



Commission for  
**Communications Regulation**

# **Response to Consultation and Decision**

## **The future of Deflector Licensing in Ireland**

### **Response to Consultation and Decision**

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**An Coimisiún um Rialáil Cumarsáide**  
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# Content

<b>Section</b>	<b>Page</b>
1 Introduction and Background .....	5
2 Discussion .....	6
2.1 Views of Respondents .....	7
2.2 ComReg's position .....	7
3 Final RIA.....	8

# Annex

Section	Page
Annex: 1 Consultation Responses .....	14
Annex: 2 Legal Basis.....	15

# 1 Introduction and Background

- 1 This Response to Consultation and Decision document sets out ComReg's final position on the future of Deflector licensing in Ireland. ComReg published its Consultation and draft RIA in ComReg document 12/ 18 "The future of Deflector licensing In Ireland"<sup>1</sup> in which it set out its proposals not to put in place a new Deflector licensing scheme once the existing scheme ends on 31 December 2012.
- 2 Chapter 1 of ComReg consultation document 12/18 set out the background to the introduction of a licensing scheme for deflector systems in Ireland in 1999. However the number of deflector service providers and consumers availing television services via a deflector service has declined considerably in recent years<sup>2</sup>. ComReg understands that the reduction in the number of subscribers is mainly due to increased competition from satellite transmission services.
- 3 RTÉ launched its National Public Service Digital Terrestrial Television (DTT) product, 'Saorview', in May 2011 and in October 2011 the Minister for Communications, Energy and Natural Resources announced that 24 October 2012 will be the date of Digital Switch Over (DSO) in conjunction with DSO in Northern Ireland, at which point analogue terrestrial television transmissions will cease in the island of Ireland<sup>3</sup>.
- 4 As of 31 December 2011, there were 14 deflector licensees operating in the State. Following renewal notification in December only 6 of these licensees have renewed their licences for the calendar year 2012.
- 5 ComReg received one response to Consultation 12/18 from Total Broadcast Consultants Ltd which is published in Annex 1 of this document.

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<sup>1</sup> [http://www.comreg.ie/publications/the\\_future\\_of\\_deflector\\_licensing\\_in\\_ireland.583.104043.p.html](http://www.comreg.ie/publications/the_future_of_deflector_licensing_in_ireland.583.104043.p.html)

<sup>2</sup> There are currently 6 licensed deflector operators down from a peak of 31 licensees in 1999 and from 14 licensees in 2011

<sup>3</sup> 'Minister Rabbitte announces date for Digital TV Switchover' - Press release DCENR, 14 October 2011

## 2 Discussion

- 6 Chapter 2 of Consultation document 12/18 set out the background to the introduction of deflector licensing in Ireland. In summary, the deflector licensing scheme was set up in 2009. Originally deflector services operated by receiving a "spill over" analogue signal from Northern Ireland or Wales on a high site, boosting that signal, and then retransmitting it locally. ComReg understands that today all, or almost all, deflector operators receive a digital signal from a satellite transmission and retransmit it locally in analogue format.
- 7 In Consultation 12/18 ComReg stated that in proposing to draw to a close the deflector licensing scheme at the end of 2012 it had given regard to the following facts:
- The launch of national DTT services in Ireland in May 2011;
  - The Broadcasting Act 2009 provides for spectrum to be available for commercial DTT to the Broadcasting Authority of Ireland (BAI);
  - At DSO, part of the UHF bands from 790 - 862 MHz will be released via an auction for other uses;
  - Viable alternative services (such as Direct to Home (DTH) satellite, both subscription and subscription free) are available;
  - The launch of the Saorsat services in early 2012;
  - The declining number of subscribers to the services provided by deflector operators; and
  - The declining numbers of deflector operators seeking to maintain licences under the scheme.
- 8 In addition to the above, in Consultation 12/18 ComReg stated that it had taken the following factors into consideration;
- The availability of the UK terrestrial programme services from other platform sources;
  - The need to ensure availability of spectrum for mobile services in the 800 MHz band for future digital multiples operators.
- 9 To inform its proposal ComReg also prepared and published a draft RIA (see Annex 2 of document 12/10). Having considered this, and bearing in mind ComReg's statutory objectives, ComReg proposed in Consultation 12/18 that it would not put in place a new deflector scheme and asked the following question.

Q. 1 Do you agree with ComReg's proposal that it shall not put in place a new deflector licensing scheme at the end of 2012? Please provide reasons and any supporting information with your answers.

## 2.1 Views of Respondents

10 ComReg received one response to this consultation from Total Broadcast , which agreed with ComReg's proposal not to put in place a new deflector licensing scheme at the end of 2012, and stated the following:

*"There is no justifiable need for these services to continue, since the TV channels they provide are available easily elsewhere, i.e. via Sky or Freesat.*

*Since the existing 'deflector' services are not deflectors at all in the original meaning of the term, but are in fact television transmitters broadcasting programming received by other means – usually satellite, I do not believe they should have been allowed to continue anyway."*

## 2.2 ComReg's position

11 ComReg notes the support received for its proposal and has not received any opinion from interested parties in support of the contrary view. As such, and bearing in mind the outcome of its final RIA in Chapter 3 of this document ComReg is proceeding with Option 1: Not to put in place a new deflector scheme at the end of 2012, when the current scheme expires.

12 The adoption of Option 1 will mean that deflector operators will no longer be able to provide television retransmission services to their limited number of customers, when the current deflector licences expire at 31 December 2012. However it will free up spectrum from early 2013 currently used by deflector operators in the UHF band, and ensure the timely availability of spectrum in that band, for the provision of new mobile broadband services<sup>4</sup> and commercial digital terrestrial television to a large number consumers on a nationwide basis. This will have benefits for competition in both the mobile and broadcasting markets.

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<sup>4</sup> The upper part of the UHF Band 790 – 862 MHz (known as the 800 MHz Band) is part of a multiband spectrum award process, currently being planned by ComReg. ComReg's final Decision on this matter, Decision 04/12, is set out in document 12/25..

### 3 Final RIA

13 This Chapter sets out ComReg’s final RIA on the deflector licensing scheme and is prepared in accordance with ComReg’s RIA guidelines<sup>5</sup> (“ComReg’s RIA Guidelines”) and having regard to the RIA Guidelines issued by the Department of An Taoiseach in June 2009 (“the Department’s RIA Guidelines”).

14 In August 2007 ComReg issued guidelines on its approach to conducting a RIA. The guidelines set out, amongst other things, the circumstances in which ComReg considers that a RIA is appropriate. In summary, ComReg indicated that it would generally conduct a RIA in any process that might result in the imposition of a regulatory obligation, or the amendment of existing regulatory obligations to a significant degree, or which might otherwise significantly impact on any relevant market or on any stakeholders or consumers.

15 The RIA follows the structure described in ComReg’s RIA Guidelines and consists of the following five steps:

Step 1: Identify the issue and identify the objectives

Step 2: Identify and describe the regulatory options

Steps 3: Determine the impact on stakeholders

Steps 4: Determine the impact on competition

Step 5: Assess the impacts and choose the best option

#### **Step 1: Identify the issue and identify the objectives**

16 ComReg’s statutory objectives which are relevant to this RIA are to:

- Ensure the efficient use and effective management of radio frequencies,
- Ensure that users including disabled users derive maximum benefit in terms of choice, price and quality,
- Ensure there is no distortion or restriction of competition in the electronic communications sector.

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<sup>5</sup> ‘Guidelines on ComReg’s Approach to Regulatory Impact Assessment’ – ComReg 07/56a, August 2007.



- 17 There are currently 6 licensed Deflector service providers offering services in Ireland. Each deflector licensee is licensed to use 4 channels in the UHF band for the retransmission of UK television services in analogue form. Channels are assigned within the 470 MHz – 862 MHz part of the UHF band. ComReg issues deflector licences on a secondary basis<sup>6</sup> under the Wireless Telegraphy (UHF Television Programme Retransmission) Regulations 209 (S.I. 445/2009). The current licensing scheme ends on 31 December 2012.
- 18 The policy issue to be addressed is whether or not ComReg should put in place a new deflector licensing scheme at the end of 2012 to accommodate continued provision of television retransmission services.
- 19 The factors relevant to this issue are:
1. DSO is scheduled to take place on October 24 2012,
  2. European Commission Decision 2010/267/EU on the harmonised technical conditions for the band 790 – 862 MHz for electronic communications,
  3. ComReg is finalising its plans for the auction of the 790 – 862 MHz (the so called “Digital Dividend”) part of the UHF band for electronic communications services in 2012,
  4. ComReg’s obligation to provide spectrum for a minimum of six national digital multiplexes below 790 MHz for public service and commercial DTT services.
- 20 In February 2009, the Department of Communications, Energy and Natural Resources (DCENR) published its National Policy framework for identifying the ‘Digital Dividend’<sup>7</sup>. The document required that spectrum for broadcasting, post analogue switch-off, sufficient to accommodate the statutory minimum of six nationwide multiplexes should be identified and reserved. The document stated that additional broadcasting requirements may be considered but not as core requirements. It set out to establish a policy framework for identifying the spectrum required for television broadcasting in the UHF band as well as identifying the spectrum that could be released for use by other services. The document also stated that following analogue switch-off, in so far as it is possible to do so, Ireland’s UHF DTT broadcasting should be concentrated in the band 470 to 790 MHz. It added that the Band 790 to 862 MHz (the “800 MHz band”) should, in so far as is possible, be released for use by electronic communications services.

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<sup>6</sup> Not permitted to cause interference and will not be afforded protection from interference from other sources.

<sup>7</sup> ‘Development of a National Policy Framework for identifying spectrum for the Digital Dividend’ – DCENR, February 2009

- 21 European Commission Decision 2010/267/EU mandates EU Member States to make available the 790 – 862 MHz band for electronic communications services. This Decision sets out the detailed technical conditions that must apply to any system deployed in this band. The technical parameters of deflector systems are such that they are not capable of meeting the technical conditions as set out in EC Decision 2010/267/EU. ComReg's Decision 04/12 set out how ComReg is implementing this Decision.
- 22 The advent of DTT and the achievement of a “Digital Dividend” in the 800MHz band gives rise to two issues for deflector operators. Deflector operators that currently use channels in the 790 - 862MHz part of the band will no longer be allowed to do so when the spectrum is allocated to new operators for the provision of electronic communications service. In addition, ComReg has an obligation, under the Broadcasting Act 2009<sup>8</sup> to issue a minimum of four national licences to the Broadcasting Authority of Ireland (BAI) in respect of DTT multiplexes, if requested. ComReg has already licensed RTÉ for two DTT multiplexes in line with its obligation under the Broadcasting Act 2009<sup>9</sup>. As is the case with radio spectrum generally, the UHF band is a finite spectrum resource. Consequently, there would be a difficulty in identifying sufficient channels at particular locations in the UHF band below 790MHz to accommodate the requirements for a minimum of six multiplexes for DTT, as well as four channels for analogue deflector transmissions.
- 23 The Programme Making and Special Events (PMSE) sector utilises the interleaved UHF spectrum band on a temporary secondary basis for communications at events such as concerts and festivals or programme making. The auction of the 790 – 862 MHz means that this spectrum will no longer be available for PMSE users who will have to be accommodated in the spectrum below 790 MHz.

## **Step 2: Identify and describe the regulatory options**

- 24 ComReg has identified the following two regulatory options which may be adopted in order to address the policy issues outlined above, in line with its statutory functions:
- 25 Option 1: Not to put in place a new deflector scheme at the end of 2012 when the current scheme expires thereby freeing up spectrum from early 2013 for other users as outlined above.

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<sup>8</sup> Section 132(3) & (4) of the Broadcasting Act 2009 requires ComReg to licence (by request of the BAI) DTT multiplexes to the BAI.

<sup>9</sup> Section 132(1) & (2) of the Broadcasting Act 2009 provides for the licensing of two DTT multiplexes to RTÉ.

26 Option 2: To put in place a new deflector scheme at the end of 2012 when the current scheme expires. This new scheme would be on a similar basis to the current scheme and run for a period of up to three years, licences under the scheme would be annual licences and could be terminated as the spectrum was needed for other services.

### **Steps 3 & 4: Determine the impacts on stakeholders and on competition**

27 The stakeholders likely to be directly affected by the options outlined above are:

- The 6 licensed deflector service providers,
- The approximate 270 customers availing of deflector services, and
- The BAI, which is responsible for the award of the four commercial DTT multiplexers.

28 The stakeholders likely to be indirectly affected by the options outlined above are:

- PMSE users,
- Commercial Digital TV services providers and consumers and
- Mobile broadband service providers and consumers as this spectrum is very suitable for the provision of mobile broadband services.

29 Option 1 would mean that deflector operators would no longer be able to provide television retransmission services to their limited number of customers. However it would free up spectrum from early 2013 currently used by deflector operators in the UHF band, and ensure the timely availability of spectrum in that band, for the provision of new mobile broadband services<sup>10</sup> and commercial digital terrestrial television to a large number consumers on a nationwide basis. This would have benefits for competition in both the mobile and broadcasting markets.

30 Under Option 1 the small number of consumers (approximately 270<sup>11</sup>) in a small number of specific geographic locations currently receiving UK terrestrial television programme services via a deflector service provider would no longer have this platform option. However they would continue to have the choice of a number of alternative platforms for reception of UK terrestrial television programme services in the future, principally via free to air or subscription based direct to home (DTH) satellite services.

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<sup>10</sup> The upper part of the UHF Band 790 – 862 MHz (known as the 800 MHz Band) is part of a multiband spectrum award process, the Draft Information Memorandum of same is at ComReg document 11/75.

<sup>11</sup> ComReg carried out a survey of the 14 licensed deflector operators in November 2011 to ascertain the number of paying subscribers using the service. Four of the seven respondents had subscribers.

- 31 A further consideration could be that consumers will be making the change to DTT this year to continue to receive the free to air Irish national stations. As part of that change a proportion may well choose to receive access to the UK stations digitally via satellite either free to air or subscription. This would reduce the already small consumer base for defectors even further and would lessen the impact of discontinuing the deflector licensing regime.
- 32 Option 1 would also ensure that the interleaved spectrum in the UHF band that is currently used for Programme Making and Special Event (PMSE) licensing continues to be available for that use throughout the country.
- 33 Option 2 would maintain the status quo for the small number of consumers who currently avail of analogue UK terrestrial television programme services via a deflector service provider and for the ever decreasing number of licensed deflector operators<sup>12</sup>.
- 34 If Option 2 were favoured, the award of the 800 MHz band for electronic communication services would, nevertheless, mean that two of the six licensed deflector operators who currently use channels in 800MHz band for the re-transmission of television programme services would have to identify channels elsewhere in the UHF band which could be used for the provision of such analogue deflector services. The potential for identifying such channels could, however, prove difficult, given the requirement for ComReg to provide sufficient spectrum below 790MHz for potential new commercial DTT services and for the continued availability of interleaved spectrum in the UHF band for PMSE. Added to that, the cost of retuning of any deflector system currently in operation above 790MHz is likely to outweigh any benefits that might accrue to the small number of paying subscribers availing of the service.
- 35 Demand for television services via a deflector system has fallen dramatically over the past number of years. Probably as a consequence of the broad choice of platforms now available, subscriber numbers have fallen from approximately 150,000 in 1999 to the current subscriber base of about 270. These remaining consumers can now, following a once off set up cost, avail of free to air terrestrial or satellite services. The continued licensing of analogue deflectors from 2013, as proposed in Option 2, could result in a delay to the availability of spectrum for and consequently the award of licences by the BAI for commercial digital television broadcasting. This could have an impact on competition in the digital broadcasting market.

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<sup>12</sup> 6 have renewed their licences for 2012, from a peak of 31 licensees in 1999 and from 14 licensees in 2011

- 36 An attempt to accommodate analogue deflectors in the UHF band below 790MHz, in addition to sufficient provision for DTT, could also impact on the spectrum availability for PMSE use in that part of the band<sup>13</sup>. PMSE is currently accommodated in the interleaved channels on a temporary basis, as necessary.
- 37 Deflector operators provide services to a specific geographical location and as such do not compete against one another to provide services to consumers. However the negative impact of Option 2 could reduce competition in both the Digital Broadcasting and mobile markets should the spectrum for the provision of these services not be available.
- 38 Overall Option 1 is likely to have a greater positive impact on competition by ensuring the efficient management and use of the radio frequency spectrum.

### **Step 5: Assess the impacts and choose the best option**

- 39 Option 1 has a number of benefits, namely, ensuring the timely availability of spectrum in the UHF band to provide DTT and wireless broadband services to a large number of consumers post analogue switch off and the continued availability of spectrum in the UHF band to provide services such as PMSE. These benefits would accrue to a significant number of consumers and are likely to outweigh the costs which relate to the short term disruption of a small number of consumers of deflector services moving to alternative platforms.
- 40 Whilst these costs would not arise for the 270 consumers using deflector services with Option 2, there would be a cost to the two deflector operators that would be required to re-tune their equipment out of the 790 – 862 MHz sub band, which, regardless of whether a new deflector licensing scheme is put in place or not, will, in any event be reassigned to mobile broadband from the date of analogue switch off in October 2012. Given the very low number of subscribers availing of the service re-tuning is unlikely to be an economical option for the operators affected. This cost and short term disruption to the 270 deflector customers is outweighed by the benefits of ensuring timely spectrum availability for the provision of DTT and broadband services to a large number of consumers.
- 41 Having regard to the factors discussed above, ComReg is of the view that Option 1 is likely to better address the policy issues set out above, and is in keeping with its statutory functions.

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<sup>13</sup> 'Development of a National Policy Framework for identifying spectrum for the Digital Dividend' as published by DCENR in February 2009, sets out that in releasing a 'Digital Dividend' in the 800 MHz, there should be continued use of the 'white spaces' (or interleaved spectrum) for PMSE and other such services ancillary to broadcasting.

# Annex: 1 Consultation Responses

## Total Broadcast Consultants Ltd.

*Q1: I agree that the system of licencing TV 'deflector' systems should cease at the end of 2012.*

*There is no justifiable need for these services to continue, since the TV channels they provide are available easily elsewhere, i.e. via Sky or Freesat.*

*Since the existing 'deflector' services are not deflectors at all in the original meaning of the term, but are in fact television transmitters broadcasting programming received by other means – usually satellite, I do not believe they should have been allowed to continue anyway.*

*These operators have been deriving income from what is in effect an illegal transmission (albeit legitimised after the 1988 Wireless Telegraphy Act) – whether they have been paying fees to the originators of the programming is doubtful.*

*Such practices are unnecessary, and of dubious legality.*

## Annex: 2 Legal Basis

A 2.1 The original deflector licensing scheme was established in 1999, by the then Office of the Director of Telecommunications Regulation ("ODTR") following a public consultation (ODTR Doc 99/55). The scheme was established under the Wireless Telegraphy (UHF Televisions Programme retransmission) Regulations 1999 (S.I. 348/1999). The scheme permitted the provision of deflector services only in those geographic areas where a cable television service was unavailable, and the view was also expressed that the scheme would be wound up upon the introduction of Digital Terrestrial Television ("DTT") which, at that time, was expected to begin roll out in 2001.

A 2.2 For this reason, the 1999 Deflector Regulations stated that the licences would be of one-year duration, subject to renewal for a maximum of one more year (i.e. up until 31 December 2001) but that they could not be renewed further beyond that date. As DTT did not launch in 2001, the deflector licensing scheme was renewed in 2001, by amendment of the 1999 Deflector Regulations, and it was renewed again in 2003, 2006 and 2009, each time by a new set of Deflector Regulations. The current scheme - in place under the Wireless Telegraphy (UHF Televisions Programme retransmission) Regulations 2009 (S.I. 445/2009) ends on 31 December 2012.