



Office of the Director of  
**Telecommunications  
Regulation**

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**to**

**ABN AMRO Institutional Equity Clients  
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**The Current Regulatory Climate**

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## ***Introduction***

Let me begin by saying how pleased I am to have the opportunity to speak to you today on the current regulatory climate in Ireland. I have no doubt but that you are all well aware of the profound changes that have occurred in the Irish telecoms market, both from a regulatory perspective and from a competition point of view over the past 18 months. I will summarise some of the major changes for you and I will also inform you of the key issues facing my office in the months ahead and the impact that these issues will have for competition in the telecoms market.

While I am aware that your focus may be more on the impact that these changes might have on certain ‘competitors’, my focus is on “competition” in its broadest sense, and more particularly on ensuring that the benefits of competition reaches every consumer in this country. However I will start first with outlining the regulatory regime as it exists at the moment.

## ***Role, Background and Powers of the Office***

To establish a picture of the background of the Office, I must initially draw upon the European perspective. National Regulatory Authorities (NRAs) were established as independent bodies within each Member State of the European Community. These NRAs are responsible for regulatory functions within the telecommunications sector.

Europe has traditionally had a history of state-controlled monopolies (“incumbent operators”) which have provided telecommunications services. The move from a State-controlled monopoly to a competitive marketplace requires a strong, independent regulatory function. This is so for a number of reasons.

Firstly, for competition to develop there needs to be a level playing field, one in which competitors are assured that they will be able to compete on a fair and equitable basis against an incumbent operator. Secondly, competitors to the incumbent need to be assured that, where they encounter difficulties, they have recourse to a fair, fast and independent party that will assist it in such matters. It is against this background that my office was established. Thirdly, operators and their

investors need to be sure that there is a level of stability in terms of regulation in order that they might plan investment with a high degree of confidence.

My Office, the Office of the Director of Telecommunications Regulation (ODTR) was, therefore, established as a result of the EU position on the independent regulation of telecommunications. It has been established under the Telecommunications (Miscellaneous Provisions) Act, 1996. This Act provides a framework for the workings of the Office and is the mechanism by which Ministerial powers and functions have been transferred to the Director.

So what is the role of my Office? In short, it is responsible for the regulation of the telecommunications sector, including radiocommunications and broadcasting transmission. The functions of the Office involve licensing policy developments, standard setting and regulation in accordance with licence terms, standards and specifications.

A number of key objectives can be identified. These are:

1. To facilitate Consumers: we must ensure the widest availability of telecommunications services to consumers and efficient and affordable pricing of quality telecommunications services;
2. To facilitate competition and ensure a “Level Playing Field”: there must be equal opportunities for existing and new suppliers to compete in the telecommunications marketplace;
3. To provide clear and consistent rules: these are critical to facilitate investment and planning and to ensure that the rights and entitlements of all parties are protected.

My Office has established a user-friendly licensing structure and light-handed regulation in order to, on the one hand, facilitate the development of a healthy, competitive environment to which investors may continue to be attracted while at the same time ensuring a level of protection for consumers. Flexibility in these mechanisms is a priority, especially considering the dynamic nature of the telecommunications industry. Hence, the role of regulation in the Irish telecommunications market is an evolutionary one.

I will turn now to some of the specific regulatory tools available to me to achieve these aims.

### **Price Cap**

Ultimately, it is the final consumer who should be the beneficiary of regulation. On October 20<sup>th</sup>, my Office issued proposals to amend the price cap on Eircom. These proposals are designed to ensure that telecommunications consumers, particularly residential users, get the benefit of lower telecommunications prices. In the long run, competition should deliver the best deal for consumers. However, until competition has developed to the point where pricing and services is not led by the most significant operator in the market - Eircom, it is essential to protect the interests of consumers.

My proposals require Eircom to make annual reductions of between 7 and 9 per cent, before inflation, in the prices of a group of telecommunications services that are in the bills of most residential users and small businesses. At the same time, certain specific safeguards have been included to ensure affordability is maintained, particularly for users in rural and high cost areas, as well as members of vulnerable groups. The proposed new price cap sets out to achieve the best deal for users, while fairly balancing the interests of other parties, including Eircom itself and the other operators in the market.

The proposals can be summarised by the following key details:

1. Eircom is required to make annual reductions of between 7% and 9% minus inflation compared to the current price cap which requires the incumbent operator to reduce prices on a basket of services by 6% minus the rate of inflation each year;
2. All services in the existing price cap will be in the new price cap except for international calls where we have judged competition to be developing more quickly;
3. The services in the price cap are - connection and rental charges for telephone lines and ISDN connections, local and trunk calls, directory enquiries, operator calls and calls from payphones;

4. The prices for any individual service in the basket may not increase by more than 2% plus inflation annually;
5. The bill of the “lower quartile” user, representing consumers who do not make many calls, may not increase by more than the annual rate of change of the CPI.

I should point out that these are draft proposals. There is a statutory consultation period of two months from the date of issue of my proposals for all interested parties to comment on them. My Office will review all comments received before making a final determination on or before 31<sup>st</sup> December.

Liberalisation has already brought benefits to most users. However, these proposals will ensure that all Irish telecommunications users, particularly residential consumers and small businesses, will share more effectively in the benefits that competition brings. These consumers do not have the bargaining power of big businesses, and for them, competition has not yet developed very far. Until that happens, price caps are a means to bring them the benefits of overall reductions in tariffs and safeguard those consumers for whom individual tariff increases would represent a significant burden.

### ***Interconnection Charges***

One of the key objectives of my Office is the creation of an environment where uninhibited competition can develop, such that retail price controls, like the price cap, are not necessary. The ability of new entrants to interconnect to the network of an incumbent operator is fundamental to the development and sustainability of competition in the telecommunications industry.

Interconnection charges can account for a substantial proportion of operators’ costs. It is therefore important that interconnection charges are soundly derived from appropriate costs and give proper economic signals to operators to guide their investment decisions. This fact is recognised in both European Union (EU) and Irish legislation which sets out arrangements for ensuring that an appropriate interconnection regime is in place.

Eircom is designated as an operator with significant market power (SMP). Consequently, it is obliged, under the legislation, to provide interconnection services

to other licensed operators (OLOs) and to publish a Reference Interconnection Offer (RIO) which can be availed of by OLOs who legitimately request interconnection to its network. The RIO must include cost-oriented, non-discriminatory and transparent interconnection rates, and Eircom is required to ensure compliance of these rates with this legal requirement.

In 1998, my Office undertook a series of consultations on the services and charges set out in Eircom's Reference Interconnection Offer. This led to the availability of services and rates that have facilitated the dynamic development that the fully liberalised market has witnessed. Work has been continuing on the RIO and other interconnection issues throughout 1999. However as you are no doubt aware, Eircom has initiated a legal challenge to my most recent Decision Notice on the RIO. This decision was intended to make it easier for OLOs to interconnect with Eircom by providing for alternative methods of interconnection, as well as addressing the manner in which certain interconnect rates are calculated. The delays in the availability of these additional services may hinder the development of competition and I cannot comment further at present.

At present, my Office is in the process of developing a Bottom up Long Run Incremental Cost (LRIC) model that will be used to review Eircom's current interconnection offer. The introduction of LRIC elsewhere in Europe and in the US has resulted in interconnection charge reductions of between 10% and 30%, depending on the existing level of efficiency of the incumbent operator.

Eircom is also in the process of developing a (Top-down) LRIC model, but completion is not expected until October 2000. In order that the market does not suffer from the absence of LRIC based interconnect charges, I intend to put interim interconnect charges in place. These charges are to be based on the results of the ODTR bottom up model, and will stand until results from Eircom's model have been provided to the ODTR and reconciled thereafter.

***Number of Operators (including movement of traditional cable/MMDS providers into telecoms)***

We have witnessed seismic shifts in the market towards increased competition since liberalisation on 1 December, 1998. To date, 40 general and 22 basic telecommunications licences have been issued by my Office, compared with last December when there were 22 general and 8 basic licences. The ultimate benefactor is the consumer as operators strive to innovate and satiate demand, by offering greater value, quality and choice.

Some operators intend to compete primarily by interconnecting with the incumbent's network, while others are investing heavily in national and international networks with a more limited need for such interconnection. In some cases, services are being provided by utilising the networks of other utility industries, such as electricity, gas and rail. Resale services and prepaid calling cards (for use in payphones, homes and businesses) are among the other means by which operators are competing with the incumbent operator. In addition, mobile phones continue to grow as a source of competition to fixed telephony.

There has been significant movement of traditional cable/MMDS operators into telecommunications, and four such operators now hold telecommunications licences (3 general and 1 basic).

This can be viewed in the context of the movement towards convergence of television and Internet services. The aim for the near future is that the Irish consumer, by using a digital television or set-top box, will be able to access multiple channels, the internet and e-mail, and even interact with live programmes. There is also expected to be large growth in e-commerce (home banking, home shopping etc.). These digital services can be provided over cable, MMDS, satellite and digital terrestrial.

The movement can also be viewed in the context of overcoming the bottleneck at the local loop level. Cable/MMDS operators have high penetration rates at the local level and modification and upgrade of these networks should serve as the basis of an alternative telecommunications network, offering broadband services in their respective areas including public telephony, Internet and value-added services.

However, investment in two-way transmission capability (instead of existing one-way transmission dedicated to television) is required to provide these services.

### ***Unbundling the Local Loop/WLL***

The advent of liberalisation has introduced wider choice to the Irish consumer, both business and residential, in relation to the quality of services provided, the prices for those services, and the type of service offered. We have moved swiftly away from the pre-liberalised regime that existed less than twelve months ago.

But regulation cannot stand still and we need to continue to examine new ways of providing choice to the consumer. Operators in many cases want direct access to the customer. Currently, the vast majority of the telecommunications local access infrastructure in Ireland belongs to one operator. This bottleneck has the potential to stifle or hinder competition.

Operators who wish to build their own infrastructure are faced with high entry costs and possible undue delays in getting its services to the market. However, the benefits include greater flexibility in the nature and price of the services they provide.

As Regulator, I am in the process of enabling alternative means of local access to operators. Earlier this year, my Office ran a competition to award licences which will allow operators to provide broadband and narrowband services using Fixed Wireless Point to Multi-Point Access technologies, otherwise known as Wireless in the Local Loop. In September, I announced the rankings of the applicants and I shortly expect to be in a position to offer licences.

This technology will allow operators to deploy their own infrastructure more rapidly and at a lower cost than would be the case with wire. Cable operators are also positioning themselves to offer telecommunications services using their own cable networks. Other technologies such as UMTS are also just over the horizon. I have no doubt that these alternative means of providing local loop infrastructure will introduce greater choice to consumers over the coming years and by so doing will go some way towards satisfying the increasing demand for services, and broadband services in particular.



Notwithstanding this, I am also interested to see if a need exists for requiring the incumbent operator to unbundle its own local loop. I am not alone in this. Many regulators across the EU have, or are currently, considering the potential for local loop unbundling. A number of EU countries including Germany, Finland, Denmark and Austria have already introduced unbundling. In the UK, OFTEL has recently set out its stall and has ruled that unbundling must be available by the middle of 2001.

My Office issued a consultation paper in March 1999 that examined the issues surrounding LLU, including the type, method and location of access; the costs and pricing issues; and the costs/benefits of LLU. In particular, I wanted to get the views of all interested parties to better understand if there is a need for local loop unbundling in Ireland and, if so, how this need can best be met.

While current EU and Irish legislation does not provide an explicit mechanism for LLU, the provisions in relation to Special Network Access have been used in other EU States to provide a framework for LLU. In the meantime, Eircom is in the process of trialing ADSL and has agreed to allow OLOs to participate in commercial trials of ADSL based services in order to establish an appropriate mechanism for the offering.

Where a demand for unbundling exists, two of the most crucial elements that would need to be addressed are the costs and pricing issues, and the substantial technical problems that would need to be overcome. The technical issues, although substantial, have been overcome in other countries and if need be there is no reason why they cannot also be overcome in Ireland.

Pricing would be the key determinant in the operation of the local loop. Appropriately set, it would enable operators to make appropriate decisions on whether and where to rent the local loops or whether to build its own infrastructure. Prices set too low, would deter operators from investing in their own infrastructure, and prices set too high, could damage those operators wishing only to provide services over the incumbent's network. Where the pricing is set at an appropriate level the network will be used significantly by other operators without deterring competitive network build.

The access operator also benefits to the extent that he gets a return on a network which would otherwise not be used.

The consultation period is now closed and my Office is considering the views and comments put forward by those who responded and I expect to be in a position shortly to publish a report on the issue.

### ***Carrier Pre-Selection***

Numbering plays an important role in the development of competition. Last year, my Office awarded short codes known as carrier access and carrier selection codes to a number of licensed operators. This has enabled alternative operators the means to offer their customers a more convenient way to access their services. However, my Office, in co-operation with all operators, is overseeing the introduction of two crucial elements that will aid the future development of competition.

As you may be aware, Eircom are required to provide Carrier Pre-Selection (CPS) facilities from 1<sup>st</sup> January 2000. Carrier Pre-Selection is a service that enables a fixed subscriber to select, by default, a carrier different from the local loop operator for the routing of all or some of the outgoing calls. Its introduction is in line with the European Commission Directive in this regard.

Three pre-selections will be available. A customer may choose; 1) International calls only; 2) National calls only; and 3) "All calls". A customer can select any option individually, or a combination of the first two, with either the same operator or different ones. Call-by-call carrier selection, which already exists, will continue to be available.

The introduction of carrier pre-selection in the Irish market will reduce the (monetary and non-monetary) costs of switching operators by customers. It may take some time for customers to become aware of the opportunities that CPS will make available to them, but it clearly increases the scope for competition.

Our commitment to the January 1<sup>st</sup> deadline was illustrated with the publication of a decision notice on the issue in May of this year. This facilitated the formation of a

Carrier Pre-Selection steering committee, comprised of both industry and consumer representatives, to tackle high-level implementation aspects and form expert working groups to address more detailed issues. With Carrier Pre-Selection, consumers will have a wider choice of more competitive telecommunications services.

### ***Number Portability***

The second key issue is Number Portability. Starting from 1<sup>st</sup> January, 2000 telephone users will be able to change to a new telecommunications service provider without having to change their telephone numbers. It will apply initially to non-geographic numbers, that is, numbers for such services as freephone, premium rate and shared cost. This requirement will be extended to geographic numbers on 1<sup>st</sup> July 2000. The current system of partial number portability between mobile operators will continue in the short term.

Our consultations have proved that there is agreement on the need to rapidly implement number portability to encourage the development of competition. I believe that this will remove one of the main barriers to consumers switching between telecommunications service providers and should advance the development of competition. A committee representing regulatory, industry and consumer interests has been established to consider the practical implementation issues and this group is at present working on the many issues that need to be addressed for the successful implementation of this decision.

### ***Regulatory Accounting***

This is an issue of utmost importance when moving from a State-controlled monopoly to a competitive marketplace. My Office has recently welcomed the publication of Eircom's cost separated accounts, which will help to prevent discriminatory charging and promote effective competition in the marketplace.

A key aspect of ensuring a level playing field is the prevention of cross-subsidisation of activities of the major operator, who has the ability to price below cost in more competitive markets while recouping losses in less competitive markets through excessive pricing. The purpose of accounting separation is to provide an analysis of

information derived from the accounting records to reflect as closely as possible the performance of parts of the business as if they had operated separately. It can be applied to those licensees that have been designated as having significant market power (SMP). Eircom has been so designated by the ODTR.

It is also necessary for competing operators to have confidence that the dominant operator is not unduly discriminating between itself and competing operators or between one competitor and another. Separated accounts allow for the development of sufficiently detailed costing systems so that costs of individual services can be clearly unbundled.

Accounting separation benefits all parties in the industry, including consumers, in terms of transparency, because we can better understand how the incumbent's revenues relate to costs.

Another important aspect in the provision of greater transparency to consumers and industry, while promoting a competitive environment, is costing methodologies. Our Decision Notice addressed the implications of following the principles of cost causation such as Activity Based Costing, in the allocation of costs, revenues and capital employed for the purposes of preparing separated accounts.

The principles are also relevant to the determination of interconnection charges, for which purposes the costing systems of operators will need to be sufficiently detailed to permit the allocation of costs to network components.

Eircom has recently published its separated accounts for the year ended 1<sup>st</sup> April 1999, along with a description of its costing system. My Office is currently reviewing these documents. While the review has not yet been completed, work by my Office to date suggests that eircom has not, in a number of areas, complied in all respects with decision notices D5/99 and D10/99. My Office is pursuing this issue with eircom.

It is my consideration that leased line services, provided by Eircom, are of fundamental importance in facilitating competition in the telecommunications market. They are an essential facility, without which new entrants would be unable to provide

services. It is crucial therefore, that competitors to Eircom can access this facility at a fair and equitable price if they are to develop their operations in Ireland. My Office is currently undertaking a comprehensive review of Eircom's costs, which will provide better information to verify the cost-oriented nature of their leased line charges.

### ***How Irish Regulation compares with that of our European Counterparts***

In 1998, we delivered the key elements of licensing, interconnect and numbers. In this year we have been filling out the framework. Our programme has included the development of the accounting framework, nearly complete as indicated above: the development of interconnection – diverted to the courts: the development of WLL Licensing, numbering, complaint handling, new digital television licensing – the rest is outlined on our website. We have moved rapidly from the 'back of the class' to the leading group.

### ***Upcoming Regulatory Issues***

I have outlined to you some of the key features of the current regulatory regime. A number of these are on-going and work on them will continue into next year. Others, such as the review of Interconnect services and prices will be a continuous feature of my office's work as these issues will be kept constantly under review.

However, there are also a number of key issues where work has yet to be undertaken and I would like to take this opportunity to mention those to you.

### ***UMTS & Mobile Markets***

Litigation on the mobile and RIO cases forms part of the workload going forward and affects our capability to deliver on our programme. The coming months will be devoted to turning round the remaining consultations and completing the implementation of the framework developed in 1999 and we will be moving forward planning UMTS and fixed mobile convergence.

### ***Fixed Licence Review***

The existing licence conditions were implemented almost one year ago. They were drafted to take account of the existing legislative provisions that existed and, in doing so, my office attempted to be as forward looking as possible. I have signalled my intention to review these conditions at an appropriate time. I believe this is necessary for a couple of reasons. Firstly, in keeping with my belief that there should be light-handed regulation, I wish to ensure that there is only a regulatory burden on operators where such a need exists. Therefore, I want to ensure that conditions in the licence are still required.

Secondly, I want to ensure that the licence conditions are achieving their stated aims. Competition will not benefit if there are gaps in a regulatory framework that has been designed to afford competing operators a level of equality. While I have no reason to believe that the current regime is failing in this regard, I equally have no intention of sitting back and waiting for a problem to arise. I, and I am sure the industry will agree with me on this, consider it necessary to ensure that the regulatory framework is such that it continues at all times to foster competition.

### ***Conclusion***

My Office, like the sector it regulates, is still developing and has a great deal to achieve. We are holding a major recruitment drive to ensure that we can continue to deliver on our targets, and deliver a quick response service to the industry as required.

We are also developing our capability in looking to future market developments, reviewing the likely uses of spectrum and technological development into the future. It is a perilous business given the speed of change, but we must ensure that we have as much information as is available to inform our work. I must in so far as possible, future-proof my policies so they do not become out-dated as soon as a technological innovation is introduced. We need to think out very carefully how new licences should be framed so it is something of a slow process.

As Ireland's telecommunications regulator, I want to see fair competition making a real difference to the lives of consumers. I want to facilitate the industry in delivering

this. We need to see a world-class telecommunications sector here in Ireland. My job is to provide an environment where this can happen. This can be best achieved by ensuring that more world-class telecommunications companies have the confidence to enter this market knowing that they will face a fair fight.

We have moved towards a truly liberalised and open telecommunications market. It is a good sign that so many companies – both Irish and multinational – are starting up and providing a real alternative and a vibrant industry. Top class telecommunications services and infrastructure are key drivers for long term economic health, and Ireland can remain an attractive destination for business only as long as it can compete with the rest of the world in its information infrastructure.

Thank you.

**-ENDS-**