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**AN BILLE UM RIALÁIL CUMARSÁIDE (LEASÚ) 2007  
COMMUNICATIONS REGULATION (AMENDMENT) BILL  
2007**

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**EXPLANATORY AND FINANCIAL MEMORANDUM**

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**Introduction**

The main provisions of this Bill are—

- to increase the enforcement powers of the Commission for Communications Regulation (hereafter “the Commission”) to compel compliance by providers of telecommunications services (operators) with their obligations under the EU Regulatory Framework for electronic communications networks and services;
- to increase penalties for breaches of certain obligations;
- to amend the Competition Act 2002 to enable the Commission to investigate breaches of competition law in the telecommunications sector;
- to establish an emergency call answering service;
- to amend the Electronic Commerce Act 2000 to transfer responsibility for the oversight and management of the Irish internet domain name .ie to the Commission;
- to grant the Minister for Communications, Marine and Natural Resources and the Commission information gathering powers.

**Provisions of the Bill**

*Part 1 — Preliminary Matters*

*Section 1* is a standard section that provides for the short title and commencement of the Bill.

*Section 2* is a standard section that defines the Communications Regulation Act 2002 for ease of reference.

*Part 2 — Amendment of Principal Act*

*Section 3* is a standard interpretative provision. It amends the Communications Regulation Act 2002 (hereafter the “Principal Act”) by inserting a number of new definitions for the purposes of the Bill.

*Section 4* repeals section 9 of the Principal Act, which relates to the transfer of functions to the Commission for Communications Regulation and provides for consequential amendments to certain Acts and S.I.s.

*Section 5* amends section 10 of the Principal Act to provide additional functions to the Commission to monitor the operation of the emergency call handling service, to investigate matters relating to the supply of and access to electronic communications services, networks and associated facilities, to collect and publish information relating to such services, networks and associated facilities and, to enable the Commission to carry out investigations on its own initiative, as well as, as a result of a complaint made by an end user or an undertaking.

*Section 6* amends the Principal Act by inserting five new sections, 13A to 13E, to provide information gathering powers for the Minister and the Commission.

- Section 13A provides information gathering powers for the Minister in relation to the technical operation and performance of telecommunications networks and infrastructure in the state for the purposes of formulating policy regarding emergencies and network security.
- Section 13B provides that the Minister may by notice in writing, require the Commission to provide written information to him in relation to communications networks and infrastructures in the State.
- Section 13C provides for the Minister to gather information from undertakings in relation to the technical operation or performance of the relevant electronic communications network, the breakdown or malfunctioning of any part of the service and the operation of the undertaking in relation to electronic communications infrastructure. Provision is also made for a summary offence for failure to provide information or for providing false information.
- Section 13D provides for the Commission to gather information from undertakings to enable it to carry out its functions as defined in statute or to comply with a requirement under Section 13B. Provision is also made for a summary offence for failure to provide information or for providing false information.
- Section 13E provides for an alternative enforcement mechanism for an offence under Sections 13C or 13D, by way of a petition to the High Court by the Minister or the Commission for an order of compliance.

*Section 7* amends the Principal Act by inserting new sections 24A to 24C to provide protection for whistleblowers who disclose appropriate information to the Commission. This is a standard provision in new legislation.

- Section 24A provides that a person who makes an appropriate disclosure, as defined in that section, to the Commission incurs no civil or criminal liability. The Commission may not divulge the identity of such a person without that person's consent and will notify the person of the outcome of any investigation into the matters to which the disclosure relates.

- Section 24B provides a right of action in tort to a person who suffers detriment as a result of making, or threatening to make, an appropriate disclosure of information to the Commission, the Garda Síochána or other law enforcement authority.
- Section 24C provides for a summary or indictable offence for the disclosure of false or misleading information.

*Section 8* repeals a now redundant provision in the Principal Act.

*Section 9* provides for a technical amendment of Section 30 of the Principal Act consequential to the insertion of the definition of ‘related enactment’ under section 3.

*Section 10* amends the Principal Act by inserting three new sections, 31A to 31C, to provide that the Commission shall, before the end of each financial year of the Commission, present to the Minister and publish an annual action plan and budget setting out its principal activities and associated budgeted expenditure.

- Section 31A defines the financial year of the Commission.
- Section 31B provides that the Commission shall prepare an action plan setting out the principal activities it proposes to undertake in the following year, relating to its functions of regulating electronic communications, managing the radio spectrum and regulating postal services. In preparing its action plan, the Commission shall have regard to its current strategy statement.
- Section 31C provides that the Commission shall prepare a financial forecast showing estimates of its revenue and expenditure in the following year for the activities referred to in its action plan.

*Section 11* amends the Principal Act by inserting a new Part 2A that confers on the Commission powers to require persons to attend before it to give evidence or produce documents. This Part is comprised of a number of new sections 38A to 38H.

- Section 38A provides the Commission with the power to serve notice on a person requiring that person to attend before it to give evidence or produce documents.
- Section 38B provides for the swearing of an oath or making of an affirmation and for legal representation of a person attending before the Commission.
- Section 38C provides that proceedings under this Part are normally to be held in private unless a person attending before the Commission requests that the proceeding take place in public or the Commission directs that because of the confidential nature of any evidence or matter, the whole or part of a proceeding should be held in private.
- Sections 38D and 38E provide for offences for failing to attend to give evidence or produce a document; for failure to swear an oath or make an affirmation; refusing to give evidence or answer a question relating to such evidence, or refusing or failing to produce a document that is required to be produced under Section 38A.

- Sections 38F and 38G provide that a person attending before the Commission under Section 38A has the same protection as a witness has in proceedings in the High Court and is entitled to the same allowances in respect of travelling and other expenses.
- Section 38H provides that an offence under this Part is triable summarily.

The provisions under this Part are modelled on similar provisions in the Competition Act 2002 and the Financial Services Authority Act 2004.

*Section 12* amends the Principal Act by restating the section in that Act providing for the prosecution of summary offences by the Commission.

*Section 13* amends Section 44 of the Principal Act by restating that section consequential to an amendment under Section 3 of the Bill. Section 44 provides for the issuing of a notice by the Commission of its intention to prosecute and provides a mechanism that allows for payments to be made by operators in lieu of prosecution and requires the operator to remedy any non-compliance instead of facing Court proceedings. A provision in Section 44 of the Principal Act whereby the Minister can, by regulations, vary the amount standing specified in that section is also repealed under this section, as is a further provision that becomes obsolete consequential to the amendment of Section 44.

*Section 14* amends the Principal Act by substituting two new sections for the existing sections 45 and 46 which are now spent.

- Section 45 provides for a summary offence for overcharging by an undertaking for a service or product that was supplied to an end user; charging for a service or product that was supplied to but not requested by the end user; or, that was requested by an end user but not supplied. In investigating a contravention of this section, the Commission may conduct an audit of the undertaking's billing system.
- Section 46 provides that where an undertaking is contravening, or has contravened Section 45, and it appears that it may commit a further contravention, the Commission may apply to the High Court for a restraining order. The Commission may also seek an order imposing a financial penalty on the undertaking having regard to the circumstances of the contravention.

*Section 15* inserts new sections 46A to 46E into the Principal Act.

- Section 46A is an enabling provision to provide that regulations made under the European Communities Act 1972 for the purpose of transposing EU law on electronic communications may provide for indictable offences. Currently, only summary offences may be provided for in regulations made under that Act. This provision will allow for substantial penalties to be imposed on undertakings for serious offences with fines of up to €4m. or 10% of turnover. It also provides for additional daily fines for offences of a continuing nature.
- Sections 46B to 46E contain provisions in relation to civil and criminal proceedings regarding the admissibility of expert evidence, the provision of documents to juries, presumptions

as to the authenticity of certain documents and the admissibility of statements contained in certain documents. These provisions are based on similar provisions in the Competition Act, 2002. As in competition law, legal proceedings relating to the electronic communications regulatory framework can be technical, specialised and complex and these provisions will facilitate the administration of such proceedings.

- Section 46B provides that relevant expert evidence is admissible in all court proceedings under the provisions of this Bill or a related enactment and that the use of such evidence may be limited to specified purposes only.
- Section 46C provides that the judge in a criminal trial under this Act or a related enactment may direct that certain documents be given to the jury in any form that the judge considers appropriate.
- Section 46D provides for certain presumptions to apply, when documents are admitted as evidence in a civil or criminal action under this Act, to the authorship, ownership, receipt and other matters relating to such documents. The defendant or respondent may rebut these presumptions. The term “document” is defined here as including anything that is in writing, which includes electronic and other forms of text and data.
- Section 46E contains provisions on the admissibility of statements in documents that are submitted in evidence. These provide that a document containing a statement to the effect that an act was done or omitted to be done by a specified person may be admitted and incorporates protections for the person who is the subject of the statements.

*Section 16* inserts a new section 57A into the Principal Act that provides a civil enforcement mechanism to enable the Commission to enforce any conditions it may impose under section 57 for physical infrastructure sharing against network operators or physical infrastructure providers, such as property developers. Currently, the Commission can only enforce such conditions against operators through conditions attached to their authorisations to operate an electronic communications service. Some developers have entered into exclusive arrangements for access to physical infrastructure, such as ducts, with only one operator, thus reducing choice for the end user. This provision is designed to provide the Commission with the power to ensure that any operator, who seeks it, can gain access to physical infrastructure controlled by persons other than operators.

*Section 17* inserts a new part 6 into the Principal Act and provides for the Minister to enter into a contract with an undertaking for the provision of an emergency call answering service. The section also provides for the Commission to regulate the price that the undertaking shall charge for handling emergency calls.

- Section 58A provides relevant definitions for new Part 6.
- Section 58B provides for the Minister to enter into a contract for the provision of an emergency call answering service. It also provides that the price per call will be fixed by contract with the Minister for the first two years and thereafter regulated by the Commission.
- Section 58C specifies the payment regime and allows for due debts to be recovered in a court of competent jurisdiction.

- Section 58D provides for the Commission to conduct a review of the maximum call handling fee.
- Section 58E provides for the Commission to be paid by the ECAS operator such amounts as is reasonably necessary for the monitoring of the service.
- Section 58F provides a defence for the ECAS operator for acts done or omitted to be done in the course of operating the ECAS unless it is established that such acts were done or omitted in bad faith or with gross negligence.
- Section 58G provides for the Commission to provide the Minister with reports on the operation of the service upon request.

*Section 18* inserts a new Part heading before Section 59 of the Principal Act.

*Section 19* substitutes a new Schedule for Schedule 1 of the Principal Act. This new schedule lists the related enactments for the purposes of this Bill.

*Part 3 — Amendment of Electronic Commerce Act 2000*

*Sections 20* and *21* amend the Electronic Commerce Act of 2000, whereby the powers provided to the Minister in relation to the registration of Domain Names is transferred to the Commission. *Section 20* inserts a definition of the ‘Commission’ into that Act and *Section 21* substitutes a new Part, comprising new *Sections 31* to *35*, for Part 4 of the Electronic Commerce Act 2000.

- *Section 31* provides a definition of “.ie domain name”
- *Section 32* sets out broadly the regime for the registration and operation of the .ie domain name in the State and provides that the Commission may make regulations for the purpose of this section. A summary offence for non-compliance with this section is provided.
- *Section 33* provides for the Commission to impose a levy on the registration authority in order to fund the properly incurred expenses of the Commission in performing its functions with regard to the .ie domain.
- *Section 34* provides for the Commission to have access at all times to .ie domain name data base and associated files.
- *Section 35* provides for the Commission to designate an interim authority in certain circumstances if it considers it necessary to do so.

*Part 4 — Amendment of Competition Act 2002*

This Part of the Bill amends the Competition Act 2002 (hereafter the “2002 Act”) to provide the Commission with the same power that the Competition Authority has under that Act, to investigate and prosecute breaches of sections 4 and 5 of the Act relating to restrictive agreements and practices and abuse of a dominant position — but only in relation to the communications sector.

*Section 22* amends section 3 of the 2002 Act by inserting a number of new definitions for the purpose outlined above.

*Sections 23 to 28* provide for technical amendments to Sections 4, 6, 8, 13, 14 and 18 of the 2002 Act for the purpose of this Part.

*Section 29* amends Section 34 of the Competition Act 2002 by providing that that Section does not apply to the cooperation agreement provided for in Section 47G of the Bill.

*Section 30* substitutes section 47 of the 2002 Act, which provides for the disclosure by certain authorised persons of information relating to offences under that Act to the Competition Authority, with a new section 47 that provides for those authorised persons to also disclose information relating to offences involving a breach of sections 4 and 5 of the 2002 Act, where it occurs in the communications sector, to the Commission.

*Section 31* inserts a new Part 4A into the 2002 Act after section 47, relating to the performance by the Commission of its new functions under that Act. This part contains new sections 47A to 47G.

- Section 47A provides that the Commission, in addition to its other existing functions, may investigate, either on its own initiative or in response to a complaint, any breach of sections 4 and 5 of the 2002 Act that is or may be occurring in the communications sector.
- Section 47B provides that the Commission may delegate certain of its functions under the 2002 Act to any member of the Commission or of the Commission's staff.
- Section 47C provides that the Commission notify the Competition Authority before performing any of its functions under this Act.
- Section 47D sets out the responsibilities of both the Commission and the Competition Authority to notify each other of suspected breaches of section 4 and 5 of the 2002 Act.
- Section 47E provides that both bodies reach agreement as to which body should investigate or prosecute offences under sections 6 and 7 relating to the communications sector. If agreement can't be reached, the matter shall be referred to the Minister for Enterprise, Trade and Employment for resolution, whose decision shall be final.
- Section 47F provides that an undertaking is not liable to be prosecuted by both bodies for the same breach.
- Section 47G provides that both bodies enter negotiations to draw up a co-operation agreement that will facilitate the performance of their respective functions under the 2002 Act. In particular, the co-operation agreement will avoid duplication of activities and ensure consistency between decisions and other steps taken by, and enable the exchange of information and consultation between, both bodies. A copy of the agreement shall be provided to the Minister for Enterprise, Trade and Employment and published, as soon as practicable after it has been entered into, by both bodies.

*Section 32* amends Schedule 1 of the Competition Act 2002 by deleting reference to the Director of Telecommunications Regulation consequential to Section 47G.



*Schedules 1 and 2 — Consequential Amendment of Certain Acts and S.I.s.*

*Schedules 1 and 2* to the Bill amend the provisions of the enactments and Statutory Instruments mentioned in Schedule 1 of the Principal Act, relating to the transfer of functions to the Commission under Section 9(1) of that Act.

The purpose of these schedules is to carry through the textual amendments of the Acts and SIs referred to in the Principal Act, in accordance with the principles of better regulation.

*Schedule 3 — Savings and Transitional Provisions*

*Schedule 3* to the Bill contains provisions of a savings or transitional nature consequent on the amendments to Acts and statutory instruments made by Schedules 1 and 2 to the Bill. In general, these provisions preserve the situation existing before the amendments took effect. For example, a person appointed as an authorised officer by the Director of Telecommunications Regulation is taken to have been appointed by the Commission for Communications Regulation without the need to formally reappoint the person as an authorised officer of that Commission.

**Financial Implications**

The proposals in the Bill do not impact on the Exchequer.

*An Roinn Cumarsáide, Mara agus Acmhainní Nádurtha,  
Eanáir, 2007.*