

Annex A: Opinion of the Competition Authority



Isolde Goggin
Chairperson
Commission for Communications Regulation
Abbey Court, Irish Life Centre
Lower Abbey Street
Dublin 1

12 May 2005

Re: ComReg Market Review – Interconnection Markets

Dear Isolde,

I have been asked, in my capacity as a Member of The Competition Authority ("the Authority"), to provide the Authority's view with respect to the outcome of the Commission for Communications Regulation's ("ComReg") review and analysis of "interconnection" in Ireland.

The process

ComReg is obliged under the EU Communications Regulatory Framework to conduct market definition and market analysis activities to determine the relevant markets for the purposes of the new regulatory framework and in accordance with competition law. Under Regulation 27(1) ComReg is required to liaise with the Authority in its process of market definition and analysis of any markets that are outside or differ from those recommended by the Commission under the *Relevant Market Recommendation*. In December 2002, a cooperation agreement was signed between the Authority and ComReg in accordance with Section 34 of the Competition Act 2002 to facilitate *inter alia* cooperation in this type of exercise.

Members of staff at the Authority have participated in the Steering Group, the senior group of advisors and ComReg staff involved in recommending market analysis decisions to ComReg, and have provided comments on the draft final decisions. The Authority considers that those staff members have contributed fully in the process and that ComReg has duly considered any comments made by them in the preparation of the consultation documents and recommendations in the draft market proposals.

The market recommendations

In its *Relevant Market Recommendation*, the European Commission recommended that National Regulatory Authorities should review wholesale interconnection markets in relation to publicly available telephone services provided at fixed locations. The specific markets the Commission recommended required analysis were:

- wholesale call origination,
- wholesale call termination, and
- wholesale transit services.

ComReg reviewed the proposed markets as recommended by the Commission. ComReg considered that a single wholesale call origination market exists, but concluded that

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wholesale call termination should be delineated into different markets based upon factors such as the nature of demand by various users and the barriers to providing termination services to different groups of users. Thus, ComReg concludes that there are two discrete types of wholesale call termination markets in Ireland-

- (a) *Termination for calls to end-users* consisting of calls to geographic numbers; and
- (b) *Termination for calls to service providers* consisting of all calls to non-geographic numbers to parties that provide services to callers, including internet service providers, freephone services and directory enquiries.

The Authority believes it is reasonable to accept ComReg's finding that in relation to wholesale termination for calls to end-users, each terminating network can be characterised as a separate market. This stems from the fact that there is no alternative for terminating a call to a specific geographic number other than directing it to the network upon which it is located.

In relation to wholesale transit services, ComReg found that international transit services should be separated from the market for national transit services. ComReg intends to undertake consultation regarding the market for international transit services in the future.

The Authority takes the view that the exercise undertaken by ComReg to define the proposed markets applied principles based on best practice for defining relevant markets in competition analysis. The Authority believes it is reasonable to accept ComReg's findings that the proposed wholesale interconnection markets exist in Ireland, at least for the period under review. Nonetheless, ComReg should monitor market developments in this regard.

Competitive analysis

ComReg examined the competitive environment in each of these markets and found evidence of high and prevailing market shares by a single operator, barriers to entry, and little, or no, countervailing buyer power. In the absence of existing regulatory measures mandating access on a non-discriminatory basis and regulating eircom's interconnection charges, ComReg believed that there would be no effective constraints imposed by potential competition in these markets.

ComReg expects this situation to continue at least for the period under review. As such eircom should be designated as having significant market power ("SMP") in each these markets and appropriate *ex ante* regulatory measures are justified. The Authority recommends that ComReg takes a holistic approach in analysing the potential impact of its regulatory remedies by determining the effects such remedies will have in both wholesale access and retail calls markets. For example, ComReg should examine the effect that regulating wholesale interconnection markets could have on eircom's ability and incentives to compete on price at the retail level.

The Authority believes it is reasonable to accept ComReg's finding that in relation to wholesale end-user termination, each terminating network has SMP in relation to calls that can only be terminated on their network. Each network can be characterised as a separate market where each network operator has 100% market share. This is because a call to a specific geographic number can only be terminated by the network operator on whose network the end-user is located.

With regard to the findings of SMP in each of the above markets, the Authority is of the view that the analysis carried out by ComReg supports this view, at least for the period under review. Despite this, the Authority welcomes ComReg's undertaking to monitor

competitive dynamics and review any such developments. As part of such monitoring, ComReg may wish to give particular attention to any changes in the conditions affecting the entry and expansion of competitors in the market for termination of calls to service providers that may arise as a result of the application of the proposed remedies.

We would note that the Authority's comments are made in the context of the specific provisions of the SMP guidelines relating to the relationship between markets defined for the purposes of *ex ante* regulation vis-à-vis competition law enforcement. The Authority reserves the right to re-examine any or all of the issues underlying these recommendations in the light of facts and evidence that may arise in specific future cases before it.

Yours sincerely



Dr. Paul K. Gorecki
Member, Competition Authority