



Commission for
Communications Regulation

Information Notice

LLU Code of Practice Review

Output of the Review

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1 Introduction

Local Loop Unbundling (LLU) is the process which enables Other Authorised Operator's (OAOs) to make use of the physical copper connections between a customer and the local exchange, known as the "local loop". Eircom is obliged to provide access to the local loop and associated facilities including collocation. OAOs use Eircom's incumbent infrastructure to deliver a range of voice and broadband services to their customers. In March 2003 as part of the LLU launch, industry created and agreed to adhere to a Code of Practice (CoP) for LLU that was drafted at the LLU Industry forum attended by Eircom, OAOs and chaired by ComReg. Eircom stated *“for the avoidance of doubt this Code, as with the Code of Practice on CPS and NP, will form part of the Eircom 'Selling Practices - A Code of Conduct for the Eircom Group', document”*.

Following on from the establishment of a National Regulatory Forum a Market Analysis was undertaken by ComReg, which found that Eircom had significant market power (SMP) in the market for wholesale unbundled access to the local loop (D8/04. As a consequence of the SMP decision certain remedial SMP obligations were imposed on Eircom relating to LLU.

The original CoP was developed nearly 4 years ago and there have been developments in relation to LLU since then. ComReg decided to carry out a review of the CoP which in turn has now led to two documents- the first of which sets out the obligations that arise and the second includes some additional areas that ComReg considers to be best practice and in the interests of protecting consumers.

1. The LLU Regulatory Guidance Document (A compendium of key regulatory and legal obligations that an Undertaking must observe), Title: *“Regulatory Guidances for Undertakings Relating to LLU”*; ComReg document number 08/11a ; and
2. Output of the LLU CoP Review (A compendium of provisions not having a legal basis), Title *“Output of the LLU CoP Review: Provisions not having a legal basis”*; ComReg document number 08\11b

The nature and purpose of these documents is further explained below.

2 Background

Local Loop Unbundling (LLU) is the process according to which OAOs can gain access to and control of the Eircom telephone line between the local telephone exchange servicing the customer and the customer's premises – commonly known as the last mile or local loop. OAO's can offer access to customers via this network to compete with Eircom and each other by offering competing telephony services to customers via LLU.

An LLU CoP was agreed by industry previously when LLU was originally launched. It was intended to be used as part of Eircom's Code of Conduct as regards selling practices and was agreed by OAOs. The provisions of this CoP were a mixture of restatements of existing legal obligations and guidelines for dealing with customers.

Eircom's Access Reference Offer (ARO) and OAO's contracts do not specifically refer to or incorporate the LLU CoP. The Eircom Code of Conduct for the Eircom Group with regard to selling practices was a requirement under the General Telecommunications Licence "GTL" (replaced in 2003 by the General Authorisation). Part 3 of the GTL addressed approval of customer contracts and misuse of data amongst other things and applied to SMP undertakings only (Eircom was designated with SMP by D 15/99). ComReg's predecessor, the Office of the Director of Telecommunications Regulation (The ODTR) consulted on the requirements under Condition 19 at Part 3 of the GTL in relation to selling practices for licensed services within the public fixed telephone and service market, to avoid unfair and anti-competitive practices in 2000 (00/85). The ODTR stated "*Should the Industry wish to agree a Code of Practice specific to Inter operator local loop unbundling issues the Director considers this to be a matter for the Industry*". Following this the Industry did agree an LLU CoP and an Eircom Code of Conduct which addressed selling practices was introduced of which the LLU CoP was a part following D8/01. . In January 2003 ComReg issued a decision under (03/11) that a no contact period of 3 months following the loss of a customer from Eircom to an undertaking via LLU would apply.

The LLU CoP dealt with a number of LLU specific issues and required Undertakings to engage in, or desist from, specific activities in relation to the inter-operator processes and end-user communications in the provisioning of telephony and/or broadband service to customers through LLU. The LLU CoP contained some provisions already required by law enforceable by ComReg or other agencies and some provisions not having an independent legal basis outside of the Code.

ComReg undertook a review of industry Codes of Practice (CoP) which support all regulated wholesale products in order to:

- Review the objectives of the CoP
- Determine the legal and policy status of each of the provisions in the CoP
- Consider the enforceability or otherwise of elements the CoP provisions.
- Consider whether a CoP is the appropriate document for provisions deemed relevant and beneficial to LLU, the products, the market and customers

In order to carry out the review a number of approaches were considered including removal, redrafting or replacement of the existing CoP.

The CoP addressed many issues already required by existing legislation within the remit of either ComReg, the Office of the Data Protection Commissioner or the National Consumer Agency. The review commenced with an examination of the provisions contained in the CoP to determine whether they were supported by existing legislation and thus enforceable by either ComReg or another agency. The continued relevance of provisions found not to be enforceable was also assessed and where a provision was deemed relevant, particularly in the interests of protecting both consumers who avail of LLU and other operators who operate LLU, but currently unenforceable in law, mechanisms were considered as to how the provision might be given a firmer legal standing. The review of the CoP also allowed consideration of provisions better suited for inclusion in other LLU related documents such as the Inter Operator Process Manual (IPM).

In conducting the review ComReg analysed the provisions contained in the current LLU CoP from both a legal and a policy perspective having regard to relevant legislation and ComReg's functions and objectives.

As a result of this review ComReg is now publishing two documents that relate to the LLU product.

- The first of which is entitled “*Regulatory Guidances for Undertakings Relating to LLU*” (08\11a) is a general guide for Industry as to the enactments, regulatory decisions and directions that they must meet, provisions which are enforceable by ComReg and other agencies (including the Office of the Data Protection Commissioner and the National Consumer Agency) which apply to LLU. The provisions contained in the document will serve to clarify for all stakeholders (customers, industry, etc) some of the key provisions that are required by law and those provisions that are enforceable.
- The second of the documents, is the “*Output of the LLU CoP Review: Provisions not having a legal basis*” (08\11b), contains elements from the original LLU CoP which, following ComReg's review of the LLU CoP, have not been included in the Guidance document as they are considered not to have any independent legal basis. However many of these provisions were developed and agreed by Industry as part of the original LLU CoP, as they felt that these provisions had both value and also assisted an Undertaking in the efficient delivery of services. These provisions were adhered to in the original CoP. ComReg recommends these provisions should continue to be followed by Undertakings in relation to LLU because such provisions would continue to be of value to the Industry in meeting the needs of consumers. ComReg has suggested that Undertakings should review the existing provisions with the Output document “*Output of the LLU CoP Review*”, then modify and or develop these provisions and consider how best these could be implemented going forward. ComReg has engaged in discussions with

industry to determine how these provisions may be used in the future, and invites industry to submit any comments they may have in this regard. It is expected that these discussions will take place before the end of February 2008.