



Commission for
Communications Regulation

ComReg Submission

Submission re BCI Ownership and Control Policy Consultation

**ComReg response to BCI's consultation paper on BCI
Ownership and Control Policy**

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BCI Ownership and Control Policy Consultation

ComReg appreciates the opportunity to contribute to the above consultation. In general, the consultation deals with the contractual relationships between broadcasters and the BCI. These are not issues which ComReg would normally comment on. However, Question 4, page 21 of your consultation paper raises a question which includes a reference to broadcasting transmission platforms which do come under ComReg's remit.

As we understand it, under the terms of their contracts with the BCI, all radio and television broadcasters are obliged to notify, and obtain the consent of, the BCI prior to implementing changes to their ownership and control structures. Section 6(2)(h) of the Radio and Television Act, 1988 requires the BCI to have regard to: "the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue amount of **communications media** in a specified area".

Question 4 asks: Which of the following should be excluded from the definition of 'communications media'?

- (a) A Broadcaster who supplies a compilation of Programme Material which is broadcast in the State;*
- (b) A programme production company which produces programmes which are broadcast in the State;*
- (c) An advertisement production company which produces advertisements which are broadcast in the State;*
- (d) The publisher of a newspaper which is displayed for sale in the State;*
- (e) The publisher of a magazine which is displayed for sale in the State;*
- (f) An advertising agency which produces advertisements which are broadcast in the State, or which acts as a media buyer in respect of the broadcast of advertisements in the State;*
- (g) A public relations company which carries on business in the State;*
- (h) A music publisher which publishes music which is displayed for sale or broadcast in the State;*
- (i) A distributor of recorded music which distributes recorded music in the State;*
- (j) A provider of a broadcasting service platform for the transmission of programme material in the state;*
- (k) A person who has a substantial interest in a person listed in (a) to (j) above.*

ComReg is of the opinion that **j) a provider of a broadcasting service platform for the transmission of programme material in the state** should be excluded from the BCI's definition of communications media. ComReg notes that broadcasting transmission platforms are excluded from the definition of "communication media" in the BCI Ownership and Control Policy (2001) which it defined it as follows:

***"Communications Media"** – includes all broadcasting services (including sound broadcasting services) in the State or the publication of any newspaper, magazine or journal in the State.*

ComReg's concern is that adding broadcasting transmission platforms could create regulatory confusion. As recognised in the consultation paper any merger involving broadcasting platforms is already covered by Section 23 of the Competition Act, 2002 which includes "*a business of providing a broadcasting service or a business of providing a broadcasting services platform*" in its definition of a media business.

The new EU Regulatory Framework for Electronic Communication introduced in 2003 also covers electronic communications networks and services used for broadcastingⁱ. Entities providing or planning to provide such networks or services are already obliged to notify ComRegⁱⁱ and are subject to the conditions of a general authorisationⁱⁱⁱ. Furthermore where entities in certain markets are identified as having significant market power (SMP) ComReg is obliged to impose one or more regulatory obligations on the SMP operator^{iv}. Entities using spectrum for broadcasting transmission are also subject to ComReg licence conditions^v.

References

- (i) Directive 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 (the “Framework Directive”);
- (ii) Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (the “Authorisation Directive”);
- (iii) Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (the “Access Directive”);
- (iv) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services (the “Universal Service Directive”); and
- (v) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (the “Personal Data and Privacy Directive”),

Transposed in Ireland by:

- (i) The European Communities (Electronic Communications Networks and Services)(Framework) Regulations, 2003;
- (ii) The European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations, 2003;
- (iii) The European Communities (Electronic Communications Networks and Services)(Access) Regulations, 2003;
- (iv) The European Communities (Electronic Communications Networks and Services)(Universal Service and Users’ Rights) Regulations, 2003; and
- (v) The European Communities (Electronic Communications Networks and Services)(Data Protection and Privacy) Regulations, 2003.

European Commission Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services (2003/311/EC).

ⁱ The Framework Directive covers ‘electronic communications services’ which includes ‘transmission services in networks used for broadcasting’ (Article 2(c))

ⁱⁱ Regulation 4(1) of the Authorisation Regulations

ⁱⁱⁱ Regulation 8(3) of the Authorisation Regulations

^{iv} Regulation 27(4) of Framework Regulations

^v Section 5 of the Wireless Telegraphy Act 1926, Regulation 10 of the Authorisation Regulations, Section 16(3) (a) of the Broadcasting Authority Act 1960 as amended and Section 3 of the Radio and Television Act, 1988