

Eircom offends under section 6 of the “Consumer Information Act 1978”

- How Ireland is cheated out of getting to grips with the Internet.
- How 200,000 citizens are still being cheated out of 50 to 100 million euros each year, paying for an obsolete subscription service that incumbent Telco Eircom continues to sell to them in direct violation of the law.

A presentation to the members of the Oireachtas Committee for Communications by Peter Weigl. Contents will also be published on www.comwreck.com. Application for investigation and prosecution has been made to the Office of the Director of Consumer Affairs. ComReg, the DCMNR and the EU Commission have been or will be informed about the issue.

May I ask you to take the time to read through this short presentation about an issue that is at the heart of Ireland's Internet and Broadband failure.

Executive summary:

When the DCMNR under Minister Dermot Ahern directed regulator Comreg to introduce cheap always-on FRIACO type flat-rate Internet access, it was done with the realisation that:

A) the one big hindrance for the Irish citizen in adopting the Internet was the by-the-minute moon-pricing of dial-up Internet connectivity provided by incumbent Eircom

and

B) the one big hindrance for Eircom in rolling out broadband was its substantial profit gained from high-priced dial-up access.

One and a half years after the introduction of FRIACO, take-up numbers at 90,000 are dismal. Irish home Internet penetration numbers have alarmingly slipped back from an already low 37% of households at the end of 2003 to 35% of households by the end of 2004.

In this presentation I'll document and expose this scandal whereby Eircom has been able to keep over 200,000 customers on their now obsolete "net subscription" service, where they are ripped off to the tune of €100,000,000/annum. Eircom has accomplished this through systematic misinformation about the "nature, effect or fitness for purpose" of the service, in clear violation of section 6 of the 1978 "Consumer Information Act".

The effects of this scam go far beyond the substantial financial loss for the users of the service; it hinders Internet adoption in the population and is a major cause for Eircom's slow and incomplete broadband roll-out.

I've informed the ODCA, the DCMNR and ComReg about this issue, but your support and initiative in helping to investigate and end this scam is very important to Ireland's Internet and Broadband future.

Thanks for your interest.

Eircom profits over €40 million from “net subscription” – Background

Eircom’s high Internet dial-up access pricing has been the main cause of Ireland’s dismal take-up of the Internet.

When Eircom introduced its “net subscription”, dial-up access customers, mainly businesses who needed to use the Net during day-time could reduce the per minute charge if they took out a €18.44 (incl.VAT) monthly subscription for the “net subscription” service. The saving was never as great as customers were made to believe, **but there was simply no other option, before the days of FRIACO and broadband.**

Eircom had sold the service with the misleading promise: “Giving you savings of over 60% on *eircom net free* daytime calls and over 20% every evening and weekend.”

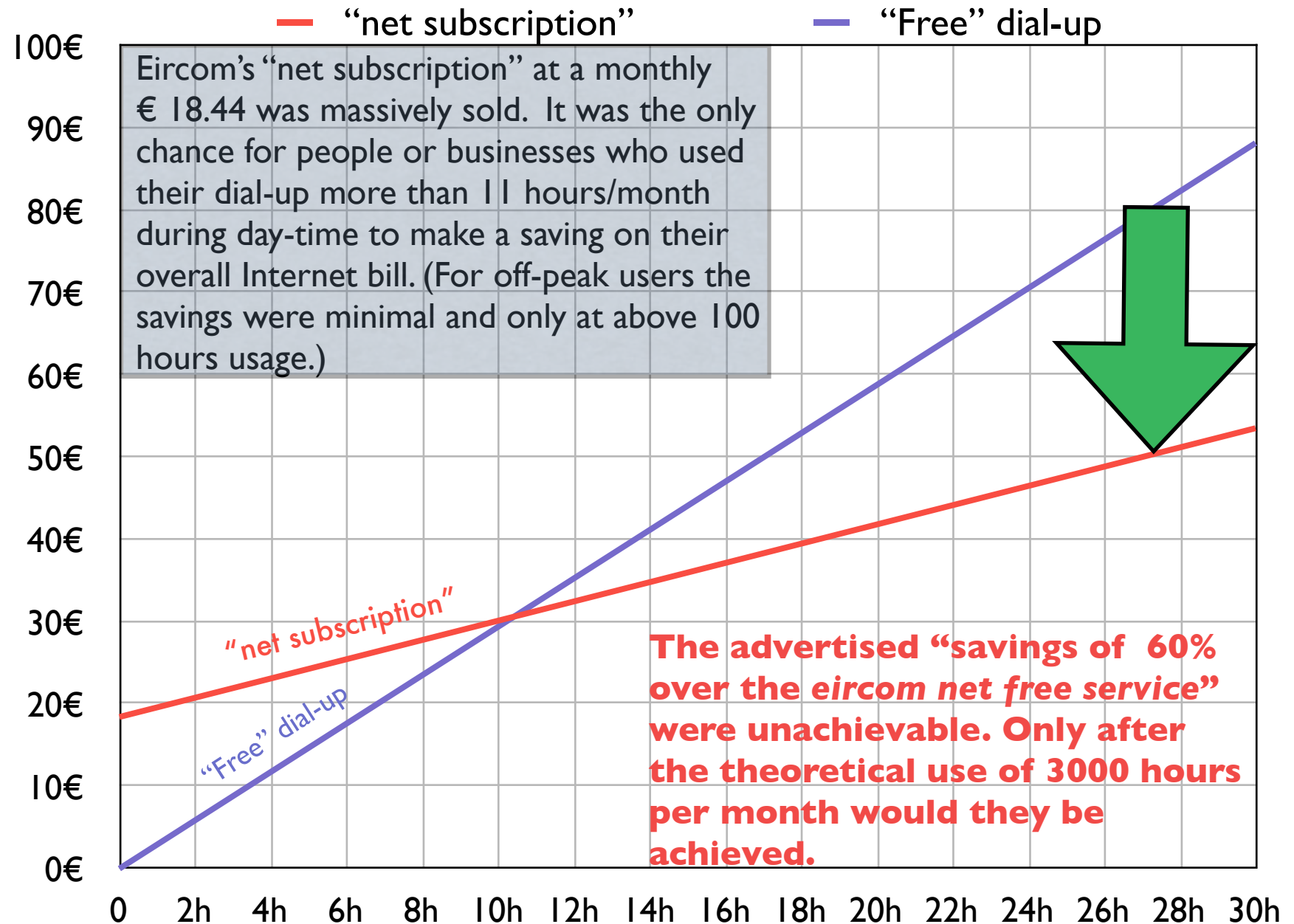
The 60% (and 20% respectively) cheaper per minute pricing does not at all result in a 60% (and 20%) saving.

Fact is: only after 3000 hours (!) of monthly peak-time usage under the “net subscription” service – which is of course impossible – would a customer achieve the claimed 60% savings over using the “eircom net free” day time calls (with off-peak usage it would require 950 hours (!) of “net subscription” Internet access per month to achieve the claimed savings of “over 20% every evening and weekend.”

Eircom sold over one quarter of a million “net subscriptions”, netting the company over 40 million/annually in subscriptions alone, without providing a single Internet minute yet.

See graphic next page.

Subscription dial-up was a must before July 2003



Introduction of FRIACO makes “net subscription” redundant

Since the July 2003 introduction of FRIACO (flat rate prepaid Internet hours), eircom’s “net subscription” became totally redundant.

In all cases, with any usage pattern, the use of “net subscription” leads to higher bills; in most cases substantially (in multiples!) higher bills than without the “net subscription”. No informed customer would use this service any longer.

[With minimal usage, up to 11 hours of daytime Internet dial-up, the eircom “free” dial-up service is way cheaper. From 11 hours onwards, when the “net subscription” service in the past started to work out cheaper than the “free” service, the costs of €31 are already above the costs of the eircom flat rate “anytime” (€29.99/month) which offers 150 Internet hours. With off-peak use the situation for the consumer is even worse: Only after 108 hours of usage the cost of the eircom “free” dial-up service can be matched, but this is already at a cost level of over € 80 euros, nearly three times the FRIACO service’s price.]

See graphic next page.

Eircom's "net subscription" is now a complete rip-off

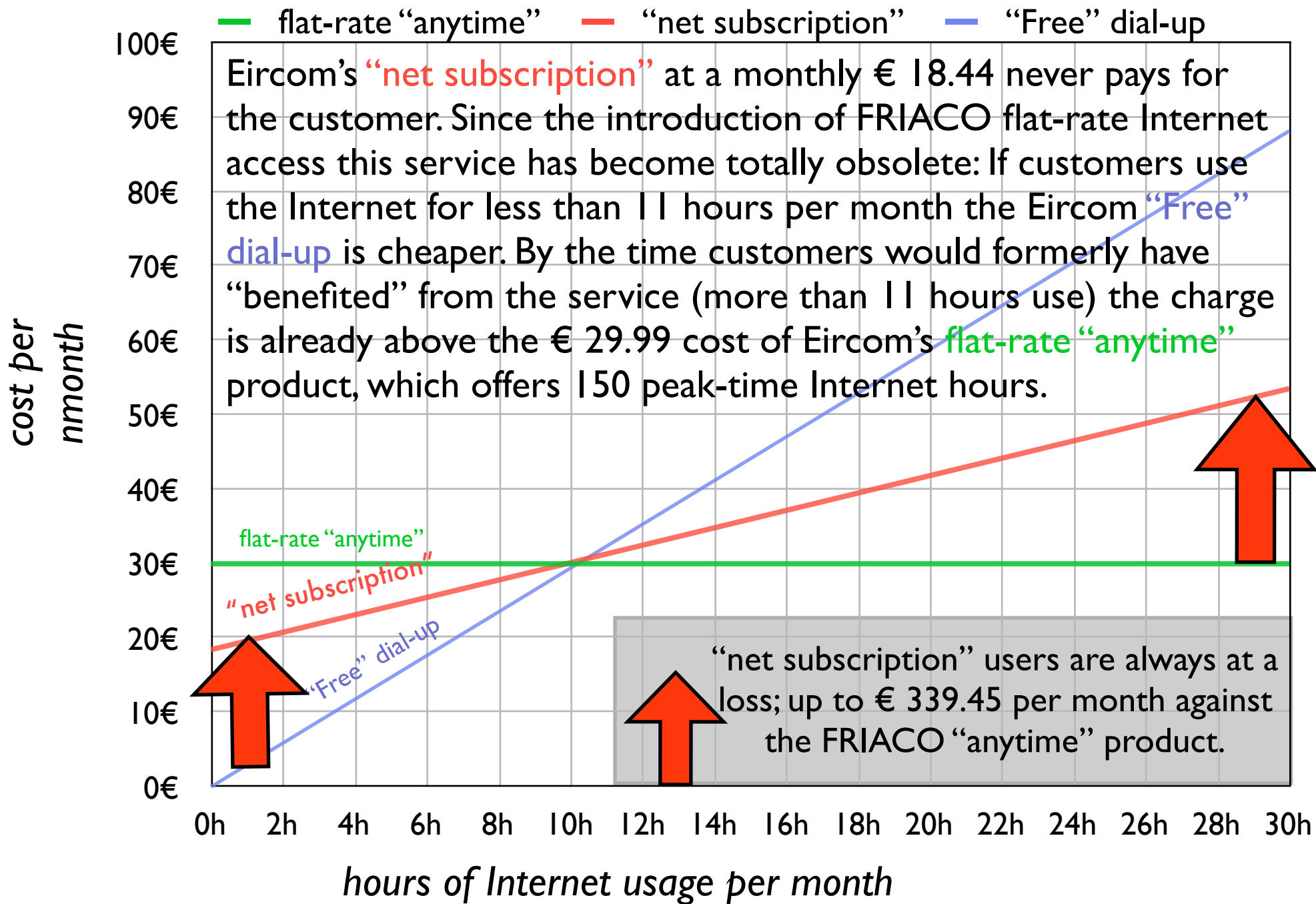


Exhibit I: One and a half years after the “net subscription” service became obsolete and nothing but a financial burden on the consumer Eircom still sells the service to over 200 000 existing subscribers each month.

ComReg’s Q4 2004 Trendwatch document shows: Only 6% of home Internet users are FRIACO (“dial-up flat rate”) customers. As this is equivalent to 90 000 users, we can deduct that the 15% of “net subscription” users (“Pay a monthly subscription cost to your ISP and then pay for time spent online”) will number around 225 000, possibly more because of the “Don’t knows”. One and a half years after the subscription product became obsolete and a substantial financial liability to the user, producing Internet access bills of up to above €200/month when a €29.99/month FRIACO product would suffice, how can there still be over 200 000 subscribers?

Home Internet Connection Payment Plan

| Which one of the following options best describes your <u>home</u> Internet connection payment plan with your main ISP? | % |
|---|-----|
| Pay as you go – pay only for time spent online | 55% |
| Pay a monthly subscription cost to your ISP and then pay for time spent online | 15% |
| Broadband flat rate | 12% |
| Dial-up flat rate | 6% |
| Don't Know | 13% |

Why would, one and a half years after the “net subscription” service became obsolete, over 200 000 users willingly pay substantially above the odds for their Internet access?

Up to July 2003 heavy day-time Internet users could reduce their bill from up to € 470 (for 8 daily hours) to € 205 per month by using Eircom’s “net subscription” service. (Not the advertised 60% reduction, but still sizeable) When in July 2003 FRIACO flat rate Internet access – ordered by ComReg following a Dermot Ahern directive – rendered the “net subscription” obsolete, Eircom decided to cash in on its customers. While Eircom eventually stopped to sell the service to new customers, Eircom did not cancel the service which had now become a financial liability for the user and an enormous “money cow” for the company.

To keep the profits (estimated to be in the region of over 100 million per year) from this lucrative source flowing, Eircom had to make sure two things were happening:

1. Make the company’s Broadband roll-out as slow and incomplete as possible.

Behind the smoke screen of an intensive PR and advertising campaign to “up” the company’s broadband credentials, Eircom made sure the broadband roll-out would proceed as slowly as possible, because the availability of broadband naturally depletes the highly profitable “net subscription” customer base.

[By March 2005, Eircom has only enabled the exchanges of the towns of Ireland that house 60 % of the population. Around 20% of the lines originating from enabled exchanges fail to carry broadband and Eircom is happily leaving it this way. Ireland’s enduser broadband availability is way below the EU average. The newly published Eircom plans to enable some 200 more exchanges (out of 1100) by March 2006 will only lead to a 72% population broadband coverage. (Eircom’s manipulative use of the figure of enabling 90% **of lines** should strongly be rejected. A line originating from an enabled exchange is not an enabled line. Only a line that is capable to carry broadband to the end-user should be counted as a broadband line.)

There are no intrinsic economic or technical reasons not to make broadband available to over 95 of the population now. NI has 100% population coverage now. To enable an exchange which is on a fibre backhaul costs only in the region of € 10 000. There are cheap technical solutions available to overcome line splitters and line distance deterioration.]

2. Misinform customers about the “net subscription” service, so they would not detect the obsolescence of the service and thus stop them from switching to an appropriate package.

This misinformation is a serious offence under section 6 of the “Consumer Information Act, 1978, with penalties of up to 2 years imprisonment.

Exhibit 2: How Eircom misinforms about its service.

| Service | eircom net Free | eircom net Subscription | eircom net flat rate |
|--------------|--|--|--|
| Suitable for | light users who surf in the evening and weekends | for heavy users who surf mainly during the day | users who want to easily control their Internet spend |
| Cost | <u>eircom net free</u> is a pay as you go dial-up Internet account. Each time you go online you pay a standard charge, just like paying for a phone call. | With <u>eircom net Subscription</u> you may a monthly fee for reduced Internet access charges. Giving you savings of over 60% on eircom net free daytime calls and over 20% every evening and weekend. | Choose one <u>easy-to-manage flat monthly fee</u> from a choice of three dial-up packages. Your choice of package will depend on how long you spend online each month. |
| More info | This service offers you unlimited access to the Internet at per minute rates, unlimited email addresses e.g. name@eircom.net and 20 MB of web space. This allows you to host your own website. | | You will also get 50Mb of web space and unlimited eircom net POP email addresses for all the family i.e. yourname@eircom.net. |

One and a half years after the “net subscription” service became obsolete Eircom still actively – and successfully – “nurses” its valuable “net subscription” customer numbers by way of deliberate illegal misinformation.

While Eircom is no longer taking on new customers to this service, it is actively selling the service to the existing customer base of over 200 000, netting the company over 40 million/annum in subscriptions alone, with at least again this amount in dial-up fees from these unfortunate misinformed subscribers.

Instead of ending the service Eircom actively and craftily promotes the service on its website. “Net subscription” customers are misled into believing that this service is still suitable “for heavy users who surf mainly during the day.” The claim “Giving you savings of over 60% on eircom net free daytime calls and over 20% every evening and weekend” is false, misleading and absurd. (Only after 108 hours of evening/weekend use would a “benefit” over the mentioned “net Free” service arise, but at a then cost of over €80 customers would have to be insane not to use the FRIACO flat-rate product at € 29.99 instead. Equally, with daytime usage there is no benefit for customers to be gained from the “net subscription” service under any usage pattern. The subscription service has become nothing but a financial burden on its customers since the FRIACO introduction.

We do not have 200 000 “insane” customer who still use the service, it is rather a matter of 200 000 customers, deliberately misinformed by Eircom about the “nature, effect or fitness for purpose of [the] services”, as section 6 of the consumer act puts it.

See cut-out from Eircom’s web site eircom.ie (taken 9th February 2005 - be assured Eircom will pull this one and only reference to the “net subscription” service from the site, as soon as it gets to read this.) Make no mistake: This is not an oversight of Eircom’s website manager, it is part of a deliberate and planned customer misinformation strategy, successfully keeping over 200 000 unsuspecting users in an obsolete service since mid 2003.

To make sure the “net subscription” customers cannot compare the price or specifications of the service with that of other services, Eircom has removed all other information about the “net subscription” from the web site.

To repeat: instead of informing its “net subscription” customers about the obsolescence of the service, Eircom misleads them into believing the service is still of value to them. This constitutes a clear breach of section 6 of the “Consumer Information Act, 1978!

Eircom is still pimping its obsolete service. Cut-out from Eircom’s web site, 9/2/2005

Background info: relevant sections of The Consumer Act 1978

Plain English explanation of Section 6 by the Office of the Director of the Consumer Authority (ODCA) from www.odca.ie:

Section 6 prohibits a person in the course of a business, trade or profession to make false (to a material degree) or misleading statement in relation to services.

According to the Act it is an offence to give, knowingly or recklessly, certain false or misleading indications as to services provided in the course of a business trade or profession.

Relevant quotes from the legislation itself: (link to the legislation text is <http://acts.oireachtas.ie/zza1y1978.1.html>)
CONSUMER INFORMATION ACT, 1978

“[False or misleading statements as to services, etc.]

6. —(1) If a person, in the course or for the purposes of a trade, business or profession—

(a) makes a statement which he knows to be false, or

(b) recklessly makes a statement which is false

as to any of the following matters, that is to say—

(ii) the nature, effect or fitness for purpose of any services, provided in the course of the trade, business or profession, he shall be guilty of an offence.

(4) In this section "false" means false to a material degree.

[Penalties.]

17. —(1) A person guilty of an offence under the Acts involving a trade description or under this Act shall, in lieu of any other fine or term of imprisonment, be liable—

(a) on summary conviction, to a fine not exceeding £500 or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or to both the fine and the imprisonment, or

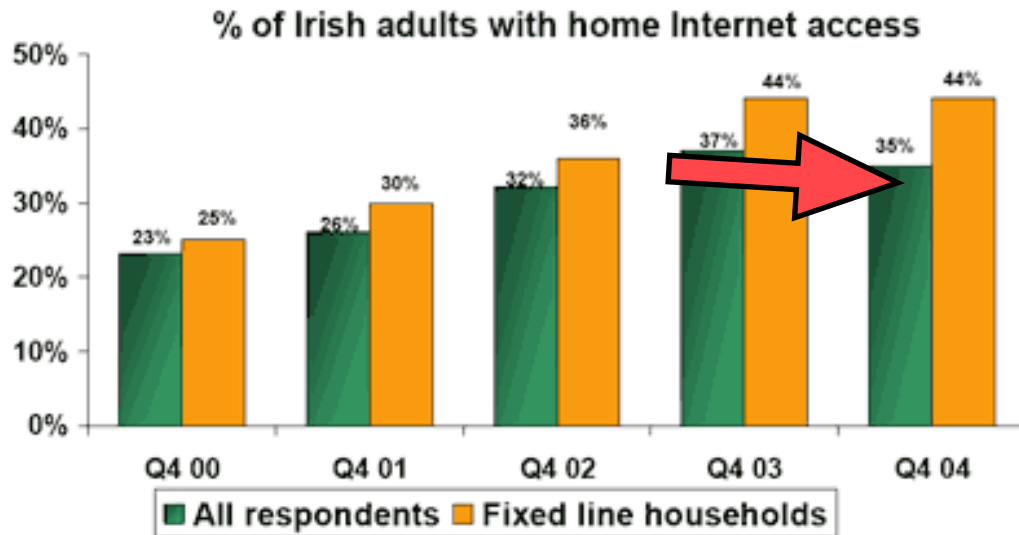
(b) on conviction on indictment, to a fine not exceeding £10,000 or at the discretion of the court, to imprisonment for a term not exceeding 2 years or to both the fine and the imprisonment.”

[Offences in relation to bodies corporate and unincorporated bodies.]

19. —Where an offence under this Act which is committed by a body corporate or an unincorporated body of persons is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person (or any person acting on his behalf) being a director, manager, secretary, member of the committee of management or other controlling authority of any such body or being any other similar officer of any such body, that person or the person so acting as the case may be shall also be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Exhibit 3: The damage done is frightening

Almost Half of Fixed Line Households Online



[ComReg purged the most important and most worrying statistic from its 2 main Quarterly Reports Q4/2004, and hid it successfully in the “Trendwatch” document (under a misleading headline)], but hidden it cannot remain:

Irish home Internet penetration has declined from an already devastatingly low level to 35% of households.

This is seriously bad news for our broadband hopes: High Internet penetration is the basis for sustained broadband growth.

Only 6% of Internet users have opted for the FRIACO service – because Eircom successfully tricks some 200 000 users into staying with the obsolete and moon-priced “net subscription” service. Unfortunately ComReg again watches with eyes wide shut as the incumbent further stunts our Internet growth and sabotages the positive effect of the FRIACO introduction.

Eircom’s phenomenal profits from this miss-selling scam, based on consumer misinformation at a grand scale, are a monumental hindrance to Irish people getting to use the Internet as the rest of the EU does, and it is a severe hindrance to an honest broadband roll-out. No wonder our less than 60% population broadband coverage compares so dismally the rest of the EU or to Northern Ireland’s 100 % population and area broadband coverage.

Conclusion: What to do regarding Eircom?

Investigate Eircom to find out the real figures about the number of “net subscribers” as my figures can only be best estimates. (A small percentage of “net subscribers” will be with other ISPs’ similar services.)

If Eircom is found to offend against the Consumer Information Act, immediate effective remedial action should be demanded:

The rip-off “net subscription” should be cancelled and customers advised which services suit their usage. (But not in the misadvising way of Eircom’s current online calculator – another example of Eircom’s manipulative ways and a further incident of an offence against section 6 of the Consumer Information Act 1978; even if in this case it is much more benign, it still is false information to a “material degree”)

As an intermediate solution, to give room for planning and executing the swift phasing out of the service, a capping of all the existing “net subscription” bill charges to no more than the FRIACO flat-rate “anytime” product (€29.99) should be implemented.

The ripped-off customers, tricked into staying with the obsolete “net subscription” service by Eircom’s misinformation, should get compensated for all amounts paid over the flat-rate anytime price of €29.99/month since the introduction of the FRIACO product one and a half years ago.

The magnitude of the material damage of this offence under section 6 of the Consumer Information Act is staggering, for the subscribers of the service and even more for the development of Internet and Broadband in Ireland. Eircom’s managers should get indicted as the law provides. The ODCA should be encouraged to take decisive action.

Take away this 100 million per year “net subscriber” cash cow from Eircom and you will not only give justice and fairness to 200 000 ripped-off customers, but you will also take away a mighty hindrance for Eircom to cover Ireland with broadband. Irish Citizens will finally be able to get used to using the Internet in the way and to the degree our European neighbours have enjoyed since years.

Conclusion: What to do regarding ComReg?

A scandalous illegal miss-selling of this dimension, with substantial negative monetary implications for hundreds of thousands of Internet users, and a devastating negative effect on national Internet and broadband development, should simply not have happened under the eyes of ComReg. ComReg was given a very clear direction by the DCMNR regarding the introduction of flat-rate dial up. ComReg failed to successfully introduce flat-rate dial-up Internet access for Ireland. Eircom's breach of the consumer information act to illegally hold on to its "net subscription" customers should not have gone unnoticed and should have been stopped at an early stage by the regulator.

It is the mind-boggling "achievement" of our regulator to have Ireland, a young, educated, Northerly, English speaking country placed at second last place in Europe with regards to Internet and Broadband development. And with little hope of catching up if ComReg's ongoing failure to fulfil its task is inconsequential.

From ComReg's latest document (its consultation about its manipulative, misleading and self-congratulatory Quarterly Reports) we can see that our regulator is prepared to continue simply watching the future exploitation of the "net subscription" customers: [Cut out from page 29. where ComReg proposes the new questionnaire for telcos and ISPs]

Section C: Narrowband / Broadband Internet Access Services and LLU

C.1 - Subscribers to Narrowband Internet Access Services

| | Non-Residential | Residential |
|--|------------------------|--------------------|
| Dial-up internet subscribers with no monthly subscription | | |
| Dial-up internet subscribers with monthly subscription excl. FRIACO | | |
| FRIACO internet subscribers | | |
| Other narrowband internet subscribers (please specify in Notes) | | |
| | | |
| | | |

Thanks for your attention!