



Office of the Director of
**Telecommunications
Regulation**

The New Regulation of Irish Telecommunications: Issues, Problems, Work in Progress

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The New Regulation of Irish Telecommunications: Issues, Problems, Work in Progress

Part 1 - Introduction

INTRODUCTION It is just three months since I took on the functions of Director of Telecommunications Regulation. I have spent some of that time getting to know the industry in Ireland and meeting many of the players in the market. I have also been reviewing the vast range of tasks and responsibilities of my job, in order to set priorities and a programme for action. I am pleased to report some significant progress on a number of key issues.

I want to use today's platform to define the role of the Regulator in the development of the Irish telecommunications industry. I will do this by setting out some key guiding principles under which my Office will operate.

THE CONTEXT Ireland must have a vibrant telecommunications industry providing the most advanced range of services and continuous innovation. For this it needs investment and low prices. Telecommunications growth means jobs, not alone in the industry itself, but in all sectors. Cheap, advanced communications are essential to the competitiveness of the Irish economy generally.

In the opening years of this century, a French commentator called us 'an island behind an island'. We have successfully established our own identity and links to our trading partners in particular in recent decades. However, the dizzying speed of change in the telecommunications industry dictates ever more rapid adaptation of new technologies and work practices even to keep up our current position in international communications comparisons. On a social level also, good communications make a major difference to quality of life, bringing friends and family members together on the phone and the internet from Monkstown to Moscow, Castlebar to Chicago and beyond.

The traditional telecommunications sector is converging with the information technology and entertainment sectors. The lines between different services and networks are blurring. Definitions are becoming more and more fluid as new and exciting applications for emerging technologies are put into practice. Global alliances and mergers are changing the face of historical telephone companies while unforeseen niches provide opportunities for new innovative operators and service providers.

THE INFORMATION SOCIETY The need to respond to change is widely recognised. The focus on preparation for the information society is one piece of evidence of this. The Government recently adopted the *Information Society Ireland - Strategy for Action Report*, which sets out a vision and a strategy for preparing Ireland for the Information Society. An Information Society Commission has been set up to report to Government on progress on the implementation of the strategy. We have seen the announcement of Ennis as the Information town of Ireland.

But, despite these high profile and very welcome developments, there is a growing awareness that Ireland has some catching up to do in terms of the development of the telecommunications sector and indeed the information society. For example, Ireland has 27,000 internet hosts at the beginning of this year, compared with 10,000 in mid 1995: however, New Zealand has gone from 44,000 to 85,000, and the Czech Republic from 15,000 to 41,000 in the same period. Ireland is well above the average in average business and residential telephone tariffs. It has 10% mobile phone penetration, compared with over a quarter to a third for the Scandinavian countries. In 1996, the Government sought derogations from the EU timetables for liberalising the Irish telecommunications market on the grounds that Telecom Eireann would be unable to adjust quickly enough to them: the European Commission agreed to most of the requests made.

TELECOMMUNICATIONS - THE BUILDING BLOCKS

The most fundamental building blocks are the provision of advanced telecommunications networks and services at low tariffs. What has this to do with the role of the ODTR, the new telecommunications regulator? The ODTR is not an organisation like the IDA, stimulating investment by providing grants, nor a Government Department promoting development like the Department of Public Enterprise. Within the parameters set out in EU and Irish law, it is our job to provide the operational framework within which a competitive telecommunications sector can develop and provide consumers with the services they need at low prices.

I am determined to develop a stable, independent regulatory regime with a minimum of rules which are simply stated, publicly available and enforced consistently and fairly. This regime will be based on a keen understanding of the commercial realities of the market and of future prospects for its development. It will be implemented with the best administrative and legal expertise. It is my responsibility to provide a clear, certain and efficient regulatory regime: it is up to the players, in co-operation with other agencies like those I have just mentioned, to do the rest.

Part 2 - Telecommunications Regulation

THE PRINCIPLES OF REGULATION Before discussing how to regulate, the question 'why regulate at all?' should be considered carefully. Do we really need all of these rules and procedures? I have heard it said that sector specific regulation is unnecessary: that there is no need for regulation, particularly in telecommunications because the concept of a "natural monopoly" does not apply to that sector any more. The advocates of this position say that competition is the ultimate regulator. I am a very strong believer in competition. But the experience of other countries, such as Britain on the one hand, and New Zealand on the other, shows clearly that there is a need to manage the transition from monopoly to effective competition.

It is the role of sector specific regulation to provide ways of ensuring that competition can emerge, ways which are well adapted to the needs of the sector, and which should enable it to develop without protracted actions to establish key rights. In this way, the regulatory regime should facilitate growth, investment and competition. Competition, regulated in a fair and equitable manner, is the best means by which advanced services and lower prices will be realised.

There are also scarce resources, in particular the radio spectrum, for which there are ever increasing alternative uses. Allocating these to the highest bidder will prejudice investment in new technology. The development and implementation of appropriate pricing and licensing policy will be an essential part of the duties of regulators for some considerable time to come.

Ireland is still only at the very initial stages of competition in telecommunications, but there is a great deal to be done to ensure that the present level of liberalisation operates as effectively as possible. There is also substantial preparation for full liberalisation, when the derogations agreed by the European Commission run out in 1999 and 2000. The playing field is not yet level: and indeed the goal posts have not stopped moving yet.

GENERAL FRAMEWORK It has been said more than once, and I am sure it has been said in a forum like this one - no-one envies the regulator. The task of regulating is not an easy one, but it is exciting and, if I can achieve my goals will be a very rewarding one. The challenges are great. There is a range of issues which have long histories and which need early action. However, given their complexity and inter linkage with other matters they will take some significant time to sort out.

CLARITY It is not going to be easy to make my Office processes simple and straightforward in the context of a legislative framework which is still fragmented, despite improvements in recent years, and includes complex EU Directives as well as Acts which date back to the last century. Nevertheless, we have already started with application systems for radio links and alternative infrastructure and with a clear statement on the extent of reserved telephony services in Ireland. I intend to ensure that all decisions and actions of my Office are clearly designed and set out.

OPENNESS AND TRANSPARENCY Another fundamental principle of regulation is openness. It is critical that decisions taken by my Office are made in as open and transparent a manner as possible. We must be fair in our dealings with the market and there must be confidence in the system. Openness can be achieved through consultation. Where appropriate, decisions will be taken following public consultation. I have already used this approach on a number of occasions and will develop it further. I also expect to publish shortly a set of simple and clear procedures for complaint handling, dispute resolution and arbitration. I intend to develop an information service for the ODTR. Our first extensive publication will be available shortly. We will also be establishing a site on the internet which will carry our information on our operations.

**INFORMING
DECISIONS**

My primary task is to licence companies to provide telecommunications services including radio based services in Ireland, and to ensure that the markets for telephony and radio spectrum are properly regulated. Although much of what is involved appears quite technical, decisions have wide ranging implications for players in these markets. So, while consultation is essential to transparency and fairness, it also provides some valuable information about the market place which is important to good decision making. It is essential to assess such information within an overall understanding of the commercial and technological realities of the market and its future development, as well as on the basis of sound administrative practice and law. Major commercial developments depend on the actions of this Office and it is essential that we build on the skills we have and develop the further expertise and policy frameworks necessary for our purposes.

TIMELINESS

The industry moves fast, and so should the regulator. It is essential to make decisions and respond to matters quickly. This industry, particularly the new players, cannot afford long waiting periods for important decisions. There are significant backlogs in a number of areas, and I have to prioritise at present even among very critical issues. Speed is one essential: decisiveness is another: one I believe I have shown already.

**MINIMALIST
INTERVENTION**

It is not that I want to be overly interventionist in the marketplace. Competition is the best means of delivering better services to end users, and I have a major role in encouraging and facilitating competition. Where that competition exists it will be allowed to work to the benefit of consumers. I intend to ensure as smooth a transition as possible to a fully competitive environment. This will be facilitated by a regulatory regime which is not intrusive or too onerous. Where possible, my approach is to encourage market players to reach agreement on their own. My Office must ensure that such agreements produce a good deal for the consumer. Where action is needed, I will intervene. I am reviewing enforcement arrangements and will be developing a coherent and effective policy. A light handed approach to regulation should not be confused with a soft approach.

INDEPENDENCE AND ACCOUNTABILITY The independence of my Office is a guiding principle which was set down in the 1996 Act. It gives the opportunity to develop long term policies for carrying out the functions of the Office, and the opportunity to pursue new approaches where appropriate and necessary. Under that Act, the telecommunications regulatory functions formerly carried out by the Minister for Transport Energy and Communications have passed to me as Director of Telecommunications Regulation. This marks a new era in Ireland. It is the first time that a significant block of important duties and obligations of this nature have been devolved from a Minister to an independent Officeholder. This in itself indicates how seriously independent regulation of the telecommunications sector is viewed by Government.

The principle of independence is of critical importance as is independent financing. The Act provides that the running expenses of my Office will be funded by a levy on the sector. Work is nearing completion on the necessary statutory instrument to make this happen. In keeping with the principle of openness, the parties affected by the levy will be consulted in the near future.

Independence is crucial to carrying out my tasks. But this does not mean that I am not accountable. For example, the Act makes provisions for seeking the consent of the Minister for Public Enterprise on specific issues and for annual reporting to the Minister and the Oireachtas.

CONSUMER CARE Licences are provided to enable services to be supplied and these services must be of appropriate quality. Complaints about quality in the telecommunications sector are dealt with by a number of agencies at present and this is an area where I believe some rationalisation is needed. As is evident from other sectors, quality control works when and only when the senior management of companies take it seriously.

Quality control is a matter for the companies themselves in the first instance. Effective self regulation in this matter must be transparent and performance related. There are different approaches. There is a lot to be said for a system of independent consumer complaints management. This matter has been raised with the cable industry, with a view to their taking the initiative themselves.

If consumer complaints are handled effectively by the industry, this Office can deal with complaints about systemic problems, including those noted in public information on complaints supplied by the industry itself or raised by consumer bodies such as the Director for Consumer Affairs.

THE LEVEL PLAYING FIELD I consider this task - the task of managing an imperfect market, of balancing unequal forces - is key. It necessarily involves controlling some specific behaviours in the market. It raises issues including accounting and structural separation, cross-subsidisation, pricing for end-users, interconnection prices, bundling, and general anti-competitive behaviour. Where choices need to be made about prioritising issues, the impact on competitiveness between market players will be a key criterion.

My Office must provide independent and fair decisions within a specified time scale to resolve disputes in the marketplace. This will obviate the need for telecommunications companies to incur the expense or delay of using other remedies. This matter has a European dimension, but one where the subsidiarity principle should apply, under which problems are handled at a national level where possible. I know that DG IV and XIII support that view, and we are working in close consultation with them.

ODTR OPERATIONS Although it must be done within the confines of national and EU legislation, there is room for streamlining of procedures. We are working on our organisation and approaches at present, and intend to develop an efficient and effective organisation which is focused on serving all of its customers. This means rapid licensing with the minimum of red tape, effective and consistent enforcement, and speedy handling of industry complaints.

Part 3 - Work in Progress

GENERAL Now, to turn to some of those issues which the Office is dealing with at the moment. Although my Office has been in existence only since the end of June, we have already made progress on some significant matters. The way these issues have been handled in my Office shows something of the approach and style which will be its hallmark.

WHOLESALE RATES I warmly welcome the introduction by Telecom Éireann of wholesale rates which will apply to service providers offering services within the terms of their licences. This is the first time such rates have been introduced in Ireland. They constitute a significant first step and offer real savings to service providers. I will be reviewing the wholesale rates in the future discussing the effects of the rates with market players.

VOICE TELEPHONY One of the greatest difficulties encountered in regulating the telecommunications sector so far has been the vexed question of a phased liberalisation involving the reservation of certain services to Telecom Eireann. The challenge is to respect this approach which is underpinned by Government and EU decisions, while at the same time facilitating the emergence of competition. Recognising the importance of this, considerable resources have been devoted to the matter and significant progress has been made through a process of intense investigation, deliberation and consultation. It culminated in the issue of Decision Notice 1/97 from my Office. That document sets out clearly and unequivocally for the market, the extent of the reserved services which Telecom Éireann alone can supply and the range of services which all other properly licensed operators can offer. It also contains measures to ensure that existing customers are not affected, whatever services they have been using. The purpose of this decision is to provide the market with clarity and to ensure that all operate on the same basis.

OPENING UP NEW SERVICES MARKET Market development is a major priority and I have also announced a widening of the range of services which service providers may offer within the terms of their licences. A new method of access is now being introduced for the provision of liberalised telecommunications services. The new access mechanism which is known as 'SwitchLink' provides a cheaper alternative to a leased line which should be of interest to some customers whose business does not warrant a full leased line. This new access mechanism can be used for voice services. The market can exploit this new opportunity to provide more and wider ranging services to the public.

LEASED LINES Access rates and pricing for leased lines are important issues for the market. The first wholesale rates from TE include an initial reduction on leased line charges for resellers of telecommunications services. Leased lines are the initial form of market competition, recognised as such in the original services and leased lines Directives issued by the EU. Low cost leased lines will benefit the market generally. With the liberalisation of infrastructure this market should expand. It is essential to ensure that the requirements of the leased line Directives as to delivery times, availability and reliability are strictly met. Within the framework provided by those directives, I intend to move rapidly to agreement with TE and the industry for advanced performance standards which will lift the services business into a new gear.

OPENING UP THE INFRASTRUCTURE MARKET A very significant step in the development of a competitive telecoms market was taken in July when the Minister for Public Enterprise signed the necessary legislation to allow for liberalisation of infrastructure. The licensing scheme to give effect to this, published by the Office is designed to reflect and encourage new openness in the market and to facilitate emerging competition in the sector. A licence must be obtained where owners of infrastructure either provide capacity on their network to third parties or provide telecommunications services themselves over that network.

The scheme was announced publicly along with a short guideline document, which is straightforward, clear and simple. It is also an example of light handed regulation, giving maximum flexibility to new operators.

This segment of the market seems set to develop rapidly. We have seen recent announcements by several companies indicating their interest, including proposals to build a fibre cable route along the east coast of Ireland and across the Irish Sea to the UK. This will benefit end users in the medium term.

TELECOM ÉIREANN'S COSTS Because of its position in the market, Telecom Éireann's costs and its cost accounting system affect all players. The TE cost accounting system forms the bedrock for many of my decisions, including such fundamental matters as interconnection charges and accounting separation between monopoly and non-monopoly activities. I must be satisfied that Telecom has a system of cost allocation which is objective and transparent and which can be relied upon to produce accurate data. I also have obligations under EU Directives to validate their cost accounting system.

It is not just a question of conducting an audit of the system. There are also questions of approach to cost allocation. For example, internationally, there is a growing consensus that for interconnection, costs should be allocated on a long run incremental cost basis. The method of cost allocation has profound implications for both Telecom Éireann and players in the market in Ireland as elsewhere. Access costs, of which interconnection is but one type, form about 40% of the costs of new competitors.

The transparency of the cost system is vital to the assessment of accounting separation. This is needed mainly because Telecom is operating in both reserved and non-reserved markets simultaneously. Telecom may not use their position in the reserved market to gain competitive advantage in the segment of the market which is open to competition.

The TE management information system must produce costing information in conformity with EU requirements. Work on verifying this is now underway in my Office.

PRICE CAP It is time now to refer briefly to the price cap imposed on TE under the 1996 Telecommunications Act. The first cap was imposed by the Minister for Transport, Energy and Communications at the end of last year. My role here at present is to monitor compliance with the cap and to review the cap if requested by the Minister for Public Enterprise. The principle of imposing a cap is to encourage efficiency within Telecom Éireann, by forcing downward pressure on prices where there is not adequate competition in the market. This in turn forces Telecom Eireann to reduce costs, to the benefit of both end-users, and competitors who use Telecom Eireann networks. Work is already underway in the Office on assessing compliance with the first year of operation of the price cap. Once again, in line with my policy of openness, I intend to publish my findings in the new year.

DCS1800 We are about to launch a competition for the licensing of one or more mobile phone operators in the 1800 MHz frequency band. DCS 1800 is part of the GSM family and like GSM900, is a digital mobile technology. It has greater capacity than GSM900 but because of high roll-out costs, provides relatively less effective coverage in rural areas. We expect that the DCS1800 service will stimulate further competition in the mobile market by providing the consumer with more choice.

Following an international competition, we have now appointed consultants to advise on the licensing process. We are currently finalising our consideration of the terms of the licensing competition, taking into account the very valuable input we received in response to our public consultation on the subject. The key decisions which are to be taken include the number of licences to be issued and the working out of appropriate relations between the incumbent GSM operators and the new DCS 1800 service. The actual competition will be run independently by my Office with its team of consultants.

The indications are that interest in DCS licences will be keen. Although there has been strong growth in the mobile market over the last year, there remains room for much more. We currently have a penetration rate of just over 10% of the population. It is the likely that this could grow to in excess of 30% by 2005.

Tender documentation will be available in the near future and we are on track to announce a successful candidate or candidates early in the new year with final licence award by April 1998.

RADIO LINKS Convergence of technologies means that radio links play an important role across the whole range of telecommunications applications from conventional radio to broadcasting and advanced telephony uses. Radio links are valuable in facilitating the early development of infrastructure for telecommunications services. This should lead to the development of high capacity fibre optic networks in many areas as capacity requirements grow and investment opportunities are realised. Radio links also form an integral part of mobile telephony networks, giving operators the independence and control over their networks which allows them to be flexible and responsive in terms of service delivery.

I have sought to optimise the use of this scarce resource. My Office has introduced revised application procedures for Radio Link Licenses above 1Ghz. The new procedures form a two stage process and are designed to provide equal opportunities to all interested parties and to encourage the efficient and orderly use of the frequency spectrum. Much work needs to be done on the pricing of the radio spectrum, which will help ensure efficient allocation of its use.

BROADCASTING Among the responsibilities assigned to my Office is the regulation of licensed systems for the retransmission of multichannel TV, that is, cable and MMDS. I am not in a position to comment at present on the major dispute involving this sector, but would like to draw attention to the following matters. A update of the technical conditions applying to licensed cable companies is being completed at present, and they will be circulated for comment, before being finalised. Given the fundamental implications which digital technology will have for frequency management, I have appointed a consulting firm to advise me on this and related matters.

**WORK BROUGHT
FORWARD**

In developing my programme, I have been able to build on work carried out in the old regulatory and technical divisions of the Department of Transport, Energy and Communications. For example, one of the first publications under my auspices will be a National Table of Frequencies, on which a great deal of work was carried out in the Department before I took over. It is being finalised at present and will be published before Christmas. Another very important issue is recovery of radio spectrum for reallocation to new users. A substantial amount of planning was done in the Department in recent years. Recovery is now taking place, and will be accelerated over the coming months.

Part 4 - Conclusion

CONCLUSION In this address, I have merely scratched the surface of the many complex issues which are of importance to the telecommunications market and which face the Telecommunications Regulator in Ireland. Given the title of your seminar, I have concentrated on utility issues, but of course there are many licensees engaging in business radio and paging for example, whose needs must be met. The Regulator's post is an enormous challenge. In meeting that challenge everything will not go smoothly all of the time. It would be foolish to think that the appointment of an independent regulator is enough to iron out all of the wrinkles in the telecommunications sector market overnight, or even in a few years.

But I would like to leave you with one message. I intend to make a difference.

The Office will operate in line with the main principles I have outlined today - clarity and transparency, openness and expert understanding, timeliness and independence; and leaving companies make decisions between themselves where appropriate. I will make every effort to foster and encourage as much competition as possible in the telecommunications market. I will do all I can to ensure that the sector in Ireland has the opportunity to develop as a most vibrant sector, delivering a wide choice of advanced services at low tariffs.

Thank you