

[IE] First Ruling of New Electronic Communications Appeal Body

IRIS 2005-10:1/27

*Marie McGonagle
School of Law, National University of Ireland, Galway*

In 2004 the Irish Government established ECAP, the Electronic Communications Appeals Panel. It is a statutory body appointed by the Minister for Communications. Its purpose is to try to fast-track appeals by the telecommunications industry against decisions of the Commission for Communications Regulation (ComReg). The first appeal heard by ECAP was taken by Hutchison 3G Ireland against a decision of ComReg to designate it with significant market power (SMP), even before it had launched its operation. ECAP ruled on 27 September 2005 that ComReg did not undertake a proper economic analysis before making its decision. It did not take into account Hutchison's position as a new entrant and did not do a complete analysis of the market. ECAP pointed out that in establishing whether a business has SMP the regulator must examine fully all the relevant factors. An SMP designation could allow ComReg to cap fees charged by a company to other operators for use of its network or to monitor the company's accounts.

On 29 July 2005, the High Court ruled on the procedure adopted by ComReg in seeking to enforce directions on the telephone company, Eircom, aimed at advancing local loop unbundling. The Court ruled that ComReg, which had set time limits for compliance, effectively deprived Eircom of its rights of appeal. In June 2004, ComReg had designated Eircom as having significant market power and had drafted a Market Requirements Document, followed by a decision notice (D/105), which included the directions referred to above. Unbundling in Ireland has been beset by long delays and although ECAP seeks to speed up the hearing of appeals it has to be mindful of the fact that its decisions in turn can be judicially reviewed in the High Court. Following the High Court decision in this case, however, ComReg decided to withdraw its instructions to Eircom. Eircom has since pledged to respond to both its competitors and the regulator by 24 October. Other appeals involving Eircom (ECAP6 2005/09 - leased line appeal) and mobile operators, Vodafone and O2 (ECAP6 1005/03-08), which were designated by ComReg as jointly dominant in the telecoms market, are due to be heard before the end of the year.

Electronic Communications Appeals Panel website

<http://www.ecap.ie/>

The Irish Times 30 July 2005, 2 August 2005, 5 August 2005, 16 September 2005, 28 September 2005, available on subscription at:

<http://www.ireland.com/>

