

Office of the Director of
**Telecommunications
Regulation**

Telecommunications Licensing Principles

Consultation Paper

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Telecommunications Licensing Principles

1. Introduction

On 15 June the Director of Telecommunications Regulation (“the Director”) published a paper on the ODTR website on the framework for the liberalisation of the telecommunications market by December 1998¹. The Director welcomed the announcement by the Minister for Public Enterprise, Mrs. Mary O’Rourke T.D., that the Irish telecommunications market will be liberalised by 1 December 1998 and noted the need for her Office (“the ODTR”) to move quickly to put in place the regulatory tools to facilitate this. The Director particularly emphasised the need for consultation and input from all relevant interested parties and announced that the ODTR would be issuing a number of consultative documents in that context.

This paper is one of a number of such consultation documents. The paper outlines the major principles that the Director intends to consider within the licensing and authorisation framework for telecommunications services in Ireland. Comments are sought from interested parties and following review of those comments, the paper will be re-issued as a statement of principles. Licence or authorisation texts and application procedures will be developed in accordance with these principles and will be subject to further consultation. The Director is pleased to announce in this context that she has engaged Denton Hall, a leading London law firm with significant telecommunications experience, to assist her in this process.

The Director is working within the framework of EU and national legislation which governs the liberalisation programme. The licensing regime which is ultimately put in place will work within the parameters of that legislation. It is noted that there is some legislation still required to facilitate full liberalisation and the Director looks forward to seeing draft proposals published as soon as possible.

The Director is cognisant of the rapidly changing nature of the telecommunications sector and the need to regulate for a converging market. Given the short timescale available for the completion of the licensing framework in advance of full liberalisation, the Director is addressing only telecommunications licensing issues in this paper. The principles set out in this paper will not conflict with the Director’s position on licensing in the converging sectors of television transmission and radio, but these will of necessity be addressed separately.

This is not a legal document; the Director is not bound by this document and may amend it from time to time. This document is without prejudice to the legal position or the rights and duties of the Director to regulate the market generally. The indicative licence conditions in this paper are not binding and are without prejudice to the final form and content of any licences the Director may issue.

¹ “Towards Liberalisation; An agenda for Ireland to achieve an effective competitive market in the provision of telecommunications services” - available on <http://www.odtr.ie>

2. Structure of the Paper

This paper is structured in a number of main sections as follows:

- Section 4 describes some fundamental principles that the Director must follow when determining an appropriate licensing regime,
- Section 5 outlines a licensing strategy (concentrating on major concerns),
- Section 6 lists some specific terms that are candidates for inclusion in the licences or authorisations.

It should be noted that, subject to Irish law, both individual licences and general authorisations may be used. For the purposes of this paper, the term licence or licensing should be taken (unless specifically excluded) to include any authorisation.

3. Consultation procedures and timetable

The consultation period will run from Monday 13 July to Wednesday 29 July. Written comments should be submitted before 5.00 p.m. on Wednesday 29 July to:

Peter McKenna
The Office of the Director of Telecommunications Regulation
Abbey Court
Irish Life Centre
Lower Abbey Street
Dublin 1

The timetable for liberalising the telecommunications market is very tight and as a result it has not been possible to make a longer period available for comment. The Director hopes to issue her response to the consultation by 17 August 1998.

To guide industry the following indicative timetable for further consultations in the area of licensing is given.

- Draft applications procedures will be available for comment late August or early September. Comments will be due by the middle of September. Final applications procedures will be notified in late September. These procedures will confirm the schedule for applications and evaluation.
- Draft pro forma licences will be available for comment in early to mid-September. Comments will be due early October. Final pro forma licences will be published in mid October.
- Licence applications are currently expected to be due at the end of October with awards being made before 1 December.

The timetable for number allocation will be separately notified but will take account of the need to have a provisional allocation prior to licence award. This will allow planning to commence. Spectrum allocation procedures will also be notified as appropriate.

4. Principles

The Director has a number of overriding concerns. Among these are the following:

- A key priority of the Director is to implement an open, fair and transparent regulatory framework that promotes the interests of Irish telecommunications users. This is considered to include a regime that promotes the appropriate provision of:
 - an environment able to support the increasing demands of the emerging information society. The need for broadband communications, especially for business users, is a particular concern in the national context;
 - basic services to an increasingly high standard where prices and quality become aligned with best European practice and where due regard is paid to the needs of all parts of the country and the interests of consumers.
- The Director must also comply with EU and Irish law when exercising her powers.

In addressing these concerns, the Director will need to promote economically efficient operation of the industry.

Within the context of the licensing regime, the Director's key concerns are as follows:

- In harmony with EU and Irish legislation, it is accepted that users' interests will best be achieved by creating, through regulation, an environment that allows competitive forces to operate effectively.
- To ensure that user needs are understood and decisions are well informed, the Director must consult interested parties appropriately.
- Light-handed regulation is preferred; regulation is appropriate only if it creates a benefit to telecommunication users in Ireland.
- The Director's role in protecting the interests of the telecommunications industry (current and future operators) exists only in so far as is necessary to ensure the industry operates effectively and is able to satisfy user needs.
- Measures and application procedures will be fair, open and transparent.
- Less regulation may be needed in time when markets operate more competitively.

The following illustrates some circumstances where regulatory intervention might be appropriate:

- to encourage both infrastructure and service competition,
- to create, through regulation, an environment that fosters and promotes market-led innovation and competition and one in which users drive decisions about what services will be provided and how they will be delivered,
- to preempt the abuse of a position of significant market power through appropriate ex ante licence conditions,
- to regulate retail pricing matters only if market forces are not achieving the desired consumer benefits
- some organisations applying for licences may be required to demonstrate that they have the necessary financial and managerial resources and technical capabilities before a licence is awarded.

Question 4.1.

- *Is this a fair and complete description of the principles that should underpin a telecommunications licensing framework?*
- *Are there further fundamental principles which should be considered?*

5. Strategy for general licensing

With these guiding principles in mind, the Director presents, as a platform for consultation, the following strategy for licensing in Ireland. This chapter addresses the following:

- market structure and entry;
- structure for licenses and awards procedures;
- fair trading;
- infrastructure competition and interconnection;
- price controls;
- universal service obligations;
- access to spectrum;
- facility sharing and access to public and private land;
- monitoring and enforcement.

The next chapter looks at more specific terms for potential inclusion in licences.

The reader should be aware that some of these strategies cannot be managed solely by licences and some may require new primary legislation or involve other bodies. Respondents may wish to make additional comments to the relevant parties.

5.1 Market Structure and Entry

The Director is keen to see competition in all aspects of telecommunications service delivery. Moreover, EU Directives limit the circumstances where licence award may be restricted. If a company is able to provide a service that complies with the relevant laws, regulations, licences or authorisations and, furthermore, does not require the allocation of a scarce resource (for example access to numbers or spectrum) or jeopardise an essential requirement then the Director generally cannot restrict market entry.

If a company requires numbers then it will be subject to a separate allocation procedure. Whilst the ODTR's numbering policy is designed to avoid shortages of numbers, excessive overbidding for capacity (which while plentiful is not limitless) should be avoided. Therefore, the Director may decide to ask companies to demonstrate that they reasonably require the numbers. The Director also reserves the right to charge for numbers.

Another key question concerns rights of access to private or public land for infrastructure development. The Director supports infrastructure development and considers that there should be equal access for all players in the market. Certain rights of the incumbent operator to access to land are set out in primary legislation. The Director expects that the rights of all relevant parties will be put on an equal footing

by new legislation which has been proposed by the Minister for Public Enterprise. Any licence conditions relating to access to land will operate within that framework. It is important that the relevant legislation is in place in time for full liberalisation on 1 December 1998.

Access to radio spectrum for use in point-to-point links or as part of a wireless local loop (WLL) delivery mechanism also needs to be considered. In this area, the Director may need to restrict access to avoid the inefficient use of spectrum. The Director will, therefore, develop specific fair and transparent application procedures that achieve this goal.

In summary, the Director must by law facilitate market entry except in very specific cases. Where access to numbers or spectrum is required, or an organisation seeks to build infrastructure the Director may wish to assure herself of the appropriateness of plans as part of the licence application procedures.

Question 5.1.1: How should companies demonstrate the viability of their plans and that they have the necessary financial, managerial and technical resources to implement those plans?

Question 5.1.2: How might organisations seek to use radio spectrum and what application and allocation procedures may be appropriate?

5.2 Licence structure

As stated in Section 1, only telecommunications service and infrastructure licences are considered in this paper. Separate licences are required under the Wireless Telegraphy Acts to use radio frequency spectrum. In addition, the transmission of real-time television programmes to a community is also licensed separately.

Mobile operators (Eircell, ESAT Digifone and, subject to licence, Meteor) will continue to operate under separate licences. The rest of this paper does not consider mobile telephony further and is concerned purely with the provision of 'fixed' telecommunications services and related infrastructure. This may include elements of non-fixed technology, for example satellite up-links and fixed point-to-point radio links.

The Director is keen to have a simple and transparent licence structure. She recognises a number of basic types of fixed telecommunications service and infrastructure providers as follows:

1. service providers not requiring access to spectrum or numbers or planning to build infrastructure;
2. service providers requiring numbers but not intending to build infrastructure and hence not needing access to spectrum or rights of access to land;
3. operators planning to build their own infrastructure and hence potentially needing access to numbers and spectrum and also needing to avail of rights of access to land;
4. operators having significant market power in all or part of a relevant telecommunications market.

There may be other organisations (or groups of organisations) that have unique licensing concerns. The Director in presenting these four classes does not exclude the

addition of other specific classes of organisation (and hence types of licence) should the need arise.

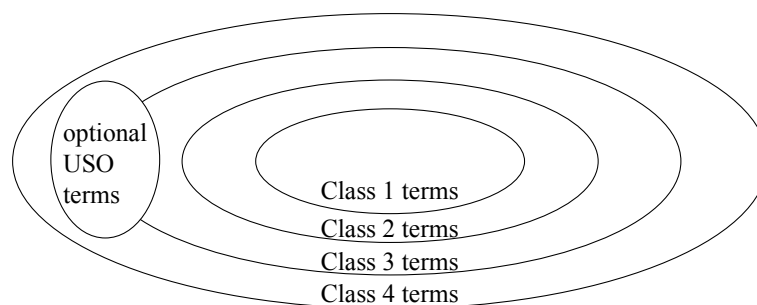
Universal service obligation (USO) is a specific obligation that may be separately applied to Telecom Éireann and, as appropriate, to any other company with significant market power in the relevant market. However, the Director notes that there may be occasions where other companies take on national or regional USO either voluntarily (possibly for some compensating benefit) or as a condition of its spectrum allocation.

A review of significant market power in Ireland is currently underway and comments will be sought through a later consultation paper. It is likely that only Telecom Éireann will initially fall into class 4. However it is hoped and expected that other companies will also fall into this class as they develop market share.

The Director anticipates that these four classes of operators may require different licence or authorisation terms and conditions and may be subject to different application procedures. Furthermore, she believes that licences may comprise modular building blocks reflecting the type of operator. For example, a class 4 operator may have all the terms of a class 3 operators as well as specific terms resulting from its position of significant market power. A class 3 operator may similarly have all the terms of a class 2 operator but will have terms specific to the construction of infrastructure. There may also be specific USO terms.

The Director generally supports the concept that all organisations within the same class will be subject to the same set of general terms and conditions and therefore suggests the appropriateness of standard licences or authorisations within each class. This concept would also apply in principle to Telecom Éireann and the Director would wish to treat that company in the same way as any other having significant market power in a relevant market. But the Director does not exclude the possibility of imposing specific conditions on Telecom Éireann or any other individual company within any class of operator, should this be justified. Schedules may also be used to refer to individual rights relating to, for example, access to a specific numbering range.

The modular approach is illustrated below:



The application and award procedures for such licences or authorisations remain to be considered.

In this respect, there is an argument in favour of using general authorisations (with registration) rather than individual licences for class 1 operators. This is in line with the approach adopted by the EU and its application in Ireland will be subject to compatibility with Irish law.

For class 2 operators, the Director has yet to decide whether a company requiring numbers will require an individual licence or a general authorisation. The most liberal approach would be to use a general authorisation that is supplemented by a specific grant of an access code or numbering range. An alternative approach would be to issue an individual licence to anyone requesting numbers. At this point, the Director favours general authorisations with registration, subject to compatibility with Irish law.

For class 3 operators, the Director may require potential licensees seeking to build infrastructure to satisfy her of the appropriateness and feasibility of their plans and therefore favours individual licenses that will incorporate not just service provision terms but also conditions relating to infrastructure provision and operation.

Class 4 operators are expected to have specific conditions resulting from their position of significant market power (SMP). It is, in this respect, noted that organisations that are successful in gaining market share may enter this class having previously been in another. It should be noted that certain obligations on SMP operators are set out in legislation transposing EU law. Licence conditions will be compatible with that legislation.

Operators providing universal service (which may include any organisation with SMP in the relevant market and those electing to take on specific obligations) are expected to have licences outlining a common set of obligations and rights within the area where USO are accepted or imposed.

The following table summarises the preferred approach together with lighter and more restrictive alternatives.

	Definition of class	Preferred	Light-handed alternative	More restrictive alternative
Class 1 operators	Service provider without need for access to numbers or spectrum and not planning to build infrastructure. Many VAS operators would currently fall into this class	General authorisation with registration	General authorisation without registration	Individual licences
Class 2 operators	Service providers requiring access to numbers but not to land or spectrum	General authorisation with registration + separate grant of number range or codes	-	Individual licences
Class 3 operators	Operators planning to build their own infrastructure	Individual but standard licences for all operators in class	General service authorisation with registration + individual infrastructure	Tailored licences unique to each applicant

			licence	
Class 4 operators	Operators having SMP in a relevant market	Individual licences for all operators in class	General service authorisation with registration that includes specific provisions for companies with SMP	Tailored licences unique to each applicant
Operators accepting USO	Operators required or electing to take on USO.	Specific licence terms common to all operators accepting USO.	General authorisation with registration of scope of USO obligations	Tailored licences unique to each applicant

Question 5.2.1: Are there any other classes of operator that need to be considered?

Question 5.2.2: Is it appropriate that all licensees in a given class should have similar terms and conditions?

Question 5.2.3: Are there reasons for imposing obligations on Telecom Éireann over and above those imposed on other operators with SMP?

Question 5.2.4: Is the award process outlined above appropriate?

5.3 Fair trading

Given the characteristics of the telecommunications market, the Director recognises that the potential for companies to distort fair and open competition as a result of their market power, or to act in a manner detrimental to consumer interests can be particularly damaging. Examples would include the following:

- bundling of services to include elements not required by other service providers or the consumer but for which they must pay;
- charging customers excessive penalties if they chose to migrate to a new supplier;
- discriminatory pricing.

The Director therefore suggests (within the context of relevant legislation) inserting specific and targeted provisions and/or a general fair trading clause into licences that enables her to prevent this type of behaviour. Provisions of this type may be applied *ex ante* (i.e. before it becomes an established feature of the market) and allow remedies to be applied without the need to resort to the Courts in the first instance.

Question 5.3.1: What provisions should be considered for inclusion?

Question 5.3.2: What should be covered by a general fair trading clause?

5.4 Infrastructure competition and interconnection

Infrastructure competition and measures to promote it

The provision of telecommunications infrastructure, especially broadband facilities and the local loop infrastructure into the home, has traditionally been expensive to provide and has long pay-back periods. But the presence of such infrastructure is an essential ingredient in ensuring a competitive telecommunications environment in Ireland. The Director wishes to ensure that the regulatory framework is designed to facilitate and encourage such investment generally.

This applies to all methods of infrastructure, from more traditional copper and now fibre-optic cable systems, to newer methods of delivering service to customers, including radio and satellite based systems as part of a “fixed” network. Technology is changing all the time and even more options are being developed including the carriage of high speed telecommunications services as an integral part of modern cable TV networks and the use of electricity power supply cables for telecommunications services. The Director wishes to encourage the use of alternative delivery systems particularly where traditional systems are not economically viable.

In the Irish context, it is likely that infrastructure competition will develop quickly in the more economically viable areas. In fact, the Director is pleased to note that such competition has already begun and she expects to see it develop further including:

- international facilities, including submarine cables and satellite;
- long distance transmission systems linking major population centres;
- switching platforms;
- local networks for large business sites, especially Dublin.

However, the Director is concerned that infrastructure competition may not develop as quickly or at all in some less lucrative areas, including:

- access by some communities to competing networks;
- competing local access systems for dispersed businesses and residential users in urban or rural areas.

On the matter of carrier access and selection, the Director has published decision notice 1/98. It is also noted that the EU is progressing carrier pre-selection and the current expectation is that this will be required by 1 January 2000. When the timetable is confirmed views will be sought from interested parties on how to proceed.

Interconnection

Interconnection arrangements are critical to the successful opening of a telecommunications market. Such arrangements are the subject of a specific ODTR paper that addresses the reference interconnection offer (RIO) from Telecom Éireann. It is sufficient to say here that Telecom Éireann is required (as an organisation with SMP) to make interconnection services available to all service providers requesting them in a timely and appropriate manner and on a basis that is non-discriminatory, transparent and cost-oriented. Furthermore, in line with emerging consensus throughout liberalising markets, the Director is of the opinion that prices be set for interconnection based on long run incremental costs (LRIC)².

The Director has commissioned a study from KPMG to ensure that appropriate rates can be calculated from Telecom Éireann's accounting systems and intends to ensure the implementation of a new charging arrangement as soon as is practical.

The question has been raised whether there should be different rates for those service providers who have and those who have not developed their own infrastructure. Such arrangements must, under EU and Irish law, be objectively justifiable. This is taken to mean that they must be cost justified. With adequate unbundling, an infrastructure operator might require fewer service elements than a pure service provider resulting in net cost savings.

The Director has not yet decided on the best approach but intends to encourage the development of an interconnection regime that is sufficiently flexible and can allow different wholesale prices should that prove desirable, appropriate and justifiable in an Irish context. The flexibility of the regime should also include the ability to accommodate new services and types of interconnection that may be required, for example, to keep pace with technology developments.

It is also noted that Telecom Éireann, as a result of having SMP, is required to provide leased line services to other licensed operators in a manner which is non-discriminatory, transparent and cost oriented. The Director is of the opinion that this should include a 34 Mbit/s (and higher speed) offering where market demand exists.

Question 5.4.1: Is it appropriate for infrastructure investment to be actively encouraged by licensing terms and if so what should the Director's role be given the legal framework?

Question 5.4.2: Should the licensing regime further promote access to existing infrastructure and if so what should the Director's role be given the legal framework?

Question 5.4.3: What role should EU benchmarks play in Ireland given the legal framework?

Question 5.4.4: What level of unbundling of interconnection service elements is appropriate?

Question 5.4.5: What regime should apply for determining wholesale prices for independent service providers?

² This costing method assesses the costs that would be incurred by the provider over a reasonable period in the future to augment its network to the extent necessary to allow the interconnection to be provided. This statement however is not intended to be a formal definition of the LRIC method.

5.5 Universal Service

It is recognised both at EU and national level³ that universal service is an important element of a telecommunications market and that one of the functions of an effective regulatory framework is to ensure delivery of such service. This issue is the subject of further EU legislation which has yet to be transposed into Irish law⁴. The preparation and implementation of the transposing legislation is a matter for the Minister for Public Enterprise. The Director looks forward to the early introduction of that legislation. This is essential to ensure that there is a clear framework within which the services which will be regarded as USO elements may be defined and the persons who will be subject to USO may be identified. The licensing regime which will be put in place by the Director will operate in accordance with that legislation.

While recognising the public importance of USO, the Director considers it important that the delivery of USO is balanced with the need for investment by new entrants which in turn is expected to lead to better services and lower prices generally. The Director anticipates initially requiring Telecom Éireann and, if appropriate, other companies that achieve SMP in a relevant market to take on USOs. The Director may also consider imposing USO possibly on a limited or regional basis for companies allocated spectrum for WLL.

With regard to the cost and funding of USO, the Director notes that in many countries there is an increasing recognition that USO may not be as costly a burden as was initially anticipated by incumbent operators. At present the Director is undertaking a detailed review of Telecom Éireann's cost accounting system, one of the objectives of which is to identify the cost of USO to Telecom Éireann. The study will consider the long term benefits to Telecom Éireann balanced against the long run cost of providing such service. The study is expected to be completed in the autumn and the Director does not wish at this time to anticipate the final results.

However in the event that USO is found to present a significant cost to Telecom Éireann the Director will be responsible for formulation of a mechanism whereby such cost may be shared. In doing so, various options will be considered and factors taken into account, including;

- any funding mechanism must be fair and transparent;
- a funding mechanism should not introduce undue distortions in to the market place;
- in defining contributions to a universal service fund the Director would be mindful of the barriers to market entry that high initial costs may present to start-up operators;
- the possibility of alternative operators themselves agreeing to submit to USO in lieu of contributions to any central fund.

Subject to developments at national and EU level and in particular to the provisions of the legislation transposing Directive 98/10/EC, the Director favours a simple but

³ See inter alia, European Council Directive 97/33/EC on Interconnection in Telecommunications and the European Communities (Interconnection in Telecommunications) Regulations, 1998, SI no 15 of 1998.

⁴ Directive 98/10/EC of the European Parliament and Council on the application of open network provision to voice telephony and on universal service for telecommunications in a competitive environment

flexible definition of USO which can take account of the evolving nature of universal service and allow for changes in the elements of USO.

Question 4.5.1: How should USO be defined and to whom should it apply?

Question 4.5.2: How should USO be funded and by whom?

5.6 Allocation of Spectrum

Some infrastructure operators will require access to spectrum. Spectrum may be required for use in both local and trunk components of the network and may include both point-to-point links and systems where capacity is shared between users to provide wireless local loop (WLL) capabilities. WLL is already used to a limited extent by Telecom Éireann and has many features that make it appropriate for use in Ireland. It may well prove to be a highly cost effective way of providing infrastructure and the Director wishes to see that spectrum is made available for companies able to use it effectively.

Ireland is in the fortunate position that spectrum availability is generally good. However spectrum has many competing uses and consideration must be given not only to the needs of fixed telecommunications operators but also to the needs of others including, for example, mobile operators including the so-called third generation systems - notably UMTS. Spectrum is a resource that needs to be managed and the Director is considering how best to manage the allocation of spectrum to fixed telecommunications operators and what application procedures may be appropriate. This may include an element of competition if it is foreseen that demand may exceed supply.

Question 5.6.1: How might operators wish to use spectrum in the future?

Question 5.6.2: Should allocation of spectrum for WLL be associated with USO?

Question 5.6.3: Are competitions likely to be required and how should they be organised?

5.7 Facilities sharing and access to public and private land

Telecom Éireann's rights to access public and private land are set out in primary legislation. The Director believes that all operators in the market should have equal rights of access and expects this to be addressed by new primary legislation. The Minister for Public Enterprise has announced her intention to introduce such legislation in the near future.

Access to facilities can become a bottleneck particularly if there are environmental considerations or traffic management considerations which must be taken into account. It is not in the interests of either the telecommunications industry or the Irish public generally to have wholesale and unnecessary disruption due to the laying of infrastructure. In such circumstances facility sharing may be an appropriate solution. There may also be significant economic benefits to facility sharing since as much as 70% of the cost of network construction can result from civil works.

If these costs can be shared investment in new infrastructure can be concentrated on those parts of the network that add more direct value to users.

Within the framework of EU and national legislation the Director wishes to hear the views of interested parties on the degree to which the licensing regime should anticipate bottlenecks in access to facilities and address these through facility sharing arrangements. In that context, it should be noted that existing legislation sets out certain existing powers and functions of the Director in relation to dispute resolution in relation to facility sharing⁵. Questions include:

- Should licence conditions address facility sharing in advance of specific access problems?
- Should licences include a requirement to negotiate facility sharing (for example in the manner in which parties are required to negotiate interconnection) with dispute resolution provided by the Director?

The Director is aware that these questions must be considered in the context of existing and proposed legislation and looks forward to the publication of that legislation at the earliest date. It is essential that the new legislative proposals are known to all relevant parties so that the licensing framework can take that into account before full liberalisation on 1 December 1998.

Question 5.7.1:

- *How can facilities be fairly shared?*
- *Are any of the proposals given preferred?*
- *Are there any other approaches that the Director should consider?*

5.8 Enforcement and Remedies

The Director recognises the need to be able to monitor compliance, enforce her decisions and apply reasonable remedies when infringements occur. Some powers of this type may be included in licences, while others will require primary legislation. Responsibility for primary legislation rests with the Government.

Question 5.8.1: What appropriate powers should be included in licences?

5.9 Other general concerns

Question 5.9.1: Are there any other general concerns that should be addressed in the context of telecommunications licences?

6. Specific licensing conditions

The EU Licensing Directive⁶ as transposed into Irish law by Regulation⁷ defines what may or may not be included in a telecommunications licence. This section considers

⁵ European Communities (Interconnection in Telecommunications) Regulations, SI No 15 of 1998

⁶ Council Directive 97/13/EC on a common framework for general authorisations and individual licences in the field of telecommunications services.

these detailed terms and provide examples as guidelines. In doing so we draw on the general principles already listed as well as a comparative review of licence terms in a number of EU countries including Finland, Sweden and the UK. It should be noted that there are a range of issues addressed in primary and transposing legislation, for example, USO, interconnection obligations, access to emergency facilities, etc. The conditions which may be included in licences will be compatible with current and future legislation. Comments are welcome on the appropriateness of proposed conditions having regard to the legislative framework.

Licence conditions can be grouped in a number of ways. For the purpose of this paper, we have divided them into 6 groups as follows:

1. General legal provisions
2. Public interest conditions;
3. Economic efficiency conditions;
4. Conditions relating to allocation of resources;
5. Compliance conditions; and
6. Procedural conditions.

Each area is considered in turn below. Suggestions are made on the conditions that may be included within licences or authorisations and indications of which class of operator they may apply to.

6.1 General Licence conditions

Certain general conditions are included in current licences and will be carried forward as appropriate. Examples include the following:

- obligations to use only approved equipment;
- obligations to comply with interconnection rules;
- obligations to comply with lawful orders from the Director;
- the need to respect other laws and consents.

There are also specific measures that may be carried forward from current licences including the following:

- the ability to intercept messages;
- the ability to give priority to particular types of communications under ministerial direction.

Also for class 3 operators there are also likely to be obligations as follows:

- to avoid harmful interference;
- to limit non-ionising radiation.

⁷ European Communities (Telecommunications Licences) Regulations, 1998, SI No 96 of 1998

6.2 Public interest concerns

Public interest conditions relate to measures that ensure that the non-economic welfare of society is safeguarded. Non-economic welfare refers to benefits that cannot easily be measured financially, e.g. providing telephone services to disabled people.

6.2.1 Universal Service

As has already been mentioned, USO will be imposed on appropriate companies as has been previously described.

6.2.2 Maintenance of Directory Information

All operators in class 2 and above may be required to keep (subject to data protection legislation) up to date and accurate Directory information that shall be made available to any one requesting it including any company obliged as part of its USO to operate a central directory service

6.2.3 Access to emergency numbers

All operators should provide free access to the emergency services for their directly connected customers.

6.2.4 Publication of prices, terms and conditions

All operators should make public their current prices, terms and conditions. It may additionally be appropriate for class 4 operators to provide advance notification of price changes.

6.2.5 Quality

It is believed that quality will be an important competitive advantage and will eventually not need regulatory intervention as appropriate level of quality will become a prerequisite to market success. However, intervention may be necessary while competition develops. It can be argued that a class 4 operator should deliver a minimum quality level in a set of key performance standards to include for example: time to install a customer line; number of faults per line; fault repair time; call failure rates.

The Director also considers that it is important that there is transparency to users in the quality offered by operators. She therefore suggests that companies should publish standard service level agreements as part of their customer contracts and that customer compensation schemes should be developed where service levels are not met. The Director would reserve the right to approve the content of the service level agreements.

It may also be appropriate to require all operators to publish performance data on a regular basis. The Director will have regard to relevant legislation, particularly Directive 98/10/EC.

All operators will be required to ensure accurate and reliable metering and billing and may be required to demonstrate accuracy.

6.2.6 Code of Practice

There are arguments to support the proposal that operators develop a code of practice for dealing with customers including, for example, billing disputes. The Director may consider such a requirement.

6.2.7 Other areas

Other areas of public interest specifically excluded from licences or authorisations may include:

- data protection: operators will need to comply with data protection regulation; the Director is not currently aware of any specific telecommunications issues that need to be included in licences;
- number portability: some EU licences or authorisations include number portability obligations. This may be handled through the transposition of relevant EU Directives rather than through licensing;
- environmental issues such as re-instatement, will be addressed through primary legislation;
- certain services such as ‘chatlines’ raise public interest concerns. These matters are handled by the appropriate authority, for example the premium rate regulator, rather than through specific licence terms.

The Director, however, reserves her position on these items and may consider suitable clauses should the need arise.

Question 6.2.1:

- *Are these the appropriate licence conditions relating to public interest concerns?*
- *Should others be added?*

6.3 Economic Efficiency conditions

In this section we consider issues intended to promote economic efficiency within the industry and the avoidance of negative externalities.

6.3.1 Fair trading

All operators may be subject to specific or general fair trading obligations and it may be appropriate that the Director through licence or authorisation conditions may investigate potential infringements, implement remedial action, and seek compensation. Primary legislation may however be required in this area.

6.3.2 Undue discrimination

It may be appropriate that no operator in any class be allowed to show undue discrimination to any wholesale or retail customer in respect to price or conditions of

service. Wholesale customers (i.e. any other licensed or authorised operator) should get comparable or better prices and terms than those offered to retail customers where cost justified. For class 4 operators it may be appropriate to require that retail and network operations in relevant markets be kept separate and that other licensed or authorised operators get comparable prices and terms to those offered to its own retail division(s).

6.3.3 Access to networks and interconnection

All operators of class 3 and above will be required to provide appropriate access to their networks in accordance with the relevant legislation⁸. The Director will require class 4 operators to make available an agreed reference interconnect offer which will include rates. The Director's view is that rates should be based on LRIC.

6.3.4 Retail price controls

Price controls are achieved through a price cap which is currently under the remit of the Minister of Public Enterprise. This may change from the end of 1998. It is noted that the structure of the price cap can only be changed by amendment of primary legislation.

6.3.5 Intellectual Property Rights (IPRs)

IPRs may be used by an organisation with SMP as a way of blocking interconnection. It may not be unreasonable in these circumstances to request the owner of the IPRs to license the use of these rights for a reasonable cost. An IPR condition for class 4 operators will allow the regulator to determine a reasonable price for its IPRs of incumbents if it is using these as a mechanism to block the development of the market.

6.3.6 Cross-subsidy

It may be appropriate to include obligation on class 4 operators not to cross-subsidise products or link sales.

Question 6.3.1:

- *Are these the appropriate licence conditions relating to economic efficiency concerns?*
- *Should others be added?*

6.4 Conditions relating to allocation of resources

Where scarce resources need to be shared between competing operators, a framework for regulating and ensuring fair sharing is required. The conditions below deal with the allocation of access to land, radio frequency and telephone numbers. Facilities' sharing is also considered.

⁸ Inter alia, Council Directive 97/33/EC on interconnection in Telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision(ONP) and the European Communities (Interconnection in Telecommunications) Regulations, SI. No. 15 of 1998.

6.4.1 Land

All class 3 and 4 operators should have comparable rights and obligations in relation to access to land. Licence conditions will be framed in the context of existing and proposed new legislation. The early publication of the proposed legislation on telecommunications infrastructure will provide clarity for affected parties.

6.4.2 Facilities sharing

Subject to proposed legislation, obligations to enter into negotiations to share facilities, mandatory facility sharing and dispute resolution measures may be included in licences. Certain dispute resolution provisions are already provided for in legislation.

6.4.3 Access to numbers

Any class 2 or above operator should have the right to apply for suitable geographic and non-geographic numbers and to apply for a carrier access or carrier selection code (or other codes as appropriate). Numbers will be made available in sufficient number to anyone reasonably requiring them and able to use them. An operator may be required to inform the Director of the proportion of numbers in allocated ranges that are being used by customers. It may also be appropriate to include a description of the rights that operators may have for additional numbers beyond their then current allocation. Conditions under which number allocations can be revoked should be included in licences. The Director's Decision Notice 1/98 on carrier access and selection should be considered in this context.

6.4.4 Spectrum allocation

Any class 3 operator should have the right to apply for spectrum for any relevant use including satellite up-linking and down-linking, point-to-point links or for WLL. As previously described specific application procedures may be required for WLL. This will be a matter for a separate consultation document. Furthermore, such a grant may include a limited or regional USO.

Question 6.4.1:

- *Are these the appropriate licence conditions relating to allocation of resources?*
- *Should others be added?*

6.5 Compliance Conditions

These are conditions intended to allow the Director to meet her obligations under EU and national legislation.

6.5.1 Accounting separation

Any class 4 operator should be required to prepare and make available separate accounts for any retail business(es) where it has SMP. Furthermore, any class 3 or 4 operator should prepare and submit separate accounts for its network and service

businesses. A transition period may be permitted. The Director may require that some information is made publicly available.

6.5.2 Provision of information

All licences in all classes should include the obligation to provide accurate and timely information to the Director that may reasonably be required. There should also be the obligation to cooperate on any formal investigations. There may also need to be an obligation to report market data to allow the Director to determine whether a company has SMP. It may be appropriate that some data is made publicly available.

Question 6.5.1:

- *Are these the appropriate licence conditions relating to compliance?*
- *Should others be added?*

6.6 Procedural Conditions

These are conditions aimed at ensuring the smooth operation of the regulated environment and issues on award, duration and revocation.

6.6.1 Duration

Licences for all classes of operators are currently expected to be awarded for a fixed period.

6.6.2 Revocation

Licences for all classes of operator may be revoked if a licensee ceases trading, becomes insolvent or breaks a final notice to comply by the Director. Other revocation conditions may be appropriate.

6.6.3 Transfer

Licenses for all classes of operator are expected not be transferable. This may include a prohibition against trading number allocations.

6.6.4 Imposition of penalties

The Director believes that it is important for her to be able to impose meaningful penalties in the event of serious or persistent infringement of licence terms by operators in any class.

6.6.5 Fees

Fees will be charged for licences depending on the class of licence to cover the cost of administration, monitoring and enforcement. Fees may also be charged for numbers and spectrum allocation.

Question 6.6.1:

- *Are these the appropriate licence conditions relating to procedural concerns?*
- *Should others be added?*

Question 6.6.2: What is the appropriate duration period for licences?

7. Conclusion

The Director is pleased to present this paper for comment by interested parties. The development of the licensing procedures and texts will be based on the final position adopted by the Director following examination of those comments.

The Director is aware of the rapidly changing nature of the telecommunications sector and is anxious that the licensing framework keeps pace with those changes and ensures that end users obtain the benefits of technological advances and developments. Following the initial grant of licences, the licensing framework will continue to be reviewed having regard *inter alia* to the principles set out in the Director's final position paper, market developments, linkages with other relevant licences and the Director's rights and obligations to regulate the market generally.

Question 7.1: Are there any other issues which the Director should consider in relation to licensing principles for the telecommunications sector in Ireland?

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