

**Draft for Consultation,  
December 2002 March 2003**

**DRAFT OF  
EUROPEAN COMMUNITIES (ELECTRONIC  
COMMUNICATIONS)(FRAMEWORK) REGULATIONS, 2003**

**To be made by the Minister for Communications,  
Marine and Natural Resources**

EUROPEAN COMMUNITIES (ELECTRONIC  
COMMUNICATIONS)(FRAMEWORK) REGULATIONS, 2003

I, Dermot Ahern, Minister for Communications, Marine and Natural Resources, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive No. 2002/21/EC of 7 March 2002<sup>1</sup> of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, hereby make the following Regulations:

Citation and Commencement

1. (1) These Regulations may be cited as the European Communities (Electronic Communications)(Framework) Regulations, 2003.
- (2) These Regulations shall come into operation on the            day of            , 2003.

Interpretation

2. (1) In these Regulations, except where the context otherwise requires:

“*Access Regulations*” means the European Communities (Electronic Communications )(Access) Regulations, 2003;

“*Act of 2002*” means the Communications Regulation Act 2002 (No. 20 of 2002);

“*application program interface (API)*” means the software interfaces between applications, made available by broadcasters or service providers, and the resources in the enhanced digital television equipment for digital television and radio services;

“*associated facilities*” means those facilities associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service. It includes conditional access systems and electronic programme guides;

“*Authorisation Regulations*” means the European Communities (Electronic Communications)(Authorisation) Regulations, 2003;

“*ComRegCommission*” means the Commission for Communications Regulation established by section 6(1) of the Communications Regulation Act, 2002 (No. 20 of 2002);

---

<sup>1</sup> O.J. No. L 108 of 24.4.2002, p. 33.

“*Competition Authority*” means the body established under section 10(2) of the Competition Act, 1991 (No. 24 of 1999) and continued in being by section 29 of the Competition Act, 2002 (No.14 of 2002);

“*conditional access system*” means any technical measure and/or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or other form of prior individual authorisation;

“*consumer*” means any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business or profession;

“*the Directive*” means Directive No. 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services;

“*electronic communications network*” means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;

“*electronic communications service*” means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude(s) services providing, or exercising editorial control over, content transmitted using electronic communications networks and services and excludes information society services, as defined in Article 1 of Directive 98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks;

“*electronic programme guide*” means any electronic means of providing information to the public in relation to the schedule of programme material the subject of any broadcasting service and which electronic means is an integral part of the distribution and reception system by which the broadcasting service is provided;

“*end-user*” means a user not providing public communications networks or publicly available electronic communications services;

“*enhanced digital television equipment*” means set-top boxes intended for connection to television sets or integrated digital television sets, able to receive digital interactive television services;

“*European Commission*” means the Commission of the European Communities;

“*European Standards Organisations*” means the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC), and the European Telecommunications Standards Institute (ETSI);

“*Member State*” means a member State of the European Community;

“*Minister*” means the Minister for Communications, Marine and Natural Resources;

“*national numbering scheme*” means the scheme administered by ~~ComReg~~ the Commission and which sets out the sequence of numbers which must be used to route communications to specific locations, terminals, persons or functions on public electronic communications networks;

“*national regulatory authority*” means the body or bodies charged by a Member State with any of the regulatory tasks assigned in the Directive and the Specific Directives;

“*number*” includes a character and a combination of numbers or characters or both;

“*provision of an electronic communications network*” means the establishment, operation, control or making available of such a network;

“*public communications network*” means an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services;

“*relevant market*” means a product or service market specified in a recommendation of the European Commission under Article 15.1 of the Directive or defined by ~~ComReg~~ the Commission and ~~adopted~~ approved in accordance with Regulation 10;

“*Specific Directives*” means Directive 2002/20/EC (Authorisation Directive), Directive 2002/19/EC (Access Directive), Directive 2002/22/EC (Universal Service Directive) and Directive 2002/58/EC (Data Protection);

“*specific obligations*” means obligations that may be imposed by ~~ComReg~~ the Commission on an undertaking under Regulation 5(1), 5(2), 5(3), 6 and 8 of the Access Regulations and Regulations 13, 14, 15 and 16 of the Universal Service Regulations, and on those designated under Regulation 7 of the Universal Service Regulations to carry out the obligations referred to in that Regulation;

“*Specific Regulations*” means these Regulations, the Authorisation Regulations, the Access Regulations, the Universal Service Regulations and

the European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002 (S.I. No. 192 of 2002);

“*subscriber*” means any natural person or legal entity who or which is party to a contract with a provider of publicly available electronic communications services for the supply of such services;

“*transnational markets*” means markets identified in accordance with Article 15(4) of the Directive covering the Community or a substantial part thereof;

“*undertaking*” means an individual, a body corporate or an unincorporated body of persons engaged in the provision of electronic communications networks or services or associated facilities;

“*universal service*” means the minimum set of services, defined in Directive 2002/22/EC (Universal Service Directive), of specified quality, which is available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price;

“*Universal Service Regulations*” means the European Communities (Electronic Communications)(Universal Service and Users' Rights) Regulations, 2003;

“*user*” means a legal entity or natural person using or requesting a publicly available electronic communications service.

- (2) A word or expression that is used in these Regulations and is also used in the Directives shall, unless the context otherwise requires, have in these Regulations the same meaning that it has in the Directive.
- (3) In these Regulations, unless the contrary intention appears –
  - (a) a reference to a regulation is a reference to a regulation of these Regulations, and
  - (b) a reference to a paragraph or a subparagraph is a reference to a paragraph or subparagraph of the provision in which the reference occurs.
- (4) In these Regulations, a reference to an enactment or Regulations shall be construed as a reference to the enactment or Regulations as amended by any subsequent enactment or Regulations, including these Regulations.

## Cooperation with Director of Consumer Affairs

3 (1) ~~3~~ ~~ComReg~~ The Commission shall, where appropriate, consult and cooperate with the Director of Consumer Affairs on matters of common interest in connection with the application of these Regulations and the Specific Regulations.

(2) The Commission and the Director of Consumer Affairs shall maintain and accept as confidential any information provided under paragraph (1) by an undertaking providing electronic communications networks or services expressed by it to be confidential, except where the Commission has good reason to consider otherwise.

## Establishment of Appeal Panel

- 4 (1) This Regulation applies to any user or any undertaking that is affected by a decision, designation, determination, specification, requirement or direction of ~~ComReg~~ the Commission under these Regulations or the Specific Regulations, other than a direction or notification under Regulation 24, Regulation 17 of the Access Regulations, Regulation 15 of the Authorisation Regulations, Regulation 32 of the Universal Service Regulations or a notice under section 44 of the Act of 2002, (in this Regulation and in Regulations 5, 6 and 7 collectively referred to as a “decision”).
- (2) No appeal shall lie against a decision of ~~ComReg~~ the Commission other than under this Regulation.
- (3) A person to whom this Regulation applies may, within 28 days of the making of a decision referred to in *paragraph (1)*, notify the Minister and ~~ComReg~~ the Commission in writing of his or her intention to appeal the decision and of the grounds of the appeal.
- (4) The Minister shall, on receipt by him or her of any such notification and after the expiry of the period specified in paragraph (2) of Regulation 6 for the making of an application for leave to apply for judicial review, no such application having been made, or no application to extend the time for the making of such an application having been made or granted
- (i) establish an Appeal Panel, to be known, and in these Regulations referred to, as an “Appeal Panel” or
  - (ii) refer such request to an Appeal Panel already established under this paragraph

to hear and determine such appeal.

- (5) In the event that an application referred to in paragraph (4) is made, the Minister shall not make a decision on a request under paragraph (3) pending the determination of the application.
- (6) Where the High Court extends the period specified in paragraph (2) of Regulation 6 and the Minister has established an Appeal Panel under this Regulation or has referred the matter to an Appeal Panel already established, the proceedings of that Appeal Panel shall be suspended pending the outcome of the application.
- (7) An appeal panel shall consist of three persons appointed by the Minister, at least one of whom shall be a practising barrister or solicitor with at least 7 years experience and the others shall have such commercial, technical or financial experience as the Minister considers appropriate.
- (8) The Minister shall nominate one member of the Appeal Panel to be the chairperson of that Appeal Panel.
- (9) Where the Minister considers it appropriate in all the circumstances, an Appeal Panel may hear and determine more than one appeal.
- (10) Any member of an Appeal Panel may be a member of more than one Appeal Panel at any given time.
- (11) The remuneration and allowances for expenses, if any, of a member of an Appeal Panel shall be such as may be determined by the Minister, with the approval of the Minister of Finance, and shall, to the extent that any such expenses are not included in an order of the Appeal Panel as to costs, shall be paid by the Minister.

#### Functions of Appeal Panel.

- 5 (1) An Appeal Panel shall hear and determine an appeal against a decision referred to in Regulation 4(1) and shall hold such and so many hearings as it considers necessary for the performance of its functions.
- (2) An Appeal Panel shall specify, on notice to ~~ComReg~~ the Commission, the appellant and any other person to whom the Appeal Panel considers that notice ought to be given, a date on which an oral hearing in connection with the appeal shall be heard.

- (3) An Appeal Panel shall have the powers, rights and privileges vested in the High Court or a judge thereof on the hearing of an action in respect of –
- (a) the enforcement of the attendance of witnesses and their examination on oath or otherwise, and
  - (b) the compelling of the production of documents.
- (4) A summons signed by the chairperson of the Appeal Panel or such other member of the Appeal Panel as may be authorised by the Appeal Panel may be substituted for and shall be equivalent to any formal procedure capable of being issued in an action for enforcing the attendance of witnesses and compelling the production of documents.
- (5) Where a person –
- (a) being duly summoned to attend before an Appeal Panel makes a default in attending,
  - (b) being in attendance as a witness before an Appeal Panel refuses to take an oath lawfully required by that Appeal Panel to be taken or fails to produce any document in his or her power or control lawfully required by that Appeal Panel to be produced by him or her or fails to answer any question to which the Appeal Panel may lawfully require an answer, or
  - (c) being in attendance before an Appeal Panel does anything which, if the Appeal Panel were a court of law having power to commit for contempt, would be contempt of court,
- that person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000.
- (6) A witness before an Appeal Panel shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.
- (7) An Appeal Panel shall be independent in the performance of its functions.
- (8) An Appeal Panel may regulate its own procedure. The Minister shall make regulations providing for the procedure to be adopted by an Appeal Panel in considering any matter referred to it.
- (9) Upon the hearing of an appeal, the Appeal Panel may –
- (a) confirm, or

(b) annul,

the decision and shall give in writing reasons for its determination.

- (10) Where an Appeal Panel is of opinion that, having regard to its determination of the appeal and all other relevant matters, there are sufficient reasons rendering it equitable to do so, the Appeal Panel may, either of its own motion or on application by any person appearing before the Appeal Panel, order that the whole or part of the costs
- (a) of any person appearing before the Appeal Panel by counsel or solicitor shall be paid to the person by any other person named in the order
  - (b) incurred by the Appeal Panel shall be paid to the Minister for Finance by any other person named in the order.
- (11) Any sum payable pursuant to an order under this Regulation shall be recoverable as a simple contract debt in any court of competent jurisdiction.
- (12) An Appeal Panel shall endeavour to determine an appeal within four months of the date of establishment of the Appeal Panel or from the date upon which an appeal was referred to an Appeal Panel, as the case may be.
- (13) The Appeal Panel shall notify the parties to an appeal pursuant to *paragraph (1)* of its determination in respect thereof and shall, as soon as practicable thereafter, cause such determination to be published in such manner as may be decided by the Appeal Panel.
- (14) No appeal shall lie against a determination of an Appeal Panel.
- (15) Where a decision of ~~ComReg~~ the Commission has been suspended or varied under Regulation 7(2) and an Appeal Panel confirms the decision, whether varied or otherwise, ~~ComReg~~ the Commission may implement the decision in accordance with the final determination of the Appeal Panel and where an Appeal Panel annuls a decision of ~~ComReg~~ the Commission, ~~ComReg~~ the Commission shall not implement the decision.

### Judicial Review

- 6 (1) An application for leave to apply for judicial review under Order 84 of the Rules of the Superior Court (S.I. No. 15 of 1986) (in this

Regulation referred to as “the Order”) of a decision of ~~ComReg~~ the Commission or an order, decision or determination of an Appeal Panel shall not be made otherwise than in accordance with this Regulation.

(2) An application referred to in paragraph (1) shall:

(a) be made within the period of four weeks commencing on the date on which a decision of ~~ComReg~~ the Commission or an order or decision of an Appeal Panel is made or, in the case of a determination of an Appeal Panel, on the date of publication of a notification under Regulation 5(13); and

(b) be made by motion on notice (grounded in the manner specified in the Order in respect of an *ex parte* motion for leave) to -

(i) ~~ComReg~~ the Commission,  
(ii) to the Appeal Panel, in the case of an order, decision or determination of an Appeal Panel,

(ii) the Minister, and

(iv) any other person specified for that purpose by the High Court,

and such leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the decision or determination is invalid or ought to be quashed.

(3) The High Court may extend the period referred to in *paragraph (a)* of *paragraph (2)* within which an application for leave to apply for judicial review under the Order may be made in relation to a matter referred to in paragraph (1) if, but only if, it is satisfied that—

(a) the failure by the applicant for the extension to make such an application for leave within the period aforesaid was not due to any neglect or default of that person or any person acting on his or her behalf, and

(b) the extension of the period aforesaid would not result in an injustice being done to any other person concerned in the matter.

(4) The determination of the High Court of such an application for leave to apply for judicial review or of an application for such judicial review shall be final and no appeal shall lie from the decision of the High Court to the Supreme Court in either case save with the leave of the High Court which leave shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

- (5) Paragraph (4) shall not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.

Status of decision pending appeal or review

- 7 (1) Subject to paragraph (2), pending the outcome of an appeal under *Regulation 4*, a decision of ~~ComReg~~the Commission shall stand.
- (2) The Appeal Panel may, on the application to it by the appellant in an appeal under *Regulation 4*, suspend or vary the decision of ~~ComReg~~the Commission pending the determination of the appeal, where it considers it appropriate to do so.
- (3) Subject to paragraph (4), pending the outcome of a review under *Regulation 6*, a decision of ~~ComReg~~the Commission shall stand.
- (4) The High Court may, on application to it by the applicant for judicial review under *Regulation 6*, make an order providing for such interim or interlocutory relief in the matter concerned as the Court considers appropriate in the circumstances, including suspension of the decision.

Provision of information

8. (1) Without prejudice to section 39 of the Act of 2002, ~~ComReg~~the Commission may, in writing, require any ~~person~~ undertaking to provide (within such time as ~~ComReg~~the Commission shall specify in the document containing the requirement) any information, including financial information, that ~~ComReg~~the Commission considers necessary for the purpose of ensuring compliance with the provisions of, or decisions or determinations made in accordance with these Regulations and the Specific Regulations, the Directive or the Specific Directives.
- (2) Any information sought by ~~ComReg~~the Commission under *paragraph (1)* shall be proportionate to the performance by it of the task of monitoring compliance and ~~ComReg~~the Commission shall give reasons justifying its requirement for the information, including a statement as to which of the Commission's statutory duties gives rise to the request.
- (3) An Undertaking ~~person~~ upon which ~~om~~ a requirement is served pursuant to *paragraph (1)* shall comply with the requirement.

- (4) Any Undertaking which person who fails or refuses to comply with a requirement under *paragraph (1)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000.
- (5) Upon receipt of a reasoned request from the European Commission, ~~ComReg~~the Commission shall, subject to this Regulation, provide the European Commission with such information as is necessary for the European Commission to carry out its tasks under the Treaty establishing the European Community.
- (6) Where any information requested by the European Commission under this Regulation has been obtained by ~~ComReg~~the Commission pursuant to a requirement under paragraph (1) or under section 39 of the Act of 2002, ~~ComReg~~the Commission shall notify in writing the Undertaking which person who provided that information that ~~ComReg~~the Commission has been requested to provide the information to the European Commission and that the European Commission is entitled to pass such information on to national regulatory authorities in other Member States unless ~~ComReg~~the Commission makes an explicit and reasoned request to the contrary. ~~Where ComReg considers it appropriate, In the case of information expressed to be confidential by the undertaking which provided it, ComReg the Commission may shall~~ delay provision of the information to the European Commission to enable the ~~person who~~ undertaking which provided the information concerned to make written representations to ~~ComReg~~the Commission within seven days of the notification from ~~ComReg~~the Commission referred to in this paragraph requesting ~~ComReg~~the Commission to make an explicit and reasoned request to the European Commission referred to in this paragraph.
- (7) ~~ComReg~~The Commission may, taking into account any representations expressed to it pursuant to paragraph (6) but at its sole discretion, make an explicit and reasoned request to the European Commission not to make any information provided under *paragraph (5)* available to a national regulatory authority in another Member State.
- (8) ~~ComReg~~The Commission may make information submitted to it pursuant to paragraph (1) available to a national regulatory authority in another Member State, after a substantiated request, where ~~ComReg~~the Commission is satisfied that provision of such information is necessary to allow that national regulatory authority to fulfil its responsibilities under Community law.
- (9) Where ~~ComReg~~the Commission ~~considers that~~ considers information to be made available under paragraph (8) is confidential ~~to the Commission~~ shall identify such information accordingly.
- (10) Where ~~ComReg~~the Commission receives information classified as confidential from the European Commission or from a national

regulatory authority of another Member State pursuant to Article 5 of the Framework Directive, it shall protect the confidentiality of such information. The Freedom of Information Act 1997 shall not apply to such information.

- (11) ~~ComReg~~The Commission shall, subject to the protection of the confidentiality of any information ~~which it considers confidential~~, publish from time to time such information as would, in the opinion of ~~ComReg~~the Commission, contribute to an open and competitive market.

(12) In this Regulation the Commission shall maintain and accept as confidential any information provided under paragraph (1) by an undertaking expressed by it to be confidential, except where the Commission has good reason to consider otherwise.

### Consultation and Transparency Mechanism

9. (1) In this Regulation and in Regulation 10 the term “measure” means a decision, designation, determination, a requirement or a specification made by ~~ComReg~~the Commission under these Regulations or the Specific Regulations, other than a determination under Regulation 20 or 21 or a notification or direction under Regulation 24 or under Regulation 15 of the Authorisation Regulations, Regulation 17 of the Access Regulations or Regulation 32 of the Universal Service Regulations.

~~(2)~~ ~~—~~ ~~(2)~~ ~~—~~ Except in cases falling within Regulations 10(8), where ~~ComReg~~the Commission intends to take a measure in accordance with these Regulations or the Specific Regulations which has a significant impact on a market for electronic communications networks or services, it ~~shall~~ ~~shall~~ make available in accordance with ~~observe the procedures referred to in paragraphs (3) (3) and (4).~~ ~~to interested parties a statement of the proposed measure and give interested parties the opportunity to comment on the proposed measure within a reasonable period.~~

(3) Before taking a measure under paragraph (2) the Commission shall publish the text of the proposed measure and

(a) give the reasons for it including information as to which of The Commissions statutory powers gives rise to the Measure

(b) specify the period within which submissions relating to the proposal may be made by interested parties

(4) The Commission, having considered any representations made under paragraph (3) may take the measure under paragraph (2) with or without amendment

(53) ~~ComReg~~The Commission shall publish its consultation procedures and shall establish a single information point through which all current consultations can be accessed.

~~(64)~~—The results of any consultation under this regulation shall be made publicly available by ~~ComReg~~the Commission, except in the case of confidential information which ~~ComReg~~The Commission considers to be confidential.

(7) The Commission shall maintain and accept as confidential any information provided by an undertaking providing electronic communications networks or services expressed by it to be confidential, except where the Commission has good reason to consider otherwise.

### Consolidating the Internal Market for Electronics Communications

10. (1) ~~ComReg~~The Commission shall contribute to the development of the internal market by co-operating, ~~in so far as is practicable~~, taking utmost account of its objectives under section 12 of the Act of 2002 and its functions under these Regulations and the Specific Regulations, with national regulatory authorities in other Member States and with the European Commission in a transparent manner to ensure the consistent application of the provisions of the Directive and the Specific Directives.

(2) Without prejudice to the generality of paragraph (1), ~~ComReg~~the Commission shall, in conjunction with national regulatory authorities in other Member States, seek, ~~in so far as is practicable~~, taking utmost account of its objectives under section 12 of the Act of 2002 and its functions under these Regulations and the Specific Regulations, to agree on the types of instruments and remedies best suited to address particular types of situations in the market place.

(3) Where ~~ComReg~~the Commission intends to take a measure which –

(i) falls within the scope of *Regulations 15 and 16* of these Regulations, Regulations 5, ~~6(8)~~ or 8 of the Access Regulations or Regulations 14, 15 or 16 of the Universal Service Regulations and

(ii) would affect trade between Member States

it shall, subject to the protection of the confidentiality of any information ~~which ~~ComReg~~ considers to be confidential~~, at the same time make the draft measure accessible to the European Commission and the national regulatory authorities in other Member States together

with the reasoning on which the measure is based, and inform the European Commission and national regulatory authorities in other Member States thereof.

(4) The Commission shall maintain and accept as confidential any information provided by an undertaking providing electronic communications networks or services expressed by it to be confidential, except where the Commission has good reason to consider otherwise.

(54) Before taking a measure referred to in *paragraph (3)*, ~~ComReg~~the Commission shall take into account any comments made by a national regulatory authority in another Member State or the European Commission and received by ~~ComReg~~the Commission within one month of so making the draft measure accessible.

(65) Where a draft measure referred to in *paragraph (3)* consists of –

- (i) a proposed definition of a relevant market which differs from any defined in a recommendation referred to in Article 15.1 of the Directive, or
- (ii) a proposed decision whether or not to designate an undertaking as having, either individually or jointly with others, significant market power under *Regulation 16 (3), (4) or (5)*,

and would affect trade between Member States and the European Commission has indicated to ~~ComReg~~the Commission that it considers the draft measure would create a barrier to the single market or that it has serious doubts as to its compatibility with community law and, in particular, the objectives referred to in *Article 8*, then the draft measure shall not be adopted for a further two months.

(76) ~~ComReg~~The Commission shall refrain from proceeding with the draft measure if the European Commission takes a decision in accordance with the procedures referred to in Article 22(2) of the Directive requiring ~~ComReg~~the Commission to withdraw the draft measure.

(87) ~~ComReg~~The Commission shall take the utmost account of any comments of a national regulatory authority in another Member State and of the European Commission received in response to a consultation referred to in *paragraph (3)* and may, except in cases covered by *paragraph (76)*, adopt the resulting draft measure with or without amendment and, where it does so adopt such measure, shall communicate it to the European Commission.

(98) Where ~~ComReg~~the Commission considers that there are exceptional circumstances justifying an urgent need to act, by way of derogation

from the procedures set out in *paragraphs (3), (54), (65) and (76)* in order to safeguard competition and protect the interests of users, it may immediately adopt proportionate and provisional measures.

(109) Where ~~ComReg~~The Commission acts in accordance with *paragraph (98)* it shall, without delay, notify the measures concerned, with full reasons for their adoption, to the European Commission and the national regulatory authorities in the other Member States and the undertaking to which the measures concerned are addressed.

(110) A decision by ~~ComReg~~The Commission to render a measure referred to in *paragraph (98)* permanent or extend the time for which they are applicable shall be subject to the provisions of *paragraphs (3), (54), (65) and (76)*.

### Numbers

11 (1) The national numbering scheme shall be administered by ~~ComReg~~The Commission subject to directions that may be issued by the Minister pursuant to section 13 of the ~~2002-Act~~ of 2002.

(2) Any person who assigns to locations, terminals, persons or functions on public electronic communications networks numbers from the national numbering scheme that have not specifically been allocated to that person by ~~ComReg~~The Commission for the purpose of providing publicly available electronic communications services shall be guilty of an offence and be liable on summary conviction to a fine not exceeding €3,000.

(3) ~~ComReg~~The Commission shall, subject to ensuring the proper management of the national numbering scheme, grant rights of use for numbers and number ranges for all publicly available electronic communications services in a manner that gives fair and equitable treatment to all undertakings providing publicly available electronic communications services.

(4) ~~ComReg~~The Commission may, without prejudice to the generality of Regulation 11(1) of the Authorisation Regulations, attach conditions to rights of use for numbers

- (a) to ensure efficient and effective management of all numbering resources,
- (b) to ensure that an undertaking allocated a range of numbers does not discriminate against other undertakings as regards the number sequences used to give access to their services.

- (5) ~~ComReg~~The Commission shall, subject only to limitations which may be specified by the Minister on the grounds of national security, from time to time publish the ~~main elements~~details of the national numbering scheme, and ~~major~~significant subsequent additions or amendments thereto.
- (6) ~~ComReg~~The Commission shall, in so far as is practicable, having regard to its objectives under section 12 of the Act of 2002 and its functions under these Regulations and the Specific Regulations, support the harmonisation of numbering resources within the Community where that is necessary to support the development of pan-European services.

### Radio Frequencies

- 12 (1) ~~ComReg~~The Commission shall, subject to any directions issued by the Minister pursuant to section 13 of the Act of 2002, ensure the effective management of radio frequencies for electronic communications services in accordance with section 12 of the Act of 2002 and ensure that the allocation of such radio frequencies is based on objective, transparent, non-discriminatory and proportionate criteria.
- (2) ~~ComReg~~The Commission shall, ~~in so far as is practicable,~~ having regard to its objectives under section 12 of the Act of 2002 and its functions under these Regulations and the Specific Regulations, promote the harmonisation of use of radio frequencies across the Community, consistent with the need to ensure effective and efficient use thereof in accordance with Decision No. 676/2002/EC (Radio Spectrum Decision).

### Accounting separation and financial reports

- 13 (1) Any undertaking providing a public communications network or a publicly available electronic communications service, that is also engaged in an activity other than the provision of such network or service on the basis of special or exclusive rights for the provision of that activity whether in the State or in another Member State shall -
- (a) keep separate accounts audited in accordance with generally accepted auditing practices for the activities associated with the provision of that network or service, to the extent that would be required if those activities were carried out by legally independent companies, so as to identify all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to their activities associated with the provision of electronic communications networks or services including an itemised breakdown of fixed asset and structural costs, or

- (b) have structural separation for the activities associated with the provision of electronic communications networks or services.
- (2) Where an undertaking providing a public communications network or a publicly available electronic communications service is not subject to the Companies Acts 1963 to 2001 and does not satisfy the small and medium – sized enterprise criteria of Community law accounting rules, it shall ensure that -
- (a) annual accounts shall be drawn up and submitted to independent audit and published, and
  - (b) such audit shall be carried out in accordance with generally accepted auditing practices.
- (3) An undertaking which fails to comply with an obligation under this regulation shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3000.

#### Undertakings with significant market power

- 14 (1) A reference in the these Regulations, the Access Regulations, the Authorisation Regulations or the Universal Service Regulations to an undertaking with significant market power shall be to an undertaking designated as such by ~~ComReg~~the Commission under Regulation 16(4) where ~~ComReg~~the Commission is satisfied that in relation to any relevant market it (whether individually or jointly with others) enjoys a position which is equivalent to dominance of that market, that is to say a position of economic strength affording it the power to behave to an appreciable extent, independently of –
- (a) competitors;
  - (b) customers, and, ultimately,
  - (c) consumers.
- (2) ~~ComReg~~The Commission shall, when assessing whether an undertaking has significant market power or whether two or more undertakings are in a joint dominant position in a relevant market, act in accordance with Community law and take utmost account of guidelines on market analysis and the assessment of significant market power published by the Commission pursuant to Article 15.2 of the Directive and, in addition, in the case of an assessment of whether two or more undertakings are in a joint dominant position, the criteria set out in Annex II of the Directive.

- (3) Where an undertaking has significant market power on a relevant market, it may also be deemed to have significant market power on a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the undertaking.

#### Market definition procedure

- 15 As soon as possible after the adoption by the European Commission of a recommendation referred to in Article 15.1 of the Directive or any updating thereof, ~~ComReg~~the Commission shall, subject to Regulations 9 and 10 and taking utmost account of such recommendation and of guidelines referred to in Article 15.2 of the Directive, and in accordance with the principles of competition law,

define relevant markets for the purposes of these Regulations and the Specific Regulations, including the geographical area within the State of such markets.

#### Market analysis procedure

- 16 (1) As soon as possible after ~~ComReg~~the Commission defines a relevant market, ~~ComReg~~the Commission shall carry out an analysis of such market, in accordance, where appropriate, with an agreement with the Competition Authority under section 34 of the Competition Act 2002 and taking the utmost account of the guidelines referred to in Article 15.2 of the Directive.
- (2) Where ~~ComReg~~the Commission is required under Regulation 14, 15 of 16 of the Universal Service Regulations Regulations 7 or 8 of the Access Regulations to determine whether to impose, maintain, amend or withdraw specific obligations on undertakings, it shall determine on the basis of a market analysis referred to in paragraph (1) whether a relevant market is effectively competitive.
- (3) Where ~~ComReg~~the Commission concludes that a relevant market is effectively competitive an undertaking operating in such market shall not be required to comply with any obligations referred to in paragraph (2) applicable to an undertaking with significant market power. In cases where an undertaking had previously been designated as having significant market power in such market and such obligations already exist, ~~ComReg~~the Commission shall, after giving reasonable notice to any parties which it considers to be affected by such withdrawal, withdraw such obligation from the undertaking concerned.

- (4) Where ~~ComReg~~the Commission determines that a relevant market is not effectively competitive, it shall designate undertakings with significant market power on that market in accordance with *Regulation 14* and it shall on such undertakings impose such specific obligations as it considers appropriate.
- (5) In the case of transnational markets identified in a decision referred to in Article 15(4) of the Directive, ~~ComReg~~the Commission ~~in conjunction and with~~ any other relevant national regulatory authority concerned, shall jointly conduct the market analysis taking the utmost account of the guidelines referred to in Article 15.2 of the Directive and decide on any imposition, maintenance, amendment or withdrawal of specific obligations in a concerted fashion.
- (6) The Commission shall, after such period as it considers appropriate, carry out a further analysis of a relevant market referred to in paragraph (1) and paragraphs (2) to (5) inclusive shall apply accordingly.

#### Interoperability of digital interactive television services

17. (1) ~~ComReg~~The Commission shall, ~~in so far as is practicable,~~ having regard to its objectives under section 12 of the Act of 2002 and its functions under these Regulations and the Specific Regulations, encourage:
- (a) providers of digital interactive television services for distribution to the public in the Community on digital interactive television platforms, regardless of the transmission mode, to use an open API;
  - (b) providers of all enhanced digital television equipment deployed for the reception of digital interactive television services on interactive digital television platforms to comply with an open API in accordance with the minimum requirement of the relevant standards or specifications.
- (2) Without prejudice to Regulation 5(2)(b) of the Access Regulations, ~~ComReg~~the Commission shall, ~~in so far as is practicable,~~ having regard to its objectives under section 12 of the Act of 2002 and its functions under these Regulations and the Specific Regulations, encourage proprietors of APIs to make available on fair, reasonable and non-discriminatory terms, and against appropriate remuneration, all such information as is necessary to enable providers of digital interactive television services to provide all services supported by API in a fully functional form.

### Standardisation

18. (1) ~~ComReg~~The Commission shall encourage, ~~in so far as is practicable,~~ having regard to its objectives under section 12 of the Act of 2002 and its functions under these Regulations and the Specific Regulations, the use of the standards and/or specifications drawn up and published by the European Commission in accordance with Articles 17.1 and 17.4 of the Directive for the provision of services, technical interfaces and/or network functions to the extent strictly necessary to ensure interoperability of services and to improve freedom of choice for users.
- (2) As long as standards and/or specifications have not been published by the Commission in accordance with Article 17.1 of the Directive, ~~ComReg~~the Commission shall encourage the implementation of standards and/or specifications adopted by the European Standards Organisations.
- (3) In the absence of such standards and/or specifications, ~~ComReg~~the Commission shall encourage the implementation of international standards or recommendations adopted by the International Telecommunication Union (ITU), the International Organisation for Standardisation (ISO) or the International Electrotechnical Commission (IEC).
- (4) This Regulation does not apply in respect of any of the essential requirements, interface specifications or harmonised standards to which the provisions of Directive 1999/5/EC apply.

### Harmonisation procedures.

19. (1) ~~ComReg~~The Commission shall, in carrying out its tasks under these Regulations, take the utmost account of any recommendations to which Article 19 of the Directive refers.
- (2) Where ~~ComReg~~the Commission chooses not to follow any such recommendation, it shall so inform the Minister and the European Commission, giving the reasoning for its position.

### Dispute resolution between undertakings.

20. (1) In the event of a dispute arising between undertakings in connection with obligations under the Directive, the Specific Directives, these Regulations or the Specific Regulations, ~~ComReg~~the Commission shall, subject to paragraph (2), at the request of either party, initiate an investigation of the

dispute and, as soon as possible but, except in circumstances which ~~ComReg~~the Commission considers exceptional, within 4 months from the date on which the dispute was notified to it by either party, make a determination, aimed at ensuring compliance with the requirements of these Regulations and the Specific Regulations, to resolve the dispute.

(2) The Commission shall publish its dispute resolution procedures and shall ensure that all investigations and determinations are handled in accordance with said procedures

- (32) ~~ComReg~~The Commission may decide not to initiate an investigation referred to in paragraph (1) where it is satisfied that other means of resolving the dispute in a timely manner are available to the parties or if legal proceedings in relation to the dispute have been initiated by either party.
- (43) Where ~~ComReg~~the Commission decides not to initiate an investigation under paragraph (2), it shall inform the parties of such decision as soon as possible thereafter, including the reasons for such a decision.
- (54) If, four months from the date of a decision referred to in paragraph (3) the dispute is not resolved and legal proceedings by either party in relation to the dispute are not in progress, ~~ComReg~~the Commission shall at the request of either party initiate an investigation and make a determination in accordance with paragraph (1).
- (65) In making a determination under this Regulation ~~ComReg~~the Commission shall have regard to the provisions of section 12 of the Act of 2002.
- (76) An undertaking to which a determination under this Regulation applies shall comply with the provisions of the determination applicable to it.
- (87) An undertaking which fails to co-operate with an investigation under this Regulation or comply with a determination under this regulation shall be guilty of an offence and shall on summary conviction be liable to a fine not exceeding €3000.
- (98) ~~ComReg~~The Commission shall issue a determination, together with a statement of the reasons on which it is based, to the undertakings concerned under this regulation, in writing, in any of the following ways –
- (a) by delivering it to the undertaking,
  - (b) by leaving it at the address at which the undertaking carries on business,
  - (c) by sending it by prepaid registered post to the address at which the undertaking carries on business, or
  - (d) in any case where ~~ComReg~~the Commission considers that the immediate giving of the determination is required, by sending it, by means of a facsimile machine or by electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the person ordinarily resides or carries on

business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender's facsimile machine generates a message confirming successful transmission of the total number of pages of the determination or the sender's facility for the reception of electronic mail generates a message confirming receipt of the electronic mail.

~~(9)~~<sup>10</sup> For the purposes of paragraph (8), a company within the meaning of the Companies Acts, 1963 to 2001 shall be deemed to be carrying on business at its registered office and every other body corporate and every unincorporated body shall be deemed to be carrying on business at its principal office or place of business.

~~(11)~~<sup>10</sup> Any obligations imposed on an undertaking by ~~ComReg~~<sup>the</sup> Commission in resolving a dispute shall respect the provisions of the Directive and the Specific Directives these Regulations, the Specific Regulations and Section 12 of the Act of 2002.

~~(12)~~<sup>11</sup> ~~ComReg~~<sup>The</sup> Commission shall publish in a newspaper circulating in the State notice of a determination under this Regulation and the notice shall indicate where copies of or information regarding the determination may be obtained.

(13) The Commission shall not publish any information provided under this regulation by an undertaking providing electronic communications networks or services expressed by it to be confidential, except where the Commission has good reason to consider otherwise.

~~(14)~~<sup>12</sup> The procedure referred to in this Regulation shall not preclude either party from bringing an action before the courts.

#### Resolution of Cross-Border Disputes

21. (1) In the event of a dispute arising under these Regulations, the Specific Regulations, the Directive or the Specific Directives between parties in different Member States, where the dispute lies within the competence of ~~ComReg~~<sup>the</sup> Commission and a national regulatory authority from another Member State, the procedure set out in *paragraphs (2), (3) and (4)* shall be applicable.

(2) Any party may refer such a dispute to ~~ComReg~~<sup>the</sup> Commission or to the other national regulatory authority concerned. ~~ComReg~~<sup>The</sup> Commission and the said other national regulatory authority shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the objectives set out in Article 8 of the Directive. Where ~~ComReg~~<sup>the</sup> Commission makes a determination for the purposes of resolving a dispute under this Regulation, the

provisions of paragraphs (65) to (124) inclusive of Regulation 20 shall apply

- (3) ~~The C.C.R~~ The Commission may enter into arrangements with other national regulatory authorities whereby they may jointly decline to resolve a dispute where other mechanisms, including mediation, exist and would better contribute to resolution of the dispute in a timely manner in accordance with the provisions of Article 8 of the Directive. Such arrangements shall include provision for ~~ComReg~~ the Commission or the other national regulatory authorities to inform the parties without delay where they agree to jointly decline to resolve the dispute. If after four months the dispute is not resolved, if the dispute has not been brought before the courts by the party seeking redress, and if either party requests it, ~~ComReg~~ the Commission and the other national regulatory authority shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the provisions set out in Article 8 of the Directive.
- (4) The procedure referred to in *paragraph (2)* shall not preclude either party from bringing an action before the courts.

#### Proceedings for Offences

22. (1) Summary proceedings for an offence under these Regulations, other than an offence under Regulation 5(5), may be brought and prosecuted by ~~ComReg~~ the Commission.
- (2) Summary proceedings for an offence under ~~these~~ Regulation 5(5) may be brought and prosecuted by an Appeal Panel.
- (3) Where an offence under these Regulations is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person, being a director, manager, secretary or other similar officer of such body or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.
- (4) Where the affairs of a body corporate are managed by its members, paragraph (3) shall apply in relation to the acts and defaults of a member of that body in connection with the member's functions of management as if he or she were a director or manager of it.
- (4) An offence under these Regulations, other than an offence under Regulation 5(5), is hereby declared to be an offence to which section 44 of the Act of 2002 applies.

## Directions

23. (1) ~~ComReg~~The Commission may, for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under these Regulations, issue directions to an undertaking to do or refrain from doing anything which ~~ComReg~~the Commission specifies in the direction.
- (2) Where ~~ComReg~~the Commission issues a direction under this Regulation, such direction shall be in writing, state the reasons on which it is based and be addressed to the person or company concerned, and as soon as practicable, be sent or given in any of the following ways-
- (a) by delivering it to the person,
  - (b) by leaving it at the address at which the person carries on business,
  - (c) by sending it by pre-paid registered post to the address at which the person carries on business, or
  - (d) in any case where ~~ComReg~~the Commission considers that the immediate giving of the direction is required, by sending it, by means of a facsimile machine or by electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender's facsimile machine generates a message confirming successful transmission of the total number of pages of the direction or the sender's facility for the reception of electronic mail generates a message confirming receipt of the electronic mail.

## Application to High Court

24. (1) ~~ComReg~~The Commission may, where it is of the opinion that a person is not complying or has not complied with an obligation under these Regulations, notify that person of such opinion and may, for the purpose of ensuring compliance with an obligation under these Regulations, accompany such notification with a direction to the person to do or to refrain from doing anything which ~~ComReg~~the Commission specifies in the direction.
- (2) ~~ComReg~~The Commission may publish, in such manner as it thinks fit, any notification or direction given by it under this Regulation, subject to the protection of the confidentiality of any information ~~which ComReg considers confidential~~. The Commission shall maintain and accept as confidential any information provided by an undertaking expressed by it to be confidential, except where the Commission has good reason to consider otherwise.

- (3) Where ~~ComReg~~the Commission issues a notification or direction under these Regulations, such notification or direction shall be in writing, state the reasons on which it is based and be addressed to the person or company concerned, and as soon as practicable, be sent or given in any of the following ways-
- (d) by delivering it to the person,
  - (e) by leaving it at the address at which the person carries on business,
  - (f) by sending it by pre-paid registered post to the address at which the person carries on business
  - (d) in any case where ~~ComReg~~the Commission considers that the immediate giving of the notification or direction is required, by sending it, by means of a facsimile machine or by electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender's facsimile machine generates a message confirming successful transmission of the total number of pages of the notification or direction or the sender's facility for the reception of electronic mail generates a message confirming receipt of the electronic mail.
- (4) ~~ComReg~~The Commission may amend or revoke any notification or direction under these Regulations and paragraphs (2) and (3) shall apply accordingly.
- (5) For the purposes of paragraph (3), a company within the meaning of the Companies Acts, 1963 to 2001, shall be deemed to be carrying on business at its registered office, and every other body corporate and every unincorporated body shall be deemed to be carrying on business at its principal office or place of business.
- (6) In order to give a person referred to in paragraph (1) an opportunity to make representations in relation to the notification or direction or remedy any non-compliance, an application for an order under this Regulation shall not be made and proceedings under Regulation 22 shall not be initiated earlier than
- (a) one month after issue of the notification or direction, or
  - (b) such shorter period as is agreed by ~~ComReg~~the Commission with the person concerned or stipulated by ~~ComReg~~the Commission in case of repeated non-compliance, or
  - (c) such longer period as may be specified by ~~ComReg~~the Commission.
- (7) Where, at the end of the relevant period referred to in paragraph (6), ~~ComReg~~the Commission is of the opinion that a person is not

complying or has not complied with an obligation under these Regulations, ~~ComReg~~ the Commission may, without prejudice to regulation 22, apply to the High Court in a summary manner for such order as may be appropriate by way of compliance with the obligation and the Court may, as it thinks fit, on the hearing of the application make or refuse to make an order providing for any relief as aforesaid.

(8) An application for an order under paragraph (7) shall be by motion and the Court when dealing with the matter may make such interim or interlocutory order as it considers appropriate.

(9) The Court shall not deny any interim or interlocutory relief referred to in paragraph (8) solely on the basis that ~~ComReg~~ the Commission may not suffer any damage if such relief were not granted pending conclusion of the action.

(10) An application for an order under paragraph (8) may include an application for an order to pay to the Commission such sum as the Commission may propose as appropriate in the light of the non-compliance. In deciding on the application for an order under paragraph (8), the court shall decide what sum (if any) should be payable and shall not be bound by the sum proposed by the Commission. Any sum ordered by the court to be paid by a person against whom an order may be sought shall be retained by the Commission as income. In deciding what sum (if any) should be payable, the court shall consider the circumstances of the non-compliance, including

(a) its duration,

(b) the effect on consumers, users and other operators,

(c) the submissions of the Commission on the appropriate sum, and

(d) any excuse or explanation for the non-compliance

#### Repeals.

25. (1) The following enactments are hereby repealed:

(a) Telegraph Act 1869

(b) Section 111 of the Postal and Telecommunications Services Act 1983.

(2) The following enactments are, subject to Regulation 7 of the Access Regulations and Regulation 13 of the Universal Service Regulations, revoked with effect from 25 July 2003 -

- European Communities (Telecommunications Services) Regulations 1992 (S.I. No. 45 of 1992)

- Regulations 4 and 5 of the European Communities (Telecommunications Infrastructure) Regulations 1997 (S.I. No. 338 of 1997)

- European Communities (Interconnection in Telecommunications) Regulations 1998 to 2000
- European Communities (Telecommunications Licences) Regulations 1998 to 2000
- European Communities (Leased Lines) Regulations 1998 (S.I. No. 109 of 1998)
- European Communities (Use of Standards for the Transmission of Television Signals) Regulations 1998 (S.I. No. 262 of 1998)
- European Communities (Voice Telephony and Universal Service) Regulations 1999 (S.I. No. 71 of 1999)
- European Communities (Electronic Communications Networks and Services) (Market Definition and Analysis) Regulations 2003~~2~~.

- (4) ~~ComReg~~The Commission shall cause a notice to be published in Iris Oifigiul and in a newspaper circulating in the State specifying the date upon which any obligations which are referred to in Regulation 7 of the Access Regulations and Regulation 13 of the Universal Service Regulations

and which are continued in force after 25 July 2003 in accordance with those Regulations, shall no longer have effect.

#### Expenses

26. The expenses incurred by the Minister in the administration of these Regulations and the Specific Regulations shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

GIVEN under my Official Seal this                      day of                      2003

Minister for Communications, Marine and Natural Resources