



Office of the Director of  
**Telecommunications  
Regulation**

# **Service Levels Provided to Other Licensed Operators by Licensees with Significant Market Power:**

## **Consultation Paper**

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**Document No. ODTR 00/78**

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**Oifig an Stiúirthóra Rialála Teileachumarsáide**  
**Office of the Director of Telecommunications Regulation**  
Abbey Court, Irish Life Centre, Lower Abbey Street, Dublin 1.  
*Telephone +353-1-804 9600 Fax +353-1-804 9680*

*Web: [www.odtr.ie](http://www.odtr.ie)*

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# 1. Introduction

The Director of Telecommunications Regulation (“the Director”) is responsible for the regulation of the Irish telecommunications sector in accordance with national and EU legislation. The treatment of competitors by the incumbent in terms of the telecommunications services provided to competing operators is a key issue for the development of competition in the market.

Given the rapidly growing telecommunications needs of our economy, Ireland has to maintain the highest of standards with regard to the availability and delivery of telecommunications services to users.

In August 1999, the Director issued a document entitled “Service Levels Provided to Other Licensed Operators (“OLOs”) by Licensees with Significant Market Power – Report on Consultation” (“the Consultation Report”)<sup>1</sup>. The paper set out the Director’s position at that time regarding the non-discriminatory treatment of competitors by the incumbent through the use of Service Level Agreements (“SLAs”) between the parties.

In October 1999, the ODTR required *eircom* to publish the terms and conditions under which it provides services to operators. *eircom* subsequently published its “Statement of Service Levels for the Provision of Specified Services to Other Licensed Operators” (“Carrier Services SLA”) in October, a copy of which is attached in Appendix 2. These SLAs were effective from 1 November 1999 and covered delivery timeframes, quality levels and maintenance terms for services provided by *eircom*, together with the penalties to be paid by *eircom* to operators in the event of its failure to meet the targets set. Subsequent to the publication of the Report on Consultation the ODTR indicated to *eircom* that a full review of the SLAs would not take place any earlier than 1 November 2000.

The Director has now initiated this general review of the Service Level Agreements and wishes to invite comments from all interested parties to assist her in coming to her conclusions. This review is particularly appropriate at this stage in light of the number of issues that have arisen in respect of the SLA offered by *eircom* to OLOs and , given the dynamic nature of the market and importance of this issue to the industry and the Irish economy in general.

The Director wishes, without prejudice to her rights and powers under law, to offer interested parties an opportunity to contribute proposals for modification of and addition to *eircom*’s carrier services SLA.

The Director welcomes comments from all interested parties, particularly end users, on the views set out in this consultation paper. The closing date for receipt of comments is **5.30pm on Friday 3<sup>rd</sup> November, 2000**. Further details on submitting comments are set out in section 8 of this document.

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<sup>1</sup> Document No. ODTR 99/48 “Service Levels Provided to Other Licensed Operators by Licensees with Significant Market Power: Report on the Consultation.

It should be noted that this consultation paper covers only carrier services. It does not cover Interconnect Services in the Reference Interconnect Offer (“RIO”) which are subject to a separate Service Level Agreement<sup>2</sup>.

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<sup>2</sup> Decision Notice D7/00 (ODTR 00/31) “*eircom*’s Reference Interconnect Offer”. See also ODTR 00/63 “Information Notice: Direction to *eircom* requiring modification to *eircom*’s Service Level Agreement for Interconnect Circuits”

## 2. Legislative Background

Both EU and Irish Legislation recognise that, in the interests of developing and sustaining competition in the telecommunications sector, it is important to ensure that new entrants to the market can efficiently utilise networks of SMP operators.

The Leased Line market is a telecommunications services market considered to be of major importance at European level as per Annex I of the Interconnection Directive – 97/33/EC.

*eircom* is designated as having SMP in the Leased Lines market pursuant to Regulation 5(1) of the European Communities (Leased Lines) Regulations 1998.

The Director is obliged by Regulation 4(1) of the European Communities (Leased Lines) Regulations to ensure that at least one organisation is required to provide leased lines at every point in the territory of the State.

*eircom* is a notified organisation within the meaning of Regulation 4 of the European Communities (Leased Lines) Regulations 1998.

Condition 18.1 of the General Telecommunication Licence requires the Licensee to deliver to the Director, who may publish and consult on same, copies of all standard-form contracts from time to time issued by the Licensee in connection with the provision of any Licensed 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.

Condition 18.2 of the General Telecommunications Licence states that the Licensee shall also prepare and deliver to the Director a draft statement setting out the minimum service levels for customers (including Other Licensed Operators) in respect of each category of Licensed Service it offers within the Relevant Market, any exceptions to these and the compensation or refunds it will offer to customers or prospective customers in case service levels are not met. The Director may publish and initiate a consultative process on the draft statement and, after considering the responses received and consulting the Licensee, issue directions to the Licensee specifying any modifications or additions that she considers should be made to the draft statement. The Licensee shall then publish the statement in the agreed amended form, in accordance with any directions as to publication made by the Director and shall forthwith implement the same.

The Director, on 8 August 1999, after considering all replies to Consultation Paper ODTR 99/27, issued her Report (ODTR 99/48) entitled Service Levels Provided to Other Licensed Operators by Licensees with Significant Market Power. On 15 September 1999 *eircom* presented to the ODTR its statement on proposed service levels. *eircom* was directed by the ODTR to publish by 15 October 1999 a final Statement of Service Levels for Carrier Services. The published statement became effective on 1 November 1999.

This consultation process herein is without prejudice to the right of the Director from time to time, without the need for consultation, to issue directions requiring modification or addition to the statement and as to its republication and

implementation as provided for in the last sentence of Condition 18.2 of *eircom*'s General Telecommunications Licence.

### **3. Developments Since the Publication of the SLA**

The timely provision of leased lines to OLOs is a legal obligation on *eircom*, and an essential service to developing competition and for supplying the demand for service of new and existing businesses based in Ireland. Without an adequate service in the delivery of lines the OLOs cannot provide a credible service to business customers. At the same time as the SLA was being developed over the Summer of 1999, the ODTR was responding to a series of informal complaints from the OLOs about a major backlog in leased line/interconnect circuit delivery by *eircom*. A backlog clearance programme was put in place by *eircom* and substantial progress made in speeding up delivery.

The SLA was put in place to come into effect on 1 November 1999. The performance targets were those proposed by *eircom* in the context of its own transformation programme, which set targets for improved performance from 50-60 days to 10 days by 30 September 2000. The SLA provided for the payment by *eircom* of penalties where the performance targets were not met. The penalties were set such that the maximum penalty payable was the installation fee, which would be reached when the period to the delivery date was 1.5 times the delivery date. No matter how much later the delivery date was, the penalty did not rise further. It was expected that the *eircom* programme to improve its service over the following 12 months would mean that this maximum penalty would be adequate.

Over the year, the ODTR has had to intervene several times to broker the establishment of several new backlog programmes, for although the Carrier Services unit has made significant efforts there has been only sporadic improvements in service. In September 2000, delivery of circuits was 20% less than in August 2000, and 25% less than the target for September set by *eircom* under its transformation programme.

Towards the end of August when it became apparent that the revised leased line targets brokered in July were not being met, the Director followed up on previous correspondence indicating that she would not hesitate to take appropriate action should *eircom* fail to meet its obligations to deliver capacity. On the 28<sup>th</sup> August the Director required<sup>3</sup> *eircom* to amend its existing mechanism for penalty calculation so that penalty payments would no longer be capped after delivery has reached 1.5 times the target delivery date. This was achieved through an amendment to the formula to be used for calculating penalty payments. Penalties were the only element of the SLAs affected by the Direction. Following the initiation of proceedings by *eircom* this direction has not yet been implemented.

#### **3.1. Updating the SLA**

In October of last year it was indicated that the ODTR would not review the SLA regime until after one year of operation. That review is now taking place and the most serious issue is that of obtaining timely delivery as outlined above. However, there is also a need to consider if the range of services should be widened to take

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<sup>3</sup> See ODTR 00/60 - Information Notice - Direction to *eircom* requiring modification to *eircom*'s Service Level Agreement for leased lines (penalty payments)"

account of developments during the last year, together with the processes to be included, the service level attributes currently guaranteed by the SMP operator, the standard delivery times, the penalty regime and ways of handling disputes. The question of the timing of a further general review is also addressed. In view of the difficulties of the last year, it is proposed that the penalty regime be reviewed to ensure its adequacy in six months from now (i.e. by 30<sup>th</sup> April 2001) and that a full review take place later in the year so that any necessary changes may be directed to be made to come into effect on 1 December 2001. These proposals or any others adopted in the light of this review are to be understood as being without prejudice to the Director's rights and obligations to regulate the market generally, in other words, it may be necessary to intervene at other times.

### **3.2. Timing of any changes**

The Director will publish her Decision Notice from this Consultation by 24<sup>th</sup> November 2000 and she envisages issuing a direction to *eircom* to make any changes arising from this review in its SLA to come into effect on 1 December 2000.



## 4. Related Developments

This consultation paper has a number of linkages with other papers published by the ODTR. The following papers, existing or planned, are of relevance.

### 4.1. Interconnect SLA

#### ***eircom's* RIO - Decision Notice D7/00 & Report on the Consultation**

D7/00<sup>4</sup> required *eircom* to develop, following consultation with OLOs, SLAs for interconnection circuits. *eircom* did submit a proposal in respect of SLAs within the designated timeframe. However, it had not carried out a consultation with other operators due, it claimed, to time constraints and its proposals were not accepted. Following additional difficulties with *eircom's* proposals the Director was not in a position to accept or approve the revised proposals prior to re-publication of the RIO on 27<sup>th</sup> June.

*eircom* was then required to submit to the ODTR a copy of all comments received from OLOs in response to its consultation including its justification for its acceptance or rejection of the comments received.

Taking into account *eircom's* comments and the comments received from OLOs as well as expert advice available to her, the Director, on 12<sup>th</sup> July, directed that further adjustments be made to Annex D of *eircom's* RIO in order to ensure compliance with D7/00 and the relevant legislation. *eircom* made representations to the ODTR seeking to have the Direction amended. However, the Director concluded that no information has been provided by *eircom* to warrant any change in the original direction and issued an information note<sup>5</sup>. *eircom* subsequently complied with the Direction.

### 4.2. Measuring Licensed Operator Performance

#### **ODTR 00/04 Measuring Licensed Operator Performance – Report on Consultation**

In January 2000 the Director set out her position on the measuring licensed operator performance programme, which will measure quality of service performance statistics for licensed operators. The Director defined three Licence categories with each category having different obligations regarding collection and publication of statistics for direct, indirect, leased line, directory enquiries and payphone services. In February 2000 an industry forum was set-up to resolve any relevant issues including parameter definitions, operator categorisation etc.

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<sup>4</sup> 00/31 [eircom's RIO - Decision Notice D7/00 & Report on the Consultation](#)

<sup>5</sup> 00/63 [Information Notice: Direction to eircom requiring modification to eircom's Service Level Agreement for Interconnection Circuits](#)

Definitions for leased lines and basic exchange lines have been agreed by the industry forum and cover, *inter alia*, service provision, fault management and complaints. The measuring licensed operator performance programme is scheduled to start collecting live data from operators on the 1<sup>st</sup> of January 2001 with the first set of results due for publication in Summer 2001. It is through the MLOP programme that the Director proposes to review the implementation of SLAs for Carrier Services and the SMP operator's compliance with them.

### **4.3. Dispute Resolution Procedures**

#### **ODTR 99/53 Dispute Resolution Procedures – Decision Notice D11/99**

In September 1999 the Director established procedures to facilitate the effective resolution of inter-operator telecommunications disputes. The proposed mechanisms for the lodging and handling of disputes, including the level of information required to enable the ODTR to consider the issues, and guiding timeframes for resolution, are detailed in the Decision document. A number of informal and formal disputes have arisen between the OLOs and *eircom* regarding the provisioning of services. Having regard to the operation of the dispute resolution procedures over the course of the last year, the Director intends to review the dispute resolution mechanisms during the fourth quarter of this year.

### **4.4. *eircom* Code of Conduct on Selling Practices**

*eircom* are required, through its designation as an SMP operator in the Fixed Telephone Network and Services Market<sup>6</sup> and the relevant licence conditions<sup>7</sup> imposed as a result of this designation, to draw up an appropriate code of conduct for selling practices. The Director proposes to issue a consultation on *eircom*'s draft code of conduct later this year.

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<sup>6</sup> Decision Notice D15/99, Document Notice ODTR 99/75.

<sup>7</sup> See General Telecommunications Licence, Document ODTR 98/50R published at the ODTR web site: [www.odtr.ie](http://www.odtr.ie).

## 5. Terms of the Existing SLA

The Director is mindful that in many cases an OLO is reliant on an SMP operator to provide a constituent part of its retail service and recognises the impact that the quality of service it receives can have on the OLO's end users. In the context of the existing carrier service SLA (attached to Appendix 2 of this Document) the Director wishes to seek views on the following issues.

- the telecommunications services to be considered as carrier services and thus subject to an SLA
- the attributes for each carrier service SLA
- the standards for each carrier service SLA
- the level of penalties for non-performance against a carrier service SLA
- escalation of disputes regarding the SMP operator's compliance with the SLA
- guidelines for the application for carrier services and penalties

### 5.1. Carrier Services

In a competitive market, competition takes place in terms of both price, and the quality of services provided for that price. Both of these elements have a net benefit to the consumer and the Irish economy in general. OLOs are constrained in their ability to compete effectively on quality if they are not provided with sufficient certainty over the quality of services provided to them by the SMP operator, particularly in regard to providing access to an OLO's customers' premises.

Hence, the document ODTR 99/48 identified a range of retail telecommunication services provided by the SMP operator which would be classed as 'Carrier Services' when provided to an OLO and for which Carrier Service SLAs should be provided.

The services identified are.

- basic exchange lines (analogue, ISDN BRA and ISDN PRA)
- national analogue leased lines
- national digital leased lines

Given the dynamic nature of the Irish market in terms of the development of competition and growth in new services, the Director considers that it is appropriate to review the composition of the carrier services portfolio.

<p><b><i>Q.5.1.1 Do you agree that the existing composition of the Carrier Services portfolio is adequate? If not, please explain why, propose any amendments or modifications supported by reasons for your suggestion.</i></b></p>
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It is also the Director's view, as set out in ODTR 99/48, that individual services within that Carrier Services portfolio should be updated to take account of the introduction of new services by *eircom*. For example, since the publication of their SLA in October 1999 *eircom* has commenced a 34 Mbit/s digital leased line retail offering. The Director considers that all data rates for national digital leased lines should be subject to an SLA and therefore this product should be included under the existing Carrier Services portfolio.

***Q.5.1.2 Do you believe there are additional services that should be included within the general services of the Carrier Services Portfolio? If so, please give details and outline the reasons why?***

## **5.2. Processes Covered under an SLA**

The following processes are covered under the existing SLA

- service provisioning : the provision of Carrier Services as a result of a request from an OLO
- in-service performance : the performance of the service whilst in operation
- fault management : the SMP operator's performance in managing its maintenance process
- billing and payment.

The Director considers that these processes should continue to be covered in an SLA for a particular Carrier Service.

***Q.5.2.1 Do you agree that these processes are still appropriate for inclusion in the SLA? Please state your reasons. If not, please state why and detail the reasons for your answer.***

***Q.5.2.2 Are there any additional processes that should be included? If so, please give reasons.***

In ODTR 99/48 the Director concluded that two additional attributes should be included in the SLA. These were

- Service Alteration
- Service Cessation

The Director considers that these should now be included in the SLA as they have the potential to affect the level of service an OLO can provide to its customers. The following definitions are proposed.

- Service Alteration: whereby an OLO requests an amendment to the configuration of the service in accordance with the terms and conditions of the contract between the parties.

- Service Cessation: whereby an OLO requests, in accordance with the terms and conditions of the contract between the parties, the cessation of an existing Carrier Service

The Director proposes that these additional processes should be implemented in a similar manner to service provisioning, whereby an alteration or cessation is ordered, confirmed as ordered, undertaken, tested and accepted by the OLO.

***Q.5.2.3 Do you agree that Service Alteration and Service Cessation are appropriate for inclusion in the SLA? If not please state why, propose alternatives and detail the reasons for your answer?***

***Q.5.2.4 If you agree that these processes should be included do you agree with the proposed definitions? If not give reasons for your answer.***

### **5.3. Attributes Guaranteed in the SLA**

The following service level attributes are currently guaranteed by the SMP operator for processes addressed under the SLA.

- **Acknowledgement of order:**
- **Notification of Order Completion date:**
- **Ready for Testing date (where required)**
- **Order completion date**
- **Maximum response time**

With the exception of the “Maximum Response Time” attribute (see below) the Director considers that the above attributes for the Service Provisioning Process should continue to be included in an SLA.

Two SLA commitments for measuring *eircom*’s performance in relation to fault management are possible, namely

- Maximum Response Time (guaranteed under the existing SLA)
- Maximum Repair Time

The market for services has developed such that the provision of a “maximum response time” is no longer seen as adequate. Customers are using telecommunications services for ever more critical applications and are therefore relying on their suppliers for greater levels of certainty regarding fault repair. Indeed, *eircom* itself has a “maximum repair time” measure for analogue exchange lines.

Having regard to the operation of the SLAs over the last year the Director feels that it is appropriate to review the question of employing the Maximum Repair Time attribute and would like to receive respondents’ views in this regard. Both attributes were defined in ODTR 99/27 and these definitions are still appropriate.

**Q.5.3.1** *Do you agree that the above service level attributes should be offered under SLAs? Please state your reasons. If not, please state why and detail the reasons for your answer.*

**Q.5.3.2** *Do you agree that Maximum Repair Time is more appropriate than Maximum Response Time? If so do you agree with the proposed definition of Maximum Repair Time? If not, please state why and detail the reasons for your answer.*

#### **5.4. SLA “Standards”**

The requirement for ‘standard’ SLA times were set last year on the basis of *eircom*’s transformation programme targets. They were set having regard to the following principles:

- be challenging yet realisable by the SMP operator
- improve towards European best practice
- maintain a level which is favourable compared to that of best practice going forward.

During the year sporadic improvements were achieved in response to ODTR brokered backlog clearance programmes. However, current indications from *eircom* are that delivery periods for leased lines are at about 60 days, no improvement as compared with the situation last year, and some OLOs are reporting much longer periods for many orders. The Director is aware of the efforts made by Carrier Services within *eircom*, but the fact remains that *eircom* has not achieved a level of delivery meeting European best practice 12 months after the targets were set, let alone maintain a level that is favourable compared to that of best practice going forward. It is estimated that *eircom* has incurred significant penalties yet it has not resolved the delivery problem.

Ireland is experiencing unprecedented economic growth largely due to massive development in key sectors of the economy such as high tech industries and related services. An ever expanding telecommunications infrastructure and services is critical to maintaining and developing these services on which so much of Ireland’s prosperity and high employment levels depend. The rates of growth in demand are far higher than in the past or in many other sectors, but that is the challenge that telecommunications companies have to meet. For example the two mobile operators –Eircell (*eircom*’s subsidiary) and Digifone - have generally kept pace with the explosive demand for mobile phones in Ireland.

*Eircom* is clearly not delivering to the 10 day target which came into effect on 1 October. It is not clear that carrier services have a sufficient level of priority within *eircom* or how much attention the rapidly growing proportion of *eircom* business that is represented by the OLOs, including the issue of delivery of leased lines, is getting from the board of *eircom*. What is realisable cannot be set just having regard to past performance, it must be set having regard to market needs The Director would wish to explore whether it would be better to reverse the last reduction in the target delivery time for leased lines from 20-30 days to 10 days. The third lowest range in the EU appears to be between 19 and 30 days. This is very similar to the previous Irish target

of 20-30 days. It would be up to *eircom* to put the necessary resources behind meeting the target.

The ODTR is aware that the European Commission is due to publish its “Annual Report on the Performance of Leased Lines in Relation to Supply Conditions” in the coming weeks. This report reviews the situation in relation to SMP operator performance in other countries in relation to the delivery of leased line services. The Director will consider “Best Practice” information contained in this report in reaching her decision on delivery standards. The lowest level in the EU appears to be between 5 and 15 days depending on the type of leased line.

The effect of this proposal would be the following:

Service	Service Provisioning “Standard” for Delivery		
	Current SLA target	Amended target 1.12.00 to 30.04.01	30.04.01 onwards
Ordinary Quality Voice Bandwidth	10 days	20 days	10 days
Special Quality Voice Bandwidth	10 days	26 days	10 days
64kbit/s leased line	10 days	26 days	10 days
2 Mbit/s leased line (unstructured)	10 days	30 days	10 days
2 Mbit/s leased line (structured)	10 days	30 days	10 days
34 Mbit/s leased line	n/a	proposals invited	Proposals invited

***Q.5.4.1 Do you agree that this proposal to extend the transition period to European Best Practice times as set out above should be adopted? If not please propose alternatives and reasons for your answer?***

The following standards currently apply in relation to the attributes identified below.

SLA Attribute	Standard
<b>Acknowledgement of order</b>	Within 2 Working Days
<b>Notification of Order Completion date</b>	Within 10 Working Days
<b>Ready for Testing date (where required)</b>	see individual carrier services SLAs
<b>Maximum response/repair time</b>	4 Hours

The Director would like to stress that the order completion date must be consistent with the relevant SLA timeframe. As a matter of good practice, *eircom* should also inform the OLO at a time close to the delivery date that the circuit is on schedule for delivery.

**Q.5.4.2** *Do you agree with the Director’s proposal to revise the standards for the attributes above? If not, please outline reasons for your answer?*

**5.5. Penalties**

In the current SLA (see Appendix 2) penalties are applied to the following attributes:

- Ready for Testing date (where required)
- Order completion date
- Maximum response time

Despite *eircom*’s poor delivery performance the Director is of that view that its transformation processes should have progressed sufficiently to permit the management of ‘Order Acknowledgement’ and ‘Notification of Order Completion Date’ processes in an efficient manner. The Director considers that, in addition to the three attributes identified above, the following attributes could also attract a penalty in the event of non-compliance with the SLA standard.

- Order Acknowledgement
- Notification of Order Completion Date

**Q.5.5.1.** *Do you consider that a penalty should apply for non-conformance with the standard for these attributes. If so please propose a penalty giving reasons for your proposal and method of verification.*

**5.6. Level of penalty**

Maximum response time:

Under the current SLA the level of penalties for the attribute ‘maximum response time’ (applicable to all carrier services) is:

SLA Attribute	Penalty Applicable	Conditions
Maximum response time	If no response is provided within the “standard” response time then <i>Eircom</i> shall refund the monthly rental for the service purchased, up to a maximum of £1000.	Response is defined as a visit to the customer premises or where this is not required the first indication to the OLO that activities are being undertaken to repair the fault.

**Q.5.6.1.** *If, in response to Q.5.3.2 you indicated a preference for maximum repair time please suggest a level of penalty that should apply and give reasons.*



**Q.5.6.2** *If you prefer maximum response time, do you consider that the penalty applicable for this attribute is adequate? If not, please propose an alternative and give reasons for your proposal?*

Order Completion:

Under the current SLA the level of penalties applying to the ‘order completion’ attribute differs for leased lines and basic exchange lines.

For basic exchange lines the current level of penalties applying to the ‘order completion’ attribute is:

SLA Attribute	Penalty Applicable	Conditions
Order Completion	<p>For every working day of delay in the provision of a service as against a previously notified date, <i>Eircom</i> shall be liable to pay a sliding scale of penalty such that it will provide a complete refund of the installation charge if the circuit is delivered at a date which is equal to or greater than 1.5 times the contracted delivery time. This will be by reference to the following equation:</p> $\sum_{1}^{n} XnI/D$ <p>where</p> <p>“I” is the installation charge</p> <p>“n” is the number of days after the ready for test date</p> <p>“D” are the number of days set as the standard in the SLA</p> <p>“X” is a constant quoted for each type of circuit against the target delivery times<sup>8</sup></p> <p>Maximum Penalty Payable</p> <p>Maximum penalty payable</p> <p>The maximum penalty payable for delays in completion of orders using the formulae set out above shall at no time exceed the maximum connection fee payable under the order attracting the penalty payment.</p>	<p>The OLO<sup>9</sup> has not been responsible for any delay in provision of information or site access requested by <i>Eircom</i>.</p> <p>Where a service (service 2) depends on the prior delivery of a separate service (service 1) also ordered from <i>eircom</i> the reckonable delivery time for Service 2 shall only commence on the expiry of the standard lead time of Service 1.</p>

<sup>8</sup> “X “ is constant in each equation and is related to the number of days “n” and “D” and will vary according to the values of “n” and “D”.

<sup>9</sup> This is taken to mean the OLO or the OLO’s customer, for which the OLO is the agent if it is ordering the circuit on behalf of the end customer.

In Direction ODTR 00/60 the Director required *eircom* to amend the formula for calculating penalties applicable to the leased lines ‘order completion’ attribute. This uncapped penalty formula is:

$$\text{Penalty Applicable} = \frac{2nI}{D} \text{ where}$$

“T” is the installation charge

“n” is the number of days after the ready for test date

“D” are the number of days set as the standard in the SLA

This amendment was affected by the proceedings referred to in section 3 above, and was not implemented by *eircom*. In order to incentivise delivery of leased lines and basic exchange lines and provide a degree of compensation to OLOs for any shortfall in service, the Director believes, as a matter of principle, that penalties should be uncapped. This principle is applied in the SLA for interconnect circuits and is accepted by *eircom*.

The Director set the revised ‘uncapped’ formula (as set out in ODTR 00/60) as a proportionate response seeking *inter alia* to weigh failure to meet agreed deadlines against the need to protect the rights of operators under the SLAs.

- Q.5.6.3** *Do you agree with the Director’s view that penalties applicable to late delivery should be uncapped? Please give reasons for your answer.*
- Q.5.6.4** *Do you agree with the uncapped formula. Please give reasons for your answer. If you do not agree please provide alternatives or modifications and give reasons for your proposals.*
- Q.5.6.5** *Should the uncapped formula for leased lines be applied to all carrier services? Please give reasons for your answer.*

## **5.7. Escalation**

In ODTR 99/48 the Director proposed that the escalation of disputes between the SMP operator and the OLO with regard to compliance with the SLA shall initially be dealt with between the operators using a published two stage escalation procedure which forms part of the Terms and Conditions for services. In the event that a dispute is not resolved between the parties then the dispute resolution procedures of the ODTR is available at the request of either party?

- Q.5.7.1.** *Are the present escalation procedures working sufficiently well? If not why? Please provide any alternatives giving reasons for your answers.*

## **5.8. Application for Carrier Services**

In ODTR 99/48 the Director considered that operators themselves would be best positioned to agree the scope of exemptions or caveats surrounding the SMP

operator's compliance with the standards set out in the carrier services SLA. To that end, the Director considers that flexibility is required of all parties involved.

Schedule 1 (See Appendix 2) of *eircom*'s SLA entitled "Guidelines for Application for the Services" refers to "exceptional circumstances" where the standard time frames for the delivery of each carrier service cannot be met due to the incompatibility of the services ordered with the *eircom* network or due to the volume of services ordered.

***Q.5.8.1 Do you believe that the process by which the scope of exemptions or caveats to be resolved between operators is effective? If not, please propose alternatives supported by the reasons for your answer.***

***Q.5.8.2 Do you agree with the "Guidelines for Application for the Services" set out in Schedule 1 of eircom's SLA? If not, please propose alternatives and outline the reasons for your answer.***

## **5.9. Submission of Claims for Penalties**

Schedule 2 (See Appendix 2) of *eircom*'s SLA sets out the current "Guidelines for Submission of Claims for Penalty Credits". The Director considers that an alternative approach similar to that currently being used for Interconnect circuits is more appropriate for the Carrier Service SLAs.

This alternative approach, as set out in Annex D of the RIO, states that "Operators will be notified by *eircom* of penalties due. Penalties will be automatically remitted by *eircom* unless *eircom* and the Operator agree that there is material reason why the penalty should not be paid. In the event that an operator believes a penalty is due and has not been notified by *eircom* then claims for penalties in respect of claimed service failures should be submitted as per Appendix 2."

***Q.5.9.1 Do you consider that the alternative approach to submission of claims for penalties, as agreed for Interconnect circuits, should also be employed for Carrier Services SLAs. If not, please state why and detail the reasons for your answer.***

## **6. Review of Performance under the SLA**

As mentioned under Section 2 of this consultation paper, the ODTR has been monitoring the performance of *eircom* in reducing the delivery backlog of leased line circuits to OLOs. The ODTR is continuing to monitor the situation under the current programme.

However, the Director intends to monitor the overall service delivery performance of *eircom* through the Measuring Licensed Operator Performance programme (see Section 4). Live data under the programme is to be collected by operators from the 1<sup>st</sup> of January 2001, with results due for publication in the summer 2001. However, the ODTR will have *eircom*'s quality of service statistics early in the second quarter of 2001. Notwithstanding the above, the Director considers that a full review take place so that any necessary changes may be directed to be made to come into effect on 1 December 2001. In view of the difficulties of the last year, it is proposed that the penalty regime be reviewed to ensure its adequacy in six months from now. These proposals or any others adopted in the light of this review are to be understood as being without prejudice to the Director's rights and obligations to regulate the market generally, in other words, it may be necessary to intervene at other times.

<p><b><i>Q.6.1</i></b>      <b><i>Do you agree that an annual review of the SLA is appropriate? If not please provide alternatives giving reasons for your answer.</i></b></p>
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## 7. Other Issues

***Q.7.1 Are there any other aspects of the SLA that you consider should be reviewed. If so, please outline your proposal, the reasons for it and how it would make the delivery of carrier services more effective.***

## 8. Submitting Comments

The consultation period will run from 16 October 2000 to 3<sup>rd</sup> November 2000 during which the Director welcomes written comments on any of the issues raised in this paper. Having analysed and considered the comments received, the ODTR will review its proposals for “Service Levels Provided to Other Licensed Operators by Licensees with Significant Market Power” and will publish a Decision Notice on the consultation by 24<sup>th</sup> November 2000. In order to promote further openness and transparency the ODTR may summarise the responses received as part of its report on this consultation.

All comments are welcome, but it would make the task of analysing responses easier if comments reference the relevant question numbers from this document. In the interests of promoting openness and transparency, the ODTR will make available responses to this consultation paper for inspection on request. Where confidential material is included in responses it should be clearly marked as such and included in an Annex to the response.

All communications pursuant to this consultation should be clearly marked “Reference: Submission re ODTR 00/78” and sent by post, facsimile or e-mail to:

Louise Power  
Office of the Director of Telecommunications Regulation  
Irish Life Centre  
Abbey Street  
Dublin 1  
Ireland  
Ph: +353-1-804.9600  
Fax: +353-1-804.9680  
Email: powerl@odtr.ie

to arrive on or before 5.30 p.m. on Friday 3<sup>rd</sup> November 2000 .

*This document does not constitute legal, commercial or technical advice. The Director is not bound by it. The Director reserves the right to change any of the information, views or opinions contained in this document. The consultation is without prejudice to the legal position of the Director or her rights and duties under legislation*

## 9. Appendix 1: Definition of Terms

The following terms are used consistently within this document and have a specific meaning:

- “Licensed Operator”** A company providing telecommunications services in Ireland which is licensed to do so, under the terms of either a Basic or General Telecommunications Licence issued by the Director.
- “SMP Operator”** A Licensed Operator which is deemed to have Significant Market Power.
- “Other Licensed Operator”** Licensed Operators other than the SMP operator.
- “Retail Services”** Services which are supplied to consumers (both residential and business customers).
- “Carrier Services”** Services which are supplied by the SMP operator to OLOs.
- “Service Schedule”** The product description of a service provided by the Licensed Operator.
- “Service Level Agreement”**  
**(“SLA”)** The contractually binding statement of performance which is included as part of the service schedule.
- “Attribute” of a Service**  
**Level Agreement** The specific metric that will be measured and used to determine adherence to an SLA.
- “Standards” for SLA**  
**Attributes** The performance level that will be achieved for the attribute as part of the SLA.

## 10. Appendix 2: *eircom*'s SLA

### ***eircom*** **Statement of Service Levels** **For the Provision of Specified Services to** **Other Licensed Operators**

1. This document sets out the service levels to which *eircom* commits with regard to the provision and maintenance of specified services known as 'carrier services' as delivered to other licensed operators (OLOs).
2. These services comprise the provision<sup>10</sup> of PSTN, ISDN BRA, ISDN PRA circuits and leased line circuits ordered by other licensed operators for the purpose of providing access from customer premises to their network (the Services). Such Services must be maintained in the OLO's name for a minimum of 12 months from date of delivery. Circuits ordered by OLOs for carrier interconnection purposes with the *eircom* network are not covered within the terms of this SLA. Certain of the Services may also be excluded from this SLA for reasons of compatibility of networks and network capacity.

Each Application for the Services is considered on its own merits and effort is made to ensure that save in exceptional circumstances each application for the Services falls within the ambit of this SLA.

Examples of such exceptional circumstances are set out by way of example in *eircom*'s Guidelines for Application for Services. This is set out in Appendix 1. The services are at all times provided subject to *eircom*'s standard terms and conditions.

3. The service level targets set out in this document have been determined following a process of industry wide consultation completed by the Director of Telecommunication Regulation. Targets are set for a number of specific Service Level Attributes, namely
  - Order acknowledgement
  - Notification of order completion date
  - Order Completion
  - Fault response times
4. A schedule of penalties for failure to meet the service targets against these attributes is also set out in the document. OLOs who wish to claim penalties in respect of claimed service failures should address their claim as set out in Appendix 2.

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<sup>10</sup> Upgrades, re-arrangements or removals of existing services are not covered by this SLA



## Eircom Service Levels for Services Delivered to Other Licensed Operators<sup>1</sup>

### SLA Attributes For Analogue Telephone Lines

SLA Attribute	Standard			
Acknowledgement of order	Within 2 working days			
Notification of Order Completion date	Within 10 working days			
Order completion	From 1.11.99	From 31.12.99	From 30.6.00	From 30.9.00
	Within 10 working days for analogue exchange lines  Penalty factor X=0.67	Within 10 working days for analogue exchange lines  Penalty factor X=0.67	In line with “best practice”  Penalty factor to be determined based on “best practice”	In line with “best practice”  Penalty factor to be determined based on “best practice”
Maximum response time	4 working hours			
Maximum repair time	1 working day (as promised to retail customers)			

### SLA Attributes for ISDN Basic Rate Access Lines

SLA Attribute	Standard			
Acknowledgement of order	Within 2 working days			
Notification of Order Completion date	Within 10 working days (after survey)			
Order completion	From 1.11.99	From 31.12.99	From 30.6.00	From 30.9.00
	Within 50–60 working days  Penalty factor X= 0.13	Within 26 working days  Penalty factor X= 0.29	Within 20 working days  Penalty factor X=0.36	Within 10 working days  Penalty factor X=0.67
Maximum response time	4 working hours			

<sup>1</sup> The delivery day figures indicated in this appendix are based on Eircom being ready to hand the circuit over for use (including testing).

### SLA Attributes for Primary Rate ISDN Services

SLA Attribute	Standard			
Acknowledgement of order	Within 2 working days			
Notification of Order Completion date	Within 10 working days (after survey)			
Order completion	From 1.11.99	From 31.12.99	From 30.6.00	From 30.9.00
	Within 50-60 working days	Within 30 working days	Within 26 working days	Within 10 working days
	Penalty factor X= 0.13	Penalty factor X= 0.25	Penalty factor X=0.29	Penalty factor X=0.67
Maximum response time	4 working hours			

### SLA Attributes for Analogue Leased Line

SLA Attribute	Standard			
Acknowledgement of order	Within 2 working days			
Notification of Order Completion date	Within 10 working days (after survey)			
Order completion	From 1.11.99	From 31.12.99	From 30.6.00	From 30.9.00
	Within 40 working days	Within 30 working days	Within 26 working days	Within 10 working days
	Penalty factor X= 0.19	Penalty factor X= 0.25	Penalty factor X=0.29	Penalty factor X=0.67
Maximum response time	4 working hours			

### SLA Attributes for Digital Leased Line (64Kbit/s)

SLA Attribute	Standard			
Acknowledgement of order	Within 2 working days			
Notification of Order Completion date	Within 10 working days (after survey)			
Order completion	From 1.11.99	From 31.12.99	From 30.6.00	From 30.9.00
	Within 50-60 working days	Within 35 working days	Within 26 working days	Within 10 working days
	Penalty factor X= 0.13	Penalty factor X= 0.22	Penalty factor X=0.29	Penalty factor X=0.67
Maximum response time	4 working hours			

### SLA Attributes for Digital Leased Line 2 Mbits

SLA Attribute	Standard			
Acknowledgement of order	Within 2 working days			
Notification of Order Completion date	Within 10 working days (after survey)			
Order completion	From 1.11.99	From 31.12.99	From 30.6.00	From 30.9.00
	Within 50-60 working days	Within 35 working days	Within 30 working days	Within 10 working days
	Penalty factor X= 0.13	Penalty factor X= 0.22	Penalty factor X=0.25	Penalty factor X=0.67
Maximum response time	4 working hours			

## Eircom Penalty Liability For Failure to Meet Service Level Agreement Targets

SLA Attribute	Penalty Applicable	Conditions
Order Completion	<p>For every working day of delay in the provision of a service as against a previously notified date, <i>Eircom</i> shall be liable to pay a sliding scale of penalty such that it will provide a complete refund of the installation charge if the circuit is delivered at a date which is equal to or greater than 1.5 times the contracted delivery time. This will be by reference to the following equation:</p> $\sum_{1}^n XnI/D \text{ where}$ <p>“I” is the installation charge</p> <p>“n” is the number of days after the ready for test date</p> <p>“D” are the number of days set as the standard in the SLA</p> <p>“X” is a constant quoted for each type of circuit against the target delivery times<sup>11</sup></p> <p>Maximum Penalty Payable</p> <p>Maximum penalty payable</p> <p>The maximum penalty payable for delays in completion of orders using the formulae set out above shall at no time exceed the maximum connection fee payable under the order attracting the penalty payment.</p>	<p>The OLO<sup>12</sup> has not been responsible for any delay in provision of information or site access requested by <i>Eircom</i>.</p> <p>Where a service (service 2) depends on the prior delivery of a separate service (service 1) also ordered from <i>eircom</i> the reckonable delivery time for Service 2 shall only commence on the expiry of the standard lead time of Service 1.</p>
SLA Attribute	Penalty Applicable	Conditions
Maximum response time	<p><b>If no response is provided within the “standard” response time then <i>Eircom</i> shall refund the monthly rental for the service purchased, up to a maximum of £1000.</b></p>	<p><b>Response is defined as a visit to the customer premises or where this is not required the first indication to the OLO that activities are being undertaken to repair the fault.</b></p>

<sup>11</sup> “X “ is constant in each equation and is related to the number of days “n” and “D” and will vary according to the values of “n” and “D”.

<sup>12</sup> This is taken to mean the OLO or the OLO’s customer, for which the OLO is the agent if it is ordering the circuit on behalf of the end customer.

## **Schedule 1**

### **Guidelines for Application for the Services**

## Guidelines for Application for the Services

The exceptional circumstances as referred to the within document are circumstances where the time frames mentioned in the within document cannot be adhered to due to the incompatibility of the Services ordered with the *Eircom* network or due to the volume of the Services ordered.

The compatibility of networks shall be considered on an individual basis and reasons will be given as to why the network in respect of which the orders are made is in compatible with the *Eircom* network."

Examples of exceptional circumstances, where order cannot be met within the time frames set out due to network capacity restraints include but are not limited to the following

- (a) Where the volume of orders is such that it requires infrastructure build over and above that normally associated with the provision of the Services in a particular area - e.g. orders for a 2Mbit/s leased line are normally provided at the local end by way of HDSL. However, where there are multiple orders for such 2Mbit/s leased lines to the same premises, at the same time, there may be a requirement to build fibre systems. This applies both to single batches of multiple orders and orders for smaller quantities to the same address placed over a short period of time.
- (b) Where a customer's premises (Installation Site) is more than three kilometres from the local exchange, additional infrastructure may need to be provided.
- (c) Where there are a large number of orders, requiring delivery, in particular customer sequences with particular characteristics - e.g. diversity or a large number of orders requiring a delivery sequence across a wide variety of orders.
- (d) Where the installation site and/or facilities are not available to *eircom* for survey and/or installation purposes at the date of order.
- (e) Where the customer specifies a date before which service will not be accepted or an exact date on which Service must be delivered.
- (f) Where it is mutually agreed between *eircom* and the OLO to construct infrastructure beyond the immediate requirements of the ordered service in order to facilitate future deliveries.

Where a non-standard implementation is requested e.g. a particular network routing.

Where an order is acknowledged, any requests for modifications to the order details may only be effected by cancelling the original order and submitting a revised order. In this case *eircom's* standard terms relating to cancellation of orders will apply.

## **Schedule 2**

### **Guidelines for Submission of claims for penalty credits**

## **Guidelines for Submission of claims for penalty credits**

1. Claims must be submitted in writing to :  
Head of Carrier Services,  
*eircom*,  
St. Stephen's Green West,  
Dublin 2
2. Claims must be submitted within three calendar months of the date on which the claim arose.
3. Claims must be submitted on the attached form. A separate form must be used for each penalty claimed.
4. In the event of a query any supporting documentation must be supplied within ten working days of a request by *eircom*.
5. Any penalties due will be remitted by way of credit against the account associated with the claim.



Claim for Penalty Credit for Late Delivery of Service			
<b>Customer claim reference</b>	:		
<b>Customer contact dealing with claim</b>	:	<b>Fax :</b>	<b>For <i>eircom</i> use only</b>
		<b>Tel :</b>	
<b>Date of submission of claim</b>	:		
<b>Date of Order</b>	:		
<b>Customer Order Reference</b>	:		
<b>Service Description (e.g. 64kbit/s Leased Line)</b>	:		
<b><i>Eircom</i> Service Order reference</b>	:		
<b><i>Eircom</i> circuit reference/telephone number</b>	:		
<b><i>Eircom</i> Account Number</b>	:		
<b>Date Service Delivered</b>	:		
<b>Amount of Claim</b>	:		
<b>Method of calculation</b>		<b>Applicable standard lead time</b> :	(Y/N) _____
		<b>Due Delivery Date</b> :	(Y/N) _____
		<b>Number of Working Days Late</b> :	(Y/N) _____
		<b>Connection Fee</b> :	(Y/N) _____
<b>Supporting documentation requested</b>	(Y/N) _____		<b>Date</b> :
<b>Supporting Documentation received</b>	(Y/N) _____		<b>Date</b> :
<b>Claim Accepted</b>	(Y/N) _____		<b>Amount</b> :
<b>Credit Processed</b>	(Y/N) _____		<b>Date</b> : :
<b>Customer informed</b>	(Y/N) _____		<b>Date</b> :