reference Interconnect Offer ("RIO") and the Switched Transit and Routing Price List ("STRPL") should be updated accordingly on the Eircom wholesale website. It is proposed that the maximum permitted time of day FTRs (i.e. peak FTRs, off-peak FTRs and weekend FTRs) will be finalised as part of the ComReg's final decision once the BU model exercise is complete and following receipt of responses to consultation with regard to the details of the proposed pure BU-LRIC model for FTRs discussed above.

7.138 As already set out above, Information Notice No 11/99 sets out the reductions to Eircom's FTRs that will take effect from 1 July 2012. ComReg understands that it was Eircom's expectation that these reduced FTRs would be in place for at least twelve months up to 30 June 2013. This date also coincides with Eircom's financial year end. It is likely that other SMP FSPs had the same expectation as rate changes are normally in place for at least twelve months from the date of amendment. Therefore, any amendment to FTRs on foot of any final decision by ComReg before 1 July 2013 would not be in line with this understanding. On that basis ComReg is minded to an implementation date of 1 July 2013 for the proposed pure BU-LRIC FTRs.

Notification procedures

7.139 Similar to the proposed notification procedures for the MSPs, it is proposed that each SMP FSP, including Eircom, will pre-notify ComReg of proposed amendments to its FTRs two months in advance of any such amendments becoming effective. It is also proposed that each SMP FSP will be required to provide a statement confirming that its proposed revised FTRs comply with the maximum permitted FTRs set out in ComReg's final decision. However, ComReg proposes to reserve the right to allow a derogation from the two-month period where necessary and appropriate. ComReg proposes that the maximum FTRs set out above will be symmetrical rates applicable to all SMP FSPs. Please refer to Chapter 4 (section 4.4) and Chapter 6 (section 6.8) for the discussion on symmetry and asymmetry.

7.140 ComReg proposes that the FTRs set out above will be maximum rates applicable to all SMP FSPs from the date of implementation of ComReg's final decision.

ComReg's Preliminary View

7.141 ComReg is of the preliminary view that the maximum FTR(s) derived from the proposed pure BU-LRIC cost model should apply to all SMP FSPs. ComReg is minded that the implementation date for the pure LRIC FTRs should be from 1 July 2013.

7.142 ComReg is of the preliminary view that all of the SMP FSPs should pre-notify ComReg of any proposed FTR changes, two months in advance of those changes becoming effective, with a statement confirming that the proposed revised FTRs comply with the maximum permitted FTRs set out in ComReg's final decision.

Q. 9 Do you agree with ComReg's proposals in relation to the implementation of its proposed pure BU-LRIC model for FTRs? Please provide reasons for your response. Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

7.4 Treatment of common costs not recovered under pure LRIC

7.143 In section 6.6 above, ComReg set out its preliminary view that pure LRIC is the most appropriate methodology to set cost oriented FTRs and MTRs. As set out in the previous Chapter and in the 2009 Termination Rate Recommendation, the adoption of a pure LRIC methodology would mean that common costs could no longer be recovered through FTRs and MTRs. To date these costs may have been recovered by Service Providers through their voice Termination Rates. In the case of Eircom, ComReg can confirm that this has certainly been the case. ComReg has had no visibility of whether this is material or not for many of the industry players as the details of what other Service Providers include in their Termination Rates has never been made available to ComReg. However, Eircom's FTRs have been subject to price control obligations for many years and ComReg understands that a proportion of Eircom's common costs have been included in FTRs to date which is clear from the TD cost model used by Eircom to set its FTRs.

7.144 As Eircom is regulated across a number of wholesale markets, it is necessary for ComReg to give consideration to the likely impact a reallocation of common costs to other services might have on Eircom as this could give rise to a requirement for ComReg to consider approving an increase in Eircom's other regulated wholesale prices. This possible impact has also been modelled by ComReg and its advisors, in consultation with Eircom. The results clearly show that there is a material shift of capital and operating costs, previously recovered through FTRs on the basis of the Eircom TD model used to set fixed interconnection rates to date if a pure BU-LRIC methodology for FTRs is used. However, not all these costs relate to fixed voice calls and it may be appropriate to allocate some costs to other wholesale services. While the costs not now recovered from FVCT may be material to that service, it is also clear from the impact analysis carried out by ComReg, that these costs, if shared among other wholesale services, do not give rise to any material shift in the unit costs of other services, such as data and voice, over the Eircom core network.

7.145 There does not appear to be a common position among other NRAs in relation to the treatment of common costs which are not recovered under a pure LRIC approach for FTRs. To date, the NRAs who have decided on pure LRIC rates appear to have varying positions on the implications on other wholesale or retail services provided by the operators impacted by the 2009 Termination Rate Recommendation. ComReg sets out below an overview of the treatment of common costs in other EU/EFTA Member States to date.

7.146 In France, ARCEP (the French NRA) initially proposed recovering common costs from other services, including other wholesale services, which prompted the European Commission to express concerns[148].

7.147 In the Netherlands, OPTA (the Dutch NRA) proposed an adjustment to the call origination rate for traffic for carrier pre-select ('**CPS**') operators. The European Commission questioned this approach and suggested that to change the basis of the origination price, OPTA would need to conduct an entire market review of origination[149].

7.148 In Norway, NPT (the Norwegian regulatory authority) has extensively discussed the issue of common cost recovery in cases where pure LRIC and LRAIC are used to calculate Termination Rates. It has chosen to price termination on the basis of LRAIC and origination based on LRAIC+, with an additional mark-up for common costs on origination prices for CPS operators. Thus, although it has not yet imposed pure LRIC, NPT has agreed that additional common cost recovery from origination is required if termination is priced below LRAIC+[150].

7.149 In Austria, Rundfunk & Telekom Regulierungs (the Austrian NRA) has argued that, despite the fact that a higher common cost contribution on call origination may result in overall higher origination costs, the common costs would need to be recovered through origination and other services[151].

7.150 In Denmark, the DEA/NITA (the Danish NRA) considered the issue of how the now-unrecovered common costs would be allocated in its hearing note (published alongside its decision), noting that "*In addition there are several fundamental issues to be addressed, including how the uncovered costs will be allocated*". NITA stated that this is an issue on which "*very few EU countries have yet taken a position, and therefore there is no established practice".* However, they have not yet imposed pure LRIC or taken a firm position on recovery of common costs[152].

[148] European Commission decision concerning Case FR/2011/1236: call termination on individual public telephone networks provided at a fixed location in France

[149] European Commission decision concerning case NL/2010/1079: Call termination on individual public telephone networks provided at a fixed location

[150] NPT Decision, 1 August 2011 - http://www.npt.no/ikbViewer/Content/130482/M2-3%20vedtak%20-%20endelig%201%20%20august%202011.pdf

[151] Page 4 of EC response to notification AT/2010/1046-1047, available at: http://circa.europa.eu/Public/irc/infso/ecctf/library?l=/sterreich/registeredsnotifications/at20101046-1047/at-2010-1046-1047/_EN_1.0_&a=d

[152] On page 3 of NITA, Consultation Note on draft decision on pricing after LRAIC methodology ('Hearing note.pdf'), 2 November 2011, available at: https://circabc.europa.eu/d/d/workspace/SpacesStore/8cb66095-afc8-494c-8e94-a9a6812e4f8e/Draft%20decision%20regarding%20determination%20of%20LRAIC-prices%20for%202012.zip

7.151 In Sweden, the PTS (Swedish NRA) has discussed this issue in its draft decision (recently under consultation) and has concluded that no additional uplift to the origination price was required (it should be at LRIC+, but not above this)[153].

7.152 No pricing decision has yet been taken in Belgium, although there is text in the relevant section of the BIPT (Belgian NRA) decision which argues that operators can recover such costs from retail markets which are subject to competition[154].

7.153 In order to assess how the common costs, previously recovered from voice Termination Rates, not now recovered through FTRs and MTRs when a pure LRIC methodology is applied should be treated, we have considered the options available to the following stakeholders:

- Eircom
- Other SMP FSPs
- SMP MSPs.

7.154 Each one is discussed in turn below.

7.4.1 Eircom

7.155 The 2009 Termination Rate Recommendation outlines a "pure LRIC" approach for setting FTRs and MTRs. Under such an approach common costs are not recovered from FVCT or MVCT traffic. As noted in the Analysys Mason Report, under a pure LRIC approach, the terminating operator does not cover its own total average costs for inbound traffic. However, it can recover the unrecovered common costs from the price it charges for originating (or outbound) services. This means that if pure LRIC is adopted, the prices for wholesale call origination traffic, or indeed other services may need to change, especially where these services are regulated. This is relevant in the case of Eircom, where it is regulated across all recommended markets and where it has a price control obligation in each of these.

[153] Page 32-33 of PTS: Beräkning av samtrafikpriser med särkostnad – en konsekvensanalys, 5 March 2012, available at http://www.pts.se/upload/Rapporter/Tele/2012/PTS-ER-2012-9-konsekvensanalys.pdf

[154] Paragraphs 375, 376 of BIPT: Décision du Conseil De L'BIPT du 2 Mars 2012 ConcernantL'Analyse de Marché du Marché de La TerminaisonD'Appel Sur Le RéseauTéléphoniquePublic en Position Déterminée, 2 March 2012, available at: http://www.bipt.be/GetDocument.aspx?forObjectID=3727&lang=fr

7.156 Eircom is also quite unique when compared to other Service Providers in that it currently has a wholesale and a retail division. Unlike other Service Providers, it may not be open to Eircom Wholesale to allocate common costs to the retail division, in particular where those common costs, previously recovered from FVCT, are wholesale related. Eircom is also subject to accounting separation obligations and cost accounting obligations which would also require that costs are allocated appropriately across the relevant services on a cost causation basis.

7.157 The Explanatory Note to the 2009 Termination Rate Recommendation states on page 17 that:

"Given the two-sided nature of call termination, not all related termination costs must necessarily be recovered from the wholesale charge levied on the originating operator. Even if wholesale termination rates were set at zero, terminating operators would still have the ability to recover their costs from non regulated retail services."

7.158 As ComReg currently regulates a number of wholesale services provided by Eircom, the Analysys Mason Report also considers the potential options for recovering common costs which would not be recovered if the proposed pure LRIC methodology were applied to FTRs. The following is a summary of the views expressed in the Analysys Mason Report. In particular, the Report considers the likely impact on call origination provided by Eircom Wholesale.

7.159 As previously set out in this Consultation Document, there are a number of cost recovery methodologies that are available to NRAs when reviewing regulated pricing, these include;

- Pure LRIC
- LRIC +
- LRIC + plus additional mark-ups for (some) of the unrecovered common costs

7.160 ComReg is of the preliminary view that pure LRIC for both termination and origination is not appropriate because Service Providers would end up selling both services for less than their average cost of production and their common costs would therefore be unrecovered. This view is supported by the Analysys Mason Report. It would also create an anomaly in that Service Providers required to provide origination at a regulated rate, such as Eircom Wholesale, could be at a disadvantage to those buying origination as they would not now recover the fully efficient cost of providing the call origination service. ComReg agrees with this assessment.

7.161 ComReg is of the preliminary view that a LRIC + approach for origination while reducing the disadvantage that operators selling origination face when compared to those buying origination, would still create an anomaly in that the relevant Service Provider, for example Eircom Wholesale, would still not recover the full efficient costs of production. The Analysys Mason Report provides the example of a Carrier Pre Select ("CPS") operator's costs, ie, those FSPs selling retail calls via Eircom's wholesale network, where the CPS origination costs would be based on a LRIC+ methodology and the voice call termination costs would be based on a pure LRIC methodology. This would mean that the Service Provider selling wholesale call origination, for example Eircom Wholesale, would not be in a position to recover its total costs (including its common costs). Where recovery of unavoidable common costs (previously recouped from FVCT) could not be facilitated from other retail/wholesale charges as in the case of other FSPs/MSPs, this would also be inconsistent with the regulated position to date where Eircom Wholesale has been allowed under the relevant regulatory decisions, to recover its full efficient costs incurred together with an appropriate rate of return on those costs.

7.162 Finally, the Analysys Mason Report considers LRIC+, plus an additional mark-up for the unrecovered (termination) common costs. The Analysys Mason Report considered two options:

(a) Allocating across origination calls, to compensate for the unrecovered common costs due to voice call termination being priced using a pure LRIC methodology. However, ComReg would caution that this depends entirely on whether the prices charged for call origination are cost oriented themselves at the time the Termination Rates change. If they are not and require reductions to bring them in line with the cost orientation obligation any movement of costs from termination may not lead to a subsequent change in origination prices.

(b) Allocating all or part of the additional common cost to other (i.e. non-voice) services, for example broadband access, leased lines etc is also an option depending on whether the costs are directly or indirectly related to making a call. The Analysys Mason Report identifies a number of complexities associated with this approach, not least of which is the cost to both the regulator and industry as it could potentially require a number of regulatory pricing decisions being reopened. However, ComReg does not consider that the reallocation of costs from termination will be such as to result in any material changes to other regulated prices.

7.163 ComReg considers that option (a) may be the most appropriate option for Eircom. Firstly, it allows the common costs to be recovered through the call origination services, from both OAOs and Eircom Retail (self supply). Secondly, the cost of the assets relating to call origination may need to be adjusted to better reflect the MEA rather than the full cost of legacy TDM technology.

7.4.2 Other SMP FSPs

7.164 Where common costs are not recovered by other SMP FSPs through FTRs, the terminating SMP FSP has the discretion to recover those costs from either other wholesale or retail services. Unlike Eircom, these other SMP FSPs are not regulated across a number of markets therefore they have discretion to recover the common costs either through other wholesale or retail services.

7.165 A number of options include:

- Recovering the common costs of termination from other wholesale network service
- Recovering the common costs of termination from other retail services
- Recovering the common costs of termination from both retail and wholesale services.

7.166 However, ComReg considers that it is up to each of the other SMP FSPs to decide on the most appropriate and reasonable approach to take that is in its best interests.

7.4.3 SMP MSPs

7.167 Similar to the proposal above regarding other SMP FSPs, ComReg considers that given that the SMP MSPs are not regulated across a number of markets, they can recover the common costs (not recovered through MTRs if a pure LRIC methodology is applied) either from other wholesale or retail services. The SMP MSPs also have a number of options to consider, similar to those set out above in the context of the SMP FSPs.

7.168 As ComReg has no details on the costs or mark ups included in current MTRs, it is not possible for ComReg to comment on the likely level of under-recovery if a pure LRIC methodology is adopted.

7.169 However, ComReg considers that discretion should be left to the relevant MSP to decide the most appropriate and reasonable approach to take.

ComReg's Preliminary View

7.170 For Eircom, ComReg is of the preliminary view that, if its FTRs are set using a pure LRIC cost methodology the net effect of any unrecovered efficient common costs should, in the first instance, be allocated across the call origination services whereby the common costs are recovered across the originating related services, from both OAOs and Eircom Retail (self supply). However, where the allocation of these costs to call origination services gives rise to significant increases in call origination prices then Eircom should assess how best these costs should be allocated to ensure the least distortion is caused to both the other FSPs and its own retail business.

7.171 For the other SMP FSPs and the SMP MSPs, ComReg is of the preliminary view that it is up to each such Service Provider to decide the most appropriate and reasonable approach to take that is in its best interests.

Q. 10 Do you agree with ComReg's preliminary views as set out above regarding the treatment of common costs not recovered from pure LRIC for Eircom, the other SMP FSPs and the SMP MSPs? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

Chapter 8

8 Draft Decision Instrument: Fixed Call Termination

Q. 11 Do you believe that the draft text of the proposed Decision Instrument in relation to FTRs contained in Chapter 8 is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain the reasons for your answer, clearly indicating the relevant section numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

1. STATUTORY POWERS GIVING RISE TO THIS DECISION INSTRUMENT

1.1 This Decision Instrument is made by the Commission for Communications Regulation ("ComReg") and relates to the market for wholesale call termination services used to provide retail calls to end users on each public telephone network provided at a fixed location as identified by the European Commission in its Recommendation of 11 February 2003 on Relevant Product and Service markets within the electronic communications sector susceptible to *ex ante* regulation[155] ("the Recommendation") and as defined by ComReg in the Response to Consultation and Decision Document entitled "Market Analysis – Interconnection Market Review Wholesale Call Termination Services", (Decision No. D06/07), (Document No. 07/109).

1.2 This Decision Instrument is made:

i. Having had regard to sections 10 and 12 of the Communications Regulation Acts 2002 to 2011[156] and Regulation 16 of the Framework Regulations and Regulation 6(1) of the Access Regulations;

[155] European Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (OJ L 344, 28.12.2007, p. 65).
[156] Communications Regulation Act 2002 (No. 20 of 2002), as amended by the Communications Regulation (Amendment) Act 2007 (No. 22 of 2007), the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 (No. 2 of 2010) and the Communications Regulation (Postal Services) Act 2011 (No. 21 of 2011).

ii. Having, where appropriate, pursuant to section 13 of the Communications Regulation Acts 2002 to 2011 complied with policy directions made by the Minister for Communications, Marine and Natural Resources[157];

iii. Having taken the utmost account of the 2009 Termination Rates Recommendation;

iv. Having had regard to the market definition, market analysis and reasoning conducted by ComReg in the Response to Consultation and Decision Document entitled "Market Analysis – Interconnection Market Review Wholesale Call Termination Services", (Decision No. D06/07), (Document No. 07/109);

v. Having regard to the analysis and reasoning set out in the consultation and draft measure on the detailed price control obligation entitled "Voice Termination Rates in Ireland: Proposed Price Control for Fixed and Mobile Termination Rates" (ComReg Document No. 12/67);

vi. Having taken account of the submissions received from interested parties in relation to "Voice Termination Rates in Ireland: Proposed Price Control for Fixed and Mobile Termination Rates" (ComReg Document No. 12/67) following a public consultation pursuant to Regulation 12 of the Framework Regulations;

vii. Having regard to the analysis and reasoning set out in the response to consultation and Final Decision entitled "[title to be inserted]" (Decision No. DXX/12), (Document No. 12/XX);

viii. Having notified the draft measure and the reasoning on which the measure is based to the European Commission, BEREC and the national regulatory authorities in other EU Member States pursuant to Regulation 13 and Regulation 14 of the Framework Regulations and having taken account of any comments made by these parties; and

ix. Pursuant to Regulations 25, 26 and 27 of the Framework Regulations and Regulations 8 and 13 of the Access Regulations.

[157] Policy Directions made by the Minister for Communications, Marine and Natural Resources on 21 February 2003 and 26 March 2004.

1.3 The provisions of the response to consultation and final decision document entitled "Market Analysis – Interconnection Market Review Wholesale Call Termination Services" (Document No. 07/109), (Decision No. D06/07), the consultation and draft decision entitled "Voice Termination Rates in Ireland: Proposed Price Control for Fixed and Mobile Termination Rates", (ComReg Document No. 12/67) and the final decision entitled "[title to be inserted]", (Decision No. DXX/12), (Document No. 12/XX) shall, where appropriate, be construed with this Decision Instrument.

PART I – GENERAL PROVISIONS (SECTIONS 2 AND 3 OF THE DECISION INSTRUMENT)

2. DEFINITIONS

2.1 In this Decision Instrument, unless the context otherwise suggests:

"2009 Termination Rate Recommendation" means the recommendation published by the European Commission on 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC) (OJ L124/67 20.5.2009);

"**Access**" shall have the meaning as under Regulation 2 of the Access Regulations, as may be amended from time to time, but shall also include, for the avoidance of doubt, Fixed Voice Call Termination;

"**Access Regulations**" means the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011), as may be amended from time to time;

"BEREC" means the Body of European Regulators for Electronic Communications, as established pursuant to Regulation (EC) No. 1211/2009 of the European Parliament and of the Council of 25 November 2009;

"**BU Pure LRIC Model**" means a bottom-up model based on the Pure LRIC of an efficient operator and in the context of this Decision Instrument is the bottom up economic/engineering model of an efficient network used to determine the Pure LRIC associated with the supply of Fixed Voice Call Termination which is more particularly described at Chapter 7 of ComReg Document No. 12/67;

"**BT Communications**" means BT Communications Ireland Limited, as referred to in section 3.1 of the Decision Instrument annexed to ComReg Decision No. D06/07, and includes its subsidiaries, and any undertaking which it owns or controls, and any undertaking which owns or controls it and its successors and assigns. For the avoidance of doubt, BT Communications includes British Telecommunications plc which is the Undertaking authorised in Ireland in accordance with Regulation 4 of the Authorisation Regulations;

"**Colt Technology Services**" means Colt Technology Services Limited as referred to in section 3.1 of the Decision Instrument annexed to ComReg Decision No. D06/07;

and includes its subsidiaries, and any undertaking which it owns or controls, and any undertaking which owns or controls it and its successors and assigns;

"**ComReg**" means the Commission for Communications Regulation, established under section 6 of the Communications Regulation Acts 2002 to 2011;

"**ComReg Decision No. D06/07**" means ComReg Document No. 07/109 entitled "Market Analysis – Interconnection Market Review Wholesale Call Termination Services" dated 21 December 2007;

"**ComReg Decision No. D08/10**" means ComReg Document No. 10/67 entitled "Response to Consultation Document and Final Direction and Decision, Response to Consultation Document No. 09/75 and Final Direction and Decision: Accounting Separation and Cost Accounting Review of Eircom Limited" dated 31 August 2010;

"**Eircom**" means Eircom Limited and its subsidiaries, and any undertaking which it owns or controls, and any undertaking which owns or controls it and its successors and assigns;

"**Effective Date**" means the date set out in section 8 of this Decision Instrument;

"**End-User(s)**" shall have the same meaning as under Regulation 2 of the Framework Regulations, as may be amended from time to time;

"**Fixed Number**" means a number from the Irish national numbering scheme which, for the purpose of this Decision Instrument, is terminated at a fixed location and means a Geographic Number, or an IP based number commencing with a network code of 076;

"**Fixed Termination Rate(s)**" or "**FTR(s)**" means the wholesale charge(s) levied by a Fixed Service Provider for the supply of Fixed Voice Call Termination which are determined on a cent per minute basis and a cent per call basis. For the avoidance of doubt, Fixed Termination Rate(s) includes the Peak Fixed Termination Rate(s), Off Peak Fixed Termination Rate(s) and Weekend Fixed Termination Rate(s);

"**Fixed Service Provider(s)**" or "**FSP(s)**" means an Undertaking providing End Users with retail voice services from a fixed location;

"**Fixed Voice Call Termination**" or "**FVCT**" means the provision by a Fixed Service Provider of a wholesale call termination service to other Undertakings for the purpose of terminating incoming calls to a Fixed Number in respect of which that Fixed Service Provider is able to set the Fixed Termination Rate. For the avoidance of doubt, the provision of Fixed Voice Call Termination involves the provision of an Interconnection service but excludes the provision of Associated Facilities;

"**Forward Looking-Long Run Incremental Costs**" or "**FL-LRIC**" means the cost of providing a defined increment of output, on the basis of forward looking costs incurred by an efficient operator;

"**Framework Regulations**" means the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011), as may be amended from time to time;

"**Geographic Number**" shall have the same meaning as set out in the National Numbering Conventions, as may be amended from time to time. The current meaning of a Geographic Number is a number from the Irish national numbering scheme where part of its digit structure contains geographic significance used for routing calls to the physical location where the call is terminated on the network;

"**Interconnection**" shall have the same meaning as under Regulation 2 of the Access Regulations, as may be amended from time to time;

"**Magnet Networks**" means Magnet Networks Limited, as referred to in section 3.1 of the Decision Instrument annexed to ComReg Decision No. D06/07 and includes its subsidiaries, and any undertaking which it owns or controls, and any undertaking which owns or controls it and its successors and assigns;

"**(the) Market**" means the market for wholesale call termination services used to provide retail calls to end users on each public telephone network provided at a fixed location as described in section 2 of the Decision Instrument annexed to ComReg Decision No. D06/07;

"**National Numbering Conventions**" means the set of rules under which the Irish national numbering scheme is managed and administered as set out in the document entitled *National Numbering Conventions, Version 7.0, ComReg Document No. 11/17*, as may be amended by ComReg from time to time;

"**Off Peak-Fixed Termination Rate**" means the FTR charged by the FSP to another Undertaking (or other Undertakings) in respect of the provision of FVCT by the FSP to the Undertaking(s) typically outside of normal working hours (or as such period may be stipulated more specifically in the contract between the FSP and the relevant Undertaking(s) in respect of Access);

"**Other SMP Fixed Service Provider(s)**" means a Fixed Service Provider designated with SMP in section 3 of the Decision Instrument annexed to Decision No. 06/07 and comprises BT Communications, Colt Technology Services, Smart Telecom, UPC Communications and Verizon Ireland but does not include Eircom;

"**Peak-Fixed Termination Rate**" means the FTR charged by the FSP to another Undertaking (or other Undertakings) in respect of the provision of FVCT by the FSP to the Undertaking(s) typically during normal working hours (or as such period may be stipulated more specifically in the contract between the FSP and the relevant Undertaking(s) in respect of Access);

"**Pure Long Run Incremental Costs**" or "**Pure LRIC**" means those costs which are caused by the provision of FVCT and includes only avoidable costs;

"**Significant Market Power (SMP) obligations**" are those obligations set out in Regulation 9 to 14 of the Access Regulations, as may be amended from time to time;

"**SMP Fixed Service Provider(s)**" means a Fixed Service Provider designated with SMP in section 3 of the Decision Instrument annexed to Decision No. 06/07 and comprises BT Communications, Colt Technology Services, Eircom, Smart Telecom, UPC Communications and Verizon Ireland;

"**Smart Telecom**" means Smart Telecom Holdings Limited and any undertaking which it owns or controls, and any undertaking which owns or controls it and its successors and assigns. For the avoidance of doubt Smart Telecom includes Smart Telecom as referred to in section 3.1 of the Decision Instrument annexed to ComReg Decision No. D06/07;

"**Undertaking**" shall have the same meaning as under Regulation 2 of the Framework Regulations, as may be amended from time to time;

"**UPC Communications**" means UPC Communications Ireland Limited, and its subsidiaries, and any undertaking which it owns or controls, and any undertaking which owns or controls it and its successors and assigns. For the avoidance of doubt UPC Communications includes Ntl Communications (Ireland) Limited and Chorus Communications Limited as referred to in section 3.1 of the Decision Instrument annexed to ComReg Decision No. D06/07 and their successors and assigns;

"**Verizon Ireland**" means Verizon Ireland Limited as referred to in section 3.1 of the Decision Instrument annexed to ComReg Decision No. D06/07 and includes its subsidiaries, and any undertaking which it owns or controls and any undertaking which owns or controls it, and its successors, affiliates and assigns; and

"**Weekend-Fixed Termination Rate**" means the FTR charged by the FSP to another Undertaking (or other Undertakings) in respect of the provision of FVCT by the FSP to the Undertaking(s) typically during weekends and bank holidays (or as such period may be stipulated more specifically in the contract between the FSP and the relevant Undertaking(s) in respect of Access).

3. SCOPE AND APPLICATION

3.1 This Decision Instrument applies to BT Communications, Colt Technology Services, Eircom, Smart Telecom, UPC Communications and Verizon Ireland in respect of activities falling within the scope of the Market.

3.2 This Decision Instrument is binding upon BT Communications, Colt Technology Services, Eircom, Smart Telecom, UPC Communications and Verizon Ireland and each of the SMP Fixed Service Providers shall comply with it in all respects.

3.3 This Decision Instrument relates to the amendment and withdrawal, pursuant to Regulation 8 of the Access Regulations, of obligations contained in section 10 of the Decision Instrument annexed to ComReg Decision No. D06/07 as it relates to Fixed Voice Call Termination. Section 7 of this Decision Instrument details such amendments and withdrawals. Furthermore, this Decision Instrument relates to the imposition of obligations on each of the SMP Fixed Service Providers in accordance with Regulation 8 of the Access Regulations.

PART II – SMP OBLIGATIONS IN RELATION TO SMP FIXED SERVICE PROVIDERS (SECTION 4 OF THE DECISION INSTRUMENT)

4. OBLIGATIONS RELATING TO PRICE CONTROL AND COST ACCOUNTING

Eircom

4.1 Pursuant to Regulation 13(1) of the Access Regulations and in accordance with Section 10.1 of the Decision Instrument annexed to ComReg Decision No. D06/07 Eircom is subject to a cost orientation obligation as regards FTRs and the price charged by it to any other Undertaking for Access to or use of those products, services or facilities described in Section 5 of the Decision Instrument annexed to ComReg Decision No. D06/07.

4.2 Without prejudice to the generality of Section 4.1 of this Decision Instrument, pursuant to Regulation 8 of the Access Regulations and in accordance with Regulation 13 of the Access Regulations, Eircom's obligation contained in Section 10.1 of the Decision Instrument annexed to ComReg Decision No. D06/07 is hereby amended such that the costs for access to or use of the Fixed Voice Call Termination shall no longer be calculated using a pricing model based on FL-LRIC. Eircom shall ensure that its Fixed Termination Rates are set in accordance with the Pure LRIC costing methodology.

4.3 Without prejudice to the generality of Section 4.2 of this Decision Instrument, pursuant to Regulation 8 of the Access Regulations and in accordance with Regulation 13(3) of the Access Regulations, Eircom shall ensure that its Fixed Termination Rates are no more than the BU Pure LRIC Fixed Termination Rates, based on the BU Pure LRIC Model, which are set out in the table below.

	Peak	**Off-Peak**	**Weekend**
Cent per Minute			
Cent per Call			

4.4 With effect from [date to be inserted], Eircom shall apply Section 4.3 to all invoices and credit notes issued by Eircom to any Undertaking in respect of the FVCT.

4.5 Notwithstanding and without prejudice to the obligations imposed on Eircom in Section 8 of the Decision Instrument annexed to ComReg Decision No. D06/07, Eircom shall pre-notify ComReg of its intention to amend its published Fixed Termination Rates, not less than 2 months in advance of the date on which any such amendments come into effect, unless otherwise agreed by ComReg.

4.6 Without prejudice to Section 4.5, Eircom shall furnish to ComReg at the date of notification, referred to in Section 4.5, a statement confirming that any such amendment complies with Section 4.3. Any such statement shall be based on an updated BU-Pure LRIC Model.

4.7 Pursuant to Regulation 13(1) of the Access Regulations and in accordance with Section 10.2 of the Decision Instrument annexed to ComReg Decision No. D06/07, Eircom is subject to a cost accounting obligation in respect of access to or use of the Fixed Voice Call Termination provided by it any Undertaking.

Other SMP Fixed Service Providers

4.8 Pursuant to Regulation 8 of the Access Regulations and in accordance with Regulation 13 of the Access Regulations, the Other SMP Fixed Service Providers' obligations contained in Section 10.3 to 10.5 of the Decision Instrument annexed to ComReg Decision No. D06/07 are hereby withdrawn and replaced with an obligation of cost orientation as regards FTRs.

4.9 Without prejudice to the generality of Section 4.8 of this Decision Instrument, each of the Other SMP Fixed Service Providers shall ensure that its Fixed Termination Rates are calculated in accordance with the Pure LRIC costing methodology.

4.10 Without prejudice to the generality of section 4.9 of this Decision Instrument and pursuant to Regulation 13(3) of the Access Regulations, each of the Other SMP Fixed Service Providers shall ensure that its Fixed Termination Rates are no more than the BU Pure LRIC Fixed Termination Rates, based on the BU Pure LRIC Model, which are set out in the table referred to in Section 4.3 of this Decision Instrument.

4.11 With effect from [date to be inserted], each of the Other SMP Fixed Service Providers shall apply Section 4.10 to all invoices and credit notes issued by it to any Undertaking in respect of the FVCT.

4.12 Notwithstanding and without prejudice to the obligations imposed on Other SMP Fixed Service Providers in Section 8 of the Decision Instrument annexed to ComReg Decision No. D06/07, each of the Other SMP Fixed Service Providers shall pre-notify ComReg of its intention to amend its published Fixed Termination Rates, not less than 2 months in advance of the date on which any such amendments come into effect, unless otherwise agreed by ComReg.

4.13 Without prejudice to the generality of Section 4.12, each of the Other SMP Fixed Service Providers shall furnish to ComReg at the date of notification, contemplated in Section 4.12, a statement confirming that any such amendment complies with section 4.10.

PART III – OBLIGATIONS AND EFFECTIVE DATE (SECTIONS 5 TO 8 OF THE DECISION INSTRUMENT)

5. STATUTORY POWERS NOT AFFECTED

5.1 Nothing in this Decision Instrument shall operate to limit ComReg in the exercise and performance of its statutory powers or duties conferred on it under any primary or secondary legislation (in force prior to or after the effective date of this Decision Instrument) from time to time.

6. MAINTENANCE OF OBLIGATIONS

6.1 Unless expressly stated otherwise in this Decision Instrument, all obligations and requirements contained in Decision Notices and Directions made by ComReg applying to Eircom and each of the Other SMP Fixed Service Providers and in force immediately prior to the Effective Date of this Decision Instrument, are continued in force by this Decision Instrument and Eircom and the Other SMP Fixed Service Providers shall comply with same.

6.2 If any section, clause or provision or portion thereof contained in this Decision Instrument is found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, that section, clause or provision or portion thereof shall, to the extent required, be severed from this Decision Instrument and rendered ineffective as far as possible without modifying the remaining section(s), clause(s) or provision(s) or portion thereof of this Decision Instrument, and shall not in any way affect the validity or enforcement of this Decision Instrument.

7. AMENDMENT AND WITHDRAWAL OF EXISTING SMP OBLIGATIONS

7.1 As regards Eircom, pursuant to Regulation 8 of the Access Regulations and in accordance with Regulation 13 of the Access Regulations, Section 10.1 of the Decision Instrument annexed to ComReg Decision No. D06/07 is hereby partly amended such that the following wording shall be withdrawn

"…*and such costs shall be calculated using a pricing model based on forward looking long run incremental costs ("FL-LRIC") or an alternative pricing model, if ComReg decides, following consultation, to adopt such an alternative pricing model.*"

and substituted instead with the insertion of the following wording "*and Eircom shall ensure that its Fixed Termination Rates are set in accordance with the Pure LRIC costing methodology and calculated based on the BU-Pure LRIC Model."*

7.2 As regards the Other SMP Fixed Service Providers, pursuant to Regulation 8 of the Access Regulations and in accordance with Regulation 13 of the Access Regulations, Sections 10.3, 10.4 and 10.5 of the Decision Instrument annexed to ComReg Decision No. D06/07 are hereby withdrawn and replaced by the imposition of the obligations set out in Sections 4.8 to 4.13 (inclusive) of this Decision Instrument.

8. EFFECTIVE DATE

8.1 The Effective Date of this Decision Instrument shall be, unless otherwise stated, the date of its notification to Eircom and the other SMP Fixed Service Providers and it shall remain in force until further notice by ComReg.

8.2 Notwithstanding Section 8.1, Section 4 and Section 7 of this Decision Instrument shall apply to each SMP Fixed Service Provider with effect from [date to be inserted].

ALEX CHISHOLM

CHAIRPERSON

THE COMMISSION FOR COMMUNICATIONS REGULATION

THE XX DAY OF X 2012

Chapter 9

9 Draft Decision Instrument: Mobile Call Termination

Q. 12 Do you believe that the draft text of the proposed Decision Instrument in relation to MTRS in Chapter 9 is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain the reasons for your answer, clearly indicating the relevant section numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

1. STATUTORY POWERS GIVING RISE TO THIS DIRECTION

1.1 This Direction and Decision Instrument ("hereinafter Decision Instrument") relates to a further specification of the cost orientation obligation imposed by the Commission for Communications Regulation ("ComReg") under Section 12.1 of the [Draft] Decision Instrument annexed to [ComReg Document No 12/46].

1.2 This Decision Instrument is made:

i. Pursuant to Regulations 8, 13 and 18 of the Access Regulations;

ii. Pursuant to and having regard to the Significant Market Power (SMP) designations on H3GI, Meteor, Lycamobile, Telefónica, Tesco Mobile and Vodafone in the Relevant Markets as provided for in Section 5.1 of the [Draft] Decision Instrument annexed to [ComReg Document No 12/46];

iii. Pursuant to and having regard to the cost orientation obligation imposed on each of H3GI, Meteor, Lycamobile, Telefónica, Tesco Mobile and Vodafone by Section 12.1 of the [Draft] Decision Instrument annexed to [ComReg Document No 12/46];

iv. Having had regard to the functions and objectives of ComReg as set out in sections 10 and 12 of the Communications Regulation Acts 2002 to 2011[158] and Regulation 16 of the Framework Regulations and Regulation 6 of the Access Regulations;

v. Having, where appropriate, pursuant to section 13 of the Communications Regulation Acts 2002 to 2011 complied with policy directions made by the Minister for Communications, Marine and Natural Resources[159];

vi. Having taken the utmost account of the 2009 Termination Rate Recommendation;

vii. Having had regard to the market definition, market analysis and reasoning in the consultation entitled "Market Review – Voice Call Termination on Individual Mobile Networks"; [ComReg Document No 12/46] and the Response to Consultation and Decision Document entitled "[Title to be inserted]", ComReg Decision DXX/12, Document No 12/XX.

viii. Having regard to the analysis and reasoning set out in the consultation and draft decision and directions entitled ""Voice Termination Rates in Ireland: Proposed Price Control for Fixed and Mobile Termination Rates" (ComReg Document No 12/67) and the Response to Consultation and Final Decision and Directions entitled "[Title to be inserted]" ComReg Decision DXX/12, Document No 12/XX.

ix. Having notified the draft measure and the reasoning on which the measure is based to the European Commission, BEREC and the national regulatory authorities in other EU Member States pursuant to Regulation 13 and Regulation 14 of the Framework Regulations and having taken account of any comments made by these parties.

[158] Communications Regulation Act 2002 (No. 20 of 2002), as amended by the Communications Regulation (Amendment) Act 2007 (No. 22 of 2007), the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 (No. 2 of 2010) and the Communications Regulation (Postal Services) Act 2011 (No. 21 of 2011) (the "Communications Regulation Acts 2002 to 2011").

[159] Policy Directions made by the Minister for Communications, Marine and Natural Resources on 21 February 2003 and 26 March 2004.

1.3 The provisions of the Response to Consultation and Final Decision document entitled "[Title to be inserted]", ComReg Decision DXX/12, Document No 12/XX, the Consultation and Draft Decision entitled: "Voice Termination Rates in Ireland: Proposed Price Control for Fixed and Mobile Termination Rates" (ComReg Document No 12/67) and the Response to Consultation and Final Decision entitled "[Title to be inserted]", ComReg Decision DXX/12, ComReg Document No 12/XX shall, where appropriate, be construed with this Decision Instrument.

2. DEFINITIONS

2.1 In this Decision Instrument, unless the context otherwise suggests:

"2009 Termination Rate Recommendation" means the recommendation published by the European Commission on 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC) (OJ L124/67 20.5.2009);

"Access" shall have the same meaning as under Regulation 2 of the Access Regulations, as may be amended from time to time; for the purposes of this Direction access shall include access to mobile voice call termination;

"Access Regulations" means the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011), as may be amended from time to time;

"Authorisation Regulations" means the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011), as may be amended from time to time;

"Benchmark of BU Pure LRIC Mobile Termination Rates" means the simple average of the BU Pure LRIC MTRs set by other NRAs in the EU Member States[160] in which a BU Pure LRIC Model has been adopted and is in force;

"BEREC" means the Body of European Regulators for Electronic Communications, as established pursuant to Regulation (EC) No. 1211/2009 of the European Parliament and of the Council of 25 November 2009;

"Bottom Up Pure Long Run Incremental Costs" or **BU Pure LRIC**" means the methodology used to estimate the pure LRIC of an efficient operator which is derived from an economic/engineering model of an efficient network;

"ComReg" means the Commission for Communications Regulation, established under section 6 of the Communications Regulation Acts 2002 to 2011, as may be amended from time to time;

"ComReg Decision DXX/XX" means ComReg Document 12/XX entitled "Market Review – Wholesale Voice Call Termination on Individual Mobile Networks (Market 7)" dated [date to be inserted];

[160] http://europa.eu/about-eu/countries/index_en.htm

"Effective Date" means the date set out in Section 7 of this Decision Instrument;

"End-User" shall have the same meaning as under Regulation 2 of the Framework Regulations, as may be amended from time to time;

"Eircom" means Eircom Limited and its subsidiaries, and any undertaking which it owns or controls, and any undertaking which owns or controls Eircom Limited and its successors and assigns;

"Framework Regulations" means the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011), as may be amended from time to time;

"H3GI" means Hutchinson 3G Ireland Limited and its subsidiaries, and any undertaking which it owns or controls and any undertaking which owns or controls it, and its successors, affiliates and assigns;

"Interconnection" shall have the same meaning as under Regulation 2 of the Access Regulations, as may be amended from time to time;

"Liffey Telecom" means Liffey Telecom and its subsidiaries, and any undertaking which it owns or controls and any undertaking which owns or controls it, and its successors, affiliates and assigns;

"Lycamobile" means Lycamobile Ireland Limited and its subsidiaries, and any undertaking which it owns or controls and any undertaking which owns or controls it, and its successors, affiliates and assigns;

"Meteor" means Meteor Mobile Communications Limited and its subsidiaries, and any undertaking which it owns or controls and any undertaking which owns or controls it, and its successors, affiliates and assigns;

"Mobile Network" means a digital wireless cellular network using radio frequency spectrum in any of the 900 MHz, 1800 MHz and/or 2100 MHz Bands or other radio frequency spectrum bands as assigned by ComReg to an Undertaking from time to time;

"Mobile Number(s)" shall have the same meaning as set out in the National Numbering Conventions, as may be amended from time to time. The current meaning of a Mobile Number is a number from the Irish national numbering scheme commencing with the network code 08X, where X can represent any digital character 0-9, except 1. For the avoidance of doubt, Mobile Number shall include both a Mobile Number which is the subject of a Primary Allocation/Reservation and a Mobile Number which is the subject of a Secondary Allocation/Reservation;

"Mobile Service Provider" means an Undertaking providing End-Users with land based/terrestrial publicly available mobile voice telephony services using a Mobile Network;

"Mobile Termination Rate(s) (MTR(s))" means the wholesale charge(s) levied by a Mobile Service Provider for the supply of MVCT and, for the avoidance of doubt, includes the Peak Mobile Termination Rate(s), Off-peak Mobile Termination Rate(s) and Weekend Mobile Termination Rate(s);

"Mobile Voice Call Termination (MVCT)" means the provision by a Mobile Service Provider of a wholesale service to other Undertakings for the purpose of terminating incoming voice calls to Mobile Numbers in respect of which that Mobile Service Provider is able to set the MTR. For the avoidance of doubt, the provision of MVCT involves the provision of an Interconnection service;

"National Numbering Conventions" means the set of rules under which the Irish national numbering scheme is managed and administered as set out in the document entitled *National Numbering Conventions, Version 7.0, ComReg Document No. 11/17*, as may be amended by ComReg from time to time;

"National Regulatory Authority" or **"NRA"** shall have the same meaning as under Regulation 2 of the Framework Regulations, as may be amended from time to time;

"**Off Peak-Mobile Termination Rate**" means the MTR charged by the MSP to another Undertaking (or other Undertakings) in respect of the provision of MVCT by the MSP to the Undertaking(s) typically outside of normal working hours (or as such period may be stipulated more specifically in the contract between the MSP and the relevant Undertaking(s) in respect of Access);

"**Peak-Mobile Termination Rate**" means the MTR charged by the MSP to another Undertaking (or other Undertakings) in respect of the provision of MVCT by the MSP to the Undertaking(s) typically during normal working hours (or as such period may be stipulated more specifically in the contract between the MSP and the relevant Undertaking(s) in respect of Access);

"Primary Allocation/Reservation" shall have the same meaning as under the National Numbering Conventions, as may be amended from time to time. The current meaning of Primary Allocation/Reservation is the direct allocation or reservation of numbers by the Numbering Plan Management to individual network operators, service providers or users;

"**Pure Long Run Incremental Costs**" or "**Pure LRIC**" means those costs which are caused by the provision of MVCT and includes only avoidable costs;

"Relevant Markets" means all of the markets defined in Section 4.2 of the [Draft] Decision Instrument annexed to [ComReg Document No 12/46];

"Secondary Allocation/Reservation" shall have the same meaning as under the National Numbering Conventions, as may be amended from time to time. The current meaning of Secondary Allocation/Reservation is the allocation or reservation of numbers to a downstream Undertaking or to an End-User, by an Undertaking to whom a Primary Allocation/Reservation has already been made. For the avoidance of doubt, a downstream Undertaking in this context includes any Undertaking other than the Undertaking to whom the Primary Allocation/Reservation was made;

"SMP Mobile Service Provider" means a Mobile Service Provider designated with SMP in Section 5 of the [Draft] Decision Instrument annexed to [ComReg Document No 12/46], namely H3GI, Lycamobile, Meteor, Telefonica, Tesco Mobile and Vodafone;

"Telefonica" means Telefonica Ireland Limited and its subsidiaries, and any undertaking which it owns or controls and any undertaking which owns or controls it,

and its successors, affiliates and assigns, including Liffey Telecom, but excluding, for the purposes of this Direction Tesco Mobile;

"Tesco Mobile" means Tesco Mobile Ireland Limited and its subsidiaries, and any undertaking which it owns or controls and any undertaking which owns or controls it, and its successors, affiliates and assigns, but excluding for, the purposes of this Direction, Telefonica;

"Undertaking" shall have the same meaning as under Regulation 2 of the Framework Regulations, as may be amended from time to time;

"Vodafone" means Vodafone Ireland Limited and its subsidiaries, and any undertaking which it owns or controls and any undertaking which owns or controls it, and its successors, affiliates and assigns;

"**Weekend-Mobile Termination Rate**" means the MTR charged by the MSP to another Undertaking (or other Undertakings) in respect of the provision of MVCT by the MSP to the Undertaking(s) typically during weekends and bank holidays (or as such period may be stipulated more specifically in the contract between the MSP and the relevant Undertaking(s) in respect of Access);

"Weighted Average Mobile Termination Rate" shall mean the sum of the relevant MSP's Peak MTR, Off-Peak MTR and Weekend MTR whereby each such MTR has been weighted to take account of the relevant percentage volume of minutes of MVCT provided by the MSP during the six month period prior to the date set out in Section 7.2 of this Decision Instrument. However, in cases where a MSP is proposing to amend its MTR(s) in accordance with Section 4.3 of this Decision Instrument, the said weightings shall take account of the relevant percentage volume of minutes of MVCT provided by the MSP during the six month period prior to the date of notification of the proposed amended MTR(s) to ComReg in accordance with Section 4.5 of this Decision Instrument. [Please refer to Figure 7.6 at Chapter 7 of ComReg Document No. 12/67 for further details in relation to the proposed calculation of the Weighted Average Mobile Termination Rate;

"900 MHz Band" means the 880 to 915 MHz band of radio frequency spectrum paired with the 925 to 960 MHz band of radio frequency spectrum;

"1800 MHz Band" means the 1710 to 1785 MHz band of radio frequency spectrum paired with the 1805 to 1880 MHz band of radio frequency spectrum; and

"2100 MHz Band" means the 1900 to 1920 MHz band of radio frequency spectrum, and the 1920 to 1980 MHz band of radio frequency spectrum paired with the 2110 to 2170 MHz band of radio frequency spectrum.

3. SCOPE AND APPLICATION

3.1 This Decision Instrument applies to H3GI, Meteor, Lycamobile, Telefónica, Tesco Mobile and Vodafone.

3.2 This Decision Instrument is binding upon H3GI, Meteor, Lycamobile, Telefónica, Tesco Mobile and Vodafone and each of H3GI, Meteor, Lycamobile, Telefónica, Tesco Mobile and Vodafone shall comply with it in all respects.

3.3 This Decision Instrument relates to a further specification of the cost orientation obligation imposed by ComReg under Section 12.1 of the [Draft] Decision Instrument annexed to [ComReg Document No 12/46] in relation to the Relevant Markets.

4. FURTHER SPECIFICATION OF THE OBLIGATIONS RELATING TO PRICE CONTROL

4.1 Pursuant to Regulation 13(1) of the Access Regulations and Section 12.1 of the [Draft] Decision Instrument annexed to ComReg Document No 12/46, each SMP Mobile Service Provider is subject to a cost orientation obligation as regards MTRs and prices charged by the SMP Mobile Service Provider to any other Undertaking for Access to or use of those products, services or facilities referred to in Section 8 of the [Draft] Decision Instrument annexed to ComReg Document No 12/46.

4.2 For the purpose of further specifying requirements to be complied with relating to the cost orientation obligation set out in Section 12.1 of the [Draft] Decision Instrument annexed to ComReg Document No 12/46, and pursuant to Regulation 18 of the Access Regulations, each SMP Mobile Service Provider is hereby directed to ensure that its Mobile Termination Rate(s) are set in accordance with a Pure LRIC costing methodology.

4.3 Without prejudice to the generality of Section 4.2, pursuant to Regulation 18 of the Access Regulations and in accordance with Regulation 13(3) of the Access Regulations, each SMP Mobile Service Provider shall ensure that its Weighted Average Mobile Termination Rate is no more than the Benchmark of BU Pure LRIC Mobile Termination Rates set out in the table below, which may be amended by ComReg from time to time by way of a published Information Notice. For the avoidance of doubt, each SMP Mobile Service Provider shall be deemed to have complied with Section 4.2 above, by complying with Section 4.3 of this Decision Instrument or with any subsequent Information Notice that may be published by ComReg in accordance with this Section 4.3

Type	**€**
Cent per Minute	

4.4 With effect from [date to be inserted], the SMP Mobile Service Provider shall apply Section 4.3 to all invoices/credit notes issued by it to any Undertaking in respect of the MVCT.

4.5 Notwithstanding and without prejudice to the obligations imposed on each SMP Mobile Service Providers in Section 11.5 of the [Draft] Decision Instrument annexed to ComReg Document No 12/46, each SMP Mobile Service Provider shall pre-notify ComReg of its intention to amend its published MTR(s) not less than 2 months in advance, in advance, of the date on which any such amendment is expected to come into effect, unless otherwise agreed by ComReg.

4.6 Without prejudice to Section 11.5.2 of the [Draft] Decision Instrument annexed to ComReg Document 12/46, and for the avoidance of doubt, each SMP Mobile Service Provider shall notify Eircom not less than 35 calendar days in advance of the date on which any such amendment is expected to come into effect.

4.7 Without prejudice to Section 4.5 above, each SMP Mobile Service Provider shall furnish to ComReg at the date of notification a statement confirming that its Weighted Average Mobile Termination Rate, as adjusted to reflect the proposed amended MTR(s), complies with Section 4.3 of this Decision Instrument.

5. STATUTORY POWERS NOT AFFECTED

5.1 Nothing in this Decision Instrument shall operate to limit ComReg in the exercise and performance of its statutory powers or duties conferred on it under any primary or secondary legislation (in force prior to or after the Effective Date of this Decision Instrument).

6. MAINTENANCE OF OBLIGATIONS

6.1 Unless expressly stated otherwise in this Decision Instrument, all obligations and requirements contained in Decision Notices and Directions made by ComReg applying to the SMP Mobile Service Providers and in force immediately prior to the Effective Date of this Decision Instrument, are continued in force by this Decision Instrument and the SMP Mobile Service Providers shall comply with same.

6.2 If any section, clause or provision or portion thereof contained in this Decision Instrument is found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, that section, clause or provision or portion thereof shall, to the extent required, be severed from this Decision Instrument and rendered ineffective as far as possible without modifying the remaining section(s), clause(s) or provision(s) or portion thereof of this Decision Instrument, and shall not in any way affect the validity or enforcement of this Decision Instrument.

7. EFFECTIVE DATE

7.1 The effective date of this Decision Instrument shall be the date of its notification to the SMP Mobile Service Providers and shall remain in force until further notice by ComReg.

7.2 Notwithstanding Section 7.1, Section 4 of this Decision Instrument shall apply to each SMP Mobile Service Providers with effect from [date to be inserted].

ALEX CHISHOLM

CHAIRPERSON

THE COMMISSION FOR COMMUNICATIONS REGULATION

THE X DAY OF X 2012

Chapter 10

10 Regulatory Impact Assessment ("RIA")

10.1 Overview

10.1 A Regulatory Impact Assessment ("RIA") is an analysis of the likely effect of proposed new regulation or regulatory change. The RIA should help to identify regulatory options, and should establish whether the proposed regulation is likely to have the desired impact. The RIA is a structured approach to the development of policy, and analyses the impact of regulatory options on various stakeholders.

10.2 ComReg's approach to the RIA is set out in the Guidelines published in August 2007 in ComReg Document Nos. 07/56 & 07/56a. In conducting the RIA, ComReg takes into account the RIA Guidelines[161], issued by the Department of An Taoiseach in June 2009 under the Government's Better Regulation programme. Section 13(1) of the Communications Regulation Act 2002 requires ComReg to comply with Ministerial Policy Directions. Policy Direction 6 of February 2003[162] requires that, before deciding to impose regulatory obligations on undertakings, ComReg shall conduct a RIA in accordance with European and international best practice and otherwise in accordance with measures that may be adopted under the Government's "Better Regulation" programme.

10.3 In conducting the RIA, ComReg has regard to the RIA Guidelines, while recognising that regulation by way of issuing decisions e.g. imposing obligations or specifying requirements in addition to promulgating secondary legislation may be different to regulation exclusively by way of enacting primary or secondary legislation. Our ultimate aim in conducting a RIA is to ensure that all measures are appropriate, proportionate and justified. ComReg will take a common sense approach to ensure that a RIA is proportionate and does not become overly burdensome. As decisions are likely to vary in terms of their impact, if after initial investigation, a decision appears to have relatively low impact ComReg may carry out a lighter RIA in respect of those decisions.

[161] See "Revised RIA Guidelines How to Conduct a Regulatory Impact Analysis", June 2009. http://www.betterregulation.ie/eng/Developments in Better Regulation Policy/Revised RIA Guidelines.pdf

[162] Ministerial Policy Direction made by the Minister for Communications, Marine and Natural Resources on 21 February 2003.

10.2 Steps for assessing regulatory options

10.4 In assessing the available regulatory options, ComReg's approach to the RIA is based on the following five steps:

Step 1: describe the policy issue and identify the objectives

Step 2: identify and describe the regulatory options

Step 3: determine the likely impacts on stakeholders

Step 4: determine the likely impacts on competition

Step 5: assess the likely impacts and choose the best option.

10.5 Each step is discussed in detail below.

10.3 Step 1: Describe the policy issue and identify the objectives

10.6 Section 12 of the Communications Regulation Acts 2002 to 2011 states that ComReg shall take all reasonable measures which are aimed at achieving its objectives, including:

- Ensuring that there is no distortion or restriction of competition in the electronic communications sector;
- Encouraging efficient investment in infrastructure and promoting innovation;
- Promoting the interests of users within the Community; and
- Encouraging access to the internet at reasonable cost to end-users.

10.7 The European Commission published its 2009 Termination Rate Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates on 7 May 2009. The 2009 Termination Rate Recommendation emphasises that regulated Termination Rates should be brought down to the costs of an efficient operator as soon as possible and that there should be a consistent application in all EU Member States.

10.8 The proposed measures in this Consultation Document should provide greater legal certainty in this area and should ensure maximum benefit to consumers in terms of affordable prices and the efficient development of innovative services.

10.9 The 2009 Termination Rate Recommendation requires Termination Rates to be set based on long-run incremental costs ("pure LRIC"). The 2009 Termination Rate Recommendation aims to address:

- Fundamental competitive distortions, substantial transfers between fixed and mobile markets and consumers, significant payments from smaller to larger competitors and high retail prices for originating calls and correspondingly lower usage rates, thus decreasing consumer welfare.

- The regulatory uncertainty created by the lack of harmonisation in the setting of Termination Rates, which may deter potential investors, and imposes a regulatory burden on operators active in several EU Member States.

10.10 The development of the internal market and consistent regulatory practice are important factors for ComReg in the context of the proposed measures assessed throughout this Consultation Document and also as set out below. As recognised in the 2009 Termination Rate Recommendation, although cost orientation is generally provided for in most EU Member States, a divergence between price control measures has prevailed across the EU Member States. Significant divergences in the regulatory treatment of FTRs and MTRs create fundamental competitive distortions.

10.11 In cases where a NRA notifies a draft measure to the European Commission aimed at imposing, amending or withdrawing an SMP obligation, Article 7a of the Framework Directive provides that the European Commission may notify the NRA concerned and BEREC of its reasons for considering that the draft measure would create a barrier to the single market or its serious doubts as to the compatibility of the draft measure with Community law. In such cases, the European Commission opens a three-month "Phase II" investigation by issuing a "serious doubts letter" to the relevant NRA (pursuant to Article 7a) in which it informs the NRA of its reasons for considering that the draft measure would create a barrier to the single market or its serious doubts as to the compatibility of the draft measure with Community law.

10.12 Asymmetrical Termination Rates have been applied by some of the smaller Service Providers in both the fixed and the mobile sector over the past few years, in order to allow those smaller Service Providers to gain scale. The 2009 Termination Rate Recommendation allows for asymmetrical Termination Rates for new mobile entrants for a transitional period of up to four years where such entrants have objectively higher efficient costs and face impediments to reaching an efficient scale, so that they have sufficient time to recoup their higher incremental costs.

10.13 It has also been necessary for ComReg to consider the implications of the 2009 Termination Rate Recommendation on related regulated markets where relevant. ComReg considers that any decision to set the FTRs at pure LRIC may result in some shared voice and common network costs left unrecovered from the regulated wholesale charge. Therefore, in the event that a decision on FTRs results in unrecovered efficiently incurred costs, these costs must be recovered elsewhere.

10.4 Step 2: Identify and describe the regulatory options

10.14 The regulatory options considered in the context of setting the FTRs and MTRs are as follows:

- Options on the various methods of price regulation
- Options on the various forms of cost orientation
- Options for Implementation of cost orientation
- Options on Implementation timelines
- Options on symmetrical Termination Rates
- Options on recovery of common costs

10.4.1 Options on the various methods of price regulation

10.15 While ComReg acknowledges the 2009 Termination Rate Recommendation and the fact that it must take utmost account of it, it must also consider its regulatory objectives in line with Section 12 of the Communication Regulation Acts 2002 to 2011 regarding promotion of competition to the benefit of end-users.

10.16 In addition, according to Regulation 13(1) of the Access Regulations, ComReg may impose on an operator obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems for the provision of specific types of access or interconnection in situations where a market analysis indicates that a lack of effective competition means that the operator concerned may sustain prices at levels above efficient cost or may apply a price squeeze to the detriment of end-users.

10.17 In Chapter 4 and Chapter 6 of the Consultation Document and also in Section 3 and Section 6 of the Analysys Mason Report, there is a detailed analysis of the various possible regulatory approaches for setting the appropriate FTRs and MTRs in Ireland.

10.18 As already discussed in Chapter 3 of this Consultation Document, to date, the Termination Rates charged by Eircom, Vodafone, O2, Meteor and H3GI have been based on a price control in the form of cost orientation. More recently, in ComReg Document No 12/46, ComReg has published its draft decision on the MVCT market which includes a proposal to impose a cost orientation obligation on the SMP MSPs. For the reasons set out in this Consultation Document, ComReg considers that cost orientation is the appropriate price control in the context of determining the appropriate level of Termination Rates and it clearly is the preferred approach in the 2009 Termination Rate Recommendation. The assessment of the possible options and the impact on stakeholders, discussed below, is based on the preferred form of price regulation – cost orientation.

10.4.2 Options on the various forms of cost orientation

10.19 The two options considered for the costing methodology are:

- Pure LRIC
- LRAIC plus

10.20 These options are considered in light of Regulation 13(3) of the Access Regulation which states that: *the Regulator shall ensure that any cost recovery mechanism or pricing methodology that it imposes under this Regulation serves to promote efficiency and sustainable competition and maximise consumer benefits*.

10.21 These options were considered in detail in Chapter 6 (subsection 6.6 and 6.7) of this Consultation Document and also in the Analysys Mason Report at Section 6. The potential impact on the various stakeholders is discussed in more detail below.

10.4.3 Options for Implementation of cost orientation

10.22 There are two options in terms of implementing cost orientation:

- Cost modelling
- Benchmarking.

10.23 Regulation 13(3) of the Access Regulations states that the Regulator shall ensure that any cost recovery mechanism or pricing methodology that it imposes under Regulation 13 serves to promote efficiency and sustainable competition and maximise consumer benefits. In this regard, the Regulator may also take account of prices available in comparable competitive markets.

10.24 The above options are considered in detail in Chapter 6 and Chapter 7 of this Consultation Document and in Section 6 of the Analysys Mason Report.

10.25 ComReg considers that a pure LRIC Termination Rate whether based on a benchmarking analysis or a cost model should be very similar. This is also supported by Section 6 of the Analysys Mason Report. Therefore, in terms of assessing the potential impact on the various stakeholders below, we have made this assumption. In Chapter 7 of the Consultation Document, we discuss the reasons and justification for the proposed benchmarking approach in the context of determining the MTRs and the proposed cost model for determining the FTRs. Please refer to Chapter 7 for further details.

10.4.4 Options on implementation timelines

10.26 ComReg considers that there are two options in terms of implementing the proposed pure LRIC approach for Termination Rates. These are as follows:

- Implementation date of 1 January 2013 (in line with the 2009 Termination Rate Recommendation)
- Implementation date of 1 July 2013.

10.27 Chapter 7 of the Consultation Document sets out these options and the merits of each.

10.28 These options are also briefly discussed below as part of the subsection on assessing the likely impacts and choosing the best option.

10.4.5 Options on symmetrical Termination Rates

10.29 ComReg is considering whether to impose:

- Symmetric (same) rates; or
- Asymmetrical (different) rates.

10.30 Chapter 4 and more particularly Chapter 6 (subsection 6.8) of this Consultation Document and also Section 3 (subsection 3.3) and Section 6 of the Analysys Mason Report discuss symmetry and asymmetry.

10.31 The 2009 Termination Rate Recommendation sets out that the rates for termination should be set on a symmetric basis unless an operator can justify higher costs on entry into the market and may in certain limited circumstances for mobile entrants with objectively higher costs have a level of asymmetry for no longer than four years after market entry. However, there would be a concern that asymmetric rates could foster inefficient entry to the market which ultimately negatively impacts on consumers.

10.32 The potential impact of symmetry versus asymmetry on the various stakeholders is discussed in more detail below.

10.4.6 Options on recovery of common costs

10.33 As discussed in Chapter 7 of this Consultation Document, unavoidable common costs are not recovered under the pure LRIC approach.

10.34 For those Service Providers not regulated across a number of markets e.g. the SMP FSPs other than Eircom and the SMP MSPs, ComReg considers that there should be discretion as to how they wish to recover those common costs.

10.35 However, we must consider the options for Eircom, the only entity regulated in related markets, in terms of where the common costs relating to the terminating service should be recovered from and provide specific guidance and views on where unrecovered efficiently incurred costs should be allocated. We consider that there are two options:

- Allocating across origination calls, to compensate for the unrecovered common costs due to voice call termination being priced using a pure LRIC methodology.

- Allocating all or part of the additional common cost to other (i.e. non-voice) services depending on whether the costs are directly or indirectly related to making a call.

10.36 This potential impact in terms of the recovery of common costs is discussed in this Consultation Document as part of the discussion of the overall options regarding the form and implementation of cost orientation obligations in the MVCT and FVCT markets.

10.5 Step 3: Determine the likely impacts on stakeholders

10.37 This section summarises the potential impact of the proposed options, set out above in subsection 10.4 on the various stakeholders for FVCT and MVCT.

10.38 The impact on stakeholders has been discussed under the following headings:

- Mobile termination (impacts based on the options regarding the form and implementation of cost orientation including recovery of common costs)
- Fixed termination (impacts based on the options regarding the form and implementation of cost orientation including the recovery of common costs)
- Mobile termination (impacts based on the option of symmetry versus asymmetry)
- Fixed termination (impacts based on the option of symmetry versus asymmetry)

10.39 As regards the MVCT market, the potential impact on consumers is set out in a separate table.

10.5.1 Mobile Termination (impacts based on the options regarding the form and implementation of cost orientation including the recovery of common costs)

Option 1: Pure LRIC (based on a benchmark)

Impact on Large Mobile Service Providers (MSPs)	Impact on Small Mobile Service Providers (MSPs)	Impact on Fixed Service Providers (FSPs)
1) MTRs based on a pure LRIC methodology are expected to be lower than LRAIC plus MTRs, and also lower than the MTRs that are currently in place. Therefore, pure LRIC MTRs will result in an initial reduction in call termination revenues associated with incoming (off-net) calls for all MSPs. The anticipated loss in termination revenue per call/minute may be mitigated by increasing volumes of incoming calls as well as by potentially increasing volumes of outgoing calls over time (depending on responsiveness to any retail off-net price reductions). **2)** Pure LRIC MTRs will result in a reduction in the cost faced by MSPs	**1)** MTRs based on a pure LRIC methodology are expected to be lower than LRAIC plus MTRs, and also lower than the MTRs that are currently in place. Therefore, pure LRIC MTRs will result in an initial reduction in call termination revenues associated with incoming (off-net) calls for all MSPs. This impact is emphasised for smaller MSPs who currently have higher MTRs than larger MSPs, and who will therefore face a higher relative reduction in their revenues. The anticipated loss in termination revenue per call/minute may be mitigated by increasing volumes of incoming calls as well as by potentially increasing volumes of outgoing calls over time (depending on responsiveness to	**1)** The pure LRIC approach will mean a significant benefit for fixed operators resulting from reduced out-payments to mobile networks for MVCT services. **2)** Lower MTRs may encourage FSPs to be more innovative and flexible in devising retail plans and tariffs e.g. offering bundles that include more off-net calls. This might generate more fixed to mobile traffic, and further facilitate the development of combined fixed and mobile subscription packages. **3)** Lower MTRs should allow FSPs to compete with MSPs in providing retail calls to mobile subscribers.

[163] We consider that the large MSPs in Ireland are Vodafone, Telefonica (O2) and Meteor, based on ComReg Document 12/20 - Quarterly Key Data Report data as at Q4 2011.
[164] We consider that the small MSPs in Ireland are H3GI, Tesco Mobile and Lycamobile.

Impact on Large Mobile Service Providers (MSPs)	Impact on Small Mobile Service Providers (MSPs)	Impact on Fixed Service Providers (FSPs)
associated with terminating calls on other networks (off-net calls). **3)** MSPs may off-set the loss in termination revenue by attempting to recover common costs from retail customers e.g. through their ability to segment user groups, or by attempting to reduce their own costs. For example, MSPs may reduce or remove the subsidies offered to consumers for handsets. Alternatively, MSPs could deactivate inactive prepaid accounts and report for expired credit as a form of revenue or accounting gain, which could then be used to off-set other costs. **4)** Lower MTRs (by virtue of pure LRIC) means that MSPs may face a lesser risk of retail revenues being eroded by the cost of terminating off-net calls since MSPs could terminate calls on another mobile networks for less. This may encourage MSPs to be more innovative and flexible in devising retail plans and tariffs e.g. offering bundles that include more off-net calls. Depending on the demand elasticity this could stimulate further usage and revenue opportunities for MSPs. **5)** Implementing a pure LRIC for MTRs	any retail off-net price reductions). **2)** Pure LRIC MTRs will result in a reduction in the cost faced by MSPs associated with terminating calls on other networks (off-net calls). Again this impact is likely to be more significant for smaller MSPs, since a large number of calls made from the smaller MSPs networks are off-net. **3)** MSPs may off-set the loss in termination revenue by attempting to recover common costs from retail customers e.g. through their ability to segment user groups, or by attempting to reduce their own costs. For example, MSPs may reduce or remove the subsidies offered to consumers for handsets. Alternatively, MSPs could deactivate inactive prepaid accounts and report for expired credit as a form of revenue or accounting gain, which could then be used to off-set other costs. **4)** Lower MTRs (by virtue of pure LRIC pricing) means that MSPs may face a lesser risk of retail revenues being eroded by the cost of terminating off-net calls. In other words, it becomes cheaper for MSPs to terminate calls on another MSP network. This may encourage MSPs to be more innovative and flexible in devising retail plans and tariffs e.g.	

Impact on Large Mobile Service Providers (MSPs)	Impact on Small Mobile Service Providers (MSPs)	Impact on Fixed Service Providers (FSPs)
means that MSPs will only be able to recover *efficiently* incurred costs through their MTRs. This is likely to encourage MSPs to make efficient investments to reduce their costs. For example, by deploying new technology that reduces the cost of terminating traffic thus improving dynamic efficiency. Please refer to Chapter 5 (subsection 5.4.3) for discussion on dynamic efficiency and also Section 4.2 of the Analysys Mason Report. **6)** Lower MTRs (under pure LRIC) allow all MSPs to include more off-net calls in call bundles, and on that basis reduce tariff-mediated network externalities. These externalities might otherwise hold retail customers 'captive' to the MSP of their friends and family. Pure LRIC MTRs therefore enable retail customers of MSPs to switch to alternative MSPs (to that of their friends and family) without facing significantly increased costs associated with high off-net call costs. This means that it may be more difficult for large MSPs to retain customers through on-net/off-net price discrimination as the relative difference in the underlying cost base becomes less pronounced. On the other hand, it	offering bundles that include more off-net calls. Depending on demand elasticity this could stimulate further usage and revenue opportunities for MSPs. **5)** Implementing a pure LRIC for MTRs means that MSPs will only be able to recover efficiently incurred costs through their MTRs. This is likely to encourage MSPs to make efficient investments to reduce their costs. For example, by deploying new technology that reduces the cost of terminating traffic (thus improving dynamic efficiency: Please refer to Chapter 5 (subsection 5.4.3) for discussion on dynamic efficiency and also Section 4.2 of the Analysys Mason Report. **6)** The pure LRIC approach means that it is cheaper for smaller MSPs to terminate calls on another mobile network (i.e. the cost to an off-net call). For this reason smaller MSPs can more easily include off-net calls in (larger) call bundles and possibly converged fixed–mobile offers. This means that small MSPs should be better able to compete for the individual customers of other MSPs who may previously have been inert due to tariff-mediated network externalities (where the customer benefited before from making lower cost on-net calls to friends and family who were customers of the same MSP). Given the reduced on-	

Impact on Large Mobile Service Providers (MSPs)	Impact on Small Mobile Service Providers (MSPs)	Impact on Fixed Service Providers (FSPs)
should be easier for all MSPs to win individual customers from other large MSPs. **7)** Lower MTRs (under pure LRIC) should mean that large MSPs may face greater competition in the retail calls market from FSPs and smaller MSPs. The threat of competition should ensure that investment incentives faced by large MSPs will be preserved, despite lower termination revenue. **8)** The pure LRIC approach means that the larger MSPs can no longer recover the unavoidable common costs of termination from mobile termination revenues. Therefore, large MSPs will need to recover common costs from other retail/wholesale services and from their own customers, rather than subscribers of other MSPs. This should ensure that large MSPs are as efficient as possible, since they would not be able to transfer their own inefficiently incurred costs to other MSPs or FSPs.	net/off-net price differentials for smaller MSPs, the reduced tariff-mediated externalities will benefit the smaller MSPs the most, since a larger portion of calls made on smaller networks are off-net. **7)** Lower MTRs should mean that small MSPs should be better able to compete, but may face greater competition in the retail calls market from FSPs and potentially other smaller MSPs. The threat of competition should ensure that investment incentives faced by all MSPs will be preserved, despite lower termination revenue **8)** The pure LRIC approach means that the small MSPs can no longer recover the unavoidable common costs of termination from mobile termination revenues. Therefore, the small MSPs will need to recover common costs from other retail/wholelsale services and from their own customers, rather than subscribers of other MSPs. This should ensure that small MSPs are as efficient as possible, since they would not be able to transfer their own inefficiently incurred costs to other MSPs or FSPs.	

Impact on Consumers

Consumers: Mobile Network Low Spend	Consumers: Mobile Network High Spend	Consumers: Fixed Network
1) MTRs based on Pure LRIC reduce the revenue available to MSPs from providing call termination, although as noted above may be partly mitigated by increased volumes of incoming calls. To accommodate lower per-customer termination revenue, MSPs may focus on attracting retail customer groups that generate more direct revenue. Therefore, when assessing the impact of pure LRIC pricing on consumers, it is important to consider the way in which different types of consumers might be impacted over time. **2)** MSPs incur significant fixed costs in building and operating a mobile network. The incremental cost of serving additional customers over the mobile network is relatively low (see section 4.2.1 of the Analysys Mason Report). The incremental costs of receiving calls would be covered by a pure LRIC MTR, and therefore should not be borne by the receiving MSP or retail customer. Lower MTRs due to a pure LRIC approach should also facilitate lower off-net retail charges for outgoing calls. **3)** Economies of scale in the provision of MVCT mean that MSPs benefit from	**1)** MTRs based on Pure LRIC reduce the revenue available to MSPs from providing call termination, although as noted above may be partly mitigated by increased volumes of incoming calls. To accommodate lower per-customer termination revenue, MSPs may focus on attracting retail customer groups that generate more direct revenue. Therefore, when assessing the impact of pure LRIC pricing on consumers, it is important to consider the way in which different types of consumers might be impacted over time. **2)** MSPs incur significant fixed costs in building and operating a mobile network. The incremental cost of serving additional customers over the mobile network is relatively low (see section 4.2.1 of the Analysys Mason Report). The incremental costs of receiving calls would be covered by a pure LRIC MTR, and therefore should not be borne by the receiving MSP or retail customer. Lower MTRs due to a pure LRIC approach should also facilitate lower off-net retail charges for outgoing calls. **3)** If MSPs were to recover their costs by increasing retail prices (this concept is known as 'the waterbed effect')[168] MSPs may seek to recover some of the lost mobile termination	**1)** Lower MTRs based on pure LRIC pricing would be likely to benefit all fixed consumers, including vulnerable user groups such as elderly fixed only consumers (if the reduction in the wholesale cost of connecting fixed to mobile calls is passed on to fixed consumers). ComReg expects that the retail price for calls from a fixed telephone to a mobile telephone may fall. **2)** Lower MTRs should facilitate development of more innovative fixed calls packages such as products that include more bundled mobile minutes at a lower price. **3)** Where fixed networks have increased funds available from reductions in outgoing wholesale termination payments, these may be used for important investments in network and service upgrades/innovations to the benefit of fixed consumers.

[168] Please refer to Section 5 of the Consultation Document and Section 4 (4.2.1) of the Analysys Mason Report for further discussion on the waterbed effect

Consumers: Mobile Network Low Spend	Consumers: Mobile Network High Spend	Consumers: Fixed Network
serving a large number of customers. In addition, network effects are likely to be present, and therefore all subscriptions, including low spend consumers, are likely to generate more overall revenue for the MSP (possibly by facilitating the acquisition or retention of higher-revenue customers). **4)** MSPs can design products in a way that extracts revenues from low spend customers. For example, by offering SIM only packages with off-peak minutes included (when spare capacity exists on the network). In Ireland low spend consumers typically pay more per minute for calls than higher spend consumers suggesting they may be less affected by lower mobile termination revenues. **5)** If MSPs were to recover their costs by increasing retail prices (this concept is known as 'the waterbed effect')[166] MSPs may seek to recover some of the lost mobile termination revenue from low and high spend consumers (probably through reduced handset subsidies etc). However, since aligning Termination Rates to efficient cost, this should facilitate a more neutral competitive framework between FSPs and MSPs and between Service	revenue from low and high spend consumers. However, since aligning MTRs to efficient cost this should facilitate a more neutral competitive framework between FSPs and MSPs and between Service Providers of different size, enhanced competition should help ensure that retail prices are set at a competitive level. **4)** Lower MTRs may encourage MSPs to be more innovative and flexible in devising retail plans and tariffs e.g. offering bundles that include more off-net calls. **5)** Enhance competition resulting from reduced tariff mediated network effects should facilitate lower retail prices and facilitate increased customer usage (depending on demand elasticity). **6)** Mobile handset subsidies may reduce if MSPs termination revenues were to fall, under the pure LRIC approach. This may increase the cost faced by mobile consumers in purchasing a mobile handset. However, Analysys Mason (section 6.2) notes there are thousands of spare working mobile handsets in Ireland and SIM-only offers can also be purchased as very low entry price or free of charge.	

[166] Please refer to Section 5 of the Consultation Document and Section 4 of the Analysys Mason Report for further discussion on the waterbed effect.

Consumers: Mobile Network Low Spend	Consumers: Mobile Network High Spend	Consumers: Fixed Network
Providers of different size. Enhanced competition should help ensure that retail prices are set at a competitive level. **6)** Lower MTRs may encourage MSPs to be more innovative and flexible in devising retail plans and tariffs e.g. offering bundles that include more off-net calls. Even if heavy users benefit more from these product offerings, low-usage customers can also benefit. For example, by receiving additional calls (i.e. benefits accrued via call externalities). **7)** Enhanced competition resulting from reduced tariff mediated network effects should facilitate lower retail prices and facilitate increased customer usage (depending on demand elasticity). **8)** Mobile handset subsidies may reduce if MSPs termination revenues were to fall, under the pure LRIC approach. This may increase the cost faced by mobile consumers in purchasing a mobile handset. However, the Analysys Mason Report (section 6.2) notes there are thousands of spare working mobile handsets in Ireland and SIM-only offers can also be purchased at very low entry	**7)** The European Commission observed in its impact assessment of pure LRIC pricing[169] that falling MTRs have not led to a significant drop in penetration**,** or an increase in retail prices.	

[169] http://ec.europa.eu/information_society/policy/ecomm/doc/implementation_enforcement/eu_consultation_procedures/working_doc.pdf

Consumers: Mobile Network Low Spend	Consumers: Mobile Network High Spend	Consumers: Fixed Network
price or free of charge **9)** The Analysys Mason Report notes (in section 4.4) that since mobile-only households are not strongly concentrated in lower income social segments, any effects on mobile-only users should not be prominent in the more vulnerable, low spending segments of society. **10)** The European Commission observed in its impact assessment of pure LRIC pricing[167] that falling MTRs have not led to a significant drop in penetration**,** or an increase in retail prices.		

[167] http://ec.europa.eu/information_society/policy/ecomm/doc/implementation_enforcement/eu_consultation_procedures/working_doc.pdf

Mobile Termination contd.

Option 2: LRAIC-plus (based on a benchmark)

Impact on Large MSPs	Impact on Small MSPs	Impact on FSPs	Consumers
1) ComReg expects that MTRs based on a LRAIC-plus pricing methodology would be lower than the MTRs that are currently in place, but higher than the option 1 pricing methodology (i.e. pure LRIC MTRs). This is because LRAIC-plus prices include a share of common costs. Therefore, LRAIC-plus MTRs will result in a reduction in call termination revenues associated with incoming (off-net) calls for all MSPs. However, the reduction would not be as significant as it would be under a pure LRIC approach. **2)** LRAIC-plus MTRs will result in a reduction in the cost faced by MSPs associated with terminating calls on other networks (off-net calls). Again, the reduction would not be as significant as it would be under a pure LRIC approach. **3)** LRAIC-plus based MTRs would be	**1)** ComReg expects that MTRs based on a LRAIC-plus pricing methodology would be lower than the MTRs that are currently in place, but higher than the option 1 pricing methodology (i.e pure LRIC MTRs). This is because LRAIC-plus prices include a share of common costs. Therefore, LRAIC-plus MTRs will result in a reduction in call termination revenues associated with incoming (off-net) calls for all MSPs. However, the reduction would not be as significant as it would be under a pure LRIC approach. **2)** LRAIC-plus MTRs will result in a reduction in the cost faced by MSPs associated with terminating calls on other networks (off-net calls). Again, the reduction would not be as significant as it would be under a pure LRIC approach. **3)** Higher MTRs (by virtue of LRAIC-plus pricing) compared with pure LRIC	**1)** ComReg expects that MTRs based on a LRAIC-plus pricing methodology would be lower than the MTRs that are currently in place, but higher than the option 1 pricing methodology (i.e. pure LRIC MTRs). This is because LRAIC-plus prices include a share of common costs. **2)** Under the LRAIC-plus approach, FSPs would pay a somewhat higher MTR and therefore the out-payments to mobile networks would be higher than under a pure LRIC approach. **3)** LRAIC-plus based MTRs (compared with pure LRIC prices) may limit the extent to which	**1)** Please refer to the table above regarding the impacts of higher and lower MTRs on the consumer. The same general points are relevant in the context of assessing the LRAIC-plus approach with some clarifications below. **2)** A higher wholesale MTR under LRAIC-plus compared to a pure LRIC approach creates a higher floor for retail pricing and also implies lower flexibility to build innovative retail plans and tariffs e.g. offering bundles that include more off-net calls. **3)** As tariff-mediated network externalities are likely to be more pronounced under LRAIC-plus than under pure LRIC, this may

Impact on Large MSPs	Impact on Small MSPs	Impact on FSPs	Consumers
higher than pure-LRIC MTRs, and therefore may render it less attractive for larger MSPs to incorporate significant volumes of off-net mobile calls into call bundles and packages. **4)** Under a LRAIC-plus approach, MSPs can recover some of the common costs which cannot be recovered from MTRs under a pure LRIC approach. **5)** LRAIC-plus based MTRs may mean that large MSPs face a lesser degree of competition (relative to pure LRIC MTRs) from MSPs in the provision of mobile calls. For example, it would be easier for large MSPs to retain customers by offering cheap on-net calls because the relative price of off-net calls to each MSP would be higher. On the other hand, it would be more difficult to win individual customers from other large MSPs.	means that the retail revenues of small MSPs would be partly eroded by the cost of terminating off-net calls. This cost is significant for small MSPs, since a large proportion of their calls are off-net. This may limit the extent to which MSPs can be innovative and flexible in devising retail plans and tariffs e.g. by limiting their ability to provide retail customers with off-net calls at a competitive price. This means that (compared with pure LRIC pricing) small MSPs will find it more difficult to compete for the individual customers of other MSPs due to a degree of tariff-mediated network externalities (where the customer benefited before from making lower cost on-net calls (relative to off-net calls) to friends and family who were customers of the same MSP). **4)** Under a LRAIC-plus approach, smaller MSPs can recover common costs from their MTRs, which cannot be recovered from MTRs under a pure LRIC approach. **5)** The LRAIC-plus approach may lead to the smaller MSPs having a higher MTR than the larger MSPs (if economies of scale are a dominant cost-increasing effect for small	FSPs can be innovative and flexible in devising retail plans and tariffs that include calls to mobile networks e.g. by limiting their ability to provide retail customers with off-net calls at a competitive price.	limit competitively driven retail price and service innovations compared to a more competitively neutral framework facilitated by a pure LRIC approach. **4)** Consumers who make high volumes of off-net calls would benefit less from LRAIC-plus compared to pure LRIC (assuming that in each case the relevant reduction in MTR is passed through to the consumer).

Impact on Large MSPs	Impact on Small MSPs	Impact on FSPs	Consumers
	MSPs). Asymmetric MTRs might reinforce tariff-mediated network externalities potentially further perpetuating financial barriers to entry/expansion).		

10.5.2 Fixed Termination (impact based on the options regarding the form and implementation of cost orientation including recovery of common costs)

Option 1: Pure BU-LRIC Model for Eircom and the SMP FSPs

Eircom	Impact on Other FSPs	Impact on MSPs	Consumers
1) FTRs based on a pure LRIC pricing methodology are expected to be lower than LRAIC-plus FTRs, and also lower than the FTRs that are currently in place. Therefore, pure LRIC FTRs will result in a reduction in call termination revenues associated with incoming (off-net) calls for Eircom. The anticipated loss in termination revenue per call/minute may be mitigated by increasing volumes of incoming calls as well as by potentially increasing volumes of outgoing calls over time (depending on sensitivity of users to any retail off-net price reductions). However, in overall revenue terms FVCT is a relatively small component of Eircom's fixed revenues which are dominated by line rental and broadband packages. **2)** Pure LRIC-based FTRs will result in a reduction in the cost faced by Eircom associated with terminating calls on other FSPs (off-net calls).	**1)** FTRs based on a pure LRIC pricing methodology are expected to be lower than LRAIC-plus FTRs, and also lower than the FTRs that are currently in place. Therefore, pure LRIC FTRs will result in a reduction in call termination revenues associated with incoming (off-net) calls for other FSPs. The anticipated loss in termination revenue per call/minute may be mitigated by increasing volumes of incoming calls as well as by potentially increasing volumes of outgoing calls over time (depending on sensitivity of users to any retail off-net price reductions). However, FVCT is a relatively small component of the other FSPs' revenues. **2)** Pure LRIC-based FTRs will result in a reduction in the cost faced by other FSPs associated with terminating calls on other FSPs (off-net calls), particularly	**1)** The pure LRIC approach will represent a benefit for MSPs resulting from reduced out-payments to fixed networks for FVCT services.	**1)** Pure LRIC-based FTRs may facilitate the development of more innovative fixed calls packages such as products that include more off-net bundled call minutes to fixed numbers at a lower price. **2)** A pure LRIC approach should give rise to greater retail pricing flexibility and a continued downward momentum in retail prices. This depends on the level of pass through of reductions in FTRs. **3)** Enhanced competition resulting from any reduced tariff mediated network effects may result in lower retail prices and potentially facilitate increased customer usage. However,

Eircom	Impact on Other FSPs	Impact on MSPs	Consumers
3) The pure LRIC approach for setting FTRs only allows for the recovery of efficiently incurred costs. Therefore, pure LRIC-based FTRs should encourage Eircom to make efficient investments in order to reduce its costs of providing FVCT. Please refer to Chapter 5 (subsection 5.4.3) for discussion on dynamic efficiency and also Section 4.2 of the Analysys Mason Report. **4)** A pure LRIC approach for FTRs should facilitate a more efficient distribution of financial transfers between Service Providers and thereby contribute to a level playing field between all FSPs and MSPs (including Eircom). **5)** Pure LRIC-based FTRs would not allow for Eircom to recover unavoidable common costs from regulated wholesale termination charge. Eircom will also need to recover common wholesale costs from other wholesale services to avoid distortions vis-à-vis CPS customers. If the pure LRIC pricing methodology is adopted for FTRs, ComReg proposes that the regulated call origination prices for Eircom will need to be revised to take account of the common costs not recovered in the FTR.	calls to Eircom's network. **3)** The pure LRIC approach for setting FTRs only allows for the recovery of efficiently incurred costs. Therefore pure LRIC-based FTRs should encourage the other FSPs to make efficient investments in order to reduce their costs of providing FVCT. Please refer to Chapter 5 (subsection 5.4.3) for discussion on dynamic efficiency and also Section 4.2 of the Analysys Mason Report. **4)** A pure LRIC approach for FTRs should facilitate a more efficient distribution of financial transfers between Service Providers and thereby contribute to a level playing field between all FSPs and MSPs (including other FSPs). **5)** Pure LRIC-based FTRs would not allow FSPs to recover unavoidable common costs from the regulated wholesale termination charge. FSPs would instead need to recover common costs through other retail and wholesale services. This should provide incentives for these FSPs to maximize efficiency in the provision of FVCT, since they would be unable to transfer their own inefficiently incurred costs to other MSPs or FSPs (as would be allowed under a LRAIC-plus FTR). **6)** The pure LRIC approach means a lower		these impacts are less pronounced in relation to assessing pure LRIC versus LRAIC+ for FTRs. (compared to MTRs) due to fixed retail offers already frequently including free or discounted minutes to both on-net and off-net fixed numbers.

Eircom	Impact on Other FSPs	Impact on MSPs	Consumers
	FTR for the other FSPs which should make it easier for them to incorporate off-net fixed calls into larger or unlimited usage bundles.		

Fixed Termination (continued)

Option 2: BU-LRAIC-plus Model for Eircom and the Other SMP FSPs

Eircom	Impact on other FSPs	Impact on MSPs	Consumers
1) FTRs based on LRAIC-plus are expected to be higher than pure LRIC FTRs, but lower than existing FTRs. Therefore, LRAIC-plus FTRs would result in a reduction in call termination revenue associated with incoming (off-net) calls for Eircom. But Eircom's fixed termination revenues under LRAIC-plus would be higher than would otherwise be the case under pure LRIC. However, FVCT is a relatively small component of Eircom's fixed revenues (which are dominated by line rental and broadband packages). **2)** LRAIC-plus based FTRs would result in Eircom facing higher out-payments when terminating calls on other FSP networks (compared with a pure LRIC FTR). **3)** Unlike the pure LRIC pricing methodology, LRAIC-plus based FTRs would allow for Eircom to recover common costs from other Service Providers through FTRs. Eircom would therefore potentially face lesser incentives to improve efficiency and reduce costs (particularly common costs)	**1)** FTRs based on LRAIC-plus are expected to be higher than pure LRIC prices, but lower than existing FTRs. Therefore LRAIC-plus pricing would result in a reduction in call termination revenue associated with incoming (off-net) calls for other FSPs. But their fixed termination revenues under LRAIC-plus would be higher than would otherwise be the case under pure LRIC FTRs. However, FVCT is a relatively small component of the other FSPs' revenues. **2)** LRAIC-plus based FTRs would result in other FSPs facing higher out payments when terminating calls on Eircom and other FSP networks (relative to if pure LRIC termination pricing were in place). **3)** Unlike the pure LRIC pricing methodology, LRAIC-plus based FTRs allow for FSPs to recover common costs from other Service Providers through FTRs. FSPs other than Eircom would therefore potentially face lesser incentives to improve	**1)** Under the LRAIC-plus approach, there would be a more moderate reduction in the out-payments from MSPs to FSPs, compared with the pure LRIC approach.	**1)** A higher FTR under LRAIC-plus compared to pure LRIC creates a higher floor for retail pricing and also implies lower flexibility to build innovative retail plans and tariffs e.g. offering bundles that include more off-net calls. In view of the current level of FTRs, however, these effects are likely to be less pronounced in absolute terms than for MTRs and depend on the level of pass-through of FTR reductions. **2)** Consumers who make high volumes of off-net calls would benefit less from LRAIC-plus compared with pure LRIC (assuming that in each case the relevant reduction in off-net FTRs is passed through to the consumer).

Eircom	Impact on other FSPs	Impact on MSPs	Consumers
	efficiency and reduce costs (particularly common costs). **4)** LRAIC-plus may lead to smaller FSPs having a higher FTR than Eircom if (a) economies of scale have a dominant cost increasing effect for smaller FSPs; and if (b) FSPs were in a position to determine the LRAIC-plus costs of their own fixed networks. This may result in inefficiently incurred costs inherent on FSP networks being subsidised by third party Service Providers.		

10.5.3 Mobile Termination (impacts based on the option of symmetry versus asymmetry)

Option 1: Symmetrical Mobile Termination Rates

Impact on Large MSPs	Impact on Small MSPs	Impact on FSPs	Consumers
1) Larger MSPs who have up until now charged a lower MTR than other smaller MSPs (given their asymmetric rates) would be beneficiaries of a move to symmetric pricing. Out-payments for termination of calls on smaller MSP networks will reduce. **2)** Symmetric MTRs facilitate a level playing field which removes potential impediments to competition (for example, symmetric MTRs mean that large MSPs no longer risk incurring higher MTRs charged by competing networks and thus potentially reduces incentives for tariff-mediated network externalities, particularly in the case of symmetric MTRs set at a pure LRIC level). **3)** A symmetric MTR is simpler from a billing and retail product	**1)** Since small MSPs currently have higher comparative MTRs (i.e. asymmetric MTRs), a move to symmetrical pure LRIC MTRs would reduce the mobile termination revenues of the smaller MSPs. **2)** Symmetry means that the out-payments for the smaller MSPs would also reduce. However, the out-payments would not reduce as significantly as the wholesale revenues would for the smaller MSPs (assuming equal amount of incoming and outgoing calls to and from mobile networks). **3)** Symmetric MTRs limit the ability of new entrants to recover additional costs through MTRs, unless they can justify otherwise. **4)** Symmetrical MTRs facilitate a level playing field by potentially removing impediments to competition where for example, symmetric MTRs reduce	**1)** Symmetrical MTRs (at a pure LRIC or LRAIC-plus level) mean that FSPs will benefit from having to make lower out-payments to MSPs for off-net mobile calls, particularly the smaller MSPs who have charged higher asymmetrical MTRs to date. **2)** A symmetrical MTR is simpler from a billing and retail product design perspective. **3)** Symmetric MTRs provide greater certainty for FSPs in designing retail products that include bundled minutes to mobile numbers (since any new-entrant MSPs will be subject to the existing symmetric MTR). This in turn provides more flexibility for FSPs to design retail packages that include larger or even unlimited off-net bundles and possibly converged fixed–mobile offers, particularly in the case of symmetric MTRs	**1)** For the reasons discussed in this table, symmetry at pure LRIC or LRAIC-plus based MTRs is likely to promote competition and dynamic efficiency, and therefore offer broad benefits to consumers in terms of promoting competition.

Impact on Large MSPs	Impact on Small MSPs	Impact on FSPs	Consumers
design perspective.	incentives for large MSPs to invoke tariff-mediated network externalities, particularly in the case of symmetric MTRs set at a pure LRIC level). **5)** Symmetric MTRs based on pure LRIC should help promote dynamic efficiency because they prevent inefficient MSPs from recovering inefficiently incurred costs from their competitors through MTRs. **6)** A symmetric MTR is simpler from a billing and retail product design perspective.	set at a pure LRIC level.	

Mobile Termination (continued)

Option 2: Asymmetrical Mobile Termination Rates

Impact on Large MSPs	Impact on Small MSPs	Impact on FSPs	Consumers
1) Asymmetric MTRs can allow less efficient MSPs to recover inefficiently incurred costs from large MSPs through the imposition of MTRs. **2)** Large MSPs are therefore worse off under an asymmetric pricing approach, compared with small MSPs.	**1)** Asymmetrical MTRs may enable small MSPs to recover additional costs through MTRs (potentially subsidising retail prices initially). This could encourage entry and competition in the short term. However, asymmetric MTRs typically lead to an increase in off-net retail tariffs, which in turn cause tariff mediated network externalities. This may pose a barrier to entry and growth for small MSPs and new entrants when competing with large MSPs for retail customers. **2)** Higher asymmetric MTRs allow less efficient MSPs to recover inefficiently incurred costs from competitors in the retail mobile calls market through the imposition of MTRs.	**1)** Higher asymmetric MTRs allow less efficient MSPs to recover inefficiently incurred costs from FSPs through the imposition of MTRs. This means that FSPs may not benefit as significantly in terms of reduced out-payments to MSPs (particularly smaller FSPs) for off-net mobile calls. **2)** Asymmetrical MTRs mean that the FSPs may not have as much incentive to compete for calls to mobile telephone numbers since calls to certain mobile networks will carry a higher cost. **3)** Asymmetric MTRs provide less certainty for FSPs in designing retail products that include bundled minutes to mobile numbers, since calls to certain mobile networks would carry a higher cost. This may discourage FSPs from offering bundles that include fixed to	**1)** Asymmetry at higher rates may not be as beneficial to consumers in terms of promoting competition. **2)** Large MSPs are likely to respond to asymmetric pricing by imposing higher tariffs for off-net calls, which can act as a barrier to entry/expansion in the retail market, and impose switching costs on consumers when changing Service Providers. **3)** Where inefficiently incurred costs are passed on from inefficient MSPs to other MSPs through MTRs, these costs are ultimately likely to be passed on to consumers through higher retail prices.

Impact on Large MSPs	Impact on Small MSPs	Impact on FSPs	Consumers
		mobile calls.	

10.5.4 Fixed Termination (impacts based on the option of symmetry versus asymmetry)

Option 1: Symmetrical Fixed Termination Rates

Eircom	Impact on other FSPs	Impact on MSPs	Consumers
1) Eircom currently charges a lower FTR than some other FSPs, and therefore is likely to be a net beneficiary of symmetric FTRs. Out-payments for termination of calls on other FSP networks would be likely to reduce. **2)** Symmetric FTRs create a level playing field which removes potential impediments to competition (for example, symmetric FTRs mean that Eircom no longer risks incurring higher FTRs charged by competing networks). **3)** Pure LRIC based symmetric FTRs should promote competition for larger FSPs, such as Eircom, because such FTRs prevent less efficient FSPs from recovering inefficiently incurred costs from competitors in the retail mobile calls market through the	**1)** A number of smaller FSPs currently charge a higher FTR (than Eircom), and therefore are likely to be worse off as a result of symmetric FTRs. In particular, revenues would be likely to reduce more than out-payments (assuming traffic flows remain constant). **2)** Symmetric FTRs create a level playing field which removes potential impediments to competition (for example, symmetric FTRs mean that FSPs no longer risk incurring higher FTRs charged by competing networks). **3)** Pure LRIC based symmetric FTRs should promote competition for the benefit of efficient FSPs because it prevents inefficient FSPs from recovering inefficiently incurred costs from their competitors through FTRs. **4)** A symmetric FTR is simpler	1) Symmetric FTRs (at a pure LRIC or LRAIC-plus based level) mean that MSPs will benefit from having to make lower out-payments to FSPs for off-net calls. However, FTRs are already relatively low therefore the impact will not be significant. 2) A symmetric FTR is simpler from a billing and retail product design perspective.	1) For the reasons discussed in this table, symmetry at pure LRIC is likely to promote competition, and therefore offer broad benefits to consumers in terms of promoting efficiency and competition.

Eircom	Impact on other FSPs	Impact on MSPs	Consumers
imposition of FTRs. **4)** A symmetric FTR is simpler from a billing and retail product design perspective.	from a billing and retail product design perspective.		

Fixed Termination (continued)

Option 2: Asymmetrical Fixed Termination Rates

Eircom	Impact on Other FSPs	Impact on MSPs	Consumers
1) Asymmetric FTRs may allow less efficient FSPs to recover inefficiently incurred costs from Eircom through FTRs.	**1)** Asymmetrical FTRs may enable small FSPs to recover additional costs through FTRs (potentially subsidising retail prices initially). This could encourage entry and competition in the short term. However, asymmetric FTRs may ultimately lead to an increase in off-net retail tariffs, which in turn cause tariff mediated network externalities. This may pose a barrier to entry and growth for small FSPs and new entrants when competing with large FSPs for retail customers. **2)** Higher asymmetric FTRs allow less efficient FSPs to recover inefficiently incurred costs from competitors in the retail calls market through the imposition of FTRs.	**1)** Higher asymmetric FTRs allow less efficient FSPs to recover inefficiently incurred costs from MSPs through the imposition of FTRs. This means that MSPs may not benefit as significantly in terms of reduced out-payments to the FSPs (particularly smaller FSPs) for off-net fixed calls. **2)** However, FTRs are already relatively low therefore the impact will not be significant. **3)** Asymmetric FTRs provide less certainty for MSPs in designing retail products that include bundled minutes to fixed numbers, since calls to certain mobile networks would carry a higher cost.	1) Asymmetry at higher FTRs may not be as beneficial to consumers in terms of promoting efficiency and competition.

10.6 Step 4: Determine the likely impacts on competition

10.40 Section 4 (subsection 4.3) of the Analysys Mason Report discusses in detail the competitive issues associated with two-sided markets and how this explains the impact of wholesale termination on the level of competition in fixed and mobile telecoms markets. Please refer to subsection 4.3 of the Analysys Mason Report for further analysis.

10.41 In this subsection ComReg summarises the likely impacts on competition between the option of setting Termination Rates based on pure LRIC, as opposed to setting Termination Rates based on LRAIC plus. The points set out below in relation to competition are supported by the work of Analysys Mason, as referred to in Section 6 (subsection 6.3) of the Analysys Mason Report.

10.42 The implementation of a pure LRIC or LRAIC plus pricing methodology for MTRs and FTRs will, in either case, lead to a reduction in MTRs and FTRs. Since pure LRIC only includes the incremental costs of call termination, the pure LRIC approach will reduce the cost for FVCT and MVCT even further than LRAIC plus. Pure LRIC MTRs should enable smaller MSPs such as H3GI and Meteor to compete more easily with larger MSPs whereas MTRs that exceed incremental cost i.e. LRAIC plus can lead to more pronounced tariff-based network externalities, which may cause inertia in the retail market, and make it difficult for smaller MSPs to win customers from large MSPs. Pure LRIC MTRs lower the floor for retail pricing of off-net calls which should strengthen the ability of smaller MSPs to construct competitive packages. This easing of barriers to entry/expansion associated with large financial transfers at wholesale level and tariff-mediated network externalities at retail level should therefore facilitate a more competitively neutral framework.

10.43 Similarly, Pure LRIC based MTRs reduce the cost faced by FSPs for terminating calls on mobile networks. The MTRs currently in place appear to have hindered the ability of FSPs to build innovative packages including calls to mobile numbers. For example, only around 1% of residential customers, and 10% of business customers, has fixed-line call bundles that include calls to mobile numbers. Adopting pure LRIC based MTRs should better enable FSPs to offer packages that include bundled mobile minutes. Pure LRIC based MTRs would also be conducive to the development of converged fixed and mobile products with inclusive 'any network' voice bundles[173].

10.44 ComReg considers that these combined impacts would create a more competitively neutral environment which would facilitate increased competition in mobile and fixed retail voice markets.

[173] Potentially subject to fair usage policies.

10.45 In terms of fixed–fixed competition, Pure LRIC based FTRs should facilitate development of more innovative fixed calls packages, such as products that include more off-net bundled call minutes to fixed numbers at a lower retail price. Since pure LRIC based FTRs result in lower out-payments to other FSPs for FVCT, it should give rise to greater retail pricing flexibility and a continued downward momentum in retail prices of calls to fixed numbers (depending on the level of pass-through).

10.46 In general, ComReg considers that a pure LRIC approach for Termination Rates should facilitate a more efficient distribution of financial transfers between Service Providers and thereby contribute to a level playing field between all FSPs and MSPs. Pure LRIC based Termination Rates remove the opportunity for MSPs and FSPs to recover inefficiently incurred common costs from their competitors.

10.47 Pure LRIC based Termination Rates may also impact the way in which MSPs and FSPs compete for retail customers. This will depend on how MSPs respond to a fall in their mobile termination revenues i.e. how they go about recovering common costs from their retail customers. MSPs and FSPs (excluding Eircom) are likely to recover these costs in various ways. For example, information provided by some of the MSPs to Analysys Mason indicates that MSPs may respond by reducing handset subsidies.

10.48 The competitive effects of pure LRIC, compared with LRAIC plus, may differ across customer groups. Since the termination revenue per customer will be lower under pure LRIC, FSPs and MSPs will rely more on direct spend of customers to cover common costs. For this reason, FSPs and MSPs have the ability to manage a greater proportion of cost recovery through their practice of segmenting different user groups using indicators such as affordability and willingness to pay. However, ComReg considers that operators will still compete for low-spend customers due to the economies of scale associated with fixed and mobile networks, and network effects (externalities), both of which attribute value to amassing scale. There is no evidence that pure LRIC based MTRs would have an adverse impact on competition for voice calling.

10.49 ComReg considers that symmetric Termination Rates should create a level playing field which removes potential impediments to competition (for example, symmetric MTRs means that large MSPs no longer risk incurring higher MTRs charged by competing networks). Symmetry in particular at the level of pure LRIC, also removes tariff mediated network externalities, and therefore reduces switching costs faced by retail customers thereby facilitating the competitive process. Symmetric FTRs and MTRs also prevent inefficient FSPs or MSPs from passing on inefficiently incurred costs to other FSPs and MSPs, thereby enabling efficient FSPs and MSPs to compete more effectively in the retail markets.

10.7 Assess the likely impacts and choose the best option

10.7.1 Mobile Termination

10.50 For MTRs, the preferred approach for setting the pure LRIC MTRs in the short to medium term is on the basis of a pure LRIC benchmark. ComReg does, however intend to commence a pure BU-LRIC cost modelling exercise in respect of MTRs in 2013.

10.51 Currently, in the absence of an appropriate pure BU-LRIC model or models from MSPs, ComReg considers that it is necessary to use an alternative approach based on benchmarking. Regulation 13(3) of the Access Regulations provides that, as regards any cost recovery mechanism or pricing methodology that it imposes, ComReg may take account of prices available in comparable competitive markets. The proposed benchmarking approach would mean analysing the modelled pure BU-LRIC MTRs in other EU Member States, in order to arrive at an appropriate MTR for SMP MSPs in Ireland from 2013, which is consistent with the 2009 Termination Rate Recommendation.

10.52 As set out in the 2009 Termination Rate Recommendation, benchmarking is an acceptable implementation measure in the short term. The proposed approach for MTRs also ensures that the competitive benefits of a lower MTR based on pure LRIC are achieved and this proposed approach is relatively easy to implement in the timelines allowed.

10.53 The benchmarking approach is easy to implement in the case of MVCT, as several countries have recently published pure LRIC MTRs based on a BU pure LRIC model.

10.54 Recognising that the pure LRIC approach for MTRs initially results in significant reductions in wholesale revenues for the MSPs, ComReg considers that in a dynamic context the overall impact of the pure LRIC approach for MVCT is positive in terms of mobile-to-mobile competition, as it facilitates a more competitively neutral framework for the smaller MSPs to compete in. In addition, the proposed approach is positive for fixed-to-mobile competition by removing the revenues paid by FSPs to MSPs and by allowing more competitive innovative offerings such as the inclusion of calls to mobiles in fixed call bundles. These positive results should therefore be to the benefit of consumers. Furthermore, to the extent that customer usage increases as a result of competition rendering calls more affordable, this would facilitate additional revenue opportunities for MSPs.

10.7.2 Fixed Termination

10.55 The preferred approach for setting the pure LRIC FTRs is by means of a pure BU-LRIC model. This is consistent with the 2009 Termination Rate Recommendation and, based on the impact assessment above, this should not create a disproportionate burden on SMP FSPs given that the FTRs are already at a relatively low level.

10.56 The cost modelling option is considered appropriate for setting the FTR of Eircom and the other SMP FSPs given that an existing core model already exists for the fixed network. ComReg proposes to update the existing PSTN and NGN BU cost model, as well as making a number of efficiency adjustments in order to arrive at the pure LRIC for FVCT. Absent any detailed information from any of the other SMP FSPs as part of this consultation process, it is proposed that the pure LRIC FTR derived from the pure BU-LRIC model will be applied by all of the SMP FSPs. The pure BU-LRIC model means that ComReg can implement a more robust 'long-term' approach for setting the pure LRIC FTRs in the time available. ComReg proposes that the pure BU-LRIC model for FVCT would be based on information obtained from Eircom but adjusted to reflect the cost of FVCT for an efficient operator.

10.57 For Eircom and the other FSPs, setting FTRs at pure LRIC will only have a marginal impact on their revenue flows because it is a very small component of overall fixed revenues. In addition, the impact of reduced MTRs will have a significant impact in terms of the reduction in out-payments by FSPs to MSPs for off-net mobile calls. This allows the FSPs to create more innovative packages or bundles including fixed-to-mobile calls and discounted off-net calls. This should provide benefit to consumers.

10.7.3 Implementation timelines

10.58 In Chapter 7, ComReg discusses the options in terms of implementation of pure LRIC Termination Rates. While an implementation date of 1 January 2013 would be in line with the 2009 Termination Rate Recommendation, ComReg is minded towards an implementation date of 1 July 2013 given that a decision is not likely to be published by ComReg until later in 2012. ComReg considers that if its decision is not published until later in 2012 the Service Providers would have very little time to adopt the decision imposed on them and to factor the impact of the pure LRIC Termination Rates into their business plans.

10.59 Based on ComReg's financial assessment, which is based on confidential data, it is likely that the financial impact on the MSPs may be significant for some of the MSPs if pure LRIC MTRs were to be implemented on the 1 January 2013. The financial impact on the FSPs is not likely to be as significant given that FTRs are already at a relatively low level. However, FSPs will benefit from lower MTRs which should outweigh any loss from reduced FTRs.

10.60 In addition, consumers may not get the benefit of pure LRIC Termination Rates from 1 January 2013 on the basis that ComReg's decision is not likely to be published until later in 2012, and that Service Providers may not be in a position to amend tariff plans for their consumers at such short notice. Therefore, the consumer benefits referred to above may not crystallise for some time after the adoption of ComReg's decision.

10.7.4 Symmetry versus asymmetry

10.61 ComReg considers that the preferred approach is that all SMP FSPs and MSPs should be subject to a symmetric pure LRIC FTR and a symmetric pure LRIC MTR. This is in line with the 2009 Termination Rate Recommendation.

10.62 ComReg proposes that asymmetric MTRs should apply to all of the current SMP MSPs (and to the two MVNOs, Tesco Mobile and Lycamobile, that ComReg proposes in ComReg Document No 12/46 to designate with SMP), given that all of those MSPs (with the exception of Lycamobile) have been in the market for more than 4 years and therefore the justification for higher costs for those MSPs are unlikely. As regards the MVNOs, ComReg believes that, in general, it is difficult to envisage a scenario as to why, absent any objective exogenous cost differences (which ComReg is open to considering), an MVNO could be justified in levying an MTR that differs from that of its host network, particularly as the MVNO has obtained the scale economy advantages accruing to the host network. As stated earlier in this section, the 2009 Termination Rate Recommendation allows for asymmetrical rates for new entrants for a transitional period of up to four years, so that new entrants have sufficient time to recoup their higher incremental costs. However, ComReg considers that any asymmetry will only be allowed in exceptional circumstance where there is clear evidence of objectively higher costs and a sufficient economic rationale that demonstrates that such asymmetry would be in the interests of competition and consumers in the long term. Please refer to Chapter 4 of the Consultation Document for further details on symmetry.

10.63 The impact on the various stakeholders in terms of symmetry and asymmetry has already been assessed above. While a move from asymmetrical MTRs for smaller MSPs will result in a significant reduction to their wholesale revenues, symmetry should provide competition benefits with associated revenue opportunities in the medium to long-term. Asymmetrical MTRs may encourage or support entry and competition in the short term, but in the medium/long-term, symmetry reduces the scope for tariff mediated network externalities by removing some of the justification for higher off-net retail charges. Therefore, symmetric MTRs should facilitate greater competition in the long-term. When small MSPs charge asymmetric MTRs, it provides larger MSPs with a justification for tariff mediated network externalities. These impose switching costs on consumers, which favour larger MSPs, and act as a barrier to entry/expansion in the retail markets.

10.64 The impact on FSPs will not be significant in terms of moving to symmetrical FTRs given that the FSPs already charge relatively low FTRs.

10.7.5 Recovery of common costs

10.65 We consider that it is important to identify the amount of common costs unrecovered from voice call termination services (given the pure LRIC approach).

10.66 This has been discussed in detail in Chapter 7 of the Consultation Document with a summary of ComReg's preliminary views set out below.

10.67 For the SMP FSPs (excluding Eircom) and the SMP MSPs, which are not regulated across other markets, ComReg considers that they should have discretion to recover the costs from other wholesale services or to recover them for retail services.

10.68 For Eircom, which is regulated across other markets, we have taken a different view on the basis that some guidance is required so that Eircom can comply with its price control obligations in other markets. We considered that there are two options for Eircom in terms of recovery of the common costs not recovered from FVCT services. One option is to recover the costs from fixed call origination based on NGN costs, by allocating them across originating calls and the second option is to allocate all or part of the additional common costs to other (i.e. non-voice) services.

10.69 ComReg considers that the common costs for Eircom should be recovered across originating calls, from both OAOs and Eircom Retail (self supply). The cost of the assets relating to call origination should be calculated based on NGN technology rather than legacy technology, which should result in a reduction in the cost of origination. This reduction taken along with the additional common costs for termination should not give rise to an increase in the call origination prices. Please refer to Chapter 7 of the Consultation Document for further details on the recovery of common costs.

Q. 13 Do you have any views on the Regulatory Impact Assessment and are there other factors (if any) that ComReg should consider in completing its Regulatory Impact Assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

Chapter 11

11 Next Steps

11.1 All comments are welcome to the consultation however it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this Consultation Document.

11.2 The consultation period will run from 28 June 2012 to 10 August 2012 during which time ComReg welcomes written comments on any of the issues raised in this Consultation Document.

11.3 Having analysed and considered the comments received, ComReg will review the main proposals set out in the Consultation Document, amend if necessary in light of representations received and will then notify the draft measures to the European Commission, the NRAs and BEREC pursuant to Regulation 13 of the Framework Regulations. Once the response under Regulation 13 is received, ComReg, taking utmost account of any comments received from the European Commission, will adopt and publish the final decisions. In order to promote further openness and transparency ComReg will publish all respondents' submissions in relation to this consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information in ComReg Document No. 05/24. We would request that electronic submissions be submitted in an unprotected format so that they can be appended into the ComReg submissions document for publishing electronically.

Please note:

11.4 ComReg appreciates that many of the issues raised in this Consultation Document may require respondents to provide confidential information if their comments are to be meaningful.

11.5 As it is ComReg's policy to make all responses available on its web-site and for inspection generally, respondents to consultations are requested to clearly identify confidential material and place confidential material in a separate annex to their response.

11.6 Such information will be treated subject to the provisions of ComReg's guidelines on the treatment of confidential information as set out in ComReg Document No. 05/24.

Annex: 1 Legal Basis

Obligations relating to the markets for call termination on individual public telephone networks provided at a fixed location

A 1.1 By ComReg Decision D06/07[174], and pursuant to Regulations 25 to 27 of the 2003 Framework Regulations[175] ComReg designated BT Communications Ireland Limited, Colt Technology Services Limited, Eircom Limited, Magnet Networks Limited, Smart Telecom Holdings Limited, Ntl Communications (Ireland) Limited/Chorus Communications Limited (now UPC Communications Ireland Limited) and Verizon Ireland Limited (the "SMP Fixed Service Providers") as having significant market power ("SMP") on the markets for call termination on individual public telephone networks provided at a fixed location (the "Fixed Termination markets").

A 1.2 The effect of the transitional provisions contained in Regulation 40 of the 2011 Framework Regulations[176] and Regulation 24 of the 2011 Access Regulations[177] is that Decision D06/07 is deemed to continue in force as if it was made pursuant to the 2011 Framework Regulations and the 2011 Access Regulations.

A 1.3 Under Section 10 of the Decision Instrument annexed to Decision D06/07, and pursuant to Regulation 14 of the 2003 Access Regulations[178] ComReg imposed obligations relating to price control and cost accounting on the SMP Fixed Service Providers.

A 1.4 Pursuant to Regulation 8 of the 2011 Access Regulations, ComReg proposes in this Consultation Document to amend the price control obligations imposed on the SMP Fixed Service Providers under Section 10 of the Decision Instrument annexed to Decision D06/07.

Obligations relating to the markets for voice call termination on individual mobile networks

A 1.5 By ComReg Document No. 12/46[179], and pursuant to Regulations 25 to 27 of the 2011 Framework Regulations, Section 5 of the Draft Decision Instrument

[174] ComReg Document No. 07/109 entitled "Market Analysis – Interconnection Market Review Wholesale Call Termination Services" dated 21 December 2007.
[175] European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2007 (S.I. No. 271 of 2007), as amended (the "2003 Framework Regulations").
[176] European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011).
[177] European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011).
[178] European Communities (Electronic Communications Networks and Services) (Access) Regulations 2007 (S.I. No. 373 of 2007), as amended (the "2003 Access Regulations").

annexed to ComReg Document No. 12/46 proposes to designate Hutchison 3G Ireland Limited, Lycamobile Ireland Limited, Meteor Mobile Communications Limited, Telefónica Ireland Limited, Tesco Mobile Ireland Limited and Vodafone Ireland Limited (the "SMP Mobile Service Providers") as having significant market power ("SMP") on the markets for voice call termination on individual mobile networks (the "Mobile Termination markets").

A 1.6 Under Section 12 of the Draft Decision Instrument annexed to ComReg Document No. 12/46, and pursuant to Regulation 13 of the 2011 Access Regulations, ComReg is proposing to impose obligations relating to price control on the SMP Mobile Service Providers.

A 1.7 Pursuant to Regulation 18 of the 2011 Access Regulations, ComReg proposes in the Consultation Document to further specify the obligations relating to price control contained in Section 12 of the Draft Decision Instrument annexed to ComReg Document No 12/46.

Consultation Requirements

A 1.8 Regulation 12(3) of the 2011 Framework Regulations provides that, except in cases falling within Regulation 13(8) (i.e. exceptional cases involving urgency), before taking a measure which has a significant impact on a relevant market, ComReg must publish the text of the proposed measure, give the reasons for it, including information as to which of ComReg's statutory powers gives rise to the measure, and specify the period within which submissions relating to the proposal may be made by interested parties. Regulation 12(4) states that ComReg, having considered any representations received under Regulation 12(3), may take the measure with or without amendment. Regulation 12 of the 2011 Framework Regulations implements Article 6 of the Framework Directive.[180]

[179] ComReg Document No. 12/46 entitled "Market Review: Voice Call Termination on Individual Mobile Networks" dated 23 May 2012.
[180] Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (Framework Directive), as amended by Directive 2009/140/EC.

A 1.9 Regulation 13(3) of the 2011 Framework Regulations provides that, upon completion of the consultation provided for in Regulation 12, where ComReg intends to take a measure which falls within the scope of Regulation 26 or 27 of the Framework Regulations, or Regulation 6 or 8 of the Access Regulations, and which would affect trade between Member States, it shall make the draft measure accessible to the European Commission, BEREC and the NRAs in other Member States at the same time, together with the reasoning on which the measure is based. Regulation 13 of the 2011 Framework Regulations implements Article 7 of the Framework Directive.

Annex: 2 Consultation Questions

Section Page

Q. 1 Do you agree with the five regulatory approaches considered or are there any other approaches that respondents consider should be assessed in the context of this Consultation Document? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position. 44

Q. 2 Do you agree with the assessment criteria, as set out above, as being appropriate criteria to use to evaluate the five possible regulatory approaches identified in Chapter 4? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position. 63

Q. 3 Do you agree that cost orientation by means of a pure LRIC methodology is the most appropriate approach to set Termination Rates in Ireland? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position. 87

Q. 4 Do you believe that asymmetry should be allowed for any FSPs or MSPs going forward? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position. 89

Q. 5 Do you agree or disagree with the proposed benchmarking approach for MTRs set out above? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position. 102

Q. 6 Do you consider that it is appropriate for ComReg to impose, with effect from 1 January 2013, a maximum weighted average symmetric MTR calculated on the basis of a benchmark approach which uses the MTRs imposed by NRAs in other EU Member States where there is a decision in force on MTRs based on a pure BU-LRIC model? Alternatively, do you consider that it would be appropriate for ComReg to apply that approach instead with effect from 1 July 2013 and to adopt the proposed glide path approach for the period from 31 December 2012 to 1 July 2013? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position. 114

Q. 7 Do you agree with the proposed BU pure LRIC modelling approach for FTRs? Please provide reasons for your response. Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your

comments refer, along with all relevant factual or other evidence supporting your position..... 120

Q. 8 Do you agree with the cost model inputs and assumptions proposed by ComReg in relation to the pure BU-LRIC model for FTRs? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position. 131

Q. 9 Do you agree with ComReg's proposals in relation to the implementation of its proposed pure BU-LRIC model for FTRs? Please provide reasons for your response. Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position. 134

Q. 10Do you agree with ComReg's preliminary views as set out above regarding the treatment of common costs not recovered from pure LRIC for Eircom, the other SMP FSPs and the SMP MSPs? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position. 141

Q. 11Do you believe that the draft text of the proposed Decision Instrument in relation to FTRs contained in Chapter 8 is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain the reasons for your answer, clearly indicating the relevant section numbers to which your comments refer, along with all relevant factual or other evidence supporting your position. 142

Q. 12Do you believe that the draft text of the proposed Decision Instrument in relation to MTRS in Chapter 9 is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain the reasons for your answer, clearly indicating the relevant section numbers to which your comments refer, along with all relevant factual or other evidence supporting your position. 152

Q. 13Do you have any views on the Regulatory Impact Assessment and are there other factors (if any) that ComReg should consider in completing its Regulatory Impact Assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position. 198

Annex: 3 Current FTRs

Eircom's current FTRs per Service Schedule 102 in Eircom Wholesale RIO

Operator	Cent per Minute			Weighted Average
	Peak	Off-peak	Weekend	
Eircom - Primary	0.26	0.15	0.13	0.20
Eircom - Tandem	0.38	0.21	0.19	0.29
Eircom - Double Tandem	0.52	0.29	0.25	0.40

OAO's current FTRs per Service Schedule 103 in Eircom Wholesale STRPL

Operator	Cent per Minute			Weighted Average
	Peak	Off-peak	Weekend	
Budget	1.04	0.52	0.42	0.76
C&W	1.04	0.52	0.42	0.76
Esat BT	0.88	0.46	0.42	0.66
Chorus	1.02	0.54	0.46	0.76
NTL	0.39	0.22	0.19	0.30
Ocean	1.61	0.81	0.67	1.18
Energis	0.39	0.22	0.19	0.30
Verizon (formerly MCI)	0.70	0.40	0.30	0.53
Colt	0.55	0.30	0.26	0.42
Access Telecom Imagine	0.50	0.32	0.29	0.40
Talk Telecom	0.31	0.17	0.15	0.23
Swiftcall	0.31	0.17	0.15	0.23
Smart	0.64	0.36	0.31	0.49
Magnet	0.31	0.17	0.15	0.23
Finarea	0.31	0.17	0.15	0.23

[181] Weighted average calculation based on assumed 50% peak / 25% off-peak / 25% weekend traffic distribution

[182] Weighted average calculation based on assumed 50% peak / 25% off-peak / 25% weekend traffic distribution

Operator	Cent per Minute			Weighted Average
Opera Telecom In2tel	0.31	0.17	0.15	0.23
Blueface	0.58	0.32	0.29	0.44
Digiweb	0.32	0.15	0.12	0.23
3PlayPlus	0.58	0.32	0.29	0.44
Rivertower	0.58	0.32	0.29	0.44
Orange Business Services	1.04	0.52	0.42	0.76
Blue Chip Telecom	0.58	0.32	0.29	0.44
Airspeed	0.50	0.27	0.24	0.38
Voxbone	0.58	0.32	0.29	0.44