



STATUTORY INSTRUMENTS.

S.I. No. 525 of 2007

EUROPEAN COMMUNITIES (IMPLEMENTATION OF THE RULES
ON COMPETITION LAID DOWN IN ARTICLES 81 AND 82 OF THE
TREATY) (AMENDMENT) REGULATIONS 2007

(Prn. A7/1405)

EUROPEAN COMMUNITIES (IMPLEMENTATION OF THE RULES ON COMPETITION LAID DOWN IN ARTICLES 81 AND 82 OF THE TREATY) (AMENDMENT) REGULATIONS 2007

I, MICHEÁL MARTIN, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving full effect to Council Regulation (EC) No. 1/2003 of 16 December 2002¹ as amended by Council Regulation (EC) No. 411/2004 of 26 February 2004², hereby make the following regulations:

1. (1) These Regulations may be cited as the European Communities (Implementation of the Rules on Competition laid down in Articles 81 and 82 of the Treaty) (Amendment) Regulations 2007.

(2) The Principal Regulations and these Regulations may be cited together as the European Communities (Implementation of the Rules on Competition laid down in Articles 81 and 82) Regulations 2004 and 2007.

(3) These Regulations come into operation on 27th July 2007.

2. In these Regulations “Principal Regulations” means the European Communities (Implementation of the Rules on Competition laid down in Articles 81 and 82) Regulations 2004 (No. 195 of 2004).

3. The Principal Regulations are amended—

(a) in Regulation 2—

(i) by substituting the following for the definition of “Act”:

“ ‘Act’ means the Competition Act 2002 (No. 14 of 2002) (as amended by the Communications Regulation (Amendment) Act 2007 (No. 22 of 2007));”,

(ii) by inserting the following definition after the definition of “Act”:

“ ‘associated facilities’ in relation to an electronic communications undertaking, has the same meaning as in section 2(1) of the Communications Regulation Act 2002 (No. 20 of 2002);”,

(iii) by inserting the following definition after the definition of “Authority”:

¹ OJ No. 1, 4.1.2003 p1

² OJ No. 68, 6.3.2004 p1

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 24th July, 2007.

“ ‘Commission’ means the Commission for Communications Regulation established by Part 2 of the Communications Regulation Act 2002;”,

and

(iv) by inserting the following definitions after the definition of “Council Regulation”—

“ ‘electronic communications network’ has the same meaning as in section 2 of the Communications Regulation Act 2002;

‘electronic communications service’ has the same meaning as in section 2 of the Communications Regulation Act 2002;

‘electronic communications undertaking’ means an undertaking that provides an electronic communications network or an electronic communications service or associated facilities;”,

(b) by substituting the following for Regulation 4:

“4. (1) Subject to paragraphs (2) and (3) of this Regulation, each of the following namely—

(a) the Authority, and

(b) as respects functions assigned that relate to electronic communications services, electronic communications networks or associated facilities, the Commission,

is, as respects the State, designated as a competition authority for the purpose of performing the functions assigned to competition authorities of the Member States by the provisions of Chapters IV, V, VII, VIII and IX of the Council Regulation and is accordingly, empowered to do anything mentioned in any of those provisions as being performable by such an authority.

(2) Each of the following namely—

(a) the Authority,

(b) as respects functions assigned that relate to electronic communications services, electronic communications networks or associated facilities, the Commission,

(c) the Director of Public Prosecutions, and

(d) a court referred to in Regulation 3(1) of these Regulations or as appropriate, the office of that court,

is, as respects the State, designated as a competition authority for the purpose of performing any functions assigned to competition authorities of Member States by Articles 11(1), 11(5), 27(2), and 28(2) of the Council Regulation and is, accordingly, empowered to do anything mentioned in any of those provisions as being performable by such an authority.

(3) The functions assigned to competition authorities of the Member States by Article 11(4) of the Council Regulation shall, as respects the State, be performed—

(a) in the case of any decision—

(i) subject to paragraph (4) of this Regulation, to withdraw the benefit of a block exemption Regulation that relates to an electronic communications service, an electronic communications network or associated facilities, by the Authority or the Commission, as appropriate, or

(ii) to withdraw the benefit of any other block exemption Regulation, by the Authority,

and

(b) in the case of any other proposed decision, by the relevant court referred to in Regulation 3(1) of these Regulations or, as appropriate, the office of that court,

and the Authority or, as appropriate, the Commission and such a court or, as appropriate, office of that court are accordingly empowered to do anything mentioned in that provision as being performable by such competition authorities.

(4) The Authority or the Commission—

(a) shall not adopt a decision to withdraw the benefit of a block exemption Regulation referred to in clause (i) of paragraph (3)(a) of this Regulation, and

(b) shall not perform the function assigned pursuant to clause (i) of paragraph (3)(a) of this Regulation,

unless the decision to withdraw the benefit of a block exemption Regulation as referred to in that clause has been adopted by either the Authority or the Commission, as the case may be, with the concurrence of the other body.”,

and

(c) by substituting the following for Regulation 6:

“6. For the purpose of the application in the State of Articles 11(6), 35(3) and 35(4) of the Council Regulation, the expression “authority prosecuting the case” in Article 35(4) shall be construed—

- (a) in the case of summary proceedings in relation to an offence under section 6 or 7 of, or proceedings taken under section 14(2) of the Act, irrespective of the subject matter of the proceedings, as a reference to the Authority,
- (b) in the case of such summary proceedings or proceedings taken under section 14(2), if the subject matter is relating to electronic communications services, electronic communications networks or associated facilities, in addition to the construction provided for by paragraph (a), as a reference to the Commission, or
- (c) in the case of proceedings on indictment in relation to an offence under section 6 or 7 of the Act, as a reference to the Director of Public Prosecutions.”.



GIVEN under my Official Seal,
17 July 2007

MICHEÁL MARTIN
Minister for Enterprise, Trade and Employment.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations are for the purpose of amending the European Communities (Implementation of the Rules on Competition laid down in Articles 81 and 82 of the Treaty) Regulations 2004 (S.I. No. 195 of 2004) which give effect in the State to EU Council Regulation No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (as amended).

These Regulations designate the Commission for Communications Regulation (ComReg) as a national competition authority responsible for the implementation in the State of the public enforcement provisions of the Council Regulation as respects functions only related to the provision of an electronic communications service or electronic communications network or associated facilities. Neither the Competition Authority nor ComReg will be able to withdraw the benefit of a block exemption in relation to an electronic communications service or electronic communications network or associated facilities without the concurrence of the other.

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FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
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