

FOI Request: FOI/2/2004

Request from Mr. John Burns for 'all records relating to a case TV3 has taken to the European Commission against RTE re state subsidies for television.'

Schedule No 2

File No S1/257-A/01 Vol. 2 'State Aid in the Broadcasting Sector'.

No.	Date	Document Details	Release
1.	27.11.1998	Discussion Paper of Dg IV regarding State aids in the broadcasting sector - 4 pages	Not relevant
2.	03.02.1999	Copy of Paper issued in Brussels on 03.02.1999 enjoining French, Italian and Spanish governments to submit information on financing schemes of their public broadcasters - 2 pages	Not relevant
3.		Protocol on the system of public broadcasting in the member states - 1 page	Not relevant
4.	11.02.1999	Article in 'TV Express' entitled: 'EC Investigates Dual Financing Of Pubcasters' -1 page	Not relevant
5.	08.04.1999	Article in Business and Finance entitled: ' TV3 Files Complaint about RTE to Brussels' - 1 page	Release
6.	25.08.2000	Document by M. Grant entitled: 'Options for legal action by the Council on the funding of public service broadcasting.' - 3 pages	Not relevant
7.	20.09.2000	Communication from the Commission on Services of General Interest in Europe. 2 documents - 7 pages and 26 pages	Not relevant
8.		Regulation No. 17 from the Official Journal of the European Communities - 7 pages	Not relevant
9.	05.02.2001	Information from the Commission on the ' Present situation and future work in the area of public service broadcasting and State aid to the film industry - 3 pages	Not relevant
10	02.05.2001	Judgment of Court of the First Instance of 27 Feb 1997 - 23 pages	Not relevant
11.		Judgement of the Court (Fifth Chamber) of 22 June 2000 - 4 pages	Not relevant
12.	03.05.2001	E-mail from G. Monks to State Aid Circulation list - 1 page	Not relevant
13.	22.05.2001	Summary of Communication from the Commission: 'Services of General Economic Interest' - 6 pages	Not relevant
14.	19.06.2001	E-mail with Attachment: 'Multilateral Meeting on State Aid to Public Broadcasting' -18 pages	Not relevant

15a.		Briefing material for meeting including: (15a) PQ 20298/01 from Mr. Brian O'Shea with supplementary information - 4 pages	Not relevant
15b.		Document entitled: 'Main issues raised by the draft Comm. on State Aids for PSB' - 3 pages	Not relevant
15c.	07.06.2001	Report of State Aid meeting in Brussels - 2 pages	Not relevant
15d.		Document on Multilateral Meeting on State Aid 19-20 October 1998 -3 pages	Not relevant
15e.		Ireland's proposed contribution to Multilateral Meeting on State Aid - 2 pages	Not relevant
16.	15.06.2001	Agenda for Multilateral Meeting on State Aid - 14 pages	Not relevant
17.	26.07.2001	Covering submission and note on State Aid meeting by J. Larkin (Dept.) - 7 pages	Not relevant
18.	30.07.2001	Report on State aid meeting by MJ Keane (Dept of Enterprise, Trade and Employment) - 3 pages	Not relevant
19.	14.09.2001	Letter from Managing Director, TV3 to Minister re licence fee increase and acknowledgement of it - 2 pages	Release
20.	10.10.2001	Faxed copy of Communication from the Commission on the application of State Aid Rules to PSB - 15 pages	Not relevant
21.	11.10.2001	Briefing Note for Meeting of Chefs de Cabinet - 6 pages	Not relevant
22.	10.10.2001	E-mail from J. Larkin to Anne-Marie O'Connor (Permanent Rep) enclosing comments on Commission's Communication - 1 page	Not relevant
23.	16.10.2001	Fax from Anne-Marie O'Connor to J. Larkin (Dept) on State Aid Broadcasting - 13 pages	Not relevant
24.	16.10.2001	Fax from J. Larkin to Anne-Marie O'Connor re proposed amendments to Commission Communication - 6 pages	Not relevant
25.	17.10.2001	Fax to J. Larkin enclosing document 'Commission clarifies application of State aid rules to PSB' - 4 pages	Not relevant
26.	18.10.2001	Submission from J. Larkin to Mr. Grant, Asst. Sec. re Communication from the EU Commission - 1 page	Not relevant
27.	22.10.2001	Submission from J. Larkin enclosing draft reply to CEO, TV3 - 2 pages	Release
28.	22.10.2001	Fax from J. Larkin to Mr. G. Angley enclosing briefing material on proposed amendments to Communication - 6 pages	Not relevant
29.	15.11.2001	Extract from the official Journal of the European Communities - 7 pages	Not relevant
30.		Minute prepared by Mr. F. O'Brien, Electricity	Release

		Regulation Div. Dept. of Communications relating to co-ordination of the Department's response to the case - 1 page	
30a	16.09.02	Fax cover sheet from Mr. T. McGrath, Dept. of Communications to Mr. E. Molloy and Mr. M. Brennan – 1 page	Release
30b	16.09.02	Memo from Ms. S. White to Asst. Secretaries seeking views on implications of ruling for State bodies -1 page	Release
30c	06.09.02	Letter from Office of the Attorney General to Sec. Gen. of 4 Government Departments outlining legal advice, enclosing letter from Registry of the Court of Justice and copy of Order of the Court of Justice – 9 pages	Withheld under section 22(1)(a) – legal professional privilege and section 46(1)(b)- record held by the Attorney General
31.	24.09.2002	Fax cover sheet and letter from C. O'hObain (Dept) to Mr. F. O'Brien re forthcoming public hearing - 2 pages	Release
32.	12.11.2002	Communication from the European Commission: 'Services of general economic interest and state aid' - 24 pages	Not relevant
33.		Discussion document: 'Review of State aid procedures' - 13 pages	Not relevant
34.	14.03.2003	Extract from the Official Journal of the European Communities - 2 pages	Not relevant
35.	27.03.2003	Submission to Mr. O'hObain: 'Fund for New programmes and State aid' - 5 pages	Not relevant
36.	08.04.2003	E-mail from Cian O'Lionain re extract from Official Journal on Danish State financing of PSB - 1 page	Not relevant
37.	09.04.2003	E-mail from J. Larkin to T. Quinn re: Transparency Directive and the State Aid Complaint - 1 page	Not relevant
38.	24.07.2003	Altmark State Aid Court Judgement of 24 July 2003 - 18 pages	Not relevant
39.	30.07.2003	Preliminary observations from P. Mooney (Advisory Counsel) on the Altmark State Aid Judgement of 24 July 2003 - 3 pages	Withheld under section 22(1)(a) – legal professional privilege and section 46(1)(b)- record held by the Attorney General

THE WEEK

New Technology to Frustrate Mackie Sale

The establishment of a new company, Bell, may undermine the attempt by the receiver, M&B International, to sell off the engineering company's valuable research and development property.

A British-based company specialising in the design of electronic parts has changed its name to Bell, a move which may frustrate the sale of the company's valuable research and development property.

The company, which has previously been known as Bell & Howells, has announced that it will be rebranded as Bell. The company's new name is a reference to the company's long history of producing electronic components for the defence industry.

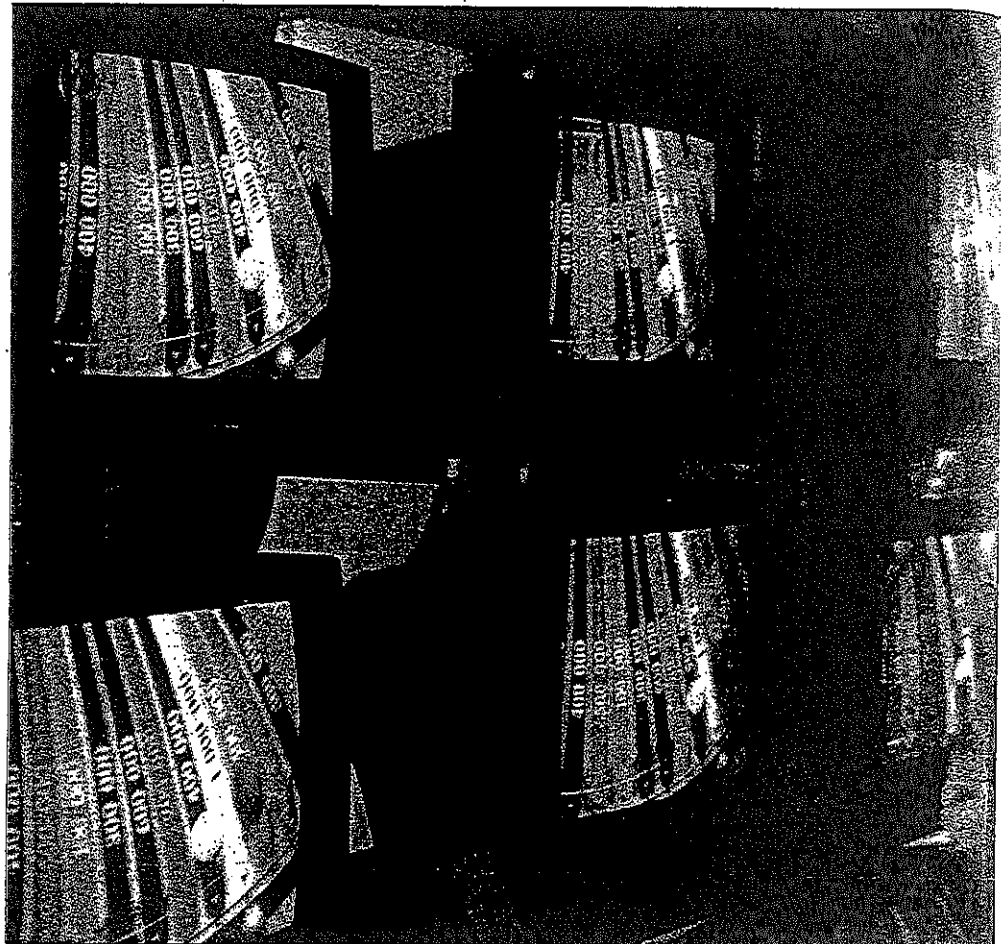
According to sources close to the company, the name change is a result of the company's decision to rebrand itself as a public limited company. The company's new name is a reference to the company's long history of producing electronic components for the defence industry.

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TV3 Files Complaint About RTE To Brussels

Independent Broadcaster TV3 has filed a complaint to the European Commission about RTE's use of the £61m it receives annually in licence fees, TV3's chief executive Rick Hetherington has told *Business & Finance*.

"Our complaint is about the anti-competitive practices RTE engages in with the use of state-aid. The licence fees should be used for cultural purposes, and not for commercial purposes, yet the Government has not addressed what RTE's public service remit is, which it is required to do so under EU law," he says.

TV3's solicitor McCann FitzGerald last week filed the complaint to the Competition Directorate, DG4. Basically the complaint boils down to the fact that RTE does not break out precisely what type of programming it spends the licence fee on.

The complaint draws attention to the lack of a clearly defined public service remit from the Department of Arts, Culture and the Gaeltacht.

It maintains that RTE should exclusively use the licence fees on information services like news, educational programming, cultural services, regional services and services for

social and ethnic minorities.

TV3 says it fears that RTE uses the licence fee funds to acquire programming such as sports and successful US programmes like ER and Friends.

RTE is financed through a combination of TV licence fees, advertising and other commercial enterprises such as the RTE Guide.

The latest figures show that in 1997 the state broadcaster had revenues of £176m, of which £61m was accounted for by TV licence fees, £86m by TV and radio advertising, £22m by Commercial Enterprises and £6.5m by other broadcasting income.

Kevin Healy, RTE's director of Public Affairs has described the complaint as "ridiculous" and says entertainment programming like ER is entirely self financing. "We spend an awful lot of the licence fees on cultural ancillary services like the RTE orchestra," he says.

The complaint to Brussels will not carry a potential fine, if the Commission finds in TV3's favour, unlike a similar complaint where Esat Telecom took Telecom Eireann to the competition directorate over an abuse of dominance in the market.

Gabi Thesing

tv three Television Network Limited
Westgate Business Park
Ballymount, Dublin 24
Tel: + 353 1 419 3333
Fax: + 353 1 419 3300
www.tv3.ie



14 September 2001

*Rep
Ack
Refer to Broadcasting*

Sile De Valera
Minister for Arts, Heritage, Gaeltacht and the Islands
Department of Arts, Heritage, Gaeltacht and the Islands
43-49 Mespil Rd
Dublin 4

18 SEP 2001

Rep: 1050/2001

Re: Licence Fee Increase – Notification of State Aid

Dear Minister,

I am writing to you to inquire as to whether the Irish Government has notified the European Commission as required under the EU Treaty of the increase in the television licence fee which commenced on 1 September 2001.

You will be aware that in a complaint to the European Commission in March 1999, TV3 submitted that the payment by you to RTE of revenues collected in respect of the licence fee is unlawful State Aid under the EU Treaty. Article 88 (3) of the Treaty provides that "the Commission shall be informed in sufficient time to enable it to submit its comments, of any plans to grant or alter aid". The 20% increase in the licence fee constitutes, in our view, an alteration of State Aid.

TV3 believes that any proposal to "alter aid" must be notified to the European Commission. Ignoring the notification obligation could give rise to action by the European Commission against Ireland.

Thank you for your attention to this matter.

Yours sincerely,

[Signature]
Rick Hetherington
Managing Director & CEO

Cc Charlie McCreevy T.D., Minister for Finance.

Our Ref: Rep: 1050/2001
(Please quote our reference number on all correspondence)

26 September 2001


Mr. Rick Hetherington,
Managing Director & CEO,
tvthree Television Network Limited,
Westgate Business Park,
Ballymount,
Dublin 24

Dear Mr. Hetherington,

On behalf of Ms. Síle de Valera, T.D., Minister for Arts, Heritage, Gaeltacht & the Islands I wish to acknowledge receipt of your letter of the 14th of September 2001 regarding the licence fee increase.

Your correspondence has been brought to the attention of the Minister and a further letter will issue to you on this matter.

Yours sincerely,



Mary Hurley
Private Secretary


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Mr Millane
Principal Officer

Mr Grant
Assistant Secretary

Rúnaí Aire

Please find underneath a draft reply, as discussed, for the Private Secretary's signature in relation to correspondence from Mr Rick Hetherington, Managing Director and CEO, TV3, regarding notification to the Commission of the recent TV licence fee increase under State Aid rules.



John Larkin
Broadcasting Policy Division

22 October 2001

October 2001

Mr Rick Hetherington
Managing Director and CEO
TV3 Television Network
Westgate Business Park
Ballymount
Dublin 24

Dear Mr Hetherington

I have been asked by Ms. Síle de Valera, TD, Minister for Arts, Heritage, Gaeltacht and the Islands to refer to your letter of 14 September 2001 regarding the licence fee increase.

The position is that the increase in licence fee revenue paid to RTÉ has not been notified to the EU Commission. The Minister has noted your comments in that regard but does not agree with your interpretation of the position.

Yours sincerely

Mary Hurley
Private Secretary

6041015

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fax 6671891

- Ms. Mary Austin
- Ms. Patricia Cronin
- Mr. Dave Hanley
- Mr. Aidan Hodson
- Mr. Tom Kennington
- Mr. Peter O'Neill
- Mr. Ciaran O'hÓbáin
- Mr. Mick Prendergast

Re: State Aid, Payments by Member States to Undertakings for Public Service Obligations, Case C-280/00 before the European Court of Justice.

1. I have been asked to co-ordinate the Department's response in the above matter.
2. The background is explained in the attached minute dated 6 September 2002 from the Attorney General's Office. I would draw your attention in particular to paragraphs 5, 6, 11 and 12 thereof.
3. As a matter of urgency, I would appreciate your view, if any, as to whether Ireland should be represented at the oral hearing on 15 October next, in order to put forward legal arguments along the lines set out in paragraph 11 of the Attorney General's minute.
4. The Court in this case will, in effect, be deciding whether prior Commission approval under the State aid rules of the EC Treaty will be needed for payments made to Semi-State organisations and other bodies for the discharge of public service obligations imposed on them by law.
5. In view of the need to obtain Government approval in the event of a decision to proceed with an Irish intervention, your comments are needed by Friday, 20 September at the latest. Your co-operation in this matter is appreciated.
6. I am in touch with the Department of Transport with a view to having a co-ordinated response to the Attorney General's Office.



Fintan O'Brien
Electricity Regulation Division
18 September 2002

17-SEP-2002 16:27 FROM DEPT. OF EN:ENR:SE

6041015

TO 96041073

P.02/11

30 (b)

For discussion at MC Meeting of 17/09/02

Assistant Secretaries

Tom Power

Michael Guitfoyle

Maurice Mullen

Eamonn Molloy

Martin Brennan

For urgent views on implications (if any) for State bodies under DCMNR aegis of arguing for such a ruling as mooted at paragraph 11; we need to consider (a) impact of such a ruling on our own undertakings (b) impact of such a ruling vis a vis other member States in terms of the potential removal of competitive advantage which would otherwise impact negative negatively on Ireland.

Sara White
16/09/02

* * * COMMUNICATION RESULT REPORT (24. SEP. 2002 15:52) * * *

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FAX HEADER:

TRANSMITTED/STORED : 24. SEP. 2002 15:51
FILE MODE OPTION

ADDRESS

RESULT

PAGE

596 MEMORY TX

6041073

OK

2/2

REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-3) NO ANSWERE-2) BUSY
E-4) NO FACSIMILE CONNECTIONAn Roinn Cumarsáide,
Mara agus Acmhainní Nádurtha
Baile Átha Cliath 2.Department of Communications,
Marine and Natural Resources
Dublin 2.To: Mrs Fintia O'Brien
Fax No 6041073From: John Leakin
Broadcasting Policy Div.Fintia
As discussed.

John

2 pages including this one.

Mr Fintan O'Brien
Electricity Regulation Division

I refer to your minute of 18 September 2002 seeking observations on whether Ireland should be represented at the forthcoming public hearing of the European Court of Justice in relation to the re-opening of the oral procedure for case C-280/00.

In April 99 the EU Commission notified Ireland of a complaint alleging infringements of Articles 92 – 94 of the EC Treaty with regard to the State funding of RTÉ and TG4. This complaint is still outstanding and it is expected that the Commission will re-commence its preliminary investigation shortly. It would appear that if the Ferring decision is upheld the payment of a tv licence fee to RTÉ or exchequer funds to TG4 may not be considered as State Aid.

However, it is understood that the oral procedure has been re-opened with the clear intention of having the Ferring decision seriously modified if not entirely over-turned. In such circumstances, this Division is of the view that it is preferable not to make any statement in relation to the broadcasting sector as it may prejudice our response to the State Aid complaint.



Ciarán Ó hÓbáin
Principal Officer
Broadcasting Division

24 September 2002