



Commission for
Communications Regulation

Response to Consultation & Decision Notice

Decision Notice on Fixed Interconnection Charging Mechanisms

Decision No:	D14/03
Document No:	03/57
Date:	29 May 2003

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1 Foreword by the Chairperson

A Consultation Paper on fixed interconnection charging mechanisms – 03/16 was issued to seek the views of interested parties on a range of topics relating to the current regime of calculating interconnection rates and other various RIO related issues.

We propose to deal with the issues raised in Consultation Paper - ComReg doc 03/16 in two papers. This paper will address the various RIO related issues and will deal specifically with questions 8-19 of the Consultation Paper. This paper will also briefly set out our views in relation to the current regime of calculating interconnection rates/price cap issues i.e. questions 1-7.

A further paper will be issued which will be deal with the current regime of calculating interconnection rates/price cap issues (i.e. question 1-7) in greater detail.

The following is a list of respondents to the consultation:

- Association of Licensed Telecoms Operators (ALTO)
- Eircom
- ESAT BT
- Meteor Communications
- O2
- Smart Telecom
- Vodafone
- Worldcom

All responses to each of the consultations were helpful in informing the Commission on the Fixed Interconnection Regime and other Interconnection related issues. The responses are available for inspection at the ComReg office, excluding confidential material that respondents specifically asked to be withheld.

Etain Doyle,

Chairperson

Commission for Communication Regulation

2 Introduction

This document follows on from the consultation paper on Fixed Interconnection Charging Mechanisms issued in March 2003.

In Document 03/06, ComReg sought the views of interested parties on the current process of setting and finalising Interconnection Rates and other various RIO related issues. The Consultation Paper was set out in two sections. The first section (Questions 1-7) dealt with the current regime of setting interconnection rates and explored a number of alternative methods of setting interconnection rates. The second section (Questions 8-19) dealt with various RIO related issues i.e. delays in the publication of conveyance rates, allocation of carrier service and billing costs, order handling and other charges and Interconnect links.

Questions 1 to 7 are dealt with in a general way in Section 3. ComReg will follow up with a more detailed response and further consultation shortly. The remaining questions are dealt with in full in this paper.

3 The process of setting and finalising Interconnection Rates

This section is in response to questions 1 to 7 of the consultation. Eight respondents submitted views on the Consultation and six of these considered the current arrangements for setting Fixed Interconnection rates to be unsatisfactory for various reasons. Of the two remaining respondents, one of them did not respond to this question, while the other respondent considered that the current process is broadly satisfactory.

Question 3 of the Consultation paper 03/16 sought views on 3 alternative options/methods of setting interconnect rates. Option 3 was the preferred option of most respondents for the following reasons:

- Spreading risk equitably between eircom and Other Licensed Operators.
- Providing certainty for OLOs for their overall input costs.
- Providing eircom and OLOs with incentives to invest.
- Avoiding the need for retrospection.
- Providing stability and predictability to the rates.
- A price cap regime would provide greater incentive for investment and efficiency gains.
- There is wide support across the industry.
- The incentive that a price cap provides for cost reduction over time.
- Simplicity, avoids a costly and intrusive task on an annual basis.
- Past experience in the UK.

The Commission notes that option 3 is favoured by both SMP operators and OLO's equally. Having considered the issues the Commission agrees in principle that Option 3 would be the preferred option and that a prompt examination of the more detailed issues is warranted. The Commission will consult further in a separate paper on this matter shortly.

4 Delays in the publication of Conveyance Rates

4.1 Summary of Consultation Issue

In Consultation paper 03/16, ComReg sought views as to whether there should be further negative incentives in the form of interest on retrospective settlements. The paper noted that the publication of interconnect charge rates is not always timely and that this creates uncertainty for all players in the market. ComReg suggested two possibilities and requested views from respondents.

Q 8	Are negative incentives on eircom's support of the interconnect market desirable?
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4.2 Views of Respondents

In general, OLO's believe that negative incentives on eircom's support of the interconnect market are desirable where interconnect rates are falling in nominal terms. They say that it is in eircom's interest to delay the process. A number of respondent's note that the issue will only arise if current regime for setting interconnect rates continues and retrospective adjustment continues to apply, however two of these were also in favour of some form of negative incentives for eircom. The other respondent suggested that consideration of this issue be deferred until a decision has been made on the matter of the future process for setting conveyance rates. They believe that if there is to be a consideration of incentives, these incentives must be tested against the cost recovery principles, and in particular cost causation. They conclude that it would not be efficient to have interest payments and could even lead to an incentive for OLOs to cause delay because they can achieve a return greater than commercial rates if any overpayment is due to be refunded.

Another respondent believes that negative incentives on eircom are not appropriate because the underlying LRIC cost of interconnect should now be reasonably stable.

Q 9	Is interest on retrospective adjustments payments desirable? If so should the rates be commercial?
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4.3 Views of Respondents

This question addressed the issue of whether account retrospective settlements should take account of the time elapsed since the accounting period in question by applying interest at normal commercial rates to such settlements.

Again OLOs generally believe that interest on retrospective adjustment payments is desirable. Two of these respondents stated that it should be applied to eircom only and commercial rates should be applied while another respondent suggested interest should be applied in line with D10/02. One respondent states that interest rates as a penalty should never apply, but followed this up by stating that if any interest rate were to be applied, it should be a simple commercial rate, and it should apply only to the extent that it can be established that a delay was caused by a respondents deliberate actions or negligence.

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One Respondent believes that interest on retrospective payments is not desirable. They suggest that it would not be fair or reasonable to a respondent which had set interim rates on the basis of best information available at a particular time to be penalised when the outcome was different.

Q 10 Is interest on late adjustment payments desirable? If so, should the interest rate be as set out in D10/02 (i.e. 3 month Euribor + 4%)?

4.4 Views of Respondents

One respondent contends that if retrospection were to continue, interest at commercial rates only should be applied in these circumstances. Most other respondents believe that interest on late adjustment payments is desirable and the interest rate be as set out in D10/02 (i.e. 3 month Euribor + 4%) should apply. Two respondents considered that ComReg should publish a timetable of events in relation to the publication of Interconnect rates which could be used as a basis for setting penalties.

Q 11 Are there any other negative incentives which would be appropriate? Please describe any proposals & give reasons for your answer?

4.5 Views of Respondents

One respondent believes that in considering SMP remedies under the new framework and indeed before that framework comes in to play, ComReg will focus more on the urgent need to secure compliance with its decisions and with eircom's regulatory obligations. Other negative incentives included fines. One respondent believes in instances where ComReg considers the level of costing information supplied to be insufficient, any interim rates set should be X% lower than the rate supported by the eircom data. If more detailed information supports a higher rate then eircom should only be allowed to claim the higher rate from the date of the subsequent submission. They also consider that some form of maximum back-payment period may be appropriate.

Q12 From what date should either type of interest rate apply?

4.6 Views of Respondents

One respondent suggested that ComReg publish a timetable of events in relation to the publication of Interconnect rates which could be used as a basis for calculating interest. Another suggestion was that interest should apply for the period of delay caused by a respondent.

4.7 *Commission's Position*

The Commission believes in principle that SMP operators must have some incentive to supply information on a timely basis. Given that the Commission agrees in principle with the introduction of a wholesale price cap, which should remove the need for such negative incentives, it does not propose to specify any action at this stage but will keep the situation under review. It reserves the right to take action in specific circumstances if the need arises.

5 Allocation of Carrier Services and Carrier Billing Costs

5.1 Summary of Consultation Issue

Carrier Services (eircom's administrative costs associated with interconnection services) and Carrier Billing Costs (billing costs for the same services) have become an increasingly significant element of Interconnect call conveyance rates. Notwithstanding ComReg's concern about the absolute level of these charges, there is also an issue as to how these charges should be allocated across eircom's traffic. Currently these costs are allocated on the basis of interconnect minutes only. This treatment is followed because interconnected operators receive the full range of services from eircom Carrier Services while eircom retail only use a few administrative functions and do not receive interconnect bills.

Eircom retail functions as a switchless reseller of eircom wholesale services without the full range of commercial arrangements for historical reasons; it was operating before eircom's wholesale function was conceived of as a separate entity. ComReg noted the differing consequences of the application of simple cost causation based on historical boundaries and simplifications and the idea of non-discrimination in relation to Carrier Services and Carrier Billing costs. It asked respondents whether the strict primacy accorded to cost causation along historical boundaries – in recovering these costs from interconnect calls only should be tempered by an acknowledgement that this was likely to discriminate in favour of the fixed market SMP operator's own retail arm which does not receive interconnect bills from its wholesale arm.

ComReg asked respondents to indicate their preference for either eircom's interconnect traffic or total traffic to be used as a basis for recovery of their Carrier Service billing and administration costs.

Q 13a Across which group of call minutes – (total minutes or OLO interconnection minutes only) should Carrier Billing costs be recovered? Please give the reasons for your response?

Q 13(b) Across which group of call minutes – (total minutes or OLO interconnection minutes only) should Carrier Services costs be recovered? Please give the reasons for your response?

5.2 Views of Respondents

Responses were spread between the alternatives, with one SMP Operator supporting the existing approach – using interconnect traffic alone, a second recommending that billing system cost recovery be limited to the ratio of utilised system capacity to total system capacity, while the third recognised the dilemma and called for further public investigation of alternative approaches. OLO respondents unanimously supported the converse approach balancing direct cost causality based on historic boundaries with non-discrimination.

One Respondent attempted to address the situation that would be faced by eircom retail operating as a switchless reseller and argued unconvincingly in ComReg's opinion that it might not receive a bill based on details of traffic generated by its customers. It advanced a more substantial argument in relation to administrative costs pointing to the extensive cost allocation mechanism in operation within eircom and supporting the production of separated accounts. This mechanism already provides for costs to be split between customers, one of whom is eircom retail. Costs which are allocated to eircom retail are already recovered internally and do not contribute to interconnect charges.

5.3 Commission's Position

Taking the above respondent arguments that eircom's retail arm is merely a switchless reseller comparable to other switchless resellers operating in the Irish market one must consider realistically the situation that eircom retail would face if this were so. We must imagine how eircom retail would operate through truly arm's length arrangements, not as it is operating which is a consequence of historical partial separation. As examples of arms length switchless resellers' mode of operation we can look at existing resellers of capacity provided by licensed operators such as Esat BT and MCI and the operations of switchless resellers in other countries. These resellers do not fall within the interconnect regime of licensed operators in Ireland but have extensive and complex agreements with the operators who support them. All such operations require the supply of detailed wholesale billing information to reconcile wholesale charges, in addition switchless resellers need this in detailed, itemised, form to enable them to generate their own customer bills as they have no switches of their own to provide call data records locally.

SI No 15 of 1998 (Interconnection in Telecommunications) contains the clear requirement on SMP operators to:

"7. (1) (a) adhere to the principle of non-discrimination imposed by the Directive¹ with regard to interconnection offered to others and –

(ii) shall provide interconnection facilities and information to others under the same conditions and of the same quality as they provide for their own services or those of their subsidiaries or partners;"

ComReg would not expect eircom to produce no interconnect bills for OLOs – in the same way that they produce no interconnect bills for their retail arm, nor would they be expected to have no interconnect agreements – in the same way that they do not have with eircom retail. However, the fact that only OLOs bear the cost of these services does not adhere to the principle of non-discrimination.

There are other concerns about these arguments. For example, Article 7 (3) of Directive 97/33/EC (the Interconnection Directive) states:

"Different tariffs, terms and conditions for interconnection may be set for different categories of organisations which are authorised to provide networks and services, where such differences can be objectively justified on the basis of the type of interconnection provided and/or the relevant national licensing conditions. National regulatory authorities shall ensure that such differences do not result in distortion of competition, and in particular that the organisation applies the appropriate interconnection tariffs, terms and conditions when providing interconnection for its own

¹ Directive 97/33/EC

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services or those of its subsidiaries or partners, in accordance with Article 6(a).”

The clear implication of the Directive is that the principle of non discrimination as between OLOs and eircom’s downstream arm is paramount.

Indeed the requirement to treat eircom’s retail arm as an interconnected party is made explicit in Regulation 9 (2) of SI 15 of 1998 which states that SMP operators shall:

“keep separate accounts for—

- (a) their activities related to interconnection covering both interconnection provided to their own services and subsidiaries and interconnection services provided to other organisations, and
- (b) other activities.

Unless eircom retail contribute to the cost recovery of Carrier Services billing and admin costs they will be operating at a competitive advantage to other players in the market. For billing costs the solution is straightforward – to recover carrier billing costs across all call types which use the eircom network, for administrative costs it is a little less so – because certain costs are already being directly incurred by eircom retail and are being recovered from that part of the organisation. This offset will be unnecessary under the treatment set out in Decision 5.2 below.

Decision 5.1

Eircom is directed to recover the costs of interconnect billing from all traffic utilising the eircom network with effect from 01/04/03 onwards, that is to say that interconnect billing will have a routing factor of 1 for all call types. Separated accounts, (revised) interim and final interconnect pricing submissions must be prepared on that basis.

Decision 5.2

Eircom is directed to recover the cost of administration of interconnection from all operators, including eircom retail, that is to say that carrier administration will have a routing factor of 1 for all call types, with effect from 01/04/03 onwards. Separated accounts, (revised) interim and final interconnect pricing submissions must be prepared on that basis. Details of the calculation of this charge are to be agreed between eircom and ComReg within 6 weeks of the date of this notice.

6 Order Handling and Other Charges

6.1 Summary of Consultation Issue

In this section ComReg asked respondents to address the computation of order handling charges.

In the context of the recent consultation on the development of the CPS regime, and elsewhere, OLOs have stated their dissatisfaction with the level of CPS order handling charges, particularly when compared with those prevailing in other EU countries. They have also noted the consequence of significant computer system costs being categorised as appropriate for recovery through order handling charges alone. In such circumstances it is all too easy for declining order volumes to drive up the cost of subsequent orders, leading to further falls in order volumes and yet further increases in per order charges. This type of downwards spiral can render vital tools of competition prohibitively expensive and leave vital tools of intra-industry products financially unsupported.

While certain facilities, such as each operator's own number portability capability, are a common requirement and if they are un-utilised the associated financial burden is borne by each operator individually, the cost of other facilities, such as CPS and industry databases, would fall unequally on the SMP operator or on a database management committee or company.

The likelihood of such dysfunctional outcomes generates uncertainty in the use of these inter-operator products and forms a disincentive to the development of competition.

OLOs have also made clear to ComReg their dissatisfaction with the level of number portability order handling charges. In this case the bleak sequence of decline in volumes and rise in unit costs has already occurred.

With this background ComReg asked a general question about current arrangements:

Q14 Is the current approach of calculating order handling charges for CPS and Number Portability satisfactory in principle? Please give reasons for your answer.

Q 15 Do you agree with ComReg's proposal to restrict the identification of costs to be recovered from per line charges to the administrative costs of implementing CPS for individual customer lines, all system costs being spread across all network elements used in providing interconnected calls, including eircom's "self-interconnected" calls, such that the costs are recovered from all such network elements? Please give the reasons for your response and indicate any alternative approach which could better develop competition?

Q 16 Do you agree with ComReg's proposal to restrict the identification of costs to be recovered from transaction charges to directly generated administrative costs of a port, all system costs being spread across all Licensed Operators? Please give the reasons for your response and indicate any alternative approach which could better develop competition?

Q17 Are there other services i.e. where charges increase significantly when order volumes decline which should be treated in a similar fashion to that specified above

6.2 Views of Respondents

Responses to this section were simply polarised with SMP operators rejecting ComReg's proposals and defending the status quo, while OLOs supported the proposals and argued the necessity of change with equal vehemence.

In their reply one of the SMP operators noted that, in relation to CPS:

"*eircom's* transaction charges are higher than those in some other countries, while the operator and system set-up charges are typically lower than the corresponding charge in those same countries"

and cautioned :

"When international comparisons of charges are being made, one must ensure that the charges being compared are comparable. For instance, *eircom* has a very simple charging structure for CPS orders whereby all completed lines attract the same charge. Other countries have more complex structures and differentiate between simple and complex orders."

Turning to what the same operator stated:

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"It is worth noting that in the last review of charges for NGNP, the fact that the level of orders which had materialised in the previous period was significantly lower than the volumes forecast. *This operator* had put in place sufficient resources to meet the demand forecast and had therefore under-recovered in that period. An adjustment was made in the calculation of the revised rate which compensated for that under-recovery and this was partially responsible for the substantial increase in rates."

Which goes to the nub of the problem. In addressing it constructively the operator makes the following proposal, in the context of CPS:

"The system costs are generally volume independent with the exception that an explosion of demand would most likely effect processing capability. While this is the case, it is still clear that the system costs are driven by the CPS orders. If a transaction charge is no use, an alternative method of recovering these costs would be to recover them from call origination, as this is the primary service derived from the CPS implementation."

And for NP:

"If cost causation and cost minimisation were maintained while allocating some part of the costs to calls, then it would not be correct to simply divide NP costs by all calls or minutes. These costs should not be spread across all network elements, but become new network elements. The element "NP System" has a routing factor of one in respect of termination on the *eircom* network, or transit where *eircom* provide the look-up facility. Retail calls also have a non-zero routing, determined by the proportion of such calls which remain on net. The routing factor for origination is zero."

Which is an interesting variation on ComReg's proposal leading to questions 15 and 16.

In response to question 17, operators mentioned the following other services:

- WLR
- Agency Rebilling
- NDD entries
- Ancillary Services and
- CPE costs
- CPS debt management
- SET

All of the above, with the exception of NDD, are services related to, or facets of either CPS or both CPS and NP and are therefore embraced by this document. ComReg will undertake to investigate NDD entries and share its conclusions with industry.

6.3 Commission's Position

To enable competition in the telecommunications markets in Ireland to continue to develop there is a practical need to prevent payments for order handling charges of intra-industry products, such as CPS and NP, reaching prohibitive levels which prevent effective use of the services. The current

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association of per line costs with expenses and set-up costs with capital expenditure produces an unstable system for the calculation of charges, generating uncertainty in the marketplace which may cause higher prices in itself.

As such the Commission considers that it must redraw the cost recovery boundaries set out in D2/99², for CPS, and D1/99³, for NP. These Decision Notices identified the following cost elements associated with CPS and NP:

- *General system provisioning costs:* These are once-off costs mainly incurred by the incumbent operator in modifying network and support systems to enable the inter-operator product. System provisioning costs are independent of operator demand.
- *Operator-specific enabling costs:* for CPS only. These are the costs of enabling the inter-operator product for any individual operator, including the setting up of commercial arrangements for the electronic transfer of customer orders.
- *Per-line enabling (order handling), or transaction, costs:* These are the mainly computer system operating and administrative costs of implementing CPS for individual customer lines.
- *Conveyance Cost:* for NP only.
- *Costs of the industry's ported number database:* for NP only

In both cases the Commission determined that:

- each operator should meet its own system set up costs (*General system provisioning costs*) when making its network and support systems capable of supporting the inter-operator product. In the specific case of eircom, the costs would be spread across all network elements used in providing interconnected calls, including eircom's "self-interconnected" calls, such that the costs are recovered from all such network elements.
- Per-line and operator-specific enabling costs (*Per-line enabling (order handling), or transaction, costs*) should be recovered from recipient operators directly, not through conveyance charges. And also that a legal constitution for the operation and management of the database should be developed by the operators and approved by ComReg. It was envisaged that the management body would put forward proposals for the funding of the database, but this has not been forthcoming, principally because of disagreements over zero-volume funding that this Determination is intended to address.

The Commission decided to allow the donor operator to levy a transaction charge which recovers its administrative transaction costs from the recipient operator. The transaction charge should only recover the costs of an efficient operator using an efficient technical solution. The transaction charge should exclude: -

- costs of changes in routing, if any, since correct routing is the operator's responsibility for calls originating on its own network,
- costs which the exporting operator would incur if it were to relinquish the customer to another operator without the application of the inter-operator product. Such costs are part of the process of

² Introducing Carrier Pre-Selection in Ireland – D2/99.

³ Introducing Number Portability in Ireland - D1/99 ODTR Doc 99/24.

losing a customer but not additional costs generated by the inter-operator product.

This structure, as set out above will not allow competition to flourish unless it is modified to limit transaction cost recovery to short term volume dependent cost items. Such a modification will ensure that systems that form part of inter-operator products do not become unfunded and that their use and operation remains feasible, even at low volumes. Other costs identified for cost recovery must be treated in the same way as general system provisioning costs are, as set out above.

The consultation paper proposed that services such as the dedicated fault handling service required by Direction 5.1 of D13/02⁴ would be considered to be interconnect-specific and recovered across all interconnect calls. This is, however, subject to the current determination on the cost recovery of Carrier Services admin costs Decision 5.2 above.

As indicated above the SMP operator has considered the introduction of the cost recovery mechanism proposed by ComReg and advocate a variation of it, for CPS:

"If cost causation were maintained while allocating some part of the costs to calls, then it would not be correct to simply divide remaining CPS costs by all minutes. These costs should not be spread across all network elements, but should become new network elements. The element "CPS system" has a routing factor of one for call origination. The routing factor for call termination is zero. The CPS capability is a call capability which is independent of the duration of calls, and so should be allocated to call set-up charges, with calls as the unit."

They apply comparable logic to NP:

"...it would not be correct to simply divide NP costs by all calls or minutes. These costs should not be spread across all network elements, but become new network elements. The element "NP System" has a routing factor of one in respect of termination on the *eircom* network, or transit where *eircom* provide the look-up facility. Retail calls also have a non-zero routing, determined by the proportion of such calls which remain on net. The routing factor for origination is zero."

But, it is important to recognise the benefit that competition brings to all consumers, not just those who directly avail of the service of a competing supplier. Easing the transition between suppliers increases downward pressure on prices and upward pressure on services to consumers who remain with their existing operator as well as those who transfer to another operator. This indicates that all costs other than those which are short term volume dependent (principally labour costs) and can thus be adjusted relatively rapidly to fluctuations in demand should be spread across all network elements used in providing interconnected calls, including *eircom*'s "self-interconnected" calls, such that the costs are recovered from all such network elements.

⁴ CPS in Ireland -2002 - D13/02

Decision 6.1

Eircom are directed to recover the costs of their CPS service other than those which are short term volume dependent (principally labour costs) from all traffic utilising the eircom network with effect from 01/04/03 onwards, that is to say that such CPS costs will have a routing factor of 1 for all call types. Separated accounts, (revised) interim and final interconnect pricing submissions must be prepared on that basis.

Decision 6.2

Eircom are directed to recover the costs their NP service other than those which are short term volume dependent (principally labour costs) from all traffic utilising the eircom network with effect from 01/04/03 onwards, that is to say that such NP costs will have a routing factor of 1 for all call types. Separated accounts, (revised) interim and final interconnect pricing submissions must be prepared on that basis.

The Commission intends to apply comparable cost recovery solutions to the industry NP database, and will work up detailed proposals in conjunction with industry and the Directors of Portco, the inter-industry company established to operate and manage that database.

7 Payment for Interconnect Links to and from eircom's network

7.1 Summary of Consultation Issues

This section addressed the underlying concept embodied in Appendix 4 of Annex E of eircom's RIO, that particular call types are owned by a particular operator and that operator is responsible for providing interconnect links to carry those calls both into their network where they originate on another network and out of their network when they terminate on another network.

ComReg also asked for views on an alternative rationale based on the idea that interconnect links are an integral feature of all telecoms networks and that their provision should be a natural part of each network. The classical analogy would be with international half circuits where each operator provides capacity (at their own expense) to and from the border of their country, or the midway point between their countries, coterminous with the boundary of their network. To avoid the need to introduce half circuits ComReg proposed that operators could be responsible for providing (and paying for) inter-network capacity in one direction or the other:

ComReg asked for opinions on this arrangement:

Q18 Is the current approach whereby Operators pay for interconnect links carrying call types that they own, in both directions, satisfactory in principle? Please give reasons for your answer.

Q 19 Would an alternative approach based on payment for interconnect links either to or from a network be preferable? Please give the reasons for your response and indicate any alternative approach which could better develop competition?

7.2 Views of Respondent

Responses to this section were also divided between SMP operators rejecting ComReg's proposals and defending the status quo, while OLOs gave cautious support to the ComReg's proposals. They were sympathetic to the possibility of a change in approach but wanted more certainty of how ComReg's proposals would work in practice.

One SMP operator argued:

"The current arrangement is that most links are charged on the basis that the operator which enjoys the retail revenue from the type of call carried on the link is causing the link to exist, and is therefore in the best position to pay for it."

Another SMP operator concurred:

“The current arrangement is that the operator who owns the traffic, which is carried over the link, is required to pay for that link. In theory as the owner of the call is the recipient of the retail margin for that call, then they bear costs associated with the interconnect link for that call. The ownership of the links, are effectively, determined by beneficial ownership.”

OLO replies indicated considerable dissatisfaction with the level of charges for interconnect links and their willingness to explore alternatives was driven at least in part by a concern to reduce costs rather than inherent disagreement with the current arrangements.

7.3 Commissions Position

In view of the support for the current arrangements by several respondents and the requests for more detailed information on practical arrangements by others the Commission does not consider it advisable to introduce any changes at this time, but this issue will be kept under review.

8 Regulatory Impact Assessment

On 21 February, the Minister for Communications, Marine and Natural Resources issued a series of policy directions to ComReg following a public consultation. Included was a Direction in relation to Regulatory Impact Assessment (RIA).

The text of the Direction is as follows:

"The Commission, before deciding to impose regulatory obligations on undertakings in the market for electronic communications or for the purposes of the management and use of the radio frequency spectrum or for the purposes of the regulation of the postal sector, shall conduct a Regulatory Impact Assessment in accordance with European and International best practice and otherwise in accordance with measures that may be adopted under the Government's Better Regulation programme."

In its Consultation Document, "Future Regulation of Electronic Networks and Services – ComReg Consultation Procedures" (Document 03/31 of 18 March 2003), the Commission stated that it would issue an Information Note on how it intended to implement this policy direction following a review of the issues involved. In accordance with the Direction, ComReg is currently reviewing best international practice and practice by equivalent European National Regulatory Authorities. In the Consultation Document, ComReg set out its view that, because of the need to conclude decisions on a number of matters which were currently under consideration, it would be counter-productive to defer these regulatory decisions until the format and methodology of RIAs were established. It pointed out that many features of an RIA already formed part of its initial investigation and major reviews of regulatory measures, and these were outlined in consultation papers and responses (where possible, subject to the constraint of commercial confidentiality). In particular, in the consultation process affected entities were provided with the opportunity to specify the impact on them of particular measures.

In relation to this paper, in the main, ComReg's sought the views of interested parties in relation to a number of RIO related issues. These issues will effect the calculation of interconnect conveyance rates which will have an effect on the costs of the OLO's and the revenue streams of eircom.

The changes proposed by ComReg in the allocation of carrier services and carrier billing costs will have an effect on conveyance rates and will ensure that eircom's retail division will be treated similarly to OLO's. Whereas the changes proposed in order handling charges will not only eliminate this discrimination between eircom's retail division and OLO's but will enhance the development of competition in the market which will in turn lead to benefits to consumers.

9 Appendix- Legislative Background

The rules governing interconnection and charges for interconnection are set out principally in the following legislation:-

- 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 (ONP) ("the Interconnection Directive"); and
- The European Communities (Interconnection in Telecommunication) Regulations 1998, SI No. 15 of 1998, transposing the above directive ("the Interconnection Regulations").

Licensed operators are also subject to certain obligations (and the Commission possesses additional powers) relevant to interconnection under the provisions of:-

- Council Directive 97/13/EC on a common framework for general authorisations and individual licences ("the Licensing Directive");
- The European Communities (Telecommunications Licences) Regulations 1998, SI No. 96 of 1998 transposing the above directive ("the Licensing Regulations"); and
- The terms and conditions contained in operators' General Telecommunications Licences.

The Interconnection Directive

Article 6 (a) provides that for interconnection to public telecommunications networks and publicly available telecommunications services provided by organisations designated as having SMP, those organisations must adhere to the principle of non-discrimination with regard to interconnection offered to others. Such organisations are obliged to apply similar conditions in similar circumstances to interconnected organisations providing similar services and to provide interconnection facilities and information to others under the same conditions and of the same quality as they provide for their own services, or those of their subsidiaries or partners.

Article 7 of the Interconnection Directive permits the Commission to impose changes on the Reference Interconnection Offer where justified. Changes to the Reference Interconnect Offer are subject to approval by the Commission.

Article 7 (3) states that Different tariffs, terms and conditions for interconnection may be set for different categories of organisations which are authorised to provide networks and services, where such differences can be objectively justified on the basis of the type of interconnection provided and/or the relevant national licensing conditions. National regulatory authorities shall ensure that such differences do not result in distortion of competition, and in particular that the organisation applies the appropriate interconnection tariffs, terms and conditions when providing interconnection for its own services or those of its subsidiaries or partners, in accordance with Article 6(a).

Decision Notice on Fixed Interconnection Charging Mechanisms

Under Article 9, ComReg has an obligation to encourage and secure adequate interconnection in the interests of all users, exercising their responsibility in a way that provides maximum economic efficiency and gives the maximum benefit to end-users. In doing so ComReg must have regard to amongst other things:-

- The need to stimulate a competitive market; and
- The principles of non-discrimination (including equal access) and proportionality.

The Interconnection Regulations

Under the Interconnection Regulations, the Commission must in the exercise of its functions encourage and secure adequate interconnection in the interests of all users in a manner that promotes economic efficiency and gives the maximum benefit to users and in doing so it must have regard to the need to stimulate a competitive market in telecommunications services.

Regulation 7(1) states that The organisations specified in regulation 4(2)(a) which have been designated by the Director as having significant market power pursuant to regulation 5 shall:-

- i. adhere to the principle of non-discrimination imposed by the Directive with regard to interconnection offered to others and—
- ii. provide similar conditions in similar circumstances to interconnected organisations providing similar services, and
- iii. provide interconnection facilities and information to others under the same conditions and of the same quality as they provide for their own services or those of their subsidiaries or partners;

Under Regulation 8 (10), the Commission is required where appropriate to direct that the Reference Interconnect Offer is adjusted so that it is transparent and cost oriented and complies with the Regulations.

When negotiations over the terms and conditions to be included in an interconnection agreement are ongoing, Regulation 10 (3) permits the Commission to intervene, either of its own initiative or at the request of any party, to specify issues which must be included in interconnection agreements or to set specific conditions that must be included in those interconnection agreements and that must be observed by one or more parties to such interconnection agreements. The specific conditions set by the Commission may relate to tariffs. In exceptional cases, the Commission may direct that changes be made to an interconnection agreement in order to ensure effective competition or interoperability of services for users. The changes made by the Commission may relate to tariffs.

General Telecommunications Licence ('the GTL')

Condition 8 of eircom's GTL obliges eircom to comply with the European Communities (Interconnection Telecommunications) Regulations 1998 insofar as same are applicable to eircom.

Part 4 of the GTL contains additional conditions applying where the Licensee is designated as having SMP in any Market. Condition 23 for example contains obligations relating to undue preference and non-discrimination.

New EU regulatory framework

A new EU regulatory framework was adopted by the Council of the European Union on February 14th 2002 for the provision of electronic communications throughout the internal market. The new framework consists of a package of Directives which reflect technological and economic changes and which attempt to further harmonise the regulation of electronic communications:-

- a common regulatory framework for electronic communications networks and services (Framework Directive);
- authorisation of electronic communications networks and services (Authorisation Directive);
- access to, and interconnection of, electronic communications networks and associated facilities (Access Directive);
- universal service and users' rights relating to electronic communications networks and services (Universal Service Directive); and
- processing of personal data and the protection of privacy in the electronic communications sector (Data Protection Directive).

All Member States are now obliged to adopt national legislation implementing this 'telecoms package' by 24 July 2003 except for the Data Protection Directive which has to be implemented before 31 October 2003⁵.

As with the current framework, a mechanism has been included which triggers various regulatory obligations on markets such as access and interconnection. In the new framework this mechanism, still called significant market power (SMP), closely relates to the competition law concept of dominance.

The provisions of the new access directive require that the national regulatory authorities of member states be able to intervene of their own initiative in order to secure the policy objectives of Article 8 of the Framework Directive⁶. National regulatory authorities must, when required follow the consultation procedures referred to in Articles 6 and 7 of the Framework Directive. Article 13 of the Access Directive⁷ provides for the national regulatory authorities of member states being able to impose obligations in relation to cost recovery and price controls on organisations designated as having significant market power under the provisions of the Framework Directive.

⁵ The Data Protection Directive 2002/58/EC was published in the Official Journal on 31 July 2002 after the publication of the other directives.

⁶ Directive 2002/21/EC of the European Parliament and the Council on a common regulatory framework for electronic communications networks and services.

⁷ Directive 2002/19/EC of the European Parliament and the Council on access to and interconnection of electronic communications networks and associated facilities.