



Office of the Director of
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Regulation**

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to the
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“Ireland as a Regulatory Communications Leader”

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Introduction

I am delighted to be here and to see so many delegates, both Irish and international at this meeting organised by the International Communications Users Group. This is surely indicative of the pivotal role telecoms services play in the daily concerns of consumers, both business and residential. Things have been getting better for consumers all over the EU as markets open up and new entrants stimulate the market. Price, choice and service levels are improving to the benefit of users. Yet, much more needs to be done, by the industry, by regulators, by Governments and the EU and by consumer bodies such as yourselves. A meeting such as this is very valuable in teasing out issues and ideas on how they can be better addressed in the future. There are four main areas that I want to address in my talk here today:

- The Role of Regulation to stimulate competition for the benefit of consumers in terms of price, choice and quality
- Affordability, Availability and Quality of Service issues
- National and EU legislation and its limits
- EU Commission 1999 Review

Before doing so it is useful to put Ireland's current and recent telecommunications performance in an historical context.

Recent Telecommunications Developments in Ireland

The EU framework for telecommunications liberalisation applies in Ireland and I am happy to say that from a position of seeking a derogation to delay liberalisation in 1996, following a change in Government policy in 1998, Ireland has moved rapidly to liberalise its market and to catch up with the leaders in Europe. The Minister for Public Enterprise has adopted many regulations the main ones being the bringing forward of the date for liberalisation, the setting out of the framework for telecommunications licensing, for universal service, for number portability and carrier pre-selection, to name but a few.

Working within the framework of the 1996 legislation and these regulations, the ODTR has completed over 30 initiatives to open up the markets for both telecommunications and broadcasting transmission and so provide the framework for the delivery of better, more diversified service at competitive prices to consumers, both business and residential. The industry has responded with 45 companies active in the Irish market of which 7 are providing services to all elements of the residential market, normally the last sector to benefit from the opening of competition.

The ODTR's mission is to provide the framework within which Irish consumers can get the best in telecommunications, best in choice, in price in quality. Given that this is so, we are often asked why we spend so much time on complex issues such as accounting separation and interconnect rates rather than just requiring reductions in retail prices. Would we not be fulfilling our mission more directly

and gain popularity into the bargain? However, as delegates here will know, efforts over many years to provide consumer benefit by controlling retail prices administratively have not been successful – while such control can be useful in the context of the transition to competition, it is no substitute for it. Competition, real competition between suppliers achieves much greater benefits for consumers than administrative price control. Our role as regulator is to promote the rapid growth of effective competition so that the consumer benefits in terms of price, choice and quality, including innovation that is so important in a fast moving sector.

Retail prices are a function of costs and competition. Accordingly, we spend a great deal of effort on reviewing key costs of the incumbent that necessarily flow through to other players and so to the consumer. As a result interconnect and leased line prices have fallen very significantly in Ireland. We enable increased competition, with simple operator licensing, adding new methods of operator access to consumers and support to operators in the form of dispute resolution and service level agreements for example.

We have upset the old status quo of one monopoly supplier in many areas already and are working on the remaining issues. We work with the industry to get new initiatives under way, and seek to promote and facilitate new players and new developments where we can. In an industry so characterised by bottlenecks, it would be easy for the first group of arrivals to become complacent, to allow a new status quo to cement itself in place. This would be to the detriment of you and your enterprises who should benefit from continuing improvements in the market.

The regulator's job is to open up markets, and to keep them open and flexible until competition is so well established that they remain open and flexible of their own accord and their inherent dynamism ensures maximum consumer benefit. The regulator facilitates new services and reduced prices: market players introduce them. Operating within a clearly defined framework set out in law, but statutorily independent, regulators can make decisions to move markets forward fast to the benefit of users. A regulator is unlikely to win popularity contests, but this very exciting and demanding role is one that the ODTR staff fill with enthusiasm, expertise and commitment.

How important is the telecommunications sector ?

Telecommunications development is extremely important as it goes hand in hand with economic development. It is the cornerstone of the highly successful economy we have developed and its sustained growth and upgrade is necessary for a country with every intention of maintaining this industrial base. Based on data supplied to my office by operators, the fixed telecoms sector now accounts for almost 2% of Irish GDP¹.

¹ This calculation is based on operators' responses to total turnover for the first quarter of this year and the ERSI forecast for Irish GDP in 2000.

Current Market Situation

It is in everybody's interest – regulators, consumers and industry – to be frequently updated regarding the rapid developments that are occurring in the market. To this end, my office recently commenced the publication of a quarterly market review, the third of which is being published later today. The report will be available on our website at www.odtr.ie. The current market continues to demonstrate substantial change to the benefit of consumers.

Licensees

To give you a snapshot of the market, there are 70 licensed telecoms operators. 45 of these have commenced operations offering a variety of telephony and network services to both Irish and international users. Since the last quarterly review in March, the resolution of a number of protracted legal proceedings has facilitated the prospective entry of several new operators into the Irish Telecoms market place.

Fixed Line Market

Competition in the fixed line market continues to develop at a rapid pace. The ODTR estimates that the new entrants' share of the fixed line market has climbed to over 10%². This increase in the new entrants market share is supported by the substantial growth in Eircom's wholesale traffic (competitors' traffic carried on Eircom's network), which grew almost 15 fold from 48 million minutes in the 12 months to March 1999 to 752 million minutes in the 12 months to March 31st 2000³. Competition is also likely to intensify further in the coming months as cable companies, who are making sizeable investments in order to upgrade the existing network, enter the market offering a range of services including cable TV, telephony and high speed Internet access and others.

Mobile

Following a large jump in the number of subscribers during the fourth quarter of 1999, Ireland's mobile penetration rate maintained its upward trend into the new year, rising from an estimated 41% at the end of December 1999 to 45%⁴ at the end of March 2000. Spurred on by a combination of falling prices and new product offerings, the total number of subscribers in the country climbed to just under 1.7 million, comparable with most other developed markets in Western Europe.

You will all be too aware that the introduction of a third mobile operator into the Irish market had been delayed for the last two years due to a legal challenge. However, the recent Supreme Court ruling unanimously upheld the ODTR decision to award the licence to Meteor. Meteor have reported that they are

² This calculation is based on data provided by eircom's competitors for the quarter to 31st March 2000 and Eircom's turnover figures for 'Fixed line network and other communications' in their financial results for the 6 months to 30/9/99 and the 12 months to March 31st 2000.

³ Eircom's Financial Results 2000.

⁴ Estimate of the number of mobile subscribers as at 31/3/2000. Source: Mobile Communications 26/5/00

confident that they will be able to roll out a network providing 80% coverage of the population within nine months. They are working on being in the market for Christmas, a welcome piece of news for the consumer.

Furthermore, the process for the introduction and licensing of Third Generation (3G) mobile services has begun. 3G is a low-cost, high capacity means of mobile communications that will transform the availability of content and data all the more.

An ambitious timetable has been set with the publication of the competition details to take place in October, the running of the competition from November to February 2001 and the awarding of the licences at the end of that month. I am confident that we can meet this rigorous schedule.

Internet

The internet sector continues to grow with the number of internet users in Ireland continuing to surge ahead with 592,000⁵ adults (aged 15 – 74) describing themselves as current users⁶. However, in terms of home usage, Ireland still lags many of the more developed Internet markets. According to research conducted during April by Nielsen, nearly 712,000 members of Irish households (aged 2 and over) currently have access to the internet of which 319,000 actually use it.

A recent study by Legg Mason⁷ has identified telecommunications, Internet and Electronic Commerce as the necessary building blocks for the development and growth of the new information economy, with the first being a necessary pre-requisite for the second and so on. They also ranked Ireland as one of the top four countries (the “Broadband Four”) in terms of creating a very hospitable environment for high growth prospects in the new economy. Ireland has also retained its third place position in a European league table ranking countries according to the progress they have made in implementing an effective and liberal telecoms regulatory climate.⁸

The ODTR’s work will continue to ensure that the telecommunications industry provides an adequate foundation for Internet growth. Indeed, Ireland, according to Legg Mason, appears to have successfully set in place the necessary foundations for a telecommunications sector that is not just conducive to continued growth but with the potential to be a world leader.

Leased Lines

Following an intensive review of pricing by the ODTR in March, eircom announced leased line price reductions by on average 16% – 18%. Some reductions will be much greater. In the crucial case of local ends for 2mb lines

⁵ Amarach, March 2000

⁶ It is important to note that a ‘current user’ may access the Internet from home, work, or a publicly accessible point (e.g. Internet Café).

⁷ See Legg Mason Precursor Research, “The Building Blocks of Growth in the “New Economy””, Spring 2000.

⁸ Liberalisation Milestones – British Telecom, Issue 4

(the basic building block for private circuits and many broadband applications) the reduction in price amounts to 36%. It is estimated that these overall price reductions will result in cost savings of £20 million per annum.

Access to Customers

Providing the means by which alternative operators can gain access to critical infrastructure is fundamental to the development of competition. A number of programmes have been implemented and others are underway.

Interconnection

The central access platform required for the development and sustainability of competition is the ability of new entrants to interconnect to the network of an incumbent operator. New entrants have to connect with eircom's network to deliver calls from eircom's customers.

From a position where OLOs were charged retail rates for services, the first full RIO at liberalisation in 1998 came within the EU benchmarks for best practice. Since then an interim reduction of 6% has been applied and we are currently close to finalising rates for 2000/2001 for which we have prepared a LRIC model. Eircom is working on a new range of services to be supplied under the RIO following my April Decision Notice on the matter.

The reduction in these charges is good news for the consumer as it allows operators to compete more effectively which ultimately translates into lower prices being passed on to the consumer.

Local Access

I believe that Ireland needs to develop the greatest variety of means of enhancing local access competition – both indirect with carrier pre-selection and number portability and direct with cable, fixed wireless access and Local Loop Unbundling.

In April this year, I issued my decision on Local Loop Unbundling. This provides for the rapid introduction of bitstream access and also sets the groundwork for investigation of full physical LLU and line sharing LLU.

Unbundling the local loop allows other service providers to access the eircom local network and provide high bandwidth services directly to customers. In short, it enhances competition and helps deliver the best in price, quality and choice to consumers.

The practical approach we are adopting, using industry working groups, is an effective way of ensuring that we reach workable solutions for complex issues. I am pleased that key industry players are demonstrating considerable interest in Local Loop Unbundling. The working groups on implementation have reported energy, enthusiasm and genuine commitment to meeting the tight deadline I have targeted.

Some operators interested in LLU generally favour the full physical access option, however, neither Irish nor EU legislation provides for full copper unbundling and I look forward to this being changed.

FWPMA (Fixed Wireless Point to Multi-Point Access)

Seven wireless in the local loop licences for a radio based alternative to copper or optic fibre cable are about to be awarded by the ODTR - four Broadband and three Narrowband licences. Six of the licences are almost ready to issue and the remaining licence will be awarded by the end of next month.

These new licences will facilitate the delivery of high quality telecommunications services to rural areas, particularly those where geography may have previously caused difficulties.

The introduction of these licences should facilitate increased competition and choice thus ensuring that the Irish consumer will benefit from lower tariffs and the availability of high quality services. I should also mention that I am also conducting a spectrum review to ascertain if more licences can be offered.

Affordability, Availability and Quality of Service

There are issues of broader economic and social policy that bear upon the regulation of the telecommunications sector. Access to basic services at affordable prices is the right of every citizen and this is maintained through tools such as price caps and universal service obligations. The framework for these is set in legislation at national and EU level.

Price Cap

One of the options open to me where certain services have yet to see the benefits of competition is a Price Cap. Last December, I imposed a new price cap on eircom which requires eircom to reduce the overall price of a basket of goods by 8% before inflation every year for the next three years. Services that are capped include local and national telephone calls, calls to operator assistance and from payphones and line rental. International calls have been removed from the price cap as competition there is developing more quickly than in other services.

Certain specific safeguards have also been included to ensure affordability, particularly for users in rural and high cost areas and members of vulnerable groups. This protection ensures that the bill of the "lower quartile" user, representing consumers who do not make many calls, may not increase by more than the annual inflation rate.

USO

Following EU and national legislation, we have designated eircom as the USO provider for key telecoms services such as access to the fixed network and public payphones. This ensures availability of a uniform set of minimum telecoms services for all consumers. eircom is required to maintain affordable services for

users, in particular those in rural and high cost areas and vulnerable groups of users.

Service Level Agreements

The treatment of competitors by the incumbent in the telecoms market is a key issue not just for the operators themselves but one which can impact directly on you as the consumers that they serve. Where other telecommunications operators rely on services from Eircom to provide retail services to end users, the service levels provided by Eircom are a critical driver in determining the level of services to the final customer.

The ODTR developed a framework for Service Level Agreements (SLAs) and these have been in place for leased lines since 1 November 1999. The SLAs cover delivery timeframes, quality levels and maintenance terms for services including analogue and digital leased lines, ISDN lines and basic exchange lines. Penalties can result for non-compliance by Eircom to the standard delivery times set out in the SLAs.

I expect to have an SLA for interconnect circuits shortly. Together these should stimulate excellent delivery to OLOs. I look forward to SLAs for end users becoming a standard feature of the telecoms market.

Making it easier for consumers to exercise choice

Effective competition not only depends on customers having a choice of efficient telecoms suppliers competing to provide services. It also depends on consumers being sufficiently well informed and having sufficient freedom of action that they can effectively exercise choice among competing suppliers.

Number Portability

Number portability allows consumers and businesses to retain their telephone number when they change operator. The cost and inconvenience to them of having to inform callers is avoided and the caller benefits from not having to change their records or calling fewer wrong numbers.

Non-geographic number portability was introduced at the start of this year. This means service providers using numbers like freefone and lo call (1800 and 1850) can choose their network provider and take their number with them. This is vital for businesses that have invested in branding services on non-geographic codes. By reducing the switching costs associated with changing service provider, number portability increases the scope for competition in the provision of these services, which, in turn, has a positive effect on their price.

Geographic Number Portability, which will allow all customers to take their numbers with them when they change operator, will be available by the end of November this year.

Carrier Pre-Selection (CPS)

Carrier Pre-Selection allows a customer to choose an alternative service provider to carry some or all of a customer's calls without the inconvenience of having a router installed. It has been available in Ireland since 1 January 2000. There are three pre-selections currently available: 1) International calls only; 2) National calls only; 3) All calls. Additional call types may be added to the scheme over time. CPS also reduces the costs and inconvenience to the consumer when switching operator, thereby increasing the scope for competition which in turn can lead to price reductions.

There is a strong role for consumer organisations like ICUG to ensure that consumers are well informed about and understand the benefits that number portability and CPS can provide.

Measuring Licensed Operator Performance

We believe that consumers are entitled to know how well operators actually meet the performance standards they promise. We are introducing a service quality measurement programme for licensed telecommunications companies. The parameters to be measured include service delivery, fault maintenance and response as well as complaints. The first data is scheduled to be published mid 2001. An industry forum is developing the requirements for publication and my office is keeping consumer groups, including ICUG, informed of developments.

Consumer Disputes

My office handles consumer complaints on an ad hoc basis, many of which relate to billing disputes. The ODTR cannot independently investigate most complaints but asks the service provider for a report on the dispute. This is clearly not the most satisfactory of situations. I believe that the ODTR is not best positioned to deal with consumer complaints directly as this does not fit well with our role as industry regulator. However, I would encourage the industry, backed by calls from groups such as yourselves, to develop a self-regulatory ombudsman who would deal with consumer disputes.

Cable/MMDS Operators

Most of you will be aware that my office is also responsible for the licensing and regulation of television distribution systems, including Digital TV, cable, MMDS, satellite, etc. All five major cable and MMDS companies have now been granted new licences which require them to develop digital services. Our intention has been that together these networks would provide national competition in digital television services to Digital Terrestrial Television (DTT).

Under the terms of the licences each licensee has been granted in-platform exclusivity, which will expire in April 2004 in order to facilitate the development of digital services. A critically important element of the new licences is the responsibility on operators to meet roll-out obligations to provide for the delivery of digital television services. By March 2001, 200,000 homes have to have digital services available to them. A considerable upgrade of their networks is therefore

required. In doing so, the enhancements facilitate the introduction of new services for consumers, particularly voice telephony and Internet access.

In addition to roll-out obligations, the new licences also contain provisions designed to ensure delivery of quality service and enhanced consumer protection provisions such as codes of practice.

National and EU Legislation and its Limits

As I noted at the beginning, the ODTR operates within a framework of EU and Irish law. It operates only within that framework and does only those things for which it has been given responsibility in law. In a democracy this is as it should be. I am, however, looking forward to the new legislation promised by the Minister for Public Enterprise for the ODTR. I am very committed to the national objective of being at the forefront of telecommunications development and the ODTR has gone all out to forward that objective. At this point, we have implemented almost all measures arising under the existing telecoms framework. We are close to completing work on LRIC based interconnection pricing for fixed services and are turning our attention to mobile.

In the absence of new legislation at EU and/or Irish levels, we are likely to be increasingly constrained in pushing out the agenda further. We are already at the margins of our legal capacity in respect of unbundling the local loop, an area the Minister intends to tackle in forthcoming legislation.

The enforcement powers of my office as they currently stand are limited. This impacts on our ability to ensure effective regulation of the market. Coupled with this is the inability to impose or have imposed proportionate sanctions where regulatory breaches have occurred. Currently, my office can impose a maximum fine of IR£1,500 on a telecommunications operator who commits an offence. These fines are tiny relative to the potential benefits in a billion-pound market. By comparison with regulators in other countries, my German and Dutch colleagues have, depending on the particulars of the situation, the power to impose administrative fines of up to £400,000 (approx.) and £360,000 (approx.) respectively.

Enhanced and simplified enforcement powers, also signalled by the Minister, will also make a difference to our ability to ensure that all our decisions are quickly and effectively implemented to the benefit of consumers.

EU Commission's 1999 Review

The EU is also reviewing its framework of Directives to simplifying and updating them in the light of technological and market developments. Along with our regulator colleagues in other EU states my Office submitted a co-ordinated response to the Commission on our views. In addition, my office submitted its own response following consultation with the Department of Public Enterprise,

industry representatives and consumer groups which included ICUG. While I do not propose to go into significant detail regarding our response, I would like to briefly touch upon one of our concerns on the proposals, namely, the proposal by the Commission to employ a new "dominance" based threshold to identify when and what obligations to apply in regulatory law.

Currently, Significant Market Power (SMP) is the trigger mechanism for imposing particular regulatory obligations on companies. A firm is presumed to have SMP if it has 25% or more of a pre-defined market. The Commission proposes to change this test in two important ways. One is to focus regulation on economic markets, rather than arbitrary, technology-specific ones. I welcome this change. It will allow regulation to keep up with changing technology and developing markets.

However, the Commission is also proposing to change SMP to a 'dominance' based test. Dominance is a concept developed for use in competition policy. In fact the new SMP test would be more stringent than the competition law dominance test, would be difficult to apply in practice and create uncertainty in the market.

The point of applying sector-specific regulation is that certain sectors are undergoing liberalisation and are not yet sufficiently competitive to be regulated by applying competition law alone. Regulators should be able to apply obligations to firms having market power. As markets become competitive, regulators need to have the flexibility to remove regulatory obligations.

Most European markets liberalised in the last few years and cannot yet be considered to have effective competition across all its telecommunications services. Indeed, the Head of the Federal Communications Commission in the U.S., Mr Kennard, commented only recently in Naples at a meeting with EU regulators on the need for intensification of telecoms regulation in the USA to ensure that sustainable competition right down to the local loop is achieved.

I remain unconvinced that a dominance-based test is the most appropriate one for use in sector-specific communications regulation. It would be better to have a test that was explicit about the level of market share at which a firm was presumed to have SMP, together with the scope to look at other factors with a bearing on the degree of actual market power possessed by the firm. This would make the test practical to apply and would contribute added legal certainty. The test should also target a lower level of market power than dominance does. This would be more appropriate for the *ex ante* nature of telecoms regulation and the types of obligations being applied. It is also needed to cater for the nature of a liberalising sector in which competition is still emerging and individual firms tend to have a strong position in many closely related markets.

The Commission's proposals in this area, as well as being cumbersome to employ, will introduce a high degree of regulatory uncertainty in the market. The

losers will be European consumers as the development of competition in the European telecommunication markets will be hindered.

Conclusion

Much work has been completed to date by my office but it does not end there. A significant work programme lies ahead and the headline workstreams have been highlighted on the ODTR's website. I must also pay credit to the telecommunications, and broadcasting operators themselves who have also had to face the challenges that have occurred.

The global telecommunications market is one of the fastest growing and changing markets in the world and if we do not continue to progress at an advanced rate we will fall behind. With the correct framework for telecommunications in place, continued development and growth of the Internet and e-commerce is facilitated and the government can focus on wider industrial policy objectives, such as attracting and retaining foreign direct investment and indigenous sector development.

My office will continue to work so that the fundamental building blocks to facilitate these aims are in place.

Thank you for your time.

- ENDS -