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alternative operators in the communications market

**Forward-looking Strategic Review of the Telecommunications  
Sector (05/30)  
Submission to ComReg Consultation Process**

27<sup>th</sup> May 2005

## 1 Executive Summary

Ireland has undergone significant economic development in recent years and has been transformed from being a low productivity, high unemployment economy to an open, competitive and growing one. However we face increasing competition from lower cost economies both inside and outside the EU and there are some early signs that Ireland is at risk of falling behind in competitiveness.

To protect sustained economic development, the Government has set an objective that Ireland should become a leading knowledge based, open and competitive economy with emphasis on research and innovation. Investment in and development of Information Communications and Technology has been identified as the means to boost productivity and increase economic performance. A vibrant and competitive communications sector is essential for Ireland to maintain and improve its economic performance.

Competition in the telecommunications sector is still at the early stages of development. Eircom retains a dominant position in many of the key telecommunications markets, and though new entrants were initially able to capture market share from Eircom, this has now tapered off, and Eircom's share of fixed markets has remained constant at 80% for the past three years.

Broadband penetration in Ireland continues to lag that of its peers. Though relative growth in the past year has seen a marked increase, this has not been sufficient to bring Ireland up to par with comparison countries, and there is a real risk that the Government targets will not be met. The Eircom copper access network, or Local Loop is set to remain key in the development of competition for broadband services. Despite being a regulatory requirement since 2001, Local Loop Unbundling (LLU) has not been a success to date, with less than 3,000 lines unbundled.

Experience has shown that Eircom is not incentivised to assist new entrants (OAOs) in gaining market position through the supply of wholesale services. The experience of OAOs has been one of continual frustration and delay. Certain facilities (e.g. local access) are enduring economic bottlenecks that are not replicable for the foreseeable future. OAOs require equivalent access to those facilities (as provided to Eircom's own downstream divisions) if competition is to develop. Eircom is not currently incentivised to provide that equivalence of access, and ALTO calls for the full operational separation of those facilities from Eircom's remaining activities. If Eircom can not create such separation on a voluntary basis, then ComReg and Government must investigate mandatory separation.

Government must take the lead to ensure that Ireland reaches its objective of becoming a leading ICT based economy. Sectoral policy, provision of services

by Government, and supply of services to Government are all key areas in ensuring innovative competitive markets. Government is one of the largest purchasers of ICT products and services, and must buy its services through open competitive processes. The Legislative and Regulatory environment must encourage and reward investment by both new entrants and incumbents. Though ALTO is supportive of the MANs, in general where it has been identified that the market has failed to bring services, then Government should in the first instance provide incentives for market players rather than intervene in the form of a state owned competitor – the latter could discourage investment by private enterprise.

ComReg has identified the major technology trends that are likely to change the telecommunications sector over the coming five years. Convergence, VoIP, and Next Generation Networks will all have an effect on the market. The move to NGNs is inevitable, but it is not clear that Ireland will be a leader in this move. OAOs have indicated willingness to invest in their networks, however this will have limited impact unless Eircom is also investing to transform its own network. Eircom has not made public any plans to invest in upgrading to a NGN, indications are that such investment is a number of years away.

ComReg has identified two alternative scenarios for the development of the sector – Fibre-nation and Hibernation. Fibre-nation will only be brought about through the creation of open, competitive telecoms markets. OAOs need equivalence of access to bottleneck facilities as compared to Eircom's own retail arm, and ongoing close regulatory oversight is required in the markets where Eircom is dominant. Market Analysis processes must be completed and obligations including transparent margin-squeeze testing should be implemented as a priority. Rapid and effective regulatory decisions will be required, including decisions on appeal to the Regulatory Appeals Panel.

A vibrant competitive communications sector is needed to protect consumer welfare and is essential for Ireland to maintain its economic competitiveness.

## 2 General Comments

### The Economic Context

As ComReg has stated in its consultation document, Ireland has undergone significant economic development in recent years. Thanks to solid Government policies, Ireland has been catapulted from being a low productivity, high unemployment economy to an open, competitive and growing one. Ireland has bucked recent global trends and has managed to maintain steady growth while having what many economists would regard as full employment. The most recent Central Bank forecast predicts that this growth is set to continue at around 5% for the remainder of the year and through 2006<sup>1</sup>.

However Ireland faces increasing competition from lower cost economies both inside and outside the EU. The recently published IMD World Competitiveness Yearbook<sup>2</sup> shows Ireland having slipped two places from 10<sup>th</sup> to 12<sup>th</sup> in its ranking of the world's most competitive economies. Ireland is slipping behind for internet costs, broadband subscribers, and infrastructure including technology infrastructure (falling from 25<sup>th</sup> to 32<sup>nd</sup> place since 2004).

To protect sustained economic development, the Government has set an objective that Ireland should become a leading knowledge based, open and competitive economy with emphasis on research, and innovation<sup>3</sup>. This mirrors the broader objectives set for Europe in the Lisbon Agenda. Europe has set itself a strategic target of becoming the world's most competitive and dynamic knowledge-based economy in the world by 2010. Investment in and development of ICT has been identified as the means by which Europe can boost its productivity and springboard its economic performance ahead of that of the US<sup>4</sup>. The recent report by Paul Tansey for Microsoft Ireland has identified productivity growth as a key element to ensuring competitiveness into the future<sup>5</sup>.

The telecommunications sector is a critical contributor to Ireland achieving its objective. ComReg's most recent Market Report<sup>6</sup> shows the telecommunications sector directly contributing €4 billion annually to the Irish economy, representing 3.3% of GNP. However the telecommunications sector also makes a significant indirect contribution to the economy through a thriving technology sector, and generally by making Ireland an attractive location for investment. Ireland also needs a vibrant, innovative and competitive telecommunications sector if it is to

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<sup>1</sup> Central Bank Bulletin, 4<sup>th</sup> May 2005

<sup>2</sup> <http://www02.imd.ch/wcc/>

<sup>3</sup> Agreed Programme for Government, June 2002

<sup>4</sup> Indepen & Ovum report for the Brussels Round Table on achieving the Lisbon Agenda, January 2005

<sup>5</sup> "A study of Ireland's Productivity Performance and the Implications for Ireland's Future Economic success", May 2005.

<sup>6</sup> March 2005

grow productivity and meet its objectives of becoming a competitive open, and innovative economy.

### **Current Status of the Telecommunications Sector**

ALTO generally agrees with ComReg's analysis of the current state of the telecommunications sector in Ireland. Some important points regarding the development of competition in the major markets must be emphasised. Eircom retains dominance in most fixed telecommunications markets with:

- 87% of the domestic calls market
- 99% of the lower level access market
- 77% in the higher level access market
- 68% of the international calls market
- 80% (revenue) of the market for the minimum set of leased lines
- 70% of the call transit market
- 80% of the wholesale market for call termination
- 100% of the market for copper local loops

Though Carrier Pre-selection (CPS) was launched at the end of 1999, and initially new entrants used it to good effect to gain market share, ComReg's market reports have shown that OAO's ability to gain market quickly flattened out at around 20% and have remained static for the past three years. High churn rates have remained a serious issue for OAOs even with the 3 month no-contact period<sup>7</sup>. Eircom has been able to successfully target OAO customers with its win-back campaigns using discounts and offers that are not generally sold to Eircom's static customer base. This allows Eircom to attack the OAO customer base with deeper discounts and maintain high churn rates. The cost of customer acquisition is much more significant for OAOs than for Eircom and current churn rates have meant that Eircom has consolidated its dominant position.

Wholesale Line Rental (WLR) was re-launched in 2004, and is still in the early stages of deployment. WLR has provided a solution for the issue of consumers (particularly residential) receiving two separate bills for line rental and calls. Though some operational issues remain to be resolved, take up looks promising, and ALTO would estimate that there are 120,000 WLR lines in operation.

The wholesale charge to OAOs for supply of line rental is fixed at retail -10%. This margin is required to cover all retail activities, including sales, marketing, billing, bad debts and administration. Though the retail-minus price regulation provides some protection to OAOs, the current margin is inadequate, and does

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<sup>7</sup> The Carrier Pre-selection code of practice provides for a 3 month no-contact period, while the Wholesale Line Rental code of practice provides for four.

not leave room for competition for line rental. As a consequence, Eircom determines the market price for line rental. Line rental has been increased on three occasions in recent years, and is now the highest in the EU 25 countries and is approximately 60% above the average for residential users<sup>8</sup>.

In the financial year to April 2005, Eircom's revenue from voice services declined by 11%, while the revenue from access increased by 14%. Eircom has been able to respond to competition in the calls market by cutting prices, and by bundling together line rental and calls in targeted discount schemes. In this way, Eircom has been able to compensate for reduced margins in the calls market with increased margin in the line rental market – where OAOs can not respond. OAOs on the other hand meet persistent intransigence and delay when seeking essential facilities from Eircom to allow roll-out and provision of their services.

The Minister for Communications has set a target of 400,000 broadband subscribers by the end of 2006, and 500,000 by the end of 2007<sup>9</sup>, however Ireland remains considerably behind its peer countries for Broadband penetration. Take-up has increased rapidly over the past year, principally as a result of free-trials and other promotions, however this is already significantly behind target if the Minister's objective is to be met.

ComReg's latest market information shows that there were 131,000 broadband subscribers in Ireland at the beginning of 2005 (ALTO current estimate 140,000), and the vast majority (almost 90%) of which are supplied by DSL. Fixed radio access can be expected to provide some alternative means of broadband access, and consolidation of cable network operators should also provide for an improved environment for upgrading of the existing cable networks, however DSL is the only delivery method that can bring about a transformation of broadband penetration in the next couple of years.

Unbundled access to the local loop is the means by which new entrants can overcome the access bottleneck and deliver alternative services directly to consumers. Eircom has had an obligation to provide unbundled access to the local loop since January 2001. Yet despite this less than 3,000 copper lines have been unbundled (among the lowest in the EU). It is not in Eircom's general interest to facilitate OAOs in provision of service using unbundled lines and this has been consistently resisted. This is evidenced by current court proceedings which have arisen as a result of a request by OAOs for improved LLU procedures.

Overall, Eircom retains a dominant position in key markets, and retains control of the bottleneck network elements that are vital for general rollout of fixed services.

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<sup>8</sup> European Commission, 10<sup>th</sup> Implementation Report

<sup>9</sup> Minister's address to IBEC TIF, 21<sup>st</sup> October 2004

Eircom has not made it easy for OAOs to gain wholesale access to these facilities and is not incentivised to do so. This does not bode well for the development of competitive innovative markets.

Broadband penetration and availability in Ireland continues to lag that of some of our nearest competitors. Northern Ireland for example already enjoys 100% broadband availability, whereas in contrast Eircom's latest plans will only see 90% DSL availability by March 2006<sup>10</sup> ( and ALTO estimates that up to 20% of lines within this coverage are unable to provide broadband). There is no apparent plan in place that will fill this remaining 10% gap in availability. ALTO welcomes the initiatives of the Minister for Communications Marine and Natural Resources through Community Broadband Schemes which has had success, and ComReg has taken a positive attitude towards the licensing of Wireless Broadband to provide some alternative to DSL, but it seems unlikely that either of these can bring broadband availability to the final 10%.

Mobile service penetration in Ireland has grown in line with general European trends, and currently stands at 94%. Relatively speaking the number of competitors is low with only three retail providers, however a fourth ("3") will enter the market this year. With the exception of prepaid services, where Meteor has been most successful, retail tariffs and ARPU in Ireland has consistently been among the highest in Europe.

ComReg has recently concluded its market analysis for Mobile markets, and mandated that both O2 and Vodafone should enter into wholesale agreements with resellers or virtual mobile network operators. ALTO awaits with interest the outcome of such discussions.

## **Government as a Leader**

It goes without saying that Government policy plays a vital role in determining whether or not Ireland becomes an ICT leader. The recent E-readiness report of the Economist Intelligence Unit<sup>11</sup> places Ireland in 15<sup>th</sup> position overall – up one position from 16<sup>th</sup> last year. The report sets out six main category criteria used to assess e-readiness, including: (2) Legal and Policy Environment, and (5) Social and Cultural Environment. These categories cover a wide range of criteria, including the legislative and regulatory environment, and broader cultural issues like education and e-literacy, and provision of e-services by Government.

If Ireland is to come to the fore for innovation and competitiveness among the world's economies, then it must be led there by Government. There is a number

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<sup>10</sup> Eircom News Release, 11<sup>th</sup> February 2005

<sup>11</sup> The 2005 E-readiness Rankings, a White Paper from the Economist Intelligence Unit.

of instruments available to Government to achieve this, including the creation of a regulatory environment that encourages competition and investment, encouraging use of e-services by state agencies, and use of Government spending on ICT to stimulate competition and innovation.

There are some good examples of e-services, e.g. Revenue on Line, and Motor Tax renewals, however Government has been poor in the use of its purchasing of ICT services in competitive markets. Government is one of the largest buyers of telecoms services, however ALTO estimates that over 75% of that fixed telecoms spend remains with Eircom. ALTO was particularly disappointed to learn recently that the contract for supply of the Government VPN by Eircom had been extended without going to tender. The use of multi-annual contracts and extension of existing contracts means Government loses out on improved pricing and advances in technology, but also “takes out of play” a significant portion of the market for supply of telecom services. This would seem to be at odds with the requirement that Government should lead in the creation of competitive innovative telecoms markets.

## **Regulation for the Future**

Competition is still only at the fledgling stage in Ireland. Eircom retains a dominant position in the fixed markets, and critically retains control of the vital network that is essential for access to consumers. If Ireland is to achieve its target of becoming a leading open, competitive, and innovative economy, then this must be supported by vibrant competitive telecommunications markets. Ireland will not have competitive innovative telecommunications markets in five years time unless the currently existing bottlenecks have been eliminated, or open access is granted.

Government and Regulatory policy must ensure that:

- Competition is facilitated to the maximum extent throughout all levels of the supply chain, from infrastructure provision to retail sales
- Investment is encouraged by new entrants and existing market players by giving certainty that an appropriate return can be gained
- Subject to the above, prices are lowered through competition to bring sustained economic growth
- Innovative products and services are developed and delivered bringing benefits to Ireland as a whole
- Ultimately, conditions should allow the withdrawal of regulation from most markets, and should focus only on those parts of the supply chain where competition can not exist



Achievement of the above will require that where Government intervention is undertaken it is initially in the form of tax relief, subsidy or otherwise to the market players rather than the creation of a new state owned provider of services. Though ALTO is a supporter of the MANs project, the prospect of the state entering competitive markets is likely to undermine investor confidence and discourage private sector involvement, while also distorting market conditions. It does nothing to eradicate the existing access bottleneck.

Regulatory decisions must be delivered in a timely fashion. ALTO is concerned that the Regulatory Appeals Panel (RAP) that was established to provide a lower cost, and quicker means of appeal of regulatory decisions has yet to deliver its first decision. It is also of concern that some appeals taken to the Minister have not been referred to the RAP at all yet. These delays undermine the purpose for which the RAP was established, and may cause increased cost for the industry.

Eircom retains a dominant position in most fixed markets, and critically retains 100% control of the copper access network and the core network used to supply services. These facilities can not be replicated by OAOs. Though radio access can provide alternative means of access through fixed wireless access, Wifi and in the future Wimax, the core Eircom network and copper loop will continue to be the key bottleneck infrastructure for delivery of services in Ireland over the next few years.

Eircom has successfully managed to retain control of this infrastructure, while attempts to break this stranglehold have been unsuccessful, e.g. LLU. Eircom has consistently frustrated OAO attempts to unbundle Eircom exchange lines and provide service over them. The reason for this is self explanatory – Eircom has managed to use these resources to maintain its dominant position in the various service markets. Eircom has no incentive to facilitate OAOs to build market share by using wholesale access to Eircom's network.

OAOs require equivalent access to Eircom's network as that enjoyed by their primary competitor – Eircom (Retail). In order to be fair and equal, this requires equivalent access to systems, processes, information, etc. It also requires that the provider of those services (Eircom Wholesale) is incentivised to sell service to both OAOs and Eircom Retail. This can not be the case under the current structure. The only means to ensure that OAOs will enjoy equivalence of access is for Eircom's access and wholesale business units to be operationally and functionally and legally separate from Eircom retail and reporting to separate boards of Directors.

The quickest (though not the most effective) means to achieve this would be with the cooperation of Eircom itself. Eircom could establish new operating companies and transfer the relevant Access, Wholesale and Retail assets as appropriate. The core monopoly facilities could then be run by the separate

operating company at arm's length from Eircom Retail. This would bring considerable benefits to Eircom by allowing for the easier removal of regulation from retail markets as they became competitive.

In the absence of Eircom voluntarily undertaking such separation ALTO believes the State must examine the option of forced separation. ALTO is aware that this will be a difficult task, and it is not clear at this time what legal instruments can be used to give effect to such separation, however it must be examined as a priority. OAOs must have equivalent access to the core bottleneck facilities if Ireland is to develop into a leading competitive telecommunications sector, and the evidence shows that this will not occur while Eircom remains as a single operating company dominant in multiple markets. ALTO calls on ComReg and Government to examine the options available for such involuntary separation.

### **3 Response to Specific Questions**

Q.1 Do you agree with ComReg's assessment of the current state of telecoms in Ireland? What other factors could ComReg consider in assessing the current state of telecoms in Ireland?

ALTO would generally agree with the information presented by ComReg in this section of the consultation document, however this information requires careful consideration and further analysis if a true opinion on the current status of the telecommunications sector in Ireland is to be gained. This is particularly the case if the data is to be used as a basis for planning the future of regulation.

The data does not demonstrate the extent to which Eircom has entrenched and protected dominant positions in several key markets; Eircom has no published plans for the deployment of Next Generation Networks; and is structurally disincentivised from granting OAOs equivalent access to core access network facilities.

Q.2 Do you agree that these represent developments, which could impact on the sector in the period under review? Are there others? If yes what impact do you believe they may have?

ComReg has identified the move to Broadband as the primary telecommunications product used by both consumers and business; a move from voice being the primary product provided to being just one of the products supplied over broadband; convergence between broadcasting and

telecommunications content provision; and convergence between traditional fixed and mobile communications; with all of these being delivered over NGNs. ALTO would agree that these are the general *technology* developments that can be expected to impact on the sector in the coming years.

It is not yet clear how long it will take for these developments to impact in Ireland, whether Ireland will be a leader in this transition, and the extent to which these developments will bring benefits to the economy. Other factors that are equally important in impacting on the sector include the general economic environment, the rate of investment in infrastructure and services, and the degree to which competitive markets develop.

### Q.3 How can ComReg best incentivise infrastructure-based competition in the Irish market?

ALTO believes competition is desirable and beneficial at all levels of the supply chain, whether that is in retail services, or provision of infrastructure. There will remain certain components in the sector where ubiquitous competition will never develop, in particular, this will apply to the copper local loop. Regulatory policy and Government policy must incentivise the development of competition in markets where this is possible, and develop a clear regulatory policy for the monopoly areas so that the prospectively competitive markets can be protected.

Telecommunications must compete for its investment funding with other sectors. Investors need to know that it is possible to make a reasonable return on investing in telecommunications if it is to attract funding. This means that in all competitive markets, OAOs need to be confident that fair competition develops, and that the regulatory regime will prevent any anti competitive actions. In particular this requires that the regulatory framework guarantees equivalent access to bottleneck facilities. As an example, Local Loop Unbundling (LLU) encourages OAOs to build networks and develop innovative services down to the last mile, however they can't provide these services to their customers unless they enjoy equivalent access to that critical "last mile". The regulatory regime must ensure that this is the case.

Also important, the owner of the monopoly facilities (whether that's Eircom or otherwise) needs to be confident that a reasonable regulated rate of return will be permitted on any investment in those facilities or infrastructures. To investors, regulatory uncertainty equates to risk. Maintaining wholesale prices too low discourages investment by both OAOs and the monopoly operator, while excessive wholesale prices will also have the effect to dampen market activity, and increases the cost base for downstream users of those facilities. In situations where there is a monopoly provider of upstream input facilities, and that provider is also active in the retail market (as is currently the case for Eircom) then excessive wholesale pricing can lead to anti-competitive behaviour.

The prospect of Government intervention in the markets that might distort market conditions would be seen by investors as a risk. Government policy needs to be carefully considered and should only intervene in markets or geographical areas where it is clear that the market has failed to bring investment.

Q.4 Do you agree with ComReg analysis that further improvement is necessary at the wholesale level to facilitate the development of a fully competitive market place here in the interests of Irish Consumers? If so, what would be the best way to ensure equal treatment between OAOs and eircom's own downstream retail arm?

The experience of ALTO members in the telecommunications sector so far has been one of delay and frustration. All of the major regulator-mandated products provided by Eircom to date have experienced difficulties. The Latest example of this is LLU, where Eircom and ComReg are currently engaged in a High Court review as a result of a request by OAOs to have certain products and facilities provided in a coordinated manner. This has led to several months delay already, and no clear resolution is in sight. If LLU operators are to invest, develop their products, and be successful, they need the owner of the local loop to assist rather than impede them. Eircom is currently incentivised only to impede LLU operators. Similar difficulties exist across a range of products and services.

Eircom can only truly be incentivised to treat all downstream users of its core monopoly facilities equally if their operation and management (and ultimately ownership) is separate from Eircom's retail activities. This would guarantee all service providers enjoy real equivalence of access, including equal provision of information and access to systems and procedures. This separation would bring benefits to both entities post-separation – regulation could be relaxed from most markets as they become competitive, and the owner/operator of the core monopoly would be subject to a regulatory regime that ensured a reasonable rate of return. The alternative is to require ongoing in-depth and minute regulation of most aspects of Eircom activities for the foreseeable future.

ALTO sees that there are advantages for both Eircom and OAOs in the separation of Eircom's current core monopoly activities from its prospectively competitive ones. ComReg should examine the instruments available to bring this about if Eircom does not voluntarily move to such separation.

ALTO is aware that this separation is not something that can be considered lightly. It will require detailed investigation to determine the appropriate points at which the separation should be made, and it is not clear what legal instrument could be used to achieve the separation in the absence of Eircom co-operation. However it should not be dismissed simply because it appears that it might be difficult. Ultimately it is the only arrangement that correctly incentivises the core

Eircom units operating both in monopoly markets and in prospectively competitive ones to respectively support competition and compete vigorously. The current market structure has not worked, and ALTO now calls for structural, operational, and legal separation of the core monopoly activities from other Eircom activities.

Q.5 How can ComReg achieve the right balance, at the retail level, between light-handed regulation and the prevention of abuses of dominance? Can the availability of wholesale inputs on a non-discriminatory basis allow the relaxation of retail regulation?

As stated above Eircom has consolidated its dominant position in several key markets in the telecommunications sector. ALTO believes that competition can develop in most markets, however only if new entrants can obtain equivalent input in the form of wholesale products from which to build their customer base and if anti-competitive behaviour is tightly regulated.

ALTO would like to see a situation where regulation can be removed from all but the core monopoly markets, however the conditions do not currently exist that would allow this to happen. Eircom would easily take advantage of any lifting of regulatory obligations to further concentrate its market power. OAOs must have equivalence of access, and markets must be competitive before regulation can be removed.

ComReg should rapidly complete the market analysis process and appropriate remedies on dominant operators. This should include the development of a transparent margin squeeze test that should be applied in advance of the announcement by Eircom of new tariff plans.

Q.6 Will substitution and convergence between fixed and mobile services reduce or eliminate the need for retail controls on a dominant operator?

It is to be expected that convergence will see some existing mobile service providers supplying services that are currently regarded as fixed, and fixed service providers supplying mobile service. It is likely that these will be bundled and branded together so that single providers can meet all the communications needs of their customers. It is also to be expected that technology developments will bring services that don't quite fit into the traditional model for either fixed or mobile. The delivery of video content over broadband and delivery of broadband over cable TV networks will further blur the distinctions that currently exist in the sector.

ComReg's latest Trends Report shows that an increasing number of households choose not to have a fixed line installed, but to use a mobile for their

communication needs instead - however this does not necessarily mean that they can become substitutes for each other. Mobile pricing tends to be approximately 10 times that for service provided over fixed lines, and fixed lines can not offer mobility – a key attribute of mobile service. As a consequence, the products may not become fully substitutable for each other, and convergence will not create a situation where regulatory obligations can be removed in the short term. This situation needs analysis as the trend continues in the marketplace. ComReg should continue to develop its consumer surveys in respect of this trend.

Q.7 What, if any, retail controls should be applied to all operators providing voice services to consumers?

The best protection for consumers is to have vibrant competitive markets. Retail controls are required when an undertaking is dominant in the retail market as a proxy for competition, though they should be removed as competition grows. ALTO believes ComReg's attention should focus on creating conditions whereby competition eradicates the requirement for retail consumer-oriented regulation. The Minister for Enterprise, Trade and Employment recently announced plans for the establishment of a more powerful Consumer Regulatory Authority. Though details of this new agency are not available yet, ALTO believes there should be one agency responsible for consumer protection in the telecoms sector, whether that be ComReg, or the new Consumer Regulatory Authority. It would seem counter-productive to have two separate state agencies carrying out the same tasks in this sector, perhaps to different standards and working from a different legislative base. Our view is that there should not be replication of consumer protection measures by different agencies and statutory provisions. The primary focus of ComReg should be on market regulation. Consumer protection is best left to agencies which have that mission as their main purpose.

Q.8 Do you have any comments on the Fibre-nation and Hiber-nation scenarios presented above? What other scenarios do you think would be useful to explore?

ALTO would broadly agree that the Fibre-nation and Hiber-nation scenarios present the two extreme examples of how the sector might develop. Many of the events described have already begun to occur – it is already possible to receive entertainment over telecoms networks (fixed and mobile), and cable TV networks are used to provide broadband and voice call services. What makes the difference between both scenarios is the extent to which technology developments are used in Ireland to bring about competitive innovative markets and encourage competition.

Q.9 Do you agree with this assessment of trends in operator strategies?

While ComReg has in very broad terms described operator strategies, ALTO would highlight that Eircom's publicly stated strategy is to:

- Defend the core business
- Grow Broadband
- Re-enter Mobile

Eircom has not publicly stated that it has any intention to invest in the rollout of a Next Generation Network. Instead, Eircom's focus seems to be to maintain and consolidate its dominant position in existing markets and maximise short term return for its shareholders. This is not a strategy that will lead us to Fibre-nation. Eircom, as the largest network operator is critical for the development of NGNs in Ireland.

ALTO would advise that a significant number of OAOs have stated their intention to invest in the roll-out of infrastructure and services in Ireland if fair competition exists. OAOs can not roll out NGNs on their own – their networks still require connection via Eircom's in order to provide any-to-any interoperability. Eircom's network is critical to any development towards NGNs in Ireland.

The rollout of NGNs will take a significant programme of planning, and a number of years for implementation. With no outward sign of such programme having commenced within Eircom yet, or of any decision to invest in network roll-out, it would seem that it will be a number of years before Ireland will have a significant portion of inter-working NGNs. This presents a significant obstacle to the Fibre-nation scenario.

Q.10 Do you agree with ComReg's assessment on the evolution of voice markets? What other options do you see emerging?

ALTO would broadly agree with ComReg's analysis of the factors that are likely to bring about changes in the voice market, though would not entirely agree with the conclusions on the likely outcome under each scenario.

The trend whereby residential fixed line penetration is driven by voice products is in decline, with more individuals choosing to use a mobile for voice calls. Fixed line providers will need to add value to their propositions by offering broadband, and at higher bandwidths. Similarly in business segments of the market, technologies such as MPLS will make data services the primary product supplied, with voice carried over data services. Voice over Internet Protocol (VoIP) is already bringing about some changes in use of fixed voice services,



however it is not until VoIP is launched as a product in Ireland with interoperability that it will begin to impact on the current voice markets.

VoIP will remove the existing distance-based costing structures that exist for PSTN voice products. This will likely bring about the sale of flat-rate voice and line rental products, or voice products bundled with others, e.g. broadband for a flat tariff. It will also present opportunities for a reduction of cost to end users (e.g. VoIP combined with SDSL can be used to provide multiple voice paths on a single copper pair, thus allowing a reduction in line rental cost), however VoIP will not impact on the cost of providing access itself.

Just as the radio spectrum is a resource that will play an important role in the provision of network access, the numbering and addressing scheme is critical to provide access to services. New services and technologies, and in particular convergence will bring about a change to the traditional requirements of the numbering/addressing scheme. ComReg needs to retain its focus on these areas to ensure that the numbering scheme and the policies for allocation facilitate these new services.

Q.11 What effect do you expect these trends to have on the need for regulation at the retail level in future? What form do you expect such regulation, if any, to take? (For instance, should regulation focus on preventing abuses of dominance/SMP, or on general consumer protection measures applicable to all operators?)

As stated above in response to question 7, ComReg should focus on the development of competitive markets where that is possible as a means to protect consumer welfare. The technology trends will not themselves bring about a change in competitive conditions unless the regulatory regime provides for that.

In the absence of vigorous regulation, Eircom could simply translate its dominance in existing markets to any new markets that might emerge. In practice these developments could be used by Eircom to further consolidate its dominant positions, for example the introduction of VoIP by Eircom might remove a large number customers who can avail of Carrier Pre-selection (CPS). CPS is the method that has been used by most new entrants to get a “foothold” in the market ComReg must ensure through appropriate measures that there is still a ‘space’ for operators to enter the market without having a network.

Q.12 Do you have any comments on this analysis of the migration to next generation networks? Are there any other issues that ComReg needs to consider?



ALTO would agree that ComReg has identified the headline issues associated with migration to NGNs. That networks will make the migration in the long term is inevitable – NGNs will allow cost savings by simplifying network architecture and will allow greater flexibility for provisioning of services. There will also come a point where maintenance of existing circuit-switched networks will become uneconomic.

What remains uncertain is how quickly the migration to NGNs in Ireland will occur. ALTO would argue that Ireland needs to be among the “early adapters” in the move to NGN roll out, or we will lose competitiveness. Eircom occupies a pivotal position in this regard, and will continue to do so throughout the period under review, unless there is a radical change to competitive conditions. Several OAOs have either begun to build IP networks, or have indicated their willingness to do so, however this will have limited impact in isolation.

Eircom has made no public statements regarding its plans to migrate to NGNs, and there is a real danger that it will instead choose to maximise short term gains by continuing to take profit and dividend payments from its existing infrastructure. Eircom’s current capital investment is focussed on “network renewal, maintenance, and improvement<sup>12</sup>”. Eircom’s balance sheet currently carries almost €2 bn in debt, and a substantial part of cash generated is used in paying interest and dividends, and in reducing debt. This does not indicate that a large-scale investment programme for NGNs is likely to emerge in the short term, and though networks in Ireland will eventually move towards NGN we will not be among the early movers unless a change in policy occurs at Eircom.

Q.13 What effects do you expect Next Generation Networks to have on the prospects for infrastructure-based competition in the 2005-2010 timeframe?

New networks rolled out in the timeframe under review will include NGN technology – it will become more economical to do so than to use circuit switched technology. OAOs will invest in rolling out their networks in all but the core monopoly areas, provided they are sure that they can gain access to the bottleneck facilities they need to deliver their services to customers. The copper loop access network will remain as a core bottleneck in the delivery of services, and ensuring access on suitable terms will be a key determinant of the extent to which OAOs will be willing to invest in their networks.

Q.14 If infrastructure-based competition develops, what markets will it affect and in what timeframe? Are there any areas where this could be expected to lead to the withdrawal of wholesale regulation /access requirements?

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<sup>12</sup> <http://investorrelations.eircom.net/pdf/ResultsQ304pres2004.pdf>

Infrastructure based competition will have an impact on all except the natural monopoly markets. Increased competition and efficiency in core network markets will bring benefits to the downstream markets, including Calls, Leased Lines, Transit & Interconnection, and Mobile.

Q.15 Are there areas where the development of Next Generation Networks could lead to the development of new bottleneck facilities or control points? If so, what are they, and how could regulation address them?

Some current bottlenecks will continue despite a move to NGNs, e.g. local access. It is also likely that new bottlenecks will emerge and careful regulation of these new bottlenecks will be required. Eircom is likely to remain in a central position in the interconnect and transit markets during the review period. Any network changes that Eircom make in order to roll-out NGNs will have a direct impact on OAOs, e.g. movement of or rationalisation of existing interconnect exchanges would have a direct cost impact for OAOs. The interconnect specifications chosen by Eircom could also have the effect to restrict the options available to OAOs.

ALTO recommends that a cross-industry planning group should be established in order to ensure that the planning of migration to NGNs is carried out in a coordinated and transparent manner.

Q.16 Do you have any comments on this analysis of trends in user access and content delivery? Are there any other issues that you think ComReg should consider?

ComReg has correctly identified the main trends possible, and only time will tell how they develop. Convergence is likely to create opportunities for the more well recognised brands currently involved in the supply of access, service, and content to expand the products and services they supply, with each aiming to become the sole supplier of converged services to their customers.

ALTO also expects there will be a continuing role for providers who specialise and excel in provision in more narrowly defined products and services, whether that be content, access or transmission. These service providers will play an important role in the competitive marketplace, and the regulatory framework in place must ensure that they continue to gain access to the additional components required of other providers for them to supply their services.

Q.17 What effects do you expect these trends to have on the prospects for competition (whether infrastructure-based or service-based) in the 2005-2010 timeframe?

The period to 2010 will bring a change in the operation of the markets in the sector. To date they tend to separate into three distinct category types: Fixed Telecoms, Mobile Telecoms, and Broadcasting. Content provision tends to be a separate category that straddles across all three. Convergence brings the opportunity for providers who would traditionally have competed in one category to expand across the other categories. There are embryonic signs of this occurring, e.g. 3G mobile supply of video content, or Cable TV expansion into the “Triple Play” of TV, Telecoms, and Broadband. So far, these converged products have tended to be compliments rather than competitors for existing services.

Q.18 Are there areas where these trends in User Access and Content Delivery could lead to the development of new bottleneck facilities or control points? If so, what are they, and how could regulation best address them?

There will be long term bottlenecks including access network and transmission capacity in certain geographical areas. Regulation of these lasting bottlenecks will be required on an ongoing basis. There are also short term bottlenecks (e.g. Interconnection) that it should be possible to eradicate through development of competition. Tight regulatory oversight will be required for a number of years to allow this competition to develop. In addition there is scope for new or replacement bottlenecks to emerge, particularly in service control points and the systems that control communications between networks.

Q.19 Do you have any comments on this analysis of trends in radio spectrum?

As ComReg has stated, radio spectrum is one of the resources that Ireland has in abundance. Our geographical location gives us some advantages over other European countries as we can plan and use radio – to a large degree - free from the need to coordinate with neighbouring countries. ALTO supports any initiatives by ComReg to utilise the radio spectrum in developing innovative competitive telecommunications markets. ComReg’s recent announcement of the new test and trial licensing regime is one example of how spectrum policy can facilitate research and innovation in advanced radio communications technology.

We would acknowledge that radio spectrum planning must take place within the constraints of the ITU, and that certain services must be planned for on an international basis, e.g. Aeronautical, Marine, Satellite, etc. There are practical economic reasons why spectrum planning needs to influence and be consistent with international allocations – Ireland is a small market in the global context, and it would not be economical to manufacturer radio equipment exclusively for the

Irish market as it does not provide enough economies of scale. Technology developments will diminish this constraint; transmitters and receivers will become more flexible; and Agile or Cognitive Radios will allow transmitters to adapt to their environment to reduce interference. This will allow more freedom to use radio as required by local conditions.

ALTO generally supports initiatives that make it easier and quicker to access the radio spectrum. Spectrum Liberalisation is one regulatory policy that can make more radio bandwidth available to the services that need it in shorter timeframes. The process for assignment of spectrum can be lengthy - international planning, coordination, allocation and assignment. It can take a number of years for the use of a particular band to be changed – particularly if existing services need to be moved. However, ITU-R allocations allow for multiple different uses of certain radio bands, and ALTO would recommend that ComReg takes the most liberal approach possible within the limits permitted by international allocations. At the same time care needs to be taken to ensure continuity of service to existing users while allowing ‘space’ for new entrants and technologies.

Spectrum trading should also bring some benefits by allowing the transfer of rights of use. This will allow the applications/services which derive most benefit from the use of spectrum to buy rights from assignees who have a surplus. The overall framework for spectrum trading needs to be carefully constructed so as to avoid building in obstacles to reallocation or reassignment. The intention is to facilitate rapid access to spectrum for those who require it, and the building up of proprietary interests could act against this, for example by encouraging spectrum hoarding.

Ireland has been successful in attracting investment from hi-tech companies in the ICT sector, and a number of global leading suppliers now have a research and/or manufacturing presence here. Some of these suppliers require to have their interests represented at international radio planning forums, e.g. CEPT, ITU. Government and Regulatory policy should facilitate this access in order to ensure Ireland can gain a leading position in the ICT sector.

Q.20 What spectrum management policies do you think ComReg should adopt so as to foster infrastructure-based competition using spectrum?

As stated in response to question 20 above, ALTO would favour the liberalisation of regulatory policy to facilitate more rapid access to spectrum. The enduring bottleneck in telecommunications is the provision of access, and in some geographical areas backhaul. Radio can provide an alternative to the copper access network, and can also be used to provide backhaul to locations where “digging in” is not feasible. Radio can also be used by OAOs to deliver services as part of an entry strategy, and can be replaced by copper/cable/fibre when the

customer base has grown, allowing the radio to be redeployed at the next location. This is an efficient method for OAOs to gain a “foothold” in the market and should be facilitated by ComReg. Licence Exemptions in certain bands is also to be encouraged as it removes administrative barriers delay, and cost in prior to the commencement of services.

Q.21 Do you have any comments on these developments considered by ComReg on universal service obligations (USO)?

Universal Service Obligations (USO) are used to ensure that most members in society can participate and avail of services and facilities available to the general population. USOs specifically target those for whom access to certain services is prohibitive, either because of physical location or because of their socio-economic circumstances. ALTO believes there will be a requirement to maintain some basic USO for the foreseeable future.

The current minimum specification for line quality (28.8Kb/s) is less useful as a measure of line quality as broadband becomes the norm. Many copper lines capable of this throughput fail the quality test required for provision of DSL services, and as a result a high proportion of copper access lines in DSL enabled areas remain unsuitable for provision of broadband service – ALTO estimates that in excess of 20% of access lines currently fail at the broadband testing stage. This means up to 35% of exchange lines in the country are currently unable to avail of broadband.

The cost of providing USO has been subject to much study in the past, and it has been shown that if the obligation is maintained at a reasonable minimum level, then the net cost of provision is negligible. Regulatory policy should aim to ensure that an objective standard is set for the minimum quality of access service. This will allow users to take advantage of technological developments to achieve greater data throughput, but would avoid imposing an excessive burden on the USO provider by specifying a minimum throughput regardless of the technology or line quality available to provide that service.

Q.22 Do you expect these developments to lead to an increase or a decrease in retail obligations on operators with SMP in retail markets? How do you expect them to affect the level of retail obligations on all operators, including those without SMP?

ALTO would expect technology developments will mean that the proportion of consumers who are supplied under USO will decline somewhat as technology develops and competition grows. The minimum standard for USO could remain , however fewer customers would fall below that standard and would instead be

supplied on a commercial basis. In its most recent communication on USO<sup>13</sup>, the European commission has proposed that the scope of USO should remain unchanged.

Q.23 Please provide any further comments which you feel are relevant to this Consultation.

Regulation is only a means to provide consumer protection in the absence of competitive markets. An effective regulatory regime will provide all of the safeguards needed to allow competition develop and for the regulation to then be removed. ComReg must work vigorously to bring about those competitive markets as this is essential if Ireland is to develop into a leading knowledge based economy.

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<sup>13</sup> Com (2005)203, Review of the Scope of Universal Service, May 2005