



Office of the Director of
**Telecommunications
Regulation**

CONSULTATION PAPER

*Future Regulation of Electronic
Communications Networks and Services*

General Authorisation Conditions

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Foreword

This is the second round of ODTR consultation on the future framework for authorisations under the new EU Directives for electronic communications networks and services. It seeks views on the issues to be covered by the new authorisations; in effect the conditions which will apply to operators both in terms of rights and obligations in the new regime.

This may sound a somewhat dry subject, but these conditions will affect users as well as service providers and I would be glad to have responses from all quarters. These are important matters and I look forward to reviewing the responses to the consultation, which will help ensure that the authorisation regime is appropriately framed for the future.

Given the huge tasks involved in implementing the new Directives, the ODTR is working in parallel with the Department of Communications, Marine and Natural Resources which has responsibility for transposing the new Directives into Irish law. The final form of the general authorisation will be based on the transposed texts.

Etain Doyle

Director of Telecommunications Regulation

Introduction

On 25 July 2003 the legal basis for the provision of electronic communications networks and services will change throughout the European Union as a new family of Directives are due to be implemented. Two significant changes to the regulatory framework will result. Firstly all electronic communications networks and services will be subject to common rules, and secondly licences to provide relevant networks and services will be replaced by an authorisation regime. Anyone will be able to avail of a “general authorisation” to provide a network or service provided they conform to certain general conditions. This document discusses these general conditions, as well as the types of networks and services that will be covered by the conditions.

The new EU regime will mean that many of the licences currently required by operators such as a general telecommunications licence will no longer operate. Instead, operators, provided that they notify the ODTR of their intentions, will be able to operate in the market and will be bound by the terms of a general authorisation. The main difference will be the absence of a formal licence application process. While many conditions of current licences are similar to those which the Directives provides for in the general authorisation, they must all be considered in the light of the new Directives and indeed experience since the existing regime was adopted in late 1998.

The Directives define regulatory objectives for the electronic communications sector which must guide the ODTR. The Communications Regulation Act 2002 incorporated these objectives in the context of providing for the establishment of the Commission for Communications Regulation. The objectives fall into three areas: the promotion of competition; the development of the internal market and the promotion of the interests of users.

The ODTR has already issued a document¹ that explained the fundamental changes that may result from the authorisation regime and sought comments on certain high-level matters. A report on this consultation was published in June². In that document, the

¹ ODTR 02/22, Future Regulation of Electronic Communications Networks and Services
Future Authorisations

² ODTR 02/51

ODTR indicated that further opportunities to comment would follow. This is the first of the more detailed consultations.

In addition to conditions which have general applicability and which will operate by reference to the network or service concerned, the Directives recognise that there are circumstances where additional conditions are appropriate. Accordingly the Directives provide for such conditions in the following situations:-

- Where spectrum or telephone numbers are needed to provide the network or service (“**conditions on rights of use**”), and
- Where an operator is deemed to have significant market power, has responsibilities for meeting universal service obligations, or measures are needed to ensure end-to-end connectivity (“**specific obligations**”).

Neither the specific obligations nor the conditions associated with the rights of use of spectrum or numbers are included in the scope of this consultation although readers should note that the ODTR will be seeking comments on these later.

The conditions which will attach to general authorisations will apply to all providers of electronic communications networks and services. Such networks and services are broadly defined in the Framework Directive and are discussed in detail in Section 3. The conditions concern the sector specific requirements that all operators will need to meet on such items as, for example, consumer protection, network integrity and the payment of administrative charges. The consultation is therefore of direct relevance to all consumer and user groups as well as operators and potential operators. The ODTR is particularly interested in the concerns of users and how, within the context of the framework, sector-specific consumer interests can be addressed.

This document provides information about the new EU framework on the regulation of electronic communications networks. This information should not be considered to represent legal or commercial advice and readers should seek professional advice appropriate to their own circumstances. In particular, readers should consult the official texts of the Directives as published in the Official Journal and not rely only upon the necessarily abbreviated interpretation of certain features contained in this Document. No liability is accepted for any decision taken on foot of information included in this document.

The ODTR also reminds readers that the issues discussed in this document are set out in advance of legal transposition of the provisions of the Directives by the Minister for Communications, Marine and Natural Resources. Accordingly all proposals or indicated approaches to particular issues are subject to the provisions of future legislation as enacted.

This document is without prejudice to the legal position or the rights and duties of the Director to regulate the market generally. Any views expressed are not binding and are without prejudice to the final form and content of any decisions the Director may issue.

1 Background

1.1 The EU Directives

In 1999, the EU Commission undertook a major review of the state of regulation of the telecommunications sector in the European Union. In the light of this review and mindful of developments in convergence which has blurred the distinction between services such as broadcasting and telecommunications, the Commission developed its proposals for a new framework for the electronic communication sector. This has been subjected to a public consultation and discussed within the Commission, European Parliament and the Council of Ministers. The final texts were agreed on 14 February 2002. The texts of the four Directives and one Decision were published in the Official Journal³ in April. A period of 15 months was provided for during which Member States are required to transpose the provisions into national law and make the necessary administrative arrangements to give effect to the new framework. The provisions of the Directives are to be applied from 25 July 2003 in all Member States.

As already indicated there is a set of related Directives and Decisions. These are as follows:

- The **Framework Directive** sets the overall context and defines overall principles and approaches.
- The **Authorisation Directive** describes the mechanisms through which services and networks may be provided, including the conditions which may be applied to operators.
- The **Access Directive** describes how networks and service may be accessed and how interconnection between public network and service providers will be regulated.

³ Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive);
 Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive);
 Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive);
 Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)
 Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision);
 All published in the Official Journal: L 108 Volume 45, 24 April 2002 and are available at http://www.europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/index_en.htm

- The **Universal Service Directive** considers how universal service will be protected and regulated and also addresses consumer rights.
- The **Spectrum Decision** concerns spectrum management issues.

Additionally, a further **Directive on Privacy and Electronic Communications** has recently been adopted⁴.

The Directives include discretionary elements that are variously applied to Member States or National Regulatory Authorities (NRA). The Minister for Communications, Marine and Natural Resources has responsibility for the enactment of legislation to transpose the Directives into Irish law. The ODTR and the Department have begun discussions on issues arising from the Directives, particularly in regard to necessary legislative changes. However, because many decisions need to be taken during the transposition process, the precise legal framework will not be finalised for some time. Therefore, any proposals or decisions made by ODTR in advance of legislation are without prejudice to final decisions which can only be taken when legislation is enacted. Nevertheless it should be noted that

- the Communications Regulation Act 2002 specifies regulatory objectives contained in the Directives and
- the concept and scope of general conditions are clearly set out in the Directives.

Thus, on the assumption that the ODTR will have responsibility for deciding on the manner in which conditions of general authorisation will be applicable, it is both timely and appropriate that this consultation on general conditions occurs now.

1.2 Current licensing arrangements in Ireland

The present position in Ireland is that the regulatory regime involves individual telecommunications licences issued under the Postal and Telecommunications Services Act of 1983 (for example General Telecommunications Licence (“GTL”), Basic Telecommunications Licence and Mobile Licence). In addition to these licences, certain operators also require licences issued under regulations made on foot of the 1926 Wireless Telegraphy Act. These include, for example, licences for mobile phone

⁴ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications). Published in the Official Journal L 201 Volume 45, 31 July 2002 and is available at http://www.europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/index_en.htm

operations, cable TV and MMDS operations, deflector licences, link licences, private mobile radio licences, etc.

1.3 What changes are required?

The current licensing regime, will need to be modified to ensure compliance with the Authorisation Directive, and will, in particular, involve the replacement of some categories of licences with general authorisations. General authorisations will be in a standard format for all electronic communications networks and services, irrespective of the network involved or the service to be provided. Licences issued under the Wireless Telegraphy Act may not necessarily be replaced but will at minimum require modification or amendment to ensure compliance with the new framework. However it is not possible at this stage for the ODTR to provide guidance on the extent of changes to such licences until there is greater certainty regarding legislative changes. The Department of Communications, Marine and Natural Resources, in addition to working on the transposition of the Directives is also reviewing Wireless Telegraphy legislation. Developments in relation to that legislation may have a significant impact on the future legal framework such as addressing issues as fundamental as whether future licences or rights of use will relate to apparatus or frequencies or possibly both. Under the Wireless Telegraphy Act a licence is currently required for the use of apparatus. The Directives however consider rights of use of spectrum. The different emphasis is noted and will need to be examined in the context of legislative change to transpose the Directives.

The rights associated with a general authorisation are set out in Article 4 of the Authorisation Directive. In summary, the rights conferred include:

- The right to provide electronic communications network and services
- The right to have applications for the necessary rights to install facilities considered in accordance with the process set out in the Framework Directive.

If an operator makes its network or services available to the public, additional rights include:

- The right to negotiate interconnection (see ODTR Document No. 02/69 – Briefing Note on Access Directive),
- The opportunity to be designated as a universal service provider (see Universal Service Directive; a consultation on USO designation is scheduled for later in the year).

An operator, will be entitled to begin the provision of networks or services subject to meeting notification requirements. However any such operator must also comply with certain conditions to be set out in a general authorisation. The Directives define and limit the types of conditions that may be included. These are in the main not dissimilar to many of the conditions which apply to licences currently issued under both the Wireless Telegraphy Act and the Postal and Telecommunications Services Act.

In responding to this consultation, operators and users should therefore consider conditions from all different types of licences that are currently used. For guidance, a note on the future applicability of the conditions of a GTL is attached as Annex 2 to this consultation. These notes address the reason for each condition and considers its appropriateness under the new regime. Specific reference to other licences is made where necessary throughout this document.

It should be noted that while this document indicates the format of the general authorisation which will be common to all operators covered by the Directive, all of the conditions will not necessarily apply to all operators. For example, the Directives distinguish between public and private operators and recognise that private operators may be subject to different – less onerous – conditions. This document sets out the ODTR view on the applicability of individual conditions to public and private operators. There can also be a distinction between the conditions which apply in the case of different services provided and the ODTR welcomes views on which conditions are appropriate (or inappropriate) for different categories of services.

1.4 Regulatory objectives

Article 8 of the Framework Directive (which is reflected in Section 12 of the Communications Regulation Act) defines the objectives underpinning sector regulation. Three broad areas are defined: promotion of competition; development of the internal market; and promotion of the interests of users. When considering general authorisation conditions (i.e. whether to maintain, modify or remove current licence conditions into the new regime or whether to set entirely new conditions) the ODTR must consider each condition in the context of these objectives. Competition and user concerns are clear, while the development of the internal market is more concerned with measures aimed at achieving harmonisation of rights and conditions across all Member States..

1.5 Scope of the consultation

The Authorisation Directive defines and limits (in Part A of the Annex) the conditions which may be imposed as part of a general authorisation. The appropriateness and applicability of these conditions are the main issues addressed by this consultation.

The Directive also refers to provisions of other Directives (the Universal Service Directive and the Access Directive) which define certain additional conditions⁵ (the “specific obligations”) that may be imposed on operators, primarily those determined as having significant market power in relevant markets or on operators designated to provide universal service obligations. The specific obligations are excluded from the scope of this consultation but will be considered in detail at a later date. ODTR will nevertheless be happy to receive submissions from operators or users to inform or focus subsequent consultations in this area and requests that such comments are supplied separately from comments related to this consultation.

More specific conditions are permitted under the Authorisation Directive in relation to the allocation of radio frequencies and numbers. These are set out in Part B and C of the Annex to the Directive. Consultation on these will also occur at a later stage.

1.6 Comments sought

Relevant comments are welcomed from all operators, users or other interested parties.

Within the context of General Authorisations, the ODTR can only implement conditions as provided for by the Directives and as transposed by national legislation. Respondents are reminded that the ODTR is not responsible for the legal transposition of the Directives. It would therefore be particularly appreciated if comments were made with due regard to the overall legislative framework.

⁵ **Access Directive** – transparency, publication of RIO (NB may include mobile operators), non-discrimination, accounting separation.

USO Directive – obligations regarding end-to-end connectivity and interoperability, retail tariffs for access to and use of public telephone network, obligations regarding carrier selection/pre-selection, the provision of a minimum set of leased lines, price cap & appropriate cost accounting system.

1.7 Structure of the document

Section 2 of this document addresses general concerns about consumer/user protection. Section 3 discusses the applicability of the General Authorisation to particular types of networks and services. Section 4 considers the form of a general authorisation and Sections 5 and 6 discuss the details of the individual conditions. Section 7 provides information on how comments should be provided.

1.8 Next stage

In view of the importance of the subject matter of this consultation a period of 6 weeks is being allowed for the submission of comments. This is also in recognition that August is traditionally a period when some key personnel in companies are unavailable. The comments received will be reviewed and summarised in a report to be published in October. These conclusions will be used as the prime input to the process of drafting the text of the general authorisation within the scope of national legislation. It is currently envisaged that there will be a further opportunity to comment on the text of all aspects of the authorisations including general and specific obligations and conditions on rights of use as appropriate. This will occur once the transposition of the Directives is at a more advanced stage.

2 Protection of Users

In this section of the consultation the ODTR wishes to provide users with the opportunity to raise concerns that may be addressed under the new framework.

Section 1.4 considered the regulatory objectives which are to guide the work of the ODTR going forward. One of the three broad areas defined relates to the protection of users and it is worth considering this area in a little more detail. Condition 8 of Part A of the Annex to the Authorisation Directive⁶ allows NRAs to include consumer protection rules specific to the electronic communications sector. The Framework Directive (Article 8.4) requires NRA's such as the ODTR to:

“promote the interests of the citizens of the European Union by inter alia:

- (a) ensuring all citizens have access to a universal service specified in [the Universal Service Directive];*
- (b) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved;*
- (c) contributing to ensuring a high level of protection of personal data and privacy;*
- (d) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services;*
- (e) addressing the needs of specific social groups, in particular disabled users; and*
- (f) ensuring that the integrity and security of public communications networks are maintained.”*

⁶ The wording is as follows: “Consumer protection rules specific to the electronic communications sector including conditions in conformity with Directive 2000/22/EC (Universal Service Directive)”. The use of the word ‘including’ means that conditions other than those included in the Universal Service Directive may be considered if justified, proportionate, non-discriminatory and transparent. The relevant sections of the Universal Service Directive include Articles 20 to 31 covering: contracts; transparency and publication of information; quality of service; integrity of the network; interoperability of consumer digital television equipment; operator assistance and directory enquiry services; certain conditions on assess and use of numbers including number portability; and ‘must carry’ obligations.

It should also be noted that in addition to the general requirements for the protection of users which will arise as a result of the general condition, certain specific obligations will also aim to protect users in relation to universal services and in cases where, in a given part of the market, there is a lack of effective competition. The specific obligations are more onerous but are necessary to help sustain and develop effective competition. They might address, for example, the requirement that prices of dominant operators are not excessive or deliberately exclude other operators through cross-subsidy. Article 17 of the Universal Service Directive is of particular note in this regard. Like general conditions, these specific obligations are defined and limited in the Directives and further details of what would be permissible can be found in the Universal Service Directive and the Access Directive. Consultation on the specific obligations will occur at a later date and the ODTR will again emphase user issues. Nevertheless, if users wish to raise a comprehensive set of concerns now, the ODTR will ensure that comments are addressed at an appropriate stage.

ODTR therefore is keen to understand the concerns of users that may be addressable under the new framework. These concerns might relate to their dealing with any operator providing electronic communications service or network.

Question 2.1

Do you have specific concerns in respect of the relationship between users and operators that might appropriately be addressed through general conditions aimed at protecting users? Please indicate what they are.

3 The applicability of the General Authorisation

The EU Framework relates to the provision of electronic communications networks and services. This section is intended to set out the ODTR's preliminary views on its interpretation of what networks and services fall within the scope of the Framework and therefore subject to regulatory requirements. This section is of great significance to end users as decisions taken in relation to the inclusion of particular types of networks and services will define which operators will be subject to varying degrees of regulatory control.

The significance cannot be overstated. The fundamental point is that if a network or service is deemed to be outside the scope of the Directives, the conditions (including measures to protect consumers and users) cannot be applied through the mechanisms set out in the Directives and addressed in this consultation. Instead national rules, to the extent that they exist and irrespective of whether they are more or less onerous, would apply. If, on the other hand, a network or service is deemed to be within the scope of the Directives only those conditions defined in the Directive and provided for by transposing legislation can be applied.

3.1 Definition of networks within the scope of the regulatory framework

The definition used in the Directives (Article 2(a) Framework Directive) is as follows:

“electronic communications network” means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;”

This definition includes any software or hardware involved in the conveyance of electronic signals. Conveyance and transmission include not just “sending” equipment and software but also “receiving” equipment and software. As given, the definition is quite broad and may reasonably appear to include anything that is commonly thought of

as “communications” equipment. The diversity of examples quoted demonstrates the intention to achieve a broad coverage.

Unlike, for example, the definition of public telecommunications network that is used in the current regulatory framework, the definition of a network is not restricted to that portion between network termination points and could, if literally interpreted, include private exchanges or in-building wiring schemes. To extend regulatory requirements to such examples on the basis of such a literal interpretation would probably be disproportionate and unjustified. However there is a need to provide greater certainty regarding the manner in which the ODTR may interpret the definitions and decide on what particular networks will be subject to regulatory conditions. Recital 6 of the Universal Service Directive recognises this and states:

“The network termination point represents a boundary for regulatory purposes between the regulatory framework for electronic communication networks and services and the regulation of telecommunication terminal equipment. Defining the location of the network termination point is the responsibility of the national regulatory authority, where necessary on the basis of a proposal by the relevant undertakings.”

The definition of the network termination point (NTP) therefore has the key role in defining where an “electronic communications network” ends in terms of the end user. The Universal Services Directive (Article 2(e)) defines the NTP as:

“ the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to a subscriber number or name.”

In order to promote convergence and a level playing field it is important that the network termination point is defined in a technologically neutral and objective manner. The specific network address could be a telephone number, IP address, or unique conditional access (CA) details contained within a smart card, which provide the subscriber with access to the network. This definition covers traditional NTPs for telephony as well as unidirectional and bidirectional Set Top Boxes (STB).

Question 3.1

What views do you have concerning the approach to interpreting the definition of networks as set out above?

What factors do you consider that the ODTR should take into account when defining Network Termination Points?

3.2 Applicability of Regulatory Provisions to Networks

One further principle also needs to be clarified. The Authorisation Directive covers the **provision of electronic communications network**. This is defined in Article 2(m) of the Framework Directive as:

“ the establishment, operation, control or making available of such a network;”

A view has been expressed that, for the purposes of the Directives, an operator which does not own physical infrastructure but operates a virtual network, for example, by leasing the necessary facilities from other infrastructure providers, could fall within the above definition (in particular due to the phrase “making available”). An operator who contracts to access a physical network with a view to making that network available to a third-party could be deemed under such an interpretation to be a network provider. This could mean that operators such as mobile virtual network operators or undertakings providing the means of receiving television signals carried on any network would come within the definition of a network provider.

The consequence of the above interpretation of the definition of “provision” would imply that infrastructureless operators that provide services to the public may be entitled to interconnection (see Article 4 of the Access Directive) if they are deemed to be “operators of public communications networks.”

Question 3.2(a)

What are your views in relation to this analysis?

What appropriate factors should be taken into account in determining which network operations are subject to network regulatory provisions?

The ODTR considers that the applicability of the framework to particular networks could conceivably be so wide as to encompass network operations for which regulatory obligations may be disproportionate. However the following networks are considered by the ODTR as appropriately subject to the conditions of a general authorisation. The particular provisions which would apply to the various networks would, as referred to earlier, depend on the characteristics of each category of network.

Electronic communications networks may be considered to include :

- Telephone networks to fixed locations
- Mobile telecommunications networks
- Networks used for the carriage or distribution of television and radio content services
- Other telecommunications networks involving transmission and/or routing.
- Radio communications networks

The examples are expressed in general terms and should not be regarded as a legal definition of scope. The listing set out here is indicative only and does not represent a decision by the ODTR on the scope of the regulatory framework. Such a decision can only be taken in the light of the legislation as enacted and further consideration by the ODTR in the light of responses and of the need to meet the objectives set out in the Directives.

Question 3.2(b)

What are your views on the above indicative listing? Are there specific networks which you believe should be excluded or alternatively are there networks which you believe should be included? Please provide reasons.

3.3 Conditional access and other associated facilities

Conditional access systems are specifically referenced in the Directives and Article 6 of the Access Directive allows a specific set of conditions to be applied. Article 5.1(b) of the Access Directive also allows NRAs to impose conditions on access to other associated facilities (notably Electronic Programme Guides and Application Programme Interfaces). These are both referred to in the Authorisation Directive as part of the specific obligations and Article 6 of the Directive indicates that procedures and criteria for imposing the specific obligations on individual undertakings shall be referred to in the General Authorisation.

The question arises whether these associated facilities need only be subject to the specific obligations and if so what mechanism will be used to enforce them. A final decision on this matter will depend on the legislative arrangements for transposition.

Question 3.3

What are your views on the above issue?

3.4 Applicability of Regulatory Provisions to Services

The Framework Directive (Article 2(c)) defines services as follows:

"electronic communications service" means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include Information Society services, as defined in Article 1 of Directive 98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks;"

This definition is also broad and encompasses a range of what would generally be considered commercial services offered over communications networks. Specific "content" type services are excluded from the definition. This cannot be taken to mean that providing the means of access to such content – as opposed to providing the content itself - is excluded. For example an Internet Service Provider allows material to be accessed from the Internet. The material is not covered by the Directives but the service that allows a connection to the ISP to be maintained would be. Similarly, a telephone subscriber might be able to call a number to hear material such as a radio station, a book being read, etc. Assuming for the purposes of the example that this is "content" it does not follow that the means of access to the content (in this case the telephone connection) is excluded from the definition of "*electronic communications service*."

In the broadcasting related area, the boundary between the provision of content and the provision of the necessary means to access that content is not always clear. For example, subscribers to cable, MMDS, deflector or satellite services not only pay for "content", i.e. the package of television and radio broadcast services received by the

subscriber, but the subscription fee also covers the cost of installing, operating and maintaining the delivery network and related equipment. In view of the above and in the context of the Directives addressing services associated with broadcast distribution networks (Electronic Programme Guide, Application Programme Interface, Conditional Access, Wide Screen television services, interoperability of consumer equipment, must carry services, terms of use during major disasters), the ODTR believes that the definition of electronic communications services encompasses the commercial provision of access to broadcasting content services.

As with networks, the ODTR considers that the applicability of the framework to particular services could conceivably be so wide as to encompass services for which regulatory obligations may be disproportionate. In the interests of providing some clarity on the application of the conditions, the ODTR considers the following to be services to which the conditions of a general authorisation would be appropriate. The particular provisions which would apply to the various services would, as noted earlier, depend on the characteristics of each category of service.

Electronic communications services may be considered to include:

- Telephony services whether to fixed locations or mobile;
- Other services involving an element of switching and/or routing irrespective of speed, protocol or use and including data services
- Leased lines or provision of capacity (including the provision of access services) whether on cable, fibre, radio or satellite
- Access to broadcasting services
- Other ancillary services such as short messaging services and intelligent network services

In addition to retail services, comparable wholesale services (services offered by one operator to another operator) would also be covered.

The examples are expressed in general terms and should not be regarded as a legal definition of scope. The listing set out here is indicative only and does not represent a decision by the ODTR on the scope of the regulatory framework. Such a decision can only be taken in the light of the legislation as enacted and further consideration by the ODTR in the light of responses and of the need to meet the objectives set out in the Directives.

Question 3.4

What are your views on the above analysis and indicative listing?

Are there specific services which you believe should be excluded or alternatively are there services which you believe should be included? Please provide reasons.

What are your views regarding the regulation of services provided by "cable" "MMDS" and "satellite"?

3.5 Public networks and services

The Directives distinguish between services and networks made available to the public and those which are not. In the following chapters we consider how conditions might apply differently to the two broad categories. In this section we consider the definitions of public networks and services.

It is noted at the outset that clarification of some of the issues raised in this section may be best achieved through the legislative arrangement for transposition and this Section is without prejudice to more precise definitions of public networks and services that may be provided.

The Framework Directive refers to public networks and publicly available services without further definition. The question that arises is what constitutes "public" or "publicly available". For example access to a service may be limited by the location of the operator or possibly the business sector in which an end user operates. That location could be as specific as a business park, campus or even a building. Within such a "closed user group" the network operator or service provider may make its offering available on a commercial basis to any user within the closed user group. The Director indicated in ODTR 02/51 that such services would appear to be subject to the new framework. It is nevertheless recognised that there may be circumstances within the above general examples where regulatory requirements could be disproportionate. The Director would welcome views on this issue.

Another issue concerns organisations only providing wholesale services (a carriers' carrier). It is suggested that if such services are provided with the intention that they will be used to provide a public service then such an operator should also be considered a public operator. That means that when interpreting the term 'publicly available' that

availability does not have to be direct. This would mean that a pure carriers' carrier would be subject to general authorisation conditions for public operators.

Question 3.5

What are your views on the distinction between public and private networks and services?

What factors should be taken into account when considering the position of closed user groups? Please provide reasons

4 The format of the general authorisation

The legal format of the general authorisation will be defined by the transposing legislation. The previous consultation addressed the structure of a general authorisation and noted the ODTR's views on the desirability of a comprehensive statement of rights and obligations expressed in a modular format. If provided for in this manner, all conditions would be listed but some conditions will only have effect in defined circumstances. The specific point was noted that private operators would be subject to less onerous conditions than would be the case with public operators.

It is also noted that there is no requirement for an undertaking wishing to provide networks and services to wait for the formal issue of an authorisation by the ODTR before beginning operations. The right to provide networks and services and the conditions to be observed will be conferred directly by the terms of the Directive and national law. The only documentation required by the Directive is a standard declaration that the undertaking concerned has submitted a notification of its intention to provide networks and services. In such circumstances the need to issue a "general authorisation document" to each individual undertaking may not be required unless specified in national law. Accordingly the ODTR is considering whether it would be more efficient both for operators and the ODTR if, instead of an automatic provision of a paper copy to all undertakings, the text of the general authorisation could be provided by alternative means. Such an approach would minimise administrative procedures and costs. One possibility would be to maintain the definitive text on the ODTR's web-site. Copies would of course be provided to anyone who specifically requests a paper version.

The conditions themselves are very likely to look like the conditions contained in any of the existing telecommunications licences. The licence conditions often refer to, and require compliance with, other documents issued by the Director from time to time. Such documents essentially provide clarification and detail of the conditions contained in the licence and as such form part of the licence. This approach has worked well without negative consequences and ODTR is not persuaded of the need to modify this approach. In particular when the full range of conditions is unlikely to be applicable in the case of the vast majority of operators, such an approach would reduce the quantity of documentation which undertakings would need to review. For the avoidance of doubt it should be noted that requirements set out in such documents need to conform to the provisions of the Directives. In particular, any proposals by the ODTR to issue or

amend such requirements would be subject to the requirement of the Framework Directive to allow interested parties to comment on draft proposals.

Article 6.3 of the Directive states that the conditions of a general authorisation shall not duplicate conditions applicable to undertakings by virtue of other national legislation. Subject to clarification by transposing legislation, the ODTR considers that it this provision would preclude the general authorisation from requiring, as a condition, compliance with other applicable legislative requirements. If such requirements are breached, the enforcement provisions of the general authorisation could not be used. However Recital 18 of the Directive acknowledges that undertakings may be informed of other national legislation concerning their activities.

Question 4

Do you believe that the proposal to maintain the text of a general authorisation by alternative means instead of the automatic provision of a paper copy to all undertakings is appropriate?

What views do you have in connection with the proposal to maintain the approach of issuing separate documentation for the purpose of setting out the detail of individual conditions to be observed?

Are there particular legislative requirements that you consider should be specifically brought to the attention of operators?

5 General Conditions

As with the situation regarding rights, the conditions listed in the Annex to the Authorisation Directive may not apply to all operators and Recital 16 states that it is appropriate to impose fewer and lighter conditions in the case of networks and services not provided to the public. The following conditions listed in Part A of the Annex appear to be appropriate to all undertakings providing electronic networks and services, irrespective of whether these are provided to the public.

5.1 Condition 2 – Authorisation Charges

5.1.1 Requirement and current position

Article 12 of the Directive states that administrative charges shall, in total, cover only the administrative charges which will be incurred in the management, control and enforcement of the general authorisation scheme and of rights of use and of the specific obligations.

Currently all licensees are required to pay appropriate levies or licence fees which are used to meet the costs of the ODTR. Two distinct payment regimes apply, depending on whether the licence in question is issued under the Postal and Telecommunications Services Act 1983 or the Wireless Telegraphy Act, 1926. In the case of telecommunications licences issued under the 1983 Act, a telecommunications levy applies which is based on turnover subject to a minimum payment. Currently this levy is calculated at 0.2% of relevant turnover with a minimum annual payment of €1,016. Where Wireless Telegraphy licences are granted, licence fees are payable at various rates depending on the nature of the licence. Such fees are in addition to the payment of any telecommunications levy which arises where a licensee also is in possession of a telecommunications licence. Licences issued under the Wireless Telegraphy Act are analogous to spectrum rights of use which are outside the scope of this consultation. Cable, MMDS and deflector licensees who distribute television programme services under licences also issued under the Wireless Telegraphy Act are subject to a licence fee of 3.5% of relevant turnover. It should be noted that the distribution of television programme services by satellite is not licensed by the ODTR and consequently payment of a licence fee does not arise for this activity.

5.1.2. ODTR Views

It is wholly appropriate that users of ODTR's services meet the running costs of the office and, as noted, this is expressly provided for in the Directive. The ODTR considers that administrative charges should be modelled on the telecommunications levy i.e. a turnover related charge subject to a minimum payment. The actual level of administrative charges will be influenced by two factors – the costs of the ODTR and the total revenue base which would be subject to such a levy-type mechanism

Question 5.1

Do you agree with the general proposal regarding administrative charges? If, not please indicate how the activities of the ODTR should be funded.

5.2 Condition 5 - Environmental and town and country planning requirements

5.2.1 Requirement and current position

The full text from the annex is as follows:

“Environmental and town and country planning requirements, as well as requirements and conditions linked to the granting of access to or use of public or private land and conditions linked to co-location and facility sharing in conformity with Directive 2002/22/EC (Framework Directive) and including, where applicable, any financial or technical guarantees necessary to ensure the proper execution of infrastructure works.”

It should be noted that the ODTR does not decide on planning consents or grant rights of way. The requirement regarding co-location and facility sharing needs to be considered in the context of Section 57 of the Communications Regulation Act, 2002 and Article 12 of the Framework Directive. Currently, condition 9 of the GTL considers one aspect of facilities sharing (trench sharing) that applies to all operators.

5.2.2 ODTR Views

The ODTR cannot exercise functions in relation to planning matters or the granting of rights of way as these are the statutory responsibility of other public bodies, Accordingly it is not proposed to include conditions related to these matters in a general authorisation due to the requirement in Article 6.3 of the Authorisation Directive that the general authorisations shall not duplicate conditions applicable to undertakings by virtue of other national law.

Insofar as the remaining issue associated with co-location and facility sharing is concerned, the ODTR considers that this should be a condition applicable to all operators. The detail of the conditions which would apply would be issued from time to time by the ODTR following public consultation

Question 5.2

Do you agree with the general approach indicated? In particular do you disagree with the exclusion of any conditions relating to meeting planning/right of way conditions imposed by other authorities?

In relation to co-location and facility sharing are there particular aspects or circumstances which you consider should be addressed?

5.3 Condition 10 - Provision of information

5.3.1 Requirement and current position

Articles 3 provides that an undertaking may be provided to notify the National Regulatory Authority of its intention to provide electronic communications networks and services and specifies the type of information to be provided. Article 11 sets out other purposes for which information may be sought from undertakings. Condition 3.1 of the General Telecommunications Licence requires licensees to comply with requests for information for the purposes stated in the licence

5.3.2 ODTR Views

There are two distinct situations envisaged by the condition as set out in the Annex. In the first instance there is information to be supplied by way of notification of intention to provide networks and services. The actual form of notification will be specified at a later stage but the ODTR does not consider that the requirement would present difficulties. At this stage it is envisaged that the requirement will consist of the following:

- Name and company registration number;
- Address;
- Nominated contact person(s);
- Nominated person's contact details (address, telephone, fax and e-mail);
- Description of the networks and/or services intended to be provided, including whether it is intended to make these available to the public;
- Estimated date for the commencement of the activity.

The other situation concerns the provision of information after activities have commenced. Article 11 sets out the purposes for which information may be sought and, without prejudice to information which may be sought in relation to rights of use or the specific obligations, these include:

- Verification of payment of administrative charges;
- Case-by-case investigation regarding compliance with a condition;
- Publication of comparative overviews of quality and price for the benefit of consumers;
- Clearly defined statistical purposes;
- Market analysis.

In all cases where information is sought, the specific purpose for which the information will be used by the ODTR will be stated.

Question 5.3

Do you agree with the above general approach?

If not, please state the basis for your views and indicate alternative means whereby ODTR may obtain the necessary information to carry out its statutory functions including enforcement of conditions.

5.4 Condition 11 - Enabling of legal interception

5.4.1 Requirement and current position

The condition requires that legal interception of communications in conformity with relevant EU law be enabled. Condition 6.3 of the general telecommunications licence addresses this point and requires licensees to comply with any directions given by the Minister under Section 110 of the 1983 Act.

5.4.2 ODTR Views

As is the case with planning consents, the authorisation of legal interception is a matter outside the statutory power of the ODTR. The ODTR considers that the issue may be capable of being addressed through the existing legislation and may not need therefore to be explicitly provided for as a condition of a general authorisation. For the sake of clarity, it is felt that, at minimum, there should be reference made to the powers of the Minister to issue directions to operators. Until the content of legislative provisions to transpose the Directives is known, it is not possible for the ODTR to indicate how the condition might be expressed. One possible approach could entail a modification of

condition 6.3 of the GTL and the condition to be expressed as a requirement to comply with relevant legislation including directions given by the Minister.

Question 5.4

Do you agree with the above general approach?

Are there associated issues which you believe should be taken into account?

5.5 Condition 12 - Terms of use during major disasters

5.5.1 Requirement and current position

The condition provides that operators comply with terms of use during major disasters to ensure communications between emergency services and authorities and broadcasts to the general public. Condition 6.7 of the GTL requires licensees to comply with any directions issued by the Director from time to time regarding emergency services and the provision of Licensed Services in times of emergency.

5.5.2 ODTR Views

The ODTR considers that this provision can be implemented by the maintenance of condition 6.7 of the GTL.

Question 5.5

Do you agree with the above general approach?

5.6 Condition 13 - Measures regarding the limitation of exposure to electromagnetic radiation

5.6.1 Requirement and current position

This condition provides that operators comply with measures regarding the limitation of exposure of the general public to electromagnetic fields. This issue is not specifically referred to in general telecommunications licences. For relevant licences issued under the Wireless Telegraphy Act, there is a requirement that operators must ensure that the radiation emissions from telecommunications masts are within the international guidelines for exposure to electromagnetic fields. In this regard, licensees must take full account of these guidelines when designing, constructing, and operating radio installations.

5.6.2 ODTR Views

The ODTR will issue, from time to time, directions which must be followed by operators to limit the exposure of the general public to electromagnetic fields. It will be a condition of the general authorisation that operators comply with such directions.

Question 5.6

Do you agree with the above general approach?

5.7 Condition 15 - Maintenance of the integrity of public communications networks

5.7.1 Requirement and current position

This condition provides that the integrity of public communications networks shall be maintained. There is specific reference to the prevention of electromagnetic interference. The GTL does not specifically consider network integrity.

5.7.2 ODTR Views

Network integrity can be jeopardised in a number of ways. These can include poor network planning, inappropriate or inadequately maintained equipment, sabotage or hacking, problems associated with interconnection and inadequate plant-redundancy planning. Article 23 of the Universal Services Directive requires Member States to ensure the integrity of telephony networks and services and uninterrupted access to emergency services. Integrity of networks under normal circumstances can to an extent be considered to fall under Article 5 of the Access Directive.

It is intended that this condition be addressed by firstly requiring that measures for the avoidance of electromagnetic interference between networks be taken by all network operators and that specific directions by the Director in regard to this be observed.

To ensure that Ireland can comply with Article 23 of the Universal Service Directive a specific authorisation condition will be necessary to ensure that providers of public communications networks and services cooperate with the ODTR in investigations into network integrity and implement appropriate recommendations. It should be noted that this Article specifically addresses the integrity of telephony networks and services. However there are clear circumstances where problems on other networks can cause consequential problems for telephony networks. Such eventualities must also be catered for if compliance to Article 23 is to be achieved.

Readers may wish to comment whether interconnection arrangements (technical and procedural) need to specifically address network integrity. They may also wish to consider whether it would be appropriate to extend network integrity conditions more generally than those networks addressed by Article 23.

Question 5.7

Do you agree with the above general approach?

Are there appropriate additional conditions that you think ODTR should consider in this area?

5.8 Condition 17 - Conditions for the use of radio frequencies where such use is not made subject to the granting of individual rights

5.8.1 Requirement and current position

Article 5.1 of the Authorisation Directive provides that, where possible, the use of radio frequencies shall not be subject to individual rights but that the conditions for the use of such frequencies shall be included in the general authorisation. As noted, the use of radio frequencies is currently subject to the grant of licences under the Wireless Telegraphy Act for the use of apparatus. In addition, certain categories of apparatus have been specified in orders as “licence exempt”. Such orders set out the conditions which govern the use of such apparatus to maintain the licence exempt status.

5.8.2 ODTR Views

Proposals in relation to possible amendments to the Wireless Telegraphy Act may have a direct impact on the implementation of this provision. It would clearly not be practical to specify in a single document the conditions of use to cover all circumstances where apparatus is currently exempt from licensing requirements. Accordingly, the ODTR considers that the most efficient manner in which this provision can be implemented is by establishing a requirement that operators who intend to use frequencies for which an individual right is not required shall observe the conditions of such usage to be issued by the Director from time to time.

Question 5.8

Do you agree with the above general approach?

Are there alternative approaches which you consider might be more appropriate or which would be more efficient?

5.9 Condition 18 - Measures designed to ensure compliance with standards and/or specifications

5.9.1 Requirement and current position

Conditions in this area relate to Article 17 of the Framework Directive. This Article is directed at the European Commission and Member States and deals with the use of standards to be drawn up by the Commission or by European standards organisations (CEN, CENELEC and ETSI) to ensure interoperability of services and to improve freedom of choice for users. While the Article only places a requirement that the use of such standards should be encouraged, there is also provision for such standards to become compulsory.

At present, licences do not contain a general requirement to observe international standards. However, a number of Wireless Telegraphy licences specify operating conditions based on such standards or reference such standards.

5.9.2 ODTR Views

While Recital 30 of the Framework Directive notes that standardisation should primarily remain a market-driven process, it also notes that there are situations where compliance with specified standards at Community level may be appropriate to ensure interoperability in the single market. If the European Commission intends that specific standards should be made compulsory, it is required to engage in a prior public consultation process. In such a situation, there will be no discretion available at national level and the use of a standard will become compulsory in all Member States.

The more general requirement that the use of standards be “encouraged” is an area where differing national approaches can be adopted. The ODTR’s view is that standards can be made compulsory at national level if this is necessary to achieve the aims of ensuring operability and of improving freedom of choice for users. Before doing so, the ODTR considers that it would be appropriate to conduct a consultation in relation to such a measure.

In order to give effect to the condition, the ODTR considers that it would be appropriate that the requirement should be expressed as a requirement for operators to:

- Take account of guidelines concerning the use of standards as issued by the Director from time to time, and

- To implement any standards which the Director specifies as mandatory following a consultation procedure or which are made compulsory by the EU Commission.

Question 5.9

Do you agree with the above general approach?

Are there alternative approaches which you consider might be more appropriate?

Question 5.10

Do you agree with the applicability of the above conditions in the manner described in this Section to all providers of networks and services.

Please give reasons if you disagree

6 General Conditions – Public networks and services

In the case of public networks and publicly available services, the following conditions from Part A of the Annex appear to be appropriate.

6.1 Condition 1 - Financial contributions to net costs of universal service

6.1.1 Requirement and current position

This condition relates to the funding of universal service in conformity with the provisions of the Universal Service Directive. That Directive deals, inter alia, with the establishment of a mechanism for financing the established net cost of universal service obligations. Prior to the establishment of any such funding mechanism, the Directive requires that the National Regulatory Authority (NRA) make a finding on the basis of the calculated net cost of universal service provision that there is an unfair burden on an operator designated to provide universal services and the Member State is required to decide that the net cost be shared between network and service providers. The Directive also requires that where such a sharing mechanism is to be established, it shall be administered by or under the supervision of the NRA.

While SI No 71 of 1999 provides for the ODTR to establish a sharing mechanism to finance the net cost of universal service provision, no such fund has been established to date. In the event that such a mechanism for sharing the cost between market participants is established, condition 6.6 of the GTL imposes a requirement that licensees pay appropriate contributions towards the funding of such services.

6.1.2 ODTR Views

A similar condition to that of clause 6.6 of the GTL remains appropriate. It should be noted that this condition may apply to all public operators availing of the general authorisation irrespective of whether they are providing services which are the subject of the universal service obligation. It should also be noted that Member States may decide to exempt operators whose turnover is below a set limit for having to contribute to any funding requirements. The exact mechanisms for funding universal services as well as applicability will, if required, be defined as appropriate in the future. Comments on the mechanisms are therefore not required at this stage.

Question 6.1

Do you have any preliminary comments regarding the principles involved in any USO fund sharing mechanism?

6.2 Condition 3 – Interoperability of services and interconnection of networks

6.2.1 Requirement and current position

Conditions in this area are set out in the Access Directive. ODTR Document 02/69 is a briefing note on the Access Directive and should be consulted in the context of the section. In summary, the general obligation is on public operators to negotiate interconnection with each other (Article 4.1); on operators to maintain widescreen format for TV distribution (Article 4.2); and on operators to respect certain conditions on use of information received as a result of discussions on interconnection (Article 4.3). Article 5 requires NRAs to encourage and where appropriate ensure adequate interconnection; Article 6 and Annex I concern conditional access systems and supersede the Advanced Television Directive which has been implemented in Ireland by SI No.262 of 1998.

Condition 8 of the GTL requires operators to comply with laws on interconnection and to engage in good faith in interconnection negotiations. Additionally, condition 6.5 concerning the connection of equipment to a network is in part intended to ensure effective access and interconnection. It should also be noted that Article 24 and Annex VI of the Universal Service Directive addresses minimum interoperability requirements for consumer digital television equipment.

6.2.2 ODTR Views

The ODTR considers that it would be beneficial and provide greater certainty if the specific references which are made in the Access Directive were recorded in the general authorisation. In addition it is proposed that a condition be established requiring undertakings to comply with directions issued by the ODTR which are considered necessary to achieve interoperability of services and interconnection of networks as provided for by the Directives.

Question 6.2

Have you any comments on the manner proposed for the implementation of the condition?

6.3 Condition 4 - Accessibility of numbers from the national numbering plan to end users

6.3.1 Requirement and current position

This condition relates to ensuring the ability of users, irrespective of the network or service provider involved, to access all numbers from the national numbering plan. Currently, access to emergency service numbers and directory enquiry services are addressed by the GTL

6.3.2 ODTR Views

The GTL takes a non-prescriptive approach to accessibility of numbers and it is proposed that this stance is maintained to include a general requirement to comply with appropriate directions needed to achieve accessibility for all users of publicly available telephony networks and services and which may be made by the Director from time to time.

Question 6.3

Do you agree with the above general approach?

Are there particular factors which you consider the Director should consider in the context of possible directions?

6.4 Condition 6 - “Must carry” obligations

6.4.1 Requirement and current position

This condition relates to the provisions of Article 31 of the Universal Service Directive which allows Member States to impose must carry radio and television obligations on networks. The Broadcasting Act 2001 established such obligations in the case of cable, MMDS and Digital Terrestrial Television. Cable and MMDS licences record the “basic” programme services which operators distribute and also record the must carry obligations.

6.4.2 ODTR Views

The ODTR considers that it is inappropriate for such obligations to be specified in a general authorisation as it is not the body with statutory responsibility for content regulation. The ODTR is also mindful of the requirement that the conditions of the general authorisation should not duplicate conditions applicable to undertakings as a result of other national legislation. Accordingly, the ODTR does not propose to make such a requirement a condition of a general authorisation.

Question 6.4

Do you agree with the above analysis and general approach?

6.5 Condition 7 - Personal data and privacy protection*6.5.1 Requirement and current position*

This condition relates to personal data and privacy protection specific to the electronic communications sector. Condition 6.4 of the GTL requires licensees to safeguard the privacy and confidentiality of any telecommunications messages in accordance with applicable national and European Communities laws in force and to comply with all applicable national and European Communities laws from time to time regarding the protection of personal data.

6.5.2 ODTR Views

It is proposed that the general provisions of Condition 6.4 of the GTL would be maintained and adapted as necessary to cater for future requirements in this area.

Question 6.5

Do you agree with the above general approach?

6.6 Condition 8 - Consumer protection rules*6.6.1 Requirement and current position*

This condition permits the establishment of specific consumer protection rules for the communications sector including, but not limited to, requirements set out in the Universal Service Directive.

The following conditions in the GTL address the subject matter:

- Condition 6.1 on consumer contracts
- Condition 6.2 on the accuracy of billing systems
- Condition 6.8 which is a general obligation to comply with directions relating to consumer protection issues.
- Condition 6.9 concerns procedures following the non-payment of bills.
- Condition 11 addresses the quality of service.

Cable and MMDS licences also contain similar provisions.

6.6.2 ODTR Views

As noted in section 2, this is an important aspect for the operation of all publicly available communications service. Ensuring a high level of protection for consumers is recorded in the Framework Directive as a key objective for national regulatory authorities. The Universal Service Directive records a series of possible provisions which include, *inter alia*:

- Content of contracts and consumer rights in relation to modifications
- Transparency of information on prices and tariffs and on terms and conditions
- Publication of service quality information
- Dispute resolution procedures

The ODTR believes that it is particularly appropriate in the context of a general freedom for undertakings to provide electronic communications services that consumers be assured of a high degree of protection in their dealings with service providers. Ultimately the full development of competition in all services will provide the best measure of consumer protection. Until such a stage is reached, the ODTR considers that it is necessary to require undertakings providing publicly available services to observe formal requirements in relation to consumer and user rights. The ODTR believes that current licence provisions have worked well and would envisage maintenance of the provisions, supplemented by additional measures if required.

As with other conditions the ODTR would favour the condition being expressed as a requirement for service providers to comply with directions issued by the ODTR from time to time with the objective of giving effect to the provisions of the Directives which address consumer and end user rights. As some of the issues addressed by the Directives are the subject of existing requirements (e.g. codes of conduct for complaint handling, MLOP, contract terms, etc.) one possible approach would be to “reconfirm” these where they are not inconsistent with the provisions of the Directives.

The ODTR intend to hold a consultation later in the process on the requirements which operators (including SMP operators) will be required to meet in respect of consumer and user rights.

Question 6.6

Do you agree with the above general approach?

What preliminary views do you have regarding appropriate conditions in regard to consumer and user rights? In responding to this question existing rights and remedies for consumers such as the Sale of Goods and Supply of Services Act should be borne in mind.

In addition to the measures mentioned in the Universal Service Directive, are there other measures which you believe are appropriate and necessary in order to adequately address consumer and user concerns?

6.7 Condition 9 - Restrictions in relation to the transmission of illegal content

6.7.1 Requirement and current position

As noted earlier, the ODTR does not have a statutory role in relation to content regulation. The GTL does not make any reference in relation to such content although it is noted that REGTEL is the regulatory body in relation to premium rate telephony services. In the area of broadcasting services, this matter is addressed by the Broadcasting Act 2001 and the various transmission/distribution licences issued by the ODTR do not contain references to the subject matter of this condition.

6.7.2 ODTR Views

The ODTR considers that it is inappropriate for such obligations to be specified in a general authorisation as it is not the body with statutory responsibility for content regulation. The ODTR is also mindful of the requirement that the conditions of the general authorisation should not duplicate conditions applicable to undertakings as a result of other national legislation. Accordingly, the ODTR does not propose to make such a requirement a condition of a general authorisation.

Question 6.7

Do you agree with the above analysis and general approach?

6.8 Condition 14 - Access obligations

6.8.1 Requirement and current position

Obligations in this area relate to the requirement on operators generally to provide access other than the specific obligations imposed on SMP operators or those with universal service obligations. The Directives distinguish between “interconnection” that can only occur between public operators and “access” which occurs in all other cases. Article 5.1 of the Access Directives talks generally about the need to “encourage and where appropriate ensure ... adequate access and interconnection, and interoperability of service, exercising their responsibilities in a way that promotes efficiency, sustainable competition, and gives the maximum benefit to users”. The GTL has no specific requirements on access conditions for non-SMP operators.

6.8.2 ODTR Views

It is proposed to provide for a general condition requiring operators to implement measures specified by the Director aimed at encouraging or ensuring adequate access and interconnection

Question 6.8

Do you agree with the above analysis and general approach?

6.9 Condition 16 - Security of public networks against unauthorised access

6.9.1 Requirement and current position

This condition area relates specifically to the requirement to keep customer data secure. Requirements are set out in the Data Protection Directive of 1997 as implemented by SI No 192 of 2002. It is expected that these requirements will be updated upon the transposition of the new Directive on Privacy and Electronic Communications (2002/58/EC) Condition 6.4 of the GTL addresses this area

6.9.2 ODTR Views

Condition 6.4 has continued relevance. The general authorisation could usefully refer to compliance with specific determinations by the Director on security.

Question 6.9

Do you agree with the above general approach?

Question 6.10

Do you agree with the applicability of the above conditions in the manner described in this Section to only providers of public networks and services.

Please give reasons if you disagree

7 SUBMITTING COMMENTS

All comments are welcome, but 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 16 August 2002 to 30 September 2002 during which the Director welcomes written comments on any of the issues raised in this paper. Having analysed and considered the comments received, the ODTR will review these and publish a report in October on the consultation which will, *inter alia* summarise the responses to the consultation. In order to promote further openness and transparency the ODTR will publish the names of all respondents and make available for inspection responses to the consultation at her Offices.

The Director appreciates that some of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful. Respondents are requested to clearly identify confidential material and if possible to include it in a separate annex to the response. Such information will be treated as strictly confidential.

All responses to this consultation should be clearly marked “Reference: Submission re ODTR [*year/document number*]” and sent by post, facsimile or e-mail to:

Mr. John Kyne,

Office of the Director of Telecommunications Regulation

FREEPOST

Irish Life Centre

Abbey Street

Dublin 1

Ireland

Ph: +353-1-8049600 Fax: +353-1-804 9671 Email: kynej@odtr.ie

to arrive on or before **4P.M. on 30 September 2002.**

Office of the Director of Telecommunications Regulation

16 August 2002

Annex 1– Summary of proposed applicability of conditions

	Condition	Applicable to
1	Financial contributions to the funding of universal service in conformity with Directive 2002/22/EC (Universal Service Directive).	Public only
2	Administrative charges in accordance with Article 12 of this Directive.	All
3	Interoperability of services and interconnection of networks in conformity with Directive 2002/19/EC (Access Directive).	Public only
4	Accessibility of numbers from the national numbering plan to end users including conditions in conformity with Directive 2002/22/EC (Universal Service Directive).	Public only
5	Environmental and town and country planning requirements, as well as requirements and conditions linked to the granting of access to or use of public or private land and conditions linked to co-location and facility sharing in conformity with Directive 2002/22/EC (Framework Directive) and including, where applicable, any financial or technical guarantees necessary to ensure the proper execution of infrastructure works.	Only requirements relating to co-location and facility sharing. To apply to all
6	“Must carry” obligations in conformity with Directive 2002/22/EC (Universal Service Directive).	Not applicable
7	Personal data and privacy protection specific to the electronic communications sector in conformity with Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector.	Public only
8	Consumer protection rules specific to the electronic communications sector including conditions in conformity with Directive 2002/22/EC (Universal Service Directive).	Public Only
9	Restrictions in relation to the transmission of illegal content, in accordance with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market and restrictions in relation to the transmission of harmful content in accordance with Article 2a(2) of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.	Not applicable
10	Information to be provided under a notification procedure in accordance with Article 3(3) of this Directive and for other purposes as included in Article 11 of this Directive	All
11	Enabling of legal interception by competent national authorities in conformity with Directive 97/66/EC and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.	All
12	Terms of use during major disasters to ensure communications between emergency services and authorities and broadcasts to the general public.	All

	Condition	Applicable to
13	Measures regarding the limitation of exposure of the general public to electromagnetic fields caused by electronic communications networks in accordance with Community law.	All
14	Access obligations other than those provided for in Article 6(2) of this Directive applying to undertakings providing electronic communications networks or services, in conformity with Directive 2002/19/EC (Access Directive).	Public Only
15	Maintenance of the integrity of public communications networks in accordance with Directive 2002/19/EC (Access Directive) and Directive 2002/22/EC (Universal Service Directive) including by conditions to prevent electromagnetic interference between electronic communications networks and/or services in accordance with Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility.	All
16	Security of public networks against unauthorised access according to Directive 97/66/EC.	Public Only
17	Conditions for the use of radio frequencies, in conformity with Article 7(2) of Directive 1999/5/EC, where such use is not made subject to the granting of individual rights of use in accordance with Article 5(1) of this Directive.	All
18	Measures designed to ensure compliance with the standards and/or specifications referred to in Article 17 of Directive 2002/21/EC (Framework Directive).	All

Annex 2–Indicative application of provisions of General Telecommunications Licence to future framework

This table outlines how the existing conditions of a general telecommunication licence could be applied in the new regulatory framework. The outline is based on the ODTR's views set out in this consultation paper. In addition to amendment in the light of responses to the current and future consultations, it is also subject to subsequent amendment in the light of national legislative provisions. It does not purport to represent the totality of conditions which would apply to the provision of telecommunication networks and services in the future.

Condition	Provision	Future application	Justification
1.1	Definitions	To be revised as appropriate	Definitions to be based on Directives and national legislation
1.2	Interpretation – needed to define manner in which document should be read	Standard provision	Defines manner in which licence document should be read
2	Nature of licence		
2.1	Non-exclusive	Not applicable	Right to provide networks and services will no longer require a licence
2.2	Conditions on transfer	Not applicable	Transfer of right to provide networks and services will not arise.
2.3	Application of conditions when more than one licence held	Not applicable. Where operator also has rights of use to spectrum or numbers or has been designated as having SMP, general powers of ODTR in respect of enforcement will apply in respect of the conditions associated with the rights of use or arising from SMP	Provision generally irrelevant apart from enforcement powers in respect of spectrum or number rights of use or specific SMP obligations. Article 10 of General Authorisation..
2.4	Application of SMP conditions to affiliates	A similar clause will be needed in relation to the specific obligations	Art 6.2 of Authorisation Directive.

Condition	Provision	Future application	Justification
2.5	No implied permit to ignore other legal obligations. Also no liability on Director of costs incurred in providing licensed services	Still applicable	Art 4 and Recital 18 of Authorisation Directive
2.6	'whole agreement'	Still applicable	To ensure transparency and legal certainty.
2.7	Payment of licence application fee	Not applicable – applications fees may arise in the case of rights of use	No requirement for application
2.8	Payments under levy order	Still applicable in respect of administrative charges	Art 12 and Condition 2 of Part A of Annex to Authorisation Directive
3	Compliance		
3.1	Provision of information	Still applicable	Art 11 and Condition 10 of Part A of Annex to Authorisation Directive
3.2	Director's right to publish information	Still applicable	Art 5.4 and 5.5 of Framework Directive
3.3	Authorised officers	Still applicable	Art 10 and Condition 10 of Part A of Annex to Authorisation Directive
3.4	Notification on commencement of service	Still applicable	Art 3.3 and 11.1(e) of Authorisation Directive
3.5	Transitional arrangements	Similar provision may be necessary	Art 17 of Authorisation Directive
3.6	Cooperation with authorised officers	Still applicable	Powers of Authorised Officers set out in Section 39 of Communications Regulation Act, 2002
4	Enforcement and amendment		
4.1	Amendment to conditions	Still applicable	Art 14 of Authorisation Directive
4.2 – 4.6	Serving notice, correcting omissions, imposing sanctions	Still applicable	Art 10 of Authorisation Directive
4.7	Shortening term of licence	Not applicable	No limit on duration of general authorisation
4.8	Suspension or revocation licence	Still applicable	Art 10.5 of Authorisation Directive.

Condition	Provision	Future application	Justification
5	Application and activation of additional conditions	Still applicable – See Parts 3 and 4.	Art 6.3 of Authorisation Directive
6	Public Service Conditions		
6.1	Publication of standard terms and conditions	Still applicable	Art 20 of Universal Service Directive and Condition 8 of Part A of Annex to Authorisation Directive
6.2	Accuracy of billing systems	Still applicable	Condition 8 of Part A of Annex to Authorisation Directive
6.3	Ability to intercept messages	Still applicable with modifications (no longer a condition – obligation arises from other national legislation)	Art 6.3 and Condition 11 of Part A of Annex to Authorisation Directive
6.4	Safeguards on privacy	Still applicable	Condition 7 of Part A of Annex to Authorisation Directive
6.5	Bar on connection on unauthorised equipment	Still applicable	Article 17 of the Framework Directive and Conditions 3, 15 and 18 of Annex to Authorisation Directive.
6.6	Contributions to USO fund	Still applicable	Condition 1 of Part A of Annex to Authorisation Directive
6.7	Access to emergency services and provisions during times of emergency	Still applicable. Specific reference to ‘112’ code to be added	Conditions 4 and 12 of Part A of Annex to Authorisation Directive. Art 26 of Universal Service Directive
6.8	Compliance with directions aimed at protecting user interests	Still applicable	Condition 6 of Part A of Annex to Authorisation Directive. Art 10 and 29 and Annex 1 of Universal Service Directive
6.9	Code of practice for resolving disputes	Still applicable	Condition 8 of Part A of Annex to Authorisation Directive Art 20 and 34 of Universal Service Directive.

Condition	Provision	Future application	Justification
6.10	Directory information services	Still applicable	Art 5 and 25 of the Universal Service Directive and Condition 4 of Part A of Annex to the Authorisation Directive
7	Public pay phones	Still applicable	Article 6 of the Universal Service Directive
8	Interconnection	Still applicable	Condition 3 of Part A of Annex to Authorisation Directive. Art 4 and 5.4 of the Access Directive.
9	Trench sharing	Still applicable with modification	Art 12 of the Framework Directive Condition 5 of Part A of Annex to Authorisation Directive
10	Numbering	Still applicable. Provisions to be addressed as conditions associated with rights of use to numbers	Art 6.4 of Authorisation Directive
11	Quality of service	Still applicable	Art 22 of Universal Service Directive
Parts 3 and 4	SMP conditions	Still applicable. Specific obligations will be legally separate from conditions of general authorisation	Art 6.2 of Authorisation directive
Part 5	Provisions applying to FWPMA licensees	Still applicable. Provisions to be addressed as conditions associated with spectrum rights of use	Art 6.4 of Authorisation Directive