



Consultation and Draft Decisions

Wholesale Call Origination and Wholesale Call Termination Markets

Consultation and draft decisions in relation to proposed amendments to the price control obligations and further specifications of the transparency obligations

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All responses to this consultation should be clearly marked:-
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and sent by post, facsimile, e-mail or on-line at www.comreg.ie
(current consultations), to arrive on or before 5pm, 9 November
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Please note ComReg will publish all respondents submissions
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1 Executive Summary

- 1.1 This consultation sets out the Commission for Communications Regulation's ("ComReg") preliminary views on the basis of which it is recommending an amendment to the existing price control obligations and a further specification of the transparency obligations in the Call Origination and Call Termination markets.
- 1.2 The rationale for the proposed amendment to the price control obligations is that ComReg believes that Eircom Limited ("Eircom") has the ability and incentives to cause a margin/price squeeze. Therefore, this consultation proposes amending the existing price control to add a general obligation not to margin/price squeeze and the specific requirements not to cause a margin/price squeeze between the price of the component parts of a Switchless Voice ("SV") service and the pricing of the corresponding wholesale Call Origination and Call Termination products for interconnected Other Authorised Operators ("OAOs").
- 1.3 SV, called white label voice by Eircom, is a relatively new commercial wholesale service that allows an OAO to purchase end-to-end call services from Eircom without the need to have its own interconnection infrastructure. The key underlying wholesale inputs of this SV service are regulated, including components in the markets of Call Origination, Call Termination and Call Transit.
- 1.4 ComReg believes that Eircom's provision of SV services, if not subject to appropriate regulatory controls for its regulated component parts, may conflict with the important regulatory goal of infrastructure investment by offering call origination and call termination at rates applicable to a higher level of infrastructure investment (i.e. primary switching) than the OAO availing of the provision of SV services has made. The main purpose of the proposed amended price control obligation is to protect interconnected OAOs from any possible margin (price) squeeze in the markets of Call Origination and Call Termination where Eircom re-sells wholesale voice to switchless operators. ComReg believes that this will encourage efficient infrastructure investment and therefore promote competition and innovation amongst operators. This will ultimately ensure that retail consumers derive benefits in terms of price, choice and quality. ComReg believes that the existing cost orientation price control¹, which is set for interconnected OAOs, would not be a sufficient price control for the resale of wholesale voice services to switchless OAOs as switchless OAOs have not made infrastructure investments to be interconnected.
- 1.5 Therefore, a margin (price) squeeze test is proposed in this consultation and it is proposed that this will set minimum prices/"price floors" for call origination and call termination when provided in SV services by Eircom. This margin (price) squeeze test will be specified on the basis of a hypothetical interconnected operator offering call origination and call termination in its provision of SV, and views are sought on the appropriate level of interconnection of that hypothetical operator. It is envisaged that the margin (price) squeeze test specified in this consultation should ensure that the appropriate economic space for the "build" or "buy" options is maintained, promoting efficient infrastructure investment consistent with ComReg's regulatory and statutory

¹ For the avoidance of doubt, the existing price control obligation of cost orientation remains and any OAO that has any interconnection is entitled to those cost oriented prices applicable to its level of interconnection.

objectives. As stated earlier, the existing price control obligations in the Call Origination and Call Termination markets remain so that any OAO who is interconnected can avail of those cost oriented rates for that interconnection.

- 1.6 The rationale for the proposed further specification of the transparency obligations is that at present there is very limited transparency regarding the provision of SV services by Eircom and it is not demonstrably clear what precisely the nature of the regulated component products included by Eircom in its provision of SV services are or that they are clearly provided on a non-discriminatory basis in terms of quality. ComReg believes that the proposed further specifications will provide some assurance to the interconnected OAOs in relation to Eircom's provision of the regulated components of its SV service. ComReg proposes to further specify the transparency obligations to specifically require Eircom to publish the minimum prices together with detailed documentation on all terms, conditions, service level agreements, guarantees and other product related assurances associated with its provision of call origination and call termination within SV services. ComReg considers that these further specifications are simply clarifying the exact scope of those obligations.
- 1.7 In conclusion, ComReg believes that the proposed amendments to the price control and further specifications of the transparency obligations in the markets of Call Origination and Call Termination present a practical and fair solution that takes into account the interests of Eircom, industry and consumers. It is anticipated that the proposed amendments and further specifications would, if made, promote efficiency, sustainable competition and consumer welfare.
- 1.8 ComReg prior to making its final decision will consider all the views of respondents to this consultation and will take utmost account of any comments from the European Commission.
- 1.9 Responses to this consultation must arrive at ComReg by 5pm, Tuesday 9 November 2010.

2 Background

- 2.1 ComReg is the regulator for the electronic communications sector in Ireland. The European Commission has identified a number of markets in which *ex ante* regulation may be warranted². These markets have been reviewed in an Irish context and obligations were imposed where operators were designated with significant market power (“SMP”). These markets included Call Origination³ and Call Termination⁴.
- 2.2 Eircom was designated with SMP in the Call Origination and Call Termination markets pursuant to market analyses carried out in 2007⁵. As an undertaking designated as having SMP, Eircom has a number of obligations in those markets. Those obligations include obligations of price control and transparency.
- 2.3 The purpose of this consultation is to seek views as to whether ComReg should amend the price control obligations and further specify the transparency obligations in the markets for Call Origination and Call Termination.
- 2.4 To give context and background for the need for amended price control and transparency obligations in the markets of Call Origination and Call Termination, the below provides an overview of the provision of SV services.

Background to the provision of SV services by Eircom

- 2.5 In 2008, Eircom launched a wholesale SV service⁶. This commercial wholesale service allows an OAO to purchase end-to-end call services from Eircom without the need to have its own interconnection infrastructure. The key underlying wholesale inputs of this SV service are regulated, including components in the markets of Call Origination, Call Termination and Call Transit. As the product is provided over the Eircom core network, an OAO availing of this SV service needs little or no physical fixed network infrastructure and as such limited up front capital investment is required. This is functionally the same as Eircom offering a wholesale ‘white label’

² Commission Recommendation 2007/879/EC 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).

³ The national wholesale market for call origination services on the public telephone network provided at a fixed location (hereafter “the Call Origination market”).

⁴ 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 (hereafter “the Call Termination market”).

⁵ ComReg Decision D06/07 ‘Market Analysis – Interconnection Market Review Fixed Wholesale Call Termination Services’ dated 21 December 2007 and ComReg Decision D04/07 ‘Market Analysis –Interconnection Market Review Wholesale Call Origination & Transit Services’ dated 5 October 2007.

⁶ This commercial service, also known as “white label”, remains on offer by Eircom. Further details can be found at:

<http://www.eircomwholesale.ie/dynamic/pdf/Network%20Switching%20Service%20Description.pdf>

version of its own retail Public Switched Telephone Network (“PSTN”) service. In essence, Eircom is reselling its own self-supply of voice to switchless operators.

- 2.6 In 2008, ComReg formed the opinion that Eircom, having launched this SV service without publishing terms and conditions, including price, associated with the regulated components of this service in its Reference Interconnect Offer (“RIO”), was not compliant with its transparency obligation⁷. In a subsequent Information Notice⁸, ComReg noted that to help bring certainty to the industry it had decided to address a further aspect of the service, namely the appropriate price control for the regulated wholesale inputs to the SV service.
- 2.7 Eircom is not the only OAO to offer SV services in Ireland. Before Eircom entered this market in 2008, ComReg understands that some OAOs, such as Verizon, Cable & Wireless, BT Ireland and Colt Telecom, were already offering their own provision of SV services⁹.
- 2.8 However, as OAO’s networks are not as extensive as that of Eircom, their provision of SV services is based on a technical combination of Eircom’s wholesale services (depending on the OAO’s level of interconnection) and their own backbone network services.

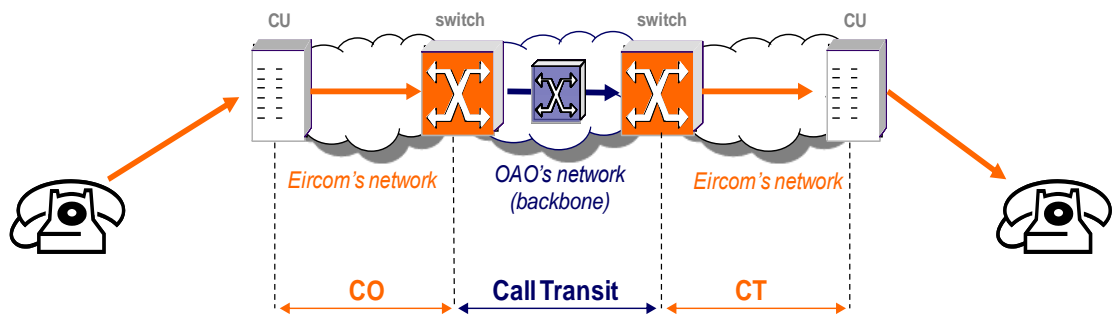


Figure 1: OAO’s provision of SV services - “CO” means call origination / “CT” means call termination

- 2.9 Therefore, in offering provision of SV services, Eircom, dominant in the provision of upstream market inputs of Call Origination, Call Termination and Call Transit¹⁰, is competing with OAOs in the downstream provision of SV services. This can be represented graphically as follows:

⁷ Information Notice 08/83 ‘Opinion of non-compliance by Eircom with its transparency obligation in relation to call origination, call termination and call transit’ dated 23 October 2008.

⁸ Information Notice 09/26: ‘Update in respect of ComReg’s investigation into Eircom’s breach of its transparency obligations around the sale of its White Label product’ dated 2 April 2009.

⁹ Based on responses received to ComReg’s data requests.

¹⁰ ComReg has commenced a review to assess whether Transit is still subject to ex-ante regulation.

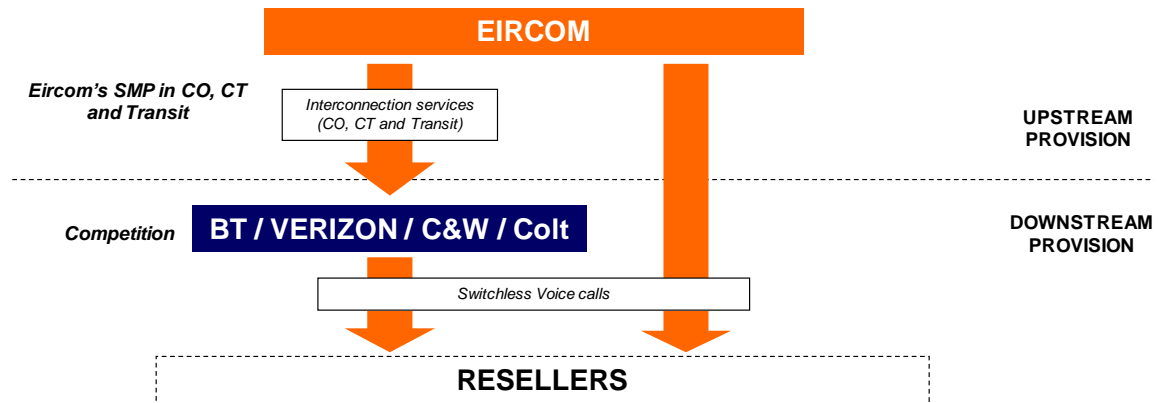


Figure 2: Overview of upstream and downstream provision of SV services
 - “CO” means call origination / “CT” means call termination

2.10 Therefore, given that Eircom provides regulated inputs into OAO’s competing offers of SV services, ComReg believes that it would be possible for Eircom, because of its scale and because of the legacy advantage of incumbency, to price call origination and call termination within its provision of SV at a level that would deter OAOs from interconnecting more deeply in the network thereby restricting infrastructure investment. OAOs who have made infrastructure investment in interconnection to avail of the applicable cost oriented rates, such as lower primary rates, associated with that level of interconnection might not be able to compete profitably over the medium to long term.

2.11 In 2008, ComReg formed the opinion that Eircom, having launched this SV service without publishing terms and conditions, including price, associated with the regulated components of this service in its RIO, was not compliant with its transparency obligations¹¹. In a subsequent Information Notice¹², ComReg noted that to help bring certainty to the industry it had decided to address a further aspect of the service, namely the appropriate price control for the regulated wholesale inputs to the SV service.

Market reviews

2.12 The markets of Call Origination, Call Termination and Call Transit¹³ are currently subject to regulation. Eircom is designated with SMP and has regulatory obligations in these respective markets, including obligations of price control, non-discrimination and transparency in relation to specified products and services.

¹¹ Information Notice 08/83 ‘Opinion of non-compliance by Eircom with its transparency obligation in relation to call origination, call termination and call transit’ dated 23 October 2008

¹² Information Notice 09/26: ‘Update in respect of ComReg’s investigation into Eircom’s breach of its transparency obligations around the sale of its White Label product’ dated 2 April 2009

¹³ National wholesale market for call transit services on the public telephone network provided at a fixed location (including incoming international transit services) (hereafter “the Call Transit market”), Eircom was designated with SMP in this market in ComReg Decision D04/07 ‘Market Analysis –Interconnection Market Review Wholesale Call Origination & Transit Services’ dated 5 October 2007

2.13 The proposed amendments to and further specifications of these obligations are based on the market definition, market analysis and reasoning conducted by ComReg in relation to the markets of Call Origination and Call Termination. The proposals in this consultation are based on the substantial body of empirical estimation and analysis contained in previously published documents¹⁴ where due consideration was given to the full range of issues covered. In the consultations which took place prior to the SMP designations in the Call Origination and Call Termination markets, ComReg noted possible competition problems including leveraging and exclusionary behaviour¹⁵. ComReg believes that these remain possible competition problems, in particular in for call origination and call termination provided by Eircom in SV services.

Call Origination and Call Transit

2.14 In the Call Origination and Call Transit market review, it was noted that:

Price control:

“Eircom’s position as a vertically integrated operator with market power in the retail access and wholesale interconnection markets means that, absent regulation, it would have the potential and the incentive to leverage market power into related markets, both horizontally and vertically linked. Such behaviour could also potentially reinforce entry barriers in the upstream interconnection markets.”¹⁶

Non discrimination:

“...it is important that information gained by Eircom as a result of their provision of wholesale call origination services to another operator is not improperly used by Eircom’s downstream arms in any manner. Eircom wholesale would have visibility of information regarding calls from other operators and therefore maybe in a position ... to use this call information to target new customers hence giving Eircom an advantage over OAOs.”¹⁷

Transparency:

“...would also allow ComReg to monitor compliance with any non-discrimination obligations, and address competition problems relating to cross subsidisation, price discrimination and the application of price squeezes.”¹⁸

¹⁴ In particular, Call Termination Market – ComReg Document 07/03, ComReg Document 07/83 and ComReg Document 07/109. Call Origination Market - ComReg Document 07/02, ComReg Document 07/51 and ComReg Document 07/80.

¹⁵ In particular paragraphs 6.13 to 6.21 of ComReg Document 07/83, Paragraphs 6.34 to 6.38 of ComReg Document 07/51.

¹⁶ At para 6.16 of ComReg Document No. 07/02 ‘Market Analysis: – Wholesale Call Origination and Transit Services’ dated 19 January 2007.

¹⁷ At para 6.96 of ComReg Document No. 07/02 ‘Market Analysis: – Wholesale Call Origination and Transit Services’ dated 19 January 2007.

¹⁸ At para 6.66 of ComReg Document No. 07/02 ‘Market Analysis: – Wholesale Call Origination and Transit Services’ dated 19 January 2007.

Call Termination

2.15 In the Call Termination market review, it was also noted that:

Price control:

“Eircom’s position as a vertically integrated operator and market power in the retail access and wholesale interconnection markets means that, absent regulation, it would have the potential and the incentive to leverage market power into related markets, both those horizontally and vertically linked.”¹⁹

Non-discrimination:

“...non-discrimination obligations should be imposed on Eircom to prevent additional competition problems such as quality discrimination and undue use of information about competitors ...”²⁰

“Eircom’s downstream arms should not have privileged access to eircom wholesale. It is therefore important that information gained by Eircom as a result of its provision of call termination services to another operator is not used by eircom’s downstream arms in any manner.”²¹

Transparency:

“Transparency is a necessary means of ensuring that ComReg and OAOs can observe price and non-price terms and conditions for Eircom’s wholesale call termination products.”²²

Eircom, as SMP operator, has ability and incentive to leverage market power

2.16 In particular ComReg is of the view that Eircom, as SMP operator, has the ability and incentive to leverage market power into related markets, both horizontally²³ and vertically linked²⁴ in the context of the SV service.

¹⁹ At para 6.16 of ComReg Document No. 07/03 ‘Market Analysis: – Interconnection Markets Wholesale Call Termination Services’ dated 19 January 2007.

²⁰ At para 6.105 of ComReg Document No. 07/03 ‘Market Analysis: – Interconnection Markets Wholesale Call Termination Services’ dated 19 January 2007.

²¹ At para 6.108 of ComReg Document No. 07/03 ‘Market Analysis: – Interconnection Markets Wholesale Call Termination Services’ dated 19 January 2007.

²² At para 6.85 of ComReg Document No. 07/03 ‘Market Analysis: – Interconnection Markets Wholesale Call Termination Services’ dated 19 January 2007.

²³ Horizontal leveraging involves an undertaking which is dominant in one market using its market power to exert undue influence in other markets. An example of this in respect of an operator that is dominant in the origination market would be the potential to exert influence in the wholesale transit market.

²⁴ Vertical leveraging arises where an operator has dominance at a wholesale level and can potentially transfer this power into related retail markets. In the interconnection markets, a vertically-integrated SMP operator has control of the wholesale inputs necessary for an entrant to offer a retail service, and is in a position to control the use of these inputs and so affect the competitive conditions in the downstream retail markets.

- 2.17 ComReg is of the preliminary view that Eircom has both the ability and incentives to engage in pricing of SV services that could significantly undermine infrastructure investment and further reinforce entry barriers in the Call Origination, Call Transit and Call Termination markets.
- 2.18 ComReg is of the preliminary view that Eircom has incentives to reinforce and protect its SMP position in the upstream wholesale call markets through its pricing of its SV service. These incentives derive from the fact that impeding the development of competition in the downstream market could enable Eircom to gain market share at the expense of its competitors.
- 2.19 ComReg believes that Eircom’s pricing of its provision of SV services has the potential to undermine existing and future infrastructure investments by interconnected OAOs. ComReg believes that this would in turn have the effect of delaying/impeding entry and competition in the Call Origination, Call Transit and Call Termination markets. ComReg would welcome views on the above.

Eircom, as SMP operator, has the ability and incentive to discriminate

- 2.20 As noted in the supporting market reviews, Eircom, as SMP operator, has the ability and incentive to discriminate in the markets of Call Origination and Call Termination.
- 2.21 ComReg is of the preliminary view that Eircom has the ability to discriminate in the context of the SV service as it provides regulated wholesale inputs for competing SV services by other interconnected OAOs.
- 2.22 ComReg understands that the SB-WLR service is part of Eircom’s switchless voice service and:
- 2.22.1 uses the same gateway as the SB-WLR service for interconnected operators
 - 2.22.2 has the same standard industry agreed Service Level Agreement (“SLA”) as that for the SB-WLR service offered to interconnected operator
 - 2.22.3 is sold at the regulated price of retail line rental less 14% (currently €18.02 / line).
- 2.23 Therefore, as ComReg understands that Eircom’s SV service is based on the SB-WLR service, ComReg believes that there should be no product advantages to a switchless operator availing of a SV service from Eircom over and above other SV services offered by other OAOs. However, ComReg is concerned that this is not demonstrably clear because no product description or SLAs have been published. For example it is not clear to ComReg that all OAOs receive the same fault report service or network management assurance as that provided to a SV customer.
- 2.24 Further to the competition problems identified in the original market reviews, ComReg is of the view that Eircom has incentives to reinforce and protect its SMP position in the upstream wholesale call markets through its provision of its SV service relative to the provision of the regulated components within the SV service. For example, Eircom may have an incentive to offer better service to its SV customers than to its interconnected customers who offer their own competing SV service. Also, Eircom may have an incentive to utilise the information it gathers in relation to interconnected OAOs (who offer SV services) utilisation of the Eircom

network to tailor competing SV offers to those interconnected OAO's SV customers. These incentives derive from the fact that impeding the development of competition in the downstream market could enable Eircom to gain market share at the expense of its competitors.

- 2.25 By virtue of Eircom's SMP position in the Call Origination and Call Termination markets and its activities in the related provision of SV services, ComReg believes that it has both the ability and incentives to engage in discriminatory action in its provision of SV services that could significantly undermine infrastructure investment and further reinforce entry barriers in the Call Origination, Call Transit and Call Termination markets.
- 2.26 Furthermore, ComReg notes that while Eircom operates a limited form of separation between Retail and Wholesale operations, no such separation appears to exist within Wholesale, ComReg will assess Eircom's internal control environment within the Wholesale operation in the context of its non discrimination obligations as between the SV product and other wholesale products.

3 Proposals

Proposed amendments to the price control obligations

- 3.1 The proposed amendments to the price control obligations will include an additional general obligation on Eircom not to impose a margin (price) squeeze on OAOs. It will also include the specific obligation to ensure that the pricing of the products and services in the markets of Call Origination and Call Termination do not squeeze other interconnected OAOs in those markets when sold within SV services. Therefore, for this specific obligation it is proposed to specify an ex-ante margin (price) squeeze test which will be utilised to set minimum prices for call origination and call termination when offered by Eircom in the provision of SV services. The specifics of this proposed margin (price) squeeze test are discussed in Chapter 4.
- 3.2 Products and services in the markets of Call Origination and Call Termination are currently charged at cost oriented prices, with different prices depending on the time (day, evening, weekend) and further differentiated prices depending on the amount of routing required for the call (namely primary, tandem, double tandem). Primary requires the least amount of call routing across the Eircom network and therefore is priced at the lowest price whereas double tandem requires the most call routing and is therefore priced at a higher level.
- 3.3 In setting the proposed additional price control for call origination and call termination, ComReg's objective is to ensure that Eircom, as SMP operator in the Call Origination and Call Termination markets, does not margin (price) squeeze and discriminate against interconnected OAOs in the markets of Call Origination, Call Termination and Call Transit, in particular in relation to the regulated wholesale components in the SV service.

Why an additional price control not to margin (price) squeeze is required

- 3.4 In the past Eircom did not provide SV services and the issue of ensuring that Eircom's regulatory obligations remained appropriate never arose in ComReg's consideration of the appropriate price control for the regulated components in the markets of Call Origination and Call Termination. However, given the forward-looking nature of the market definition process it would be clearly inappropriate to limit the scope of the market to Eircom's existing wholesale products. This is reflected in the SMP obligations imposed on Eircom in these markets, which clearly envisage that new wholesale products may be offered.
- 3.5 Also, as noted earlier, the possible issue of leverage was noted in the supporting market analyses²⁵ and therefore ComReg believes that the price control requires amendment so that it continues to address this problem and remains fit for purpose.

²⁵ See for example paras 6.6 – 6.16 in ComReg Document No. 07/02 'Market Analysis: – Wholesale Call Origination and Transit Services' dated 19 January 2007 and para 6.6 of ComReg Document No. 07/03 'Market Analysis: – Interconnection Markets Wholesale Call Termination Services' dated 19 January 2007.

- 3.6 ComReg believes that there is a risk that Eircom could offer the call origination and call termination components of the SV service at rates applicable to a higher level of infrastructure investment (i.e. primary switching) than the OAO availing of the provision of SV services may have made. Therefore, Eircom’s provision of SV services has the potential to bypass the important regulatory goal of infrastructure investment as, without an appropriate price control obligation, the pricing of SV services could likely penalise those OAOs who have already made efficient infrastructure investments to avail of the lower primary interconnection rates. This could as a result undermine efficient infrastructure development and reinforce entry barriers in the Call Origination, Call Transit and Call Termination markets.
- 3.7 ComReg considers that an appropriate price control model should ensure that any price charged by Eircom for regulated components in the Call Origination and Call Termination markets does not foreclose efficient investment made or being made by OAOs in their own voice infrastructure. It is envisaged that the control specified in this consultation should ensure the appropriate economic space for the “build” or “buy” options is maintained. ComReg believes that this will encourage infrastructure investment and therefore promote competition and innovation amongst operators. This will ultimately ensure that retail consumers derive benefits in terms of price, choice and quality. Therefore, ComReg is of the view that such a price control would be in accordance with its statutory functions and objectives.
- 3.8 Finally, the views expressed by ComReg are preliminary and ComReg asks for the views of interested parties before making its final decision.

Objectives of the additional price control not to margin (price) squeeze

- 3.9 ComReg believes that the proposed additional price control should promote efficiency and sustainable competition and maximise consumer benefits²⁶.

Promote efficiency

- 3.10 ComReg believes that safeguarding efficient competitors from possible margin (price) squeeze by an SMP operator in the markets of Call Origination and Call Termination should help to ensure that other OAOs’ efficient infrastructure investments are not undermined and therefore should promote efficiency by encouraging efficient investment in infrastructure.

Promote sustainable competition

- 3.11 ComReg believes that the additional price control should promote sustainable competition as competitors offering voice services to their retail customers can either avail of the resale of wholesale voice services at an appropriate price or efficiently invest in interconnection to avail of cost oriented primary call origination and primary call termination.

²⁶ As required by Regulation 14(3) of the Access Regulations.

3.12 ComReg believes that this should result in sustainable competition and promote consumer choice, in terms of product range, quality and affordability.

Maximise consumer benefits

3.13 ComReg is of the view that the resale of wholesale voice services (including to switchless OAOs) at an appropriate price may increase competition in the retail voice market. ComReg believes that safeguarding efficient competitors who have made efficient interconnection infrastructure investment from possible margin (price) squeeze by an SMP operator in the markets of Call Origination and Call Termination would help to facilitate greater regulatory certainty for longer-term competitive entry and expansion based on efficient infrastructure investment. It is ComReg's view that this will have positive implications for the price, choice and quality of services ultimately delivered and should therefore maximise consumer benefits.

Q. 1. Do you agree or disagree with ComReg's preliminary view to amend the price control to add an obligation not to margin (price) squeeze in the markets of Call Origination and Call Termination? Please explain your response in detail.

Proposed further specification of the transparency obligations

3.14 ComReg is of the view that there is currently insufficient transparency regarding the regulated components within SV services provided by Eircom²⁷. At present there is very limited transparency regarding the provision of SV services by Eircom and it is not demonstrably clear what precisely the nature of the regulated component products included by Eircom in its provision of SV services are or that they are clearly provided on a non-discriminatory basis in terms of quality. This is despite the transparency obligations which apply to the component parts of the SV service which are regulated within the markets of Call Origination and Call Termination.

3.15 Therefore, ComReg proposes to further specify the transparency obligations to clarify that Eircom is required to publish the minimum prices in the RIO price list²⁸ together with detailed documentation on all terms, conditions, service level agreements, guarantees and other product related assurances associated with its provision of call origination and call termination within SV services in the RIO itself²⁹. ComReg proposes to further specify the transparency obligations in the markets of Call Origination and Call Termination as follows:

²⁷ Information Notice 08/83 'Opinion of non-compliance by Eircom with its transparency obligation in relation to call origination, call termination and call transit' dated 23 October 2008.

²⁸ Currently RIO Price List version 2.52 available at www.EircomWholesale.ie.

²⁹ Currently RIO version 3.20 available at www.EircomWholesale.ie.

- 3.15.1 Eircom is to publish:
- 3.15.1.1 The minimum prices for call origination and call termination component parts within its provision of SV services;
 - 3.15.1.2 The terms, conditions, service level agreements, guarantees and other product related assurances of the call origination and call termination component parts within its provision of SV services.
- 3.16 ComReg believes that this further specification will provide some assurance to interconnected OAOs in relation to Eircom's provision of regulated components within its provision of SV as:
- 3.16.1 it will be clear to interconnected OAOs by reviewing the applicable tables in the RIO price list that call origination and call termination offered to interconnected operators is at a lower price, reflective of their infrastructure investment, to the minimum prices when offered by Eircom in the provision of SV services.
 - 3.16.2 It will be clear to interconnected OAOs by reviewing the RIO that there is no product advantages to availing of SV services from Eircom relative to availing of the individual regulated components from Eircom.
- 3.17 It is important to note ComReg considers that this further specifying is not adding to or amending the existing transparency obligations (in particular those contained in Section 8.2(iii) of Annex A to D04/07 and Section 8.2(iii) of Annex A to D06/07) but is simply clarifying the exact scope of those obligations.
- 3.18 ComReg is consulting separately on key performance indicators from Eircom Wholesale which should help satisfy industry that there is little scope for discriminatory behaviour³⁰.
- 3.19 For the avoidance of doubt, the transparency obligations remain unchanged for all other products and services in the markets of Call Origination and Call Termination.
- 3.20 ComReg would welcome respondents' views on this proposed further specification of the transparency obligations.

Q. 2. Do you agree or disagree with ComReg's preliminary view in relation to the further specifications of the transparency obligations in the Call Origination and Call Termination markets? Please explain your response in detail.

Preliminary conclusion

- 3.21 The main purpose of the proposed amended price control obligations is to protect interconnected OAOs from any possible margin (price) squeeze in the markets of Call Origination and Call Termination where Eircom re-sells wholesale voice to

³⁰ ComReg Document No. 10/74 'Consultation on the Introduction of Key Performance Indicators for Regulated Markets' dated 27 September, 2010

switchless operators. ComReg believes that this will encourage efficient infrastructure investment and therefore promote competition and innovation amongst operators. This will ultimately ensure that retail consumers derive benefits in terms of price, choice and quality. The existing non-discrimination obligations will prevent competition problems, such as quality discrimination and undue use of information about competitors, in the markets of Call Origination and Call Termination as a result of Eircom's provision of regulated components within SV. The proposed further specifications of the transparency obligations will support the proposed amendments to the price control and the existing non-discrimination obligations and will clarify the scope of the obligation in the context of the SV service. Therefore, given the reasons above and referencing the competition problems noted in the supporting consultations to the SMP decisions; ComReg believes it is appropriate to amend the price control obligations and further specify the transparency obligations in the markets of Call Origination and Call Termination.

- 3.22 ComReg believes that its proposals should not impact end users because it does not affect Eircom's freedom to price calls in retail markets. In fact ComReg believes there should be a longer term benefit from increased competition, or at least that competition provided at the retail level through the provision of SV services will not be adversely affected.

4 Price control: proposed margin (price) squeeze test

- 4.1 This consultation proposes to amend the price control to add the specific requirement not to cause a margin/price squeeze between the price of the component parts of a SV service and the pricing of the corresponding wholesale Call Origination and Call Termination products for interconnected OAOs.
- 4.2 To assess the appropriate costs in the margin (price) squeeze test which will set minimum prices/“price floors” below which Eircom cannot price the component parts of call origination and call termination in its provision of SV services, ComReg sent data requests to Eircom and a number of OAOs. ComReg has reviewed and considered those responses in its proposal to amend the price control to set minimum prices for the component parts of call origination and call termination in Eircom’s provision of SV services.
- 4.3 Set out below are ComReg’s preliminary views on the key aspects of the margin (price) squeeze test and the proposed minimum prices for the component call origination and call termination parts of Eircom’s provision of SV services. ComReg is seeking respondents’ views on those specifics before making a final decision on the margin (price) squeeze test and the associated minimum prices.
- 4.4 The first consideration is for what type of OAO the margin (price) squeeze test should be assessed.

What type of OAO?

- 4.5 To specify the margin (price) squeeze price control test, the type of OAO that the additional price control should protect from possible margin (price) squeeze needs to be considered.
- 4.6 One option is that the OAO needs to be as efficient as Eircom (an Equally Efficient operator ‘EEO’); this would mean that such a fixed OAO would need to have invested in interconnection to the same level as Eircom. Currently, no OAO has done this. Therefore, ComReg is of the preliminary view that it would not be appropriate in this instance to use an EEO standard as to do so would give Eircom an advantage, namely the advantage of its incumbency. Furthermore, ComReg is of the preliminary view that an EEO offering primary call origination and primary call termination would have additional costs over Eircom which do not exist for Eircom, for example, additional costs associated with the regulated CPS/WLR product, such as interconnect circuits, which would not need to be borne by Eircom and “local call disadvantage”³¹.
- 4.7 Another option would be utilising a Reasonably Efficient Operator (‘REO’) standard, set by reference to Eircom’s competitors. To utilise a REO standard would require OAOs making available reliable and robust cost data for use in the margin (price) squeeze test.

³¹ For certain types of calls, i.e. calls that are originated and terminated on the same local exchange (Eircom’s exchange) or adjacent local exchange which have a direct link between them, OAOs suffer a routing inefficiency known as ‘tromboning’ which results in a cost disadvantage in handling local calls when compared to Eircom. The tromboning effect means that it costs OAOs more to carry a local call than Eircom.

- 4.8 A third option would be a Similarly Efficient Operator ('SEO') standard, which is set by reference to Eircom's prices/costs but adjusted for economies of scale differences.
- 4.9 ComReg is of the preliminary view that a SEO standard is appropriate as the SEO standard recognises that the hypothetical OAO would not have interconnected to the same level as the incumbent and therefore would not benefit from the same economies of scale and scope.
- 4.10 To ascertain the SEO, ComReg proposes to utilise Eircom's efficiently incurred costs, which are utilised in the pricing of Eircom's regulated components, adjusted to reflect different economies of scale based on the interconnection structure of a hypothetical OAO. ComReg has a number of options in setting the level of interconnection of this hypothetical OAO, namely;
- 4.10.1 Weighted Average Level - ComReg could set the assumed level of interconnection for the hypothetical OAO based on the weighted average level for all existing interconnected OAOs offering SV. This would imply, 66% primary, 24% single tandem and 10% double tandem (based on data supplied by Eircom), or
- 4.10.2 More Interconnected Level - ComReg could set the assumed level of interconnection for the hypothetical OAO at the level of a more interconnected OAO offering provision of SV services would be at a much higher percentage of primary interconnection than the average. This would imply interconnection at 88% primary and 12% single tandem (based on data supplied by OAOs and Eircom).
- 4.10.3 Lower Interconnected Level - ComReg could set the assumed level of interconnection for the hypothetical OAO at the level of an lower interconnected OAO offering provision of SV services in the margin (price) squeeze test which would be at a much lower percentage of primary interconnection than the average. This would imply interconnection at 12% primary, 70% single tandem and 18% double tandem (based on data supplied by OAOs and Eircom).
- 4.11 ComReg is of the preliminary view that it is appropriate to use the more conservative structure of the Lower Interconnected Level OAO offering a SV service as the hypothetical OAO. ComReg believes that it mitigates the potential for a margin (price) squeeze against any interconnected OAOs currently offering competing SV services. Also, ComReg believes that this is appropriate given the critical stage of development and roll out of LLU. ComReg is of the preliminary view that to utilise a level of interconnection above the lower level of interconnection could result in lower interconnected OAOs who provide SV being squeezed and could reduce competition in areas where there is less primary interconnection. ComReg believes that this approach should maintain and sustain competition in the provision of SV services.
- 4.12 ComReg proposes to keep the hypothetical OAO under review and may consider moving to the Weighted Average Level of interconnected hypothetical OAO if competitive conditions indicate that this is appropriate. In particular, ComReg would also have to be reasonably satisfied that transparency and non-discrimination

by Eircom in its provision of SV services have been clearly demonstrated before a different level of interconnection structure is considered in the test.

- 4.13 Also, ComReg wishes to point out for the avoidance of doubt that the SEO approach proposed here is for the specific purpose of the margin (price) squeeze test in the markets of Call Origination and Call Termination. It does not impact on the inputs to the current Net Revenue Test, which is based on an EEO and which is utilised to assess whether Eircom is margin (price) squeezing in any bundled offer of retail fixed narrowband access³².
- 4.14 ComReg would welcome respondents' views on these preliminary views.
- 4.15 The next consideration is over what time period should the margin (price) squeeze test be conducted.

Over what time period?

- 4.16 The margin (price) squeeze price control could be assessed at a point in time (a static test) or over a longer time period (a dynamic test). ComReg is of the preliminary view that a static test is preferable for the following reasons:
- 4.16.1 A dynamic test would have to rely on forecasts of costs, which can be unreliable.
- 4.16.2 A dynamic test may allow anti-competitive behaviour on the basis that that initial losses can be recovered by future profits. Further, competitors, without the advantage of incumbency, may not be able to absorb initial losses.
- 4.17 ComReg would welcome respondents' views on the appropriate time period to assess the margin (price) squeeze test.
- 4.18 The next consideration is at what level of aggregation the margin (price) squeeze should be assessed.

At what level of aggregation?

- 4.19 As noted earlier in this document, call origination and call termination is currently priced at day, evening and weekend tariffs. Based on the responses received to its data requests, ComReg understands that the commercial offers of provision of SV services tend to be priced by day, evening and weekend and differentiate between on-net and off-net calls. ComReg is of the preliminary view that the margin (price) squeeze test should be assessed for the relevant combination of off-net and on-net by time of day gradient (i.e. day, evening and weekend). As call durations differ between on-nets and off-nets, ComReg has used Eircom's retail traffic data to establish an average on-net and off-net call duration. ComReg would welcome respondents' views on this and any (confidential) data OAOs may have for consideration in the margin (price) squeeze test.

³² See ongoing consultation document 10/01'Consultation and draft decision: further specification of the obligation not to unreasonably bundle pursuant to D07/61' for further information on the current Net Revenue Test used as a bright line test to assess whether a bundle that includes retail fixed narrowband access is reasonable.

- 4.20 ComReg believes that this proposal reflects the actual pricing of these regulated components and ensures that OAOs do not need to reproduce the portfolio of Eircom to recover its efficiently incurred cost.
- 4.21 As it is proposed that the margin (price) squeeze test should be assessed by time of day gradient, that is, by day, evening and weekend, ComReg is of the preliminary view that a time of day gradient should be applied to any wholesale input that has a 24 hour price. ComReg believes that this should reflect the costing decisions made by OAOs in setting the commercial pricing for the provision of SV services. Furthermore, ComReg is of the preliminary view that applying a time of day gradient to these prices and costs is consistent with the current wholesale pricing structure for call origination and call termination as well as with the current retail pricing structure for the voice service.
- 4.22 ComReg would welcome respondents' views on these preliminary views in relation to the level of aggregation.
- 4.23 The next consideration is what cost standard should be utilised in the margin (price) squeeze price control test.

What cost standard?

- 4.24 In considering the cost standard to be utilised in the margin (price) squeeze price control test ComReg considered the lower thresholds of average variable cost and average avoidable cost and the respectively higher thresholds of long run average incremental cost ("LRAIC plus") and average total cost³³ ("ATC").
- 4.25 'LRAIC plus' is defined to include all of the variable and fixed costs that are directly attributable to the activity concerned plus an allocation of the joint and common costs. 'LRAIC plus' is a forward looking cost measure with efficiency adjustments made as required.
- 4.26 ComReg believes that using LRAIC plus includes appropriate amounts of variable, fixed and common costs, which is the calculus faced by any operator when deciding to enter the market or expand in the market. ComReg is of the preliminary view that to not include common costs would advantage Eircom relative to OAOs as Eircom has significant economies of scope. Therefore ComReg is of the preliminary view that the choice of cost standard to be utilised in the margin (price) squeeze test should be 'LRAIC plus'.
- 4.27 ComReg would welcome respondents' views on this preliminary view.

³³ ATC is defined as average total cost and includes all variable, fixed, common and joint costs incurred by the business as a whole. It is a Fully Allocated Cost. ATC is normally based on historical cost data from Eircom's HCA regulatory accounts but may include some current changes where there is a known revised cost going forward.

Q. 3. Do you agree or disagree with ComReg’s preliminary views on the proposed structure of the price control margin (price) squeeze test – in particular that the margin (price) squeeze test: will be assessed based on a similarly efficient operator standard, will be assessed at a static point in time, will be assessed by time of day gradient (i.e. day, evening and weekend), and uses ‘LRAIC plus’ as its cost standard? Please explain your response in detail.

Proposed costs to be taken into account in setting the minimum prices for call origination and call termination when provided in SV

4.28 ComReg proposes to take the costs facing a hypothetical interconnected OAO offering SV services into account in calculating the minimum prices/price floors of the regulated components of the SV product for the margin (price) squeeze tests. These costs include the regulated prices of call origination and call termination applicable to the assumed level of interconnection, the cost of the interconnect paths (“I/C paths”) with the assumed level of interconnection and other network, billing and carrier administration costs.

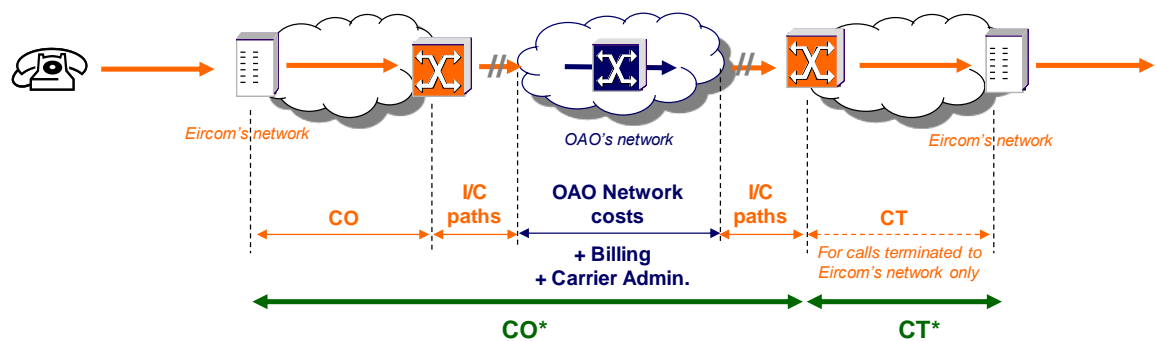


Figure 3: Proposed costs to be considered in the price control margin (price) squeeze test - “CO” means call origination / “CT” means call termination

4.29 For the assessment of the squeeze, ComReg proposes to assess call origination and call termination separately as each of these market is subject to a separate price control obligation.

Minimum price for call origination offered by Eircom in SV

4.30 ComReg proposes to calculate the appropriate minimum price for primary call origination when offered by Eircom in a SV product, by adding the following costs;

4.30.1 The applicable RIO interconnection call origination rates that are charged to interconnected OAOs will be applied to the hypothetical OAO structure to get

a cost. As discussed earlier in this document, ComReg proposed a hypothetical OAO interconnection structure of 12% primary, 70% single tandem and 18% double tandem (“Lower Interconnected Level”).

- 4.30.2 The cost of another wholesale service from Eircom that interconnected OAOs must purchase in the minimum price for call origination, namely interconnect paths. ComReg proposes to utilise the cost³⁴ of interconnect paths for the hypothetical Lower Interconnected Level OAO assumed and this cost will be adjusted using the time of day gradient applied by Eircom on its call origination.
- 4.30.3 The internal costs of the SEO, namely its own network costs and the specific billing and carrier administration expenditure. For the SEO network costs, ComReg proposes to base this on ComReg’s Bottom Up LRAIC model (“BU-LRAIC”) and proposes to adjust this mean value using the time of day gradient applied by Eircom for its pricing of call origination. For the specific billing and carrier administration expenditure, ComReg proposes to set this based on Eircom’s 2010/11 Top Down model and again adjust this for a time of day gradient applied by Eircom for its pricing of call origination.

Minimum price for call termination offered by Eircom in SV service

- 4.31 ComReg proposes that the appropriate minimum price for primary call termination when offered by Eircom in a SV product will be calculated based on Eircom’s RIO price list by utilising the hypothetical Lower Interconnected Level OAO and the applicable RIO interconnection call termination rates that are charged to interconnected OAOs.

ComReg proposes to keep the minimum call origination and call termination prices when offered in a SV service updated based on the latest wholesale prices set, the latest Top Down model and any updates to ComReg’s BU-LRAIC model.

- 4.32 ComReg would welcome respondents’ views on this.

Q. 4. Do you agree or disagree with ComReg’s preliminary views on the costs to be included in the margin (price) squeeze test? Please explain your response in detail.

Structuring the minimum prices for the margin (price) squeeze tests

- 4.33 ComReg believes that there are two possible options for structuring the minimum prices/“price floors” for the margin (price) squeeze tests.
- 4.34 Option 1 is that the margin (price) squeeze tests would be assessed on call origination and call termination price floors offered in provision of SV services for two types of call (on-net and off-net) and three times of day (day, evening and

³⁴ The cost is informed by the cost of I/C paths charged by Eircom to each interconnected OAO offering SV – ComReg obtained this information by data request.

weekend). This would therefore result in six price floors that would have to be respected in order to avoid a margin (price) squeeze, namely on-net by day, evening and weekend (based on the combination of one call origination and one call termination within Eircom’s network) and off-net by day, evening and weekend (based on one call origination only within Eircom’s network).

- 4.35 ComReg believes that Option 1 would offer flexibility to Eircom as, for example, it could price its provision of SV services off-net calls to different destinations at different prices once it overall respects the price floor for off-net by day, evening and weekend. ComReg believes that this option closely reflects the current pricing of Eircom’s provision of SV services offerings and closely matches the existing price structure of products in the markets of Call Origination and Call Termination offered to interconnected OAOs which is different by time of day.
- 4.36 Option 2 is that the price control is simply for two price floors. Firstly a 24 hour rate set for on-net (based on the combination of one call origination and one call termination within Eircom’s network) and secondly off-net (based on one call origination only within Eircom’s network). This is a much more flexible price control for Eircom as it would be able to adjust its provision of SV services tariffs on the different periods of the day once it respects the applicable price floor overall for the 24 hour rate. Therefore, to implement this price control would require an appropriate split of day/evening/weekend to be determined.
- 4.37 ComReg is of the preliminary view that Option 1 is more appropriate at this time as it reflects the current pricing of call origination and call termination. Based on the proposed approach of the Lower Interconnected Level hypothetical OAO and subject to respondents’ views, Option 1 could be as follows:

Indicative minimum prices for call origination and call termination when provided in SV services by Eircom under proposed Option 1:

Price control	Option 1		
	Day (Peak)	Evening (Off-peak)	Weekend
Call origination off-net and Call origination on-net respectively	1.352	0.732	0.643
Call termination on-net	0.665	0.368	0.322
Total on-net (CO&CT)	2.017	1.100	0.965
Total off-net (CO)	1.352	0.732	0.643

Euro cent per minute – “CO” means call origination, “CT” means call termination

- 4.38 The above also sets out indicative minimum prices that will apply for Eircom's offer of call origination and call termination when provided in SV services if, subject to the views of respondents, ComReg's preliminary views in relation to the proposed margin (price) squeeze test are maintained in the final decision e.g. use of Lower Interconnected Level hypothetical OAO etc. Other applicable termination rates will be added to the above minimum off-net prices as required, for example, if the call terminates off-net on a mobile network the applicable mobile termination rate will be added to the off-net minimum price.
- 4.39 Finally, ComReg believes that the use of the 'LRAIC plus' cost standard together with the use of the applicable regulated wholesale prices in the margin (price) squeeze test takes into account investment made by Eircom and allows a reasonable rate of return in accordance with Regulation 14(2) of the Access Regulations.
- 4.40 ComReg would welcome respondents' views on this.

Q. 5. Do you agree or disagree with ComReg's preliminary view in relation to the structure of the minimum prices/price floors for the margin (price) squeeze test? Please explain your response in detail.

5 Conclusion

Any issues not considered in this consultation?

- 5.1 ComReg would also welcome any views respondents have on issues that ComReg has not considered in relation to the amendment of the price control obligations and further specification of the transparency obligations in the Call Origination and Call Termination markets.

Q. 6. Are there any issues in relation to the amendment of the price control obligations and further specification of the transparency obligations in the markets of Call Origination and Call Termination that ComReg has not considered in this consultation? If so, please document and explain those issues fully and provide examples where appropriate.

Preliminary views expressed

- 5.2 All of the above are preliminary views expressed by ComReg. ComReg, in this consultation, is seeking views on these preliminary views and conclusions. ComReg in forming its final decision will consider respondents' views to this consultation and will take utmost account of comments, if any, from the European Commission and as such the final decisions may be different to the draft Decision Instruments included in this consultation.

Q. 7. Do you agree or disagree with the preliminary views expressed by ComReg? If not, please explain which preliminary view(s) you disagree with and detail what specific amendments you believe are required.

6 Legal Basis

- 6.1 It is proposed that any decisions which follow as a result of this consultation would amend the price control obligations and further specify the transparency obligations set out ComReg Decision D04/07³⁵ and ComReg Decision D06/07³⁶ (Call Origination and Call Termination markets respectively).
- 6.2 It is proposed that the price controls be amended to include the additional *ex ante* general requirements not to cause a margin/price squeeze and the specific requirements not to cause a margin/price squeeze between the price of the component parts of a SV service and the pricing of the corresponding wholesale Call Origination and Call Termination products for interconnected OAOs. The proposed test to assess compliance with the specific requirements is set out in the body of this consultation document.
- 6.3 It is proposed that the transparency obligations in the Call Origination and Call Termination markets be further specified to clarify that Eircom is obliged to make public the minimum prices of the call origination and call termination component parts of its SV service in these markets (i.e. the requirement to publish will apply to the regulated component parts of the SV product) and detailed documentation on all terms conditions, service level agreements, guarantees and other product related assurances associated with its provision of call origination and call termination within SV services.
- 6.4 Regulations 9, 10, 14 and 17 of the Access Regulations³⁷, section 10(3) of the Communications Regulation Acts 2002 to 2010 together with the market analyses culminating in 2007 in a finding that Eircom had SMP in the markets of Call Origination (ComReg Decision D04/07) and Call Termination (ComReg Decision D06/07) are the applicable legal bases for the proposed amendments to the price controls and further specifications of the transparency obligations.
- 6.5 ComReg considers that the proposed amendments to the price control obligations and the further specifications of the transparency obligations are appropriate, in accordance with Regulation 9(1) of the Access Regulations.
- 6.6 ComReg will notify any decision to the European Commission in accordance with Regulation 20 of the Framework Regulations³⁸ and in accordance with Regulation 9(4) of the Access Regulations.

³⁵ 'Market Analysis – Interconnection and 'Market Analysis –Interconnection Market Review Wholesale Call Origination & Transit Services' dated 5 October 2007, Document No. 07/80

³⁶ 'Market Analysis – Interconnection Market Review Fixed Wholesale Call Termination Services' dated 21 December 2007, Document No. 07/09

³⁷ The European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003, S.I. No. 305 of 2003. (hereafter "the Access Regulations")

³⁸ The European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003, S.I. No. 307 of 2003.

- 6.7 The proposed amendment to the price control obligations will in ComReg's view ensure that the SMP operator does not "apply a price squeeze to the detriment of end users", in accordance with Regulation 14(1) of the Access Regulations.
- 6.8 In considering the proposed amendment to the price control obligations ComReg will take into account any investment made by the SMP operator in electronic communications networks or services or associated facilities which ComReg considers relevant and allow the operator a reasonable rate of return on adequate capital employed, taking into account the risks involved, in accordance with Regulation 14(2) of the Access Regulations.
- 6.9 It is ComReg's view that the proposed amendments to price controls will also serve to "promote efficiency and sustainable competition and maximise customer benefits" in accordance with Regulation 14(3) of the Access Regulations.

7 Draft Decisions

7.1 ComReg would appreciate respondents' views on the draft decisions as set out below.

Q. 8. Do respondents believe that the draft text of the proposed decision instruments are from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please elaborate on your response.

DECISION INSTRUMENT (WHOLESALE CALL ORIGINATION)

1. STATUTORY AND LEGAL POWERS

1.1. This Decision is made by the Commission for Communications Regulation ("ComReg"):

1.1.1. Pursuant to Regulations 9, 10, 14 and 17 of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003³⁹; and

1.1.2. Pursuant to and having regard to the Significant Market Power ("SMP") designation on Eircom Limited in the national wholesale market for call origination services on the public telephone network provided at a fixed location contained in ComReg Decision D04/07⁴⁰; and

1.1.3. Having, where appropriate, complied with policy decisions made by the Minister for Communications, Marine and Natural Resources⁴¹; and

1.1.4. Pursuant to the functions and objectives of the Commission for Communications Regulation as set out in Sections 10 and 12 respectively of the Communications Regulation Acts 2002 to 2010; and

1.1.5. Having had regard to the analysis and reasoning set out in ComReg Decision No. D04/07, which shall, where necessary be construed together with this Decision Instrument; and

³⁹ S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003.

⁴⁰ 'Market Analysis – Interconnection and 'Market Analysis –Interconnection Market Review Wholesale Call Origination & Transit Services' dated 5 October 2007, Document No. 07/80.

⁴¹ Dated 21st February 2003 and 26 March 2004.

1.1.6. Having taken into account the views of interested parties following a public consultation⁴²; and

1.1.7. Having notified the draft measure and the reasoning upon which the measure is based to the European Commission, and the national regulatory authorities in other EU Member States and having taken into account any comments made by these parties⁴³.

2. DEFINITIONS

2.1. In this Decision Instrument, unless the context suggest otherwise:

“Access Regulations” means the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003. (S.I. No. 305 of 2003);

“Call Origination market” means the national wholesale market for call origination services on the public telephone network provided at a fixed location (hereafter “the Call Origination market”) contained in ComReg Decision D04/07 ‘Market Analysis –Interconnection Market Review Wholesale Call Origination & Transit Services’ (“D04/07”)

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

“SV service” means the provision of a wholesale switchless voice service which allows an operator to purchase end-to-end call services without the need to have its own interconnection infrastructure.

3. SCOPE AND APPLICATION

3.1. This Decision Instrument applies to Eircom Ltd. The Decision is taken pursuant to Regulations 9, 10, 14 and 17 of the Access Regulations and s.10 and s.12 of the Communications Regulation Acts 2002 to 2010 and amends the price control and further specifies the transparency obligations imposed in D04/07.

3.2. This Decision Instrument is binding upon Eircom Ltd. and Eircom Ltd. shall comply with it in all respects.

⁴² Pursuant to its obligation under Regulation 19. of S.I. No. 307/2003 European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003.

⁴³ Pursuant to its obligation under Regulation 20 of S.I. No. 307/2003 European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003.

4. AMENDMENT TO OBLIGATION RELATING TO PRICE CONTROL

General

4.1. The following text shall be inserted following s.10.7 of the Decision Instrument (Wholesale Call Origination) of Annex A of D04/07:

4.2. “ 10.8 Eircom shall not cause a margin (price) squeeze.

10.9 Without prejudice to the generality of s.10.8, Eircom shall not cause a margin (price) squeeze between the price for the Call Origination component part of a SV service and the price of the corresponding wholesale Call Origination product available for an interconnected operator. The assessment of same shall be based on the test set out in Response to Consultation [XX] at section [XX] and the minimum prices published by Eircom at section 5.1.1.1 of [XX].”

5. DIRECTION FURTHER SPECIFYING REQUIREMENTS TO BE COMPLIED WITH RELATING TO THE OBLIGATION OF TRANSPARENCY

5.1. For the purpose of further specifying requirements to be complied with relating to Eircom’s transparency obligation in the Call Origination market, at s.8.1 and 8.2(iii) of the Decision Instrument (Wholesale Call Origination) of Annex A of D04/07 Eircom is directed to ensure that the Reference Interconnect Offer includes;

5.1.1.1. The minimum prices of the Call Origination component part of a SV service.

5.1.1.2. The terms, conditions, service level agreements, guarantees and other product related assurances of the Call Origination component part of a SV service.

6. STATUTORY POWERS NOT AFFECTED

6.1. Nothing in this Decision Instrument shall operate to limit ComReg in the exercise and performance of its statutory functions, powers and duties under any primary or secondary legislation (in force prior to or after the effective date of this decision instrument) from time to time as the occasion may require.

7. MAINTENANCE OF OBLIGATIONS

7.1. Unless expressly stated otherwise in this Decision Instrument, all obligations and requirements on Eircom including those set out in D04/07, are continued in force by this Decision Instrument and Eircom shall comply with same.

7.2. 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), clauses(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.

8. EFFECTIVE DATE

8.1. This Decision Instrument shall be effective from [date of decision] until further notice by ComReg.

[]

CHAIRPERSON

THE COMMISSION FOR COMMUNICATIONS REGULATION

THE [] DAY OF [] 2010

DECISION INSTRUMENT (WHOLESALE CALL TERMINATION)

1. STATUTORY AND LEGAL POWERS

1.1. This Decision is made by the Commission for Communications Regulation (“ComReg”):

1.1.1. Pursuant to Regulations 9, 10, 14 and 17 of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003⁴⁴; and

1.1.2. Pursuant to and having regard to the Significant Market Power (“SMP”) designation on Eircom Limited in 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 contained in ComReg Decision D06/07⁴⁵; and

1.1.3. Having, where appropriate, complied with policy decisions made by the Minister for Communications, Marine and Natural Resources⁴⁶; and

1.1.4. Pursuant to the functions and objectives of the Commission for Communications Regulation as set out in Sections 10 and 12 respectively of the Communications Regulation Acts 2002 to 2010; and

1.1.5. Having had regard to the analysis and reasoning set out in ComReg Decision D06/07, which shall, where necessary be construed together with this Decision Instrument; and

1.1.6. Having taken into account the views of interested parties following a public consultation⁴⁷; and

1.1.7. Having notified the draft measure and the reasoning upon which the measure is based to the European Commission, and the national regulatory authorities in other EU Member States and having taken into account any comments made by these parties⁴⁸.

⁴⁴ S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003.

⁴⁵ ‘Market Analysis – Interconnection Market Review Fixed Wholesale Call Termination Services’ dated 21 December 2007, Document No. 07/09.

⁴⁶ Dated 21st February 2003 and 26 March 2004.

⁴⁷ Pursuant to its obligation under Regulation 19. of S.I. No. 307/2003 European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003.

⁴⁸ Pursuant to its obligation under Regulation 20 of S.I. No. 307/2003 European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003.

2. DEFINITIONS

2.1. In this Decision Instrument, unless the context suggest otherwise:

“Access Regulations” means the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003. (S.I. No. 305 of 2003);

“Call Termination 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 contained in ComReg Decision D06/07 ‘Market Analysis – Interconnection Market Review Fixed Wholesale Call Termination Services’(“D06/07”)

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

“SV service” means a provision of wholesale switchless voice services which allows an operator to purchase end-to-end call services without the need to have its own interconnection infrastructure.

3. SCOPE AND APPLICATION

3.1. This Decision Instrument applies to Eircom Ltd. The Decision is taken pursuant to Regulations 9, 10, 14 and 17 of the Access Regulations and s.10 and s.12 of the Communications Regulation Acts 2002 to 2010 and amends the price control and further specifies the transparency obligations imposed in D06/07.

3.2. This Decision Instrument is binding upon Eircom Ltd. and Eircom Ltd. shall comply with it in all respects.

4. AMENDMENT TO OBLIGATION RELATING TO PRICE CONTROL

4.1. The following text shall be inserted following s.10.2 of Decision Instrument at Appendix A of D06/07

4.2. “10.2A Eircom shall not cause a margin (price) squeeze.

10.2B Without prejudice to the generality of s. 10.2A, Eircom shall not cause a margin (price) squeeze between the price for the Call Termination component part of a SV service and the price of the corresponding wholesale Call Termination product available for an interconnected operator. The assessment of same shall be based on the test set out in Response to Consultation [XX] at section [XX] and the minimum prices published by Eircom at section 5.1.1.1 of [XXXX].”

5. DIRECTION FURTHER SPECIFYING REQUIREMENTS TO BE COMPLIED WITH RELATING TO THE OBLIGATION OF TRANSPARENCY

5.1. For the purpose of further specifying requirements to be complied with relating to Eircom's transparency obligation in the Call Termination market at s.8.1 and 8.2(iii) of Decision Instrument at Appendix A of D06/07, Eircom is directed to ensure that the Reference Interconnect Offer includes:

5.1.1.1. The minimum prices of the Call Termination component part of a SV service

5.1.1.2. The terms, conditions, service level agreements, guarantees and other product related assurances of the Call Termination component part of a SV service.

6. STATUTORY POWERS NOT AFFECTED

6.1. Nothing in this Decision Instrument shall operate to limit ComReg in the exercise and performance of its statutory functions, powers and duties under any primary or secondary legislation (in force prior to or after the effective date of this decision instrument) from time to time as the occasion may require.

7. MAINTENANCE OF OBLIGATIONS

7.1. Unless expressly stated otherwise in this Decision Instrument, all obligations and requirements on Eircom including those set out in D06/07, are continued in force by this Decision Instrument and Eircom shall comply with same.

7.2. 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), clauses(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.

8. EFFECTIVE DATE

8.1. This Decision Instrument shall be effective from [date of decision] until further notice by ComReg.

[]
CHAIRPERSON
THE COMMISSION FOR COMMUNICATIONS REGULATION
THE [] DAY OF [] 2010

8 Submitting Comments

- 8.1 All comments are welcome; however, it will make the task of analysing responses easier if comments are referenced to the relevant question numbers from this document.
- 8.2 The consultation period will run from 28 September, 2010 to 9 November, 2010 during which ComReg welcomes written comments on any of the issues raised in this paper.
- 8.3 Having analysed and considered the comments received, ComReg will review the proposed additional price control obligations and further specifications of the transparency obligations in the markets of Call Origination and Call Termination and will publish a Response to Consultation which will, *inter alia* summarise the responses to the consultation.
- 8.4 In order to promote further openness and transparency ComReg will publish all respondents' submissions to this consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg Document No. 05/24. ComReg appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful. Therefore, respondents are requested to clearly identify confidential material and place confidential material in a separate annex to their response

Appendix A – Regulatory Impact Assessment

Role of the Regulatory Impact Assessment

- A1. Regulatory Impact Assessment ('RIA') is an analysis of the likely effect of proposed new regulation or regulatory change. The RIA should help identify regulatory options, and should establish whether 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 different stakeholders.
- A2. 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 Guidelines⁴⁹, adopted under the Government's Better Regulation programme. Section 13(1) of the Communications Regulation Act 2002 - 2010 ("the Act"), requires ComReg to comply with Ministerial directions issued. Policy Direction 6 of February 2003⁵⁰ 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.
- A3. In conducting the RIA, ComReg has had regard to the RIA Guidelines, while recognising that regulation by way of issuing decisions, e.g. revising obligations or specifying requirements in addition to promulgating secondary legislation, may be different to regulation exclusively by way of enacting primary or secondary legislation. ComReg's ultimate aim in conducting a RIA is to ensure that all proposed measures are appropriate, proportionate and justified. To ensure that a RIA is proportionate and does not become overly burdensome, a common sense approach should be taken towards a RIA. 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.

Steps Involved

- A4. ComReg has decided to carry out a RIA in order to demonstrate that it has considered and evaluated the regulatory options available, with due regard to necessity, effectiveness, proportionality, transparency, accountability and consistency. ComReg will consider all respondents' views to this consultation and therefore in finalising the decisions, the draft decisions as set out in this document may change and if so, ComReg will assess whether a further RIA should be conducted, though it is not mandatory for ComReg to do so.

⁴⁹ See 'REVISED RIA GUIDELINES: How to conduct a Regulatory Impact Analysis' dated June 2009 @ http://www.betterregulation.ie/eng/Publications/Revised_RIA_Guidelines.pdf.

⁵⁰ Ministerial Policy Direction made by the Minister of Communications, Marine and Natural Resources on 21 February 2003.

A5. In assessing the available regulatory options, ComReg’s approach to RIA follows five steps as follows:

Step 1: describe the policy issue and identify the objectives

Step 2: identify and describe the regulatory options

Step 3: determine the impacts on stakeholders

Step 4: determine the impacts on competition

Step 5: assess the impacts and choose the best option

Describe the policy issue and identify the objectives

A6. The purpose of the consultation is to seek respondents’ views on amending the price control and transparency obligations in the markets of Call Origination and Call Termination. The purpose of the further specification of the transparency obligations is to clarify that Eircom is obliged to publish in its Reference Interconnect Offer and associated price list, the minimum prices of the regulated component parts of its Switchless Voice (‘SV’) services⁵¹ and the terms, conditions, service level agreements, guarantees and other product related assurances of the component parts of a SV service in the Call Origination and Call Termination markets. This further specification is purely for the purpose of clarifying the scope of these transparency obligations and does not amount to new regulation or regulatory change. However, in the RIA, ComReg has considered the possibility of amending the transparency obligation to reduce the level of transparency required for call origination and call termination when provided by Eircom in its commercial SV services.

A7. The objective of the additional price controls is to ensure that Eircom does not margin (price) squeeze in the markets of Call Origination and Call Termination and in particular when regulated components within those markets are sold within the provision of Switchless Voice (‘SV’) services.

A8. In the past Eircom did not provide SV services and the issue of ensuring that Eircom’s regulatory obligations remained appropriate never arose in ComReg’s consideration of the appropriate price control for the Call Origination and Call Termination markets. However, given the forward-looking nature of the market definition process it would be clearly inappropriate to limit the scope of the market to Eircom’s existing wholesale products. This is reflected in the SMP obligations imposed on Eircom in these markets, which clearly envisage that new wholesale products may be offered. Also, ComReg believes that Eircom’s provision of SV services may bypass the important regulatory goal of infrastructure investment by offering Call Origination and Call Termination at rates applicable to a higher level of infrastructure investment (i.e. primary switching) that the OAO availing of the provision of SV services may not have made. Without an appropriate price control obligation, ComReg believes that this potential development would likely result in OAOs not being encouraged to make efficient infrastructure investment and would

⁵¹ Known by Eircom as ‘White Label Voice’

likely penalise those OAOs who have already made such infrastructure investments to avail of the lower primary interconnection rates.

A9. ComReg considers that an appropriate price control should ensure that any price charged by Eircom in the markets of Call Origination and Call Termination does not foreclose efficient investment made or being made by OAOs in their own voice infrastructure. It is envisaged that the control specified in this consultation should ensure the appropriate economic space for the “build” or “buy” options are maintained consistent with ComReg’s regulatory and statutory objectives. Therefore, in this proposed amendment of the price control obligations, ComReg has considered its statutory objectives, as set out in section 12 of the Act in particular the objectives in exercising its function in relation to the provision of electronic communications networks, electronic communications services and associated facilities:

- To promote the interests of users within the Community, and
- To promote competition

And the obligation on ComReg to take all reasonable measures which are aimed at achieving its statutory objectives, including inter alia, in so far as the promotion of competition is concerned.

- Ensuring that there is no distortion or restriction of competition in the electronic communications sector;
- Encouraging efficient investment in infrastructure and promoting innovation.

Identify and describe the regulatory options

A10. In essence, the regulatory options under consultation are:

1. To not amend the price control obligations in the markets of Call Origination and Call Termination.
2. To amend the price control obligations in the markets of Call Origination and Call Termination to include an ex-ante obligation not to margin (price) squeeze.
3. To amend the transparency obligation in the markets of Call Origination and Call Termination to exempt Eircom from publishing the prices, terms, conditions etc of the call origination and call termination components when provided in SV services.

A.11 In relation to the proposed specific requirement not to cause a margin/price squeeze between the price of the component parts of a SV service and the pricing of the corresponding wholesale Call Origination and Call Termination products for interconnected OAOs, possible specification options for the margin (price) squeeze test include the following:

1. whether the test is based on an Equally Efficient Operator (‘EEO’), Reasonably Efficient Operator (‘REO’) or Similarly Efficient Operator (‘SEO’) test?
2. whether the hypothetical SEO for the test is based on:

- (i) OAO providing SV services which is interconnected more than average i.e. more primary interconnection
 - (ii) average interconnected OAO providing SV services
 - (iii) OAO providing SV services which is interconnected at lower than average i.e. less primary interconnection
3. whether the test is conducted on a product by product basis?
 4. whether 'Long Run Average Incremental Cost plus' is the appropriate measure of cost?

A.12 As regards the above options, the following key considerations arise:

- i. In its assessment of competition problems in the Call Origination and Call Termination markets, ComReg identified the possible leverage of market power by Eircom both horizontally and vertically. Further to the competition problems identified in the original market reviews, ComReg is of the preliminary view that Eircom would have incentives to reinforce and protect its SMP position in the upstream wholesale call markets through its pricing of its SV service. As ComReg believes that Eircom's pricing of its provision of SV services has the potential to undermine existing and future infrastructure investments by interconnected OAOs, ComReg believes that this would in turn have the effect of delaying/impeding entry and competition in the Call Origination and Call Termination markets. By virtue of Eircom's SMP position in the Call Origination and Call Termination markets and its activities in the related provision of SV services, ComReg believes that it has both the ability and incentives to engage in pricing of SV services that could significantly undermine efficient infrastructure investment and further reinforce entry barriers in the Call Origination and Call Termination markets. Given this potential risk of anti-competitive behaviour, amending the price control to include a general *ex-ante* regulatory obligation not to margin (price) squeeze is considered by ComReg to be appropriate.
- ii. In its assessment of competition problems in the Call Origination and Call Termination markets, ComReg identified the possible incentives for Eircom to act discriminatory manner. Further to the competition problems identified in the original market reviews, ComReg is of the view by virtue of Eircom's SMP position in the Call Origination, Call Transit and Call Termination markets and its activities in the related provision of SV services, that Eircom has both the ability and incentives to engage in discriminatory action in its provision of SV services that could significantly undermine infrastructure investment and further reinforce entry barriers in the Call Origination, Call Transit and Call Termination markets. It is considered that Eircom may have an incentive to offer better service to its SV customers than to its interconnected customers who offer their own competing SV service. Also, Eircom may have an incentive to utilise the information it gathers in relation to competing interconnected OAOs utilisation of the Eircom network to tailor their own competing SV offers to interconnected OAOs' SV customers. ComReg believes that such

discriminatory action by Eircom in its provision of SV services has the potential to undermine existing and future infrastructure investments by interconnected OAOs. ComReg believes that this would in turn have the effect of delaying/impeding entry and competition in the Call Origination, Call Transit and Call Termination markets. The existing non-discrimination obligation applies for call origination and call termination offered by Eircom in its provision of SV.

- iii. In the assessment of the type of operator to utilise for the proposed margin (price) squeeze test, the SEO approach recognises that even in the long-run alternative operators may not be able to compete with the SMP operator due to structural diseconomies of scale and scope, and the nature of the market. This is likely in the markets of Call Origination and Call Termination as no OAO is interconnected to the same level as Eircom. Therefore, to the extent that operators do not benefit from the same economies of scale and scope and having different unit network costs, a test based on SEO is considered more appropriate.
- iv. In the assessment of utilising and setting a hypothetical OAO, interconnected at lower than average, providing SV services, ComReg was informed by the responses to its data requests and ComReg believes that such a level is appropriate to utilise in setting the proposed minimum prices for call origination and call termination when provided by Eircom in SV services as it reduces the risk of any interconnected OAO currently providing SV services being margin (price) squeezed by Eircom.
- v. In the assessment of the margin (price) squeeze test between the price of the component parts of a SV service and the pricing of the corresponding wholesale call origination and call termination products for interconnected OAOs, it is proposed to assess this based on six price floors that must be respected in order to avoid a margin (price) squeeze, namely on-net by day/evening/weekend (based on the combination of one call origination and one call termination within Eircom's network) and off-net by day/evening/weekend (based on one call origination only within Eircom's network). In ComReg's view the application of the ex-ante margin (price) squeeze test, if introduced, will allow for enhanced transparency and confidence in the effective operation of the obligation, ensuring that there is no distortion or restriction of competition and supporting investment.
- vi. In choosing the appropriate cost standard for the calculation of retail costs ComReg considered using the lower thresholds of average variable cost ("AVC") and average avoidable cost ("AAC") and the respectively higher thresholds of, Long Run Average Incremental Cost ("LRAIC plus") and Average Total Cost ("ATC"). 'LRAIC plus' is defined to include all of the variable and fixed costs that are directly attributable to the activity concerned, plus an apportionment of joint and common costs. ComReg is proposing to use 'LRAIC plus' as it considers this costs standard to be the most appropriate as it includes appropriate amounts of variable, fixed and

common costs, which is the calculus faced by any operator when deciding to enter or expand in a market.

- vii. In the assessment of not amending the transparency obligation to exempt Eircom from publishing the minimum prices, terms, conditions etc of the call origination and call termination components in the provision of SV services, ComReg was cognisant of the limited publically available information available to interconnected OAOs to demonstrate that no discrimination is occurring in Eircom’s provision of SV services. As noted in the consultation, ComReg may consider not requiring Eircom to publish the minimum prices of its call origination and call termination components in the provision of SV services, once it is satisfied that competition is protected where appropriate and that non-discrimination is clearly demonstrated.

Determine the impacts on stakeholders and competition

A13. Having identified the possible regulatory options, the following determines the likely impacts on stakeholders and competition for taking the preferred approaches:

Summary of Impacts on Stakeholders and on Competition

Option – Price control is not amended		
Impact on incumbent	Impact on OAOs	Impact on consumer
Incumbent could be at risk of margin (price) squeeze under competition law when providing call origination and call termination inputs to interconnected OAOs versus its call origination and call termination components offered in its provision of SV services.	Interconnected OAOs who have made infrastructure investments to avail of lower primary interconnection rates may be squeezed by Eircom offering such call origination and call termination rates in its provision of SV services. Similarly, if the price control is not amended, OAOs may not invest in primary interconnection as they may perceive that there could be a margin (price) squeeze by Eircom’s future pricing of its provision of call origination and call termination in SV services.	Competing SV services, availing of Eircom’s regulated call origination and call termination components, may be squeezed by Eircom offering competing SV services below the appropriate prices for the regulated components to the detriment of competition and ultimately end consumers in the medium to long term.
Option – Price control to include obligation not to margin (price) squeeze		
Impact on incumbent	Impact on OAOs	Impact on consumer
Test is specified so it	Ensures that all OAOs	Test should ensure

should not be particularly burdensome on the incumbent.	purchase regulated components in the markets of Call Origination and Call Termination at appropriate prices reflective of their own investment in interconnection infrastructure and minimises the risk of margin (price) squeeze.	competition is maintained to the benefit of consumers.
Option – That the margin (price) squeeze test is based on a Similarly Efficient Operator – the SEO is based on lower level of interconnection than average		
Impact on incumbent	Impact on OAOs	Impact on consumer
Minimises the risk of the incumbent causing a margin (price) squeeze against any interconnected OAO currently offering competing SV services. Should not impact on the incumbent too onerously as the test is based on the incumbent’s costs for the most part but adjusted for economies of scale and scope.	Should ensure that all similarly efficient operators, availing of the wholesale input of Eircom, can compete profitably in the medium to long term.	Allows the promotion of competition by OAOs that are similarly efficient to the benefit of consumers.
Option – That the margin (price) squeeze test is conducted on a product by product basis		
Impact on incumbent	Impact on OAOs	Impact on consumer
Should not be overly onerous on the incumbent as reflects the actual pricing by Eircom of the regulated inputs in the markets of Call Origination and Call Termination	Allows the promotion of competition by OAOs which currently have a smaller range of product offerings than the incumbent.	Allows the promotion of competition by OAOs which currently have a smaller range of product offerings than the incumbent to the benefit of consumers.
Option – That the test uses ‘LRAIC plus’ as the appropriate measure of cost		
Impact on incumbent	Impact on OAOs	Impact on consumer
Should not be overly onerous on the incumbent and adoption of ‘LRAIC plus’ ensures that incumbent recovers all its	Allows the promotion of competition by OAOs as ‘LRAIC plus’ includes appropriate amounts of variable, fixed and common	Allows the promotion of competition by OAOs to the benefit of consumers as ‘LRAIC plus’ includes appropriate amounts of

<p>efficient forward looking costs including fixed, variable and common.</p>	<p>costs, which is the calculus faced by any OAOs when deciding to enter or expand.</p> <p>The ‘LRAIC plus’ cost standard includes common costs and to not include common costs would advantage Eircom relative to OAOs as Eircom has significant economies of scope.</p>	<p>variable, fixed and common costs, which is the calculus faced by any OAOs when deciding to enter or expand.</p>
<p>Option – That the transparency obligation is amended to exempt Eircom from publishing minimum prices, terms, conditions associated with call origination and call termination when provided in SV services</p>		
<p>Impact on incumbent</p>	<p>Impact on OAOs</p>	<p>Impact on consumer</p>
<p>Reduces the risk for incumbent of interconnected OAOs offering competing SV services price beating / following incumbent pricing.</p>	<p>OAOs have no visible assurance that incumbent is not margin (price) squeezing. OAOs have no visible assurance that no discrimination is occurring for the regulated components provided in Eircom’s offering of competing SV services.</p>	<p>Unclear to consumers that regulated components in Eircom’s provision of SV services is on same terms, conditions for regulated components provided to interconnected OAOs offering competing SV services and that regulatory obligations are being enforced appropriately.</p>

Assess the impacts and choose the best option

- A14. ComReg has considered the impacts identified above and is of the view that the proposed amendments of the price control obligations are for the reasons set out in this consultation justified and should foster OAO competition and should ensure that OAO’s efficient investment in interconnection infrastructure is protected.
- A15. The proposed amendments to the price control obligations will include an additional general obligation on Eircom not to impose a margin (price) squeeze on OAOs. It will also include the specific obligation to ensure that the pricing of the products and services in the markets of Call Origination and Call Termination do not squeeze other interconnected OAOs in those markets when sold within SV services. Therefore, for this specific obligation it is proposed to specify an ex-ante margin (price) squeeze test which will be utilised to set minimum prices for call origination and call termination when offered by Eircom in the provision of SV services.
- A16. ComReg proposes to further specify the transparency obligations to clarify that Eircom is required to publish the minimum prices in the Reference Interconnect

Offer ('RIO') price list together with detailed documentation on all terms, conditions, service level agreements, guarantees and other product related assurances associated with its provision of call origination and call termination within SV services in the RIO itself.

A.17 In particular ComReg is of the view that the proposed amendments are consistent with ComReg's statutory objectives under section 12 of the Act, as follows:

- a. Ensuring that there is no distortion or restriction of competition
ComReg believes that the proposed amendments to the obligations will safeguard efficient competitors from possible margin (price) squeeze by an SMP operator in the markets of Call Origination and Call Termination which helps to ensure that other OAOs' efficient infrastructure investments are not undermined. The test will ensure the selling of regulated components in the markets of Call Origination and Call Termination at appropriate prices and in a non-discriminatory manner and should thus ensure that there is no distortion or restriction of competition so that competitors, both switched and switchless OAOs, can maintain and sustain competition over the medium to long term.
- b. Encouraging efficient investment in infrastructure and promoting competition
ComReg believes that safeguarding efficient competitors from possible margin (price) squeeze by an SMP operator in the markets of Call Origination and Call Termination helps to ensure that other OAOs' efficient infrastructure investments are not undermined and therefore should encourage efficient investment in infrastructure. The proposed amendments to the price control obligations should not restrict the selling regulated components in the markets of Call Origination and Call Termination at appropriate prices and should thus ensure that competition by both switched and switchless OAOs is promoted.
- c. Promoting the interests of users within the community
ComReg believes that safeguarding efficient competitors who have made efficient interconnection infrastructure investment from possible margin (price) squeeze and discriminatory behaviour by an SMP operator in the markets of Call Origination and Call Termination helps to facilitate greater regulatory certainty for longer-term competitive entry and expansion based on efficient infrastructure investment, with positive implications for the price, choice and quality of services ultimately delivered to end-users which therefore promotes the interests of those end-users in the community.

A18. ComReg is moreover of the view that the proposed amendments to the obligations of price control in the markets of Call Origination and Call Termination set out in this consultation meet the six principles of "Better Regulation" as follows:

- i. ComReg has clearly outlined why it is **necessary** to undertake this review. As set out in the supporting market review, ComReg believes that Eircom, as SMP operator in the markets of Call Origination and Call Termination, has

the ability and incentive to leverage both horizontally and vertically and to act in a discriminatory manner. ComReg considers that the proposed margin (price) squeeze obligation is justified to protect against this possible leverage and that the specific margin (price) squeeze test is necessary as the purpose of the test is to ensure that a similarly efficient OAO availing of wholesale inputs from Eircom based on its infrastructure investment in interconnection is not margin (price) squeezed by Eircom through its pricing of the regulated components within competing SV services;

- ii. ComReg considers that it has been **effective** in addressing the potential for margin (price) squeeze and discrimination that could act as a constraint to the growth of OAOs who have made efficient infrastructure investments to avail of primary call origination and primary call termination;
- iii. ComReg considers that it has been **proportionate** in its review. ComReg believes the proposed amendments to the price control obligations are not overly burdensome or onerous on Eircom;
- iv. ComReg considers that its approach offers **transparency** in reaching the preliminary view that the obligation not to margin (price) squeeze is added to the price control in the markets of Call Origination and Call Termination. This consultation seeks respondents views on these matters which should be considered by ComReg;
- v. ComReg considers that it has been **accountable** in its review and that it has provided all of the detail, reasoning and information necessary to demonstrate how it reached the preliminary view that the obligation not to margin (price) squeeze is added to the price control in the markets of Call Origination and Call Termination,. ComReg believes that its preliminary view is consistent with its statutory objectives under section 12 of the Act;
- vi. ComReg considers that its preliminary view is **consistent** with previous ComReg decisions. However, ComReg will review and consider responses to this consultation including take utmost account of the views of the European Commission and, based on those responses, ComReg may make decisions different to the preliminary views expressed in this consultation.

Q. 9. Do you have any views on this Regulatory Impact Assessment and are there other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment? Please explain your response and provide details of any factors that should be considered by ComReg.

Appendix B – Consultation Questions

List of Questions

Q. 1. Do you agree or disagree with ComReg’s preliminary view to amend the price control to add an obligation not to margin (price) squeeze in the markets of Call Origination and Call Termination? Please explain your response in detail.

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Q. 2. Do you agree or disagree with ComReg’s preliminary view in relation to the further specifications of the transparency obligations in the Call Origination and Call Termination markets? Please explain your response in detail..... 14

Q. 3. Do you agree or disagree with ComReg’s preliminary views on the proposed structure of the price control margin (price) squeeze test – in particular that the margin (price) squeeze test: will be assessed based on a similarly efficient operator standard, will be assessed at a static point in time, will be assessed by time of day gradient (i.e. day, evening and weekend), and uses ‘LRAIC plus’ as its cost standard? Please explain your response in detail. 20

Q. 4. Do you agree or disagree with ComReg’s preliminary views on the costs to be included in the margin (price) squeeze test? Please explain your response in detail.21

Q. 5. Do you agree or disagree with ComReg’s preliminary view in relation to the structure of the minimum prices/price floors for the margin (price) squeeze test? Please explain your response in detail. 23

Q. 6. Are there any issues in relation to the amendment of the price control obligations and further specification of the transparency obligations in the markets of Call Origination and Call Termination that ComReg has not considered in this consultation? If so, please document and explain those issues fully and provide examples where appropriate. 24

Q. 7. Do you agree or disagree with the preliminary views expressed by ComReg? If not, please explain which preliminary view(s) you disagree with and detail what specific amendments you believe are required..... 24

Q. 8. Do respondents believe that the draft text of the proposed decision instruments are from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please elaborate on your response. 27

Q. 9. Do you have any views on this Regulatory Impact Assessment and are there other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment? Please explain your response and provide details of any factors that should be considered by ComReg. 44