



Office of the Director of
**Telecommunications
Regulation**

DECISION NOTICE

**“off book” pricing investigation in respect of
eircom’s provision of voice services**

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1 INTRODUCTION

The ODTR seeks to enable competition in the provision of services to end users. Fundamental to the development of competition is the establishment of a level playing field for telecommunications providers which requires in the main adherence to principles of transparency and non discrimination. *eircom* as a licensed telecommunications operator, is subject to a number of obligations in relation to, *inter alia*, the publication of prices, discounts and other terms and conditions, adherence to the principles of transparency and cost orientation in relation to tariffs and adherence to the principles of transparency and non discrimination in respect of discount schemes.

Given the importance of *eircom*'s compliance with its obligations for the development of effective competition in the market, and the concerns expressed to the ODTR that *eircom* might not be complying with its legal obligations in relation to pricing and discounts, the ODTR has carried out an own initiative investigation into 'off book' pricing by *eircom* and price compliance generally.

2 LEGISLATIVE BACKGROUND

The Voice Telephony Regulations¹

eircom as a licensed telecommunications operator, is subject to a number of obligations in relation to, *inter alia*, the publication of prices, discounts and other terms and conditions, adherence to the principles of transparency and cost orientation in relation to tariffs and adherence to the principles of transparency and non-discrimination in respect of discount schemes. It is a function of the Director pursuant to the Voice Telephony Regulations to monitor *eircom*'s compliance with the legal obligations contained in these Regulations and the corresponding Directive.²

2.1 Regulation 21(2) and 21(5):-

“An organization providing voice telephony services which has been designated under Regulation 4 shall ensure that tariffs for use of its fixed public telephone networks and fixed public telephone services follow the basic principles of transparency and cost orientation specified in Annex II of Directive No. 90/389/EEC.”

“An organization referred to in paragraph (2) shall implement tariff changes on the 21st day after public notice has been given, or some other period as may be specified by the Director.”

2.2 Regulation 23(1):-

Regulation 23(1) of the Voice Telephony Regulations requires *eircom* having been designated with SMP to ensure that discount schemes for users are publicly advertised (per Regulation 15(4) of the Voice Telephony Regulations) and are applied in accordance with the principles of transparency and non-discrimination.

“An organisation which has an obligation under Regulation 19 [i.e., an SMP designation] shall ensure that discount schemes for users are published in accordance with Regulation 15(4) and are applied in accordance with the principles of transparency and non-discrimination.”

¹ European Communities (Voice Telephony and Universal Service) Regulations, 1999, (the “Voice Telephony Regulations”), SI No. 71 of 1999.

² The Voice Telephony and Universal Service Directive 98/10/EC.

For the purposes of ensuring transparency and adherence to the principles of transparency and non discrimination, *eircom* as a licenced telecommunications operator is require to publish its tariffs and discounts pursuant to Regulation 15(1) and (4) which provide as follows:-

“(1) A person licensed under section 111(2) of the Act of 1983 shall publish in accordance with paragraph (4) current and accurate information and any changes to that information in respect of its standard terms and conditions with regard to access to and use of the public telephone network and publicly available telephone services which shall include -

- a) tariffs for end-users,*
- b) the contract period and, where applicable, any minimum contractual period, and*
- c) any conditions for renewal of contracts.*

(4) Subject to any other publication requirements that may be specified by the Director, a person referred to in paragraph (1) or (2) shall ensure that the information in relation to the matters specified in paragraph (1), (2) or (3), as the case may be, is made publicly available and, on request, in a form accessible to users with disabilities.”

2.3 Regulation 23(2) and Regulation 29(2):-

Pursuant to the Voice Telephony Regulations, the Director may withdraw or suspend the discount schemes or may take specified measures to ensure compliance with Regulation 23(1). With regard to enforcement measures therefore under the Voice Telephony Directive, the Director has two options, namely:-

- (i) She can either issue a direction under Regulation 23(2), following consultation with *eircom*, requiring its discount schemes to be modified or withdrawn, and/or
- (ii) She can issue a direction under to Regulation 29(2) requiring *eircom* to take “specified measures or to refrain from taking specified measures” for the purpose of complying with Regulation 23(1).

2.4 Regulation 29(3) and (5):-

With regard to enforcement, Regulation 29(3) and 29(5) of the Voice Telephony Regulations provides:

“The Director may issue directions to any person to which a provision of these Regulations or the Directive applies, requiring that person to take specified

measures or to refrain from taking specified measures for the purpose of complying with such provision.

A direction issued under these Regulations shall be in writing, state the reasons on which it is based and be addressed to the person concerned, and as soon as practicable, be sent or given in any of the following ways -

- (a) By delivering it to the person,*
- (b) By leaving it at the address at which the person carries on business, or*
- (c) By sending it by prepaid registered post to the address at which the person carries on business.”*

There are also obligations on (SMP) operators in relation to pricing, transparency and non-discrimination in the General Telecommunications Licence. In this instance 'specified measures' under the Voice Telephony Regulations have been devised. This is without prejudice to the rights of the Director to review at her discretion at any time, any further issues and or similar issues under the terms of the licence, the Voice Telephony Regulations and all other applicable laws.

3 OFF BOOK PRICING INVESTIGATION

The ODTR has over the last number of months carried out an own initiative investigation of *eircom*'s compliance with its legal obligations under the Voice Telephony Regulations in respect of pricing and discounts. Specifically, the ODTR has investigated issues relating to whether or not *eircom* has been offering prices and or discounts which are not in accordance with its publish terms and conditions. Also, the purpose of the investigation was to highlight the likelihood of any such errors occurring in the future. This investigation covered transactions in the periods from 2001 until March 2002.

On the basis of that investigation and the information it has received the ODTR has found *eircom* to be non-compliant with its legal obligations under the Voice Telephony Regulations in the following respects. *eircom* has priced off book in the provision of voice services. Specifically, the *eircom* multi-site (MSDS) and performance discount schemes were not applied in a manner consistent with the specific terms and conditions of those schemes. The investigation and the subsequent evidence provided indicate that non compliance was more extensive than initially considered. In addition, the ODTR has confirmed a number of additional apparent anomalies with general pricing. The ODTR believes significant gaps exist in the *eircom* systems that support the management of discount schemes and licensed products or services and that the management control systems to ensure compliance with the relevant regulations are inadequate.

eircom as the organisation designated as having significant market power (SMP) in the provision of fixed voice telephony services is required to ensure that discount schemes for users are publicly advertised (per Regulation 15(4)) and are applied in accordance with the principles of transparency and non-discrimination. Further, *eircom* is required to ensure that tariffs are publicly advertised and applied in accordance with the principles of transparency and cost orientation. By engaging in off book pricing in regard to the MSDS and performance discount schemes, *eircom* has failed to ensure full compliance with its obligations under Regulation 15(4), 21(2) and 23(1) of the Voice Telephony Regulations respectively.

The ODTR considers the issues this raises to be very serious ones and is particularly concerned that *eircom*, whilst agreeing to an urgent programme to address the problems is not yet in a position to assure the Director of their full compliance with their obligations in this regard. Given the potential detrimental effect a lack of transparency and or discrimination in respect of prices and or discounts may have on an OLOs ability to compete on fair and equal terms in the sector, in addition to the potential negative effect any weakening of competition may ultimately have on the end user, the ODTR has intervened rapidly to halt any continuation of the practices and to ensure that any repetition of such practices by *eircom* are avoided in the future. The Director will be closely monitoring the situation and will take whatever further steps considered necessary in the light of progress/developments. In markets where competition is not fully established any discrimination or lack of transparency may result in the exclusion of competitors.

The ODTR having reviewed the situation, has outlined to *eircom* certain undertakings and remedies which it considered to be essential but not necessarily exhaustive in ensuring their compliance with its obligations. The Director will continue to monitor developments closely.

eircom accepts that ensuring compliance is the responsibility of *eircom* and its Directors. In that regard, *eircom* has further detailed for the ODTR specific measures which it believes will deal effectively with any non compliance in relation to pricing and discounts, including a headline action plan. *eircom* undertakes to provide the ODTR with a detailed compliance plan covering the period to 31 November 2003 by 31 October 2002. Moreover, *eircom* assures the ODTR that any errors have been or will be fully corrected by the 27th October 2002.

eircom have advised the ODTR of their provisional steps taken to put in place a system of management controls and processes to support full compliance with their legal obligations in relation to pricing and discounts, including the appointment of a senior executive who now has overall responsibility for ensuring regulatory compliance with pricing and discounts within *eircom*.

eircom has taken steps to have some aspects of the discount schemes approved at a senior level, through senior executive participation and or sign-off, and to ensure that responsibilities involved are sufficiently segregated.

eircom has verified its billing tables against published prices and has undertaken to have this verified by the internal audit by the 31st November 2002.

The programme of specific measures to be put in place and implemented and with which *eircom* agrees is as outlined in the following direction;

Pursuant to Regulations 15(4), 21(2), 23(1), 23(2) and 29(3) of the Voice Telephony Regulations, *eircom* are directed to undertake the following specified measures :

Further to the headline action plan already provided, *eircom* shall by 31st October 2002 provide the details of the means by which its compliance in relation to pricing and discount schemes is to be established and maintained, including an explanation of problem areas together with a detailed action plan setting out all steps to meet *eircom*'s legal obligations.

eircom shall provide an in-depth review of all discount schemes, including the provisioning process for each scheme, the implementation of the terms and conditions and periodic audit checks, to the ODTR by 31st January 2003.

eircom shall immediately ensure the continued implementation of a system of management controls the processes to support full compliance with their legal obligations in relation to pricing and discounts. All processes put in place shall be both transparent and accurate to best international standards. These processes are to operate in a manner which enables end to end metering and billing processes to be verified and audited. Specifically, systems which can control the processes that impact on billing are to be introduced. This shall involve documentation of the specific steps both system and manual based to be exercised over these processes.

Further to the initial steps taken *eircom* shall immediately ensure the continued implementation of the same in relation to discount schemes and shall ensure that additional steps are taken in relation to all prices and all other discount schemes, including sufficient segregation and senior executive participation and or sign-off. The sponsoring approving body shall be *eircom's* Audit Committee or some similar body nominated by *eircom's* Chief Executive.

By the 31st October 2002, *eircom* shall clearly specify the role of the internal audit to include regulatory compliance with *eircom's* legal obligations in relation to pricing and discounts as a specific element of the internal audit work plan. Further, the internal audit reports on compliance are to be listed and considered by *eircom's* Audit Committee.

Further to the verification of the billing tables against published prices *eircom* shall ensure that the verification is reviewed by *eircom's* internal audit by the 31st November 2002.

eircom shall review service provisioning processes, including, service order codes and authorisations by 1 April 2003. These processes and controls shall be verified by the internal audit.

eircom shall immediately implement a new revenue assurance programme which shall cover end to end revenue assurance including implementation of manual and automated controls. This program shall be overseen by the CFO.

eircom shall provide the ODTR with a detailed plan in terms of a robust IT solution by 31st October 2002. *eircom* shall develop further the integration between systems to automate the flow through of customer orders through provisioning and billing, including a review system interfaces.

eircom shall ensure that underlying databases shall be integrated to a sufficient degree to allow its controls to operate in a uniform manner across all prices and discount schemes. *eircom* shall further ensure that appropriate automated controls are maintained across all IT elements.

eircom shall immediately ensure that a comprehensive and validated training and communications program be put in place for all relevant staff to ensure that all concerns over the relevant interfaces are corrected and that there is a full understanding and appreciation of the responsibilities involved in ensuring continuing compliance.

eircom shall commission an independent audit, the terms of reference to be agreed with the ODTR, of all the processes listed above or otherwise considered necessary to ensure compliance with Regulatory obligations and best practice be undertaken on an annual basis going forward for the next two years.

eircom has confirmed that all undertakings given and the time frames associated with these form a binding commitment in the resolution of this matter. The Director will closely monitor *eircom's* compliance with its obligations and the delivery of the specific undertakings given, including, all timelines for remedial action. Failure by *eircom* to deliver on any of the specific undertakings or timelines will result in the Director taking further remedial action.