



Office of the Director of
**Telecommunications
Regulation**

DECISION NOTICE

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

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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 power¹. 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 review² 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 (now Vodafone) 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. The designations made by the Director as a result of the last reviews carried out by the ODTR, in 1999³ and 2001, are contained in the decision notices D15/99⁴ and D10/01 respectively. Following the ODTR’s last review in 2001 the following operators were designated as having SMP:

- *eircom* in the fixed network and services and leased line markets
- Vodafone and 0₂ (previously Esat Digifone) in the mobile market
- Vodafone and 0₂ 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 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 1/1/2001 to 31/12/2001 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 Condition 4.6 in the Annex to EU Directive 97/13/EC.

² ODTR Document No. 98/25 and Decision Notice D4/98

³ The review carried out in 1999 was based on revenue figures from April 1998 to March 1999; while the 2001 review was based on revenue figures for the calendar year 2000.

⁴ 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.

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

2.1.1 Retail Level

Following the consultation process outlined in 1998⁵, 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 Commission⁶. Shares of retail revenues provide a simple and reasonably effective measure of retail market power.

Based on this method, the Director wishes to reconfirm *eircom* as the only operator with SMP at the retail market level with a market share of 86%.

There is evidence of increasing competitive activity in the market for fixed public telephony services with a considerable number of licensed operators offering services, and a number of operators entering the market since our last review. OLOs share of the market has increased steadily since liberalisation; mainly attributable to Esat and Worldcom's increased share of the market. OLOs share of the market has increased from 5% in the 1999 designation to 14% in 2002.

2.1.2 Network Level

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 the fixed public telephony networks. 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, the Director wishes to reconfirm *eircom* as the only operator with SMP at the network market level with a market share of 88%.

OLOs currently account for 12% of the market, increasing from 6% in 1999.

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 same approach is used 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

⁵ ODTR Document No. 98/25 and Decision Notice D4/98

⁶ Determination of Organisations with Significant Market Power (SMP) for implementation of the ONP Directives – European Commission, 1st March 1999.

traffic received from other networks. Again, this is in agreement with the method proposed by the SMP Explanatory Note.

Vodafone and 0₂ remain designated with SMP in the mobile market, with 62% and 37% respectively of the market.

The SMP mobile operator's share of the market has remained relatively stable since liberalisation. Vodafone's share of the market has decreased by 2% since 1999, while 0₂'s share of the market has increased by 1% since 1999. Since our last SMP review a third operator, Meteor, has entered the mobile market in Ireland. During the year Meteor gained 1% of the market measured by call termination revenues⁷.

2.3 Leased Lines

Based on the 1999 consultation and for the purposes of the leased line regulations, market shares are measured by revenues raised by network operator regardless of the nature of the customer (Retail or OLO). Revenues from the reselling of leased lines are not included, only revenues from the original rental or sale by network operator are included. Again, this method is in accordance with the SMP Explanatory Note.

On this basis *eircom* has 85% of the market and remains designated as having SMP in the leased lines market.

Consistent with our 1999 and 2001 SMP reviews, *eircom* remains the sole operator having SMP in the leased lines market. OLOs share of the market has increased by 10% since 1999. There are five OLOs offering leased lines on their own network.

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 and D10/01. It is also in line with the approach suggested by the

⁷ Meteor commenced its operations in the Irish Market on the 22nd February 2001, and the 1% relates to the calendar year 2001.

SMP Explanatory Note. On this basis, the Director wishes to reconfirm the designations of Vodafone and 0₂ with SMP in the National market for Interconnection, with market shares of 49% and 29% respectively.

Measured by value, Vodafone and 0₂'s share of the market has grown consistently since our review in 1999. Together both mobile operators account for 78% of the national market for interconnection. Vodafone's and 0₂'s share of the market increased by 10% and 6% respectively since the ODTR's SMP review in 1999.

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 directive (97/33/EC) as imposed by SI 15/1998. This means that the obligations do not vary according to the market in which the operator has SMP. The outcome of the analysis does not therefore alter the rights and obligations of *eircom* or any other operator.

A further analysis - using for example volume measures where *eircom* have 69% of the call termination minutes in this market - might have led to a designation. 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. After carrying out a review of the market the Director wishes to reconfirm *eircom*, Vodafone and 0₂ as operators having SMP in the Irish Telecommunications Market.

Designation 3.1

***eircom* remains designated as having SMP in the public fixed telephony services market with a market share of 86% (2001 designation: 89%).**

***eircom* remains designated as having SMP in the public fixed telephony networks market with a market share of 88% (2001 designation: 92%).**

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 Vodafone and 0₂ remain designated as having SMP. Vodafone has a market share of 62% (2001 designation: 62%) and 0₂ has a market share of 37% (2001 designation: 38%)

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

Designation 3.3

***eircom* remains designated as having SMP in the leased lines market with a market share of 85% (2001 designation: 91%⁸).**

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

Designation 3.4

In the national market for interconnection Vodafone and 0₂ remain designated as having SMP. Vodafone has a market share of 49% (2001 designation: 46%), and 0₂ has a market share of 29% (2001 designation: 28%)

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 2001.

⁸ In D10/01 *eircom*'s share of the leased line market was reported as 96%. However, this figure has been adjusted to 91% following the correction of a discrepancy in last year's figures. It should be noted that the adjustment in *eircom*'s share of the leased line market does not in any way affect the designations contained in D10/01, as its market share would still have been considerably greater than the 25% threshold for determining SMP.

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. The total value of the market is the revenue collected from residential and business retail customers in respect of direct supply and from sales to other licensed operators for connection and rental of national and international leased lines.

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. For example, CPS revenues from OLOs are attributed to call charges for OLOs.

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.