

Regulatory Reform in Ireland

Regulatory Reform in the Telecommunications
Industry



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Regulatory Reform in the Telecommunications Industry* analyses the institutional set-up and use of policy instruments in Ireland. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in Ireland* published in 2001. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform*.

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, specific sectors such as electricity and telecommunications, and on the domestic macroeconomic context.

This report was principally prepared by Takashi Yamada, of the Directorate on Science, Technology, and Industry, with the participation of Dimitri Ypsilanti of the Directorate on Science, Technology, and Industry. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in Ireland. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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Executive Summary

Background Report on Regulatory Reform in the Telecommunications Industry

The telecommunications sector in OECD countries has seen significant regulatory reform in recent years. Twenty-four OECD countries had, in 2000, unrestricted market access to all forms of telecommunications, including voice telephony, infrastructure investment and investment by foreign enterprises, compared to only a handful just a few years ago. The success of the liberalisation process depends on the presence of a transparent and effective regulatory regime that enables the development of full competition, while effectively protecting other public interests. There is a need to promote entry in markets where formerly regulated monopolists remain dominant and to consider elimination of traditionally separate regulatory frameworks applicable to telecommunications infrastructure and services and to broadcasting infrastructures and services.

Ireland has for over five years been liberalising its telecommunication markets, largely driven by the European Union's policies. Originally, on the basis of a European Commission derogation, Ireland had committed to completing the opening of its market to full competition on 1 January 2000. A turning point was the decision taken by Ireland in May 1998 to end the derogation on 1 December 1998, shortening the remaining period for completing the full liberalisation from nineteen to six months. This acceleration in the liberalisation process brought the Irish regulatory framework on a par with many other OECD countries, and in certain areas ahead of many countries that had opened their markets earlier to competition. Market access in the telecommunications sector of Ireland is among the most liberalised and its regulatory framework has been moving steadily toward implementing best practice regulation.

The Department of Public Enterprise and the Office of the Director of Telecommunications Regulations (ODTR), the independent regulator, have rapidly put in place the essential regulatory measures for fair and effective competition. Nonetheless, the rapid transition to create a competitive environment inevitably left a number of issues unresolved. Price rebalancing needs to continue. Progress on introducing an interconnection framework reflecting best practice methodology needs to be continued, and delays in obtaining capacity from the incumbent reduced. Mechanisms to protect consumer interests must be given greater priority and legislation relating to rights of way for telecommunication operators over public highways should be adopted as soon as possible. In addition, a universal service costing methodology needs to be implemented and, if necessary a universal service fund set up. The enforcement power of the ODTR must be strengthened and it should ensure that it has adequate resources. Ireland's strength is in its recognition that there is a continuing need for further progress and development along with its readiness to implement change and improve institutional and regulatory arrangements.

There are now over forty operators competing in the Irish telecommunications market, and the new entrants' share in the fixed line market has grown to more than 17% (as measured by revenue). Introduction of Wireless Local Loop services and telephony over cable TV networks have already started to develop in the local call market. Competition in the mobile market is weak at present, but a third market entrant entering at the end of 2000 will improve this situation and several airtime resellers are beginning to place competitive pressure on prices.

The stated ambition of the Irish authorities is to reach the top decile of the OECD countries in terms of major indicators. Ireland has the potential to attain this goal, if the government continues to pursue further regulatory reforms.

1. THE TELECOMMUNICATIONS SECTOR IN IRELAND

1.1. *The national context for telecommunications policies*

The Irish economy has shown remarkable growth since the late 1980's. Growth in output has been on average over nine per cent per year on a GDP basis during the period 1994-98.¹ GDP per capita in terms of purchasing power parity has surpassed the European Union average.² The telecommunications sector has increased its weight in GDP from 2.40% in 1985 to about 3% in 1999 as measured by public telecommunication revenue.³ During the same period, the number of telephone mainlines increased more than twice from 0.7 million to 1.6 million.⁴ This corresponds to an increase from 19.8 to 42.2 per 100 inhabitants, but despite this growth Ireland still ranked below the OECD average.

Employment in the Irish telecommunications sector, which was about 16 200 in 1985, had declined to 11 700 in 1997.⁵ However, by the end of 1999, the incumbent's employment had increased again reaching a level of 12 606.⁶ Telecommunications employment declined as a percentage of total national employment from 1.50% in 1985 to 0.85% in 1997. Public telecommunication revenue per employee in Ireland has increased significantly, as in most other OECD countries, from USD 29.2 in 1985 to USD 192.7 in 1999, but is low relative to the OECD average of USD 269.5.⁷

The incumbent, Telecom Éireann (Eircom since September 1999) was ranked 59th in 1999 among the major public telecommunications operators in the OECD area as measured by revenues.⁸

1.2. *General features of the regulatory regime, telecommunications market and market participants*

Development and Liberalisation of Telecommunications in Ireland

The main features in the development and liberalisation of the telecommunications sector in Ireland are shown in Box 1.

Box 1. Important events in the liberalisation of the telecommunications sector in Ireland	
1984:	Telecom Éireann was established as a fully government-owned telecommunications operator with an "exclusive privilege".
1992:	Provision of value added services were liberalised.
1994:	Regulatory conditions regarding the supply of leased lines by Telecom Éireann were laid down.
1996:	EC allowed Ireland a two-year derogation until 1 January 2000 to complete the full liberalisation of the telecommunications market.
1996:	Telecommunications (Miscellaneous Provisions) Act, 1996 was passed. It provided the main framework for regulation in the fully liberalised market.
1996:	Telecom Éireann established a strategic alliance with KPN and Telia.
1997:	Competition in mobile phone services started with the entry of Esat Digifone as a second GSM operator (licensed in 1996).
1997:	Alternative infrastructure provision was allowed by removing the monopoly on the provision of satellite-based telecommunications services and the supply of liberalised telecommunications services over cable TV networks and alternative public telecommunications networks.
1997 (June):	The Office of the Director of Telecommunications Regulation (ODTR) was created.
1998 (May):	The Minister of Public Enterprise decided to end the derogation with effect from 1 December 1998.
1998:	A third mobile (GSM) operator was selected to end the duopoly, but the award of the licence was challenged legally by an unsuccessful applicant which delayed the process for two years until 2000.
1998 (1 December):	Voice telephony was fully opened to competition to complete the full liberalisation of the telecommunications market.
1999:	Telecom Éireann was privatised by a public share offering, and its name was changed to Eircom.

As in the other OECD countries, Ireland's telecommunications networks were developed by direct involvement of the national government, which created a state-owned monopoly with an "exclusive privilege", based on the argument that the sector was a natural monopoly.

Ireland as a member of the European Union, has gradually opened up its telecommunications market in line with the Union's requirements and has been influenced by other EU members' policy orientations since the 1980s. However, Ireland was not a leading country in terms of taking steps toward market liberalisation and the creation of competitive telecommunication markets in the 1990s. Its request in 1996 for a derogation from the EU's 1 January 1998 full liberalisation was indicative of policies at that time placing emphasis on caution rather than market forces and regulatory reform.

The first major step toward liberalisation of the telecommunications sector was the separation of the government policy function from service operations by establishing Telecom Éireann as a statutory corporation in 1984. The company was wholly owned by the state and was managed by a governing board whose members were appointed by the responsible Minister.

The basic market, regulatory and institutional changes to prepare for liberalisation were enacted in the Telecommunications (Miscellaneous Provisions) Act, 1996, which amended the Postal and Telecommunications Services Act of 1983. The Act's main provisions included establishment of an independent regulator, namely the Director of Telecommunications Regulation, transfer of regulatory functions to the Director from the Minister for Public Enterprise, imposition of levies on telecommunications service providers for meeting the expenses of the ODTR, and tariff regulation.

The Act allowed for a change in the ownership of the incumbent. With a goal to complete the liberalisation process by 1 January 2000, the Irish government in 1996 decided to prepare Telecom Éireann for competition by gradually privatising the company. The first step in this direction was to find a strategic investor. An agreement was concluded with a consortium composed of the Netherlands' KPN and Sweden's Telia, who acquired a shareholding of 20% in Telecom Éireann (the share increased to 35% – 21% by KPN⁹ and 14% by Telia – by 1999).¹⁰

Another significant step taken in the 1996 Act was the separation of regulatory functions from the policy functions of the Department of Public Enterprise by establishing an independent regulator of telecommunications, the Office of the Director of Telecommunications Regulation (ODTR), with effect from 30 June 1997. The new act also provided for a price cap regime of certain services of Telecom Éireann.

During the course of implementing a number of liberalisation measures between 1997 to 1998 in line with the EU Directives, the Minister for Public Enterprise decided in May 1998 to end the liberalisation derogation with effect from 1 December 1998, leaving it with only about six months instead of one year and seven months to complete the liberalisation process.

Another major step in the liberalisation process of Ireland took place in July 1999, when the government disposed of its majority shareholding in Eircom, reducing the shares to less than 1% by November 2000. The government decided not to retain a golden share, and it has no policy to retain any state shareholding in Eircom.

The ODTR became operational, initially, using to a large extent seconded staff from the Department of Public Enterprise. Both the Department and the ODTR managed very successfully to meet the shortened deadline to complete the opening up of the market fully to competition. Over the last three and a half years they have implemented a number of policy and regulatory measures for liberalisation and transformed EU Directives into national laws and regulations. Considering the short period in which they

were required to make changes both of the authorities deserve credit for their efforts and achievements. Nevertheless, linked largely to shortages of experienced staff and the short period given to implement the basic requirements for market liberalisation a number of problems arose. However, from a slow start in the process of market liberalisation, Ireland has made rapid progress helped by the ODTR, which expedited matters and used experience gained by other countries.

At the same time, the Irish regulatory landscape has been characterised by a number of court cases. This has tended to slow down the process of liberalisation and creating effective competition. The Department of Public Enterprise addressed this issue in respect of interconnection and licensing decisions of the ODTR,¹¹ and also, as noted below, new proposed provisions of the Communications Regulations Act, 2000 will likely act to reduce the resort to the courts, in particular where such legal processes have been used to slow down change. Initial problems arising from poor implementation are also being rectified through provision of appropriate legal power and through increased staffing.

Derogation for the full liberalisation

Ireland was the only one of the five EU countries with a derogation¹² to implement full market liberalisation before the derogation period had been completed. The confidence and willingness of the government to transform their telecommunication market from a monopoly to a competitive market, providing leading edge services, and benchmark themselves with other advanced countries, has characterised policy and regulatory developments since then. But the decision of Ireland to waive the derogation eleven months after the EC's original deadline for other countries, but thirteen months before the specially granted deadline to Ireland, raise a question as to whether the initial derogation was necessary.

The request of the Irish government for the derogation on fully liberalising fixed voice telephony was based mainly on the following reasons:

- Telecom Éireann's high level of debt, due to a significant capital investment required and high cost of delivering telecommunications services in Ireland.
- Necessary structural adjustments of Telecom Éireann to enable it to function effectively in a fully liberalised market while ensuring universal service, increasing telephone density, and re-balancing tariffs.

The European Commission, taking into account the submissions by interested parties in Ireland, examined the issue from the following perspectives:

- To what extent the temporary exclusion of all competition is necessary in order to allow Telecom Éireann to continue performing its task of general interest, *i.e.* universal service for voice telephony.
- The derogation period should be strictly proportional to what is necessary to achieve the necessary structural adjustment for facing full competition, *i.e.* (i) further development of Telecom Éireann's networks, (ii) further adjustment of Telecom Éireann's tariff structure, and (iii) transformation of Telecom Éireann, in particular, further developments of its products, restructuring of its cost base and completion of its organisational change to be market driven and customer focused.

After a thorough examination of the issues covering the factors of universal service, telephone density and penetration rate, re-balancing of tariffs, debt and cost structure, and effect on trade including the possibility of cross-subsidisation for investing in foreign markets, the European Commission reached a conclusion to accept the request of the Irish government as shown in Table 1.

Table 1. **Derogation for completing full liberalisation**

	Requirement of EC	Derogation granted	Request of Ireland
Provision of voice telephony and infrastructure	1 January 1998	1 January 2000	1 January 2000
Provision of already liberalised services on own or alternative infrastructure	1 July 1996	1 July 1997	1 July 1999
Direct interconnection of mobile networks	Immediately in 1996	1 January 1999	1 January 2000

The derogation did require that Ireland should, before 1 April 1998, publish proposed legislative changes to implement full competition, publish proposals for the funding of universal services, and adopt these changes before 1 November 1998.

Telecommunications market and participants

There are at present around 70 telecommunications licence holders, of which 45 are actually operating, in the Irish telecommunications market, most having entered the market after full liberalisation on 1 December 1998. However, the top two companies – the Eircom group and Esat Telecom group – represent a large part of the Irish telecommunications market at present. Table 2 shows major telecommunications operators and the numbers of residential customers.

Table 2. **The major telecommunications operators in Ireland**

	Operator	Number of residential customers (as of 31 March 2000)
Fixed line market	Eircom	1 585 000
	Esat Telecom	37 720
	OCEAN	N/A
Mobile phone market	Eircell	1 049 000
	Esat Digifone	550 000
	Meteor	(operation to start shortly)
Cable television market	NTL	356 231 (cable TV) 0 (telephony)
	Chorus Communications	254 585 (cable TV) 0 (telephony)

1. Both Esat Telecom and OCEAN are owned by British Telecom, and are in the process of merging.

2. The number of subscribers for Ntl and Chorus Communications are as of 30 June 2000.

3. Eircell is being acquired by Vodafone of the United Kingdom as of December 2000.

Source: Esat Telecom (<http://www.esat.com/news/PR20000110-1.asp>), Eircom (Annual Report 2000), Ntl (<http://www.ntl.com/ireland/frames/quarterly/1st-00.htm>).

Eircom, the former monopoly, has continued to be the strongest player in the Irish telecommunications market since full liberalisation with a share of close to 83% in the fixed line market based on revenue.¹³ Eircom's revenue grew by 10% between fiscal year 1998 to 1999. The increase was driven primarily by the mobile sector, which had 40% growth in revenue.¹⁴ Eircom's fixed line retail call traffic, which stood at 10.3 billion minutes at the end of March 2000, has grown by 7.1% over the past year, and its wholesale call traffic, 1.8 billion minutes increased by 129% during the same period.¹⁵ It is expected that new entrants' market share in fixed line services will increase further as the new interconnection regime, based on a long run average incremental costs (LRAIC) methodology, carrier pre-selection, and geographic number portability are introduced and developed.

Eircom continues to maintain a strong position in the fixed network market as a result of its nationwide infrastructure coverage. It provides service in every segment of the telecommunications market, and has the largest share among competitors in each of these segments.

In the domestic fixed network market, Esat Telecom and OCEAN (no longer operating separately from Esat Telecom under the common ownership of British Telecom of the United Kingdom as a result of a merger in early 2000) are the major competitors to Eircom, and are providing services in both business and residential markets, and in all of the local, long distance, and international markets.

There are currently 596 000 homes receiving cable television services in Ireland out of a total estimated television home population of 1.2 million. There are a number of small CATV operators, generally with less than one thousand subscribers, with analogue services.¹⁶ In addition, there are around 120 000 subscribers of Multipoint Microwave Distribution System (MMDS) in rural and non-cabled urban areas. MMDS operators offer both analogue and digital services, and are subject to similar licence provisions with those of cable licences coming under the same regulation. Each cable operator has a monopoly (in-platform exclusivity) granted by the ODTR, which will expire in April 2004. The limited monopoly was granted to upgrade their networks to provide digital services and expand their coverage as required by the licence conditions.

The estimated number of cellular mobile subscribers reached 1.86 million by June 2000, corresponding to a penetration rate of 50%. Of the two mobile operators in the Irish market, Eircell is the larger, but both operators are designated as having a significant market power (SMP) in public mobile telecommunications networks and services. The third licensed operator, Meteor, was not in operation as of October 2000.

There will be four UMTS (IMT-2000) licences awarded. Licences will be awarded in April or May 2001 through a comparative selection process (so called "beauty contest").¹⁷

New forms of mobile service providers such as airtime resellers, indirect access providers, and mobile virtual network operators (MVNOs) are also expected to develop. The ODTR is expected not to take regulatory action in this area, placing emphasis on commercial negotiations as indicated in their consultation paper.¹⁸

Operators have been designated as having Significant Market Power (SMP) in four markets by the ODTR,¹⁹ making them subject to additional obligations for controlling the exercise of their market power, under the EU Open Network Provision (ONP) Directive. These are the markets for fixed public telecommunications networks and services, leased line services, public mobile telecommunications networks and services, and the national market for interconnection. Eircom is an operator with SMP in the market for fixed networks and services, in the leased line market, and in the national market of interconnection. Eircell has been designated as having SMP in the mobile market and in the national market of interconnection. Esat Digifone has been designated as having SMP in the mobile market (Table 3). The eventual build-up of market share by the third mobile operator, Meteor, will require a review of SMP in the mobile market.²⁰

Table 3. Designation of SMP in the Irish telecommunications market

	Fixed public telecommunications networks and services	Leased line services	Public mobile telecommunications networks and services	National interconnection
Eircom	SMP	SMP		SMP
Eircell			SMP	SMP
Esat Digifone			SMP	

2. REGULATORY STRUCTURES AND THEIR REFORM

2.1. Regulatory institutions and processes

Department of Public Enterprise

The Department of Public Enterprise is the government ministry in Ireland which has the responsibility for overall policy for the telecommunications and broadcasting transmission²¹ sectors including the radio frequency spectrum, as well as for policies in transport, energy, and earth resource sectors. As noted previously, the government's regulatory functions were transferred to the ODTR by the enactment of the Telecommunications (Miscellaneous Provisions) Act, 1996 (hereinafter "1996 Act"). Unlike a number of government Ministries in other OECD countries the Department did not attempt to retain regulatory power over the sector.

One of the criticisms made of the liberalisation process in Ireland is that the Irish government, has simply reacted to the European Union's requirements by mechanically transposing them into national legislation and that the objective of the whole regulatory reform process, and thus the benefits of reform, has not been recognised sufficiently. This criticism is unfair in that by shortening the derogation period available the Irish Government did recognise the benefits of competition, but because the process of market liberalisation was started late, there was little alternative to rapidly transposing Directives as well as ensuring that policy frameworks in place met requirements to create a competitive market.

Since 1998 new policy initiatives have taken place in relation to development of the regulatory framework, including publication in March 2000 by the Minister for Public Enterprise of "Governance and Accountability in the Regulatory Process: Policy Proposals", which sets out her proposals for development and clarification of the regulatory framework across the sectors within her remit. In September 2000 the Minister published an "Outline Legislative Proposals in relation to the Regulation of the Communications Sector",²² which sets out her proposals for legislation in the area of communications regulation, including implementation of the "Governance and Accountability" proposals in the sector. These proposals show a rapid reaction by the Department to perceived weaknesses in the regulatory framework as well as incorporating new EU proposals in legislation. Also, although yet to pass the parliament, the Department initiated and prepared a Telecommunications (Infrastructure) Bill in 1999 to reform the system for telecommunications network operators to access public and private land. As a result of the Department's work and that of the ODTR Ireland's regulatory framework, despite the late start, has caught-up with many of the EU countries that started the liberalisation process much earlier, and in certain policy areas is in advance of these countries.

The National Development Plan 2000-2006 states that Ireland's objectives in communications and electronic commerce policies are (1) the development of the Irish communications sector so that it ranks in the top decile of OECD countries in terms of service range, quality, availability and price, and (2) the establishment of a legal, regulatory and administrative framework which will create a favourable climate for the development of electronic commerce and digital industries.²³

Office of the Director of Telecommunications Regulation (ODTR)

The ODTR is the independent national regulatory authority for telecommunications regulations including the broadcasting distribution sector. It was established by the 1996 Act and commenced the operation in July 1997. It is headed by one person, namely the Director, appointed after a public competition by the Minister for Public Enterprise with the consent of the Minister for Finance.²⁴ Regulatory bodies structured on the basis of a single person as the head of the regulatory body are common among the OECD countries, although regulators structured on the basis of a collegiate body are in the majority.²⁵

The ODTR's functions and duties are defined by an extensive range of legislation, both primary and secondary. The main ones include the development and implementation of a licensing regime, supervision of the interconnection regime, dispute resolution, supervision of access to networks, management and licensing of use of the frequency spectrum, management and administration of the national numbering resource, setting price caps, and monitoring and enforcing quality of service and performance targets.

The ODTR is wholly funded by income received from the broadcasting, radio and telecommunications industry. The income comprises licence fees in respect of radio licences issued and levies raised on the turnover of telecommunications operators (at a rate of 0.2%) and cable and MMDS television operators (at a rate of 3.5%).²⁶ The cost of the ODTR's activities for the year ended on 30 June 1999 was approximately IEP 11.1 million and was totally covered by licensing fees and levies (and bank interest).²⁷ In the majority of OECD countries regulators use fees and contributions from the industry to support wholly or partly their budgetary needs.

The 1996 Act did not define clearly the objectives of the ODTR. In this context the Director of the ODTR has stated that she is "committed to ensuring [the ODTR] plays an effective role in facilitating the operation and competitive development of the sector, within the parameters of EU and Irish law." and that "Ireland needs cheap, advanced communications to maintain and improve its competitive position in the world economy."²⁸ Also, the mission of the ODTR as defined under Section 15 of the Freedom of Information Act, 1997 states:

- "The purpose of the Office of the Director of Telecommunications Regulation is to regulate with integrity, impartiality and expertise to facilitate rapid development of a competitive leading edge telecommunications sector, that provides the best in price, choice and quality to the end user, attracts business investment and supports ongoing social and economic growth."²⁹

The ODTR has focused on the competitive development of the telecommunications sector, which leads to improvement of the competitive position of the Irish economy. However, the ODTR emphasised in its annual report for 1998-99 that "[t]he focus has now firmly shifted to the users of telecommunications services and how they are best served." and that "we have now moved into a liberalised environment offering consumer choice."³⁰ The new legislative proposals by the Department of Public Enterprise now set out clearly the objectives of the ODTR as follows³¹:

- a) "To promote and sustain an open and competitive market in Ireland for electronic communication networks and services with a view to achieving maximum benefits for users in terms of choice, price, quality, value for money and access to a variety of innovative services.

- b) To ensure the efficient management and use of the radio frequency spectrum and numbers from the national numbering resource in Ireland in accordance with policy as may be determined by the Minister.”

The ODTR is organised around three functional units called Market Development, Market Operations, and Market Framework (in addition to Human Resources, Financial Control, and Legal). It is structured in a forward-looking and flexible manner to respond effectively to the changes and convergence of traditional sectors. Many market participants have criticised the ODTR for not being sufficiently transparent in providing details of its organisation or clearly nominating contact points. There were several reasons for this lack of structural transparency, partly to do with insufficient resources at the ODTR, and partly to do with the use of flexible teams on different projects which meant that a rigid organigramme was not feasible. There is, however, still scope to improve transparency and accessibility. Although the organisational structure and contact points have recently been made available on the ODTR’s Web site, it is somewhat terse and provides insufficient information on contact details for different regulatory issues. In contrast, consultations are widely publicised and contact details are provided there for the specific consultation. The greater emphasis of the ODTR, in particular by putting to the forefront the interests of consumers may require a change in the internal organisation by, for example, establishing a unit that deals exclusively with consumer issues.

Starting initially with staff seconded from the Department of Public Enterprise, the ODTR now operates with around seventy staff, whereas it is mandated to have around ninety. Recruitment of staff has been a major issue for the ODTR and there has always been a shortage of personnel relative to the required amount, quality, and speed of work. This has resulted partly from the fact that the staff seconded from the Department have been returning, and also, the ODTR has to compete with the private sector which, resulting from liberalisation, have also increased their demand for skilled telecommunication personnel.

One of the inevitable results has been that the ODTR often has resorted to outside consultants for high quality expertise in specific issues. While it is beneficial to make good use of highly qualified outside expertise, it is necessary as well to develop internal experts and retain an “institutional memory”, which the ODTR has been well aware of and has tried to ensure knowledge transfer to the staff.

Relationships between the Minister and the Director of the ODTR

The Minister for Public Enterprise has the mandate to appoint the Director and to remove him or her under certain circumstances.³² At the same time, the 1996 Act stipulates that “The Director shall be independent in the exercise of his or her functions.”³³ It further provides for the involvement of the Minister in certain areas, where the Minister may direct the Director, in relations with public service requirements, international commitments, allocation and use of the spectrum, etc.³⁴

The Director must report the performance of his or her functions as well as provide financial accountability to the Minister annually, and the Minister submits the Director’s report to the Parliament.³⁵ This means that it is the Minister who is accountable to the Parliament for the ODTR’s performance in general, a common arrangement among a number of OECD countries.

Accountability

Important issues concerning accountability have received much attention in Ireland in recent times and the generic regulatory framework has undergone some development in this regard.³⁶ The Department of Public Enterprise has been concerned with the issue of accountability of regulators noting the need to overcome a perceived “democratic deficit”.³⁷ The 1996 Act establishing the ODTR did not

have a provision regarding their accountability to the Parliament, but such lacuna has been filled in later legislation for other sectoral regulators such as in electricity. Following the publication of its “Statement of Strategy”, the Department published, “Governance and Accountability in the Regulatory Process: Policy Proposals”³⁸ in March 2000 as policy proposals on the governance and accountability aspects of the generic regulatory framework as it applies across all sectors within its remit. The proposals drew on the views expressed in the public consultation and on the experience gained in Ireland and in other countries. In general terms, they develop the regulatory framework so as to resolve perceptions about “democratic deficit” which could have had an impact on the credibility and legitimacy of the new regulatory institutions.³⁹

In telecommunications, the Department published in September 2000 a consultation paper of proposed legislation entitled “Outline Legislative Proposals in relation to the Regulation of the Communications Sector”, which when enacted will be cited as the Communications Regulation Act, 2000.⁴⁰ It reflects the “Governance and Accountability” proposals and those which are of particular relevance in this regard are:

- Replacement of the current single regulator structure of the ODTR with a three-person Commission, bringing postal regulation within the ambit of the regulator.⁴¹
- Explicitly requiring the ‘Commission’ to report to a relevant parliamentary committee on a regular basis in relation to its plans and overall performance, as is provided for in case of the Commission for Electricity Regulation.⁴²
- The proposed legislation is important in tightening up previous legislation (the Telecommunications (Miscellaneous Provisions) Act, 1996) which had not addressed or provided clear guidance for a number of important issues (see below). There is no evidence available from other OECD countries to indicate that a “Commission” structure for a telecommunication regulatory body is more or less effective than a single-person regulator. The latter can be more effective since a single Director is more likely to be able to make more rapid decisions than a Commission. However, this may depend on how a Commission is structured and frequency of meetings. A Commission may provide for a wider scope of opinions, but again the structure and how responsibilities are allocated within a Commission can play an important role. Criticism that a single person regulator can result in “undue personalisation” may not be of concern if good accountability procedures are put in place. On the contrary, effective regulation may sometimes require that the regulator has an authoritative public profile. The proposals in the Communications Regulation Act, 2000, would require that the Commissioners be appointed by the Minister, after a competition by the Civil Service Commission. The proposed terms of office are between three to five years and a Commissioner will be limited to two terms of office. Commissioners can be removed from office only for reasons of incapacity or ‘stated misbehaviour’.⁴³

The proposed Act improves accountability of regulation by more clearly defining the objectives of regulation, the powers of the regulatory body, and its answerability. By requiring the regulatory body to provide a general review of its performance to a committee of parliament the proposed Act serves to increase transparency and accountability, and also to enhance the independence of the regulatory body. However, the draft Act states that it should have “regard to any recommendation of such Committee [of parliament] relevant to its functions”.⁴⁴ In this context it is also important to note that the Minister is responsible for overall policy in the communications sector. This new clause can cause difficulties for the Commission since it is subject to policy directions from the Minister and these policy directions may differ from “recommendations” of a Committee of parliament.

Review of the ODTR's Decisions

Aggrieved parties can challenge ODTR's decisions by going to court if they believe there has been an illegality in procedural aspects. Before 16 March 2000, appeals against decisions of the ODTR on licensing and interconnection resulted in suspension of the decision until the outcome of the appeal. Now an appealed decision can be implemented by the Director unless the court decides whether to suspend it pending the outcome of the appeal. As an example, a decision by the ODTR to award the third cellular mobile licence to Meteor Mobile Communications Ltd., in 1998 was brought to court by the unsuccessful applicant, Orange Communications Ltd. This high profile case presented some major institutional issues regarding the review of the ODTR's decisions.

The legal process, which ended when the Supreme Court upheld the original decision of the ODTR in May 2000, delayed the introduction of the third mobile licence, in other words delayed the end of duopoly in the Irish cellular mobile market by around eighteen months, to the detriment of consumer interests. This, and other cases have raised a more general question of challenging decisions of the regulator through recourse to the legal system, which can effectively delay implementation of decisions, and often can impose costs on parties who would gain by the implementation of a decision.⁴⁵

In an attempt to overcome the potential invocation of judicial proceeding in an effort to delay implementation of regulatory decisions, the "Governance and Accountability" document proposed that regulatory decisions would apply when the matter was referred to judicial review unless the court decided otherwise. In telecommunications, the Department of Public Enterprise made amendments to the existing regulations in respect of interconnection and licensing.⁴⁶ Stepping further, it proposed in the draft Act that this principle applies to the ODTR decision in general. At the same time it is proposed to strengthen the regulator by ensuring that its decisions cannot be questioned other than through judicial review for compliance with legal requirements, and not judicial appeal on the merits, by placing a time limit on applying for a review of a decision, and ensuring that judicial review takes into account "the interests of the public in the efficient regulation of the market".⁴⁷ Thus, the new draft rectifies a problem in the original legislation which had not addressed the question of judicial appeal, i.e. it provided the courts the opportunity to examine the substantive merits of a decision of the ODTR in all matters.

This initiative of the Department is important in addressing the issue of possible abusive appeals to delay the effective implementation of decisions and by ensuring that courts take into account the objective of ODTR decisions.

Decision Making Process

Telecommunication regulators in many OECD countries use public consultation as an integral part of their decision making processes. Such consultation helps to improve transparency and to improve decision-making by reflecting a wide range of views. Both the ODTR and the Department of Public Enterprise should be commended for their very effective use of the public consultation process, although there is no such requirement in the relevant legislation.⁴⁸

A difficult challenge is how to better reflect consumer interests effectively in the public consultation procedures. The general public, consumer groups, and small and medium enterprises are provided the same opportunity to comment on a range of issues through public consultation. Moreover, the ODTR invites consumer groups to meet with them and draws their attention to consultations of particular interest to consumers so that the consumer groups are encouraged to respond to the consultations. However, partly because of their lack of expertise in specific areas, and partly because in many cases these groups may not be well organised, these groups generally perceive that their views are not given sufficient weight in the consultation process, although they are often the most widely affected by the decisions.

Co-operation with the Competition Authority

The transition of the telecommunications market from monopoly to competition has been accompanied by increased involvement of competition authorities in this sector throughout the OECD. In Ireland, the Competition Authority (CA), as the agency responsible for enforcing the competition law under the Department of Enterprise, Trade and Employment is mandated to take action against anti-competitive practices in all sectors of the economy. Because of overlapping jurisdiction with the ODTR, there is a possibility that an act specifically allowed or even mandated by the ODTR could inadvertently be in conflict with competition laws, costing and confusing enterprises. Thus, it is important to ensure that decisions are co-ordinated to avoid the possibility of inconsistency and over-burdening relevant parties. In this respect, the Report of the Competition and Mergers Review Group⁴⁹ recommends that the Competition Act should be amended “to grant immunity from criminal prosecution and/or liability in damages under the Competition Act in respect of actions taken by undertakings pursuant to and in accordance with a ruling, decision or approval granted by a sectoral regulator.” (Recommendation 16(i)), which is likely to reduce uncertainties for undertakings.

Initially, there have been complications in co-ordination. The ODTR had intended to include the terms of Sections 4(1) and 5 of the Competition Act, 1991 (sections prohibiting anti-competitive agreements, decisions, and practices, and abuse of dominant position) as a condition of telecommunication licences. During the ODTR’s consultation on the licences, concern was raised about coherence with existing law and clarity for industry players, which led the Director to remove the general fair trading clauses from all licences that would be operational from 1st December 1998, in order to avoid potential conflicts with the CA.

On the other hand the CA has acted while the ODTR has carried out a public consultation on proposed regulatory measures. For example, for local loop unbundling the ODTR, in early 1999 began a consultation process on ULL. Then the EC clarified that the existing EC Directives included only bitstream access within their scope but not full ULL. Consequently the ODTR noted in its Decision Notice on Unbundling published in April 2000 that it did not have sufficient powers under the existing EC Directives to enforce ULL. The Decision Notice set out a work programme for the introduction of bitstream access by April 2001. The CA initiated proceedings against Eircom in October 1998 alleging abuse of its dominant position. At present these proceedings are in the hands of the courts. In December 2000, the EU adopted a Regulation for full unbundling to impose on fixed line operators with SMP the obligation to make available ULL from 1 January 2001. Eircom has published its access reference offer shortly prior to 1 January 2001.

The draft Communications Regulation Act, 2000 explicitly recognises the need to ensure that the ODTR and Competition Authority work together. There are three relevant clauses in the proposed Act at Head 39. The first, which is based on the presumption that both bodies have a good working relationship, states that where a regulatory issue falls within the competence of both bodies one of the regulatory bodies may defer from regulation allowing the other body to take action. The second, and an important clause, requires that the two bodies consult before taking any action in the area of communications regulation if such action is in an area in which the other body also has competence and take into account the opinion of the other body. Effective implementation of this clause may, however, require that the two regulatory bodies agree in advance on their respective fields of competence as regards the communications regulatory area. This could be in the form of a protocol established between the two authorities.⁵⁰

Equally important in the draft Act is a provision allowing the two regulatory bodies to exchange confidential information. This clause is relatively unique in that competition authorities are often constrained to maintain information they obtain in the course of their inquiries confidential. In giving the ODTR powers to collect information and subjecting them to a confidentiality requirement the new Act facilitates such information exchange which will allow for more rapid and efficient decision making.

Lack of sufficient enforcement power of ODTR

The industry has, in general, given favourable ratings to the ODTR in terms of its operations and decision making. However, the ODTR has not been rated highly in the past in terms of its ability to follow-up on decisions, monitor their compliance and enforce decisions. One reason for this has been the lack of staff and the necessity for the regulator concentrate on putting in place the necessary regulatory framework and safeguards, following the Government's decision in 1998 to fully liberalise the market 13 months before the end of the derogation period. A second, more fundamental reason, has been the lack of sufficient enforcement powers.

The new draft Act provides the ODTR with more enforcement power. In particular, penalties have been increased including the possibility of prosecution and conviction on indictment with up to five years imprisonment. Fines up to 10% of turnover or IEP 500 000 (whichever is greater) are being proposed together with a fine not exceeding IEP 5 000 per day for a continuing offence. For lesser offences the regulator will also be given the power of prosecution in certain circumstances so that it can take quick action if it believes an offence is being committed.⁵¹ For summary offences the new law proposed to maintain the existing level of fine (*i.e.* IEP 1 500) and up to three months imprisonment. Although a significant improvement on previous provisions the new proposals do not give the regulator sufficient scope to act speedily to impose fines. This is necessary in view of the costs that non-adherence to a regulatory decision can impose on other market players. The level of fines imposed on summary offences remains quite low and should be more proportionate to the damage that can be inflicted on other market players through non-compliance to regulatory decisions. It needs to be noted as well that there is a constitutional constraint on the imposition of penalties without recourse to the courts, *i.e.* if the fine is above a certain level, the offence must be prosecuted on indictment, which could take a long time.

The ODTR has been able to invoke penalty clauses for failure to meet agreed delivery of leased lines by Eircom to other licensed operators. In September 1999 Eircom, following consultation with the ODTR and industry, agreed to a 'service level agreement' (SLA) with other licensed operators which stipulated that Eircom would deliver leased circuits within 26 days of an order, and failing this would be penalised on a capped basis. The SLA, which came into effect in November 1999, also had put forward, improved delivery times declining from 60-40 days to ten days. The penalties were capped at IEP 3 000 per delayed line.⁵² The ODTR, arguing that Eircom's performance has been persistently inadequate, decided in September 2000 to uncap the fines and impose higher fines and on a daily basis. Eircom challenged the ODTR's authority to uncap such fines and the matter is before the High Court for hearing in late November 2000.

Handling of Consumer Complaints

Consumer groups have argued that their complaints regarding telecommunications services have not been handled in a satisfactory manner. Consumer complaints, such as those on billing, have been dealt with primarily by being directed to the telecommunications operators who are the object of the complaint and who have the primary responsibility to deal with them. It should be noted as well that the ODTR requires applicants of telecommunications licences to establish a customer contract indicating how they will deal with complaints. Consumers unsatisfied with the operator's handling have at times requested the intervention of the Office of the Director of Consumer Affairs (ODCA), an independent statutory body responsible for a wide range of consumer protection laws. However, the ODCA does not normally investigate individual complaints, irrespective of the sector. The ODTR, who has regulatory responsibilities in complaints on telecommunications, in many cases has referred problems back to the operators for investigation before ascertaining what action if any can be taken.

This situation has arisen in large part by the lack of a formal mechanism to handle such complaints. Thus, although the ODTR has been mandated to resolve consumer complaints in telecommunications, that do not come within the scope of the Small Claims Court (see below), they have dealt with all complaints to them on an ad hoc basis.⁵³ Most of the time, it has meant referring the complaints to the operators in question for investigation in the first instance and asking them for a report on the matter so that the ODTR can ascertain what action is necessary. Other means at consumers' hands at the moment include the use of the small claims procedure within the District Court structure (known colloquially as the Small Claims Court), if the claim does not exceed IEP 1 000.

The ODTR and the Department of Public Enterprise have been aware of these problems, and have been working to establish a formal mechanism to handle consumer complaints. The draft Communications Regulation Act, 2000 provides for a framework to address this issue.⁵⁴ The Law would require telecommunication operators to develop and make public an appropriate code of practice for their dealings with users.⁵⁵ However, it would be more appropriate if a requirement was made on the industry as a whole to develop a single code of practice for the resolution of user complaints and disputes. The Law would also require the ODTR to establish procedures for examination, investigation, and resolution of consumer and user complaints and disputes, following public consultation, and would give it the authority to make binding determinations. The ODTR has already worked with operators to implement a timeframe for the resolution of complaints. It is important that these time frames are included in any specific procedures to be set out.

It is important for the regulator to supplement these proposed provisions by requiring operators to provide a published report on the number and type of complaints received, and summary data on the time taken for resolution, the number of cases resolved satisfactorily and the number not resolved. In this context, the ODTR plans to do so under a programme called "Measuring Licensed Operator Performance" should be welcomed.

2.2. *Regulations and related policy instruments in the telecommunications sector*

Regulation of entry and service provision

Full liberalisation of the Irish telecommunications market on 1 December 1998 resulted in a new licensing regime. The ODTR, based on the provisions of the Postal and Telecommunications Services Act 1983, specified two types of licences: a General Telecommunications Licence and a Basic Telecommunications Licence. Their main features are shown in Table 4. There were, as of December 2000, 46 General Licence holders (25 of which were operational), and 31 Basic Licence holders (21 of which were operational).⁵⁶

The Irish licensing regime is open. The standard time to handle the licensing process of four or six weeks is relatively rapid compared to a number of other OECD countries with an individual licensing framework. The regime is in compliance with the EU Licensing Directive.⁵⁷ However, in order to further reduce barriers to market entry and attract more investment, as well as to further transparency, simplicity, and efficiency of regulation, Ireland should change its individual licensing regime toward a system of general authorisation. At minimum, the requirement for a detailed and high-level business plan, including details on financial sources and projections, and adequacy of managerial and technical resources,⁵⁸ should be reconsidered since a well functioning market would decide whether the entrant's plan is sufficiently viable. The EU Licensing Directive of 1997 requires that priority be given to general authorisations as opposed to individual licences, and a new EU directive⁵⁹ being proposed will require that all electronic communication services and networks are covered under a general authorisation framework. Under this proposal use of licensing would be limited to the assignment of radio frequencies.

The best practice in this regard is found in Denmark. In Denmark, all telecommunications operators, except for those providing public mobile communications, can enter the market freely without the need even to register with the regulatory authority as long as they satisfy the general conditions stipulated in an Executive Order, which follows the essential conditions set down in the EU Licensing Directive.⁶⁰

There are no line-of-business restrictions in the Irish telecommunications market.⁶¹

Table 4. **Types of licences required to enter Irish telecommunications market**

	General telecommunications licence	Basic telecommunications licence
Permitted Operation	- Provision of all types of telecommunications networks and services, including voice telephony, to the general public. - Holders can apply for telephone numbers from the national numbering scheme.	- Provision of all types of telecommunications networks and services except voice telephony and services involving numbers.
Duration of Validity	15 years	Five years
Standard Handling of the Application	Processed within six weeks after receipt of all information.	Processed within four weeks after receipt of all information.
Main Requirements in Application	- A high-level business plan for three or more years, including key sources of finance, revenue and expenditure projections. - Adequate managerial and technical resources. - To specify the network or service to provide.	- To specify the network or service to provide.
Form of Licence	Individual licence	General authorisation
Licence Fee	Initial: Euro12 500 Annual: 0.2% of turnover	Initial: Euro2 500 Annual: 0.2% of turnover
Legal Basis	Section 111(2) of Postal and Telecommunications Services Act 1983	Section 111(3) of Postal and Telecommunications Services Act 1983

Source: ODTR.

In order to provide mobile telephony in Ireland, an operator needs to obtain two individual licences as in other OECD countries. They are a service licence under the 1983 Postal & Telecommunications Act and a radio licence for the equipment and spectrum under the 1926 Wireless Telegraphy Act. There are three operators at present in this category: of which, Eircell and Esat Digifone are operational and designated as operators with SMP in public mobile telecommunications networks and services market,⁶² and Meteor, the third licensee, is expected to start operation in 2000. Operators of Wireless in the local loop (WLL) need equivalent licences since they need access to radio frequencies. Six of them have been issued to date.

Provision of new mobile service by airtime resellers, indirect access providers, and mobile virtual network operators (MVNOs) is not subject to any special regulations in principle as was made clear by the ODTR's report on the regulatory framework for access in the mobile market.⁶³

Entry into cable television market, including MMDS, requires an individual licence granted by the ODTR. Current terms of cable licences, which were issued in 1999, grant cable operators five years of in-platform exclusivity (monopoly in each operating area), out of fifteen years duration of licence, for their provision of programming services. CATV operators are required to pay an annual licence fee of 3.5% of their turnover. Also, specific phased roll-out requirements are imposed.

This policy of limited exclusivity was employed so that the CATV infrastructure in Ireland, particularly for digital services, could develop quickly and licensees could invest actively in building infrastructure requiring enormous capital investment. The licences were granted on first come first served basis subject to meeting certain regulatory requirements. However, even though the granting of an exclusive period might have been necessary to attract investment and to develop the cable infrastructure as quickly as possible, the penetration rate of cable infrastructure including MMDS (multipoint microwave distribution system, or so called “wireless cable”) is now relatively high (see Section 3). This suggests that the original aim has been partly achieved. Upgrading cable to provide broadband access and telephony would more likely occur in a competitive market. However, it is now necessary to ensure that cable operators are clearly informed that their exclusive period will end as planned.

Cable operators are also required to obtain authorisation from municipalities from a planning perspective for the installation of equipment such as headends and from a road management perspective in relation to road excavation. When cable operators provide telephony, they are required to obtain separate telecommunications services licences because the cable licences currently do not cover telephony. When the initial period of five years expires in April 2004, licensing for CATV networks should be streamlined and covered by general authorisation.

Terrestrial broadcasting operators first need to obtain licences from the ODTR for the operation of apparatus for wireless telegraphy (under the 1926 Wireless Telegraphy Act). They also need authorisation to provide programming services from the Independent Radio and Television Commission (IRTC) under the 1988 Radio and Television Act. Ireland also has a national public service broadcasting organisation, the RTE (Radio Telefís Éireann), which is a statutory corporation under the Broadcasting Act 1960.

Foreign ownership restrictions do not exist in Ireland. There are certain notification procedures in relation to change of control, ownership or shareholding of a licensee. A number of fully-owned foreign communication companies already operate in the Irish telecommunications market, and foreign investment has played an important role in developing Irish telecommunications. Some examples include KPN and Telia’s shareholding in Eircom and British Telecom’s acquisition of Esat Telecom in April 2000.

Rights of Way

Under a monopoly regime Telecom Éireann (currently Eircom) had the right to compulsorily acquire private land or rights of way, but this right was abolished when it lost its monopoly privilege. As a result, Eircom and other telecommunications operators do not have any rights to compulsorily acquire rights of way over private land. They now need to rely on negotiations with owners of private rights of way.

A major difficulty faced by new entrants is the demands placed by local and municipal authorities on requests for rights of way over public highways. Some municipalities have requested, for example, that extra ducts be provided and made available to other new entrants. The Association of Licensed Telecommunications Operators (ALTO, an association of new market entrants) have made proposals to co-ordinate ducting. Obtaining rights of way to public highways requires, for local roads, permission from local road authorities (there are over thirty of them in Ireland) or the National Roads Authority for national roads. There are a number of legislative provisions, some of which date back to 1863, giving telecommunications operators the right to open public highways for the purpose of laying the infrastructure and provide for the procedure.

The Minister for Public Enterprise prepared a bill, the Telecommunications (Infrastructure) Bill, in 1999 to reform the system for telecommunications network operators to access public and private land. The Bill provided that the network operators could apply for and possibly compulsorily acquire rights of way over private land in the event that negotiations with landowners were unsuccessful. It also addressed the issue of opening of public roads to lay cable, the use of public roads for infrastructure, and provided a legislative basis for sharing of ducts. The Bill proposed to set up a Telecommunications Infrastructure Board, a quasi-judicial body with the power to adjudicate on access to private rights of way. The Bill also provided for simplification and clarification of the procedures for the operators to access public roads. On enactment, such legislation would have provided a benchmark for many countries with open telecommunication markets in that rights of way, and the lack of an appropriate framework, have become a key stumbling block in the development of competitive networks.

Due to public concerns which were expressed after the Bill was published and proposed to parliament regarding possible compulsory access by telecommunications operators to private land for the purpose of constructing telecommunications infrastructure, the Minister did not proceed with the Bill and withdrew it in December 2000. Instead, the Minister intends to include in the Communications (Regulation) Bill, 2000 those provisions of the withdrawn Bill relating to access by telecommunications operators to public highways and relating to sharing of infrastructure. In other words, the provisions relating to compulsorily acquiring access to private land by telecommunications operators are dropped and such access will continue to be a matter for negotiation between operators and landowners. It is expected that the Communications (Regulation) Bill will be published in mid-2001 and submitted to parliament in autumn 2001. The Bill should help facilitate the rapid construction of alternative facilities, thus helping in developing effective competition and meeting Ireland's broader goals of creating an Information Society. The new Bill does not aim to take away powers from Municipalities, but rather aims to ensure consistency and fairness in access to public ways.

Regulation of interconnection

New entrants still rely highly on Eircom's networks to provide services to end-users. Such a situation is foreseen to continue for some time, especially for the local network. To facilitate competition in telecommunication markets the Irish government has made efforts to provide new entrants access to Eircom's networks at cost based prices so that they have the opportunities to compete with Eircom effectively.

Ireland's interconnection regime is based on the EU Interconnect Directive (Directive 97/33/EC) transposed into the European Communities (Interconnection in Telecommunications) Regulations 1998 (S.I. No. 15 of 1998), which came into effect in January 1998. It provides for certain rights and obligations on licensed operators to enter into interconnection agreements, and the SMP operator such as Eircom is further obliged to offer interconnection on a cost-oriented and non-discriminatory basis as requested. It is also required to publish a Reference Interconnect Offer (RIO) stating all of the terms and conditions. Mobile networks are also covered in this regime because the regulations apply to all licensed operators. Eircom currently has thirteen interconnection agreements with other fixed operators, and a number of new entrants are negotiating interconnection agreements with Eircom and Esat Digifone.

The method used to determine interconnect charges offered by Eircom has been based on historical costs. However, the ODTR has developed an initial bottom up LRIC (Long Run Incremental Cost) model with the assistance of the Industry Advisory Group, and it was used to assess Eircom's RIO rates in establishing the interim rates for 2000 to 2001. The ODTR has finalised the bottom up LRIC model with further inputs from the industry, and Eircom is developing a top down LRIC model due to be out in December 2000. Then the two models will be compared to finalise the current interim rates for

1 December 1999 to 31 March 2001. LRIC will also be used to set up the rates for 2001 to 2002. Table 5 shows the level of interconnection rates in Ireland. Ireland's interconnection rates are below EU benchmarks and one of the lowest among EU members as shown in Figure 1.

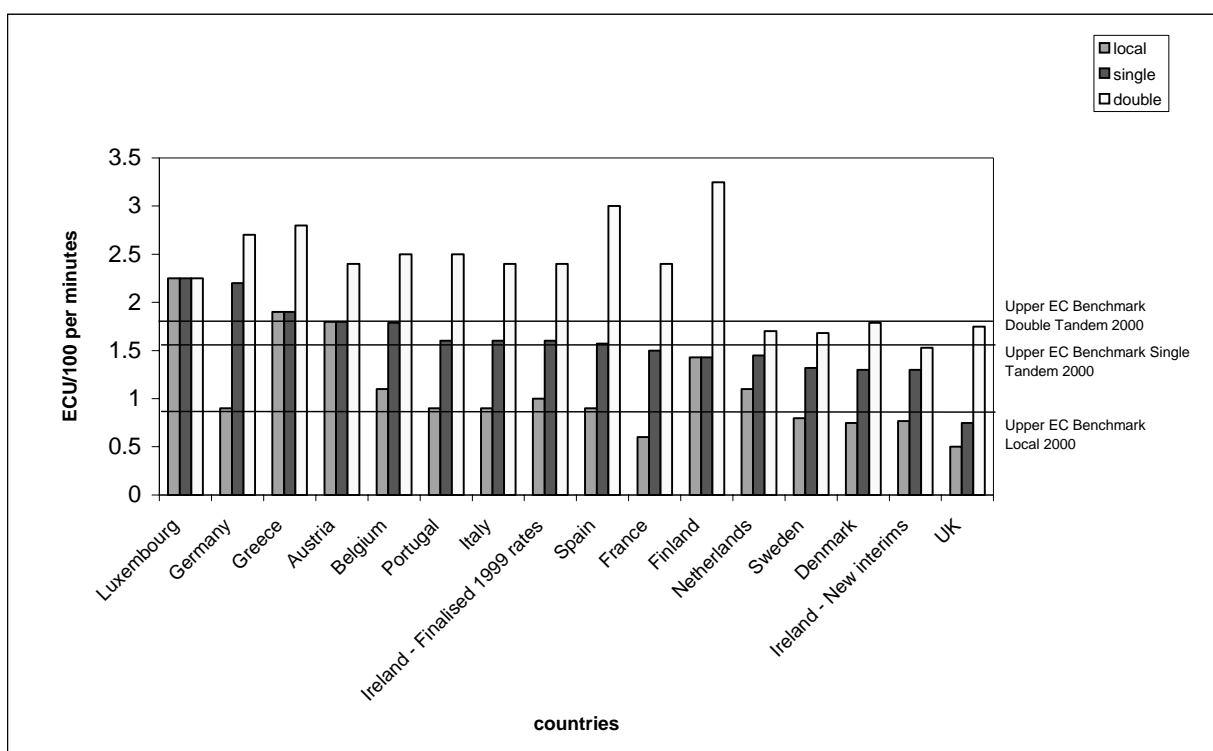
Table 5. **Fixed line interconnection charges of Eircom for call termination**

Call termination	August-98 Rate per minute (pence)	01/12/1998-1/12/99 Final rates Rate per minute (pence)	1/12/99-31/3/00 Interim rates Rate per minute (pence)
Primary peak	1.02	0.82	0.805
Primary off/peak	0.68	0.41	0.425
Primary weekend		0.33	0.36
Tandem peak	1.54	1.27	1.16
Tandem off/peak	1.03	0.63	0.605
Tandem weekend		0.52	0.52
Tertiary peak	2.31		
Double tandem <50km peak		1.56	1.38
Double tandem >50km peak		1.78	1.58
Tertiary off/peak	1.54		
Double tandem <50km off/peak		0.78	0.72
Double tandem >50km off/peak		0.88	0.82
Double tandem <50km weekend		0.64	0.615

Source: ODTR.

A general consensus has emerged among a number of countries on the theoretical superiority of the LRIC accounting methodology as closely approximating costs of the most efficient operators and as bringing the rates to a level of a fully competitive market, while a methodology based on historical cost (FDC or Fully Distributed Cost) tends to overly compensate the incumbent through subsidising inefficient historical costs incurred by it. Thus, many OECD countries have developed or are developing LRIC model for interconnection rates, but few countries have come yet to the point of its implementation as Ireland has except Austria, the United Kingdom, and Portugal. Ireland, at present, belongs to a group of countries with lower rates, but has a potential for further reductions in local and single tandem prices to meet best practice.

Figure 1. Comparison of fixed interconnection charges based on a call duration of three minutes



Source: Official Journal of the European Communities March 2000, ODTR June 2000.

1891 Internet Access

Eircom's introduction in January 1999 of a new discounted daytime call charge for accessing certain Internet service providers (ISPs)⁶⁴ raised an issue related to interconnection regime. The new service offered end users access to the ISPs with an 1891 access code at a charge less than the cost of a local call.

A number of new entrants objected to what was viewed as unfair discrimination by Eircom in the provision of the 1891 services because:

1. Eircom was providing an interconnection service to its own downstream arm that it was not providing to competing operators.
2. It was providing a service to end users at a retail price that competing operators were not in a position to offer.
3. It was providing a service to ISPs as end users that other operators could not offer.⁶⁵

The ODTR dealt with the issue in a broader context, *i.e.* the interconnect for calls destined for Internet services, and following two public consultations it decided in July 1999 that:

1. Operators with SMP in the fixed market are required to pass 1891 Internet calls over national interconnection links, and allowing a new entrant to pick up a call at a "higher" level would not imply that the call was not a local call.

2. Retail revenue retained on calls destined for the Internet by the originating SMP operators should be cost based.
3. Eircom must offer the services related to calls to the Internet on the principle of non-discrimination.
4. The retail price of calls to the Internet should be under the control of the terminating operator.

The ODTR also decided to establish an industry forum to develop the new interconnect arrangements based on these decisions. The ODTR should also consider how a flat rate (unmetered) Internet call origination can be introduced in order to develop an Internet market more conducive to electronic commerce.

An important requirement in market access and interconnection is the availability of leased lines. Eircom had agreed to a service level agreement with new entrants detailing delivery deadlines and other terms and conditions, together with the penalties to be paid by Eircom to operators in the event of its failure to meet the targets set. However, many new entrants have complained of delays.⁶⁶ The ODTR has proposed to change the level of fines as an incentive for the incumbent to meet its commitments. The immediate imposition of these fines has been delayed as a result of a court appeal by the incumbent. At the same time the ODTR has launched a review in order to try and find solutions to improve on the provision of leased circuits and the performance of the incumbent.

Local loop unbundling⁶⁷

The regulator began to tackle the issue of unbundling at an early stage relatively to many other OECD countries. In March 1999 a consultation paper on unbundling was issued, which was followed in April 2000 by a Decision to introduce bitstream access. The Decision also announced that it was planned to develop a framework for full local loop unbundling by April 2001.

The regulator did not initially implement full local loop unbundling arguing that the “current EU framework does not enable the Regulator to mandate this particular form of access at this time [*i.e.* April 2000]”.⁶⁸ This decision is indicative of the limited powers given to the Regulator under national law. Whereas Austria, Germany and the Netherlands had already implemented full unbundling under national law, the Irish Regulator argued that EU legislation on Special Network Access obligations did not mandate such full unbundling, and neither did Irish law.⁶⁹ It is important for the Regulator to have sufficient powers to take innovative decisions which will facilitate the development of competition. The new provisions in the proposed draft Act enhance significantly the powers of the Regulator by laying down clear and specific objectives, by setting down *ex ante* obligations the Regulator can impose on an enterprise designated as having SMP, and by establishing Relevant Markets to allow for regulation of operators with SMP. The Regulator needs powers not only to survey the market, but should also be given sufficient flexibility to initiate change when necessary for the efficient functioning of the market.

Developments at the EU level and the decision to implement full local loop unbundling will be an important step in upgrading the network to provide broadband access and help fulfil Ireland’s policy goal to develop a knowledge-based economy as well as become a European hub for electronic commerce. It is unfortunate that these wider economic goals were not supplemented much earlier through specific legislation to allow important developments such as full LLU (Local Loop Unbundling) to be implemented thus giving Ireland a head start.

The Regulator should ensure that its policy to give new entrants the opportunity to participate in ADSL⁷⁰ trials at an early stage so that they are not disadvantaged relative to the incumbent is being implemented by Eircom. A decision on pricing of unbundled local loops also needs to be made rapidly and in this context price rebalancing will be important. The Regulator has taken a decision that geographic averaging of prices will be retained for unbundled local loops.

Pricing policy

Price regulation in telecommunications services in Ireland is based on the 1996 Act and takes the form of price caps on services provided by an operator with a dominant position and/or where there is no competition in the services. The price cap in Ireland follows the CPI-X formula, where CPI is the consumer price index as calculated by the Central Statistics Office and X is the adjustment specified originally by the Department of Public Enterprise with subsequent modifications by the ODTR. X used to be six, and was changed to eight after the revision of 1999. The actual overall price reduction over a three year period from January 1997 to December 1999 was 22.6% in nominal terms, whereas the required rate was 12.3% reduction. Increased operator efficiency and the development of competitive markets in fixed line telecommunications could account for the further reduction of 10%. There are currently sub-price caps on the prices of individual services within the overall price cap basket of the incumbent's services.

For fixed line telecommunications sector, the ODTR carried out during 1999 a detailed review and consultation process to modify the price cap on Eircom, which had been set three years earlier for a five-year period. As a result, Eircom was found to be dominant in all the relevant telecommunication service markets, including for access. It was determined that price caps continued to be applied to the same services except that international calls were dropped because of the prospect of their becoming competitive within the three years term of the modified cap. It may be opportune to consider whether caps on national calls could also be dropped if the competitive situation warrants this and given that a higher percentage of national calls are carried on mobile networks. The services that the price cap continues to apply in fixed line services are; voice telephony (local and national), the provision of connection, and take-over of telephone exchange lines and ISDN (Integrated Services Digital Network) lines, operator calls, directory enquiry calls, and payphone calls. Under the current regime, the prices under the price cap regulation must be transparent, cost-oriented, and non-discriminatory.

It is important that price regulation encourages full tariff rebalancing in order to promote competition on the basis of efficient price structures. The ODTR has taken into account the need for rebalancing in their examination of price caps. It decided to raise the sub-cap of CPI-0 on line rental charges to CPI+2 to allow progressive re-balancing of Eircom's fixed charges. The ODTR has recognised that the line rental charges of Eircom are below cost. It has however not been clarified if at the end of the current cap period *i.e.* 2002, price rebalancing will have been achieved. Data in Section three show that the incumbent's line rental charges have only been subject to minor changes over a seven year period, although significant changes have taken place in local call charges. It is important for the ODTR to ensure that subscriber line charges are cost-oriented as soon as possible. While it would be preferable that this takes place before full local loop unbundling is introduced, this is unlikely to occur given the low increase allowed by the cap.

There are social and economic considerations that need to be taken into account so that a "one-off" price increase may not be possible. However, an agreed date, which is publicised, to achieve such rebalancing may help to speed up the transition and would forewarn users of scheduled price changes.

There appears to be a consensus among OECD countries that the most effective way to achieve cost-based prices is through effective competition and not through price regulation. However, in tariff re-balancing of residential and local services, the regulator has to handle the particularly sensitive issue of how quickly or slowly to manage the transition since such price changes tend to become highly political. Excessive tariff control can also reduce tariff flexibility and since many new entrants use the incumbents price levels as a benchmark to set prices, such price controls may in fact reduce the impact of competition in pushing down prices. Therefore, constant review of market competition and price developments is important and so are efforts to streamline price control.

In the cellular mobile market, which effectively has been a duopoly up to the end of 2000,⁷¹ there is no price cap regulation on the operators' charges. Instead, price controls on the operators' retail charges are implemented through their licence conditions. Both Eircell and Esat Digifone offered to have retail price control included in their licences when they applied for GSM900 or 1800 spectrum. Specifically, their licence conditions state:

*The Licensee shall endeavour to reduce, in each of its financial years, the amounts of the charges to its customers so that those amounts are, after allowance is made for changes in the value of money in each such year after the first, lower than those obtaining in the previous such year, and shall endeavour to maintain those charges at or below the appropriate international comparators specified from time to time by the Director.*⁷²

Irrespective of this condition, Ireland's cellular mobile prices are well above the OECD average for residential and business customers. It would appear that the licence condition has not played a significant role in reducing prices. Such reductions should occur through competition, as they have in most other OECD countries. And this should begin to occur when the third operator develops its business.

Quality of service

Under the 1996 Act and other legislation the ODTR is responsible for regulating service quality. Licences, both General and Basic, contain conditions relating to service quality, among which are obligations in relation to use of terminal equipment and a requirement to have a Code of Practice for resolution of consumer disputes. Also, the ODTR may issue directions regarding indicators and measurement methods of the quality of telephony services and digital leased lines.

The ODTR developed a minimum set of service level agreements, which became effective in November 1999, to ensure that the new entrants receive the same level of services from the SMP operators' wholesale arm as their own retail arm. Also, in response to the complaints regarding delayed delivery of interconnection links to the new entrants, and delayed dealing with technical faults by Eircom, the ODTR decided to require Eircom to develop service level agreements on interconnection covering, *inter alia*, delivery times, and fault maintenance and restoration, in the context of approving Eircom's Reference Interconnection Offer, which is expected to become effective shortly.

According to the ODTR, they receive complaints covering a broad variety of issues ranging from interconnection, carrier access and selection, numbering, cross-subsidisation, customer service behaviour, Internet, pricing and access. As of May 2000, they had received 48 formal disputes, among which three had been rejected, one withdrawn, 15 issues addressed, three referred back to the operators, two draft determinations, seven final determinations, and 16 ongoing.

On an informal level, the ODTR receives complaints by telephone calls, emails, letters and representations from the public concerning levels of services by the licensees. They receive an average of 60 complaints per week, among which the main complaint for telecommunications services is billing. This might have resulted from customers' increased awareness of charges from itemised billing. Eircom presently charges IEP 3 for itemised billing⁷³ even though Article 14 of Directive 98/10/EC (ONP to Voice Telephony) states that a basic level of itemised billing should be made available at no charge.

The ODTR has set down key areas for performance measurement by all operators offering public telecommunication services. These include service provision, fault management, complaints and billing. Additional information will be required from Eircom, as the fixed line SMP operator, covering: directory enquiry services, public payphones and quality of service for other licensed operators. Operators will begin publishing these in 2001. Such indicators are important for consumer choice and to ensure continued best practice performance.

2.3. Resource issues

Spectrum Allocation

The development of competition, and in particular in mobile communications, has increased the demand for frequency spectrum in many OECD countries, and in Ireland. Increasing demand for spectrum access provides greater pressure for an objective and transparent regulatory allocation of spectrum and for greater efficiency in the use of spectrum.

Responsibility for frequency planning is shared between the Department of Public Enterprise and the ODTR. Under the 1996 Act, the ODTR is required to provide a radio frequency plan and is responsible for the licensing of spectrum, whereas the Department retains the right to issue directions to the ODTR to comply with decisions concerning the allocation and use of spectrum. The ODTR published a detailed Table of Frequency Allocations for Ireland⁷⁴ in 1998, and is currently reviewing it with the aim to complete the review in early 2001.

The assignment and licensing of spectrum for the first mobile telecommunications service was to Eircell (then Telecom Éireann), which started analogue (TACS standard) mobile telephony service in 900 MHz band in 1985. Further spectrum was assigned to Eircell (Telecom Éireann) within the 900 MHz band for their provision of digital (GSM standard) mobile service in 1993. There was no competition for spectrum assignment in these cases. The second GSM licence was allocated on the basis of a competitive tender in March 1995 by the Department of Transport, Energy and Communications, where six applications were received. Esat Digifone won the licence in May 1996 (the service was launched in March 1997). Meteor Mobile Communications was selected as the third mobile licensee (GSM900/1800 standard) in June 1998 also through a beauty contest. There were only two applicants (a legal challenge by the unsuccessful applicant delayed the award until May 2000). In addition, the ODTR invited Eircell and Esat Digifone to apply for additional spectrum in the 1800 MHz band for the provision of a dual band GSM 900/1800 service, and subsequently they were awarded the spectrum in late 1999.

Ireland has been one of the OECD countries that began licensing wireless in the local loop technologies at an early stage. The first licences were awarded mid 2000: four broadband and two narrowband WLL licences were awarded.⁷⁵ Following this earlier WLL licensing a competition for three further WLL licences is to be held shortly with a view to awarding licences in April 2001.

UMTS (IMT-2000) licensing has been taking place in a number of OECD countries recently, and a number of countries have decided to use auction as a method for spectrum allocation. The financial success of the auctions in some countries (e.g. the United Kingdom Treasury earned around

USD 35 billion for five licences and Germany around USD 46 billion for six licences using auctions to sell the licences) has also led countries to reconsider methods of licence allocation. In Ireland, the ODTR decided, following a consultation process, to use a comparative selection process (beauty contest) to award four UMTS licences.⁷⁶ A comparative selection was chosen over auctions as the ODTR came to a conclusion that the former would best secure the delivery of competitive prices, choice and quality in the Irish telecommunications market. The factors that have counted in reaching a decision in favour of a beauty contest are the following:

- Speedy roll-out and extensive geographic and population coverage would be easier to specify in a comparative tender than in an auction where the costs of market entry are much higher.
- Concerns over high retail prices to consumers because of the very high fees for spectrum access and the higher per capita fixed cost of building the networks, relative to the small size of the Irish market and its population density compared to those of the United Kingdom or other countries.
- A comparative tender provides more incentives for entrants to undertake voluntary commitments for roaming arrangements and third parties' access to the licensees' networks.
- Experience and expertise in Ireland with beauty contests and performance guarantees.

However, even if an auction procedure were chosen, the above performance requirements could easily be included as part of the licence.

The level of UMTS fees are currently being considered by the ODTR,⁷⁷ taking into account, *inter alia*, the development in other European countries. The ODTR plans to develop and publish competition details, run the competition, and finally award the licences around April to May 2001. The ODTR should try to maintain or even advance this schedule in order to try and ensure that service provision begins at the beginning of 2002.

Another point to be mentioned regarding the allocation of spectrum is that the new legislative proposals include a provision to enable the Minister to give directions to the proposed regulatory Commission regarding the means by which licences for spectrum use may be assigned.⁷⁸ This effectively reduces the existing power of the regulator by returning some of its powers on spectrum allocation to the Minister. This is likely to have an impact on choosing a method to allocate spectrum in the future, in particular on the choice between auctions and beauty contests.

Numbering issues

Management of the Irish numbering resources is the responsibility of the ODTR, which is obliged by statute to put in place procedures to ensure that the allocation of numbers is carried out in an objective, transparent, non-discriminatory, and timely manner.

Call-by-call carrier selection/access services have been available in Ireland since December 1998. All operators have five digit access codes for these purposes. Moreover, full carrier pre-selection was introduced in January 2000, the deadline required by the European Parliament and Council Directive (98/61/EC).⁷⁹ Three options are available currently for pre-selection: international calls only, national calls only, and all calls. Customers have a choice of opting for both of the first two options and pre-select different operators. They are also able to override their pre-selection for individual calls by dialling a carrier selection/access code.

Number portability is another important safeguard for efficient competition. Non-geographic number portability, portability of numbers without containing geographic information such as freephone numbers between operators, was introduced on 1 January 2000, in line with the European Parliament and Council Directive (98/61/EC). Geographic number portability is currently being introduced on a phased manner between July and November 2000.

At an initial stage, Eircom was required to provide the capability to export geographic numbers to any other operator who requested them and is willing in return to offer portability by 1 July 2000. In this operator-initiated portability, a new operator can choose not to participate in the regime (*i.e.* to refuse the request for reciprocal portability). The second stage is customer-initiated portability to be introduced on 30 November 2000, where any operator must provide portability when a customer requests it. This requires all operators to equip themselves with networks capable of dealing with importing and exporting numbers. After 30 November, new operators are not allowed to refuse importing and exporting numbers from and to any other operator. There are currently 128 minimum numbering areas in Ireland, within which geographic number portability applies.

For mobile telephony, partial number portability has been available since 1997. It has been partial in a sense that customers changing operator are allowed to retain the subscriber part of their number, but have to change their access codes. As the third mobile operator is entering the market, there is a more pressing need for full portability of mobile phone number, and the ODTR is currently working to introduce it.

2.4. Universal Service Obligations (USO)

Ireland's current universal service regulations, effective from 15 April 1999, are based on relevant Directives of the European Commission, namely the Revised Voice Telephony Directive (98/10/EC) and the Interconnection Directive (97/33/EC), which have been transposed into Irish national regulations.⁸⁰ The Directives define universal service as "a minimum set of services of specified quality which is available to all users independent of their geographical location and, in light of specific conditions, at an affordable price", and the Irish transposed regulations are in this line. Based on the transposed regulations, Eircom was designated as having the obligation to provide universal service by the ODTR on 14 May 1999.⁸¹

Telecommunications services covered within the universal service obligations (USO) in Ireland are in line with the relevant EU Directives and comparable to those of many OECD countries. These services are access to the fixed public telephone network and services, directory services, and public pay telephones. The first of the three is an obligation that the USO operator (Eircom), so far as it considers reasonable, must meet any request by a person for connection to the fixed public telephone network at a fixed location and provide access to fixed public telephone service. As a safeguard, the ODTR is authorised to overrule a refusal by the USO operator to provide such services. USO in directory services are the provision of directory services, *i.e.* compilation of and access to directory information, and of comprehensive public directories in printed or electronic form. USO in public pay telephones are the obligation imposed on USO operator to provide public pay telephones in sufficient numbers, taking into account the population density to satisfy all reasonable needs for them throughout the area.

Regarding a funding mechanism of USO, the USO operator may receive funding for the net cost of meeting the USO, taking into account any obligations on such an operator.⁸² The "net cost" is defined in the regulation as "the cost, if any, having regard to the direct and indirect costs and revenues associated with the provision of universal service including in particular, any market benefits accruing to a person arising from its obligation to provide universal service."⁸³ Eircom requested such funding for the period

from December 1998, when the market was fully liberalised, to May 2000, and the ODTR is currently reviewing this request. If the ODTR determines that there is a net cost and if such a cost is determined by the ODTR to be an unfair burden, Eircom is reimbursed by either of the following two mechanisms. The first option is establishing a fund to which all operators contribute and from which the USO operator is reimbursed. The second is that a supplementary charge is added to the charge for interconnection to the public telecommunications network.⁸⁴

Experience from other countries has shown that the first option tends to be preferable since it avoids distortion in interconnection, tends to be more transparent and allows designating another operator, instead of the incumbent, to provide universal service in specific areas. Principles of transparency, non-discrimination, efficiency, and proportionality should apply in the management of the compensation mechanism, and accounting separation should be ensured to prevent the possibility of cross-subsidisation with other competitive services offered by the USO operator. The second option, if implemented, should clearly separate interconnection payments from any access deficit charges. This option could create structural inflexibility in prices and in the way interconnection is charged.

2.5. *International aspects*

Ireland imposes no restrictions on market entry by foreign operators. In the European Communities' commitment to WTO agreement on basic telecommunications concluded in February 1997, Ireland made exemptions to delay the implementation of full liberalisation in public voice telephony and facilities-based services until 2000, and to delay the liberalisation of internationally connected mobile and personal communications services until 1999. However, as already noted, Ireland implemented the WTO commitment earlier than the scheduled deadline.

2.6. *Consumer protection*

Consumer interests are best enhanced through effective competition, which will deliver lower prices, improved choice and better quality. However, there is a continuing role for the government to ensure that consumer interests are protected. While the government and the ODTR have worked to ensure that consumers benefit from increased competition, including by inexpensive switching of service providers, and from customer charters, improved performance of operators, etc., some aspects of consumer protection have been left behind in Ireland as seen in the earlier sections, such as the lack of a formal and clearer mechanism to handle consumer complaints. However, the proposed legislation provides for frameworks for resolving this and other issues on consumer protection.⁸⁵

It is also a welcome move that the ODTR is strengthening its focus towards enhancement of consumer interests as a general policy, and the efforts to establish concrete mechanisms within the general framework to be provided by the proposed legislation to address consumer complaints are understood in this context. Also, their efforts to establish quality of service indicators in fixed line services to be published (see Section 3) are a positive step in enhancing consumer choice and information. The ODTR should establish concrete procedures with standard time frame for handling consumer complaints. It is the intention of the new legislation to do so. The procedure should be speedy, simple, and inexpensive for ordinary consumers. It should also ensure under relevant legal provisions to come into place that telecommunications operators implement and make public an appropriate code of practice for consumers.⁸⁶ It is preferable that an industry wide code is available to ensure consistency in the market. Operators should be required to provide a published report on their handling of the complaints, and in this regard it is a welcome move that they will be required to do so under the ODTR's Measuring Licensed Operator Performance programme from June 2001.

2.7. Streamlining regulation and application of competition principles

The Irish competition acts, namely the Competition Act, 1991 and Competition (Amendment) Act, 1996, apply to telecommunications sector with no exemptions. As in other OECD countries, these acts prohibit anti-competitive agreements and abuse of dominant power in all industries. As noted earlier, some overlap of jurisdiction between the agencies to administer the competition acts and the telecommunications acts is inevitable and a framework of co-operation is essential and the right of an aggrieved party to pursue a case in either the Competition Authority or the ODTR should be respected.

Regulatory streamlining

While sector-specific regulations are necessary to steer and facilitate the transition of the market from monopoly to full competition, it is also necessary to consider when it is appropriate to streamline regulations and to withdraw sector specific regulations as the market becomes fully competitive. It is important to review regulations on a regular basis and determine whether they should be maintained, modified or streamlined and are proportionate to their stated aim and take into account the degree of competition in the market in question. Determination of when and to what extent the sector-specific regulations could be withdrawn needs thorough examination and evaluation of a number of factors related to the actual situation and functioning of the market.

The ODTR's practice of conducting and publishing a quarterly review of the Irish telecommunications market is commendable from this perspective.⁸⁷ The review focuses on monitoring the market to allow the ODTR to discharge its own responsibilities. However, the review should focus as well on the impact of market changes on users and the benefits that they are deriving from competition. It would also facilitate an evaluation of the market and of the impact of regulation if data on the market shares of individual companies and quality of service of market players, particularly for fixed voice communications, were published.

The use of industry self-regulation, rather than imposition of regulations by the government is becoming more common in OECD countries, for example, in management of numbering. Self-regulation is generally viewed as having advantages in providing more flexibility to rapid changes and in ensuring better compliance by the industry. The ODTR should consider how it could provide an incentive to encourage industry self-regulation where it is practical. The success of such regulation will clearly depend on having an open dialogue between the incumbent and new entrants.

Transparency

The existing telecommunication legislative provisions in Ireland are spread over an enormous number of statutes inevitably as a result of consecutive amendments and enactment over a hundred and forty years. Consequently, it is not easy to access and understand the overall legislative framework. The practice in the past of amending existing legislation has also led to difficulties in having access to a comprehensive legislative framework. It would help ensure further consistency and greater transparency of laws and regulations if the Department and the ODTR consolidate these into a single document available to the public.

The ODTR, although not legally required, uses a process of public consultation extensively, and publishes its findings. ODTR's website is well organised helping to ensure greater transparency by providing information on regulations issued, documents and consultations. ODTR needs to provide better information on contact points for specific issues for the industry and other market participants to be able to obtain further information.

2.8. *Convergence in communications markets*

Convergence between telecommunications and broadcasting sector is advancing rapidly at the technological, service, and market level in OECD countries, posing a number of regulatory challenges for many member countries. In Ireland, regulation of infrastructures including broadcasting, namely television and radio transmitters and equipment associated with terrestrial services and CATV networks fall under ODTR's jurisdiction. The ODTR is not organised internally along the traditional separation of the communication sectors, but along functional divisions (*i.e.* Market Operations, Market Development and Market Framework), within each of which both telecommunications and broadcasting issues are dealt with. This helps in dealing with issues where convergence is an important factor. A number of recent decisions have been relevant to convergence. For example, licences were issued in 1999 that provide for digital cable and MMDS. In addition a consultation is under way on the implications that convergence and, in particular, the use of ADSL technology will have for the legal and regulatory frameworks covering telecommunications and broadcasting. The ODTR also took steps in 1999, much earlier than many other OECD countries, to provide wireless in the local loop licences.

Programming services or content of private broadcasting services are regulated by the Independent Radio and Television Commission (IRTC) under the 1988 Radio and Television Act. The operation of the state broadcaster, RTE, as a statutory corporation, falls under the supervision of RTE Authority (a commission comprising nine members) under the Broadcasting Act 1960.

3. MARKET PERFORMANCE

3.1. *Introduction*

The rationale for regulatory reform is the increase in the efficiency in the provision of services and the beneficial effects it is expected to deliver to users and consumers. This section assesses the performance of the Irish telecommunications industry in the delivery of those benefits to users and consumers, using indicators related to network penetration, investment, price, and quality.

The main elements of market performance examined below are:

- Network development and modernisation.
- Services based on leading edge technology and infrastructure.
- Lower prices.
- Improved quality of service.
- Increased customer choice.
- Benefit to users.

Since full liberalisation of the Irish telecommunication market in late 1998 the market has shown dynamic growth in terms of new market entry, investment and development of services. Nevertheless, the less than smooth market opening has also slowed potential growth and benefits to users. This is most apparent in the cellular mobile sector where the third licence is only now becoming operational because of litigation lasting well over a year. This has had a negative impact on price performance and mobile penetration rates.

Ireland has had the ambition to become a communications hub linking Europe and North America. It also has placed much emphasis on the creation on the development of electronic commerce. It is thus important, if these objectives are to be met, that the full benefits of competition are realised and

passed on to users. The efficient working of the market will allow this to happen, but in the shorter term as the telecommunications market is transformed from a monopoly to a competitive market, effective regulation will play a key role. In this context, as well, having good benchmarking data is important for effective regulation and the ODTR needs to improve on its ability to obtain and publish such benchmarks.

3.2. *Market development*

The telecommunication service sector, as measured by telecommunication service revenues, in Ireland has increased from IEP 1 094 million in 1995 to IEP 1 407 million by 1997. By 1999 revenues had reached IEP 1 716 million (Table 6). The telecommunication sector increased its share in GDP from 2.4% to 2.9% during the 1985-97 period. In 1999 telecommunications revenue accounted for 2.6% of GDP. With emphasis on network expansion and digitalisation during the 1990s, public telecommunication investment ranged around 3% of national gross fixed capital formation, reaching 4% in 1997.⁸⁸ Over the period 1997-99 telecommunication investment averaged 3.4% of GFCF.

The number of telephone mainlines expanded significantly during the 1990s, from 983 thousand lines in 1990 to 1.6 million by 1999. As a result the penetration rate increased from 28.1 access lines per 100 inhabitants in 1990, well below the OECD average, to 42.2 per 100 inhabitants by 1999, although still below the OECD average. In terms of access channels (*i.e.* including ISDN lines) per 100 inhabitants Ireland was below the OECD average with 46 channels compared to 54. Telecommunication employment, which stood at 16.1 thousand in 1985, has declined steadily to around 11.7 thousand in 1997, increasing to 1999 to attain 12 600.⁸⁹

The incumbent, Eircom, was ranked 59th in 1999 among the major public telecommunication operators in the OECD area as measured by revenues. Mobile services now account for 20% of its revenue. The increase in Internet traffic has been important and by the first quarter of 2000 accounted for 30% of local call traffic. Competition has also benefited the incumbent, for example, they have experienced extremely high growth in the wholesale traffic market, which amounted to 17% of retail fixed line traffic at the beginning of 2000.

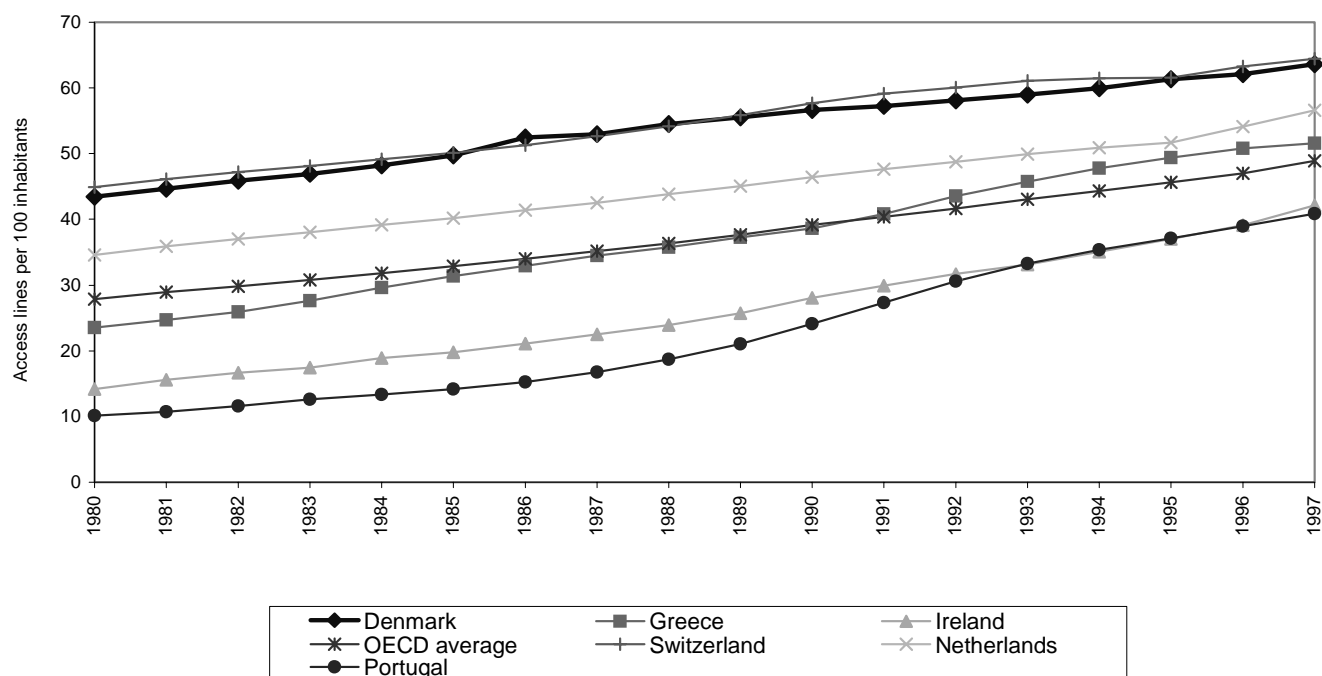
Table 6. **Eircom: main telecommunication indicators**

	1995	1996	1997	1998	1999
Telecommunication services: revenue (IEP million)	1 094	1 230	1 354	1 435	1 551
Total employment	12 025	11 918	11 705	11 911	12 055
Operating revenue per access line (IEP)	833	885	938	1 055	1 059
Operating revenue per employee (IEP)	90 990	103 205	120 229	120 476	128 660

Note: Total employment includes mobile and fixed services.

Source: OECD, Telecommunications Database 1999, ODTR

Figure 2. Access lines per 100 inhabitants



Network development and modernisation

Ireland, in the mid-1980s, had a relatively low telecommunication penetration rate. High investment led to a growth in telecommunication access at a compound annual growth rate of 6.9% during 1987-92 and 6.1% during the 1992-97 period.⁹⁰ However, this growth was insufficient to close the gap between Irish penetration rates and the OECD average (see Figure 2). In terms of access lines per 100 inhabitants, Ireland ranked 21st in the OECD in 1997 with a penetration rate of 42 lines per 100 population (compared to an OECD average of 49). By 1999 the penetration rate had increased only slightly.

Table 7 indicates that in Ireland, public telecommunications investment (*i.e.* Eircom's investment) as a percentage of revenue weakened in the early 1990s and only began to pick up as the threat of competition began to become a reality. In addition, increases in investment over the last several years reflect investment in mobile activities.

Table 7. Public telecommunication investment as a percentage of revenue

	1986-88	1989-91	1992-94	1995	1996	1997	1998	1999
Ireland	24.0	21.0	17.2	16.4	24.1	27.6	34.3	23.9
OECD average	26	27	25	24	25	24	25	27

Source: OECD (2001), *Communications Outlook 2001*, Paris.

Digitalisation

In contrast to network expansion, Ireland has rapidly digitalised its network and by 1998 had attained 100% digitalisation as shown in Table 8. New technologies have emerged with digitalisation, in particular ISDN. National coverage for ISDN was achieved by 1998.

Penetration of ISDN increased from 4 184 subscribers in 1995 to 27 522 basic rate access lines by the end of 1999 or about 0.5% of main lines. By the end of the 1999 the number of basic rate ISDN connections was 76 000 customers (or 5% of main lines). Commercial ADSL services had not yet been made available in mid-2000 although pilot trials were being held. By the end of 1999 Ireland had 596 000 CATV subscribers, a 38% increase since 1997. The CATV penetration rate as measured by the proportion of households with access to cable was 49%.

Table 8. Eircom's rate of digitalisation

	1993	1995	1997	1998	1999
Ireland	71.0	79.0	92.0	100.0	100.0
Czech Republic	10.0	17.0	54.6	64.1	74.4
Greece	22.0	37.1	47.1	74.5	90.6
Poland	9.5	48.0	58.0	62.0	68.0
Portugal	59.0	70.0	88.3	98.0	100.0
OECD average	58.8	74.8	87.5	92.1	94.2

Source: OECD, Communications Outlook 1999, and Communications Outlook 2001.

Cellular Mobile Services

Between 1985 and 1997, when the second GSM mobile licence became operational, the mobile market developed in a monopoly environment. Telecom Éireann launched analogue service in 1985 and it was also provided with a GMS licence launching service in 1993 (as Eircell). In March 1997 a second GSM licence was awarded to Esat Digifone. Cellular mobile penetration has increased from 14.4 per 100 inhabitants in 1997 (OECD average 15.6) to 42.7 by 1999 (OECD average 32.4). Prepaid subscriptions have played an important part in mobile growth, for example, prepaid subscribers account for 60% of Eircom's total cellular mobile subscribers.

Table 9. Cellular mobile subscribers

	1997	1998	1999	2000 (June)
Eircell	405 747	707 000	1 049 000	1 100 000
Esat	105 000	239 000	551 000	744 000
TOTAL	510 747	946 000	1 600 000	1 860 000
Market penetration	14.4	25.5	42.7	49.7

Source: Company annual reports, ODTR.

By mid-2000 the number of mobile subscribers had reached 1.9 million or 49.7 subscribers per 100 inhabitants, that is higher than the penetration rate for the fixed network. Eircell has the largest market share with 60% of subscribers. Nevertheless, it has lost about seven percentage points of market share since 1999.⁹¹

Development of competition

Although there has been full liberalisation for only 18 months some benefits have accrued to Irish consumers and users (see Section 3.4 below). These have been mainly from price decreases, and an expansion in the range of services becoming available. The delay in the third mobile licence becoming operational has reduced the impact of price competition in that market, in particular for subscribers on monthly plans (prepaid call prices declined substantially during the first half of 2000).

Alternate communication infrastructures are developing quite rapidly in Ireland. Cable television infrastructure has been developing relatively rapidly and is providing bundled broadband services, including voice at reasonable prices.

A number of new entrants have entered the Irish telecommunications market since full liberalisation took place in 1 December 1998. Around forty-five operators were providing telecommunications networks and/or services as of September 2000. Eleven of them offer fixed services to residential customers at least in international calls markets, and eight offered integrated local, long distance, and international services.⁹²

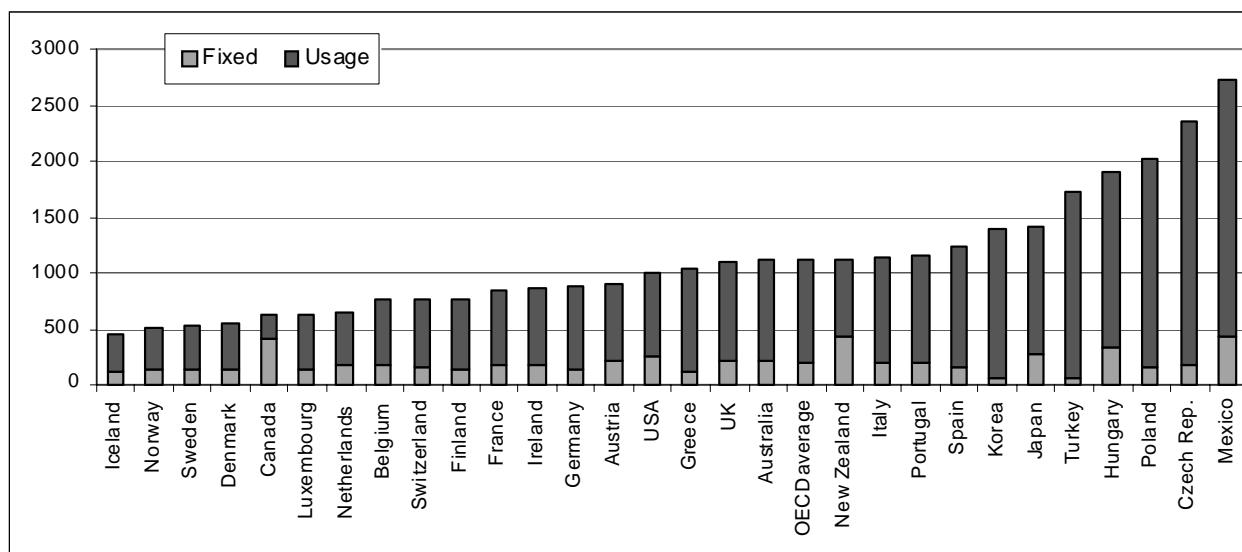
In the fixed network sector, the share of new entrants, based on operators' revenues, is estimated to be in excess of 15% as of June 2000, whereas the equivalent for March 2000 was in excess of 10%.⁹³ The market share of new entrants for international telephone services rose to around 9% in terms of minutes of international traffic in 1997 from 0% in 1996.⁹⁴ The development of competition for international calls resulted in the ODTR removing these services from price cap regulations.

The licensing of wireless local loop services will also ensure the more rapid development of competition in the local market. The ODTR has issued wireless local loop (WLL) licences for broadband services to four entities, two of which also have been granted WLL licences in narrow band, earlier than many other OECD countries. As noted in the previous section, full local loop unbundling is expected shortly.

Price performance and rebalancing

Price levels in other countries provide an important benchmark to assess relative performance of telecommunication markets. For these purposes the OECD collects the prices of a basket of telecommunications for residential and business customers in each of the twenty-nine OECD countries.⁹⁵ Ireland is ranked 12th for the business basket and 13th for the residential basket among OECD countries as measured in terms of purchasing power parities (see Figures 3 and 4).

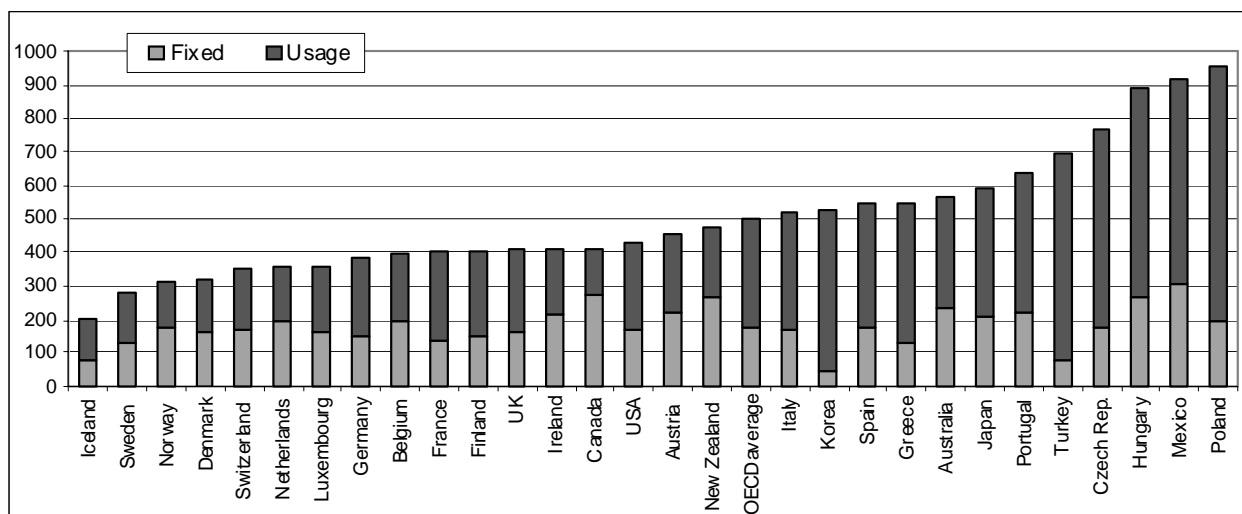
Figure 3. OECD Composite Basket of business telephone charges, November 2000
(in US\$/PPP)



Note: VAT is excluded; calls to mobiles are excluded.

Source: OECD.

Figure 4. OECD Composite Basket of residential telephone charges, November 2000



Note: VAT is included; calls to mobiles are excluded.

Source: OECD.

Important changes have taken place in Eircom's prices. However, fixed charges have hardly been adjusted unlike other countries where price increases have taken place mainly in fixed prices. National call charges have become distance insensitive and international call charges have been adjusted downward. Local call charges remain high and rather than using a call set-up charge a minimum charge is being used. However, per second charging has been introduced. In October 2000 new call charges were introduced but only for off-peak local calls. These new call charges were in response to competition from new entry. For example the cable company, NTL, has offered its customers a bundled package costing IEP 20 per month which includes two telephone lines, cable TV and unlimited and unmetered Internet access. Telephone call charges will be at a minimum rate of 3.5p.

Table 10. Local telephony charges

	1992	1993	1997	1998	1999	2000	Rates of change (%)
Connection charges (IR punts)			145.00		99 (incl. VAT)	99 (incl. VAT)	
Monthly rental charges (IR punts)	10.00	10.00	10.00	10.00	10.24 (excl. VAT)	10.92 (excl. VAT)	
Charge for 3 minutes (IR pounds)					9.5p minimum charge (per second pricing introduced) [3.31p/min charged above initial charge – 0.83 offpeak]	5.0 (incl. VAT)	
Peak	11.17 (for 15 minutes)	9.5					
Off-peak	11.17 (for 30 minutes)	1.9				1.0 (incl. VAT)	
National calls (pence per minute)	22 for over 80km				8.26 5.50 evening 0.83 weekend	7.38 (incl. VAT) 4.84 (incl. VAT) offpeak 1.0 (incl. VAT) weekend	

Note: In 1990 business and residential customers were charged the same for line rental. Local call timing was first used in 1992. In 1996 local call areas expanded to include calls up to 27km. In 1998 per second charging introduced (but minimum fee applies).

Source: ODTR.

International telecommunication prices

Ireland had relatively high international collection charges, which were above the OECD average in the past, but continuous reductions since 1994 (mainly through indirect competition *e.g.* call-back services) have improved Ireland's relative position quite significantly.⁹⁶ The OECD basket of international telephone charges⁹⁷ as of August 2000 shows that Ireland has international charges of less than a half of the OECD average both for business and residential calls in USD/PPP (Table 11). Accounting rates with the United States have also declined and are comparable with other heavier traffic routes (Table 12).

Table 11. OECD basket of international telephone charges, August 2000

	Business Excluding tax		Residential Including tax	
	USD	USD PPP	USD Based	USD PPP
Australia	0.80	1.03	1.12	1.44
Austria	0.80	0.87	1.21	1.32
Belgium	1.17	1.34	1.56	1.79
Canada	0.21	0.26	0.74	0.92
Czech Republic	1.18	3.11	1.26	3.31
Denmark	0.50	0.44	0.81	0.71
Finland	0.77	0.74	1.08	1.04
France	0.60	0.65	0.75	0.81
Germany	0.79	0.86	1.16	1.26
Greece	0.89	1.26	1.35	1.90
Hungary	1.11	2.77	1.77	4.43
Iceland	0.79	0.63	1.25	1.00
Ireland	0.55	0.65	0.76	0.89
Italy	0.93	1.18	1.35	1.71
Japan	2.90	1.78	3.25	1.99
Korea	2.38	3.83	2.77	4.46
Luxembourg	0.52	0.58	0.66	0.74
Mexico	3.25	4.51	3.94	5.47
Netherlands	0.33	0.38	0.48	0.55
New Zealand	0.77	1.09	1.06	1.50
Norway	0.46	0.40	0.71	0.62
Poland	1.49	2.87	2.35	4.51
Portugal	0.97	1.49	1.38	2.12
Spain	1.09	1.49	1.52	2.08
Sweden	0.39	0.35	0.61	0.56
Switzerland	0.30	0.25	0.37	0.31
Turkey	1.67	3.10	2.07	3.84
United Kingdom	0.87	0.80	0.94	0.87
United States	0.55	0.55	0.87	0.87
OECD average	1.00	1.35	1.35	1.38

Source: OECD and Teligen.

Table 12. Accounting rates with the United States (US\$)

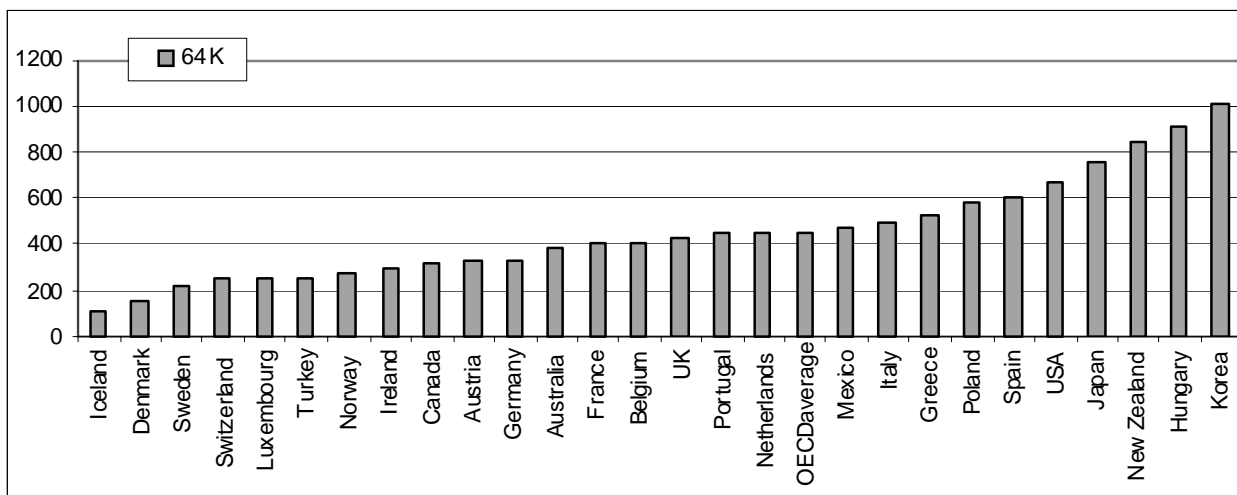
	1996	1997	1998	1999	2000
Ireland	USD 0.35	0.33	0.19	0.19	0.20
France	USD 0.35	0.26	0.21	0.20	0.20
Greece	USD 1.01	0.86	0.55	0.30	0.26
Italy	USD 0.52	0.33	0.22	0.22	0.21
Portugal	USD 0.83	0.60	0.43	0.30	0.29
Spain	USD 0.64	0.48	0.26	0.27	0.27
United Kingdom (BT)	USD 0.36	0.20	0.21	0.21	0.20

Source: International Bureau, Federal Communications Commission, US.

Leased lines

The availability of leased lines and their price levels are important for the development of competition since new entrants initially will rely on these circuits to develop service. Leased circuits have also become important for the development of Internet services. Relative to other OECD countries prices Ireland has the eighth lowest tariffs of national leased lines of 64Kbit (Figure 5).

Figure 5. Comparison of OECD Leased Line Tariff Baskets, November 2000 (in USD/PPP)



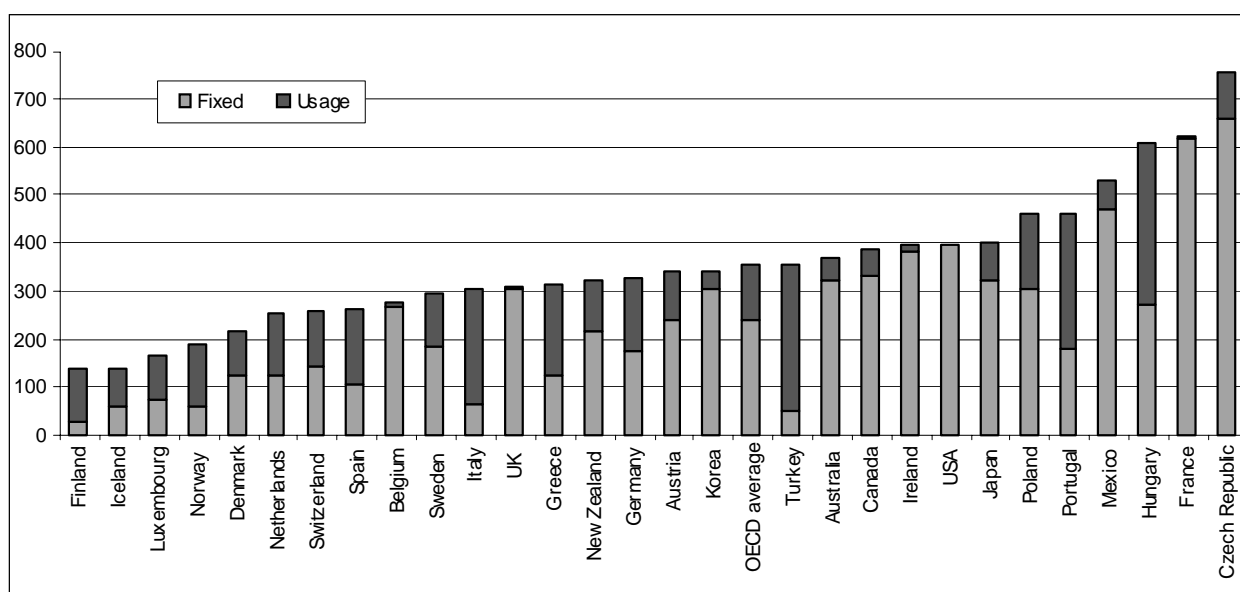
Note: VAT is excluded.

Source: OECD.

Cellular mobile prices

Ireland has high prices for mobile telephone services offered by the incumbent. The basket of consumer mobile telephone charges shows Ireland as the ninth most expensive OECD country (in PPP), above the OECD average (Figure 6). Equivalent charges of the business basket are also high (the ninth highest at USD/PPP1 146) and above the OECD average of USD/PPP1 072. The relative lack of mobile competition in the Irish mobile market which had a monopoly until 1997 and a duopoly since then is the main reason for the lack of price competition.

Figure 6. OECD Basket of consumer mobile telephone charges, November 2000
(in US\$/PPP)



Note: The basket includes 50 minutes per month and excludes international calls. VAT is included.

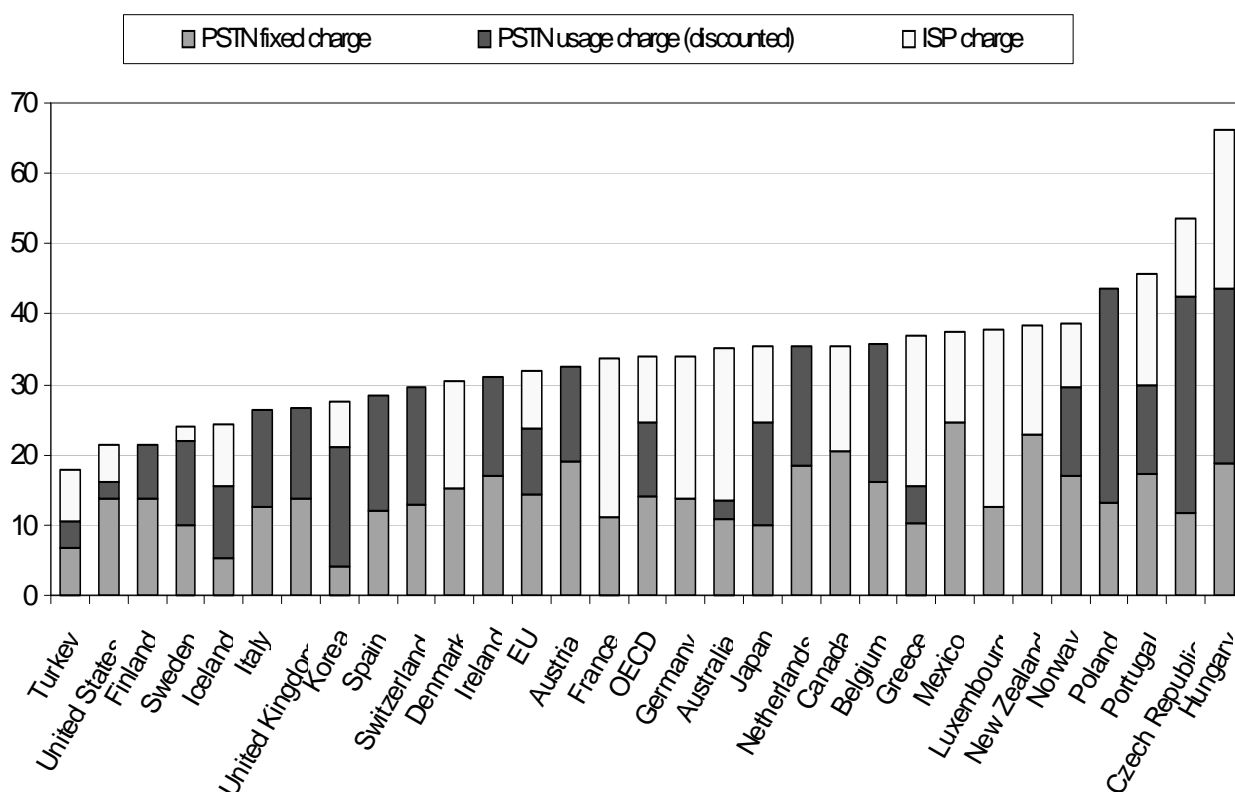
Source: OECD and Teligen.

Internet developments and performance

The number of Internet subscribers in Ireland is estimated to be around 405 000, of which 243 000 or 60% are Eircom's customers.⁹⁸ This corresponds to 11 per 100 population, which is about the OECD average.⁹⁹ The number of Internet hosts per 1 000 inhabitants has been growing, and reached 36.4 in January 2000, which is below the OECD average of 59.3. The increase between July 1999 and January 2000 of 7.7% is also below the OECD average of 12.2%, or below the equivalent average among OECD members with metered local access charges of 8.6%.¹⁰⁰

Access price of the Internet as measured by the OECD basket for 20 hours shows that Ireland has the sixth highest charges among the OECD countries for peak times, but for off-peak times Ireland's performance is better (Figure 7).

Figure 7. OECD Internet Access Basket for 20 hours at off-peak times using discounted PSTN rates, 2000 (US\$/PPP, including VAT)



Note: PSTN fixed charges include monthly rental fee. The basket includes 20 one-hour calls. Off peak is taken at 20h00. In some countries, ISP and PSTN usage charges are bundled and included under either the ISP or the PSTN charge.

Source: OECD.

Quality of service

In the early 1990s Ireland ranked among the highest OECD countries in terms of the percentage of faults repaired within 24 hours with a rate of 100%. However, since then the rate for fault repair declined in 1997 to 76%, one of the lowest rates in the OECD.¹⁰¹ The number of faults per 100 lines per annum was 15 in 1997, or 13th of 17 reporting OECD countries at that time.

The ODTR, following a public consultation, issued a report¹⁰² in January 2000 to develop parameters to measure fixed line operators' performance in a comprehensive way. An industry forum has been working to agree on detailed definitions for performance parameters, and it is expected that the results will be published in mid-2001. Main parameters include service delivery, fault management, complaints, billing, and disconnection. These efforts are likely to help improve the quality of service significantly.

The current focus in these efforts is to measure the performance of fixed line services and do not cover mobile operations. As a future step, the ODTR should also develop, and publish, quality of service parameters for mobile services.

4. CONCLUSIONS AND RECOMMENDATIONS

4.1. *General assessment of current strengths and weaknesses*

The regulatory regime in Ireland displays a number of strengths (see below). These strengths are based above all on the emphasis the government, and the regulator, have been placing on the importance of market forces and the readiness and flexibility to adopt best practice regulation. Ireland introduced full liberalisation of telecommunications market on 1 December 1998, later by eleven months than many other European Union countries. As one of the five countries that was granted a derogation up to 1 January 2000 by the EC for full liberalisation, the decision taken in May 1998 to fully open the market to competition 13 months earlier than necessary was courageous, even though it was to give rise to a number of shorter term problems. The government's decision was commendable in understanding the importance of competition and in understanding that the technological speed of change in the telecommunication sector can only be mastered and benefited from in a competitive environment.

The early opening of the market to full liberalisation before the regulator had completed the task of putting in place the necessary safeguards forced the regulator to divert very scarce human resources to immediate problem areas where emphasis was needed on building a sound regulatory framework. Inevitably this led to dissatisfaction from all parties in the market, placing even further pressure on the regulator. The last year was essentially a period of adjustment for the regulator in trying to cope with a framework, which was not yet complete. The government has rapidly put forward new measures to ensure that the regulator has sufficient tools available to take and enforce decisions, as well as measure which aim at trying to ensure that benefits from liberalisation accrue to the consumer.

Box 2. **Strengths**

Emphasis on market forces shown through shortening of derogation period for full liberalisation by thirteen months.

Emphasis on open market access.

Awareness of a continuing need for further progress and development in the regulatory system.

Responsiveness and flexibility in regulatory reform.

Transparency of regulatory decision making supported by extensive use of public consultation.

Regular review and evaluation of the market.

The courage in opening the market early to competition has proved to be a success. There are now more than forty operators providing telecommunications networks and/or services in Ireland despite the relatively small size of the country. Price reductions, including for local call prices are beginning to take place benefiting consumers.

Market access in telecommunications is open in Ireland, as exemplified by the number of new entrants offering range of services in the past two years. Despite the number of new entrants the question of whether an individual licensing system is required remains. It is timely to move to an even more open market entry framework based on a class licensing system. Market entry is not limited through any discriminatory restrictions on foreign participants, and in fact all major operators in Ireland, including the incumbent, are largely owned by foreign companies. In the mobile market, which has been a duopoly, the late licensing of the third operator that occurred in June 2000, resulted from litigation brought against the original licence award made in 1998.

The Department of Public Enterprise and the ODTR have quickly recognised weaknesses both in regulations as well as institutions, and have showed readiness to take rapid action to bring about necessary changes. For example, the government is already preparing major legislation since the enactment of the Telecommunications (Miscellaneous Provisions) Act, 1996 to make major changes in institutional and regulatory frameworks.

The government and the regulator have used quite effectively public consultation process both in the development of legislation and in regulation. There is general consensus that the ODTR has acted fairly and independently of politics and of industry. Emphasis has also been placed on market evaluation as a basis for making timely and appropriate regulatory decisions. In this context, the practice of the ODTR to conduct quarterly reviews of the market is commendable.

There are, however, a number of weaknesses that need to be addressed:

Box 3. Weaknesses

Inadequate powers of the ODTR.

Insufficient human resource with ODTR.

Greater focus needed to ensure benefits to consumer of competition.

Further improvements required in institutional co-operation.

More competition needed in cellular mobile sector.

Completion of price rebalancing.

Although the strengths of the Irish regulatory framework provide the potential for the creation of a competitive and efficient market which will bring benefits to Irish consumers and the economy at large, there are some regulatory issues that need to be addressed. The ODTR needs to be strengthened in terms of its powers to make binding decisions and enforce them. The recent outline of legislative proposals in relation to the regulation of the communications sector in fact addresses this weakness and some of the others noted above. This proposed legislation would, if successfully implemented, go a long way to allow for the development of a more open market without the danger of constant litigation slowing down regulatory reforms.

High quality in policies and regulation is not possible without adequate human resources. The brief history of the ODTR, as noted earlier, is commendable in light of the insufficient resources available. ODTR has had support of staff seconded from the Department of Public Enterprise, who have gradually returned to their Department, and outside expert consultants. ODTR needs to continue its focus on completing its staffing needs.

Lack of staffing is partially responsible for the fact that the ODTR has not been sufficiently pro-active in certain areas, e.g. in consumer protection and enforcement of the decisions. Another reason for this, as noted previously, has been the early liberalisation, which resulted in emphasis being placed on implementing the Directives and the Decisions of the European Community as well as some basic regulatory requirements. Improvements in institutional relations with the Competition Authority are necessary. The last year has already led to some improvements and the proposed draft legislation also addresses this issue. Both institutions have recognised past deficiencies and seem prepared to make improvements. In this regard, it should be acknowledged that the Competition and Mergers Review Group, a consultative body for the Minister for Enterprise, Trade and Employment, made co-ordination proposals, where both the ODTR and the CA made inputs, and both agencies incorporated them in actual practice. It is also incorporated in the new proposed Communications Regulation Bill, 2000.

Despite rapid growth in the cellular mobile market, resulting mainly from pre-paid cards, insufficient competition has developed in mobile markets and prices remain high. Entry of the third operator is expected shortly. This should improve the situation, but the ODTR needs to maintain this market under review to ensure that a competitive market for mobile services develops. This will be assisted by the announced intention to offer four licences for the UMTS services.

Price rebalancing should be completed as rapidly as possible to ensure attainment of cost-orientation and elimination of any cross-subsidies. This will also facilitate the implementation of local loop unbundling.

It is also necessary that the ODTR place greater focus on consumer interests. It is understandable that the ODTR has generally focused on development of the industry and setting up a framework to develop a competitive market. In itself this has brought benefits to consumers, but a more direct focus is needed on consumer interests and the implication of changes of regulation on consumers. In particular, an effective framework is needed to handle consumer complaints and resolve disputes. Benchmarks for quality of service and the publication of relative quality of service indicators can also facilitate consumer choice. To their credit, the ODTR is already aware of some of these deficiencies, and has been working to address them.

4.2. *Potential benefits and costs of further regulatory reform*

As indicated in previous sections, the Irish industry and consumers have in the past benefited from declining prices and an increasing variety of services. However, as described in Section 4.1, there is still room for improvement in the regulatory framework of Ireland in order to achieve fair and effective competition in a market, which is still in transition, and exploit its potential fully. The consultation paper on draft changes to legislation goes a long way to meet present problems and concerns. The government should, however, take opportunity of this draft to introduce new streamlined licensing system and procedures in line with proposals of the European Commission.

Improvement in the regulatory landscape and enhanced competition would bring further benefits to consumers through price reduction, better quality and more choice. From this perspective, it is suggested that Ireland consider the following recommendations.

4.3. *Policy recommendations*

The following policy recommendations are based on the “Policy Recommendations For Regulatory Reform” set out in the OECD “Report on Regulatory Reform” (OECD, June 1997).

1. Ensure that regulations and regulatory processes are transparent, non-discriminatory, and applied effectively.

- The licensing regime should be streamlined using general authorisations, rather than individual licensing.

Ireland needs to shift further towards a framework for market entry based on general authorisation rather than individual licensing. This will help to further reduce barriers to entry and to free scarce human resources in the ODTR. The requirement for a high-level business plan with the financial sources and projections, as well as for adequacy of managerial and technical resources, in obtaining a General Licence is questionable.

- The ODTR should establish concrete procedures with standard time frame for handling consumer complaints. The procedure should be speedy, simple, and inexpensive for ordinary consumers. It should also ensure that telecommunications operators implement and make public an appropriate code of practice for consumer. Operators should be required to provide a published report on their handling of the complaints.

The Department of Public Enterprise and the ODTR have been aware of the problem in dealing with consumer complaints and this issue has been covered in the draft legislation. The ODTR should develop concrete procedures to deal with consumer interests. The telecommunications industry, in particular, should be required to develop adequate and simple procedures to resolve disputes and respond to complaints.

- Accelerate the introduction of appropriate rights of way legislation to facilitate the construction of new networks on public lands.

The Irish government proposed benchmark legislation in 1999 to reform the system for telecommunications network operators to access public and private land. The Telecommunications (Infrastructure) Bill provided that the network operators could apply for and possibly compulsorily acquire rights of way over private land in the event that negotiations with landowners were unsuccessful. It also addressed the issue of the use of public roads for infrastructure, and provided a legislative basis for sharing of ducts. The Bill proposed to set up a Telecommunications Infrastructure Board, a quasi-judicial body with the power to facilitate access to private land. Now that the Infrastructure Bill is withdrawn because of the issues over compulsory access to private land and the provisions relating to access to public highways and sharing of infrastructure are included in the new Communications (Regulation) Bill, the government needs to take appropriate action to ensure its enactment.

4. Reform regulations to stimulate competition and eliminate them except where clear evidence demonstrates that they are the best way to serve the broad public interest.

- The “in platform exclusivity” granted to cable operators should not be continued after the five-year period has expired in April 2004. The industry should be informed of such a decision at an early stage.

Intended as a means to provide an incentive to develop digital networks, the “in platform exclusivity” period also serves to limit competition. As a tool to stimulate investment, the strength of the policy lies in the time limitation imposed. Clarifying that the exclusive privilege will not be extended is more likely to provide CATV operators with incentives to upgrade their networks for broadband access and telephony.

- The costs of providing universal service should be determined on an agreed methodology. If net costs are found and deemed as an unfair burden on the incumbent then a universal service fund should be created through contributions of market participants.

Appropriate policies to rebalancing prices should be given the first priority in the context of universal service. A methodology agreed to by the industry should be used to determine the cost of providing universal service. If the ODTR determines that the costs of universal service are high, taking into account any benefits that may accrue to the incumbent from providing universal service, then a funding system should be implemented to allow for appropriate compensation. If this is required, it is more appropriate to set up a universal service fund to which market players contribute than to use access deficit charges, which would also be in line with the European Commission’s proposals in the draft new Directive on Universal Service.

5. Review, and strengthen where necessary, the scope, effectiveness and enforcement of competition policy.

- Explicit and concrete provisions governing forbearance and withdrawal from sector specific regulation should be developed. From this perspective, the ODTR's practice of reviewing the telecommunications market should be strengthened and enhanced as a measure to enable the ODTR to evaluate the state of competition in the market to determine when and how sectoral regulations can be withdrawn leaving incumbent power to be disciplined by the market and the general competition law.

Even though there may be scope for the introduction of further regulations in the market, the requirement to streamline regulations and forbear from regulation, when and where appropriate, remains an important task for the ODTR as does the need for continuous consultation with the Competition Authority. The market reviews of the ODTR are an important initial step in this process. These should be strengthened and the ODTR should be required to undertake regular reviews of regulation to ascertain where streamlining can take place.

NOTES

1. OECD (1999a), p. 9.
2. *Ibid.*
3. OECD (2001), *Communications Outlook 2001*, forthcoming.
4. *Ibid.*
5. OECD (1999b), p. 208.
6. OECD (2001).
7. *Ibid.*
8. Ireland, with the exception of Luxembourg and Iceland, is the smallest OECD country in terms of population.
9. KPN plans to dispose of all of its shares to institutional and private investors as of September 2000.
10. This agreement for a strategic alliance also involved co-operation in a transformation programme of Telecom Éireann to improve its market focus and the cost base. In parallel to the agreement, the Irish government arranged for the acquisition of 14.9% of the shares of the company by a trust on behalf of Telecom Éireann's employees in return for changes in work practices as well as for financial interests.
11. European Communities (Interconnection in Telecommunication) (Amendment) Regulations, 2000 (S.I. No. 69 of 2000), and European Communities (Telecommunications Licences)(Amendment) Regulations, 2000 (S.I. No. 70 of 2000).
12. Other countries which were granted similar derogation were Greece, Luxembourg, Portugal, and Spain. The derogations differ in length and scope from country to country.
13. ODTR (2000b), p. 10.
14. Eircom (2000), p. 3.
15. *Ibid*, p. 4.
16. Most of such operators are TV deflector operators who deliver services by analogue means using UHF broadcasting bands. Many of them had been providing services illegally for many years, but a short-term licensing system for such operations was established by the ODTR with the consent of the Minister for Public Enterprise, in 1999.
17. ODTR, Media Release of 26th July 2000.
18. See, ODTR (2000c), 00/53.
19. See, ODTR "Significant Market Power in the Irish Telecommunications' Sector, Decision Notice: D 15/99 & Report on the Consultation Paper ODTR 99/59", December 1999, Document No. ODTR 99/75.

20. ODTR Decision Notice: D 15/99 & Report on the Consultation Paper ODTR 99/59, “Significant Market Power in the Irish Telecommunications Sector”, ODTR 99/75, December 1999. All markets in respect of which the ODTR designate SMP operators are reviewed annually by the ODTR.
21. Non-transmission aspects of broadcasting policy such as cultural and public service issues are responsibilities of the Department of Arts, Heritage, the Gaeltacht and the Islands.
22. Department of Public Enterprise, “Outline Legislative Proposals in relation to the Regulation of the Communications Sector /Consultation Paper” September 2000.
23. Ireland (1999), “National Development Plan 2000-2006”, (15 November), p. 68.
24. First Schedule of 1996 Act at item 1.
25. Other OECD countries whose telecommunications regulator is headed by one person are Belgium, the Czech Republic, Denmark, Germany, Hungary, Iceland, Luxembourg, Norway, and the United Kingdom. Other countries with an independent regulator have a collegiate body.
26. The levy on cable operators is a licence fee in relation to the provision of programme services, The telecommunications levy is a levy on telecommunication service providers in relation to the provision of telecommunication services.
27. ODTR (2000a), p. 49.
28. ODTR, “Introduction by the Director” at <www.odtr.ie/new/flash_theoffice.html>.
29. ODTR http://www.odtr.ie/foi_mission_statement.asp.
30. ODTR, *op. cit.*, note 26, p. 5.
31. Department of Public Enterprises, *op. cit.*, note 22.
32. First Schedule of 1996 Act at items 1 and 4.
33. *Ibid* at item 10.
34. Sections 3(7), (8), (9), 4(8), (9), (10), (11), 6(5) of the 1996 Act.
35. First Schedule of 1996 Act at item 16.
36. In telecommunications, the issue of ODTR’s accountability received much attention in 1998 when the Director declined to appear before the relevant parliamentary committee on the grounds that there were no statutory requirements for this. However, the Director has in fact appeared before parliamentary committees on several occasions since then.
37. See, Department of Public Enterprise (1998), “Statement of Strategy”, April, at the section “Accountability of regulatory system” available at www.irlgov.ie/tec/publications/dpe13.htm.
38. Available at www.irlgov.ie/tec/publications/regulatory.htm.
39. For a fuller discussion of “democratic deficit” in the regulatory process, see Ferris, Tom (2000), “Why Regulate Irish Utilities?”, paper delivered to the 23rd Annual Economic Policy Conference of the Dublin Economic Workshop, October.

40. This document is available on the website of the Department of Public Enterprise at www.irlgov.ie/tec/communications/commconsultation.pdf. The discussion and analysis in the “Governance and Accountability” document is of a cross-sectoral, generic nature, but implementation of the policy proposals is being done by means of sector-specific measures.
41. The Department of Public Enterprise, *op. cit.*, note 36 at Item 3(a)(b). Postal regulation has already been transferred to the ODTR under a Statutory instrument of 27 September 2000.
42. *Ibid* at Item 4(h).
43. Department of Public Enterprise, *op. cit.* note 22 at Head 10.
44. *Ibid.* at Head 25.
45. Incumbents, who are usually subject to a decision by the regulator, have an interest to appeal to the courts to delay implementation of a decision. Cost savings from delaying implementation are often significantly higher than court costs.
46. See note 11.
47. Department of Public Enterprise, *op. cit.*, note 22 at Head 44.
48. Both the Department and the ODTR are subject to extensive Freedom of Information legislation, which provides access to decision-related information.
49. Available at <http://www.entemp.ie/tcmr/cmrg1.pdf>.
50. For example as in the Netherlands. See, OECD (2000), “Telecommunications Regulations: Institutional Structures and Responsibilities”, at pp. 22-23.
51. Department of Public Enterprise, *op. cit.*, note 22 at Head 46.
52. Eircom has paid in the last year approximately IEP 5 million in fines for delayed lines.
53. According to the ODTR, 75% of complaints referred to it are resolved within ten days. It has also agreed with various operators upon an acceptable timeframe for the resolution of complaints. Another point to be noted here is that the proposed legislation will remove the provision limiting the mandate of the ODTR to handle complaints which are within the scope of the Small Claims Court under Regulation 28 of the European Communities (Voice Telephony and Universal Service) Regulations, 1999 (S.I. No. 71 of 1999), and will explicitly provide the new Commission with responsibilities in this regard.
54. Department of Public Enterprise, *op. cit.*, note 22 at Head 40.
55. It should be acknowledged that condition 6.9 of the General Telecommunications Licence requires that operators implement and make public an appropriate code of practice for their dealings with users.
56. ODTR, *op. cit.*, note 13.
57. Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisation and individual licences in the field of telecommunications services, Official journal L 117, 07/05/1997 pp. 0015-0027.

58. ODTR (1998), "Application for a General Telecommunications Licence", October, Document No. 98/46R at 3.8 and 3.9; ODTR (1998), "Telecommunications Licences: Guidance Notes for Applicants", October, Document No. 98/44R at 3.5 and 4.3.
59. Proposal for a Directive of the European Parliament and the Council on the authorisation of electronic communications networks and services, COM(2000) 386 final.
60. OECD (2000a), at 18.
61. The derogation required that the CATV subsidiary of Telecom Éireann, Cablelink, be managed at arm's length. This company was eventually divested by the incumbent.
62. Eircell is also designated as having SMP in national interconnection market.
63. ODTR, *op. cit.* note 18.
64. ISPs wishing to operate using the Eircom's 1891 service must obtain an 1891 number from the ODTR and must have a Point of Presence in the local call area of the end user.
65. ODTR (1999), pp. 29-30.
66. The ODTR states that 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. See ODTR (2000d).
67. Local Loop Unbundling (LLU) refers to a mandatory opening-up of the local loop (the last part of physical telecommunication circuit leading to the subscriber's premises) to enable new entrants to access customers directly over the incumbent's networks. The ODTR found that one of the three forms of the LLU, bitstream access, was within their mandate to implement, but the other two, direct access to raw copper and line sharing were not supported by the EU legal framework. See, ODTR Decision D6/00 (Document No. ODTR 00/30) for further details.
68. ODTR, Press Release of 19 April 2000.
69. As a result of the Regulator's position the issue of unbundling was examined by the Competition Authority who took legal actions against *Eircom* to mandate unbundling. Although a court ruling has not yet been made, events at the EU level where final action has been taken to require unbundling have made such a ruling academic.
70. ADSL (Asymmetric Digital Subscriber Line) is one of the digital coding technologies that utilise an existing telephone line of copper for high-speed data communications. ADSL has been commercialised the most extensively among various DSL technologies and the word "Asymmetric" comes from the fact that downstream data flow (downloading) of up to 8Mbps is faster than that of upstream (uploading) of up to 1Mbps.
71. The third licensee started operations in November of 2000.
72. Section 1, Part 7 of Schedule of Mobile Telecommunications Licence to Esat Digifone, January 2000, Document No. ODTR 00/03.
73. Some Eircom discount schemes currently include free itemised billing. An examination of whether regulatory action is required in this area is being carried out by the ODTR in conjunction with their work on access costing and universal service.

74. Document ODTR 98/03.
75. Eircom, Esat, Formus Communications and Prince Holdings obtained broadband licences, and Eircom, Esat, Formus and Prince Holdings also obtained narrowband licences.
76. See, for details, ODTR Press Release 26th July 2000.
77. Fees for telecommunications licences are subject to the consent of the Minister for Finance.
78. Department of Public Enterprise, *op. cit.* note 22 at Head 30 (Paragraph 2).
79. The incumbent had to process orders manually until a fully automated system was introduced in April 2000.
80. European Communities (Voice Telephony and Universal Service) Regulations, 1999 (S.I. No. 71 of 1999), and European Communities (Interconnection in Telecommunications) Regulations, 1998 (S.I. No. 15 of 1998).
81. Eircom also had universal service obligations prior to this designation under Section 14 of the Postal and Telecommunications Services Act, 1983.
82. Regulation 5(1) of the European Communities (Voice Telephony and Universal Service) Regulations, 1999 (S.I. No. 71 of 1999).
83. *Ibid* at paragraph (17).
84. It should be noted however that the European Commission, as part of its proposed regulatory package published in July 2000, proposes to remove the second option (a supplementary charge to interconnection) in its proposed new Directive on Universal Service. That new Directive when adopted after discussions (and possibly amendments) in the Council of Ministers and in the European Parliament will replace the Directive on which current Irish regulation, *i.e.* European Communities (Voice Telephony and Universal Service) Regulations, 1999 (S.I. No 71 of 1999), is based.
85. Department of Public Enterprise, *op. cit.* note 22 at Head 40.
86. At present operators with General Telecommunication Licence holders are required to implement their own appropriate code of practice for the resolution of customer disputes under its condition 6.9.
87. However, it is not evident that a quarterly review is necessary. With resource constraints that has affected ODTR's ability to act in certain areas, a less frequent review would be sufficient.
88. OECD, "Communications Outlook 1999", Paris, Table 4.11 at 81.
89. Eircom only.
90. OECD (1999*b*), Table 4.1 at 97.
91. ODTR "The Irish Telecommunications Market/ Quarterly Review" for September 2000.
92. *Ibid* at Table 3.2.
93. ODTR "The Irish Telecommunications Market/ Quarterly Review" for September 2000 and for May 2000.

94. OECD (1999*b*), Table 2.2.
95. The basket includes a number of calls distributed at different times of the day, different days of the week, and over different distances. The statistics are prepared in US\$ using both purchasing power parity (PPP) and current exchange rates. In general, it is considered that the PPP figures provide a more reliable comparison.
96. See, OECD (1999*b*), Table 7.9.
97. OECD countries are divided into three regions (Europe, North America, Asia-Pacific) and international call destinations are assumed to be distributed equally to each area.
98. OECD (2001).
99. *Ibid.*
100. OECD (2000*b*), p. 60.
101. OECD (1999*b*), Table 8.5, p. 199.
102. ODTR (2000), “Measuring Licensed Operator Performance: Report on Consultation”, 27 January, Document No. ODTR 00/04.

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