# [IE] Supreme Court Confirms Withdrawal of Broadcasting Licence and Defines “Advertising”

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After several decades in which the national broadcaster, RTE, enjoyed a monopoly of the airwaves and up to 80-90 unlicensed "pirate" radio stations played cat-and-mouse with the law, a system for licensed commercial broadcasting was finally introduced in Ireland in 1988 under the Radio and Television Act of that year. The Act established the Independent Radio and Television Commission (IRTC), which was to enter into contracts for the provision of independent private commercial radio and television broadcasting on a national and local level, as well as community and special interest broadcasting services.

The criteria for the award of licences were set out in the Act and the IRTC was also to monitor compliance with the terms of the contracts entered into by new stations. Non-compliance amounting to "serious repeated breaches" could result in the termination of a contract or a refusal by the IRTC to renew it after the initial seven year period. In 1996, the seventh year of licence period, when renewals were due to be made, the IRTC served notice of termination on one private commercial radio station, Radio Limerick One. Court proceedings resulted. In January 1997, the Supreme Court dismissed the station's appeal against a decision of the High Court, which had found that there had been an "aboundance of evidence" to justify the IRTC in terminating the contract and that the termination was not disproportionate to the gravity of the breaches involved. The High Court judge also concluded that there was no evidence of bias on the part of the IRTC such as had been alleged by the station.

One interesting point that was dealt with by the Supreme Court related to advertising. The Radio and Television Act 1988 stipulates, inter alia, that the maximum amount of advertising that may be carried is 15% of the total daily broadcasting time. One of the breaches of the Act allegedly committed by Radio Limerick One was that it exceeded these limits and, in addittion, broadcast promotions for particular shops in the Limerick area, which "constituted advertising significantly in excess of what was permitted under the 1988 Act or the contract". The Supreme Court took the view that in determining what was meant by advertisements it was necessary to have regard to the policy of the 1988 Act. While advertising of its nature doubtless has beneficial aspects from the consumers' point of view, the Court said, as well as providing an essential source of revenue for the operator, the policy of the Act is clearly to ensure, in the interests of listeners and viewers, a reasonable balance between such advertising

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and the provision of news, entertainment and other programmes. A narrow interpretation of advertisements could, therefore, wholly distort that balance. An analogy drawn by the station with the promotion of books or films was, the Court said, wholly unconvincing; they were informative and entertaining and it was only as a by-product that they constituted advertising.

***Supreme Court, Radio Limerick vs. The Independent Radio and Television Commission, No. 290/96. Judgement delivered on 16 January 1997***

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