



Commission for  
**Communications Regulation**

## Decision Notice

### **Pricing of Flat Rate Internet Access Call Origination – (“FRIACO”)**

### **Formalisation of Pricing of Wholesale FRIACO product**

<b>Decision No:</b>	<b>D6/03</b>
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("FRIACO")**

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## Pricing of Flat Rate Internet Access Call Origination – ("FRIACO")

### 1 Background

The growth of the internet is having a major impact on the world's economy. Being able to order goods and services online, communicate with each other by e-mail, carry out research and enjoy new and differing forms of entertainment have all impacted to radically change the environment in which we live. Ireland, as a post industrial economy in an increasingly competitive world needs to be in a position to capitalise on the benefits that such new technologies can bring.

In terms of Internet usage and penetration, despite a number of initiatives already underway including off-peak flat rate services, Ireland remains somewhat behind key competitor locations. One of the main drivers of enhanced penetration in many of these countries has been the provision of a Flat Rate Internet Access Call Origination ("FRIACO") service, which can facilitate at a retail level the provision of "flat rate internet access". This enables companies and residential customers to have a competitive service, which is available at a predictable cost.

ComReg considers the availability of a FRIACO product will help stimulate a competitive market, provide for effective competition, encourage economic efficiency, and provide benefit to end users. ComReg believes that the requesting other licensed operators ("OLOs") are reliant on *eircom* to provide wholesale flat rate interconnection, if they are to offer a similar product at retail level. Failure by *eircom* to provide such access, could have adverse consequences for the future development of the Internet market in Ireland, which is highlighted by the draft policy direction of Mr Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources published on the 2<sup>nd</sup> December 2002. In the draft policy direction, the Minister stated that he considered, as a matter of public policy that the widespread availability of dial up access to the Internet charged at flat rates would be of substantial benefit to users, as well as for the further development of the market for Internet access provision.

In July 2002, two OLOs submitted Statements of Requirements ("SORs") to *eircom* requesting a FRIACO service on the 1893 internet access code. *eircom* and the OLOs in question began bi-lateral negotiations on the 30<sup>th</sup> July 2002 for the introduction of a FRIACO product. Since the bi-laterals convened, *eircom* and the interested parties concerned met regularly to try and reach agreement on the product description for the FRIACO product. In an effort to expedite the negotiations between *eircom* and the two OLOs concerned, ComReg established a forum on the 28<sup>th</sup> November 2002. The purpose of the forum was to produce an agreed FRIACO product description.

A ComReg Information Notice of the 24<sup>th</sup> December 2002 (ComReg 02/122) outlined developments to that date in respect of special measures for Internet access including flat rate access.

In light of a number of technical and commercial constraints encountered at the forum ComReg intervened in the negotiations and issued a direction (D01/03)

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which directed the introduction of FRIACO on a phased basis, froze the product description for Primary level FRIACO and set out the complete process, with dates, for the development of inter-operator processes, terms and conditions and cost orientated pricing associated with the product description. .

In accordance with Decision Notice D01/03, *eircom* submitted a pricing proposal for the FRIACO product elements of Unmetered Traffic Charge on 3rd February 2003; and submitted on 12<sup>th</sup> February 2003 a pricing submission for appropriate FRIACO process elements for the FRIACO product.

In the period since, there has been intensive analysis of the pricing submissions by ComReg, supported a number of meetings with *eircom* staff to address ComReg's concerns. Following these discussions, a number of amendments were made to the submission by *eircom*, which were again subject to further detailed review and analysis by ComReg. However, ComReg have been unable to fully satisfy themselves about the reasonableness and appropriateness of a number of assumptions and calculation bases included in the two pricing submissions. These outstanding matters referred to, form the subject of this Decision and are elaborated on further below.

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### 2 Legislation

Both EU and Irish legislation recognise that, in the interests of developing and sustaining competition in the telecommunications sector, the ability of new entrants to the market to interconnect with the network of an incumbent operator is essential.

The most relevant legislative provisions in relation to interconnection are:

*Council Directive 97/33/EC on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of the Open Network Provision (ONP (“the Directive”)), and*

*The European Communities (Interconnection in Telecommunication) Regulations, 1998, SI No. 15 of 1998, transposing the above Directive. (“the Regulations”)*

Under the legislation, a telecommunications industry operator providing fixed public telephone networks and designated as having Significant Market Power (SMP) in that market must meet certain obligations in providing access to the network in response to reasonable requests and is required to publish a Reference Interconnect Offer (RIO) which is based on market needs and to which ComReg may direct changes.

*eircom* as an SMP operator in the public fixed telephony services and networks market is obliged to publish a RIO under Regulation 8 of the Regulations and ComReg has the power to direct *eircom* to justify its RIO and where appropriate, direct the RIO to be adjusted to ensure transparency and cost-orientation.

ComReg also has the power under Regulation 10 (3) to intervene on its own initiative to “*specify issues which shall be included in an interconnection agreement or to lay down specific conditions to be observed by one or more parties to such an agreement*”

Regulation 10(5) provides that the conditions directed by ComReg under Regulation 10 (3) may include the following amongst others: conditions designed to ensure effective competition, technical conditions, tariffs and supply and usage conditions. Regulation 10(6) allows ComReg at any time on its own initiative to set the period within which negotiations on interconnection shall be completed and may take steps to conclude an agreement if not reached within the period set under procedures laid down by ComReg. In exercising its functions under the Regulations, Regulation 10(1) requires ComReg to take into account a number of factors including the need, to stimulate a competitive market in telecommunications services and the need to ensure satisfactory communications for users in a manner that promotes economic efficiency.

All those negotiating interconnection must do so in good faith under condition 8 of the General Telecommunications Licence, but the Directive and

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Regulations place special obligations on an operator who is designated by the Director as having SMP in the market for fixed telephony networks and services. These obligations include:

- interconnection charges should follow the principles of transparency, non-discrimination and cost-orientation;
- the Director may direct an organisation to justify its charges and to adjust these charges where they are not in compliance with these principles;
- the burden of proof lies on the organisation providing interconnection;
- a RIO based on market needs shall be published and the Director may direct changes to this offer;

*eircom* is the only operator to have been designated as having SMP in the relevant market.

*eircom* are required as an Operator with SMP to adhere to the principle of non-discrimination as specifically set out in Regulation 7(1).

The Interconnection regime imposes a LRIC costing methodology for interconnection products such as FRIACO. The Commission Recommendation 98/195 of 8<sup>th</sup> January 1998 published in EC OJ (1998) L141, Page 6 – Recommendation 2 of the Interconnection Recommendation (Part 1) - Interconnection Pricing, recommended that LRIC is the most appropriate method of calculating interconnection costs as it provides “an analytical framework which can be used to obtain an estimate of the costs that would be found in a fully competitive market.

This Decision Notice is based on the existing telecoms regulatory regime and is in accordance with the objectives of the Commission as set out in 12(1) of the Communications Regulation Act 2002. However, it should be noted that it is also in line with the principles of the new regime which will come into effect later this year.

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### 3 Decision Notice Issues

#### 3.1 Product Pricing

ComReg is pleased to welcome *eircom*'s revised FRIACO product pricing submission. After review and analysis ComReg finds the proposed:

PFRIACO un-metered traffic charge of € 14,728 per 2Mb/s per annum

to be adequately cost justified. ComReg is also pleased to accept *eircom*'s proposal that these rates be reviewed at 6 monthly intervals from the date of service launch.

In the light of the rapid review date and the importance of price stability and predictability for this new product in a volatile market, ComReg have decided that these charges should be final and that retrospection should not apply.

#### **Decision 3.1**

**The Commission for Communications Regulation, after reviewing cost information from *eircom*, has determined that the rate for the PFRIACO un-metered traffic charge for the period from the date of this notice until 6 months from product launch shall be set at €14,728 per 2Mb/s per annum. These prices are final and retrospection will not apply. This decision is made under Regulations 8(5), 8(6), 8(9), 8(10) and 10(3) of the European Communities (Interconnection in Telecommunications) Regulations, 1998, SI No. 15 of 1998.**

#### 3.2 Process Pricing

ComReg has also received *eircom*'s process pricing submission which contains charges for the following elements:

- Development costs
- Forecasting costs
- Conversion (of a telephony port to a FRIACO port) costs for a first conversion on a route and for a subsequent conversion on a route
- Network Protection mechanism costs

After review and analysis, ComReg have found that not all elements of this submission are adequately cost justified. Given the requirement on *eircom* to publish prices in the RIO on Monday 24<sup>th</sup> February, ComReg directs *eircom* to make a number of amendments to their submission, so that adequately cost justified prices can be provided to the market, while noting that these issues will need to be reviewed at the 6 month price review point.

#### **Forecasting and Development costs:**

*eircom*'s forecasting cost calculation is adequately cost justified, but this does not extend to the recovery rate of development costs. ComReg have concerns as to the level of documentation supporting *eircom*'s cost calculation, they

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have further concerns over the method and input parameters of the calculation of the rate of costs recovery, and still further concerns over the forecast level of demand for the service. In the light of these concerns, ComReg is directing *eircom* to amend their submission, so that the rate of recovery of development costs is:

PFRIACO process charge – forecasting and development costs € 51 per 2Mb/s per annum

These costs will be final and will apply from the date of this notice until the date of the first pricing review.

### **FRIACO conversion costs:**

ComReg have concerns as to the level of documentation supporting *eircom*'s cost calculation. In the light of these concerns, ComReg is directing *eircom* to amend their submission, so that the conversion charges are:

Conversion of a telephony port to a FRIACO port - €300.00 (first conversion on a route) or - €272.00 (subsequent conversion on a route)

### **Network Monitoring:**

*eircom* have included within their process cost, submission costs associated with network monitoring. These costs are proper to the overheads associated with the costs of running *eircom*'s network. While these costs are, in principle, proper to be recovered against this product, their proposed treatment as process items conflicts with the existing costing approach used by *eircom* in their product pricing submission, which conventionally addresses the recovery of these costs. To avoid the possibility of double cost recovery and to sustain established cost allocation methodologies underpinning the production of *eircom*'s Separated Accounts, ComReg must direct *eircom* to exclude this cost item from their PFRIACO process charges.

### **Decision 3.2.1**

**The Commission for Communications Regulation, after reviewing cost information from *eircom*, has determined that the rate for the PFRIACO process charge for the period from the date of this notice until 6 months from product launch shall be set at €51 per 2Mb/s per annum. These prices are final and retrospective will not apply. This decision is made under Regulations 8(5), 8(6), 8(9), 8(10) and 10(3) of the European Communities (Interconnection in Telecommunications) Regulations, 1998, SI No. 15 of 1998.**



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**Decision 3.2.2**

**The Commission for Communications Regulation, after reviewing cost information from *eircom*, has determined that the rate for the PFRIACO conversion charge for the period from the date of this notice until 6 months from product launch shall be set at €300 per 2Mb/s (for the first conversion on a route) and €272 (for subsequent conversions on a route). These prices are final and retrospection will not apply. This decision is made under Regulations 8(5), 8(6), 8(9), 8(10) and 10(3) of the European Communities (Interconnection in Telecommunications) Regulations, 1998, SI No. 15 of 1998.**

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**4 Appendix 1 - List of Directions**

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

**Decision 3.1**

The Commission for Communications Regulation, after reviewing cost information from *eircom*, has determined that the rate for the PFRIACO un-metered traffic charge for the period from the date of this notice until 6 months from product launch shall be set at €14,728 per 2Mb/s per annum. These prices are final and retrospection will not apply. This decision is made under Regulations 8(5), 8(6), 8(9), 8(10) and 10(3) of the European Communities (Interconnection in Telecommunications) Regulations, 1998, SI No. 15 of 1998.

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**Decision 3.2.2**

The Commission for Communications Regulation, after reviewing cost information from *eircom*, has determined that the rate for the PFRIACO conversion charge for the period from the date of this notice until 6 months from product launch shall be set at €300 per 2Mb/s (for the first conversion on a route) and €272 (for subsequent conversions on a route). These prices are final and retrospection will not apply. This decision is made under Regulations 8(5), 8(6), 8(9), 8(10) and 10(3) of the European Communities (Interconnection in Telecommunications) Regulations, 1998, SI No. 15 of 1998.