[IE] Unlicensed Deflector Systems

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Reception of UK television stations available by aerial in border areas and the cast of Ireland, was extended to urban areas by cable, under licence, from 1981. In rural areas, cable systems were uneconomic and so the Government decided in 1988 to invite applications for "exclusive licenses" to operate an MMDS system (Microwave Multipoint Distribution System). However, a number of unlicened and much less expensive deflector systems had already begun to operate, and despite repeated calls from Government to desist, continued to operate after the exclusive licences had been allocated to other operators. The deflector operators sought licences for thei own rebroadcasting systems but none were forthcoming.

Eventually, a case was taken in the High Court by one of the deflector Groups against the Minister, challenging his decision not to grant them a licence. In November 1995, the High Court granted the plaintiff (a) a declaration that the Minister had failed to act impartially and fairly in refusing to investigate the possibility of licensing the plaintiffs' system, and (b) a mandatory injunction requiring him to consider their application for a licence in accordance with law.

In the couse of a lengthy judgement, Judge Keane held inter alia that article 85 and 86 of the EC Treaty did not apply, as there was no effect on trade between Member States and that the Minister's decision was protected by article 90(1), which permits Member States to grant special exclusive rights to undertakings for considerations of public interest of a non-economic nature. Sacchi (Case 155/73)[1974]ECR 409 and ERTA (Case C-260/89)[1991] 1 ECR applied. He further held that the jurisprudence of the European Court of Human Rights demonstrated that Article 10 of the European Convention for the protection of human rights and fundamental freedoms had no application to the present case: Groppera (28.3.1990, Series A, Vol. 173), Autronic (22.5.1990, Series A, Vol. 178) und Informationsverein Lentia (24.11.1993, Series A, Vol. 276) considered.

In April 1997, the same judge vacated his 1995 order on the grounds that the Minister had determined the matter and refused to grant a licence.(The Irish Times 25 April 1997).

The Government then announced plans to invite applications for temporary licences (The Irish Times of 25 April and 24 May 1997). The problem, however, continues. In the lead-up to the June 1997 general election a number of the derflector operators had closed down in protest at the refusal to grant them

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licences (The Irish Times, 7 March 1997), and at the threat of court cases to be taken against them by some of the MMDS licensed operators but some of the deflector groups fielded their own candidates in the elections, one of whom was elected to the Dail, the Irish Parliament. Since then, Cablelink, a state-owned cable and MMDS operator, was granted an injunction restraining an unlicensed deflector operator in its area from retransmitting television signals (The Irish Times, 17 June 1997). Further court actions are expected: including an action for damages against the state. (The Sunday Times 22 June 1997).

Case Carrigaline Community Television Broadcasting Co. Ltd. v. Minister of Transport, in Irish Law Reports Monthly [1997] 1 ILRM 241

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