



Commission for  
**Communications Regulation**

## Consultation and Draft Decision

# Leased Line Markets: Further Review of Urban Centres

All responses to this consultation should be clearly marked:-  
“Reference: Submission re ComReg 13/39” as indicated  
above, and sent by post, facsimile or e-mail to arrive on or  
before 5p.m., 15 May 2013, to:

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Please note ComReg will publish all respondents’  
submissions with the Response to this Consultation,  
subject to the provisions of ComReg’s guidelines on the  
treatment of confidential information – ComReg 05/24.

## Consultation and Draft Decision

**Reference:** ComReg13/39

**Date:** 17/04/2013

**An Coimisiún um Rialáil Cumarsáide**

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## 1 Background & Executive Summary

- 1.1 A leased line is a fixed permanent telecommunication connection or link providing broadly symmetric capacity between 2 fixed points. It is permanent in that this capacity is always available for use between the 2 points. However, this capacity could be reserved or shared through the associated network depending on the nature of the leased line.
- 1.2 Leased lines are typically used to connect business users to various advanced telecommunications services, for instance, Internet Protocol (IP) switched data services, Internet connectivity (World Wide Web) and Cloud Services. They are also used by OAOs as network inputs. This can allow an operator to extend its network reach by renting large capacity leased lines and thereby establishing Points of Presence (POPs) in locations which may be difficult and/or expensive to reach with self-built network. It can also thereby encourage an operator to invest in network rollout and move up the “ladder of investment” by eventually replacing such “bridgehead” leased lines with its own network when it has established sufficient business in an area to warrant such network expansion.

### *2008 review of Leased Line markets*

- 1.3 In line with its statutory obligations<sup>1</sup>, ComReg published its most recent review of the market for Wholesale Terminating Segments of Leased Lines in December 2008 (“D06/08”)<sup>2</sup>. This analysis, incorporating a Decision Notice and Decision Instrument, found that Eircom had Significant Market Power (SMP) in the market for Wholesale Terminating Segments of Leased Lines, but found that Eircom no longer had SMP in the market for Wholesale Trunk Segments of Leased Lines, or the market for the Minimum Set of Retail Leased Lines (up to 2Mb/s).
- 1.4 In D06/08, ComReg defined the competitive wholesale trunk segment market as constituted by high capacity connections between major centres of population. Under these conditions, a supplier would be able to realise economies of scale and of scope. The attraction for the supplier would be the ability to offer either high bandwidth circuits (i.e. of the order of STM-1), or to be able to aggregate sufficient traffic. While a network operator could offer an individual low bandwidth circuit, it is not likely that this would be economically attractive until the supplier could aggregate sufficient of them to constitute a high capacity connection. The conditions of supply associated with thin routes are, therefore, not the same as those associated with opportunities for aggregation onto high capacity circuits, that is to say trunk routes. A leased line trunk market was therefore defined to comprise of higher capacity circuits on such routes.
- 1.5 The regulated market for wholesale terminating segments was defined as that constituted by those segments of a leased line which connected an end-user to those circuits in the trunk market, including all lower capacity circuits and handover or interconnection circuits.

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<sup>1</sup> Regulations 25, 26 and 27 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations S.I. No. 307 of 2003, as amended.

<sup>2</sup> ComReg Decision D06/08 (Document 08/103) Decision Notice and Decision Instrument: “Market Analysis – Leased Line Market Review”.

1.6 In order to provide certainty to the market, ComReg identified a list of urban centres, listed in Annex A to D06/08, which met the criteria established in defining the market for wholesale trunk segments, and by extension, illustrated the scope of the market for wholesale terminating segments. Section 3.2 of the Decision Instrument included in Decision D06/08 states that *“The [wholesale trunk segment] Market excludes circuits which run between any of the urban centres listed in Annex 1 to this Decision Instrument and which have a capacity equal to or greater than STM-1 (155Mb/s). For the avoidance of doubt, intra-urban routes entailing circuits which run between exchanges located in the same urban area are included. The table contained in Annex 1 may be amended from time to time by ComReg.”*

### **2010 Decision to expand list of Urban Centres**

1.7 ComReg received a request from Eircom in 2009 to expand the list in Annex A to D06/08 by a further 7 urban centres: Athlone; Bray; Carlow; Clonmel; Naas; Portlaoise and Swords.

1.8 ComReg consulted (in ComReg Document No. 09/86<sup>3</sup>) on whether any of these centres qualified under the criteria previously established under D06/08: i.e., the presence of at least two or more sets of competing infrastructure *“indicating that the prevailing economic conditions have encouraged actual or prospective complete supply”*, in particular:

- that there were at least 2 competing operators other than Eircom within any qualifying centre;
- that 1 should be located close enough to an Eircom exchange to facilitate connectivity to the dominant operator (Eircom); and
- that the competing infrastructure POPs (Points of Presence) were not located so far apart that it would be uneconomic to use that infrastructure which would cancel out any possible economical constraint.

1.9 Following consultation, ComReg confirmed in Decision D02/10 that Portlaoise met the criteria outlined above and should therefore, be added to Annex A to D06/08, as published in Appendix C of this document. The other six centres did not, however, satisfy the criteria.

### **Current consultation**

1.10 ComReg has received another request from Eircom to further expand the list in Annex A to D06/08 with an additional five urban centres. ComReg has, therefore, launched this consultation to consult and seek respondents' views on our assessment of the appropriateness of expanding Annex A to D06/08, as amended, including our draft Decision Instrument as published in Appendix B of this document.

1.11 In the event that the list of urban centres is amended following this consultation, it should be understood that this does not constitute any

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<sup>3</sup> Consultation and Draft Decision, Leased Line Markets: Review of Urban Centres, 17 November 2009.

change to the market definition or competition analysis set out in D06/08. This consultation should be viewed as an opportunity by stakeholders to clarify the actual operation of the market, so that the remedies are correctly applied.

## **2 (Summary of) Market Definition of Market for Wholesale Terminating Segments of Leased Lines**

2.1 The following text has been extracted from Section 8 of the Decision Notice included in D06/08, and is presented for information purposes only.

- 8.1 There are separate markets for the trunk segments and the terminating segments of leased lines, and both are national in scope.
- 8.2 The boundary between trunk and terminating is not determined by any operator's specific network topology. Trunk segments connect high densities of traffic via high capacity connections, between and within major centres of population. OAO investment on these routes reflects the difference in the underlying economic conditions of supply and demand. Terminating segments generally supply lower densities of traffic on a less aggregated basis. Everything, outside of the trunk segment market, and including the main points of handover, is considered to be part of the terminating segment market.
- 8.3 Self-supply should be considered part of the market where an operator has capacity which it would be likely to offer on a wholesale market without significant costs, and within a reasonable timeframe.
- 8.4 The market for wholesale terminating segments should not be further differentiated by bandwidth.
- 8.5 All products offering fixed permanent, point-to-point, broadly symmetric termination are in the same wholesale terminating segment market, regardless of the underlying technology. For the avoidance of doubt, this means that services delivered using Ethernet fall into this market.
- 8.6 Further to stakeholder requests, ComReg feels it would be helpful to delineate, as far as practicable, specific routes which fall into the wholesale market for trunk circuits. This is by way of clarification and does not change the market definition, analysis or subsequent remedies that have already been consulted on and determined. Those circuits which facilitate routes which run between urban centres (as listed in Table 1), and which are of a capacity equal to or greater than STM-1 (155Mb/s) fall into this market for trunk segments of wholesale leased lines.

2.2 As explicitly noted in Section 3.2 of the Decision Instrument included in D06/08, the market for wholesale terminating segments excludes circuits which run between any of the urban centres listed in Annex A to that Decision Instrument (as amended by D02/10) and which have a capacity equal to or greater than STM-1 (155Mb/s).

2.3 The urban centres set out in Annex A (as amended) are Arklow, Carrick-on-Shannon, Cork, Drogheda, Dublin, Dundalk, Ennis, Galway, Letterkenny, Limerick, Mullingar, Portlaoise, Shannon, Sligo, Waterford and Wexford, as per Appendix C of this document. In paragraph 5.8 of the Decision Notice and section 3.2 of the Decision Instrument of D06/08, ComReg reserved its right to amend this list of urban centres from time to time.

### 3 Request to expand the list of urban centres

3.1 ComReg has received a new request from Eircom to further expand the list of urban centres set out in Annex A to the Decision Instrument in D06/08 (as amended) to include the following urban centres: Athlone, Charleville, Mallow, Roscommon and Tullamore.

#### *Analysis method*

3.2 In paragraph 5.7 of the Decision Notice in D06/08, ComReg set out the reasoning by which it arrived at the list of urban centres contained in Annex A of Decision No. D06/08, as follows:

Circuits which are provided using established infrastructure, between certain urban centres (as listed in Table 1 below), and which are of a capacity equal to or greater than STM-1 (155Mb/s) fall into the market for trunk segments of wholesale leased lines. [...] OAO investment on these routes reflects the difference in the underlying economic conditions of supply and demand.

3.3 ComReg had previously set out that *“the cut-off point between trunk and terminating should be where there is a distinct break in the economics of demand for, or supply of, these respective segments such that appreciably different competitive conditions can be observed”*<sup>4</sup>.

3.4 ComReg further noted that *“the supply of terminating segments, which relies on a widespread network which can reach individual customers, requires different economic inputs to the supply of trunk segments”*<sup>5</sup>.

3.5 ComReg noted throughout its consultation process that its analysis found that the boundary between the market for wholesale trunk segments and wholesale terminating segments was determined by a break in the economic conditions of demand and supply, and that this break was associated with high capacity connectivity between major urban centres.

3.6 In assessing whether the list of urban centres constituting the wholesale trunk market should be revised, ComReg proposes to follow the same analytical approach it followed in its previous decisions, D06/08 and D02/10. This involves considering the presence and extent of high capacity connectivity between an urban centre and other major urban centres, and it is likely that the presence of these characteristics would be reflected in the presence of significant competing infrastructure.

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<sup>4</sup> ComReg Document 08/63, Market Analysis: Leased Lines Markets Response to Consultation and Consultation on Draft Decision, Paragraph 3.52.

<sup>5</sup> Paragraph 3.57, Ibid.

3.7 ComReg's previous analyses completed in 2008 and 2010 suggested that, for connectivity to and from an urban centre to fall within the wholesale trunk market, there are likely to be two or more sets of competing infrastructure present between the urban centres. Furthermore, in order that the competing infrastructure can effect a competitive constraint on the dominant operator (Eircom), those intending to use this infrastructure must be able to do so in a technically and economically efficient manner. Therefore, the infrastructure needs to be physically located close enough to the Eircom exchange in the relevant urban centre. If the Points of Presence (POPs) of the individual infrastructures are located so far apart that it would be uneconomic to use that infrastructure, the potential competitive constraint is negated.

3.8 The following table summarises the preliminary analysis of data collected by ComReg and indicates the level of infrastructure located in, or in close proximity to the additional urban centres proposed by an Eircom. A tick indicates in the affirmative.

	<b>Eircom</b>	<b>AltNet1<sup>6</sup></b>	<b>Altnet2</b>	<b>Altnet3</b>	<b>Altnet4</b>
<b>Athlone</b>	√		√	√	√
<b>Charleville</b>	√	√	√	√	√
<b>Mallow</b>	√	√	√	√	√
<b>Roscommon</b>	√	√	√		
<b>Tullamore</b>	√		√		

Table 1 List of number of operators with network infrastructure in the Urban Centres under consideration

3.9 As Table 1 shows, of the 5 urban centres considered, 1 has one alternative infrastructure provider present, and 4 have two or more. ComReg wishes to note that it has also taken into account in its analysis the condition of the built infrastructure and its accessibility to allow cabling and effect customer or inter-operator connectivity within a reasonable period.

3.10 ComReg therefore, proposes to append the following urban centres to the Annex A to D06/08, as amended (as set out in the draft Decision Instrument in Appendix B of this document):

Athlone;

Charleville;

Mallow; and

Roscommon.

<sup>6</sup> OAO's with alternate infrastructure in relevant Urban Centres have been anonymised as the information supplied is confidential.



**Q. 1. Should any or all of the proposed urban centres be appended to the list set out in Annex A to D06/08 (as amended)? If you agree, please provide reasons why this is the case.**

**Q. 2. Are there reasons why any of these urban centres should not be appended to the list set out in Annex A to D06/08 (as amended)?**

#### **4 Implications of adding the urban centres**

- 4.1 The definition of the wholesale leased lines markets set out in D06/08 will remain unchanged regardless of whether the list in Annex A to that decision (as amended) is changed following this consultation, and D06/08 will continue to apply. Any revision of the list of urban centres merely recognises that any additional urban centre meets the criteria set out in D06/08 and that, as such, high capacity connectivity (that is, sections of circuits which have a capacity equal to or greater than STM-1 (155Mb/s)) between that centre and other centres on the list will be recognised as falling within the wholesale trunk market, which is not subject to ex ante regulation.
- 4.2 For the avoidance of doubt, and as set out in Section 5.8 of D06/08, ComReg notes that any amendment to Annex A to D06/08 (as amended by D02/10) will not change the definitions of the markets for trunk segments and for terminating segments of wholesale leased lines.

#### **5 Next steps**

- 5.1 This consultation will run from 17 April 2013 until 15 May 2013. ComReg has published a draft Decision Instrument in Appendix B of this Consultation and welcomes respondents' views on this draft Decision Instrument and to the questions posed. ComReg will publish a Response to this Consultation and final Decision Instrument if, following a further assessment of the evidence and opinions provided, it is deemed appropriate to revise the aforementioned list of urban centres in Annex A to D06/08, as amended by D02/10.

**Q. 3. Do the respondents believe that the draft text of the proposed decision instrument is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please elaborate on your response.**

## **6 Submitting Comments**

All comments are welcome; however it would make the task of analysing responses easier if comments were referenced to the relevant question numbers in this document.

The consultation period will run from 17 April 2013 until 15 May 2013 during which ComReg welcomes written comments on any of the issues raised in this paper.

In order to promote further openness and transparency ComReg will publish all respondents' submissions to this consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg Document No. 05/24.

### **Please note:**

ComReg appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful.

As it is ComReg's policy to make all responses available on its website and for inspection generally, respondents to consultations are requested to clearly identify confidential material and place confidential material in a separate annex to their response.

Such information will be treated subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg Document No. 05/24.

Responses must be submitted in written form (post or email) to the following recipient, clearly marked "Submissions to ComReg 13/39":

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## Appendix A – Consultation Questions

Q. 1. Should any or all of the proposed urban centres be appended to the list set out in Annex A to D06/08 (as amended)? If you agree, please provide reasons why this is the case. .... 8

Q. 2. Are there reasons why any of these urban centres should not be appended to the list set out in Annex A of D06/08 (as amended). ? ..... 8

Q. 3. Do the respondents believe that the draft text of the proposed decision instrument is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please elaborate on your response. .... 8

## Appendix B – Draft Decision Instrument

### **1 STATUTORY POWERS GIVING RISE TO THIS DECISION INSTRUMENT**

- 1.1 This Decision Instrument relates to the market for wholesale terminating segments of leased lines defined in Decision No. D06/08 Market Analysis – Leased Line Market Review dated 22<sup>nd</sup> December 2008 and is made by the Commission for Communications Regulation (“ComReg”):
- i. Pursuant to and having had regard to sections 10 and 12 of the Communications Regulation Act 2002 to 2011,<sup>7</sup> Regulation 6(1) of the Access Regulations<sup>8</sup> and Regulation 16 of the Framework Regulations<sup>9</sup>;
  - ii. Having had regard to ComReg Decision No. D06/08 and more particularly to paragraph 5.8 of the Decision Notice and section 3.2 of the Decision Instrument contained therein;
  - iii. Having taken account of the submissions received in relation to Document No. 13/39.

### **2 SCOPE AND APPLICATION**

- 2.1 This Decision Instrument applies to Eircom Limited and its subsidiaries, and any undertaking which it owns or controls and any undertaking which owns or controls Eircom Limited, and its successors and assigns (“Eircom”).
- 2.2 This Decision Instrument is binding upon Eircom and Eircom shall comply with it in all respects.

### **3 SUBSTITUTION OF ANNEX A OF DECISION NO. D06/08, AS AMENDED BY DECISION NO. D02/10**

- 3.1 Annex A of Decision No. D06/08 as amended in Decision No. D02/10 is hereby substituted by the list of urban centres listed below so as to expand the list of urban centres to include the following:

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<sup>7</sup> Communications Regulation Act 2002 (No. 20 of 2002), as amended by the Communications Regulation (Amendment) Act 2007 (No. 22 of 2007), the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 (No. 2 of 2010) and the Communications Regulation (Postal Services) Act 2011 (No. 21 of 2011).

<sup>8</sup> European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011).

<sup>9</sup> European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011).

[Athlone, Charleville, Mallow and Roscommon]. Thus the amended Annex A will read as follows:

**Annex A**

<b>Arklow</b>
<b>[ Athlone]<sup>+</sup></b>
<b>Carrick-on-Shannon</b>
<b>[Charleville]<sup>+</sup></b>
<b>Cork</b>
<b>Drogheda</b>
<b>Dublin</b>
<b>Dundalk</b>
<b>Ennis</b>
<b>Galway</b>
<b>Letterkenny</b>
<b>Limerick</b>
<b>[Mallow]<sup>+</sup></b>
<b>Mullingar</b>
<b>Portlaoise</b>
<b>[Roscommon]<sup>+</sup></b>
<b>Shannon</b>
<b>Sligo</b>
<b>Waterford</b>
<b>Wexford</b>

**[Signed]**

**THE COMMISSION FOR COMMUNICATIONS REGULATION**

**[Date]**

<sup>+</sup> Note: brackets indicate those urban centres indicated earlier and which ComReg is proposing be included in the Annex A list pending the outcome of the consultation.

Appendix C – List of Urban Centres Annex A to D06/08 (as amended by D02/10)

<b>No.</b>	<b>URBAN CENTRE</b>	<b>DECISION No.</b>
<b>1</b>	<b>Arklow</b>	<b>D06/08</b>
<b>2</b>	<b>Carrick-on-Shannon</b>	<b>D06/08</b>
<b>3</b>	<b>Cork</b>	<b>D06/08</b>
<b>4</b>	<b>Drogheda</b>	<b>D06/08</b>
<b>5</b>	<b>Dublin</b>	<b>D06/08</b>
<b>6</b>	<b>Dundalk</b>	<b>D06/08</b>
<b>7</b>	<b>Ennis</b>	<b>D06/08</b>
<b>8</b>	<b>Galway</b>	<b>D06/08</b>
<b>9</b>	<b>Letterkenny</b>	<b>D06/08</b>
<b>10</b>	<b>Limerick</b>	<b>D06/08</b>
<b>11</b>	<b>Mullingar</b>	<b>D06/08</b>
<b>12</b>	<b>Portlaoise</b>	<b>D02/10</b>
<b>13</b>	<b>Shannon</b>	<b>D06/08</b>
<b>14</b>	<b>Sligo</b>	<b>D06/08</b>
<b>15</b>	<b>Waterford</b>	<b>D06/08</b>
<b>16</b>	<b>Wexford</b>	<b>D06/08</b>