



Commission for
Communications Regulation

Response to Consultation

Response to Consultation Paper in relation to eircom Interim Interconnect Conveyance Rates 2003/04

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1 Foreword

In ComReg Document 03/145, ComReg issued a draft direction to eircom Limited to update their Reference Interconnect Offer with the revised National Termination, Origination and Transit Interim Rates for 2003/04 as submitted on the 15th July 2003. It was also proposed to direct eircom to refund Other Authorised Operators any monies due within 45 days of the date of the direction.

Four responses were received from the following parties:

- eircom
- Esat BT
- Chorus
- Vodafone

Set out in this document are extracts from the responses received to the questions asked in consultation document 03/145.

The Commission wants to thank all the respondents to the consultation for their input to the review of the interim conveyance rates for 2003/04. These responses are available for inspection at the ComReg Office, excluding confidential material that respondents specifically asked to be withheld.

Since the draft direction, eircom has indicated to ComReg that their submission, upon which ComReg relied, contained a material error. eircom discovered the error and informed ComReg subsequent to the publication of 03/145. The error consisted of an overstatement of call volumes, representing 7.6% of overall call volumes, which when corrected in the July submission would have had a material impact on the revenue calculation resulting in an over refund equating to 5.2% of total revenue. ComReg believes this error is material enough to render the submission unreliable. ComReg reluctantly is forced to accept eircom's contention that this submission is unusable and will not, therefore, proceed with the direction as proposed.

As a result of this, the current interim rates published will remain applicable until such time as the 2002/03 rates which are currently under review are finalised. ComReg views this outcome as highly regrettable but believes that no other course of action is available to it. The main consequence of the withdrawal of the 2003/04 submission at this stage is that the market will not benefit from the new computation methodology in ComReg Decision Notice D14/03 or any other possible reductions in costs expected by the industry for a number of months. The time lag in setting interim rates for 2003/04 may also lead to uncertainty in the market which impinges on Other Authorised Operators from being able to forecast and budget their costs accurately. However, we can see no benefit in directing on rates which are known to be inaccurate as this would result in refunds to Operators which may not be a fair reflection of the cost applicable for that period. A revised 2003/04 submission was made by eircom which purports to show an increase in costs compared to the now unusable submission. A thorough review of this has yet to be completed by ComReg.

ComReg would like to express its concern at the delay in the publication of the 2003/04 rates which is as a result of an error by eircom. Given the importance of reliable and accurate data to the market and in line with the proposed Policy Directive 5.3 ComReg is currently considering what the most appropriate steps would be to avoid a repetition.

John Doherty

Chairperson, Commission for Communications Regulation

2 Introduction

On 10 December 2003 ComReg issued a Consultation and Draft Direction on eircom's Interim Interconnect Conveyance Rates for 2003/04, in which industry was asked whether they agreed that eircom should be directed to update the published Reference Interconnect Offer rates.

On 15 July 2003, eircom had submitted proposed revised interim (2nd interim) rates for 2002/03 and interim (1st interim) 2003/04 RIO rates for National Termination, Origination and Transit to ComReg. These would supersede the current interim rates in place. ComReg reviewed both these submissions. It agreed to eircom's suggestion that the 2002/03 figures should not be published because they would be rapidly overtaken by the final figures for 2002/03, but took the view that the submission for 2003/04 should be published in the RIO, as these rates represented the best information currently available about rates for 2003/04, pending finalisation of these rates next year.

On the 21 November, ComReg published an Information Notice on its website detailing the new interim rates as per eircom's submission for the period 1 April 2003 to 31 March 2004. At the same time ComReg wrote to eircom requesting that the new rates be published. ComReg did not formally direct eircom at that point.

In a response, eircom stated that as the interim 2003/04 rates were derived from the 2nd interim 2002/03 rates, they should be reviewed and amended as part of the finalisation of the 2002/03 rates. eircom stated that it was inappropriate to revise rates for 2003/04 now given that eircom had provided ComReg with a new proposal for final rates for 2002/03 on 7 November 2003. eircom states that it believed that 2003/04 rates could not be revised without reference to the parallel review of final rates for 2002/03.

The submission of the 2002/03 final rates is, however, the subject of an extensive review by ComReg. Based on previous experience, it is possible that this review will not be completed for some time. ComReg was concerned that waiting to complete the finalisation of the 2002/03 charges would cause delay. ComReg's proposal was to use eircom's submission as it was originally intended – as a basis for revised interim rates. If there proved to be a need for an intermediate adjustment, second interim rates could be introduced, as had happened in earlier periods where this was judged to be valuable. ComReg therefore considered it appropriate and reasonable, in the light of the information available to it at the time, to direct eircom to act on the basis of their submission from July 2003.

Setting the 2003/04 RIO Rates;

Crucial to the decision to accept the submission from 15 July 2003 was that the 2003/04 estimates contained in eircom's submission implemented a new computation methodology determined upon in ComReg Decision Notice D14/03. The impact of this methodological change appeared to have been reasonably anticipated by eircom's submission and it seems appropriate that it should take effect

within the year in which it was intended to be implemented. ComReg was consequently of the opinion that it was in the best interests of the industry and the development of competition that the 2003/04 rates were brought into operation as soon as possible.

ComReg went on then to publish the following draft direction and requested feedback from industry on it;

Draft Direction

Eircom Limited is directed to update the Reference Interconnect Offer with the revised National Termination, Origination and Transit Rates for 2003/04 as submitted (See Appendix C) on the 15 July 2003 and is also directed to refund Other Authorised Operators any monies due within 45 days of the date this direction.

This direction is made under Regulations 8 and 17 of S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003.

Q. 1. Should ComReg proceed with the above direction? Please provide reasons with detailed explanation for your answer.

3 Responses to consultation

3.1 Industry comments

Two operators agreed that the draft direction should be implemented as soon as possible. Esat BT said that “the newly decreased levels of interconnect rates as detailed in Document 03/145 means that currently interconnected operators will benefit (via a cost reduction) and in turn this will allow for more innovative and price competitive products to end users. This all means that competition is stimulated in the market. The reductions also encourage the possibility of further competitors entering the market thus fostering further competition.”

Chorus said that they agreed that “the review of the 2002/03 final rates is unlikely to be completed quickly and that waiting to complete the finalisation of the 2002/03 charges would cause unwarranted delay. This will create extra uncertainty to OAO’s.”

Two operators disagreed with the draft direction citing the following reasons; Vodafone gave a number of areas where they felt the Regulatory Impact Assessment in Appendix D of the consultation was flawed and they felt that the publication of the 2003/04 rates would be contrary to the headings in the RIA assessment. The main concern expressed was that as the 2002/03 rates have not yet been finalised and that it would be misleading and create uncertainty to industry to publish the 2003/04 rates which will change based on the finalisation of the 2002/03 rates. They also expressed concerns at the likely cost to eircom of implementation of the re-ratings.

eircom were of the opinion that the July 2003 submission was now invalid based on an error they found, after the consultation was issued, in the model they had submitted. They said that, with this change now highlighted, publishing the 2003/04 rates as per the draft direction would send the wrong economic signals to industry and would not aid in the promotion of competition.

Along with its response to the consultation on the draft direction eircom has submitted a revised proposal for interim interconnect rates for 2003/04 which it claims is consistent with the current final submission under review for 2002/03.

3.2 Commission's position

The error in eircom's workings which has been identified by it since the publication of the draft direction has left ComReg with little choice. ComReg will not now proceed with the draft direction. It is felt that this is the best course of action at this time as imposing the direction on eircom to refund Operators amounts which are uncertain would be inappropriate as it is hoped that the final 2002/03 rates will be published within the next two months.

4 Next Steps

ComReg is currently in the process of reviewing the 2002/03 final interconnect conveyance rates with eircom and will review the most recent revised 2003/04 interim interconnect conveyance rates received on December 16 2003 in conjunction with this.

In relation to the delay in setting 2003/04 Interconnect conveyance rates the office feels that it may be necessary to further review the issue of imposing negative incentives on eircom in situations where publication of rates is not timely and creates uncertainty in the market. This has previously been discussed in Document 03/57.

Appendix A – Legislation

Under current Irish and EU legislation, an operator who is designated as having significant market power ('SMP') is subject to a number of obligations including the requirement to permit other authorised operators ('OAOs') to interconnect with its network. To facilitate this process, the SMP operator must publish a RIO that sets out the terms and conditions for interconnection and the prices to be charged. The contents and production of the RIO are subject to various statutory requirements, compliance with which is overseen by ComReg. In particular, a SMP operator must justify to ComReg's satisfaction that the prices set are in accordance with the requirements of the legislation, which include the need for these prices to be cost-oriented, non-discriminatory and transparent. If ComReg is not satisfied that prices are properly justified, it may direct changes to be made to the RIO.

Eircom is an operator designated as having SMP in the relevant market for interconnection. Following the introduction of a new regulatory framework for electronic communications networks and services in Ireland on 25 July 2003, ComReg commenced a process of market analysis to assess the competitiveness of markets in this sector and if appropriate, to impose appropriate regulatory obligations. Pending completion of this work, *eircom* continues, under Regulation 8 of the Access Regulations¹ to be subject to the obligations set out in the European Communities (Interconnection in Telecommunications) Regulations, 1998 (S.I. No. 15 of 1998) as amended. Under Regulation 17 of the Access Regulation 17 ComReg may, for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under the Access Regulations, issue directions to an undertaking to do or refrain from doing anything which ComReg specifies in the direction.

¹ S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 which transposes Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities.