



The Competition Authority on 17 January 2012 published copies of its [Enforcement Decision](#) and [Agreement and Undertakings](#) in relation to alleged anti-competitive behaviour by RTÉ. As a result of that agreement (and arising out of a strategic review by RTÉ) RTÉ can no longer give discounts to television advertisers based on their total budget committed to the state broadcaster.

Back in October 2011, RTÉ and TV3 exchanged sharply worded press releases with [TV3](#) claiming victory and accusing RTÉ of “*a shocking abuse of dominance*”. In response, [RTÉ](#) described TV3’s statement as “*blatantly inaccurate*”.

### Background

The background is that RTÉ operated a ‘share deal’ system for the sale of television advertising airtime. That system gave discounts to advertisers for placing more advertising business with RTÉ. Ordinarily such arrangements (essentially volume discount or volume rebate arrangements) cause no problem from a competition perspective. However where a company is dominant in a particular market or the beneficiary of state aids, such arrangements can breach competition law.

TV3, a commercial broadcaster, complained to the Competition Authority about RTÉ’s business practices in 2009. RTÉ carried out a strategic review and have now agreed with the Competition Authority that, effective 1 July 2012, discounts for advertisers will no longer depend on their total budget committed to RTÉ.

### Implications

In addition to the probable loss of television advertising revenue to RTÉ, the agreement and undertaking with the Competition Authority opens a possible avenue for TV3 (and potentially other parties active in the Irish market, such as Setanta) to seek damages from RTÉ. Irish competition law gives injured parties the right to seek civil remedies (eg damages or injunctions to restrain anti-competitive conduct) for breaches of competition law. TV3 has estimated that RTÉ’s actions may have cost the broadcaster as much as €30,000,000 (although this number has not been independently verified). The potential stakes are high.



### Applicable Law

Irish competition law is governed by the Competition Acts 2002-2010. Section 14 of the Competition Act 2002 allows parties injured by anti-competitive behaviour to seek damages (including exemplary damages) for losses suffered as a result of such behaviour. Injured parties can take direct legal action in the Circuit Court or the High Court against parties found to be engaging in anti-competitive conduct.

The Competition Bill 2011, currently at committee stage in the legislative process, provides that if a court finds that a breach of competition law has taken place, that finding can be relied on by all subsequent claimants. Accordingly, if this matter were to be litigated after the commencement of the Competition Bill 2011 the implications for RTÉ would even more serious because it could trigger a spate of follow-on claims.

### History between the parties

It is notable that a previous competition complaint by TV3 resulted in a decision by the Competition Authority in 2006 to take no action against RTÉ, underlining the complexity of these legal issues. TV3 is already suing RTÉ in proceedings issued in the High Court in June 2011 in respect of a dispute over transmission fees charged by RTÉ Transmission Network Limited during the period 1998 to 2008. It will be interesting to see if TV3 decides to pursue RTÉ directly in relation to the competition law breaches TV3 perceives to have occurred.

For information on competition law, dawn raids, state aids, restrictive practices, abuse of dominance or other anti-trust issues, please call or email [competition@venturelaw.ie](mailto:competition@venturelaw.ie).

This briefing is correct as at 27 January 2012.

This information is for guidance purposes only. It does not constitute legal or professional advice. Professional or legal advice should be obtained before taking or refraining from any action as a result of the contents of this publication. No liability is accepted by Venture Legal Services for any action taken in reliance on the information contained herein. Any and all information is subject to change. Venture Legal Services is not responsible for the contents of any other website or third party material accessed through this website.