Commission for
Communications Regulation

Submissions received in response to Consultation

Market Review: Wholesale Voice Call Termination Services Provided at a Fixed Location

Non-confidential submissions received from respondents

Document No:	**12/137**
Date:	**19 December 2012**

Consultation:	**12/96**

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation
Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland
Telephone +353 1 804 9600 *Fax* +353 1 804 9680 *Email* info@comreg.ie *Web* www.comreg.ie

Contents

1 Alternative Operators in the Communications Market (ALTO)

alto

alternative operators in the communications market

Response to Consultation – Market Review: Wholesale Voice Call Termination Services Provided at a Fixed Location Ref: 12/96

Submission By ALTO

Date: October 15th 2012

ALTO is pleased to respond to Consultation – Market Review: Wholesale Voice Call Termination Services Provided at a Fixed Location Ref: 12/96

Preliminary Comments

ALTO made the point in the related consultation on proposed price controls for fixed and mobile termination rates 12/67, that where rates vary, for example by time of day, peak / off peak variations etc, there is potential scope for providers to exploit flexibility in an unfair and anti-competitive manner. For example the UK has seen a situation where certain providers were able to “game” price controls based on rate changes at different times and days, and force purchasers of mobile termination to pay more, in aggregate, than the rates intended to be set as an upper limit.

Material differentials in rates often act against the interests of business providers, as rates during the working day are typically much higher than those at so-called “off- peak” times. Therefore with its current proposals ComReg is effectively discriminating against the needs of businesses.

In addition, if there is too much flexibility then this also forces competing operators to incur extra costs, as rates may be subject to frequent changes by significant amounts, requiring price notifications to be prepared and distributed to customers, in compliance with contractual obligations.

ALTO would therefore urge ComReg to re-consider its position on this element of the proposals and mandate a flat rate across the piece for both fixed and mobile providers.
This would not only promote certainty consistency and simplicity, but more importantly it would greatly reduce the risk of competition being distorted.

It is ALTO's view that regulation should only be applied where it is appropriate and proportionate to the issues under consultation or decision. ALTO believes that this consultation is addressing a relatively mature market that is currently causing few, if any problems and the existing remedies should be continued in their current form for all parties.

ALTO highlights the following issues, which are addressed in more detail in our response to the ComReg questions.

Reference Interconnection Offer – RIO

ALTO strongly urges ComReg to rethink its Reference Interconnect Offers – RIO, proposals, as they will trigger very significant administrative burdens and additional cost on new entrant operators. While it may be relatively easy to publish a RIO document, it is a completely different situation to obtain the agreement of other parties to adopt it in contractual negotiations. ComReg appears to assume each operator has the market power to force their RIO to be accepted – this is unlikely to happen, as larger operators will force their position on small providers with the outcome that the industry will be forced to towards the view of eircom who are the largest FSP by a very large margin. This does not stimulate innovation or competition and little is gained.

While ALTO recognises the objective of having an obligation that promotes transparency, we consider that it is a step too far to require all FCPs to prepare and publish a RIO. This goes beyond what is necessary and proportionate to ensure a competitive market, and ComReg has simply not made the case adequately for proposing this requirement. Indeed we cannot see what added benefit this requirement would bring above and beyond the existing requirement (on those FCPs designated with SMP in 2007) to publish prices and terms and conditions of supply.

The proposed obligation will force entrant operators to have to simultaneously re-negotiate all their existing interconnect contracts with all their customers from the time the decision – this is unreasonable and is unlikely to be possible in the three months ComReg is allowing. Such also assumes the contracts can be opened and the other parties are agreeable to the changes. Protracted negotiations could easily prevent an agreeable RIO being possible in the term proposed.

In ALTO's view, any RIO remedy is unnecessary and will cause huge disruption and new costs that will have to be recovered in the termination fee as it's a new cost directly related to termination rates. The existing approach has worked to date and the publication of prices in the Switched Routing and Transit Price List – SRTPL, meets the objective of seeing all prices in the open.

Number Ranges in general

ALTO considers that ComReg needs to re-evaluate its conclusions for number ranges as they are not working as ComReg appear to understand. In ALTO's view it is not possible for ComReg to find parties have SMP in certain numbering ranges, as it is possible for customers to have simultaneous instances of the same termination number on multiple networks thereby creating parallel routes to terminate certain types of call.

ALTO formally calls on ComReg to consider and revise the following call types and the national numbering conventions in light of this comment: 076 - Internet; 118XX - DQ; 190X – Network Numbering; 1850-XXX-YYY - National; 1890-XXX-YYY – LoCall; 1800-XXX-YYY - Freephone. Further, ComReg should take account of surcharging arrangements associated with non-FCP originations that are outdated and directly linked to this consultation.

Response to Consultation Questions:

Q. 1. Do you agree that the above identifies the main relevant developments in the provision of retail voice services at a fixed location relevant for informing the assessment of the wholesale Relevant FVCT Markets since the previous review in 2007? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

A. 1. ALTO members agree that the above identifies the main relevant developments in the provision of retail voice services at a fixed location relevant for informing the assessment of the wholesale Relevant FVCT Markets since the previous review in 2007.

Q. 2. Do you agree that ComReg has identified the retail consumer/business behaviours and retail market characteristics that are most relevant to the analysis of the Relevant FVCT Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

A. 2. ALTO does not agree that ComReg has fully identified the retail consumer/business behaviours and retail market characteristics that are most relevant to the analysis of the Relevant FVCT Markets. In our view the very low price of Fixed Termination Rates has more of an impact and influence on the outcome than ComReg acknowledge. We are aware there has been concern with the pricing of Mobile Termination Rates; however we are not aware of similar with Fixed Termination Rates – FTRs. As ComReg itself suggests many customers use bundled retail packages with unlimited calls to geographic numbers, hence the price of originating and terminating fixed line calls is already approximating to zero.

Our view as to why the calling party never knows the destination fixed provider is that the calls are already so cheap they do not need to be concerned with calling geographic numbers, i.e., there appears to be no market failure and no market abuse to address in Ireland for FTRs.

Q. 3. Do you agree with ComReg‘s preliminary assessment of these retail consumer/business behaviours and retail market characteristics in terms of their potential to impact the Relevant FVCT Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

A. 3. ALTO does not agree with ComReg‘s preliminary assessment of these retail consumer/business behaviours and retail market characteristics in terms of their potential to impact the Relevant FVCT Markets? Please see our response to question 2.

Q. 4. Do you agree with ComReg‘s preliminary conclusions on the retail product and geographic market assessment to the extent that it informs the analysis of the Relevant FVCT Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.

A. 4. ALTO members agree with ComReg’s preliminary conclusions on the retail product and the geographical market assessment, as the geographic scope of the networks market is confined to its indigenous network.

ALTO notes with interest that the test that the FVCT appears to offer the best value for money to the customer as customers will not move to more expensive substitutes. However we consider that ComReg should conduct two further tests given significant changes are likely to occur to two of the substitutes during the period of this review.

Test 1: that ComReg separately consults on the price control for mobile termination rates with a proposal to apply pure LRIC. In the event of this change we consider the substitutability to mobile may create a different outcome.

Test 2: VoIP solutions now exist in pockets of the market, but as the technology is now proven and mature and network operators will be upgrading obsolescent switches to new technology platforms in the current review period, VoIP and its greater flexibility will become more prevalent. This should be also be considered.

Q. 5. Do you agree with ComReg's preliminary conclusions on the wholesale FVCT product market assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.

A. 5. ALTO agrees with ComReg's preliminary conclusion in relation to wholesale FVCT product market assessment. We remark though that ComReg should consider various aspects of the numbering conventions that are not utilised, and do not compete/operate as they should, and have surcharges and transit benefits that can be seen as unattractive to certain new entrants.

Q. 6. Do you agree with ComReg's preliminary conclusions on the wholesale FVCT geographic market assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your position.

A. 6. ALTO agrees with ComReg’s preliminary conclusions, as the network is individual to the company and the company owns their network in a limited geographic location. However industry is at a point of rapid change and we simply do not know at this juncture whether this geographic market assessment will continue in the event of Next Generation Access and the geographic de-averaging of retail bundles proposed by ComReg in consultation document 12/63.

Q. 7. Do you agree with ComReg’s preliminary conclusions on the wholesale FVCT market definition assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.

A. 7. ALTO agrees with the definition as outlined in paragraph 5.125. However, ALTO urges ComReg to review this definition in light of Regulation 20(4) of the Framework directive.

Q. 8. Do you agree with ComReg‘s assessment of SMP and the associated SMP designations above? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.

A. 8. ALTO members agree with ComReg’s assessment. Each operator stated owns their own network that has a presence in one or more fixed locations and uses fixed number ranges to supply their customers with a fixed telephone service. To allow their customers make calls to other networks they either interconnect with that operator or use another network to transit and terminate the call, this incurs transit costs and FVCT. Thus, due to only one operator owning their own network, they each have SMP in their own network.

ALTO remarks though that the imposition of conditions or remedies greater than those previously extant may be a disproportionate response to the analysis. ComReg identified the relative independence of rate setting exercised by operators in certain instances. This should be viewed as in-line with new entrant market behaviour.

Q. 9. Do you agree that the competition problems and the associated impacts on competition and consumers identified are those which could potentially arise in the Relevant FVCT Market(s)? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

A. 9. ALTO suggests that the impact on consumers in this area is negligible. ALTO believes and states that where the incentive is greater to charge higher FVCT, this is invariably due to the fact that the party has a higher number of on-net calls and thus, FVCT is a source of revenue due to their outgoings on FVCT is less than their revenue. ComReg appears to have overlooked the fact that eircom not only terminates its own retail calls but most of the wholesale fixed line calls in the industry through its wholesale line rental service; other operators receive no financial benefit for this WLR termination. The amount of calls terminated on other networks is modest in comparison and for numerous operators the inbound terminating traffic is small. Given eircom's combined dominance in this and other markets it is not economic for most other operators to directly interconnect with each other so there is little to be gained by being anti-competitive. In our view the ability for most players to act anti-competitively does not occur in termination due to their small size and the analysis is flawed leading to what appear to be disproportionate remedies.

Q. 10. Do you agree with ComReg's approach to imposing access remedies?

Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

A. 10. ALTO members state that while imposing access remedies on larger network providers may be deemed to be important, due to their ubiquity or near ubiquity or large customer base it can be disproportionate in certain instances.

ALTO members believe that imposing access obligations on smaller network provider is of no great significance, as many operators will not want to directly interconnect with them and instead purchase transit through larger operators, e.g., eircom. It is important to note that it is not in a smaller operators interest to deny, prevent or slow down interconnection negotiations or accessing their network. The more interconnects the small operator has the better end-to-end connectivity they have. It is in a larger operators interest to slow down and prevent interconnect, as if their customers can not access customers on the smaller network it is the smaller network that obtains reputational damage and thus, makes customers move to larger suppliers such as eircom. This has been borne out in the past by eircom not allowing customers access Smart Telecoms customers. This led to a mass exodus of customers from Smart to amongst others, eircom retail.

Q. 11. Do you agree with ComReg‘s approach to imposing non-discrimination remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

A. 11. ALTO members have been subject to non-discrimination remedies since 2007 in this market and consider these measures have proved effective on entrants and should continue in their current form.

ALTO members do not actively discriminate between any operator, who seeks access, however, as each agreement is a contract, these contracts will vary slightly from operator to operator depending on each parties requirements and interpretation of the contract and their needs.

ALTO members agree with the principle of non-discrimination, however, we believe that only eircom should be so closely monitored. Any proposed obligation to publish all information requested by one party to all parties should be suspended in the case of all remaining operators.

Q. 12. Do you agree with ComReg's approach to imposing transparency remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

A. 12. ALTO members state that the imposition of Reference Interconnection Offer, obligations on all parties is a disproportionate suggestion and should only be a regulatory imperative when considering larger operators or the operator who terminate the majority of calls on the national network, i.e., eircom. However, this obligation and the extremely short time frame proposed, in which to implement such an obligation is burdensome, disproportionate, resource intensive and costly when considered in light of smaller, new entrant operators.

It must be considered that larger operators will insist on reciprocity and thus, one RIO published by one operator is the norm across the industry. Currently, eircom's RIO requires reciprocity and based on this, this agreement is currently signed by a large number of operators and thus, will become the Industry agreement.

ALTO members suggest and submit that other operators should not have to publish a unilateral RIO just ensure that the contract is negotiated in good faith and in a timely manner. The regulations in this area relating to publication should be assessed on a case-by-case basis.

ALTO members do not agree with the proposed transparency remedies as we consider the current approach including to publishing all FTR prices in the Switched Transit Routing Price List (STRPL) has worked well and is effective. The STRPL approach meets ComReg aspiration of making your service known to all parties. We therefore consider some of the transparency proposals made by ComReg to be disproportionate as detailed below.

Publication of RIOs – We consider ComReg in clause 8.75 has completely underestimated the work involved in managing Reference Interconnect Offers. Please see our response to question 17.

New Entrant versus Incumbent RIOs – We believe many operators accept the eircom RIO; however this proposal from ComReg suggests that all operators should now create their own RIOs and negotiate terms individually with eircom. Please see our response to question 17.

Synchronising RIOs – Given the imbalance in market size the entrants will have little option but to offer reciprocal rates and conditions, and then applying the non-discrimination clause those rates will have to be offered to all there other interconnected parties. In effect ComReg's proposal means that eircom will by default set the fixed termination price and terms. Please see our response to question 17.

Margin Squeeze and eircom – Given eircom is a vertically integrated Incumbent with SMP in multiple markets and at multiple layers of supply, we agree with

ComReg’s proposal to maintain appropriate margin squeeze regulation on eircom.

Q. 13. Do you agree with ComReg‘s approach on price control and cost accounting remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

A. 13. ALTO does not agree with the price control and cost accounting remedies as set out in this consultation, however, we note that due to consultation 12/67, this question may actually be moot.

ALTO suggest that it is imperative that cost accounting remedies are imposed and maintained on eircom.

ALTO suggest that aspects of the transit market may need to be considered in light of this consultation. This is due to the lack of availability and will to interconnect outside of those offers may available by eircom Wholesale.

We of course acknowledge ComReg‘s approach on price control and agree it would be disproportionate to apply very detailed cost accounting remedies to entrant fixed service providers where there are only being designated SMP in this market for the reasons provided by ComReg.

Q. 14. Do you agree with ComReg‘s approach to accounting separation remedies at this time? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

A. 14. ALTO agrees with ComReg's approach to accounting separation once they are imposed proportionately and in line with our response and the theme of the answer to Q. 12, above.

Q. 15. Do respondents agree with ComReg's draft Decision Instruments set out in Appendix C and Appendix D? Do respondents agree with ComReg's Definitions and Interpretations as set out in the draft Decision Instruments? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer.

A. 15. In relation to Annex C point 11.4 ALTO suggests and is certain that the 3 month time frame for RIO implementation is too short (we of course do not support the notion of blanket RIO implementation, as set out above).

Clause 11.5 the decision out of consultation 12/65 will regulate the FTR's.

In relation to Annex D Clause 11.2, the publication by all of a RIO is something ALTO does not agree with due to reciprocity of agreement and the inability to negotiate flexibility in these contracts.

ALTO members also believe that cost orientation elements of this decision are actually covered off in the main by any decision made under consultation 12/67.

Q. 16. Do you agree with ComReg's preliminary conclusions on the Regulatory Impact Assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your position.

A. 16. ALTO remarks that Access (and Access Obligations) generally is not an issue for smaller new entrant operators, as larger operators will not unilaterally seek access to smaller operators' networks, who invariably chose to use transit through eircom instead.

Our view is that the existing regulatory remedies both for Eircom and the other FSPs should be maintained as there have not been competition issues in the FVCT market since it matured several years ago hence the existing remedies are demonstrably sufficient. The proposed remedies for the other FSPs is disproportionate in our view.

Q. 17. Do you believe that the draft text of the proposed Decision Instrument in relation to general obligations for FVCT is from a legal technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain the reasons for your answer, clearly indicating the relevant section numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

A. 17. ALTO members take no issue with the text in its current form, when read in light of the above consultation question responses.

ComReg must consider that the administration involved in managing RIOs is considerable and from a practical perspective the remedy of making all operators maintain a RIO will be an administrative nightmare. Even if all parties supplying calls to the operator accepted the RIO (best case) the administration is significant as such has to be followed up with contractual amendments to all the existing contracts and the renegotiation and burden that such involves. In the event the other operators do not accept the RIO (worst is when all do not accept same) difficult negotiations are required followed by the administration above. Bilateral negotiation is difficult but multilateral negotiation results in a disproportionately steep increase in complexity. Incumbents have dedicated people and years of experience of RIOs and for entrants to operate RIOs adds costs and administrative delays.

ALTO's view is that ComReg are overestimating the SMP power of entrant operators when pushing for contractual conditions and entrants will lose out to larger players. In reality ComReg's approach is pushing the industry to accept eircom's RIO which is where we are today hence this obligation appears overly onerous for negligible benefit.

Q. 18. Do you believe that the draft text of the proposed Decision Instrument in relation to FTRs is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain the reasons for your answer, clearly indicating the relevant section numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

A. 18. ALTO members take no issue with the text in its current form, when read in light of the above consultation question responses.

Ronan Lupton

Chairperson

ALTO

15th October 2012

THIS PAGE IS INTENTIONALLY BLANK

2 BT Communications Ireland Limited

BT Communication Ireland Ltd ("BT") Response to ComReg's Market Review Consultation

Wholesale Voice Call Termination Services Provided at a Fixed Location

Issue 1 – 15th October 2012

Introduction

1. Our view is regulation should be applied where appropriate but should be proportionate to the problems identified. This consultation is addressing the mature fixed termination market in Ireland which causes little if any problems and we believe the proportionate approach is to continue the existing remedies in their current form. We would like to highlight the following key issues which are also addressed in our detailed responses.

RIO

2. We urge ComReg to rethink the Reference Interconnect Offers (RIO) proposal as this will trigger significant administration and additional costs on entrant operators. Whilst it may be relatively easy to publish a RIO document, it is a completely different situation to obtain the agreement of other parties to adopt it in contractual negotiations. ComReg appear to assume each operator will have the market power to force their RIO to be accepted – this is unlikely to happen as larger operators will influence their position on smaller providers. Ultimately we expect the outcome to be agreements not dis-similar to the current Eircom RIO of today, hence is there a real benefit to this onerous proposal. We are not aware of this RIO proposal in other jurisdictions and it appears disproportion to entrant providers.

3. The RIO obligation will force entrant operators to simultaneously re-negotiate all their existing interconnect contracts with all their interconnect partners from the time of the decision – this is unreasonable and is unlikely to be possible in the three months ComReg is allowing. Such also assumes the contracts can be opened and the other parties are agreeable to the changes. Protracted negotiations could easily prevent an agreeable RIO being possible in the short 3 month term.

4. In our view the RIO remedy is unnecessary and will cause huge disruption and new costs that will have to be recovered in the termination fee as it's a new cost directly related to termination rates. The existing approach has worked to date and the publication of prices in the Switched Transit Routing Price List (STRPL) meets the objective of seeing all prices in the open.

5. ✂

Price Control Regulation

6. Whilst reserving our position that the existing regulation is sufficient and no changes are needed, we note ComReg has afforded the mobile operators many years of glide paths for reducing their MTR rates and yet equivalent is not being offered for Fixed Termination Rates. The price proposals if imposed as a step change will be another negative impact on operator revenues and earnings in what are already difficult trading times. We therefore urge ComReg to consider implementing an FTR glide path for fixed providers.

Scope

7. Our understanding from the consultation is the scope is limited to geographic and 076 numbers and not to other numbers such as non-geographic numbers in general. The commercial models and markets for non-geo numbers are completely different and we consider fall outside of this review.

Response to the Detailed Questions

8 **Q. 1. Do you agree that the above identifies the main relevant developments in the provision of retail voice services at a fixed location relevant for informing the assessment of the wholesale Relevant FVCT Markets since the previous review in 2007? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

9 A.1 We agree that the above identifies the main relevant developments in the provision of retail voice services at a fixed location relevant for informing the assessment of the wholesale Relevant FVCT Markets since the previous review in 2007. We understand from ComReg's review that non-geographic numbers (except for the 076 range) are outside the scope of this review.

10 **Q. 2. Do you agree that ComReg has identified the retail consumer/business behaviours and retail market characteristics that are most relevant to the analysis of the Relevant FVCT Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

11 A.2. We do not agree that ComReg has fully identified the retail consumer/business behaviours and retail market characteristics that are most relevant to the analysis of the Relevant FVCT Markets. In our view the low price of Fixed Termination Rates has more of an impact and influence on the outcome. We are aware there has been concern with the pricing of Mobile Termination Rates; however we are not aware of similar with Fixed Termination Rates (FTRs). As ComReg itself suggests many customers use bundled retail packages with unlimited calls to geographic numbers, hence the price of originating and terminating fixed line calls is already good value. Our view as to why the calling party never knows the destination fixed provider is that the calls are already at a low price where they do not need to be concerned with calling geographic numbers. I.e. there appears to be no market failure and no market abuse to address in Ireland for FTRs.

12 **Q. 3. Do you agree with ComReg's preliminary assessment of these retail consumer/business behaviours and retail market characteristics in terms of their potential to impact the Relevant FVCT Markets? Please explain the reasons for your answer, clearly**

indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

13 A.3. We do not agree with ComReg's preliminary assessment of these retail consumer/business behaviours and retail market characteristics in terms of their potential to impact the Relevant FVCT Markets? Please see our response to question 2.

14 Q. 4. Do you agree with ComReg's preliminary conclusions on the retail product and geographic market assessment to the extent that it informs the analysis of the Relevant FVCT Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.

15 A.4. We acknowledge ComReg's preliminary conclusions on the retail product and geographic market assessment to the extent that it informs the analysis of the Relevant FVCT Markets. We also note from the conclusions of the test that the FVCT appears to offer the best value for money to the customer as customers will not move to more expensive substitutes such as mobile. However we consider ComReg should conduct two further tests given significant changes are likely to occur to two of the substitutes during the period of this review.

16 The first is that ComReg are separately consulting on the price control for mobile termination rates with a proposal to apply pure LRIC. In the event of this change we consider the substitutability to mobile may create a different outcome.

17 Secondly, VoIP technology is now proven at the carrier class level and pockets of commercial VoiP solutions have emerged in the market. During the period of this review we expect operators to commence upgrading obsolescent switches to new platforms to bring flexibility and new solutions. This should be considered.

18 **Q. 5. Do you agree with ComReg's preliminary conclusions on the wholesale FVCT product market assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.**

19 A.5 ✂

20 ✂

21 **Q. 6. Do you agree with ComReg's preliminary conclusions on the wholesale FVCT geographic market assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your position.**

22 A.6 We acknowledge ComReg's preliminary conclusions on the wholesale FVCT geographic market assessment which is based on the existing environment. However the industry is at a point of change and we simply don't know at this time whether this geographic market assessment will continue in the event of Next Generation Access and the geographic de-averaging of retail bundles proposed by ComReg in consultation document 12/63.

23 **Q.7. Do you agree with ComReg's preliminary conclusions on the wholesale FVCT market definition assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your position.**

24 A.7. We acknowledge ComReg's preliminary conclusions on the wholesale FVCT market definition assessment and also reference our response to question 6.

25 **Q. 8. Do you agree with ComReg's assessment of SMP and the associated SMP designations above? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.**

26. A.8 ✂

27 **Q. 9. Do you agree that the competition problems and the associated impacts on competition and consumers identified are those which could potentially arise in the Relevant FVCT Market(s)? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.**

28. A.9 We believe ComReg have overlooked that Eircom not only terminates its own retail calls but most of the wholesale fixed line calls in the industry through its wholesale line rental service; other operators receive no financial benefit for this WLR termination. The amount of calls terminated on other networks is thus modest in comparison and for numerous operators the inbound terminating traffic is small. It is not economic for most other operators to directly interconnect with each other (i.e. there is a threshold for interconnect to be commercially viable) so the issue of acting anti-competitively does not arise for most small operators. In our view the ability for most players to act anti-competitively does not occur in termination due to their small size and the analysis is flawed leading to what appear to be disproportionate remedies. For example we don't envisage small operators being able to force their contractual terms on very large players.

29 **Q. 10. Do you agree with ComReg's approach to imposing access remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.**

30. A.10. As a general comment we believe there are serious issues of proportionality to entrants with the proposed access remedies which will add cost and administration to the industry.

31. We are not aware of an environment of access refusal for terminating telephony calls in Ireland suggesting the current regulation is working. We don't see the need for such draconian remedies given the market is mature and most of the interconnect activity has already taken place. We consider the current ComReg threshold approach has merit and has served the industry well since 2007.

32. With reference to clause 8.39 we assume non-payment of charges will be a reasonable reason to withdraw access facilities already provided? If this is not to be allowed how will maintaining such non-commercial activity be funded?

33. **Q. 11. Do you agree with ComReg's approach to imposing non-discrimination remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.**

34. A.11. We have been subject to non-discrimination remedies since 2007 in this market and consider these measures have proved effective on entrants and should continue in their current form.

35. **Q. 12. Do you agree with ComReg's approach to imposing transparency remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.**

36. A.12. We don't agree with the proposed transparency remedies as we consider the current approach including to publishing all FTR prices in the Switched Transit Routing Price List (STRPL) has worked well and is effective. The STRPL approach meets ComReg's aspiration of making your service known to all parties. We therefore consider some of the transparency proposals of ComReg to be disproportionate as detailed below.

37. Publication of RIOs – We consider ComReg in clause 8.75 has completely underestimated the work involved in managing Reference Interconnect Offers. Please see our response to question 17.

38. Entrant vs. Incumbent RIOs. Today we believe many operators accept the Eircom RIO; however this proposal from ComReg suggests that all operators should now create their own RIOs and negotiate terms individually with Eircom and others. Please see our response to question 17.

39. RIOs and non-discrimination – Given the imbalance in market size the entrants will have little option but to offer reciprocal rates and conditions to Eircom. Applying the non-discrimination clause to those rates and T's and C's will means the entrants will have to offer the same to all other interconnected parties. In effect ComReg's proposal means that Eircom will by default set the fixed termination price and terms. Please see our response to question 17.

40. Margin Squeeze and Eircom – Given Eircom is a vertically integrated Incumbent with SMP in multiple markets and at multiple layers of supply, we agree with ComReg's proposal to maintain appropriate margin squeeze regulation on Eircom.

41. **Q. 13. Do you agree with ComReg's approach on price control and cost accounting remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.**

42. A. 13. We agree it would be disproportionate to apply very detailed cost accounting remedies to entrant fixed service providers where there are only being designated SMP in this market for the reasons provided by ComReg.

43. **Q. 14. Do you agree with ComReg‟s approach to accounting separation remedies at this time? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.**

44. A.14 We agree with ComReg‟s approach to accounting separation remedies as only Eircom has been designated with SMP in multiple markets and the pricing and behaviours in those markets could potentially impact competition this market and vice versa. Other fixed service providers do not have SMP designations in multiple markets and are of smaller scale.

45. **Q. 15. Do respondents agree with ComReg‟s draft Decision Instruments set out in Appendix C and Appendix D? Do respondents agree with ComReg‟s Definitions and Interpretations as set out in the draft Decision Instruments? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer.**

46. A.15. We would like to make the following comments to the decision instrument:

47. Reference Annex C clause 8.4 (ii). Given it is possible that the two parties involved in an interconnect agreement may decide to mutually end the relationship (for example traffic goes via a different route to the FVCT operator) why should there be a need to inform ComReg in this scenario.

48. Reference Annex D clause 4.3. Whilst we would seek for the regulation to remain unchanged as it is working, ComReg's text in 4.3 appears unclear whether ComReg are going to apply a bench mark FTR value that will apply across the board as suggested in the price control consultation (ComReg doc 12/63) or allow operators to offer their own pure LRIC value. Clause 4.2 of the decision directs that FTRs should be set in accordance with Pure LRIC costing methodology and it's our view operators should have a right to calculate their own Pure LRIC value in the event they consider a bench mark value unrepresentative of their own costs. The cost of carrying out this work will be specifically associated with the pure LRIC value as it would not be required for any other purpose.

49. **Q. 16. Do you agree with ComReg‟s preliminary conclusions on the Regulatory Impact Assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your position.**

50. A.16. Our view is the existing regulatory remedies both for Eircom and the other FSPs should be maintained as there have not been competition issues in the FVCT market since it matured several years ago hence the existing remedies are demonstrably sufficient. The proposed remedies for the other FSPs is disproportionate in our view.

51. Q.17. Do you believe that the draft text of the proposed Decision Instrument in relation to general obligations for FVCT is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain the reasons for your answer, clearly indicating the relevant section numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

52. A.17 In our view it may be possible for operators to publish a RIO in three months, but we cannot realistically see agreement of the terms by other operators in less than one year.

53. The administration involved in managing RIOs is considerable and from a practical perspective the remedy of making all operators maintain a RIO will be an administrative nightmare. Even if all parties supplying calls to the operator accepted the RIO (best case) the administration is significant as such has to be followed up with contractual amendments to all the existing contracts and the toing and froing such involves. In the event the other operators do not accept the RIO (worst is when all don't accept) difficult negotiations are required followed by the administration above. Bi-lateral negotiation is difficult but multi-natural negotiation is a step increase in complexity. Incumbents have dedicated people and years of experience of RIOs and for entrants to operate RIOs adds costs and administrative delays.

54. Our view is ComReg are over-estimating the SMP power of entrant operators when pushing for contractual conditions and entrants will lose out to larger players. In reality ComReg's approach is pushing the industry to accept Eircom's RIO which is where we are today hence this obligation appears overly onerous for negligible benefit.

55. We are not aware of this remedy applied to all terminating operators in other regulatory jurisdictions and it does appear disproportionate for entrants.

55 Q. 18. Do you believe that the draft text of the proposed Decision Instrument in relation to FTRs is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain the reasons for your answer, clearly indicating the relevant section numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

A.18. Without prejudice to our view the existing regulations should continue as they are today, we assume we will be given the option of accepting the benchmark view of ComReg or providing our cost estimation should be consider the benchmark view to be unrepresentative of our costs. This would align with the principle of the price control.

Documentation Control

Document Date: 15th October 2012

Issue Status: Issued

Version Status: Non-confidential version Issue 1

For enquiries about this document please contact John.odwyer@bt.com

THIS PAGE IS INTENTIONALLY BLANK

3 Eircom Limited

eircom Ltd.

Response on behalf of eircom Group to ComReg Consultation 12/96:

Market Review

Wholesale Voice Call Termination Services Provided at a Fixed Location

15October2012

DOCUMENT CONTROL

Document name	**eircom** Response to ComReg Consultation 12/96: Market Analysis - FVCT
Document Owner	eircom
Version	final
Status	Non Confidential

Please note that, for the purposes of the Freedom of Information Acts, 1997 and 2003, and, in the context of eircom's general rights and obligations, information supplied by eircom to you may contain confidential, commercially sensitive or price sensitive information consisting of financial, commercial, technical or other information, whose disclosure to a third party could result in financial loss to eircom, or could prejudice the competitive position of eircom in the conduct of its business, or could otherwise prejudice the conduct or outcome of contractual or other negotiations to which eircom is a party or could result in a breach of the laws regarding Insider Dealing by you or your employees.

Accordingly, you are requested to contact a member of eircom's Regulatory Department where there is a request by any party to have access to records which may contain any of the information herein, and not to furnish any information before eircom has had an opportunity to consider the matter. In any event you should not publish, circulate or disclose to any third party the information supplied herein by eircom to you without our prior written consent

TABLE OF CONTENTS

OVERVIEW

eircom welcomes the opportunity to respond to this consultation on ComReg's review of the market for Wholesale Fixed Voice Call Termination (FVCT) Services. This response should be read in conjunction with eircom's earlier responses to ComReg's Consultation and Draft Decision papers 12/46 (Voice Call Termination on Individual Mobile Networks MarketReview) and 12/67 (Proposed Price Control for Fixed and Mobile Voice Termination Rates in Ireland).

This market analysis is overdue, as the previous analysis was carried out five years ago in 2007. This is also the case of the other interconnect markets, the markets for call origination and call transit. It is particularly disappointing that ComReg has not yet carried out the review of the market for call transit despite the European Commission's recommendation of five years ago that it was no longer susceptible to regulation. eircom does not believe that regulation of this market in Ireland is warranted. eircom notes that ComReg is obliged to carry out a review of the market as soon as possible after the publication of the Commission's recommendation.

We note in this context ComReg's statement in paragraph 4.155 that the lifetime of market reviews is "typically three years". While this does not appear to be accurate based on experience to date, we also note that in accordance with the amendments brought in 2009 to the Framework Directive, obligations may be imposed on undertakings for no longer than three years unless this period is *exceptionally* extended on the basis of the submission by the national regulatory authority of a reasoned proposed extension to the European Commission and the European Commission does not object to this extension. This is reflected in Regulation 27 of the Framework Regulations, 2011 and is consistent with the need in an era of rapidly changing competitive dynamics to analyse competitive conditions in markets regularly.

Since 2007, the competitive and regulatory position in relation to fixed call termination services has changedsignificantly. One indication of this evolution is that there are now at least 17 OAOs susceptible to regulation, as opposed to 6, which were in scope in 2007.

Another indication of the change in the competitive position is the increasing activity of UPC in the urban telecommunications sector over the past five years, as epitomised by the statistic in paragraph 3.10, where ComReg outlines that UPC's voice subscriptions increased 350 fold (from 600 to over 200,000) in those 5 years.

eircom is in general agreement with the conclusion reached by ComReg in this Consultation Paper that all Operators providing, or planning to provide, fixed voice call termination services should be subject to regulatory controls as there is no alternative option to Service Providers requiring to deliver calls to number ranges controlled by another operator, irrespective of the scale of numbers controlled by that operator. eircom would suggest that ComReg specifies a simplified process for the purpose of designating new operators providing fixed call termination services within the next three years with SMP and subject to the same range of regulatory obligations as other providers of such services in Ireland. This simplified process should be limited to verifying that there are no reasons specific to the situation of that operator which could justify a finding that it does not have SMP.

eircom welcomes ComReg'sproposalto expand the scope of services included in the market definition to include both national geographic fixed numbers and 076 number ranges. This will ensure that, as operators move from legacy TDM-based fixed termination to either managed or un-managed VoIP solutions, the regulatory regime will be sufficiently flexible to ensure continuity of appropriate call termination services and price levels in the market.

eircom also welcomes the proposal to expand the remedies applied to all SMP operators to include Access, Non-Discrimination and Transparency and a Price Control. It is critical that all operators are obliged to provide access on reasonable and transparent terms. To this end, it is disappointing that ComReg has not proposed to extend the Price Control remedy to include the essential facility of switch ports. Access to reasonably priced switch ports on all networks is a necessary prerequisite to availing of a fixed call termination service. With the impending proposals to move fixed call termination rates to a pure LRIC cost basis, the cost of switch ports will become a substantially more important element of the costs faced by a service provider wishing to purchase call termination services from any operator.

Finally, eircom does not believe, having regard to ComReg's analysis of the market and its exclusion of self-supply, that it is in any way appropriate to maintain in force the provisions of the 2011 Decision regarding eircom's White Label services. If these provisions are to remain in place, they must be applied equally to all suppliers of White Label services

Responses to Consultation Questions

Q.1 **Do you agree that the above identifies the main relevant developments in the provision of retail voice services at a fixed location relevant for informing the assessment of the wholesale Relevant FVCT Markets since the previous review in 2007? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

eircom agrees that ComReg Doc. 12/96 identifies the main developments in the retail market for call services since 2007. This market is in decline, both from the perspective of the number of active connections to the network and the average number of calls being generated from each remaining line connected to the network. This decline is being driven by the increased migration of voice calls to mobile networks.

The decline in fixed calls has corresponded with a significant increase in the level of competition in the market mainly driven by the entry of mobile operators such as Vodafone and O2 as well as the growth in services provided by UPC.eircom notes that ComReg analyses the market based on the technology utilised to provide service and agrees with the conclusion reached that the technologies of TDM, Managed VoIP and Un-managed VoIP should be included in the market in all cases where a relevant number range is utilised to terminate the call.

eircomnotes that ComReg's analysis of the retail market is based primarily on the quarterly market figures it publishes. While the accuracy of these figures has in the past been open to question on occasions, we would accept the figures are generally a reasonable basis for the analysis of high-level market trends.

Q.2 **Do you agree that ComReg has identified the retail consumer/business behaviours and retail market characteristics that are most relevant to the analysis of the Relevant FVCT Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

eircom agrees that ComReg has identified the retail consumer/SME behaviours and retail market characteristics that are most relevant to the analysis. eircom would agree with ComReg (ref. paragraph 4.40) that "*consumers tend to have relatively low levels of awareness of the identity of the Called Party's FSP*". We would also accept as reasonable the conclusion in paragraph 4.50 that "*consumers and businesses are likely to have low levels of specific awareness of the cost of making calls to fixed numbers*".

VoIP offerings such as Skype, may have the potential to develop into a real substitute for circuit switched voice calls over time, as epitomised by the annual growth of 40% referenced in paragraph 4.50[1].It is important that ComReg keep the growth and development of such technologies under review over the coming years.

At footnote 96 on page 38 of 12/96 (referred from paragraph 4.16) ComReg correctly identifies examples of called party pays model for retail services. eircom notes that in this case, the price paid by the called party depends critically on what network operators charge the called party's operator for origination to these services. In other words, the competition issues that arise in relation to call termination in a Calling Party Pay environment arise in relation to call origination in the context of a Called Party Pay environment and it is essential that a specific review of the competitive conditions around such calls be made, whether in the context of this review or in the context of a review of call origination services, and appropriate remedies imposed.

For the avoidance of doubt, this competition problem cannot be addressed in the analysis of the call origination markets – even though the service is call origination to a called party pays service. This is because in general the end user can choose the network that serves them for outbound (calling party pays) services but has no economic signal to change call origination provider that arises from the pricing behaviour of their network operator to other networks. It is also the case that none of the networks that raise excessive charges for this type of origination compete in the market for hosting calling party pays services. The proportion of the total origination

[1] 6.0% of total fixed voice minutes in Q1 2011 increased to 9.6% in Q1 2012

traffic represented by called party pays services is sufficiently small that it will have no influence on any finding of market failure in the call origination market as a whole. So the only tool available to ComReg to address this issue of excessive pricing and bottleneck control is to take the rational step to include this interconnect service in the call termination market

Q.3**Do you agree with ComReg's preliminary assessment of these retail consumer/business behaviours and retail market characteristics in terms of their potential to impact the Relevant FVCT Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

eircom agrees with ComReg's preliminary assessment of the retail consumer behaviours and market characteristics in terms of their potential to impact the Relevant FVCT Markets.

The basis is reasonable for ComReg's conclusion in paragraph 4.107 that "*substitution of a F2M call instead of a F2F call is not likely to be significant in response to small but significant FTR increases*", and in paragraph 4.108 that "*A F2M call is not, therefore, likely to pose an effective or sufficiently immediate competitive constraint on the price of an F2F call".*

Similarly, eircom does not have any issue with the conclusions reached by ComReg, in relation to market substitution.

In summary, we consider none of the candidate potential substitutes that have been considered by ComReg to substitute for fixed voice calls, are sufficient to materially constrain the setting of FTRs at the wholesale level.

Q.4**Do you agree with ComReg's preliminary conclusions on the retail product and geographic market assessment to the extent that it informs the analysis of the Relevant FVCT Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.**

eircom agrees with ComReg's preliminary conclusions that the geographic market is national in scope on the basis of the equivalence in network coverage of the FSPs, the fact that FTRs are generic regardless of the underlying technology or the location within Ireland, and the likelihood that these aspects will remain unchanged over the next three years.

Q.5**Do you agree with ComReg's preliminary conclusions on the wholesale FVCT product market assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.**

eircom agrees with ComReg's preliminary conclusions on the wholesale FVCT product market assessment, as outlined in paragraph 5.113, i.e. that the wholesale FVCT product market consists of:

> *"the provision by an FSP of a wholesale FVCT service to other Service Providers from the nearest point (to the end user) or level on that terminating FSP's network at which calls can be handed over for termination to fixed numbers and in respect of which that FSP is able to set the FTR".*

However, please see our response to Question 2 in relation to call origination in the case of "called party pays" arrangements.

eircom agrees with the definition of the market at a network level rather than an individual subscriber level and that a technology neutral approach must be applied. In this context, eircom concurs with ComReg's proposal to include FVCT delivered via wireless technology to fixed numbers, FVCT over managed VOIP, partially-managed VOIP and unmanaged VOIP in the relevant FVCT market because they are subject to similar competitive characteristics as FVCT to geographic numbers using traditional TDM technology.

eircom agrees with ComReg's rationale in its identification of 18 separate FVCT markets as listed in Appendix F (Groups A and B)[2]. Each of the listed FSP's has the ability to act independently of its competitors and customers for the supply of FVCT in their market regardless of their relative size because competitors who wish to route calls to such customers must consume the termination service offered by the operator serving that customer because no practical wholesale supply-side or demand–side substitutes can be readily identified today.

In relation to paragraph 5.25, we agree that Magrathea Telecommunications (from Group B) should be in scope. However, eircom would strongly argue that the current proposed list of SMP operators must be capable of being easily expanded as new FVCT operators emerge in the future. ComReg should specify in this market review the simplified process whereby new operators can be designated with SMP. eircomsuggests that this should be limited to verifying that there are no specific reasons why, in the circumstances of that operator, it does not have SMP, having regard to the rationale set out by ComReg in Doc. 12/96. This should be done as soon as ComReg becomes aware of definitive plans for market entry (including where ComReg is apprised of interconnection negotiations by other operators) and the process should not last more than four weeks to include any consultation that ComReg may consider is required. eircom believes that this arrangement should be extended to operators benefitting from secondary allocations of number ranges.

eircom agrees with the ComReg conclusion at paragraph 5.59 that the wholesale market be defined as termination on both geographic and 076 number ranges.

We consider the demand and supply side substitute analysis in section 5 of the consultation document to have identified the most salient potential substitutes and would agree that none of these would be sufficient to constrain FTR price setting by an FSP. The conclusion that "*there are not likely to be any effective demand-side or supply-side substitutes to FVCT by individual FSPs within the timeframe of this market analysis*"[3] is reasonable. However, we would point out that there is no way within the existing regulatory construct to introduce the benefits of competition to this market - all

[2] Listed in para. 5.128
[3] Ref. para. 5.112

FSPs continue to have the incentive to increase their own FTR as this improves their business position.

Q.6 **Do you agree with ComReg's preliminary conclusions on the wholesale FVCT geographic market assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your position**

eircom agrees with ComReg's view that the geographic scope of each relevant FVCT market should include only the combined set of fixed numbers utilised by subscribers of the FSP operating within that market.

Q.7**Do you agree with ComReg's preliminary conclusions on the wholesale FVCT market definition assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.**

Further to the answers to questions 5 & 6, eircom is in broad agreement with ComReg's preliminary conclusions on the Wholesale FVCT market definition.

Q.8**Do you agree with ComReg's assessment of SMP and the associated SMP designations above? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.**

eircom agrees with ComReg's assessment of SMP and the associated proposed SMP designations.

We note that ComReghas limited itself to defining 18 separate markets. As outlined above, in answer to Q.5, we believe that ComReg should establish a defined regime by which other operators commencing provision of FVCT services can be quickly designated with SMP in order to avoid situations where existing operators are forced to expend significant resources in commercial negotiations followed by lengthy dispute resolution procedures.

eircomagrees with ComReg's conclusion that the purchasers of FVCT services cannot exercise countervailing buyer power (CBP) in the absence of appropriate regulatory controls. In particular, eircom has attempted on several occasions to negotiate reductions in the fixed call termination rates levied by other operators in the market without success. eircomhas also sought ComReg intervention through the dispute resolution process where commercial negotiations have failed or in instances where the Service Provider has refused to even engage in negotiations. ComReg declined to intervene as the operators concerned were not subject to price controls. The case of the increase of its termination rates by Colt Telecom is a good example of the absence of CBP. Despite several attempts at negotiation, eircom was unable to prevent Colt imposing a significant increase in its termination rate.

ComReg's analysis from paragraph 6.110 to paragraph 6.120 and graphs in Figures 21 and 22, in particular, show that eircom's FTRs are consistently the lowest across all the operators in scope. Table 3 shows that, whereas eircom has reduced its rates significantly in the last 5 years, most other operators' rates remained constant. Of the 16 operatorslisted in Table 3, the rates of 13 of the operators remained static over the 5 years and Colt actually increased its rates by over 30%. This is ample evidence of the non-existence of CBP in these markets. Also, it clearly demonstrates the urgent need for ComReg to impose effective regulatory remedies on these FSPs to ensure the implementation of symmetric FTRs across the FVCT markets in scope, to the benefit of all consumers.

It is also worth pointing out that the absence of regulation of FTRs by ComReg can exert upward pressure on FTRs, as evidenced by the fact that the latest new entrant to the market (Magrathea Telecommunications) has set its FTRs at effectively the highest rate currently in the market[4.]

Q.9**Do you agree that the competition problems and the associated impacts on competition and consumers identified are those which could potentially arise in the Relevant FVCT Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.**

eircomis in general agreement with ComReg's analysis.

However we believe that further consideration should have been given by ComReg to the potential impacts of FVCT on the pricing of other wholesale and retail services including in terms of opportunities for unfair cross-subsidisation that may be open to certain operators having regard to their customer base and the geographical reach of their network.

In particular, eircom is of the view that the risk of leveraging into the retail market is significantly higher than ComReg suggests in the case of an operator whose focus is on urban business customers. For example an operator essentially addressing the retail business markets in urban areas has a clear incentive to set call termination

[4]. Ref. para. 6.114

rates at an excessive level. Where an operator is serving predominantly large business customers who receive large volumes of calls, there is a clear incentive to cross-subsidise the access and call charges levied on these customers from the excessive revenues generated from FVCT services.

The remedies proposed for FSPs other than eircom should also be tailored to their market position. UPC and BT have presence on several fixed markets, providing several voice, data and other sorts of services. While a cost accounting separation obligation may not be justified in relation to other FSPs, the situations of UPC and BT are significantly different.

Q.10**Do you agree with ComReg's approach to imposing access remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.**

eircom agrees with the principle that any access remedies being imposed should apply to all SMP FSP's in the market. This is consistent with the Article 7 comments of the European Commission in relation to the 2007 Decision. It will also promote regulatory predictability and help ensure that SMP FSP's operating in similar market circumstances are treated in an equivalent fashion from a regulatory perspective.

ComReg proposes to impose an obligation to provide interconnect paths solely on eircom. Interconnect paths contain two specific elements which are:

- The switch port on the network of the terminating operator providing the call termination service
- The transport service connecting the above switch port to the network of the Service Provider purchasing the FVCT service.

eircom has no difficulties as such with the ComReg's proposal that only eircom be required to provide entire interconnect paths, having regard to the geographic reach of eircom's network, However, eircomis of the view that all operators should be obliged to provide access to their switch ports on a regulated basis. Todate, eircom has attempted to negotiate a "deemed to be" regime with other fixed and mobile operators whereby eircom pay those operators the same charge as it levies through the current regulated interconnect paths products. In general, these negotiations have been successful. However, eircom has recently announced significant reductions in its pricing of interconnect paths and there is no reason to believe that other operators will similarly reduce their charges. Therefore, it is critical that ComReg specifically identifies the provision of access to Switch Ports as an associated product/facility in this market and apply appropriate pricing controls.

In addition, it is critical that all operators offer reasonable open access to technical interfaces, protocols and other key technologies. As the industry moves away from the traditional TDM technologies towards VoIP, there is a need to ensure the ongoing ability to interconnect networks. Todate, all operators in the market have offered reciprocal technical interfaces to those provided by eircom. We would argue that the eircom offered interconnection specification should be considered the industry standard and only modified through consensus agreement of industry. We would expect that ComReg would facilitate engagement at an industry level to achieve such consensus.

Q.11**Do you agree with ComReg's approach to imposing non-discrimination remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position**

eircom agrees with the proposal to apply an obligationof non-discrimination on all SMP designated operators and with "*ComReg's preliminary view that it would not be objectively justified to adopt an alternate approach for the alternative FSPs*"[5] to that imposed upon eircom.

Q.12**Do you agree with ComReg's approach to imposing transparency remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.**

eircom believes that the publication of a RIO (in its current form) and the full suite of reference documentation that accompanies it in relation to interconnection services, including fixed call termination, is sufficient to achieve adequate transparency in the market. eircom is committed to maintaining this document set going forward.

eircom agrees with ComReg's view that all SMP FSPs should be required to comply with transparency obligations in order to minimise information asymmetries across the industry and, therefore, facilitate effective access to FVCT and promote effective competition in downstream markets.

If ComReg is to impose transparency remedies on allOAOs as part of this Decision, it should apply consistent standards and rigour in the implementation of regulatory

[5]Ref. para. 8.58

measures. It is not clear to eircom that the OAOs concerned met the transparency obligation that had been imposed byComReg's Decision D06/07, in particular the obligation on the part of six OAOs to "*publish on their websites (or make public in an easily accessible manner where no website exists), their prices and associated terms and conditions (and any amendments thereto) in respect of wholesale call termination services in the Market*". As these operators have had the obligation to publish their reference offers for several years, it is not clear why ComReg would defer the obligation for a 3 month period following the Effective Date of its decision.

eircom would query the proposed 35 day notice period for FTR price changes. Normal commercial practice is one month's notice.eircom would also point to the industry practice of having all changes to FTR rates being effective from the beginning of the month. This practice ensures invoicing transparency for all operators and simplifies billing system design thus reducing cost for all operators. eircom would be anxious that such practice would continue in the future. eircom assumes that the obligation on operators to publish changes to their FTR is one that must be discharged directly. Operators cannot assume to discharge this obligation through the eircom Switched Transit Routing and Price List. This is particularly important as the provision of transit services is no longer a recommended market and the current obligation will, most likely, be removed from eircomin the near future.

eircom does not believe, having regard to ComReg's analysis of the market and its exclusion of self-supply, that it is in any way appropriate to maintain in force the provisions of the 2011 Decision regarding eircom's White Label services. eircom notes in particular that the White Label 2011 Decision was based on the previous remedies originating from the 2006 Decision and cannot be as such continued without an adequate review. It continues to be eircom's position that it is not open to ComReg to regulate White Label services in the manner that it purports to do.

Without prejudice to this position, eircom submits that to the extent that it is subject to specific transparency obligations in relation to "notional" FVCT services included in White Label services as a result of its market power in FVCT services on its own network, then there is clearly no reason not to impose those same obligations on FVCT operators who provide equivalent "notional" services in White Label offers.

Q.13 **Do you agree with ComReg's approach on price control and cost accounting remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.**

eircomagrees with the conclusion that a price control remedy is necessary and that it should apply equally to all the operators in scope.

However, the pricing model, the expected market conditions, and the expected results of price regulation, should all be assessed in selecting the form of control. eircom in this regard would suggest that a "Hypothetical Efficient Operator" ("HEO") concept be used. The "HEO" should correspond to the conditions of an efficient service provider for the next 4-5 years. A "HEO" approach would ensure that an "all market players" approach is used instead of a "one player" approach and will ensure that the price control that is imposed meets the regulatory requirement of encouraging efficient investment.

eircom accordingly advocates the use of a unified cost-based model for each SMP operator, which determines the actual costs of FVCT having regard to the actual reach of the operator concerned, provides for the full recovery of the costs of an efficient service provider (determined on a nationwide basis)[6] and allocates on a transparent basis the cost difference between BU LRIC+ and pure LRIC.

Such an approach will ensure that the FTRs set for each network operator are cost-reflective taking into account the geographic reach of their network. To the extent that networks are different in their focus and reach, they will have single national cost oriented FTRs that are different. A network with a high number of rural customers will logically have higher FTRs than a network that serves predominantly urban customers. In other words, cost modelling should reflect the differences between SMP operators' unit costs where the mix of FVCT services differ according to the geographic reach of the networks concerned and/or the type of customers connected to the networks (e.g., residential and business users).

[6]The appropriate reference efficient network is in eircom's view a network with a national reach and serving between 25% and 33% of the retail market. This will enable FTRs to be set at a level that gives operators the appropriate incentive to build a core network with a reach that is similar to eircom's.

This will provide for a symmetric price regime that is able to express similar nationwide pricing for networks with a similar network geographic reach, and different nationwide pricing for networks with different geographic reach.

The attributes of an efficient service provider should be defined on a unified nationwide manner. Consideration of the actual geographic reach of the operator network will avoid distorted assessment of efficiencies of service providers working under different service conditions.

A number of further specific issues are considered below within this framework of analysis.

The pricing model

There must be clarity as to how the pricing model proposed for the Call Termination conveyance service will impact the prices for related services. Two immediate examples are Call Origination and Interconnect Paths. Call Origination conveyance uses the same network elements as does Call Termination and eircom is currently designated with SMP in the national market for Call Origination, and is subject to a price control remedy. Interconnect Paths are also viewed as ancillary services to the Call Termination product and are subject to price control by cost orientation. For these reasons any form of control for Call Termination must recognise relationships with related services and markets.

Expected market conditions:

ComReg should state the expected market conditions that will apply for the term of a price control remedy. For example there is an argument that the MEA of a fixed call conveyance network is an IP core with carrier class VoIP implementation. The control should recognise the timetable for such a deployment – and in particular the costs at the intermediate point where TDM and IP networks run in parallel with additional complexity and cost to support hybrid interconnect services.

Expected results of regulation

In order to assess the efficiency of regulatory intervention ComReg should quantifythe expected benefits to end-users of voice services.

Cost Accounting

ComReg's decision on Accounting Separation (Decision D08/10) sets the framework for compliance in terms of cost accounting and accounting separation obligations for wholesale fixed voice termination. Over the past 2 years, eircom has worked closely with ComReg to develop and implement cost accounting systems, methodologies and documentation with a view to fully satisfy the requirements deriving from this decision. eircom therefore considers that this public consultation should not carry additional requirements, but should be entirely consistent with D08/10 and with the implementation to date of the new Separated Accounts.

Q.14 **Do you agree with ComReg's approach to accounting separation remedies at this time? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.**

eircom is of the opinion that the obligations imposed by ComReg should be reasonable and proportionate to the competition problem they aim to address. This means that ComReg should consider whether an accounting separation remedy is appropriate or not in relation to the individual circumstances of each of the alternative operators concerned, having regard in particular to the size and growth of FVCT OAOs in terms of network coverage. In this context, we note that Consultation Document 12/96 does not actually give any figures with regards to the size of each of the 17 OAOs. Nor does it give any indication in relation to the dynamics of the market (e.g. the relative rates of growth of various suppliers of FVCT).

Q.**15Do respondents agree with ComReg's draft Decision Instruments set out in Appendix C and Appendix D? Do respondents agree with ComReg's Definitions and Interpretations as set out in the draft Decision Instruments? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer.**

See our responses below to questions 17 and 18.

Q.16 **Do you agree with ComReg's preliminary conclusions on the Regulatory Impact Assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your position.**

eircom is disappointed by the approach adopted by ComReg in its regulatory impact assessment (RIA).The approach is wrong because the RIA is little more than a qualitative discussion.No attempt has been to quantifiably assess the efficiency or cost of ComReg's proposals. We believe that there is a clear need for the quantitative standard of ComReg's RIAs to be raised.

ComReg's RIA is far too limited and does not investigate all reasonable options. For example, the Draft Decision proposes to regulate 18 separate markets (corresponding to the 18 FSP which are in scope. Yet, ComReg only considers two groupings – "Eircom's Relevant FVCT Market" (ref. page 209) and "the 17 alternative FSPs' FVCT Markets" (ref. page 216). This treatment of this latter group of 17 OAOs as if they were a homogenous group, with exactly the same characteristics and competitive power is misguidedand lacks the requisite underlying analysis, thereby inevitably leading to unreliable and misleading conclusions. For instance, a strong case could be made for imposing remedies on a large player such as UPC which would be akin to those imposed on eircom. Yet this possible course of action was not even contemplated in ComReg's RIA.

In summary, therefore, we do not believe that ComReg's RIA is fit for purpose.

Q.17 **Do you believe that the draft text of the proposed Decision Instrument in relation to general obligations for FVCT is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain the reasons for your answer, clearly indicating the relevant section numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.**

In terms of the substance of the obligations being imposed, eircom refers generally to its responses to Q 1-16 above. In addition, eircom has the specific following comments regarding the draft decision instrument:

Section 2 – Definitions and Interpretation

eircom does not agree that the proposed definition of "Access" is adequate and/or accurate. It is not necessary to define Access in the first place because in the context of an obligation of access, access is defined in the Access Regulations. In addition, the obligation of access that is imposed as a result of the review of the market for fixed voice call termination services is limited to remedies concerned with access to these services and associated facilities and services to avail of fixed voice call termination services. It is accordingly limited to these services. Section 8 should also be reviewed accordingly. eircom is of the firm view that on the basis of the conclusions of ComReg's market analysis as set out in ComReg Doc. 12/96, ComReg may only require SMP operators to provide access to FVCT services and Associated Facilities. This is not to say that there are different products and services which fall within the scope of this obligation.

Section 3 – Scope and Application

While we agree that the 18 listed FSPs should be in scope for the Decision, as we outlined in our response to question 5 above, eircom would strongly argue that the current proposed list of SMP operators must be capable of being easily expanded as new FVCT operators emerge in the future. This flexibility needs to be built into the wording of the Decision Instrument.

Section 4 – Market Definition

See our response to Q.2 above regarding the inclusion in the relevant markets of call origination where "called party pays".

Section 8 – Obligations to Provide Access

Section 8.3

"*Section 8.1 (ii)*" should presumably read "*Section 8.2 (ii)*".

Section 15

All provisions of Decision D07/11concerning voice call termination should be withdrawn; in the alternative, their application should be extended to all SMP operators.

Q.18 **Do you believe that the draft text of the proposed Decision Instrument in relation to FTRs is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain the reasons for your answer, clearly indicating the relevant section numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.**

Insofar as this Decision Instrument is effectively replicating the Decision Instrument arising from ComReg Consultation paper 12/67, and broadening its scope from 7 operators to 18 operators, eircom has already responded to this question in response to Consultation 12/67.

THIS PAGE IS INTENTIONALLY BLANK

4 Magnet Networks Limited

Q. 1. Do you agree that the above identifies the main relevant developments in the provision of retail voice services at a fixed location relevant for informing the assessment of the wholesale Relevant FVCT Markets since the previous review in 2007? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

Magnet Networks Limited (hereinafter 'Magnet') has no reason to disagree with the trend outlined in Clause 3.40 of the decrease in voice traffic. Magnet also agree that MSP such as Vodafone and O2 fixed and mobile bundled offer are becoming more attractive to end users in the fixed voice market. Magnet agrees that VoIP is growing, however, as identified managed VoIP such as is provided by Magnet and UPC use a number allocation and interconnection, transit and FVCT, however, unmanaged VoIP doesn't provide the quality of service that managed VoIP does.
Magnet agree that consumers both business and residential bundles are very attractive due to their economic and financial constraints.

Q. 2. Do you agree that ComReg has identified the retail consumer/business behaviours and retail market characteristics that are most relevant to the analysis of the Relevant FVCT Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

As the Calling Party Pay principle, ComReg has identified that called parties do not have any incentive to move as they do not pay for the calls received. However, called parties may only change provider to avail of free calls to family and friends on the same network. This is true in both fixed and mobile markets, and in effect those on the same network benefit from lower retail call charges to each other due to the fact they do not have to pay FVCT.
However, businesses will not change except to lower outbound call charges as they are the paying party. In relation to the ability to switch or use alternative methods than a fixed telephone call to convey a message i.e. mobile call, SMS, IM, email or off-peak calls, Magnet agrees with the behaviours identified by ComReg. SMS and email though virtually instantaneous there is a time delay, SMS have character constraints, email does not have the same feedback flow that a telephone conversation has. In relation to instant messaging this is something that is response driven i.e. normally a person is monitoring a website to seek to engage the viewer.

Q. 3. Do you agree with ComReg's preliminary assessment of these retail consumer/business behaviours and retail market characteristics in terms of their potential to impact the Relevant FVCT Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

Magnet agrees with ComReg's preliminary assessment as outlined above in Magnet's response to question 2 above. Awareness of CPP may not substantially affect customers behaviour with the only exception is between friends and family who join the same network to avoid FVCT and receive lower call charges or free call benefits. However, potential substitutes do not have the immediacy and flow that a telephone conversation has and this will remain attractive as a means of communication to many people.

Q. 4. Do you agree with ComReg's preliminary conclusions on the retail product and geographic market assessment to the extent that it informs the analysis of the Relevant FVCT Markets? Please explain the reasons

for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.

Magnet agrees with ComReg preliminary conclusions on the retail product and the geographical market assessment, as the geographic scope of the networks market is confined to its indigenous network.

Q. 5. Do you agree with ComReg's preliminary conclusions on the wholesale FVCT product market assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.

Overall, Magnet agrees with ComReg's preliminary conclusion in relation to wholesale FVCT product market assessment. As FVCT is where one network finishes a call on behalf of another network and unless you don't have your own network you have to pay someone to deliver your customers call and then you are incurring other charges such as transit etc.

Q. 6. Do you agree with ComReg's preliminary conclusions on the wholesale FVCT geographic market assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your position.

Overall, Magnet agrees with ComReg's preliminary conclusions, as the network is individual to the company and the company owns their network in a limited geographic location. In relation to supply side substitution unless already connected to that party as either redundancy, internet or inbound only traffic i.e. if enough traffic from one customer may start taking outbound calls directly to your network to bypass FVCT via another incumbent network. This may be in contravention of Regulation 20(4) of Framework regulations (SI 333/2011).

Q. 7. Do you agree with ComReg's preliminary conclusions on the wholesale FVCT market definition assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.

Overall, Magnet agrees with the definition as outlined in paragraph 5.125.

Q. 8. Do you agree with ComReg's assessment of SMP and the associated SMP designations above? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.

Magnet is unable to find a reason to disagree. Each operator stated owns their own network which has a presence in one or more fixed locations and uses fixed number ranges to supply their customers with a fixed telephone service. To allow their customers make calls to other networks they either interconnect with that operator or use another network to transit and terminate the call, this incurs transit costs and FVCT. Thus, due to only one operator owning their own network, they each have SMP in their own network.

Q. 9. Do you agree that the competition problems and the associated impacts on competition and consumers identified are those which could potentially arise in the Relevant FVCT Market(s)? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

Overall, Magnet feel that the incentive is bigger in larger parties to charge higher FVCT, due to the fact that they have a higher number of on net calls and thus, FVCT is a source of revenue due to their outgoings on FVCT is less than their revenue.

Q. 10. Do you agree with ComReg's approach to imposing access remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

Imposing access remedies on larger network providers is important due to their ubiquity or near ubiquity or large customer base. However, imposing access obligations on smaller network provider is of no great significance as not many operators will want to directly connect with them and instead purchase transit through larger operators. There may be no business case for interconnecting with smaller operators as the cost of the leased line and FVCT maybe greater than transit and FVCT cost.

Also, it is not in a smaller operator's interest to deny, prevent or slow down interconnection negotiations or accessing their network. The more interconnects the small operator has the better end to end connectivity they have. It is in a larger operators interest to slow down and prevent interconnect, as if their customers cannot access customers on the smaller network it is the smaller network that obtains reputational damage and thus, makes customers move to larger suppliers such as Eircom. This has been borne out in the past by Eircom not allowing customers access Smart Telecoms customers. This led to a mass exodus of customers from Smart to Eircom.

Q. 11. Do you agree with ComReg's approach to imposing non-discrimination remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

The concept of non-discrimination is in principle laudable, however, the proposed way of implementation of same especially in relation to information being published is onerous and goes beyond the true intention of non-discrimination. Magnets does not discriminate between any operator, who seeks access, however, as each agreement is a contract, these contracts will vary slightly from operator to operator depending on each parties requirements and interpretation of the contract and their needs.

Thus, though Magnet agrees with the principle of non-discrimination, however, we believe only Eircom should be so closely monitored. As per the 2007 decision, applying similar terms and conditions is sufficient to allow the sentiment of the agreement to be the same but the contract terms can vary from one party to another. Thus, an obligation to publish all information requested by one party to all parties should be suspended in the case of the remaining operators.

Q. 12. Do you agree with ComReg‘s approach to imposing transparency remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

The imposition of a RIO obligation to be published by all parties is imperative on larger operators or the operator who terminates the majority of calls i.e. Eircom. However, this obligations and the short time frame to implement same is burdensome, resource intensive and costly to smaller operators. Also, larger operators may insist on reciprocity and thus, one RIO published by one operator becomes the norm across the industry. Currently, eircom’s RIO requires reciprocity and based on this, this agreement is currently signed by a large number of operators and thus, will become the Industry standard agreement.

Magnet would prefer that outside of Eircom all other operators do not have to publish their RIO just ensure that the contract is negotiated in good faith and in a timely manner. As stated previously, a larger operator will only interconnect with a smaller operator if a certain outbound call threshold has been reached to make the investment in interconnect worthwhile. Thus, Magnet believe that a RIO should not be required to be published until an operators call volume reaches a certain threshold. This can be easily monitored through the ComReg quarterly.

Q. 13. Do you agree with ComReg‘s approach on price control and cost accounting remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

Magnet does not agree with the price control outside of Eircom. However, the proposed pricing as set out consultation 12/67 may render this question moot.

Also, it is imperative that cost accounting remedies are imposed and maintained on Eircom.
It is important to note that ComReg are overlooking the inclusion of transit. Not all operators are interconnected with BT for 999 calls, and thus transit charges are incurred in relation to terminating these calls. Thus, Magnet believe transit needs to come within this consultation and maintain regulation on this.

Q. 14. Do you agree with ComReg‘s approach to accounting separation remedies at this time? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

Overall, Magnet agree with ComReg’s approach to accounting separation once they are imposed and derogations are not allowed creep in as per Comreg 12/107. Magnet does not believe internal resource mismanagement should result in a derogation of obligations being given.

Q. 15. Do respondents agree with ComReg‘s draft Decision Instruments set out in Appendix C and Appendix D? Do respondents agree with ComReg‘s Definitions and Interpretations as set out in the draft Decision Instruments? Please explain the reasons for your answer, clearly

indicating the relevant paragraph numbers to which your comments refer.

In relation to Annex C, Magnet feels point 11.4, the 3 month time frame for RIO implementation is too short. Clause 11.5 the decision out of consultation 12/65 will regulate the FTR's. Clause 13.1 cost orientated should only apply to Eircom.

In relation to Annex D Clause 11.2, the publication by all of a RIO is something Magnet does not agree with due to reciprocity of some agreements and the inability to negotiate flexibility in these contracts.

Also, Magnet believes the cost orientated element of this decision is covered in any decision made under Consultation 12/67.

Q. 16. Do you agree with ComReg's preliminary conclusions on the Regulatory Impact Assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your position.

Option 4 is an imperative for Eircom due to its incumbency and dominant position across a range of markets.

Magnet feel option 2 is more appropriate as we believe price control too far and that access is not an issue for smaller operators as larger operators will not seek access with smaller operators and will use transit through Eircom instead.

Q. 17. Do you believe that the draft text of the proposed Decision Instrument in relation to general obligations for FVCT is from a legal technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain the reasons for your answer, clearly indicating the relevant section numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

Magnet Networks has believes the text is clear with regards to the specifics proposed, but Magnet reserves the right to disagree with such proposals.

Q. 18. Do you believe that the draft text of the proposed Decision Instrument in relation to FTRs is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain the reasons for your answer, clearly indicating the relevant section numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

Magnet Networks has believes the text is clear with regards to the specifics proposed, but Magnet reserves the right to disagree with such proposals.

THIS PAGE IS INTENTIONALLY BLANK

5 Magrathea Telecommunications Limited

Magrathea

Tel: 0845 004 0040
Fax: 0845 004 0041
e-mail: info@magrathea-telecom.co.uk

Arvydas Vidziunas
Commission for Communications Regulation
Irish Life Centre
Abbey Street Freepost
Dublin 1
Ireland

15th October, 2012

Dear Mr Vidziunas,

Market Review –
Wholesale Voice Call Termination Services Provided at a Fixed Location,
ComReg 12/96

We welcome the opportunity to comment on your consultation on your review of the market for wholesale voice call termination services provided at a fixed location.

Magrathea provides wholesale carrier services and managed solutions to communications service providers. We are due to launch wholesale inbound termination services in the Republic of Ireland in December of this year. Our network is IP based with a relatively flat network topology, with our main switch located in Telecity, Dublin.

ComReg's preliminary conclusions on the wholesale FVCT product market assessment

We agree with ComReg's view that the geographic scope of the relevant FVCT market corresponds to the geographic coverage of each individual FSP's FVCT offering to fixed numbers. We are happy in principle that the SMP obligations will apply to Magrathea; however, we have some concerns that these regulations will not, in practice, lead to an equitable fixed termination rates regime.

We note that ComReg's preliminary view is that the wholesale FVCT product market consists of *"the provision by an FSP of a wholesale FVCT service to other Service Providers from the nearest point (to the end user) or level on that terminating FSP's network at which calls can be handed over for termination to fixed numbers and in respect of which that FSP is able to set the FTR".* We do not believe that this provides sufficient incentive for Eircom to migrate away from TDM to a more efficient IP-based network. Moreover, it provides incentives for originating service providers ("OSPs") to act in an inefficient manner. The implication is that those OSPs who either operate an IP network and/or do not have sufficient traffic volumes to justify extending their network to all of Eircom's primary exchanges will have to pay more for call termination than the basic fixed termination rate. This penalises new market entrants for behaving efficiently and puts them at a disadvantage commercially compared with legacy TDM network operators and with Eircom in particular.

The termination rate received in practice will not be the same for all operators and therefore the effect of the non-discrimination remedy will be significantly weakened. This is especially so as the IP network operator will need to incur the additional and otherwise unnecessary cost of maintaining an interconnect with a TDM network.

Instead, ComReg should be providing incentives for efficient investment in next generation networks and promoting effective competition based on NGN infrastructure.

The regime will only be truly reciprocal and symmetrical if other CPs can obtain an equivalent termination rate from fewer points of interconnect. Otherwise, Eircom will benefit from the lower termination costs of more efficient networks through being able to pay a lower termination rate than it is charging.

We believe Eircom should be required to offer an IP interconnect product for which next generation network operators would pay the same FVCT rate as Eircom charges for interconnection at the primary exchange level.

Is FVCT delivered over Voice over Internet Protocol ('VoIP') technology in the same Relevant FVCT Market as FVCT using traditional PSTN voice technology?

We note that ComReg's preliminary view with respect to VoIP technology is:

- FVCT services in respect of calls to fixed numbers using managed or partially managed VoIP technology share similar competitive characteristics to FVCT services provided for calls to fixed numbers using traditional (e.g. PSTN technology) and should thus be considered as part of FVCT Relevant Markets; and

- To the extent that FVCT services are provided in respect of calls to fixed numbers using unmanaged VoIP technology, such FVCT services (where either the unmanaged VoIP Service Provider or a host Service Provider has the ability to set the level of the FTR) are provisionally considered to share similar characteristics to FVCT services employing PSTN technology. Under such circumstances, FVCT services to fixed numbers using unmanaged VoIP technology would likely form part of the Relevant FVCT Market(s).

We agree with this view. Given the lack of demand-side substitutability available to the originating SP, it would be wrong for unmanaged VoIP terminating operators not to face the same regulatory controls on their termination rates as other terminating operators.

If you have any queries with respect to this response, please do not hesitate to contact us.

Yours sincerely,

Louise Lancaster
Magrathea Telecommunications Ltd

THIS PAGE IS INTENTIONALLY BLANK

6 Verizon UK Limited

Reading International
Business Park
Basingstoke Road
Reading
Berkshire,
RG2 6DA

Verizon Enterprise Solutions response to ComReg's consultation on Wholesale fixed voice call termination 12/96

1. Verizon Enterprise Solutions ("Verizon") welcomes the opportunity to respond to ComReg's consultation on Wholesale fixed voice call termination 12/96 (the "Consultation").

2. Verizon is the global IT solutions partner to business and government. As part of Verizon Communications – a company with nearly $108 billion in annual revenue – Verizon serves 98 per cent of the Fortune 500. Verizon caters to large and medium business and government agencies and is connecting systems, machines, ideas and people around the world for altogether better outcomes.

3. As ComReg is no doubt aware, Verizon is a member of the Alternative Operators in the Communications Market ("ALTO") trade body in Ireland. ALTO is submitting a response to the Consultation, and therefore this response is intended merely to supplement rather than duplicate the points made in ALTO's response.

<u>Summary</u>

4. Verizon recognises that the Consultation represents ComReg's preliminary views on its analysis of the wholesale market for the provision of call termination on individual public telephone networks provided at a fixed location in Ireland (the "Market"). Verizon further recognises that ComReg, in conducting its review, has a duty to take utmost account of particular recommendations and decisions emanating from the European Commission, such as the recommendation on markets susceptible to ex ante regulation (the "2007 recommendation")[1] and the treatment of termination rates (the "2009 recommendation").[2] To some extent, therefore, ComReg is guided by external parameters in the conclusions it should reach on remedies in the Market, and indeed the specification of those remedies. However we would also urge ComReg to consider carefully the issue of proportionality in devising the nature and extent of the remedies to impose.

[1] European Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services OJ L 344.
[2] European Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC) (OJ L124/67 20.5.2009.

Competition and nature of SMP remedies in the fixed market

5. Mobile termination rates in Ireland have been consistently far in excess of the European average for a sustained period. Competition is far more restricted in the mobile market given the small number of providers and the very high barriers to entry. In the fixed market there are now 18 players, and much lower barriers to entry especially given new technologies that are emerging. Therefore whereas each fixed provider ("FCP") may have significant market power for termination on their own network, it does not necessarily follow that remedies must be identical for all FCPs, incumbent and smaller FCPs.

6. We would therefore urge ComReg to act with caution and with a bias against additional remedies, or additional elements of remedies unless there is a fully evidence-based rationale for each element. ComReg is aware that the need to act with proportionality in such matters is set down in the Access Regulations, with good reason. It is very important to all stakeholders that any remedies do not go beyond what is strictly necessary to achieve the aims, ie to promote competition and choice for the benefit of consumers. If they do, they will without doubt have a chilling effect on the incentives of business to invest and innovate in the sector. This is particularly important in this market, given that call volumes and margins are falling, and further red tape may have a far greater effect than in a market which is growing.

New entrants

7. ComReg considers that, if new entrants enter the market during the lifetime of the review, it will "monitor and [..] consider such developments on a case-by-case basis". However given the detail and extent of remedies that ComReg proposes, we would be concerned that such a new entrant would be able to significantly distort competition in the market for a material amount of time. This is because we consider that it would take ComReg a significant period to consult on and impose remedies on new entrants. We would therefore ask ComReg to consider whether there are any practical steps it may take to pre-empt such a scenario.

Transparency obligation

8. ComReg considers that all FCPs should (in addition to a general transparency obligation) be required to make publicly available and keep updated on its website a Reference Interconnect Offer ("RIO") and to make fixed termination rates ("FTRs") publicly available and publish such FTRs in an easily accessible manner on its publicly available website.

9. While we recognise the objective of having an obligation that promotes transparency, we consider that it is a step too far to require all FCPs to prepare and publish a RIO. This goes beyond what is necessary and proportionate to ensure a competitive market, and ComReg has simply not made the case adequately for proposing this requirement. Indeed we cannot see what added benefit this requirement would bring above and beyond the existing requirement (on those FCPs designated with SMP in 2007) to publish prices and terms and conditions of supply.

10. This proposal appears to be in conflict with Regulation 8(6) of the Access Regulations which among other things requires remedies to be proportionate and justified. While ComReg may consider that this is not an undue burden, it is another layer of unnecessary regulation which diverts time and resource from looking after the needs of customers. ComReg is able to review wholesale agreements between providers simply by requesting them direct from the FCPs should it choose to do so. From a brief check of other comparative European Member States, none has such a requirement on non-incumbent FCPs for wholesale voice.

11. We would strongly urge ComReg to re-consider this requirement. Alternatively ComReg could require that alternative FCPs on request of another FCP that is interested in interconnection provide the most important terms and conditions details of their interconnection offer.

Applicability

12. Notwithstanding the merits of the various remedies proposed, Verizon would agree with ComReg that those proposed for the alternative FCPs (ie all providers bar eircom) should apply in an equivalent manner. This is clearly necessary to prevent competitive distortions between alternative FCPs. Further, it is necessary to promote regulatory certainty, given that these FCPs are all operating in an equivalent manner in the same market.[3]

Price control remedies

13. Verizon fully agrees with ComReg's view expressed at paragraph 8.115 of the Consultation that it is neither proportionate nor necessary to require the alternative FSPs to maintain appropriate cost accounting systems, as is the case for eircom. This would be extremely time-consuming, expensive, and would return little benefit. This is especially the case given that, as ComReg notes, the alternative FSPs are being regulated in this one wholesale market under consideration, unlike eircom which is regulated in several markets.

[3] While recognising that eircom is subject to some additional accounting obligations.

14. We also agree with ComReg that termination rates should be set on the basis of BU Pure LRIC - and that this methodology should apply to all providers, both fixed and mobile.

15. We note at paragraph 4.3 of Appendix D of the Consultation that ComReg's proposal incorporates the ability for FCPs to set termination rates which can vary by peak, off-peak and weekend rates, and also by cents per minute and cents per call. Verizon considers that it is not fair or reasonable to build in the ability to vary rates in this way, either for mobile or fixed termination. ALTO made the point in the related consultation on proposed price controls for fixed and mobile termination rates 12/67, that where rates vary, for example by time of day, peak / off peak variations etc, there is potential scope for providers to exploit flexibility in an unfair and anti-competitive manner. For example the UK has seen a situation where mobile providers were able to "game" price controls based on rate changes at different times and days, and force purchasers of mobile termination to pay more, in aggregate, than the rates intended to be set as an upper limit.[4]

16. Material differentials in rates often act against the interests of business providers, as rates during the working day are typically much higher than those at so-called "off-peak" times. Therefore with its current proposals Comreg is effectively discriminating against the needs of businesses.

17. In addition, if there is too much flexibility then this also forces competing operators to incur extra costs, as rates may be subject to frequent changes by significant amounts, requiring price notifications to be prepared and distributed to customers, in compliance with contractual obligations.

18. We would therefore urge ComReg to re-consider its position on this element of the proposals and mandate a flat rate across the piece for both fixed and mobile providers. This would not only promote certainty consistency and simplicity, but more importantly it would greatly reduce the risk of competition being distorted.

Verizon Enterprise Solutions
15 October 2012

[4] This practice is commonly known as "flip-flopping", viewed as "undesirable" by the UK regulator Ofcom.

THIS PAGE IS INTENTIONALLY BLANK

7 Vodafone Ireland Limited

Vodafone Response to ComReg Consultation Market Review Wholesale Voice Call Termination Services Provided at a Fixed Location

Introduction

Vodafone welcomes the opportunity to respond to this consultation which covers some 18 individual fixed termination markets. When one considers the totality of fixed traffic terminating in Ireland Vodafone believes that this increase in the volume of designated Undertakings will not have a corresponding volume increase in the application of Regulation to terminating traffic.

Vodafone has concerns regarding the proportionality of some of remedies proposed to be imposed on some markets and the omnibus approach whereby little or no distinction is made in the actual market dynamics as they apply to categories of operators of different size.

Our detailed responses are below.

Response to Consultation Questions

Q. 1. Do you agree that the above identifies the main relevant developments in the provision of retail voice services at a fixed location relevant for informing the assessment of the wholesale Relevant FVCT Markets since the previous review in 2007? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

Vodafone agrees that the analysis set out by ComReg is broadly correct.

Q. 2. Do you agree that ComReg has identified the retail consumer/business behaviours and retail market characteristics that are most relevant to the analysis of the Relevant FVCT Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

Vodafone agrees that the analysis set out by ComReg is broadly correct.

Q. 3. Do you agree with ComReg's preliminary assessment of these retail consumer/business behaviours and retail market characteristics in terms of their potential to impact the Relevant FVCT Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

Vodafone agrees that the analysis set out by ComReg is broadly correct. However Vodafone is aware of at least one very large end user who has an allocation of a significant block of Fixed numbers which would act as potentially the single largest sink for termination traffic in the market. As Vodafone understands it this end user is requesting that providers of origination services directly route calls to this number block from the generality of their customer bases directly to the end user, bypassing the host network for the number block. Even in terms of its own assessment of the practicalities of supply side substitution ComReg does not appear to have adequately considered the potential market impact of this development.

Q. 4. Do you agree with ComReg's preliminary conclusions on the retail product and geographic market assessment to the extent that it informs the analysis of the Relevant FVCT Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.

Vodafone agrees that the analysis set out by ComReg is broadly correct.

Q. 5. Do you agree with ComReg's preliminary conclusions on the wholesale FVCT product market assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.

Vodafone agrees that the analysis set out by ComReg is broadly correct.

However Vodafone believes that central to any analysis of supply side substitution are the constraints imposed by the National Numbering Conventions and the Framework Regulations. If the grant of the Right to use for a particular Fixed number carries with it some form of exclusivity as regards the termination of traffic from the PSTN to that number then no supply side substitution is possible as a matter of law. In this scenario the last leg of the call must always be carried by the undertaking to whom it is allocated.

Regulation 20 (4) of the Framework Regulations[1] states:

"An undertaking commits an offence if the undertaking assigns to locations, terminals, persons or functions on public communications networks numbers from the national numbering scheme that the Regulator has not specifically allocated to the undertaking in connection with the provision of publicly available electronic communications services."

This Regulation appears to be a prohibition on an undertaking from assigning a Fixed number to an end user on its network unless <u>that undertaking</u> has been allocated the number, even in circumstances where the number has been allocated to another Undertaking who has assigned it to the same end user. If this interpretation is correct then supply side substitution is in effect prohibited by Regulation as the assignment of the number to an end user on any network can only be done by the specific undertaking which has been allocated that number.

ComReg does not appear to have explicitly considered whether Regulation 20(4) of the Framework Regulations has applicability to an assessment of supply side substitution. Vodafone believes that such a consideration would result in the assessment of supply side substitution set out in the consultation document falling away, as it is simply not relevant.

In terms of the product market definition ComReg's proposed market definition states:

"The wholesale FVCT product market consists of —the provision by an FSP of a wholesale FVCT service to other Service Providers from the nearest point (to the end user) or level on that terminating FSP's network at which calls can be handed over for termination to fixed numbers and in respect of which that FSP is able to set the FTR"

Vodafone has concerns regarding ComReg's proposed market definition – that while ostensibly it is technology neutral, technology choices by the terminating operator could have dramatic effects on the physical location of the market boundary. This is particularly true of larger networks with multiple switching nodes and multiple technologies.

Consider a large network comprising TDM network with multiple switching nodes each hosting a pool of Foxed numbers and also IP switching nodes. If we adopt a "black box" approach to this network, then the based on ComReg's definition, each node potentially becomes a sub-market as the switching node with which the end-user number is associated is the "*the nearest point (to the end user) or level on that terminating FSP's network at which calls can be handed over for termination"*. For a given pool of numbers on that network no other node is part of the termination market.

---

[1] S.I. No. 333 of 2011 EUROPEAN COMMUNITIES (ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES) (FRAMEWORK) REGULATIONS 2011

If the network operator decides to move the number so that it is associated with another node then the handover point also changes. This movement between nodes is more likely to occur with the advent of NGA services where voice services will be carried in the IP layer and the IP node is unlikely to be in the same location as the TDM node that the number was previously associated with.

Similar fluidity in the location of the physical network boundary will arise in the case of growing networks which introduce additional nodes.

In both of these scenarios a question then arises of whether an operator seeking to offer terminating traffic into a multi-node network must connect to all of the nodes in order to access the entirety of the termination market on that network.

If this is not the case or if this is not the intent then Vodafone urges that that the definition be modified to remove any ambiguity.

Vodafone suggests that the following modification deals with this issue (additions underlined):

"The wholesale FVCT product market consists of —the provision by an FSP of a wholesale FVCT service to other Service Providers from the nearest point (to the end user) or level on that terminating FSP's network at which calls can be handed over for termination to all of *the fixed numbers* on that network *and in respect of which that FSP is able to set the FTR."*

The wording of section 11.2 of the proposed Decision instrument appears to deal with a situation where an operator has sufficient traffic volume to justify direct delivery of terminating traffic to the node hosting a particular pool of numbers. In this case in order to ensure that access seekers are not t required to pay for services or facilities which are not necessary for the Access requested then an a facility to terminate such traffic directly would be required.

Q. 6. Do you agree with ComReg's preliminary conclusions on the wholesale FVCT geographic market assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your position.

Vodafone agrees that the analysis set out by ComReg is broadly correct.

Q. 7. Do you agree with ComReg's preliminary conclusions on the wholesale FVCT market definition assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.

Vodafone agrees that there a number of individual FVCT markets although it disagrees that ComReg has properly analysed these.

Q. 8. Do you agree with ComReg's assessment of SMP and the associated SMP designations above? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your views.

Vodafone believes that ComReg has failed to properly analyse the pricing behaviour of a number of the undertakings now proposed to be designated as having SMP on their individual networks. ComReg has set out that a number of undertakings have reduce their Fixed Termination Rates while a number of others have not and purports to use this difference to support a finding that those operators who have not reduced their rates can operate independently of the market. However each termination market is individual. By definition activity in one market will have no effect on activity in another market. The market dynamics and price pressures in each market must be analysed separately. ComReg has not set out any evidence that those operators who did not reduce their FTRs had been requested to do so within their individual market.

What ComReg has in effect done is to carry out a benchmarking exercise on FTRs across a group of networks and has provided no evidence to support the proposition that the networks within the benchmark are valid comparators. It has not examined whether there is a technology breakpoint in terms of scale whereby smaller networks cannot profitably use carrier grade switches which allow them to reduce their unit costs. Nor has ComReg examined potentially volume independent items associated with being an FSP such as the provision of Lawful Interception facilities.

ComReg has not brought forward any evidence that there have been requests for these smaller networks to reduce their prices nor that these requests have been unreasonably denied.

The lack of this consideration means that ComReg's analysis is incomplete and cannot be relied on to draw the conclusions which it has.

Q. 9. Do you agree that the competition problems and the associated impacts on competition and consumers identified are those which could potentially arise in the Relevant FVCT Market(s)? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

Vodafone notes that, based on eircom's Switched Transit and Routing Price List, all of the OAOs proposed to be designated are capable of being reached via eircom as a transit operator. Based on the structure of the wider Irish telecommunications market and the relative size of eircom's market share across multiple individual markets Vodafone also believes that all originating operators who have traffic for termination to individual networks will also be interconnected to eircom for transit purposes.

There are two possibilities for any originating operator who wishes to send traffic to a terminating network. They can either implement a dedicated interconnect to the terminating network involving the cost of transmission and the other operational overheads of multiple contract, multiple billing relationships, etc. or they can route the traffic on an existing connection to a transit provider. As noted above eircom is in a unique position whereby it is connected to all traffic sources and sinks for calls to Fixed numbers.

The choice of which of these two solutions to use is essentially a straightforward business case. What is being balanced is the cost of the direct interconnection to the terminating network against the cost of transit. There are statistical gains achieved in transmission systems when traffic volumes are sufficiently large with a given increment of transmission having a higher utilisation (and hence lower unit cost) as traffic volumes increase.

This puts a lower limit on the point at which there will be market demand for direct connection to networks. This lower threshold is unlikely to be met to justify a business case for direct connectivity between smaller networks. Therefore there will be no new market requirement for direct connectivity to many of the smaller network operators now proposed to be designated. A Reference Offer is only relevant to those seeking new interconnect arrangements. Those already connected have no need of a Reference Offer as they have signed contracts. If there is no market requirement for new connectivity to a given (smaller) network then there can be no market problem that arises from the lack of a Reference Offer.

Regulation 8.6.(a) of the Access Regulations states:

"Any obligations imposed in accordance with this Regulation shall—(a) be based on the nature of the problem identified,"

If there is no problem identified then it is simply not lawful for ComReg to attempt to impose an obligation.

In order to justify the imposition of an obligation to publish a Reference Offer ComReg must demonstrate that there is likely to be a level of traffic from new, non-interconnected network towards a specific terminating network which is above the business case break point which would justify a direct connection. Unless it can do this it cannot, as a matter of fact, identify a problem requiring the publication of a Reference Offer.

This analysis could be modelled using information either in the public domain (such as eircom's transit rate and the regulated pricing for leased lines) and market share information available to ComReg (which would allow it to model a matrix of fixed termination traffic from each likely originating network towards each individual terminating network). This level of modelling is far less difficult than other modelling exercises undertaken by ComReg and there is no obvious reason why ComReg has not carried out the required analysis before contemplating the imposition of this remedy.

Similar reasoning applies in respect of the proposed Access remedy. Those operators who are already interconnected do not require an Access remedy as they already have access and unless there is a market requirement for new direct connections to a particular terminating network then the absence of an access obligation does not give rise to a market problem. Again, unless ComReg can identify a problem it cannot impose an obligation.

Consideration of the proposed non-discrimination remedy is also amenable to this analysis with a similar conclusion.

In other markets ComReg has imposed conditional remedies that only become active once a particular threshold is passed. There is no reason why this approach could not be adopted for each of the individual termination markets under consideration.

Even where the business case break point is reached is reached through growth, in practice switching from transit to direct connection will likely be a reactive rather than proactive activity. The cost savings are so marginal that it does not make business sense to incur the set-up costs of the direct connection unless you are sure of accruing the benefits. This means that even if the remedies were only activated after a threshold of was reached then there would be no market harm.

It would appear therefore that for the majority of the FVCT markets under consideration the only remedy that is fully justified is a price control remedy with perhaps a transparency remedy relating to the publication of the individual network operator's termination rate. This last point would remove a dependency on eircom in terms of price transparency. The imposition of these remedies would in any event be dependent on a designation of SMP and as has been pointed out in our response to Question 8 there are question marks over the analysis relied on by ComReg in this regard.

There is a different set of considerations in respect of eircom. Its scale and SMP across multiple markets means that there will be an ongoing requirement for even the smallest operators to interconnect with it. This is evidenced by the fact that all of the operators proposed to be designated in the FVCT market are already interconnected with eircom as are all of the Mobile Network Operators.

This is view is reinforced by the fact that, as far as Vodafone is aware the GNP centralised database is not being used for traffic routing purposes. This means that in practice that eircom is used to provide Serving Network Functionality for the routing of calls to geographic numbers. This is unsurprising as the business case for direct interconnection does not just depend on the trade-off between transit and transmission costs but also on the costs of implementing an "all-calls" lookup capability. Absent this facility calls to numbers which were ported out from eircom would continue to be offered into eircom as original block-holder. Therefore there is direct market evidence of an ongoing market demand for direct connection to eircom for termination purposes.

This justifies the imposition of the full suite of remedies in the case of eircom.

In terms of the transparency remedy eircom's currently published Reference Interconnect Offer is written as a reciprocal contract with provision for inclusion of operator offered services such as termination. This is direct evidence of eircom's ability to leverage its SMP in the FVCT and other markets in order to impose non-price conditions on operators who purported exercise SMP on their individual FVCT markets. In order to deal with this situation eircom should be obliged to publish both a reciprocal and non-reciprocal version of its RIO.

Q. 10. Do you agree with ComReg's approach to imposing access remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

See answer to Question 9.

Q. 11. Do you agree with ComReg's approach to imposing non-discrimination remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

See answer to Question 9.

Q. 12. Do you agree with ComReg's approach to imposing transparency remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position. ...

See answer to Question 9.

Q. 13. Do you agree with ComReg's approach on price control and cost accounting remedies? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position. .

Given the current and foreseeable configuration of the wider telecommunications market over the period of the review whereby there will be no demand for new direct interconnection to the majority of the designated undertakings Vodafone considers that a price control remedy on its own would be sufficient to deal with any problems likely to exist or arise regarding these markets.

In terms of larger Undertakings a wider suite of remedies will be required because there is a foreseeable demand for new direct interconnection to these networks.

Q. 14. Do you agree with ComReg's approach to accounting separation remedies at this time? Are there other approaches that would address the identified competition problems? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

Vodafone agrees that the analysis set out by ComReg is broadly correct.

Q. 15. Do respondents agree with ComReg's draft Decision Instruments set out in Appendix C and Appendix D? Do respondents agree with ComReg's Definitions and Interpretations as set out in the draft Decision Instruments? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer.

As set out in response to the previous Questions Vodafone does not believe that the imposition of the full suite of remedies to all designated undertakings is proportionate, reasonable or justified.

In respect of eircom, Vodafone believes that a further specification of its transparency obligation is required so that it must publish a reciprocal and non-reciprocal version of its Reference Offer.

Q. 16. Do you agree with ComReg's preliminary conclusions on the Regulatory Impact Assessment? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your position.

Vodafone does not believe that ComReg has properly analysed the impact of not imposing transparency, access and non-discrimination obligations on a number of the Undertakings. On this basis ComReg's RIA is flawed and cannot be relied on to support the proposed measures.

Q. 17. Do you believe that the draft text of the proposed Decision Instrument in relation to general obligations for FVCT is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain the reasons for your answer, clearly indicating the relevant section numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.

Please see the answer to Question 15.

Q. 18. Do you believe that the draft text of the proposed Decision Instrument in relation to FTRs is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please explain the reasons for your answer, clearly indicating the relevant section numbers to which your comments refer, along with all relevant factual or other evidence supporting your position.