

Brussels, 2nd July 1999

Commission takes a favourable view on Esat Telecom – Irish Rail agreements

The European Commission has published a notice stating that it intends to authorise the agreements by means of which Coras Iompair Éireann (CIE) and its subsidiary Irish Rail grant Esat Telecommunications Limited a non-exclusive right to lay fibre optic cable on their property along the Irish nationwide railway infrastructures. Esat Telecom intends to create a national fibre optic telecommunications network in Ireland, whose construction and maintenance it has subcontracted to Irish Rail.

The notice was published in Official Journal No. C 181 of 26.6.1999, pursuant to Article 19(3) of Council Regulation No 17. It is also available on the Internet at http://europa.eu.int/comm/dg04/entente/closed/en/closed.htm#idx_reg17_art19. Interested third parties have one month to send their comments to the Commission.

In the course of the notification procedure, the Commission examined in particular the conditions of access to railway lines for the purpose of installing telecommunications networks. In response to the Commission's enquiry, the two companies have clarified the wording of their agreements to address possible concerns about the nature of the access rights granted to Esat.

Pursuant to the agreements as amended, CIE may install or permit the installation of other telecommunications cable for third parties provided that during a short, limited period, Esat Telecom will be granted priority access over CIE infrastructures for the purposes of deploying and putting into service its network as fast as possible.

Upon making a determination to install or permit the installation of cable for third parties during that initial period, CIE is to give Esat Telecom prior notice of its intentions. If Esat Telecom determines on reasonable grounds that such an installation is likely to hinder or delay the completion of its own network, the installation of the third party cable shall be postponed. Notwithstanding the foregoing provision, CIE is entitled:

- to permit the installation of telecommunication cables merely for the purpose of crossing its infrastructures;
- to maintain and permit the maintenance of telecommunications cables in the places, of the kinds and to the extent to which is obliged pursuant to the agreements to which it is already party; and
- to permit the installation of other cable if and to the extent that the installation thereof on CIE's infrastructures is the only possible means whereby a telecommunications network can be constructed.

The Commission has dealt with and is currently examining a number of similar cases relating to other Member States and different types of facilities along which telecommunication infrastructure can be laid (e.g. railways, electricity grids, oil pipelines). Whilst the specific characteristics of each case will have to be examined, the same general principles will remain applicable.