

CO-OPERATION AGREEMENT BETWEEN THE COMPETITION AUTHORITY AND THE BROADCASTING COMMISSION OF IRELAND

This Agreement is made on the 19th day of December 2002

Between

The Broadcasting Commission of Ireland of Marine House, Clanwilliam Place, Dublin 2.

And

The Competition Authority of Parnell House, 14 Parnell Square, Dublin 1.

1. Definitions

“Agreement” means all provisions of this Agreement, as from time to time amended by agreement between the Parties in accordance with Article 8 of the Agreement,

“Party” means the Broadcasting Commission of Ireland and/or the Competition Authority, and “Parties” shall be construed accordingly,

“Respondent Party” means the Party to whom a request has been submitted under the Agreement,

“Requesting Party” means the Party submitting a request under the Agreement,

“The Act” means the Competition Act 2002 (No.14 of 2002).

2. Purposes of Agreement –

WHEREAS the purposes of this Agreement are -

- (a) To facilitate co-operation between the Parties in the performance of their respective functions in so far as they relate to issues of competition between undertakings,

- (b) To avoid duplication of activities by the Parties, being activities involving the determination of the effects on competition of any act done, or proposed to be done,
- (c) To ensure, as far as practicable, consistency between decisions made or other steps taken by the Parties in so far as any part of those decisions or steps consists of or relates to a determination of any issue of competition between undertakings,

THE PARTIES NOW AGREE AS FOLLOWS, PURSUANT TO THE PROVISIONS OF SECTION 34(1) OF THE ACT.

3. Term of Agreement

This Agreement commences on the date of this Agreement and will continue for as long as the provisions of Section 34 of the Act shall remain in force.

4. Review

The Parties will review this Agreement annually or at the request of either Party.

5. Exchange of information

- (1) Each Party agrees that it will, upon written request, where it agrees that the request is reasonable, provide to the other Party any information in its possession of a kind specified in the request. The request shall state that the information is required by the Requesting Party for the purpose of the performance of its functions, and shall describe the particular functions for which the information is required.
- (2) Where the Broadcasting Commission of Ireland receives a request under Clause 5(1) of this Agreement, it shall not be obliged by virtue of this Agreement to provide any information which was the subject of an undertaking as to confidentiality made by the Broadcasting Commission of Ireland to a third party prior to the coming into effect of this Agreement.
- (3) Requests for information must be made in writing (for the avoidance of doubt, "writing" includes electronic mail). In cases of urgency, requests for information may at first instance be made orally, and their responses given orally, provided that both requests and responses are subsequently confirmed in writing.
- (4) In the case of information supplied pursuant to this Agreement, the provisions of any enactment concerning the disclosure of information by the Respondent Party shall apply to the Requesting Party.

- (5) The Requesting Party may ask that the request itself be considered to be of a confidential nature.
- (6) Subject to Clause 5 (7) the Parties hereby commit themselves to use the information solely for the purposes described in the Request.
- (7) Should the Requesting Party wish to use the shared information for any purpose other than the purposes expressed in the Request it must first obtain the written approval of the Respondent Party.

6. Forbearance to act

- (1) Where one Party is satisfied that the other Party is performing functions in relation to any particular matter, the first Party may agree to forbear to perform any of its functions in relation to that same matter.
- (2) Where a Party intends to forbear to perform its functions in the manner described in sub-article (1) of this Article, it shall first discuss the issue with the other Party, inform it of its intention to apply forbearance, and give the other Party an opportunity to respond.
- (3) Either Party may request the other to exercise forbearance in any particular case. The other Party may accede to such request where it is satisfied that the requesting Party is performing functions in relation to that matter.
- (4) Where one Party has agreed to forbear to perform its functions in any particular matter, it may so inform any relevant third parties as it sees fit.

7. Consultation

In any circumstance in which both Parties are considering an issue or issues of competition which is or are identical to one another, each Party shall consult with the other before performing any function involving the determination of such issues.

8. Variation

This Agreement may be varied at any time by consent of both Parties. Any variation agreed shall be in writing, shall be signed by both Parties or by their authorised representatives and shall come into force on a date agreed by the Parties.

9. Severability

Should, at a future date, the whole or any part of any provision of this Agreement prove to be illegal or unenforceable, the other provisions of the Agreement and, where applicable, the remainder of the provision in question shall remain in full force and effect.

10. Entire Agreement

This Agreement supersedes all prior Agreements, arrangements and understandings between the Parties and constitutes the entire agreement between the Parties relating to the same subject matter. Both Parties undertake to apply the Agreement in a spirit consistent with the purposes of the Agreement as set out in section 34(1) of the Act.

11. Governing Law and Jurisdiction

The Agreement shall be governed by and construed in accordance with the laws of Ireland and the courts of Ireland shall have jurisdiction to hear and determine any suit, action or proceedings that may arise out of or in connection with this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed in the manner hereinafter appearing on the date and year first herein written.

Conor J. Maguire

Chairperson
Broadcasting Commission of Ireland

John Fingleton

Chairperson
Competition Authority