



Office of the Director of  
**Telecommunications  
Regulation**

# **Significant Market Power in the Irish Telecommunications Sector**

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Decision Notice: **D 10/01**

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# 1. Introduction

The Director of Telecommunications Regulation ("the Director") is responsible for the regulation of the Irish telecommunications sector. The greater part of this responsibility for sector regulation originates from European Community legislation subsequently transposed to national law.

The Open Network Provision (ONP) framework requires National Regulatory Authorities (NRAs) to designate certain operators as having Significant Market Power (SMP). Operators with SMP face additional obligations aimed, inter alia, at controlling the exercise of their market power.<sup>1</sup> The ODTR is the competent body in Ireland to make such designations and the ODTR is under obligations in both EU and national legislation to make notifications of those operators with SMP.

Following a consultation and review<sup>2</sup> of the sector in 1998, the Director made the first designation of operators with Significant Market Power ("SMP") in October of that year. In Decision Notice D4/98 Telecom Eireann (now *eircom*) was designated as having SMP in the fixed, leased lines and interconnection markets. Eircell was designated as having SMP in the mobile market.

In the Decision Notice D4/98 the Director signalled her intention to review SMP notifications at regular intervals to take account of competitive conditions. Decision Notice D15/99<sup>3</sup> contained the designations made by the Director as a result of the last review carried out by the Office of the Director of Telecommunications Regulation (ODTR) in 1999. At the time the Director designated the following operators as having SMP:

- *eircom* in the **fixed network and services** and **leased line** markets
- **Eircell** and **Esat Digifone** in the **mobile** market
- *eircom* and **Eircell** in the national market for **interconnection**

Since the decision notice in 1999 there have been no changes to the legislative framework and therefore no need for a further consultation. The methodology agreed in ODTR D15/99 is the

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<sup>1</sup> Condition 4.6 in the Annex to EU Directive 97/13/EC. Please refer to other regulations on page two.

<sup>2</sup> See Significant Market Power- Consultation Paper ODTR 98/25 and Decision Notice D4/98 Document ODTR 98/47 published at the ODTR web site: [www.odtr.ie](http://www.odtr.ie)

<sup>3</sup> Decision notice (D15/99) contains the report on the consultation process. Key issues arising from the consultation process, definitions and explanations of Level 1 and Level 2 analysis, and the SMP licensing regime are outlined in this document.

current methodology in use. The ODTR has undertaken a further review of SMP in the Irish telecommunications market. A questionnaire was sent to all the licensed operators for the period 1/1/2000 to 31/12/2000 and formed the basis of the current SMP review.

As with previous SMP reviews carried out by the ODTR, any operator designated with SMP as a result of the determination process is subject to a number of obligations. These obligations arise from certain EC Directives establishing the ONP framework and the corresponding regulations transposing them into Irish legislation is as follows:

1. Council Directive 97/33/EC on Interconnection in Telecommunications ("the Interconnection Directive") as transposed by the European Communities (Interconnection in Telecommunications) Regulations, SI No. 15 of 1998 ("the Interconnection Regulations");
2. Council Directive 97/51/EC (amending Council Directives 90/387/EEC and 92/44/EEC on Leased Lines ("the Leased Lines Directive") as transposed by the European Communities (Leased Lines) Regulations, SI No. 109 of 1998 ("the Leased Lines Regulations"); and
3. Council Directive 98/10/EC on Voice Telephony and Universal Service for telecommunications ("the Voice Telephony Directive") as transposed by the European Communities (Voice Telephony and Universal Service) Regulations, SI No. 71 of 1999 ("the Voice Telephony Regulations").

The obligations imposed vary depending on the relevant Directive and regulations and also the market in which an operator is designated as having SMP. These markets are defined in the relevant legislation and can be summarised as follows:

- the market for fixed public telecommunications networks and services;
- the market for leased line services;
- the market for public mobile telecommunications networks and services;
- the national market for interconnection;

Throughout this document, these markets are collectively referred to as the SMP markets.

## **2. Determining SMP**

### **2.1 Fixed Public Telephone Network and Services**

Following the consultation process outlined in 1998<sup>4</sup>, the Director decided that for the purposes of the Voice Telephony Regulations, shares of the market for voice telephony services should be assessed on the basis of *retail revenues* excluding the revenues related to the supply of terminal equipment. This method is in accordance with the SMP Explanatory Note issued by the EU Commission.<sup>5</sup> Shares of retail revenues provide a simple and reasonably effective measure of retail market power. Based on this method, *eircom* is the only operator with SMP at the retail market level with a market share of 89%.

The Interconnection Regulations require an assessment of market power at the *network level*. The SMP Explanatory Note suggests that, for the purposes of the implementation of the Interconnection Directive, it is best to use *revenues from terminating calls* to calculate market shares for both fixed public telephony networks and services. This measure should include a notional value for self-terminated own-network traffic and the termination of interconnection traffic received from other networks. Following the 1999 consultation exercise, the Director decided to adopt this approach.

Based on this method, *eircom* is the only operator with SMP at the network market level with a market share of 92%.

### **2.2 Mobile Public Telephone Network and / or Services**

For determining shares of the mobile public telephony network and/or services under the Interconnection Regulations, the Director has decided to use the same approach as in the fixed public telephony networks, that is, the revenues from terminating calls. This measure should also include a notional value for self-terminated own-network traffic and the termination of interconnection traffic received from other networks. Again, this is in complete agreement with the method proposed by the SMP Explanatory Note.

Eircell and Esat Digifone remain designated with SMP in the mobile market, with 62% and 38% respectively of the market.

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<sup>4</sup> See Significant Market Power- Consultation Paper ODTR 98/25 and Decision Notice D4/98 Document ODTR 98/47 published at the ODTR web site: [www.odtr.ie](http://www.odtr.ie)

### **2.3 Leased Lines**

Based on the 1999 consultation, the Director has decided that for the purposes of the Leased Lines Regulations, shares of the leased lines market are to be measured in terms of *shares of revenues from customers* (be they domestic or business customers or other operators). Again, this method is in accordance with the SMP Explanatory Note.

On this basis eircom has 96% of the market and it is the sole operator designated as having SMP in the leased lines market.

### **2.4 The National Market for Interconnection**

The Interconnection Regulations require the assessment of SMP in the national market for interconnection. Following the 1999 consultation, the Director has decided that Level 1 market shares are best measured by call termination revenues. Call termination revenues are calculated in the same way as for the fixed and mobile public telephone network/services markets under the Interconnection Regulations, namely including:

- calls terminating on networks (including fixed public telephony networks, mobile public telephony networks and leased lines) within Ireland regardless of their origin;
- an imputed value for self-terminated calls; but
- excluding traffic conveyed but not terminated by operators.

This procedure has been used for the determination of SMP in the interconnection market in Decision Notice D15/99. It is also in line with the approach suggested by the SMP Explanatory Note. On this basis, Eircell and Esat Digifone are designated with SMP in the National market for Interconnection, with market shares of 46% and 28% respectively.

Clearly Eircell with a market share of 46% far exceeds the 25% threshold for designation. With a market share of 28%, the presumption is that Esat Digifone would have SMP, but as the market share is close to the critical 25% required for designation, the Director considered whether further review should be undertaken in respect of designation. In 1999, Esat Digifone was just below the 25% threshold and the question as to whether its market share was transient which was relevant then is not so now.

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<sup>5</sup> Determination of Organisations with Significant Market Power (SMP) for implementation of the ONP Directives – European Commission, 1<sup>st</sup> March 1999.

Some consideration was given to level 2 analysis, however level 2 analysis is intended to provide guidance in cases where the market share of an operator in a level 1 market is close to the critical value of 25%, and there is a significant fear that the formulaic application of a 25% cut off could lead to an inappropriate designation. As there was not a significant fear of an inappropriate designation level 2 analysis was not considered necessary.

A consideration of the factors in Regulation 6 of the Interconnection Directive also confirm Esat Digifone's market power, in terms of turnover, access to financial resources and experience of the organisation concerned in providing products and services in the market. The control exercised or capable of being exercised on the means of access to end-users is well supported by its well established subscriber base and brand identity.

*eircom* have previously been designated in this market, however their market share, calculated using the procedure above, is 23% and therefore *eircom* as a result of this review is not designated with SMP in the national market for interconnection.

For the sake of clarity, it should be pointed out that the outcome of the analysis does not affect the existing obligations imposed on *eircom*, including obligations under the interconnection regulations. This is because *eircom* has been designated above as having SMP in the market for leased lines and the market for fixed network and services. Subject to special rules for mobile operators (which are not relevant in *eircom*'s case) the regulations do not distinguish between the obligations of an operator depending on the markets in which it has SMP. The outcome of the analysis would therefore not alter the rights and obligations of *eircom* or any other operator.

A further analysis - using for example volume measures where *eircom* have 77% of the call termination minutes in this market - might have led to a designation, but it is not necessary to decide at present. The Director reserves the right to revisit the designations in this market at any time if it is considered necessary to do so.

### 3. Conclusion

The designation of operators with Significant Market Power in relevant markets is very important for the regulatory regime and for the operators concerned, as it brings with it certain obligations in national and EU legislation. The Director has made the designations in this Decision Notice on the basis of the Level 1 analysis.

#### ***Designation 3.1***

*eircom* is designated as having SMP in the public fixed telephony services market with a market share of 89% (1999: 95%).

*eircom* is designated as having SMP in the public fixed telephony networks market with a market share of 92% (1999: 94%).

The above designations are made pursuant to regulation 5 of the Interconnection Regulations and Regulation 4 of the Voice Telephony Regulations.

#### ***Designation 3.2***

In the mobile public telephony networks and services market Eircell and Esat Digifone are designated as having SMP. Eircell has a market share of 62% (1999: 64%) and Esat Digifone has a market share of 38% (1999: 36%)

The above designations are made pursuant to regulation 5 of the Interconnection Regulations.

#### ***Designation 3.3***

*eircom* is designated as having SMP in the leased lines market with a market share of 96% (1999: 95%).

The above designations are made pursuant to regulation 5 of the Interconnection Regulations.

#### ***Designation 3.4***

In the national market for interconnection Eircell and Esat Digifone are designated as having SMP. Eircell has a market share of 46% (1999: 39%), and Esat Digifone has a market share of 28% (1999: 23%)

The above designations are made pursuant to regulation 5 of the Interconnection Regulations.

*Note: Market share calculations have been based on figures for the calendar year 2000.*



## **Annex 1: Calculation of Level 1 market shares**

### ***Leased Lines***

Shares were calculated on the basis of revenues accruing to network operators for the supply of leased lines to customers or other operators. Where a leased line was resold, the revenue was counted against the original supplier of the leased line rather than the reseller.

### ***Fixed public telephony network/services (retail level)***

Market shares were calculated on the basis of all retail revenues. This included line rental, connection and call charges, but excluded charges related to terminal equipment.

### ***Fixed public telephony network/services (network level), Mobile public telephony network/services (network level), National market for interconnection***

In these markets, shares were measured using call termination revenues. These were calculated by taking the sum of the following:

- Receipts from sales of primary interconnection to other operators;
- Sales of other interconnection services, including single and double-tandem interconnection as well as termination of incoming international traffic, valued at the average price of primary interconnection; and
- Self-terminated calls valued at the average price of primary interconnection.

The average price of primary interconnection was calculated by dividing receipts from sales of primary interconnection to other operators by the number of minutes of primary interconnection provided. This was undertaken separately for peak, off-peak and weekend periods.

The volume of self-terminated own-network traffic was calculated by subtracting the volume of traffic received from other operators for termination on the relevant operator's network from the total volume of traffic terminated on the relevant operator's network.