



Office of the Director of  
**Telecommunications  
Regulation**

**Notification of Decision**  
**Re Amendment to Mobile Telecommunications Licence:**  
**Pro-forma Mobile Licence Terms**

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**Decision Notice D14/99**

**Document No. ODTR 99/69**

**November, 1999**

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## 1. Introduction

The Director of Telecommunications Regulation (the “Director”) is responsible for the regulation of the Irish telecommunication sector in accordance with national and EU legislation. As part of her functions, the Director is responsible for the licensing of mobile telecommunications operators.

On 13 July 1999, the Director published “Notification of Proposed Amendment to Mobile Telecommunications Licence: Introduction of Pro-forma Licence Terms” (ODTR99/42). In that document, the Director proposed a new form of Mobile Telecommunications Licence, and noted that the three principal reasons for making this proposal were:-

1. To ensure that mobile licences reflect the liberalisation of the operating environment for telecommunications networks and services in Ireland;
2. To reflect her view that the licensing framework for mobile operators should be consistent with the framework for the General and Basic Telecommunications Licences ;
3. To ensure that the Mobile Telecommunications Licence conforms with the provisions of the European Communities (Telecommunications Licences) Regulations, 1998<sup>1</sup> (the “Licensing Regulations”).

The Director invited comments on her proposals. Submissions were received from the following parties (in alphabetical order):-

- ALTO
- Eircell Limited
- eircom plc (submitted as Telecom Eireann plc)
- Esat Digifone Limited
- Esat Telecom Limited
- Ocean Communications Limited.

The Director would like to thank each of the respondents for their carefully prepared submissions. These submissions contained a wide variety of opinions and suggestions. These have been considered by the Director, and are summarised in this Notification, the structure of which is as follows:-

- Summary of comments, and the Director’s decisions, on the general framework for the licensing of mobile telecommunications operators.
- Summary of comments, and the Director’s decisions, on the proposed pro-forma licence terms.
- Pro-forma Mobile Telecommunications Licence.

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<sup>1</sup> SI No. 96 of 1998.

## **2. General framework for the licensing of mobile telecommunications operators: Summary of Comments, and the Director's decisions.**

The three primary objectives of this review of the licensing of mobile telephony operators are described in the introduction of this paper. The Director welcomed views on these objectives and the general issue of the framework for the licensing of mobile operators.

### **2.1 Summary of Comments**

All six respondents offered comments on the general question of the licensing of mobile telecommunications operators. All six indicated that amendments to reflect the liberalisation of the telecoms market and to ensure compliance with the Licensing Regulations should be carried out.

#### **2.1.1 "Convergence" of the fixed and mobile licensing regimes**

Three respondents favoured a "convergence" of the fixed and mobile licensing regimes. They argued that it is appropriate, as convergence gathers pace, that all market players are governed by the same, technology neutral, forward looking rules. It was suggested that this would best be effected by eliminating mobile licences as stand-alone licences, and including relevant mobile conditions in a General Telecommunications Licence ("GTL").

One respondent agreed that the principles underlying the licensing of fixed and mobile operators should be similar, but argued that it was inappropriate to apply the text and language of the GTL (which it states was developed for licensing fixed operators) to mobile licences.

One operator disagreed with the linkage of the GTL with the mobile licences in any form, arguing that the GTL is based on Open Network Provision ("ONP") rules which are inappropriate to the mobile market and the proposed terms would lead to unacceptable commercial and legal uncertainty for mobile operators.

The sixth respondent did not comment specifically on this issue.

#### **2.1.2 Application of Significant Market Power ("SMP") related conditions**

Four respondents believed that the control of SMP in the mobile market should be regulated with specific regard to whether or not the relevant organisation, or an affiliate, subsidiary or parent, also had SMP in the fixed market. In particular, three respondents expressed the view that the position of Eircell as a 100% wholly owned subsidiary of eircom justified the extension of the SMP conditions on eircom to Eircell. The fourth of these believes that Eircell should be designated as having SMP on the national market for interconnection and appropriate conditions imposed as a consequence.

Three respondents also believe that it would be unfair for a newer entrant into the mobile market, if it were to be designated as having SMP in the mobile market, to be subject to the same SMP conditions as Eircell, due to Eircell's position as a wholly owned subsidiary of eircom.

One respondent believed that the fact that Eircell is the only operator currently designated as having SMP on the mobile market would cause it to be subject to SMP conditions and that this is an “unfair anomaly”.

One respondent raised the issue of access for Virtual Mobile Network Operators, which it argues are widely seen in Europe as a way of providing for greater competition and benefits to consumers.

### 2.1.3 Other Issues/General Comments

One respondent was concerned that the proposed licence terms were not consistent with the Director’s policy of light-handed regulation. Another commented that the proposed terms provided for an unwarranted level of influence by the Director in relation to the “ordinary commercial practices of a licensee”. The same respondent expressed concern in relation to powers of the Director to issue directions and stated that the Director should be required in so doing to have regard, *inter alia*, to the “legitimate concerns of the licensee”.

## 2.2 **Review of the Submissions Received**

### 2.2.1 General Policy Issues

When ODTR 99/42 was published in July 1999, the Director stated that she did not intend at this time to undertake a fundamental policy review of mobile licensing. While this has been acknowledged by respondents, some of them felt it appropriate to set out some policy issues which they consider should be further examined by the Director, including:-

- The arguments advanced by three respondents that there should be no distinction, from a licensing point of view, between mobile operators and operators in other areas of the telecommunications market (this is underpinned by the acceptance by a fourth respondent that the underlying principles in the licensing of the fixed market are equally applicable in the mobile market);
- The concerns expressed by three respondents that the proposed SMP provisions were inappropriate, and that the proposed licence would not result in adequate regulation of eircom in all of the markets in which it, directly or through subsidiaries, operates; and
- The suggestion that the presence of service providers and/or Virtual Mobile Network Operators in the mobile market could improve the competitiveness of the market and benefit end users.

The Director welcomes these suggestions and believes that these, as well as a range of other important issues, warrant further careful consideration, and accordingly she intends to undertake formal consultations on, *inter alia*, the following issues of relevance to the mobile telephony market:-

- Whether or not it is appropriate to continue to license mobile operators separately to operators in other areas of the telecommunications market;

- The role of SMP and, if applicable, the appropriate implications for an operator being designated as having SMP; and
- The level of competition in the mobile market and the issue of access to mobile networks for service provision and Virtual Mobile Network Operators.

These consultations will be initiated as soon as practicable. The Director's intention is that they would be initiated in the New Year.

### 2.2.2 Scope and type of Conditions

The Director has considered the arguments about the scope and nature of the conditions in the licences, in particular the position put by one respondent that what it describes as the "heavily prescriptive ONP terms" should not be applied in the mobile market. She has similarly given consideration to what she believes are related submissions from that respondent and another respondent that the form, content and language of the GTL are not suitable to the mobile market and do not conform with the Director's policy of light-handed regulation.

The GTL was designed to be appropriate for the fully liberalised telecommunications market which came into effect in Ireland on 1 December 1998. In designing that licence, the Director sought, insofar as was possible, to put in place a format that was forward looking, flexible and appropriate for the rapidly evolving telecommunications market. In fact, the form and text finally published has proven appropriate to date, as is well illustrated by the recent amendment to the GTL to facilitate the provision thereunder, by appropriately designated persons, of telecommunications services via fixed wireless point to multi-point access.

When including conditions in the GTL, all relevant legislation was considered, including, *but not limited to*, ONP requirements. For example the GTL was specifically drafted with regard to the Licensing Regulations and the Licensing Directive<sup>2</sup> (both of which apply to mobile telephony licensing). The Licensing Regulations and the Directive provide for the inclusion of conditions in licences for a range of reasons including conditions required by ONP law, but not limited to such conditions. For example provision is made to include:-

- conditions intended to prevent anti-competitive behaviour in telecommunications markets, including measures to ensure that tariffs are non-discriminatory and do not distort competition;<sup>3</sup>
- conditions relating to the protection of users and subscribers;<sup>4</sup>
- specific conditions linked to the effective use and efficient management of radio frequencies.<sup>5</sup>

In this regard, the Director is mindful of the fact that one of the objectives of the proposal under consideration is to bring the terms of the mobile licence into compliance with the terms of the Licensing Regulations.

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<sup>2</sup> Directive 97/13/EC of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services.

<sup>3</sup> Paragraph 2.3 of the Annex to the Licensing Directive.

<sup>4</sup> Paragraph 3.1 of the Annex to the Licensing Directive.

<sup>5</sup> Paragraph 4.2 of the Annex to the Licensing Directive.

The Director does not accept that the GTL solely reflects ONP requirements, or that it is exclusively applicable (whether in form, or content or language) to the fixed market. In fact, the Director considers that it is essential to have regard to the convergence of the fixed and mobile markets when considering licensing. In addition, she believes that, for transparency, simplicity and consistency purposes, similar language, form and text should be used in licences where appropriate.

This position is supported by the views of the majority of respondents in this consultation and also by the recent European Commission document “Towards a new framework for Electronic Communications infrastructure and associated services”,<sup>6</sup> which recommends a single regulatory framework for communications infrastructure and associated services.

The Director does consider that certain specific provisions of the proposed licensed terms were not entirely appropriate to the mobile market, and suitable amendments have been made to reflect this. These are detailed in part three of this Decision Notice.

### **Decision 2.1**

**The Director has decided that it is appropriate to use the GTL as the basis for a pro-Forma Mobile Telecommunications Licence. The Director accepts that not all provisions of the GTL are applicable to the provision of mobile telecommunications network and services, and appropriate amendments have been made to the pro-forma terms set out at part four of this Notification to reflect this.**

The balance of the specific comments referred to above are also addressed in detail in part three of this Notification, and accordingly are not addressed in this section of the Notification.

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<sup>6</sup> Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, available at: [http://europa.eu.int/comm/dg13/review\\_en.pdf](http://europa.eu.int/comm/dg13/review_en.pdf)

### **3. The proposed Pro-forma licence terms: Summary of comments, and the Director's decisions.**

Four respondents furnished specific comments on the proposed pro-forma licence terms. These submissions will be summarised, and the Director's decisions to amend the proposed terms stated, sequentially in accordance with the paragraph numbering scheme in the proposed pro-forma terms.

#### **3.1 Part 1: General Conditions**

##### 1. Definitions and Interpretation

- 1.1 Two respondents argued that the definition of "**Licensed Mobile Services**" was unclear and uncertain. The Director accepts this point.

Each of these respondents also queried whether that definition included the TACS mobile service provided by Eircell. The Director believes that the relevant provisions of the schedule to Eircell's licence will make it clear that the definition of Licensed Mobile Services includes TACS mobile services.

Each of these respondents also queried whether it was appropriate to use such terms as "a category of Licensed Mobile Service", "a constituent part of the Licensed Mobile Services", "all Licensed Mobile Services" and "any Licensed Mobile Services".

The Director does not accept that the use of expressions such as those itemised above is in any way inappropriate or the source of confusion. Each of these expressions is used in a particular context in the pro-forma terms. The Director is satisfied that the context in which each such expression is used renders the same clear and unambiguous.

A third respondent also suggested that sub-paragraphs (i) and (ii) of the definition of Licensed Mobile Services set out in the proposed pro-forma terms could be deleted in light of the manner in which it proposed that mobile operators should be licensed.

In light of the manner in which she has decided to license mobile operators, the Director does not believe it is appropriate to delete sub-paragraphs (i) and (ii) of the definition of Licensed Mobile Services.



### **Decision 3.1.1**

**The Director has decided to amend the definition of Licensed Mobile Services in order to resolve the uncertainty issues raised.**

One respondent argued that the exclusion of “**Licensed Programme Services**” from the definition of “Licensed Mobile Services” might affect the future development of value added services, and in particular the content element thereof.

The Director believes that this is an issue requiring separate and specific consideration, and therefore outside the scope of the current exercise.

One respondent felt that “**Mobile and Personal Communications Services**” and “**Mobile and Personal Communications System**” were vaguely defined.

These definitions are drawn from section 111(12) of the Postal and Telecommunications Services Act, 1983 (as amended by the Licensing Regulations). It is therefore the opinion of the Director that each is appropriate for licensing purposes.

One respondent argued that, in light of the manner in which it proposed that mobile operators should be licensed, the definition of “Mobile and Personal Communications Services” could be removed from the definitions section.

In light of the manner in which the Director has decided to license mobile operators, she feels that it would be inappropriate to make this amendment.

Two respondents argued that the expression “**Network Termination Points**” is inappropriate in the context of a mobile licence.

This definition is drawn from section 111(12) of the Postal and Telecommunications Services Act, 1983 (as amended by the Licensing Regulations). The term is specifically used in connection with mobile telephony in that section. The Director is accordingly satisfied that it is appropriate for licensing purposes.

One respondent argued that “**Telecommunications Network**” was used ambiguously in the proposed licence. That respondent specifically cited condition 6.7(c) as an example of this. The Director accepts this point.

### **Decision 3.1.2**

**The Director has made appropriate amendments to the relevant licence conditions to remove any such ambiguities.**

Two respondents argued that the term “Users” was used in areas of the licence where the term “customers” or possibly “customers of the Licensee” might more properly be used.

### **Decision 3.1.3**

**The Director accepts these comments, and appropriate adjustments have been made at the relevant parts of the pro-forma licence terms.**

- 1.2(2) One respondent argued that it was unreasonable for every document referred to in the text of the licence to form a binding part of that licence. It argued that documents to be incorporated into and form part of the conditions of the licence should be specifically referred to.

The intention of this provision, in the context of mobile licensing, was to ensure that documents such as ETSI Technical Reports and ICNIRP guidelines would be incorporated as conditions of the licence. However, the Director is satisfied that the relevant conditions referring to such documents adequately give effect to the intended purpose.

### **Decision 3.1.4**

**Condition 1.2 (2) has been deleted in its entirety.**

## 2. Nature of the Licence

- 2.1 One respondent submitted that the following additional paragraph should be included:-

“The Licensee shall provide the Licensed Mobile Services in accordance with the ..... Schedule”.

The Director believes that this point is adequately covered by proposed condition 2.1. The additional paragraph has therefore not been included.

- 2.5 Two respondents argued that additional text should be inserted at condition 2.5 to make clear that condition 2.4 does not apply to a transfer, assignment or

other disposal of assets made in the ordinary course of business. The Director agrees that this would be an appropriate amendment.

**Decision 3.1.5**

**Condition 2.5(c) has been included in the pro-forma terms.**

- 2.8(a) One respondent argued that it would be near impossible to ensure compliance with condition 2.8 (a) of the proposed pro-forma licence terms in the absence of clarification of “any constituent part” of the Licensed Mobile Services. The Director agrees that such clarification would be helpful.

**Decision 3.1.6**

**Condition 2.8 (a) has been amended accordingly.**

- 2.9 One respondent argued that condition 2.9 potentially creates tremendous uncertainty for licensees.

The Director is not convinced by this argument, and is satisfied that the safeguards incorporated into the condition will ensure clarity and certainty of application. Condition 2.9 will therefore stand unaltered.

- 2.12 The same respondent argued that condition 2.12 created unacceptable levels of uncertainty.

Again the Director does not accept this argument. Rather, she feels that this is an entirely desirable condition. Contrary to the respondent’s view, the Director feels the condition will add to licensing certainty rather than uncertainty. Condition 2.12 accordingly stands unaltered.

3. Compliance

- 3.1 One respondent argued that any requests by the Director pursuant to condition 3.1 should be both reasoned and reasonable.

The Director is satisfied that her powers to request the provision of information are grounded in statute and may accordingly only be exercised in accordance with the provisions of the relevant legislation. Accordingly, she does not believe that any amendment is necessary to this condition.

The same respondent, together with a second respondent, made the general argument that one of the existing licensees would be bound by the Stock Exchange Listing Rules concerning the disclosure of information. The respondent requested that these requirements should be specifically reflected in the licence terms.

The Director does not believe this is an appropriate matter for the licence terms. Rather, any difficulties that may arise in this regard should be dealt with on an individual basis as and when they arise. Accordingly, no amendment has been made to the text of pro-forma condition 3.1.

- 3.2 The same respondent expressed its serious concern in relation to licence condition 3.2. It argued that regulation 7 of the Licensing Regulations was an inadequate safeguard. It went on to argue that it should be consulted prior to the publication of any such information.

The Director is satisfied that the provisions of regulation 7 of the Licensing Regulations in fact provide sufficient safeguards to licensees. Accordingly, no amendment has been made to the proposed condition.

- 3.5 The same respondent argued that the three month period referred to in proposed licence condition 3.5 would potentially be inadequate.

#### **Decision 3.1.7**

**The Director accepts that there may in certain circumstances be difficulty in complying with this time scale. Accordingly, the relevant licence condition has been amended.**

#### **4 Enforcement and Amendment**

- 4.3 One respondent argued that the one month period referred to in proposed condition 4.3 may be insufficient if the extension period referred to in condition 4.2 (2) is invoked.

#### **Decision 3.1.8**

**The Director accepts this point, and has amended condition 4.3 accordingly.**

- 4.8 The same respondent argued that proposed condition 4.8 (2) was unclear, as it was not apparent whether it was designed to address the cessation of provision of all Licensed Mobile Services or merely some Licensed Mobile Services.

The Director is satisfied that the meaning of the clause in question is clear. Her actions must be proportionate and reasonable, and the revocation of a licence would not normally be sanctioned for a limited cessation of the provision of services thereunder. Accordingly, condition 4.8 stands unaltered.

#### 5. Application of Additional Conditions where SMP is Designated

Two respondents furnished comments on this matter. Both argued that the review of the application of SMP to Esat Digifone is overdue. As this is the subject of a separate consultation by the Director,<sup>7</sup> she does not feel it is necessary it deals specifically with these arguments.

One of these respondents also argued that many of the condition included in Part 3 of the proposed licence should apply equally to operators who have not been designated as having SMP. The Director will consider each such condition at the appropriate place in this document.

#### 6. Public Service Conditions

- 6.1 One respondent commented that the term “each category of Licensed Mobile Services” in proposed condition 6.1 required to be further defined, as it was unclear as to precisely which Licensed Mobile Services it referred or when the obligation to publish standard terms and conditions for such services arose.

The Director is satisfied that the clause is clear from its current terms, which state that standard terms and conditions shall be published “in the manner and at the time that it is specified by the Director”, and it will therefore stand unaltered.

- 6.2 The same respondent noted the expression “Licensed Service” in proposed condition 6.2. It submitted that this should refer to Licensed Mobile Service.

#### **Decision 3.1.9**

**The Director agrees and the condition has been amended accordingly.**

- 6.3 The same respondent argued that a licensee should be required only to use reasonable endeavours to ensure the accuracy and reliability of systems, equipment, data or procedures as required by proposed condition 6.3.

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<sup>7</sup> ODTR 99/59.

No argument was advanced in support of this contention. The Director is not persuaded that any amendment requires to be made to this condition.

- 6.4 The same respondent indicated that it was unclear as to the meaning of “messages delivered by the Licensed Mobile Services” in proposed condition 6.4.

**Decision 3.1.10**

**The Director accepts this point and the condition has been amended in order more accurately to reflect the language of section 98 of the Postal and Telecommunications Act, 1983, to which it relates.**

- 6.5 The same respondent then queried the meaning of “messages” in the context of proposed condition 6.5.

Although she believes its meaning is clear, in the interests of certainty the Director wishes to state that the expression “messages” in pro-forma conditions 6.4 and 6.5 has the meaning ascribed to it in the Postal and Telecommunications Services Act, 1983.

**Decision 3.1.11**

**The text of pro-forma condition 6.5 has been amended more accurately to reflect the language of that Act.**

- 6.12 The same respondent observed, in connection with pro-forma condition 6.12, that it is impossible for a mobile operator to maintain a complete and accurate database of its customers, as many customers avail of its pre-paid service. The Director accepts this argument,

**Decision 3.1.12**

**Condition 6.12 has been amended accordingly.**

**3.2 Part 2: Additional Conditions on Numbering and Quality of Service**

8. Numbering and Quality of Service

- 8.1 One respondent queried the meaning of “short code”. It also argued that this condition could have implications for SMS based information services which

use particular numbers for sending. It also queried whether the condition included VPN short codes which would be unique to the particular customer but which may be re-used by any VPN customer at a later stage.

The term “short code” is generically used in the telecommunications industry, including legislation relevant thereto.<sup>8</sup> The purpose of this condition is to ensure that short codes or numbers allocated as set out in the condition are used for the purpose associated with that allocation. The Director is surprised that this is a source of concern. It will accordingly stand unaltered.

- 8.6 The same applicant argued that it should be given adequate notice of any changes proposed by the Director pursuant to proposed condition 8.6.

The Director has noted this argument, but does not feel that any amendment to the condition is necessary.

- 8.8 In respect of proposed condition 8.8, the same respondent argued that it should be entitled to charge its customers where a customer agreed to be charged.

The Director is not entirely clear as to the intended meaning of this argument. In any event, it should be noted that pro-forma condition 8.8 permits charging for allocations of short codes or numbers where authorised and in accordance with any direction from the Director. No charges are currently authorised in respect of numbers or codes.

## 9. Quality of Service and Publication of Performance Data

- 9.1 In respect of proposed condition 9.1, the same respondent argued that it can use only reasonable endeavours to comply with the standards set out in part 4 of the schedule to its licence.

No argument was advanced in support of this contention. The Director is not persuaded that any amendment requires to be made to this condition.

## 10. Interference with Radio Systems

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<sup>8</sup> e.g. Regulation 13(5) of the European Communities (Interconnection in Telecommunications) Regulations, 1998 (S.I. No. 15 of 1998).

- 10.1 In respect of proposed condition 10.1, the same respondent suggested that it should be required to use only reasonable endeavours to ensure that equipment and systems are adequate to prevent interference.

No argument was advanced in support of this contention. The Director is not persuaded that any amendment requires to be made to this condition, which in her opinion is entirely consistent with the provisions of the relevant Wireless Telegraphy legislation.

- 10.2 In respect of proposed condition 10.2, the same respondent queried the meaning of “authorised officer”.

In the interests of certainty, the Director wishes to make it clear that this term has the meaning ascribed to it by the Telecommunications (Miscellaneous Provisions) Act, 1996 and by the Postal and Telecommunications Act, 1983 (as amended by the Licensing Regulations).

- 10.3 ... The same respondent went on to argue that the words “if practicable” should be deleted from proposed condition 10.3 in light of the stated importance of any direction within the contemplation of that provision.

The Director is satisfied that the proposed condition requires her to consult with the relevant licensee, save in exceptional circumstances (i.e. when it is not practicable to do so before giving a direction). She is therefore satisfied that it would be inappropriate to amend this condition.

### **3.3 Part 3: Additional Conditions applying where the Licensee is designated as having Significant Market Power**

#### 12 Separate Accounts

- 12.1 Two respondents argued that it is beyond the scope of the relevant legislation for mobile operators to be required to keep separate accounts.

The Director is satisfied that it is within the scope of the relevant legislation, being the European Communities (Interconnection in Telecommunications) Regulations, 1998,<sup>9</sup> to require mobile operators to keep separate accounts.

One of these respondents also goes on to contend that, in so far as the condition applies to Eircell, it should equally apply to Esat Digifone. The

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<sup>9</sup> (S.I. No. 15 of 1998).



other respondent raised a doubt as to whether it would be possible for a licensee to deploy the systems necessary to comply with this requirement within the three month period referred to in Condition 3.5.

As noted above, Condition 3.5 has been amended to allow for periods in excess of three months. The Director is therefore satisfied that the concern raised has been adequately addressed, and the condition accordingly stands unaltered.

As also noted above, the applicability of any of the provisions of Part 3 of the pro-forma licence to Esat Digifone is the subject of a separate consultation being undertaken by the Director, and it is thus not necessary for it to be addressed herein.

### 13 Approval of Customer Contracts

- 13.1 One respondent argued that, insofar this condition is to apply to Eircell, it should apply equally to Esat Digifone.

Another respondent asserted that this condition constitutes an unreasonable and unwarranted intrusion into the commercial life of an operator designated as having SMP. It also queried whether it is envisaged that contracts should be submitted to the Director in draft form prior to their execution by either of the parties thereto. It is also concerned that, when this condition is read in conjunction with condition 13.3, it enables the Director in effect to re-write an SMP designate's standard form contracts and compensation schemes with its customers.

As this condition makes clear, what are required to be notified to the Director are standard form contracts. By their very nature, such contracts require little or no negotiation with a customer. The Director does not believe, therefore, that the question of every contract having to be furnished to her prior to execution arises.

As mentioned above, the applicability of any of the provisions of Part 3 of the pro-forma licence to Esat Digifone is addressed in a separate consultation being undertaken by the Director, and it is thus not necessary for the Director to address that issue herein.

- 13.2 One respondent queried the need for statements to be issued on "minimum service levels", and went on to query the meaning of that expression.

### **Decision 3.3.1**

**The Director is of the view that this clause more properly relates to the current structure of the fixed market than the current structure of the mobile market. Accordingly, it has been deleted in its entirety.**

#### 14. Selling Practices

. One respondent argued that, in the interests of equity, these conditions should apply to all mobile operators.

A second respondent felt it was not clear why such a code was necessary in the first instance. It felt that general law should provide adequate protection for consumers. It also felt that it was inappropriate to direct such a code of practice to selling agents of a licensee, given that such agents may enjoy a significant degree of independence from the licensee.

### **Decision 3.3.2**

**The Director is satisfied that, for the present, it should not be necessary to introduce the code of practice envisaged by this proposed condition. Accordingly, this condition has been deleted in its entirety.**

#### 15. Misuse of Data

One respondent contended that, as all operators are subject to Data Protection legislation, this condition should apply to all operators. A second respondent argued that the broad scope of this condition would place an operator in difficulty every time it collects data about its own products and services.

The Director does not accept this latter argument. Nor is she convinced that relevant Data Protection legislation necessarily covers the type of information that this condition is intended to address. The Director is satisfied that what is comprehended by this condition is in fact a narrow range of data that becomes available to the licensee in particular circumstances, and that that data quite properly ought not to be used by a licensee in the manner precluded by the condition. The condition accordingly stands unaltered.

#### 16. Bodies representing Users' interests

One respondent feels that this condition should apply to all operators

The Director is satisfied that, at least for the present, it is sufficient for the obligations imposed by this condition to lie only against operators designated as having SMP.

17. Undue preference and unfair discrimination

- 17.1 One respondent argued that competition law provides adequate safeguards in relation to undue preference and unfair discrimination, and felt it was unnecessary for the licence to deal with those issues.

The Director is satisfied that it is appropriate to have a licence condition concerning undue preference and unfair discrimination. She is of the view that any such clause acts to complement the relevant provisions of competition law.

The same respondent also felt that the expression “persons competing with that business or Affiliate” should be replaced with “Other Licensed Operators”. The Director is of the view that a more appropriate amendment would be to refer to “persons lawfully competing with that business or Affiliate”.

The Director notes that the proposed condition made reference to the question of access to a Telecommunications Network. As set out more fully in part two of this Notification, the issue of access to mobile networks for service provision and Virtual Mobile Network Operators is to be the subject of formal consultation. The reference as proposed was thus inappropriate, and has been deleted from the pro-forma condition.

**Decision 3.3.3**

**Condition 17.1 has been amended to reflect the points discussed above.**

18. Linked Sales

One respondent argued that this condition is unclear and virtually impossible to apply in practice, as it did not reflect the reality of the mobile market. It also argued that competition law should provide adequate safeguards in this respect.

**Decision 3.3.4**

**The Director is satisfied that, on balance, the condition is inappropriate and it has accordingly been deleted in its entirety.**

**3.4 Part 4: Additional Conditions applying to Mobile Licences**

19. Priority to certain communications

One respondent sought clarification of the meaning of this condition.

The Director is satisfied that the condition is clear from its terms. She also notes that it is currently a term of that respondent's existing licence.

#### **4. Pro-forma licence terms**

### **Mobile Telecommunications Licence**

Under Section 111(2) of the Postal and Telecommunications Services Act, 1983, as amended, and the Telecommunications (Miscellaneous Provisions) Act 1996

**Telecommunications Licence No. XXX**

**[Name of Licensee]**



## LICENCE CONDITIONS

### Part 1: General Conditions

#### 1. Definitions and Interpretation

1.1. In the Licence and the Conditions the expressions set out below have the meanings given to them below (and other grammatical forms of the expressions have corresponding meanings):

**“1983 Act”**: means the Postal and Telecommunications Services Act, 1983;

**“1996 Act”**: means the Telecommunications (Miscellaneous Provisions) Act, 1996;

**“Affiliate”**: means any company controlling, controlled by or under common control with the Licensee;

**“Conditions”**: means Conditions 1 through 20 and the Schedule as otherwise supplemented or amended from time to time and forming part of the Licence;

**“Director”**: means the Director of Telecommunications Regulation;

**“Licence”**: means the authorisation herein granted by the Director to the Licensee to provide Licensed Mobile Services;

**“Licence Commencement Date”**: means the date set out at Part 1 of the Schedule;

**“Licensed Mobile Services”**: means the establishment and/or operation of a Mobile and Personal Communications System and/or Mobile and Personal Communications Services including (but not limited to) those services set out in part 2 of the Schedule, but excepting:

- (i) services to which Section 4(A) of the Telegraph Act 1869 (as inserted by the European Communities (Telecommunications Infrastructure) Regulations, 1997 (SI No 338 of 1997) and as amended by the European Communities (Telecommunications Infrastructure) (Amendment) Regulations, 1999 (SI No 70 of 1999)) relates;
- (ii) the reception and/or origination of Licensed Programme Services and their conveyance over a Telecommunications Network,

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**“Licensed Programme Services”**: means any service involving compilation of sound and/or visual programme material intended for reception by the public which comes within the scope of services provided over Cable and Multi-point Microwave Media Distribution Systems licensable in accordance with relevant regulations under the Wireless Telegraphy Act 1926;

**“Licensee”**: means the person to whom the Licence is granted, as identified on page 1 or any person to whom the Licence is lawfully transferred or sub-licensed in accordance with Condition 2.4;

**“Licensing Regulations”**: means the European Communities (Telecommunications Licences) Regulations, 1998 (SI No 96 of 1998);

**“Mobile and Personal Communications Services”**: means services other than satellite services the provision of which consists, wholly or partly, in the establishment of radiocommunications to a mobile user, and makes use wholly or partly of a Mobile and Personal Communications System;

**“Mobile and Personal Communications System”**: means a system consisting of the establishment and operation of a mobile network infrastructure as more particularly set out on Part 2 of the Schedule in accordance with the standards set out in the said Part 2 of the Schedule, whether or not connected to Network Termination Points, to support the transmission and provision of radiocommunications services to mobile users;

**“National Numbering Scheme”**: means the scheme administered by the Director which sets out the sequence of numbers or other characters which shall be used to route telephony traffic to specific locations;

**“Network Termination Point”**: means all physical connections and their technical access specifications which form part of a Public Telecommunications Network and are necessary for access to and efficient communication through that public network and which are individually identified by numbers allocated from the National Numbering Scheme;

**“Other Licensed Operator”**: means any person who, at the relevant time, has the benefit of a licence granted under Sections 111(2) or 111(3) of the 1983 Act;

**“Public Telecommunications Network”**: means a telecommunications network used, inter alia, for the provision of public telecommunications services (as defined in Section 111 of the 1983 Act) between Network Termination Points;

**“Relevant Market”**: means any market or markets in respect of which the Licensee has been designated as having SMP;

**“Schedule”**: means the Schedule attached to the Licence;

**“SMP”**: means Significant Market Power as defined in relevant national and European Community law;

**“State”**: means Ireland;



**“Telecommunications Network”**: means the transmission equipment and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electro-magnetic means;

**“Term”**: means, subject to Condition 4 and to the 1983 Act, as amended by the Licensing Regulations, a period of fifteen years from the Licence Commencement Date;

**“Users”**: means individuals, including consumers or organisations, using or requesting publicly available telecommunications services.

**“USO”**: means universal service obligation as defined in the European Communities (Voice Telephony and Universal Service) Regulations, 1999 (SI No 71 of 1999).

1.2 In the Licence and the Conditions, unless the context indicates a contrary intention:

- (1) references to conditions, paragraphs, subparagraphs and the Schedule are to conditions, paragraphs, subparagraphs of, and to the Schedule as varied from time to time in accordance with the Conditions;
- (2)
- (3) headings used for Conditions, paragraphs, subparagraphs and the Schedule are for ease of reference only and will not affect the interpretation of the Conditions;
- (4) references to any law, ordinance, by-law, regulation or other statutory instrument includes any modification, re-enactment or legislative provisions substituted for the same;
- (5) use of the word ‘includes’ or ‘including’ is to be construed as being without limitation; and
- (6) the masculine gender shall include the feminine and neuter, and the singular shall include the plural, and vice versa, and words importing persons shall include firms or companies.

## **2. Nature of the Licence**

2.1 The Licensee shall provide the Licensed Mobile Services to the public generally, without discrimination and in accordance with the Conditions.

2.2 The Licensee may refuse to extend or continue the provision of the Licensed Mobile Services to or from particular Network Termination Points and/or terminal equipment if such extension or continuation would, or would be

likely to, cause damage or interference to the Licensee's Licensed Mobile Services or to any other Telecommunications Network or services. If the Director considers that the extension or continuation of the provision of the Licensed Mobile Services to or from particular Network Termination Points would, or would be likely to, cause damage or interference to the Licensee's Licensed Mobile Services or to any other Telecommunications Network or services, he or she may direct the Licensee in writing to refrain from extending or continuing the provision of the Licensed Service to or from those Network Termination Points.

- 2.3 For the avoidance of doubt, the Licence is non-exclusive.
- 2.4 The Licence is personal to the Licensee. The Licensee shall not sub-license or grant any right, interest or entitlement in the Licence. The Licensee shall not transfer, assign or otherwise dispose of the Licence, or any of its assets that are necessary to provide the Licensed Mobile Services, to any other person save with the prior written consent of the Director. Any consent to transfer granted by the Director under this Condition may be subject to such further conditions as the Director may reasonably consider appropriate in the circumstances.
- 2.5 Condition 2.4 does not apply to:
- (a) A mortgage or other transaction entered into for the purpose of securing borrowings of the Licensee or a subsidiary, being borrowings for the purposes of the Licensed Mobile Services or the provision thereof or anything incidental thereto, or
  - (b) A transfer, assignment or other disposal of assets that are intended to be, and are, immediately after their transfer, assignment or other disposal, assigned by way of lease to the Licensee, or, as the case may be, a subsidiary, or
  - (c) A transfer, assignment or other disposal of assets made in the ordinary course of business.
- 2.6
- (a) The Licensee shall not issue or transfer or redeem shares such as would give rise to a change in control of the Licensee or a material change in the ability of the Licensee to perform the Licensed Mobile Services without the prior consent of the Director (which shall not be unreasonably withheld).
  - (b) A consent under subparagraph (a) shall be subject to such conditions (if any) as the Director may determine and shall specify in writing to the Licensee, and any such condition shall be deemed to be a condition of this Licence.
  - (c) he Licensee by itself or through its Board of Directors shall not act to give effect to any change in the beneficial or legal ownership of shares such as would give rise to a change in control of the Licensee or a

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material change in the ability of the Licensee to perform the Licensed Mobile Services without the prior consent of the Director (which shall not be unreasonably withheld).

(d)

n this Condition 2.6 "shares" means shares of any class in the Licensee.

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2.7 The Licensee shall ensure that the administration and management of the business associated with the provision of the Licensed Mobile Services shall be carried on in premises in the State. The business aforesaid shall be carried on on a normal commercial basis and at arms' length from the business of any of the Licensee's shareholders.

2.8 (a) If the Licensee proposes to cease to provide the Licensed Mobile Services or any material constituent part thereof, it shall give not less than two years notice in writing to the Director of the proposal and of its plans in accordance with which is proposes to effect such cessation. Such cessation shall be effected only with the consent of and in accordance with any conditions that may be imposed by the Director.

(b) At any time within two years before the expiry of the Licence or if the Director receives a notice under Condition 2.8 (a) or if the Director suspends or revokes the Licence, the Director may after consultation with the Licensee direct it in writing to take such steps as are specified in the direction, being steps that he or she considers necessary or expedient to ensure the safety of the Mobile and Personal Communications System or the continuity and continuation of the provision of the Licensed Mobile Services or any constituent part thereof, and the Licensee shall comply with any such directions under this Condition 2.8(b).

2.9 If at any time the Licensee has or obtains the benefit of another licence under Sections 111(2) or 111(3) of the 1983 Act at the same time as it has the benefit of the Licence, the Director may thereafter, and for so long as the Licensee has the benefit of that other licence, and subject to Section 111(2)(f) of the 1983 Act, apply in relation to Licensed Mobile Services the Conditions under the Licence and/or those under that other licence, and Conditions 3 and 4 shall be construed accordingly.

2.10 Where any Affiliate of the Licensee has been designated as having SMP, such of the Conditions in Part 3 of any Mobile Telecommunications Licence granted under Section 111(2) of the 1983 Act held by that Affiliate and which apply to the Affiliate for the time being shall, for so long as they are applicable to the Affiliate, also apply to the Licensee if and to the extent that the Licensee provides Licensed Mobile Services in the market in which the Affiliate is designated as having SMP, and Conditions 3 and 4 shall be construed accordingly.

- 2.11 Nothing in this Licence shall absolve the Licensee from any requirement in law to obtain such additional consents, permissions, authorisations or licences as may be necessary for the provision of Licensed Mobile Services and for the exercise of its rights or discharge of its obligations under the Licence. The Licensee is responsible for all costs, expenses and other commitments (financial and non-financial) in respect of the Licence and provision of the Licensed Mobile Services and the Director shall bear no responsibility for such costs, expenses or commitments.
- 2.12 The Licence and the Conditions supersede any prior communications from the Director relevant to Licensed Mobile Services and the Licensee acknowledges that nothing in any guidance notes or other prior communications with the Director shall be deemed to be incorporated into the Licence or the Conditions.
- 2.13 The Licensee shall make any payment required by the Telecommunications (Miscellaneous Provisions) Act, 1996 (Section 6) Levy Order, 1998.

### **3. Compliance**

- 3.1 The Licensee shall provide all documents, records, accounts, estimates or other information requested from time to time by the Director, in the form and at the times specified by the Director, for the purpose of verifying that the Licensee is complying with the Conditions, for statistical purposes or to assist the Director to perform any duty or function imposed by national or European Community law. The Licensee shall in particular, as soon as may be in each year, submit to the Director a copy of the accounts to be laid before its annual general meeting for that year and a copy of the accounts of each subsidiary to be laid before the annual general meeting of the subsidiary for that year. The Licensee shall notify the Director of any change in the address or telephone number of the Licensee's principal office or on the occurrence of any event described in Conditions 4.8(2), (3), (4) or (5).
- 3.2 The Director may at her discretion publish any information provided to the Director under this Licence; in exercising her discretion under this Condition, the Director shall have regard to the obligation concerning professional secrecy imposed on her under Regulation 7 of the Licensing Regulations.
- 3.3 The Licensee shall comply forthwith with any demand made by a person authorised by the Director under Section 111 (7) of the 1983 Act and/or Section 12 of the 1996 Act in relation to any entry, inspection, test, measurement, copying of any record or the giving of information as may reasonably be required by that authorised officer.
- 3.4 The Licensee shall notify the Director in writing of the date on which it proposes to commence providing Licensed Mobile Services and shall confirm in writing when it has commenced such services.

- 3.5 Where, prior to the date on page 1 of the Licence, the Licensee was lawfully operating a Telecommunications Network or providing telecommunications services, as defined in Section 111 of the 1983 Act (whether under a licence granted under Section 111 of the 1983 Act or as otherwise authorised by law) and where the Director is satisfied that the Licensee reasonably requires additional time in which to change established procedures or to adapt existing systems in order to comply with the Conditions, the Director may, on request from the Licensee, agree to defer the applicability of such of the Conditions as he or she considers appropriate in the circumstances for such period as may be determined by the Director as being appropriate in the circumstances. The Director shall publish notice of the deferment of the applicability of any Condition made in accordance with this Condition.

#### **4. Enforcement and Amendment**

- 4.1 The Director may amend the Licence from time to time where objectively justifiable and in a proportionate manner. Any amendment, including any amendment under Condition 4.3(2), shall be made in accordance with Section 111(2)(e)(iv) and Section 111(10) of the 1983 Act, and any other requirements under applicable national or European Community law.
- 4.2 If the Licensee, whether by act or omission, fails or refuses to comply with any Condition or any lawful direction issued by the Director from time to time, the Director shall serve a written notice on the Licensee (a "Warning Notice"):
- (1) specifying how, in the Director's opinion, the Licensee is failing or refusing to comply with the Condition or, as the case may be, direction and requesting that, subject to sub-paragraph (2) below, such failure be corrected by the Licensee; and
  - (2) affording the Licensee the opportunity to make representations to the Director in respect of the alleged breaches within 14 days of the date of the Warning Notice. The Director may, at the request of the Licensee, extend the 14 day period for submission of representations by such period as the Director may consider reasonable in the circumstances.
- 4.3 If, after expiry of one month, together with the period of any extension granted under Condition 4.2(2), from the date of the Warning Notice, the Licensee shall not have corrected the acts or, as the case may be, omissions specified in the Warning Notice and the Director, having taken account of any representations made by the Licensee in accordance with Condition 4.2, is satisfied that such acts or omissions constitute a breach of the Conditions or of a lawful direction of the Director, he or she may impose any one or more of the following sanctions (the "Sanctions") on the Licensee:
- (1) subject to Condition 4.5, revocation or suspension of the Licence;

- (2) without prejudice to the generality of Condition 4.1, amendment of the Licence by way of reduction of the Term;
- (3) imposition of specific measures aimed at ensuring compliance in accordance with Section 111(4) of the 1983 Act.

No sanction shall be imposed by the Director save in accordance with the procedures set out in Section 111(10) of the 1983 Act.

- 4.4 The Director may publish notice of his or her intention to impose any Sanction under Condition 4.3 in such manner as he or she considers appropriate from time to time.
- 4.5 The Director shall not take action under Condition 4.3 to revoke or suspend the Licence save in respect of a breach of any Condition or any lawful direction of the Director which the Director considers to be material or persistent. For the avoidance of doubt this provision shall not in any way limit the power of the Director to revoke or suspend the Licence pursuant to Condition 4.8.
- 4.6 Invocation of any Sanction (other than that of revocation) against the Licensee for breach of a Condition or a lawful direction of the Director shall not prejudice the right of the Director to initiate procedures to invoke any other Sanction against the Licensee whether in respect of the same or any other breach of the Conditions or lawful direction of the Director.
- 4.7 If the Term is reduced pursuant to Condition 4.3, the Director may at his or her discretion restore the original Term where he or she considers restoration to be justifiable having regard inter alia to the behaviour of the Licensee since imposition of the Sanction of reduction of the Term. Restoration of the Term may be made subject to such conditions as the Director may consider objectively justifiable and proportionate in the circumstances of the case. Any decision of the Director in relation to restoration of the Term shall be notified in writing to the Licensee together with an explanation of the reasons for such decision. Notice of the restoration of the Term shall be published by the Director.
- 4.8 Without prejudice to the foregoing Conditions 4.1 to 4.7, the Director may suspend or revoke the Licence in any of the following circumstances:
  - (1) where, in the opinion of the Director, such revocation or suspension is required for the purpose of complying with national or European Community law;
  - (2) where the Licensee has ceased to provide Licensed Mobile Services;
  - (3) if the Licensee is an individual, a receiving order for bankruptcy has been made in respect of the estate of the Licensee;

- (4) where the Licensee is a company within the meaning of the Companies Acts 1963 to 1990, an order for its winding up has been made or a resolution for voluntary winding up (within the meaning of those Acts) has been passed by the company otherwise than for the purpose of a merger or solvent reconstruction, or a receiver of the property of the company has been appointed or an examiner to the company has been appointed;
- (5) if the Licensee shall, in respect of its activities in providing Licensed Mobile Services, have been found guilty of an offence under the Competition Acts, 1991-1996.

4.9 Upon the revocation or expiration of the Licence, the Licensee shall not be entitled as of right, or be deemed to enjoy any equity entitling it, to the grant of another licence under the 1983 Act.

## **5. Application of Additional Conditions where SMP is designated**

5.1 Unless and until the Licensee has received notification from the Director of an appropriate designation, the Conditions set out in Part 3 of this Licence shall not apply to the Licensee.

5.2 If the Director designates the Licensee as having SMP, he or she shall notify the Licensee of the designation and all the Conditions set out in Part 3 of the Licence shall apply to the Licensee in respect of all Licensed Mobile Services carried on by it in the Relevant Market with effect from the date which is 30 days after the notification of the designation.

5.3 Where a designation as to SMP has been made prior to the date on page 1 of the licence, the relevant Conditions or obligations shall apply as from that date.

5.4 Any Condition or obligations activated pursuant to this Condition 5 shall only apply to the Licensee for so long as the Licensee continues to have SMP in a Relevant Market.

## **6. Public Service Conditions**

6.1 The Licensee shall, in the manner and at the times specified by the Director, publish the standard terms and conditions under which it provides each category of Licensed Mobile Services to its customers. In the absence of any other instruction from the Director, the Licensee shall ensure that a statement of all applicable terms and conditions is:

- (1) filed with the Director; and
- (2) promptly made available for inspection at the request of any member of the public.

- 6.2 The Licensee shall publish, prior to the commencement of the Licensed Mobile Service, a customer's charter which provides for commitments by the Licensee to customers in respect of the standard and quality of the Licensed Service. The charter shall provide for the making of payments or other recompense by the Licensee to customers in cases of failure by the Licensee to meet commitments specified in the charter. The Director may, after consultation with the Licensee, direct the Licensee in writing to make specified amendments to the charter and the Licensee shall comply at its own cost with such a direction.
- 6.3 The Licensee shall ensure the accuracy and reliability of any systems, equipment, data or procedures which the Licensee uses to measure or to track the provision of Licensed Mobile Services or for the calculation of related charges.
- 6.4 The Licensee shall establish and maintain the capability to intercept messages transmitted by the Licensee and to provide information regarding the use of Licensed Mobile Services and, in this respect, shall comply with any directions given by the Minister for Public Enterprise to the Licensee under Section 110 of the 1983 Act as applied under Section 111(5) of the 1983 Act. In this Condition "intercept" shall be construed in accordance with the meaning assigned to "interception" by Section 98 (5) of the 1983 Act.
- 6.5 The Licensee shall safeguard the privacy and confidentiality of any telecommunications messages transmitted by the Licensee in accordance with applicable national and European Communities laws in force from time to time and shall comply with all applicable national and European Communities laws from time to time regarding the protection of personal data.
- 6.6 The Licensee shall not attach to Public Telecommunications Networks any terminal equipment unless it is lawful to do so, or other equipment which fails to comply with essential interfaces or other essential requirements notified from time to time by the Director.
- 6.7 (a) The Licensed Mobile Services shall comply with the directives of the European Community regarding electromagnetic compatibility and the safety of electrical equipment.
- (b) The Licensee shall observe good radio site engineering practices in accordance with ETSI Technical Report, ETR053, and any revisions of the practices or report.
- (c) The Licensee shall ensure that non-ionising radiation emissions from its Telecommunications Network are within the limits specified by the guidelines published by the International Commission for Non-Ionising Radiation Protection ("ICNIRP") and that it complies with any radiation emission standards adopted and published from time to time by IRPA, the Standards of ETSI and the European Committee for Electrotechnical Standardisation and any other standards specified by European Community law.



- (d) The Licensee shall ensure that only terminal equipment which is type approved in accordance with directives issued by the European Community from time to time, is connected to the Mobile and Personal Communications System.
  - (e) The Licensed Mobile Services shall comply with such revisions of the foregoing standards or GSM technical specifications of ETSI as are published by NSAI from time to time.
- 6.8 The Licensee shall make contributions to assist in the funding of a USO in accordance with any directions issued by the Director under applicable legislation governing USO in force from time to time.
- 6.9 The Licensee shall comply with any directions issued by the Director from time to time regarding emergency services in accordance with the terms of Part 3 of the Schedule.
- 6.10 The Licensee shall comply with any direction issued by the Director for the purposes of protecting the interests of its customers, having regard to relevant legislation in force from time to time, including, but without limitation, directions regarding:
- (a) the dialling and other tones used on Public Telecommunications Networks; and
  - (b) the provision of such services as may be specified by the Director from time to time, including, but without limitation, call barring and calling line identification.
- 6.11 The Licensee shall implement an appropriate code of practice for the resolution of User disputes and in relation to non-payment of bills and disconnection. The Director may from time to time issue directions to the Licensee specifying any modifications or additions that she considers should be made to the code or as to the publication, republication, implementation or further modification of the code. The Licensee agrees to participate in good faith in any dispute resolution procedure established by the Director for the resolution of disputes.
- 6.12 The Licensee shall ensure that its customers have access to directory information services offered by every Directory Information Service Provider, subject to fair and reasonable interconnect arrangements being arrived at between the Licensee and the relevant Directory Information Service Provider. The Licensee shall insofar as the information is available to it maintain a complete and accurate database of its customers' numbers and, for the sole purpose of facilitating provision of directory information services, make that information available to every Directory Information Service Provider and co-operate in the supply or compilation of comprehensive and accurate directory information on terms that are fair and reasonable. For the purpose of this

Condition 6.12, a Directory Information Service Provider shall mean any person to whom the Director has allocated a directory enquiry access dialling code designated by the Director from time to time under the National Numbering Scheme as a dialling code to be used for the provision of directory information services. Insofar as any directory information is disclosed to the Licensee for the purpose of facilitating provision by the Licensee of directory information services, the Licensee shall not use such information for any other purpose unless specifically authorised to do so by the person disclosing same and shall comply with all applicable national and European Communities laws and regulations from time to time regarding the protection of personal data.

## **7. Trench Sharing**

- 7.1 Where the Licensee proposes to carry out any trenching work on a public highway or in any public place, it shall notify the Director of its intention and shall publish a notice of same in at least one national and one local newspaper of general circulation not less than 21 days in advance of commencement of such works, or as otherwise agreed with the Director. If the Licensee receives a request from any Other Licensed Operator for permission to lay separate ducts in the trenches opened by the Licensee and sharing would not result in any material deviation from the Licensee's timetable for completion of the trenching work or roll-out of its Telecommunications Network, the Licensee shall negotiate in good faith with the Other Licensed Operator with a view to agreeing the terms on which such trench-sharing shall take place. Such terms may include a provision that the Other Licensed Operator makes a fair contribution to the costs incurred in connection with the trenching work.
- 7.2 Recognising timetable issues of the kind described in Condition 7.1, the Director may on her own initiative at any time, and shall if requested by the Licensee and the Other Licensed Operator concerned in any particular instance, make directions specifying the issues to be covered in any agreement of this type, the conditions that shall apply and the time limits within which the agreement is to be completed.

## **Part 2: Additional Conditions on Numbering and Quality of Service**

### **8. Numbering**

- 8.1 The Licensee shall not use any short code or number from the National Numbering Scheme for the purpose of terminating telecommunications messages on any Public Telecommunications Network within the State unless that short code and number shall have been allocated to the Licensee by the Director for that purpose.
- 8.2 Insofar as any short code or number from the National Numbering Scheme, which is allocated to the Licensee by the Director, is used for terminating telecommunications messages, the Licensee shall use the same for terminating telecommunications messages solely on a Public Telecommunications Network in the State. Any short codes or numbers from the National Numbering Scheme allocated to the Licensee shall be used in accordance with the conditions applicable to their allocation and with the other provisions of this Condition 8 and the National Numbering Scheme and any other numbering plans or conventions or directions issued by the Director from time to time.
- 8.3 No Licensee shall acquire any proprietary rights in any short code or codes, number or range of numbers allocated to it or used by its customers. No short code or codes, number or range of numbers may be sold or otherwise transferred by the Licensee without the prior written consent of the Director.
- 8.4 The Licensee shall manage any short codes and numbers allocated to it:
  - (1) with a view to conserving short codes and numbers as a public resource; and
  - (2) in conformity with the National Numbering Scheme and any other numbering plans or conventions or directions issued by the Director from time to time.
- 8.5 The Licensee shall maintain a record of the status of all short codes and numbers allocated to it by the Director and shall, on request, make that information available to the Director. The Licensee shall ensure that the allocation of individual short codes, numbers or number ranges by the Licensee to its customers is carried out in an objective, transparent, non-discriminatory and timely manner.
- 8.6 The Licensee shall make any changes in any equipment, facilities or processes required in order to continue to comply with the National Numbering Scheme and any other numbering plans or conventions or directions issued by the Director from time to time. The Director may change the short codes and/or numbers allocated to the Licensee at any time. The Licensee shall comply with any direction of the Director in relation to the implementation of short codes or number changes and informing its customers of such changes.

- 8.7 The Director may reclaim any short code or codes, numbers or numbering ranges allocated to the Licensee if, in the opinion of the Director, the Licensee is found to be in breach of any Condition, including specific numbering Conditions.
- 8.8 The Licensee shall not charge its customers for allocations of short codes or numbers except where authorised and in accordance with any direction from the Director.
- 8.9 The Licensee shall not reallocate to another customer a subscriber number previously allocated to a customer before the expiration of a period specified by the Director in the National Numbering Scheme and any other numbering plans or conventions or directions issued by the Director from time to time, or otherwise from time to time, from the date of the termination of the contract with that customer in respect of that number and unless the Licensee has ascertained that the customer has not continued the use of that number for the purpose of another mobile telephony service within the State.

## **9. Quality of Service and Publication of Performance Data**

- 9.1 The Licensee shall comply with the standards set out in Part 4 of the Schedule, and any directions issued by the Director from time to time regarding quality of service indicators and measurement methods for Licensed Mobile Services. In issuing further directions, the Director shall have due regard to any applicable European (ETR) Regulations. The Director may also, following a public consultation, issue directions regarding quality of service indicators and measurement methods for other Licensed Mobile Services, again having due regard to any applicable European (ETR) Regulations.
- 9.2 The Licensee shall, as and when required, supply to the Director, in a form specified by her, the results of its own measurements of actual performance against any quality of service requirements specified by the Director in respect of the Licensed Mobile Services from time to time. The Director may include the figures supplied to her in any compilation of the quality of service indicators of licensed operators in the State and/or in the European Community, and may publish the compilation.

## **10. Interference with other Radio Systems**

- 10.1 The Licensee shall at all times facilitate the Director in the management of the radio frequency spectrum and shall ensure that the equipment and systems of the Licensee are adequate to prevent or, if necessary, eliminate interference with other authorised radio systems.
- 10.2 The Licensee shall, if so directed by the Director in writing or if so directed by an authorised officer in a case where the officer reasonably believes that an emergency exists:

- (1) modify, in such manner as may be specified in the direction, the operating characteristics of any radio transmitting station used for the purposes of the Licensed Mobile Services; or
- (2) cease operating any radio channel or any radio transmitting station used for the purposes of the Licensed Mobile Services.

10.3 Where the Director proposes to give a direction under Condition 10.2, she shall, if practicable, consult with the Licensee in relation to the proposal.

### **Part 3: Additional Conditions applying where the Licensee is designated as having Significant Market Power**

#### **11. Cross-subsidisation**

- 11.1 Where the Director, after consulting the Licensee and such other interested parties as she considers appropriate, determines that the Licensee or an Affiliate is unfairly cross-subsidising or unfairly subsidising any category of Licensed Mobile Services in the Relevant Market, or is unfairly cross-subsidising any Offered Services by activities in the Relevant Market, he or she may issue a direction to that effect and require the Licensee to cease to do so. For the purposes of this Condition, an Offered Service shall mean any service provided by the Licensee or on Affiliate (whether pursuant to a licence granted under Section 111 of the 1983 Act or otherwise) the cross-subsidisation of which the Director considers will affect a telecommunications market or markets.
- 11.2 In order to enable the Director to evaluate whether any unfair cross-subsidisation or unfair subsidisation is taking place, the Licensee shall record at full cost in its accounting records any material transfer of assets, funds, rights or liabilities between a part and any other part of its business, and between itself and any Affiliate, and shall observe any directions issued by the Director for this purpose.

#### **12. Separate Accounts**

- 12.1 The Licensee shall maintain accounting records in a form which enables the activities of any business unit specified in any direction given by the Director to be separately identifiable, and which the Director considers to be sufficient to show and explain the transactions of each of those business units and shall:
- (1) prepare, in respect of each calendar quarter, accounting statements setting out and fairly presenting the costs (including capital costs), the revenue and the financial position of each of those business units including a reasonable assessment of the assets employed in and liabilities attributable to them and deliver copies of the same to the Director on demand; and
  - (2) deliver to the Director each year a copy of its annual audited accounts forthwith on publication of the same.
- 12.2 The Licensee shall comply with any directions made by the Director from time to time in relation to the preparation and delivery of accounting statements.

#### **13 Approval of Customer Contracts**

- 13.1 The Licensee shall deliver to the Director, who may publish and consult on the same, copies of all standard-form contracts from time to time issued by the Licensee in connection with the provision of any Licensed Mobile Service provided within the Relevant Market, and shall supply a true and complete

copy of any particular contract within five days of any written request from the Director.

- 13.2 The Director may, on her own initiative or at the request of a body of the kind referred to in Condition 16, and acting in an objective and proportionate manner and in order to protect the rights of the Licensee's customers, direct that the Licensee alter its standard form contracts and/or compensation or refund schemes offered to customers or prospective customers.

#### **14. Misuse of Data**

The Licensee shall not make use of network or traffic data, traffic profiles or any other data of any nature, and which are not otherwise lawfully publicly available and which become available to the Licensee directly or indirectly as a result of entering into interconnection arrangements or otherwise as a result of carrying telecommunications messages, in such a way which, in the reasonable opinion of the Director, would unduly prefer the interests of any business carried on by the Licensee or an Affiliate or place persons competing with that business at an unfair disadvantage.

#### **15. Bodies Representing Users' Interests**

The Director shall from time to time publish details of bodies recognised by her as representing the interests of Users. The Licensee shall give due consideration to any matter relating to the provision of Licensed Mobile Services which is raised by any such body and shall, at the request of the Director, furnish the Director with a written report of its dealings with that body.

#### **16. Undue Preference and Unfair Discrimination**

- 16.1 The Licensee shall not, in respect of a Relevant Market, whether in respect of the prices charged or other terms or conditions applied or otherwise, show undue preference to, or exercise unfair discrimination against, particular persons or persons of any class or description regarding the provision of any Licensed Mobile Service. The Licensee will be deemed to have shown undue preference or exercised undue discrimination if it favours any business carried on by the Licensee or an Affiliate so as to place persons lawfully competing with that business or Affiliate at an unfair disadvantage.
- 16.2 The Licensee shall not, in respect of a Relevant Market, show undue preference to or exercise unfair discrimination against any Other Licensed Operator in respect of the quality of any Licensed Mobile Service provided by the Licensee to such Other Licensed Operator. The Licensee may be deemed to have shown undue preference or to have exercised unfair discrimination if it favours a business carried on by it or by an Affiliate in relation to the quality of any Licensed Mobile Service provided to that business or Affiliate as compared with the Licensed Mobile Services provided to any Other Licensed Operator, so as to place the Other Licensed Operator at an unfair disadvantage.

## **Part 4: Additional Conditions applying to Mobile Licences**

### **17. Priority to Certain Communications**

- 17.1 The Director may, at the request of the Minister for Public Enterprise (in this Condition referred to as the “Minister”) and where, in the opinion of the Minister, there are special circumstances so justifying, direct the Licensee to give absolute priority on the Mobile and Personal Communications System to communications of such kind as the Director may specify at the request of the Minister, and a specification for the purposes of this provision may be effected in such manner and by reference to such matters as the Minister may determine.
- 17.2 The Licensee shall comply with a direction under this Condition and shall do so at its own expense.

### **18. Safety Measures**

- 18.1 The Licensee shall take all reasonable measures in relation to the provision of the Licensed Mobile Services to ensure the safety of its employees and other persons whose employment relates wholly or partly to the Licensed Mobile Services and of its customers and the public and shall conform with best international practice in relation to health and safety in the provision of the Licensed Mobile Services.