

Our ref: FOI/45/2004.

Mr. David McMunn,
Director of Government, Regulatory and Legal Affairs,
TV3,
Westgate Business Park,
Ballymount,
Dublin 24.

Dear Mr. McMunn,

I refer to the request which you made to this Department under the Freedom of Information Act. You requested "correspondence (from August 2003 to May 2004 inclusive) sent and received by the Department concerning TV3's payment of fees for the use of the RTE Transmission Network from 1988 to the present.


I enclose a schedule of all records which are relevant to the request. I am releasing all records with the exception of

- record nos. 9 and 17d which are withheld under section 20.1 of the Act as they form part of the deliberative process the release of which may negatively impact on the process:
- record nos. 11, 12, 13, 14, 17b and 17c which are withheld under section 22.1(a) of the Act as they are covered by legal professional privilege and section 46(1)(b) as they are records held by the Office of the Attorney General.
- record nos. 16 and 17 which are withheld both under section 20(1) as they form part of the deliberative process and section 22.(1)(a) as they are covered by legal professional privilege.

The Freedom of Information Act provides the right to appeal a decision taken under the Act within 4 weeks of the initial decision. Should you wish to make such an appeal, you can do so by writing to Mr. John Wynne, FOI Unit, Department of Communications, Marine and Natural Resources, Leeson Lane, Dublin 2.

The review is a full and new consideration of the matter by a more senior member of staff of this Department. The Act requires that the review be completed within 3 weeks of receipt of such request.

Yours sincerely,



Joe Meleady
Broadcasting Policy Division
25 June, 2004

FOI Request: 45/2004

Request from Mr. David McMunn, Director of Government, Regulatory and Legal Affairs, tv three Television Network Limited for “ correspondence from August 2003 to May 2004 inclusive sent and received by the Department concerning TV3’s payment of fees for the use of the RTE Transmission Network from 1988 to the present”.

Schedule No. 1

File No. S1/66-E/03: TV3 Transmission Charges.

No	Date	Document Details	Decision.
5	14/08/03	Letter from Mr. D. Mc Munn, Director of Government, Regulatory and Legal Affairs, TV3 to Mr. B. Tuohy, Sec. General, DCMNR re transmission charges – 1 page	Release
6	15/08/03	Acknowledgement of Mr. Mc Munn’s letter from Secretary General’s Office, DCMNR – 1 page	Release
7	19/08/03	Letter from Mr. C. Ó hÓbáin, DCMNR to Mr.D. Mc Munn, TV3 outlining present position and enquiring if TV3 had made a complaint to the Competition Authority – 1 page	Release
8	22/08/03	Letter from Mr. D. Mc Munn, TV3 to Mr. C. Ó hÓbáin, DCMNR confirming that no proceedings had been instituted and enquiring as to timeframe for dealing with issue – 1 page	Release
9	28/08/03	Information note from Mr. C. Ó hÓbáin to Assistant Secretary, Sec. Gen and Minister re request by BCI for Minister to intervene in matter of transmission charges paid by TV3 to RTE – 2 pages	Withheld under section 20.1 – record forms part of the deliberative process, the release of which may negatively impact on the process
10	29/08/03	Copy letter from Mr. C. Ó hÓbáin, DCMNR to Mr. D. Mc Munn, TV3 outlining position - 1 page	Release
11	27/08/03	Letter from Mr. C. Ó hÓbáin to Office of The Attorney General seeking legal advice –2 pages	Withheld under section 22.1(a) –legal professional privilege and section 46.1(b) – record held by the Attorney

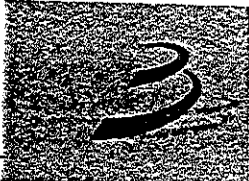
			General
12	12/11/03	Copy of legal advice received from Office of the Attorney General – 4 pages	Withheld under section 22.1(a) –legal professional privilege and section 46.1(b) – record held by the Attorney General
13	12/11/03	Original of legal advice received from Office of the Attorney General – 4 pages	Withheld under section 22.1(a) –legal professional privilege and section 46.1(b) – record held by the Attorney General
14	12/11/03	Covering letter from Office of the Attorney General enclosing legal advice - 1 page.	Withheld under section 22.1(a) –legal professional privilege and section 46.1(b) – record held by the Attorney General
15	19/01/04	Letter from Mr. R. Hetherington, CEO/Man. Director, TV3 to Mr. E. Molloy, Asst. Sec. DCMNR with annotations seeking meeting – 1 page	Release.
16	05/02/04	Copy of submission by Mr. C. O’hObain to Minister regarding request for Minister to intervene in matter of transmission charges paid by TV3 to RTE – 3 pages	Withheld under section 20.1 – record forms part of the deliberative process, the release of which may negatively impact on the process; withheld under section 22.1(a) –legal professional privilege
17	05/02/04	Copy of submission with annotations from Mr. C. O’hObain to Minister request for Minister to intervene in matter of transmission charges paid by TV3 to RTE – 3 pages	Withheld under section 20.1 – record forms part of

			the deliberative process, the release of which may negatively impact on the process and withheld under section 22.1(a) –legal professional privilege
		<p>17a. Draft letter dated April 04 from Minister Ahern to Mr. C. Maguire, Chairperson, BCI setting out position – 1 page</p> <p>17b. Covering letter dated 12/11/03 from Office of Attorney General to DCMNR enclosing legal advice – 1 page</p> <p>17(c) Copy legal advice received from Office of the Attorney General - 4 pages</p> <p>17(d) Information note dated 28.08.03 from Mr. C.O hObain to Ass. Sec, Sec-Gen and Minister re request by BCI for Minister to intervene in matter of transmission charges paid by TV3 to RTE – 2 pages</p> <p>17(e) Letter dated 2/05/03 from Mr. C. Maguire, Chairperson, Broadcasting Commission of Ireland to Minister Ahern setting out background to dispute between tvthree and RTE – 2 pages</p> <p>17(f) Copy letter dated 8/04/03 from Mr. D. McMunn, TV3 to Mr. C. Ohobain/ Mr. C.O’Cuinn setting out need for independent adjudication – 1 page</p>	<p>Release</p> <p>Withheld under section 22.1(a) – legal professional privilege and section 46(1)(b) record held by the Attorney General</p> <p>Withheld under section 22.1(a) – legal professional privilege and section 46(1)(b) record held by the Attorney General</p> <p>Withheld under section 20(1) – record forms part of the deliberative process, the release of which may negatively impact on the process</p> <p>Not relevant to request</p> <p>Not relevant to request</p>

18	7.04.04	Copy letter from Minister Ahern to Mr. C. Maguire, Chairperson, BCI setting out position – 1 page	Release
19.	27.04.04	Submission from J. Meleady to Mr. OhObain enclosing draft letter to Mr. Hetherington, TV3 – 1 page	Release

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Three Television Network Limited
Westgate Business Park
Ballymaurty, Dublin 24
Tel: + 353 (0) 419 3333
Fax: + 353 (0) 419 3302
www.tv3.ie



14th August 2003

Mr Brendan Touhy
Secretary General
Department of Communications, Marine and Natural Resources
Leeson Lane
Dublin 2

For Observations
For Action
For Follow up
For Information E. Kelly
C.C. BT.
Date 15/8/03 C.C. BT

Ref: Transmission Issue with RTE.

Dear Mr Touhy,

This letter refers to the above issue. Given that you may not be aware of this issue I would like to outline this issue and then set out the reason for the letter to your goodself.

This matter concerns the charges that RTE levy on TV3 for the use of its transmission network that we must access in order to meet our licence requirements in regards to coverage of population in the state. Given that RTE own this network as a result of state activity whilst RTE were a monopoly it is covered by the Essential Facilities doctrine of European Law i.e. access to the network must be on a non-discriminatory basis, particularly in relation to cost. In this case this means that RTE Transmission costs to both TV3 and the RTE stations must be on the same basis. RTE management has confirmed that TG4 and TV3 are charged differently with TG4 being charged on an absolute basis three times less than TV3.

We have raised this issue with the BCI as we are contractually allowed to do so and the BCI have referred it to your Department. It is our understanding that it was brought to your department's attention in April and despite several letters to the Broadcasting section of the Department (sent on 8th April and 14th July, copies of which are enclosed) we have received no reply.

We would be obliged if you would investigate this matter, particularly given that we have not even received an acknowledgement on such an important matter and one that confers competitive advantages to our direct competitor(s) that may be underwritten by the use of aid provided by your Department to RTE and TG4.

Thank you for your assistance in this matter.

Yours sincerely,

David Mc Munn
Director of Government, Regulatory and Legal Affairs

RECEIVED IN SECRETARY
GENERAL'S OFFICE
15 AUG 2003
DEPARTMENT OF
COMMUNICATIONS, MARINE
AND NATURAL RESOURCES

Ofis an Árd Runai
An Roinn Cumarsáide
Mara agus Acmhainní Náúúrtha
Baile Átha Cliath 2

Email: Brendan.Tuohy@dcmnr.ie
Website: www.dcmnr.ie



Office of the Secretary General
Department of Communications
Marine and Natural Resources
Dublin 2

Tel: +353-1-678 2030
Fax: +353-1-678 2079

15 August, 2003.


Mr. David McMunn,
Director of Government, Regulatory & Legal Affairs,
TV Three Television Network Limited,
Westgate Business Park,
Bally Mount,
Dublin 24.

Dear Mr McMunn,

I wish to acknowledge receipt of your letter of 14 August addressed to Secretary General Brendan Tuohy, concerning charges for access to the RTE Transmission Network.

I will bring your letter to the Secretary General's attention on his return from annual leave in September, but in the mean time, will pass it to the Broadcasting Division for their attention.

Yours sincerely,


Catherine McDonald,
Secretary General's Office

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19 August 2003


Mr. David McMunn
Director of Government, Regulatory and Legal Affairs
TV3
Westgate Business Park
Ballymount
Dublin 4, D4.

Dear David

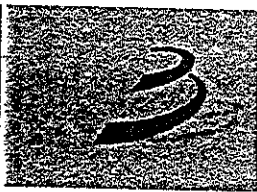
I refer to your correspondence in relation to a request from the Broadcasting Commission of Ireland to the Minister to use his powers under Section 16 of the 1988 Radio and Television Act, to intervene in the matter of the transmission charges paid by TV3 to RTE. I wish to confirm that this matter is being considered by the Department.

I recall that when discussing the matter at a meeting with TV3 that TV3 indicated its intent to make a complaint to the Competition Authority. I would be grateful if you would let me know whether TV3 has made such a complaint to the Competition Authority or to any other competent authority.

Yours sincerely


Ciarán Ó hÓbáin

Rthree Television Network Limited
Westgate Business Park
Ballydoon, Dublin 24
Tel: +353 1 419 3333
Fax: +353 1 419 3302
www.tv3.ie



22nd August 2003

[Handwritten signature]
27.8.03

Mr Ciaran O'hObain,
Department of Communications, Marine and Natural Resources
Leeson Lane
Dublin 2

Ref: Letter dated 19 August 2003.

Dear Ciaran,

Thank you for the above letter. I can confirm that TV3 has not instituted proceedings in any forum concerning the comparative costs of RTE transmission charges between TG4 and TV3.

I would be obliged if you could inform me of the proposed timetable for dealing with this complaint.

Yours sincerely,

[Handwritten signature]

David Mc Munn
Director of Government, Regulatory and Legal Affairs

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29 August 2003

Mr. David McMunn
Director of Government, Regulatory and Legal Affairs
TV3
Westgate Business Park
Ballymount
Dublin 24.

Dear David

Thank you for your letter of 22 August. I can confirm that the request of the Broadcasting Commission of Ireland that the Minister use his powers under Section 16 of the 1988 Radio and Television Act, to intervene in the matter of the transmission charges paid by TV3 to RTÉ is still under consideration. That consideration has yet to determine whether the Minister's power under Section 16 of the 1988 Act would allow him to intervene in relation to the existing agreement between TV3 and RTÉ. In the event that it is determined that the Minister has the power to intervene then a decision on whether an intervention would be warranted will be taken.

You can be assured that this matter will continue to receive our attention.

Yours sincerely



Ciarán Ó hÓbáin

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 Westgate Business Park
 Westmount, Dublin 24
 Tel: + 353 1 419 3333
 Fax: + 353 1 419 3302
 www.tv3.ie

19th January 2004

Mr Eamonn Molloy
 Assistant Secretary

Department of Communications, Marine and Natural Resources ("the Department")
 Leeson Lane
 Dublin 2

Ref: Transmission Access Issue with RTE- Letter dated 26th November.

Dear Eamonn,

I refer to the above matter and to my previous correspondence with the Department over a nine-month period. This was after a period of at least three months corresponding with the BCI on the issue.

We have to date received no detail from the Department with regard to how they intend to deal with this matter and we would be obliged if the Department could inform us of its intentions in this regard. I would stress that this matter is critical to TV3.

I would be obliged if we could have a meeting on this matter as was requested in my letter of November 26th. In this regard I would suggest any time in the first week in February 2004, other than the morning of the 5th. In case that this does not suit, I would be pleased to arrange a more suitable time.

Yours sincerely,



Rick Hetherington
 CEO and Managing Director

CC Michael O' Keeffe- Chief Executive, BCI

Tae,
 Please prepare letter
 for my signature base
 on letter from minister
 to BCI. For release only
 after Minister's
 issued

Cian
 5.2.0

April 2004

Mr. Conor J. Maguire
Chairperson,
Broadcasting Commission of Ireland,
2-5 Warrington Place,
Dublin 2.

Dear Conor,

I refer to your letter dated 2 May 2003 formally requesting that I use my powers under Section 16 of the Radio and Television Act 1988, to intervene in a dispute relating to the level of transmission charges paid by TV3 to RTÉ.

Having considered the advice of the Attorney General in the matter I am satisfied that Section 16 of the 1988 Act does not provide me with the power to intervene in this matter.

Yours sincerely,

Dermot Ahern, T.D.
Minister for Communications,
Marine and Natural Resources.

13.
Department of Communications,
Marine and Natural Resources

An Roinn Cumarsáide,
Mara agus Acmhainní Náúúrtha

Office of the Minister
Oifig an Aire

Dublin 2
Baile Átha Cliath 2

Tel +353 1 678 2000
LoCall 1890 44 99 00
Fax +353 1 678 2029
Email: minister.ahern@dcmnr.ie
www.dcmnr.gov.ie

7 April 2004

Mr Conor J. Maguire
Chairperson
Broadcasting Commission of Ireland
2-5 Warrington Place
Dublin 2.

Dear Conor,

I refer to your letter dated 2 May 2003 formally requesting that I use my powers under Section 16 of the Radio and Television Act 1988, to intervene in a dispute relating to the level of transmission charges paid by TV3 to RTE.

Having considered the advice of the Attorney General in the matter I am satisfied that Section 16 of the 1988 Act does not provide me with the power to intervene in this matter.

Yours sincerely,



Dermot Ahern T.D.
Minister for Communications,
Marine and Natural Resources

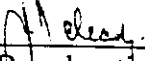


Mr. Ó hÓbáin,

Following earlier correspondence with BCI and TV3 regarding a dispute between TV3 and RTE on the issue of transmission charges, the advice of the Attorney General was sought in the matter. The Attorney's advice was that the Minister did not have the powers under the Radio and Television Act 1988 to intervene in the dispute between the parties.

The Minister has written to the BCI on 7 April advising them of the position.

The attached letter (in file pocket) to Mr. Hetherington, CEO and Managing Director, TV3 similarly advising him as to the position is attached for consideration, please.



Broadcasting Policy Division.
27 April, 2004.