



Consultation Paper and Draft Decision Instrument

**Leased Line Markets: Review of Urban Centres**

<b>Document No:</b>	<b>09/86</b>
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All responses to this consultation should be clearly marked:-  
“Reference: Submission re ComReg 09/86” as indicated above,  
and sent by post, facsimile, e-mail or on-line at [www.comreg.ie](http://www.comreg.ie)  
(current consultations), to arrive on or before 5p.m., 11<sup>th</sup>  
December 2009, 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.

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## 1 Background

### *2008 review of Leased Line markets*

- 1.1 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<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).
- 1.2 Decision No. D06/08 is currently in effect.
- 1.3 In Decision No. D06/08, ComReg defined the 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 (ie 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 individual low bandwidth circuits are, therefore, not the same as those associated with high capacity connections.
- 1.4 The market for wholesale terminating segments is constituted by those segments of a leased line which go from an end-user to the part of the leased line that is actually or prospectively competitive, i.e. the trunk segment.
- 1.5 In order to provide maximum certainty to the market, ComReg identified a list of urban centres, listed in Annex A of the Decision Instrument included in Decision No. D06/08, which met the criteria established in defining the market for wholesale trunk segments, and by extension, the scope of the market for wholesale terminating segments. Section 3.2 of the Decision Instrument included in Decision D6/08 states that *“The 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.”* ComReg is now consulting as to whether such an amendment to the annex is warranted.
- 1.6 In the event that the list of urban centres is amended, it should be understood that this does not imply a change in the overall market definition or competition analysis. This consultation should be viewed as an opportunity by stakeholders to clarify the actual operation of the market, so that the remedies can be correctly applied.

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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 Instrument: “Market Analysis – Leased Line Market Review”

## **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 Decision Notice included in Decision No. 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 Decision No. D06/08, the market for Wholesale Terminating Segments excludes circuits which run between any of the urban centres listed in Annex A of that Decision Instrument and which have a capacity equal to or greater than STM-1 (155Mb/s).

2.3 The urban centres set out in Annex A of the Decision Instrument are Arklow, Carrick-on-Shannon, Cork, Drogheda, Dublin, Dundalk, Ennis, Galway, Letterkenny, Limerick, Mullingar, Shannon, Sligo, Waterford and Wexford. In paragraph 5.8 of the Decision Notice and section 3.2 of Decision Instrument, 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 request from Eircom to expand the list of urban centres set out in Annex A of the Decision Instrument to include the following urban centres: Athlone, Bray, Carlow, Clonmel, Naas, Portlaoise and Swords.

*Analysis method*

- 3.2 In paragraph 5.7 of the Decision Notice included in Decision No. 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 has 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>3</sup>.
- 3.4 ComReg has 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>4</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. The actual pattern of OAO investment supports this assessment. While the presence of alternative infrastructure provision does not define the market, it does confirm the applicability of the analysis. The urban centres which were identified in Annex A of the Decision Instrument all have two or more sets of competing infrastructure present, indicating that the prevailing economic conditions have encouraged actual or prospective competitive supply.

<sup>3</sup> Paragraph 3.52, ComReg Document 08/63 3.52

<sup>4</sup> Paragraph 3.57, Ibid

- 3.6 In assessing whether the list of urban centres constituting the wholesale trunk market should be revised, ComReg proposes to follow its previous analytical approach. 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. ComReg’s previous analysis suggests 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.
- 3.7 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 operator.

	Eircom	AltNet1 <sup>5</sup>	AltNet2 <sup>5</sup>
Athlone	√	√	
Bray	√	√	
Carlow	√	√	
Clonmel	√	√	
Naas	√	√	
Portlaoise	√	√	√
Swords	√	√	

- 3.8 As the table shows, of the 7 urban centres considered, 6 have one alternative infrastructure provider present, and one has two or more.

**Q. 1. Should any or all of the proposed urban centres be appended to the list set out in Annex A of the Decision Instrument? If you agree, please provide reasons why this is the case.**

**Q. 2. Are there reasons why these urban centres should not be appended to the list set out in Annex A of the Decision Instrument?**

<sup>5</sup> The first column, AltNet1, indicates that there is one competing infrastructure provider present. The second column, AltNet2, indicates that there are 2 or more competing infrastructure providers present.

## 4 Implications of adding the urban centres

- 4.1 The definition of the wholesale leased lines markets will remain unchanged through this current consultation, and Decision No. D06/08 will continue to apply. The implication of revising the list of urban centres is that, should any centres be added, 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 considered to fall within the wholesale trunk market, and this market 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 of the Decision Instrument included in Decision No. D06/08) 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 November 2009 until 11 December 2009. ComReg has published a draft Decision Instrument in Appendix B of this consultation. ComReg welcomes respondents' views on this draft Decision Instrument. ComReg will publish a Response to this Consultation and final Decision Instrument, if it is deemed appropriate to revise the aforementioned list of urban centres in Annex A of D06/08.

**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 from this document.

The consultation period will run from 17 November 2009 until 11 December 2009 during which the Commission 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 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 05/24.



## 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 of the Decision Instrument? If you agree, please provide reasons why this is the case..... 5

Q. 2. Are there reasons why these urban centres should not be appended to the list set out in Annex A of the Decision Instrument? ..... 5

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

## 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. Having had regard to sections 10 and 12 of the Communications Regulation Act 2002;
  - 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. 09/86;

### **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**

Annex A of Decision No. D06/08 is hereby substituted by the list of urban centres listed below so as to expand the list of urban centres to include the following: Athlone, Bray, Carlow, Clonmel, Naas, Portlaoise and Swords. Thus the amended Annex A will read as follows:

**Annex A**

Arklow
[ ] <sup>6</sup>
[ ]
[ ]
Carrick-on-Shannon
[ ]
Cork
Drogheda
Dublin
Dundalk
Ennis
Galway
Letterkenny
Limerick
Mullingar
[ ]
[ ]
Shannon
Sligo
[ ]
Waterford
Wexford

**[Signed]**

**THE COMMISSION FOR COMMUNICATIONS REGULATION**

**[Date]**

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<sup>6</sup> Note brackets indicate those urban centres indicated earlier and which may be included pending the outcome of the consultation.