



Commission for  
**Communications Regulation**

Direction

## **'In-Situ' Transfer of Leased Lines**

<b>Decision No:</b>	<b>D02/04</b>
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## **1 Introduction**

The availability of competitively priced leased lines is a prerequisite in an information based economy like Ireland's. As a technology that is utilised by both SMEs and large corporate users alike it is important that they have confidence that the services they can avail of represent the best in both price and quality. ComReg's aim is to ensure through the promotion of competition that these objectives can be met and sustained.

ComReg issued document 03/123 on October 17<sup>th</sup> 2003 on In Situ Transfer of Leased Lines containing a Draft Direction on this topic.

On November 20<sup>th</sup> 2003 ComReg issued document 03/133 in which the Draft Direction contained in the earlier 03/123 was issued as a Direction with appropriate amendments based upon the considerations of the responses to the Draft. Also contained in 03/133 was a related Draft Direction on which ComReg sought views of respondents.

Following discussions with industry, ComReg believes that greater clarity is required regarding implementation details. This document now provides clarification of the Direction in 03/133. At this time the responses to the Draft Direction in 03/133 are being considered by ComReg and a further document as appropriate will be issued in respect of this Draft Direction in the near future.

## 2 Clarification Direction

### 2.1 Clarification of Direction set out in document number 03/133

On 11<sup>th</sup> December 2003 eircom provided ComReg with a proposal for an In-Situ transfer process as required under the Direction contained in document number 03/133. This proposal from eircom was unsatisfactory and ComReg drew this to the attention of eircom on 19<sup>th</sup> December 2003 by letter. ComReg wishes to ensure that the Direction in 03/133 is clearly understood by industry as a whole. For the purposes of clarity and to ensure that the requirements of industry are met, ComReg makes the following Direction.

#### **Direction**

**Pursuant to Regulation 17 of the European Communities (Electronic Communications Networks and Services)(Access) Regulations, 2003 (S.I. No. 305/2003) (the “Access Regulations”), the Commission for Communications Regulation directs that eircom applies the same terms and conditions to a leased line which is provided to an other authorised operator (OAO) through an In Situ transfer process as for similar wholesale leased lines provided by current processes.**

**This includes, *inter alia*, that the circuit qualifies for the wholesale discount – currently 8% .**

**eircom is directed to resubmit its proposal, taking into account this Direction, for the in-situ transfer of leased lines in compliance with this Direction within 7 (seven) calendar days of the date of this Direction.**

**eircom’s current project plan for the implementation of the in-situ transfer process will see the process available mid 2004 (due to systems development). In the interim, eircom is directed to implement a solution whereby other authorised operators (OAOs) can submit orders for the In Situ process from January 31<sup>st</sup> 2004 with orders being processed from 1<sup>st</sup> March 2004 and from the date of 1<sup>st</sup> March apply appropriate delivery timescales to be agreed with ComReg.**

The interim solution shall be fit for purpose and shall include, *inter alia*, processes for the billing address for the circuit being changed to the billing address specified by the OAO, billing being at the appropriate rate and fault reporting/management processes being in place which allows the retail customer to communicate a fault either via the OAO or as a minimum directly to eircom.

If an OAO avails of the In Situ process to serve a customer the in situ process will not restrict the OAO from changing the technical solution for the customer at a later date. This could take the form of a customer ceasing the wholesale leased line and providing a service using PPCs. The OAO change in solution will use terms and conditions which relate to the products at the time.

ComReg is confident that the Direction of clarification set out above is consistent with the underlying spirit and purpose of the original Direction, the paper which contained the original Direction, and the various communications between ComReg and eircom, the OAOs and other interested parties which pre-dated the original Direction concerning the issue of the in-situ transfer of leased lines. In particular, ComReg considers the Direction of clarification as ensuring that the process of facilitating the in-situ transfer of leased lines, which is currently being developed, will be cost oriented and efficient.

## **2.2 Implementation**

eircom are required to resubmit their proposal within 7 calendar days of the date of this Direction. ComReg will then convene an industry working group to review the proposal and to oversee the implementation of the process and to ensure that it meets industry requirements. This group will complete its work by January 31<sup>st</sup> 2004.

## Appendix A – Legislation

Regulation 12 of the Leased Lines Regulations, 1998 (S.I. 109 of 1998)

*(1) A notified organisation shall, without prejudice to the principle of non discrimination*

*specified in Article 8.2 of Council Directive 92/44 as amended by Article 2.8 of Directive 97/51, set tariffs for leased lines that-*

*(a) follow the basic principles of cost orientation and transparency, and*

*(b) are independent of the type of application which the users of the leased lines implement.*

*(2) A tariff for leased lines shall, subject to paragraph (3), contain the following elements-*

*(a) an initial connection charge, and*

*(b) a periodic rental charge, that is to say, a flat-rate element.*

*(3) Where tariff elements other than other than the elements specified in paragraph (2) are applied such tariff elements shall be transparent and based on objective criteria.*

*(4) (a) A tariff for leased lines shall apply to the facilities provided between the termination points at which the user has access to the leased lines.*

*(b) Where a leased line is provided by more than one telecommunications organisation, half-circuit tariffs, that is to say, from one termination point to a hypothetical mid-circuit point, can be applied.*

*(5) A notified organisation shall operate and maintain a cost accounting system suitable for the implementation of paragraphs (1), (2), (3) and (4) and which conforms with the provisions of Article 10.2 of Council Directive 92/44 as amended by Article 2.10 of Directive 97/51.*

(6) *A notified organisation shall provide the Director with such information as the Director requests for the purposes of complying with Article 10.3 of Council Directive 92/44 as amended by Article 2 of Directive 97/51. .*

(7) *A notified organisation shall not alter or change its cost accounting system unless the prior approval in writing of the Director to such alteration or change has been obtained.*

(8) *The Director shall provide the Commission with any information requested for the purpose of Article 10.3 of Council Directive 92/44 as amended by Directive 97/51.*

(9) *The Director may make a declaration that there is effective competition in a leased line market having regard to the tariffs which comply with this Regulation.*

(10) *Paragraphs (1), (2), (3) and (4) shall not apply-*

(a) *to an organisation which does not have significant market power as determined by the Director under Regulation 4 in respect of a specific leased line offering in a specific geographic area, or*

(b) *where the Director makes a declaration under paragraph (9) that he or she is satisfied that there is effective competition in the relevant leased lines market as evidenced by tariffs which comply with the requirements of this Regulation.*

(11) *A person who contravenes paragraph (1), (3), (5), (6) or (7) shall be guilty of an offence.*

### **Regulation 8 of the Access Regulations**

- (1) *Notwithstanding Regulation 38 of the Framework Regulations, an operator shall continue to comply with any obligations concerning access and interconnection under the European Communities (Interconnection in Telecommunications) Regulations 1998 (S.I. No. 15 of 1998), the European Communities (Voice Telephony and Universal Service) Regulations 1999 (S.I. No. 71 of 1999) or the European Communities (Leased Lines Regulations) 1998 (S.I. No. 109 of 1998) applicable to it prior to entry into force of the Access Directive until such time as specific obligations pursuant to Regulation 9 are imposed on any undertaking designated under Regulation 27(4) of the Framework Regulations.*
- (2) *The Regulator shall give such notice as it considers reasonable to any party affected by the amendment or withdrawal of obligations referred to in paragraph (1) as a result of the imposition of specific obligations.*

**Regulation 6(1) of the Access Regulations<sup>1</sup>**

6. (1) *The Regulator shall, acting in pursuit of the objectives set out in section 12 of the Act of 2002, encourage and, where appropriate, ensure, in accordance with these Regulations, adequate access, interconnection and interoperability of services in such a way as to –*
- (a) promote efficiency,*
  - (b) promote sustainable competition, and*
  - (c) give the maximum benefit to end-users.*

**Section 12 of the Communications Regulations Act, 2002**

- 1) *The objectives of the Commission in exercising its functions shall be as follows-*
- (a) in relation to the provision of electronic communications networks, electronic communications services and associated facilities-*
    - (i) to promote competition,*
    - (ii) to contribute to the development of the internal market, and*
    - (iii) to promote the interests of users within the Community,*
  - (b) to ensure the efficient management and use of the radio frequency spectrum and numbers from the national numbering scheme in the State in accordance with a Direction under section 13, and*
  - (c) to promote the development of the postal sector and in particular the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all users.*
- (2) *In relation to the objectives referred to in subsection (1)(a), the Commission shall take all reasonable measures which are aimed at achieving those objectives, including-*
- (a) in so far as the promotion of competition is concerned-*
    - (i) ensuring that users, including disabled users, derive*
    - (ii) ensuring that there is no distortion or restriction of competition in the electronic communications sector,*
    - (iii) encouraging efficient investment in infrastructure and promoting innovation, and*
    - (iv) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources,*
  - (b) in so far as contributing to the development of the internal market is concerned-*

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<sup>1</sup> EUROPEAN COMMUNITIES (ELECTRONIC COMMUNICATIONS NETWORKS END SERVICES) (ACCESS) REGULATIONS, 2003 (SI No 305 of 2003).



- (i) removing remaining obstacles to the provision of electronic communications networks, electronic communications services and associated facilities at Community level,*
- (ii) encouraging the establishment and development of trans-European networks and the interoperability of transnational services and end-to-end connectivity,*
- (iii) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services and associated facilities, and*
- (iv) co-operating with electronic communications national regulatory authorities in other Member States of the Community and with the Commission of the Community in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of Community law in this field, and*
- (c) in so far as promotion of the interests of users within the Community is concerned-*
  - (i) ensuring that all users have access to a universal service,*
  - (ii) 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,*
  - (iii) contributing to ensuring a high level of protection of personal data and privacy,*
  - (iv) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services,*
  - (v) encouraging access to the internet at reasonable cost to users,*
  - (vi) addressing the needs of specific social groups, in particular disabled users, and*
  - (vii) ensuring that the integrity and security of public communications networks are maintained.*
- (3) In carrying out its functions, the Commission shall seek to ensure that measures taken by it are proportionate having regard to the objectives set out in this section.*
- (4) In carrying out its functions, the Commission shall, without prejudice to subsections (1), (2) and (3), have regard to policy statements, published by or on behalf of the Government or a Minister of the Government and notified to the Commission, in relation to the economic and social development of the State.*
- (5) In carrying out its functions, the Commission shall have regard to international developments with regard to electronic communications networks and electronic communications services, associated facilities, postal services, the radio frequency spectrum and numbering.*

(6) *The Commission shall take the utmost account of the desirability that the exercise of its functions aimed at achieving the objectives referred to in subsection (1)(a) does not result in discrimination in favour of or against particular types of technology for the transmission of electronic communications services.*

(7) *In this section, "national numbering scheme" means the scheme administered by the Commission which sets out the sequence of numbers or other characters used to route telephony traffic to specific locations.*

#### **Regulation 17 of the Access Regulations**

*The Regulator may, for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under these Regulations, issue Directions to an undertaking to do or refrain from doing anything which the Regulator specifies in the Direction*

#### **Regulation 18 of the Access Regulations**

(1) *Where the Regulator finds that a person has not complied with an obligation under these Regulations or a Direction under Regulation 17, the Regulator shall notify the person of those findings and give the person an opportunity to make representations in relation to the notification or remedy any non-compliance, not later than -*

(a) *one month after issue of the notification,*

(b) *such shorter period as is agreed by the Regulator with the person concerned or stipulated by the Regulator in case of repeated non-compliance, or*

(c) *such longer period as may be specified by the Regulator.*

(2) *The Regulator may publish, in such manner as it thinks fit, any notification given by it under this Regulation subject to the protection of the confidentiality of any information which the Regulator considers confidential.*

(3) *The Regulator may amend or revoke any notification under this Regulation.*

(4) *Where, at the end of the period referred to in paragraph (1), the Regulator is of the opinion that the person concerned has not complied with an obligation or Direction, the Regulator may, subject to paragraph (13), apply to the High Court for such order as may be appropriate by way of compliance with the obligation or Direction. The Court may, as it thinks fit, on the hearing of the application make an order compelling compliance with the obligation or Direction or refuse the application. An order compelling compliance shall stipulate a reasonable period for the person to comply with the obligation or Direction.*

(5) *An application for an order under paragraph (4) shall be by motion and the Court when dealing with the matter may make such interim or interlocutory order as it considers appropriate.*

(6) *The Court shall not deny interim or interlocutory relief solely on the basis that the Regulator may not suffer any damage if such relief were not granted pending conclusion of the action.*

(7) (a) *An application for an order under paragraph (4) or (12) may include an application for an order to pay to the Regulator such amount, by way of financial penalty, as the Regulator may propose as appropriate in the light of the non-compliance.*

(b) *In deciding on such an application, the Court shall decide what amount (if any) of the financial penalty which should be payable and shall not be bound by the amount proposed by the Regulator.*

(c) *Any financial penalty ordered by the Court to be paid by a person under this paragraph shall be paid to and retained by the Regulator as income.*

(d) *In deciding what amount (if any) should be payable, the Court shall consider the circumstances of the non-compliance, including -*

- (i) *its duration,*
- (ii) *the effect on consumers, users and other operators,*
- (iii) *the submissions of the Regulator on the appropriate amount, and*
- (iv) *any excuse or explanation for the non-compliance.*

(8) *Where the Regulator has evidence of non-compliance with an obligation under these Regulations or a Direction under Regulation 17 that represents an immediate and serious threat to public safety, public security or public health, the Regulator may issue a Direction to the person concerned requiring that the use of such apparatus or part of it, as may be specified in the Direction, cease with immediate effect or, on or before such date and time, as may be so specified.*

(9) *A person to whom a Direction has been issued under paragraph (8) shall cease to use the apparatus or part of it to which the Direction relates, unless and until such Direction has been withdrawn by the Regulator, and shall take such measures as may be specified by the Regulator in the Direction to remedy the non-compliance.*

*(10) Where the Regulator has evidence of non-compliance by a person with an obligation under these Regulations or a Direction under Regulation 17 that will in the opinion of the Regulator create serious economic or operational problems for undertakings or for users of electronic communications networks or services, the Regulator may issue a Direction to the person requiring immediate compliance.*

*(11) A person may make representations to the Regulator concerning a requirement made of the person under paragraph (8) or (10) and the Regulator having considered the representations may confirm, amend or withdraw the requirement.*

*(12) Where a person fails to comply with a requirement under paragraph (8) or (10), the Regulator may, subject to paragraph (13), apply in a summary manner to the High Court for an order compelling compliance.*

*(13) Where the Regulator has brought proceedings for an offence under these Regulations or given a notice under section 44 of the Act of 2002 in respect of a failure by a person to comply with an obligation under these Regulations, the Regulator shall not make an application for an order under this Regulation to the High Court to compel compliance by the person with the obligation.*