



Submissions received in relation to Consultation

**Input to Consultation Document  
No.09/86.Licensed Line Markets:Review of  
Urban Centres**

**Submissions received from respondents**

<b>Document No:</b>	<b>10/12a</b>
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<b>Response to Consultation:</b>	<b>10/12 (D02/10)</b>

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## **1 Eircom**

**eircom Ltd.**

**Response to ComReg  
Consultation and Draft Decision  
09/86 of 17<sup>th</sup> November 2009**

**Leased Lines Market  
Review of Urban Centres**

## DOCUMENT CONTROL

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## Introduction

This document constitutes eircom's response to ComReg's Consultation and Draft Decision" paper 09/86 in relation to the list of urban centres which is used to define the boundary between the Leased Lines markets for Wholesale Trunk Segments and Wholesale Terminating Segments. The original list of 15 urban centres was published in ComReg Decision Notice D06/08 (Document 08/103 of 22<sup>nd</sup> December 2008). ComReg is now consulting on whether or not this list should be expanded to include another 7 specific additional urban centres.

## Executive Summary

[✂]

In D06/08, ComReg has determined that regulation of leased lines should be limited to the market for Wholesale Terminating Segments, and that the boundary between Terminating Segments and Trunk Segments should be determined with reference to a specific list of urban centres.

eircom believes that the current list of urban centres which define the Trunk Market is too limited and that the competitive situation in other urban centres merits their inclusion on the list as well. Specifically we believe that strong cases can be made for the inclusion of all 7 centres that ComReg is consulting upon in this Consultation Paper. Each of these locations is addressed in turn below.

### **ComReg's Method of Assessing Competition**

Before commenting on the specifics of the current Consultation, eircom must point to an inconsistency in Decision Instrument D06/08 which is highlighted in the current Consultation. At section 8.2 of Decision D06/08, ComReg state that "*Trunk segments connect high densities of traffic via high capacity connections, between and within major centres of population. OAO investment on these routes reflects the difference in the underlying economic conditions of supply and demand*". However, at section 3.2 of the actual Decision Instrument (page 19), ComReg state that "*The [wholesale terminating segments of leased lines] Market excludes circuits which run between any of the urban centres listed in Annex 1 to this Decision Instrument and which have a capacity equal to or greater than STM-1 (155Mb/s). For the avoidance of doubt, intra-urban routes entailing circuits which run between exchanges located in the same urban area are included. The table contained in Annex 1 may be amended from time to time by ComReg.*". There is clearly conflicting views expressed in these two clauses as to whether intra-urban capacity at STM1 and greater is included in the trunk market or not.

In section 3.6 of 09/86, ComReg states that “*ComReg’s previous analysis suggests that, for connectivity to and from an urban centre to fall within the wholesale trunk market, there are likely to be two or more sets of competing infrastructure present between the urban centres*”. While eircom entirely agrees that this condition would indicate that the urban centre should fall within the wholesale trunk market, ComReg appear to apply this test in a manner which requires two alternative infrastructures as well as eircom infrastructure to be in place before considering that sufficient competitive conditions may exist to remove regulatory obligations. eircom does not agree that this is necessarily the case as will be demonstrated later in this response.

ComReg further claims that, in addition to the presence of alternative infrastructure, that infrastructure must be located sufficiently close to eircom infrastructure to arrange interconnection with the eircom terminating segment. eircom would argue that, in instances where alternative terminating segment infrastructure such as the MANs is available, then interconnection with eircom is not an essential element for an alternative trunk network supplier. The examples provided below clearly highlight that alternative communications companies are active in certain MAN locations and have managed to meet their customer requirements without the necessity to interconnect with the eircom network.

Clonmel is a good example of an urban centre which is served by only one alternative trunk fibre operator but where the majority of market demands are, most likely, carried by an alternative network. The analysis contained in the previous eircom submission showed that of the demands originated on the eircom network within Clonmel, almost 40% are carried from Clonmel on alternative infrastructure. However, there is an extensive phase 1 MAN in Clonmel which has been interconnected to the BT fibre network for several years. While eircom has no visibility of the utilisation levels of this network, if we assume that there are only 20 customers connected, then the percentage of market demand carried by non-eircom infrastructure would rise to 57%.

The Department of Communications, Energy and Natural Resources in their Value for Money and Policy Review of the M.A.N’s, published in June 2008, state that “*Importantly also, the IDA are unequivocal in their view that the MANs have provided their client customers with much greater choice, service and better prices when it comes to broadband (and telephony) connectivity. On that basis, the MANs have contributed significantly to the competitiveness of regional centres in Ireland and thus their attractiveness to international foreign direct investment, both new and existing. The networks continue to experience growth in use, and have been found to result in significant cost saving to operators, and to have introduced an important degree of competition in the market.* This report further states on page 48 that there are 3 communications companies using the MAN’s to deliver services to end customers on the Clonmel MAN.

This report further states in Table 4.1 that there are multiple operators active in other urban centres addressed in this Consultation as set out below.

Table 1

Urban Centre	Number of Operators
Athlone	2
Portlaoise	4
Carlow	3

This table when combined with the information previously supplied by eircom clearly proves that interconnection with the eircom Terminating Segment is not necessary where an alternative supplier of Terminating Segments exists.

It is therefore imperative that ComReg, in its analysis of the market are fully aware of and take account of all competing infrastructure at the various locations (UPC, MANs, etc.), so that they can carry out a full and accurate analysis of the competitive activity at the various locations. ComReg has extensive data gathering powers which can be used by ComReg to ensure that it has all the relevant data in relation to what competing infrastructure is in situ at each urban centre (not just the 7 locations that are the subject of the current Draft Decision).

**Provided below is a brief summary of the situation in relation to each of the individual urban centres**

**Note – In the analysis below, in the whole, CIE is the same network as BT.**

#### **1. Athlone**

[http://www.dcenr.gov.ie/NR/rdonlyres/A5225D2C-D83D-481F-B821-D5C6E572BD21/0/CIE\\_Fibrenetwork.pdf](http://www.dcenr.gov.ie/NR/rdonlyres/A5225D2C-D83D-481F-B821-D5C6E572BD21/0/CIE_Fibrenetwork.pdf) indicates that the Dublin-Galway CIE fibre optic network, which is operated by BT serves Athlone.

There is an extensive Metropolitan Area Network available in Athlone on which 2 communications companies are actively supplying services.

In addition, BT has extensive interconnection with the eircom terminating segment in Athlone.

UPC infrastructure serves Athlone.

#### **2. Bray**

[http://www.dcenr.gov.ie/NR/rdonlyres/A5225D2C-D83D-481F-B821-D5C6E572BD21/0/CIE\\_Fibrenetwork.pdf](http://www.dcenr.gov.ie/NR/rdonlyres/A5225D2C-D83D-481F-B821-D5C6E572BD21/0/CIE_Fibrenetwork.pdf) indicates that the Dublin-Wicklow CIE fibre optic cable network, which is operated by BT serves Bray.

[[http://www.esbtelecoms.ie/infrastructure/national\\_fibre\\_optic\\_network.htm](http://www.esbtelecoms.ie/infrastructure/national_fibre_optic_network.htm) indicates that the ESB national fibre also serves Bray].



### **3. Carlow**

There is an active MAN in Carlow with 3 communications companies providing services.

[http://www.dcenr.gov.ie/NR/ronlyres/A5225D2C-D83D-481F-B821-D5C6E572BD21/0/CIE\\_Fibrenetwork.pdf](http://www.dcenr.gov.ie/NR/ronlyres/A5225D2C-D83D-481F-B821-D5C6E572BD21/0/CIE_Fibrenetwork.pdf) indicates that the Dublin-Waterford CIE fibre optic cable network, which is operated by BT, serves Carlow.

UPC infrastructure serves Carlow.

### **4. Clonmel**

There is an active MAN in Clonmel with 3 communications companies providing services.

[http://www.dcenr.gov.ie/NR/ronlyres/A5225D2C-D83D-481F-B821-D5C6E572BD21/0/CIE\\_Fibrenetwork.pdf](http://www.dcenr.gov.ie/NR/ronlyres/A5225D2C-D83D-481F-B821-D5C6E572BD21/0/CIE_Fibrenetwork.pdf) indicates that the Limerick-Waterford CIE fibre optic cable network, which is operated by BT, serves Clonmel.

UPC infrastructure serves Clonmel.

### **5. Naas**

[\[http://www.esbtelecoms.ie/infrastructure/national\\_fibre\\_optic\\_network.htm](http://www.esbtelecoms.ie/infrastructure/national_fibre_optic_network.htm) shows that the ESB national fibre serves Naas

The CIE fibre optic cable from Dublin to Galway/Waterford/Tralee goes through Sallins, which is adjacent to Naas. This coincides with the BT fibre network.

UPC infrastructure serves Naas.

### **6. Portlaoise**

[\[http://www.esbtelecoms.ie/infrastructure/national\\_fibre\\_optic\\_network.htm](http://www.esbtelecoms.ie/infrastructure/national_fibre_optic_network.htm) shows a Point of Presence in Portlaoise for ESB national fibre].

[http://www.dcenr.gov.ie/NR/ronlyres/A5225D2C-D83D-481F-B821-D5C6E572BD21/0/CIE\\_Fibrenetwork.pdf](http://www.dcenr.gov.ie/NR/ronlyres/A5225D2C-D83D-481F-B821-D5C6E572BD21/0/CIE_Fibrenetwork.pdf) indicates that the Dublin-Tralee CIE fibre optic cable goes through Portlaoise, so BT is here.

There is also an active MAN in Portlaoise with 4 communications companies providing services.

UPC infrastructure serves Portlaoise.

**7. Swords**

Aurora has a cable network serving Swords.

Inland Fibre Telecom announced plans to build fibre into Swords for completion in 2009.

UPC infrastructure serves Swords.

## **EIRCOM RESPONSES TO COMREG QUESTIONS**

- 1. Should any or all of the proposed urban centres be appended to the list set out in Annex A of the Decision Instrument? If you agree, please provide reasons why this is the case.**

As outlined above, we believe that all 7 urban centres listed in ComReg Draft Decision 09/86 should be added to the original list of 15 urban centres in the Annex to Decision D06/08.

The reasons for this belief are outlined above.

- 2. Are there reasons why these urban centres should not be appended to the list set out in Annex A of the Decision Instrument?**

All 7 additional centres should be added to the original list of 15 centres. Indeed, it is expected that this list will expand further as the level of competition increases going forward.

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

eircom has no issues with the content of the Draft Direction, from a legal, technical or practical perspective.

[X]

**2 BT**



**BT Communications Ireland Ltd (“BT”) response to the  
ComReg Consultation and Draft Decision on:  
Leased Line Markets: Review of Urban Centres**

**10th December 2009  
Issue 1  
Non – Confidential Version**

## **Introduction**

BT welcomes and considers this an important and timely review given the current serious difficulties and further potential market problems expected with the introduction of eircom Next Generation Services. Traditionally ComReg has considered the Wholesale Terminating Segment of Leased Lines Market and Wholesale Trunk Segment of leased lines market to be based on historic Synchronous Digital Hierarchy (SDH) based services; however this technology is rapidly becoming obsolescent with the widespread growth and future use of Ethernet technologies.

BT acknowledges that this consultation is primarily concerned with the wholesale trunk segments of leased lines and a key constituent of the trunk market is the point of handover between the terminating and trunk segment leased line markets. I.e. The handover point also forms part of the wholesale terminating segment of leased lines market as highlighted by the extracts from the obligations published in D06/08 extracted below.

**Extract from D06/08 and the urban review consultation. (Highlighting added.)**

8.2 The boundary between trunk and terminating is not determined by any operator’s specific network topology. Trunk segments connect high densities of traffic via high capacity connections, between and within major centres of population. OAO investment on these routes reflects the difference in the underlying economic conditions of supply and demand. Terminating segments generally supply lower densities of traffic on a less aggregated basis. **Everything, outside of the trunk segment market, and including the main points of handover, is considered to be part of the terminating segment market.**

Hence for the review to consider further de-regulation of urban areas there must by inference be no issues with the handover demarcation

point. However, we believe that based on eircom’s track record with regards to its wholesale customer’s and the likelihood of disputes and difficulties arising around NGN structures and handover points that this consultation is premature. No change should take place until NGN discussions have developed further

To note that Wholesale terminating segments of leased lines based on NGN Ethernet technology are clearly defined within the Wholesale terminating segments of leased lines as extracted from the decision notice D06/08 below.

**Extract from D06/08 and the urban review consultation. (Highlighting added.)**

*8.5 All products offering fixed permanent, point-to-point, broadly symmetric termination are in the same wholesale terminating segment market, regardless of the underlying technology. For the avoidance of doubt, this means that services delivered using Ethernet fall into this market.*

BT therefore is of the view that for ComReg to de-regulate urban areas for the trunk market there must be no issues surrounding the handover point between the wholesale terminating of leased lines market and the wholesale trunk segment market. Given wholesale terminating segments of leased lines using NGN Ethernet fall within the scope the terminating segment market defined, issues surrounding the handover of wholesale terminating segments of leased lines have to be considered in this review. As such it is too premature to conclude this review and no changes should take place at this time.

## **Summary of market problems with the handover of Wholesale Terminating Segments of leased lines using Ethernet technology.**

To date BT and other operators have had to lodge formal disputes and complaints with ComReg before eircom made any attempt to offer handover to wholesale termination segments of leased lines using Ethernet and BT perceives that further complaints and disputes will be required for eircom to offer fit for purpose handover products into this wholesale market. It is very clear to BT that the supply and in effect handover of wholesale Terminating Segment of leased lines market is not functioning correctly and hence there is no basis for de-regulation of the urban areas given significant market problems in the handover of wholesale terminating segments of leased lines.

Moreover BT is of the strong view that ComReg should now be consulting with a view to re-regulating the existing defined urban areas given the debacle that is handover to wholesale terminating segments of leased lines using Ethernet.

In conclusion there is now a significant market failure in the handover of wholesale terminating segment of leased lines using Ethernet technology and for that reason all de-regulatory activity should cease until such has been rectified. Moreover, ComReg should now be consulting on re-introducing regulation given this market failure.

As the market is not defined in terms of specific technologies, i.e. there is no regulated SDH wholesale terminating segment of leased lines market or a different market for Ethernet wholesale terminating segments of leased lines, the BT comments apply to the whole market.

### **Supporting Details of market failure**

The ComReg review appears to be largely concerning itself with the world of Partial Private Circuits (PPCs) and traditional SDH connectivity which although important are extremely expensive and rapidly becoming obsolescent. The main concern for the industry today is the handover of wholesale terminating of Leased lines using Ethernet technology as this is now the defacto technology around the world and eircom’s planned technology for their NGN in Ireland. Ethernet offers very significant cost savings to both operators and customers and offering Ethernet based solutions is becoming the norm for business solutions. There is clear and demonstrable evidence that the eircom NGN is based on Ethernet technology, not least that they have told the industry such in numerous presentations.

Therefore the key to this ComReg consultation is whether there exists fair and reasonable handover point between the wholesale trunk segment and wholesale Terminating segments of leased lines market using Ethernet. The answer to this question is a very emphatic NO for the following reasons:

#### **Formal Disputes**

- Evidence of eircom evading fair and reasonable handover to wholesale terminating segments of leased lines using Ethernet can be observed by the need and resolution of two formal disputes that COLT and BT took against eircom in 2007 which only recently concluded in 2009 with ComReg Determining both disputes in favour of BT and COLT.

Disappointingly by the time the Determinations were made by ComReg, the market had moved on to Gbit/s services however eircom insisted on only supplying the outdated 10Mbits handover solution requested back in 2007. In BT’s view this was wholly inadequate and a demonstration of behaviour consistent with delaying the market and restricting competition in the wholesale



terminating segment market. ComReg will be aware that eircom were offering Gbit/s retail leased lines services in the absence of wholesale terminating segments of leased lines being available.

#### Formal Complaints

BT had to lodge a new complaint in the summer of 2009 following the ComReg Determination and the failure of eircom to offer up-to date Gbit/s or even 100s Mbit/s handover wholesale terminating segments of leased line services using Ethernet. Shortly after this complaint was submitted eircom published details of what it calls its Ethernet transition products. In BT’s view these products were offered with serious handover defects, not least that the quality of service could not be assured and pricing issues. BT has had no option but to issue yet another formal complaint with the ComReg concerning these matters.

#### Continuation behavioural problems with NGN

- Confidential text removed

BT is simply seeking handover to eircom Ethernet based terminating segments and associated facilities on fair and reasonable terms and functionality to enable BT and other operators to offer retail services and facilities and to compete with eircom’s downstream businesses. To date this handover has not happened and from past experience of LLU and other industry discussions BT’s view is that this aim will be frustrated by eircom well into 2010 and potentially 2011.

In conclusion eircom is not providing the required fit for purpose handover to wholesale Terminating Segment of leased lines using Ethernet on fair and reasonable terms. As handover is defined in the wholesale terminating segment market, but is also required for the functioning of the wholesale trunk market; handover issues must be fully resolved before de-regulation can continue. Therefore BT can find no justification to define further de-regulated urban areas as it’s not reasonably possible for other providers to gain fair and reasonable handover to wholesale terminating segments of leased lines from eircom using Ethernet technology areas and ComReg should be seriously reviewing the areas de-regulated to date.

## **Other considerations for Wholesale Trunk Segments Availability and Connectivity**

To explain further why these urban centres should not be de-regulated BT proposes four simple and common sense tests to establish whether the market is working.

### ***ComReg Approach.***

The perception that BT has of the ComReg test is that the basis for the de-regulation of an urban area appears to be that a provider other than eircom has infrastructure in the local area, and thus there is competitive supply. BT considers that this is wholly incorrect and offers a more complete four step approach based on five common sense questions.

### ***The 5 Step Test***

1. Are there three or more providers in the location?
2. Does another operator have network capability in the urban area?
3. Does the operator have fibre access to the eircom exchange? and,
4. Does eircom provide the full range of fit for purpose handover services and associated facilities to enable other providers to fully avail of the eircom access network to compete in downstream markets?
5. Is there connectivity to the other urban areas?

#### **Test 1 – Are there three or more competitors in a location.**

BT considers that the existence of two operators in a location is not the correct basis to assume competition exists. For example in the mobile world at least three operators are considered for a competitive market and some years ago the Director General of the then Oftel indicated during the time of the duopoly review in the UK that at least three competitors are required for competition.

#### **Test 2 – Does another operator have fibre access to the eircom exchange**

It is quite possible that an operator other than eircom has entered into an a geographic location which ComReg define as an urban centre; however, it is equally possible that the operator has done so to serve a large company or small number of large companies with dedicated very high bandwidth fibre access.

The supply of service to a small number of very high bandwidth customers does not mean the ubiquitous supply of services in that area as the cost of rolling out a new access network is economically prohibitive. For example lower bandwidth access customers, including but not limited to the 2Mbit/s customers, would not be served by this other operator infrastructure as the economics of digging to those customers would be prohibitive.

The only operator that has ubiquitous access in the urban area is clearly eircom with its existing telecoms duct access network and connectivity back to its local exchanges. Hence although an operator may have served some business customers in an urban area, the only way to achieve any form of economic access is for the operator to access and obtain handover is via the eircom exchange through some form of carrier aggregated handover interface, hence BT would expect that ComReg should be testing for this access facility to the eircom wholesale terminating segments. Tests 3 and 4 below are aimed at testing the availability of this.

### **Test 3 - Gaining access to the eircom site.**

- Commercially the other operator may not wish to access the eircom local exchange for example its deployment is likely to be green field or semi-green field and its customers may be located on a business park on the outskirts of the town with the eircom exchange located in the town centre based on historical incumbent deployment.
- Entering eircom’s exchanges is not straight forward given local planning rules and the need to dig the roads in urban shopping centres etc. It’s also not cheap to do!
- In a competitive environment standard commercial practices would be envisaged including the refusal supply. It is quite possible if such a supply would act to undermine the investment made by the operator a request to use their infrastructure may be refused, or more likely offered on uneconomic terms. Hence although there is a possibility service will be offered there is no guarantee that an operator will provide services.
- BT acknowledges that eircom could offer a customer sited solution at cost to the other operator.

Therefore once an operator has reached the eircom exchange the next test is whether connectivity to the eircom wholesale terminating segments of leased lines is possible and that is the next test.

**Test 4 Does eircom provide the full range of fit for purpose handover services and associated facilities to enable other providers to fully avail of the eircom access network to compete in downstream markets?**

Based on the earlier discussion in this submission concerning the market failure of gaining fair and reasonable handover to wholesale terminating segments of leased lines using Ethernet BT concludes that fit for purpose handover services between the wholesale trunk market and the wholesale terminating segment market do not exist and are not likely to exist for the foreseeable future in Ireland.

**Test 5 - Providing connectivity to the other urban areas.**

The services addressed by this review are point-to-point dedicated services. However, if an operator were to achieve open wholesale access in one urban area the ability to offer the service would also depend on being able to offer the other end of the service and the connectivity between the two. Given both the connectivity problems concerning Ethernet and the very small list of urban areas it's highly unlikely that a single provider, other than eircom, would be able to offer both ends of the services. BT notes that the review is about “connectivity” and its BT's view that this connectivity has not been demonstrated to exist as there is no demonstration that both ends can be connected. In fact, given the behaviour and obstruction of eircom concerning their Ethernet solutions, which form the basis for all future products, connectivity to eircom at any level is increasing difficult.

**Response to the questions**

**Q. 1. Should any or all of the proposed urban centres be appended to the list set out in Annex A of the Decision Instrument? If you agree, please provide reasons why this is the case.**

Response 1. None of the proposed exchanges should be appended to the list set out in Annex A of the draft Decision Instrument as eircom's obstruction of the wholesale Ethernet market has removed the ability of the other operators to fairly and reasonably gain handover to wholesale terminating segments of leased lines for the provision of Ethernet services and associated facilities to customers. BT considers that ComReg should now be consulting on removing sites from the existing list in Annex A of the Draft Decision rather than adding to it. BT draws ComReg to its

discussion on the market failure of handover to Ethernet Terminating segments of leased lines and its Analysis of Access Availability and Connectivity earlier in this response.

**Q. 2. Are there reasons why these urban centres should not be appended to the list set out in Annex A of the Decision Instrument?**

Response 2. Please see our discussion on the failure of handover to the terminating segments of the leased lines market and access availability and connectivity.

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

Response 3. BT is of the view that the draft decision notice should be amended to remove the existing sites listed in Annex A of the draft Decision Notice. The emergence of Ethernet as the key technology for these services has set connectivity to wholesale terminating segments of leased lines back several years as eircom utilise anti-competitive behaviour to prevent other operators who have invested in infrastructure from gaining fair and reasonable access to the local access network to enable them to offer comparable retail services to those offered by eircom’s downstream businesses.



### **3 IrelandOffline**

## **IrelandOffline Response To Consultation 09/86 On Large Scale Wholesale and Retail National Circuits Above 155mbits**

In reponse to <http://www.comreg.ie/fileupload/publications/ComReg0986.pdf>

**(Non Confidential)**

### **Introduction**

We would like to take this opportunity to thank Comreg, in advance, for allowing us to respond to this consultation. We hope that this document will allow for proper discussion and release of the relevant details and documentation into the public domain so that a thorough examination of all the details can be undertaken.

### **Competition issues**

We, in IrelandOffline, are of the opinion that this consultation is a window-dressing exercise and that the market is clearly not as competitive as Comreg wishes to claim. We do not believe that the market is fully competitive, as we are being led to believe. This is a core issue that needs to be addressed and tackled urgently.

We can see why Comreg would like to claim that the Irish telecommunications landscape or indeed any aspect of the Irish market is a wholly, or largely, functional market and that no undertaking operating within it has significant market power.

Sadly we would observe that in order to do so, any analysis supporting such a position would trend towards a lack of rigour in order to achieve the desired result.

Our view is that a reasonably competitive market exists when certain conditions are satisfied and where this is the case, Comreg is correct in granting specific geographic reliefs from an SMP designation.

### **National Spatial Strategy**

We are most concerned that Comreg have self-admittedly taken no account of the National Spatial Strategy and have not tiered their market analysis, if any, to the different requirements of different towns as outlined in that strategy.

At the most basic level, and following rather than ignoring the National Spatial Strategy:

1. There is a requirement for a hub and spoke analysis to ensure that not all traffic is needlessly back boned and routed to Dublin; and priced as 2 full national traversals in many cases.
2. There should be a demonstrably higher threshold for a declaration of competitiveness in a gateway such as Galway, Cork and Dundalk, as against a hub town such as Ennis.
3. Gateway to Gateway paths, and not via Dublin, should be examined in detail. It is essential that this be done for each set of contiguous gateways towns.



## **IrelandOffline Analysis**

On a National Scale there are only 4 networks in Ireland. Unlike Comreg we are happy to name them:

1. eircom
2. ESB
3. BT
4. UPC

These are the only carriers with sufficient fibre either owned, or leased, by IRU to offer competitive pricing and a number of them are present some semblance of a market (other than a basic cartel) may be inferred to exist.

There are two significant national wireless networks but as they are frequently dimensioned at 155Mbits maximum as they evidently do not have the capacity to lease all of that out in a given locus and cannot be seen as having significant market power in the provision of circuits above 155Mbits.

These currently are:

1. Digiweb
2. Airspeed.

Our contention is that a **competitive market exists where 3 of the named fibre carriers** have:

- A) Lit capacity of 1 x 2.5Gbit wavelength or higher in a town and
- B) Where a MAN is functional in a town along with
- C) A contiguous mast and a co-location to Tier1, or Tier2, data centre standards where route redundancy may be implemented.

In that case, Comreg should forbear where eircom conclusively demonstrate, additionally, that they have presented capacity to that co-location and have a Wholesale product available in a given town, scheduled in an annex to this document allowing a cost effective route redundancy implementation, via the co-location, to a secondary carrier. This would suffice even if that secondary carrier does not guarantee 155Mbits but a significant fraction of that bandwidth of not less than 30% of the dimension of the primary port.

### **Further analysis required**

IrelandOffline urge Comreg to go back and do this analysis properly, on these stated grounds:

1. Comreg must comply with the National Spatial Strategy and must show such compliance.
2. Availability of Tier 1 or Tier 2 co-location has not been examined by locus.
3. Route Redundancy to that co-location has not been examined.
4. Verification of the minima of lit wavelengths in a given town has not been carried out.

5. Confirmation of completion of Wholesale Route Redundancy circuits to the co-location or openly accessible mast is required together with a Published Product Offer at the Wholesale Level.

The *apparent presence* of an alternative network on the alleged say-so of eircom is insufficient grounds for conducting this consultation, due to the absence of a proper and due diligence examination of the facts on the ground. Abstract desktop surveys from an office block in Abbey street is not an adequate form of regulation and especially not so in Ireland.

We do not believe that any purpose is served by not stating currently available bandwidth minima and maxima by town, e.g. 2.5Gbits, on commercial or any other grounds that we can think of.

### **Disappointment**

We are disappointed that Comreg have chosen not to examine the provisioning of masts and co-locations in any of these towns. However we have examined them ourselves. Absent the Wholesale Route Redundancy to a co-location we must find most of the initial list to be partially competitive (PC), rather than competitive (C) or not competitive (NC) unless we are certain that a wireless option greater than STM1 (typically STM4) is also available. We apply the same qualifiers to the new list.

Our analysis of the initial list:

Arklow, PC  
Carrick-on-Shannon, PC to C  
Cork C,  
Drogheda, NC to PC  
Dublin, C ( in parts, mainly around the M50)  
Dundalk, C  
Ennis, PC  
Galway, C  
Letterkenny C (assuming Kelvin is lit, not right now)  
Limerick, PC  
Mullingar, PC to C  
Shannon, PC  
Sligo, PC  
Waterford PC  
Wexford. PC

Our analysis of the supplementary list:

Athlone PC to C  
Swords PC to C  
Bray NC  
Clonmel NC  
Naas PC  
Carlow C  
Portlaoise C

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## **4 Vodafone**



**Vodafone Response to the ComReg Consultation on Leased Line Markets: Review of Urban Centres**

## Introduction

Vodafone welcomes the opportunity to respond to this ComReg consultation on Leased Line Markets: Review of Urban Centres and the proposal to extend the list of Urban Centres identified as falling within the market for Wholesale Trunk Segments of Leased Lines.

Vodafone agrees with the market definition for Wholesale Trunk Segments of Leased Lines and the boundary split between Trunk and Terminating Segments. In addition, Vodafone also agrees that any extension of the list of Urban Centres should analyse whether there are “... *two or more sets of competing infrastructure present between the urban centres*” and that “*those intending to use this infrastructure must be able to do so in a technically and economically efficient manner*”.

Vodafone believes that the analysis set out in the consultation fails to demonstrate that the centres proposed to be added to the list meet the analytic criteria set out in paragraph 3.6 of the consultation document.

Connectivity between the Urban Centres listed in the consultation currently lies entirely in the market for Wholesale Terminating Segments of Leased Lines. The proposed extension of the list of Urban Centres comprising the Trunk Segment would have the effect of removing connectivity between these centres and the existing centres on the list from the Terminating Segment Market and would move it to the Trunk Segment Market. That is it would move such connectivity from a regulated market to an unregulated one. While the market definition and the wording of the market remedies remain unchanged the fact that the proposed change means that the remedies no longer apply in a given circumstance is unambiguously a change to eircom’s obligations.

ComReg has designated eircom as having Significant Market Power (‘SMP’) on the market for Wholesale Terminating Segments of Leased Lines and has imposed obligations of Access, Transparency, Price Control and Non-discrimination to address market problems. This designation and the associated remedies have only been in place for 12 months. An effective reduction in the scope for application of these remedies should only be countenanced where ComReg has clear and unambiguous evidence that the market failure which justified their imposition to that portion of the market in the first instance no longer exists. To do otherwise risks entrenching the SMP position of eircom in the market for Wholesale Terminating Segments of Leased Lines.

In this regard account must be taken of the fact that this review is prompted by a request from the SMP operator to effectively move the boundary between regulated and unregulated markets so as to decrease the scope of the former and increase the scope of the latter. As this proposal would be to the benefit of the SMP operator it is Vodafone’s view that any such change would have to be objectively justified in the clearest terms so as not to disadvantage non-SMP operators in the market.

Given that the consultation fails to set out an analysis which meets the specified analytic criteria the evidence has not been presented which would justify the addition of the proposed centres to the list in Annex A of D06/08.

## Response to Consultation Questions

**Q.1. Should any or all of the proposed urban centres be appended to the list set out in Annex A of the Decision Instrument? If you agree, please provide reasons why this is the case.**

Vodafone believes that the proposed urban centres should not be appended to the list in Annex A of the Decision Instrument.

**Q2. Are there reasons why these urban centres should not be appended to the list set out in Annex A of the Decision Instrument?**

Paragraph 3.6 of the consultation outlines two separate analytic tests which ComReg used in its original formulation of the list of Urban Centres that fall within the market for Wholesale Trunk Segments of Leased Lines and which it proposes to also apply in considering eircom's request to extend this list to a larger number of centres. The first is summarised by ComReg as that there must be "... *two or more sets of competing infrastructure present between the urban centres*" and the second that "*those intending to use this infrastructure must be able to do so in a technically and economically efficient manner*".

Considering the first test the market definition clearly sets out that the Wholesale Trunk Segment market is characterised by the availability of competing connectivity between urban centres. Given eircom's request for the inclusion of the proposed urban centres in Annex A, and the fact that it operates a single national network, Vodafone believes that it is likely that eircom has in place connectivity between all of the centres (existing and proposed). The consultation does not set out an analysis of the competing connectivity and contains no analysis of whether this connectivity can be technically and economically realised in a sufficiently short period so as to represent a competitive constraint on eircom.

The consultation does not consider whether single source Altnet connectivity exists to provide matching connectivity to eircom. If this connectivity does not exist the consultation does not consider what would be required to provide such connectivity. Even if partial point to point connectivity from two Altnets could be combined to provide matching connectivity there is no assessment of the commercial and other enablers that would have to be put in place to realise such connectivity

In any event if such connectivity does not exist at the present time it is not clear that its hypothetical provision would meet the analytic test used by ComReg in the original consultation (and quoted by ComReg in this consultation) of capacity "...*using established infrastructure*" being defined as in the relevant market.

Vodafone notes that the capacity cut-off for the Wholesale Trunk Segment market (155 Mbit/s) is a tier in the Synchronous Digital Hierarchy (SDH). It is a feature of SDH that traffic paths are capable of being protected from outage by the availability of alternative routing and automatic switching in the event of outage on the primary path. It is Vodafone's experience that proper network planning

incorporates this functionality as standard in the design of SDH networks. Therefore in assessing whether competing connectivity to eircom's exists it is necessary to consider only connectivity which is functionally equivalent i.e. is capable of supporting SDH protection. This is germane particularly in the case where multiple Altnets must be used to provide the connectivity as it would require them to interconnect at two physically separate points in order to provide the required traffic protection.

The current Annex A list has 15 entries giving a connectivity matrix with up to 210 different connections (allowing for no "daisy chaining"). The addition of the proposed 7 centres more than doubles this figure to in excess of 460 (again allowing for no "daisy chaining"). Even allowing for some daisy chaining it is clear that the increase in the connectivity matrix between centres in an expanded list reduces the likelihood that a single Altnet provider can offer connectivity to match eircom's on a route by route basis and that some analysis will be required to determine whether connectivity matching eircom's can be provided by using amalgamated Altnet inputs. If there were proposals to further extend the list of urban centres this issue becomes more acute.

The fact that the consultation does not set out the analysis which ComReg has carried out in this regard means that it is not possible for Vodafone to form a view as to the basis for ComReg's proposed change which effectively reduces the applicability of eircom's obligations in the Wholesale Terminating Segment Leased Line market.

In the absence of an analysis which clearly establishes the existence of alternative connectivity it is Vodafone's view that any extension of the list of urban centres falling within the market for Wholesale Trunk Segments of Leased Lines (effectively reducing the scope of eircom's obligations in the market for Wholesale Terminating Segments of Leased Lines) is not justified and is premature.

The second test to be applied considers access to the connectivity which was the subject of the first analysis. The information set out in the consultation appears to only deal with this test. The mere existence of Altnet access to an eircom exchange is not in itself sufficient to meet the requirements of the market definition and the results of this access test should not be considered unless connectivity exists. In the absence of connectivity the issue of access has no bearing on the relevant market.

In the alternative Vodafone will assume that connectivity does exist between all centres in the proposed expanded list. In this circumstance the access test must consider whether the Altnet can connect to the relevant eircom exchanges in a "...*technically and economically efficient manner*".

Vodafone notes that the "*preliminary analysis*" carried out by ComReg indicates that there is alternative infrastructure "*located in, or in close proximity to the additional urban centres*"<sup>1</sup>. However the consultation does not set out the criteria that ComReg has used to assess whether or not "*those intending to use this infrastructure must be able to do so in a technically and economically efficient manner*"<sup>2</sup>. In this context it is not possible for Vodafone to give specific comments on the proposal to extend the list of urban centres or to assess the proposal or ComReg's analysis.

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<sup>1</sup> Para 3.7 of the consultation document

<sup>2</sup> Para 3.6 of the consultation document



Vodafone does wish to make some general comments regarding any assessment of whether Altnets can effectively implement access so “...that the competing infrastructure can effect a competitive constraint on the dominant operator”<sup>1</sup>.

The mere existence of latent infrastructure at one of eircom’s exchanges is not sufficient to indicate that an Altnet can use this to provide trunk segments. Eircom’s various reference offers limit the use to which connectivity may be used. For example access provided under the Access Reference Offer cannot currently be used to provide leased line services. Similarly, existing connectivity for Leased Lines may be capacity expired or constrained so that it is not an effective “competitive constraint” on eircom as new connectivity must be installed to allow an Altnet compete with eircom for new business.

Where the Altnet has not already connected to the eircom exchange the Altnet faces an economic investment threshold before it can efficiently effect a connection. It must be able to reasonably expect sufficient demand to recover its own network set-up costs together with the recovery of set-up costs levied by eircom by way of connection charges. The Altnet must also be able to reasonably expect sufficient demand to recover the ongoing eircom charges and earn its cost of capital. There is no analysis set out which indicates which, if any, of these factors ComReg has taken into account.

In any given area there will be a finite demand for leased line services. Where end-user demand is low and the Altnet does not have a reasonable expectation that it can win sufficient aggregated end user demand to spread the costs of the trunk segment connectivity at a minimum increment of 155 Mbit/s a feasible business case for it to connect to eircom’s premises would not appear to exist.

Given the ubiquity of eircom’s network, the fact that it is already located in its own exchanges, and its previous obligations in the retail leased line market, it is Vodafone’s belief that eircom does not face the same set up costs as Altnets and that the break-even point for eircom in terms of cost recovery is at a much lower volume of aggregated end-user demand.

Apart from the economic aspects the operational aspects of connection also need to be assessed. This assessment should take account of the timescales involved and the commercial arrangements that Altnets must enter into (including in some cases the necessity to negotiate wayleaves).

All of these elements must be sufficiently easy to fulfil so as to ensure that the access conforms to the market definition requirement that it be “established infrastructure”.

It should be noted that at the Leased Line and PPC Industry Forum, which is dealing with the introduction of eircom’s wholesale Ethernet terminating segment product, eircom has been unable to confirm whether it will be in a position to support In-Span and In-Building Handover from product launch. Even if it is in a position to do so, eircom has not provided any information as regards the implementation timescales or costs for such access. This uncertainty means that it is not possible to assess whether Altnets can access eircom exchanges for these services in a technically and economically efficient manner.

In summary Vodafone believes that the assessment of the access criteria must be carried out so as to demonstrate that Altnets with infrastructure in the vicinity of the relevant eircom exchanges can use this infrastructure in a technically and economically efficient manner and that this

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<sup>1</sup> Para 3.6 of the consultation document

assessment should only be carried out after it is demonstrated that there is connectivity which runs between the relevant urban centres and which has a capacity equal to, or greater than, STM-1 (155Mb/s).

**Q3. Do the respondents believe that the draft text of the proposed decision instrument is from a legal, technical and practical perspective, sufficiently detailed, clear and precise with regards to the specifics proposed? Please elaborate on your response.**

The proposal in this consultation, if implemented even partially, results in the alteration of the applicability of market remedies imposed following a market review process. Vodafone is strongly of the view that the outcome of this consultation constitutes a measure within the meaning of Regulation 19(1) of the European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2003. The effect of adding to the list of Urban Centres would have the effect of removing regulation from a portion of the market for Wholesale Terminating Segments of Leased Lines and therefore has a “*significant impact on a market for electronic communications networks*” within the meaning of Regulation 19(2) of the Framework Regulations.

Regulation 19(3) of the Framework Regulations states that “*Before taking a measure under paragraph (2) the Regulator shall publish the text of the proposed measure, give the reasons for it, including information as to which of the Regulator's statutory powers gives rise to the measure, and specify the period within which submissions relating to the proposal may be made by interested parties.*”

The draft Decision Instrument cites paragraph 5.8 of the Decision Notice D06/08 and section 3.2 of the Decision Instrument (also D06/08) as the legal basis for the proposed amendment to the list of urban centres. However in the original Decision Instrument Vodafone cannot identify that a legal basis has been set out which would allow ComReg to reserve the right to modify a decision and indirectly modify a remedy (which is the effect of the proposed change on the market for Wholesale Terminating Segment Market of Leased Lines as capacity on these routes will no longer be subject to eircom's obligations in this market). The assertion that this right is reserved does not appear in itself to confer such a right in the absence of a statutory basis. In this regard the consultation document does not appear to give information as to which of the Regulator's statutory powers gives rise to the measure.

In addition the consultation does not set out the analysis of the connectivity test carried out by ComReg, which in turn would give reasons for the proposal to extend the list of urban centres falling within the Trunk Segment market by adding the seven specific centres proposed.

Vodafone notes that section 3.2 of the Decision Instrument references “Annex 1” of the Decision Instrument. The Decision Instrument does not have an Annex 1 but does have Annexes A, B and C.