



John Quinn
Director of Regulatory affairs
Smart Telecom Holdings Ltd
3300 Lake Drive
Citywest Business Campus
Dublin 24

The Information Officer,
Freedom of Information Unit
Department of Communications Energy and Natural resources
Elm House,
Earlsvale Road,
Cavan

31 July 2008

Freedom of Information acts 1997 & 2003 - request

Dear Sirs,

Under the freedom of information acts 1997 & 2003 Smart Telecom are requesting the release of the following information:-

Smart Telecom seeks copies of all written (in any form, written or electronic) or verbal (where possible, by way of recorded calls) correspondence in relation to the disconnection of Smart Telecom's Customers by *eircom* Limited and subsequent actions between the following parties:-

- The Department and *eircom* Limited
- The Department and Comreg
- The Department and the European Union
- The Department and any other 3rd party (other than Smart Telecom)

The period in question is:- 01 September 2006 to 31 March 2007 inclusive.

The standard initial fee of 15 euro is enclosed.

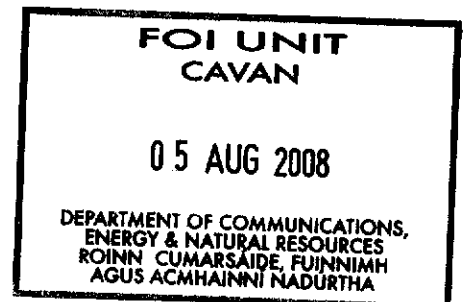
Regards

John Quinn

Regulatory & Development Director
Smart Telecom

Smart Telecom Holdings Ltd.
3300 Lake Drive
Citywest
Dublin 24

Company Registration Number 327562
VAT number 6347562i
Directors Fergal Murtagh, Rob Gibson
Tel +353 1 4699300 e-mail info@Smarttelecom.ie



S.M.C.

www.smartngn.com

19/9/08

Mr John Quinn
Smart Telecom
Smart Telecom Holdings Ltd
3300 Lake Drive
Citywest
Dublin
Request No. FOI/2008/44

Dear Mr John Quinn

I refer to the request you have made under the Freedom of Information Act for access to records held by this Department in connection with the disconnection of Smart Telecom's Customers by eircom Ltd.

Your request has been part granted and I attach all relevant information with this letter. Please find included a Schedule of all records associated with your request, detailing the order in which they are filed here.

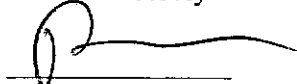
I wish to advise you that, if for any reason you are not satisfied with the outcome of your request, you are entitled to seek a review of the case by appealing the decision to this Department's FOI Internal Review Board. To appeal, you need to write to Ms Seana McGearty, FOI Unit, Department of Communications, Energy and Natural Resources, Elm House, Earlsvale Road, Cavan, Co. Cavan. You must make your appeal within 4 weeks of the date of this letter, but the making of a late appeal may be permitted in appropriate circumstances. The appeal will involve a complete reconsideration of the matter by a more senior member of the staff of this Department.

Please note that an application fee for an appeal is currently €75.

Payment should be made by way of bank draft, money postal order, or personal cheque made payable to "The Department of Communications, Energy & Natural Resources".

On receipt of the fee, an acknowledgement letter will be sent to you outlining details of when you can expect a decision on your appeal, and the contact details of the person handling the appeal.

Yours sincerely



Philip McMahon
Communications Regulation and Postal Affairs Division
Tel: 01 6782944

Schedule of Records: Summary of Decision Making

FOI Request Reference: FOI/2008/44

Disconnection of Smart Telecom's customers by eircom

Record No.	Brief Description & Date of Record	File Ref.	No. of Pages	Relevant facts	Findings/ conclusions (Public Interest Considerations, (If applicable))	Grant/ refuse/ part-grant	Basis of Refusal: Section of Act	Record edited/ Identify deletions
1	Email from Tom Butler, Public Affairs Manager, ComReg to Catherine McDonald forwarding copy of statement on AIM website, 3rd October 2006	Tel/Op 20	2			grant		no
2	Email from Catherine McDonald to Hugh Tuckey, Tom Butler and Patricia Dowling requesting briefing material on Smart Telecom, 5 th October 2006	Tel/Op 20	1			grant		no
3	Emails marked <i>Confidential</i> between Stephen O'Connor, Special Advisor and staff of Department and Secretary General D/Taoiseach on Smart Telecom/eircom update, 6 th October 2006	Tel/Op 20	6	Information given by 3 rd parties in confidence to Dept. officials during a particular commercial situation on the understanding that it would be treated by them as confidential on the basis that it might prejudice a commercial position.	On balance it was decided that access to the record should be refused	refusal	26 & 27	
4	Email from Tom Butler, ComReg to Catherine McDonald enclosing briefing note marked <i>Highly Confidential</i> 6th/9 th October 2006	Tel/Op 20	6			grant		no

5	<p>Email from Sabha Green, D/Taoiseach to Marie Gibney, Minister's office and forwarded to staff of Division and of Energy Divisions regarding PQ on regulatory reform. Response from Catherine McDonald to Marie Gibney enclosing Note for An Taoiseach, 5th/9th October 2006</p>	Tel/Op 20	3			grant	no
6	<p>Email from Catherine McDonald to Hugh Tuckey ComReg, enclosing copy of Note for An Taoiseach, 9th October 2006</p>	Tel/Op 20	2			grant	no
7	<p>Email from Richard O'Reilly to Carina O'Donoghue, Minister's Office and enclosing note for Oireachtas Committee 9th October 2006</p>	Tel/Op 20	2			grant	no
8	<p>Email from Secretary General to Minister Dempsey regarding Smart Telecom and telephone conversation with Hugh Cooney BDO Simpson Xavier and forwarded to Catherine McDonald, 10th October 2006</p>	Tel/Op 20	1			grant	no
9	<p>Email from Michelle Lenihan, BDO Simpson Xavier to Secretary General enclosing a copy of a Statement regarding the disposal of the business, assets and liabilities of Smart Telecom and forwarded by Secretary General to Minister Dempsey and other staff of Department, 10th October 2006</p>	Tel/Op 20	5			grant	no

10	Email from Tom Butler, ComReg to Catherine McDonald re Draft Question re Waiver Question and forward to other staff in Division, 17 th October 2006	Tel/Op 20	1			grant		no
11	Email from Secretary General to Carina O'Donoghue and other staff in Department regarding phone call from Rex Combe, circom , 18 th October 2006	Tel/Op 20	1			grant		no
12	Email from Kerry O'Hare, ComReg enclosing information note for Minister Dempsey, 18 th October 2006	Tel/Op 20	2			grant		no
13	Copy of "blacks" from Presentation by ComReg to the Joint Oireachtas Committee on Communications regarding telecommunications services, 16 th October 2006.	Tel/Op 20	16			grant		no
14	Email from John Doherty, ComReg to Peter O'Neill and cc to Secretary General regarding ex Smart customers and forwarded to Carina O'Donoghue for Minister's attention and to other staff in Department, 27 November 2006	Tel/Op 20	1			grant		no
15	Copy of letter from Isolde Goggin, Chairperson, ComReg to Minister Dempsey giving an update on consumer issues relating to the cessation of narrowband services by Smart Telecom, 2 nd November 2006.	Tel/Op 20	4			grant		no

16	Correspondence from/to.. regarding problems he was experiencing with eircom and Smart Telecom, 3/13 th October 2006	Div Cor 1 vol 40	3	Personal information		Part grant	28	Identity of representee deleted
17	Correspondence from/to ..regarding problems he was experiencing with eircom and Smart Telecom, 3 rd /13 th October 2006	Div Cor 1 vol 40	4	Personal information		Part grant	28	Identity of representee deleted
18	Correspondence from/to ..regarding problems he was experiencing with eircom and Smart Telecom, 6 th /23 rd October 2006	Div Cor 1 vol 40	4	Personal information		Part grant	28	Identity of representee deleted
19	Correspondence from /to ..regarding problems he was experiencing with eircom and Smart Telecom 9 th October/10 th November 2006	Div Cor 1 Vol 40	5	Personal information		Part grant	28	Identity of representee deleted
20	Correspondence from/to ..regarding problems various people were experiencing with eircom and Smart Telecom, 6 th October 2006 – 10 th November 2006	Div Cor 1 Vol 40	17	Personal information		Part grant	28	Identity of representee deleted
21	Correspondence from/to ..regarding problems he was experiencing with eircom and Smart Telecom, 5 th October 2006 to 9 th November 2006	Div Cor 1 Vol 40	3	Personal information		Part grant	28	Identity of representee deleted
22	Correspondence from/to ..regarding problems he was experiencing with eircom and Smart Telecom, 5 th October 2006 – 10 th November 2006	Div Cor 1 Vol 40	3	Personal information		Part grant	28	Identity of representee deleted
23	Correspondence from/to ..regarding problems he was experiencing with eircom and Smart Telecom, 4 th October 2006 – 9 th November 2006	Div Cor 1 Vol 40	3	Personal information		Part grant	28	Identity of representee deleted

24	Correspondence from/to ..regarding problems he was experiencing with eircom and Smart Telecom, 3 rd October 2006 – 13 th November 2006	DivCor 1 Vol 41	3	Personal information		Part grant	28	Identity of representee deleted
25	Correspondence from/to ..regarding members of the Dail holding shares 3 rd October 2006 – 13 th November 2006	DivCor 1 Vol 41	2	Personal information		Part grant	28	Identity of representee deleted
26	Correspondence from/to ..regarding problems he was experiencing with eircom and Smart Telecom, 3 rd October 2006 – 13 th November 2006	DivCor 1 Vol 41	3	Personal information		Part grant	28	Identity of representee deleted
27	Correspondence from/to ..regarding problems he was experiencing with eircom and Smart Telecom, 6 th October 2006 – 15 th November 2006	DivCor 1 Vol 41	3	Personal information		Part grant	28	Identity of representee deleted
28	Correspondence from/to ..regarding problems he was experiencing with eircom and Smart Telecom, 6 th October 2006, 15 th November 2006	DivCor 1 Vol 41	3	Personal information		Part grant	28	Identity of representee deleted
29	Correspondence from/to ..regarding problems he was experiencing with eircom and Smart Telecom, 3 rd /16 th November 2006	DivCor 1 Vol 41	3	Personal information		Part grant	28	Identity of representee deleted
30	Correspondence from/to ..regarding recent issues between eircom and Smart Telecom, 25 th October 2006 – 20 th November 2006	DivCor 1 Vol 41	2	Personal information		Part grant	28	Identity of representee deleted
31	Correspondence from/to ..regarding recent problems between eircom and Smart Telecom, 8 th /22 nd November	DivCor 1 Vol 41	5	Personal information		Part grant		Identity of representee deleted

During the period 1/9/06 – 31/3/07 20 PQs concerning Smart Telecom were answered. The questions and responses are in the public domain and are available on the following links:

<http://historical-debates.oireachtas.ie/en.toc.D.0625.20061017.html>

<http://historical-debates.oireachtas.ie/en.toc.D.0625.20061019.html>

<http://historical-debates.oireachtas.ie/en.toc.D.0627.20061121.html>

<http://historical-debates.oireachtas.ie/en.toc.D.0634.20070327.html>

Catherine McDonald

From: Tom Butler [tom.butler@comreg.ie]
Sent: 03 October 2006 16:54
To: Catherine McDonald
Subject: Smart Statement on AIM website

RNS Number:8390J
Smart Telecom plc
03 October 2006

Smart Telecom plc ("Smart" or "the Company")

3 October 2006

EMBARGOED UNTIL 7.00AM 3 OCTOBER 2006

Update on restructuring process and suspension of shares

As previously communicated, the Company is undergoing a significant restructuring process to focus the Company on profitable and high-growth market segments. This process has already reduced the workforce from 348 people in August to 180 currently and disposal processes have also been initiated on the WLR / CPS residential business, the payphone business and the prepaid card business. This restructuring will result in a Company focused on corporate and residential broadband.

Unfortunately, the Company regrets to announce that at 5.00 pm last evening, eircom commenced the implementation of Termination Notices in respect of its Interconnect and Access Agreements. Termination Notices were served upon the Company in recent weeks and deferred on a weekly basis while the Company commenced implementation of the Strategic Review announced on September 8th. The execution of the restructuring as detailed above was proceeding to plan and the associated short term refinancing of the Company was and is at an advanced stage of negotiation.

In this context, the Company deeply regrets the action taken by eircom at this juncture which has the impact of shutting down a substantial element of the Company's residential telecoms services, in particular, the Company's WLR / CPS business. The Company is endeavouring to engage in further discussions with eircom and Comreg to find a solution that returns service to its customers as quickly as possible and minimises any further impact.

Additional short term funding remains necessary and the Company is having further discussions with key shareholders on the provision of that funding. The Board remains confident that this funding will be obtained. However, there is no certainty that this will happen.

In these circumstances, the Board has requested that its shares are suspended on the Alternative Investment Market of the London Stock Exchange pending clarification of the Company's financial and operating position.

Enquiries:

Smart Telecom plc

Ciaran Casey

Brian Timmons

Iarla Flynn

Tel: +353 1 469 9300

This information is provided by RNS
The company news service from the London Stock Exchange

END

Tom Butler
Public Affairs Manager

Commission for Communications Regulation
Abbey Court, Irish Life Centre, Lower Abbey Street, Dublin 1, Ireland
Telephone +353 1 804 9639
Fax +353 1 804 9680
Email tom.butler@comreg.ie

Visit our new consumer website at <http://www.askcomreg.ie>

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Catherine McDonald

From: Catherine McDonald
Sent: 05 October 2006 15:57
To: Hugh Tuckey (E-mail); Tom Butler (E-mail); Patricia Dowling (E-mail)
Cc: Richard O'Reilly
Subject: Request for Briefing re SMART Telecom

Dear All,

The Department of An Taoiseach have asked for briefing (by tomorrow evening) in relation to recent developments with Smart Telecom - as well as supplementary questions and background briefing (in the context of a PQ he is due to answer next week on "... the implementation of the recommendations of the OECD Report on deregulation....").

Could you please provide material by midday tomorrow on the issue, perhaps focussing on the following questions, or any further supplemental info you think may be useful?

- What mechanisms are being/have been put in place for Smart's customers?
- Given ComReg's role in consumer protection (to promote the interests of users and to ensure a high level of protection for consumers in their dealings with suppliers), and their knowledge of the impending difficulties, could/should a contingency plan have been put in place?
- What mechanism(s) should be put in place to prevent a similar situation occurring again? Could /should an operator's conditions of authorisation prevent this from happening? What other mechanism might be used?
- Any comment on how other EU MS ensure continuity of supply? (or the FCC in the US - as per report in today's Irish Independent?).

Thanks and kind regards

Catherine

Catherine McDonald
Communications (Regulation & Postal) Division
Department of Communications, Marine & Natural Resources
Tel: + 353 1 678 2953
Fax: + 353 1 678 2919
catherine.mcdonald@dcmnr.ie

Catherine McDonald

From: Catherine McDonald
Sent: 09 October 2006 10:34
To: Marie Gibney
Cc: Carina O'Donoghue; Susan Lowen; Peter O'Neill; Kenneth Spratt; Richard O'Reilly
Subject: FW: PQ on regulatory reform



091006 Note for An
Taoiseach r...

Marie,

Note attached for Department of an Taoiseach.

Catherine

-----Original Message-----

From: Marie Gibney
Sent: 05 October 2006 13:59
To: Catherine McDonald; Philip McMahon
Subject: FW: PQ on regulatory reform

In Caoimhin's absence.

Marie

-----Original Message-----

From: Marie Gibney
Sent: 05 October 2006 10:43
To: Aoife MacEvilly; Una NicGiollaChoille; Caoimhin Smith; David Glynn;
Eanna O'Conghaile
Cc: Sara White; Peter O'Neill
Subject: FW: PQ on regulatory reform

Hi Everyone

A few weeks ago I requested and received an update in relation to Energy and Communications as well as a note on gas and electricity tariffs for the Taoiseach's upcoming PQ on regulatory reform. As you will see from the email below this PQ is now likely to be taken next week. Taoiseach's office would like a further update on the recently published Energy green paper, the decision not to split up the ESB and the recent development with Smart Telecom as well as supplementary questions and a background briefing for the Taoiseach's information.

You will see from Sabha's email below that this is required by close of business tomorrow, Friday.

Many thanks for your co-operation in this matter.

Regards
Marie
Extn: 2017

-----Original Message-----

From: Sabha.Greene@taoiseach.gov.ie
[mailto:Sabha.Greene@taoiseach.gov.ie]
Sent: 05 October 2006 10:23
To: Marie Gibney
Subject: RE: PQ on regulatory reform

Dear Marie,

Thank you for the information you supplied for the Taoiseach's upcoming PQ

on regulatory reform (copied below for ease of reference). It now seems that this question will be taken next week in the Dail.

In light of developments since we were last in contact, may I ask you for information on the following -

The recently published Green Paper on energy
The decision not to split up the ESB
The recent events with Smart Telecom

I would be grateful if you supply question and answer material on any supplementary questions that you think might arise as well as a short background briefing note for the Taoiseach's information. If anything further occurs that I have not mentioned above, then briefing on that too would be welcome. As this question is due for answer next week, I would be obliged if you could get back to me before the close of business tomorrow, Friday.

Please let me know if you require anything further.

Regards,

Sabha

PQ 28195/06

For Oral Answer on Tuesday the 10th of October, 2006

To ask the Taoiseach if he will report on the implementation of the recommendations of the OECD Report on deregulation; and if he will make a statement on the matter.

Sabha Greene
Public Service Modernisation
Department of the Taoiseach
Government Buildings
Upper Merrion Street, Dublin 2

Tel: +353 1 619 4456

Fax: +353 1 619 4239

Email: Sabha.Greene@taoiseach.gov.ie

<http://www.betterregulation.ie>

Tá Roinn an Taoisigh meáite ar seirbhís phroifisiúnta, éifeachtach agus chúirtéiseach a sholáthar dár gcustaiméirí go léir. Chun amharc ar an Chairt do Chustaiméirí, cliceáil ar <http://www.taoiseach.gov.ie//irish/index.asp?docID=1763>

Is le haghaidh an duine nó an aonáin ar seoladh dó/di an t-eolas a seachadadh, agus d'fhéadadh ábhar faoi rún agus/nó ábhar faoi phribhléid a bheith istigh leis. Tá cosc ar aon athbhreithniú, athsheachadadh, scaipeadh faisnéise nó aon úsáid eile den eolas seo ag aon aonáin eile seachas an faighteoir beartaithe, ná aon ghníomh a thógáil i dtuilleamaí an eolais seo. Má fuair tú seo de bharr earráide, téigh i dteagmháil leis an seoltóir agus scríos an t-ábhar ó do ríomhaire le do thoil. Is é polasaí Roinn an Taoisigh cosc a chur ar ábhar maslach a sheoladh, agus más rud é go gceapann tú go bhfuil an t-ábhar istigh leis an teachtaireacht seo maslach ba cheart duit dul i dteagmháil leis an seoltóir ar an bpointe agus le itu@taoiseach.gov.ie freisin.

The Department of the Taoiseach is committed to providing a professional, efficient and courteous service to all our customers. To view the Customer Charter, please click on <http://www.taoiseach.gov.ie/index.asp?locID=181&docID=1762>

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged

Note for An Taoiseach re Smart Telecom

- The telecoms market in Ireland is fully liberalised and open.
- Responsibility for the regulation of the electronic communications sector rests with the independent regulator, the Commission for Communications (ComReg).
- ComReg is independent in the exercise of its functions and operates in accordance with EU and national law.
- The EU regulatory framework is based on Competition law principles.
- Smart had been in financial dispute with eircom (a contract debt issue) since 2005 and eircom terminated its Interconnect contract with Smart on October 2nd. Approximately 50,000 customers were affected. The Department of Communications Marine & Natural Resources received no prior notice of eircom's intention.
- Neither the Minister for Communications, Marine & Natural Resources nor ComReg have any statutory function in relation to contract debt issues such as exists between the two operators.
- However, ComReg, whose functions include the promotion of competition and the promotion of the interests of users, immediately facilitated meetings between eircom and Smart, and worked to find a solution for Smart Telecom's customers.
- An interim arrangement has been put in place to ensure continuity of service; with most customers now having had most services restored and are being facilitated to move to another operator.
- The Minister for Communications, Marine & Natural Resources has asked the ComReg Commissioners to reflect on how such a situation could be prevented from happening in the future, and come back to him with proposals.
- All options will be considered, including if necessary, new legislative provisions to be included in the Electronic Communications (Miscellaneous Provisions) Bill.

**Communications (Regulation & Postal) Division,
09 September, 2006.**

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Catherine McDonald

From: Catherine McDonald
Sent: 09 October 2006 11:43
To: Hugh Tuckey (E-mail)
Subject: Note re Smart Telecoms

Hugh,
Copy of note sent to Dept of An Taoiseach this morning - attached for your info.

Catherine



091006 Note for An
Taoiseach r...

Catherine McDonald
Communications (Regulation & Postal) Division
Department of Communications, Marine & Natural Resources
Tel: + 353 1 678 2953
Fax: + 353 1 678 2919
catherine.mcdonald@dcmnr.ie

Note for An Taoiseach re Smart Telecom

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- All options will be considered, including if necessary, new legislative provisions to be included in the Electronic Communications (Miscellaneous Provisions) Bill.

**Communications (Regulation & Postal) Division,
09 September, 2006.**

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Catherine McDonald

From: Richard O'Reilly
Sent: 09 October 2006 17:45
To: Carina O'Donoghue
Cc: Donna Comer; Susan Lowen; Peter O'Neill; Catherine McDonald
Subject: Note for Oireachtas Committee

Carina,

I spoke with Donna earlier and suggested that the note Catherine sent earlier for D/Taoiseach (attached) would suffice for Deputy O'Flynn. I have deleted reference in the note to a possible amendment to the Communications Bill to prevent such a situation arising in the future, as this will very much depend on ComReg's views having reflected on the issue in due course.

Richard.



091006 Note re
Smart Telecom.d...

Note re Smart Telecom

- The telecoms market in Ireland is fully liberalised and open.
- Responsibility for the regulation of the electronic communications sector rests with the independent regulator, the Commission for Communications (ComReg).
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Communications (Regulation & Postal) Division,

09 September, 2006.

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Catherine McDonald

From: Brendan Tuohy
Sent: 10 October 2006 09:20
To: Catherine McDonald
Subject: FW: Smart Telecom

-----Original Message-----

From: Brendan Tuohy
Sent: 10 October 2006 08:59
To: Minister Dempsey
Cc: Carina O'Donoghue; Peter O'Neill; Kenneth Spratt; Stephen O'Connor; Tanya Harrington; Olive Stephens; Kenneth Cleary
Subject: Smart Telecom

Minister,

I discussed the update on the Smart situation with Hugh Cooney this morning and he informs me that eircom have been very cooperative in the main since last Friday's agreement and your own meeting with the CEO. The wholesale line rental customers (WLR) are now being transferred to other operators (it appears eircom are getting about 50% of them). The remaining customers who are unbundled local loop (ULL) customers and includes SME's and broadband customers (about 6,600), are now being targeted by Smart and those who have been disconnected are being reconnected. Smart have now started a PR campaign with their own customers and hope to expand their customer base over the coming weeks and months.

Brendan Murtagh, the 90% owner of the new Smart, would be keen to meet you next week to brief you on their plans.

Brendan

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Tá eolas sa teachtaireacht leictreonach seo (agus b'fhéidir sa chomhaid ceangailte leis) a d'fhéadfadh bheith príobháideach nó faoi rún. Is le h-aghaidh an duine/na ndaoine nó le h-aghaidh an aonáin atá ainmnithe thuas agus le haghaidh an duine/na ndaoine sin amháin atá an t-eolas. Murab ionann tusa agus an té a bhfuil an teachtaireacht ceaptha dó bíodh a fhios agat nach gceadaítear nochtadh, cóipeáil, scaipeadh nó úsáid an eolais agus/nó an chomhaid seo. Más trí earráid a fuair tú an teachtaireacht leictreonach seo cuir, más é do thoil é, an té ar sheol an teachtaireacht ar an eolas láithreach.

Deimhnítear leis seo freisin nár aimsíodh víreas sa phost seo tar éis a scanadh.