



Consultation Paper

Market Analysis International Leased Lines

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All responses to this consultation should be clearly marked:-
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1 Executive Summary

- 1.1 The new communications regulatory framework requires that ComReg define relevant markets appropriate to national circumstances, in particular relevant geographic markets within its territory, in accordance with the market definition procedure outlined in the *Framework Regulations*. In addition, ComReg is required to conduct an analysis of the relevant markets to decide whether or not they are effectively competitive.
- 1.2 The *Framework Regulations* further require that the market analysis procedure under Regulation 27 be carried out as soon as possible after ComReg defines a relevant market, which takes place as soon as possible after the adoption, or subsequent revision, of the Recommendation on relevant product and service markets (“the *Relevant Markets Recommendation*”) by the European Commission¹. In carrying out market definition and market analysis, ComReg must take the utmost account of the *Relevant Markets Recommendation* and the European Commission’s *Guidelines on Market Analysis and Significant Market Power* (“*The Guidelines*”).
- 1.3 In this review ComReg has defined a national market for international retail leased lines. ComReg understands that international leased lines offer capacity between two points, the ‘A end’ which is in Ireland and the ‘B end’ which is outside Ireland. The Commission’s *Recommendation on Relevant Markets* does not define a relevant market for international leased lines. This market operates at the retail level.
- 1.4 In the market definition process of international retail leased lines, ComReg assesses whether switched and non-switched leased line services are currently in the same relevant product market. However, functional and pricing differences between international switched and international non-switched services, lead ComReg to conclude that these are not currently in the same relevant retail product market.
- 1.5 The geographical dimension of the market is also assessed and ComReg finds that there is a single national relevant market that is not constrained by the location of the ‘A end’ of the particular service.
- 1.6 The market analysis for the period under review leads ComReg to conclude that the market for retail international leased lines services is effectively competitive. ComReg therefore proposes to withdraw current regulatory obligations from eircom in this market.
- 1.7 ComReg would welcome comments from all interested parties on the questions posed in this market review and will accept written comments on or before 16 July 2004.

¹Framework Regulations 26 and 27.

2 Introduction

Objectives under the Communications (Regulation) Act 2002

- 2.1 Part 2 Section 12 of the Communications (Regulation) Act 2002 outlines the objectives of ComReg in exercising its functions. In relation to the provision of electronic communications networks, electronic communications services and associated facilities these objectives are to:
- (i) promote competition
 - (ii) contribute to the development of the internal market, and
 - (iii) promote the interests of users within the European Union.
- 2.2 This review is in line with the objectives set out in the Communications (Regulation) Act 2002, in particular as ComReg seeks to promote competition and ensure that end-users derive the maximum benefit in terms of price, choice and quality.

Regulatory Framework

- 2.3 Four sets of Regulations,² which transpose into Irish law four European Community directives on electronic communications networks and services,³ entered into force in Ireland on 25 July 2003. The final element of the European electronic communications regulatory package, the *Privacy and Electronic Communications Directive*, was transposed into Irish law on 6 November 2003.
- 2.4 The new communications regulatory framework requires that ComReg define relevant markets appropriate to national circumstances, in particular relevant geographic markets within its territory, in accordance with the market definition

² Namely, the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 (S.I. No. 307 of 2003), ("the *Framework Regulations*"); the European Communities (Electronic Communications) (Authorisation) Regulations, 2003 (S.I. No. 306 of 2003), ("the *Authorisation Regulations*"); the European Communities (Electronic Communications) (Access) Regulations 2003 (S.I. No. 305 of 2003), ("the *Access Regulations*"); the European Communities (European Communications) (Universal Service and Users' Rights) Regulations 2003 (S.I. No. 308 of 2003), ("the *Universal Service Regulations*").

³ The new regulatory framework for electronic communications networks and services, comprising of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, ("the *Framework Directive*"), OJ 2002 L 108/33, and four other Directives (collectively referred to as "the *Specific Directives*"), namely: Directive 2002/20/EC of the European Parliament and of the Council on the authorisation of electronic communications networks and services, ("the *Authorisation Directive*"), OJ 2002 L 108/21; Directive 2002/19/EC of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and services, ("the *Access Directive*"), OJ 2002 L 108/7; Directive 2002/22/EC of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services, ("the *Universal Service Directive*"), OJ 2002 L 108/51; and the Directive 2002/58/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector, ("the *Privacy and Electronic Communications Directive*"), OJ 2002 L 201/37.

procedure outlined in the *Framework Regulations*⁴. In addition, ComReg is required to conduct an analysis of the relevant markets to decide whether or not they are effectively competitive⁵. Where it concludes that the relevant market is not effectively competitive (*i.e.*, where there are one or more undertakings with significant market power (“SMP”)), the *Framework Regulations* provide that it must identify the undertakings with SMP on that market and impose on such undertakings such specific regulatory obligations as it considers appropriate⁶. Alternatively, where it concludes that the relevant market is effectively competitive, the *Framework Regulations* oblige ComReg not to impose any new regulatory obligations on any undertaking in that relevant market. If ComReg has previously imposed sector-specific regulatory obligations on undertakings in that relevant market, it must withdraw such obligations and may not impose new obligations on those undertaking(s)⁷.

- 2.5 The *Framework Regulations* further require that the market analysis procedure under Regulation 27 be carried out subsequent to ComReg defining a relevant market, which is to occur as soon as possible after the adoption, or subsequent revision, of the *Relevant Markets Recommendation* by the European Commission⁸. In carrying out market definition and market analysis, ComReg must take the utmost account of the *Relevant Market Recommendation* and the European Commission's *Guidelines*.

ComReg procedure

- 2.6 ComReg has collected market data from a variety of internal and external sources, including users and providers of electronic communications networks and services (“ECNS”), and from consumer surveys commissioned by ComReg, in order to carry out thoroughly its respective market definition and market analysis procedures based on established economic and legal principles, and taking the utmost account of the *Relevant Markets Recommendation* and the *Guidelines*.
- 2.7 The results of ComReg’s consumer surveys are referred to throughout this report. In particular, ComReg commissioned a report by TNSmrb “Broadband & Data Communications Survey” in May 2003.

Liaison with Competition Authority

- 2.8 There is a requirement on ComReg under Regulation 27 of the *Framework Regulations* to carry out an analysis of a relevant market that has been defined. This analysis must be carried out in accordance, where appropriate, with an agreement with the National Competition Authorities (NCAs) under Section 34 of the Competition Act 2002. In December 2002, ComReg signed a co-operation agreement with the Competition Authority for a period of three years⁹. To facilitate market review decision-making, a Steering Group which included a representative from the Competition Authority was established by ComReg. Through this forum,

⁴ Framework Regulation 26.

⁵ Framework Regulation 27.

⁶ Framework Regulation 27(4).

⁷ Framework Regulation 27(3).

⁸ Framework Regulations 26 and 27.

⁹ ComReg Document No. 03/06.

the Competition Authority has been informed and involved throughout the market review decision making process.

Consultation

- 2.9 All comments to this public consultation are welcome. However, it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document.
- 2.10 The consultation period will run from 04 June to 16 July 2004 during which time ComReg welcomes written comments on any of the issues raised in this paper.
- 2.11 As required by Regulation 20 of the *Framework Regulations*, any draft measure which ComReg proposes to adopt will be made accessible to the European Commission and the national regulatory authorities in other member states of the European Community prior to adopting the measure.

Structure of Consultation Document

- 2.12 The remainder of this consultation document is structured as follows:
- **Section 3** presents ComReg's preliminary conclusions on the definition of the market(s) for the provision of international capacity to end users. This section consists of a review of the market definition procedure and its scope, as well as demand-side and supply-side substitution assessments at the retail level;
 - **Section 4** presents ComReg's market analysis for the market listed above and presents ComReg's preliminary view on whether this market is effectively competitive;
 - **Section 5** presents ComReg's preliminary view on undertakings with significant market power within the market;
 - **Section 6** provides details with regard to the submission of comments on this consultation document.

3 Relevant Market Definition

- 3.1 ComReg has considered the scope of the appropriate retail market(s) for international leased lines between two points, one of which is in Ireland (A-end) and the other of which is outside Ireland (*i.e.*, international). For the purpose of this market analysis ComReg examines the A-end only.
- 3.2 In order to understand the functional characteristics of leased lines products and services that are purchased by end users, ComReg has undergone a process of examining functionality from a demand side analysis. The conclusions drawn are that leased lines products and services comprise:

“point to point symmetric capacity, whether contended or uncontended, which does not include on-demand switching or routing functions which the end user controls”.
- 3.3 For the purpose of defining the relevant market for leased lines, ComReg understands that these are the characteristics and functionality which are offered by leased lines products and services. These functional characteristics are explained in greater depth in ComReg document 04/59.
- 3.4 There are a number of retail leased line services that can be acquired to provide the carriage for data, broadband, voice and other electronic communications services between Ireland and international locations. The primary means of providing such services are international leased lines, whether over owned/controlled infrastructure or using wholesale leased lines acquired from other operators who own or control international infrastructure.
- 3.5 Accordingly, in light of such factors, this analysis considers whether:
 - international leased lines and national leased lines fall into the same relevant market;
 - retail leased line services and switched international services fall into the same relevant market;
 - international retail leased lines and multi-national VPNs fall into the same relevant market;
 - there are distinct route-by-route relevant markets for international retail leased lines.

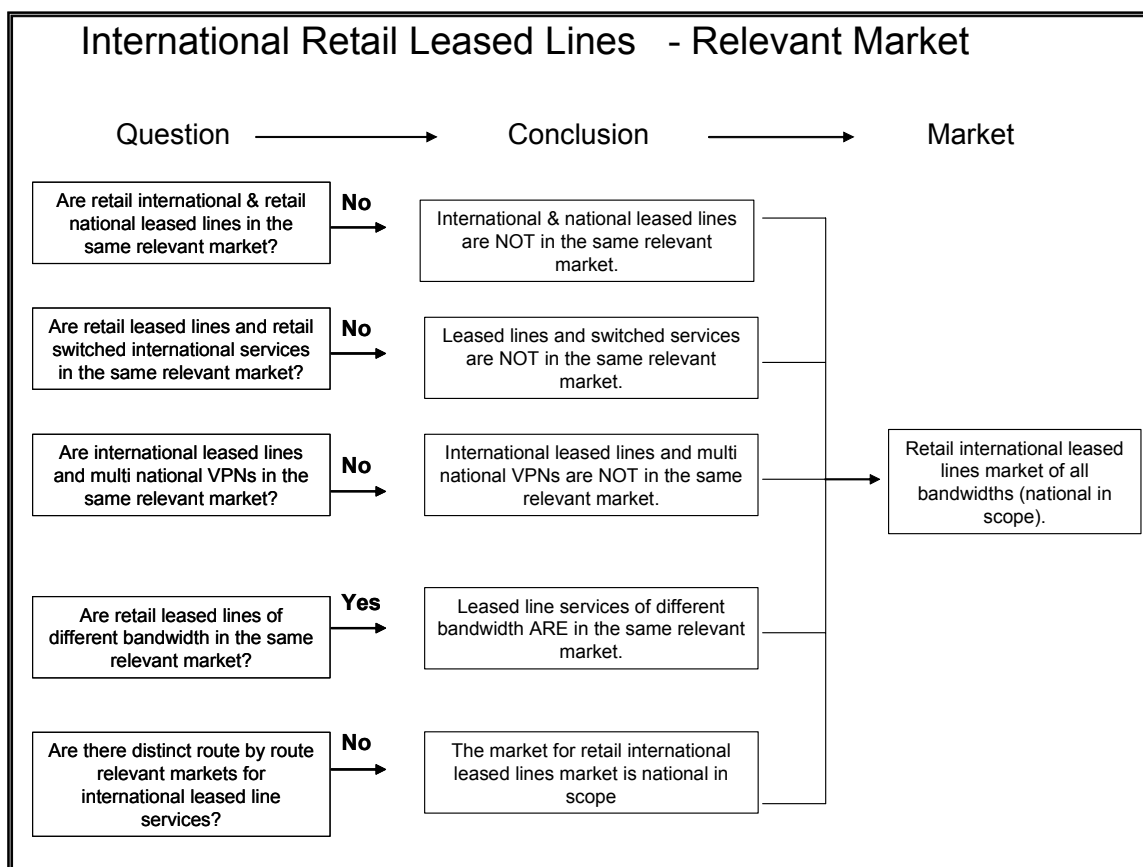


Figure 3.1: Overview of the International Retail Leased Line Market Definition

Are international leased lines in the same market for national leased lines?

- 3.6 ComReg has considered the scope of the appropriate retail market for leased lines. In the *Recommendation on Relevant Markets* the Commission defined a retail market which includes the minimum set as described in the *Universal Services Directive*. It does not distinguish between national and international leased lines. ComReg, however has defined a market for international leased lines, which has one point (the ‘A end’) in Ireland and the other (the ‘B end’) which is outside Ireland. This differs from a market for national leased lines, which has two points within Ireland. ComReg has considered whether and to what extent international and national leased lines fall within in the same market.

Demand side

- 3.7 ComReg is of the preliminary view that a leased line within Ireland and a leased line from Ireland to another country are not substitutes for each other. From the demand side analysis it seems unlikely that a consumer of international leased lines will respond to a small but significant non-transitory price increase by a hypothetical monopolist of international leased lines and switch to a national leased line e.g. a leased line from Dublin to London is not equivalent to a leased line from Dublin to Galway. The two products are not close substitutes.

Supply side

- 3.8 Starting from a narrow market for national leased lines, ComReg examines whether an operator of international leased lines would respond to a small but significant non-transitory price increase made by a hypothetical monopolist of national leased lines. ComReg believes it is unlikely that such a switch in production could occur, sufficiently promptly or cost effectively in order to constrain a hypothetical monopolist operating in the national leased lines market. Moreover, an international operator would need to acquire key network based inputs which differ from those used for international leased lines. Furthermore, an international operator would incur marketing and sales costs in building up a customer base in the national market. Thus it is unlikely that this could occur within a timeframe to constrain a hypothetical monopolist. Conversely, a hypothetical monopolist of leased lines would not be constrained by supply side substitution from national operators.
- 3.9 From the outset it is important to note the differences which exist, particularly as international leased lines are often provided as part of a broader regional (*e.g.*, pan-European) or global contract. This differs from the national market for leased lines, where provision is offered on terms and conditions unique to a national market for Ireland. The conditions of supply and hence the pricing reflect a separate market place.
- 3.10 ComReg holds that both demand and supply-side substitution factors indicate that there is a separate market for national and international leased lines. National leased lines are subject to a separate review ComReg 04/59.

Are retail leased line products and services (non-switched) and switched international services in the same relevant market?

- 3.11 In *BT/AT&T*,¹⁰ the European Commission found that the market for the provision of international voice telephony could be considered to be a relevant product market, for which both the share of capacity owned and volumes of bilateral traffic carried on the relevant country pair route constituted relevant indicators. The Commission also stated that the international voice telephony market consists of two primary services sold to end-users:
- (i) international direct dial telephony ('IDD') and
 - (ii) retail international private leased circuits ('IPLCs').
- 3.12 The issue is, therefore, whether such services are, from a demand or supply-side perspective, within separate relevant product markets.

Demand-side substitutability

- 3.13 ComReg notes some significant functional and pricing differences between international switched services and non-switched international leased lines, including:
- while non-switched international leased lines can be used by customers to carry a number and range of forms of communications traffic (both voice and data), international switched voice and data (including managed data) services must be acquired individually;

¹⁰ Case No. IV/JV.15.

- switched international services are not ordinarily supported by service level agreements, while non-switched international leased lines are ordinarily supported by service level agreements prescribing service quality, fault response and other service support elements that ensure the quality and robustness of the services; and
- international switched services are billed on a metered basis, while tariffs for non-switched international leased lines are flat rate, and are independent of the volume of traffic carried over the capacity.

3.14 ComReg has formed the view that the objective characteristics are sufficiently different to weaken competitive constraints on the demand-side.

Supply-side substitutability

3.15 ComReg understands that the majority of suppliers of international switched services into and out of Ireland do so using either owned or controlled facilities or wholesale leased lines or other capacity services. These inputs are also used to provide retail international leased lines services. As such, suppliers of retail leased line services would have access to the capacity necessary to switch supply to international switched voice and data services, and *vice versa*, in response to a price increase by a hypothetical monopolist. However, the provision of non-switched services requires service providers to offer quality of service guarantees; condition the capacity for a range of traffic; and provide the higher levels of customer service demanded by end-users. As such, suppliers of switched international services could only impose a competitive constraint on a hypothetical monopolist supplier of non-switched if they are prepared to make the necessary additional investments. ComReg considers that the differences in conditions of supply limit the scope for supply side substitution from a provider of switched services.

Conclusion

3.16 In light of the demand-side functional and pricing differences between retail international switched services and retail non-switched leased line services, and the supply-side substitution arguments, ComReg does not believe that these are currently in the same relevant retail product market.

Are international retail leased lines and multi-national VPNs in the same relevant market?

Demand-side substitution

Functional substitutability

3.17 A number of decisions by the European Commission have considered whether leased lines fall within the same relevant market as managed services such as VPNs. For example, in *Phoenix/ Global One*,¹¹ the European Commission defined a broad market for 'non-reserved corporate telecommunications services' which consisted of customised packages of corporate telecommunications services and packet-switched data communications services. The Commission went on to identify the following services as falling within this broad market:

- corporate voice services (including global VPNs);

¹¹ Case No. IV/35.617.

- data communications services (using *inter alia* X.25, Frame Relay and IP protocols);
 - custom network solutions and platform-based enhanced services.
- 3.18 The Decision does not identify which services fall into the 'segments' that are aggregated as 'non-reserved corporate telecommunications services'.
- 3.19 It is a matter for the end user to determine the nature and mix of services carried over leased line services. Other data services usually entail a greater degree of management on the part of the service provider, limiting, to some degree, the flexibility for the customer in terms of determining the nature and mix of services carried.
- 3.20 ComReg's customer survey data indicates that demand patterns for leased line services are currently distinct from those for other data services (including VPNs). It also appears that a number of respondents consider that such other data services are being provided at a different functional level of trade.¹²
- 3.21 ComReg notes that the distinction between so-called 'first (basic) level' services, which include the provision of bandwidth, and 'second level' services, which include 'managed data network services' was considered by the Commission in *FT/Equant*.¹³ The Commission looked at the levels of value added, management and the 'technicality' of the tailored offering and the degree of additional support provided (*e.g.*, maintenance and security) in acknowledging that such a distinction could be drawn.

Price comparison

- 3.22 ComReg notes that at present eircom's pricing for international leased line services is regulated and thus transparent, in that it is required to publish its prices. However, the evidence suggests that eircom's prices are, in essence, a 'price ceiling' below which its competitors set their prices. The prices of such competitors are not similarly transparent.
- 3.23 Prices for other data services are generally opaque, in that most contracts entail the provision of bespoke on-demand services that are tailored for the customer, and are often provided under contracts awarded through bidding or competitive tender processes. It appears that contracts are often priced on a 'one-off' basis and are the subject of confidentiality obligations. Furthermore, the provision of such services to undertakings in Ireland is often a part of a much broader service offering (*e.g.*, either regional or global contracts). Many such contracts do not break out prices for the provision of services to particular locations. As such, it is very difficult to conduct a price comparison of such services, or to compare their prices with the prices of other services (including leased line services).

Supply-side substitution

- 3.24 ComReg understands that the majority of suppliers of other data services to locations in Ireland (including VPNs) do so using either owned or controlled facilities or

¹² tns mrbi Broadband & Data Communications Survey, May 2003.

¹³ Case No. COMP/M.2257.

wholesale leased lines or other capacity services. These are the same inputs used to provide retail international leased line services. As such, suppliers of retail international leased line services would be equipped to switch supply to other types of international other data services, and *vice versa*, in response to a price increase by a hypothetical monopolist. As such, suppliers of such other data services could impose a competitive constraint on the hypothetical monopolist retail leased line services supplier, if it had access quickly and cheaply to the management and protocol tools necessary to condition the capacity.

Conclusion

3.25 ComReg takes into consideration that there is a different functionality for leased line services and other data services. Moreover, the bespoke nature of service design and pricing for many such data services; and the differing degrees of management and customer control and flexibility in relation to services, leads ComReg to believe that retail international leased line services and other data services are not currently in the same relevant retail product market.

Are there distinct route-by-route relevant market(s) for retail leased line services?

- 3.26 A number of other regulatory authorities have considered whether it is appropriate to define route-by-route relevant markets for international leased lines, reaching differing conclusions. In the preliminary working document produced by the European Commission in the course of its leased line enquiry, the Commission defined the leased line market as being global or pan-European¹⁴. In a number of merger decisions in which the (wholesale) market for carrier services was considered, the European Commission left open that question of whether it should define the relevant market(s) on a global basis or by country pairs¹⁵. In others, it has defined distinct markets for bilateral routes¹⁶. Oftel adopted the latter approach in its 1999 review of wholesale international voice services, and defined relevant markets on a route-by-route (or 'country pair') basis¹⁷.
- 3.27 In the context of the Irish market end users are seeking international leased lines between two points, out of Ireland. The provision of capacity between one route is not a substitute for capacity on another route. However, it is unlikely that such customers will know or be concerned as to whether such capacity is provided directly or indirectly (transiting through one or more jurisdictions). In fact, as discussed below, customers seeking connectivity with Ireland will tend to assume that their capacity is transiting through the United Kingdom.
- 3.28 ComReg notes that Oftel's 1999 approach was adopted part of the way through the last cycle of submarine cable construction, and that the UK has historically performed something of a 'transit' role for capacity and traffic, both intra-European and international. ComReg believes that such an approach is not appropriate for Ireland,

¹⁴ *Working Document on the Initial Results of the Leased Lines Sector Inquiry*, 8 September 2000, at page 18.

¹⁵ See, for example, *BT/AT&T*, Case No. IV/JV.15, at paragraphs 74 to 78.

¹⁶ *BT/MCI (II)* Case No. IV/M.856.

¹⁷ *Competition in International Markets*, November 1999, at paragraph 3.16.

given the absence of a significant 'hubbing' role for Ireland in the routing of international traffic.

3.29 As the following map illustrates, submarine cables that land in Ireland are directly connected to only two locations: the United Kingdom and the United States¹⁸. There are only two direct links to the United States, over PTAT-1 and Hibernia Atlantic.

¹⁸ Map produced by Mason, in April 2003.

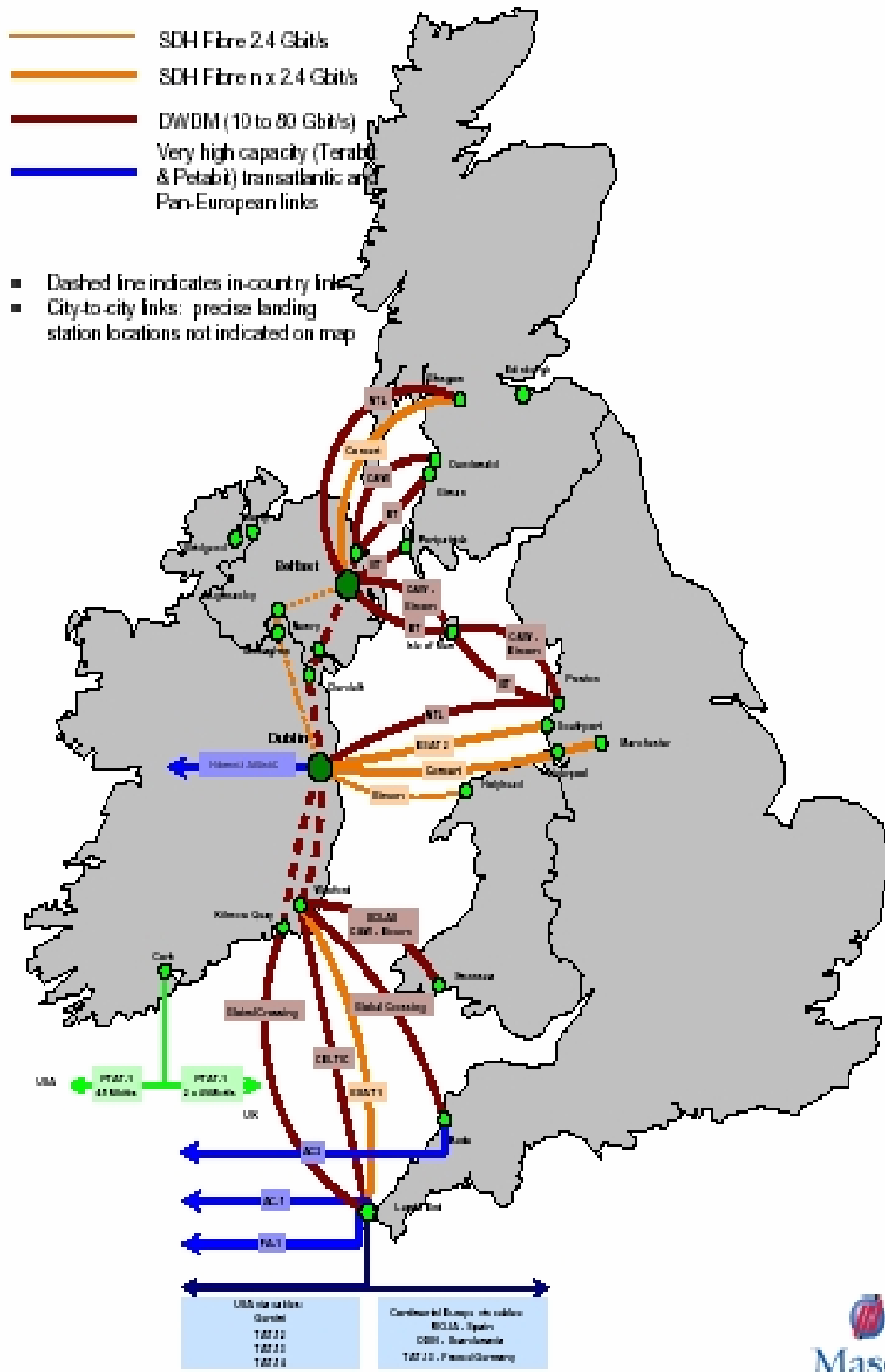


Figure 3.2: International Links

- 3.30 The United Kingdom is clearly the most important link for Irish international connectivity and consequently, retail international leased lines services. A supply side analysis suggests that the market should not be split on a route to route basis. Evidence shows that all such services are provided using capacity into the United Kingdom, where the second point on the particular link is in a third country. In a liberalised environment, evidence shows that in the case of capacity to that third country, supply of capacity current outstrips demand significantly. In essence, ComReg observes that an operator could use alternative routes to an end destination, where there were a small but significant price increase by a hypothetical monopolist on one particular route. Moreover, as there is excess capacity in the market, it is unlikely that an operator could raise the price above the competitive level.
- 3.31 The Commission acknowledged, in *France Telecom/Equant*,¹⁹ that the availability of satellite communications and the growth of third country transit had the potential to require the reassessment of bilateral routes, and the definition of wider categories for the purposes of defining relevant markets. Indeed, intelligent network platforms route traffic in the most efficient route to an end destination and this is not necessarily on a bilateral basis.
- 3.32 ComReg takes the view that there is no Ireland- United States relevant market, despite the two direct links. It believes that the amount of excess capacity on other cables from Europe to the United States is such that this indirect capacity imposes pricing pressure and otherwise constrains behaviour in relation to direct capacity between Ireland and the United States²⁰.
- 3.33 Finally, ComReg takes the view that there is a single relevant market that is not constrained by the location of the so-called 'A-end' and 'B-end' of each service. From a supply side analysis, the specific destination of the route does not have a material impact on the conditions of supply, indeed international leased lines are often provided as part of a broader regional (e.g., pan-European) or global contract. However, ComReg notes that leased lines between Ireland and the United Kingdom are of central importance to the provision of international leased lines between Ireland and the rest of the world.

Conclusion

- 3.34 ComReg takes the view that the market for international retail leased lines includes all routes coming out of Ireland.

¹⁹ Case No. COMP/M.2257.

²⁰ Such capacity lands in the United Kingdom, Spain, the Netherlands, Iceland and Germany, among other jurisdictions.

THE GEOGRAPHIC MARKET

3.35 ComReg has considered the scope of the geographic market within which the conditions of supply and demand for the relevant retail international leased line services are sufficiently homogeneous. ComReg takes the view that the relevant product market is a national market for the provision of international leased lines. As such, ComReg has considered whether the conditions of supply differ from jurisdiction to jurisdiction.

Demand-side substitutability

3.36 Given the proliferation of infrastructure servicing the international market, it appears to ComReg that customers seeking leased lines between two points can acquire such capacity indirectly. As such, if a hypothetical monopolist provider between two points increases the price on that route by between 5 and 10%, customers can have their capacity routed through a third (and, if necessary, additional) location to reach the ultimate destination. In particular, if customers acquire international services, this facility will already be available.

Supply-side substitutability

3.37 ComReg believes that market entry is likely to occur in response to a hypothetical price increase. Illustrated in Figure 3.2 is a map which shows that there is a significant amount of competing infrastructure connecting Ireland to the United Kingdom. There is an even greater number of competing networks connecting the United Kingdom to the remainder of Europe. As such, the owners and operators of such infrastructure and all those acquiring capacity (or seeking to acquire such capacity) on such networks would be able to respond to a price increase by a hypothetical monopolist. ComReg believes that the significant amount of unused or 'excess' capacity on such infrastructure would ensure that supply would be unconstrained at the wholesale level, allowing retail market entry.

Conclusion

3.38 ComReg takes the view that there is one national market for retail international leased lines.

Q. 1. Do you agree with the scope of the market definition for a national market for retail international leased lines? Please provide evidence to support your response.

4 Market Analysis

Background

- 4.1 Having first identified a relevant market relating to retail international leased lines in Ireland, ComReg is required to conduct an analysis of whether the market is effectively competitive by reference to whether any given undertaking or undertakings is/are deemed to hold SMP in that market. Recital 27 of the *Framework Directive* states that a relevant market will not be effectively competitive “*where there are one or more undertakings with significant market power*”. Regulation 25(1) of the *Framework Regulations* states that:

“A reference in these Regulations ... to an undertaking with significant market power is to an ... undertaking (whether individually or jointly with others) [which] enjoys a position which is equivalent to dominance of that market, that is to say a position of economic strength affording it the power to behave to an appreciable extent, independently of competitors, customers, and, ultimately, consumers”.

- 4.2 Accordingly, an undertaking may be deemed to have SMP either individually or jointly with other undertakings in a relevant market. In addition, where an undertaking has SMP on a relevant market, it may also be deemed to have SMP on a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the undertaking²¹.
- 4.3 ComReg is obliged under the *Framework Regulations* to assess SMP in accordance with European Community law and to take the “utmost account” of the *SMP Guidelines*²². Those criteria considered to be probative on the issue of SMP are discussed below.

Market shares

- 4.4 Market shares are an imperfect proxy for market power. However, they can provide useful indicia of the effectiveness of competition in a relevant market. The market shares calculated by reference to the number of lines sold and revenue earned by each entity are set out below.
- 4.5 However, ComReg notes that it only has data relating to lines that are 'sold' or, to put it another way, have their 'A-end', in Ireland. As such, these figures artificially inflate actual market shares and only represent a segment of the total market.
- 4.6 Analysis of data over a two year period 2002-03 shows that the international leased line market is competitively dynamic as can be seen by the change in market shares in Figure 4.1 (evaluated on a revenue basis). Furthermore, it can be seen that no operator has a market share in excess of 40% and the largest market share is declining.

²¹ Framework Regulations, Regulation 25(3).

²² Framework Regulation 25(2).

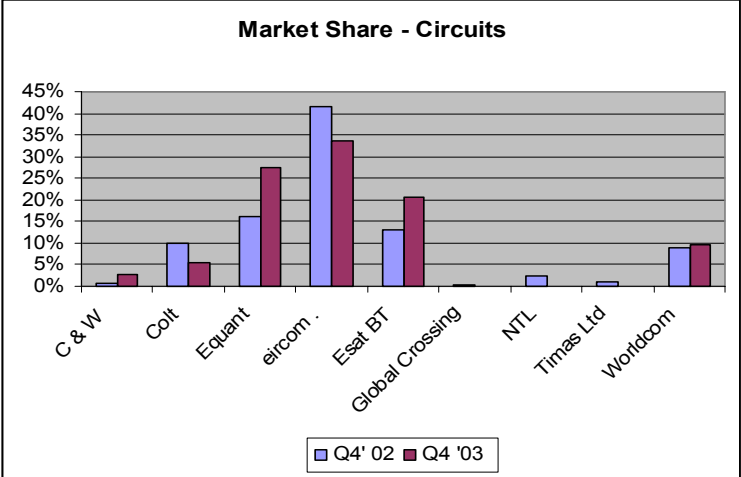


Figure 4.1: Market share calculated by number of circuits

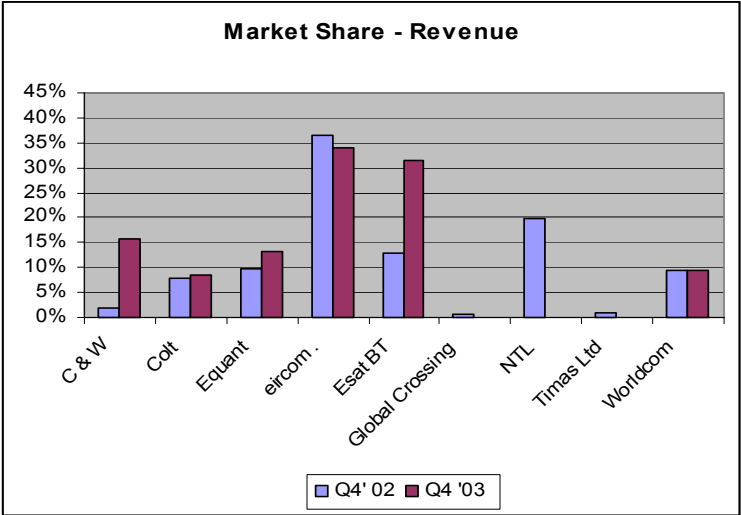


Figure 4.2: Market share calculated by revenue

Price development

- 4.7 While eircom is required to publish its international leased line prices, other operators providing such services and other international leased lines services are not. As such, eircom's prices seem to operate as a price ceiling.
- 4.8 DG Information Society publishes '*Telecoms Price Development*' data prepared for it by Teligen. The 2003 data indicate that the last significant reduction in publicly available international leased lines pricing occurred between 1999 and 2000. These reductions were in the order of 30%, and followed a similar reduction between 1998 and 1999. Between the year 2000 and 2003, publicly available prices remained stable.
- 4.9 Despite this stability, it is important to consider the relative level of such prices, compared to the other Member States. For example:

To	Capacity Link	Rank Among Member States Reported
Near EU	64 kb/s	5th lowest of 15
Distant EU	64 kb/s	8th lowest of 15
US	64 kb/s	4th lowest of 15
Near EU	2 Mb/s	3rd lowest of 14
Distant EU	2 Mb/s	6th lowest of 14
US	2 Mb/s	3rd lowest of 14
Japan	2 Mb/s	3rd lowest of 13
Near EU	34 Mb/s	2nd lowest of 10
Distant EU	34 Mb/s	2nd lowest of 6

Table 4.1: Leased line prices from Ireland rated against other Member States

- 4.10 As such, ComReg does not believe that the relative prices indicate that prices are being sustained above competitive levels through the exercise of market power.

Barriers to entry

- 4.11 ComReg has considered the extent to which there appears to be barriers to entry or expansion that precludes market entry or make it more onerous. In particular, it has taken note of the construction of new infrastructure between Ireland and the United Kingdom since 1999.

Available capacity

- 4.12 As noted in the supply-side discussions relating to market share above, pan-European capacity has grown significantly in the last three to four years. In particular, there are now a significant number of high capacity links between Ireland and the United Kingdom, namely:

- DWDM (10 to 80 Gb/s) links between Wexford and Swansea, Bude and Lands End, between Kilmore Quay and Lands End, between Dublin and Preston, and between Belfast and Preston, Girvan, Dundonald, Glasgow and Portpatrick;²³
- SDH fibre (multiples of 2.4 Gb/s) between Wexford and Lands End, Dublin and Liverpool (through to Manchester) and Southport, and Belfast to Glasgow; and

²³ ComReg notes that there is a DWDM link between Dublin and Belfast, together with an older 2.4 Gb/s link.

- SDH fibre (with 2.4 Gb/s capacity) between Dublin and Holyhead.
 - eircom operates the single 2.4 Gb/s cable and has an interest in one of the Belfast to Preston links. All other infrastructure is operated by other entities.
- 4.13 As such, it would appear that there is significant available capacity between Ireland and the United Kingdom. It does not appear that access to underlying capacity operates as a barrier to entry.

Technological and infrastructure advantages

- 4.14 ComReg has no reason to believe that any entity has a technological advantage. The DWDM infrastructure described above is owned and operated by the following range of entities: NTL, Concert, C&W, BT, Cable & Wireless, SOLAS C&W, Global Crossing and CELTIC.

Countervailing buyer power

- 4.15 The purchasers of retail international leased lines are, almost by definition, multinational corporate entities. As such, they are relatively sophisticated and well-informed purchasers. In addition, they are in a position to acquire their international leased lines in the location that delivers the most attractive commercial proposition (*i.e.*, they are able to locate the 'A-end' of their services in the place that delivers the best deal). They are also ready and able to ensure that they achieve the best commercial transaction possible through ensuring that suppliers compete to provide their services, whether that is through tenders, RFPs and RFQs or some other mechanism.

Conclusion

- 4.16 ComReg is of the view that no operator has advantage over its competitors such that it could operate independently of its competitors, customers or consumers. On balance, ComReg believes that the national market for international retail leased lines services is effectively competitive.

Q. 2. Do you agree that the national market for international retail leased lines services is effectively competitive? Please provide evidence to support your response.

5 Withdrawal of Obligations

- 5.1 Article 7 of the Access Directive²⁴ and Article 16 of the Universal Service Directive,²⁵ allow Member States to carry forward some existing obligations until the market analyses have been completed and a determination is made whether to maintain, amend or withdraw any such obligations. These provisions were transposed into Irish law by Regulation 8 of the Access Regulations²⁶ and Regulation 13 of the Universal Service Regulations²⁷.
- 5.2 ComReg proposes to define a market comprising a national market for international retail leased lines out of Ireland, undifferentiated by bandwidth (the 'Market'). ComReg also proposes to make a determination, in accordance with Regulation 27(2) of the Framework Regulations,²⁸ that the Market is effectively competitive and, accordingly, that those obligations imposed on eircom, in relation to the Market, by Regulation 8 of the Access Regulations and Regulation 13 of the Universal Service Regulations, be withdrawn.

²⁴ Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive).

²⁵ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive).

²⁶ European Communities (Electronic Communications Network and Services)(Access) Regulations 2003.

²⁷ European Communities (Electronic Communications Network and Services)(Universal Service and Users' Rights) Regulations 2003.

²⁸ European Communities (Electronic Communications Network and Services)(Framework) Regulations 2003.

6 Submitting Comments

- 6.1 All comments are welcome; however it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document.
- 6.2 The consultation period will run from 04 June to 16 July during which ComReg welcomes written comments on any of the issues raised in this paper.
- 6.3 ComReg appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful. Under Article 5(2) of the Framework Directive the European Commission can require ComReg to provide it with responses to the consultation and other information. ComReg can request the European Commission to keep that information confidential. For that reason respondents are requested to clearly identify confidential material and if possible to include it in a separate annex to the response. Such information will be treated as strictly confidential.
- 6.4 Having analysed and considered the comments received, ComReg will review the market review and publish a report on the consultation which will inter alia summarise the responses to the consultation.
- 6.5 In order to promote further openness and transparency ComReg will publish the names of all respondents and make available for inspection responses to the consultation at its offices.

Appendix A – Consultation Questions

- Q. 1. Do you agree with the scope of the market definition for a national market for retail international leased lines? Please provide evidence to support your response..... 15
- Q. 2. Do you agree that the national market for international retail leased lines services is effectively competitive? Please provide evidence to support your response..... 19