



Commission for
Communications Regulation

Decision Notice

Wholesale Broadcasting Transmission Services Markets - SMP Obligations

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1 Introduction

- 1.1 The Commission for Communications Regulation ('ComReg') is obliged by the Framework Regulations¹ to impose at least one obligation on an undertaking or undertakings that have been designated with Significant Market Power ('SMP').² The obligations which may be imposed on undertaking(s) designated with SMP are set out in Regulations 10 - 14 of the Access Regulations³.
- 1.2 ComReg conducted a national consultation and took in to account all comments in arriving at its preliminary conclusions in relation to the SMP obligations that it considers are appropriate, justified and proportionate to impose, as a result of RTÉ Transmission Network Limited ('RTÉNL') having been designated with SMP on the relevant markets.
- 1.3 As required by Regulation 20 of the Framework Regulations, the draft measure imposing the SMP obligations and the Response to Consultation⁴ were made accessible to the EU Commission and the national regulatory authorities ('NRAs') in other EU Member States.
- 1.4 The EU Commission informed ComReg on 17 December 2004 that it had examined the draft measures, that it had no comments in relation thereto and that pursuant to Article 7 (5) of the Framework Directive,⁵ ComReg could adopt the resulting draft measures. The purpose of this Decision is to formally impose the said SMP obligations on RTÉNL as and from the effective date specified in section 4 hereof.

¹ S.I. No. 307 of 2003 the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 which transposes Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

² Regulation 27 (4) of the Framework Regulations provides that 'Where the Regulator determines that a relevant market is not effectively competitive, it shall designate undertakings with significant market power in accordance with Regulation 25 and it shall impose on such undertakings such specific obligations as it considers appropriate.'

³ S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 which transposes Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities ('the Access Regulations').

⁴ Response to Consultation on Implementation of Remedies-Wholesale National Markets for Analogue Terrestrial Broadcasting Transmission and Draft Decision: ComReg Document 04/112, 17 November 2004.

⁵ Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

2 Statutory Powers Giving Rise to Decision and Legislative Background

- 2.1 In making this Decision ComReg has taken account of, amongst other things, its functions under Regulation 6 (1) of the Access Regulations, has (where appropriate) complied with the Policy Directions made by the Minister⁶ and has also taken the utmost account of the EU Commission's Recommendation⁷ and the Guidelines.⁸
- 2.2 This Decision is based on the reasoning conducted by ComReg in relation to the markets for wholesale national analogue terrestrial broadcasting transmission services for the provision of radio content to end-users and wholesale national analogue terrestrial broadcasting transmission services for the provision of television content.⁹
- 2.3 The SMP obligations imposed by this Decision were notified to the EU Commission in accordance with Regulation 20 of the Framework Regulations and the provisions of the Article 7 Recommendation¹⁰ and were registered by the EU Commission on 19 November 2004. The EU Commission informed ComReg on 17 December 2004 that it had examined the draft measures pursuant to Article 7 (3) of the Framework Directive,¹¹ that it had no comments in relation thereto and that pursuant to Article 7 (5) of the Framework Directive, ComReg could adopt the resulting draft measures.
- 2.4 This Decision is made pursuant Regulations 25, 26 and 27 of the Framework Regulations, Regulations 9, 10, 11 and 12 of the Access Regulations and having regard to sections 10 and 12 of the Communications Regulation Act, 2002.

⁶ Policy Directions made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February 2003 and Policy Directions made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 26 March 2004.

⁷ EU 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 the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

⁸ Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services.

⁹ See Consultation on Implementation of Remedies-Wholesale National Markets for Analogue Terrestrial Broadcasting Transmission: ComReg Document 04/80, 22 July 2004, and Response To Consultation on Implementation of Remedies-Wholesale National Markets for Analogue Terrestrial Broadcasting Transmission and Draft Decision: ComReg Document 04/112, 17 November 2004.

¹⁰ Commission Recommendation of 23 July 2003 on notifications, time limits and consultation provided in Article 7 of Directive 2002/21/EC of the European Parliament and the Council on a common regulatory framework for electronic communications networks and services.

¹¹ Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

3 SMP Obligations

SMP Obligations Generally

- 3.1 In accordance with Regulation 9 of the Access Regulations, RTÉNL shall have imposed on it, the obligations of Transparency, Non-discrimination and Accounting Separation as provided for by Regulations 10, 11 and 12 of the Access Regulations respectively. These SMP obligations are detailed in the sections below.

Obligation of Transparency

- 3.2 RTÉNL shall file with ComReg all agreements and associated documents, for the provision of transmission services, including, a description of all terms and conditions and prices. ComReg may oblige RTÉNL to make these agreements and associated documents publicly available.
- 3.3 All existing agreements for the provision of transmission services (whether or not in writing) shall be filed with ComReg by RTÉNL within 28 days of the date of this Decision becoming effective. Any new agreements (and any updates to thereto) shall also be filed by RTÉNL within 28 days of their being concluded.
- 3.4 RTÉNL shall publish on its website a complete schedule of tariffs within 28 days of the date of this Decision becoming effective. The schedule of tariffs shall include details of the mechanism whereby all parties, with which RTÉNL has contractual arrangements for the relevant services, will be notified of a change in tariffs resulting from any material change in costs.
- 3.5 RTÉNL shall send to ComReg a written notice (which may be in electronic format) of any new charges or, any amendment to the existing charges, at which it provides national analogue terrestrial transmission services, not less than 90 days prior to the introduction of any such new charge or, any amendment to any existing charges.
- 3.6 RTÉNL shall notify all parties with which RTÉNL has contractual arrangements for the relevant services, of the matters referred to in section 3.4 and 3.5 at the same time that ComReg is notified thereof.
- 3.7 RTÉNL shall make available to all parties with which RTÉNL has contractual arrangements for the relevant services and to ComReg, details of the technical specifications, network characteristics and terms and conditions of supply, under a service level agreement ('SLA'). ComReg may oblige RTÉNL to make such SLAs publicly available.
- 3.8 The matters addressed by such SLAs shall include, but not be limited to, the following:
- a. The scope of the SLA and details of the duration and negotiation of the SLA;
 - b. The objective of the SLA;
 - c. Broadcasters' business support;
 - d. Fault incidents;
 - e. Fault management;

- f. Fault response;
- g. Escalation process;
- h. Network monitoring centre;
- i. Service requests;
- j. Business continuity management;
- k. Routine meetings;
- l. Reports;
- m. A dispute resolution procedure to be used between parties;
- n. Provisions regarding confidentiality of non-public parts of the SLA;
- o. A description of the network access to be provided, including technical information;
- p. The locations of the points of network access;
- q. The technical standards for network access (including any usage restrictions and other security issues);
- r. The conditions for access to ancillary and supplementary services;
- s. Details of traffic and network management;
- t. Details of maintenance and maintenance objectives, any ordering and provisioning procedures, details of interoperability tests;
- u. Details of quality metrics;
- v. Details of measures to ensure compliance with requirements for network integrity; and
- w. Rules of allocation between the parties when supply is limited.

Obligation of Non-discrimination

- 3.9 Without prejudice to the generality of section 3.1 of this Decision and Regulation 11 of the Access Regulations, RTÉNL shall ensure that it offers SLAs to broadcasters, which address all of the matters referred to in 3.8 of this Decision and shall ensure that it does so in accordance with its SMP obligation relating to non-discrimination.

Obligation of Accounting Separation

- 3.10 The details of the Accounting Separation obligation will be contained in a decision(s) and direction(s) to be made by ComReg, following further consultation in relation to the detailed requirements for and the practical implementation of Accounting Separation.

4 Effective Date

- 4.1 This Decision shall be effective from the 22 December 2004 and until further notice by ComReg.

Isolde Goggin
Chairperson
The Commission for Communications Regulation

The 22 day of December 2004