



Commission for
Communications Regulation

Leased Line Markets: Further review of Urban Centres

**Final Decision and Response to Consultation
Decision Number D12/13**

Document No. 13/75

Final Decision & Response to Consultation

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1 Introduction

- 1 This final decision and response to consultation is the result of a consultative process which was triggered by a request made by Eircom to ComReg to consider the addition of 5 towns to the “Annex A” list of urban centres (the centres) as published in decision D06/08¹ in 2008, as later amended under decision D02/12². Decision D06/08 was the decision published following ComReg’s market review of the leased lines markets.
- 2 This list was originally produced in order to describe the boundary between the Wholesale Trunk Segments Leased Line market (the trunk market), a competitive leased line market that is not subject to *ex ante* regulation and the Wholesale Terminating Segments Leased Line market (the terminating market) which is currently subject to *ex ante* regulation. Eircom was found to have Significant Market Power (SMP) within this market in our 2008 decision. The obligations and corresponding remedies imposed upon Eircom to address the identified market failure were laid out in detail in D06/08, the culmination of a comprehensive three stage consultative procedure.
- 3 This list of urban centres (the centres) was expanded by 1 urban centre in 2010 following a further consultation conducted expressly on the issue as to whether or not this list should be extended. The request from Eircom at that time was to consider a further 7 candidate centres for addition to this Annex A list (the list).
- 4 The previously established criteria which were used in the analyses to decide whether or not a centre qualified for inclusion on this list (which resulted in the finalisation of the Annex A lists in D06/08 and D02/10) were as follows: that there were at least 2 other competing infrastructures other than that of Eircom’s in a candidate town or city which could possibly supply wholesale leased lines to industry; that the competitive infrastructures could potentially provide connectivity to an Eircom exchange on a technically and economical efficient basis to another operator; and that the alternate competing infrastructure’s Points of Presence (POPs) were not located so far apart so that it would be uneconomic to use such infrastructure and thereby negate any possible economical constraint on the SMP operator.

¹ Decision D06/08, Document No. 08/103. Leased Line Market Review: Response to Consultation on draft Decision Instrument. Final Decision Notice and Decision Instrument, published 22 Dec 2013

² Decision D02/12, Document No.10/12 Leased Line Markets: Review of Urban Centres. Response to Consultation 09/86 and Final Decision, published on 15 February 2010

- 5 Following the process adopted leading to decision D02/10, ComReg again decided to conduct a further public consultation on foot of a more recent request received from Eircom in late 2012 to further expand this list by 5 centres. This was to allow all stakeholders and other interested parties to offer comment on Eircom's proposition and to afford the maximum transparency possible to the eventual decision made by ComReg.
- 6 In its most recent request to ComReg to expand the list and again in its response to our consultation, Eircom supplied information it had garnered from public sources. It listed the operators it believed had established fixed telecoms infrastructure connected to the 5 urban centres in question and which, in its opinion, were capable of offering leased line services to the wholesale market.
- 7 In our Consultation and Draft Decision, Document No. 13/39³, we suggested that 4 of the 5 candidate centres qualified for inclusion on the list of centres. ComReg had investigated the presence and of equal importance, the state of the fixed telecoms infrastructure in these 5 centres, prior to the publication of our Consultation and Draft Decision. Further investigations were undertaken in response to submissions lodged in response to our consultation. These investigations included a number of thorough site visits and inspections. This exercise confirmed the findings set out in our draft decision.
- 8 Our final decision therefore, as published in this paper confirms the inclusion of the 4 additional centres on the Annex A list attached to our Decision Instrument. ComReg notes that the criteria used in the analyses and the detailed considerations which resulted in these 4 centres being added to the list were identical to those used in both D06/08 and D02/10.
- 9 These centres are Athlone; Charleville; Mallow and Roscommon.

³ Leased Line Markets: Further Review of Urban Centres Consultation and Draft Decision, published 14 April 2013

2 Executive Summary

The leased lines markets

- 10 Leased lines are generally used by business users and authorised operators to fulfil specialised requirements. They are critical to the day to day operation of both fixed and mobile telecoms networks including backbone, backhaul and local access portions of these networks. All end customers use leased lines albeit unknowingly on a daily basis in a myriad of ways: whether making or receiving fixed and mobile telephone calls; browsing the internet; completing financial transactions via internet banking services; assisting schoolchildren and students with learning and school and college work; consuming entertainment services; using critical business tools and applications and availing of government e-services.
- 11 The efficient and effective operation of leased lines markets ensures that end users gain the maximum possible downstream benefit derived from the optimum competition achieved in these markets. This assists service providers of many differing types, across many varieties of industries in offering cheaper and more efficient, competitive and accessible services and a wider choice of services and products. It also allows such businesses to advertise their products in innovative and more informative ways which were not previously available to them thereby gaining access to untapped worldwide markets.
- 12 Leased lines are of specific importance to the wider business community and to telecommunications operators themselves, both fixed line and mobile operators. They are used by operators to provide vital services required for the operation of a modern vibrant economy. Examples are important business voice and data services offered by operators such as cloud services, large bandwidth internet connectivity or the connection of business head offices to their respective branch networks e.g. in the banking and retail industry. These lines also provide much of the backbone connectivity required to run large private and public networks including much of the internet and international connectivity.
- 13 Wholesale leased line services perform two basic and vitally important functions to the telecommunication industry. Firstly, they allow wholesale operators to provide secure and dedicated connections to their customer's sites or premises over which many value added services can be offered. These may range from simple inter-office connectivity to complex cloud services. Secondly, they provide the opportunity for a wholesale operator to extend its own network closer to its own existing or prospective customers, who may be geographically situated in locations or regions that would not otherwise be economically viable for that operator at that time without immediately incurring the major expenditure normally associated with self build.

- 14 Operators can thereby, establish Point of Presence (POPs) in areas where it previously could not offer services. This is also of particular importance to mobile operators to allow them connect base stations and high-sites of their networks. When or if operators eventually achieve sufficient scale and density within an area, this may justify it incurring the cost of building out its own network. In some instances this familiar build or buy proposition could be based solely on connecting an individual large customer. This extension to its network could also be used to connect other smaller customers thereby enhancing the original business case in the first instance.
- 15 The types and dimensions of leased line services available have increased significantly in the past number of years in all markets. Technical and commercial innovation has made available leased lines of heretofore unimaginable capacities to both retail and wholesale purchasers using such technologies as Carrier Ethernet and DWDM at very keen commercial rates. The demand has been accelerated by a myriad of requirements including, increased availability of broadband services including internet access and cloud services, and the necessity for larger capacity mobile backhaul. The newer innovative technologies available to them appear to have allowed operators meet this ever increasing demand.
- 16 The general availability of these high capacity networks has also spurred corresponding innovation in the variation and range of services available to end users. This has allowed the “new” economy to thrive and has facilitated the emergence of new industries and services such as the social media and the ongoing reconfiguration of traditional industries such as the media and broadcast industries.
- 17 When these leased line markets do not work in the desired manner and are proven to have failed, ComReg must intervene to address this failure. Conversely, where competition is demonstrated to be working and markets are operating effectively, sector specific regulation should be relaxed or removed. ComReg believes it has completed such interventions successfully in the past and the last market review is a example of this, where regulation was relaxed in the retail and trunk markets but was balanced with the imposition of proportionate and practical remedies in part of the wholesale market in which SMP was found to exist, i.e. the terminating market.

The last leased lines market review

- 18 This last market review completed in 2008 was performed as part of ComReg's legal requirement to complete reviews of the "designated markets". It found that SMP no longer existed in either the Retail Lease Lines market or the Trunk Segments Leased Lines market. This review also found that having completed this review in accordance with the Commission guidelines⁴, there were two distinct wholesale markets in Ireland, the trunk and terminating markets.
- 19 The trunk (competitive) market was found to consist of large capacity intercity circuits (155Mb/s and greater). The terminating (uncompetitive) market was essentially, all leased lines not contained within the trunk market. As this market was found to be uncompetitive and Eircom was found to have SMP in it, appropriate regulatory remedies were imposed on Eircom following the proscribed consultative process to ensure, in so far as is practicable, the efficient operation of the market.

The urban centres

- 20 "Annex A" (the list) of the Decision Instrument in Decision D06/08 listed the cities and towns of urban centres which described the physical manifestation of ComReg's market definition, i.e. the boundary between the trunk and terminating markets. The list contained 15 towns or cities.
- 21 Decision D02/10 added a further single town (Portlaoise) to Annex A. This decision was published in 2010 following a public consultation executed in response to a request by Eircom to consider the inclusion of a further 7 centres on the list.

The current review of urban centres

- 22 This current consultative process has followed the form and format of the process which resulted in decision D02/10. This was again initiated by ComReg in response to a further request from Eircom lodged with ComReg in late 2012 to further expand this list of centres by 5 towns.
- 23 ComReg published its consultation and draft decision in response to this request, document number 13/39 on 17 April 2013. Prior to the publication of this paper, ComReg had issued data requests to the relevant fixed operators with infrastructure in these 5 centres and had engaged in a detailed dialogue with these operators regarding their responses. Our draft decision recommended that 4 of the 5 centres suggested by Eircom qualified for inclusion in the list of urban centres under the criteria first published in D06/08 and further elucidated in D02/10.

⁴ European Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services of 11 July 2002 – OJ C 165/6.

- 24 ComReg completed a thorough examination and analysis of the responses to this consultation. This encompassed detailed inspections of this infrastructure in question in 3 of the centres under consideration.
- 25 Our further analysis has confirmed ComReg's original analysis and findings as published in the draft decision and consultation document (ComReg Document 13/39). ComReg is, therefore, now publishing its final decision and appending 4 centres to the Annex A list: Athlone; Charleville; Mallow; and Roscommon.

3 Background

The 2008 and 2010 decisions

- 26 In the time leading up to our 2008 review, the European Commission (the Commission) had reviewed the product and service markets which may be susceptible to *ex ante* regulation⁵. The Commission had proposed that the minimum set of retail leased lines should be removed from the list of relevant markets, since wholesale regulation should ensure that there is competitive supply at the retail level. In addition, the Commission reasoned that, in the presence of wholesale regulation, this market did not meet the three criteria test⁶ since there were no significant barriers to entry⁷.
- 27 In our 2008 decision D06/08, ComReg decided that both the markets for Retail Leased Lines (the Minimum Set –analogue leased lines and lines up to a bandwidth of 2Mb/s) and the Trunk Segment of Wholesale Leased Lines (the trunk market) should not be susceptible to *ex-ante* economic regulation. It found that Eircom no longer has Significant Market Power (SMP) in either market. Although Eircom's market share was still high in the retail market, ComReg found that this market failed the 3 criteria test as the barriers to entry of this market were sufficiently low due to the presence of adequate remedies and competitive pressure in the upstream wholesale leased line markets. This decision was in accordance with the European Commission's 2007 Recommendation, referred to above and was completed in line with our statutory obligation⁸.
- 28 ComReg further considered that the wholesale leased line markets were further delineated into two separate markets, the regulated Terminating Segments Market of Wholesale Leased Lines (the terminating market) and the competitive and therefore, unregulated wholesale trunk market referred to above. Both of these markets were fully described in Decision D06/08. The thorough economic examination of the leased lines markets and corresponding analyses explaining how ComReg arrived at these conclusions are set out in that decision and in ComReg's preceding consultation documents.

⁵ This review cumulated in a Revised Commission Recommendation on Relevant Product and Service Markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, dated 17 December 2007, OJ L 344/65 (2007 Recommendation).

⁶ *Ibid*, Recital 5 and paragraph 2 of the 2007 Recommendation. The three criteria are, briefly, (i) are there high and non-transitory barriers to entry, (ii) does the market structure tend towards effective competition over time and (iii) would the application of competition law alone adequately address the market failure(s).

⁷ *Ibid*, Recital 15.

⁸ Regulation 25, 26 & 27 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulation 2011, S.I. No. 333 of 2011.

- 29 The trunk market was defined as that consisting of any large capacity circuits (155Mb/s or greater) which were part of a competitive, multi-operator, national inter-city network connected between a defined list of 15 towns and cities. The list of 15 urban centres that satisfied the market definition criteria set out in Decision D06/08 was published as part of that decision, Annex A of the Decision Instrument.
- 30 The terminating market was defined as being the converse of the trunk market, i.e. as that consisting of any circuits less than 155Mb/s connected between these centres, and importantly, circuits of all capacities contained wholly *within* these centres or *outside* this inter-city national network. Also included in the terminating market were large capacity interconnection circuits or “transport links” of short length which are essentially required by operators to effect access to important wholesale products offered by Eircom in this market (Partial Private Circuits and wholesale Ethernet products).
- 31 At a practical level this list of centres described the boundary between the trunk and terminating markets. It was also produced in response to requests from industry as a guide to allow it operate the leased line markets in an efficient and orderly fashion. Otherwise industry may have faced the prospect of having to qualify each order on an individual basis as to whether it was part of a regulated or unregulated product set. This would have placed an onerous overhead on both Eircom as the regulated entity and purchasing operators which required certainty of supply and pricing and could have led to unwarranted disruption in the operation of the market.
- 32 As outlined above, this list was augmented in 2010 by 1 further town (Portlaoise) in decision D02/10 giving a total of 16 centres, following a consultation which was triggered by a request by Eircom to add another 7 centres to the list.
- 33 ComReg used the same criteria in both Decision D06/08 and Decision D02/10 to assess whether or not the relevant urban centres fell within the definition of a “trunk” segment. In particular, ComReg looked at whether: there were 2 operators other than Eircom, with fixed network infrastructure connected to any candidate urban centre under consideration; the infrastructures should be sufficiently close to an Eircom exchange to allow connectivity to Eircom’s network on a sufficiently economical basis; and they were not so far apart as to negate any competitive constraint on the SMP operator.
- 34 Eircom has recently lodged a new request to add 5 centres to the existing list of 16. On foot of this request, ComReg sought information from relevant operators with fixed infrastructure in these 5 centres. We then published a draft decision and consultation (ComReg Document 13/39), based on our appraisal and analysis of the detailed information supplied using the same criteria as used in our previous analyses.

- 35 The result of the investigations as published in ComReg Document 13/39 is reproduced below in table 1: a tick indicates the presence of an operator's network connected to a centre; a blank or no tick indicates its absence.

	Eircom	AltNet ⁹ 1	Altnet 2	Altnet 3	Altnet 4
Athlone	√		√	√	√
Charleville	√	√	√	√	√
Mallow	√	√	√	√	√
Roscommon	√	√	√		
Tullamore	√		√		

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

- 36 As can be clearly seen from table 1, 4 of the 5 centres qualified under the first established criterion for inclusion in the list of urban centres i.e. that there were 2 or more fixed line infrastructures of operators other than Eircom's, connected to these centres capable of supplying leased lines or an upstream physical input such as dark fibre, to the wholesale market.
- 37 ComReg also established as published previously, that these 4 centres also met the remaining criterion that at least 2 competing infrastructures (2 in addition to Eircom) would allow for economical connectivity to an Eircom exchange i.e. sufficiently close to establish local interconnection with Eircom and were sufficiently close to offer a economical restraint to Eircom in the trunk market.
- 38 In order to address the issues raised in the submissions to our consultation and to provide a further level of verification of the analysis, ComReg has completed a number of on-site inspections. These inspections were undertaken on what ComReg considered was some of the key pieces of network infrastructure which were pertinent to the consultation. These included walking and driving along the various tracks, surveying relevant inspection chambers and nodes which contained both active and passive network elements and confirming whether or not the infrastructure was fit for purpose. This comprehensive exercise was completed in the majority of the candidate urban centres which were the subject of this consultation following a careful consideration of the information gathered and the responses to consultation.

⁹ OAO's with alternate infrastructure in relevant Urban Centres have been anonymised as the information supplied is confidential.

- 39 These inspections confirmed the results of our analysis contained in our draft decision and the results published in table 1 above.

Responses to consultation

- 40 We will now consider the responses to this consultation in more detail, particularly the submission from Eircom. The questions contained in the consultation are reproduced below for assistance. Non confidential versions of both submissions lodged with ComReg in response to this consultation are reproduced below in Appendix B of this document.

Consultation Questions

- Q. 1. Should any or all of the proposed urban centres be appended to the list set out in Annex A to D06/08 (as amended)? If you agree, please provide reasons why this is the case.**
- Q. 2. Are there reasons why any of these urban centres should not be appended to the list set out in Annex A to D06/08 (as amended)?**
- Q. 3. Do the respondents believe that the draft text of the proposed decision instrument is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please elaborate on your response.**

- 41 Eircom called upon ComReg to commence a new market review and expressed the view that the existing market review is obsolete. ComReg wishes to confirm that it has already started the preliminary work on this review and has commenced the process of meeting with interested parties. The process of gathering relevant data and market information will commence shortly and we intend to issue a public consultation on this market at the start of 2014. ComReg's position on the status of the extant market analysis is clear. The legal basis for the existing obligations and remedies, including more recent pricing decisions, are those which currently apply in market 6, namely D06/08 and D02/10. This regulatory regime has been applied and will be in place until the completion of the next Market Review. A full market analysis will be undertaken and we cannot pre-empt the outcome of the market review which has already commenced. To attempt to do so could undermine the entire regulatory regime and we are satisfied that the current rules provide fairness and certainty to industry as a whole, including Eircom. ComReg believes that it would not have been fair, reasonable or proportionate were it to have rejected Eircom's proposal to investigate whether or not the 5 centres qualified for addition to the list of Urban Centres on the basis that a new market review was imminent.

- 42 Eircom raised the validity of the criterion regarding the presence of 2 operators other than Eircom being present as one of the qualifying rules as to whether or not a centre should be added to the Annex A list. It claimed that ComReg had in effect modified this criterion between D06/08 and D02/10. ComReg wishes to state categorically that this is not the case.
- 43 This issue was brought up in the previous consultation which led to decision D02/10 and ComReg reiterates its position on this matter. The qualifying requirement of “2 plus Eircom” was used identically in the analyses completed in both D06/08 and D02/10 and this point was clarified specifically in the previously completed consultation in 2010.
- 44 Eircom makes reference to a recently completed pricing decision D04/13, “Price Regulation of Bundled Offers”. This decision was made regarding bundled offers using inputs from markets 1 and 4. Eircom compares in isolation one of the qualifying criterion used in the analysis supporting that decision to establish the “Large Exchange Area” (LEA) to one of those used to qualify centres of inclusion in the leased line market Annex A list. ComReg considers that it is not appropriate to consider this issue as part of this consultation process. In particular, this consultation is not a market review of market 6. It is confined to the narrow issue of identification of the qualifying urban centres based on Decision D06/08. The matter raised by Eircom may be an issue for the forthcoming leased lines market review. ComReg will invite Eircom and all other stakeholders to register their views at the appropriate time as part of that process.
- 45 Finally, Eircom requested that ComReg publish the identity of the operators which were anonymised in figure 1. ComReg considers that this information is confidential/commercially sensitive and does not, therefore, intend to publish this information.

Conclusion

- 46 ComReg is satisfied that the analysis it conducted, which is set out in ComReg Document 13/39 and which resulted in the proposed addition of 4 centres to the Annex A list in its draft decision, was correct and has published its final decision accordingly.

4 Final Decision Instrument

1 STATUTORY POWERS GIVING RISE TO THIS DECISION INSTRUMENT

- 1.1 This Decision Instrument relates to the market for wholesale terminating segments of leased lines defined in Decision No. D06/08 Market Analysis – Leased Line Market Review dated 22nd December 2008 and is made by the Commission for Communications Regulation (“ComReg”):
- i. Pursuant to and having had regard to sections 10 and 12 of the Communications Regulation Act 2002 to 2011,¹⁰ Regulation 6(1) of the Access Regulations¹¹ and Regulation 16 of the Framework Regulations¹²;
 - ii. Having had regard to ComReg Decision No. D06/08 and more particularly to paragraph 5.8 of the Decision Notice and section 3.2 of the Decision Instrument contained therein;
 - iii. Having taken account of the submissions received in relation to Document No. 13/39.

2 SCOPE AND APPLICATION

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

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

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

¹⁰ Communications Regulation Act 2002 (No. 20 of 2002), as amended by the Communications Regulation (Amendment) Act 2007 (No. 22 of 2007), the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 (No. 2 of 2010) and the Communications Regulation (Postal Services) Act 2011 (No. 21 of 2011).

¹¹ European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011).

¹² European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011).

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

Annex A

Arklow
Athlone
Carrick-on-Shannon
Charleville
Cork
Drogheda
Dublin
Dundalk
Ennis
Galway
Letterkenny
Limerick
Mallow
Mullingar
Portlaoise
Roscommon
Shannon
Sligo
Waterford
Wexford

KEVIN O'BRIEN
COMMISSIONER
THE COMMISSION FOR COMMUNICATIONS REGULATION
THE XX DAY OF XXXXX 2013

Appendix A: Annex A List of Urban Centres

This list is reproduced from the Decision Instrument of this decision.

Arklow
Athlone
Carrick-on-Shannon
Charleville
Cork
Drogheda
Dublin
Dundalk
Ennis
Galway
Letterkenny
Limerick
Mallow
Mullingar
Portlaoise
Roscommon
Shannon
Sligo
Waterford
Wexford

Appendix B: Consultation Responses

Response from Eircom Group to Consultation No. 13/39



eircom Group

Response to ComReg Consultation:

Leased Line Markets: Further Review of Urban Centres

ComReg Document 13/39

~~Strictly Private and Confidential~~

15May 2013

eircom Group Response to ComReg Consultation 13/39

DOCUMENT CONTROL

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The comments submitted to this consultation are those of eircom Ltd (eircom) and Meteor Mobile Communications Ltd. (MMC) collectively referred to as eircom Group.

~~Please note that, for the purposes of the Freedom of Information Acts 1997 and 2003 and in the context of eircom's general rights and obligations, information supplied by eircom to you may contain confidential, commercially sensitive or price sensitive information consisting of financial, commercial, technical or other information, whose disclosure to a third party could result in financial loss to eircom, could prejudice the competitive position of eircom in the conduct of its business, could otherwise prejudice the conduct or outcome of contractual or other negotiations to which eircom is a party.~~

~~Accordingly, you are requested to contact a member of eircom's Regulatory Department where there is a request by any party to have access to records which may contain any of the information herein and not to furnish any information before eircom has had an opportunity to consider the matter.~~

~~Strictly Private and Confidential~~

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eircom Group Response to ComReg Consultation 13/39

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eircom Group Response to ComReg Consultation 13/39

1. A MARKET REVIEW IS NECESSARY

At the outset, eircom would point out that this consultation is being conducted some four and a half years after the market review which established the current regulatory controls. That market review process had commenced with an initial consultation in October 2007 based on market data collected earlier in 2007. While this data set, used to inform ComReg's market analysis, was partially refreshed in 2008, the fact remains that the current regulatory regime is based on market circumstances at least five years and in some cases six years old. This situation is unacceptable and eircom calls on ComReg to immediately commence a new market review.

The current regulatory regime no longer reflects the current market structures and the advancement of competitive forces that have taken place over recent years. In that time, fundamental changes have occurred in the market including:

- The entry of the two largest multinational mobile operators, Vodafone and O2, into the fixed market with particular focus on serving business customers. This includes the provision of a full suite of data products. In particular the acquisition by Vodafone of C&W, Interfusion and Complete telecom makes it a significant player in the Irish datacomms market. [REDACTED]
- The entry of the cable operator, UPC, into the telecommunications market with a full portfolio of data, broadband and voice products.
- The aggressive promotion of state sponsored dark fibre and wavelength products by the fibre infrastructure operators such as ESB Telecom, BordGais and CIE.
- The emergence of network aggregators such as BT and Complete Telecom (acquired by Vodafone) who integrate their own fibre infrastructure with that of others to create national data networks which are then offered at both the wholesale and retail levels.
- The completion of the interconnection of the State subsidised Metropolitan Area Networks to create a national network capable of serving the vast majority of data market requirements.
- The emergence of Airspeed as an aggressive competitor in the data market using self provided high capacity radio access in combination with core capacity acquired from alternative suppliers. This is facilitated by developments in cost effective wireless radio access technology that enable high-speed (>500Mbps) symmetrical Ethernet services over wide-areas.

These developments now result in many extensive customer networks being supplied exclusively on alternative infrastructure which was clearly not the situation when the market was last reviewed.

Not only is the current market definition significantly out of line with market realities but the criteria by which ComReg propose to assess whether a particular urban centre should be

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eircom Group Response to ComReg Consultation 13/39

included in the Trunk Segment market are significantly more stringent than has been the practice in other regulated markets. In Consultation 09/86 on the expansion of the Trunk Segment market, section 3.6 stated "*ComReg's previous analysis suggests that, for connectivity to and from an urban centre to fall within the wholesale trunk market, there are likely to be two or more sets of competing infrastructure present between the urban centres*". In Decision Notice D02/10 which followed this consultation, ComReg further qualified the above at section 3.1.11 where it stated "*ComReg stresses that the two or more sets of competing infrastructure referred to above are assumed to be in addition to the presence of the incumbent which is presumed to have a ubiquitous network*". These criteria are significantly more stringent than the original criteria set out in Decision Notice D06/08 where ComReg stated at section 5.3 "*ComReg also clarified that a distinguishing characteristic of the market for trunk segments of wholesale leased lines is that it always has an Other Authorised Operator (OAO) presence.*"

The definition set out in D06/08 aligns closely with the Decision Notice D03/13, Price Regulation of Bundled Offers, Further specification of certain price control obligations in Market 1 and Market 4 in which ComReg and its advisors (Oxera Consulting) undertook an assessment of retail pricing constraints on eircom. The conclusion of that assessment was an acceptance that a significant constraint existed where two operators were competing with eircom at the retail level even where these two operators were providing services on the same infrastructure. The precise criteria was set out in section 4.86 which stated "*Criterion 2: An exchange area in which at least two OAOs (not being AIPs) are providing telecommunications services at the retail level to End-Users from the relevant exchange using LLU or VUA (either by means of direct provision by those OAO(s) to End-Users or via a wholesale service provided to those OAO(s) by another OAO by means of LLU or VUA),*"

This situation is mirrored exactly in the Leased Line market where several operators compete in both the retail and wholesale markets utilising common non-eircom infrastructure.



In addition to requesting the immediate commencement of a market review, eircom strongly urges ComReg to conduct the assessment of these particular urban centres in line with its original D06/08 decision which will result in a uniform application of regulatory principles and the inclusion of all urban centres in the Trunk Segment.

eircom Group Response to ComReg Consultation 13/39

2. RESPONSES TO CONSULTATION QUESTIONS

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

We note *"the preliminary analysis of data collected by ComReg"* at paragraph 3.8 of the consultation which presents a list of four anonymous Altnets considered to have network infrastructure in the five Urban Centres.

It is eircom's view that all five towns (Athlone, Charleville, Mallow, Roscommon and Tullamore) meet the conditions established by ComReg in Decision Notice D06/08. The documentation supporting eircom's submission of 17th November 2012 is replicated at Annex 1. Further evidence to support the case in respect of Tullamore being a competitive node is provided at Annex 2.

In the interest of transparency we request ComReg to publish the identities of the operators it sought data from and whether ComReg made the request under its formal information gathering powers. It is not clear to us why the identity of the operators in the Urban Centres have been anonymised but in any event all we are asking for is the list of operators ComReg considers to be active in the Leased Line Markets.

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

eircom considers all five towns to be competitive nodes. The additional evidence provided with this response and the evidence submitted on 17th November 2012 has been collected from publicly available sources, in many cases produced by the operators themselves.

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

With regards to the specifics proposed, eircom is of the view that the draft text is sufficiently clear and precise.

However, eircom is not in agreement with ComReg's conclusion regarding Tullamore and has provided additional evidence to show that Aurora Telecom, along with BT, has a competing network in Tullamore.

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**Annex 1: Evidence of Competitor Networks submitted 17th November 2012
Submission to ComReg****ESB Telecoms (ESBT)**

The link below (Link 1) is to an ESBT presentation (see slide 8 and 9) which lists Roscommon and Mallow towns as being part of the ESBT backbone.
http://broadband.oireachtas.ie/Presentations/31_Pres_%20esb.pdf



ESB Telecoms.pdf

The link below (Link 2) shows that Charleville is part of the ESBT fibre backbone.
<http://www.dcenr.gov.ie/nr/ronlyres/e23b93f3-b66d-4a85-a5f8-df8e73bb8613/0/esbnetworkmap.pdf>



esbnetworkmap.pdf

On the website (http://www.esbtelecoms.ie/bandwidth_services/man.htm) ESBT describe their bandwidth interconnection with E-net as follows:

"To further extend the reach of its bandwidth services, ESBT has interconnections with many of the Government [Metropolitan Area Networks \(MANs\)](#), at Wexford, Waterford, Cork, Limerick, Portlaoise, Galway, Roscommon, Carrick on Shannon, Sligo, Letterkenny, Cavan, Dundalk and Drogheda (see map). In cooperation with [e-net](#), ESBT can provide its customers with managed bandwidth circuits, starting as low as 10Mb Ethernet, originating at any premises on any of the connected MANs and terminating at a choice of carrier neutral data centres in Dublin."

BT Ireland

There are two maps of the BT fibre network below. We have also included a link to a map of the CIE fibre optic infrastructure cable. The BT network map below (Figure 1) references Athlone and Mallow as being towns accessed by the BT fibre Network.

BT uses the CIE optical fibre network infrastructure. At the website address below (and Figure2 - Intercity Stations) we can identify Roscommon, Charleville (Charleville is the infrastructure node between Limerick Junction and Mallow in the link below) and Tullamore Towns as being part of the CIE fibre network infrastructure.
http://www.dcenr.gov.ie/NR/ronlyres/A5225D2C-D83D-481F-B821-D5C6E572BD21/0/CIE_Fibrenetwork.pdf

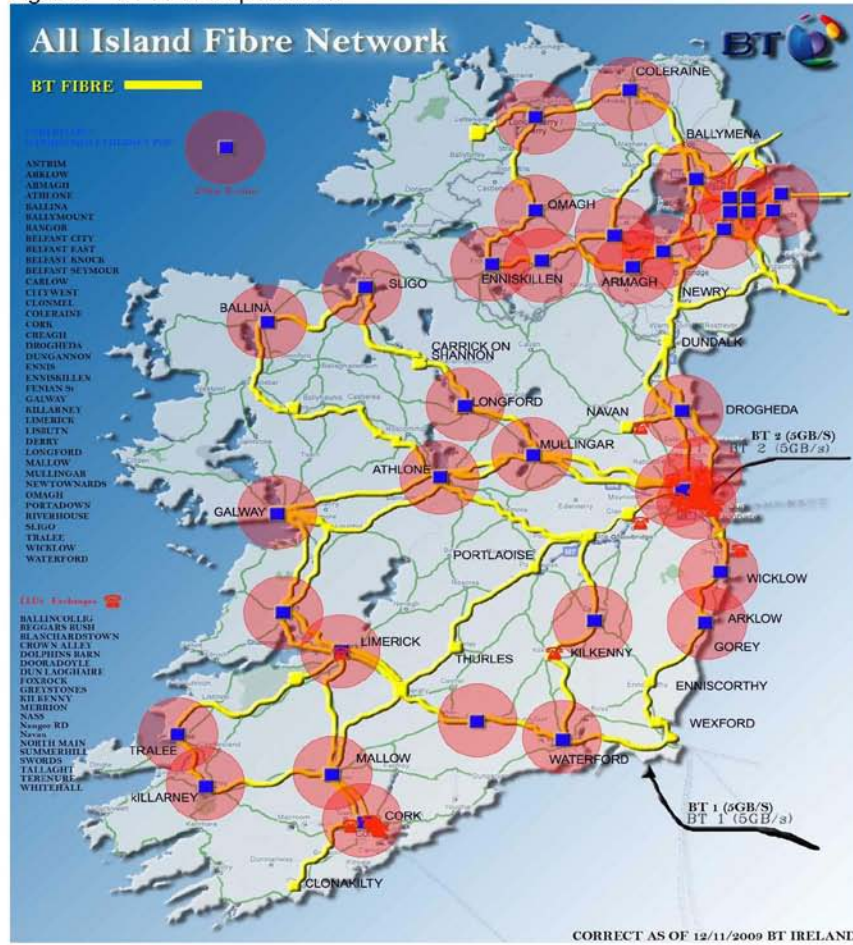
CIE_Fibre
network.pdf

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Figure 1 – BT Fibre Map Network



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Figure 2- Intercity Railway Network



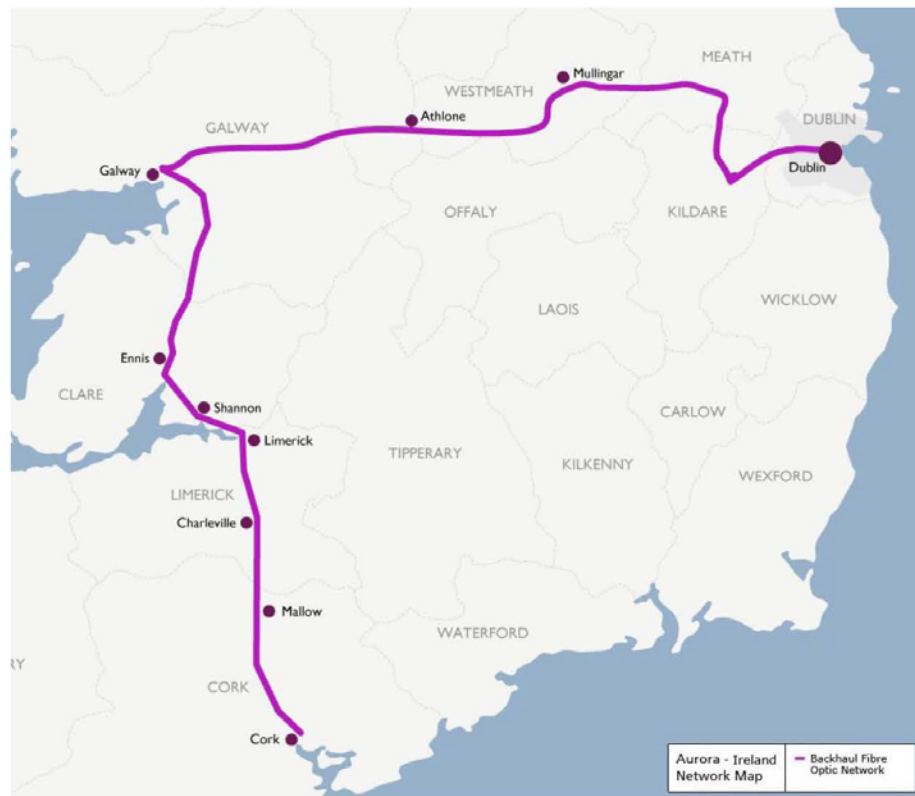
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Aurora Telecom

Bord Gais is active in the Irish telecommunications market via Aurora Telecom. The Aurora Network Map below and the website link <http://www.auroratelecom.ie/service-level.htm> show that the Aurora fibre network runs through **Athlone, Charleville, Mallow and Tullamore**. The front end of the Aurora website (see description of the national network) at the link above states that “the first stage of Aurora’s national expansion has involved the installation of more than 300km of fibre optic cable that passes major regional locations including Galway, Athlone, Mullingar, and Tullamore.” Aurora Telecom issued a RFP earlier this year offering fibre on their network. The embedded map/graphic below shows the various nodes on the network. Please note that while the map suggests that Tullamore is a “future Aurora fibre”, the Aurora website states that this is now in place.



Figure 3 – Map of Aurora Telecom Network



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Annex 2: Further Evidence of Competitor Networks**Aurora Telecom****1. Bord Gáis's Annual Report & Financial Statements 2012**

Bord Gáis's annual report for 2012 includes the following statements. The internet address is provided below.

"Aurora Telecom has continued to expand its high-speed fibre optic backbone network with its national footprint now extending from Dublin to Cork. The first stage of Aurora's national expansion involved the installation of more than 330km of fibre optic cable that services major regional locations including Galway, Athlone, Mullingar, and Tullamore. The fibre optic cable has been inserted into ducting laid during construction of the Gas Pipeline to the West project."
["http://bordgais.annualreport12.com/networks.php"](http://bordgais.annualreport12.com/networks.php)

2. ComReg website

ComReg's website (see link below) contains the following information.
http://www.askcomreg.ie/erau/search_result.0.0.fnbOtfqzUfdjwsfT.DTFE.eraureresults.LE.asp

BordGaisEireann	Aurora Telecom	Other Fixed Network	Other Electronic Communication Service	Network-Dark Fibre Service-Provision of access to network facilities (by other authorised perons)	Metropolitan Network: Dublin, Shannon & Ennis Backhaul Linking: Galway, Limerick, Cork, Athlone, Tullamore, Mullingar, Ennis, Shannon, Belfast, Drogheda, Dundalk
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Complete Telecom

Complete Telecom offers "Wholesale Ethernet" at 1Gb and 10Gb bandwidths in Tullamore. Details are available on the link below. <http://complete.ie/telecommunications/wholesale-carrier/wholesale-ethernet/>

The Complete Network Map shows (Figure 1) Tullamore is part of Complete Telecom's network infrastructure.

Figure 1 – Map of Complete Telecom Network (from their website).



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UPC Ireland

While very little information is publically available on UPC business products outside their current cable network footprint, they claim on their wesite that they have national reach for a full portfolio of data services up to and including 10Gb/s services provided from over 100 network nodes. It must be assumed that the 5 centres subject to this application are included in that network.

Response from ALTO to Consultation No. 13/39

alto

alternative operators in the communications market

**Response to Consultation - Market Review: Leased Line
Markets - Further Review of Urban Centres Ref: 13/39**

Submission By ALTO

Date: May 15th 2013

ALTO is pleased to respond to Consultation – Market Review: Leased Line Markets – Further Review of Urban Centres Ref: 13/39

Preliminary Comments

ALTO welcomes this general tenor of this Market Review consultation and considers the issues therein to be properly considered and fully in line with regulations and remedies set out by ComReg previously.

Response to Consultation Questions:

ALTO does not propose to address each consultation question, as set out at page 10 and throughout the consultation paper.

ALTO requests that ComReg consider what, if any effect, a change to the competitive dynamic, in a particular urban centre would mean for the review and removal of the conditions set out in this market review. This was a matter dealt with by ALTO in previous analogous consultation responses.

ALTO

15th May 2013