

Opening Statement by Garrett Blaney, Chairperson of the Commission for Communications Regulation (ComReg)

to the Joint Oireachtas Committee on Enterprise, Trade and Employment

23 February 2021

Go raibh maith agat, a Chathaoirigh, agus tá muid buíoch as ucht an cuireadh a bheith i láthair anseo inniú.

Thank you, Chairman, and on behalf of the Commission for Communications Regulation, I welcome the opportunity to appear before today's hearing in relation to the Competition (Amendment) Bill. I am joined by my fellow ComReg Commissioner, Jeremy Godfrey

ComReg was established by the Communications Regulation Act in 2002 and is now in its third decade. As part of our statutory functions and objectives, we promote competition and investment in the telecoms or electronic communications sector. We uphold end-user rights. And we manage the radio spectrum.

Our vision for the electronic communications sector is that consumers and businesses in Ireland have affordable, high-quality, and widespread access to communications services and applications that support their social and economic needs.

European law recognises that there are specific competition issues that arise in the telecoms sector and has established a bespoke regime for regulating the sector that operates alongside general competition law.

The bespoke telecoms regime provides for National Regulatory Authorities to take "ex ante" action to prevent likely competition problems arising, even before they materialise. The general competition law regime, which provides for ex post enforcement against cartels and abuse of dominance, also applies to the sector.

ComReg is the National Regulatory Authority responsible for implementation of the specific telecoms regulatory regime in Ireland.

Under the bespoke telecoms regime, we have used our ex ante powers to promote competition in markets such as broadband, voice telephony and broadcast of television signals. One example is that we require Eircom to make its network available to competing providers of broadband services. As a result, operators such as Sky and Vodafone have been able to enter the market. Today, around a third of all fixed broadband customers get their service from competitors using the Eircom network for the final connection to the customer premises.

ComReg also shares responsibility with CCPC for enforcement of general competition law – other than merger control – in the electronic communications sector. ComReg and the CCPC have in place a cooperation agreement. This facilitates performance by the CCPC and ComReg of their respective functions as competition authorities, to avoid duplication of activities and to ensure consistency of approach. In practical terms, notification and consultation between ComReg and the CCPC are promoted.

The Competition (Amendment) Bill will transpose the ECN+ Directive into Irish law. It will only have an impact on ComReg's powers and functions as a competition authority. Changes to our powers and functions under the bespoke telecoms regime – and transposition of new EU law in that area – require separate legislation.

I should like to comment briefly on three issues: sanctions, investigation powers and flexibility.

The Directive requires civil financial sanctions for breaches of competition law. Ireland is one of only two EU Member States that do not already have a system of administrative fines for breaches of competition law. This means we rely solely on criminal enforcement for financial sanctions of competition law breaches. However, the evidentiary requirements, the complex economic analysis involved in many cases and the criminal standard of proof mean that criminal prosecution is neither practical nor appropriate in most competition law cases.

ComReg therefore welcomes and supports the approach in the General Scheme giving the Irish administrative competition authorities (the CCPC and ComReg) administrative fining powers, subject to appeal or confirmation by the High Court. ComReg believes that the proposed scheme, whereby the Irish Competition Authorities may, subject to Court confirmation, impose fines at levels that are sufficiently high to act as a credible deterrent, is essential to the effective enforcement of competition law.

ComReg recognises nevertheless that there is a continuing role for criminal sanctions and welcomes the approach in the Scheme for a dual civil and criminal sanction regime.

For the enforcement regime to be as effective as possible, civil financial sanctions need to be complemented by enhanced investigations and enforcement powers and an effective leniency regime that encourages early resolution of cases.

Some of the necessary powers are already available to both ComReg and CCPC. We welcome the opportunity to enhance ComReg and CCPC powers so that both authorities have all the powers required by the Directive.

It is vital for competition authorities to be able to obtain information that is relevant to their investigations, including by way of unannounced inspections. Information-gathering powers need to be underpinned by an ability to impose sanctions if the information required is not forthcoming. We welcome proposals in the Scheme to enable the CCPC and ComReg to punish non-compliance in the context of an investigation by way of periodic penalty payments. These will assist a speedy and efficient enforcement regime.

It is also necessary for competition authorities to be able to stop egregious behaviours and protect consumers and competitors from harm in the short term by adopting appropriate and proportionate interim measures. Interim measures are essential to ensure competition law breaches do not profit those responsible pending completion

of often complex investigations. Such measures are therefore a key component of the effectiveness of the enforcement regime and public confidence in it.

In addition to the deterrence of breaches, effective enforcement also involves giving incentives to perpetrators to come forward and put an end to the breach, and benefit where conditions are met from reductions of in the fines. ComReg welcomes the proposals governing the establishment of a leniency regime.

We recognise the importance of fully and adequately protecting the rights of undertakings that are under investigation. We consider that competition authorities should have the flexibility to determine the precise administrative arrangements to achieve this, in the light of their responsibility to organise themselves and deploy their resources as efficiently as possible. For this reason, we would urge that the Bill set out the principles about fairness contained in the Directive rather than specifying administrative arrangements in detail. This would allow ComReg and CCPC to define appropriate internal processes and to publish guidance for undertakings that provide transparency and legal certainty about how those processes will operate.

The transposition of the ECN+ Directive paves the way for more effective deterrents to and sanctions for anti-competitive behaviour in Ireland. ComReg believes that the proposals in the Bill will have a positive effect on the effective enforcement of the national and EU competition rules.

However, I should emphasize that the Bill's impact on ComReg will be limited to our role as an ex post competition authority. Similar enhancements to our enforcement powers are also required in respect of our functions under the bespoke telecoms regulatory regime if we are to become more effective at promoting competition and upholding end-user rights.

ComReg has consistently advocated for such powers, for example in our submissions to the Law Reform Commission on Regulatory Issues and Corporate Offences. We welcome that enhancement of such powers is also included in the Programme for Government. We are discussing the details with the Department of Environment, Climate and Communications. We also raised the topic in giving evidence to the Committee on Transport and Communications Networks last December.

Nonetheless, we welcome this Bill and the commitment by the Government and other parties and we hope that this important legislative change can be implemented as soon as possible.

ComReg supports the CCPC's views and as a competition authority for the electronic communications sector, considers that sector needs the same competition rules as those applicable to all other sectors for which CCPC is the NCA.

Ends.