



Office of the Director of
**Telecommunications
Regulation**

Implementation of Local Loop Unbundling in Ireland – *eircom* Reference Access Offer

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Oifig an Stiúirthóra Rialála Teileachumarsáide

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1 Background

1.1 Legislative background

On 18 December 2000 the European Parliament and the Council adopted Regulation (EC) No. 2887/2000 on unbundled access to the local loop (hereafter referred to as the “LLU Regulation”). The LLU Regulation, in accordance with Article 249 of the EC Treaty is directly applicable and binding in its entirety in all Member States.

Article 3(2) of the LLU Regulation obliges notified operators from 31 December 2000 to meet reasonable requests from beneficiaries for unbundled access to their local loops and related facilities under transparent, fair and non-discriminatory conditions. Notified operators are obliged to provide beneficiaries with facilities equivalent to those provided for their own services or to associated companies, and with the same conditions and time scales.

eircom, as the operator designated by the Director in ODTR Decision Notice D15/99 as having significant market power in the provision of fixed public telephone networks and services under Annex 1, Part I, of Directive 97/33/EC, is a notified operator within the meaning giving to that term in Article 2(a) of the LLU Regulation.

A “beneficiary” is defined in Article 2(b) of the LLU Regulation as a third party duly authorised in accordance with Directive 97/13 EC or entitled to provide communications services under national legislation, and which is eligible for unbundled access to a local loop.

Article 4 of the LLU Regulation charges the Director as the national regulatory authority for telecommunications with supervision of local loop unbundling. The Director is required to ensure that the granting of access to the local loop by the notified operator (hereafter ‘*eircom*’) fosters fair and sustainable competition.

In particular, paragraph 3 of Article 4 empowers the Director to intervene on her own initiative in order to ensure non-discrimination, fair competition, economic efficiency and maximum benefit to users.

1.2 Position of the ODTR on *eircom* Reference Access Offer

Information Notice 00/99 set out the views of the ODTR on *eircom*’s Reference Access Offer. In this, the Director highlighted three specific service issues that were of immediate concern. These were the definition of space available for collocation; restrictions on equipment that can be collocated and the prohibition of collocation space sharing.

The Director asked the Chairman of the Methods of Access and Definitions LLU working groups to raise this issue in the relevant fora in the first week of January with a view to resolving them or providing the Director with sufficient information from the parties so as to enable her to make a speedy determination on them.

A meeting was convened on 5th January 2001 at which participants discussed the areas of concern. Written submissions were provided to the ODTR by *eircom* and by a group of access seekers (hereafter “the beneficiaries”) in a joint submission supported by Esat, Aurora Communications, Genesis (Europe), Worldcom and Formus.

2 Definition of space available for collocation

Views of respondents

eircom's Reference Access Offer (hereafter "the Reference Offer") comprises physical collocation within those parts of the exchange that are designed to support the operation of equipment and are supported with infrastructure such as ducts, access to power supplies, air conditioning, etc. In effect, this amounts to existing exchange facilities (switching and transmission spaces).

Beneficiaries believe that *eircom's* definition represents a barrier to entry and refer to ODTR inspections of *eircom* exchange sites that identified a number of sites with constrained space, particularly in urban areas.

Beneficiaries argue that they should be allowed to collocate in other areas as well, pointing to the definition of collocation in the LLU Regulation which they interpret as requiring *eircom* to provide physical space and technical facilities necessary to reasonably accommodate and connect the relevant equipment of a beneficiary, and point to their Statement of Requirements (Version 2: 6/11/00) which requested (in order of preference) shared room use, dedicated OLO space (outside exchange floor) and shared aisle use.

The product set out in the Reference Offer is a serviced footprint, provided singly or in multiples where available. As footprints will be provided in collocation suites rather than mixed suites where possible, *eircom* states that it has taken into account two of the three options requested by access seekers in the original statement of requirements. The beneficiaries argue that the product on offer does not reflect options most favourable to them.

eircom states that the collocation product should include the full range of associated services necessary to provide local loop services and so does not intend to rent non-serviced space.

eircom believes that restriction of space available for collocation does not represent a barrier to entry since where the physical collocation product is not available, another form of collocation such as Virtual Collocation or Direct Connection may be available. *eircom* offers to work with industry to develop these.

eircom states that it plans to take into account collocation needs of beneficiaries when planning future exchange expansions. However *eircom's* offer excludes provision for structural build and alteration, and ties provision of service to compliance with a forecasting process. Beneficiaries believe that such exclusion is not covered by grounds for refusal under the LLU Regulation.

Beneficiaries also reject the link to provision of a fully unbundled and shared access loop to existing rental of a collocation space, on the grounds that it is inconsistent with the LLU Regulation.

Position of the Director

The Director believes that there are two key difficulties with the definition of space in the Reference Offer:

- There is uncertainty among access seekers about the space that is likely to be available and a concern about the perceived lack of commitment to developing new space where congestion problems arise. The Director acknowledges the beneficiaries' concerns that a restrictive definition of available space will be used to deny them access to a large number of sites. Such denial of access would amount to a substantial barrier to entry, particularly in circumstances where *eircom* has not yet introduced direct connection or virtual collocation services.
- The second difficulty is that the collocation product currently included in the Reference Offer does not cater for sub-loop unbundling or cover circumstances in which access seekers wish to employ sets of related facilities other than those included in the standard exchange facility. A footprint as defined in the Reference Offer is in essence a bundle of related facilities, including physical space, air conditioning, and DC power. Access seekers have indicated in working group discussions that in some circumstances their preferred bundle of related facilities is different from the one *eircom* has included in the Reference Offer.

Availability of serviced space

The Director welcomes *eircom*'s assurances that it will take OLO needs into account when planning development of space in its exchanges. Work on ordering processes should include development of a mechanism by which *eircom* develops additional space for collocation purposes.

Additionally, the Director welcomes *eircom*'s offer to insert into Clause 3.1.6 the stipulation that development of Exchange Facilities by *eircom* may take place following consideration, on a case by case basis, of individual requests.

Links between provision of collocation and requests for unbundled loops

The Director considers that the links made in the Reference Offer between rental of collocation space and request of loops inconsistent with the LLU Regulation, which requires *eircom* to meet reasonable requests for unbundled access (which might or might not involve collocation). The LLU Regulation should not be interpreted as requiring that related facilities must be obtained as a condition for meeting requests.

The Director welcomes *eircom*'s indication to the ODTR of its willingness to re-word Clause 3.1.4 of Service Schedule 102 to read 'The Unbundled Local Metallic Path provided by *eircom* is available in conjunction with the *eircom* Physical Collocation service. This product will be made available in conjunction with other forms of collocation introduced in the future'. Similarly, *eircom* has offered to re-word Clause 3.1.5 of Service Schedule 103 to read 'The Line Sharing service provided by *eircom* is available in conjunction with the *eircom* Physical Collocation service. This product will be made available in conjunction with other forms of collocation introduced in the future'.

The Director is of the view that the Reference Offer may require further amendment as the types of related facilities required by beneficiaries have been further defined. The Reference Offer should incorporate at least the most common sets of related facilities required by beneficiaries. However, it is important to note that beneficiaries are entitled to request access

to related facilities whether or not these are encompassed by pre-defined bundles in *eircom*'s Reference Offer. To help clarify its position on meeting requests, *eircom* has offered to include in the preamble to the Reference Offer "This Reference Access Offer does not purport to be exhaustive of all the services *eircom* will provide and does not in any way diminish the rights of beneficiaries to seek additional services or the obligation on *eircom* to provide additional services under applicable law."

3 Restrictions on equipment that may be collocated

Views of Respondents

The Reference Offer permits only ADSL and associated backhaul equipment to be used in collocation spaces. *eircom* suggests that it will need to impose such restrictions on grounds of (i) health and safety concerns, (ii) prevention of electrical interference to other equipment and services and (iii) best use of the exchange space resource. *eircom* considers that in order to ensure fair competition, economic efficiency and maximum benefit to users, collocation space should be treated as a scarce resource. It views its proposal for best use of the space available as supporting the access of the maximum number of competing service providers to its ubiquitous copper network.

Beneficiaries state, however, that the purpose of fully unbundling a local loop is to guarantee the handing over by the notified operator of control over that loop. They view the LLU Regulation as preventing *eircom* from imposing restrictions on the type of services that beneficiaries may choose to offer. To restrict collocated equipment to that associated with ADSL, they believe, is contrary to the objectives of the LLU Regulation which aims to stimulate technological innovation in the local access market.

Beneficiaries also believe that equipment should be restricted only with regard to health and safety, ITU/ETSI standards and the constraints of the spectrum parameters. Beneficiaries suggest that cost of collocation space will lead to efficient usage, and further restrictions for this purpose are unnecessary.

eircom's initial proposal was that the industry, through forum discussions, should agree a list of equipment that would be permitted to be housed in collocation space. As beneficiaries proposed equipment (e.g. speech concentrators, SDSL DSLAMs etc), these could be tested against the three principles set out by *eircom*. Such a list would also be informed by the technologies which can be deployed as set out in an agreed Access Network Frequency Plan.

Position of the Director

Article 2(i) of the LLU Regulation defines "related facilities", including collocation, as those that are necessary for beneficiaries "to provide service on a competitive and fair basis". The LLU Regulation also states, in Article 1, that one of its aims is to stimulate technological innovation.

Article 3(2) obliges *eircom* to meet reasonable requests from beneficiaries for unbundled access to its related facilities under transparent, fair and non-discriminatory terms. It is

obliged to provide beneficiaries with facilities equivalent to those provided for its own services or to its associated companies, and with the same conditions and time-scales.

In the Director's view, a restriction such as *eircom's* suggestion that beneficiaries should be permitted to collocate only equipment that needs to be near the MDF, would be premature and, at present, unnecessary.

If and when it becomes clear that congestion will cause difficulties, the Director will consider further measures for improving space management.

The Director notes that beneficiaries will have to pay for collocation space, resulting in a strong disincentive to take up more space than necessary. Moreover, at present and continuing through the early years of unbundling, equipment put in place by beneficiaries will almost certainly take up a very small proportion of the space near the MDF in comparison to various types of *eircom* equipment. Placing a type restriction on equipment that has only a marginal impact on the degree of congestion would be an inefficient way to manage any congestion problems that arise. It would also be seen as discriminatory, as no similar restriction is placed on the generality of *eircom* equipment. This difficulty would be most obvious with *eircom* equipment that is similar to that which beneficiaries are likely to wish to employ; for example, the Director notes that *eircom* makes extensive use of HDSL equipment in the provision of leased lines at present.

Restrictions on requests

Article 3(2) of the LLU Regulation states that requests shall only be refused on the basis of objective criteria, relating to technical feasibility or the need to maintain network integrity.

The current text of paragraph 3.1.4 of Service Schedule 101 limits qualifying equipment to that equipment that complies with ETSI or ITU standards. This restriction the Director considers reasonable.

While the Director recognises that it may be necessary for restrictions to be placed on the characteristics of collocated equipment in accordance with the LLU Regulation, she believes that the current text of paragraph 3.1.4 of Service Schedule 101 is unnecessarily restrictive.

The Director considers that a more appropriate approach to restricting the characteristics of equipment that may be collocated is to combine the use of standards with a basic notification regime.

The Director considers that an appropriate regime would involve *eircom* maintaining, on behalf of the industry, a list of equipment to which access seekers may append items. This list should be made available to all beneficiaries. In Director's view, once a particular item of equipment has been appended to the list, beneficiaries should be free to deploy it in collocation spaces without the need to get further approvals or give further notification to *eircom*. *eircom* may however identify a list of information to be provided immediately prior to installation, all items on the list to be required only for the purposes of protecting health and safety and maintaining network integrity.

Should particular equipment be notified about which *eircom* or any beneficiary has concerns, the Director recommends that the relevant party first discuss those concerns with the

notifying beneficiary with a view to reasonable accommodation of each other's concerns. In the event of a dispute between *eircom* and the beneficiaries over the inclusion/non-inclusion of particular equipment on the aforesaid proposed list, the Director confirms that in accordance with her powers under Article 4(3) of the LLU Regulation she will determine disputes on such items with a view to facilitating collocation as mandated by the Regulation.

It is foreseen that this approach should also allow for rapid introduction of new types of equipment and hence accommodate innovation, avoiding unnecessary and inefficient administrative delays. *eircom* is informed of the types of equipment being collocated and permitted to question the appropriateness of particular types of equipment. It also gives full freedom to beneficiaries to employ notified types of equipment where they wish, preserving their commercial privacy. The Director considers this an important issue in fostering fair competition.

4 Sharing of collocation space

Views of Respondents

eircom, in its offer, has assumed that each footprint or block of footprints would be rented by one beneficiary. *eircom* is responsible for the provision and management of the service. Service is provided, managed and priced on a per footprint basis.

eircom highlights its view that sharing would create difficulties centred on Fault Handling, Security, DC Power and Service Management. On Fault Handling, *eircom* submits that if in order to resolve a fault, service (including the dedicated feed of DC Power) had to be interrupted, service to others in the shared rack would be affected. *eircom* expresses concerns relating to cost, delay and security issues when competing operators share space.

eircom also expresses a concern around expansion management whereby one beneficiary might take up all available space in order to squeeze out or overcharge other entrants.

eircom underlines that it is not seeking to impose restrictions on the type of service to be provided by a particular beneficiary. In particular, there is no restriction on one beneficiary wholesaling services to another. This would, for example, allow a beneficiary to offer others a service analogous to *eircom*'s bitstream access services. *eircom* believes this is an equally effective method of allowing new entrants access to the market.

Beneficiaries, meanwhile, submit that sharing of space is necessary in order to use space efficiently and ensure that ongoing concerns over scarcity of collocation space are minimised.

Additionally, *eircom* raises Property Law concerns attaching to any proposal by one beneficiary to sub-let to another. It submits that a licence by *eircom* to one beneficiary is simply permission for it alone to use *eircom* property. It argues that no title may be passed by the Licensee another beneficiary. It considers that all beneficiaries must individually execute a separate property licence with *eircom* as the owner of exchange.

Beneficiaries argue that the LLU Regulation allows for “sub-licensing”, provided all parties agree to it in the main licence, and accept that a “sub-licence” may not give a right greater than that which they hold themselves (e.g. tenancy).

Position of the Director

In its arguments on restrictions on equipment for collocation, *eircom* suggests that "the best use of space is to support access by the maximum number of service providers to *eircom*'s ubiquitous copper network." Another way to put this is that a key objective of unbundling is to allow for as many competitors as possible to enter the local access market.

The Director considers that the benefits of allowing sharing by beneficiaries of collocation space *inter se* in terms of reduction in the minimum efficient scale of beneficiaries outweighs the difficulties of implementation that *eircom* has raised.

The Director believes that sharing of collocation space has a useful role to play in facilitating entry by the largest possible number of competitors. Sharing has the potential to reduce the minimum scale of beneficiaries wishing to enter the market at a given site. The lower the minimum scale, the lower the potential entry barrier. At some sites, for example those with uncertain levels of demand or ones with a relatively small catchment area of users, reducing the minimum scale for entry could encourage early entry by a larger number of competitors than might otherwise occur. Sharing, it is envisaged, will also lead to more efficient use of available space. By sharing space, beneficiaries can tailor their use of space more exactly to the current level of demand at any point in time. This will be of particular importance at sites with limited available collocation space.

Purchase of services by one beneficiary from another beneficiary may be useful, but may not always be an adequate substitute for the ability to install one's own equipment. For example, a beneficiary might wish to purchase backhaul from another beneficiary, but to install a different form of DSL than that employed by the host beneficiary and provide quite different services (e.g. a symmetric rather than asymmetric data service).

Following discussions with the ODTR, *eircom* has accepted that it will permit sharing of collocation footprints and *eircom* has agreed to amend Service Schedule 101 Clause 3.1.10 to read ‘Any sharing of physical collocated footprints shall be in compliance with the terms of the Licence agreement as attached at Annex F’. While the Director considers that the form in which such arrangements might take place is a matter for the industry in the first instance, she believes that at a minimum the Licence should allow for joint requests by beneficiaries for shared use of space to be met by *eircom*, both where beneficiaries are seeking new space together or where one beneficiary wishes to switch from exclusive to shared use of space.

5 Next steps

This Information Notice sets out views on the three specific issues arising in the service schedules that were of immediate concern.

The steps laid out in Information Notice 00/99 are continuing in parallel. Specifically,

- The Director is awaiting material on sub-loop unbundling which is to be included in the Reference Offer by 31st January 2001. *eircom* has indicated that it needs information

about the requirements of access seekers before it can make the relevant changes to its Reference Offer. The Director has asked the Chairman of the Definitions Group to discuss this with the access seekers and arrange for provision of a statement of requirements to *eircom* as soon as possible.

- The Director requires changes to be made to the Reference Offer to reflect agreed product definitions by 31st January 2001.
- The Director is aware that access seekers have further concerns with the Reference Offer. Some of these will be addressed through the incorporation of agreed product definitions, but if additional issues remain the ODTR will examine what action is required, with a view to agreeing or directing further amendments in mid February.
- On 17 January 2001 Esat Telecom sent in an additional submission highlighting the need for inclusion in the Reference Offer of collocation options combining space with different sets of other related services than those included in the current Reference Offer. The Director will give further consideration to this point together with the other issues scheduled for mid February.
- The ODTR will continue its examination of *eircom*'s price justifications with a view to establishing the appropriate level of prices for LLU and related facilities. Final pricing will be agreed or determined by end February 2001 with price changes retrospective to 1st January 2001.