



Response to Consultation and Consultation on Draft Decision

Market Analysis International Leased Lines

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All responses to this consultation should be clearly marked:-
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and sent by post, facsimile, e-mail or on-line at www.comreg.ie
(current consultations), to arrive on or before 6.00 pm Friday 14
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Response to Consultation, subject to the standard confidentiality
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1 Executive Summary

- 1.1 In this review ComReg has defined a market for international retail leased lines. This market consists of leased lines which offer capacity between two points, the 'A end' which is in Ireland and the 'B end' which is outside Ireland. The Commission's *Recommendation on Relevant Markets* does not define a relevant market for international leased lines.
- 1.2 ComReg has reviewed this market in order to assess if it is appropriate to maintain, withdraw or amend the existing regulation and considering the provisions of Regulation 14(9) of the Universal Service Regulations and Article 20(3) of the Framework Regulations.
- 1.3 The assessment of the market concludes that:
 - there is a separate product market for national and international leased lines;
 - retail international switched services and retail non-switched leased line services are not in the same market;
 - the market for international retail leased lines includes multinational Virtual Private Networks (VPNs);
 - the market for international retail leased lines includes all routes coming out of Ireland;
 - there is one national market for retail international leased lines coming out of Ireland.
- 1.4 In the case of the market for retail international leased lines, ComReg concluded in the market analysis that the market was, effectively competitive. The assessment of this market was made not only on the basis of market share data, but also on other factors such as technological and infrastructure advantages; countervailing buyer power; and pricing. Furthermore, the examination of the market using the three criteria specified in the *Relevant Markets Recommendation*, shows that this is not a relevant market that should be subject to ex ante regulation.
- 1.5 ComReg is proposing to remove existing obligations on eircom. The remedies are set out in detail in Annex C below.
- 1.6 As noted earlier, this document is both a response to consultation document and a consultation on the draft Decision attached in Annex B. ComReg welcomes all comments that were submitted by interested parties on the questions that were posed in this market review, and has considered all comments in coming to its conclusions on market definition, market analysis and remedies.
- 1.7 ComReg is required (by Regulation 20 of the Framework Regulations) to make available any draft measure which ComReg proposes to adopt to the European Commission and the national regulatory authorities in other member states of the European Community prior to adopting the measure
- 1.8 ComReg would also welcome comments from all interested parties on the draft Decision attached in Annex B. Details of the consultation procedure are included in section 6.

2 Introduction

Objectives under the Communications Regulation Act, 2002

- 2.1 Section 12 of the Communications Regulation Act, 2002 outlines the objectives of ComReg in exercising its functions. In relation to the provision of electronic communications networks, electronic communications services and associated facilities these objectives are to:
- promote competition
 - contribute to the development of the internal market, and
 - promote the interests of users within the European Union.
- 2.2 This review is in line with the objectives set out in the Communications Regulation Act, 2002, in particular as ComReg seeks to promote competition amongst operators to ensure that end-users derive the maximum benefit in terms of price, choice and quality.

Regulatory Framework

- 2.3 Four sets of Regulations,¹ which transpose into Irish law four European Community directives on electronic communications networks and services,² entered into force in Ireland on 25 July 2003. The final element of the European electronic communications regulatory package, the *Privacy and Electronic Communications Directive*, was transposed into Irish law on 6 November 2003.
- 2.4 Regulation 14(9) of the Universal Service Regulations and Article 20(3) of the Framework Regulations obliges ComReg specifically, in relation to retail markets, to undertake market analysis in accordance with the procedures specified in the Framework Regulations (under Regulation 27) to determine whether obligations

¹ Namely, the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 (S.I. No. 307 of 2003), ("the Framework Regulations"); the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations, 2003 (S.I. No. 306 of 2003), ("the Authorisation Regulations"); the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 (S.I. No. 305 of 2003), ("the Access Regulations"); the European Communities (European Communications) (Universal Service and Users' Rights) Regulations 2003 (S.I. No. 308 of 2003), ("the Universal Service Regulations").

² The new regulatory framework for electronic communications networks and services, comprising of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, ("the Framework Directive"), OJ 2002 L 108/33, and four other Directives (collectively referred to as "the Specific Directives"), namely: Directive 2002/20/EC of the European Parliament and of the Council on the authorisation of electronic communications networks and services, ("the Authorisation Directive"), OJ 2002 L 108/21; Directive 2002/19/EC of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and services, ("the Access Directive"), OJ 2002 L 108/7; Directive 2002/22/EC of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services, ("the Universal Service Directive"), OJ 2002 L 108/51; and the Directive 2002/58/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector, ("the Privacy and Electronic Communications Directive"), OJ 2002 L 201/37.

should be maintained, amended or withdrawn.³ In carrying out market definition and market analysis, ComReg must take the utmost account of the *Relevant Markets Recommendation* and the SMP Guidelines.

- 2.5 The new communications regulatory framework requires that ComReg define markets appropriate to national circumstances, in particular relevant geographic markets within its territory, in accordance with the market definition procedure outlined in the *Framework Regulations*⁴. In addition, ComReg is required to conduct an analysis of the relevant markets to decide whether or not they are effectively competitive⁵. Where it concludes that the relevant market is not effectively competitive (*i.e.*, where there is one or more undertaking with significant market power (“SMP”)), the *Framework Regulations* provide that it must identify the undertakings with SMP on that market and impose on such undertakings such specific regulatory obligations as it considers appropriate⁶. Alternatively, where it concludes that the relevant market is effectively competitive, the *Framework Regulations* oblige ComReg not to impose any new regulatory obligations on any undertaking in that relevant market. If ComReg has previously imposed sector-specific regulatory obligations on undertakings in that relevant market, it must withdraw such obligations and may not impose new obligations on those undertaking(s)⁷.

Structure of Consultation Document

- 2.6 The remainder of this consultation document is structured as follows:
- **Section 3** presents ComReg’s conclusions on the definition of the market(s) for the provision of international capacity to end users. This section consists of a review of the market definition procedure and its scope, as well as demand-side and supply-side substitution assessments at the retail level;
 - **Section 4** presents ComReg’s market analysis for the market listed above and presents ComReg’s view on whether this market is effectively competitive;
 - **Section 5** presents the withdrawal of obligations on existing regulated undertakings within the market;
 - **Section 6** provides details with regard to the submission of comments on this consultation document.

³ Universal Service Directive Art 16 (3) and Framework Regulations 20 (3) and 27.

⁴ Framework Regulation 26.

⁵ Framework Regulation 27.

⁶ Framework Regulation 27(4).

⁷ Framework Regulation 27(3).

3 Market Definition

Summary of consultation issue

- 3.1 ComReg's consultation paper put forward the view that the scope of the appropriate retail market is international leased lines between two points, where one of the points is in Ireland (A-end) and the other is outside Ireland (i.e., international). In this market analysis ComReg examines the A-end only.
- 3.2 ComReg has defined a retail leased line to be:

“point to point symmetric capacity, whether contended or uncontended, which does not include on-demand switching or routing functions which the end user controls”.
- 3.3 ComReg considers dedicated capacity to mean capacity which is capable of being used only by the customer concerned and is available for the use when that customer requires it. Capacity is obviously dedicated when assigned exclusively to that customer. Dedicated capacity can also be provided in other ways, where the management functions can be employed to allow the customer the experience of a dedicated circuit without that being assigned exclusively and permanently to that customer and use.
- 3.4 Additionally, a customer may not always require a guarantee of 100% capacity and may prefer to know that x% of capacity is always available with y% being the maximum capacity which can be used if required. ComReg considers this to be dedicated capacity for the lower guaranteed capacity with the ability to avail of additional capacity where available.
- 3.5 An important consideration for users is the type of distortion: a customer using capacity for voice could tolerate little packet delay but a customer using capacity for video transmission may have less concern about the issue of delay. On the other hand, for data transfer (e.g. e-mail) a customer may consider delay to be insignificant and may even accept packets delivered in the wrong order as the customer's end applications may manage any necessary reordering of packets.
- 3.6 The issue of transparency is a feature which can be customer/service specific (which depends on user requirements and the level of tolerance which is addressed in the solution design by specifying network parameters or data priorities such as CBR⁸, VBR⁹, etc. There are currently technical solutions for such customer requirements on platforms using SDH, ATM and IP.
- 3.7 ComReg concludes that contended capacity can provide equivalent services to the end user as uncontended or dedicated capacity.

⁸ Constant bit rate is a service class for ATM networks in which the cell throughput is guaranteed.

⁹ Variable bit rate is a service class for ATM networks in which the cell throughput can vary on a best effort basis in accordance with the connection contract.

- 3.8 Asymmetric and symmetric capacities have functional differences which indicate that they cannot be considered as technical substitutes.
- 3.9 An electronic communications solution which would allow an end user to send data and choose to have that data arrive at different destinations on demand e.g. *point to multi point capacity* does not offer the equivalent functional characteristics offered by a traditional leased line and thus can not be said to be a demand-side substitute. ComReg is of the view the inherent additional flexibility is provided, as customers do not have to define specifically the point to point connectivity at the time of provisioning, and can adjust this easily and flexibly to suit their needs e.g. point to multi point IPVPNs. Removing the functionality of on-demand switching constrains the market to simply capacity between two points.
- 3.10 Detailed analysis of the appropriateness of this functional definition is contained in the response to consultation of the *Review of Retail leased lines and Wholesale Terminating and Trunk Segments* which will be published in the near future.
- 3.11 For the purpose of defining the market for international leased lines, ComReg is of the view that these are the characteristics and functionality which are offered by leased lines products and services.
- 3.12 There are a number of international retail leased line services that can be acquired to provide the carriage for data, broadband, voice and other electronic communications services between Ireland and international locations. The primary means of providing such services are international leased lines, whether over owned/controlled infrastructure or using wholesale leased lines acquired from other operators who own or control international infrastructure.
- 3.13 Accordingly, in light of such factors, this analysis considers whether:
- there is a separate market for international leased lines;
 - retail leased line services and switched international services fall into the same product market;
 - international retail leased lines and multi-national VPNs fall into the same product market;
 - there are distinct route-by-route markets for international retail leased lines.

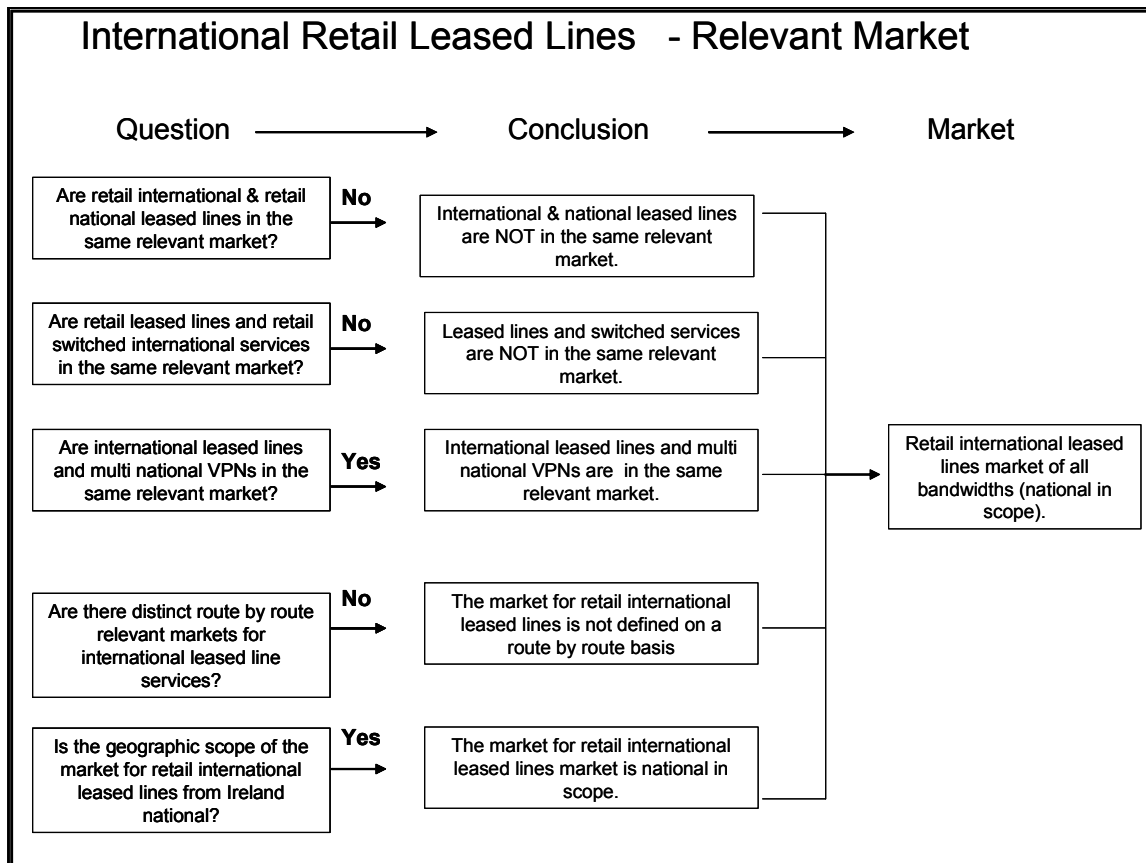


Figure 3.1: Overview of the International Retail Leased Line Market Definition

Are international leased lines in the same market for national leased lines?

Summary of consultation issue

- 3.14 ComReg has considered the scope of the appropriate retail market for international leased lines. In the *Relevant Market Recommendation* the Commission defined a retail market which includes the minimum set as described in the Universal Services Directive. It does not distinguish between national and international leased lines. ComReg, however has defined a market for international leased lines, which has one point (the ‘A end’) in Ireland and the other (the ‘B end’) outside Ireland. This differs from a market for national leased lines, which has two points within Ireland. ComReg has considered whether and to what extent international and national leased lines fall within in the same market.
- 3.15 From the demand-side analysis a consumer of international leased lines would not respond to a small but significant non-transitory price increase by a hypothetical monopolist of international leased lines by switching to a national leased line because the intended use and characteristics of each product are not the same.
- 3.16 ComReg believes from the supply-side that it is unlikely that such a switch in production would occur, sufficiently promptly or cost effectively in order to constrain the hypothetical monopolist. An international operator would need to acquire key network based inputs which are different and additional to those used to provide international leased lines (although they would already be acquiring some of the

necessary inputs). Furthermore, an international operator would incur marketing and sales costs on building up a customer base in the national market. Thus it is unlikely that this could occur within a timeframe to constrain a hypothetical monopolist. ComReg is of the view that no supply side substitution exists (absent regulation); it is unlikely that a supplier of national leased lines would be able to switch production into the international market promptly and at minimal cost and vice versa. Also, international leased lines are often provided as part of a broader regional (e.g., pan-European) or global contract. This differs from the national market for leased lines, where provision is offered on terms and conditions determined by the dynamics of the national Irish market. The conditions of supply and hence the pricing reflect a separate market place.

Conclusion

3.17 ComReg holds that both demand and supply-side substitution factors indicate that there are separate markets for national and international leased lines.

Are retail leased line products and services (non-switched) and switched international services in the same product market?

Summary of consultation issue

- 3.18 In BT/AT&T,¹⁰ the European Commission found that the market for the provision of international voice telephony could be considered to be a product market¹¹ which consists of two primary services (international direct dial telephony and retail international private leased circuits). ComReg considered whether such services are within separate product markets.
- 3.19 ComReg noted significant functional and pricing differences between international switched services and non-switched international leased lines which are sufficiently different to weaken competitive constraints on the demand-side (i.e. non-switched international leased lines can be used to carry both voice and data, they are ordinarily supported by service level agreements and tariffs are generally flat rate, and are independent of the volume of traffic carried over the capacity). ComReg is of the view that no supply side substitution exists as a supplier of switched services would not be able to switch production, promptly or at minimal costs or visa versa.
- 3.20 Additionally, ComReg's view is that the provision of non-switched services requires service providers to offer quality of service guarantees; condition the capacity for a range of traffic; and provide the higher levels of customer service demanded by end-users. As such, suppliers of switched international services could only impose a competitive constraint on a hypothetical monopolist supplier of non-switched if they are prepared to make the necessary additional investments.

Conclusion

3.21 In light of the demand-side functional and pricing differences between retail international switched services and retail non-switched leased line services, and the

¹⁰ Case No. IV/JV.15.

¹¹ The share of capacity owned and volumes of bilateral traffic carried on the relevant country pair route constituted relevant indicators.

supply-side substitution arguments, ComReg does not believe that these are currently in the same retail product market.

Are international retail leased lines and multi-national VPNs in the same market?

Summary of consultation issue

3.22 In ComReg's consultation on international leased lines the question was asked whether or not multi national VPNs should be included in the relevant market. ComReg believes that at a retail level attempting to distinguish between international capacity sold as a leased line as opposed to as part of an international VPN would be arbitrary given the way the products are purchased and sold. ComReg notes that a number of operators exclusively provide international capacity as part of VPN products. ComReg believes that in the market for international capacity there is clear evidence of demand-side substitution between VPN products and traditional leased lines. Additionally, most operators in this market supply both traditional international leased lines and VPN products utilising the same physical infrastructure which is strong evidence of supply-side substitution. ComReg therefore concludes that international leased lines and international VPNs should be in the same market.

3.23 This conclusion is supported the European Commission decision in the case of *Phoenix/ Global One*,¹² where it defined a broad market for 'non-reserved corporate telecommunications services' which consisted of customised packages of corporate telecommunications services and packet-switched data communications services. The Commission went on to identify the following services as falling within this broad market:

- corporate voice services (including global VPNs);
- data communications services (using *inter alia* X.25, Frame Relay and IP protocols);
- custom network solutions and platform-based enhanced services.

3.24 The Decision does not identify which services fall into the 'segments' that are aggregated as 'non-reserved corporate telecommunications services'.

3.25 It is a matter for the end user to determine the nature and mix of services carried over leased line services. Other data services usually entail a greater degree of management on the part of the service provider, limiting, to some degree, the flexibility for the customer in terms of determining the nature and mix of services carried.

Conclusion

3.26 ComReg concludes that international leased lines and multinational VPNs are in the same market.

¹² Case No. IV/35.617.

THE GEOGRAPHIC MARKET

Are there distinct route-by-route market(s) for retail leased line services?

- 3.27 In the preliminary working document produced by the European Commission in the course of its leased line enquiry, the Commission defined the leased line market as being global or pan-European¹³. In the context of the Irish market end users are seeking international leased lines between two points, out of Ireland. The provision of capacity between one route is not a substitute for capacity on another route. However, it is unlikely that such customers will know or be concerned as to whether such capacity is provided directly or indirectly (transiting through one or more jurisdictions). In fact, as discussed below, customers seeking connectivity with Ireland will tend to assume that their capacity is transiting through the United Kingdom. ComReg notes that submarine cables that land in Ireland are directly connected to only two locations: the United Kingdom and the United States. There are only two direct links to the United States, over PTAT-1 and Hibernia Atlantic.
- 3.28 A supply side analysis suggests that the market should not be split on a route to route basis. Services are generally provided using capacity into the United Kingdom, where the second point on the particular link is in a third country. In a liberalised environment, the capacity to that third country (the country where the second point on the particular link is located), supply currently outstrips demand significantly. In essence, ComReg observes that an operator could use alternative routes to an end destination, where there was a small but significant price increase by a hypothetical monopolist on one particular route. Moreover, as there is excess capacity in the market, it is unlikely that an operator could raise the price above the competitive level. Additionally ComReg takes the view that there is no separate Ireland-United States market; despite the two direct links, the amount of excess capacity on other cables from Europe to the United States is such that this indirect capacity imposes pricing pressure and otherwise constrains behaviour in relation to direct capacity between Ireland and the United States¹⁴.
- 3.29 From a supply side analysis, the specific destination of the route does not have a material impact on the conditions of supply, indeed international leased lines are often provided as part of a broader regional (*e.g.*, pan-European) or global contract. However, ComReg notes that leased lines between Ireland and the United Kingdom are of central importance to the provision of international leased lines between Ireland and the rest of the world.
- 3.30 ComReg additionally notes that the market for the provision of international leased lines with an ‘A end’ in Ireland is national in scope. International leased lines are available nationally and are homogenous in terms of pricing and marketing. Additionally the product is technically and functionally standard, regardless of where the customer is located within Ireland.

¹³ *Working Document on the Initial Results of the Leased Lines Sector Inquiry*, 8 September 2000, at page 18.

¹⁴ Such capacity lands in the United Kingdom, Spain, the Netherlands, Iceland and Germany, among other jurisdictions.

Conclusion

- 3.31 ComReg takes the view that there is one national market for retail international leased line which includes all routes coming out of Ireland.

Consultation question 1

Q. 1. Do you agree with the scope of the market definition for a national market for retail international leased lines? Please provide evidence to support your response.

Responses to consultation question 1

- 3.32 Two of the three respondents did not agree with the proposed market definition. One respondent (alto) claimed that ComReg's proposal to define a separate market for international leased lines was not adequately supported in the consultation paper. The respondent noted that the market for international leased lines was not one of the European Commission's Recommended Markets and has not been identified by other Member State NRAs.
- 3.33 The respondent considered that in general, an international leased line will be sold with a national leased line as elements of an end-to-end customer solution. It was stated that ComReg's analysis did not seem to consider this factor in any detail. The respondent was concerned that, were ComReg's proposals to be implemented, eircom might be in a position to use pricing of an international leased line as a form of loss leader to support its sale of regulated products. It was suggested that ComReg needed to provide assurances that controls would be put in place to ensure that eircom did not use the relaxation of regulation in certain market sectors to unfairly compete in others. The respondent requested clarification on whether below-cost selling would be permitted for leased lines where specific regulatory controls were being removed.
- 3.34 Another respondent (EsatBT) supported this view and held that ComReg had not provided adequate justification for the variation from the Recommended Markets. The respondent noted that an end to end International leased line was composed of two distinct segments, the national and international segments. It was held that the national segment of an international leased line was no different to an international leased line and that ComReg had not made any proposal on how this segment would be treated in the new regulatory framework.
- 3.35 This respondent also noted that ComReg had only considered leased lines where the A-end was in Ireland. However, it was their view that it made no difference to the user or supplier whether the A-end or the B-end was located in Ireland. Both provided point to point capacity, and were direct substitutes for each other, in fact the same circuit could be ordered as having either the A-end or B-end in Ireland. It was noted that this was an important consideration when carrying out the market analysis, as considering only A-end would ignore a significant portion of the existing circuits.
- 3.36 The same respondent did agree with ComReg that a national leased line having both ends in Ireland was not a substitute for an International leased line, when considered from the demand or supply side. They also agreed that International switched services were not in the same market as International leased lines. (There was also support for

ComReg's conclusion that the market for international leased lines covered all routes out of Ireland and all routes into Ireland).

- 3.37 However they were of the view that services such as ATM, IP, etc. should be considered to be in the same market where these were used to provide point to point capacity. The respondent considered that VPNs were not in the same market, however where VPNs were formed using leased lines, then the underlying point to point capacity remained in the market for leased lines. This view was not supported by another respondent who did not agree with the inclusion of the phrase "whether contended or uncontended" in the description of a leased line. The respondent (eircom) maintained that one of the most important features of a leased line was the fact that the service provided was uncontended. The respondent pointed to ComReg's statement that there was a perceived distinction between leased lines and other data services in terms of functionality. It was held this distinction lay in the uncontended, guaranteed, dedicated nature of the capacity provided by a leased line.
- 3.38 One respondent noted concern that the consultation did not consider the effect of eircom's market power in the National leased lines market, and the influence that it would have on the International market. They noted that the national segment of an international leased line is no different to a national leased line. Therefore, as eircom held SMP in the market for National leased lines, remedies would be required to prevent eircom from leveraging this market power to gain an advantage in the International leased lines market. The respondent believed that the boundary between the national segment and international segment of an international leased line lay at the point of entry of the international capacity in Ireland. The respondent agreed with ComReg's analysis that there was a single geographic market for international leased lines.
- 3.39 Another respondent (eircom) considered that ComReg's definition of a separate national market for international leased lines from network termination points in Ireland to network terminating points in other countries was compatible with the reality of international circuit service provision.

ComReg Position

- 3.40 It is important to remember that ComReg has reviewed this market in order to assess the appropriateness of existing regulation and this market has not been defined in the *Relevant Markets Recommendation* as a market which could be subject to ex ante regulation. Moreover, as noted in the *Framework Directive*¹⁵ an NRA is required¹⁶ to carry out a review of the market to determine whether or not it is effectively competitive. Based on the findings of the review the NRA will determine whether to impose, maintain amend or withdraw obligations on an undertaking. Where an NRA concludes that the market is effectively competitive, it shall not impose or maintain any of the specific regulatory obligations. In cases where regulatory obligations already exist, it shall withdraw such obligations placed on undertakings in the market. An appropriate period of notice shall be given to parties affected by the withdrawal of obligations. Currently, International leased lines are being regulated in the retail

¹⁵ Article 16 subsection 2 & 3

¹⁶ under Articles 16, 17, 18 or 19 of the Universal Service Directive or Articles 7 or 8 of the Access Directive

market. In order to fulfil our obligations under the new regulatory framework, ComReg is obliged to assess the appropriateness of this regulation. Reviewing the international market for leased lines, is not a deviation from the *Recommendation on Relevant markets*, rather it is necessary for ComReg to do so in order to fulfil the requirements of the Article 16 of the *Universal Service Directive*.

- 3.41 ComReg has considered the issues highlighted on the definition of the market, including the functional characteristics; the geographic scope of the market and the market boundary.
- 3.42 ComReg maintains that the proposed definition of an international leased line is appropriate. ComReg also notes that international leased lines are priced and marketed differently to national leased lines, due to the difference in intended use. Retail international leased lines are priced end to end which usually encompass a national segment (based on distance) from the customer site and international segment (fixed charge). National leased lines are typically charged by distance. Thus it is appropriate to define an international leased line from the network termination point at the customer site.
- 3.43 ComReg holds that a leased line with an 'A end' in another country and a 'B end' in Ireland should not be categorised as an international leased line. If an operator is declaring an international 'B end' in Ireland (as opposed to supplying a national leased line to another operator to use to terminate an international circuit) then that operator (or a related party) is in a retail relationship with the purchaser of international capacity. Thus the national portion of an international leased line with an 'A end' in some other country and a 'B end' in Ireland is part of the Irish national retail market. These circuits are considered in the review of the national retail leased line and trunk and terminating markets.
- 3.44 ComReg acknowledges that many markets are interdependent, and the European regulatory framework specifically recognises the possibility that an undertaking could leverage its dominance from one market to another. ComReg notes this potential problem and proposes to address this issue as discussed in detail in Section 4. ComReg holds that wholesale national remedies are sufficient to prevent eircom from leveraging its power into the retail international market. ComReg notes that this highlights the importance of the boundary split between a national and international capacity. Currently eircom's international circuits encompass a national charge and an international segment charge. The boundary between the national and international segment is defined at the 'international gateway'. While superficially this would seem to be an appropriate boundary split, it would allow for manipulation by facilitating eircom to vary its boundary, potentially narrowing the SMP national segment and increasing the competitive segment. However, the models used by operators for purchase of international capacity vary, sometimes terminating at a cable landing station with the operator responsible for the backhaul to an international gateway, and sometimes including dedicated capacity all the way back to a gateway in a major city. The logical alternative would therefore be to define the interface as the point at *which capacity is no longer carried on infrastructure used also for national traffic*. ComReg proposes that the obligation of non-discrimination in the national wholesale leased line market would deal with the potential for leverage. Whilst potentially difficult to enforce it would be no more difficult than if a national and international split was constructed (as was requested from respondents).

- 3.45 ComReg has considered the respondents' views that it makes no difference to the user or supplier whether the 'A-end' or 'B-end' is located in Ireland and that end users purchase an end to end customer solution. The views of the respondents suggest that the market should more appropriately be defined as a subset of the definition used by ComReg, where the national element forms part of the customer solution which is connected to a purely international node. In essence, this consideration is pertinent in the analysis of the market and hence these considerations will be examined in more detail in the market analysis section. However ComReg continues to believe that it is appropriate to define the market for international leased lines as one where one point (A-end) is in Ireland and the other point (B-end) is outside of Ireland (i.e. international).
- 3.46 Given that this is a definition of the retail market, ComReg holds the view that either way of defining the market would not alter the conclusions of the market analysis and hence it is appropriate to continue to define the market as was done in the initial consultation. It should be noted, however, that underpinning the retail market is the national element of the wholesale market for leased lines as set out in ComReg's forthcoming response to consultation on the *Review of National Retail Leased Lines and Trunk and Terminating Segments of Wholesale Leased Lines*.
- 3.47 Respondents have raised a concern about the boundary between national leased lines and international leased lines. The boundary is defined to be at the international gateway. However, the location of the boundary is relevant to the assessment of market power in the market analysis.
- 3.48 ComReg concludes that it is appropriate from the demand and supply-side that leased lines and VPN used for the provision of international capacity are included within the same product market. Additionally whether VPN are included or not, will not affect the market analysis conclusion regarding the competitiveness of the market definition process.
- 3.49 Another respondent did not agree with ComReg's proposal to include contended capacity within the definition and submitted that the market should be limited to dedicated private circuits. ComReg is of the view that its interpretation of the functional definition of a leased line is correct and continues to believe a leased line does not necessarily have to be dedicated and concludes that contended capacity can provide an equivalent level of service to traditional leased line. This is set out in greater detail in the forthcoming response to consultation on the *Review of National Retail Leased Lines and Trunk and Terminating Segments of Wholesale Leased Lines*.

Conclusion

- 3.50 ComReg takes the view that it is appropriate and necessary to carry out a review of the market for international leased lines as this fulfils our obligations under the Framework Regulation.
- 3.51 ComReg continues to believe that the scope and definition of the market for international leased lines, is appropriately defined. Furthermore, altering the definition to accommodate the views of the respondents would not yield a different conclusion to the market analysis.
- 3.52 ComReg defines the interface between the national and international segment as the point at which capacity is no longer carried on infrastructure used also for national traffic.

3.53 ComReg has concluded that:

- demand and supply-side substitution factors indicate that there are separate market for national and international leased lines;
- In light of the demand-side functional and pricing differences between retail international switched services and retail non-switched leased line services, and the supply-side substitution arguments, ComReg does not believe that these are currently in the same retail product market;
- the market for international retail leased lines includes multinational VPNs;
- the market for international retail leased lines includes all routes coming out of Ireland;
- there is one national market for retail international leased lines coming out of Ireland.

4 Market Analysis

Background

- 4.1 ComReg is obliged under the *Framework Regulations* to assess Significant Market Power (SMP) in accordance with European Community law and to take the “utmost account” of the *SMP Guidelines*¹⁷. Those criteria considered to be probative on the issue of SMP are discussed below.
- 4.2 ComReg needs to consider the criteria set out in the *SMP Guidelines* for analysing markets not included in the *Relevant Market Recommendation*. In considering the level of competition in this market ComReg has looked at a number of indicators including inter alia; market shares, price development, barriers to entry, available capacity, technological advantage and countervailing bargaining power.
- 4.3 Currently there are seven main players in the retail market for international leased lines, which provide circuits with an A end in Ireland and a B end in some other country. Additionally all operators provide B ends in Ireland and thus also have a presence in the Irish national leased line market. Many of these operators are part of multi national telecommunications groups often with extensive network coverage, as can be seen below.
- Cable and Wireless has investments in 78 major international cable systems, providing connectivity to every continent;
 - Colt has pan European coverage with a presence in 13 countries and 58 cities;
 - eircom has extensive national coverage and their international network consists of two international gateway switches located in Dublin that provide connection to international networks, together with interests in various submarine cables and satellite systems.
 - EsatBT is part of BT plc which has national coverage in the UK;
 - Energis has a national footprint in the UK;
 - Global Crossing has a global footprint and presence in every continent;
 - MCI has network facilities in North America, Latin America, Europe, Africa, and the Asia-Pacific region, in more than 140 countries and over 2,800 cities;
 - CVC Acquisitions Company which recently began to offer high bandwidth services in the retail market which has a transatlantic submarine cable system over SDH and Ethernet.
- 4.4 Almost all providers offer both traditional leased lines as well as VPNs of all bandwidths. eircom and EsatBT however provide a greater proportion of the of lower capacity circuits. There is currently a trend for substitution from analogue and lower capacity digital lines to higher capacity digital lines (e.g. 2Mbps) and switch of some customers to other managed data services such as IPVPNs. Leased lines are generally purchased by business users and can be used for the transmission of voice or data service.

¹⁷ Framework Regulation 25(2).

Market shares

- 4.5 The *SMP Guidelines* advise that an undertaking will be subject to the rebuttable presumption that it is in a position of single dominance if it holds in excess of a 50% market share¹⁸. However the data indicates that eircom's market share in the retail international leased lines market is below the threshold considered to be indicative of SMP. It would appear that other operators compete effectively with eircom in this market and hence impose a constraint on any potential market power.
- 4.6 In the responses to consultation a number of respondents expressed reservations about the reliability and accuracy of data used in the original market analysis for retail international leased lines. In light of these comments ComReg carried out a subsequent data request. This showed that market shares varied widely depending on whether they were calculated by number of circuits, by capacity or by revenue:
- 4.7 The difference between market shares by number of circuits and market shares by capacity arises from the fact that many of eircom's circuits are lower bandwidth. eircom have a market share of 57% in terms of the number of circuits sold, however when calculated in terms of capacity sold, this accounts for less than 4% of the total market. ComReg notes that a large portion of the total number of circuits which eircom provides are low capacity analogue leased lines. As noted in *Market Analysis: Wholesale Terminating and Trunk Segments of Leased Lines and Retail Leased Lines (National)*¹⁹, ComReg is of the view that analogue leased lines are demand and supply-side substitutes for digital circuits.
- 4.8 The next largest operator has approximately 38% of market (measured by circuits) which indicates that eircom is not in a position to operate independently of its competitors. Moreover, consumers have a choice of at least two suppliers at most bandwidths, and more at some capacities. ComReg also notes that there are a number of new entrants (most recent Hibernia) in the retail market for international leased lines, which could potentially impose a competitive constraint within the market. Furthermore it should be noted that operators such as Colt and Global Crossing which may not have a significant market share (measured by total number of circuits), do provide services at certain bandwidths. Additionally, it can be seen that operators such as C&W have a low market share in terms number of circuits sold, but of the circuits which they provide these are all high bandwidth. ComReg concludes that market shares indicate that no operator has SMP in the market.

	eircom	C&W	Colt	energis	EsatBT	Hibernia	Global Crossing
Total (No. of circuits)	57%	3%	0%	1%	38%	0%	0%
Total (Capacity)	4%	61%	1%	0%	35%	0%	0%

Figure 4.1: Market Share (Number of Circuits and capacity)

- 4.9 ComReg has looked at revenue data where available. This gives rise to different market shares again, because the price per unit of capacity declines rapidly as capacity rises. This data confirms that, despite having a high market share by circuit, eircom's revenue share is significantly less, at below 40%. Additionally, eircom's market share is declining, having fallen by over 25 percentage points in the past two years. Even a market share as low as 40% might, given existence of other relevant factors, be

¹⁸ See *AKZO v. Commission*, Case C-62/86, [1991] ECRI-3359; approved in *Hilti AG v. Commission*, Case T-30/89, [1991] ECR II-1439.

¹⁹ ComReg Document No. (04/120)

supportive of a finding of dominance. However eircom's market share by revenue is falling and this would not support a finding of dominance. Below ComReg shows market share (by revenue) for three operators, eircom, EsatBT and Cable and Wireless, all of which have a high market share measured by number of circuits and capacity. No operator has a market share in excess of 40% independently.

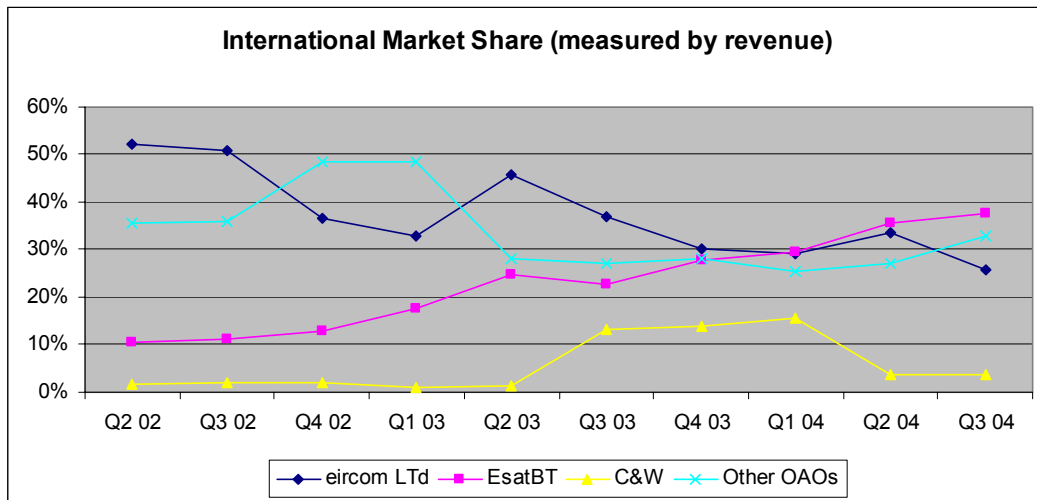


Figure 4.2: Market Share (Revenue)

- 4.10 As noted in the *SMP Guidelines* fluctuating market shares over time may be indicative of a lack of market power in the market. ComReg holds that this is appropriate to the Irish market for retail international leased lines, where there is no evidence of persistent and high market share. No operator has a market share in excess of 40% of the market (measured by capacity or revenue) and the largest market share is declining. From the second round data collection it can be seen that the number of international leased lines provided by eircom fell by more than 35% from March 2002 to March 2004. Additionally, the number of circuits provided per operator changes on a quarter by quarter basis which indicates volatile market share (this is evidenced by data collected from the initial consultation and is supported by the second data collection process).
- 4.11 It is important to note that ComReg has defined the international retail leased line market as circuits with an A end in Ireland. This decision was in part due the fact the provision of international leased lines with B ends in Ireland and A ends in another country falls outside the jurisdiction of ComReg powers of regulation. ComReg only has access to data relating to lines that are “sold” or, to put it another way, have their “A” end, in Ireland. However ComReg is of the view that international leased line providers operating from countries other than Ireland can feasibly exert a competitive constraint on the Irish market for international leased lines. This competitive constraint is such that market power in this market is even less than that implied by the market shares.
- 4.12 ComReg notes that the *SMP Guidelines* state market share *alone* is not sufficient to establish the possession of dominance. Market shares are an imperfect proxy for market power. However, they can provide useful indicia of the effectiveness of competition in a market. In its market analysis ComReg has also considered equally significant criteria such as barriers to entry, and countervailing bargaining power.

Price development

- 4.13 While eircom is required to publish its international leased line prices, other operators providing such services and other international leased lines services are not. As such, eircom's prices seem to operate as a price ceiling.
- 4.14 DG Information Society publishes *'Telecoms Price Development'* data prepared for it by Teligen. The 2003 data indicate that the last significant reduction in publicly available international leased lines pricing occurred between 1999 and 2000. These reductions were in the order of 30%, and followed a similar reduction between 1998 and 1999. Between the year 2000 and 2003, publicly available prices remained stable.
- 4.15 Despite this stability, it is important to consider the relative level of such prices, compared to the other Member States. For example:

To	Capacity Link	Rank Among Member States Reported
Near EU	64 kb/s	5th lowest of 15
Distant EU	64 kb/s	8th lowest of 15
US	64 kb/s	4th lowest of 15
Near EU	2 Mb/s	3rd lowest of 14
Distant EU	2 Mb/s	6th lowest of 14
US	2 Mb/s	3rd lowest of 14
Japan	2 Mb/s	3rd lowest of 13
Near EU	34 Mb/s	2nd lowest of 10
Distant EU	34 Mb/s	2nd lowest of 6

Table 4.3: Leased line prices from Ireland rated against other Member States

- 4.16 As such, ComReg does not believe that the relative prices indicate that prices are being sustained above competitive levels through the exercise of market power.

Barriers to entry

- 4.17 ComReg has considered the extent to which there appear to be barriers to entry or expansion that precludes market entry or make it more onerous. In particular, it has taken note of the construction of new infrastructure between Ireland and the United Kingdom since 1999.

Available capacity

- 4.18 As noted in the supply-side discussions relating to market share above, pan-European capacity has grown significantly in the last three to four years. In particular, there are now a significant number of high capacity links between Ireland and the United Kingdom, namely:

- DWDM (10 to 80 Gb/s) links between Wexford and Swansea, Bude and Lands End, between Kilmore Quay and Lands End, between Dublin and Preston, and between Belfast and Preston, Girvan, Dundonald, Glasgow and Portpatrick;²⁰
- SDH fibre (multiples of 2.4 Gb/s) between Wexford and Lands End, Dublin and Liverpool (through to Manchester) and Southport, and Belfast to Glasgow; and
- SDH fibre (with 2.4 Gb/s capacity) between Dublin and Holyhead.

²⁰ ComReg notes that there is a DWDM link between Dublin and Belfast, together with an older 2.4 Gb/s link.

- eircom operates the single 2.4 Gb/s cable and has an interest in one of the Belfast to Preston links. All other infrastructure is operated by other entities.
- 4.19 As such, it would appear that there is significant available capacity between Ireland and the United Kingdom. It does not appear that access to underlying capacity operates as a barrier to entry.

Technological and infrastructure advantages

- 4.20 ComReg has no reason to believe that any entity has a technological advantage. The DWDM infrastructure described above is owned and operated by the following range of entities: NTL, Concert, EsatBT, Cable & Wireless, SOLAS C&W, Global Crossing and CELTIC.

Countervailing buyer power

- 4.21 The purchasers of retail international leased lines are, almost by definition, multi-national corporate entities. As such, they are relatively sophisticated and well-informed purchasers. In addition, they are in a position to acquire their international leased lines in the location that delivers the most attractive commercial proposition (*i.e.*, they are able to locate the 'A-end' of their services in the place that delivers the best deal). They are also ready and able to ensure that they achieve the best commercial transaction possible through ensuring that suppliers compete to provide their services, whether that is through tenders, RFPs and RFQs or some other mechanism.

Conclusion

- 4.22 ComReg is of the view that no operator has advantage over its competitors such that it could operate independently of its competitors, customers or consumers. On balance, ComReg believes that the national market for international retail leased lines services is effectively competitive.

Consultation question 2

Q. 2. Do you agree that the national market for international retail leased lines services is effectively competitive? Please provide evidence to support your response.

Response to consultation question 2

- 4.23 One respondent (eircom) believed that 'without question' the market for international retail leased line services is effectively competitive. The respondent also noted that the market share data reported by ComReg does not include revenues earned by other operators selling circuits into Ireland to customers based in other countries. Given the presence in Ireland of BT, AT&T, MCI and Global Crossing, the figures presented were not representative of the actual market share; nor could they be used to assess the market power of eircom or other market players.

- 4.24 Additionally, the same respondent noted that based on the data supplied, a number of players have access to significant capacity therefore there were no supply-side limitations to serving the market. Furthermore, the presence of countervailing bargaining power from purchasers of international leased lines (who are often large multinational companies that typically exercise considerable expertise and control in purchasing international leased lines) meant that eircom was not in a position to act independently from its competitors. eircom did not enjoy any technological advantages in this market while it was their view that global reach and capacity however offered considerable advantages to large global telecommunication players rather than eircom.
- 4.25 However another respondent (EsatBT) did not believe that ComReg has carried out an adequate analysis and did not agree with the conclusion that the market for International leased lines was effectively competitive. Taking market share as the first indicator, the respondent viewed it as surprising that the analysis is based only on circuits where the “A-end” is located in Ireland. This approach ignored a significant portion of the circuits in the market. The respondent was aware that eircom (through Telecom Ireland Ltd and eircom UK Ltd) has supplied a number of International leased lines with the B-end in Ireland. To exclude these circuits underestimated eircom’s market share.
- 4.26 The respondent suggested that the market share data presented by ComReg in figures did not seem reliable and did not reflect their understanding of how market shares had developed over the past two years. They suggested that the data needed to be revisited and verified.
- 4.27 Additionally, it was suggested that ComReg should consider other factors when assessing market power in this market, including pricing. It was highlighted that eircom prices had been stable for the past two years, and did not show any sign that they were subject to competitive pressure. Also it was suggested that ComReg must consider that eircom held SMP in the market for provision of national leased lines (which they noted was equivalent to the national segment of an international leased line). This was a significant component of the end to end leased line, and was indicative of an advantage that eircom alone enjoys. ComReg must carry out a full and thorough analysis before concluding that eircom did not hold SMP in this market.
- 4.28 The respondent noted that ComReg should take measures to prevent eircom from bundling together products (or sub-products) for which eircom held SMP with products for which it didn't hold SMP. To do otherwise would allow eircom to leverage from the SMP market into the market where it did not hold SMP. In these cases, the full set of remedies should apply to the component parts for which eircom held SMP. It should not be possible to mask or avoid these obligations through bundling.

ComReg Position

- 4.29 Issues have been raised by respondents concerning the market definition which have implications for the assessment of market power on this market. In particular, respondents feel that both A-end and B-end international leased lines should form part of the market and hence should be counted in the market shares. ComReg is of the view that the market definition has been defined appropriately for this market. As noted in Section 3, international leased lines with ‘B ends’ in Ireland are considered in the review and market share calculation of the national markets.

- 4.30 ComReg has analysed the market share information for this market using both a narrow definition of international leased lines and a broader definition including international VPNs. Using either definition, the clear conclusion is that this is an effectively competitive market.
- 4.31 In the case of the market for retail international leased lines, ComReg believes that the market is in itself, effectively competitive, as outlined above. Moreover, the assessment of this market was made not only on the basis of market share data, but was made on other factors such as technological and infrastructure advantages; countervailing buyer power; and pricing.
- 4.32 ComReg addressed the concerns of respondents in relation to data quality and requested additional data from the industry in relation to international leased lines. The data received verified the conclusion in the consultation in terms of market share.
- 4.33 As outlined above, it is clear that other operators which form part of an international corporate group would have a greater cost advantage on international circuits. Moreover, there is a large amount of alternative capacity in the international market. Furthermore, the client profile purchasing in the international market tend to be large corporate customers which purchase globally and hence enjoy a position of bargaining power. One respondent commented that the existing SMP operator in the national market for leased lines would have an advantage that was not enjoyed by other operators in this market. However, ComReg believes that this advantage (albeit mitigated through regulation) would not play a significant role in the international market. As outlined above, other operators which form part of an international corporate group would have a greater infrastructure and cost advantage in the supply of international leased lines.
- 4.34 One respondent suggested that ComReg should give greater weight to the pricing evidence. eircom's pricing has been stable for the past two years and has not been subject to regulatory pressure. However, ComReg has taken account of the pricing data and notes that eircom's pricing has acted as a price ceiling. ComReg does not view this as evidence of market power, given that eircom is required to publish these prices. Furthermore, as seen above in Table 4.1, international leased line prices from Ireland are ranked competitively against other Member States.
- 4.35 ComReg has taken on board these concerns particularly the view that eircom could bundle the national tail with the international tail, where the latter would be provided on a loss making basis, in order to gain a competitive advantage. ComReg believes that as long as there is appropriate national regulation at the wholesale level on any operator with SMP, in particular the obligation to supply on a non-discriminatory basis, this should give sufficient protection for the retail international market.
- 4.36 The assessment of market power at the retail level needs also to take into account the level of regulation at the wholesale level. In accordance with the New Regulatory Framework, it is only where regulation at the wholesale level is deemed to be insufficient, obligations can be imposed at the retail level²¹. ComReg will take into

²¹ para 4 of the Recommendation states that The identification of a retail market for the purposes of ex ante market analysis does not imply, where there is a finding of a lack of effective competition by a NRA, that regulatory remedies would be applied to a retail market. Regulatory controls on retail services can only be imposed where relevant wholesale or related measures would fail to achieve the objective of ensuring effective competition.

account respondents concerns on the ability of eircom to leveraging dominance from a wholesale market into the retail international leased lines market when it frames its wholesale remedies.

Conclusion

4.37 ComReg concludes that the retail market for international leased lines is effectively competitive.

5 Withdrawal of Obligations

- 5.1 Article 7 of the Access Directive²² and Article 16 of the Universal Service Directive,²³ allow Member States to carry forward some existing obligations until the market analyses have been completed and a determination is made whether to maintain, amend or withdraw any such obligations. These provisions were transposed into Irish law by Regulation 8 of the Access Regulations²⁴ and Regulation 13 of the Universal Service Regulations²⁵.
- 5.2 ComReg proposes to define a market comprising a national market for international retail leased lines out of Ireland, undifferentiated by bandwidth (the 'Market'). ComReg also proposes to make a determination, in accordance with Regulation 27(2) of the Framework Regulations,²⁶ that the Market is effectively competitive and, accordingly, that those obligations imposed on eircom, in relation to the Market, by Regulation 8 of the Access Regulations and Regulation 13 of the Universal Service Regulations, be withdrawn.

²² 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).

²³ 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).

²⁴ European Communities (Electronic Communications Network and Services)(Access) Regulations 2003.

²⁵ European Communities (Electronic Communications Network and Services)(Universal Service and Users' Rights) Regulations 2003.

²⁶ European Communities (Electronic Communications Network and Services)(Framework) Regulations 2003.

6 Submitting Comments on the draft decision

- 6.1 All comments are welcome; however it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document.
- 6.2 The consultation period will run for four weeks from the date of publication during which ComReg welcomes written comments on the question below.

Question 1: Do respondents believe that the draft text of the proposed Decision set out in Annex B is, from a legal, technical and practical perspective, sufficiently detailed, clear, precise and intelligible with regard to the specifics of the removal of existing remedies? Please elaborate on your response.

- 6.3 ComReg appreciates that the issues raised in the Decision may result in respondents providing confidential information if their comments are to be meaningful. Under Article 5(2) of the Framework Directive the European Commission can require ComReg to provide it with responses to the consultation and other information, and the Commission may pass that information on to other NRAs in other Member States. In the limited circumstances of Regulation 17(6) of the Framework Regulations (namely where the information supplied by a party has been supplied to ComReg under an express power to request information) ComReg can make a reasoned request to the Commission that the information should not be passed on to other NRAs. This would not normally be the case with a response by an operator to a consultation document. In cases not covered by Regulation 17(6) the Commission, ComReg and the other NRAs are still bound to respect the confidential nature of such information. Respondents are asked to clearly identify confidential material and if possible include it in a separate annex to the response.

Appendix A – Consultation Question

Question 1: Do respondents believe that the draft text of the proposed Decision set out in Annex B is, from a legal, technical and practical perspective, sufficiently detailed, clear, precise and intelligible with regard to the specifics of the removal of existing remedies? Please elaborate on your response. 25

Appendix B – Draft Decision

1 STATUTORY POWERS GIVING RISE TO DECISION

- 1.1 In making this Decision and removing the obligations set out herein, ComReg has had regard to the objectives of ComReg set out in section 12 of the Act of 2002,²⁷ has taken the utmost account of the *Relevant Markets Recommendation*²⁸ and the *SMP Guidelines*²⁹ and has (where appropriate) complied with and taken in to account the Policy Directions made by the Minister.³⁰ ComReg's Decision contained below is based on the market analysis and reasoning conducted by ComReg in relation to the market for international retail leased lines (Document No. 04/120) dated 17 December 2004. Document No. 04/120 forms part of this Decision.
- 1.2 This Decision is made pursuant to Regulations 27 of the *Framework Regulations*³¹, Regulation 9 of the *Access Regulations*, Regulation 14 of the *Universal Service Regulations* and having regard to sections 10 and 12 of the Act of 2002.

2 MARKET DEFINITION

- 2.1 This Decision relates to the market for international retail leased lines and is a market which differs from any market defined in the *Relevant Markets Recommendation*. The market in this Decision is defined as the market for international retail leased lines and is not a relevant market defined in accordance with Regulation 26 of the Framework Regulations.
- 2.2 The geographic market for the market for international retail leased lines is defined as Ireland.

²⁷The Communications Regulation Act 2002.

²⁸EU Commission Recommendation of 11 February, 2003 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 the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

²⁹Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services.

³⁰Policy Directions made by the Minister for Communications, Marine and Natural Resources on 21 February 2003 and 26 March 2004.

³¹S.I. No. 307 of 2003 the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 which transposes Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

3 FINDING THAT THE MARKET IS EFFECTIVELY COMPETITIVE

3.1 ComReg concludes that the market for international retail leased lines is effectively competitive.

4 WITHDRAWAL OF OBLIGATIONS³²

4.1 ComReg concludes that the relevant market for international retail leased lines is effectively competitive and, accordingly, withdraws, with effect from two weeks from the date of this Decision, those obligations listed in Annex C, which are currently applicable to eircom Limited by virtue of Regulation 13 of the *Universal Service Regulations*.

Isolde Goggin
Chairperson
The Commission for Communications Regulation

Dated the [●] day of [●] 2004

³²Where ComReg concludes that a relevant market is effectively competitive, in cases where an undertaking has previously been designated as having significant market power in such market and specific obligations are applicable to such undertaking, ComReg is required by Regulation 27(3) of the Framework Regulations, after giving reasonable notice to any parties which it considers to be affected by such withdrawal, withdraw such obligation from the undertaking concerned.

Appendix C – Obligations being withdrawn

All obligations applicable to eircom Limited by virtue of Regulation 13 of the *Universal Service Regulations*³³, including Direction 3(a) and Direction 3(b), set out in ODTR Document No. 02/30³⁴, which require eircom Limited:

- to continue to offer international broadband services only on the basis of published offerings; and
- with effect from 1 April 2002, to give a minimum of 24 hours notice of tariff rate changes in respect of international broadband services.

³³ By virtue of Regulation 13 of the *Universal Service Regulations*, eircom Limited was required to continue to comply with any obligations applicable to it on 24 July 2003 relating to, inter alia, leased lines, imposed under the European Communities (Leased Lines) Regulations 1998 (the "Leased Lines Regulations"), notwithstanding the revocation of the Leased Lines Regulations. However, Regulation 27(3) of the *Framework Regulations* requires ComReg, where it concludes that a relevant market is effectively competitive, in cases where an undertaking has previously been designated as having significant market power in such market and specific obligations are applicable to such undertaking, to withdraw such obligation from the undertaking concerned. Accordingly, the obligations set out above are being withdrawn from eircom Limited with effect from 2 weeks from the date of the Direction set out at Appendix B.

³⁴ ODTR Document No. 02/30 of 25 March 2002, "eircom's Reference Interconnection Offer – Miscellaneous Issues – Response to Consultation Paper, Decision Notice and Further Consultation"

Annex E – Notification of Draft Measures Pursuant to Article 7(3) of the Directive 2002/21/EC

Under the obligation in Article 16 of the Directive 2002/21/EC, ComReg, has conducted an analysis of the market for retail international leased lines in Ireland.

Under Article 6 of the Directive 2002/21/EC, ComReg has conducted a national consultation, contained in ComReg document 04/59. This consultation ran from 04 June to 16 July 2004. The responses to this consultation (ComReg document 04/60) have been taken into consideration and ComReg has now reached decisions in market definition, designation of SMP and regulatory obligations, which are contained in ComReg document 04/120.

ComReg hereby notifies the Commission of its proposed removal of obligations consistent with Article 7(3) of Directive 2002/21/EC.

Section 1 - Market Definition

Please state where applicable:

1.1	The affected relevant product/service market (s). (Market Definition) Is this market mentioned in the Recommendation on relevant markets?	The market for Retail International Leased Lines has been analysed and found not to be a relevant market, subject to ex ante regulation. No	5 – 15
1.2	The affected relevant geographic market (s)	The national market of Ireland.	9 – 10
1.3	A brief summary of the opinion of the national competition authority where provided;	Not required.	
1.4	A brief overview of the results of the public consultation to date on the proposed market definition (for example, how many comments were received, which respondents agreed with the proposed market definition, which respondents disagreed with it)	The views of respondents on the market definition are contained in this document in Section 3. There were three respondents to the consultation: <ul style="list-style-type: none"> • eircom • EsatBT • Alto 	5 - 10
1.5	Where the defined relevant market is different from those listed in the	ComReg has reviewed this market in order to assess if it is appropriate to maintain, withdraw or amend the existing regulation	2, 16 - 23

	<p>recommendation on relevant markets, a summary of the main reasons which justified the proposed market definition by reference to Section 2 of the Commission's Guidelines on the definition of the relevant market and the assessment of significant market power³⁵, and the three main criteria mentioned in recitals 9 to 16 of the recommendation on relevant markets and Section 3.2 of the accompanying Explanatory Memorandum³⁶.</p>	<p>and considering the provisions of Article 16(3) of the Universal Service Directive. This was transposed into Irish law, by Regulation 14(9) of the Universal Service Regulations and Article 20(3) of the Framework Regulations.</p> <p>ComReg concludes that this is not a relevant market subject to ex ante regulation.</p>	
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Section 2 - Designation of undertakings with significant market power

Please state where applicable:

2.1	The name(s) of the undertaking(s) designated as having individually or jointly significant market power. Where applicable, the name(s) of the undertaking(s) which is (are) considered to no longer have significant market power	No operator has been designated with SMP.	16 - 23
2.2	The criteria relied upon for deciding to designate or not an undertaking as having individually or jointly with others significant market power	No operator has been designated with SMP.	16 - 23
2.3	The name of the main undertakings (competitors)	<ul style="list-style-type: none"> • Cable and Wireless 	

³⁵ Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications and services, OJ C 165, 11.7.2002, p. 6.

³⁶ Commission Recommendation of 11.2.2003 on Relevant Product and Service Markets with 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 ECNs and ECSs, C (2003) 497

	present/active in the relevant market.	<ul style="list-style-type: none"> • Colt • eircom • EsatBT • Energis • Global Crossing • MCI • CVC Acquisitions Company 	
2.4	The market shares of the undertakings mentioned above and the basis of their calculation (e.g., turnover, number of subscribers)	Section 4	17 - 18

Please provide a brief summary of:

2.5	The opinion of the national competition authority, where provided	Not required	
2.6	The results of the public consultation to date on the proposed designation(s) as undertaking(s) having significant market power (e.g., total number of comments received, numbers agreeing/disagreeing)	<p>There were three respondents to the consultation and their views are contained in Section 4 of this document:</p> <ul style="list-style-type: none"> • eircom • EsatBT • Alto 	

Section 3 - Regulatory Obligations

Please state where applicable:

3.1	The legal basis for the obligations to be imposed, maintained, amended or withdrawn (Articles 9 to 13 of Directive 2002/19/EC (Access Directive))	•	
3.2	The reasons for which the imposition, maintenance or amendment of obligations on undertakings is considered proportional and justified in the light of the	<p>Market if effectively competitive.</p> <p>Propose to withdraw obligations.</p>	<p>16 – 23</p> <p>29</p>

3.3	objectives laid down in Article 8 of Directive 2002/21/EC (Framework Directive). Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found		
	If the remedies proposed are other than those set out in Articles 9 to 13 of Directive 2002/19/EC (Access Directive), please indicate which are the 'exceptional circumstances' within the meaning of Article 8(3) thereof which justify the imposition of such remedies. Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found		

Section 4 - Compliance with international obligations

In relation to the third indent of the first subparagraph of Article 8(3) of Directive 2002/19/EC (Access Directive), please state where applicable:

4.1	Whether the proposed draft measure intends to impose, amend or withdraw obligations on market players as provided for in Article 8(5) of Directive 2002/19/EC (Access Directive)	Propose to withdraw obligations.	29
4.2	The name(s) of the undertaking(s) concerned	Not Applicable	
4.3	Which are the international commitments entered by the Community and its Member States that need to be respected	Not Applicable	