

[IE] BAI decision on political advertisement by wind-energy association

IRIS 2016-10:1/18

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The Broadcasting Authority of Ireland (BAI) has upheld a complaint regarding a television advertisement co-ordinated by the Irish Wind Energy Association (IWEA) as being in breach of Section 41(3) of the Broadcasting Act 2009, which provides that “a broadcaster shall not broadcast an advertisement which is directed towards a political end” (see IRIS 2009-10/18). A similar ban in the UK was found to be consistent with Article 10 of the European Convention on Human Rights by the European Court of Human Rights in 2013 (see IRIS 2013-6/1).

The complaint concerned an advertising campaign entitled “The Power to Power Ourselves”, which was broadcast by both public service broadcaster RTÉ One and commercial television channel TV3 in January and April 2016. The television advert ended with the text “Why do we import 85% of Ireland’s energy needs, producing only 15% domestically, when we’re surrounded by a resource that could move us towards energy independence.”

The complainant submitted inter alia that the campaign co-ordinated by IWEA, the national body representing the wind energy sector in Ireland, “are a special interest lobby group” and “are supported by State and semi-State organisations”. The complainant stated that at the time of the broadcast, wind energy was a matter of “significant political dispute” and that campaigns were underway “to oppose the further development of wind energy within Ireland.” The complainant asserted that the IWEA “were targeting what their CEO described as ‘a concerning escalation in false and misleading information about wind energy from some quarters.’” The complainant was of the view that this dispute was also linked to the ongoing review of the wind energy guidelines which were being undertaken by the Government, particularly on the issue of “safe setback distances / noise limits between homes and wind farms”, something which the IWEA has “vehemently opposed.” The complainant asserted that, taking into account the content of the advert, the context in which it was broadcast and the aims and objective of the IWEA and of the advertising campaign, the advertisement was an attempt to influence government policy and contravened the ban on political advertising as prescribed under s. 41(3) of the Broadcasting Act 2009 and reflected in Section 9 of the BAI’s General Commercial Communications Code dealing with “Prohibited Communications”.

In response to the complaint, TV3 stated that it did “not accept that the advert was a political message or advertisement” and contended that political advertising is merely restricted for “political parties, trade unions and charities”. RTÉ stated that the advert “promotes, generally, the contribution which wind energy could make to Ireland’s energy requirement” and “that potential is not a matter of political debate or controversy”. RTÉ was of the view that the complainant did not “substantiate his claim that wind energy is currently a matter of significant political dispute.”

In reaching its decision, the BAI Compliance Committee had regard to the statutory prohibition on advertisements directed towards a “political end”, provided for in the Broadcasting Act 2009 and reflected in Section 9 of the BAI General Commercial Communications Code. The Committee also took into account the content of the advert, the context in which it was broadcast, and the aims and objectives of the advertiser and the advertising campaign. The Committee also had regard to the definition of a “political end” as set out in the 1998 case of *Colgan v. IRTC* (see IRIS 1998-9/9). In that case, the Irish High Court found that “a political end is not limited to adverts aired by or on behalf of political parties” but also “encompasses ... an advertisement which has the objective of procuring changes in the law of Ireland or countering suggesting changes in those laws and or advertising which has an objective of procuring a reversal of government policy or of particular decision of governmental authorities in this country or countering suggested reversals thereof.”

In respect of the “content of the advert” the Committee held that the advertisement amounted to an “implicit criticism” of energy policy in Ireland. The Committee noted “that an objective of the advertiser, the IWEA”, was to “lobby government with a view to supporting the development of wind energy and renewable energy sources in Ireland.” In respect of the context in which the advert was broadcast, the Committee observed that it “was aired in the immediate run-up to a General Election” where “planning and other issues related to wind energy ... were live and contentious issues in a range of constituencies”. The Committee considered that “while wind and renewable energy are businesses, they are ones which generated current public debate in the country during the period in which the advertisement was aired.”

Having regard to all these elements as a whole, it was the view of the Committee that, “on balance”, these elements “were such that the advert met the criteria as one having the objective of being directed towards a ‘political end’, specifically one intended to influence government policy in respect of energy”, and accordingly, “had the nature and characteristics of an advert prohibited by the Broadcasting Act 2009.”

Broadcasting Authority of Ireland, Broadcasting Complaints Decisions, September 2016, p. 5

http://www.bai.ie/en/media/sites/2/2016/09/201609_CCECF_Decisions_Sept16_vFinal1.pdf

Broadcasting Authority of Ireland, Broadcasting Complaints Decisions, September 2016, p. 9

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