

ADDENDUM

TO THE OWNERSHIP AND CONTROL POLICY OF THE BROADCASTING COMMISSION OF IRELAND

2004

Subsequent to the publication of the Ownership and Control Policy of the Broadcasting Commission of Ireland ("BCI") in October 2001, the Competition Act, 2002, ("Act") introduced new statutory provisions for the control of "media mergers" by the Competition Authority ("the Authority") and the Minister for Enterprise, Trade and Employment ("the Minister"). Part III of the Act sets out the respective statutory roles of the Authority and the Minister in respect of mergers and acquisitions, including media mergers. In particular, the Minister retains, under section 23 of the Act, a public interest role in the control of media mergers and may, in certain circumstances, order that a media merger may or may not be put into effect or may be put into effect subject to specified conditions. In reaching a decision, the Minister is required to have regard to "the relevant criteria", set out in the Act.

In Section 23 of the Competition Act 2002, "media merger" is defined as meaning a merger or acquisition in which one or more of the undertakings involved carry on a media business in the State. Section 23 contains a definition of "media business" as including a business of providing a broadcasting service or a broadcasting services platform.

It is clear from a reading of the provisions that such provisions may affect the transactions of broadcasting services licensed by the Broadcasting Commission of Ireland, under the Radio and Television Act, 1988, and the Broadcasting Act, 2001 ("contractors"). Such contractors currently are subject to the relevant statutory provisions concerning ownership and control as contained in broadcasting legislation, their contractual obligations to the Commission and the terms of the BCI's Ownership and Control Policy. The relevant criteria to which the Minister must have regard, include the extent to which ownership or control of media businesses or particular types of media businesses in the State is spread amongst individuals and other undertakings and the extent to which the diversity of views prevalent in Irish society is reflected through the activities of the various media businesses in the State. A consideration by the Minister of these criteria overlaps with the consideration of the Commission pursuant to its Ownership and Control Policy.

The Commission's view, in light of the enactment of the 2002 Act, is that its Ownership and Control Policy continues to be relevant and necessary, in the light of its statutory remit. Both the 1988 and 2001 Acts list certain factors to which the BCI is to have regard and thereby require and entitle the Commission to focus on issues that will affect diversity, both within the broadcasting sector and within each specified (franchise) area.

The purpose of this addendum is to clarify the procedures that will apply to the consideration of changes in ownership and control for which Contractors must seek and obtain the consent of the Commission under their contract ("Proposed Changes"), which changes also amount to media mergers within the meaning of Section 23 of the Competition Act 2002.

This Addendum is without prejudice to the application of the Commission's Ownership and Control Policy in the context of the award of broadcasting contracts under the Broadcasting Act, 2001 and the Radio and Television Act, 1988.

In assessing applications for changes in the ownership and control provisions of broadcasting/content contracts, and in reaching a decision in such regard, the BCI will have regard to:

- (i) the provisions of the Radio and Television Act 1988 (where applicable);
- (ii) the provisions of the Broadcasting Act 2001 (where applicable);
- (iii) obligations under the relevant broadcasting/content contract;
- (iv) the terms of its Ownership and Control Policy;
- (v) the role of the Minister further to the provisions of the Competition Act 2002.

The Commission will continue to apply normal procedures in respect of an application for change. However, contractors must ensure that the relevant sections of the Competition Act 2002 are being adhered to.

The Commission may, pursuant to Section 23(6) of the Competition Act, make its views known to the Minister regarding any proposed change.

Notification of the decision of the BCI to the Contractor will also be in accordance with its contractual obligations.