



# THE PRESENT AND FUTURE IMPACT OF EC LAW ON TELECOMMUNICATIONS IN IRELAND

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On

## TELECOMMUNICATIONS: LEGAL ISSUES IN THE NEW COMPETITIVE ERA

by

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“Stand anywhere in the quiet countryside, away from the crowded cities, ploughed fields or other signs of men’s activities. Then your picture may well be the same as that of your forefathers, hundreds or even thousands of years ago. And yet, during the last few decades, a subtle change has occurred, which none of our senses can register. Radio waves, bearing messages in many tongues flow ceaselessly around us. We can only hear and see them if we convert them to other waves to which our ears and eyes are receptive.”

Preface to *From Semaphore to Satellite*, International Telecommunication Union, Geneva, 1965

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## Introduction

Each generation considers itself at the dawn of new age – a new era. We too consider ourselves as entering a new phase of technological, political and social development. We are at the second stage of European economic union. We are also at the dawning of a new multimedia world where sound, text and image will be conveyed simultaneously over telecommunication networks.

The Commission of the European Communities in its Paper *Growth Competitiveness and Employment: The Challenges and Ways Forward Into the 21<sup>st</sup> Century* (1993)<sup>2</sup> noted that in the context of the 21<sup>st</sup> century, the Information Society was “a crucial aspect in the survival or decline of Europe.”<sup>3</sup> Whilst appreciating the words of US Supreme Court Justice Cardozo that “a fertile source of perversion in constitutional theory is the tyranny of labels”<sup>4</sup> and, I would add to that fertile source, those who tyrannise with an absolute sense of pessimism or utopian optimism, we must take the words “survival or decline” in the context of telecommunications services in Europe and in Ireland seriously. Telecommunication is and will continue to be one of the fastest changing sectors in the economies of the developed world. This will have far-reaching effects on production methods, employment, the ways business are organized, working hours, pay and conditions, the place of work (teleworking) and consumption patterns generally. The social and economic stakes are high. The telecommunications sector in the European Union is now worth over a 140 billion ECUs and growing strongly. International and cross-border telephone traffic in the Union rose by over 10% in 1993<sup>5</sup>.

The future of Europe’s telecommunications infrastructure lies at the heart of the debate on the Information Society considered by the 1994 Bangemann Group

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<sup>2</sup> COM (93) 700 final.

<sup>3</sup> Ibid. p. 13

<sup>4</sup> *Snyder v. Massachusetts* 291 US 97, 114 (1934)

<sup>5</sup> *The Consultation on the Green Paper on the Liberalisation of Telecommunications Infrastructures and Cable Television Networks*, COM (95) 158, final p.3.

Report, *Europe and the Global Information Society*<sup>6</sup> and in the Commission's *Action Plan on Europe's Way to the Information Society*.<sup>7</sup>

An adaptable regulatory framework was recognised as one of the eight principles for the realisation of the Global Information Society at the February 1995 summit in Brussels:

“The regulatory framework should put the user first and meet a variety of complementary societal objectives. It must be designed to allow choice, high quality services and affordable prices. It will therefore have to be based on an environment that encourages dynamic competition, ensures the separation of operating and regulatory functions as well as promotes interconnectivity and interoperability.”

Therein lies the challenge and the opportunities.

### **Exclusive Privileges: Application of EC Competition Rules**

A dominant theory of regulation in the field of telecommunication has been the concept of natural monopoly: telecommunication is an essential public service with economies of scale and scope. There is also the standardisation factor – the preservation of the integrity of the network. These factors, together with Article 90(2) of the EC Treaty which appeared to sanction to certain extent undertakings to which the State granted special or exclusive rights “immunised” State telecommunications administrations from the effects of competition and EC law.

In the 1980s, the EC adopted a more aggressive “case-by-case” approach to enforcement of competition rules in the telecommunication sector. One such case involved the United Kingdom, now one of the most liberalized regimes in telecommunications in the world.

In *Telespeed Services Ltd v. United Kingdom Post Office* (1982)<sup>8</sup> the EC Commission held that British Telecom (BT), then a State-owned corporation with a statutory monopoly for the provision of telecommunications services in the United Kingdom, had infringed Article 86 of the EEC Treaty (abuse of a dominant position) by prohibiting private message forwarding agencies from relaying in the

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<sup>6</sup> *Europe and the Global Information Society, Recommendations to the European Council*, May 26, 1994.

<sup>7</sup> *Communication on Europe's Way to the Information Society: An Action Plan* COM (94) 347, 17.7.94.

<sup>8</sup> Decision 82/861 EEC of December 10, 1982; [1983] 1 CMLR 457

UK messages received from and intended for other countries. The restrictions had essentially prevented UK customers from acting as intermediaries for users in other EC States by taking advantage of difference in tariff structures or costs to relay telex messages for countries via the UK.

BT had been relying on a recommendation of the consultative committees of the International Telecommunications Union, the oldest of the United Nations specialised agencies. The Commission issued a “cease and desist order” but did not impose a fine because of the “special circumstances of the case.” Some months before the Commission decision BT decided to withdraw the “offending” measure.

The *British Telecom* case became a landmark because it established that Community rules on competition applied to the telecommunication sector – a legal concept that is familiar to us today.

The sequel to the British Telecom case is of relevance today. The Italian Government, in *Re British Telecommunications: Italy v. EC Commission* (1985)<sup>9</sup> based on Article 173 of EC Treaty, requested the Court of Justice to annul the Commission decision in *British Telecom*. Paradoxically, but true to its liberalisation philosophy, the United Kingdom intervened in the case to support the Commission. Italy argued, inter alia: BT’s exercise of rule-making powers, (its power to make schemes pursuant to statute – similar to Telecom Ireland’s existing authority<sup>10</sup>, could not be regarded as the actions of “an undertaking” within the meaning of Article 86 and that by reason of the statutory monopoly accorded to BT, Article 222 of the Treaty did not allow competition rules to be applied to it. Second, it was argued that the Commission did not attempt to justify the alleged priority of Community rules over those of international law and that the Commission was jeopardising the accomplishment of the tasks assigned to BT by declaring the regulations issued by it to be contrary to Community Law. In this context, Italy argued that the activities of private message-forwarding agencies were economically detrimental to the British telecommunications service. Further, in the context of Article 90(2), Italy stressed the need for world-wide co-operation under the auspices of the ITC and that the decision in question by preventing BT from satisfying in full its obligations in respect of such international co-operation risked prejudicing the accomplishment of the specific task assigned to the national undertaking in question.

The application by Italy for annulment of the Commission decision was dismissed by the Court of Justice. The Court held that a State enterprise which operates

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<sup>9</sup> Case 41/83, Decision of March 20, 1985, [1985] 2 CMLR 368

<sup>10</sup> Section 90 of the Postal and Telecommunications Services Act 1983

public telecommunication “installations” and makes them available to the users in return for payment of charges is “an undertaking” whose activities are subject to Article 86 of the EC Treaty. The Court did note that it had not been established that such message-forwarding agencies used “point-to-point” circuits in order to retransmit messages to third parties.

## **The 1987 EC Telecommunications Green Paper**

The *1987 Telecommunications Green Paper*<sup>11</sup> from the European Commission became a blueprint for what is now the European Union’s telecommunication policy. Essentially, these policies (many of which have been subsequently developed and already implemented) can be specified as:

- liberalisation of the supply and provision of terminal and network equipment;
- the freedom to provide certain telecommunications services;
- the separation of regulatory and operational functions;
- ensuring open access conditions to networks, as well as interworking;
- Interconnection through Open Network Provision (ONP);
- the promotion of European Telecommunication Standards Institute (ETSI); and
- the full application of the Community rules on competition to the undertaking involved in the telecommunications sector.

## **Terminal Equipment**

A central element in EC telecommunication policy is the elimination of monopoly rights – where these are incompatible with the EC Treaty. The first exclusive right to be eliminated was the manufacture and supply of telecommunications terminal equipment pursuant to *Commission Directive 88/30/EEC* (“the Terminal Equipment Directive”). This Directive was implemented in Ireland on an

administrative basis – without resort to primary or secondary legislation.<sup>12</sup> Telecommunications terminal equipment is not to be connected to or used in conjunction with the public telecommunication network of Telecom Eireann unless such equipment was of a type that had been approved by the Minister for Communications. A person who places on the market, or connects to or uses in

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<sup>11</sup> *Green Paper on the Development of a Common Market for Telecommunications Services and Equipment*\_COM (87) 290.

<sup>12</sup> Notices from Department of communications published in the national press on January 29, 1990 and October 30, 1992.

conjunction with the public telecommunication network, or who cause or permits to be so connected or used, telecommunication terminal equipment which has not been approved shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding IR£800 or to imprisonment for a term not exceeding 12 months or to both. The District Court is empowered (pursuant to the 1992 Regulations) to grant search and seizure warrants where, inter alia, equipment is being used in contravention of the 1992 Regulations.

## **The Services Directive**

The second exclusive right to be restricted pursuant to liberalisation measures of the EC was Telecom Eireann's so called "exclusive privilege" pursuant to section 87 of the *Postal and Telecommunication Service Act, 1983*. This was effected pursuant to *Commission Directive 90/388 EEC on Competition in the Markets for Telecommunications Services* ("the Services Directive")<sup>13</sup> The Services Directive may be described as a seminal legislative measure on telecommunications liberalisation around which will be built other measures on liberalisation in preparation for January 1, 1998, the date set for full liberalisation of all telecommunications services and appropriate infrastructure with additional transitional periods for certain Member States.<sup>14</sup>

*Commission Directive 94/46/EC of 13 October 1994* in regard to satellite communications brought satellite earth station equipment within *Commission Directive 88/30/EEC* (the Terminal Directive) and brought satellite services within the scope of the *Services Directive*. The *Satellite Directive* essentially removes barriers to the delivery of liberalised services via satellite communications networks. On December 21, 1994, the Commission published a draft amendment to the *Services Directive* to allow the use of cable-television networks for the delivery of liberalised telecommunications services<sup>15</sup>.

## **Voice Telephony**

One of the crucial elements in EC legislation is "voice telephony". Article 2 of the *Services Directive* provided that Member States must withdraw all special or exclusive rights for the supply of telecommunications services other than "voice telephony". "Voice telephony" is defined in the *Services Directive* as meaning

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<sup>13</sup> J. No L192 of 24 July 1990

<sup>14</sup> See Council Resolution 93/C.213/01 of July 22, 1993; The Minister for Communications has yet to decide at what stage full liberalisation will apply.

<sup>15</sup> OJC 76 28.3.95

“the commercial provision for the public of the direct transport and switching of speech in real-time between public switched network termination points, enabling any user to use equipment connected to such a network termination point.”<sup>16</sup>

The *Services Directive* was implemented in Ireland by the *European Communities (Telecommunications Services) Regulations 1992* (“the 1992 Regulations”).<sup>17</sup> The 1992 Regulations amended the privilege of Telecom Eireann, incorporated the definition of “voice-telephony” into Irish law and provided that Telecom Eireann’s privilege was restricted to offering, providing and maintaining the public telecommunications network and offering, providing and maintaining voice telephony services and certain other telecommunications services such as telex, paging and satellite services.<sup>18</sup>

The *Services Directive* justified the continuation of the public voice telephony exclusive privilege under Article 92(2) of the EC Treaty on the basis of the universal service obligations at that time assigned to public telecommunications operators in all Member States. In particular, the voice telephony exclusive privilege was to ensure that operators retained a sufficient revenue base for the provision of universal service.

The Commission has stated that commercial “simple resale” of voice telephony is a reserved service (as distant from a liberalised service) pending full liberalisation of public voice telephony.<sup>19</sup> The Commission document refers to the concept of “simple resale” as referring to the situation where the telephone call both originates and terminates on the public switched network. The Commission states that the service is offered to the public since the local call may originate from any user of the public switched network and the customer itself not connected by the service provider via a dedicated leased line.<sup>20</sup> In its 1995 document<sup>21</sup> the Commission stated that unofficial by-pass would be noticed by the relevant Member State. The Commission noted that as any commercial offer would normally involved advertising of the services available,

“or, at the very least, issuing price lists, contracts and invoices, such by-pass should be evident from an early stage. Furthermore, any breach leading to a substantial diversion of traffic on to a competitor’s network is rapidly detected by a public operator providing the competitor’s leased line capacity. The [Telecommunications Operator] would clearly have an

<sup>16</sup> Article 1 of *Services Directive*.

<sup>17</sup> S.I. No. 45 of 1992.

<sup>18</sup> Section 87 of the *Postal and Telecommunications Services Act 1983* as amended by Reg. 3 of S.I. No of 1992.

<sup>19</sup> See *Communication to the European Parliament and the Council on the Status and Implementation of Directive 90/388/EEC on Competition in the Markets for Telecommunications Services*. COM (95) 113 final, 04.04.1995.

<sup>20</sup> See *ibid* p. 15.

<sup>21</sup> *Ibid.*.

interest in bringing the situation to the attention of the appropriate national regulatory authority.”<sup>22</sup>

A person offering commercial voice telephony to the public without a licence is liable on conviction on indictment to a fine to IR£50,000 and five years imprisonment.<sup>23</sup>

The Commission also stated in its 1995 Communication to the Parliament and the Council:

“New operators generally have shown that they will respect the voice telephony monopoly. Service providers do not want to take the risk of having their authorisation revoked or having the national regulatory authority requesting the disconnection of the relevant leased lines and not being able to fulfil their obligations towards their clients.”<sup>24</sup>

Changes in technology, politics and costs have facilitated what Professor Eli Noam (1992) has described as “the dynamics of group formation” – the shift from a single public network towards the emergence of multiple telecommunications networks.<sup>25</sup> *Council Resolution 93/C213/O2* confirmed the deliberations of the 1992 *Telecoms Review*<sup>26</sup> that the basic voice monopoly will no longer be permitted from January 1, 1998 with the exception of certain transitional periods of up to five years for Spain, Ireland, Greece and Portugal and, where justified, two years for Luxembourg. The Irish Government has yet to decide at what date full liberalisation will apply.

## Value-Added Services

Value-added telecommunications services and other services excluding public voice telephony services were liberalised by the 1992 Regulations subject to being licensed by the Minister for Transport, Energy and Communications pursuant to Section 111 of the *Postal and Telecommunications Services Act 1983*.

The 1992 Regulations provide for the rights of these licensees in the context of access to and use of the public telecommunications network; the conditions applied must be objective and published. Furthermore, requests for leased lines must be met within a reasonable period and there should be no restrictions on

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<sup>22</sup> Ibid., p. 17.

<sup>23</sup> Section 4 of the *Postal and Telecommunications Services Act 1983*.

<sup>24</sup> See note 19 above, p.17.

<sup>25</sup> *Telecommunications in Europe*, New York and Oxford, Oxford University Press, 1992.

<sup>26</sup> SEC (92) 1048 – C3- 01-01/93



their use other than to ensure non-provision of voice-telephony services, the security of network operations, the maintenance of network integrity and, in justified cases, the interoperability of services and data protection.<sup>27</sup>

The Minister for Transport, Energy and Communications is the surveillance authority pursuant to the 1992 Regulations.<sup>28</sup>

## Mobile Communications

The 1994 Report *Europe and the Global Information Society*<sup>29</sup> identified mobile communications as a necessary building block of the Information Society and advised on the strengthening of its potential. Within the fast growing telecommunications sectors, mobile communications is the fastest growing segment of that market. The mobile and personal communications facility has the ultimate potential to reach near 80% of the population (i.e. up to one mobile communication facility per adult). The second GSM Mobile service is to be licensed in the autumn of 1995.<sup>30</sup>

Following on the 1994 *Green Paper on Mobile and Personal Communications*,<sup>31</sup> the Commission in a proposal in November 1994 for a Council Resolution on the further development of mobile and personal communications in the European Union<sup>32</sup> proposed, prior to January 1, 1996 the introduction of further competition, (where this was still not the case) in the mobile and personal communications sector, with the number of mobile licences granted to be limited only on the grounds of essential requirements and public-service requirements. This would entail the full application of Community competition rules and an amendment of *Directive 90/388/EEC (the Services Directive)*.<sup>33</sup> A *Code of Conduct for Service Providers* describing the rights and duties of service providers was proposed before January 1 1996, subject to bi-annual review, including an examination as to whether the protection of consumer interests can be sufficiently safeguarded by

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<sup>27</sup> Reg. 4(3) of 1992 Regulations, above. See also *European Communities (Telecommunications Service) (Appeals) Regulations, 1994* (S.I.No 398 of 1994)

<sup>28</sup> Reg. 5 of 1992 Regulations, above.

<sup>29</sup> *Europe and the Global Information Society, Recommendations to the European Council*, May 26, 1994.

<sup>30</sup> In this context, see generally *European Communities (Co-ordinated) Introduction of Public Pan-European Cellular Digital Land-Based Mobile Communications – GSM Regulations, 1994*, (S.I.No. 416 of 1994).

<sup>31</sup> *Towards the Personal Communications Environment: Green Paper on a Common Approach in the field of Mobile and Personal Communications in the European Union*, COM (94) 145, final 27.04.04, 1994.

<sup>32</sup> *Communication to the European Parliament and the Council on the Consultation on the Green Paper on Mobile and Personal Communications*, COM 94, 492, final, 23.11.1994.

<sup>33</sup> *Ibid*, section VI. 1. 1, pp. 30 and 52.

the voluntary application of this code.<sup>34</sup> It was also proposed that service providers should have full commercial freedom to offer a combination of services provided under different mobile licences as well as the ability to provide services in different Member States, subject only to the provisions of the Treaty competition rules.

## **Telecommunications Infrastructure and Cable TV Operators**

*The 1994 and 1995 EC Commission Green Papers on the liberation of the Telecommunications Infrastructure and Cable TV networks,*<sup>35</sup> and subsequent consultations considered not only the core issue of infrastructure liberalization but also the overall regulatory environment to achieve full liberalisation of telecommunications services and networks by January 1, 1998 – subject to certain transitional arrangements for Ireland and others.

Full liberalisation of telecommunications services was linked with that of full liberalisation of infrastructure and the issue of harmonisation. It was proposed by the Commission in May 1995<sup>36</sup> that before July 31, 1995 the Commission would put forward draft separate measures amending the *Services Directive (90/388/EEC)* in the context of full liberalisation of telecommunications infrastructure and services (from January 1, 1998) and before January 1, 1996 to adopt an amendment of the *Services Directive* applying the *Services Directive* to cable television network and mobile and personal communications.<sup>37</sup> The

Commission proposal to amend the *Services Directive (90/388/EEC)* to allow the use of cable television networks for the delivery of liberalised telecommunications services was published in March 1995.<sup>38</sup> At the time writing, June 1995, some 124 licences have been issued by the Department of Trade and Industry in the United Kingdom to cable television service operators authorising them to provide voice telephony services.

## **Open Network Provision**

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<sup>34</sup> Section VI.1.2 above.

<sup>35</sup> *Green Paper on the Liberalisation of Telecommunications Infrastructure and Cable TV Networks, Part 1; Principles and Timetable*, COM (94) final, 25.10.94, and *Green Paper on the Liberalisation of Telecommunications Infrastructure and Cable TV networks – Part 11: A Common Approach to the Provision of Infrastructure in the European Union*, COM (94) 682 final, 25.1.1995.

<sup>36</sup> *Consultation on the Green Paper on the Liberalisation of Telecommunications Infrastructure and Cable Television Networks*, COM (95) final 03.05.1995.

<sup>37</sup> See *ibid*, section VI, Timetable for Action, p.47.

<sup>38</sup> O.J.C 76, 28.3.1995.

Open Network Provision (ONP), first presented as a concept in the 1987 Green Paper,<sup>39</sup> is one of the cornerstone provisions of EC telecommunications law. Its purpose is to establish in the European Union, an environment favorable for the development of competition, for the benefit of the telecommunications industry as well as of the users of telecommunications services. To achieve more effective competition, the ONP programme is being realised by the development of a harmonised regulatory framework on the basis of transparent and non-discriminatory conditions for access to telecommunications networks and services. The principles of these harmonised Open Network Provision conditions are set out in the 1990 *ONP Framework Directive*<sup>40</sup> implemented in Ireland by *European Communities (Telecommunications Services) Regulations 1992*.<sup>41</sup>

The *ONP Framework Directive* identifies three main areas to which ONP harmonised conditions should apply:

- technical interfaces, including network termination points;
- usage and supply conditions (eg. delivery time, repair time, conditions for resale of capacity etc); and
- tariff principles (in particular cost-orientation and unbundling).

The *ONP Framework Directive* requires *ONP* conditions to be

- based on objective criteria
- transparent and published; and
- to ensure equal and non-discriminatory access.

In Ireland, apart from maintaining for an interim period certain special or exclusive rights in public voice telephony services, the *Framework Directive* limits restrictions on access to public telecommunications networks and services to non-economic reasons in the public interest, the so-called “essential” requirements:

- security of network operations;

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<sup>39</sup> See note 11 above.

<sup>40</sup> *Council Directive of June 28, 1990 on the establishment of the internal market for telecommunications services through implementation of Open Network Provision*, 90/387/EEC

<sup>41</sup> S.I. No. 45 of 1992.

- maintenance of network integrity;
- interoperability of services in justified cases; and
- protection of data as appropriate.

Specific ONP provisions have been developed for the following areas:

- the provision of leased lines in the form of a Directive,<sup>42</sup> implemented in Ireland by regulations in 1994;<sup>43</sup>
- the provision of Packet Switched Data Services (PSDS) in the form of a recommendation;<sup>44</sup> and
- the provision of Integrated Service Digital Networks (ISDN) services also in the form of a recommendation.<sup>45</sup>

A proposal for a Council Directive on the application of ONP to voice telephony was first submitted by the Commission in September 1992. Following the implementation of the *Treaty of the European Union* on November 1, 1993, the European Parliament and the Council were unable to reach agreement on a joint text, mainly on account of the issue of comitology, in particular the procedures for consultation that apply when the Commission exercises implementing powers conferred upon it by an instrument adopted jointly by the European Parliament and Council pursuant to Article 189b of the EC Treaty. The aim of the proposed *European Parliament and Council Directive on the Application of Open Network Provision to Voice Telephony*<sup>46</sup> is to:

- establish the right of users of the telephone service;
- ensure open and non-discriminatory access to the telephone network for all users, including service providers offering competitive services; and

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<sup>42</sup> *Council Directive of 5 June on the Application of Open Network provision to Leased Lines* (92/44/EEC OJL 165/27, 19.06.92).

<sup>43</sup> *European Communities (Application of Open Network Provision to Leased Lines) Regulations* 1994 (S.I. No. 328 of 1994).

<sup>44</sup> *Council Recommendation of June 5, 1992 on the Application of Open Network Provision to Public Switched Data Services*, 92/382/EEC, OJL 200/01, 18.07.92.

<sup>45</sup> *Council Recommendation of June 5, 1992 on the application of Open Network Provision to ISDN* (92/383/EEC OJL 200/10, 18.07.92).

<sup>46</sup> *Proposal for a European Parliament and Council Directive on the Application of Open Network Provision (ONP) to Voice Telephony* COM (94) 689 final, 01.02.1995.

- enhance Community-wide provision of voice telephony services

The proposed Directive seeks to enhance the importance which the Treaty gives to consumer protection in the European Union. The European Parliament and the Council are expected to adopt the draft Directive shortly.

The next phase of Open Network Provision will be designed to meet the requirements of a fully competitive environment from January 1, 1998 dealing with:

- applicability, i.e. the entities to which Open Network Provision conditions apply;
- the core issues for regulation, the central importance of interconnection and interoperability in a competitive environment; and
- standardisation, emphasising the development of market-led interface standards as the basis for interconnection and interoperability.

The European Commission is assisted in its responsibilities for development and implementation of Open Network Provision by the ONP Committee, a regulatory

committee established by the *Framework Directive* and composed of delegations from the Member States and observers from the European Free Trade Association (EFTA) countries. Each delegation consists of representatives of the National Regulatory Authority for telecommunications assisted by national experts. The Commission and the ONP Committee must take into account the view of a wide range of interested parties through broad consultation in the sector including representatives of telecommunications organisations, users, consumers, manufacturers and service providers.

## **PUBLIC PROCUREMENT**

Public procurement is an important part of the European Union's *Internal Market Programme* and there has been a very significant widening of EU involvement in this area in recent years. EU Directives set legal obligations on contacting authorities.

Three different types of contract are identified in EU Directives:

- Work contracts - building and civil engineering works

Supplies contracts - purchasing goods

Services contracts - advertising, property management services, architectural/engineering/surveying, management consultancy services and so on.

A new consolidated Directive for the Utilities, 93/38/EEC (OJ L 199 of 9.8.1993), incorporating Services contracts came into effect from 1 July 1994.

The current thresholds are:

Works Contracts:	5,000,000 EUC [c.IR£3,865,670]	
Supply Contracts:	600,000 EUC [c.IR£463,880]	for entities operating in the telecommunications sector.
Service Contacts:	600,000 ECU [IR£463,880]	

This measure was implemented in Ireland by the *European Communities (Award of Contracts operating in the Water, Energy, Transport and Telecommunications Sectors) Regulations, 1995*.<sup>47</sup>

### **The Eirpage Case**

The Commission adopted its first formal decision applying between the EC *Competition Rules in the Telecommunications Sector*<sup>48</sup> to a joint venture between Telecom Eireann and Motorola Ireland Ltd for the provision of paging service in *Case IV/32/737, Re Eirpage Ltd*<sup>49</sup> (signed by Commissioner Sir Leon Brittan).

Telecom Eireann and Motorola Ireland Ltd, a subsidiary of US Motorola Inc., jointly set up a company, Eirpage Ltd., to provide a nation-wide radiopaging service interconnected to Telecom Eireann's telecommunications network. Paging is a one-way means of communication.

Following the principles set out in the *Guidelines* this joint-venture between two potential competitors was found to fall under Article 85(1) (prevention, restriction or distortion of competition). But the Commission considered that the joint venture also made possible the rapid introduction of a new paging

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<sup>47</sup> S.I. No.51 of 1995

<sup>48</sup> 92/C, 233/02 OJ C233/2, 06.09.91

<sup>49</sup> [1993] 4CMLR 64

service previously unavailable to consumers and business in Ireland, such as nation-wide coverage and direct contact with the paging service customer. The market for the sale of paging receiver equipment was expected to benefit, as customers to the Eirpage service were free to use any brand of compatible receiver units on the system, which was so constructed as to allow the broadest possible range of compatibility. Under these circumstances, the Commission concluded that the co-operation could be exempted under Article 85(3) of the EEC Treaty.

## **The Kingdom of the Customer**

The words “consumer”, “choice”, “the market”, “improved efficiency” and “quality of service” are the mantras of present-day regulators both at Member State level and what may be described as European level - the European institutions namely the Council, the European Parliament and the Commission.

In a significant speech on the future of regulation of telecommunication in Ireland in April 1995 in the context of making preparations for the award of a licence to operate a second GSM Mobile service, the choice of a strategic partner for Telecom Ireland, and the choice of a date for liberalising voice telephony service and telecommunications infrastructure, the Minister for Transport, Energy and Communications, Michael Lowry, TD, articulated a basic philosophy that will permeate legislative change in Ireland:

“The future of the telecommunications industry in Ireland will be written not by a Minister for Communications, or by any Government. Still less will be written by Telecom [Ireland] or any other service providers. The future of telecommunications in Ireland will be written by the customer... The pace of change will be driven by the customer... The real revolution [in telecommunications] is that in the future the customer will be king – and the countries, the companies and individuals who realise that are the ones who will benefit most from the change.”<sup>50</sup>

We are entering upon the era of the *Kingdom of the Customer* encouraged by EC legislation and jurisprudence.

End.

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<sup>50</sup> Speech by Michael Lowry, TD, Minister for Communications at Communications 95 Exhibition, RDS, Dublin, April 4, 1995 as issued by the Government Information Services, Dublin.