



Office of the Director of
**Telecommunications
Regulation**

CONSULTATION PAPER

Payphone Access Charge Consultation Paper.

Document No: 02/68

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Oifig an Stiúirthóra Rialála Teileachumarsáide

Office of the Director of Telecommunications Regulation

Abbey Court, Irish Life Centre

Lower Abbey Street, Dublin 1, Ireland

Tel. +353 1 804 9600 Fax. +353 1 804 9680 E-mail info@odtr.ie

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1 INTRODUCTION

The Director of Telecommunications Regulation (“the Director”) is responsible for the regulation of the Irish telecommunications sector in accordance with European and National Law.

In Information Notice 00/33 – Direction to eircom on the Payphone Access Charge, the ODTR set out its position in relation to this charge. Since this document was published, a number of operators have raised concerns about specific issues and the Director now considers it appropriate to enter into a public consultation with industry, in order to decide on the best approach in dealing with these issues.

2 BACKGROUND

2.1 Legislation

The relevant legislation is contained in Appendix 1.

2.2 Related Consultation

Document 00/33- Information Notice – Direction to eircom on the Payphone Access Charge.

3 PAYPHONE ACCESS CHARGE

3.1 Calculation of the Payphone Access Charge: Current Methodology

The Payphone Access Charge (PAC) was first introduced in April 2000 following a lengthy consultation process. *eircom* stated that a PAC was needed because many calls made over their payphones are to 1800 free phone numbers and, in the absence of a PAC, their payphone business would receive no revenue in relation to this traffic. The proposed PAC was intended to address this situation.

eircom provided cost information and analysis based on the 1997/1998 Financial Statements to support its view that the PAC should be set at a rate of 6.74p/8.55c per minute. Following a review by this office, the Director deemed 5.47p/6.95c per minute as the justified charge for the PAC.

The PAC is calculated by :
$$\frac{\text{Relevant Payphone Costs.}}{\text{Number of Call Minutes from Payphones.}}$$

Up to now the PAC has been calculated on an interim basis, based on the most recently available data for call volume and costs. It had been the intention to update these interim calculations when the actual data for the periods in question became available, with any amendments being applied retrospectively.

In December 2001, *eircom* wrote to the ODTR stating that they consider it appropriate to recalculate the PAC rate for the period from 1st April 2000 to 31st March 2001 on the basis of the recently published 2000/2001 Separated Accounts. A summary of *eircom*'s proposed Payphone Access Charge is available in the Separated Accounts.¹ *Eircom* also proposed that as they are required to reimburse OLO's on a retrospective basis following the recent change to RIO rates, that the PAC rate approved by the ODTR should be applied on a retrospective basis to OLO's as far back as April 2000.

3.2 Industry Concerns

A number of operators have questioned the appropriateness of calculating rates on a basis involving retrospection, arguing that this particular sector has a number of unique characteristics. They say that, given the potential size of any retrospective adjustment relative to some of the players, the impact of retrospective adjustments could potentially be highly disruptive. The majority of calls to 1800 free phone numbers are made by users of prepaid phone cards. These prepaid phone card operators operate in a highly competitive market with tight margins and real time billing, where operators compete aggressively on price and cost control is essential.

In the period between the introduction of the PAC and the 13th of June 2002, card phone service providers based outside Ireland or with overseas subsidiaries could avoid the charge being levied on them through the use of overseas free phone

¹ Note 6 to the Historical Cost Separated Accounts for the year ended 31 March 2001.

numbers. eircom has confirmed that it has taken action to remedy this situation. The carriers responsible for the majority of the traffic not levied with a PAC have agreed to pay the PAC, and those carriers who have not responded to eircom's notification or who have indicated a willingness to do so, have had their numbers barred.

The Director would like to debate the appropriateness of the current mechanism of calculation of the PAC and the use of retrospection in these circumstances and is entering into a consultation process to seek the views of industry.

3.3 Calculation of the Payphone Access Charge: Proposed Methodology

The Director is minded to address these concerns and is conscious of the need for stability in such market conditions. She proposes to set a new rate effective from the 1st October 2002 to the 31st March 2003 based on forecast costs and projected volumes, assuming that call volumes continue to decline at present trends. The rate would also reflect the shortfall in PAC revenues in the period from 1st April 2000 to 30th September 2002.

The Director also considers that from 1st April 2003, inclusive, new rates should be set annually by reference to changes in the Consumer Price Index (CPI) for the previous calendar year. A new rate would be calculated in April 2003 by increasing the revised rate for the period from 1st October 2002 to 31st March 2003 referred to above by the change in CPI. These rates would not be subsequently revised for this period thereby providing certainty in the market.

The Director proposes that this procedure be subject to review within 3 years, without prejudice to the Director's discretion to invoke her powers under the relevant laws.

The Director asks for a view on the following issues:

Q3.1 Do you agree with the proposed method of calculating the PAC for the period from 1st October 2002 to 31 March 2003?

Q 3.2 Do you agree that the PAC should be revised annually from April 2002 by reference to an adjustment based on CPI?

4 SUBMITTING COMMENTS

All comments are welcome, but it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document.

The consultation period will run from 19th July 2002 to 9th August 2002 during which the Director welcomes written comments on any of the issues raised in this paper. Having analysed and considered the comments received, the ODTR will review the consultation and publish a report in August on the consultation which will, *inter alia* summarise the responses to the consultation. In order to promote further openness and transparency the ODTR will publish the names of all respondents and make available for inspection responses to the consultation at her Offices.

The Director appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful. Respondents are requested to clearly identify confidential material and if possible to include it in a separate annex to the response. Such information will be treated as strictly confidential.

“All responses to this consultation should be clearly marked “Reference: Submission re ODTR 02/68” and sent by post, facsimile or e-mail to:

FREEPOST

Ms Elaine Kavanagh

Office of the Director of Telecommunications Regulation

Irish Life Centre

Abbey Street

Dublin 1

Ireland

Ph: +353-1-8049600 Fax: +353-1-804 9680 Email: kavanaghe@odtr.ie

to arrive on or before 5pm, 9th August 2002.

Office of the Director of Telecommunications Regulation

19th July 2002

APPENDIX 1

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

The most relevant legislative provisions in relation to interconnection are:

- *Council Directive 97/33/EC on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (“the Interconnection Directive”), and*
- *The European Communities (Interconnection in Telecommunication) Regulations, 1998, S.I. No. 15 of 1998, transposing the above directive (“the Interconnection Regulations”).*

Under the legislation, a telecommunications industry operator providing fixed public telephone networks and designated as having Significant Market Power (SMP) in that market is required to publish a Reference Interconnect Offer (RIO) which is based on market needs and to which the Director may direct changes.

The pay phone access charge is a charge for interconnection services between the payphone and the terminating operator for 1800 free phone calls. The charge is levied on the terminating operator for those services.

eircom as a SMP operator in the public fixed telephony services and networks market is obliged to publish such interconnection charges as part of the RIO under Regulation 8 of the Interconnection Regulations and the Director has the power to direct *eircom* to justify its charges and where appropriate, direct they be adjusted to ensure transparency and cost-orientation. The Director also has the power under Regulation 10 of the Interconnection Regulations to intervene on her own initiative to “specify issues which shall be included in an interconnection agreement or to lay down specific conditions to be observed by one or more parties to such an agreement”.

The Director may set conditions or make changes under 10(3) in relation to the following:

- Conditions designed to ensure effective competition
- Directions or conditions relating to tariffs
- Supply and usage conditions
- Conditions as to compliance with relevant standards and/or essential requirements

This is not an exhaustive list.

In exercising her functions under Regulation 10 the Director must take into account a number of factors including the need to stimulate a competitive market in telecommunications services and the need to ensure satisfactory communications for users.

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

- interconnection charges should follow the principles of transparency, non-discrimination and cost-orientation;
- the Director may direct an organisation to justify its charges and to adjust these charges where they are not in compliance with these principles;
- a RIO based on market needs shall be published and the Director may direct changes to this offer; and
- charges for interconnection shall be sufficiently unbundled, so that applicants are not required to pay for anything not strictly related to the service requested.

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