



Office of the Director of  
**Telecommunications  
Regulation**

**Speech by the**

**Director of Telecommunications Regulation**

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**Irish Telecommunications 98**

**26<sup>th</sup> November 1998**

**Alexander Hotel**

**The New Regulatory Body: The ODTR**

**The Role of the ODTR: Objectives and Challenges**

**Document No. ODTR 98/58**

**November, 1998**

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## **The Role of ODTR: Objectives and Challenges**

### **Introduction**

Back in May of this year, when the Minister for Public Enterprise, Mrs Mary O'Rourke, TD announced that Ireland would not take up in full its derogation on telecommunications liberalisation, I was faced with the prospect of doing in six months what I had previously anticipated doing in eighteen. Despite the work that I knew I would face, I was convinced that this was the right decision for the Irish telecommunications sector.

I now stand before you at the end of those six long and gruelling months even more convinced that this was the right decision. I am delighted to say that my office has the key elements in place to facilitate the opening of the market. Licence texts were published a month ago following a comprehensive series of consultations, many applications have been processed, telephone numbers have been allocated and Telecom Éireann has announced key interconnection rates which are welcomed by my office.

It is very tempting at a time like this to reflect exclusively on all that has happened. My office has been very busy, and my team deserves praise for all that has been delivered. I am very proud of what has been achieved by the team, which came together and worked quickly and effectively under extreme pressure. This 'can do' attitude, the willingness to adapt to the unfamiliar, to find solutions rather than concentrate on problems reflects

the new, confident Ireland, the Ireland which is determined to take its share of the future communications market.

In the past, Ireland has been very good at analysing its difficulties and identifying the obstacles to solving them. If that approach had been taken, we would not have the licensing regime we have today.

Even international benchmarking is not enough to deliver Ireland's needs to catch up and take even the minimum necessary slice of the global communications market. No other country has achieved what the ODTR team has done in six months, nor do they face quite the challenge we will encounter in coming years. It will be tough, but we are developing our organisation and our ability to meet any challenge ahead.

The declaration of early liberalisation marked not just a once off change in policy, but, as frequently stressed by the Minister Mrs Mary O'Rourke, TD, a major change in how Ireland views the role of telecommunications in Irish economic and social development. The report of the Advisory Committee on Telecommunications underlines this clearly. The 1<sup>st</sup> December is really only the end of the beginning of a very exciting new world in which Irish people will have the opportunity and necessity to deliver and receive a wide range of services through internet and other media.

### **ODTR Programme**

So today, let us consider the foundation that has been laid. A foundation that avoids unnecessary regulatory impediments to market entry and makes Ireland an investment-friendly location. But let us also look

forward, and I will indicate how my office intends to build upon the start it has already made.

My office has defined a licensing environment for a market into which operators will, I fully expect, enter eagerly and compete strongly. We have put a great deal of effort into designing a licence framework which is simple, clear, transparent, and as light handed as possible, providing the right balance between freedom to operate and regulation of activities liable to cause distortions and limit entry to the market. Going forward, I will have to ensure that this licence regime works as it should, that licence conditions are enforced and work as they were intended; that codes of practice addressing unacceptable modes of behaviour are implemented in an appropriate manner. I have to consider how to use Long Run Incremental Cost (LRIC) as the basis for future key interconnection rates. There are many other major tasks in respect of accounting separation and publication which need urgent attention. I have to review the whole numbering scheme in the context of liberalisation and consider how number portability and carrier pre-selection can be introduced for 1 January 2000. I need to tackle major licensing issues in respect of infrastructure to ensure that the increased demand for better and more widespread communications services can be met on a competitive basis.

The licensing regime we have established in the last six months deals with the provision of services over existing networks, whether of Telecom Eireann or other operators. However, we are progressing licence regimes for other types of networks, in particular radio based telephony and satellite, which are particularly important to delivery in

less populated areas and those less well served at present. We are also reviewing the question of local loop unbundling which can enable new operators access clients more easily. All this, whilst not forgetting longer term objectives of ensuring that the regulatory regime adapts to tackle convergence and that there is a progressive lightening of regulatory intervention as competition begins to work effectively.

### **Telecommunications Sector Principles**

Let us turn to seeing how we got to where we are today. In keeping with the radical break represented by the decision to go for early liberalisation, we started our consideration of the regime, not from the point of view of where we were already, but where we needed to be. If the market was to be liberalised, the framework should be designed to allow the market operate fully and facilitate new entrants and the development of new products: it should not just be an adaptation of the old regime.

### **The Irish Context**

Over the last two years, there has been intense debate on what role telecommunications should play in Ireland's development generally, and how it needs to be organised to achieve that goal. These questions have been answered by successive Governments - part of Telecom Eireann was sold in the creation of a strategic alliance to improve its capability to deliver competitive services: the ODTR was set up under legislation passed at the end of 1996: the role that telecommunications is to play has been defined – it has a key strategic role in securing and developing employment and enterprise into the twenty-first century: the market has been opened up a for the best, indeed only way to achieve this, is through vigorous competition.

Under the enabling legislation, as Director of Telecommunications Regulation, I have a statutory obligation to operate independently and the Office is independently funded by the industry. This ensures that I can operate outside of the pressures of the political process, but does not mean that I am unaccountable. I expect in the New Year to present my first report and accounts to the Minister for Public Enterprise.

In our very short existence, I believe we have already made our mark on the telecoms market in Ireland, putting the user of services at the centre of our concerns, rising to the challenge of liberalisation, tackling long standing problems in broadcasting, developing new approaches to radio spectrum management and licensing, and building on earlier initiatives. Licensees and potential licensees can expect that decisions are taken independently of all pressures, with integrity and fairness. We are building our reputation for expertise and speed of action which reflects the needs of the market here, and of Ireland Inc. generally. The ODTR must become a 'centre of excellence' with a reputation known to international investors, providing the services needed to facilitate the development of the telecommunications industry here against very strong and, at this point in time, more advanced international competition.

### **The Liberalisation deadline – 1<sup>st</sup> December 1998**

In preparing for this date, I had to consider a number of broad themes, such as, for example:

- how to define and set in place an appropriate licensing regime;
- interconnection rates and their cost basis;
- number allocation.

For each of these high level areas, work programmes were developed. Wherever possible, I adopted a consultative process. I wanted to ensure that I understood the views of the industry and the public. Among the documents that were issued were draft versions of the licences that will be issued to telecommunications operators for 1 December.

I appreciate I gave very little time for people to respond but this was necessary if my Office was to meet the deadline of 1 December. I would like to thank all the people who took the time and effort to submit observations and comments in relation to these consultative documents. Your comments greatly helped my work.

### **Licensing Principles**

I would now like to talk briefly about the new licensing regime that will operate after 1 December.

Clearly I had to develop a regime that was in harmony with both Irish and EU law. The principles of openness, fairness, transparency and proportionality will be familiar to anyone who has considered EU telecoms law. But more fundamentally, I had to promote the interests of users. But how were user interests interpreted? Two broad themes emerged.

The first was the need for a network fit for the information society. This had a particular – but not exclusive - focus on the business user. Ireland Inc. wants a vibrant and successful information sector and wants all its companies to be able to avail themselves of the new business processes that rely on electronic communications. Inward investment is very

important to us. We want companies coming here to know that they will have the infrastructure they need. So we want to encourage investment and innovation in customer-focussed broadband products. Furthermore, we want the companies that will make this investment and will deliver innovative products to enter the Irish market.

The second user interest theme was more broadly focussed across all Ireland and concerned basic services. We want to move quickly to the point at which services are best in their class, compared especially to our European colleagues, in terms both of price and of quality. We want to prepare the ground in which residential and rural services can also expand to meet the expectations of the future.

Considering these two themes, it was agreed that the regime should be procompetitive. Regulatory barriers to entry were to be tackled and provision made for introducing in time a light handed regime. There will be no intervention for intervention's sake.

In terms of encouraging market entry, I do not mean crutches for new entrants. I want them to get tough quick and stay tough. I want a regime in which they can prosper through their own effort, but nevertheless recognising that they will be facing a very powerful incumbent and that a degree of asymmetry may be required whilst the incumbent retains its power.

### **Investment and Innovation**

So an environment that facilitates investment and innovation. What does this mean?



Firstly, as regulator, I need to know my place. Companies make decisions to invest and innovate based on a whole range of factors of which the regulatory regime is just one. Where there is competition in the market, licences should be as least prescriptive as possible, giving players as much freedom as possible to make their own decisions.

A regulator in telecommunications can influence whether competitors will find it worthwhile to enter markets. Interconnection and retail price controls are part of our armoury. Interconnection costs are a very significant part of the costs of a new entrant and will remain so until such times as they construct their own infrastructure. We have devoted a lot of time to ensuring we get the rate right and will need constantly to monitor the situation until such time as an alternative market for interconnection services develops.

The extent to which the competitive environment is fair is also an area where the regulator may impact. A strong incumbent can, if so inclined, make life difficult, if not impossible, for new entrants. The market is asymmetric and regulation has to be so as well. But again I do not want to prevent the incumbent introducing new, innovative services.

First mover advantage raises particular concerns in the telecoms industry, where interconnection, according to given rules and standards, is such an important part of delivering end-to-end service. In other industries, companies expect, and do, leverage their intellectual property. But in telecoms this can result in a damaging bottleneck. It is very hard to pre-judge the potential for innovation to become a bottleneck, and there is no

easy answer as to the extent to which openness must be enforced. My instinct is not to intervene unless the bottleneck threat is real and significant.

Finally I briefly consider platform choice. I am a regulator not a commercial engineer. Companies are far better positioned than I am to determine how best to deliver services. I intend to provide the licensing framework for all types of platforms from which companies can choose what best suits their business. I believe in this way that that competition between platforms will develop.

### **The Licensing Regime**

So these briefly were the principles the industry endorsed. How is this reflected in licences? Most of you will already know that there are two types of licence, namely a General Telecommunications Licence and a Basic Telecommunications Licence.

A General Telecommunications Licence permits the licensee to provide telecommunications networks and services, including voice telephony, to the general public. Holders of such licences can apply to my Office for telephone numbers from the national numbering scheme for allocation to their customers. General licences are valid for a period of 15 years.

A Basic Telecommunications Licence does not cover voice telephony and services involving numbers, and so is tailored to the needs of specialised companies, providing data, Internet and cable-based services for example. I should explain that holders of basic licences will be able to apply for a general telecommunications licence if at any stage in the future they wish

to expand the range of services that they provide. Basic licences will be valid for a period of 5 years.

As many of you will be aware, I announced previously that completed applications received by my Office before close of business on 3 November 1998 would be considered for the award of licences on 1 December. I am pleased to say that that my Office was in a position to process these applications and meet this deadline, although the need to request additional information may have delayed the processing of some applications a little beyond 1 December.

Some companies may be surprised to find that we do not accept their applications on the grounds that the services to be provided are not licensable. This is driven by the legal background, but essentially this office will not be licensing ‘retail resellers’ – because there is no need to. If someone is simply providing a channel to market, and possibly a billing mechanism they are not under Irish law providing a telecommunications service and are therefore free to operate without a licence. Of course, existing law on consumer protection will bind them.

Apart from this issue of scope – is the service proposed licensable - there are very few reasons why my office might reject a licence application. Such reasons might include:

- the proposed service is unlawful or inconsistent with international obligations;

- the applicant does not have sufficient financial, managerial or technical resources to operate the proposed service;
- the spectrum allocated to the applicant will not be used efficiently and will interfere with other authorised services;
- the applicant or its senior officers has or have been in serious breach of conditions included in other licences issued by my Office.

I expect few, if any will be rejected on these grounds.

I intend to publish the names and contact details of operators licensed by my Office on the ODTR website on Monday next.

#### **Further Steps**

As I mentioned at the beginning of my speech the main elements of the new regime are now ready, and we are turning our attention to major issues which need further development or which were a little less time critical than those already covered.

I will approach many of these through a consultative process. For example, I intend to launch an exercise looking at costing issues in general. This consultation may include:

- how to implement a LRIC based approach to interconnection;
- principles to be adopted in the future regarding interconnection rates (for example, the possibility of flat rate charging);

- the procedures, mechanisms and timetable for approving and implementing revisions to the rates and changes to the reference interconnection offer;
- the publication of information;
- accounting separation;
- the rebalancing of Telecom Éireann's tariffs in a fully liberalised environment, including issues of the retail price cap, the recovery of costs associated with the access network and universal service.

In fact, I have already asked for comments on the scope of such a consultation and the issues that should be included in it.

Moving on, the effective regulation of the liberalised marketplace will present new challenges for my Office. The functions of my Office are set out in legislation. Certain new regulatory powers will enable me to deal more effectively with the very different liberalised regime that will now apply. In this regard, I note and welcome that the Minister for Public Enterprise intends to introduce legislation to strengthen the powers of the Office.

We are now at a transition stage in the Irish telecommunications market. The era of full liberalisation of the market is getting underway. However, it is likely that it will be some while before effective competition operates in the Irish marketplace. One of the principal duties of the Office will be to ensure that liberalisation can result in tangible benefits for consumers – both business and residential.

I believe that there are two key factors that will influence the development of a robust regulatory regime for the future:

- Effective, timely enforcement of licence conditions in a transparent and proportionate way, making possible the gradual lightening of the more onerous conditions as market forces become strong enough to replace regulation. User interests may need to be protected but other measures may no longer be required.
- Second, the rapid and radical change convergence will bring. This warrants a separate discussion. I am firmly convinced that, over the period of the new licences, the whole shape of the information, communications and entertainment industry will change substantially, with major implications for the market and for users

The regulatory regime must reflect the dynamism of the industry.

#### **Conclusion**

I wish to thank the organisers for giving me this opportunity to address you today.

I would like to conclude by underlining ODTR key principles in developing the operational framework for telecoms liberalisation:-

- It puts user needs now and over the next five years at the centre of its concerns. It anticipates and responds to rapid changes in user needs, the needs of big business critical to general economic development, small entrepreneurs providing local services and residential consumers.

- It aims to be a “centre of excellence”, providing transparent, simple effective services attractive to the international investor which Ireland Inc. needs.
- It is procompetitive, enabling new entrants to compete effectively in the market.
- It operates independently of all pressures, with integrity and fairness.
- It does not intend to stay involved in any regulatory process any longer than necessary.

It is a privilege as well as a great challenge to lead the ODTR at this time. It has moved up to being a leading edge regulator for an industry which the Government and everyone in the sector intends to make a leading edge contributor to Ireland’s development in the twenty-first century.

Thank you for your attention.

**ENDS**  
**26/11/98**