



Office of the Director of  
**Telecommunications  
Regulation**

**Information Notice**  
**Telecommunications Tariff Regulation (Modification)**  
**Order, 1999.**

**Price Cap on certain services provided by *eircom***

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# 1 Introduction

In October 1999, the Director of Telecommunications Regulation (“the Director”) published proposals to modify the Telecommunications Tariff Regulation Order, 1996 (S.I. No. 393 of 1996) which controls the prices that *eircom* may charge for certain services. These proposals were prepared following a direction from the Minister for Public Enterprise Mary O’Rourke, TD (“the Minister”) to review the price cap mechanism. Following receipt of that direction, the Director’s Office (“the ODTR”) carried out a consultation on the price cap (see ODTR documents 99/19 and 99/34), and then published the proposal to modify the price cap in ODTR document no 99/61.

In accordance with the legislation, two months were provided for the submission of representations by *eircom* as an affected provider of telecommunications services. The Director also welcomed comments from any other interested parties by 19 December 1999.

Substantial representations were made by *eircom* during the two month statutory period, and a number of other parties also submitted comments. Comments were received from:

- Conduit Ireland Ltd
- *eircom* plc
- Mr Sean Hackett
- MCI WorldCom
- Ocean plc

The Director wishes to thank *eircom* for its representations and all other parties who commented on the proposals. She has considered all of the information received which has been very useful in assisting her to come to final conclusions on the modification of the Price Cap Order. The Director has also considered other information which has become available since the publication of her initial proposals in October, including *eircom*’s regulatory accounts.

The Director has now signed the Telecommunications Tariff Regulation (Modification) Order, 1999, (S.I. No. 438 of 1999) setting out the amendments to the 1996 Telecommunications Tariff Regulation Order. The Order is available at the ODTR offices or from the Government Publications Office, Molesworth Street, Dublin 2.

This document describes the main issues raised by parties who commented, gives an overview of the key elements of the new price cap mechanism and describes changes from the Director’s original proposals in ODTR 99/61. This paper should be read in conjunction with ODTR99/61 as the latter explains the purpose of many of the changes that are now being effected. It has not been possible to respond to every one of the comments received, or provide detailed commentary on the underlying material which is largely confidential.

*This paper does not constitute legal, commercial or technical advice. The Director is not bound by it. The paper is without prejudice to the legal position of the Director or her rights and duties under legislation.*

## 2 Structure and parameters of the modified price cap mechanism

### 2.1 Services included in the price cap

The Director considered a number of comments and additional information in relation to the services that should be included in the price cap and has modified the Order so that the following services are included in the new cap:

- The provision of telephone exchange lines and Integrated Services Digital Network lines
- Telephone exchange lines and Integrated Services Digital Network connection and take-over
- Local dialled calls
- Trunk dialled calls
- Operator calls
- Directory enquiry calls
- Payphone calls

These are the same services that were set out in ODTR 99/61. However, PSTN and ISDN rentals are combined as a single set of services whereas they were originally separate, both in the 1996 Price Cap and in the Director's proposed modification in ODTR 99/61. The Director considers that combining these services is consistent with the fact that connection and takeover for these services is combined and with the general convergence of the services.

A suggestion was made that calls made by *eircom* customers to Other Licensed Operators (OLOs) should be excluded because the termination charge for such calls is set by the OLO. In fact, termination rates for OLOs are set by commercial negotiation, with recourse to the ODTR in the case of failure of such negotiations. In such circumstances it is not accurate to say that the rates are set unilaterally by the OLOs. The Director does not consider it appropriate or practicable to remove calls that terminate on the networks of OLOs from the price cap, particularly given the current stage of development of the Irish market.

Further suggestions were made that directory enquiry calls, operator assisted calls and payphone calls should be removed from the cap for a variety of reasons, including the fact that these services were competitive. The Director does not agree with this position and considers that all such services should remain in the cap as *eircom* continues to have a dominant position in each case.

### 2.2 Structure of the price cap basket

The Director has maintained the original position of including all affected services within a single basket for the purpose of applying the CPI-X constraint. No new information came to light to suggest a change in this approach.

### 2.3 Phasing of price reductions and the level of the control

The Director has set the level of the control at CPI-8 per cent. This is mid-way between the range of 7-9 per cent that was proposed in ODTR 99/61 and requires *eircom* to achieve price reductions of 8 percent in each of the three years of the control.

Amongst the matters considered by the Director was the suggestion that the retail business of *eircom* in the services covered by the price cap might be unprofitable or below cost and therefore anti-competitive. The Director considers it more appropriate to examine the retail price cap services in conjunction with the internal supply of services within *eircom*. In that context, and in the light of the information available to her, the Director is satisfied that this is not a concern.

The Director considers that the level of the control at 8 per cent, strikes a fair balance between the interests of the various parties, including *eircom*, the market generally, and consumers, and satisfies the legislative requirements.

### 2.4 Sub caps on individual services

The Director has made some adjustments to the original proposals in relation to sub-caps on services within the basket. Originally, the Director proposed to continue to apply sub caps at a level of CPI+2 for all individual services for the reasons set out in ODTR 99/61. With one exception, the Director has not received any information that suggests this approach should be changed. Having considered the additional information the Director has decided:

- to remove the sub cap on directory enquiry calls, and
- to retain the sub-cap of CPI+2 for all other individual services.

The Director notes that *eircom* continues to have a dominant position in the provision of directory enquiry calls and considers that the services should remain in the price cap. However, she accepts, in the light of information received, that the charges for these services are substantially below the costs of provision and that if this were to remain the case, it could have an adverse effect on the development of competition in the provision of these services. She considers that allowing *eircom* the freedom to rebalance these tariffs will not have a material effect on the affordability of services to vulnerable users.

The Director also considered the provision of Operator Assisted Calls but concluded that these are a distinctly separate service from directory enquiries (although they could of course be sold together if customers wished to avail of a bundled service). The Director considers that operator assisted calls should remain available at an affordable price to all users who may require assistance in making calls, and has retained the sub-cap of CPI+2 on this service.

The Director has included, as proposed, a provision allowing light-user discount schemes approved by the Director to count towards *eircom*'s price cap obligations. She has also expanded this to allow vulnerable user schemes, in accordance with Regulation 8 of the Voice Telephony and Universal Service Regulations, 1999 to count towards the obligations. The Director considers that this is a useful way to encourage *eircom* to introduce targeted schemes to protect vulnerable users.

### 2.5 Sub cap on the lower quartile bill

The Director has provided for the continuation of the sub cap on the lower quartile bill of

CPI+0%.

## 2.6 Duration of control and extent of carry-over

The new price cap control is set for a three year period as was originally proposed.

Similarly, the Director has provided for carry-over of unmade increases or excess reductions within the price cap period to be permitted at her discretion but has not provided for carry over of unmade increases from the existing price cap to the modified cap.

## 2.7 Compliance assessment process

A number of minor modifications have been made, in particular to the Second Schedule to S.I. No. 393 of 1996, for the purpose of improving the clarity and effectiveness of the methodology used to measure compliance with the price cap mechanism. There were many other issues raised in relation to compliance that the Director does not consider appropriate for inclusion in legislation. Rather, such matters will be addressed in the context of measuring compliance at the end of each calendar year of operation of the price cap. In accordance with policy to date, a statement of compliance will be published which will also describe the details of the compliance methodology at that time.

## 3 Conclusion

The Director considers that the modifying order provides a challenging but achievable level of reductions in prices to consumers to be met by *eircom* over the three year lifetime of the order. She will keep the operation of the price cap under review and looks forward to seeing consumers benefit from the downward movement in prices that must now happen over the next three years.

#### **4 Consolidated text of S.I. No. 393 of 1996 as amended by SI 438 of 1999**

I, Alan Dukes, T.D., Minister for Transport, Energy and Communications, in exercise of the powers conferred on me by section 7 of the Telecommunications (Miscellaneous Provisions) Act, 1996 (No. 34 of 1996), hereby order as follows:

1. (1) This Order may be cited as the Telecommunications Tariff Regulation Order, 1996.  
  
(2) This Order shall come into operation on the 1st day of January, 1997.  
  
(3) Except as provided for in Article 2 of this Order in the definition of "lower quartile bill", this Order shall apply to the telecommunications services specified in the First Schedule to this Order and provided by the company."

2. In this Order -

"the Act of 1996" means the Telecommunications (Miscellaneous Provisions) Act, 1996;

"basket of telecommunications services" has the meaning assigned to it by Article 3;

"the company" means *eircom* plc;

"connection and takeover charge" means a charge made by the company for the connection of a customer to the company's networks or to services on the company's networks;

"the Director" means the director of Telecommunications Regulation appointed under the Act of 1996;

"directory enquiry call" means a call made to the company's directory enquiry service for the purpose of obtaining telephone numbers;

"Integrated Services Digital Network" means a network whereby telephone calls are made over switched end to end digital transmission paths;

"light user scheme" means any discount scheme which has been approved as such by the Minister and which is aimed at certain residential users whose bills for telecommunications services are, in the opinion of the Minister, following consultation with the company, low in monetary terms;

"local dialled call" means a dialled call made from a telephone exchange line in the State to a telephone exchange line in the same telephone group or to a telephone exchange line in another telephone group in the State or in Northern Ireland which is regarded as adjacent to the first-mentioned telephone group;

"lower quartile bill" means a notional bill for telecommunications services (including telecommunications services other than those referred to in the First Schedule) which stands specified by the Minister, following consultation with the company and is based on a representative sample of bills imposing charges for a specified period on residential users of such services;

"operator call" means a call which is completed with the assistance of an operator of the company for which a charge is made by the company;

"payphone call" means a call originating from a public telephone owned by the company on public property;

"the provision of Integrated Services Digital Network lines" means a service for which a recurring charge is made by the company for the availability of Integrated Services Digital Network lines and does not include connection and takeover charges;

"the provision of telephone exchange lines" means a service for which a recurring charge is made by the company for the availability of telephone exchange lines and does not include connection and takeover charges;

"relevant year" means any period of 12 months beginning on 1 January;

"trunk dialled call" means a dialled call made from a telephone exchange line in the State to a telephone exchange line in another telephone group in the State or in Northern Ireland which is not a local dialled call;

"vulnerable user scheme" means any discount scheme which has been approved as such by the Director and which is aimed at vulnerable groups of users, within the meaning of Regulation 8(2) of the European Communities (Voice Telephony and Universal Service) Regulations, 1999 (S.I. No. 71 of 1999);



3. The telecommunications services set out in the First Schedule to this Order shall be the basket of telecommunications services specified for the purposes of this Order and "basket of telecommunications services" shall be construed accordingly.
4. (1) The Minister hereby specifies  $\Delta\text{CPI} - 8\%$  to be the price cap in respect of the basket of telecommunications services to which this Order applies.  
  
(2) Without prejudice to subarticle (1) of this Article, the following adjustments to the price cap formula shall apply:
  - (a) in respect of any individual service (other than directory enquiry calls) contained in the basket of telecommunications services, the price cap shall be  $\Delta\text{CPI} + 2\%$ , and
  - (b) in respect of the lower quartile bill the price cap shall be  $\Delta\text{CPI} + 0\%$ .
5. (1) The restrictions and adjustments to the price cap formula, set out in Part I of the Second Schedule to this Order, shall be applied for the purpose of determining compliance with the price cap specified in Article 4(1).  
  
(2) The restrictions and adjustments to the price cap formula, set out in Part 2 of the Second Schedule to this Order, shall be applied for the purpose of determining compliance with the adjustment to the price cap specified in Article 4(2)(b).
6. Notwithstanding Article 4 of this Order, the Director may make the following adjustments to the price cap formula:
  - (a) to the extent that the company has made, during any relevant year, a reduction in charges that is greater than the reduction required by subarticle (1) of that Article, the difference may be taken into account by the Director in applying the said subarticle (1) in the relevant years subsequent to the relevant year in which the reductions were made;
  - (b) to the extent that the company has made, during any relevant year, an increase in charges (including an increase of 0%) that is less than any increase allowed under subarticle (2)(a) of that Article, the amount by which those increases are less than the increase so allowed may be carried forward and added to the increase allowed for the individual service in question in the relevant years subsequent to the relevant year in which the increase was made.

## **First Schedule**

The provision of telephone exchange lines and Integrated Services Digital Network lines;

Telephone exchange line and Integrated Services Digital Network connection and take-over;

Local dialled calls;

Trunk dialled calls;

Operator calls;

Directory enquiry calls ;

Payphone calls.

## Second Schedule

### Part 1

$$\sum_{i=1}^n \Delta P_i * (R_i / R_t)$$

Where,

n is the total number of services in the basket of telecommunications services;

$\Delta P_i$  is the percentage change in the tariff (before discounts, except for any light user scheme or vulnerable user scheme) for telecommunications service "i" calculated in accordance with a method to be specified by the Director after consultation with the company from either:

- (i) the base of the tariff pertaining at the end of the year preceding the relevant year, or
- (ii) on the basis of a representative sample (approved of by the Director after consultation with the company) of call records for the service "i" provided by the company;

$R_i$  is the total revenue before discounts for the telecommunications service "i" in the financial year ending on or about 31 March in the relevant year;

$R_t$  is the overall total revenue before discounts in the financial year ending on or about 31 March in the relevant year for all telecommunications services in the basket.

## Part 2

$$\sum_{i=1}^n \Delta P_i * (LR_i / LR_t)$$

Where,

n is the total number of services in the basket of telecommunications services;

$\Delta P_i$  is the percentage change in tariff (before discounts, except for any light user scheme or vulnerable user scheme) for telecommunications service "i" calculated in accordance with a method to be specified by the Director after consultation with the company from either:

- (i) the base of the tariff pertaining at the end of the year preceding the relevant year, or
- (ii) on the basis of a representative sample (approved of by the Director after consultation with the company) of call records for the service "i" provided by the company;

$LR_i$  is the amount charged for the telecommunications service "i" in the lower quartile bill in the financial year ending on or about 31 March in the relevant year;

$LR_t$  is the overall total charge for all telecommunications services in the lower quartile bill in the financial year ending on or about 31 March in the relevant year.