

# **ADVISORY GROUP ON MEDIA MERGERS**

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**Report to the Tánaiste and Minister for Enterprise, Trade and Employment,  
Mary Coughlan T.D.**

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**June 2008**

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# 1. Chapter 1- Introduction

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## INTRODUCTION TO REPORT

- 1.1 In March of 2008, the then Minister for Enterprise, Trade and Employment, Micheál Martin T.D., announced the establishment of an advisory group (the Group) to review the current legislative framework regarding the public interest aspects of media mergers in Ireland. This review was undertaken in the context of a wider review taking place on the operation and implementation of the Competition Act 2002.
- 1.2 The Group was asked to examine the provisions of the Competition Act 2002 in relation to media mergers and in particular the “*relevant criteria*” specified in the Act, by reference to which the Minister currently considers media mergers.
- 1.3 The Terms of Reference of the Group were:-
  - To review and to consider the current levels of plurality and diversity in the media sector in Ireland.
  - To examine and review the “*relevant criteria*” as currently defined in the Act.
  - To examine and consider how the application of the “*relevant criteria*” should be given effect and by whom.
  - To examine the role of the Minister in assessing the “*relevant criteria*” from a public interest perspective and the best mechanism to do so.
  - To examine international best practice, including the applicability of models from other countries.
  - To make recommendations, as appropriate, on the above.

1.4 The membership of the Group comprised:-

Paul Sreenan S.C. (Chairman)

Dr. Olive Braiden.

Peter Cassells

Marc Coleman

John Herlihy

Prof. Colum Kenny

Michael O'Keeffe

1.5 Freda Nolan and Cathal O'Gorman from the Competition and Consumer Policy Section of the Department of Enterprise, Trade and Employment, provided the secretariat.

1.6 The Group conducted a wide-ranging consultation. It published an advertisement (**Appendix F**) seeking submissions in a large number of newspapers (**Appendix G**).

1.7 In addition, a number of persons and bodies were invited to make submissions. A list of these appears at **Appendix H**.

1.8 As a result of the consultative process, the Group received fourteen submissions. A list of the persons and bodies making submissions is to be found in **Appendix I**. While taking no position on claims for confidentiality, the Group has avoided quoting or referring to parts of a submission designated as confidential.

1.9 The Group held meetings with the Competition Authority, the Joint Oireachtas Committee on Enterprise, Trade and Employment and the Joint Oireachtas Committee on Communications, Energy and Natural Resources, with a view to enhancing the understanding of the members of the Group of the issues concerned. Following the latter two meetings, a number of separate comments were received from public representatives.

- 1.10 The Group commissioned PricewaterhouseCoopers (PWC) to prepare a statistical study of data relevant to plurality and diversity in the media sector in Ireland. A copy of this is to be found at **Appendix C**.
- 1.11 The Group also commissioned Emily Gibson B.L. to prepare a comparative study on the practice relating to media mergers in selected jurisdictions, thereby enabling the Group to consider and take into account international best practice in accordance with its Terms of Reference. A copy of Emily Gibson B.L.s comparative law survey is to be found at **Appendix D**.
- 1.12 In formulating its recommendations, the Group has aimed to balance the needs of business for transparency, certainty and efficiency with the public interest in the protection of media plurality in the State.
- 1.13 When appointed in April 2008, the Minister requested that the Group report by the end of June 2008. The Group is happy to be able to meet this target.

## **2. Chapter 2 - Executive Summary**

### **Executive Summary**

- 2.1 Media Mergers raise strong public interest concerns, relating to plurality (both of ownership and content) in the media.
- 2.2 The Group has examined how the existing mechanism for the approval of media mergers under Section 23 of the Competition Act 2002 might be amended to reflect the relationship between media and the public interest in media plurality in the State.
- 2.3 The Minister's role in the consideration of relevant criteria for assessing media mergers is also examined. The Group has identified difficulties with the present system including concerns about the role of the Competition Authority, lack of clarity in the relevant criteria as currently defined and the absence of clear statutory mechanisms to enable the Minister to protect the public interest in media plurality. The Group has suggested a reduced role for the Competition Authority in the assessment of plurality aspects of media mergers, redefined the relevant criteria and has suggested a statutory test to guide the Minister in the discharge of his/her function in considering the relevant criteria. The Group has also recommended concrete indicators of diversity of content and spread of ownership.
- 2.4 The Group recognises the contribution of the internet to plurality in the Irish media sector noting that the capabilities of new media are forecast to increase significantly in the future. The Group has called for greater clarity and transparency for parties contemplating a merger.
- 2.5 The Group has considered international best practice and a research paper was commissioned by the Group to provide a comparative analysis of the legal framework for media mergers in a number of jurisdictions. The Group has

considered current levels of plurality in the media in the State and commissioned PWC to collate data from publicly available sources on this topic. The Group has taken all of this material into account in the consideration of its recommendations.

2.6 The Group has made eleven recommendations, which in summary are as follows:-

1. There should be a statutory definition of media plurality (referring both to ownership and content).
2. The Competition Act should be amended to incorporate a statutory test to be applied by the Minister in the discharge of his or her function in relation to media mergers.
3. The definition of the “*relevant criteria*” in Section 23 (10) of the Competition Act should be replaced.
4. There should be an on-going collection and periodic publication of information and employment of concrete indicators in relation to media plurality in the State.
5. The Competition Authority should neither be required to form nor to furnish an opinion on the application of the relevant criteria.
6. There should be a separate system of notification of media mergers to the Minister for clearance. The Group has proposed an outline of such a system.
7. There should be an obligation imposed by Statute on parties to a media merger to provide full information to the Minister on all circumstances that might impair media plurality in the State, and to notify any changes in information provided to the Minister, with appropriate penalties for non-compliance.

8. The Minister should publish Guidelines to assist undertakings involved in media mergers in knowing how the Minister would in general apply the relevant criteria.
9. In the event of the Minister deciding to proceed to a detailed investigation of a proposed merger (other than a broadcaster to broadcaster merger), a three to five person Consultative Panel should be established on a statutory basis to provide advice to the Minister on the media merger.
10. The definition of “*media business*” should be amended to include publication of newspapers and periodicals over the Internet and broadcast of certain audio-visual material over the Internet.
11. The important role of the media in a democracy should be recognised by Statute, ideally in the Long Title of the Act containing the relevant provisions on media mergers.

### 3. Chapter 3 - Media Diversity and Plurality in the State

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#### Discussion

- 3.1 Current objective indicators of an aspect of media plurality, namely the spread of ownership and control of media businesses in the State, consist largely of publicly available data on ownership, agreed industry data on circulation, audience/readership and distribution. Some of that data appears in a report commissioned from PWC in Appendix C to this report. The data reveal a media market within the Republic of Ireland that is larger and more complex than could have been imagined even twenty-five years ago. There are some indications of a trend towards the concentration of ownership and this may accelerate, especially in the event of a sustained economic downturn or recession. Global trends also reveal a tendency by large media corporations to acquire other media organisations on a continuing basis. In the case of holders of broadcasting licences, licence conditions imposed by the Broadcasting Commission of Ireland (the B.C.I.) sometimes operate to restrict the spread of ownership and control. In the case of the print media, merger control often offers the sole opportunity of reviewing the consequences of a merger from the perspective of its effect on the spread of ownership and control of media businesses generally.
- 3.2 Current objective indicators of diversity of media content are generally implicit, being discerned principally through an examination of data relating to audience or readership that disclose to some extent which particular geographically or socially specific group is accessing which media. While the Minister and other citizens may have a sense of the editorial leanings of particular media outlets, their ‘sense’ is ultimately subjective and liable to possible bias. Thus, editors will frequently disagree with critics who complain that a certain phenomenon, be it a specific sport or cultural activity or political perspective (for example), is not adequately or fairly represented in the media.



To a limited extent, in certain circumstances, decisions of the Broadcasting Complaints Commission (the B.C.C.) and of the Press Council provide evidence of the accuracy or otherwise of such complaints. In the case of holders of broadcasting licences, diversity of media content is pursued through the BCI's licensing policy, through diverse programming commitments entered into by contractors and through the statutory requirements for fairness, balance and impartiality, in respect of news and current affairs.

### *Defining plurality*

3.3 The Group sees the plurality of the media as a wide concept that encompasses both the spread of ownership and control and diversity of content. In considering a range of concrete indicators of diversity of ownership and diversity of content that might assist the Minister in the exercise of his/her powers under the Competition Act 2002, the Advisory Group (the Group) has decided to formulate for this purpose a working definition of the two concepts.

3.4 The Advisory Group has adopted the following working definitions of 'diversity of ownership' and 'diversity of content', which are not defined in the Competition Act 2002:

*'Diversity of Ownership' means the spread of ownership and control of media businesses in the State amongst individuals and other undertakings linked to the market share of those media businesses as measured by listenership, readership or other appropriate methods.*

*'Diversity of content' means the extent to which the broad diversity of views and cultural interests prevalent in Irish society is reflected through the activities of media businesses in this State, including their editorial ethos, content and sources. "Views" includes but is not limited to, news and current affairs.*

3.5 The definitions adopted are based in the first instance on a reading of Section 23 of the Competition Act 2002 which requires the Minister to have regard to certain ‘relevant criteria,’ including,

*“(b) the extent to which ownership or control of media businesses in the State is spread amongst individuals and other undertakings,*

*(c) the extent to which ownership and control of particular types of media business in the State is spread amongst individuals and other undertakings,*

*(d) the extent to which the diversity of views prevalent in Irish society is reflected through the activities of the various media businesses in the State...”*

3.6 The Group notes that the phrase ‘views prevalent in Irish society’ is used in Section 23 of the Competition Act 2002, but is not defined by that statute. It may be argued by some that the word ‘prevalent’ means that the phrase refers only to such views as are predominant or are held by a majority of the population at large. However, the *Oxford English Dictionary* currently defines ‘prevalent’ both as ‘having great power or force; effective, powerful; influential, potent; that prevails *with* or *against* (a person or thing)’ and as ‘widespread in a particular area or at a particular time’. It notes that the usage meaning ‘predominant, powerful, victorious’ is ‘now *rare*’. The Broadcasting Act 2001, s. 11 (2) puts an onus on the B.C.I. to ensure that the number and categories of broadcasting services made available, ‘best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity’.

3.7 The Group believes that the phrase should be interpreted inclusively of influential or potent views that are widespread among members of any of the distinct cultural or socio-demographic groups that constitute Irish society as a whole.

3.8 In defining ‘diversity of ownership’ and ‘diversity of content’, the Group also takes into account contemporary discussions and debates, as well as the policies of some other states and European organisations. It acknowledges that, beyond the ambit of this report, people sometimes use these terms interchangeably to refer to content or ownership.<sup>1</sup>

3.9 Diversity of content can be measured in a number of ways that are not mutually exclusive. There is ‘internal diversity’ which may be evident in, for example, the nature of particular media content and sources and in the employment practices and standards of media organisations. There is ‘external diversity’, which may be evident in the range of public, private and community media of various types in a particular locality or market. All such measures of diversity are complementary to one another.

3.10 The Group also recognises that it is not always possible to consider either ‘diversity and plurality’ or ‘content and ownership’ as if the two terms in each case refer to entirely separate realities. We concur with the Competition & Mergers Review Group which, in its earlier report, struck a note of caution against taking the view that the Competition Authority could apply a standard competition analysis to the media that would be entirely free of implications for media content, observing that, *‘The nature of the media sector is such that issues such as the plurality of ownership of titles and the position in the media market generally of enterprises constitute public policy issues as they inevitably overlap with questions of editorial and cultural diversity.’* It further recognises the presence of factors that require ‘a set of criteria for the analysis of the

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<sup>1</sup> Commission of the European Communities Staff Working Document (SEC(2007) 32), 16 Jan. 2007, p. 10 for a precise inversion of the terms: ‘Diversity of ownership of media outlets is not sufficient per se to ensure media pluralism of media content’. In the United Kingdom, the Enterprise Act, 2002, section 58 (2A-C) as inserted by the Communications Act, 2003, s.375, does not refer anywhere to ‘diversity’ as such but recognizes, in cases of mergers involving newspapers, ‘the need for ... a sufficient plurality of views’ and, in cases of mergers involving broadcast media, both ‘the need... for there to be a sufficient plurality of persons with control’ and ‘the need for the availability throughout the United Kingdom of a wide range of broadcasting which (taken as whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests’. Prior to the passing of the Irish Competition Act, 2002, the terms ‘diversity’ and ‘plurality’ both appeared in the recommendations of both the *Report of the Commission on the Newspaper Industry* (Dublin: Government Publication, 1996), and *The final report of the Competition & Mergers Review Group* (*op. cit.*) but ‘plurality’ did not appear in the legislation, being only implicit in Section 23 quoted above. The word has reappeared in the terms of reference of the present Advisory Group which has been requested, *inter alia*, to ‘review and consider the current levels of plurality and diversity in the media sector in Ireland’.

*merger which are qualitatively different from those criteria which make up conventional micro-economic competition analysis’.*<sup>2</sup>

3.11 More recently, the authors of an EU discussion document noted another objective reality, with which we also concur, namely that *‘the way media content is produced also has an impact’* on the diversity of content. The authors observed that, for example,

*“Readers who consult several newspapers sometimes find that they contain the same articles, usually preceded by the initials of a press agency. Television viewers who switch from one channel to another often see the same news reports, documentaries or dramas. The reason for this uniformity is that the newsrooms of media companies do not themselves produce all their articles and programmes. They use outside agencies that supply information, photos, newsreel, broadcasts, documentaries, series and film”.*<sup>3</sup>

3.12 In a local context, the Irish branch of the National Union of Journalists (the NUJ) observes that,

*“Investment in editorial resources must be seen as a necessary operating cost, not discretionary expenditure. The pursuit of editorial excellence is not aided by an over-reliance on news agencies and syndicated copy.”*<sup>4</sup>

#### *Current concerns about plurality*

3.13 Concern has been expressed about the extent to which media businesses do not generate their own original sources of news but rather feed off one another. This is sometimes evident in the extent to which radio or television programming is based on the output of newspapers on news and current

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<sup>2</sup> *The final report of the Competition & Mergers Review Group*, March 2000 (Government Publications PN: 8487), p.251 (7.2.5-6), (7.2.8).

<sup>3</sup> Commission Staff Working Document, p. 10.

<sup>4</sup> Submission of NUJ, p. 3.

affairs. Independent Newspapers (Ireland) (“I.N.M.”) observes in its submission that:-

*“There is a clear relationship between the output of newspapers on news/current affairs etc. and their major stories [on the one hand] and radio news/current affairs coverage and the major themes of radio shows [on the other]. The same feature is also apparent to some degree in respect of live news shows on Irish television programming, for example, afternoon television shows on the Irish terrestrial channels. A significant part of radio programming, especially radio in the morning is influenced by news stories in the press/photographs in the press. For example, RTÉ1 radio’s Morning Ireland agenda is often influenced by the content of the morning newspapers and the same is true of other radio stations’ offerings... . Accordingly, there is a relationship between newspaper coverage of events and radio coverage. There are also links between newspapers and radio stations in terms of joint promotions to fuel sales of newspapers/increase listenership, e.g. holiday prizes.”*

3.14 The Irish Congress of Trade Unions (“I.C.T.U”) believes that,

*“The merger of independent commercial regional stations has diluted the distinct local nature of stations and it should be noted that there is significant cross-ownership between regional and national newspapers and independent commercial stations.”<sup>5</sup>*

3.15 Notwithstanding the multiplication of platforms and channels, there is a view amongst some respondents that media diversity is in effect being reduced for those citizens who lack either the means or the time or the inclination to seek out alternative viewpoints on the Internet or elsewhere<sup>6</sup>. According to one senior Irish broadcaster, who has worked for decades in the community radio

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<sup>5</sup> Submission of ICTU, p. 3.

<sup>6</sup> Submission of Dublin Community TV, p.3.

sector and who has elsewhere written of the constructive role that media can play in a democracy, ‘we are witnessing significant mergers, with ownership of previously independent Irish media moving into control of either foreign business or into monopolistic Irish control’<sup>7</sup>.

3.16 Introducing the Bill that became the Competition Act 2002, the then Tánaiste and Minister for Enterprise, Trade and Employment, Ms Mary Harney TD remarked in the Dáil that,

*The products or services offered by the mass media of newspapers, radio and television are different from the generality of consumer products and services in at least one vital respect. We depend on them significantly for information and views about the world in which we live. The material they provide influences how we see the world, how we interpret events and, to a significant extent, our attitudes and even our behaviour. This has a particular relevance to the operation of our political system. The proper functioning of our democratic system depends ultimately on liberty of expression and all that entails. Excessive concentration of media ownership and control involves risks that go beyond those involved in the case of ordinary goods and services.*<sup>8</sup>

3.17 Concerns about the future relationship between media and the public sphere are by no means confined to Ireland and they give rise to calls for greater clarity in respect of the underlying purpose of regulations in respect of diversity and plurality. Commenting on the fact that there has been, ‘detailed work in this area under the auspices of the OECD, the Council of Europe, the European Union and in individual states’, National Newspapers of Ireland observes that,

*The justification for the control of media mergers on plurality/diversity grounds is, in essence that it is necessary to*

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<sup>7</sup> Jack Byrne, in Submission of Craol: The Community Radio Forum for Ireland, p.1.

<sup>8</sup> Dáil Éireann, *Reports*, 550 (28 Feb. 2002).

*secure the existence of media which genuinely transmit and articulate the diverse and often competing views and ideas underlying our democratic way of life. Without an adequate spread of control in terms of ownership, there is a risk that this range of views and ideas will not be reflected in the public debate and true freedom of expression will be prejudiced. NNI believes that this basic objective of regulation can be stated in the legislation in order to provide an explicit context in which the Minister can exercise his or her powers. <sup>9</sup>*

3.18 The Group accepts that whether in the Long Title to an Act or otherwise such a statutory statement would be helpful in clarifying what is already implicit in Irish legislation, namely the recognition that media are not merely a market but are also part of the fabric of democratic society. This appears as recommendation No.11 in the Group's recommendations in Chapter 8.

3.19 The media have a role to play in vindicating the personal rights of citizens under Article 40 of the Constitution of Ireland which recognises the right of people to express freely their convictions and opinions and which describes the education of public opinion as 'a matter of ... grave import to the common good'. Under Article 40, the State may have due regard to differences of capacity and of social function and may strive to address these in legislation.

3.20 Article 10 of the European Convention on Human Rights has been invoked as an important legal basis for media plurality.<sup>10</sup> The European Court of Justice has also recognised the public interest in the maintenance of a pluralist broadcasting system justifying restrictions on other community law freedoms.<sup>11</sup>

3.21 In its submission to the Group, McCann FitzGerald notes that two conflicting

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<sup>9</sup> Submission of NNI, p. 2.

<sup>10</sup> "Media Diversity in Europe" – A report prepared by the Advisory Panel to the CDMM on media concentrations, pluralism and diversity questions. Media divisions. Directorate General of Human Rights. Council of Europe. Strasbourg. December 2002.

<sup>11</sup> See for example, Gouda, [1991] ECR 1-4007, Commission v. Netherlands, [1991], ECR 1-4069; Veronica Omroep, [1993] ECR 1-487; TV10 [1994] ECR 1-4795, Familia Press [1997], ECR 1-3689.

approaches to the ‘public interest’ test to be applied to media mergers have generally been identified:

*The ‘democracy model’ typically defines the public interest in terms of fostering constitutional and social values of quality and diversity, as well as preserving an effective forum for informed public debate.*

*In this model, what the economic market would dictate gives way at some point to what is necessary to achieve an open and broadly representative marketplace of ideas. Broadcasting a diverse but unpopular programme in this model might count as a beneficial promotion of the public interest, not as an undesirable inefficiency. What is important is the existence of opportunities for diverse offerings to enter the marketplace, not that consumers prefer each of those offerings to alternatives.*

*In contrast, the ‘efficiency model’ defines the public interest, often implicitly, in terms of fostering a market that does the best possible job of satisfying consumers’ programming preferences. In line with this approach, advertiser-focused merger analysis, as currently undertaken by the Competition Authority, essentially treats advertisers as consumers and the audience as the relevant product (rather than the audience as consumers and programmes as the relevant product).*

*This version of the public interest aims for an efficient market, where efficiency means that media companies take consumer preferences as given and produce as much content as people want, in the varieties they want, as cost effectively as possible. Even if ‘better’ programming or content choices might exist for some*



*purposes, the model presumes decisions about what to consume and supply are for individuals and media companies, not policy officials to make.*<sup>12</sup>

3.22 While the Group acknowledges this analysis, it notes that in Ireland, the existence of tests of diversity of programming undertaken by the BCI when considering ownership and control changes, together with specific programming obligations in broadcasting contracts is aimed at fostering “*public interest*” in media plurality.

3.23 The Group is aware of tensions between contending perspectives on both the regulation of markets and on the relationship between markets and society. It does not believe that public policy in Ireland enshrines the reductionist view of media that was evident in a reported declaration by Mr Mark Fowler, the first chairman of the US Federal Communications Commission in the Reagan administration, that ‘television is just another appliance ... a toaster with pictures’<sup>13</sup>. The conditions for a healthy democracy include the maintenance of shared spaces for discourse between citizens or, as the veteran director of research at the Consumer Federation of America has written,

*The distinction between the commercial marketplace and the forum for democratic discourse becomes readily apparent when we respond to the advice frequently given by the most ardent advocates of pure economics to the complaint of mediocrity in the media. When the poor quality of the media product is brought up, they give a good free market response – ‘If you do not like what is on the tube, turn it off.’ An okay answer for consumers is very bad for citizens. It may be perfectly acceptable for consumers to be forced to vote with their*

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<sup>12</sup> Submission of McCann FitzGerald, pp.8-9.

<sup>13</sup> C. Mayer, ‘FCC Chief’s fears: Fowler sees threat in regulation’, in *Washington Post* (6 Feb. 1983). Cited at C. Edwin Baker, *Media, markets, and democracy* (Cambridge University Press, 2002), p. 3.

*dollars and turn off commercial entertainment, but it is not acceptable for citizens to be turned off by the poor quality of civic discourse, and then have no comparable alternative to which they can turn. As Justice Brandeis explained ... 'the greatest menace to freedom is an inert people ... public discussion is a political duty.'*<sup>14</sup>

3.24 The level of diversity and plurality may vary from one local market to another, with any given sector being more or less competitive than another at any particular time. It is also the case that perspectives may differ radically on the commercial realities of any sector and this gives rise to concern. For example, from its perspective, UPC Ireland believes that there is at present no reason for concern in respect of television delivery. UPC, a wholly owned subsidiary of Liberty Global Inc., is comprised of the formerly separate businesses of NTL and Chorus and is the largest Pay TV operator in the state. It owns and operates cable and MMDS networks in over 22 of the 26 counties of the State:-

*From UPC Ireland's perspective, cultural diversity and media plurality exists to a greater extent than in 2005, when the ICA [Competition Authority] – by virtue of its approval of LGI's [Liberty Global International] acquisition of NTL - last undertook a comprehensive review of the Pay TV market. We believe the media merger provisions as currently provided under the Act already provide considerable scope for both the ICA and the Minister, to undertake a comprehensive review of any planned media merger. We therefore see no need for further amendment to those provisions.*<sup>15</sup>

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<sup>14</sup> Mark Cooper, *Media ownership and democracy in the digital age: promoting diversity with First Amendment principles and market structure analysis* (Consumer Federation of America, 2003), p.14. Cooper is also a fellow of the Stanford Law School's Center for Internet and Society; *Whitney v. California*, 274 U.S. 357 (1927).

<sup>15</sup> UPC Submission, pp. 2-3.

3.25 Channel 6 does not share UPC's level of satisfaction. As an emerging Irish channel, it depends on platforms such as NTL for delivery and argues that, *'In short, it may not matter how good your channel is, if it is relegated to the outer reaches of the channel listings by the platform owner, or if promotion and cross subsidisation by platform owners with channels also owned by platform owners otherwise prevents fair competition'*.<sup>16</sup>

3.26 Concerns about levels of transparency have also been voiced and are addressed later. There is no doubt that parties to contemplated mergers and citizens in general stand to benefit from clarity and consistency of methodology on the part of those charged with approving mergers. The difficulties of defining and assessing a particular market are considerable and are fraught with potentially controversial aspects. Besides the need to identify any effective subsidies that may distort competition, and that may have long-term strategic purposes rather than obvious short-term justification, there is the not so simple matter of identifying and measuring citizens' relative preferences for alternative products. McCann FitzGerald observe that,

*Compounding this problem, some media are free, such as conventional television, conventional radio, many Internet sources, and some weekly or daily newspapers. Other forms of media have prices, such as cable, DBS satellite service, and the print editions of daily newspapers; however, even when antitrust agencies have access to media price data, the data can be hard to interpret. Monthly package prices for cable or DBS frequently convey little information about the relative value to consumers of individual [channels] within packages. Without accurate and detailed price data, it is hard to estimate "cross elasticities of demand", or the extent to which consumers substitute among*

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<sup>16</sup> Submission of Channel 6 Broadcasting Ltd. p.1

*different media as relative prices for those media alternatives change.*<sup>17</sup>

3.27 The Group also recognises that financial circumstances sometimes require decisions that reduce the spread of ownership and control. As Communicorp remarks in its submission, ‘Significant holdings within or across media may be the only way to deliver essential economies of scale and scope’<sup>18</sup>. It adds, ‘Ownership concentration may well extend across different types of media considering the efficiencies that must be realised in order to compete with global heavyweights such as Sky and others’<sup>19</sup>. In any such circumstances of cross-media mergers, if such a decision must be made, it will be especially important to ensure that a reduction in the spread of ownership is not necessarily accompanied by a reduction in diversity of content and that robust mechanisms are in place to measure and to report on relative levels of internal diversity at the consolidated enterprise.

3.28 Moreover, the number of owners within a particular media sector is not the sole relevant consideration. The range of services is at least as significant. Communicorp has drawn to our attention a recent notice of the Canadian Radio-television and Telecommunications Commission (the CRTC) that expresses as follows the importance of recognising a diversity of elements in such cases:

*To ensure a diversity of voices, the Broadcasting Act (the Act) mandates that three elements must be represented in the Canadian broadcasting system. In particular, section 3(1)(b) of the Act, states that:*

*... the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property*

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<sup>17</sup> Submission of McCann FitzGerald, p. 11.

<sup>18</sup> Submission of Communicorp, p. 6.

<sup>19</sup> Ibid.

*and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;*

*At this level, it is not the number of owners that is the focus but the availability of different types of broadcasting services – each with its own distinct voice. While a diversity of individual owners is important, ensuring the availability of all three elements provides the foundation for viewpoint diversity within the Canadian broadcasting system.*

*In the Commission’s view, the Canadian broadcasting system should provide access to a diversity of voices through broadcasting services from the public, private and community elements.<sup>20</sup>*

3.29 The Broadcasting Bill 2008 gives specific recognition to the three strands of broadcasting - public, commercial and community – and requires the new regulator, the Broadcasting Authority of Ireland (the B.A.I.), to ensure through its policies that the objects of each of these strands is facilitated. This approach to diversity is broadly in accordance with the CRTC approach to the provision of “*access to a diversity of voices*” as outlined above.

3.30 Whatever the particular perspective that one may have on media, there is broad agreement among most of those who have made submissions to the Group that some form of regulation is necessary and that leaving the media market to its own devices is not a realistic option. New media platforms provide additional opportunities to reach audiences or readerships, and the Internet has certainly not yet achieved its full potential in respect of journalism and media production, but for the foreseeable future there will continue to be media services and titles that are shared by relatively large numbers of citizens and the possible alteration

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<sup>20</sup> CRTC Broadcasting Public Notice CRTC 2008-4 (Ottawa, 15 Jan. 2008), paragraphs 12-14; Communicorp Submission, p. 6;

or loss of which in any merger will give rise to concerns. As has been observed by the authors of a recent overview of media regulation and the public interest,

*If choice of product is an objective, either as an end in itself or as a prerequisite of citizenship, then the media market must be regulated against the operation of free market forces which, by themselves, would be likely to produce oligopoly or monopoly and therefore run counter to an objective of plurality and diversity. In addition, from a different perspective, free market approaches to media markets raise issues which, while not of significance to proponents of consumerism, appear to fall within general constitutional expectations. Equality of citizenship appears to presuppose a degree of equality of access to media output and, if a significant part of the range of media product is available only to those with the means to buy it, the principle of equality of citizenship appears to be breached.<sup>21</sup>*

3.31 In considering ways in which to measure and to protect plurality, the Group has taken into account both the economic realities of the market-place and the broader democratic requirements of society.

3.32 Theoretically, a single or monopoly media conglomerate may provide diversity of content by providing a range of services for various tastes and audiences. In practice, in the opinion of the Group, plurality of media ownership and control is a *sine qua non* or prerequisite of sustained diversity. Regulated competition facilitates what one highly regarded media theorist has described as ‘variability of mass media (sources, channels, messages and

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<sup>21</sup> M. Feintuck and M. Varney, *Media regulation, public interest and the law* (Edinburgh University Press, 2006), Pp. 105-6

audiences) in terms of relevant differences in society (political, geographical, socio-cultural etc.)<sup>22</sup>.

3.33 In its submission, I.C.T.U. observes that,

*Diversity, plurality and proper representation of varied viewpoints are an essential element of a healthy, properly-functioning media. It is not overly dramatic to state that the capacity of citizens to make informed decisions is threatened by a concentration in media ownership and a consequent limiting of opinions and voices.*

*Ownership interests may affect what is and is not covered, while at other times, news and journalism can suffer as commercial imperatives drive operations — and stories are either slanted or omitted so as not to offend advertisers. In short, ‘media issue’ cannot be governed or driven solely by commercial considerations, nor viewed solely through the prism of competition.<sup>23</sup>*

3.34 The I.C.T.U. views certain trends in the Irish media with concern, believing that concentration of media power in too few hands will invariably corrode the quality and diversity of output<sup>24</sup> in the media.

3.35 The Group acknowledges that diversity of ownership and control and the proper representation of a variety of viewpoints in the media are an essential element of a healthy, properly-functioning society. One of the guiding principles of the BCI in respect to possible mergers of radio and television companies applies equally well to the management of media mergers in general, namely that,

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<sup>22</sup> Denis McQuail, *Media performance: mass communication and the public interest* (Sage: London, 1992), p. 147.

<sup>23</sup> Submission of ICTU, p. 1.

<sup>24</sup> Submission of ICTU, p. 2.

*... the BCI aims to put the public into a position which gives them access to a diversity of programming from a variety of sources in the form of broadcasting services of such number and categories as will best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity.*<sup>25</sup>

3.36 A number of parties making submissions have called for greater transparency and the publication of guidance for parties contemplating a merger. Thus, for example, in relation to transparency, NNI submits that the basis on which the Minister makes his/her decision should be better defined and that the Minister should establish Guidelines clarifying how the relevant criteria are to be applied.

3.37 The Group believes that all parties involved in a notified merger, as well as society at large, can benefit from greater transparency in relation to the public interest role played by the Minister. In its Recommendation No.8 in Chapter 8, the Group recommends that the Minister publish Guidelines and a detailed statement of his/her reasons in respect of any decision relating to a notified merger. This is dealt with further below.

3.38 There is, in general, a wide variety of media publications in the State. These provide citizens with a broad range of opinions and cater to many tastes. Existing policy is aimed at ensuring the continuation and protection of such plurality, both in terms of the spread of ownership and the range of content. To this end, for example, the BCI has evolved rules that militate against concentration of ownership beyond certain levels in the case of proposed mergers that fall within its sphere of competence. While such specific thresholds are not applicable to print or other non-broadcast media, the Competition Authority can be expected to intervene to prevent a substantial

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<sup>25</sup> Broadcasting Commission of Ireland, 'Ownership and Control Policy' (Dublin, 2005), pp. 13-14. See [http://www.bci.ie/documents/o&c\\_policy\\_05.pdf](http://www.bci.ie/documents/o&c_policy_05.pdf).



lessening of competition in the market in the case of any media merger notified to it under law.

### **3.39 Objective data**

The Report sets out in Appendix C the very considerable amount of objective market data that is already available to anyone interested in assessing both the spread of media ownership in Ireland and the relationship of that ownership to citizens in terms of their consumption of particular media (“market-share”). This data, of course, does not in itself allow one to determine the influence of particular media titles/stations on those who read/hear/view them — or the actual spread of media content in any or all cases when related to views that are prevalent in Irish society, in the sense of views that are widespread among members of any of the distinct cultural or socio-demographic groups that constitute Irish society as a whole.

### **3.40 Subjective interpretations**

Individual members of the Group have their own personal opinions on the extent to which the media in part or in whole are diverse when it comes to the coverage of particular matters. However, the Group cannot in the time available to it undertake a study of the media that would permit it to determine how representative any or all media outlets are on any given topic. We suggest elsewhere a mechanism for providing to the Minister on a rolling basis and in a coherent fashion the relevant data on media plurality that are generally available<sup>26</sup>. The body providing such data to the Minister might also be asked to commission objective longitudinal studies of diversity in the media.

3.41 That having been said, it is recognised that some media organisations are particularly powerful in the Irish context. Both Independent Newspapers, in the private sphere, and RTE, in the public sphere, clearly enjoy market leadership positions, while other companies such as Communicorp or News International have emerged as potent corporate challengers. It is also the case, however, that the combined effect of smaller individual media enterprises such

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<sup>26</sup> See Recommendation No.4 in Chapter 8

as local radio stations, or websites, offset the dominance of larger operations and may offer the citizen in a particular locale or market greater choice than is at first apparent. Indeed, some local radio stations dominate the airwaves in their particular area, while niche media may have an influence on particular demographic groups (e.g. youth) that is only apparent when one looks closely at the data. Those whose duty it is to articulate and enforce media merger policy have a challenging task in first defining and then assessing relevant markets for the purpose of ensuring plurality within them, as well as having to ensure overall plurality nationally.

3.42 The conclusion that one draws from data such as that which is presented in Appendix C may well depend on one's particular civic, commercial, ideological or political perspective. Thus, for example, one may define the national radio market to exclude local radio, notwithstanding the fact that at any given time about half of the listening public nationally is tuned into a local radio station. If one does exclude it then RTÉ appears to have a more dominant position in national radio than might otherwise be the case. Similar variables may apply in respect to, for example, the Sunday newspaper market where conclusions vary depending on whether or not one counts broadsheets and tabloids together, or counts Irish-owned titles with foreign-owned titles (with or without Irish editions) or counts all broadsheets as "quality newspapers" if referring to "quality media". On the television side, if one takes only TV stations that have been licensed within the Republic of Ireland then it may be said that the level of plurality of ownership in this market is extremely low: but the commercial and consumer reality is that both advertisers and audiences have a wide choice of English-language television services aimed at the Irish public from within and without the state and it is within that broader context that stations licensed in the Republic of Ireland have to compete and survive.

### 3.43 **Actual levels**

Data provided in Appendix C allows the Minister and others to draw their own conclusions about plurality in the Irish media. In respect of measuring diversity of content relevant to views prevalent in Irish society, the Group

believes that if conclusions are not to be unduly impressionist then research is needed beyond the timeframe within which this Group was asked to report. Meanwhile, both the BCC and the Press Council are mechanisms that to some extent and in certain areas provide a remedy for those who believe that diversity is not being delivered in a particular case. It is noted that these bodies have to date upheld relatively few complaints against Irish media, although to say so is not to diminish the significance of complaints that were upheld or to conclude that the criteria under which one may complain necessarily encompass all aspects of diversity.

3.44 Some further observations follow on particular areas of the Irish media, although these ought not to be regarded as definitive. Our report is intended to assist the Minister in ensuring that plurality of ownership and content are protected within the Irish media at a time of great indigenous and global competition.

#### 3.45 **Daily Newspapers.**

The Group considers that the spread of ownership of daily newspapers reveals no serious concerns in relation to plurality of ownership. Ownership of newspapers available to Irish readers seems to be well spread according to the data in Appendix C, which suggests that market shares have remained broadly stable in recent years.

3.46 When UK newspapers are excluded, the largest ownership group, IN&M owns 100% of the Irish Independent and 50% of the Irish Daily Star which, when combined, account for 60% of the daily market. Were the strength and competitiveness of the indigenously owned daily print media to be considered an important criteria, this could constitute a concern.

3.47 The data provides a breakdown of broadsheet papers and although only three Irish – owned newspapers are deemed to fulfill this category, the market share of the largest ownership group, IN&M (The Irish Independent) has a share of

just under half the market. However given the shares of the other two daily newspapers under this category, this level of market share could be deemed to be acceptable from a plurality point of view.

**TABLE 1 MARKET SHARE OF DAILY MORNING NEWSPAPERS**

<b>Title</b>	<b>Daily Newspaper with Irish title or Irish edition of UK title, Circulation July-December 2007<sup>27</sup></b>	<b>Daily Morning Newspaper with Irish Title or Irish Edition of UK Title, Circulation July – December 2007<sup>28</sup></b>	<b>Daily Morning Newspapers, Irish Title, Circulation July – December 2007<sup>29</sup></b>	<b>Broadsheet Daily Morning Newspapers, Irish Title, Circulation July – December 2007<sup>30</sup></b>	<b>Ownership</b>
Irish Independent	20%	23.3%	35.7%	48%	(IN&M 100%)
Irish Daily Star	14%	16.3%	25%	N/A	(IN&M 50%; Express 50%)
Irish Examiner	7%	8.1%	12.5%	17%	(T. Crosbie Holdings Ltd. 100%)
Irish Times	15%	17.4%	26.8%	36%	(Irish Times Trust 100%)
Irish Sun	13%	15.1%			(News International Ltd 100%)
Irish Daily Mail	8%	9.3%			(Daily Mail & Associated News. 100%)
Irish Mirror	9%	10.5%			(Trinity Mirror Group 100%)
Evening Herald	10%				(IN&M 100%)
Evening Echo	4%				(Evening Echo 100%)
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	

<sup>27</sup> ALL DATA USED FROM PricewaterhouseCoopers: Department of Enterprise, Trade and Employment: Media Research required by the Advisory Group on Media Mergers Page 9 Section 9 A Table (ii).

<sup>28</sup> Excluding the evening newspapers “*The Evening Herald*” and “*The Evening Echo*” the market shares of remaining newspapers are totalled to give 86%. The market share of each remaining paper is then divided by this number to produce its market share of the morning daily newspaper market. Example: Daily Star;  $14\%/86\% = 0.14/0.86 = 16.3\%$

<sup>29</sup> The market shares of the Irish owned morning newspaper titles (Irish Independent, Irish Daily Star, Irish Examiner, Irish Times) are totalled to give 56%. The market share of each of these titles is then individually divided by this number to produce their market share of the morning daily Irish owned newspaper market. Example: Irish Daily Star  $14\%/56\% = 0.14/0.56 = 25\%$ .

<sup>30</sup> The market shares of the Broadsheet morning newspapers (Irish Independent, Irish Times, Irish Examiner) are totalled to give 42%. The market share of each of these titles is then individually divided by this number to produce their market share of the broadsheet market.

Example: Irish Examiner,  $7\%/42\% = 0.07/0.42 = 17\%$

### 3.48 Sunday Newspapers<sup>31</sup>

The data in Appendix C suggests that market shares have remained broadly stable in recent years. However there appears to be a significantly lower level of plurality of ownership as far as Sunday newspapers are concerned. The data shows that Sunday newspapers wholly owned by INM account for 48% of the Sunday Newspaper market measured as including Irish titles or Irish editions of UK titles (54.5% if confined to the broadsheet market only) and 75% if the market is measured as including Irish titles only. Not included in these figures are the Irish Daily Star on Sunday in which INM has a 50% interest and the Sunday Tribune in which INM has a 29.9% interest. If one includes these titles, INM accounts for 59% of the Sunday newspaper market measured as including Irish titles or Irish editions of UK titles (68.1% if confined to broadsheet market only) and 92.2% of the market measured as including Irish titles only.

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<sup>31</sup> ALL DATA USED FROM PriceWaterhouseCoopers: Department of Enterprise, Trade and Employment: Media Research Required by the Advisory Group on Media Mergers Page 7 section 9 A Table (ii)

**TABLE 2 MARKET SHARE OF SUNDAY NEWSPAPERS**

<b>Title</b>	<b>Sunday Newspaper with Irish Title or Irish Edition of UK Title, Circulation July – December 2007<sup>32</sup></b>	<b>Sunday Newspaper with Irish Title, Circulation July – December 2007<sup>33</sup></b>	<b>Broadsheet Sunday Newspapers, Circulation July – December 2007<sup>34</sup></b>	<b>Ownership</b>
Sunday Independent	24%	37.5%	54.5%	(IN&M 100%)
Irish Daily Star on Sunday	5%	7.8%		(IN&M 50%; Express 50%)
Sunday World	24%	37.5%		(IN&M 100%)
Sunday Tribune	6%	9.4%	13.6%	(IN&M 29.9%)
<b>Total market share of 'IN&amp;M' Titles</b>	<b>59%</b>	<b>92.2%</b>	<b>68.1%</b>	
Irish News of the World	13%			(News International Ltd 100%)
Sunday Times	9%		20.5%	(News International Ltd 100%)
<b>Total market share of News International Titles</b>	<b>22%</b>	<b>0%</b>	<b>20.5%</b>	
Sunday Business Post	5%	7.8%	11.4%	(T. Crosbie Holdings Ltd 100%)
Irish Mail on Sunday	10%			(Daily Mail and General Trust Assoc Newspapers)
Irish Sunday Mirror	4%			(Trinity Mirror Group)
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	

<sup>32</sup> ALL DATA USED FROM PricewaterhouseCoopers; Department of Enterprise, Trade and Employment; Media Research required by the Advisory Group on Media Mergers Page 20 Section F. Table (i) A "Irish Sunday Newspapers".

<sup>33</sup> The market shares of the Irish owned Sunday titles (Sunday Independent, Irish Daily Star on Sunday, Sunday World, Sunday Tribune and Sunday Business Post) are totalled to give 64%. The market share of each individual title in this list is then divided by this amount to arrive at the market share of each of the Irish owned Sunday Newspaper market. Example: Sunday Business Post;  $5\%/64\% = 0.05/0.64 = 7.8\%$ .

<sup>34</sup> The market shares of the Broadsheet Sunday newspaper market (Sunday Independent, Sunday Tribune, Sunday Business Post and Sunday Times) are totalled to give 44%. The market share of each individual total in this list is then divided by this number to give its market share in the broadsheet Sunday newspaper market. Example: Sunday Business Post =  $5\%/44\% = 0.05/0.44 = 11.4\%$

### **3.49 Regional Newspapers.**

Some seventeen of Ireland's regional newspapers are owned outright by IN&M, while Thomas Crosbie Holdings own sixteen and Johnston Press own sixteen local titles. Alpha Newspaper Group own five titles, the Irish Times Trust own two and Associated Newspapers own two. The spread of ownership on the face of it – given the relative ease of entry into this market – does not appear to suggest any lack of plurality.

### **3.50 National Radio.**

As the data suggests, the national radio market (national stations only) is characterized by a low level of plurality. The media group with the largest market share, RTE has nearly 70% of the sector through its ownership of RTE1, RTE2 and Lyric FM. Communicorp's joint ownership of TodayFM and Newstalk 106 to 108 accounts for 30%. If however one includes regional and local stations in this analysis which would be the industry norm, the shares fall to 36% and 16% respectively,<sup>35</sup> indicating a higher level of plurality.

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<sup>35</sup> See PricewaterhouseCooper's Report at Appendix C Page 70



**TABLE 3 MARKET SHARE OF NATIONAL RADIO STATIONS**

<b>Station</b>	<b>National Radio Stations Broadcasting in Ireland; JNLR Listenership Weekday Share Jan-Dec 2007<sup>36</sup></b>	<b>Ownership</b>
RTÉ Radio 1	41.5%	(RTÉ 100%)
RTÉ Radio 2	24.6%	(RTÉ 100%)
Lyric FM	3.3%	(RTÉ 100%)
<b>Total RTÉ</b>	<b>69.4%</b>	
Newstalk 106-108FM	6.5%	(Communicorp 100%)
Today FM	24%	(Communicorp 100%)
<b>Total Communicorp</b>	<b>30.5%</b>	
<b>TOTAL</b>	<b>100%</b>	

**TABLE 3A MARKET SHARE OF NATIONAL, REGIONAL AND LOCAL RADIO STATIONS<sup>37</sup>**

<b>National, Regional and Local Radio Stations</b>	<b>Market Share 2007, %</b>
<b>All Radio Stations</b>	
Any Regional/Local	<b>47.6</b>
RTÉ Radio 1	<b>21.6</b>
RTÉ 2FM	<b>12.8</b>
Today FM	<b>12.5</b>
Newstalk 106-108FM	<b>3.4</b>
RTÉ Lyric FM	<b>1.7</b>
<b>TOTAL</b>	<b>99.6</b>

<sup>36</sup> ALL DATA USED FROM Pricewaterhouse Coopers: Department of Enterprise, Trade and Employment: Media Research required by the Advisory Group on Media Mergers Page 61 Section A, Table (i) A 'National Radio Stations Broadcasting in Ireland'.

<sup>37</sup> SOURCE: JNLR Weekday Share Figures (7am-7pm), January 2007 – December 2007 as contained in Appendix C Page 70

### **3.51 Local Radio (Dublin/Cork).**

The data suggests that ownership of Dublin's radio market is reasonably well balanced with UTV owning two stations (FM104 and Q102) accounting for just over half the market share and Communicorp's 98FM accounting for 27%. The situation in Cork appears very different, where UTV's ownership of Cork96FM and C103 gives it a market share of 82%. All of these figures are calculated on the basis of the exclusion of national stations.

### **3.52 Local Radio (outside Dublin and Cork).**

Outside of the Dublin and Cork regions, most of the local stations hold almost 100% of the share of the market, if you exclude national stations. When national stations are included, the share remains high so for example, Highland Radio holds 62% while most others hold close to 50%.

### **3.53 National Television.**

Nearly 70% of that part of the market share that is enjoyed by Irish licensed broadcasting stations is accounted for by RTÉ. The next largest ownership group, Tullamore Alpha, accounts for 23.5%. The only other undertakings in the sector are extremely small in size. The level of plurality of ownership in this group might be considered as low. However, if one assesses market share on the basis of all television stations broadcasting in Ireland (which would be the industry norm in terms of calculation of market share) RTE has 37.1% of the all day and 43.7% of the peak viewing audiences.<sup>38</sup>

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<sup>38</sup> See PricewaterhouseCooper's Report Appendix C page 69

**TABLE 4 MARKET SHARE OF NATIONAL TELEVISION STATIONS-  
WEEKDAY VIEWING SHARE 2007**

<b>Station</b>	<b>National Television Stations AGB Nielsen Market Share All Day, 2007<sup>39</sup></b>	<b>Owner</b>
RTÉ 1	46.8%	(RTÉ 100%)
RTÉ Two	21.7%	(RTÉ 100%)
<b><i>Total RTÉ</i></b>	<b>68.5%</b>	
TG4	4.9%	(TG4 – 100%)
TV3	23.5%	(Tullamore Alpha Ltd 100%)
Setanta Ireland	1.6%	(Setanta Sports 100%)
Channel 6	1.6%	(Kish media 100%)
<b><i>Total others</i></b>	<b>31.6%</b>	
<b>Total</b>	<b>100%</b>	

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<sup>39</sup> ALL DATA USED FROM PricewaterhouseCoopers: Department of Enterprise, Trade and Employment: Media Research Required by the Advisory Group on Media Mergers page 43 section B, table (ii) A 'National Television Stations Broadcasting in Ireland – Multi Share'

**TABLE 4a MARKET SHARE OF ALL TELEVISION STATIONS  
BROADCASTING IN IRELAND<sup>40</sup>**

<b>Television Stations</b>	<b>Market Share, All Day 2007,%</b>	<b>Market Share, Peak 2007,%</b>
RTÉ 1	25.0	31.5
RTÉ 2 (aka Network 2)	12.1	12.2
TV3	12.2	13.1
TG4	2.7	2.4
BBC1	5.4	4.8
BBC2	3.2	2.9
UTV	4.8	5.1
Channel 4	3.8	3.6
E4	1.2	1.1
Sky One	2.1	2.3
Sky News	1.3	0.8
Sky Sports 1	1.1	0.8
Sky Sports 2	0.5	0.5
MTV	0.9	0.6
Nickelodeon	1.0	0.4
Paramount	0.7	0.6
Setanta Ireland	0.6	0.5
Channel 6	0.6	0.5
Living	1.2	1.1
Nick Junior	0.3	0.1
Other	19.3	15.0
<b>TOTAL</b>	<b>100.0</b>	<b>99.9</b>

<sup>40</sup> SOURCE AGB Nielsen Media Research, TV Trends 2007, Station Shares – National Share All Individuals, All Day and Peak 2007

**NOTE:- As set out in Appendix C Page 69**

1) “All Day” refers to Mon-Sun 0300-2659 while “Peak” refers to Mon-Sun 1800-2329

2) “Market Share” is the percentage of the viewing audience accounted for by a particular channel at a specific point in time, i.e. of those people who are watching television, what proportion are viewing channel X

## **Regulation of broadcasting in the State**

3.54 The broadcasting sector in Ireland consists of three main strands – public, commercial and community. The public sector consists of the national broadcasting service RTE and the national Irish language broadcasting service TG4. RTE operates two national television stations – RTE 1 and RTE 2 and four national radio services – RTE Radio 1, 2FM, Lyric FM and Radio na Gaeltachta. At present the public broadcasters, RTE and TG4 are self-regulated, although both are overseen by Boards appointed by the Government – the RTE Authority and Bord Teilifis na Gaeilge.

3.55 The indigenous commercial sector consists of 1 national television service (TV3), 2 national radio services (Today FM and Newstalk), 29 local and regional radio services and 5 television services on cable/satellite systems.

3.56 The community sector consists of 21 community/community of interest radio services and 2 community television services.

3.57 At present, the BCI is responsible for the regulation of all commercial and community broadcasters. Its main functions are licensing; compliance and monitoring; the development of codes and rules for broadcasters; support for training and development initiative; research; information and the operation of a broadcast funding scheme. The Broadcasting Complaints Commission (BCC) is responsible for adjudicating on complaints from members of the public in respect of programming and advertising content on all licensed broadcasting services. The secretariat for the body is provided by staff of the BCI but the functions are operated on an arms length basis.

3.58 The Commission for Communications Regulation (ComReg) is responsible for the allocation of frequency spectrum to all broadcasting services. In the case of the commercial and community services this is done through the provision of licences through the BCI.

3.59 The Broadcasting Bill 2008 includes a number of proposals relevant to media plurality in the broadcasting sector. These include a new regulator, the Broadcasting Authority of Ireland (BAI). Under the Broadcasting Bill 2008, the newly created broadcasting regulator, the B.A.I., will take on the regulatory functions in respect of all three strands of broadcasting.

3.60 By virtue of Section 25 of the Bill, the B.A.I. and the statutory committees, in performing their functions shall endeavour to ensure the provision of open and pluralistic broadcasting services. Without prejudice to the generality of this provision, the B.A.I. and the statutory committees shall also promote diversity in control of the more influential commercial and community broadcasting services. The B.A.I. and the statutory committees, in performing their functions, are also required to seek to ensure that measures taken are applied across the range of broadcasting services taking account of the degree of influence that the different types of broadcasting services are able to exert in shaping audience views in the State.

3.61 Part 6 of the Bill deals with Broadcasting Contracts. Section 66 addresses the manner in which the Contract Awards Committee shall determine the most suitable applicant to be awarded a contract. The following three sub-sections of Section 66, sub-section 2, are relevant from a media concentration perspective:-

*“In the consideration of applications referred to in subsection (2) received by it and in determining the most suitable applicant to be awarded a broadcasting contract, the Contract Awards Committee shall have regard to –*

*(g) the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue number of sound broadcasting services in respect of which a sound broadcasting contract has been awarded under this Part,*

- (h) *the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue number of sound broadcasting services in the area specified in the notice,*
- (i) *the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue amount of the communications media in the area specified in the notice,”*

3.62 Section 66 (g) and (i) reflect the existing provisions contained in Section 6 subsection 2(g) and (h) of the Radio and Television Act 1988. Section 66 subsection 2(h) is a new provision which refers to the number of sound broadcasting services held in a specified area.

3.63 Section 69 of the Bill sets out the terms and conditions to be included in broadcasting contracts and includes a requirement in Section 69 subsection (3)(b) that:

*“in considering whether to grant its consent to...a material change in the ownership of such a company, the Authority shall have regard to the criteria specified in Section 66(2)...”*

3.64 Part 8 of the Bill refers to Digital Broadcasting and includes a new provision at Section 137(2) (i) whereby the Contracts Awards Committee, in determining the most suitable applicant for a multiplex contract shall have regard to

*“the desirability of allowing any person, or groups of persons, to have control of, or a substantial interest in, an undue amount of communications media in the area specified in the notice under Section 136(3)”.*

3.65 Section 138 of the Bill contains similar contractual provisions for multiplex operators as are contained in Section 69 for sound broadcasting services.

3.66 In summary, the Bill provides a framework for an enhanced role for the B.A.I. in the area of spread of ownership and control through specified statutory objectives, and the requirement to consider media ownership and control from both a licence award and a contractual obligation perspective. These new provisions are in addition to the general requirements to ensure a diversity of broadcasting services through the B.A.I.’s licensing policies.

### **Contribution of the Internet to plurality and diversity in the Irish media sector**

3.67 It is evident that the Internet has had a substantial impact on the ability of people to access media content. Section 1G of the PWC Report at Appendix C contains a list of newspapers published in Ireland which are published electronically. In addition, it is possible to access large numbers of newspaper titles published throughout the world over the Internet with relative ease.

3.68 In recent times, we have seen the emergence of news content aggregation services<sup>41</sup>, websites containing publisher controlled content<sup>42</sup> and content sharing platforms.<sup>43</sup>

3.69 The proliferation of Internet sites containing media content and ease of access to those sites contributes positively to media plurality (both content and ownership). The Group recognises that there may be important public interest implications in a merger that the Minister is obliged to consider, to the extent to which any of the parties to the proposed merger have Internet based media businesses. It should be possible for the Minister to consider the Internet based aspect of such businesses when addressing the “*relevant criteria*”.

3.70 We note elsewhere that the definition of “*broadcasting service*” which is one aspect of the definition of “*media business*” in Section 23(10) of the Act

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<sup>41</sup> e.g. <http://news.google.com/> and <http://www.world-newspapers.com/uk.html>

<sup>42</sup> e.g. [www.rte.ie](http://www.rte.ie) and [www.ireland.com](http://www.ireland.com)

<sup>43</sup> e.g. [www.youtube.com](http://www.youtube.com) and [www.dailymotion.com](http://www.dailymotion.com)



explicitly excludes the provision of a broadcasting service “*whether involving audio-visual material or audio material*” provided by means of the “*system commonly known as the Internet*”.

3.71 It is the view of the Group, that a number of principles are applicable to any consideration of the extent to which the law relating to the control of media mergers is applied to Internet based activity. The primary principles appear to be as follows:-

- a) Editorial content or responsibility. Much of the content on the Internet is generated by individual users rather than published by established media organisations. News aggregators that do not exercise editorial control also do not appear to fit within this concept. Such content does not seem to fit within the normal concept of “*media content*”.
- b) The scale of (potential) impact on the general public. The vast majority of content on the Internet is of interest only to a small group of people. Again, some account should be taken of the impact or likely impact of the material in considering whether such Internet services should be drawn within the scope of definitions of media business or media plurality and diversity.
- c) Private websites/emails. This type of material could also be considered as content that is produced or available on the Internet, some of it having the character of “*news or current affairs*”, but nevertheless is clearly content that should not come within any regulation concerning media mergers.
- d) Services primarily of a non-economic nature. Much Internet content is not supported by any business model or indeed delivered by a business entity. The application of media regulation and control should take this into account.

3.72 These principles are broadly consistent with the Audio-Visual Media Services Directive (2007/65/EC). The Directive recognises that all audio-visual material on the Internet is not the same, and that the identity of the content creator and nature of the content/service being provided is important.

3.73 The Group believes that it is important that the Oireachtas takes a consistent approach to this issue across both the regulation of broadcasting and the regulation of media mergers.

3.74 While considering that it is appropriate that any proposals in this area should proceed with caution, the Group nevertheless sees the Internet as having clearly emerged in the context of media business, simply as a route to market. Traditional newspapers now publish electronically on the Internet as well as the paper version. It may be only a matter of time before the paper version is completely abandoned by some publishers of newspapers and periodicals in favour of electronic publication. There appears to be no reason in principle why such publication of newspapers or periodicals consisting substantially of news and comment on current affairs, should not come within the definition of “*media business*”, even though publication might take place wholly or partly on the Internet. However, the fact that the Internet is specifically excluded from the definition of “*broadcasting service*” casts some doubt on this proposition as a statement of the current law. This is notwithstanding the fact that “*broadcasting service*” is clearly just one of three arms of a definition of “*media business*” provided by Section 23(10) of the Act.

3.75 The Group recommends that Section 23(10) of the Act should be amended to include the words “*including the publication of such material on the Internet*” after the words “*a business of the publication of newspapers or periodicals consisting substantially of news and comment on current affairs*” being Item (a) under the definition of “*media business*” in Section 23(10) of the Act. The Group also recommends that the definition of “*broadcast service*” should be amended so as (a) to remove the absolute exclusion of Internet services from the definition of “*broadcast service*” and (b) to include in the definition of

*“broadcast service”* the provision of audio-visual material over the Internet which is:-

- under the editorial control of the service provider delivering the service;
- primarily economic in nature;
- intended for reception by, or could have a clear impact on, a significant proportion of the general public; and
- in competition with or akin to (a) newspapers or periodicals or (b) broadcasting services transmitted or relayed by the means specified in the existing definition.

## **4. Chapter 4 - The Existing mechanism for Approval for Media Mergers in Ireland**

### **Introduction**

4.1 Part 3 of the Competition Act 2002 governs the domestic law on merger approval in Ireland. Media mergers are subject to this regime but additionally special rules also apply to media mergers.

4.2 The general rule is that certain mergers above a specified turnover threshold must be notified to the Competition Authority for approval. In addition, media mergers in which at least two of the undertakings involved carry on a media business, where at least one of those undertakings carries on a media business in the State, must be notified regardless of turnover. The Competition Authority applies a test as to whether the result of the merger or acquisition will be to substantially lessen competition. Having applied this test, it decides either to approve the merger, prohibit it, or allow it to be put into effect subject to conditions.

4.3 It is no part of the function of the Group to consider proposals for reform either of the Competition Act generally or the provisions of Part 3 dealing with mergers in particular. A separate mechanism of Ministerial approval is applied to media mergers and it is this mechanism governing the approval of media mergers that the Group has been asked to address in its terms of reference.

## **Brief Outline of the Procedure under Irish law for the Approval of Mergers Generally**<sup>44</sup>

4.4 The 2002 Act speaks of a “*merger or acquisition*”. Certain mergers or acquisitions must be notified to the Competition Authority for approval. The conditions are:-

- (a) the worldwide turnover of each of two or more of the undertakings involved in the merger or acquisition must be not less than €40 million,
- (b) each of two or more of the undertakings involved in the merger or acquisition must carry on business in any part of the island of Ireland, and
- (c) the turnover in the State of any one of the undertakings involved in the merger or acquisition must be not less than €40 million.<sup>45</sup>

4.5 Two aspects of this provision are worthy of note. First, there is no definition of the term “*carries on business*”. The difficulties that this has given rise to in practice are highlighted in the submission of McCann Fitzgerald who draw attention to the Competition Authority’s guidance notes<sup>46</sup> and to the Authority exercising jurisdiction over mergers<sup>47</sup> where the Authority treated mergers as notifiable despite the business concerned having at most a tenuous connection with the State. The concept of “*carries on business*” is of course fundamental to the regime governing the approval of media mergers in Ireland both at Competition Authority and Ministerial level. Second, in contrast to the first and third conditions which refer to the State, the second condition refers to the island of Ireland.

4.6 In addition to mergers or acquisitions that meet these criteria requiring mandatory notification, the Minister has power under Section 18(5) of the 2002 Act, where he or she is of the opinion that the exigencies of the common

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<sup>44</sup> This is meant to be a brief outline and not a legal interpretation. The reader is referred to the provisions of Part 3 of the Act in Appendix A

<sup>45</sup> S.18 of the 2002 Act

<sup>46</sup> Decision N/02/03, amended 12<sup>th</sup> of December 2006.

<sup>47</sup> E.g. Gus/Ireland/March U.K. M/03/016 and Ryanair/Buzz M/03/005

good so warrant, and after consultation with the Competition Authority, to specify a class or classes of merger or acquisition that must also be notified to the Competition Authority.

4.7 The Minister has made Orders under this provision specifying media mergers. The current order is the Competition Act, 2002 (Section 18(5) and (6)) Order 2007.<sup>48</sup> This specifies two categories of media merger or acquisition making it mandatory to notify them to the Competition Authority regardless of any of the three conditions outlined above. The two categories are as follows:-

- (a) mergers and acquisitions in which two or more of the undertakings involved carry on a media business in the State, and
- (b) mergers and acquisitions in which one or more of the undertakings involved carries on a media business in the State and one or more of the undertakings involved carries on a media business elsewhere.

4.8 Since any notification is dependent on there being a merger or acquisition, Section 16 of the 2002 Act is important. This provides that a “*merger or acquisition*” can occur in one of three situations, namely merger, acquisition of control, or acquisition of assets. The Act describes this as follows, namely if:-

- (a) two or more undertakings, previously independent of each other, merge, or
- (b) one or more individuals or other undertakings who or which control one or more undertakings acquire direct or indirect control of the whole or part of one or more other undertakings or
- (c) the result of an acquisition by one undertaking (the “*First Undertaking*”) of the assets, including goodwill (or a substantial part of the assets) of another undertaking (the “*Second Undertaking*”) is to place the First Undertaking in a position to replace (or substantially to

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<sup>48</sup> SI No 122 of 2007. See Appendix B.

replace) the Second Undertaking in the business or, as appropriate, the part concerned of the business in which that undertaking was engaged immediately before the acquisition.

- 4.9 Section 16 of the 2002 Act also defines the concept of control as meaning essentially the capacity to exercise decisive influence with regard to the activities of an undertaking. The Act also contains detailed provisions defining specific circumstances in which control is regarded as being acquired and other circumstances in which a merger or acquisition is deemed not to occur.
- 4.10 Section 20 of the 2002 Act governs the examination by the Competition Authority of a notification received by it. Generally, the Competition Authority must cause a notice of the notification to be published within seven days after receipt. It must also consider all submissions made. The Competition Authority is not obliged to comply with these requirements where the circumstances are such that the Competition Authority considers it would not be in the public interest to comply. The Act contains no guidance on what such circumstances might be. The Group considers it important that a Notice of Notification of a media merger to the Competition Authority be published in all cases.
- 4.11 The Competition Authority has power under Section 20(1)(b) of the Act to enter into discussions with the undertakings involved in any merger or acquisition with a view to identifying measures which would ameliorate any effects of the merger or acquisition on competition in markets for goods or services. Likewise, any of the undertakings involved may submit proposals to the Competition Authority for that purpose and with a view to the proposals becoming binding on them if the Competition Authority takes the proposals into account. There is no equivalent provision enabling the undertakings involved in media mergers to enter into discussions with the Minister.
- 4.12 Any commitments given to the Competition Authority that are incorporated in the Competition Authority's decision and any conditions attached to a

determination of the Competition Authority or an Order of the Minister are enforceable by court order.<sup>49</sup>

4.13 The Competition Authority has power to seek further information in order to carry out its function and the undertaking involved is obliged to comply with the request.

4.14 The Competition Authority must form a view as to whether the result of the merger or acquisition would be to substantially lessen competition in markets for goods and services in the State. This is the test that the Competition Authority applies in deciding whether or not to approve a merger or acquisition.

4.15 The Competition Authority typically has one month to consider the merger or acquisition during the first Phase. This period is extended to forty five days if the undertakings concerned submit proposals to the Competition Authority. Within that period, the Competition Authority must make a determination (a) that in its opinion, the result of the merger or acquisition will not be to substantially lessen competition and accordingly, it may be put into effect, or (b) that it intends to carry out a full investigation. That determination must be notified to the undertakings concerned during the period allowed for determination. In addition, it must be published by the Competition Authority but it has two months in which to do this under the Act.

4.16 If the Competition Authority proceeds to a full investigation or Phase two, it has three options at the end of that process. It may decide:-

- (a) that the merger or acquisition may be put in effect,
- (b) that it may not be put into effect or
- (c) that it may be put into effect subject to conditions to be specified by it.

4.17 Essentially, the Phase two decision must be made within four months after the receipt by the Competition Authority of the notification of the merger

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<sup>49</sup> Section 26(2) of the Competition Act, 2002



although there is provision for the extension of this period where a requirement for further information is made of the undertakings concerned.

4.18 It is evident that the Competition Authority has a specific function under Part 3 of the Act and applies a very specific test. Its focus is whether the result of the merger or acquisition would be to substantially lessen competition in markets for goods or services in the State. It might conclude that having imposed conditions, the result of the merger or acquisition would not be to substantially lessen competition in markets for goods or services in the State. It is always looking at a particular product market which it defines for the purposes of forming an opinion as to whether or not the result of the merger will be to substantially lessen competition. Its decision on how it defines the product market is taken on the basis of well established principles of economics and law. This decision does of course fundamentally determine the scope of the activity to which the Competition Authority applies the statutory test. Its opinion is of necessity a prediction of what the result of the merger or acquisition would be if it went ahead. It is also, importantly, a prediction of what the effect will be on competition. The Competition Authority has a large margin of discretion in its assessment which is built into the test by the use of the word “*substantially*”.

### **Brief Outline of the Procedure under European Community Law for the Approval of Mergers Generally**

4.19 Merger approval in European Law is currently governed by Council Regulation (EC) No. 139/2004<sup>50</sup> (“*ECMR*”) and Commission Regulation (EC) No. 802/2004<sup>51</sup>

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<sup>50</sup> Of 20<sup>th</sup> January 2004 on the control of concentrations between undertakings. O.J.L 24/1 29.1.2004.

<sup>51</sup> Of 7<sup>th</sup> April 2004 implementing Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings. O.J. L 133/1 30.4.2004

4.20 The ECMR confers jurisdiction on the Commission to approve mergers with a Community dimension. This provides a “*one-stop shop*” for the parties to such mergers. The definition of mergers having a Community dimension is based primarily on the level of worldwide and EC turnover.

4.21 For present purposes, it is sufficient to note that certain media mergers might be notified not to the Competition Authority, but to the European Commission.

4.22 The ECMR contains provisions whereby certain mergers notifiable to the European Commission are capable of being referred on to the Competition Authority of a Member State for determination.<sup>52</sup> In addition, the ECMR contains provisions whereby the European Commission can be asked to examine a concentration that does not have a Community dimension, where it affects trade between Member States and threatens to significantly affect competition within the territory of the Member State making the request.<sup>53</sup>

4.23 Importantly in the present context, Article 21.4 of the ECMR recognises the legitimate interest of the Member States in the area of plurality of the media. Article 21.4 of the ECMR provides that Member States may take appropriate measures to protect legitimate interests. Plurality of the media is specifically identified as a legitimate interest in this respect. The ECMR does not define plurality of the media but it appears in its context to have a wide meaning.

### **Brief Outline of the Procedure for the Approval of the Media Mergers**

4.24 A media merger is subject to the normal merger clearance provisions of the 2002 Act with the exception that regardless of turnover thresholds, media mergers falling within the category specified in the Ministerial Order (currently S.I. No. 122 of 2007) must be notified. Nevertheless, the test applied by the Competition Authority to the evaluation of media mergers is

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<sup>52</sup> See Article 9 (1) and Article 4 (4) of the ECMR.

<sup>53</sup> See Article 22 of the ECMR

exactly the same as that applied to non-media mergers i.e. whether or not it will substantially lessen competition in markets for goods or services in the State.

4.25 It is widely recognised that this test while sufficient to protect the public interest in competition, is not in itself always sufficient to protect the public interest in media plurality and diversity. Accordingly, Section 23 of the Act includes special provisions governing media mergers.

4.26 Section 23 of the 2002 Act uses the shorthand description of “*media merger*”. Its provisions apply to (and only to) a “*media merger*”. Despite the description, it applies to both mergers and acquisitions.

4.27 A “*media merger*” is defined by Section 23 (10) as:-

*“A merger or acquisition in which one or more of the undertakings involved carries on a media business in the State”.*

4.28 This is an extremely wide definition. Not all media mergers as so defined will be notifiable to the Competition Authority on the basis of Section 23(1) of the Act since they may be below the thresholds of turnover, or the other undertaking may not carry on business on the island of Ireland. However, there is also a subset of media mergers which is defined by Ministerial Order<sup>54</sup> to which no threshold of turnover applies and which also as a result of the Order require to be notified to the Authority. That subset involves two undertakings carrying on a media business in which at least one is carrying on a media business in the State. If a media merger as defined by Section 23 (10) does not come within the Ministerial Order<sup>55</sup> it will not be notifiable unless it meets the turnover and other requirements of Section 18(1) of the Act. Accordingly, some media mergers as defined by Section 23(10) of the Act will never be notified either to the Competition Authority or the Minister.<sup>56</sup> It

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<sup>54</sup> S.I. No. 122 of 2007. See paragraph 4.7 above.

<sup>55</sup> S.I. No. 122 of 2007, e.g. acquisition of a media business in the state by a foreign non-media business or merger of a media business in the state with a non-media business.

<sup>56</sup> For example, the acquisition of a media business in the State (regardless of its turnover) by a foreign non-media business (regardless of its turnover) where the foreign business does not carry on business in any part of the island of Ireland. Another example, is the acquisition of a media business in the State

appears that the Ministerial Order was intended to define a category of media mergers that would not normally be notifiable to the Competition Authority but which might give rise to plurality/diversity concerns, thereby enabling a mechanism to be triggered whereby Ministerial and Competition Authority consideration would be applied to such mergers.

4.29 Central to the definition of “*media merger*” in Section 23(10) of the Act is the definition of a “*media business*”. This term “*media business*” is adopted in the Ministerial Order. It is defined in the Act as meaning:-

- (a) *a business of the publication of newspapers or periodicals consisting substantially of news and comment on current affairs,*
- (b) *a business of providing a broadcasting service, or*
- (c) *a business of providing a broadcasting services platform*

Some of these terms are in turn further defined. The important word “*publication*” is not however defined. The Group is aware that this has given rise to difficulty in practice.

4.30 A “*broadcasting service*” is defined by the Act as meaning a service which comprises a compilation of programme material of any description and which is transmitted or relayed by means of wireless telegraphy, a cable system or a multi point microwave distribution system, a satellite device or any other transmission system, directly or indirectly for reception by the general public, whether that material is actually received or not, and includes a sound broadcasting service within the meaning of the Radio and Television Act, 1988, but the Act specifically excludes any such service (whether involving audio visual material or audio material) that is provided by means of the system commonly known as the Internet.

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with a turnover of less than €40 million by a Northern Ireland non-media business that has less than €40 million turnover in the State regardless of its worldwide turnover.

4.31 “*Providing a broadcasting service*” is, by virtue of Section 23(10) and (11) to be construed as a reference to doing either or both of the following:-

- (a) supplying a compilation of programme material for the purpose of it being transmitted or relayed as a broadcasting service, or
- (b) transmitting or relaying as a broadcasting service programme material.

4.32 “*Providing a broadcasting services platform*” is by virtue of Sections 23(10) and (12) of the Act to be construed as a reference to the transmitting or re-transmitting of programme material by means of wireless telegraphy, a cable system or a multipoint microwave distribution system, a satellite device or any other transmission system.

4.33 Ministerial consideration of a media merger under Section 23 of the 2002 Act involves a number of steps. First, within five days after the receipt of a notification, the Competition Authority is mandated to forward a copy of the notification to the Minister and to notify the undertakings involved in the merger that the Competition Authority considers the merger to be a media merger<sup>57</sup>.

4.34 Section 23(2) provides that if the Competition Authority makes a determination at the end of Phase One to approve a media merger i.e. that in its opinion the result of the merger or acquisition will not be to substantially lessen competition in markets for goods or services in the State and accordingly that it may be put into effect, it must “*immediately after doing so*” inform the Minister of that fact. The Minister then has ten days after the date on which that determination is made, to direct the Competition Authority to carry out an investigation under Section 22 in relation to the merger i.e. a full or Phase two investigation.

4.35 The Act provides that a decision of the Competition Authority to clear a media merger at Phase one does not have effect until the expiry of a period of ten days.<sup>58</sup> If a Ministerial direction is given to the Competition Authority to

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<sup>57</sup> Section 23(1) of the Act

<sup>58</sup> Section 23(9)(a) of the Act.

proceed to a full investigation the determination to clear the merger does not operate to permit the media merger to be put into effect.<sup>59</sup> The Competition Authority must then notify the undertakings involved in the merger that a Phase two investigation will be carried out.<sup>60</sup>

4.36 At the end of the Phase two investigation, the Competition Authority is again obliged to inform the Minister of its determination. Again, the phraseology used is that the Competition Authority should inform the Minister “*immediately*” after making its determination.

4.37 The trigger for the Minister’s power to prevent a media merger being put into effect or to impose conditions on it being put into effect, is a determination by the Competition Authority following a full investigation either that the merger may be put into effect or that it may be put into effect subject to conditions specified by the Competition Authority being complied with. If at the end of the full investigation the Competition Authority determines that the merger may not be put into effect then, as appears logical, the Minister has no further involvement.

4.38 If the Ministerial power is triggered, the Minister has thirty days from the date of the Competition Authority’s determination on the full investigation to reach his or her decision on the merger. He or she has three options open. The Minister may decide:-

- (a) that the merger may be put into effect,
- (b) that the merger may be put into effect subject to specified conditions being complied with, or
- (c) that the merger may not be put into effect.<sup>61</sup>

4.39 The Minister “*may*” consider such submissions or observations from persons claiming to be interested in the matter as he or she thinks proper.

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<sup>59</sup> Section 23(3)(a) of the Act.

<sup>60</sup> Section 23 (3)(b) of the Act

<sup>61</sup> See Section 23(4) of the Act.

4.40 In making this decision, the Minister is mandated to have regard “to, and only to” the relevant criteria.<sup>62</sup>

4.41 The “*relevant criteria*” are defined in Section 23(10) of the Act as meaning the following:-

- “(a) *the strength and competitiveness of media business indigenous to the State,*
- (b) *the extent to which ownership or control of media businesses in the State is spread amongst individuals and other undertakings,*
- (c) *the extent to which ownership and control of particular types of media business in the State is spread amongst individuals and other undertakings,*
- (d) *the extent to which the diversity of views prevalent in Irish society is reflected through the activities of the various media businesses in the State, and*
- (e) *the share in the market in the State of one or more of the types of business activity falling within the definition of “media business” in this subsection that is held by any of the undertakings involved in the media merger concerned, or by any individual or other undertaking who or which has an interest in such an undertaking.”*

4.42 Apart from its obligation to notify decisions, the Competition Authority is given a role in the process of Ministerial approval. Section 23(7) provides that, when making a decision on a media merger, the Competition Authority “*shall*” form an opinion as to how the application of the relevant criteria should affect the exercise by the Minister of his or her powers under the Act. If requested by the Minister the Competition Authority must then inform the Minister of the opinion it has so formed.

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<sup>62</sup> See Section 23(4) of the Act.

4.43 Any determination by the Competition Authority on a media merger following a full investigation does not have effect until the expiry of thirty days after the date on which the determination is made and then has effect, if and only if, the Minister has not made an Order in relation to the media merger or has stated in writing that he or she does not propose making such an Order in relation to the merger.

4.44 Section 25 of the Act makes provision for Oireachtas supervision of the exercise of Ministerial power under Section 23. Any Order of the Minister (including an Order that the merger may be put into effect) must be laid before each House of the Oireachtas as soon as may be after it is made, and if a resolution annulling the Order is passed by either of those Houses within the next twenty one days on which that House has sat after the Order is laid before it, then the Order is annulled accordingly. The effect of annulment is (without prejudice to any appeal to the High Court in respect of the decision of the Competition Authority) to give effect to the determination of the Authority.

4.45 Since the Act came into force, 89 media mergers have been notified to the Competition Authority. The Minister has never exercised his power under Section 23(2) to direct the Competition Authority to carry out a Phase Two investigation of a media merger. Of the 89 mergers notified to the Competition Authority, 86 have been cleared at Phase One. A number of these have been with commitments (e.g. M/05/206, SRH/Highland Radio and M/07/022, TCH/Southeast Broadcasting). The three media mergers that proceeded to Phase two were cleared with conditions attaching to them (namely M/03/033, SRH/FM104, M/05/025, EGC/NTL, and M/07/040, Communicorp/SRH).<sup>63</sup> The Minister has not exercised his power under Section 23(4) to make a Ministerial Order in relation to any of the mergers that proceeded to Phase two. A full list of the media mergers notified is to be found at Appendix E to this report.

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<sup>63</sup> See the Competition Authority's Annual Reports published on its website [www.tca.ie](http://www.tca.ie)



## 5. Chapter 5 - The Decision Maker

- 5.1 One of the questions specifically posed in our Terms of Reference is to examine and consider by whom the relevant criteria should be given effect. In other words who should have the power to prohibit a media merger on public interest grounds.
- 5.2 Communicorp argued in its submission that there was no need for a ministerial power to approve media mergers as the public interest was already adequately protected by the Competition Authority and the BCI. By contrast, the National Newspapers of Ireland (“*NNI*”) argued that the Minister was the appropriate person to take this decision.
- 5.3 The Group considers that the public interest in promoting plurality and diversity in the media is distinct from the public interest of ensuring that mergers generally do not substantially lessen competition. The Group accepts that the process whereby the Competition Authority aims to prohibit media mergers that would substantially lessen competition is a process that assists in the achievement of the public interest objective of promoting plurality and diversity in the media, but it is not to be assumed that in every case this will be sufficient. The Competition Authority is carrying out quite a distinct task and although the promotion of plurality and diversity may be an incidental effect of its decision, it is not the exercise in which it is engaged.
- 5.4 In addressing the statutory mechanism whereby the Competition Authority is required to form an opinion on the relevant criteria and convey that on request to the Minister, the Competition Authority stated in its response to the public consultation on the operation and implementation of the Competition Act 2002<sup>64</sup> that the relevant provision of the Act “*obliges the Competition Authority to do something outside its area of expertise*”. Both in that

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<sup>64</sup> See the Competition Authority’s submission on its website [www.tca.ie](http://www.tca.ie)

submission and in its response to the Group's invitation for submissions<sup>65</sup> it makes it clear that it regards the "*relevant criteria*" as non-competition criteria. It also points out that in coming to its decision (whether in Phase one or Phase two) it reaches its decision entirely on the basis of the application of the competition criteria (not the "*relevant criteria*" which it considers to be "*non-competition criteria*") and does not undertake a separate or concurrent investigation relating to the relevant criteria.<sup>66</sup>

5.6 The Group is of the view that competition policy is not meant to fulfil the function of protecting the public interest in plurality and diversity. There will be cases where that public interest will need to be protected by a different mechanism.

5.7 In its response, the National Union of Journalists drew attention to the approach of the Competition Authority when considering media mergers in looking at the effect of the proposed merger on advertising markets and argued that "*the public interest role of the media, broadcasting, online and print, cannot simply be defined within the parameters of competition policy*". INM for its part drew attention to a speech by the then EU Competition Commissioner Mario Monti in November 2001, quoted in an EU report on media diversity in Europe in which he recognised that media plurality and diversity of opinion both within and across media were fundamental to the

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<sup>65</sup> Paragraph 2.9

<sup>66</sup> Paragraph 3.4 of its submission to the Group. As noted by McCann Fitzgerald in its submission, the approach of the Competition Authority in its response to the public consultation on the operation and implementation of the Competition Act 2002 on this issue appears to be inconsistent with the submission it made to the Competition and Mergers Review Group. According to paragraph 7.2.5 of that Group's report, the Competition Authority pointed out that as regards the criteria proposed by the Newspaper Commission at (b) (c) and (f) i.e. the plurality of ownership, plurality of titles and the position in the media market generally of any of the enterprises involved in the proposed merger or take over or of any of the enterprises with an interest in any such enterprises, these are criteria which would in any event be taken into account by the Competition Authority as part of its standard competition analysis. Those criteria they argued required an analysis of market share, a definition of product market, consideration of product differentiation and an examination as to the effect of the acquisition on related markets. On that occasion, they argued that those were criteria which fell within the remit of the competition analysis to be conducted by the Competition Authority. The Competition Authority did go on to express its reservations as to the criteria specified at (a), (d) and (e) i.e. the strength and competitiveness of the indigenous newspaper industry, the diversity of views in Irish society and the maintenance of cultural diversity. Those criteria, the Competition Authority argued, required an analysis of a merger from the perspective of protecting competitors rather than competition. It submitted that it did not endorse what it regarded as the "*protectionist intention*" of those criteria and criticised the approach whereby a merger would be analysed on the basis of the nationality of the shareholders of the acquirer, the target, or other firms in the market.

health of an open, democratic society but “*may not be assured by simple free market approach*”.<sup>67</sup>

5.8 The Group does not accept that the existing mechanism of Competition Authority approval can in itself be considered adequate to protect the public interest.

5.9 The BCI currently has significant regulatory power and experience in pursuing the public interest in the protection of plurality and diversity through the licensing process. A media merger involving an undertaking that holds a broadcasting licence potentially requires approval from three bodies, the Competition Authority, the BCI and the Minister.

5.10 The Group considered whether the Minister was the appropriate person to take the decision on media mergers having regard to the “*relevant criteria*”. In particular, the Group considered whether the Competition Authority should be given this function as an independent body with expertise in competition matters and the economics of markets. However, it appeared to the Group that for this very reason the Competition Authority was ill-equipped to take ultimate custody of the important public interest issues involved. Its expertise lies in the economics of markets not in issues of plurality or diversity. The Group believes that the function of protecting the public interest in plurality and diversity is quite different to the Competition Authority’s primary function in merger cases of addressing the likely effects of a merger on competition. For the Competition Authority to have to discharge these two different functions could lead to a blurring of the distinctions between different functions of the Competition Authority and a lack of clarity as to how Competition Law was applied to media mergers.

5.11 The Group believes that the identity of the person who discharges the function should ultimately be determined by the nature of the function itself. In this case, the Group sees the function as one essentially of political judgment as to how the public interest is best protected as a result of a particular media merger. A Government Minister is democratically elected, his or her

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<sup>67</sup> INM submission paragraph 6.3

Department is responsible for the relevant functions of Government and he or she is answerable to the Oireachtas for the way in which that statutory power is exercised. A mechanism can be put in place whereby the necessary information and advice is made available to the Minister to assist in the discharge of this function. There is no reason why the manner in which the Minister discharges the function should not be transparent and meet the needs of modern society. If anything, the fact that the Minister is answerable to the Oireachtas should make the exercise of this power more and not less transparent. However, the Group is strongly of the view that ultimately this power to intervene in media mergers in the public interest is a power calling for the exercise of political judgment and that the Minister is the most appropriate person to exercise it.

5.12 The Group considered whether in cases considered by the BCI, the Minister should have any power of supervision in relation to media mergers. The Group concluded that the Minister was the appropriate person to take decisions in relation to media mergers generally. However, in the case of mergers between broadcasting entities, it is undoubtedly the case that these are currently considered by the BCI in the context of diversity and plurality and that these powers emanate from statute. In this regard, the Group recognises a significant role for the BCI and this is reflected in the recommendations contained in Chapter 8. Notwithstanding this envisaged role for the BCI to which the Minister would undoubtedly attach weight, the capacity to intervene in all media mergers should remain a matter for the Minister as it would be unjustifiable to exempt some media mergers from the ultimate political responsibility of the Minister on the basis that the BCI had a regulatory involvement.

5.13 Having decided that a Government Minister is the person best placed to take this decision one question remains. Which Government Minister? There are two possibilities. The first is the Minister for Enterprise, Trade and Employment. There is a certain logic in this Minister being the designated person given that he or she has responsibility for industrial policy and the Competition Authority. Given the fact that the whole area of media mergers

was dealt with in the Competition Act one can certainly see the logic of the role having been assigned to the Minister for Enterprise, Trade and Employment in the 2002 Act. However, it is evident that the Minister for Communications, Energy and Natural Resources, who has responsibility for broadcasting policy, is intimately concerned with the area of plurality and diversity in the context of broadcasting. The Group considered whether he/she should be the Minister designated. Ultimately, the Group concluded that since the point of intervention with a view to protecting media plurality and diversity was that of a merger or acquisition, it was more appropriate that the Minister for Enterprise, Trade and Employment should exercise this power but that in exercising the power, in relation to a merger involving the holder of a broadcasting licence, there should be a statutory requirement that he/she should do so after consultation with the Minister for Communications, Energy and Natural Resources.

## 6. Chapter 6 - The Relevant Criteria

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6.1 The Commission on the Newspaper Industry was established in September 1995 by the then Minister for Enterprise and Employment, Mr. Richard Bruton, T.D. Its terms of reference included the following:-

1. *“the need to guarantee plurality of ownership, to maintain diversity of editorial viewpoints necessary for a vigorous democracy and to promote cultural diversity in the industry;*
2. *the competitiveness of the industry in Ireland which faces growing challenge from imports, both in respect of its cost base, taxation, technology, skills and training; and in respect of the wider business environment affecting employment and output in the industry;*
3. *fair competition both in the market for newspaper sales and in the advertising markets;*
4. *concentration of ownership in the media generally;*
5. *the pressure on the industry’s ability to provide a range of views and choices reflecting both popular and minority interest at national and local level;*
6. *the challenge from the growing range of electronic media and its implications for the industry;*
7. *the correct balance between privacy and press freedom including consideration of the desirability of a mechanism for complaint and adjudication and of changes in the libel laws;*
8. *editorial independence and freedom and the appropriateness of codes of practice in relation to such matters;*
9. *the importance of the industry in reflecting all aspects of Irish identity;*

10. *the standard of coverage of important aspects of Irish political, social, economic and cultural life bearing in mind changes that are occurring in the market place;*
11. *other matters which affect the industry.”*

6.2 The “*relevant criteria*” were born out of this report. The Commission recommended that in exercising his powers under mergers and competition legislation to regulate changes of ownership in the newspaper sector the Minister should assess the implications of any change on:-

- “(a) the strength and competitiveness of the indigenous industry in relation to U.K. titles;*
- (b) the plurality of ownership;*
- (c) the plurality of titles;*
- (d) the diversity of views in Irish society; and*
- (e) the maintenance of cultural diversity.”*

6.3 The Competitions and Mergers Review Group was established on the 30<sup>th</sup> of September 1996 by the same Minister for Enterprise and Employment, Mr. Richard Bruton T.D. Its terms of reference were not specific to the media sector. In its report in March 2000 it addressed in chapter 7 the report of the Newspaper Commission. The Competition and Mergers Review Group did not feel that it was entitled to consider the merits of the Newspaper Commission’s proposals. Nevertheless, addressing the concept of the “*exigencies of the common good*” as referred to in section 9 (1) (a) of the Mergers, Takeovers and Monopoly’s (Control) Act, 1978 or in any consolidated legislation, it recommended that that concept should be specifically defined in the case of a proposed merger or takeover of a newspaper to include the five criteria identified by the Newspaper

Commission (subject to compatibility with community law) and a sixth criterion which would refer to the position of any of the enterprises involved in the proposed merger or takeover in the media market. Accordingly, the Group recommended that *“when assessing the permissibility of mergers or takeovers in the media sector, the Minister shall, in addition to the public policy factors generally applicable to mergers, take account of the following factors:-*

- (a) the strength and competitiveness of the indigenous newspaper industry;<sup>68</sup>*
- (b) the plurality of ownership;*
- (c) the plurality of title;*
- (d) the diversity of views in Irish society;*
- (e) the maintenance of cultural diversity; and*
- (f) the position in the media market generally of any of the enterprises involved in the proposed merger or takeover or of any enterprises with an interest in any such enterprises.”*

6.4 When these recommendations came to be implemented in Part 3 of the Competition Act, 2002, they were applied, not only to newspapers, but to media business generally.

6.5 The phrasing of the ‘relevant criteria’ has been criticised in a number of submissions made to the Advisory Group, including that from Communicorp:

*“Communicorp considers that the criteria which the Minister must attempt to apply to media mergers are unworkable in some respects and clearly duplicative in others.”<sup>69</sup>*

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<sup>68</sup> The Competition and Mergers Review Group specifically advised that it was inappropriate to seek to set out in legislation a concrete definition of the term *“indigenous”*. Paragraph 7.2.10.

<sup>69</sup> Submission of Communicorp, p. 2 (2.6).



6.6 Communicorp believes that in some respects the relevant criteria ‘cannot be operated without the State engaging in a logistical exercise akin to that necessary to sustain mass censorship’. The company is of the view that they are ‘an unprincipled hybrid of factors’ and ‘there is no useful purpose to be served by their continued operation’. It recommends their repeal<sup>70</sup>. However, while other submissions also express concerns and criticisms, they are not so radical. National Newspapers of Ireland (NNI), the umbrella organisation representing eighteen leading newspaper titles<sup>71</sup>, observes that, at a fundamental level,

*“... there is no general principle of protection of plurality/diversity that underpins these criteria. At present this is treated as a matter for the judgment of the Minister. NNI believes that such a general principle should be stated in the legislation, so that there is a clear statutory basis for applying the criteria. In stating such a principle, it should be made clear that plurality/diversity needs to be considered in relation to each sector of the media and to the media as a whole.”*<sup>72</sup>

6.7 The criteria themselves are perceived to lack certainty or to be otherwise inadequate. NNI believes that,

*“As currently drafted, the criteria are in some cases ambiguous and unclear, and NNI address the specific criteria below. However, it should be noted that, in general terms, the decision taken by the Minister is a largely subjective and discretionary one. As matters stand, parties to a proposed media merger have no idea how the Minister will apply these criteria.*

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<sup>70</sup> Submission of Communicorp, p. 12 (B.9), p. 15 (F.2).

<sup>71</sup> *Irish Independent, Irish Examiner, The Irish Times, Irish Daily Star, The Irish Sun, Irish Daily Mail, Irish Daily Mirror, Evening Herald, Sunday Independent, Sunday World, The Sunday Business Post, The Sunday Tribune, Irish Daily Star Sunday, Irish News of the World, Irish Sunday Mirror, Irish Mail on Sunday, The Sunday Times and Irish Farmers Journal.*

<sup>72</sup> Submission of NNI, p. 4.

*NNI believes that there is a need for some measure of control of media mergers on plurality/diversity grounds and it therefore supports the principle of legislation regulating media mergers. However, it believes that the current opaque and discretionary system is not appropriate and it should be replaced by a system that is more focused, better balanced and more transparent.”<sup>73</sup>*

6.8 The Group recommends some concrete indicators of diversity below and also endorses calls for the greatest possible transparency on the part of relevant agencies and the Minister consistent with reasonable requests to protect information that is really and significantly commercially sensitive.

6.9 The Group believes that the whole question of the relevant criteria cannot be properly considered in the absence of consideration of a test. It is a striking feature of the current statutory scheme that although the Statute mandates the Minister to “*have regard to and only to*” the “*relevant criteria*” it does not identify what the object of Ministerial intervention is. Neither does it identify the test that the Minister should apply. The Group believes that this test should be identified in the Act. By identifying the test to be applied by the Minister the object of Ministerial intervention becomes clear. This in itself contributes much needed transparency and certainty to the process.

6.10 Although the test to be applied is ultimately a matter for the Oireachtas it appears to the Group to be desirable that it should express a view and give a recommendation on this issue.

6.11 The object of Ministerial intervention as intended by the Oireachtas can be deduced from the “*relevant criteria*” as currently defined namely to protect the plurality and diversity of media businesses in the State.

6.12 Both NNI and INM in their responses, noted the absence of a statutory test. In its submission, NNI stated<sup>74</sup>:-

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<sup>73</sup> Submission of NNI, p. 2

<sup>74</sup> At page 4

*“First, there is no general principle of protection of plurality/diversity that underpins these criteria. At present this is treated as a matter for the judgment of the Minister. NNI believes that such a general principle should be stated in the legislation, so that there is a clear statutory basis for applying the criteria. In stating such a principle, it should be made clear that plurality/diversity needs to be considered in relation to each sector of the media and to the media as a whole.”*

- 6.13 The Group agrees. The starting point must be the identification of a statutory test. The object of Ministerial intervention is clearly to protect the public interest in media plurality.
- 6.14 The statutory test to be applied by the Competition Authority, although involving an element of subjective evaluation, is nevertheless clear. It is whether the result of the merger or acquisition would be to substantially lessen competition in markets for goods or services in the State.<sup>75</sup>
- 6.15 A number of respondents specifically addressed the relevant criteria. Communicorp argued that the relevant criteria were unworkable and in some respects duplicative and were at best a hybrid of criteria separating and more specifically applied by both the BCI and the Competition Authority. It argued that the relevant criteria should be repealed.
- 6.16 NNI argued that the relevant criteria could include a requirement that the Minister take account of efficiencies resulting from a proposed merger that might (despite the increase in concentration) result in increased diversity. NNI also argued that the Minister should be required, as one of the relevant criteria to take into account the competitive framework applying as between various media sectors and the impact that a cross media merger might have on competitors.
- 6.17 The ICTU and the NUJ argued that in considering a new merger application the Minister should take into account the short and long term impact and potential impact of concentration of ownership of media platforms on diversity

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<sup>75</sup> See Section 22(2) of the Act

of opinion, diversity of sources of information and the impact on employment levels and employment standards. They argued that there was a direct link between employment standards and the quality of journalism.

6.18 The Group believes that it would be of assistance to consider each of the relevant criteria as currently defined.

***“The strength and competitiveness of media businesses indigenous to the State”- Criterion (a)***

6.19 Although the Competition Authority argued that all of the criteria were non-competition criteria, it appears to the Group that this criterion is capable of being regarded as a competition criterion. The reference to “*indigenous to the State*” is, in the Group’s view, problematic as the meaning of the term in the context of different media businesses is not entirely clear.

6.20 The term ‘indigenous’ found its way into the Competition Act 2002 after a long process of discussion and debate. It reflected public and industry concern about the ambitions of foreign media organizations in respect to the Irish market, as well as a fond appraisal of the value of a home-grown media. This appraisal was bluntly expressed in the view of the Commission on the Newspaper Industry. It was of the view that the value of diversity provided by imported titles, even ‘to the extent to which they direct their editorial matter to Irish interests [i.e. have Irish content or Irish editions] ... is necessarily less than that which can be provided by an indigenous newspaper industry which maintains the values and objectives already set out in the introductory chapter to this Report’.<sup>76</sup>

6.21 However, since then, a number of media organizations based in the Republic of Ireland have grown in size and confidence and have significant investments in other states. The threat to home-grown media from foreign capital is not felt as

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<sup>76</sup> *Report of the Commission on the Newspaper Industry*, June 1996 (Dublin: Government Publication Pn. 2841), p. 30 (1.7); *The Final Report of the Competition & Mergers Review Group report*, March 2000 (Dublin: Government Pn. 8487), p. 249 (7.2.2.), p.254 (7.2.12) indicates that the latter group had some concerns about such a criterion in the context of European law.

acutely today as it was ten or fifteen years ago. NNI now includes among its members the owners of various media titles that originate across the Irish Sea. In its submission to this Group, NNI makes the following observation in relation to ‘the protection of the indigenous press’:

*“As its very title suggests, NNI is concerned that there should be a vibrant press in Ireland with a multiplicity of titles responding to the diverse needs – and indeed growing the demands – of an Irish-based readership. In the past there were concerns that UK titles might seek to enter the Irish marketplace with little, if any, Irish content and that this could undermine the indigenous press. In fact, a significant number of UK-based publishers have entered the Irish market by introducing identifiably Irish editions of their titles. This is not to say that there would not be serious potential concerns were old-established Irish titles in the future to be taken over by overseas publishers. However, proposed mergers would have to be decided on a case-by-case basis, and the public interest analysis would have to take account of any mechanisms designed to safeguard the integrity of the acquired title and its traditional content.”<sup>77</sup>*

6.22 Clearly, one can regard newspapers compiled, printed and largely purchased in the State (e.g. The Irish Independent, The Irish Times, The Examiner) as indigenous to the State but what of Irish editions of foreign newspapers or foreign newspapers having a large readership in the State? NNI in its submission was alert to this problem arguing that there has to be a criterion ensuring that “indigenous” businesses remain viable in competitive terms, while at the same time wishing to stress the contribution that Irish editions of newspapers owned by overseas publishers made to local cultures and traditions.

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<sup>77</sup> Submission of NNI, p. 3.

6.23 The Group also notes the absence of any definition of “*competitiveness*” or “*strength*”.

6.24 The Group believes that the wording of this criterion is unclear and likely to give rise to difficulties of application in practice. The difficulty is accentuated by virtue of the fact that the criterion simply identifies the concepts “*strength*” and “*competitiveness*” without identifying the relevance of these concepts to the task in which the Minister is engaged.

6.25 In at least one respect, it was argued to us, Criterion (a) does not go far enough. NNI observed that,

*“...in view of the pace and nature of changes in the media marketplace, NNI believes that it is important to ensure that a fair competitive framework is assured as between the different sectors of the media. Although this will to some extent be assured by the Competition Authority in assessing the competitive effects of a merger, NNI believes that the Minister should be required, as one of the relevant criteria, to take into account the competitive framework applying as between various media sectors.”*<sup>78</sup>

6.26 The Group agrees that the Minister needs to weigh carefully the impact of a merger not only on the overall level of choice for consumers but also on the balance between the three main elements, these being privately-controlled, state-owned and community-based media. While the analysis of the Competition Authority will form the principal basis of any decision by the Minister in such cases, it may not be exhaustive of all relevant social implications.

6.27 In Section 3.2 of this Report, a range of current objective indicators of diversity were set out which could be measured in a number of ways. ‘Internal diversity’ may be evident in, for example, the nature of particular media content. Positive

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<sup>78</sup> Submission of NNI p. 5.

measures of diversity include the programming, news and current affairs, and fairness, balance and impartiality obligations of broadcasters. One negative measure of such diversity is the record of relevant successful complaints against a media organisation. Bodies such as the Press Council, the NUJ, the BCC, the BCI may all have recorded relevant transgressions of codes or contracts. Apart from the fact that reliance on such findings is a somewhat passive and reactive way of monitoring diversity, not all those who made submissions believe that these particular measures are adequate for the purposes of ensuring diversity.

6.28 The Group observes that the BCI does in fact monitor station output. Indeed, Communicorp believes that, as a result of existing measures, ‘independent radio and television output in Ireland is highly representative’ and is regulated in a way that newspapers are not.<sup>79</sup> The BCI does not see itself as having an unduly interventionist approach in such matters. Its approach to the regulation of relevant measures of diversity is related to the formulation of agreements in respect of programming but which are secured in Programme Policy Statements contained within broadcasting contracts. Adherence to these agreements is monitored. Changes in ownership and control include a requirement imposed on new owners aimed at ensuring:-

- the quality, range, type and schedule of programming to be provided, and
- whether the service reflects sufficient commitment to serving relevant local communities and communities of interest;
- the creation of new opportunities for Irish talent, music, drama and entertainment;
- and programming relating to Irish language and culture.

6.29 While it is clear that the BCI aims at ensuring pluralism in the broadcasting media, concerns expressed underline the need for a

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<sup>79</sup> Submission of Communicorp, pp. 7-8.

transparent and thorough means of monitoring various types of diversity for the purposes of assessing the consequences of any notified merger. In the opinion of this Group, it is reasonable to propose that the Minister should always determine if there could be a decreased incentive to ensure a diversity of views and opinions as a result of any proposed merger and also look to the adequacy of safeguards in place should there be a risk to such diversity.

***“The extent which ownership and control of media business in the State is spread amongst individuals and other undertakings”- Criteria (b) and (c)***

- 6.30 A number of those making submissions drew attention in their submissions to the difference in wording in that the first of these criteria refers to “*ownership or control*” and the second refers to “*ownership and control*”. It is not clear to the Group that this apparent difference has any real consequence.
- 6.31 The first of these criteria refers to media businesses generally whereas the second refers to “*particular types of media business*”.
- 6.32 These criteria address the issue of plurality (i.e. spread of ownership). It is not clear to the Group why they are split into two separate criteria as the issue would appear to be adequately covered by the first. It may be that criterion (b) was meant to translate the Newspaper Commission’s formula “*plurality of ownership*” and criterion (c) was meant to translate the Newspaper Commission’s other formula “*plurality of titles*”. If so, the distinction appears to have been lost in the translation.
- 6.33 Communicorp believes that criterion (b) ‘is essentially duplicative of tests separately applied by the BCI’ and that criterion (c) ‘appears to be a direct duplication of current functions and approach of the [Competition] Authority’<sup>80</sup>. The Advisory Group believes that this is not necessarily so in

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<sup>80</sup> Submission of Communicorp, p. 11 (4-5).



either case, although the Minister will clearly take into account relevant decisions of the BCI and the Competition Authority.

6.34 It appears to the Group that the concept of control for the purposes of the Act is defined by Section 16(2) as the capacity to exercise decisive influence. It is however undoubtedly the case that as presently drafted, the criteria require the Minister to have regard to what could potentially be a very wide ranging survey of ownership and control across the entire media landscape in the State rather than one focused on the effects of the transaction proposed.

6.35 The fact that the State is democratic is seen by the ICTU as something that should be recognised explicitly in the context of regulating media mergers, with this being the civic backdrop against which the spread of ownership and control is measured:

*“Congress believes that serious consideration should be given to providing legislative recognition of the role of the media in a democracy, having due regard to the provisions of the Irish Constitution and the European Court of Human Rights, including rulings based on the Convention by the ECHR”.*<sup>81</sup>

6.36 The Group believes that whether in the Long Title to an Act or otherwise, legislative recognition of the role of the media in a democracy would be useful in educating citizens in respect of the need for regulating mergers in the public interest.

6.37 The Community Radio Forum of Ireland points to the special role that community-controlled media play in fostering diversity:

*“Media pluralism suggests that media is distributed between a wide number of groups. In relation to media diversity, it is*

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<sup>81</sup> Submission of ICTU, p. 2.

*worth stressing that community media is owned by the community itself, so that community media directly contributes to diversity but also to a widening of ownership and direct citizen control of the means of communication. The community media model we have developed in Ireland is based on that of the credit union, where each community radio station is an autonomous entity, resistant to merger or acquisition.*

*The Minister in protecting the public interest should ensure that in tandem with a controlled merging of private media, we witness a burgeoning of communal media to counter balance the restrictive debate that this merging will inevitably produce. The Minister should ensure that the government use the mechanism of supporting the growth of community media as the means to promote the widest possible diversity in the media.”<sup>82</sup>*

6.38 The Group recognises that community media in this sense are not simply styled ‘community’ but are structured differently from the other two elements of the media mix, privately-owned and state-owned media. The Broadcasting Bill 2008 includes supports for the development of community media.

***“The extent to which the diversity of views prevalent in Irish society is reflected through the activities of the various media businesses in the State”- Criterion (d)***

6.39 The Group has already indicated that the word ‘prevalent’ is somewhat ambiguous. NNI would remove it entirely, so that the words ‘diversity of views in’ might not be thought to be qualified in any way:

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<sup>82</sup> Submission of Craol, p. 1.

*“NNI believes that it is critical that every sector of the media reflects the diversity of views in the State. In today’s Ireland, the reference to “Irish society” could usefully be replaced by “society in Ireland”. The use of the word “prevalent” suggests that minority views are not included and NNI suggests that this word could be omitted. NNI also submits that the reference to “diversity of views” is not sufficient: the diversity that media plurality seeks to protect extends to culture, religious belief and language and the Minister’s examination of diversity should not be limited to “views” or “opinion”. ”<sup>83</sup>*

6.40 The Group sees merit in these suggestions.

6.41 Communicorp is sceptical of this criterion:

*“Communicorp considers that the fourth criteria is unworkable because in order to apply it, the Minister would need to have primary data on the views of the entire population on a plethora of issues, and then he would somehow need to monitor all of the prodigious output of the entire media, or at least that of the merging parties, so as to make a decision on a proposed merger. This is an impossible task for both the Minister and his officials. ”<sup>84</sup>*

6.42 The Group recognises the difficulty of assessing the extent to which the diversity of views prevalent in Irish society is reflected through the activities of the various media businesses in the State. Nevertheless, for so long as society wishes to regulate media mergers in order to avoid a reduction in diversity, it will be necessary for the responsible body, in this case the Minister, to make such decisions. The Group recommends the use of certain concrete indicators that will in practical and objective ways assist the Minister to make such decisions rationally.

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<sup>83</sup> Submission of NNI, p.5.

<sup>84</sup> Submission of Communicorp, p. 12 (7).

6.43 The adoption of these criteria would also address some of the following concerns expressed by the ICTU.

*“In considering any merger application the Minister for Enterprise, Trade & Employment should take into account the short and long-term impact and potential impact of the concentration of ownership of media platforms on diversity of opinion, diversity of sources of information and the impact on employment levels and employment standards.*

*There is a direct link between employment standards and the quality of journalism. In the media sector there is a direct correlation between poor pay and employment conditions and low journalistic standards and Congress is cognisant of a growing anti-union sentiment in the sector, which develops in tandem with demands to cut costs.’’<sup>85</sup>*

6.44 The relevance of structural matters such as employment practices to the fostering and maintenance of diversity is evident not only in respect of the adoption of budgets and codes that aim to create the circumstances for high-quality production but also in respect to the employment of a workforce that reflects the diversity of Irish society as a whole. Indeed, a recent major survey of 132 medium to large Irish companies indicated that having employment policies that recognize multicultural realities is itself good for business in general:

*“The results ...reconfirm what previous research by the NCPP and others has shown – that strategic human resource management practices are clearly associated with business performance outcomes, including labour productivity, innovation levels, and employee wellbeing. The more novel*

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<sup>85</sup> Submission of ICTU, p.2.

*findings relate to the discovery that other factors, including diversity and equality systems, and workplace partnership systems, are positively and synergistically associated with significantly higher levels of labour productivity, workforce innovation, and reduced employee turnover.*

*Both at public policy level and at the level of the enterprise, policies that promote equality of opportunity and accommodate diversity are understood to have a key role in mobilising an increasingly diverse labour force. This is a particularly important issue in contemporary Ireland, where the labour force has developed an unprecedented level of diversity stemming from a significant increase in the participation rate of women, as well as record levels of inward migration from both non-EU states and EU Member states.”<sup>86</sup>*

6.45 The Group considers that insofar as the relevant criteria are currently set out, criterion (d) i.e. the diversity criterion appears to be the dominant one. At the same time, it does suffer from what the Group regards as a defect applicable to the other criteria namely, it is simply a description of a concept without clearly identifying its relevance or putting it in the context of the exercise in which the Minister is engaged i.e. consideration of a media merger.

**The share in the market in the State of one or more of the types of business activity falling within the definition of “*media business*” in this subsection that is held by any of the undertakings involved in the media merger concerned, or by any individual or other undertaking who or which has an interest in such an undertaking.- Criterion (e)**

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<sup>86</sup> National Centre for Partnership Performance & The Equality Authority, *New models of High Performance Work Systems: the business case for strategic HRM, partnership and diversity and equality systems* (Dublin, 2008), p. 11, p.29.

6.46 NNI states that it is not aware how this complex criterion has been applied in practice:

*“As the criterion is drafted, it appears that the relevant ‘markets’ are the three types of media business defined in Section 23(10), which could differ from the definition of markets underpinning the competitive effects analysis. NNI accepts that there can be different market definitions for different purposes, although this increases the uncertainties faced by parties to a proposed media merger. What is of more concern [is] that there is no framework within which a market share is to be assessed. It could be made clear that a market share is relevant only where it has a demonstrably negative effect on plurality/diversity.”<sup>87</sup>*

*“The naked reference to ‘an individual or other undertaking who or which has an interest in such an undertaking’ may also be confusing, since it seems to apply even to small interests with little or no influence. Again the unstated question is whether such an interest adversely affects plurality/diversity. NNI believes that this could be addressed by the introduction of a clearer legislative plurality/diversity objective and by a requirement that the Minister issue guidelines.”<sup>88</sup>*

6.47 This criterion appears to be the only one specifically focused on the merger or acquisition under consideration. It addresses market share apparently on the basis that each of the three types of “*media business*” as defined in Section 23(10) of the Act (see paragraph 6.50 below) are to be treated as a separate market. It appears however to address only the pre (rather than post) merger market shares. It also appears to require the Minister to look at market share

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<sup>87</sup> Submission of NNI, p. 6.

<sup>88</sup> Submission of NNI, p. 6.

held by individual shareholders having an interest in one of the undertakings no matter how small that shareholding might be. It appears to the Group that this criterion is so general as to be unlikely to advance the utility of the relevant criteria in the context of the public interest test.

6.48 The term ‘media business’ used in the ‘relevant criteria’ is defined in Section 23 (10) of the Competition Act, 2002, as follows:

- (a) a business of the publication of newspapers or periodicals consisting substantially of news and comment on current affairs,
- (b) a business of providing a broadcasting service, or
- (c) a business of providing a broadcasting services platform;

6.49 Concern has been expressed that this definition lacks clarity and ought to be amended to include specific reference to the Internet and associated technologies and undertakings. Thus, NNI states that,

*“The competitive environment for newspapers is changing dramatically, in terms both of competing for readership and of competing for advertising. In terms of readership, the increasing use of the Internet and the proliferation of portable electronic media – 3G mobiles, laptops, and blackberries – together with new techniques for disseminating information (such as ‘blogs’ and texting) mean that publishers of print newspapers are competing with other news and current affairs providers. In terms of advertising, “traditional” paper titles compete with increasing numbers of on-line providers: for example, eircom uses its internet site – [eircom.net](http://eircom.net) – to deliver news and current affairs – and seeks to attract advertising revenue in competition with established news providers.*

*The print edition of many newspapers has had to be supplemented by on-line editions tailored to the needs of a*

*more demanding 'readership'. Indeed, for many newspaper publishers, an extension into electronic publishing is seen as crucial for the survival of the paper edition. This process needs to be carefully managed if the high levels of media plurality/diversity we enjoy today are to be assured for the future.*"<sup>89</sup>

6.50 Questions may also arise, as with digital television platforms, about the priorities of guides or search-engines, and about the visual or commercial context within which such services appear. The ownership of such platforms for the Internet may be as relevant when assessing a merger, as is the ownership of cable, Multiwave Micropoint Distribution System (MMDS) or satellite platforms. In addition to editorial issues, there are collateral questions about the capacity of Internet sites to close advertising deals that have knock-on effects (e.g. seducing revenue from other media), especially if a media conglomerate can offer package deals across platforms and/or media.

6.51 Moreover, the extent to which any aspect of on-line activity such as games is controlled by particular producers raises questions that may be relevant to diversity and plurality in the media under EU policy. The Television Without Frontiers Directive itself recognises sport as 'significant in terms of generating senses of identity and belonging, no matter how partial the groups which are represented by those sports are .... Without doubt, the on-line games industry is an important part of popular culture and especially youth culture'<sup>90</sup>. In this context, in May 2006, the European Games Developer Federation itself made this notable declaration:

*"The impact of games is growing in technological and economic terms, but most important of all, in the field of culture. Like films, games are a cultural asset. In a converging environment, Games will develop a leading quality. The impact*

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<sup>89</sup> Submission of NNI, p.4 .

<sup>90</sup> J. Harrison & L. Woods, *European broadcasting law and policy* (CUP Studies in European Law and Policy: Cambridge, 2007), p. 249.



*of Games in technological and narrative terms in the near future must not be underestimated, as they have already influence on contemporary society. Hence, Games are not only of technological and economical importance; they represent a significant audiovisual medium.”<sup>91</sup>*

## **The Group’s recommendations on the test**

6.52 The Group is of the view that there should be a clear statutory test to guide the Minister in the discharge of his/her function in relation to media mergers. It is only when this test is identified that the relevant criteria fall into place. The Group is conscious of the fact that it has not had the opportunity of inviting views on the formulation of a specific new test or new criteria. It is also conscious of the fact that if the Group’s recommendations are accepted in whole or in part, these will clearly be the subject of debate in the Oireachtas. Accordingly, it does not wish to be unnecessarily prescriptive in this regard.

6.53 However, the Group does believe that the test should make it clear that what the Minister is doing is protecting the public interest in promoting plurality in media business in the State in the context of the proposed media merger. The test accordingly might be expressed as follows:-

*“Whether the result of the media merger is likely to be contrary to the public interest in protecting plurality in media business in the State.”*

6.54 This formulation would we believe incorporate the concept of significant or substantial effect since a media merger that was only likely to have a minimal effect would be unlikely to satisfy the test. The test is nevertheless expressed in subjective terms as we believe it must be since it is ultimately a matter of political judgment for the Minister as to what the likely effect of the merger will be on media diversity and plurality. However, by clearly identifying the

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<sup>91</sup> Full statement at [http://www.europarl.europa.eu/comparl/cult/hearings/20060601/position\\_games\\_en.pdf](http://www.europarl.europa.eu/comparl/cult/hearings/20060601/position_games_en.pdf).

object of the exercise, the test transparently identifies for the parties and the public what is the nature and object of Ministerial intervention.

6.55 However, the Group also believes that the test needs to be supported by a statutory definition of “*plurality*” that incorporates both spread of ownership and diversity of content. The Group notes that although its own terms of reference refer to plurality, and the reports of the Commission on the Newspaper Industry and the Competition and Mergers Review Group refer to plurality, that term is not used in the 2002 Act. The Commission on the Newspaper Industry appeared to use “*plurality*” in the sense of ownership and titles and “*diversity*” in the sense of views. However, Article 21.4 of the ECMR in referring to Member State competence refers to “*plurality*”. The Group believes that in the interests of consistency, it is best to adhere to the ECMR term “*plurality*”. The Group recommends that the term “*plurality*” be defined to include the spread of ownership and diversity of content. Conscious of the fact that it has not had the opportunity of going out to public consultation on non-specific proposals, the Group would tentatively recommend the following:-

#### **Plurality of the media**

*“Plurality of the media includes both diversity of ownership and diversity of content.”*

Plurality in this sense thus incorporates both the spread of ownership and diversity of content. It is however also necessary to define what is meant by diversity of ownership and content.

#### **Diversity of Ownership**

*“Diversity of ownership means the spread of ownership and control of media businesses in the State amongst individuals and other undertakings linked to the market share of those media businesses as measured by listenership, readership or other appropriate methods.”*

Diversity of ownership in this sense gives a weighting to the power of the media business in which a share or control is held. It thus refers to the extent to which ownership or control of the “*ability to influence*” or “*opinion forming power*” of media businesses is spread.

### **Diversity of Content**

*“Diversity of content means the extent to which the broad diversity of views and cultural interests prevalent in Irish society is reflected through the activities of media businesses in the State, including their editorial ethos, content and sources. “Views” includes but is not limited to, news and current affairs.”*

This definition is intended to be broader than referring simply to views but also to refer to Irish culture. The Group believes that the extent to which Irish media businesses are reflective of Irish culture is an important aspect of diversity. The Group considers that it is important to note that the mode of expression of views in the media can of course include both factual and fictional representations.

6.56 The Group believes that all of the relevant criteria as currently defined suffer from significant ambiguity and lack of clarity and are too general.

6.57 Apart from Communicorp, no other party making submissions argued that the relevant criteria should be completely abandoned. The Group sees considerable value in the identification of relevant criteria (however described) and in the use of the statutory formula that the Ministerial decision should be taken having regard to and only to the relevant criteria. As long as a clear test is identified, the Group does not see any difficulty in the use of the formula of having “*regard to and only to*” the relevant criteria. Indeed this is well established as a statutory formula and its meaning has been addressed in our case law. It identifies relevant considerations while at the same time allowing the decision maker a margin of discretion.

6.58 Rather than engaging in drafting amendments to the relevant criteria as currently defined the Group believes that it would be preferable to redefine the

relevant criteria in the specific context in which they need to be addressed i.e. the consideration of a media merger, while at the same time placing the focus on the effect of the proposed merger on plurality and diversity.

6.59 The Group recommends the adoption of the following “*Relevant Criteria*”:-

- (a) The likely effect of the media merger on plurality which includes both diversity of ownership and diversity of content.

The Group accepts that ensuring that ownership of media businesses is not concentrated in the hands of a few is a legitimate means of achieving media diversity. It is for this reason that we have recommended that the concept of plurality be included in the test itself and not just in the criteria. The Group recommends that in looking at the spread of ownership and control the Minister should also look at market share and the likely effect on market share since it is access to the views of consumers of media products that is the focus of concern in relation to ownership and control. Thus, an 80% interest in a radio station having 2% listenership is of much less significance than a 25% share in an undertaking having 40% listenership.

The likely effect of the media merger on diversity of content is also taken into account under this criterion. This would take account of NNI’s efficiency point i.e. that the merger might in fact have positive effects on diversity. It would also enable the Minister to take into account the impact of the merger on the strength of other media businesses. It also enables the Minister to address the effect on community, local or regional audiences and markets.

The Group recommends that under this heading, the Minister should weigh the possible impact of a merger, not only on the

overall level of choice for citizens but also on the balance between the three main media strands, these being commercial, state-owned and community based media.

The Group recommends that this be identified as the first of the criteria thereby emphasising its importance.

(b) The undesirability of allowing any one individual or undertaking to hold significant interests within a sector or across different sections of media businesses.

This is an aspect of media plurality and it enables the Oireachtas to put down a marker that it has determined that it is undesirable that any one individual or undertaking would hold significant interests across different sections of media business. This leaves it to the Minister to interpret the word significant and as we recommend later on, we believe that the Minister should issue Guidelines which would provide much needed clarity in this area.

(c) The consequences for the promotion of plurality in media business in the State of intervening to prevent the media merger or attach conditions to the approval of the media merger.

This again might be seen as duplicative of criteria (a) and (b) above but it is intended to address the consequences of Ministerial intervention as distinct from the merger itself. In other words, it may be that the immediate effect of a merger would be a significant reduction of plurality but that for example, in a failing firm situation, the consequence of intervention to prohibit the merger might be the failure of one or both of the media businesses concerned thereby having more significant long term effects on plurality in media business in the State.

(d) The adequacy of other mechanisms to protect the public interest in plurality in the media if the Minister was not to intervene.

This enables the Minister to observe the principle of necessity since regulation (e.g. by the BCI) or voluntary codes of conduct might be sufficient to address the public interest in plurality without the need to intervene in a merger.

(e) The commitments that the undertakings are prepared to offer and which are capable of being effectively incorporated in any decision by the Minister.

This again enables the Minister to observe the principle of necessity and proportionality in that a total prohibition of the merger might be unnecessary if the public interest objective could be effectively addressed by way of commitments (either alone or in combination with the other mechanisms referred to at (d)).

(f) The extent to which the public interest can be secured by the imposition of any conditions in any decision by the Minister to approve the merger.

This is similar to (e) but addresses conditions that the Minister might impose of his own initiative as distinct from commitments offered by the undertakings. Both criteria (e) and (f) are dependent on effective mechanisms being incorporated in the Statute to enforce commitments/conditions in a Ministerial Order. This is addressed in a later recommendation.

6.60 In addition, the Group believes that certain relevant matters should be identified as being matters to which the Minister should have regard, namely:-

- (a) the Guidelines (if any) issued by the Minister on media plurality in Ireland,<sup>92</sup>
- (b) the decision of the Competition Authority. This is self-explanatory. There will often be an overlap between the effect of a merger on competition and the effect it will have on media plurality and the decision of the Competition Authority is something to which the Minister should have regard. As we also recommend at a later stage, it should be binding on the Minister insofar as it determines the issue of substantial effect on competition in the market defined by the Competition Authority. This of course is without prejudice to the Minister's entitlement to approach the market differently for the purposes of the application of the plurality test.
- (c) the decision of the BCI (if any). Again, this is self-explanatory and as previously observed, we would expect that it would be a matter to which the Minister would attach some weight in that in the case of a broadcaster/broadcaster merger the decision of the BCI might satisfactorily address any concerns that there were in relation to media plurality.
- (d) the opinion (if any) of the consultative panel,<sup>93</sup>
- (e) the submissions (if any) received in the public consultation,
- (f) such other matters relevant to the "*relevant criteria*" as the Minister thinks fit.

6.61 The Minister's task in applying the relevant criteria to the approval of a media merger whether under the Act or the recommendations requires him to address the issue of media plurality. Accordingly, we considered what indicators of diversity of ownership and content might be available to the Minister.

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<sup>92</sup> At a later stage we recommend that the Minister should issue such Guidelines.

<sup>93</sup> At a later stage we recommend the establishment of a consultative panel.

6.62 Citizens can rely neither on the existence of a plurality of owners nor on the application of competition principles alone to ensure that diversity of content to which Irish statute law on media mergers and broadcasting aspires. Monitoring of content as well as the adoption and enforcement of codes of conduct and standards are also required to achieve diversity. While ‘some of the strongest supporters of market liberalization insist that they are motivated by the desire to increase diversity’<sup>94</sup>, the Group recognises a continuing role for the Minister for Enterprise, Trade and Employment in acting to protect the non-commercial public interest in respect of the editorial content and editorial structures (e.g. newsrooms) of media organisations involved in any proposed merger.

6.63 To the extent that the Minister is obliged to have regard to the relevant criteria for assessing such matters as diversity of content and the spread of ownership, when determining if a proposed media acquisition may proceed, he or she will be assisted by having available information on specific indicators of diversity and plurality. These indicators constitute a sort of checklist that might be incorporated in Ministerial Guidelines and which the parties to a media merger should be invited to address in their approval application.

6.64 In considering some ‘concrete indicators’, the Group has had regard to current and recent work that has been undertaken in this context by both the European Union and the Council of Europe<sup>95</sup>. The Group notes that the EU has commissioned an independent study on media pluralism in member states ‘to define and test concrete and objective indicators for assessing media pluralism within the EU’<sup>96</sup>. The Group has considered how some other states seek to

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<sup>94</sup> Des Freedman, ‘Promoting diversity and pluralism in contemporary communication policies in the United States and the United Kingdom’, in *International Jn. Media Management*, 7 (182), 2005, 16, who notes also that there are a impressive 599 references to diversity in the U.S. Federal Communications Commission’s (FCC) review of broadcast ownership rules [2003] that recommended raising the national television ownership cap from 35% to 45% of the total audience’.

<sup>95</sup> For example, *Transnational media concentrations in Europe*. Report prepared by the Advisory Panel to the CDMM on media concentrations, pluralism and diversity questions. AP-MD (2004) 7 (Media Division, DG of Human Rights, Strasbourg, Nov. 2004)

<sup>96</sup> The tender was awarded to Katholieke Universiteit Leuven (with Ernst & Young, Jönköping Int and CEU Hungary). ‘A Commission Communication on the indicators for media pluralism in the EU Member States’ is planned for early 2009, in respect of which a public consultation is intended to take place.



ensure diversity of content and/or spread of ownership. However, it is the case that practice in such matters can vary significantly from State to State and may depend to a substantial extent on specific local circumstances.

6.65 In respect of the relevant criteria for assessing a proposed acquisition, concrete indicators of ‘diversity of content’ include,

**(1) Independent and objective demographic data on the audience/readership for particular media businesses, as a general indicator of the type of taste and content to which a particular media business caters.**

6.66 ‘What is the readership/audience?’ is a common question asked by editors/producers when assessing an idea for an article or programme. Thus, the relationship between content and audience tends to be symbiotic and readership/audience data can be a more reliable or honest measure of audience taste than is any survey of what people say that they want or respect. A report compiled for this Group and included as an Appendix C to our report has been based on data gathered and paid for jointly by media organisations. The Competition Authority has kindly furnished the Group with a previously unpublished report written for it by a number of academics from the University of East Anglia on the assessment of media mergers under the Irish Competition Act 2002. This includes some suggestions about how an appropriate ‘Media Map’ (as it is called there) might be structured. It is evident from the authors’ discussion of a possible methodology for utilising such a ‘map’, that the application of such data will remain a social science requiring judgement rather than a simple formula.<sup>97</sup>

**(2) Records of any breaches of relevant codes of good practice, especially but not exclusively relating to fairness and honesty, respect for rights and incitement to hatred, insofar as such breaches infer bias or exclusion.**

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<sup>97</sup> Shaun Hargreaves Heap, Andrew Scott, Alexandra Gaudeul and Pinar Akman, ‘Consultation on the assessment of media mergers under the Competition Act 2002: an analytical framework for media mergers in Ireland’ (January 2006), p. 64, pp. 68-72.

6.67 Examples of relevant codes include the Code of Practice of the Press Council of Ireland, the Code of Conduct of the NUJ and the statutory requirements to which the BCC has reference. NNI points out in its submission that it has played a key role in the establishment of the Office of Press Ombudsman and the Press Council of Ireland:

*‘The Code of Practice for Newspapers and Periodicals provides the basis for an independent press complaints mechanism. Amongst other matters, newspapers and periodicals are to “strive at all times for truth and accuracy” and “readers can expect that the content of a publication reflects the best judgement of editors and writers and has not been inappropriately influenced by undisclosed interests”.*<sup>98</sup>

6.68 The BCI also undertakes compliance activity as follows:-

- monitoring reports in respect of the compliance of each station with statutory duties, codes and rules;
- compliance audits in respect of a contactor’s service during the course of a proposed acquisition;<sup>99</sup>
- performance reports on a contractor when a contractor applies for a new or renewed licence.<sup>100</sup>

**(3) Policies and practice in respect of the recruitment and/or training of persons of a diverse range of cultural, ethnic, social or other backgrounds as company directors or as editors and other professional media workers within a media business.**

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<sup>98</sup> Submission of NNI, p. 1.

<sup>99</sup> e.g. Communicorp were required to undertake compliance audits for Newstalk 106, 98 FM, Spin 108 and East Coast FM when it applied to acquire E map services.

<sup>100</sup> Section 60 of the 2001 Act

6.69 A recent EU working document observes that, ‘structural obligations such as the composition of management bodies or bodies responsible for programme/content selection’ may be particularly suited to smaller member states where ‘having many competing and diverse channels or titles controlled by many different players can be more difficult to reach’.<sup>101</sup>

**(4) Employment levels and standards. Media require sufficient resources to ensure the breadth and depth of coverage appropriate to a diverse, multicultural society.**

**(5) Data on financial support from non-commercial sources for media content, and on the criteria for its expenditure.**<sup>102</sup>

**(6) A record of truthful, accurate and fair reporting on topics of public importance or controversy, — be they explicitly and/or implicitly expressed, — of directors, editors and large shareholders in any media business.**

6.70 Data in relation to complaints to media regulators would be relevant in this context.

**(7) ‘Level of trust in’, and ‘contribution to being “informed by”’, each media outlet by age, sex and socio economic group and geographic location.**

6.71 The report on the ‘Consultation on the assessment of media mergers under the Competition Act 2002’, which was commissioned for the Competition Authority and kindly furnished by it to this Group, includes (p. 64) these two proposed categories. The Group has reservations about them, as data on them might be extremely elusive and controversial. It could be very difficult to reach agreement on measures of ‘trust’ and ‘contribution to being informed’, and there is a risk that such measures might be based on ‘politically correct’

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<sup>101</sup> ‘Media pluralism in the Member States of the European Union’ (*Commission Staff Working Document*), p. 8.

<sup>102</sup> For example, the BCI ‘Sound & Vision Fund’ or The Irish Times Trust.

assumptions that would propel a Minister towards decisions that were open to successful challenges on legal grounds as being either arbitrary or an infringement of the right to free expression. Furthermore, the public's relationship with media is a complex one and the public's level of trust and the degree to which it is informed are perhaps not always consciously appreciated. If one purpose of this indicator is, for example, to avoid dominance by one company within the 'quality' newspaper market, then a simpler but less contentious indicator of such dominance is the market share of each broadsheet or the clustering of relevant readerships into their various market-research/social categories such as 'ABC' etc. if one adopts this alternative measure, then 'trust' and 'being informed' are calculated on the basis of what citizens do rather than on what they say.

*Concrete indicators of spread of ownership*

6.72 In respect of the relevant criteria for assessing a proposed acquisition, concrete indicators of the spread of ownership and control include,

- (1) Independent and objective demographic data on the audiences/readerships for particular media businesses, as a general indicator of the control of the flow of information to any particular sector, be it a geographic community or some other community of interest.**
  
- (2) Independent and objective data on the various market shares enjoyed by particular media businesses.**

6.73 As noted elsewhere in the report, the extent to which a Minister may be constrained by references to 'the State' in Section 23 the Competition Act, 2002, needs to be considered. The 'relevant criteria' (e) requires the Minister to have regard to 'the share in the market in the State' that is held by any of the undertakings involved in a media merger, or by any individual or other undertaking who or which has an interest in such an undertaking. This provision seems somewhat out-of-date when the advertising industry deals in

an ‘all-island’ market and when some media companies have major cross-border investments. It also bears no relationship to the realities of a global economy if the Minister cannot consider the significance of a potential purchase by an undertaking having massive media interests outside the state but none within it, even where there may be a contest between an indigenous company and such a foreign enterprise.

- (3) Annual reports of media businesses in respect to shareholdings, where these are reliable and adequate. In this regard, the BCI already requires the submission of annual reports of broadcasting contractors. It may be necessary to amend the law relating to company disclosure and banking secrecy in order to ensure greater public transparency in respect of financial holdings and activities in media businesses. In this context, the powers enjoyed in respect of media mergers by the U.S. Securities and Exchange Commission are worth considering.**

6.74 A consultant to the Council of Europe points out that it was the Securities and Exchange Commission that brought charges against the UK media owner Conrad Black. She writes, ‘It would be politically infeasible for a European agency to be granted such powers, but it may be possible to facilitate national regulatory authorities to automatically exchange information so that court action could be taken across national borders.’ On banking secrecy, she notes that, ‘Many European media companies bank in Switzerland and Austria, particularly those operating in Eastern Europe. Since companies are multinational, this greatly reduces the ability for other member states to monitor media ownership and the activities of executives and non-executive directors’.<sup>103</sup>

- (4) Other information disclosed by parties to a notified merger or by citizens with an interest in that merger.**

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<sup>103</sup> Alison Harcourt, ‘Report on methodology for the monitoring of media concentration, pluralism and diversity’ (Unpublished report for the Group of Specialists on Media Diversity (MC-S-MD), 7 Feb. 2008), pp. 326-7. We are grateful to Ms Harcourt for allowing us to read her report. We are also grateful to Professor Thomas Gibbons of the University of Manchester for providing information.

6.75 Information voluntarily disclosed might include data on outsourcing and editorial budgets. Information required to be disclosed includes that required by the BCI. Thus, for example, the BCI may require any person involved in a possible media merger to supply information with respect to the –

- character of an applicant;
- experience, expertise and financial resources of the applicant;
- number of sound broadcasting services held;
- amount of communications media held in an area; and
- programming obligations.

**(5) Information concerning any safeguards for the editorial integrity of undertakings that are proposed to be merged.**

6.76 In the words of one submission, ‘Where an organisation owns more than one media company a form of buffer should be established to ensure editorial independence and also to ensure editorial voices are not compromised by effecting synergies.’<sup>104</sup>

**(6) Data relating to the strengths and weaknesses of companies that will remain in any relevant market after a merger or take-over.**

6.77 The ‘relevant criteria’ to which the Minister must currently have regard include, as noted earlier, ‘the strength and competitiveness of media businesses indigenous to the State’. The number and size of media companies that will remain after a merger is related to their individual prospects of survival. While such information may well form part of the basis for any initial analysis and determination by the Competition Authority in relation to a proposed media merger, it must be carefully considered by the Minister.

6.78 In general terms, in respect to the utilisation of data on plurality, it is worth considering the policy of the BCI when assessing possible mergers. The BCI takes the view that there is no obvious practical matrix for determining what

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<sup>104</sup> The Submission of NUJ p. 3.

constitutes a reasonable share of the available audience in all cases. The BCI will therefore consider each application on a case-by-case basis with particular reference to the circumstances i.e. the total communications media in the relevant area.

In assessing ‘an undue amount of communications media in a relevant area’, the BCI will apply the following criteria in making its determination:

- (i) An examination of the totality of the communications media in the area specified, including a different weighting to be given between national and local services;
- (ii) The application of a test of substitutability, i.e. in assessing the extent to which one communications media can be deemed to be a substitute for another, regard will be had to the characteristics of the communications media in question, the cost to the user and/or its target audience; and
- (iii) An examination of the applicant’s ability to influence *opinion-forming* power and its dominance of the audience share of any communications media in which it holds an interest.<sup>105</sup>

6.79 The adoption by the Minister of concrete indicators of diversity and plurality such as those discussed above would allow for a more extensive assessment of the consequences of any proposed media merger.

6.80 We do not envisage these indicators as being suitable for inclusion in the Statute either as “*relevant criteria*” or matters to which the Minister must have regard. However, we do believe that they merit consideration for inclusion in any Guidelines issued by the Minister or any questionnaires that might be prescribed for applicants for media merger clearance.

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<sup>105</sup> BCI, ‘Ownership and Control Policy’ (Dublin, 2005), pp. 13-14.

## **Concluding Observations**

- 6.81 We have not included any recommendation as to a criterion relating to security or conditions of employment. Although prepared to accept that secure well-paid employment can promote journalistic independence and accordingly the capacity for diverse views we do not believe that it is necessary to include such a specific criterion in the context of merger approval.
- 6.82 The NUJ does, however, in its submission appear to us to make a valid point namely that the concentration of ownership is likely to lead to a reduction in the numbers of employed journalists and as a result negatively impact on the availability of a diverse range of views. On the other hand, it may be in a particular case that a merger or acquisition would lead to an expansion of journalistic activity. At any rate, we believe that the relevant criteria as recommended above are broad enough to enable the Minister apply his or her mind to the consequences of the merger for plurality of content.
- 6.83 Another potential criterion that the Group considered was whether or not character should be included. It may be, for example, that one of the individuals or undertakings concerned has a prior record of non-compliance with licence conditions relating to broadcasting. Equally, it may be that a disqualification or restriction order has been made under the Companies Acts in relation to certain individuals. However, the Group concluded that such a criterion would run the risk of imposing sanctions for breaches of the law or licensed conditions which are outside the sanctions provided for in those statutory schemes. That is not to say that it might not be relevant in some circumstances for the Minister to consider character issues under some of the relevant criteria outlined above. For example, commitments proffered by an undertaking or individual who had in the past dishonoured comparable commitments might not be so readily accepted. However, we are not convinced that the issue is of such significance as to merit inclusion as a criterion in its own right.



## 7. Chapter 7 - The Mechanism by which the Minister assesses media mergers

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- 7.1 At present the Act provides that after the Competition Authority approves a media merger at Phase one, the Minister can intervene to direct a full investigation. There are a number of aspects of this that appear to us to be anomalous.
- 7.2 It appears to us to be anomalous that when a specialist body such as the Competition Authority concludes that, in its opinion, the result of the merger or acquisition will not be to substantially lessen competition in markets for goods or services in the State that the Minister should have power to direct the Competition Authority to proceed to a full investigation, the object of which is to determine that exact same issue. At the end of Phase one the Competition Authority, if it is to approve the merger, will have defined the market that is relevant for its purpose and assessed the effects of the merger with sufficient confidence as to be in a position to make that determination. The effect of this statutory provision is however to delay merger clearance by the Competition Authority by up to three months although the undertakings concerned must inevitably have a high degree of confidence that the result of the Phase two procedure will, from the Competition Authority's point of view, be no different to that in Phase one.
- 7.3 The other aspect of this provision that appears to us to be unusual is that it is the Competition Authority which, under the statutory scheme, is the source of the provision of information to the Minister on the fact of a media merger. The Minister's power to intervene in a media merger is dependent on a favourable determination by the Competition Authority (favourable in the sense that it approves the merger with or without conditions). If the approval takes place at the first Phase<sup>106</sup> the Minister has a very narrow period of ten days after the date of the determination to direct the Competition Authority to

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<sup>106</sup> Section 21(2)(a)

proceed with a full investigation. Time runs from the date of the Competition Authority's determination not the date on which the Competition Authority informs the Minister and indeed, it is not beyond the bounds of possibility that due to some administrative oversight the Minister might not be informed by the Competition Authority. Unless the Minister intervenes within the ten days to direct the Competition Authority to proceed to a full investigation, all Ministerial power to protect the public interest in plurality and diversity will be lost.

7.4 Furthermore, the Ministerial power is entirely dependent on the Competition Authority making a determination "*referred to in Section 21(2)(a)*"<sup>107</sup> i.e. in a Phase one investigation. If for example, through an oversight the Competition Authority failed to inform the undertakings concerned of its decision within the time allowed for the Phase one investigation, the result would be an approval by default and no entitlement on the part of the Minister to intervene in the public interest.<sup>108</sup> Equally, if the Minister had directed (or the Competition Authority had proceeded on its own account) to a Phase two investigation, but the Competition Authority allowed the time for a Phase two decision to lapse without a determination having been made, the result again would be an approval of the merger by default. Because the Competition Authority would not then have made "*a determination under paragraph (a) or (c) of subsection (c) of Section 22*" and because the Competition Authority would not have made a determination<sup>109</sup>, the Minister would again lose the power to intervene in the public interest. The possibility that such an important Ministerial public interest power could be lost by accident or oversight is clearly unacceptable.

7.5 Likewise, the Ministerial power to intervene decisively in the public interest in a media merger only arises at the end of the Competition Authority's Phase Two investigation if it clears the merger conditionally or unconditionally. The Minister then has a very narrow time window of 30 days from the date of the

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<sup>107</sup> See Section 23(2) of the Act

<sup>108</sup> See Section 19(1)(c) of the Act

<sup>109</sup> Section 19(1)(d) and Section 23(4) of the Act

determination (again – not the date of notification by the Competition Authority) in which to make his/her final decision.

7.6 Furthermore, the Act has not been amended to take account of the possibility that the media merger might be notified, not to the Competition Authority but to the Commission under the ECMR. If such a notification currently took place, it would seem that in the absence of a referral back to the Competition Authority under Articles 4 or 9 of the ECMR, the necessary triggers for the Minister’s statutory powers to intervene in the public interest would be absent.

7.7 The provisions relating to the Competition Authority’s role in media mergers, in particular its opinion and the furnishing of it to the Minister, are also in the Group’s view anomalous. The Competition Authority is obliged when dealing with a media merger at Phase two to “*form an opinion*” as to how the application of the relevant criteria should affect the exercise by the Minister of his or her powers in relation to the merger. However, it may never be asked by the Minister for its opinion.

7.8 Since the passing of the Competition Act 2002, the Competition Authority has made no secret of its reluctance to offer advice in respect of aspects of the relevant criteria that it considers transcend the usual remit of competition authorities internationally. It has indicated more than once that it does not have the expertise to give an adequately informed opinion on such matters. Thus, it has informed this Group that,

*“The Competition Authority takes the view that it is not within its expertise to develop a definitive opinion with respect to the relevant criteria.... Section 23(7) of the [Competition] Act obliges the Competition Authority to do something outside its area of expertise.”<sup>110</sup>*

7.9 Insofar as the Competition Authority has been asked by the Minister for its opinion on the relevant criteria in respect of notified mergers, it

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<sup>110</sup> Submission of the Competition Authority, p.9 (4.1.-4.2).

appears from the redacted or edited opinion provided to this Group<sup>111</sup>, to have adopted a minimalist approach, relying heavily on its own decisions and apparently accepting the existence of licensing requirements for broadcasters as an adequate guarantee of diversity. Since the passing of the Competition Act, 2002, there have been only three mergers that went to Phase two and so required such an opinion to be formed<sup>112</sup>.

7.10 Concern has been expressed about the reliance of the Minister on the Competition Authority for guidance on the application of the relevant criteria. It has been suggested that this may give rise to a situation in which the effect of a merger on the advertising market is taken into account but the effect of the merger on readership or listenership can be overlooked.

7.11 The Competition Authority indicates that it has regard to ‘consumer welfare’. It sees the citizen principally in market terms and measures his or her welfare ‘primarily by whether prices in the market will rise post merger’. This is a specific application of a standard competition assessment test that asks whether or not notified mergers will substantially lessen competition<sup>113</sup>. It is a useful and important test but it is clearly not the only possible measure of the impact of a proposed media merger on a democracy.

7.12 Until now, the Competition Authority has prioritised its enquiries into what it describes as ‘the competition aspects’ of a notified merger, that is to say those aspects that relate most directly to business. It explains that,

*“The Authority’s view of the application by the Minister of the relevant criteria is drawn from the evidence, views and findings received by the Authority during its review of the competition aspects of the proposed transaction. The Authority does not undertake a separate or concurrent investigation relating to the*

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<sup>111</sup> Submission to the Advisory Group, p.11 (Annex 1: Illustrative example of the Authority’s opinion on the relevant criteria in a Phase 2 Media Merger’).

<sup>112</sup> M/03/033 SRH/FM104; M/05/025 UGC/NTL; M/07/040 Communicorp/SRH.

<sup>113</sup> Submission of the Competition Authority p. 2 (2.1-2.2).

*relevant criteria. The Authority's approach to expressing its opinion on the relevant criteria is consistent with a legal opinion it has obtained from Senior Counsel on the Authority's role in relation to section 23(7) of the Act."* <sup>114</sup>

7.13 Dublin Community TV accepts that certain issues relating to assessing the relevant criteria

*clearly go beyond the core remit but also the core competence of the Competition Authority and the Department for Enterprise, Trade and Employment, and relate to wider issues of broadcasting policy and regulation.... If a coherent approach is to be taken to this question, and we believe that achieving the public interest will demand a highly nuanced and coherent approach, then the 'criteria' and the mechanisms should be located with an authority/entity that has all the core competency requirements; and one that can meaningfully and directly take into account the views and needs of the community broadcasting sector.* <sup>115</sup>

7.14 In the Group's view the Competition Authority has a particular expertise in competition economics and ex-ante assessment of the likely effects of a merger on a defined product market. The Minister's role is quite different. The Minister's role is to protect the public interest in plurality and diversity in the media sector. The determination of the Competition Authority as to whether a merger (with or without conditions) is likely to substantially lessen competition in a market for goods and services is undoubtedly of assistance to the Minister in making his or her determination. However, beyond that it is hard to see how the Competition Authority in present circumstances can further assist the Minister in his or her function.

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<sup>114</sup> Submission of the Competition Authority, p. 7 (3.4, 3.6).

<sup>115</sup> Submission of Dublin Community TV, p.3.

7.15 These anomalies identified are entirely the product of grafting the Ministerial power to protect the public interest in media mergers onto the power of the Competition Authority to address the effect of mergers generally on competition. The Group recommends that these functions should be separated. The Competition Authority should confine itself to dealing with media mergers in the same way as it deals with all mergers. Meanwhile, the Minister should be provided with a statutory mechanism that enables him or her to protect the public interest in plurality and diversity. This mechanism should be efficient and transparent.

7.16 Nevertheless, even if this recommendation is implemented the Competition Authority will continue to play an important and influential role in media mergers. In the opinion of the Group, the Minister should request the Competition Authority to make special efforts to explain to citizens in a simple fashion the methods that it employs when arriving at a decision on whether or not to approve a merger. In doing so, the Competition Authority should identify clearly the limitations of its methods in the context of broader public policy considerations relating to the role of the media in a democracy and, specifically, in respect of the relevant criteria to which the Minister is obliged by law to have regard when making his decision on a notified merger. The purpose of doing so would be to address any concerns about the ideological implications of standard competition practice and to facilitate media literacy among citizens.

## **Oireachtas Supervision**

7.17 Clearly, the Minister is answerable to the Oireachtas for the exercise of all his/her powers. However, the current statutory provision in relation to the laying of Orders before the Houses of the Oireachtas is somewhat curious. Thus an Order by the Minister “*that the merger may be put into effect*” is an Order that must be laid before both Houses of the Oireachtas and may be “*annulled*” within twenty one sitting days. The consequence of annulment is that the determination of the Competition Authority has effect. However, an Order of the type mentioned does not detract in any way from the decision of

the Competition Authority. Earlier decisions by the Minister (e.g. not to exercise the power under Section 23(2) to direct the Competition Authority to carry out a full investigation in relation to the merger, or a decision by the Minister under Section 23(9)(b) following a full investigation that he or she does not propose making an Order in relation to the merger) are not subject to the same type of Oireachtas supervision.

7.18 If the Minister was to make an Order that the merger may not be put into effect, the decision of either House of the Oireachtas would be sufficient to reverse that decision and bring about a clearance of the merger (subject to any conditions that might have been attached by the Competition Authority or the BCI). The power given to the Oireachtas is therefore somewhat of a blunt instrument. If the Oireachtas was of the view that the merger could be cleared subject to conditions, as an alternative to its prohibition, it has no power to attach those conditions. Likewise, if the Minister cleared the merger subject to conditions a resolution of either House of the Oireachtas would in effect, be sufficient to wipe out all of the conditions attached by the Minister and bring about an unconditional clearance at Ministerial level (thus leaving only such conditions as might have been attached by the Competition Authority or the BCI).

7.19 Twenty one sitting days for both Houses of the Oireachtas can also, at some times of the year, amount to quite a long period within which a Ministerial decision would have a question mark over it. This can hardly be regarded as desirable.

7.20 The Group has concluded that this type of Oireachtas supervision is unnecessary, unworkable and undermines the efficiency of the system for business. The Minister's decision is subject to judicial review if it is in any way unlawful, irrational or procedurally improper. The normal outcome of such an application if successful would be to remit the matter to the Minister for a decision in accordance with law. In addition, the Minister is answerable to both Houses of the Oireachtas for the manner in which Ministerial power is exercised. While not in any way detracting from the desirability of general parliamentary oversight, there must be an end to administrative decision

making. The Group has concluded that the insertion of a further layer of (potential) decision making in a particular media merger is undesirable and can only contribute to the possibility of unpredictable and disproportionate interventions.

## **Ministerial Power to Seek Commitments**

7.21 The Competition Authority has been provided with a power to receive and seek commitments so as to address its concerns. The BCI has similar power. The Group considers this to be a very useful power. It contributes to the capacity of the decision maker to address its legitimate concerns while at the same time minimally interfering with property rights. Given the function of the Minister in relation to the protection of the public interest in diversity and plurality in the context of a media merger, it appears to us to be desirable that the Minister should have a similar power and should have power to incorporate such commitments into his or her decision thereby rendering them enforceable.<sup>116</sup>

## **The Mechanism**

7.22 As is clear from what we have said above, the Group believes that there should be a mechanism for Ministerial approval of media mergers. This mechanism should be separate to that for the clearance of mergers on competition grounds. Separating these functions demands that the category of media mergers notifiable to the Minister be defined. This raises the issue as to whether the categories of media merger notifiable to the Competition Authority should be aligned with the category notifiable to the Minister.

7.23 There are particular features of the media market in Ireland whereby public interest (and possibly competition) issues might arise in relation to certain media mergers below the threshold for notification to the Competition Authority. There needs to be some provision whereby these are subject to the requirement of Ministerial approval.

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<sup>116</sup> See Section 26 of the Act for the current provision.



7.24 This is recognised in the present legislation whereby, certain media mergers below the threshold are notifiable (by virtue of the Ministerial Order<sup>117</sup>) to the Competition Authority and through it to the Minister. There is thus, already in existence a very effective statutory mechanism for defining the category of media mergers that is subject to scrutiny by both the Competition Authority and the Minister. This category consists of (a) media mergers above the threshold specified in the Statute, and (b) the additional subset of media mergers below the threshold identified by the Minister in S.I. No. 122 of 2007. The result of this system is that media mergers that potentially raise competition/public interest concerns are defined and scrutinised by both the Competition Authority and the Minister.

7.25 We believe that it is important that in any case of a media merger coming before the Minister and in respect of which he or she might potentially exercise the statutory power, the Minister should have available a report from the Competition Authority on whether or not the proposed merger is likely to substantially lessen competition in markets for goods or services in the State.

7.26 Accordingly, we recommend that the definition of the category of media businesses coming under Ministerial scrutiny should continue to be dealt with via the mechanism of Section 18, sub-sections (5) and (6).

7.27 The retention of this mechanism means that it is relatively easy to define the category of media merger requiring notification to and approval by the Minister. That category is all media mergers requiring notification to the Competition Authority under Section 18(1) of the Act. Thus, all media mergers that are defined by Statute or Statutory Instrument, as requiring notification are reviewed by both the Minister and the Competition Authority.

7.28 In all cases, the Competition Authority should then follow its normal course of investigation and determination.

7.29 The Group believes it would create intolerable uncertainty if the Competition Authority's decision on the issue within its remit i.e. substantial lessening of

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<sup>117</sup>S.I. No 122 of 2007

competition was not binding on the Minister. Accordingly, and within the product market defined by the Competition Authority, but without prejudice to the Minister's power to approach market definition for the purposes of the public interest test in a different way, the determination of the Competition Authority as to whether or not the proposed merger or acquisition is likely to substantially lessen competition in the market for goods or services in the State, should be binding on the Minister.

7.30 The Minister should have power to enter into discussions with the applicants and to seek or receive commitments which could then be incorporated into the ultimate decision.

7.31 There will be cases when media mergers are notifiable to the Minister where the Minister can quickly see that the proposal gives rise to no concerns from a public interest perspective. There will be other cases where the Minister will need a more detailed review. The Group is of the opinion that the best way to deal with this is by way of a two Phase procedure similar to that operated by the Competition Authority.

7.32 In Phase One, the Minister should decide whether in the light of the decision of the Competition Authority and any commitments offered by the undertakings concerned the proposed transaction gives rise to real concerns that it might be contrary to the public interest in promoting diversity and plurality in media business in the State. In Phase Two, while preserving the possibility at any stage that the Minister would conclude that he or she no longer has such concerns in relation to the transaction and notify the parties accordingly thereby terminating the process, the Minister should consider the proposed transaction by applying to it the relevant statutory test having regard to the relevant criteria.

## **The times within which the Minister should make a decision**

7.33 The Group is conscious of the time that regulatory approval takes and the effect of delay on business. At the same time, a balance has to be struck between the requirements of business and the public interest in protecting plurality and diversity. The Group believes that in making a decision, either in Phase One or Phase Two, it is essential that the Minister have available the report of the Competition Authority. Balancing the interests concerned, the Group believes that an appropriate time limit for Phase One is thirty days after the date of notification of the media merger to the Minister or the decision of the Competition Authority (whichever is the later). If the Minister decides to proceed to Phase Two, we believe that the minimum period that can be fairly fixed for a proper consideration of the issues in all cases is four months from the date of the Phase One decision by the Minister and even this period, is dependent on the proper provision of information.

### **Consultative Panel**

7.34 The Group believes that it would be an advantage to the Minister in some media mergers to have advice on how the Minister should exercise his or her power in relation to a particular merger – if it was to proceed to Phase Two. That is not in any way to undermine the power of the Minister who would have regard not just to the advice of that group but also a range of other material (e.g. consultation with the Minister for Communications, Energy and Natural Resources, the decision of the Competition Authority, the decision of the BCI, submissions received etc) in making his or her decision. Nevertheless, the Group believes that it would be of assistance to the Minister in mergers in which he or she does not have the assistance of a decision of the BCI to have the views of an independent group of experts in law, journalism, the media, business or economics.

7.35 That gives rise to the question as to how this group should be constituted. The number of media mergers likely to proceed to Phase Two before the Minister is obviously so small as not to justify the establishment of such a Consultative Panel on a permanent basis. On the experience of media mergers to date

under the 2002 Act, it is possible that none of those would have proceeded to Phase Two before the Minister. Another reason why it would not be desirable to establish such a panel on a permanent basis is the possibility of a conflict of interest in relation to a particular media merger.

7.36 There are a number of statutory models that are of assistance. One such model is that of the Aviation Appeal Panel that may be established under Section 40 of the Aviation Regulation Act 2001. Under Section 40, the relevant Minister has power to establish an appeal panel to consider an appeal by a person against a determination of the Commission for Aviation Regulation. The panel consists of at least three but not more than five persons appointed by the Minister one of whom is designated by the Minister to be Chairperson. It determines its own procedure. Another example is that of the consultative panels established by Part VII C of the Central Bank Act 1942 as inserted by Section 17 of the Central Bank and Financial Services Authority of Ireland Act 2004. Unlike the Aviation Appeal Panel which is established for the purposes of hearing a specific appeal, the consultative panels are established on a permanent basis. Either way, it is important that such a panel be established on a statutory basis. Our recommendation is that the Minister should have power to establish a panel of not less than three and not more than five persons to advise in relation to a particular merger. We also recommend that the Minister should have power to fix the time within which he or she requires the Consultative Panel to report.

7.37 In the interests of transparency, we recommend that, subject to the protection of confidential and commercially sensitive information, a copy of the advice of the Consultative Panel should be provided to the notifying parties and published by the Department on its website as soon as practicable after receipt.

7.38 We envisage that the role of the Consultative Panel would be to advise the Minister how the “*relevant criteria*” should affect the exercise by the Minister of his or her powers in relation to the media merger.

7.39 We believe that it is important that this Consultative Panel be established on a statutory basis and that it should be appropriately remunerated for its work.

## **Consultation with Minister for Communications, Energy and Natural Resources**

7.40 The Minister for Communications, Energy and Natural Resources has important functions to discharge in the area of broadcasting. Media mergers will often involve issues of concern for aspects of Government policy for which he/she is responsible. We believe that in making a decision at Phase one and Phase two of the process that in relation to any broadcaster/broadcaster merger involving the holder of a broadcasting licence that the Minister, before making his/her decision, should consult with the Minister for Communications, Energy and Natural Resources. We believe that there should be a statutory provision to this effect and so recommend.

## **Provision of Information by Notifying Parties**

7.41 The Minister should be given statutory power to prescribe forms for the notification of a media merger to the Minister for clearance. These forms should be aimed at securing as much as possible of the information that the Minister needs in order to consider the application in the light of the relevant criteria. It should be possible to reduce the burden on business and avoid duplication of information by simply requiring the undertaking concerned to attach a copy of the notification to the Competition Authority or to undertake to supply that once filed. There should be a statutory obligation on the undertakings or individuals involved to promptly provide the Minister with copies of any additional information provided to the Competition Authority. Finally, there should be an over-riding statutory obligation on the undertakings and individuals concerned to provide full information on all circumstances that might impair media diversity or plurality should the merger or acquisition take place.

## **Publication of Information on Plurality in the Media Sector**

7.42 In a Council of Europe Report<sup>118</sup>, the Advisory Panel on Media Concentrations, Pluralism and Diversity Questions stated:-

*“The up-to-date collection and public access to economic information on providers and operators (turnover, audience share, etc) are absolutely necessary. Only on the basis of appropriate data is it possible to determine if media pluralism is vibrant or endangered. Such data should be collected and used in monitoring and as the basis for regulation and control of media concentration.”*

7.43 MediaForum, which is a national non-profit organisation<sup>119</sup> working to give people in Ireland the tools they need to understand, manage and create media in their lives, also sees merit in the publication of objective data relating to media:

*“MediaForum considers an awareness of title, brand and station ownership to be a pre-requisite information tool for the media literate citizen. MediaForum would like to suggest that the Advisory Group recommends that full, clear and easily accessible information regarding media ownership in Ireland is provided to its citizens. The mechanism to achieve this recommendation should be simple, sustainable, effective and to the benefit of all stakeholders involved. Possible solutions are:*

*Policy support to an academic or non-governmental organisation to perform a regular, frequent and continuous mapping audit of the media industry ownership particulars, with the data results provided online in a timely manner.*

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<sup>118</sup> Media Diversity in Europe – A report prepared by the Advisory Panel to the CDMM on Media Concentrations, Pluralism and Diversity Questions – Media Division – Directorate General of Human Rights – Strasbourg, December 2002 – Paragraph 95.

<sup>119</sup> CHY17984

*Direct provision of the media ownership particulars by a statutory agency, with the data results provided online in a timely manner.*

*An encouragement or imperative on media industry organisations to provide full and transparent details of their media ownership details on their relevant corporate websites and in their published corporate annual reports (if appropriate).’’<sup>120</sup>*

7.44 The Group acknowledges that at present, information regarding the ownership of broadcasting entities is available and accessible through the BCI.

7.45 Apart from the obligation imposed on the undertakings and individuals notifying the transaction, the Group believes that it is essential for the proper discharge of the Minister’s role and the protection of the public interest that there be publicly available information on issues relevant to media plurality. This is particularly important given the time limits applicable for a Ministerial decision. There is a considerable amount of data publicly available as to circulation, listenership and readership. There is also a considerable amount of information available in relation to ownership of media businesses in the State and the extent of cross ownership. The Group recommends that the Minister should make arrangements within his/her own Department and/or with the Department of Communications, Energy and Natural Resources, the BCI, and/or some outside body (e.g. the Competition Authority or the ESRI) to assemble and collate information on a number of defined matters relevant to plurality. The information contained in this report particularly that contained in the PWC Report at Appendix C might be a useful starting point. This information should be laid before the Houses of the Oireachtas and published electronically by or on behalf of the Minister at least on an annual basis. The Group believes that it is critical to the application of the public interest test and to the transparency of the process that this type of information is publicly available and reasonably up to date.

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<sup>120</sup> Submission of MediaForum, pp. 1-2.

7.46 The Group also recommends that the Minister should make arrangements with an outside body (e.g. the ESRI) to collate defined information relevant to diversity of content of media business in the State. The Group believes that it would assist the Minister in the discharge of his/her function to commission longitudinal studies to provide an insight into how diversity of content is developing over time. This information should be published in the form of a report and laid before the Houses of the Oireachtas at least annually. Depending on the body retained to collate the defined information on spread of ownership and control, all of this information might conveniently be combined in one report.

### **Submissions**

7.47 As noted, Section 23(6) of the Act provides that the Minister may consider submissions or observations from persons claiming to be interested as he or she thinks proper. In a matter relating to the public interest we believe that this provision is inadequate and a greater level of public participation should be encouraged. Accordingly, we recommend that this provision be amended so as to require that the Minister, if he or she proceeds to Phase Two, invite submissions from the undertakings concerned and members of the public and have regard to them in making his or her decision. We do not believe that this is unduly onerous since it should be perfectly possible for Departmental officials to prepare for the Minister a summary of the submissions and present those to the Minister with the submissions themselves (in the event that the Minister wishes to refer to the original documents).

7.48 Consistent with the ultimate decision being taken by the Minister in the public interest we believe that it is primarily the function of the civil service to assemble all the relevant information, analyse it, and advise the Minister as to how he or she should exercise the powers.

7.49 McCann FitzGerald also submit that,

*“...greater transparency in the review procedure (including, for instance, provision of fair opportunity for the parties to react to*



*and contest preliminary conclusions of the reviewing agency) would be desirable and might reduce the risk of legal challenge to a prohibition decision.”<sup>121</sup>*

7.50 The Group agrees with this submission. Ideally, the invitation to make submissions should be published shortly after the Minister decides to proceed to Phase Two. One month appears to the Group to be an appropriate period to allow for the public and the undertakings concerned to make submissions. This would mean that the submissions would be received by the beginning of month two of Phase two. These submissions in the Group’s opinion should be made available to the Consultative Panel. Ideally, the Consultative Panel should aim to have its advices to the Minister available by the second month of the process. By the end of the third month of the Phase Two process, the Minister should be in a position to issue to the undertakings concerned a notice of his or her proposed decision. The Group believes that in fairness the undertakings concerned should have an opportunity of making further submissions on the proposed decision and a period of two weeks would appear to be reasonable within which such submissions should be made. This would allow the Minister a further period of two weeks within which to make a final decision in the light of those submissions.

7.51 It must be recognised that this time frame is tight. Nevertheless, it is necessary to balance the needs of good administration with the needs of business for certainty and expedition.

7.52 In the light of the experience to date, the Group expects that only a limited number of media mergers will proceed to Phase two but insofar as they do, it is important that they be fully considered.

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<sup>121</sup> Submission of McCann FitzGerald, p. 5.

## **Reasons**

7.53 Section 23(5) of the Act provides that the Minister shall publish, with due regard for commercial confidentiality, a statement of the reasons for his or her making an Order within two weeks after the date on which the Order is made. We believe that this is an important provision in the interests of transparency and as a valuable provision in giving guidance to the public about how the Ministerial power is exercised. We believe however that it needs to be supplemented by a requirement (which is not in the Statute at present) that on making his/her decision the Minister should inform the notifying parties of his/her decision and the reasons therefor.

## **Support for the Ministerial Decision**

7.54 We believe that the Minister will, through the availability of the determination of the Competition Authority, the decision of the BCI (if any), the submissions of members of the public, the opinion of the Consultative Panel and the Minister's consultation with the Minister for Communications, Energy and Natural Resources, have considerable information available to enable him or her to reach a decision. However, as we have previously emphasised we believe that this decision is fundamentally a question of judgment to be made by the nominated representative of the Government on behalf of the State i.e. the Minister. The Minister should have available to him or her within his own Department, supplemented as necessary by the Department of Communications, Energy and Natural Resources, the expertise to receive and process these notifications according to a consistent standard.

## **Guidelines**

7.55 A number of parties making submissions have called for greater transparency and the publication of guidance for parties contemplating a merger. Thus, for example,

*“In relation to transparency, NNI submits that the basis on which the Minister makes his/her decision should be better defined and that the Minister should establish guidelines clarifying how the relevant criteria are to be applied.”<sup>122</sup>*

7.56 The Group believes that all parties involved in a notified merger, as well as society at large, can benefit from greater transparency on the part of the Minister. The Group recommends that the Minister publish a detailed statement of his/her reasons in respect of any decision relating to a notified merger.

7.57 It is normal for regulatory bodies such as the BCI in this jurisdiction or Ofcom<sup>123</sup> to issue guidelines or establish rules in relation to concentration of media ownership and in particular, cross ownership rules. The United States, Australia, France, Luxembourg, and The Netherlands are amongst the countries having such rules.

7.58 The Group does not believe that the advantages of certainty associated with a priori or “*bright line*” rules outweigh the advantages of a more flexible approach. Undoubtedly, there are advantages to giving guidance to the business community on the levels of ownership or cross ownership of certain media businesses that are likely to be considered problematic from a public interest view point. Nevertheless, there should in the Group’s view be flexibility to address each case on its own merits. The Group believes that there would be considerable merit in guidelines being issued by the Minister indicating the approach that will be taken to media mergers notified to the Minister for approval and that those guidelines should fix levels of ownership and cross ownership that are likely to give rise to problems from the point of view of diversity and plurality. We recommend that the Minister be given a Statutory power to issue such guidelines and that the Statutory provision should require the Minister first to consult with the Minister for Communications, Energy and Natural Resources and the BCI in relation to the

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<sup>122</sup> Submission, p. 3.

<sup>123</sup> See in particular Ofcom review of media ownership rules 14<sup>th</sup> November 2006

making of such guidelines. In the case of such Guidelines, we consider that it is appropriate that they should be issued by Ministerial Order, and that provisions as to amendment and the laying of those Orders before each House of the Oireachtas (similar to the provisions currently contained in Section 18(6) and (7) of the Act) should be incorporated.

## **8. Chapter 8 - Recommendations**

### **Recommendation No. 1 : – Definition of plurality**

8.1 There should be a statutory definition of plurality of the media. We would tentatively recommend the following:-

#### **Plurality of the media**

*“Plurality of the media includes both diversity of ownership and diversity of content.”*

#### **Diversity of Ownership**

*“Diversity of ownership means the spread of ownership and control of media businesses in the State amongst individuals and other undertakings linked to the market share of those media businesses as measured by listenership, readership or other appropriate methods.”*

#### **Diversity of Content**

*“Diversity of content means the extent to which the broad diversity of views and cultural interests prevalent in Irish society is reflected through the activities of media businesses in the State, including their editorial ethos, content and sources. “Views” includes but is not limited to news and current affairs.”*

### **Recommendation No. 2:- A Test**

8.2 The Competition Act, 2002 should be amended to incorporate a statutory test to be applied by the Minister in the discharge of his or her function in relation to media mergers. The Group suggests the following formulation:-

*“Whether the result of the media merger is likely to be contrary to the public interest in protecting plurality in media business in the State.”*

### **Recommendation No. 3: – Relevant Criteria**

8.3 The definition of “*relevant criteria*” in Section 23(10) of the Act should be replaced by the following:-

*“(a) the likely effect of the media merger on plurality, which includes both diversity of ownership and diversity of content,*

*(b) the undesirability of allowing any one individual or undertaking to hold significant interests within a sector or across different sectors of media business in the State,*

*(c) the consequences for the promotion of plurality in media business in the State of intervening to prevent the media merger or attach conditions to the approval of the media merger,*

*(d) the adequacy of other mechanisms to protect the public interest in plurality if the Minister was not to exercise his or her power under the Act,*

*(e) the commitments that the undertakings are prepared to offer and which might be effectively incorporated in any decision by the Minister,*

*(f) the extent to which the public interest can be secured by the imposition of any conditions by the Minister under Section 23(4)(b) of the Act.”*

8.4 In addition, the Minister should have regard to the following matters:-

- (a) the Guidelines (if any) on plurality in the media issued by the Minister,
- (b) the decision of the Competition Authority,
- (c) the decision of the Broadcasting Commission of Ireland (if any),
- (d) the advices of the Consultative Panel (if any),

- (e) the submissions received as a result of the public consultation,
- (f) such other matters relevant to the “*relevant criteria*” as he sees fit.

**Recommendation No 4 :- Ongoing Collection and Periodic Publication of Information and Employment of concrete indicators in relation to media plurality in the State**

- 8.5 The Minister should make arrangements whether within the Department of Enterprise, Trade and Employment or with the Department of Communications, Energy and Natural Resources, or an outside body (e.g. the Competition Authority or the ESRI) to collate defined information relevant to the spread of ownership and control of media business in the State, and this information should be published in the form of a report and laid before the Houses of the Oireachtas at least annually.
- 8.6 The Minister should make arrangements with an outside body (e.g. the ESRI) to collate defined information relevant to diversity of content of media business in the State, and this information should be published in the form of a report and laid before the Houses of the Oireachtas at least annually.

**Recommendation No. 5 : – Continue the involvement of the Competition Authority in the assessment of the effect on competition of a wide category of media mergers. Remove the involvement of the Competition Authority in the application of the Public Interest Test**

- 8.7 We recommend that the Competition Authority should continue to be involved in the assessment of the competition effects (i.e. whether the result of the merger would be to substantially lessen competition in markets for goods or services within the State) of a wide category of media mergers and accordingly, that SI No. 122 of 2007 (or such variant of it as deemed appropriate by the Minister) should be retained.

8.8 We recommend that the Competition Authority should neither be required to form nor to furnish an opinion on the application of the relevant criteria. The Competition Authority has made it clear that it does not have the requisite expertise. We believe that it would be a distraction from the defining function of the Competition Authority in mergers generally for it to have any involvement in the application of the public interest test. Accordingly, we recommend that Section 23(7) and (8) of the Act be repealed. Finally, we recommend that any decision of the Competition Authority as to whether the result of the merger or acquisition would be to substantially lessen competition in such markets for goods or services in the State as were used by the Competition Authority for the purposes of its determination, should be binding on the Minister.

8.9 We recommend that the Minister request the Competition Authority to make special efforts to explain to citizens in a simple and understandable fashion, the criteria and methods that it employs, when arriving at a decision on whether or not to approve a media merger, in addition to giving its reasons for each decision.

**Recommendation No. 6 – Separate system of notification of media mergers to the Minister for clearance.**

8.10 We recommend that there should be a separate system of notification of media mergers to the Minister for clearance. We recommend the following as an outline of such a system:-

- (a) media mergers that are notifiable to the Competition Authority or the European Commission should also be notified to the Minister for approval,
- (b) it should not be possible to lawfully implement a media merger except in accordance with a decision of the Minister,



- (c) the Minister should continue to develop the expertise within the Department of Enterprise, Trade and Employment to handle the clearance of media mergers on public interest grounds, and in this respect the Minister should give consideration to including the staff of the Department of Communications, Energy and Natural Resources, within that pool of expertise,
- (d) the Minister should be given power to prescribe forms to gather required information from individuals and undertakings notifying media mergers and to fix fees to recover a contribution towards the cost of operating the system of Ministerial clearance,
- (e) applicants for Ministerial clearance of a media merger should be entitled to propose commitments which the Minister should be entitled to incorporate in a decision making them legally binding,
- (f) in Phase One of the media clearance procedure which should last until thirty days after the date of notification to the Minister or the decision of the Competition Authority/EU Commission/BCI (whichever is the later), the Minister should, having consulted in the case of a broadcaster/broadcaster merger with the Minister for Communications, Energy and Natural Resources and, if he/she deems it appropriate, the BCI, decide either:-
  - (i) that he/she is not concerned that the media merger might contravene the public interest test – in which case he/she should issue a decision approving the media merger,
  - (ii) that in the light of commitments offered by the undertakings he/she is not concerned that the media merger might contravene the public interest test – in which case he/she should issue a decision approving the media merger subject to the commitments which should be incorporated as conditions in the decision, or

- (iii) that he/she is concerned that the media merger might contravene the public interest test – in which case he/she should proceed to Phase two.
  
- (g) In Phase two which should last no longer than four months commencing on the date of the relevant decision at Phase one, the Minister should
  - (i) issue a call for public submissions and should be obliged to have regard to the submissions received,
  - (ii) establish a Consultative Panel and be obliged to consider the advice of the panel,
  - (iii) consult with the Minister for Communications, Energy and Natural Resources,
  - (iv) issue to the undertakings concerned a preliminary decision for comment.
  
- (h) At any stage in the process the Minister should be empowered to bring the Phase two procedure to a halt by a decision that he/she no longer has concerns that the media merger might contravene the public interest test.
  
- (i) The Minister should, through the Department, have power to enter into discussions with the undertakings involved in the media merger with a view to obtaining commitments designed to address concerns that the Minister may have in relation to the impact of the media merger on the diversity and plurality in the media business in the State.

- (j) At any stage in the process the Minister should be entitled to look for further information and time limits should be extended by the time taken to provide the information sought.
- (k) At all times between notification of a media merger to the Minister, the Competition Authority or the BCI and the final decision of the Minister, the Minister, the Competition Authority and the BCI should have power to share information in relation to the proposed transaction.
- (l) The result of Phase two, unless brought to a halt in the intervening period by a Ministerial decision, would be a decision as per the existing Section 23(4) of the Act namely that (a) the merger may be put into effect (b) the merger may be put into effect subject to specified conditions being complied with, or (c) that the merger may not be put into effect.
- (m) The Minister should be obliged to publish reasons for his/her decision at the time when the decision is made.
- (n) There should be no need for confirmation of the Order of the Minister by the Oireachtas.
- (o) There should be an effective mechanism for enforcement of commitments made and accepted and in respect of conditions attached by the Minister to a merger approval.

8.11 In line with our recommendation to separate the functions of the Competition Authority and the Minister, we recommend that the Minister should not have power to direct the Competition Authority to proceed to Phase Two. Accordingly, we recommend that Section 23(2) of the Act be repealed.

### **Recommendation No. 7:- Obligation to provide information**

8.12 There should be an obligation imposed by Statute on parties to a media merger to provide full information to the Minister on all circumstances that might impair media diversity or plurality in the State, and to notify any changes in information provided to the Minister. There should be appropriate penalties for non-compliance. Non-compliance should be determined by an objective standard of the reasonableness of the view taken by the individual or undertaking concerned.

### **Recommendation No. 8 :- Publication of Guidelines**

8.13 The Minister should publish Guidelines to assist undertakings involved in media mergers in knowing how the Minister would in general apply the relevant criteria.

8.14 These Guidelines should include guidelines on levels of media ownership and in particular cross media ownership that would, subject to particular circumstances, prima facie be regarded as unacceptable.

8.15 These Guidelines on levels of ownership should not be regarded as fixed or bright line rules but should depend on consideration of the particular circumstances of any notified media merger.

8.16 The Minister should consult with the Minister for Communications, Energy and Natural Resources and the BCI in the making of such Guidelines.

8.17 The Guidelines should be issued by way of Ministerial Order, should be capable of amendment or revocation and should be laid before each House of the Oireachtas for approval.

8.18 The Minister should include in such Guidelines concrete indicators of diversity of ownership and diversity of content such as those indicated in

Chapter 6 of this Report and invite undertakings to a merger to address such issues in their merger approval application.

### **Recommendation No. 9 :- Establishment of a Consultative Panel**

8.19 Apart from the case of broadcaster/broadcaster mergers where the Minister will have the decision of the BCI, the Group believes that it would assist the Minister and promote transparency if a three to five person Consultative Panel could be established who would provide advice to the Minister on a media merger in the event of the Minister deciding to proceed to Phase two. The Consultative Panel should be established on a statutory basis but should be appointed only for the purposes of advising on the application of the “*relevant criteria*” to a particular media merger. In this respect it would be similar to the Aviation Appeal Panel under the Aviation Regulation Act of 2001. The Minister should have wide discretion as to the persons that he or she would appoint to the Consultative Panel so as to ensure that it was representative of relevant interests. Subject to appropriate steps to protect confidential commercially sensitive information, the advice of the Consultative Panel should be published. The Minister should have power to fix the time within which he or she requires the Consultative Panel to report to him/her.

### **Recommendation No. 10 : – The Internet and the Definition of “*Media Business*”**

8.20 The Group recommends that Section 23(10) of the Act should be amended to include the words “*including the publication of such material on the Internet*” after the words “*a business of the publication of newspapers or periodicals consisting substantially of news and comments on current affairs*” being Item (a) under the definition of “*Media Business*” in Section 23 (10) of the Act.

The Group also recommends that the definition of “*Broadcast Service*” should be amended so as (a) to remove the absolute exclusion of Internet services from the definition of “*Broadcast Service*” and (b) to include in the definition of “*Broadcast Service*” the provision of audio-visual material over the internet which is:-

- Under the editorial control of the service provider delivering the service;
- primarily economic in nature;
- intended for reception by, or could have a clear impact on, a significant proportion of the general public; and
- in competition with or akin to (i) newspapers or periodicals or (ii) broadcast services transmitted or relayed by the means specified in the existing definition.

8.21 On the other hand, the definition of “*media business*” should be adjusted so as to exclude from its definition material which is merely published or broadcast incidentally in the State. The concept of “*carries on business*” which is of wider import and applicable to all mergers should be more specifically defined to address the problems that have arisen in practice.

### **Recommendation No. 11: Recognition of the Role of Media in a Democracy**

8.22 The important role of the media in a democracy should be recognised by Statute ideally, in the Long Title to the Act containing the relevant provisions on media mergers.

## **Appendix A:**

# **Competition Act 2002 - Part 3 Mergers and Acquisitions**

**PART 3**  
**MERGERS AND ACQUISITIONS**  
**COMPETITON ACT 2002**

**16. Mergers and acquisitions for the purposes of Act.**

(1) For the purposes of this Act, a merger or acquisition occurs if—

- (a) 2 or more undertakings, previously independent of one another, merge, or
- (b) one or more individuals or other undertakings who or which control one or more undertakings acquire direct or indirect control of the whole or part of one or more other undertakings, or
- (c) the result of an acquisition by one undertaking (the “first undertaking”) of the assets, including goodwill, (or a substantial part of the assets) of another undertaking (the “second undertaking”) is to place the first undertaking in a position to replace (or substantially to replace) the second undertaking in the business or, as appropriate, the part concerned of the business in which that undertaking was engaged immediately before the acquisition.

(2) For the purposes of this Act, control, in relation to an undertaking, shall be regarded as existing if, by reason of securities, contracts or any other means, or any combination of securities, contracts or other means, decisive influence is capable of being exercised with regard to the activities of the undertaking and, in particular, by—

- (a) ownership of, or the right to use all or part of, the assets of an undertaking, or
- (b) rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of an undertaking.

(3) For the purposes of this Act, control is acquired by an individual or other undertaking if he or she or it—

- (a) becomes holder of the rights or contracts, or entitled to use the other means, referred to in *subsection (2)*, or
- (b) although not becoming such a holder or entitled to use those other means, acquires the power to exercise the rights derived therefrom.

(4) The creation of a joint venture to perform, on an indefinite basis, all the functions of an autonomous economic entity shall constitute a merger falling within *subsection (1) (b)*.

(5) In determining whether influence of the kind referred to in *subsection (2)* is capable of being exercised regard shall be had to all the circumstances of the matter and not solely to the legal effect of any instrument, deed, transfer, assignment or other act done or made.

(6) For the purposes of this Act, a merger or acquisition shall not be deemed to occur if—

- (a) the person acquiring control is a receiver or liquidator acting as such or is an underwriter or jobber acting as such, or
- (b) all of the undertakings involved in the merger or acquisition are, directly or indirectly, under the control of the same undertaking, or



- (c) control is acquired solely as a result of a testamentary disposition, intestacy or the right of survivorship under a joint tenancy, or
- (d) control is acquired by an undertaking referred to in *subsection (7)* in the circumstances specified in *subsection (8)*.

(7) The undertaking mentioned in *subsection (6) (d)* is an undertaking the normal activities of which include the carrying out of transactions and dealings in securities for its own account or for the account of others.

(8) The circumstances mentioned in *subsection (6) (d)* are that the control concerned is constituted by the undertaking's holding, on a temporary basis, securities acquired in another undertaking and any exercise by the undertaking of voting rights in respect of those securities, whilst that control subsists, is for the purpose of arranging for the disposal, within the specified period, of all or part of the other undertaking or its assets or securities and not for the purpose of determining the manner in which any activities of the other undertaking, being activities that could affect competition in markets for goods or services in the State, are carried on.

(9) In *subsection (8)* "specified period" means—

- (a) the period of 1 year from the date on which control of the other undertaking was acquired, or
- (b) if in a particular case the undertaking shows that it is not reasonably possible to effect the disposal concerned within the period referred to in *paragraph (a)*, within such longer period as the Authority determines and specifies with respect to that case.

#### **17. Application of sections 18 to 22**

*Sections 18 to 22* are subject to *section 23* (which provides for additional procedures in the case of a media merger).

#### **18. Obligation to notify certain mergers and acquisitions.**

(1) Where a merger or acquisition is agreed or will occur if a public bid that is made is accepted and—

- (a) in the most recent financial year—
  - (i) the world-wide turnover of each of 2 or more of the undertakings involved in the merger or acquisition is not less than €40,000,000,
  - (ii) each of 2 or more of the undertakings involved in the merger or acquisition carries on business in any part of the island of Ireland, and
  - (iii) the turnover in the State of any one of the undertakings involved in the merger or acquisition is not less than €40,000,000, or
- (b) the merger or acquisition falls within a class of merger or acquisition specified in an order under *subsection (5)*,

each of the undertakings involved in the merger or acquisition shall notify the Authority in writing of the proposal to put the merger or acquisition into effect, and provide full details thereof, within 1 month after the conclusion of the agreement or the making of the public bid.

(2) For the purpose of *subsection (1)*—

(a) “turnover” does not include any payment in respect of value-added tax on sales or the provision of services or in respect of duty of excise,

(b) subject to *paragraph (c)* an undertaking shall not be deemed to be involved in a merger or acquisition by virtue only of its being the vendor of any securities or other property involved in the merger or acquisition, and

(c) in relation to a merger or acquisition that will occur by reason of the acquisition concerned being an acquisition referred to in *section 16(1) (c)*—

(i) *subparagraphs (i) and (iii) of paragraph (a) of subsection (1)*, in their application to the second-mentioned undertaking in *section 16(1) (c)*, shall apply as if the references in them to the world-wide turnover and turnover in the State were, in relation to that undertaking, references, respectively, to the world-wide turnover and turnover in the State generated from the assets of that undertaking that are the subject of the acquisition mentioned in *section 16(1) (c)*, and

(ii) notwithstanding *paragraph (b)*, that second-mentioned undertaking shall, for the purposes of *paragraph (a) or (b) of subsection (1)* but not so as to place on it an obligation to notify the Authority of the proposal to put the merger or acquisition into effect, be deemed to be involved in the merger or acquisition.

(3) If—

(a) 2 or more undertakings agree to a merger or acquisition, or

(b) a merger or acquisition will occur if a public bid that is made is accepted, being in either case a merger or acquisition to which *subsection (1)* does not apply, any of the undertakings which have agreed to or are involved in the merger or acquisition may notify the Authority in writing of the proposal to put the merger or acquisition into effect, and provide full details thereof, within 1 month after the conclusion of the agreement or making of the bid.

(4) Nothing in this section or any other provision of this Act prejudices the operation of Council Regulation (EEC) No. 4064/89 on the control of concentrations between undertakings.

(5) Where he or she is of opinion that the exigencies of the common good so warrant, the Minister may, after consultation with the Authority, by order specify a class or classes of merger or acquisition for the purposes of *subsection (1) (b)*.

(6) The Minister may by order amend or revoke an order under *subsection (5)* or a previous order under this subsection.

(7) Every order under this section shall have effect on and from the date on which it is made and shall be laid before each House of the Oireachtas as soon as may be after it is made; if a resolution confirming the order is not passed by each such House within the next 21 days after that House has sat after the order is laid before it, the order shall lapse, but without prejudice to the validity of anything previously done thereunder.

(8) A notification in accordance with this section shall be accompanied by such fee as may be prescribed and different fees may be prescribed for different classes of notification; if the notification is not accompanied by that fee the notification shall be invalid.

(9) Where there is a contravention of *subsection (1)* or *section 20(2)* the person in control of an undertaking which has failed to notify the Authority within the specified period or failed to supply the information required within the period specified by the Authority, as the case may be, shall be guilty of an offence and shall, subject to *subsection (10)*, be liable—

- (a) on summary conviction, to a fine not exceeding €3,000,
- (b) on conviction on indictment, to a fine not exceeding €250,000.

(10) *Subsection (9)* operates so that if the contravention concerned continues one or more days after the date of its first occurrence, the person referred to in that subsection is guilty of a separate offence under that subsection for each day that the contravention occurs; but in respect of the second or subsequent offence of which he or she is guilty by reason of that continued contravention, *subsection (9)* shall have effect as if—

- (a) in *paragraph (a)*, “€300” were substituted for “€3,000”,
- (b) in *paragraph (b)*, “€25,000” were substituted for “€250,000”.

(11) For the purposes of *subsection (9)* the person in control of an undertaking is—

- (a) in the case of a body corporate, any officer of the body corporate who knowingly and wilfully authorises or permits the contravention,
- (b) in the case of a partnership, each partner who knowingly and wilfully authorises or permits the contravention,
- (c) in the case of any other form of undertaking, any individual Pt.3 S.18 in control of that undertaking who knowingly and wilfully authorises or permits the contravention.

(12) A notification for the purposes of *subsection (1)* or *(3)* shall not be valid where any information provided or statement made under *subsection (1)* or *(3)* or *section 20(2)* is false or misleading in a material respect, and any determination under this Part made on foot of such notification is void.

(13) The transmission to the Authority by the Commission of a copy of a notification made to the Commission under Council Regulation (EEC) No. 4064/89 on the control of concentrations between undertakings shall constitute a notification under *subsection (1)* in relation to the merger or acquisition concerned.

(14) Irrespective of the date on which the Commission transmits a copy of the notification referred to in *subsection (13)*, the date of receipt by the Authority of the Commission’s decision under Council Regulation No. 4064/89 in relation to the merger or acquisition, the subject of the notification, shall be deemed to be the date of the notification for the purposes of this Act.

**19. Limitation on merger or acquisition being put into effect.**

(1) A merger or acquisition to which *paragraph (a) or (b) of section 18(1)* applies, or which is referred to in *subsection (3) of section 18* and has been notified to the Authority in accordance with that subsection, shall not be put into effect until—

(a) subject to *subsection (3)*, the Authority, in pursuance of *section 21 or 22*, has determined that the merger or acquisition may be put into effect, or

(b) the Authority has made a conditional determination in relation to the merger or acquisition, or

(c) subject to *subsection (4)*, the period specified in *subsection (2) of section 21* has elapsed without the Authority having informed the undertakings which made the notification concerned of the determination (if any) it has made under *paragraph (a) or (b) of that subsection (2)*, or

(d) subject to *subsection (5)*, 4 months after the appropriate date have elapsed without the Authority having made a determination under *section 22* in relation to the merger or acquisition,

whichever first occurs.

(2) Any such merger or acquisition which purports to be put into effect, where that putting into effect contravenes *subsection (1)*, is void.

(3) Notwithstanding *subsection (1) (a)*, the determination referred to in that provision shall not operate to permit the merger or acquisition concerned to be put into effect if the merger or acquisition is not put into effect before the expiry of the period of 12 months after the date on which the determination is made.

(4) Notwithstanding *subsection (1) (c)*, the failure by the Authority to inform the undertakings concerned of the matter referred to in that provision shall not operate to permit the merger or acquisition concerned to be put into effect if the merger or acquisition is not put into effect before the expiry of the period of 13 months after the appropriate date.

(5) Notwithstanding *subsection (1) (d)*, the absence of a determination by the Authority in the circumstances referred to in that provision shall not operate to permit the merger or acquisition concerned to be put into effect if the merger or acquisition is not put into effect before the expiry of the period of 16 months after the appropriate date.

(6) In this section “appropriate date” means—

(a) unless *paragraph (b)* applies, the date of receipt by the Authority of the notification of the merger or acquisition concerned under *section 18*,

(b) if the Authority has, under *section 20(2)*, made, within 1 month from the date of receipt by it of the notification of the merger or acquisition concerned under *section 18*, a requirement or requirements of one or more of the undertakings concerned—

(i) the date on which the requirement is complied with or, in case 2 or more requirements are made and each is complied

with, whichever of the dates on which the requirements are complied with is the later or latest,

(ii) where the requirement is not complied with or each of the 2 or more requirements is not complied with, the date immediately following the expiry of the period specified in the requirement or, as the case may be, the date immediately following the expiry of whichever of the respective periods specified in the requirements is the last to expire, or

(iii) in case 2 or more requirements are made but one or more but not all of them are complied with, the later or latest of the following dates, namely the dates provided by applying—

(I) *subparagraph (i)* to the requirement or requirements complied with, and

(II) *subparagraph (ii)* to the requirement or requirements not complied with.

(7) The reference in the definition of “appropriate date” in *subsection (6)* to the period specified in a requirement is a reference to the period specified in the requirement as being the period within which the information concerned shall be supplied.

(8) For the purpose of the reference in *subsection (6)*, and in any other provision of this Act, to the date on which the Authority receives a notification under *section 18*, if a single notification is not made by all the undertakings concerned, the said reference shall be construed as a reference to the later or latest of the dates on which a notification of the merger or acquisition concerned under *section 18* is received by the Authority.

(9) *Subsection (8)* is without prejudice to *section 18(14)*.

## **20. Examination by the Authority of notification.**

(1) In respect of a notification received by it, the Authority—

(a) shall, unless the circumstances involving the merger or acquisition are such that the Authority considers it would not be in the public interest to comply with this paragraph—

(i) cause a notice of the notification to be published within 7 days after the date of receipt of it,

(ii) consider all submissions made, whether in writing or orally, by the undertakings involved in the merger or acquisition or by any individual or any other undertaking,

(b) may enter into discussions with the undertakings involved in the merger or acquisition or with any individual or any other undertaking with a view to identifying measures which would ameliorate any effects of the merger or acquisition on competition in markets for goods or services, and

(c) shall form a view as to whether the result of the merger or acquisition would be to substantially lessen competition in markets for goods or services in the State.

(2) Where the Authority is of the opinion that, in order to consider for the purposes of this Part a merger or acquisition, it requires further information it may, by notice in writing served on the undertaking, require any one or more of the undertakings concerned to supply to it within a specified period specified information, and an undertaking of whom such a requirement is made shall comply with it.

(3) In the course of the Authority's activities under *subsection (1) (b)*, any of the undertakings involved in the merger or acquisition concerned may submit to the Authority proposals of the kind mentioned in *subsection (4)* with a view to the proposals becoming binding on it or them if the Authority takes the proposals into account and states in writing that the proposals form the basis or part of the basis of its determination under *section 21* or *22* in relation to the merger or acquisition.

(4) The proposals referred to in *subsection (3)* are proposals with regard to the manner in which the merger or acquisition may be put into effect or to the taking, in relation to the merger or acquisition, of any other measures referred to in *subsection (1) (b)*.

## **21. Determination of issues concerned without full investigation, etc**

(1) In this section "appropriate date" has the same meaning as it has in *section 19*.

(2) In respect of a notification received by it, the Authority shall, within 1 month after the appropriate date, inform the undertakings which made the notification and any individual or any other undertaking from whom a submission concerning the notification was received of whichever of the following determinations it has made, namely—

(a) that, in its opinion, the result of the merger or acquisition will not be to substantially lessen competition in markets for goods or services in the State and, accordingly, that the merger or acquisition may be put into effect, or

(b) that it intends to carry out an investigation under *section 22* in relation to the merger or acquisition.

(3) Where the Authority makes a determination referred to in *paragraph (a)* or *(b)* of *subsection (2)*, it shall publish that determination, with due regard for commercial confidentiality, within 2 months after the making of the determination.

(4) If any of the undertakings which have made the notification concerned submits to the Authority proposals to which *section 20(3)* applies, then *subsection (2)* shall have effect as if "45 days" were substituted for "1 month" in that subsection.

## **22. Determination of issues concerned on foot of full investigation.**

(1) In this section "appropriate date" has the same meaning as it has in *section 19*.

(2) Having considered a notification made to it, the Authority may decide that it shall carry out an investigation (in this section referred to as a "full investigation") in relation to the merger or acquisition concerned.

(3) On completion of a full investigation in relation to the merger or acquisition concerned, the Authority shall make whichever of the following determinations it considers appropriate, namely that the merger or acquisition—

(a) may be put into effect,

(a) may not be put into effect, or

(c) may be put into effect subject to conditions specified by it being complied with, on the ground that the result of the merger or acquisition will or will not, as the case may be, be to substantially lessen competition in markets for goods or services in the State or, as appropriate, will not be to substantially lessen such competition if conditions so specified are complied with.

(4) Where the Authority makes a determination under *subsection (3)*, it shall reduce the determination to writing (and the determination in that form is referred to in *paragraph (a)* and *subsection (7)* as a “written determination”) and—

(a) furnish to the undertakings which made the notification a copy of the written determination within 4 months after the appropriate date, and

(b) publish the determination, with due regard for commercial confidentiality, within 1 month after the making of the determination.

(5) A determination under *subsection (3) (c)* that the merger or acquisition may be put into effect subject to specified conditions being complied with is referred to in this section as a “conditional determination”.

(6) A conditional determination shall include a condition requiring the merger or acquisition to be put into effect within 12 months after the making of the determination.

(7) A written determination under *subsection (3)* shall state the reasons for its making and shall include a report in relation to the full investigation.

(8) Before making a determination under *subsection (3)*, the Authority shall have regard to any relevant international obligations of the State.

### **23. Provisions with regard to media mergers.**

(1) Within 5 days after the receipt by it of a notification in relation to a media merger, the Authority shall—

(a) forward a copy of the notification to the Minister, and

(b) notify the undertakings involved in the merger that it considers the merger to be a media merger.

(2) If the Authority makes a determination referred to in *section 21(2) (a)* in relation to a media merger it shall, immediately after doing so, inform the Minister of that fact and the Minister may, notwithstanding that determination, within 10 days after the date on which that determination is made, direct the Authority to carry out an investigation under *section 22* in relation to the merger.

(3) Upon such a direction being given—

- (a) the determination referred to in *section 21(2) (a)* shall not operate to permit the media merger to be put into effect, and
  - (b) the Authority shall notify the undertakings involved in the merger that an investigation under *section 22* in relation to the merger will be carried out pursuant to the direction.
  
- (4) Where the Authority makes a determination under *paragraph (a) or (c) of subsection (3) of section 22* in relation to a media merger it shall, immediately after doing so, inform the Minister of the determination and the Minister may within 30 days after the date of the making of that determination, notwithstanding that determination, having regard to, and only to, the relevant criteria, by order provide—
  - (a) that the merger may be put into effect,
  - (b) that the merger may be put into effect subject to specified conditions being complied with, or
  - (c) that the merger may not be put into effect.
  
- (5) The Minister shall publish, with due regard for commercial confidentiality, a statement of the reasons for his or her making such an order within 2 weeks after the date on which the order is made.
  
- (6) For the purpose of the exercise of the power under *subsection (4)*, the Minister may consider such submissions or observations from persons claiming to be interested in the matter as the Minister thinks proper.
  
- (7) In addition to the functions conferred on it by *section 22* in relation to a merger or acquisition, the Authority shall, in dealing with a merger or acquisition under that section that is a media merger, form an opinion as to how the application of the relevant criteria should affect the exercise by the Minister of his or her powers under *subsection (4)* in relation to the merger.
  
- (8) The Authority shall inform the Minister of the opinion it has so formed on request being made by the Minister of it to do so.
  
- (9) The following provisions shall have effect on account of the additional procedures provided by the foregoing provisions in relation to media mergers:
  - (a) a media merger which could otherwise be put into effect upon a determination referred to in *section 21(2) (a)* being made in relation to it may not be put into effect until the expiry of 10 days after the date on which that determination is made,
  - (b) a determination under *section 22* in relation to a media merger shall not have effect until the expiry of 30 days after the date on which that determination is made and then only if, within that period, the Minister has not made an order under *subsection (4)* in relation to the merger or has stated in writing that he or she does not propose making such an order in relation to the merger.
  
- (10) In this section—



“broadcasting service” means a service which comprises a compilation of programme material of any description and which is transmitted or relayed by means of wireless telegraphy, a cable system or a multipoint microwave distribution system, a satellite device or any other transmission system, directly or indirectly for reception by the general public, whether that material is actually received or not, and includes a sound broadcasting service within the meaning of the Radio and Television Act, 1988, but does not include any such service (whether involving audio-visual material or audio material) that is provided by means of the system commonly known as the Internet;

“cable system” has the same meaning as it has in the Broadcasting Act, 2001;

“media business” means—

- (a) a business of the publication of newspapers or periodicals consisting substantially of news and comment on current affairs,
- (b) a business of providing a broadcasting service, or (c) a business of providing a broadcasting services platform;

“media merger” means a merger or acquisition in which one or more of the undertakings involved carries on a media business in the State;

“programme material” has the same meaning as it has in the Broadcasting Act, 2001;

“providing a broadcasting service” shall be construed in accordance with *subsection (11)*,

“providing a broadcasting services platform” shall be construed in accordance with *subsection (12)*,

“relevant criteria” means the following matters—

- (a) the strength and competitiveness of media businesses indigenous to the State,
- (b) the extent to which ownership or control of media businesses in the State is spread amongst individuals and other undertakings,
- (c) the extent to which ownership and control of particular types of media business in the State is spread amongst individuals and other undertakings,
- (d) the extent to which the diversity of views prevalent in Irish society is reflected through the activities of the various media businesses in the State, and
- (e) the share in the market in the State of one or more of the types of business activity falling within the definition of “media business” in this subsection that is held by any of the undertakings involved in the media merger concerned, or by any individual or other undertaking who or which has an interest in such an undertaking.

(11) A reference in this section to providing a broadcasting service shall be construed as a reference to the doing of either or both of the following:

- (a) supplying a compilation of programme material for the purpose of its being transmitted or relayed as a broadcasting service,
- (b) transmitting or relaying as a broadcasting service programme material.

(12) A reference in this section to providing a broadcasting services platform shall be construed as a reference to the transmitting or re-transmitting of programme material by means of wireless telegraphy, a cable system or a multipoint microwave distribution system, a satellite device or any other transmission system.

#### **24. Appeal to the High Court against determination of the Authority**

(1) An appeal may be made to the High Court against a determination of the Authority under *paragraph (b) or (c) of section 22(3)*.

(2) *Subsection (1)* does not apply to a determination made in relation to a media merger unless it is a determination that has effect by virtue of *section 23(9) or 25(2)*.

(3) An appeal under this section—

(a) may be made by any of the undertakings which made the notification in relation to the merger or acquisition concerned, and

(b) shall be made within 1 month after the date on which the undertaking is informed by the Authority of the determination concerned or, in case the determination is one in relation to a media merger, after the expiry of the period specified in *section 23(9)*.

(4) Any issue of fact or law concerning the determination concerned may be the subject of an appeal under this section but, with respect to an issue of fact, the High Court, on the hearing of the appeal, may not receive evidence by way of testimony of any witness and shall presume, unless it considers it unreasonable to do so, that any matters accepted or found to be fact by the Authority in exercising the relevant powers under *section 22* were correctly so accepted or found.

(5) Notwithstanding *subsection (4)*, the High Court, on the hearing of an appeal under this section, may receive evidence by way of the testimony of one or more witnesses if it considers it was unreasonable for the Authority to have accepted or found as a fact any matter concerned.

(6) Without limiting the exercise of the judicial function with respect to a particular case, it shall be the duty of the High Court, in so far as it is practicable, to hear and determine an appeal under this section within 2 months after the date on which the appeal is made to it.

(7) On the hearing of an appeal under this section, the High Court may, as it thinks fit—

(a) annul the determination concerned,

(b) confirm the determination concerned, or

(c) confirm the determination concerned subject to such modifications of it as the court determines and specifies in its decision.

¶

(8) The High Court may, where it appears to the court that the circumstances so warrant, or shall, where the operation of *section 25(1)* results in an order under *section 23(4)* being annulled after the expiry of the period hereafter mentioned, extend the period mentioned in *subsection (3) (b)* in which an appeal under this section may be made to it.

(9) An appeal to the Supreme Court against a decision of the High Court under any of the foregoing provisions of this section shall lie only on a question of law.

**25. Laying of order under *section 23(4)* before Houses of the Oireachtas.**

(1) An order under *section 23(4)* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly.

(2) If an order under *section 23(4)* is annulled pursuant to *subsection (1)* the determination made by the Authority under *section 22(3)* in relation to the media merger concerned shall, notwithstanding *section 23(9)* but without prejudice to the right of appeal under *section 24*, have effect.

**26. Enforcement of certain commitments, determinations and orders.**

(1) In this section—

“commitment” means an obligation on the part of an undertaking arising by virtue of a proposal put forward by it being the subject of a statement in writing by the Authority such as is mentioned in *section 20(3)*;

“determination” means a determination of the Authority made under *section 21* or *22*;

“order” means an order made by the Minister under *section 23(4)*. Pt.3 S.26

(2) It shall be lawful for a court of competent jurisdiction to grant an injunction on the motion of the Authority or of any other person to enforce compliance with the terms of a commitment, a determination or an order, for the time being in force.

(3) *Subsection (2)* shall not affect any other right of the Authority or other person to bring proceedings (whether civil or criminal) for the enforcement of compliance with the terms of a commitment, a determination or an order.

(4) A person who contravenes (whether by act or omission) a provision of a commitment, a determination or an order for the time being in force shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment, or

(b) on conviction on indictment, to a fine not exceeding €10,000 or to imprisonment for a term not exceeding 2 years or to both such fine and such imprisonment.

(5) Every person who aids, abets or assists another person, or conspires with another person, to do anything (whether by way of act or of omission) the doing of which is an offence by virtue of *subsection (4)* shall himself or herself be guilty of an offence under this section and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(6) Where an offence under *subsection (4) or (5)* which is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person who is a director, manager, secretary, member of the committee of management or other controlling authority of any such body, or who is any other similar officer of any such body, that person shall also be guilty of an offence and shall be liable to be proceeded against and punished as if he or she was guilty of the first-mentioned offence.

(7) *Subsections (4), (5) and (6)* operate so that if the contravention concerned continues one or more days after the date of its first occurrence, the person referred to in the subsection concerned is guilty of a separate offence under that subsection for each day that the contravention occurs; but in respect of the second or subsequent offence of which he or she is guilty by reason of that continued contravention, *subsection (4)* shall have effect as if—

- (a) in *paragraph (a)*, “€300” were substituted for “€3,000”, and
- (b) in *paragraph (b)*, “€1,000” were substituted for “€10,000”.

(8) Summary proceedings in relation to an offence under this section may be brought by the Authority.

(9) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this section may be instituted within 12 months after the day on which the offence was committed.

## **27. Alteration of certain monetary amounts**

(1) The Minister may make an order once, and once only, in each year, beginning with the year following the year in which this section is commenced, amending *subsection (1) (a) of section 18* by substituting for the monetary amount standing specified in *subparagraph (i) or (iii)* of that provision for the time being a monetary amount that is greater than that amount.

(2) In making an order under *subsection (1)*, the Minister shall have regard to, and only to, such economic data as the Minister considers to be relevant to the purpose.

(3) Every order under this section shall have effect on and from the date on which it is made and shall be laid before each House of the Oireachtas as soon as may be after it is made; if a resolution confirming the order is not passed by each such House within the next 21 days after that House has sat after the order is laid before it, the order shall lapse, but without prejudice to the validity of anything previously done thereunder.

## **28. Relationship between this Part and other enactments.**

(1) Nothing in an enactment specified in *subsection (2)* prejudices the operation of this Part.

(2) The enactment mentioned in *subsection (1)* is an enactment (other than an enactment contained in this Part) that requires, in respect of the doing of the act or acts that comprise a

merger or acquisition to which *paragraph (a) or (b) of section 18(1)* applies, the doing of that act or those acts to be either—

(a) sanctioned, whether such sanctioning takes the form of the making by a court of an order or the granting by a person of any other form of consent, or

(b) the subject of any form of registration of a resolution passed by one or more undertakings.

(3) Neither the giving of a sanction such as is referred to in *subsection (2) (a)* nor the carrying out of a registration such as is referred to in *subsection (2) (b)* shall be done or completed in relation to a merger or acquisition to which *paragraph (a) or (b) of section 18(1)* applies unless and until no step remains to be taken, or power of any person or court or of either House of the Oireachtas remains to be exercised, under this Part, being a step or power the taking or exercising of which would, by virtue of this Part, prevent the merger or acquisition from being put into effect.

## **Appendix B:**

**Competition Act 2002 (Section  
18(5) and (6)) Order 2007**

**S. I. No. 122 of 2007**

**S.I. No. 122 of 2007**  
**COMPETITION ACT 2002 (SECTION 18 (5) AND (6)) ORDER 2007**

WHEREAS subsection (5) of section 18 of the Competition Act 2002 (No. 14 of 2002) enables the Minister for Enterprise, Trade and Employment, where he or she is of opinion that the exigencies of the common good so warrant, to make, after consultation with the Competition Authority, an order specifying a class or classes of merger or acquisition for the purposes of subsection (1)(b) of that section 18;

AND WHEREAS the Minister for Enterprise, Trade and Employment is of opinion that the exigencies of the common good warrant the making of such an order in respect of the class of merger or acquisition specified in this Order;

AND WHEREAS the Competition Authority has been consulted with respect to this Order; AND WHEREAS subsection (6) of the foregoing section enables the Minister for Enterprise, Trade and Employment to make an order amending or revoking an order made under subsection (5) of the foregoing section;

NOW I, MICHEÁL MARTIN, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by subsections (5) and (6) of the foregoing section, hereby order as follows:

1. This Order may be cited as the Competition Act 2002 (Section 18 (5) and (6)) Order 2007.
2. This Order shall come into operation on 1 May 2007.
3. In this Order, “Act” means the Competition Act 2002 (No. 14 of 2002).
4. The following classes of merger or acquisition are specified for the purposes of section 18 (1)(b) of the Act, namely—
  - (a) the class of each merger and each acquisition in which two or more of the undertakings involved carry on a media business in the State, and
  - (b) the class of each merger and each acquisition in which one or more of the undertakings involved carries on a media business in the State and one or more of the undertakings involved carries on a media business elsewhere.
5. The Competition Act 2002 (Section 18 (5)) Order 2002 (S.I. No. 622 of 2002) is revoked.

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 27th March, 2007.*

GIVEN under my Official Seal

21 March 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)

This Order applies Part 3 of the Competition Act 2002 to:

- all mergers or acquisitions in which two or more of the undertakings involved carry on a media business in the State, and
- all mergers or acquisitions in which one or more of the undertakings involved carries on a media business in the State and one or more of the undertakings involved carries on a media business elsewhere.

The Competition Act 2002 (Section 18 (5)) Order 2002 S.I. 622 of 2002 is revoked. Media mergers are also subject to Section 23 of the Act which provides for a review role for the Minister in relation to media mergers. Under Section 18(7) of the Act, this Order has effect from the date on which it is made but will require confirmation by resolution of each House of the Oireachtas within 21 sitting days of its making.



## **Appendix C:**

**Report produced by**

**PriceWaterhouse Coopers**



## Department of Enterprise, Trade and Employment: Media Research Required by the Advisory Group on Media Mergers

20th June 2008

Final Report

\*connectedthinking

PRICEWATERHOUSECOOPERS

In preparing our report, we have relied upon secondary information sources. In all cases PricewaterhouseCoopers has identified the sources of information relied upon however, PwC makes no representation in relation to independently auditing or verifying the data or information.

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## Summary of Key Findings

The following points offer an overview of the Irish media landscape, in terms of the key ownership and circulation / market share trends across the newspaper, television and radio sectors. All reference to Irish in the report refers to the Republic of Ireland.

The following points highlight the key findings in relation to the **Irish newspaper sector**:

The **Sunday newspaper market** consists of four Irish national titles , five Irish editions of UK titles and five UK titles. The Sunday Independent and Sunday World titles (both owned by Independent News and Media ~ (INM)), dominate the Sunday newspaper market (combined share of 48% of circulation in the Sunday newspaper market for 2007). The Irish News of the World and the Sunday Times, owned by News Corporation, also represent a significant share;

The **National daily market** consists of four Irish national titles , three Irish editions of UK titles , two national ~ evening titles , and 10 UK titles. Titles owned by INM represent a significant share of the daily market, via its Irish Independent, Irish Daily Star and Evening Herald titles (combined share of 44% of circulation in the Daily newspaper market in 2007);

There are approximately 90 **paid-for regional newspapers** and 76 **free regional / city newspapers** in ~ circulation in Ireland. In the paid-for regional market, approximately 39 titles are owned by either INM, Johnston Press (JP) or Thomas Crosbie Holdings Ltd (TCH) with a combined circulation of circa 44%;

Circa 11 Daily and five Sunday **foreign language newspapers**, which are **published outside of Ireland**, are distributed in the Republic, including languages such as French, Italian, Pakistani and Polish, etc. Circa 16 foreign language newspapers and multi-cultural newspapers, which are **published in Ireland**, are in ~ circulation in the Republic. These cater predominantly for the large migrant communities living in Ireland, including Polish, Lithuanian, Chinese and Russian communities. Based on circulation estimates from the publishers / MediaLive, Ireland Chinese News , and Nasha Gazeta , a Russian title have the highest circulation in Ireland (13% and 11% respectively)

Many of the newspaper groups in Ireland have **cross-media interests** in the Irish market, and are involved not only in the ownership of national and local newspapers but in the distribution and printing of newspapers, ownership of websites and also radio stations. For example, two media groups, INM and TCH, have significant interests in both the national and local / regional newspaper market (INM: 7 national and 17 local titles, TCH: 2 national and 15 local titles) and JP owns a significant number of local titles (16 local titles).

A number of the media groups are also involved in **printing** newspapers in Ireland (INM, JP, TCH & Irish Times), and INM owns one of the two key newspaper **distributing** companies in Ireland, Newsread (the other major distributor is Easons). Further detail on INM, TCH and JP is provided in the table below.

Group	National Titles	Local Titles	Websites	Printing Facility	Distribution Service	Radio Stations
INM	7	17	27	Yes	Yes	None
TCH	2	15	23	Yes	Yes	5 stations
JP	None	16	10	Yes	Yes	None

The key findings in relation to the **Irish Television Broadcasting Sector** are summarised below:

There was no dominant player in the **international television market** in Ireland. BBC1 has the largest 'All Day' national market share, and UTV has the highest 'Peak' national market share. RTE One dominates the **national television market** in Ireland during 'All Day' and 'Peak' times (47-52% market share), followed by RTE Two and TV3.

Similar to the newspaper groups, there is evidence of cross-media ownership across the Irish television stations, for example:

- ~ TV3 are 100% owned by Tullamore Alpha Limited (of which 13.5% is owned by TV3's management team and the remaining 86.5% is largely owned by Doughty Hanson. Tullamore Alpha Limited also owns a 21.8% stake in Setanta Sports Holdings);
- ~ In addition to the connection with TV3 through Tullamore Alpha Ltd., Michael O' Rourke via a 11% minor shareholding in Setanta Sports Ltd, owns a small share in Newstalk 106 and KCLR 96FN;
- ~ Liberty Global Inc. own 36% of City Channel Ltd and also owns Chorus and NTL (i.e. UPC).

Of the **digital subscribers** in Ireland, in 2008, a small majority of 51% use UPC's services, with the remaining 49% using Sky. Sky's share of digital subscribers has grown by 10% since 2004, from a share of 39%.

Finally, our research highlighted the following findings in relation to the **Irish Radio Broadcasting Sector**:

In relation to the **national radio market**, RTE Radio 1 dominated the national market in 2007 (listener share of 42%). Other popular stations included 2FM and Today FM. Within the **Dublin and Cork local radio markets**, FM104 and Cork's 96FM dominate their respective markets. Within their respective local transmission areas, Highland Radio and Midwest Radio both have a 50%+ share.

Of the national stations, between 2006 and 2007, RTE 2FM experienced a decrease in market share, whereas RTE Radio 1 and Today FM's market share has increased over the same period. In the local markets outside Dublin and Cork, the majority of local radio stations appeared to experience a drop in their local market share between 2006 and 2007 (ranging from 25% to 50%).

Further detail on the above and data to support the points are found in the following sections.





Section 1: Newspaper Data



\*connectedthinking

## A. Irish and English Language Newspapers Published in Ireland

The Sunday newspaper market in Ireland consists of four Irish national titles, five Irish editions of UK titles and five UK titles. The Sunday Independent and Sunday World titles, both owned by Independent News & Media, dominate the Sunday newspaper market (combined share of 48% circulation and 51% readership). They also have a 50% share in the Irish Daily Star Sunday, with a 5% share of the Sunday market. The Irish News of the World and the Sunday Times, owned by News Corporation also represent a significant share of the Sunday newspaper market, with a combined 22% circulation and 24% readership share. Of the UK editions circulated in Ireland, the People represents the largest share, with 58% share of circulation in 2007 (albeit from a low base of 33,728 copies).

### (i)A Sunday Newspapers

Title	Circulation July-Dec 2007	% Share	Readership 2007	% Share	Cover Price	Ownership by Major Groups
<b>Irish National Title/ Irish Edition of UK Title</b>						
Sunday Independent	282,459	24%	1,019,000	27%	€2.40	Independent News & Media
Sunday World	283,801	24%	922,000	24%	€2.20	Independent News & Media
Sunday Tribune	70,058	6%	218,000	6%	€2.50	Tribune Newspapers plc
Sunday Business Post	53,871	5%	159,000	4%	€2.20	Thomas Crosbie Holdings Ltd
Irish Mail on Sunday*	113,577	10%	252,000	7%	€2.00	Daily Mail and General Trust Associated Newspapers Ltd
Irish Daily Star Sunday**	64,052	5%	178,000	5%	€2.00	Independent News & Media (50%) Express Newspapers (50%)
Irish News of the World	156,666	13%	571,000	15%	€1.20	News Corporation
Irish Sunday Mirror	47,427	4%	162,000	4%	€1.30	Trinity Mirror plc
Sunday Times	104,464	9%	363,000	9%	€2.50	Published by Times Newspapers Ltd, a subsidiary of News Corporation
<b>Total</b>	<b>1,176,375</b>	<b>100%</b>	<b>3,844,000</b>	<b>100%</b>	~	~
<b>UK Edition</b>						
The People	33,728	58%	n/a	~	€1.20	Trinity Mirror plc
Sunday Express	6,447	11%	n/a	~	€1.40	Express Newspapers (owned by Richard Desmond)
Independent on Sunday	3,060	5%	n/a	~	€2.10	Independent News & Media
The Observer	11,289	19%	n/a	~	€2.30	Guardian Media Group
Sunday Telegraph	3,410	6%	n/a	~	€2.00	The Telegraph Group
<b>Total</b>	<b>57,934</b>	<b>100%</b>	n/a	~	~	~
<b>Overall Total</b>	<b>1,234,309</b>	~	~	~	~	~

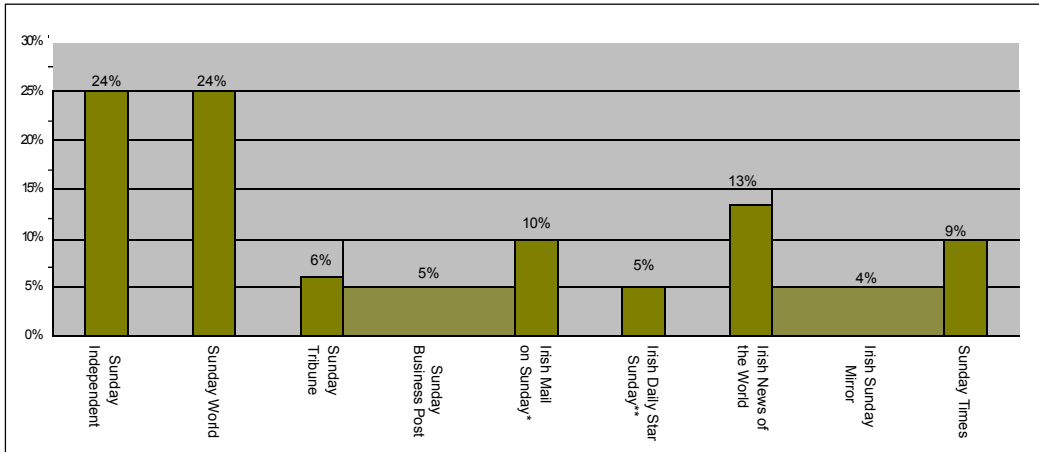
**SOURCE:** ABC, average net circulation per issue, July-December 2007

Cover price provided by ABC Island of Ireland Report, December 2007, Easons, or by contacting title directly.

Ownership information collected via company websites.

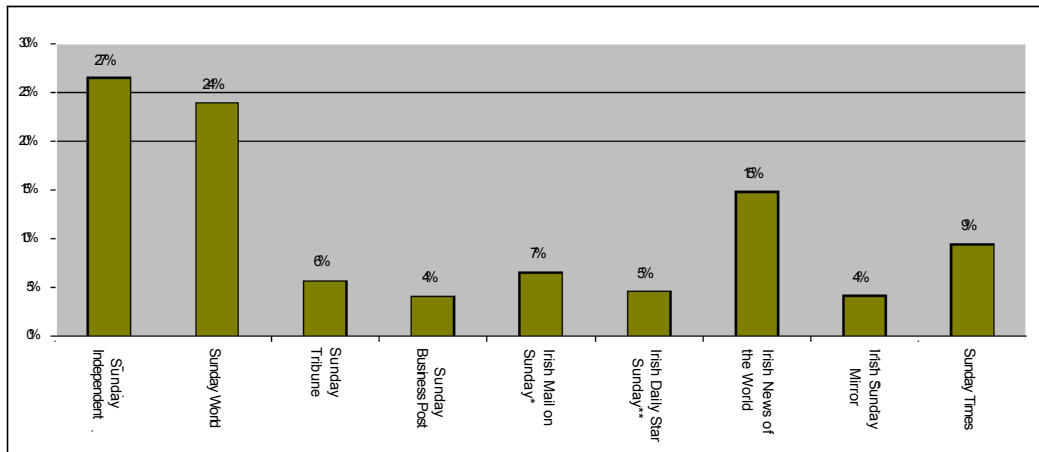


**(i)B National Titles, Irish Edition of UK Titles (% share of average circulation per title)**



**SOURCE:** ABC, average net circulation per issue, July-December 2007

**(i)C National Titles, Irish Edition of UK Titles (% share of readership per title)**



**SOURCE:** JNRS, Readership Review 2007

**NOTES:**

- 1) \*Ireland on Sunday re-launched as Irish Mail on Sunday in October 2006
- 2) \*\*Irish Daily Star Sunday launched 2003

## A. Irish and English Language Newspapers Published in Ireland

The national daily market in Ireland consists of four 'Irish national titles', three 'Irish editions of UK titles', two national 'evening titles', and 10 'UK' titles. Titles owned by Independent News & Media represent a significant share of the daily market. The Irish Independent has the highest share with 20% of total circulation, the Irish Daily Star (of which INM has a 50% stake) is the third most popular title with 14%, and the Evening Herald, represents 10% of total daily circulation. The Irish Times is the second most popular title with a 15% share of total daily circulation. Of the 'UK editions' in circulation in Ireland, the Racing Post holds a 32% share of circulation.

### (ii) A National Daily Newspapers

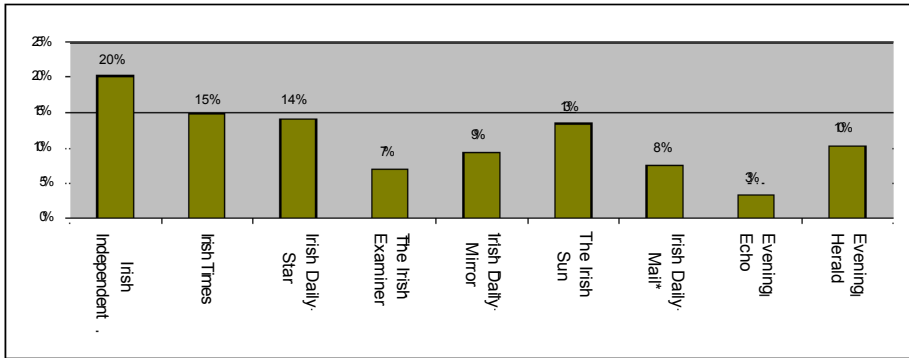
Title	Circulation July-Dec 2007	% Share	Readership 2007	% Share	Cover Price (Mon-Fri)	Cover Price (Sat)	Ownership by Major Groups
<b>Irish National Title/ Irish Edition of UK Title</b>							
Irish Independent	160,854	20%	570,000	22%	€1.80	€2.00	Independent News & Media
Irish Times	119,051	15%	325,000	13%	€1.80	€2.00	Irish Times Ltd
Irish Daily Star	112,042	14%	441,000	17%	€1.35	€1.35	Independent News & Media (50%) Express Newspapers (50%)
The Irish Examiner	55,948	7%	267,000	10%	€1.70	€1.70	Thomas Crosbie Holdings Ltd
Irish Daily Mirror	74,786	9%	204,000	8%	€1.00	€1.00	Trinity Mirror plc
The Irish Sun	107,079	13%	309,000	12%	€0.90	€1.00	News Corporation
Irish Daily Mail*	59,913	8%	117,000	5%	€0.70	€1.00	Daily Mail and General Trust Associated Newspapers Ltd
Evening Echo	25,904	3%	n/a		€1.30	€1.30	Echo Publications (Cork) Ltd
Evening Herald	82,084	10%	315,000	12%	€1.10	€1.10	Independent News & Media
<b>Total</b>	<b>797,661</b>	<b>100%</b>	<b>2,548,000</b>	<b>100%</b>	~	~	
<b>UK Edition</b>							
Daily Express	3,924	11%	n/a		€0.75	€1.00	Express Newspapers (owned by Richard Desmond)
Daily Telegraph	3,654	11%	n/a		€1.00	€1.50	Sir David and Sir Frederick Barclay
Financial Times	4,757	14%	n/a		€2.20	€2.80	Pearson Plc
Guardian	4,585	13%	n/a		€1.00	€1.80	Guardian Media Group
Irish News**	n/a		n/a		€1.00	€1.00	Owned by Fitzpatrick family & part of the consortium, Northern Media Group (which Alpha Newspaper Group are also a member)
Daily Record***	n/a		n/a		€1.00	€1.00	Trinity Mirror plc
The Independent	2,502	7%	n/a		€1.10	€1.80	Independent News & Media
Racing Post	10,800	32%	n/a		€2.40	€2.40	FL Partners
The Times	3,947	12%	n/a		€0.95	€1.40	Published by Times Newspapers Ltd, a subsidiary of News Corporation
Belfast Telegraph	n/a		n/a		n/a	n/a	Independent News & Media
<b>Total</b>	<b>34,169</b>	<b>100%</b>	n/a		~		
<b>Overall Total</b>	<b>831,830</b>						

**SOURCE:** ABC, average net circulation per issue, July-December Figures 2007

Cover price provided by ABC Island of Ireland Report, December 2007, Easons, or by contacting title directly.

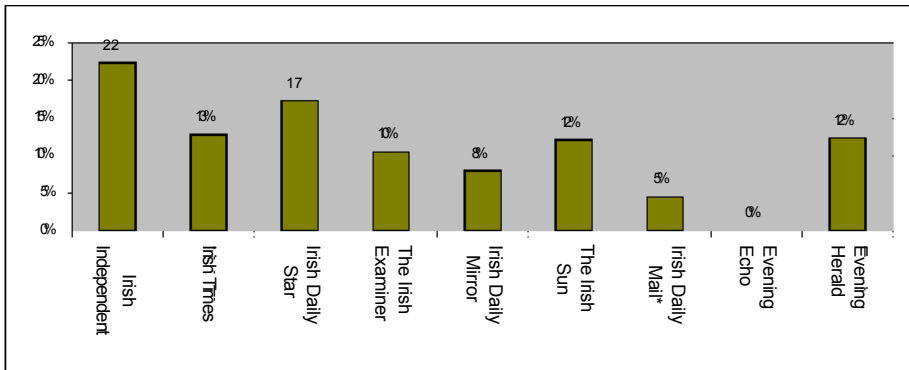
Ownership information collected via company websites.

(ii)B National Titles, Irish Edition of UK Titles (% share of average circulation per title)



SOURCE: ABC, average net circulation per issue, July-December Figures 2007

(ii)C National Titles, Irish Edition of UK Titles (% share of readership per title)



SOURCE: JNRS, Readership Review 2007

NOTES:

- 1)\*Irish Daily Mail Launched February 2006
- 2) \*\*Northern Ireland title - no ABC circulation figures available
- 3) \*\*\* Scottish Title - no ABC circulation figures available

## A. Irish and English Language Newspapers Published in Ireland

There are approximately 90 paid-for regional newspapers and 76 free regional / city newspapers in circulation in Ireland. A number of the paid-for titles are owned by large media groups, with approximately 39 titles owned by either Independent News & Media, Johnston Press or Thomas Crosbie Holdings Ltd, representing a combined circulation of circa 44%. The titles with a larger circulation (i.e. circulation of 3% or total, or more) include the Connacht Tribune, Kerry's Eye, Kerryman and the Limerick Leader. Of the free regional / city newspapers, a number of titles represent a share of 3% +, including the Dublin Informer, Galway Independent, Herald AM, The Local News, Metro and the Southside People. Independent News & Media own the Herald AM, and the Irish Times have a share in the Metro.

### (iii) A Regional Newspapers - Paid-For Titles

Title	Circulation	Market Share	Cover Price	Ownership by Major Groups
Anglo Celt	14,713	2%	€1.95	Anglo Celt Ltd
Athlone Topic	5,500	1%	€1.80	
Athlone Voice	4,000	0%	€1.75	
The Avondhu	9,200	1%	€1.70	
Bandon Opinion	3,500	0%	€3.75	
The Carrigdhoun	6,000	1%	€1.00	
Catholic Standard	800	0%	€1.00	
Cavan Post	7,500	1%	€1.70	
Clare Champion	19,539	2%	€1.80	Clare Champion Ltd
Clare People	12,250	1%	€1.60	Clare College News Ltd
Connacht Sentinel	5,757	1%	€0.50	Connacht Tribune Ltd
Connacht Tribune	24,598	3%	€1.70	Connacht Tribune Ltd
Connaught Telegraph	13,506	2%	€1.60	
Corkman	8,247	1%	€1.45	Independent News & Media plc
Donegal Democrat	13,060	2%	€1.45	Johnston Press Ireland
Donegal Democrat – Tuesday (People's Press)	9,580	1%	€1.35	Johnston Press Ireland
Donegal Post	5,191	1%	€1.50	River Newspapers South Donegal Ltd
Derry People / Donegal News*	12,091	1%	Monday (€1) Friday (€1.45)	The North-West of Ireland Printing & Publishing Co Ltd
Drogheda Independent*	15,630	2%	€1.90	Independent News & Media plc
Dundalk Argus*	11,507	1%	€1.90	Independent News & Media plc
Dundalk Democrat**	9,500	1%	€1.90	Johnston Press Ireland
Dungarvan Leader"	8,000	1%	€1.50	
Dungarvan Observer"	9,800	1%	€1.50	
East Cork Journal"	5,000	1%	€2.00	
The Echo – Dublin*	9,741	1%	€1.70	Johnston Press Ireland
The Echo (incorporating the New Ross Echo, Enniscorthy Echo, Wexford Echo & Gorey Echo)"	18,400	2%	€1.90	Thomas Crosbie Holdings Ltd
Fingal Independent*	5,302	1%	€1.90	Independent News & Media plc
Finn Valley Post"	3,000	0%	€1.00	
Galway Voice	n/a		€1.70	
Inish Times	n/a		€1.30	River Newspapers South Donegal Ltd
Kerry's Eye"	25,930	3%	€1.80	
Kerryman*	26,392	3%	€1.80	Independent News & Media plc
Kilkenny People*	16,113	2%	€1.90	Johnston Press Ireland
Kilkenny Voice"	8,500	1%	€1.80	
The Kingdom"	10,500	1%	€1.80	Thomas Crosbie Holdings Ltd
Laois Voice"	12,500	2%	€1.85	
Leinster / Offaly Express*	15,318	2%	€2.00	Johnston Press Ireland
Leinster Leader*	12,100	1%	€2.00	Johnston Press Ireland
Leitrim Observer*	8,386	1%	€1.90	Johnston Press Ireland
Leitrim Post*	4,923	1%	€1.80	River Newspapers South Donegal Ltd
Liffey Champion"	7,500	1%	€1.90	
Limerick Chronicle"	9,000	1%	€0.90	Johnston Press Ireland
Limerick Leader*	21,619	3%	€2.00	Johnston Press Ireland
Longford Leader*	9,485	1%	€1.85	Johnston Press Ireland
Longford News**	7,220	1%	€1.75	
Mayo News*	10,569	1%	€1.80	Mayo News Holdings Ltd
Meath Chronicle*	16,010	2%	€1.90	Meath Chronicle Limited
Meath Post"	15,000	2%	€1.00	
Midland / Tullamore Tribune*	10,105	1%	€1.85	Alpha Newspaper Group
Monaghan Post"	7,500	1%	€1.70	
Munster Express*	10,849	1%	€1.80	The Munster Express Ltd

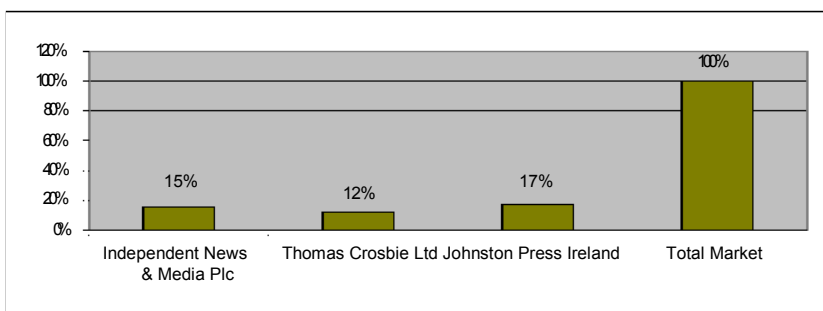
Title	Circulation	Market Share	Cover Price	Ownership by Major Groups
Nationalist & Leinster Times (Kildare, Laois, Carlow)**	21,300	3%	€2.00	Thomas Crosbie Holdings Ltd
Nationalist Clonmel*	14,106	2%	€1.90	
Nenagh Guardian*	8,134	1%	€1.85	Independent News & Media plc
Northern Standard**	14,500	2%	€1.85	
Offaly Independent*	10,000	1%	€1.70	
People Group (9 Titles)*:	50,312	6%	Various (€1.60 - €1.90)	
Wicklow People	13,122		€1.90	Independent News & Media plc
Bray People	5,736		€1.90	Independent News & Media plc
Carlow People	4,686		€1.60	Independent News & Media plc
Enniscorthy Guardian Series	7,521		€1.90	Independent News & Media plc
New Ross Standard	6,384		€1.90	Independent News & Media plc
Wexford People	12,863		€1.90	Independent News & Media plc
Waterford People+	n/a		€1.60	Independent News & Media plc
Dungarvan People+	n/a		€1.60	Independent News & Media plc
Gorey Guardian+	n/a		€1.90	Independent News & Media plc
Roscommon Champion*	6,351	1%	€1.75	
Roscommon Herald*	9,185	1%	€1.80	Thomas Crosbie Holdings Ltd
Sligo Champion*	12,108	1%	€1.80	Champion Publications Ltd
Sligo Weekender***	7,904	1%	€1.80	Thomas Crosbie Holdings Ltd
Southern Star**	14,155	2%	€1.94	
Tipperary Star*	9,223	1%	€1.80	Johnston Press Ireland
Topic Newspapers (3 titles)*	9,000	1%	€1.90	
Tuam Herald*	9,514	1%	€1.50	The Herald Printing & Publishing Ltd
The Vale / Mallow Star "	8,000	1%	€1.50	
Weekly Observer"	8,500	1%	€1.50	
Waterford News & Star"	9,800	1%	€1.90	Thomas Crosbie Holdings Ltd
The Weekender"	10,500	1%	€1.70	
Western People***	19,829	2%	€2.00	Thomas Crosbie Holdings Ltd
Westmeath Examiner*	9,273	1%	€2.00	Westmeath Examiner Ltd
Westmeath Independent**	10,265	1%	€1.95	
Wicklow News"	15,500	2%	€1.00	
<b>Total</b>	<b>823,890</b>	<b>100%</b>		

**SOURCE:**

Circulation Figures: \*ABC, average net circulation per issue, July-Dec 2007; \*\*Independent Audit; \*\*\*ABC, average net circulation per issue, Jan-Dec 2007 (12 month figure); "Publishers Statement.

Thomas Crosbie Holdings Ltd  
Independent News & Media  
Johnston Press


Information on cover price and ownership from ABC Island of Ireland Report, December 2007, and by contacting companies directly



**(iii)B Independent News & Media, Thomas Crosbie and Johnston Press Share of Total Paid-for Regional Newspaper Market in Ireland**

**SOURCE:** PwC Analysis

**NOTES:**

- Galway Voice in operation since November 2007, ABC figures not yet available
- People newspaper figure based on circulation for 6 titles: New Ross Standard; Wexford People; Wicklow People; Bray People; Carlow People; Enniscorthy Guardian.
- + Circulation data not available - Waterford People and Dungarvan People launched in February 2008
- Local titles listed include 'Paid-For' titles only - does not include free local newspapers.



## (iv) Regional / City Newspapers - Free Titles

Title	Circulation	Market Share	Ownership by Major Groups
Athlone Advertiser" **	22,300	1%	~
Athlone Life"	20,000	1%	~
Ballincollig Today	5,000	0%	~
Blanch / Castletknock Gazettes"	11,000	1%	Irish Times Trust Ltd
Dundrum / Dun Laoghaire Gazettes"	14,000	1%	Irish Times Trust Ltd
Lucan / Clondalkin Gazettes"	11,000	1%	Irish Times Trust Ltd
Swords / Malahide Gazettes"	14,000	1%	Irish Times Trust Ltd
Gazette Group Dublin"	50,000	2%	~
Carlow First" **	13,500	1%	~
Cavan Echo"	19,525	1%	~
City-Ads"	35,000	2%	~
City Wide News	90,000	4%	~
Clare County Express"	20,000	1%	~
Clare Courier"	20,000	1%	~
Clare People Weekender"	25,000	1%	~
Community Voice (Dublin 15)	37,000	2%	~
Cork & County Advertiser"	20,000	1%	~
Cork Independent+	70,374	3%	~
Cork Weekly (incorporating The Douglas Weekly)"	20,000	1%	~
Douglas Post""	10,000	0%	~
Drogheda Leader"	25,000	1%	~
Drogheda Weekend"	15,000	1%	~
Dublin Informer"	212,500	10%	~
Dundalk Extra"	18,000	1%	~
Dundalk Leader	18,000	1%	~
Dundalk Life"	15,000	1%	Johnston Press Ireland
Dundalk Weekender"	15,000	1%	~
Dun Laoghaire Express	10,000	0%	~
Galway Advertiser" **	70,000	3%	~
Galway First" **	30,000	1%	~
Galway Independent++	58,012	3%	~
Herald AM (Dublin City) "	80,295	4%	Independent News & Media plc
Inish Times (Donegal)++	6,224	0%	~
Kildare Post"	30,000	1%	~
Kildare Times (North & South)	36,000	2%	~
Killarney Advertiser"	7,500	0%	~
Killarney Outlook"	7,500	0%	~
Kilkenny Advertiser" **	19,500	1%	~
Kilkenny Weekender"	15,000	1%	~
Lee Valley Outlook"	5,000	0%	~
Leinster Leader Weekender (Kildare)"	14,000	1%	~
Letterkenny People	n/a	~	Johnston Press Ireland
Letterkenny Post"	15,000	1%	~
Lifetimes (inc. Dublin Xtra)	80,000	4%	~
Limerick Independent"	45,000	2%	~
Limerick Post++	48,124	2%	~
The Local News"	119,000	5%	~
Mayo Advertiser" **	24,000	1%	~
Mayo Echo"	24,158	1%	~
Meath Echo"	18,000	1%	~
Metro (Dublin Daily) ***	74,025	3%	Irish Times Trust Ltd
Midleton Post"	8,000	0%	~
Monaghan Echo"	15,000	1%	~
Mullingar Advertiser" **	8,000	0%	~
Mullingar Life"	20,000	1%	~
North County Leader"	40,000	2%	~
Northside People (East)	54,000	2%	~
Northside People (West)	45,000	2%	~
North West Extra"	20,000	1%	~
Portfolio"	20,000	1%	~

Title	Circulation	Market Share	Ownership by Major Groups
Roscommon People"	15,000	1%	~
Sliabh Luachra Outlook"	3,000	0%	~
Sligo Post"	15,000	1%	~
South City Express"	50,000	2%	~
South East Voice	n/a	n/a	~
Southside People	60,000	3%	~
South Tipp Today	20,500	1%	Johnston Press Ireland
Waterford Life"	20,000	1%	~
Waterford Today"	27,500	1%	~
West Cork People"	12,000	1%	~
Wicklow Times"	38,700	2%	~
Youghal News"	3,500	0%	~
<b>Total:</b>	<b>2,177,737</b>	<b>100%</b>	~

**SOURCE:** all figures supplied by [www.medialive2.com](http://www.medialive2.com)

+ ABC, Latest confirmed figures

"" Print run

++ ABC, Jul - Dec 2007

"ABC VFD -- March 2008

\*\*\* ABC, Feb 25th - March 30th 2008

Information on ownership supplied by ABC Island of Island Report, December 2007 and PwC company research

**NOTES:**

- 1) The above listing / table may not be totally comprehensive and may not include all free titles nationally - inadequate source of information.
- 2) \*Circulation for these free dailies is collected on a monthly basis and represent ABC circulation for March 2008
- 3) \*\* Advertiser circulation figures are per week.
- 4) *City Wide News*: circulation / distribution of 90,000, with 30,000 per title.
- 5) Source of circulation data were not supplied by Media Live for those titles not followed by a symbol (e.g. ")



## B. Foreign language Newspapers Distributed in Ireland

Circa 17 Daily / Weekly and five Sunday foreign language newspapers, which are published outside of Ireland, are distributed in the Republic. Languages include French, Italian, Spanish, German, Pakistani, Polish and Lithuanian.

Title	Language	Print Location	Frequency of Circulation	Circulation / Distribution	Market Share	Price (Mon - Fri)	Price (Saturday)	Price (Sunday)
<b>Daily / Weekly Foreign Language Newspapers</b>								
Le Monde	French edition	France	Mon-Sat	n/a		€2.00	€2.00	
Le Figaro	French edition	France	Mon-Sat	n/a		€2.10	€2.10	
L'equipe	French edition	France	Mon-Sat	n/a		€2.10	€2.10	
Liberation	French edition	France	Mon-Sat	n/a		€2.25	€2.25	
La Republica	Italian edition	Italy	Mon-Sat	n/a		€2.00	€2.00	
Corriere della Sera	Italian edition	Italy	Mon-Sat	n/a		€2.00	€2.00	
Gazetta dello Sport	Italian edition	Italy	Mon-Sat	n/a		€2.00	€2.00	
Il Sole 24 Ore	Italian edition	Italy	Mon-Fri	n/a		€2.00		
El Pais	Spanish edition	UK	Mon-Sat	n/a		€2.00	€2.00	
El Mundo	Spanish edition	Spain	Mon-Sat	n/a		€2.00	€2.00	
ABC	Spanish edition	Spain	Mon-Sat	n/a		€2.10	€2.10	
Frankfurter	German edition	Germany	Mon-Sat	n/a		€2.10	€2.70	
Die Welt	German edition	Germany	Mon-Sat	n/a		€3.20	€3.50	
Daily Ausaf	Pakistani edition	UK	Mon-Sun	n/a		€2.00	€2.00	
Laif	Polish	UK	Weekly	n/a		€0.50		
Express Polish	Polish	UK	Weekly	n/a		€1.56		
London Zinios	Lithuanian	UK	Weekly	n/a		€1.56		
<b>Total</b>	~	~	~	<b>n/a</b>	~	~	~	~
<b>Sunday Foreign Language Newspapers</b>								
Le Journal de Dimanche	French edition	France	Sunday	n/a				€2.20
El Pais Sunday	Spanish edition	UK	Sunday	n/a				€3.00
El Mundo Sunday	Spanish edition	Spain	Sunday	n/a				€2.00
ABC Sunday	Spanish edition	Spain	Sunday	n/a				€3.00
Daily Ausaf	Pakistani edition	UK	Mon-Sun	n/a				€2.00
<b>Total</b>	~	~	~	~	~	~	~	~
<b>Total</b>	~	~	~	~	~	~	~	~

**SOURCE:** Titles and prices identified by Easons Distributors and PwC research

### NOTES:

- 1) Newsread does not distribute any foreign language newspapers
- 2) Circulation figures for foreign language newspapers not collected by Easons or ABC for ROI
- 3) Prices given for the foreign titles are the retail / cover prices but the retailers can charge what they want for any title they sell

### C. Multi-cultural and Foreign language Newspapers Published in Ireland

Circa 16 foreign language newspapers and multi-cultural newspapers, which are published in Ireland, are in circulation in the Republic. These cater predominantly for the large migrant communities living in Ireland, including Polish, Lithuanian, Chinese and Russian communities. Based on circulation estimates from the publishers / MediaLive, 'Ireland Chinese News', and 'Nasha Gazeta', a Russian title have the highest circulation in Ireland (13% and 11% respectively).

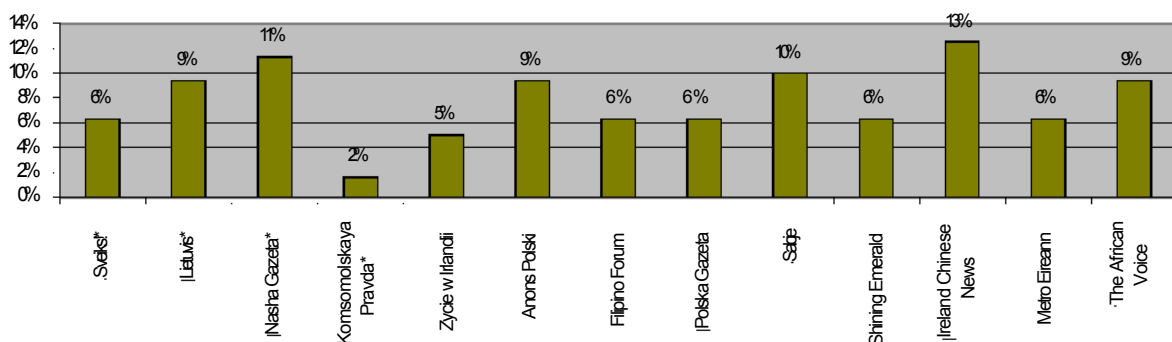
#### (i) Multi-cultural and Foreign Language Newspapers Published in Ireland

Title	Translation into English	Language	Edition	Frequency of	Weekly Circulation	Market Share	Price
<b>Foreign Language Newspapers</b>							
Sveiks!	Hello!	Latvian	Ireland	Fortnightly	10,000	6%	€1.50
Lietuvis	Lithuanian	Lithuanian	Ireland	Weekly	15,000	9%	€1.50
Nasha Gazeta	Our Newspaper	Russian	Ireland	Weekly	18,000	11%	€2.00
Komsomolskaya Pravda	n/a	Russian	Ireland	Weekly	2,500	2%	€2.50
InfoCenter	~	Russian	Ireland	Weekly	n/a	~	€1.90
Kurier Polski	n/a	Polish	Ireland	Weekly	n/a	~	€2.00
Zycie w Irlandii	The Polish Times	Polish	Ireland	Weekly	8,000	5%	€1.00
Anons Polski	Polish Community	Polish	Ireland	Weekly	15,000	9%	€2.00
Filipino Forum	~	Filipino / English	Ireland	Quarterly	10,000	6%	Free
Polska Gazeta	Polish Newspaper	Polish	Ireland	Weekly	10,000	6%	€2.49
Saloje	n/a	Lithuanian	Ireland	Weekly	16,000	10%	n/a
Shining Emerald	~	Mandarin	Ireland	Weekly	10,000	6%	n/a
Ireland Chinese News	~	Mandarin	Ireland	Fortnightly	20,000	13%	Free
<b>Multi-cultural Newspapers</b>							
Metro Eireann	~	English	Ireland	Weekly	10,000	6%	€1.00
The African Voice	~	English	Ireland	Monthly	15,000	9%	Free
The Immigrant (Cork)	~	English	Ireland	Monthly	n/a	~	n/a
<b>Total</b>	~	~	~	~	<b>159,500</b>	<b>100%</b>	~

**SOURCE:** Titles identified in Easons, O'Connell Street, Dublin 1 and PwC Research and from [www.medialive2.com](http://www.medialive2.com). Information on the titles Sveiks, Lietuvis, Nasha Gazeta and Komsomolskaya Pravda were provided by Nasha Gazeta, who publish all four titles in Ireland.

Other circulation figures sourced directly from newspapers themselves or from [www.medialive2.com](http://www.medialive2.com)

#### (ii) Multi-cultural and Foreign Language Newspapers Published in Ireland - % share of total circulation



#### NOTES:

- 1) Titles are considered an 'Irish Edition' if they contain Irish advertising and/or Irish content
- 2) List may not be totally comprehensive and may not include all foreign language newspapers published in Ireland - no comprehensive source.
- 3) Komsomolskaya Pravda is a former Russian young communist newspaper and is now a best selling Russian Tabloid
- 4) Sveiks! Is a weekly publication however in summer months, the title is published every two weeks.
- 5) Circulation figures refer to the Island of Ireland and not just the Republic.

## D. Sunday and Daily Newspaper Titles not Published in Ireland but in Circulation in Ireland

A total of 27 Daily and 10 Sunday titles which are not published in Ireland, are in circulation in Ireland. Circulation data in the Daily market was limited to seven titles. Based on this information, the Racing Post held the highest share with 32% of circulation, followed by the Financial Times and the Guardian with 14% and 13% respectively. In the Sunday market, circulation figures were available for six titles, of which the People newspaper recorded the highest market share (58%).

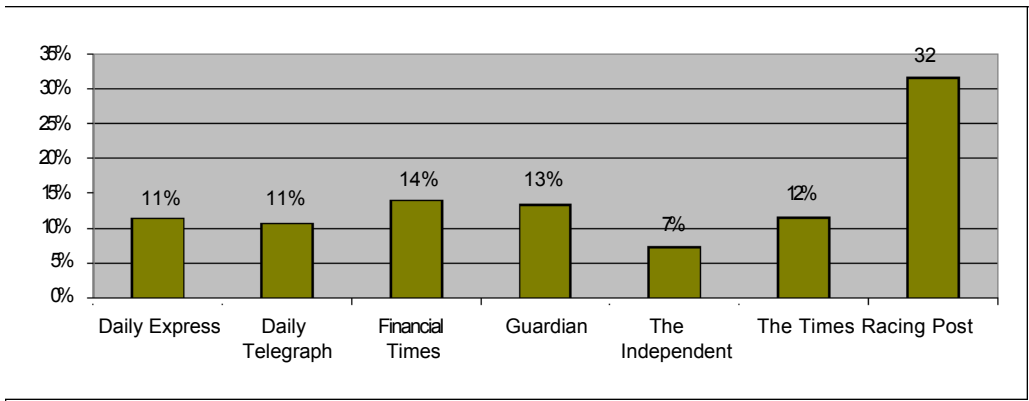
### (i) Daily and Sunday Newspapers not Published in Ireland but in Circulation in Ireland

Title	Edition	Irish Circulation	Market Share	Price (Mon-Fri)	Price (Saturday)	Price (Sunday)
<b>Daily Newspapers</b>						
Daily Express	UK edition	3,924	11%	€0.75	€1.00	~
Daily Telegraph	UK edition	3,654	11%	€1.00	€1.50	~
Financial Times	UK edition	4,757	14%	€2.20	€2.80	~
Guardian	UK edition	4,585	13%	€1.00	€1.80	~
The Independent	UK edition	2,502	7%	€1.10	€1.80	~
The Times	International edition	3,947	12%	€0.95	€1.40	~
Irish News	Northern Ireland	n/a	n/a	€1.00	€1.00	~
Daily Record	Scottish Title	n/a	n/a	€1.00	€1.00	~
Racing Post	UK edition	10,800	32%	€2.40	€2.40	~
Wall Street Journal	European Edition	n/a	n/a	€2.50	~	~
USA Today	USA title	n/a	n/a	€2.00	~	~
International Herald Tribune	International edition	n/a	n/a	€2.50	€2.50	~
Le Monde	French edition	n/a	n/a	€2.00	€2.00	~
Le Figaro	French edition	n/a	n/a	€2.10	€2.10	~
L'equipe	French edition	n/a	n/a	€2.10	€2.10	~
Liberation	French edition	n/a	n/a	€2.25	€2.25	~
La Repubblica	Italian edition	n/a	n/a	€2.00	€2.00	~
Corriere della Sera	Italian edition	n/a	n/a	€2.00	€2.00	~
Gazetta dello Sport	Italian edition	n/a	n/a	€2.00	€2.00	~
Il Sole 24 Ore	Italian edition	n/a	n/a	€2.00	~	~
El Pais	Spanish edition	n/a	n/a	€2.00	€2.00	~
El Mundo	Spanish edition	n/a	n/a	€2.00	€2.00	~
ABC	Spanish edition	n/a	n/a	€2.10	€2.10	~
Frankfurter	German edition	n/a	n/a	€2.10	€2.70	~
Die Welt	German edition	n/a	n/a	€3.20	€3.50	~
Daily Ausaf	Pakistani edition	n/a	n/a	€2.00	€2.00	~
Laif	Polish	n/a	n/a	€0.50	~	~
Express Polish	Polish	n/a	n/a	€1.56	~	~
London Zinios	Lithuanian	n/a	n/a	€1.56	~	~
<b>Total Daily</b>		<b>34,169</b>	<b>100%</b>	~	~	~
<b>Sunday Newspapers</b>						
The People	UK edition	33,728	58%	~	~	€1.20
Sunday Express	UK title	6,447	11%	~	~	€1.40
Independent on Sunday	UK edition	3,060	5%	~	~	€2.10
The Observer	UK Sunday	11,289	19%	~	~	€2.30
Sunday Telegraph	UK Sunday	3,410	6%	~	~	€2.00
Le Journal de Dimanche	French edition	n/a	n/a	~	~	€2.20
El Pais Sunday	Spanish edition	n/a	n/a	~	~	€3.00
El Mundo Sunday	Spanish edition	n/a	n/a	~	~	€2.00
ABC Sunday	Spanish edition	n/a	n/a	~	~	€3.00
Daily Ausaf	Pakistani edition	n/a	n/a	~	~	€2.00
<b>Total Sunday</b>		<b>57,934</b>	<b>100%</b>			
<b>TOTAL</b>		<b>92,103</b>				

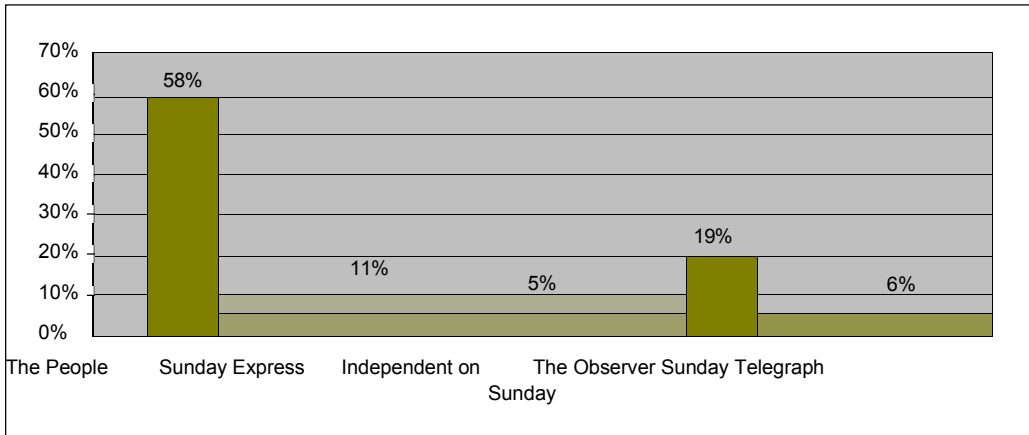
SOURCE: Circulation: ABC, average net circulation per issue, July-December 2007

Cover price: ABC, Island of Ireland Report, December 2007, Easons and contacting titles directly

(ii) % Share of Total Daily Market



(iii) % Share of Total Sunday Market



## E. The Total Irish Circulation and Market Share Figures - Daily Newspapers

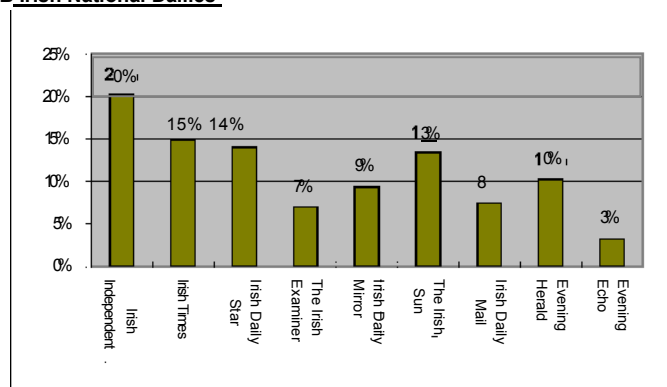
In the Daily newspaper market in 2007, circulation for the 'Irish National Dailies' (which includes Irish National titles and Irish editions of a UK title) represented the vast majority of circulation in Ireland, with 96%. The remaining 4% was covered by UK titles.

### (i)A Irish National Dailies

Irish National Daily	July-December, 2007	
	Total Irish Circulation	Market Share %
Irish Independent	160,854	20%
Irish Times	119,051	15%
Irish Daily Star	112,042	14%
The Irish Examiner	55,948	7%
Irish Daily Mirror	74,786	9%
The Irish Sun	107,079	13%
Irish Daily Mail	59,913	8%
Evening Herald	82,084	10%
Evening Echo	25,904	3%
<b>Total</b>	<b>797,661</b>	<b>100%</b>

SOURCE: ABC, average net circulation per issue, July-December 2007

### (i)B Irish National Dailies



SOURCE: ABC, average net circulation per issue, July-December 2007

#### NOTES:

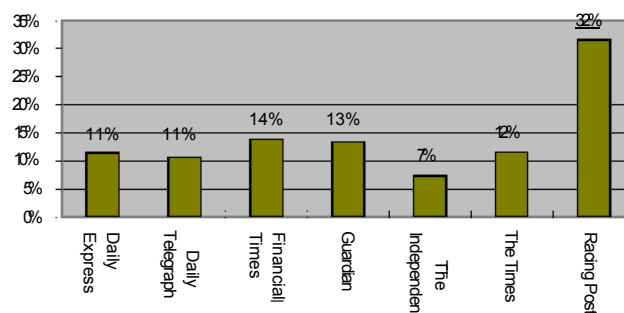
1) Includes Irish National Titles and Irish editions of a UK title

### (ii)A UK National Dailies

UK National Daily	July-December, 2007	
	Total Irish Circulation	Market Share %
Daily Express	3,924	11%
Daily Telegraph	3,654	11%
Financial Times	4,757	14%
Guardian	4,585	13%
The Independent	2,502	7%
The Times	3,947	12%
Racing Post	10,800	32%
Irish News	n/a	n/a
Daily Record	n/a	n/a
Belfast Telegraph	n/a	n/a
<b>Total</b>	<b>34,169</b>	<b>100%</b>

SOURCE: ABC, average net circulation per issue, July-December 2007

### (ii)B UK National Dailies



SOURCE: ABC, average net circulation per issue, July-December 2007

#### NOTES:

1) Covers UK editions

### (iii) non Irish, non UK national daily

Non-Irish, Non UK National Daily	July-December, 2007	
	Total Irish Circulation	Market Share %
Wall Street Journal	n/a	~
USA Today	n/a	~
International Herald Tribune	n/a	~
Le Monde	n/a	~
Le Figaro	n/a	~
L'equipe	n/a	~
Liberation	n/a	~
La Repubblica	n/a	~
Corriere della Sera	n/a	~
Gazetta dello Sport	n/a	~
Il Sole 24 Ore	n/a	~
El Pais	n/a	~
El Mundo	n/a	~
ABC	n/a	~
Frankfurter	n/a	~
Die Welt	n/a	~
Daily Ausaf	n/a	~
Laif	n/a	~
<b>Total</b>	<b>n/a</b>	<b>~</b>

SOURCE: Easons

#### NOTES:

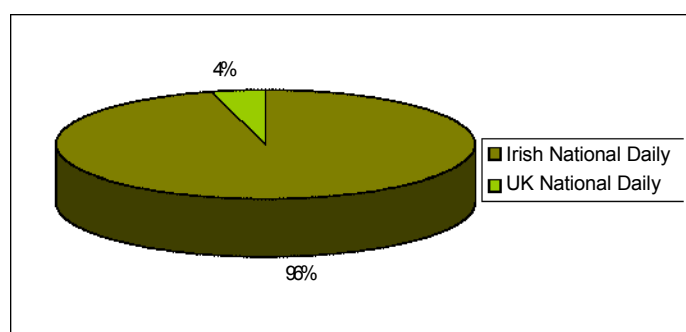
- 1) Newsprint do not distribute any foreign language newspapers
- 2) Circulation figures for foreign language newspapers not collected by Easons or ABC for ROI

### (iv)A Totals Table

Total Daily	July-December, 2007	
	Total Irish Circulation	Market Share %
Irish National Daily	797,661	96%
UK National Daily	34,169	4%
Non-Irish, Non UK National Daily	n/a	~
<b>Total</b>	<b>831,830</b>	<b>100%</b>

SOURCE: ABC, average net circulation per issue, July-December 2007

### (iv)B Totals Table, Market Share % 2007



**F. The Total Irish Circulation and Market Share Figures - Sunday Newspapers**

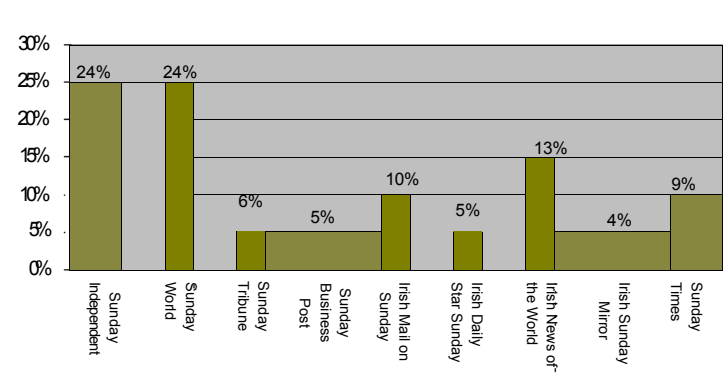
In the total Sunday newspaper market in 2007, circulation for the 'Irish Sunday Newspapers' (which includes Irish Sunday Titles and Irish editions of a UK title) represented the vast majority of circulation in Ireland, with 95%. The remaining 5% was covered by UK titles.

**(i)A Irish Sunday Newspapers**

Irish Sunday Newspapers	July-December, 2007	
	Total Irish Circulation	Market Share %
Sunday Independent	282,459	24%
Sunday World	283,801	24%
Sunday Tribune	70,058	6%
Sunday Business Post	53,871	5%
Irish Mail on Sunday	113,577	10%
Irish Daily Star Sunday	64,052	5%
Irish News of the World	156,666	13%
Irish Sunday Mirror	47,427	4%
Sunday Times	104,464	9%
<b>Total</b>	<b>1,176,375</b>	<b>100%</b>

SOURCE: ABC, average net circulation per issue, July-December 2007

**(ii)B Irish Sunday Newspapers**



SOURCE: ABC, average net circulation per issue, July-December 2007

**NOTES:**

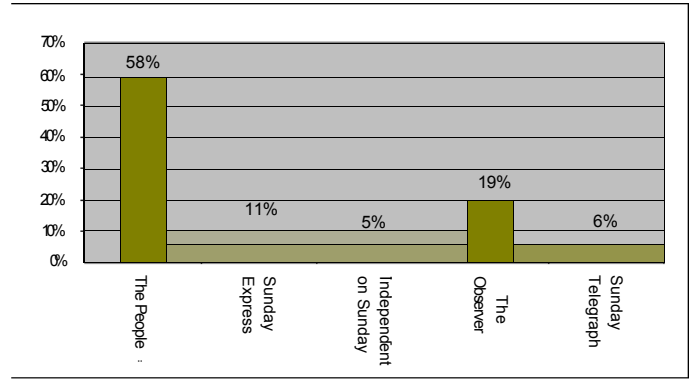
1) Includes Irish Sunday titles and Irish editions of a UK title

**(ii)A UK Sunday Newspapers**

UK Sunday Newspapers	July-December, 2007	
	Total Irish Circulation	Market Share %
The People	33,728	58%
Sunday Express	6,447	11%
Independent on Sunday	3,060	5%
The Observer	11,289	19%
Sunday Telegraph	3,410	6%
<b>Total</b>	<b>57,934</b>	<b>100%</b>

SOURCE: ABC, average net circulation per issue, July-December 2007

**(ii)B UK Sunday Newspapers**



SOURCE: ABC, average net circulation per issue, July-December 2007

**NOTES:**

1) Covers UK editions

**(iii) Non Irish, non UK Sunday newspapers**

Non-Irish, Non UK Sunday Newspapers	July-December, 2007	
	Total Irish Circulation	Market Share %
Le Journal de Dimanche	n/a	~
El Pais Sunday	n/a	~
El Mundo Sunday	n/a	~
ABC Sunday	n/a	~
Daily Ausaf	n/a	~
<b>Total</b>	<b>n/a</b>	<b>~</b>

SOURCE: Easons

**(iv)B Totals Table, Market Share %**

**NOTES:**

1) Newsprint do not distribute any foreign language newspapers

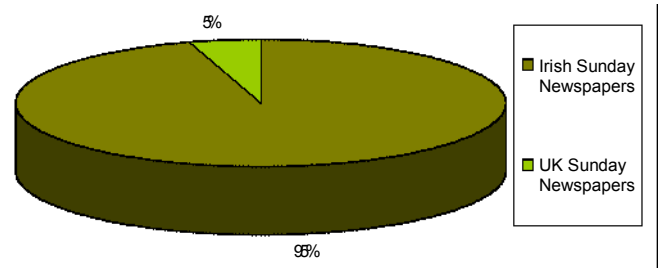
2) Circulation figures for foreign language newspapers not collected by Easons or ABC for ROI

**(iv)A Totals Table**

Total Daily	July-December, 2007	
	Total Irish Circulation	Market Share %
Irish Sunday Newspapers	1,176,375	95%
UK Sunday Newspapers	57,934	5%
Non-Irish, Non UK Sunday Newspapers	n/a	~
<b>Total</b>	<b>1,234,309</b>	<b>100%</b>

SOURCE: ABC, average net circulation per issue, July-December Figures 2007

**(iv)**



SOURCE: ABC, average net circulation per issue, July-December Figures 2007

## G. List of Newspapers Published in Ireland which are Published Electronically

A significant number of Daily, Sunday and Regional newspapers publish their content electronically. The level of content varies however, with some newspapers placing all / most content on their websites (e.g. Irish Independent, Irish Times, Clare People, etc), while other newspapers offer a selected number of stories (e.g. Anglo Celt, Leitrim Post, etc).

	Title	Website	Full Paper	Selected Stories
Daily Newspapers	Irish Independent	<a href="http://www.independent.ie">www.independent.ie</a>	X	
	Irish Times	<a href="http://www.ireland.com">www.ireland.com</a>	X	
	The Irish Examiner	<a href="http://www.examiner.ie">www.examiner.ie</a>	X	
	Irish Daily Mirror (UK Edition)	<a href="http://www.mirror.co.uk">www.mirror.co.uk</a>	X	
	The Irish Sun (UK Edition)	<a href="http://www.thesun.co.uk">www.thesun.co.uk</a>	X	
	Irish Daily Mail * (UK Edition)	<a href="http://www.dailymail.co.uk">www.dailymail.co.uk</a>	X	
	Evening Echo	<a href="http://www.eveningecho.ie">www.eveningecho.ie</a>	X	
	Daily Express	<a href="http://www.express.co.uk">www.express.co.uk</a>	X	
	Daily Telegraph	<a href="http://www.telegraph.co.uk">www.telegraph.co.uk</a>	X	
	Financial Times	<a href="http://www.financialtimes.net">www.financialtimes.net</a>	X	
	Guardian	<a href="http://www.guardian.co.uk">www.guardian.co.uk</a>	X	
	The Independent	<a href="http://www.independent.co.uk">www.independent.co.uk</a>	X	
	The Times	<a href="http://www.timesonline.co.uk">www.timesonline.co.uk</a>	X	
	Sunday Newspapers	Sunday Independent	<a href="http://www.independent.ie">www.independent.ie</a>	X
Sunday World		<a href="http://www.sundayworld.com">www.sundayworld.com</a>	X	
Sunday Tribune		<a href="http://www.tribune.ie">www.tribune.ie</a>	X	
Sunday Business Post		<a href="http://www.sbpost.ie">www.sbpost.ie</a>	X	
Ireland on Sunday / Irish Mail on Sunday		<a href="http://www.dailymail.ie">www.dailymail.ie</a>	X	
Irish News of the World (UK Edition)		<a href="http://www.newsoftheworld.co.uk">www.newsoftheworld.co.uk</a>	X	
Irish Sunday Mirror (UK Edition)		<a href="http://www.sundaymirror.co.uk">www.sundaymirror.co.uk</a>	X	
The People		<a href="http://www.people.co.uk">www.people.co.uk</a>	X	
Sunday Times		<a href="http://www.Sunday-times.ie">www.Sunday-times.ie</a>	X	
Sunday Express		<a href="http://www.express.co.uk">www.express.co.uk</a>	X	
Independent on Sunday		<a href="http://www.independent.co.uk">www.independent.co.uk</a>	X	
The Observer		<a href="http://observer.guardian.co.uk/">http://observer.guardian.co.uk/</a>	X	
Sunday Telegraph		<a href="http://www.telegraph.co.uk">www.telegraph.co.uk</a>	X	
Regional Newspapers (Paid-for)		Anglo Celt	<a href="http://www.anglocelt.ie">www.anglocelt.ie</a>	
	The Avondhu	<a href="http://www.avondhupress.ie">www.avondhupress.ie</a>		X
	Cavan Post	<a href="http://www.cavanpost.ie">www.cavanpost.ie</a>		X
	Clare Champion	<a href="http://www.clarechampion.ie">www.clarechampion.ie</a>	X	
	Clare People	<a href="http://www.clarepeople.com">www.clarepeople.com</a>	X	
	Connacht Tribune	<a href="http://www.connacht-tribune.ie">www.connacht-tribune.ie</a>		X
	Connaught Telegraph	<a href="http://www.con-telegraph.ie">www.con-telegraph.ie</a>	X	
	Corkman	<a href="http://www.corkman.ie">www.corkman.ie</a>	X	
	Donegal Democrat	<a href="http://www.donegaldemocrat.com">www.donegaldemocrat.com</a>		X
	Donegal Democrat-Tuesday (People's Press)	<a href="http://www.peoplespressnews.com/">www.peoplespressnews.com/</a>	X	
	Donegal Post	<a href="http://www.donegalpost.com">www.donegalpost.com</a>		X
	Derry People / Donegal News	<a href="http://www.donegalnews.com">www.donegalnews.com</a>		X
	Drogheda Independent	<a href="http://www.drogheda-independent.ie">www.drogheda-independent.ie</a>	X	
	Dundalk Argus	<a href="http://www.argus.ie">www.argus.ie</a>	X	
	Dundalk Democrat	<a href="http://www.dundalkdemocrat.ie">www.dundalkdemocrat.ie</a>	X	
	Dungarvan Leader	<a href="http://www.dungarvanleader.com">www.dungarvanleader.com</a>	X	
	East Cork Journal	<a href="http://www.eastcorkjournal.com">www.eastcorkjournal.com</a>		X
	The Echo – Dublin	<a href="http://www.the-echo.ie">www.the-echo.ie</a>		X
	The Echo Group (4 Titles):	~		
	<i>New Ross Echo</i>	<a href="http://www.newrossecho.ie/">www.newrossecho.ie/</a>		X
	<i>Enniscorthy Echo</i>	<a href="http://www.enniscorthyecho.ie/">www.enniscorthyecho.ie/</a>		X
	<i>Wexford Echo</i>	<a href="http://www.wexfordecho.ie/">www.wexfordecho.ie/</a>		X
	<i>Gorey Echo</i>	<a href="http://www.goreyecho.ie/">www.goreyecho.ie/</a>		X
	The Epoch Times	<a href="http://en.epochtimes.com/index15.html">http://en.epochtimes.com/index15.html</a>		X
	Fingal Independent	<a href="http://www.fingal-independent.ie">www.fingal-independent.ie</a>	X	

	Title	Website	Full Paper	Selected Stories	
Regional Newspapers (Paid-for)	Finn Valley Post	<a href="http://www.finnvalleypost.com">www.finnvalleypost.com</a>		X	
	Kerry's Eye	<a href="http://www.kerryseye.com">www.kerryseye.com</a>	X		
	Kerryman	<a href="http://www.kerryman.ie">www.kerryman.ie</a>	X		
	Kilkenny People	<a href="http://www.kilkennypeople.ie">www.kilkennypeople.ie</a>	X		
	The Kingdom	<a href="http://www.the-kingdom.ie">www.the-kingdom.ie</a>	X		
	La Nua	<a href="http://www.nuacht.com">www.nuacht.com</a>	X		
	Leinster / Offaly Express	<a href="http://www.laoistoday.ie">www.laoistoday.ie</a>	X		
	Leinster Leader	<a href="http://www.leinsterleader.ie">www.leinsterleader.ie</a>	X		
	Leitrim Observer	<a href="http://www.leitrimobserver.ie">www.leitrimobserver.ie</a>	X		
	Leitrim Post	<a href="http://www.leitrimpost.com">www.leitrimpost.com</a>		X	
	Limerick Leader	<a href="http://www.limerickleader.ie">www.limerickleader.ie</a>		X	
	Longford Leader	<a href="http://www.longfordleader.ie">www.longfordleader.ie</a>	X		
	Mayo News	<a href="http://www.mayonews.ie">www.mayonews.ie</a>	X		
	Meath Chronicle	<a href="http://www.meathchronicle.ie">www.meathchronicle.ie</a>	X		
	Meath Post	<a href="http://www.meathpost.com">www.meathpost.com</a>		X	
	Monaghan Post	<a href="http://www.monaghanpost.com">www.monaghanpost.com</a>		X	
	Munster Express	<a href="http://www.munster-express.ie">www.munster-express.ie</a>	X		
	Nationalist Group:	~			
		<i>Carlow Nationalist</i>	<a href="http://www.carlow-nationalist.ie/">www.carlow-nationalist.ie/</a>		X
		<i>Laois Nationalist</i>	<a href="http://www.laois-nationalist.ie/">www.laois-nationalist.ie/</a>		X
		<i>Kildare Nationalist</i>	<a href="http://www.kildare-nationalist.ie/">www.kildare-nationalist.ie/</a>		X
	Offaly Independent	<a href="http://www.offalyindependent.ie">www.offalyindependent.ie</a>			X
	People Group:	~			
		<i>Bray People</i>	<a href="http://www.braypeople.ie">www.braypeople.ie</a>	X	
		<i>Carlow People</i>	<a href="http://www.carlowpeople.ie">www.carlowpeople.ie</a>	X	
		<i>Wicklow People</i>	<a href="http://www.wicklowpeople.ie">www.wicklowpeople.ie</a>	X	
		<i>Enniscorthy Guardian</i>	<a href="http://www.enniscorthyguardian.ie">www.enniscorthyguardian.ie</a>	X	
		<i>Gorey Guardian</i>	<a href="http://www.goreyguardian.ie">www.goreyguardian.ie</a>	X	
		<i>New Ross Standard</i>	<a href="http://www.newrossstandard.ie">www.newrossstandard.ie</a>	X	
		<i>Wexford People</i>	<a href="http://www.wexfordpeople.ie">www.wexfordpeople.ie</a>	X	
		<i>Nenagh Guardian</i>	<a href="http://www.nenaghguardian.ie">www.nenaghguardian.ie</a>	X	
	Roscommon Champion	<a href="http://www.roscommonchampion.ie">www.roscommonchampion.ie</a>			X
	Roscommon Herald	<a href="http://www.roscommonherald.ie">www.roscommonherald.ie</a>			X
	Sligo Champion	<a href="http://www.sligochampion.ie">www.sligochampion.ie</a>	X		
	Sligo Weekender	<a href="http://www.sligoweekender.ie">www.sligoweekender.ie</a>			X
	Southern Star	<a href="http://www.southernstar.ie">www.southernstar.ie</a>			X
	Tipperary Star	<a href="http://www.tipperarystar.ie">www.tipperarystar.ie</a>	X		
	Tuam Herald	<a href="http://www.tuamherald.ie">www.tuamherald.ie</a>			X
	Waterford News & Star	<a href="http://www.waterford-news.com">www.waterford-news.com</a>			X
	The Weekender	<a href="http://www.theweekender.ie">www.theweekender.ie</a>			X
	Western People	<a href="http://www.westernpeople.ie">www.westernpeople.ie</a>			X
	Westmeath Examiner	<a href="http://www.westmeathexaminer.ie">www.westmeathexaminer.ie</a>	X		
	Westmeath Independent	<a href="http://www.westmeathindependent.ie">www.westmeathindependent.ie</a>	X		
Wicklow News	<a href="http://www.wicklownews.ie">www.wicklownews.ie</a>			X	

SOURCE: PwC research; newspaper websites.

**NOTES:**

1) Websites are categorised into two types: one which offers the 'full paper' online, or those websites which offer 'selected stories' only



**H. Table of Newspaper Ownership Identifying the Owner, the National Titles held by that Owner, the Local Titles Held by that Owner and the Broadcasting Stations in which they have an Interest**

Many of the newspaper groups in Ireland have cross-media interests in the Irish market, and are involved not only in the ownership of national and local newspapers but in the distribution and printing of newspapers, ownership of websites and also radio stations. For example eight groups own national and / or local newspaper titles, and three have an interest in radio stations. Two media groups, specifically Independent News & Media (INM) and Thomas Crosbie Holdings (TCH), have substantial interests in both the national and local / regional newspaper market (INM: 7 national and 17 local titles, TCH: 2 national and 15 local titles), and Johnston Press (JP) owns a significant number of local titles (16). Four of the groups are involved in printing newspapers in Ireland (INM, JP, TCH & Irish Times), and INM owns one of the two key newspaper distributing companies in Ireland, Newsprint.

(i) Summary Table - Ownership of Irish Newspapers, Radio and TV for each of the Media Groups Profiled

Owner	Irish Newspapers (Publishing, printing, distribution and associated websites)	Irish Radio	Irish TV
<b>Independent News &amp; Media plc</b>	7 National titles 17 Regional titles 27 websites: <i>17 Newspaper associated websites</i> <i>5 Classified websites</i> <i>1 Travel website</i> <i>1 Property website</i> <i>3 Other websites</i> Printing Facility Newsprint - distribution company Other: <i>Primary School Magazine</i>	None	None
<b>Communicorp Group Ltd.</b> (including Denis O'Brien)	Denis O'Brien is a 25.04% shareholder of Independent News & Media as at 30.05.08. This shareholding represents his only interest in National and Regional titles. 5 websites: <i>5 Radio associated websites</i>	5 radio broadcasting stations	None
<b>Thomas Crosbie Ltd.</b>	2 National titles 15 Regional titles 23 websites: <i>18 Newspaper associated websites</i> <i>3 Sports websites</i> <i>1 News website</i> <i>1 Recruitment website</i> Printing Facility	5 radio broadcasting stations	None
<b>Johnston Press</b>	No national titles 16 Regional titles 10 websites: <i>10 Newspaper associated websites</i> Printing Facility	None	None
<b>Irish Times Trust</b>	1 National title 2 Regional titles (both are free titles) 3 websites: <i>1 Newspaper associated website</i> <i>1 Property website</i> <i>1 Sports website</i> Printing Facility	None	None
<b>Alpha Newspaper Group</b>	No national titles 5 Regional titles 1 website: <i>1 Newspaper associated website</i>	None	None
<b>Associated Newspapers</b>	2 National titles 1 Regional title (free title) 1 website: <i>1 Newspaper associated website</i>	None	None
<b>News Corporation</b>	3 National titles (Irish Editions of UK titles)  No Regional title	None	None [however, BSKyB sells television broadcasting platform services from an Irish base. It broadcasts into Ireland from the UK and is active in the ROI advertising market]
<b>UTV Media plc</b>	No National titles No Regional titles 7 websites: <i>6 Radio associated websites</i> <i>1 Other website</i>	6 radio broadcasting stations	None [however, UTV broadcasts from Northern Ireland into ROI and is active in the ROI advertising market]

**NOTES:**

- Further detail on distribution and printing facilities are provided in parts J and K of Section 1
- Details above are for Republic of Ireland only (i.e. UK and Northern Ireland newspaper titles, websites, broadcasting radio and television channels are not included)

## (ii) Independent News &amp; Media Plc.

Owner	Title	% Interest	Subsidiary	
Independent News & Media plc	National Titles	Irish Independent	100%	Yes
		Sunday Independent	100%	Yes
		Evening Herald	100%	Yes
		Sunday World	100%	Yes
		Irish Daily Star	50%	Yes
		Irish Daily Star Sunday	50%	Yes
		Sunday Tribune	29.90%	No
	Regional Titles (paid-for and free)	People Newspaper Group:	100%	Yes
		<i>Wicklow People</i>	100%	Yes
		<i>Bray People</i>	100%	Yes
		<i>Carlow People</i>	100%	Yes
		<i>Enniscorthy Guardian Series</i>	100%	Yes
		<i>New Ross Standard</i>	100%	Yes
		<i>Wexford People</i>	100%	Yes
		<i>Waterford People</i>	100%	Yes
		<i>Dungarvan People</i>	100%	Yes
		<i>Gorey Guardian</i>	100%	Yes
		<i>Nenagh Guardian</i>	100%	Yes
		Drogheda Independent Group:	100%	Yes
		<i>Drogheda Independent</i>	100%	Yes
		<i>Fingal Independent</i>	100%	Yes
		The Corkman Series	100%	Yes
		The Argus	100%	Yes
		The Kerryman Series	100%	Yes
		The Sligo Champion	100%	Yes
		Herald AM (free title)	100%	Yes
		Broadcasting	None	~
	Other	<a href="http://www.independent.ie">www.independent.ie</a>	100%	Yes
		<a href="http://www.sundayindependent.com/">http://www.sundayindependent.com/</a>	100%	Yes
		<a href="http://www.sundayworld.com/">http://www.sundayworld.com/</a>	100%	Yes
		<a href="http://www.tribune.ie">www.tribune.ie</a>	30%	Yes
		<a href="http://www.thestar.ie/">http://www.thestar.ie/</a>	100%	Yes
		<a href="http://www.braypeople.ie/">http://www.braypeople.ie/</a>	100%	Yes
		<a href="http://www.carlowpeople.ie/">http://www.carlowpeople.ie/</a>	100%	Yes
		<a href="http://www.drogheda-independent.ie/">http://www.drogheda-independent.ie/</a>	100%	Yes
		<a href="http://www.enniscorthyguardian.ie/">http://www.enniscorthyguardian.ie/</a>	100%	Yes
		<a href="http://www.fingal-independent.ie/">http://www.fingal-independent.ie/</a>	100%	Yes
		<a href="http://www.goreyguardian.ie/">http://www.goreyguardian.ie/</a>	100%	Yes
		<a href="http://www.kerryman.ie/">http://www.kerryman.ie/</a>	100%	Yes
		<a href="http://www.newrossstandard.ie/">http://www.newrossstandard.ie/</a>	100%	Yes
		<a href="http://www.argus.ie/">http://www.argus.ie/</a>	100%	Yes
		<a href="http://www.corkman.ie/">http://www.corkman.ie/</a>	100%	Yes
		<a href="http://www.wicklowpeople.ie/">http://www.wicklowpeople.ie/</a>	100%	Yes
<a href="http://www.wexfordpeople.ie/">http://www.wexfordpeople.ie/</a>		100%	Yes	
<a href="http://www.yourlocal.ie/">http://www.yourlocal.ie/</a>		100%	Yes	
<a href="http://www.loadza.com/">http://www.loadza.com/</a>		100%	Yes	
<a href="http://www.loadzacars.ie/">http://www.loadzacars.ie/</a>		100%	Yes	
<a href="http://www.loadzajobs.ie/">http://www.loadzajobs.ie/</a>		100%	Yes	
<a href="http://www.loadzatravel.ie/">http://www.loadzatravel.ie/</a>		100%	Yes	
<a href="http://www.placemyad.ie/">http://www.placemyad.ie/</a>		100%	Yes	
<a href="http://www.propertynews.com/">http://www.propertynews.com/</a>		100%	Yes	
<a href="http://www.independentcolleges.ie/">http://www.independentcolleges.ie/</a>		100%	Yes	
<a href="http://www.getminted.com/">http://www.getminted.com/</a>		100%	Yes	
<a href="http://www.primelearning.com/">http://www.primelearning.com/</a>		100%	Yes	
Eureka (Primary School Science Magazine)		100%	Yes	

SOURCE: Sunday Tribune information: CRO Tribune Newspapers Annual Return 30/09/2007

Website information: <http://www.independent.ie/service/group-websites-1200021.html>

## NOTES:

- 1) Independent Newspapers (Irl) Limited is a wholly owned subsidiary of Independent News & Media plc
- 2) Irish Daily Star and Irish Daily Star Sunday are jointly owned with Express Newspapers
- 3) Sunday Tribune's other major shareholders are Gordon Colleary, Chairman Sunday Tribune, (33%) and Martin Naughton (Glen Dimplex) (8%)
- 4) IN&M own 99.9% of share preferences for Sunday Independent
- 5) Irish Daily Star and Star Sunday website under construction only
- 6) Dungarvan People and Waterford People were recently launched in February 2008.

## (iii) Communicorp Group Ltd

Owner	Title	% Interest	Subsidiary	
Communicorp Group Ltd (including Denis O'Brien)	National Titles	Via shareholding in Independent News and Media plc (See Table H(ii) above)	25.04%	No
	Regional Titles (paid-for and free)	Today FM	100%	Yes
		Newstalk	62%	Yes
		Spin 103.8	100%	Yes
		98 FM	79%	Yes
		Spin Southwest	45%	No
	Other	<a href="http://www.98fm.ie/">http://www.98fm.ie/</a>	79%	Yes
		<a href="http://www.todayfm.com">www.todayfm.com</a>	100%	Yes
		<a href="http://www.newstalk.ie/">http://www.newstalk.ie/</a>	62%	Yes
		<a href="http://www.spin1038.com/">http://www.spin1038.com/</a>	100%	Yes
		<a href="http://www.spinsouthwest.com/">http://www.spinsouthwest.com/</a>	45%	No

SOURCE: Radio station information: BCI 3.1.4 Statement Pursuant to Clause 3.2 Re: Radio Ireland Limited 31st March 2008

Website information: [www.communicorp.ie](http://www.communicorp.ie)

CRO, Annual returns 30/09/2007

The Irish Times, O'Brien Sells Highland Radio, 3/05/2008

The Guardian, Independent News & Media: Denis O'Brien stake above 25% , 30.05.08

## NOTES:

- 1) Denis O'Brien (not Communicorp Group) is a 25.04% shareholder of IN&M, as at 30th May 2008 (The Guardian, Independent News & Media: Denis O'Brien stake above 25%, 30.05.08)
- 2) Communicorp website lists East Coast FM as one of its subsidiaries, which is contrary to BCI report.
- 3) According to the latest annual returns filed in the Companies Registration Office, dated the 30th September 2007, the sole member listed for Communicorp Group Ltd is Mr Denis O'Brien.
- 4) Denis O'Brien sold Highland Radio in Co. Donegal to Galway-based businessman Gerry Rabbitte for approximately €10million on May 2nd, 2008.

## (iv) Thomas Crosbie Ltd.

Owner	Title	% Interest	Subsidiary	
Thomas Crosbie Ltd.	National Titles	The Sunday Business Post	100%	Yes
		Irish Examiner	100%	Yes
	Regional Titles (paid-for and free)	Evening Echo	100%	Yes
		Waterford News & Star	100%	Yes
		The Western People	100%	Yes
		Sligo Weekender	100%	Yes
		The Kingdom	100%	Yes
		Newry Democrat	100%	Yes
		Down Democrat	100%	Yes
		Carlow Nationalist	100%	Yes
		Kildare Nationalist	100%	Yes
		Laois Nationalist	100%	Yes
		Roscommon Herald	100%	Yes
		Enniscorthy Echo	100%	Yes
		New Ross Echo	100%	Yes
		Gorey Echo	100%	Yes
		Wexford Echo	100%	Yes
	Broadcasting Stations	WLR FM	75%	Yes
		Beat FM	70%	Yes
		Midwest Radio	15%	No
		RedFM	36%	No
		County Mayo Radio Ltd	9%	No
	Other	<a href="http://www.tcm.ie">www.tcm.ie</a>	100%	Yes
		<a href="http://www.examiner.ie/irishexaminer/pages/home.asp">http://www.examiner.ie/irishexaminer/pages/home.asp</a>	100%	Yes
		<a href="http://www.sbpost.ie">www.sbpost.ie</a>	100%	Yes
		<a href="http://www.echo.ie">www.echo.ie</a>	100%	Yes
		<a href="http://www.breakingnews.ie/">http://www.breakingnews.ie/</a>	100%	Yes
		<a href="http://www.roscommonherald.com/">http://www.roscommonherald.com/</a>	100%	Yes
		<a href="http://www.sligoweekender.ie/">http://www.sligoweekender.ie/</a>	100%	Yes
		<a href="http://www.westernpeople.ie/">http://www.westernpeople.ie/</a>	100%	Yes
		<a href="http://www.the-kingdom.ie/">http://www.the-kingdom.ie/</a>	100%	Yes
		<a href="http://www.waterford-news.ie/">http://www.waterford-news.ie/</a>	100%	Yes
		<a href="http://www.carlow-nationalist.ie/">http://www.carlow-nationalist.ie/</a>	100%	Yes
		<a href="http://www.kildare-nationalist.ie/">http://www.kildare-nationalist.ie/</a>	100%	Yes
		<a href="http://www.laois-nationalist.ie/">http://www.laois-nationalist.ie/</a>	100%	Yes
		<a href="http://www.goreyecho.ie/">http://www.goreyecho.ie/</a>	100%	Yes
		<a href="http://www.newrossecho.ie/">http://www.newrossecho.ie/</a>	100%	Yes
		<a href="http://www.enniscorthyecho.ie/">http://www.enniscorthyecho.ie/</a>	100%	Yes
		<a href="http://www.wexfordecho.ie/">http://www.wexfordecho.ie/</a>	100%	Yes
		<a href="http://www.newrydemocrat.com/">http://www.newrydemocrat.com/</a>	100%	Yes
		<a href="http://www.downdemocrat.com/">http://www.downdemocrat.com/</a>	100%	Yes
		<a href="http://www.irishpost.ie/">http://www.irishpost.ie/</a>	100%	Yes
<a href="http://www.recruitireland.com">www.recruitireland.com</a>		100%	Yes	
<a href="http://www.motornet.ie">www.motornet.ie</a>		100%	Yes	
<a href="http://www.rugby.ie">www.rugby.ie</a>		100%	Yes	
<a href="http://www.golfonline.ie">www.golfonline.ie</a>		100%	Yes	

SOURCE: Newspaper ownership: [www.tch.ie](http://www.tch.ie)

Broadcasting stations: BCI 3.1.4 Statement Pursuant to Clause 3.2 31st October 2007

Website information: [www.tcm.ie](http://www.tcm.ie)

## (v) Johnston Press

Owner	Title	% Interest	Subsidiary	
Johnston Press	<b>National Titles</b>	None	~	
	<b>Regional Titles (paid-for and free)</b>	Leinster Leader	100%	Yes
		Kilkenny People	100%	Yes
		Leinster Express	100%	Yes
		Offaly Express	100%	Yes
		Limerick Leader	100%	Yes
		Limerick Chronicle	100%	Yes
		Nationalist and Munster Advertiser	100%	Yes
		Tipperary Star	100%	Yes
		Longford Leader	100%	Yes
		Lairim Observer	100%	Yes
		Dundalk Democrat	100%	Yes
		Dundalk Life (free title)	100%	Yes
		Tallaght Echo	100%	Yes
		Donegal Democrat	100%	Yes
		Letterkenny People (free title)	100%	Yes
		South Tipp Today (free title)	100%	Yes
	<b>Broadcasting Stations</b>	None	-	-
	<b>Other</b>	<a href="http://www.leinsterleader.ie">www.leinsterleader.ie</a>	100%	Yes
		<a href="http://www.kilkennypeople.ie">www.kilkennypeople.ie</a>	100%	Yes
		<a href="http://www.laoistoday.ie">www.laoistoday.ie</a>	100%	Yes
		<a href="http://www.offalyexpress.ie">www.offalyexpress.ie</a>	100%	Yes
		<a href="http://www.limerickleader.ie">www.limerickleader.ie</a>	100%	Yes
		<a href="http://www.longfordleader.ie">www.longfordleader.ie</a>	100%	Yes
		<a href="http://www.lairimobserver.ie">www.lairimobserver.ie</a>	100%	Yes
		<a href="http://www.dundalkdemocrat.ie">www.dundalkdemocrat.ie</a>	100%	Yes
		<a href="http://www.donegaldemocrat.ie">www.donegaldemocrat.ie</a>	100%	Yes
<a href="http://www.tipperarytoday.ie">www.tipperarytoday.ie</a>		100%	Yes	

SOURCE: Competition Authority Determination of Merger Notification M/07/064 18th February 2008

Websites: Newspaper own websites

## (vi) Irish Times Trust Ltd

Owner	Title	% Interest	Subsidiary	
Irish Times Trust Ltd	<b>National Titles</b>	Irish Times	100%	Yes
	<b>Regional titles (Free)</b>	Metro Ireland	45%	No
		Gazette Group (Lucan, Blanch, Clondalkin & Dundrum Gazette)	33%	No
	<b>Broadcasting Stations</b>	None	~	~
	<b>Other</b>	<a href="http://www.ireland.com">www.ireland.com</a>	100%	Yes
		<a href="http://www.irish-racing.com">www.irish-racing.com</a>	100%	Yes
<a href="http://www.myhome.ie">www.myhome.ie</a>		100%	Yes	

SOURCE: Metro Information: <http://www.independent.ie/business/irish/morning-freesheet-metro-runs-up-836483m-losses-in-first-15-months-1200179.html> )

namely Associated Newspapers & Irish Times & Metro / Fortneugreen

Source for Gazette Group information: Competition Authority Decision M/08/007 - Irish Times/ Relevance

Source for [myhome.ie](http://www.myhome.ie) information: Competition Authority Decision M/06/059 - The Irish Times / MyHome September 2006

## NOTES:

1) Metro is jointly owned by Irish Times, Associated Newspapers and Metro International

## (vii) Alpha Newspaper Group

Owner	Title	% Interest	Subsidiary	
Alpha Newspaper Group	Northern Ireland Titles	Ballyclare Gazette	100%	Yes
		Ballymena Guardian	100%	Yes
		Carrickfergus Advertiser	100%	Yes
		Larne Gazette	100%	Yes
		East Antrim Gazette	100%	Yes
		Dungannon News	100%	Yes
		Northern Constitution - Coleraine	100%	Yes
		Northern Constitution - Limavady	100%	Yes
		Northern Constitution - Magherafelt	100%	Yes
		The Outlook	100%	Yes
		Strabane Weekly News and Donegal Reporter	100%	Yes
		Tyrone Constitution	100%	Yes
		Tyrone Courier	100%	Yes
		Ulster Gazette	100%	Yes
		Coleraine Chronicle	100%	Yes
		Ballymena Chronicle	100%	Yes
		Ballycastle Chronicle	100%	Yes
		Limavady Chronicle	100%	Yes
		Antrim Guardian	100%	Yes
		The Leader	100%	Yes
	National Titles	None	~	~
	Regional Titles (paid-for and free)	Longford News	100%	Yes
		Athlone Voice	100%	Yes
		Roscommon Champion	100%	Yes
		Midland Tribune	100%	Yes
		Tullamore Tribune	100%	Yes
	Broadcasting Stations (Northern Ireland)	Five FM	33%	No
		Six FM	33%	No
		Seven FM	33%	No
		Q102.9	33%	No
		Q101.2	33%	No
		Q97.2	33%	No
	Other	<a href="http://www.ulsternet.co.uk">www.ulsternet.co.uk</a>	100%	Yes
		<a href="http://www.irelandnet.ie">www.irelandnet.ie</a>	100%	Yes
		<a href="http://www.fivefm.co.uk/">http://www.fivefm.co.uk/</a>	33%	No
		<a href="http://www.sixfm.co.uk/">http://www.sixfm.co.uk/</a>	33%	No
		<a href="http://www.sevenfm.co.uk/">http://www.sevenfm.co.uk/</a>	33%	No
		<a href="http://www.q102.fm/">http://www.q102.fm/</a>	33%	No
		<a href="http://www.q101west.fm/">http://www.q101west.fm/</a>	33%	No
		<a href="http://www.q972.fm/">http://www.q972.fm/</a>	33%	No

SOURCE: Alpha company website, <http://www.ulsternet-ni.co.uk/> and Northern Media Group website, <http://www.northernmediagroup.com/shareholders.php>  
Northern Media Group Ltd Abbreviated Accounts, period from 14/06/2006 to 31/12/2006

**NOTES:**

- 1) All six Alpha Radio Stations are Northern Ireland broadcasting stations.
- 2) Alpha Newspapers, The Irish News and River Media are part of the consortium Northern Media Group, which operates the six radio stations above in Northern Ireland.
- 3) Information provided directly from Alpha Media Group, indicated that all radio stations owned by this consortium are divided equally among the three members (Irish News, River Media and Alpha)

## (viii) Associated Newspapers

Owner	Title	% Interest	Subsidiary	
Associated Newspapers	National Titles	Irish Daily Mail	100%	Yes
		Irish Mail on Sunday	100%	Yes
	Regional Titles (paid-for and free)	Metro UK	100%	Yes
		Metro (Ireland)	10%	No
		London Lite (UK only)	100%	Yes
		Daily Mail	100%	Yes
	UK Titles	Mail on Sunday	100%	Yes
		Evening Standard	100%	Yes
		Loot	100%	Yes
	Broadcasting Stations	None	~	~
	Other	<a href="http://www.metroireland.ie/">http://www.metroireland.ie/</a>	100%	Yes
		<a href="http://www.metro.co.uk">www.metro.co.uk</a>	100%	Yes
		<a href="http://www.loot.com">www.loot.com</a>	100%	Yes
		<a href="http://www.femail.co.uk">www.femail.co.uk</a>	100%	Yes
		<a href="http://www.jobsite.co.uk">www.jobsite.co.uk</a>	100%	Yes
		<a href="http://www.findaproerty.co.uk">www.findaproerty.co.uk</a>	100%	Yes
		<a href="http://www.anm.co.uk">www.anm.co.uk</a>	100%	Yes
		<a href="http://www.thisismoney.co.uk">www.thisismoney.co.uk</a>	100%	Yes
		<a href="http://www.thisistravel.co.uk">www.thisistravel.co.uk</a>	100%	Yes
		<a href="http://www.thisisflights.co.uk">www.thisisflights.co.uk</a>	100%	Yes
		<a href="http://www.homesandproperty.co.uk">www.homesandproperty.co.uk</a>	100%	Yes
		<a href="http://www.londonjobs.co.uk">www.londonjobs.co.uk</a>	100%	Yes
		<a href="http://www.dailymail.co.uk">www.dailymail.co.uk</a>	100%	Yes
<a href="http://www.mailonsunday.co.uk">www.mailonsunday.co.uk</a>		100%	Yes	
<a href="http://www.thisislondon.co.uk">www.thisislondon.co.uk</a>	100%	Yes		

SOURCE: Associated Newspaper website, <http://www.associatednewspapers.com/>

## NOTES:

- 1) Associated Newspapers is a subsidiary of The Daily Mail and General Trust plc (DMGT)
- 2) Metro Ireland information: <http://www.independent.ie/business/irish/morning-freesheet-metro-runs-up-836483m-losses-in-first-15-months-1200179.html> )

## (ix) News Corporation

Owner	Title	% Interest	Subsidiary	
News Corporation	National Titles (Irish Editions of UK Titles)	Irish News of the World	100%	Yes
		The Sunday Times	100%	Yes
		The Irish Sun	100%	Yes
	Regional Titles (paid-for and free)	None	n/a	~
	UK Titles	The Times	100%	Yes
		The Sun	100%	Yes
		The News of the World	100%	Yes
		TLS (The Times Literary Supplement)	100%	Yes
	Broadcasting Stations	None	~	
	Other	BSkyB	39.14%	No
		<a href="http://www.news-of-the-world.co.uk">www.news-of-the-world.co.uk</a>	100%	Yes
		<a href="http://www.thesun.co.uk">www.thesun.co.uk</a>	100%	Yes
		<a href="http://www.timesonline.co.uk">www.timesonline.co.uk</a>	100%	Yes
		<a href="http://www.thesundaytimes.co.uk">www.thesundaytimes.co.uk</a>	100%	Yes
<a href="http://www.page3.com">www.page3.com</a>	100%	Yes		

SOURCE: News International website, <http://www.newsinternational.co.uk/>

BSkyB information: [http://www.competition-commission.org.uk/inquiries/ref2007/itv/pdf/sky\\_berr\\_decision.pdf](http://www.competition-commission.org.uk/inquiries/ref2007/itv/pdf/sky_berr_decision.pdf)

## NOTES:

- 1) News Corporation owns News International Ltd is a British newspaper publisher. The company's major titles are published by three subsidiary companies: Times Newspapers Ltd, News Group Newspapers and NI Free Newspapers Limited

Owner	Title	% Interest	Subsidiary	
UTV Media plc	National Titles	None	~	
	Regional Titles (paid-for and free)	None	~	
	National Broadcasting Channels	FM104	100%	Yes
		Dublin's Q102	100%	Yes
		Cork's 96FM	100%	Yes
		103FM County Sound	100%	Yes
		Limerick's Live 95FM	100%	Yes
		LMFM	100%	Yes
	UK Broadcasting Stations	Talk Radio	100%	Yes
		talkSPORT	100%	Yes
		Imagine FM	100%	Yes
		Peak FM	100%	Yes
		The Pulse of West Yorkshire	100%	Yes
		Signal 1	100%	Yes
		107.4 Tower FM	100%	Yes
		Radio Wave 96.5	100%	Yes
		96.4 FM The Wave	100%	Yes
		Wave 102	100%	Yes
		107.2 Wire FM	100%	Yes
		102.4 Wish FM	100%	Yes
		107.7 The Wolf	100%	Yes
		107.6 Juice FM	100%	Yes
		Talk 107	100%	Yes
		Pulse Classic Gold	100%	Yes
		Signal 2	100%	Yes
		Swansea Sound	100%	Yes
		Valleys Radio	100%	Yes
		UTV-EMAP Stoke-on-Trent	70%	Yes
		UTV-EMAP Swansea	70%	Yes
		UTV-EMAP West Yorkshire	70%	Yes
		Central Radio 106.5 FM	100%	Yes
		First Radio Sales	100%	Yes
	U105 (Belfast only)	100%	Yes	
	Other	<a href="http://www.u.tv">www.u.tv</a> ( <a href="http://www.utv.co.uk">www.utv.co.uk</a> )	100%	Yes
		UTV	100%	Yes
		UTV2	100%	Yes
		UTV Internet	100%	Yes
		UTV Talk	100%	Yes
		Broadcast Media Sales (BMS)	100%	Yes
		<a href="http://www.broadcastmediasales.ie">www.broadcastmediasales.ie</a>	100%	Yes
		<a href="http://www.fm104.ie">www.fm104.ie</a>	100%	Yes
		<a href="http://www.q102.ie">www.q102.ie</a>	100%	Yes
		<a href="http://www.96fm.ie">www.96fm.ie</a>	100%	Yes
		<a href="http://www.c103.ie">www.c103.ie</a>	100%	Yes
		<a href="http://www.live95fm.ie">www.live95fm.ie</a>	100%	Yes
		<a href="http://www.lmfm.ie">www.lmfm.ie</a>	100%	Yes
		<a href="http://www.talk-radio.co.uk">www.talk-radio.co.uk</a>	100%	Yes
<a href="http://www.talksport.net">www.talksport.net</a>		100%	Yes	
<a href="http://www.imaginefm.net">www.imaginefm.net</a>		100%	Yes	
<a href="http://www.peakfm.net">www.peakfm.net</a>		100%	Yes	
<a href="http://www.pulse.co.uk">www.pulse.co.uk</a>		100%	Yes	
<a href="http://www.signal1.co.uk">www.signal1.co.uk</a>		100%	Yes	
<a href="http://www.towerfm.co.uk">www.towerfm.co.uk</a>		100%	Yes	
<a href="http://www.wave965.com">www.wave965.com</a>		100%	Yes	
<a href="http://www.thewave.co.uk">www.thewave.co.uk</a>		100%	Yes	
<a href="http://www.wave102.co.uk">www.wave102.co.uk</a>		100%	Yes	
<a href="http://www.wirefm.com">www.wirefm.com</a>		100%	Yes	
<a href="http://www.wishfm.net">www.wishfm.net</a>		100%	Yes	
<a href="http://www.thewolf.co.uk">www.thewolf.co.uk</a>		100%	Yes	
<a href="http://www.juicefm.com">www.juicefm.com</a>		100%	Yes	
<a href="http://www.talk107.co.uk">www.talk107.co.uk</a>		100%	Yes	
<a href="http://www.pulseclassicgold.co.uk">www.pulseclassicgold.co.uk</a>		100%	Yes	
<a href="http://www.signal2.co.uk">www.signal2.co.uk</a>	100%	Yes		
<a href="http://www.swanseasound.co.uk">www.swanseasound.co.uk</a>	100%	Yes		
<a href="http://www.valleysradio.co.uk">www.valleysradio.co.uk</a>	100%	Yes		
<a href="http://www.utvdab.com">www.utvdab.com</a>	70%	Yes		
<a href="http://www.centralradio.fm">www.centralradio.fm</a>	100%	Yes		
<a href="http://www.firstradio.co.uk">www.firstradio.co.uk</a>	100%	Yes		
<a href="http://www.u105.com">www.u105.com</a>	100%	Yes		

SOURCE: UTV Media website, [www.utvmedia.com](http://www.utvmedia.com)

**NOTES:**

- 1) Broadcast Media Sales is the advertising sales house for UTV Radio in Ireland.
- 2) UTV Media own 6 ROI radio stations, but also sell airtime to Galway Bay FM and Beat 102-103 through its subsidiary, Broadcast Media Sales.
- 3) The remainder of UTV's radio stations are UK / Northern Ireland stations.

**ASSUMPTION:** A subsidiary is defined as a shareholding / ownership of equal to, or greater than 50%

## I. Table of Newspaper Circulation and Market Share Figures for each of the past Five Years

The majority of titles in the Irish Daily market recorded a decline in circulation over the four year period between 2003 and 2007. In particular, circulation for the Evening Herald dropped by 15%, with two of the tabloid newspapers, specifically the Irish Daily Mirror and the Irish Sun recording declines of 7% over this period. The three most popular daily titles (the Irish Independent, Irish Times and Irish Daily Star) recorded similar circulation levels or an increase between 2003 and 2007. Circulation for five of the Sunday titles dropped over this time, with the Irish Mail on Sunday recording a 29% drop in circulation. Three titles recorded an increase in circulation between 2003 and 2007, the most significant increase by the Sunday Business Post up 10%.

### (i) Irish National Dailies

Title	2003		2004			2005			2006			2007			% Change 03-07
	Circ.	Market Share	Circ.	Market Share	% Change	Circ.	Market Share	% Change	Circ.	Market Share	% Change	Circ.	Market Share	% Change	
Irish Independent	161,297	21%	171,910	23%	7%	163,598	22%	-5%	163,732	21%	0%	160,854	20%	-2%	0%
Irish Times	115,502	15%	114,528	15%		117,370	16%	2%	116,102	15%	-1%	119,051	15%	3%	3%
Irish Daily Star	110,087	14%	106,433	14%	-3%	105,853	14%	-1%	105,353	13%	0%	112,042	14%	6%	2%
The Irish Examiner	59,412	8%	58,788	8%	-1%	59,070	8%	0%	56,441	7%	-4%	55,948	7%	-1%	-6%
Irish Daily Mirror	80,076	10%	79,337	10%	-1%	81,130	11%	2%	71,950	9%	-11%	74,786	9%	4%	-7%
The Irish Sun	115,711	15%	114,553	15%	-1%	118,199	16%	3%	107,058	14%	-9%	107,079	13%	0%	-7%
Irish Daily Mail	~	~	~	~	~	~	~	~	58,993	7%	n/a	59,913	8%	2%	~
The Evening Echo	27,732	4%	27,938	4%	1%	26,496	3%	-5%	26,946	3%	2%	25,904	3%	-4%	-7%
Evening Herald	96,203	13%	88,284	12%	-8%	85,506	11%	-3%	85,756	11%	0%	82,084	10%	-4%	-15%
<b>Total</b>	<b>766,020</b>	<b>100%</b>	<b>761,771</b>	<b>100%</b>	<b>-1%</b>	<b>757,222</b>	<b>100%</b>	<b>-1%</b>	<b>792,331</b>	<b>100%</b>	<b>5%</b>	<b>797,661</b>	<b>100%</b>	<b>1%</b>	<b>4%</b>

SOURCE: ABC, average net circulation per issue, July-December 2003-2007

### NOTES:

1) \*Irish Daily Mail Launched February 2006

### (ii) Irish Sunday Titles

Title	2003		2004			2005			2006			2007			% Change 03-07
	Circ.	Market Share	Circ.	Market Share	% Change	Circ.	Market Share	% Change	Circ.	Market Share	% Change	Circ.	Market Share	% Change	
Sunday Independent	292,499	25%	291,323	24%	0%	286,613	24%	-2%	287,750	24%	0%	282,459	24%	-2%	-3%
Sunday World	285,503	24%	268,380	22%	-6%	272,304	23%	1%	278,395	23%	2%	283,801	24%	2%	-1%
Sunday Tribune	83,445	7%	79,769	7%	-4%	71,808	6%	-10%	69,305	6%	-3%	70,058	6%	1%	-16%
Sunday Business Post	49,007	4%	48,639	4%	-1%	51,500	4%	6%	53,860	5%	5%	53,871	5%	0%	10%
Irish Mail on Sunday*	160,493	14%	144,172	12%	-10%	127,399	11%	-12%	130,824	11%	3%	113,577	10%	-13%	-29%
Irish Daily Star Sunday**	~	~	45,655	4%	n/a	52,920	4%	16%	56,548	5%	7%	64,052	5%	13%	~
Irish News of the World	167,248	14%	166,536	14%	0%	174,953	15%	5%	162,133	14%	-7%	156,666	13%	-3%	-6%
Irish Sunday Mirror	44,542	4%	51,303	4%	15%	47,742	4%	-7%	42,669	4%	-11%	47,427	4%	11%	6%
Sunday Times	101,518	9%	102,521	9%	1%	107,559	9%	5%	104,871	9%	-2%	104,464	9%	0%	3%
<b>Total</b>	<b>1,184,255</b>	<b>100%</b>	<b>1,198,298</b>	<b>100%</b>	<b>1%</b>	<b>1,192,798</b>	<b>100%</b>	<b>0%</b>	<b>1,186,355</b>	<b>100%</b>	<b>-1%</b>	<b>1,176,375</b>	<b>100%</b>	<b>-1%</b>	

SOURCE: ABC, average net circulation per issue, July-December 2003-2007

### NOTES:

1) \* Ireland on Sunday re-launched as Irish Mail on Sunday in October 2006

2) \*\* Irish Daily Star Sunday launched 2003



**J. Newspaper Printing Facilities in Ireland**

Six key printing companies print the majority of newspaper titles published in Ireland and are typically owned by the large media groups in operation in Ireland, including Independent News & Media, Irish Times Ltd, Thomas Crosbie Holdings, Johnston Press, Celtic Media Group and River Media Group

No	Printer	Locations	National Titles	Local Titles (including freesheet and paid-for titles)	Source	Additional Information
1	Independent News & Media	1) Citywest	Irish Independent	The Sligo Champion	INM contact & INM Website	~
			Sunday Independent	~	As Above	~
			Evening Herald	~	As Above	~
			Herald AM	~	As Above	~
			~	~	As Above	~
			~	~	As Above	~
			~	~	As Above	~
			~	~	As Above	~
			~	~	As Above	~
			~	~	As Above	~
			~	~	As Above	~
		2) Belfast	The Independent (UK)	The Belfast Telegraph (UK)	As Above	INM owns the Telegraph Group
			Independent on Sunday (UK)	Fingal Independent	As Above	~
			~	Wexford People	As Above	~
			~	Bray People	As Above	~
			~	New Ross Standard	As Above	~
			~	The Kerryman	As Above	~
			~	The Corkman	As Above	~
		3) Newry	The Star	Wicklow People	As Above	~
			Sunday World	~	As Above	~
		4) Another	The Sunday Star	~	As Above	Contracted to print by the Irish Times Ltd.
			The Sunday Tribune	~	As Above	Birr
			~	Carlow People	As Above	Datascope in Wexford
~	Enniscorthy Guardian		As Above	As Above		
2	Irish Times Ltd.	Citywest	The Irish Times	The Lucan Gazette	Irish Times contact and website	Owns a 49.8% holding in the Gazette Group
			~	The Blanch Gazette	As Above	As Above
			~	The Clondalkin Gazette	As Above	As Above
			~	The Dundrum Gazette	As Above	As Above
			~	The Dun Laoghaire Gazette	As Above	As Above
			~	The Malahide Gazette	As Above	As Above
			~	The Swords Gazette	As Above	As Above
			~	The Castleknock Gazette	As Above	As Above
			~	The Metro	As Above	Owns a 33.3% share as do both the Metro Group and Associated Papers (UK based)
			~	Metro Eireann	As Above	Supporting role only
3	Thomas Crosbie Holdings Limited (TCH)	Mahon Point	The Irish Examiner	The Evening Echo	TCH Website	~
			The Sunday Business Post	Western People	As Above	~
			~	Kildare Nationalist	As Above	~
			~	Laois Nationalist	As Above	~
			~	The Nationalist	As Above	~
			~	Waterford News and Star	As Above	~
			~	The Kingdom	As Above	~
			~	Sligo Weekender	As Above	~
			~	Newry Democrat	As Above	~
			~	Down Democrat	As Above	~
			~	The Irish Post	As Above	~
			~	Roscommon Herald	As Above	~
			~	The Echo	As Above	~
			~	Gorey Echo	As Above	~
~	Wexford Echo	As Above	~			
~	New Ross Echo	As Above	~			

No	Printer	Locations	National Titles	Local Titles (including fresheet and paid-for titles)	Source	Additional Information
4	Johnston Press plc	Limerick, Kilkenny and Mortons ( in Northern Ireland)	n/a	Leinster Leader	Johnston Press Website	~
			~	Kilkenny People	As Above	~
			~	Leinster Express	As Above	~
			~	Offaly Express	As Above	~
			~	Limerick Leader	As Above	~
			~	The Nationalist and Munster Advertiser	As Above	~
			~	The Tipperary Star	As Above	~
			~	Longford Leader	As Above	~
			~	Observer	As Above	~
			~	Dundalk Democrat	As Above	~
			~	The Tallaght Echo	As Above	~
5	Celtic Media Group	Navan	n/a	The Meath Chronicle	CMG contact & CMG Website	Owned by a Scottish printing group, the Dunfermline Press Group
			~	The Westmeath Examiner	As Above	As Above
			~	The Westmeath Independent	As Above	As Above
			~	The Offaly Independent	As Above	As Above
			~	The Anglo-celt	As Above	As Above
6	River Media Group	Belfast (The majority are printed by Interpress in Belfast, but 1 title is printed by the Meath Chronicle and another by the Irish Times)	n/a	Letterkenny Post	Printer Magazine Contact & River Media website	Established in partnership with the Irish News, which is owned by JA Trading. JA Trading also owns Interpress.
			~	Donegal Post	As Above	As Above
			~	Finn Valley Post	As Above	As Above
			~	Inish Times	As Above	As Above
			~	Derry News	As Above	As Above
			~	Country Derry Post	As Above	As Above
			~	Leitrim Post	As Above	As Above
			~	Sligo Post	As Above	As Above
			~	Monaghan Post	As Above	As Above
			~	Kildare Post	As Above	As Above
			~	Cavan Post	As Above	As Above
			~	Meath Post	As Above	As Above
			~	Wicklow News	As Above	As Above

**SOURCE:** Company websites  
Contacted companies directly

**NOTES:**

1) The order in which the printing facilities are listed above is not a reflection of size or market ranking

## K. Newspaper Distribution Facilities in Ireland

Two key companies distribute the vast majority of newspaper titles in the Republic, namely Newsread and Easons. Titles not included in this list typically distribute themselves (e.g. Irish Times) or are part of a small distribution group.

Distributor	Daily	Sunday	Foreign/Foreign Language	Weekly Papers	Additional Information
<b>Newsread</b>	Irish Mirror	Sunday World		Foinse	
	The Star	Sunday Tribune		The Irish Field	
	The Racing Post	Star Sunday		The Corkman Muskerry	
	The Irish Independent	Sunday Mirror		The Corkman North	
	The Independent	The People		Kerryman North	
	Daily Record	Sunday Business Post		Kerryman South	
	The News Letter	Sunday Life		The Corkman Avondhu	
	Better Racing Post	Independent On Sunday		Greyhound Weekly	
	La Nua	Sunday Mail		The Universe	
		The Sunday Racing Post		Sporting Press	
		Betting Racing Post Sunday		Recruitment Inc Job News	
				Catholic Times	
				Irish Catholic	
				The Longford News	
				The Roscommon Champion	
				Racing & Football Outlook	
				Raceform Update	
				The Midland Tribune	
				The Tullamore Tribune	
				The Racing Post Weekender	
			Waterford People		
			Dungarvan People		
			The Voice		
			The Kilkenny Voice		
			Laois Voice		
			The Kildare Voice		
			Tipperary Voice		
			Newry Reporter		
			Kerryman Tralee		
			The Leitrim Post		
			The Donegal Post		
			The Monaghan Post		
<b>EM News Distribution</b>	The Irish Sun	The Sunday Times	Le Monde	Anglo Celt	Distributed by EM & Others
	News Of The World	The Irish Mail On Sunday	Le Figaro	Argus	As Above
	The Times	The Sunday Express	L'equipe	Armagh Observer	As Above
	International Herald Tribune	The Observer	Liberation	Bray People	As Above
	The Irish Examiner	The Sunday Telegraph	Le Journal De Dimanche	Carlow Nationalist	As Above
	Irish Daily Mail	Daily Star Sunday	La Republica	Carlow People	As Above
	The Independent (UK)		Corriere Della Sera	Catholic Herald	As Above
	Financial Times		Gazetta Dello Sport	Catholic Standard	As Above
	Wall Street Journal		Il Sole 24 Ore	Catholic Times	As Above
	Buy & Sell (National)		USA Today	Clare Champion	As Above
	Buy & Sell (Munster)		El Pais	Clare People	As Above
	Buy & Sell (Northern Ireland)		El Pais Sunday	Clonmel Nationalist	As Above
	The Voice		El Mundo	Connaught Telegraph	As Above
	The Daily Telegraph		El Mundo Sunday	Connaught Tribune	As Above
	The Guardian		ABC Sunday	Corkman	As Above
	Irish News		Frankfurter	Derry Journal Fri	As Above
	The Daily Express		Die Welt	Derry People	As Above
			Daily Ausaf	Donegal Democrat	As Above
			Wall Street Journal	Donegal Peoples Press	As Above
				Donegal Post	As Above
			Down Democrat	As Above	
			Drogheda Independent	As Above	

Distributor	Daily	Sunday	Foreign/Foreign Language	Weekly Papers	Additional Information
EM News Distribution (cont.)	~	~	~	Dundalk Democrat	As Above
	~	~	~	Dungarvan Leader	As Above
	~	~	~	Enniscorthy Echo	As Above
	~	~	~	Farm Week	As Above
	~	~	~	Fermanagh Herald	As Above
	~	~	~	Fingal Independent	As Above
	~	~	~	Finn Valley	As Above
	~	~	~	Gorey Guardian	As Above
	~	~	~	Guardian Weekly	As Above
	~	~	~	Inish Times	As Above
	~	~	~	Irish Catholic	As Above
	~	~	~	Irish Family Press	As Above
	~	~	~	Irish Farmers Journal	As Above
	~	~	~	Kerryman	As Above
	~	~	~	Kerrys Eye	As Above
	~	~	~	Kildare Nationalist	As Above
	~	~	~	Kilkenny People	As Above
	~	~	~	Laois Nationalist	As Above
	~	~	~	Limerick Leader	As Above
	~	~	~	Longford Leader	As Above
	~	~	~	Longford News	As Above
	~	~	~	Mayo News	As Above
	~	~	~	Meath Chronicle	As Above
	~	~	~	Meath Weekender	As Above
	~	~	~	Midland Tribune	As Above
	~	~	~	Mid-Ulster Observer	As Above
	~	~	~	Munster Express	As Above
	~	~	~	Nenagh Guardian	As Above
	~	~	~	New Ross Standard	As Above
	~	~	~	Newry Democrat	As Above
	~	~	~	Northern Standard	As Above
	~	~	~	Offaly Independent	As Above
	~	~	~	Roscommon Champion	As Above
	~	~	~	Roscommon Herald	As Above
	~	~	~	Sligo Champion	As Above
	~	~	~	Sligo Weekender	As Above
	~	~	~	Southern Star	As Above
	~	~	~	Sporting Press	As Above
	~	~	~	The Kingdom	As Above
	~	~	~	The Wicklow News	As Above
	~	~	~	The Monaghan Post	As Above
	~	~	~	The Cavan Post	As Above
	~	~	~	The Meath Post	As Above
	~	~	~	Tipperary Star	As Above
	~	~	~	Tuam Herald	As Above
	~	~	~	Tullamore Tribune	As Above
	~	~	~	Ulster Herald	As Above
	~	~	~	Universe	As Above
	~	~	~	Waterford News & Star	As Above
	~	~	~	Weekly Sport	As Above
~	~	~	Westmeath Examiner	As Above	
~	~	~	Western People	As Above	
~	~	~	Westmeath Independent	As Above	
~	~	~	Wexford Echo	As Above	
~	~	~	Wexford People	As Above	
~	~	~	Wicklow People	As Above	

SOURCE: Contacted Easons and Newsread directly



## Section 2: Television Data

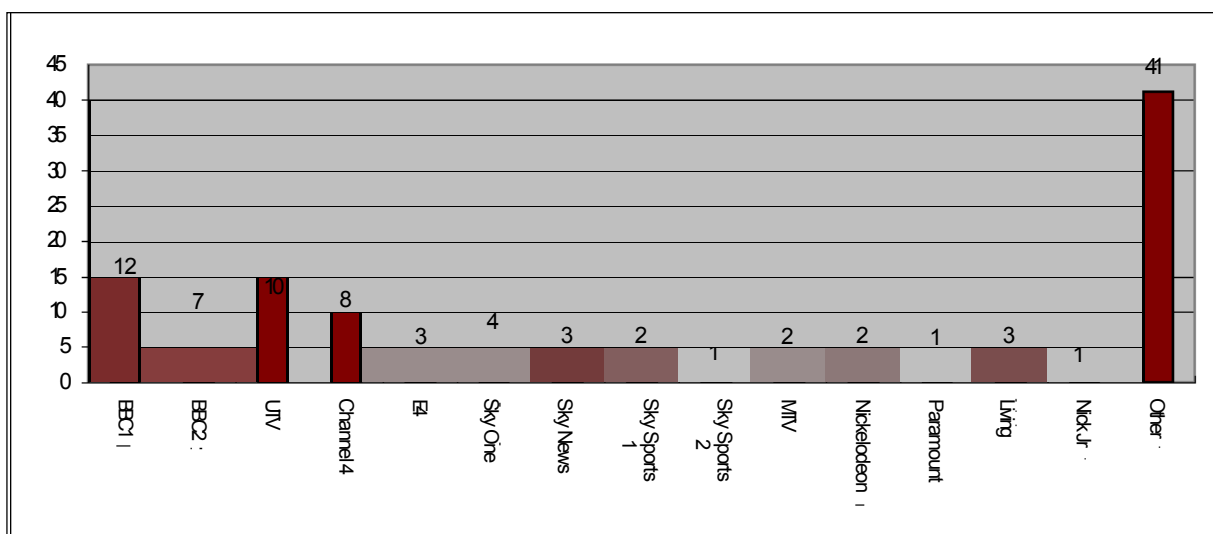
## A. International Television Broadcasters Broadcasting in Ireland

There was no dominant player in the international television station market in Ireland. In 2007, BBC1 had the largest 'All Day' national market share with approximately 12%, and UTV had the highest 'Peak' national market share with approximately 13%.

### (i)A International Television Stations Broadcasting in Ireland - National Share

International Television	National Market Share, All Day 2007, %	National Market Share, Peak 2007, %
BBC1	11.54	12.09
BBC2	6.84	7.30
UTV	10.26	12.85
Channel 4	8.12	9.07
E4	2.56	2.77
Sky One	4.49	5.79
Sky News	2.78	2.02
Sky Sports 1	2.35	2.02
Sky Sports 2	1.07	1.26
MTV	1.92	1.51
Nickelodeon	2.14	1.01
Paramount	1.50	1.51
Living	2.56	2.77
Nick Jr	0.64	0.25
Other	41.24	37.78
TOTAL	100.0	100.0

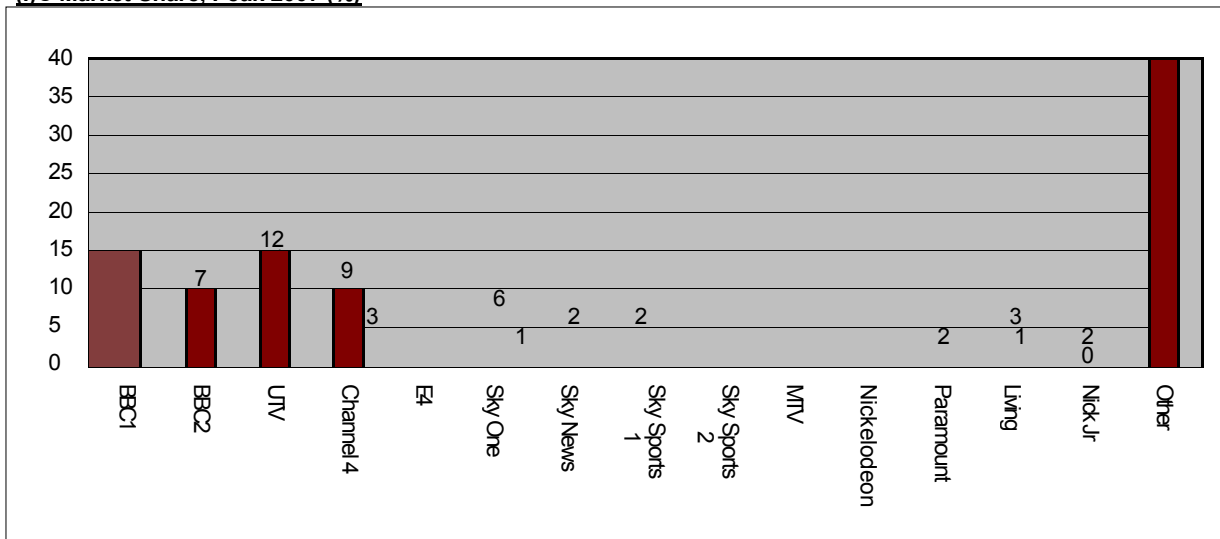
**SOURCE:** AGB Nielsen Media Research, TV Trends 2007, Station Shares - National Share All Individuals, All Day and Peak 2007



### (i)B Market Share, All Day 2007 (%)

**SOURCE:** AGB Nielsen Media Research, TV Trends 2007, Station Shares - National Share All Individuals, All Day and Peak 2007

**(i)C Market Share, Peak 2007 (%)**



**SOURCE:** AGB Nielsen Media Research, TV Trends 2007, Station Shares - National Share All Individuals, All Day and Peak 2007

**NOTES:**

- 1) "All Day" refers to Mon-Sun 0300-2659 while "Peak" refers to Mon-Sun 1800-2329.
- 2) "Market Share" is the percentage of the viewing audience accounted for by a particular channel at a specific point in time, i.e. of those people who are watching television, what proportion are viewing channel X.
- 3) "National Share" means a national broadcasting service, covering the 26 counties.

**WORKINGS:**

The table below has been extracted from Appendix 2: All Television Stations Broadcasting in Ireland, and has been used to derive Table (i)A above.

International Channels	Market Share, All Day 2007, %	Market Share, Peak 2007, %
BBC1	5.4	4.8
BBC2	3.2	2.9
UTV	4.8	5.1
Channel 4	3.8	3.6
E4	1.2	1.1
Sky One	2.1	2.3
Sky News	1.3	0.8
Sky Sports 1	1.1	0.8
Sky Sports 2	0.5	0.5
MTV	0.9	0.6
Nickelodeon	1.0	0.4
Paramount	0.7	0.6
Living	1.2	1.1
Nick Jr	0.3	0.1
Other	19.3	15.0
<b>TOTAL</b>	<b>46.8</b>	<b>39.7</b>

## A. International Television Broadcasters Broadcasting in Ireland

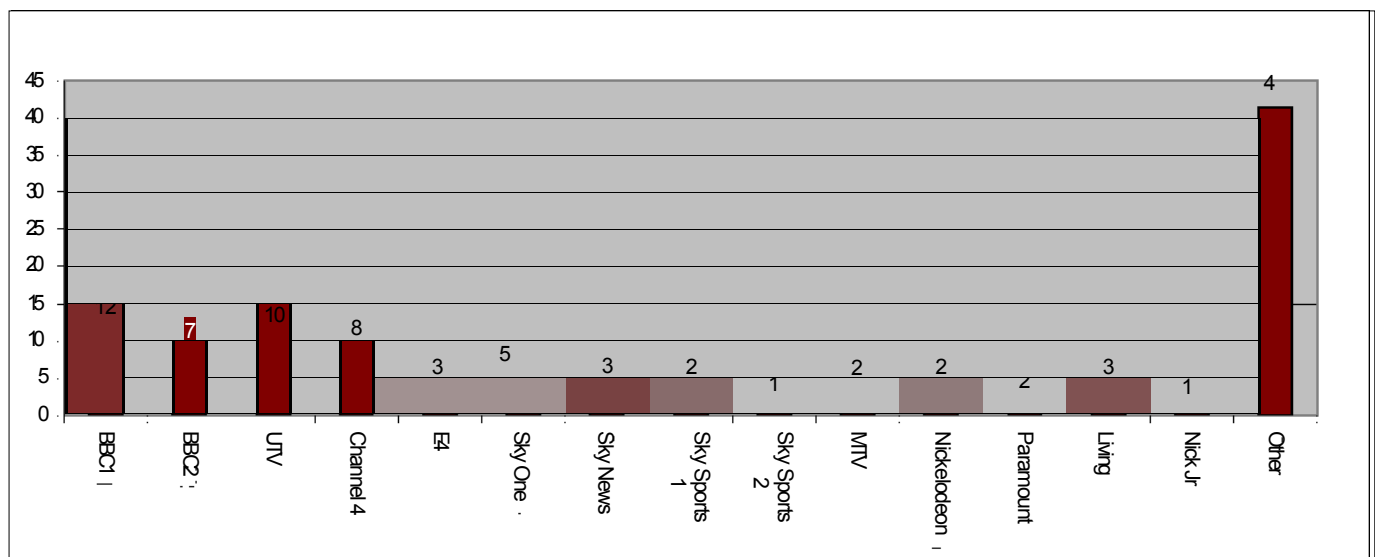
As per national share, similar patterns of market share distribution are observed in the multi-share market in Ireland. Again, BBC1 and UTV retained the largest share in both 'All Day' and 'Peak' audiences.

### (ii)A International Television Stations Broadcasting in Ireland - multi share

International Television	Multi - Market Share, All Day 2007, %	Multi - Market Share, Peak 2007, %
BBC1	11.57	12.03
BBC2	6.69	7.26
UTV	10.31	12.86
Channel 4	8.14	8.92
E4	2.53	2.70
Sky One	4.52	5.81
Sky News	2.71	2.07
Sky Sports 1	2.35	2.07
Sky Sports 2	1.08	1.24
MTV	1.81	1.66
Nickelodeon	2.17	1.04
Paramount	1.63	1.66
Living	2.53	2.70
Nick Jr	0.54	0.21
Other	41.41	37.76
<b>Total</b>	<b>100.00</b>	<b>100.00</b>

**SOURCE:** AGB Nielsen Media Research, TV Trends 2007, Station Shares - Multi Share All Individuals, All Day and Peak 2007.

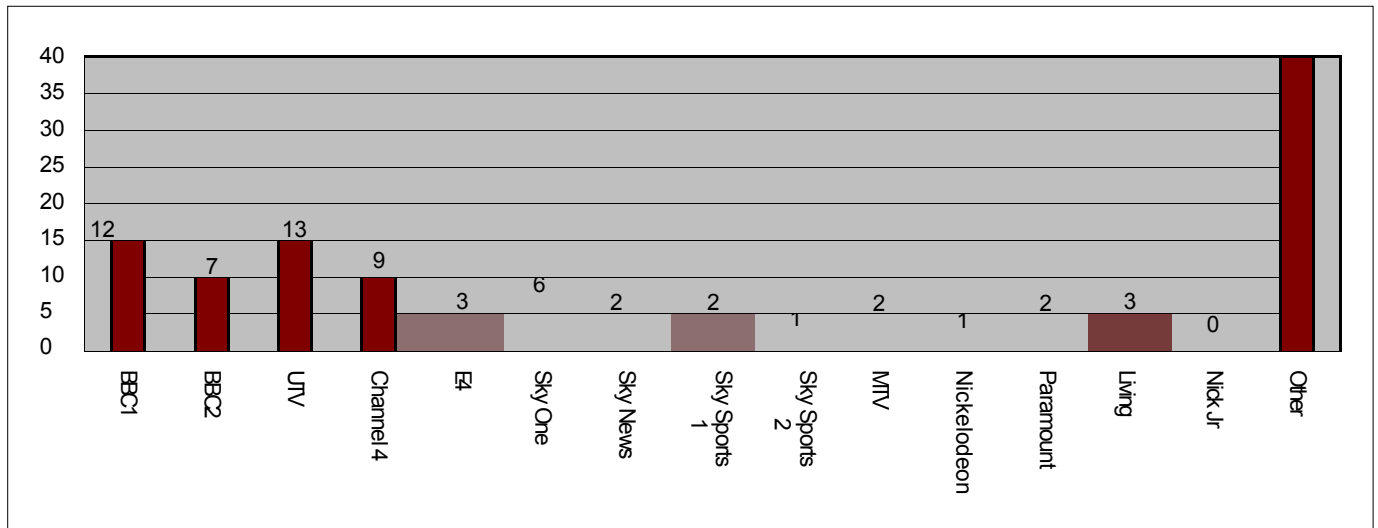
### (ii)B Market Share, All Day 2007 (%)



**SOURCE:** AGB Nielsen Media Research, TV Trends 2007, Station Shares - Multi Share All Individuals, All Day and Peak 2007



(i)C Market Share, Peak 2007 (%)



**SOURCE:** AGB Nielsen Media Research, TV Trends 2007, Station Shares - Multi Share All Individuals, All Day and Peak 2007

**NOTES:**

- 1) "All Day" refers to Mon-Sun 0300-2659 while "Peak" refers to Mon-Sun 1800-2329
- 2) "Market Share" is the percentage of the viewing audience accounted for by a particular channel at a specific point in time, i.e. of those people who are watching
- 3) "Multi Share" means a multi-city sound broadcasting service. For example: "Dublin city and county and the commuter belt. Cork city and county"

**WORKINGS:**

The table below has been extracted from Appendix 2: All Television Stations Broadcasting in Ireland, and has been used to derive Table (ii)A above.

International Channels	Market Share, All Day 2007, %	Market Share, Peak 2007, %
BBC1	6.4	5.8
BBC2	3.7	3.5
UTV	5.7	6.2
Channel 4	4.5	4.3
E4	1.4	1.3
Sky One	2.5	2.8
Sky News	1.5	1
Sky Sports 1	1.3	1
Sky Sports 2	0.6	0.6
MTV	1.0	0.8
Nickelodeon	1.2	0.5
Paramount	0.9	0.8
Living	1.4	1.3
Nick Jr	0.3	0.1
Other	22.9	18.2
TOTAL	55.3	48.2

## A. International Television Broadcasters Broadcasting in Ireland

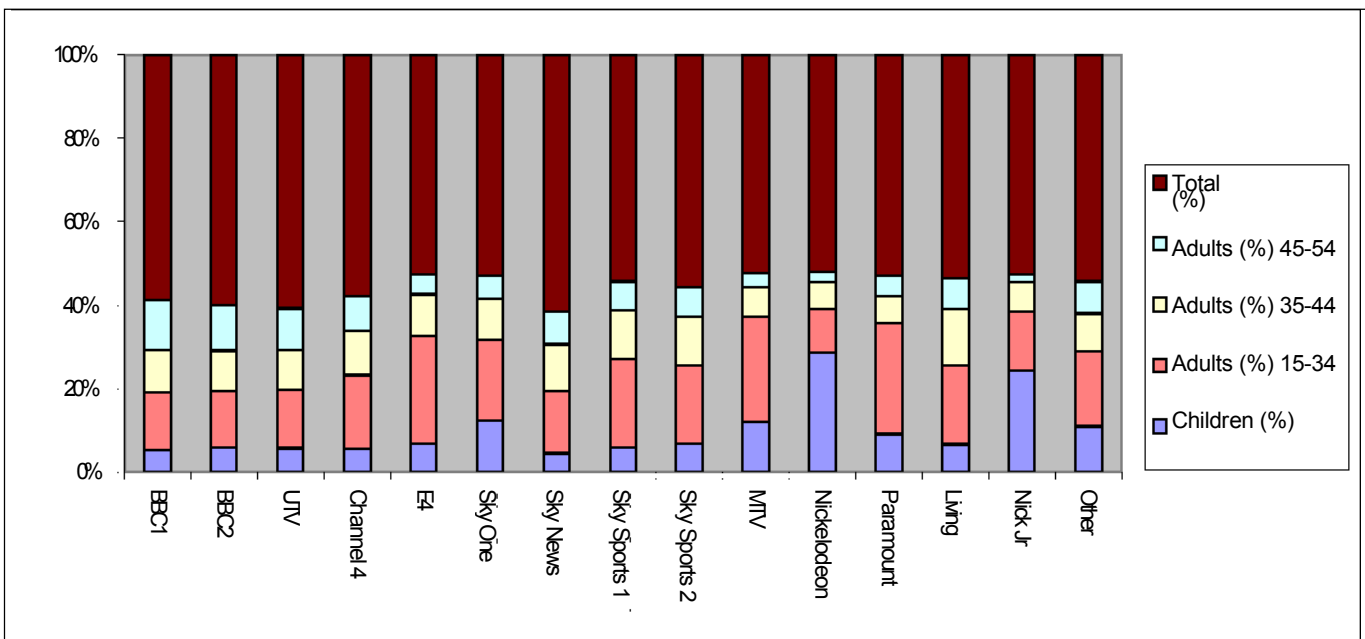
The Table below shows that the highest viewership share per channel is represented by the age profiles of children , or adults aged i5-34 or 55+ . This might suggest that adults aged 35-44 and 45-54 have a lower preference for particular channels.

### (iii)A International Television Viewership Age Profile

International Television	Children (%)	Adults (%)				Total (%)
		15-34	35-44	45-54	55+	
BBC1	8.8	23.8	17.2	20.2	29.9	100
BBC2	9.6	22.5	16.2	18	33.8	100
UTV	9.3	22.9	16	16.3	35.5	100
Channel 4	9.6	30.5	18.3	14.3	27.4	100
E4	12.8	49.2	18.8	8.9	10.3	100
Sky One	23.3	36.6	18.3	10.6	11.3	100
Sky News	7.2	24.2	18.3	12.7	37.6	100
Sky Sports 1	10.6	39.2	21.4	12.9	15.9	100
Sky Sports 2	12.3	33.3	21.2	12.3	20.9	100
MTV	23	48.1	13.5	6.6	8.8	100
Nickelodeon	54.8	20.4	12.1	4.8	7.9	100
Paramount	17.1	50.1	12.2	9.3	11.3	100
Living	12.3	35.3	25.5	13.9	12.9	100
Nick Jr	46.2	26.9	13.5	3.5	9.9	100
Other	20.1	32.9	16.8	14.1	16.1	100

SOURCE: AGB Nielsen Media Research, TV Trends 2007

### (iii)B International Television Viewership Age Profile



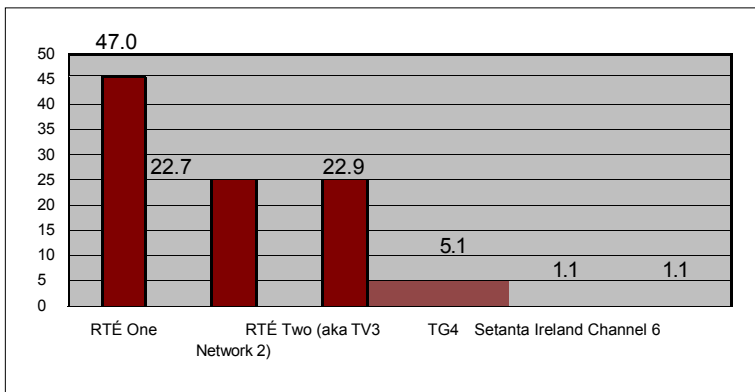
## B. National Television Broadcasters Broadcasting in Ireland

RTÉ One dominates the national television market in Ireland during 'All Day' and 'Peak' times, with RTÉ Two and TV3 achieving a strong share, ranging from 20-23% across both time periods.

### (i)A National Television Stations Broadcasting in Ireland - National Share

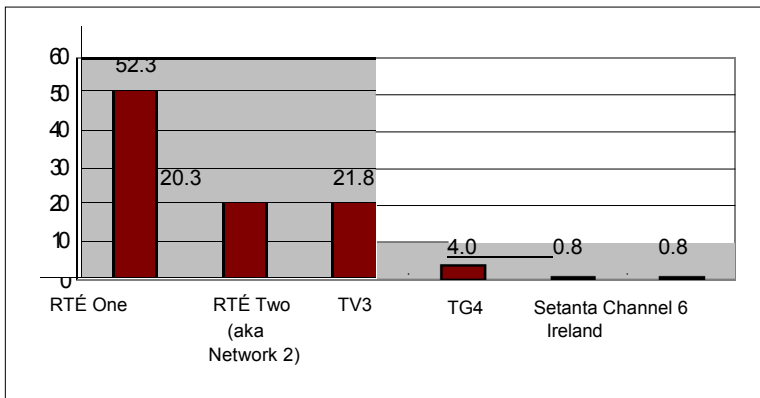
National Television	Market Share, All Day 2007, %	Market Share, Peak 2007, %	Ownership
RTÉ One	47.0	52.3	RTÉ
RTÉ Two (aka Network 2)	22.7	20.3	RTÉ
TV3	22.9	21.8	100% owned by Tullamore Alpha Ltd
TG4	5.1	4.0	TG4
Setanta Ireland	1.1	0.8	100% owned by Setanta Sports Holdings Ltd (of which Benchmark II owns 23.85)
Channel 6	1.1	0.8	100% owned by Kish Media Ltd (ACT Venture Capital (25.06%), Pat Donnelly (16.97%) and Delta Equity Fund II Ltd Partnership (15.04%))
<b>Total</b>	100.0	100.0	~

**SOURCE:** AGB Nielsen Media Research, TV Trends 2007, Station Shares - National Share All Individuals, All Day and Peak 2007.



### (i)B Market Share, All Day 2007 (%)

**SOURCE:** AGB Nielsen Media Research, TV Trends 2007, Station Shares - National Share All Individuals, All Day and



Peak 2007.

### (i)C Market Share, Peak 2007 (%)

**SOURCE:** AGB Nielsen Media Research, TV Trends 2007, Station Shares - National Share All Individuals, All Day and Peak 2007.



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**NOTES:**

- 1) "All Day" refers to Mon-Sun 0300-2659 while "Peak" refers to Mon-Sun 1800-2329.
  - 2) "Market Share" is the percentage of the viewing audience accounted for by a particular channel at a specific point in time, i.e. of those people who are watching.
  - 3) "National Share" means a national broadcasting service, covering the 26 counties.
- 

**WORKINGS:**

The table below has been extracted from Appendix 2: All Television Stations Broadcasting in Ireland, and has been used to derive Table (i)A above.

<b>National Television</b>	<b>Market Share, All Day 2007, %</b>	<b>Market Share, Peak 2007, %</b>
RTE One	25.0	31.5
RTE Two (aka Network 2)	12.1	12.2
TV3	12.2	13.1
TG4	2.7	2.4
Setanta Ireland	0.6	0.5
Channel 6	0.6	0.5
<b>TOTAL</b>	<b>53.2</b>	<b>60.2</b>

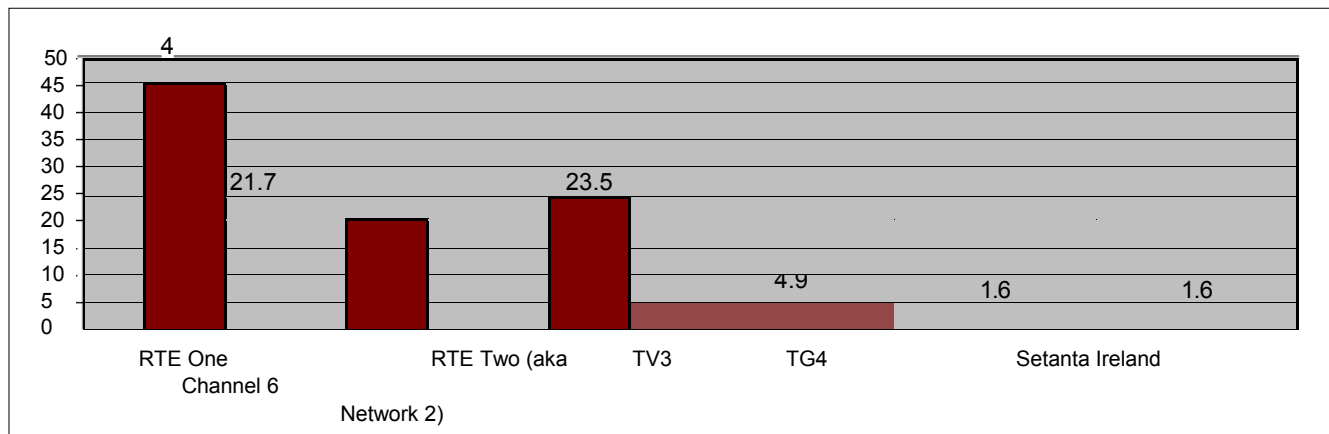
## B. National Television Broadcasters Broadcasting in Ireland

Similar trends are observed in the multi-share national market as RTE One dominates viewership with 47% and 52% across 'All Day and 'Peak' times respectively, followed by RTE Two and TV3 (ranging from a 22% to 24% multi market share).

### (ii)A National Television Stations Broadcasting in Ireland - Multi Share

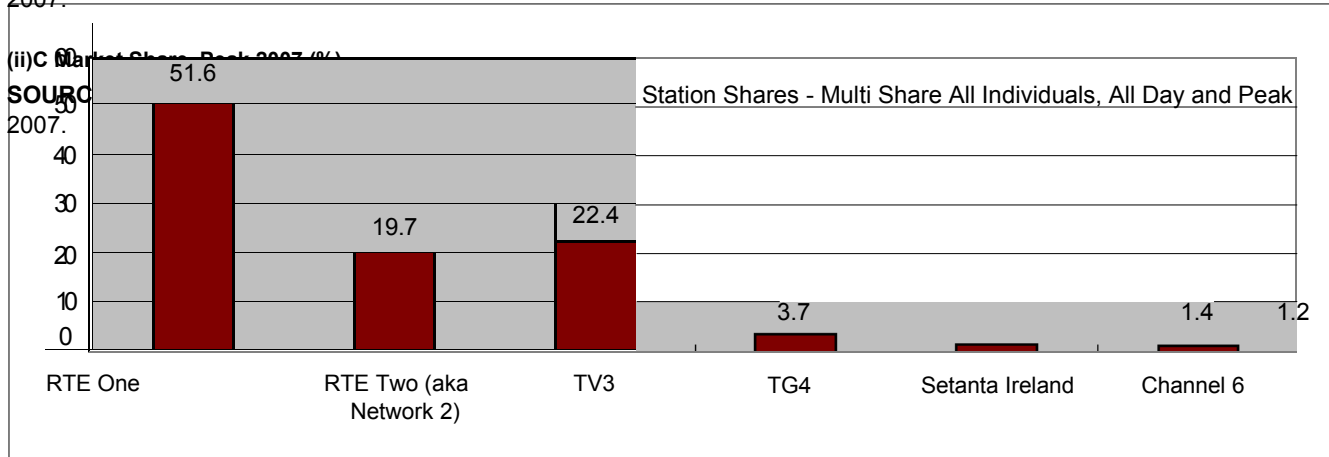
National Television	Market Share, All Day 2007, %	Market Share, Peak 2007, %	Ownership
RTE One	46.8	51.6	RTE
RTE Two (aka Network 2)	21.7	19.7	RTE
TV3	23.5	22.4	100% owned by Tullamore Alpha Ltd
TG4	4.9	3.7	TG4
Setanta Ireland	1.6	1.4	100% owned by Setanta Sports Holdings Ltd (of which Benchmark II owns 23.85)
Channel 6	1.6	1.2	100% owned by Kish Media Ltd (ACT Venture Capital (25.06%), Pat Donnelly (16.97%) and Delta Equity Fund II Ltd Partnership (15.04%))
<b>Total</b>	100.0	100.0	~

**SOURCE:** AGB Nielsen Media Research, TV Trends 2007, Station Shares - Multi Share All Individuals, All Day and Peak 2007.



### (ii)B Market Share, All Day 2007 (%)

**SOURCE:** AGB Nielsen Media Research, TV Trends 2007, Station Shares - Multi Share All Individuals, All Day and Peak 2007.



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**NOTES:**

- 1) "All Day" refers to Mon-Sun 0300-2659 while "Peak" refers to Mon-Sun 1800-2329.
  - 2) "Market Share" is the percentage of the viewing audience accounted for by a particular channel at a specific point in time, i.e. of those people who are watching.
  - 3) "Multi Share" means a multi-city sound broadcasting service. For example: "Dublin city and county and the commuter belt. Cork city and county"
  - 4) RTE One, RTE Two and TG4 are public service broadcasters
- 

**WORKINGS:**

The table below has been extracted from Appendix 2: All Television Stations Broadcasting in Ireland, and has been used to derive Table (ii)A above.

<b>National Television</b>	<b>Market Share, All Day 2007, %</b>	<b>Market Share, Peak 2007, %</b>
RTE One	20.9	26.7
RTE Two (aka Network 2)	9.7	10.2
TV3	10.5	11.6
TG4	2.2	1.9
Setanta Ireland	0.7	0.7
Channel 6	0.7	0.6
<b>TOTAL</b>	<b>44.7</b>	<b>51.7</b>

## B. National Television Broadcasters Broadcasting in Ireland

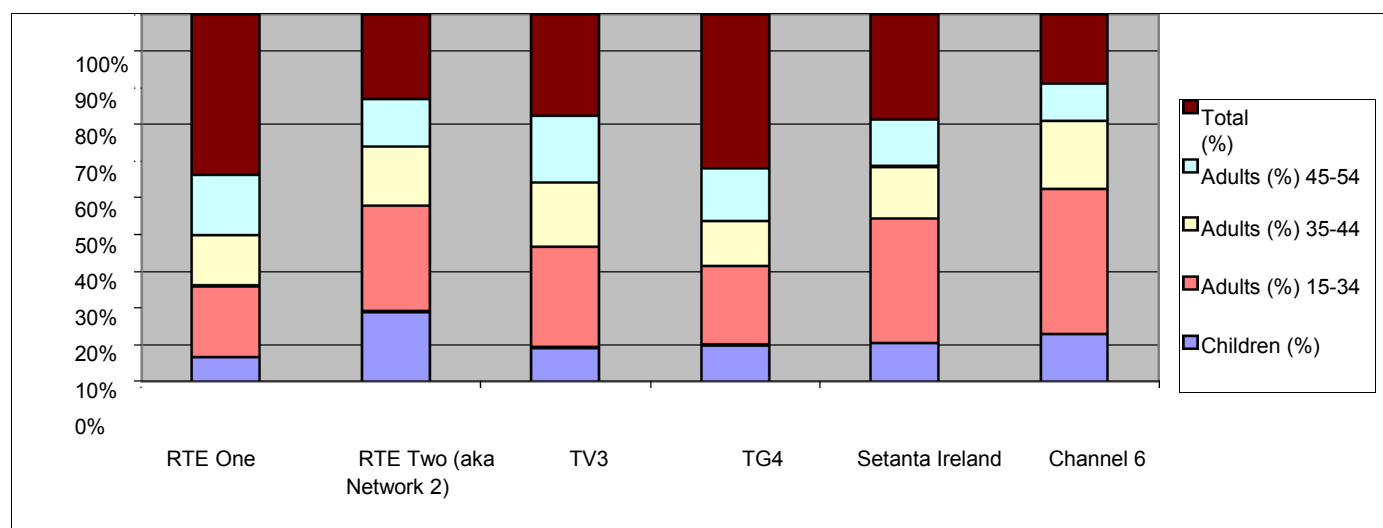
The Table below shows that the highest viewership share per channel is represented by the age profiles of adults aged 15-34 or 55+ . This might suggest that children and adults aged between 35-44 and 45-54 have a lower preference for particular Irish channels.

### (iii)A National Television Viewership Age Profile

National Television	Children (%)	Adults(%)				Total (%)
		15-34	35-44	45-54	55+	
RTE One	6.6	19.4	13.8	16.4	43.8	100
RTE Two (aka Network 2)	19	29	15.9	13	23.1	100
TV3	9.2	27.6	17.3	18.2	27.8	100
TG4	9.9	21.5	12.3	14.2	42.2	100
Setanta Ireland	10.4	34	14.1	12.8	28.7	100
Channel 6	12.9	39.5	18.4	10.2	18.9	100

SOURCE: AGB Nielsen Media Research, TV Trends 2007.

### (iii)B National Television Viewership Age Profile - % viewers by age category for each channel





### C. Irish Television Station Ownership

TV3 are 100% owned by Tullamore Alpha Limited (of which 13.5% is owned by TV3's management team and the remaining 86.5% is largely owned by Doughty Hanson (which is owned by Nigel Doughty and Richard Hanson). Tullamore Alpha Limited also owns a 21.8% stake in Setanta Sports Holdings).

#### (i) TV3

Irish Television Station	Owner			Other Commercial Media			Other
				Radio Stations	Newspapers	Magazines	
TV3 Television Network Limited	100% owned by Tullamore Alpha Limited*, which in turn is owned by:	Andrew Hanlon	1.875%	~	~	~	~
		David McMunn	1.875%	~	~	~	~
		David McRedmond	3%	~	~	~	~
		Kathy Curran	1.875%	~	~	~	~
		Patrick Kiely	1.875%	~	~	~	~
		Peter Ennis	1.875%	~	~	~	~
		Ben Frow	1.00%	~	~	~	~
		Officers Nominees Limited	4.33%	~	~	~	~
		Nigel Doughty	41.09%	~	~	~	~
	Richard Hanson	41.09%	~	~	~	~	
NOTE: Tullamore Alpha Limited*	N/A	N/A	~	~	~	Owns 21.8% Setanta Sport Holdings Limited**	

**SOURCE:** Broadcasting Commission of Ireland, "Supplemental Contract to Television Programme Service Contract, Broadcasting Commission of Ireland and TV3 Television Network Limited", November 2007

#### NOTES:

1) This is accurate as of November 2007

\* The entire issued share capital of TV3 Television Network Limited ("TV3") is legally and beneficially owned by TV Three Enterprises Limited (formerly, CanWest Granada Media Holdings Limited) ("Enterprises").[1]

The entire issued share capital of Enterprises is legally and beneficially owned by Tullamore Beta Limited (Registered Number 419695) ("Beta").

The entire issued share capital of Beta is legally and beneficially owned by Tullamore Alpha Limited (Registered number 422974) ("Alpha").

Members of the TV3 Management Team hold shares representing 13.375% of the issued ordinary share capital of Alpha on a dilute basis (that is, taking into account the 1.125% of the issued share capital of Alpha reserved for management and referred to in the next paragraph) as follows: Andrew Hanlon - 1.875%; David McMunn - 1.875%; David McRedmond - 3%; Kathy Curran - 1.875%; Patrick Kiely - 1.875%; Peter Ennis - 1.875%; Ben Frow - 1.0%

The Commission has consented to the allotment of a further 0.125% of the issued share capital of Alpha to members of the TV3 Management Team, which would bring the total percentage of the issued ordinary share capital of Alpha held by members of the TV3 Management Team up to 13.5% on a dilute basis.

The remainder of the issued ordinary share capital of Alpha is held by Tullamore S.à.r.l. ("TSL"), a société à responsabilité limitée registered in Luxembourg under registration number B 121002.

The entire issued share capital of TSL is held by DHC Luxembourg IV S.à.r.l. ("DHC"), a société à responsabilité limitée registered in Luxembourg under registration number B121012.

Officers Nominees Limited holds 5.5% of the issued share capital of DHC. The remainder of the issued share capital of DHC is held by the following shareholders ("the DH Nominees"):

- Doughty Hanson & Co IV Nominees One Limited
- Doughty Hanson & Co IV Nominees Two Limited
- Doughty Hanson & Co IV Nominees Three Limited
- Doughty Hanson & Co IV Nominees Four Limited

Each of the DH Nominees holds its shares in DHC for a limited partnership whose general partner (with sole management and control) is a company which is wholly owned by Doughty Hanson & Co Limited ("Doughty Hanson").

The management and control of each such limited partnership has been delegated to a company which is wholly owned by Doughty Hanson.

The entire issued voting share capital of Doughty Hanson is held by Nigel Doughty and Richard Hanson.

\*\* Tullamore Alpha Limited, which indirectly owns the entire issued share capital in TV3 owns an interest of approximately 21.8% in Setanta Sport Holdings Limited ("Setanta") calculated both on a non-diluted basis and on a fully-diluted basis taking into account its options to acquire additional equity share capital from existing shareholders in Setanta. Setanta and its subsidiaries are party to a number of contracts with the Commission as follows:-

**Setanta group company**

Setanta Sports Channel Ireland Limited:

Setanta Sport (PPV) Limited:

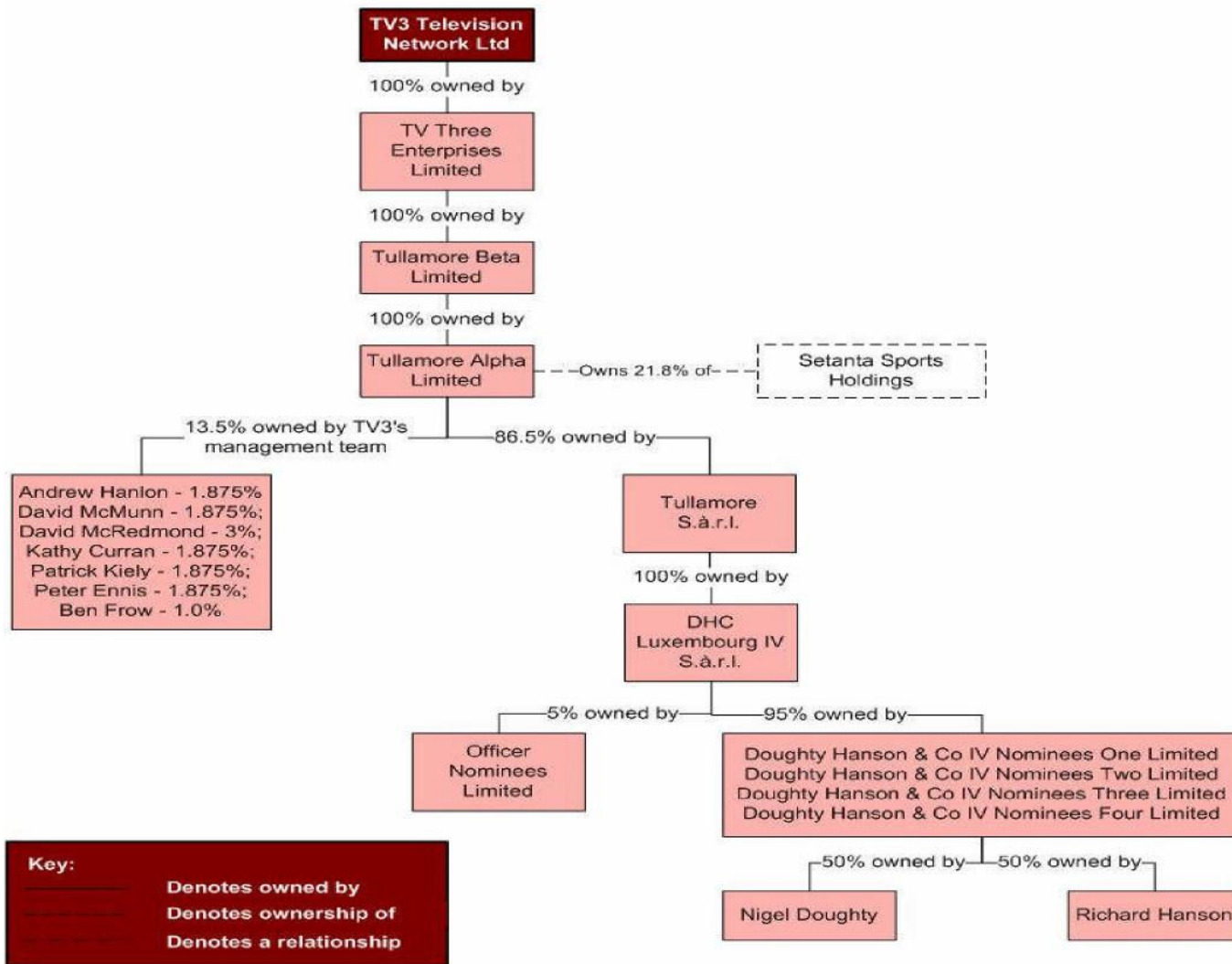
Setanta Sport Holdings Limited:

Setanta Sport North America Limited:

**Broadcasting Contracts**

- Provision of Content (Satellite Subscription) Contract
- Provision of Content (Cable – MMD) Contract
- Provision of Content (Satellite Commercial Subscription) Contract
- Provision of Content (Satellite Subscription) Contract
- Provision of Content (Satellite Subscription) Contract

**Indicative Illustration of TV3's Ownership and Other Media Interests:**



### C. Irish Television Station Ownership

In addition to the connection with TV3 through Tullamore Alpha Ltd., Michael O' Rourke with a 11% minor shareholding in Setanta Sports Ltd, owns a small share in Newstalk 106 and KCLR 96FN.

#### (ii) Setanta

Irish Television Station	Owner		Other Commercial Media			Other	
			Radio	Newspapers	Magazines		
Setanta Sports (PVV) Limited	100% owned by Setanta Sports Holdings Limited, which in turn is owned by:	Benchmark II ***	23.85%	~	~	~	
		Michael O'Rourke	11.09%	Owns 50% of Ardfuse Investments Limited which owns 12.6% of KCLR ..	~	~	~
				Owns 50% of Ardfuse Investments Limited which owns 17.5% of Newstalk ...			
		GSEF Broadcasting Ltd**	7.79%	~	~	~	
		Leonard Ryan	7.03%	Owns 50% of Ardfuse Investments Limited which owns 12.6% of KCLR ....	~	~	
				Owns 50% of Ardfuse Investments Limited which owns 17.5% of Newstalk ■			

Irish Television Station	Owner			Other Commercial Media			
				Radio Stations	Newspapers	Magazines	Other
Setanta Sports Limited (cont.)	Setanta Sports Holdings Limited (cont.)	Tullamore Alpha Limited ●●	21.89%	~	~	~	Indirectly owns the entire share capital of TV3 Television Network Ltd. ●●
		Indigo Holdings*	2.92%	~	~	~	~
		Adams Street V, L.P.. and Adams Street Direct Fund 2006, L.P ****	5.83%	~	~	~	~
		DavyCREST Nominees ●	11.25%	~	~	~	~
		Others (All with less than 5%)	8.35%	~	~	~	~
	NOTE: Setanta Sport Holdings Ltd	N/A	N/A	~	~	~	Owns 100% Setanta Sport (Irl) Ltd, which owns 12% of the issued share capital of Motive PLC, which owns 100% of Motive Television Ltd ●●●  Owns 80% of Setanta Sports Channel Ireland Ltd ●●●●  Owns 100% of Setanta Sports North America Ltd ♦

**SOURCE:** Broadcasting Commission of Ireland, "Broadcasting Commission of Ireland and Setanta Sport (PPV) Limited, Provision of Content (Satellite Commercial Subscription) Contract, Amended and Restated Contract", 20 September 2007

**NOTES:**

1) The above is accurate as of 20 September 2007.

\* Indigo Holdings Limited is 50% owned by Langtry Trust Company Ltd and 50% owned by Langtry Consultants.

Michael Watt of Brooma Hill House, Brooma Hill, Pulborough, West Sussex RH20 2HZ, is the beneficial owner of the entire issued share capital of Langtry Trust Company Limited and Langtry Consultants Limited.

\*\* GSEF Broadcasting Investments Limited is 100% owned by AIG Global Sports and Entertainment Fund LP, which is a limited partnership, constituted under the laws of the Cayman Islands and is ultimately owned by AIG Inc. of: c/o AIG Capital Partners, Inc., Maples and Calder, PO BOX 309, George Town, Grand Cayman, Cayman Islands, British West Indies

\*\*\* Benchmark Europe II L.P is a limited partnership venture capitalist fund of Benchmark Capital, established in 1995 and registered under the laws of Delaware, USA. It is management by Benchmark Management (UK) LLP ("BMUK") which is regulated by the UK Financial Services Authority. BMUK is owned by six individual partners.

\*\*\*\* Adams Street V, L.P. is a US-based venture capital limited partnership focused on investing in private companies. Adams Street V, L.P. has 17 limited partners, all of which are institutional investors. Adams Street Partners is the general partner of Adams Street V.

Adams Street 2006, L.P. is a US-based venture capital limited partnership focused on investing in private companies. Adams Street 2006, L.P. has 70 limited partners, all of which are institutional investors. Adams Street Partners is the Managing Member of the general partner of Adams Street 2006, L.P.

- DavyCREST Nominees Limited is a nominee holding vehicle established by Davy Stockbrokers to facilitate share dealing on behalf of its clients. DavyCREST Nominees Limited holds its shares in Setanta Sport Holdings Limited as nominee on behalf of clients of Davy. Only one of these client shareholders holds in excess of 5% of Setanta Sport Holdings Limited. Acomita Legal S.A. is the legal holder of 6.08% of the issued share capital of Setanta Sport Holdings Limited. John Magnier, c/o Davy Stockbrokers, Davy House, 49 Dawson Street, Dublin 2, is the beneficial owner of the entire issued share capital of Acomita Legal.

- The issued share capital of Tullamore Alpha Limited is owned by those limited partnerships which together constitute Doughty Hanson & Co. IV (a private equity fund managed by Doughty Hanson & Co. Limited), Officers Nominees Limited (as nominee for directors and employees of the Doughty Hanson group) and members of the TV3 Television Network Limited management team.

- Setanta Sports Holdings Ltd owns 100% of the issued share capital of Setanta Sport (Irl) Ltd. Setanta Sport (Irl) Ltd owns 12% of the issued share capital of Motive PLC, which owns 100% of Motive Television Limited a programme production company that produces programs, which are broadcast in the state.

- Setanta Sports Holdings Ltd owns 80% of the issued share capital of Setanta Sports Channel Ireland Ltd, which is a Contractor with the Commission in respect of a Provision of Television Content (Satellite) Contract and a Provision of Content (Cable MMD) Contract to operate a subscription based sports channel for broadcast in the State.

- ◆ Setanta Sports Holdings Ltd owns 100% of the issued share capital of Setanta Sports North America Ltd, which is a Contractor with the Commission in respect of a Provision of Television Content (Satellite) Contract to operate a subscription based sports channel for broadcast in North America.

- ◆◆ Michael O'Rourke owns 50% of the issued share capital of Ardfuse Investments Limited which owns 12.6% of the issued share capital of KCLR Ltd. which operates the local sound broadcasting service KCLR 96FM in the Carlow/Kilkenny area.

- ◆◆◆ Michael O'Rourke owns 50% of the issued share capital of Ardfuse Investments Limited. which owns 17.5% of News 106 Ltd, which operates the national sound broadcasting service Newstalk 106.

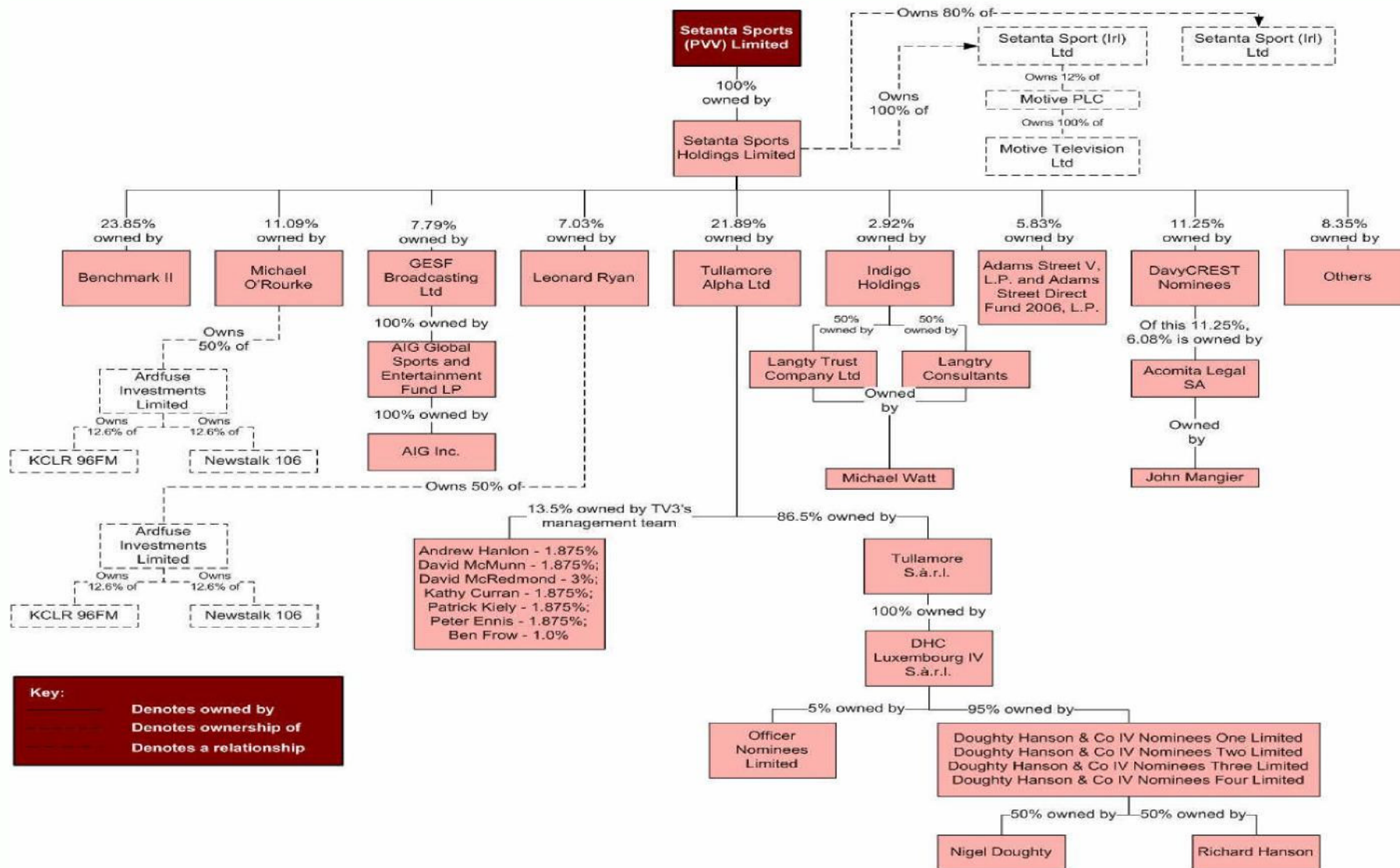
- ◆◆◆◆ Leonard Ryan owns 50% of the issued share capital of Ardfuse Investments Limited which owns 12.6% of the issued share capital of KCLR Ltd. which operates the local sound broadcasting service KCLR 96FM in the Carlow/Kilkenny area.

- Leonard Ryan owns 50% of the issued share capital of Ardfuse Investments Limited. which owns 17.5% of News 106 Ltd, which operates the national sound broadcasting service Newstalk 106.

- Tullamore Alpha Limited indirectly owns the entire issued share capital of TV3 Television Network Limited, which is licensed by the Commission to provide a free-to-air national commercial television network in the State.

Doughty Hanson & Co. Limited owns the general partner and manager of each of the limited partnerships which together constitute Doughty Hanson & Co IV, the owner of the majority of the share capital of Tullamore Alpha Limited.

**Indicative Illustration of Setanta's Ownership and Other Media Interests:**



### C. Irish Television Station Ownership

Claret Capital Nominees Ltd (Claret), have a 9.6% shareholding in Channel 6. Through Domhnall Slattery, a director and shareholder in Claret, Claret has a 45% stake of the Clare People.

#### (iii) Channel 6

Irish Television Station	Owner	Other Commercial Media					
		Radio	Newspapers	Magazines	Other		
Channel 6 Broadcasting Ltd	100% owned by Kish Media Ltd, which in turn is owned by:	Gowan Securities Ltd	4.79%				
		ACT Venture Capital	25.06%				
		Delta Equity Fund II Ltd Partnership	15.04%				
		RDJ Ltd (Barry's Tea is the beneficial owner)	7.52%				
		Claret Capital Nominees Ltd	9.57%	45% of Clare People*			25% of Newgrange Pictures Ltd**
		Pat Donnelly	16.97%				
		Michael Murphy	11.96%				Secretary and Director of Beyond Entertainment Ltd***
		ESOP	9.09%				
	NOTE: Chris Sharp, Director Kisk Media	N/A	N/A				Director of Zone Broadcasting Ltd****

**SOURCE:** Broadcasting Commission of Ireland, "Broadcasting Commission of Ireland and Channel 6 Broadcastin Limited, Provision of Contents (cable - MMD) Contract", 27 March 2006

#### NOTES:

1) The above is accurate as of 27 March, 2006

\* Domhnall Slattery, a Director of, and shareholder in, Claret Capital Nominees Limited 45% of the issued share capital of Clare College News t/a Clare People, a newspaper published and circulated within the State. He is also non-executive Chairperson on the Board of Directors of Clare People.

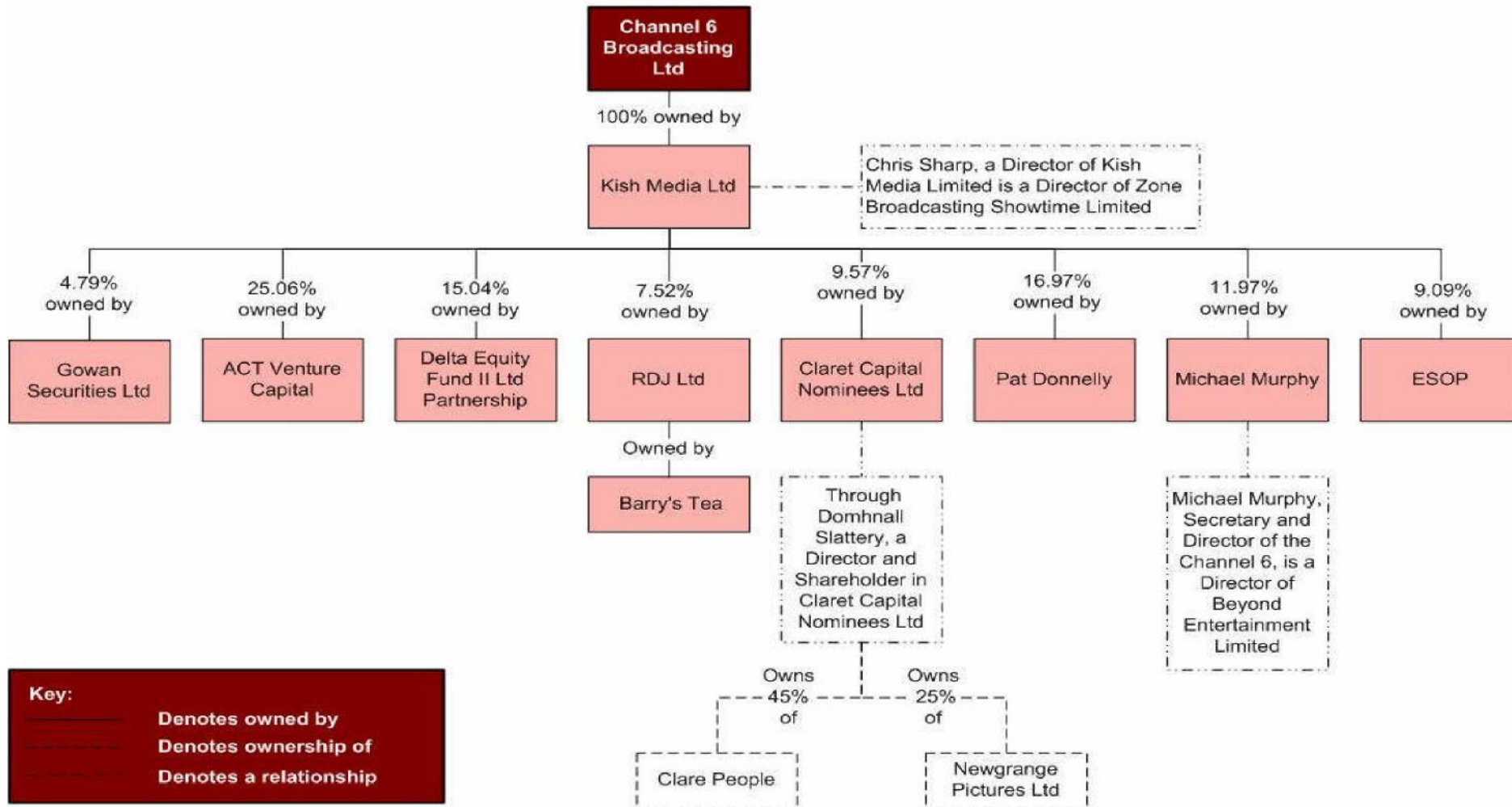
\*\* Domhnall Slattery also owns 25% of the issued share capital of Newgrange Pictures Limited, an independent film and television production company. He is also a non-executive Director on the Board of Directors of Newgrange Pictures Limited.

\*\*\* Michael Murphy, Secretary and Director of the Contractor, is a Director of Beyond Entertainment Limited, an international film and television sales agent.

\*\*\*\* Chris Sharp, Director of Kish Media Limited is a Director of Zone Broadcasting Showtime Limited, a television production services company.



**Indicative Illustration of Channel 6's Ownership and Other Media Interests:**



### C. Irish Television Station Ownership

Liberty Global Inc. own 36% of City Channel Ltd and also owns Chorus and NTL (i.e. UPC).

#### (iv) City Channel

Irish Television Station	Owner		Other Commercial Media			Other
			Radio Stations	Newspapers	Magazines	
City Channel Ltd	David Harvey	51.99%	12.82% shareholding in Star Broadcasting Limited*	~	~	100% shareholding of Prime Productions**
	Liberty Venture BV, a wholly owned subsidiary of Liberty Global Inc	35.5%	~	~	~	Note: Liberty Global Inc. indirectly owns 100% of the issued share capital of LGI Ventures BV. via a number of intermediate holding companies.  Through it's subsidiaries Liberty Global Inc. owns: - Liberty Media International Inc. - Liberty Founders Inc. - United GlobalCom - UGC/SPCo Inc. - Europe Acquisition Inc. - Liberty Global Europe Inc. - Liberty Global Europe Nv and - Chellomedia BV  Liberty Global indirectly owns 100% of Zone Broadcasting Limited***  Liberty Global owns 100% of The Extreme Sports Channel****
	10 shareholders hold the remaining share at 1.25% each	12.51%	~	~	~	

**SOURCE:** Broadcasting Commission of Ireland (email of 24/04/08 and fax of 29/04/08 sent to PwC project team)

#### NOTES:

1) The above is accurate as of 15 August, 2007

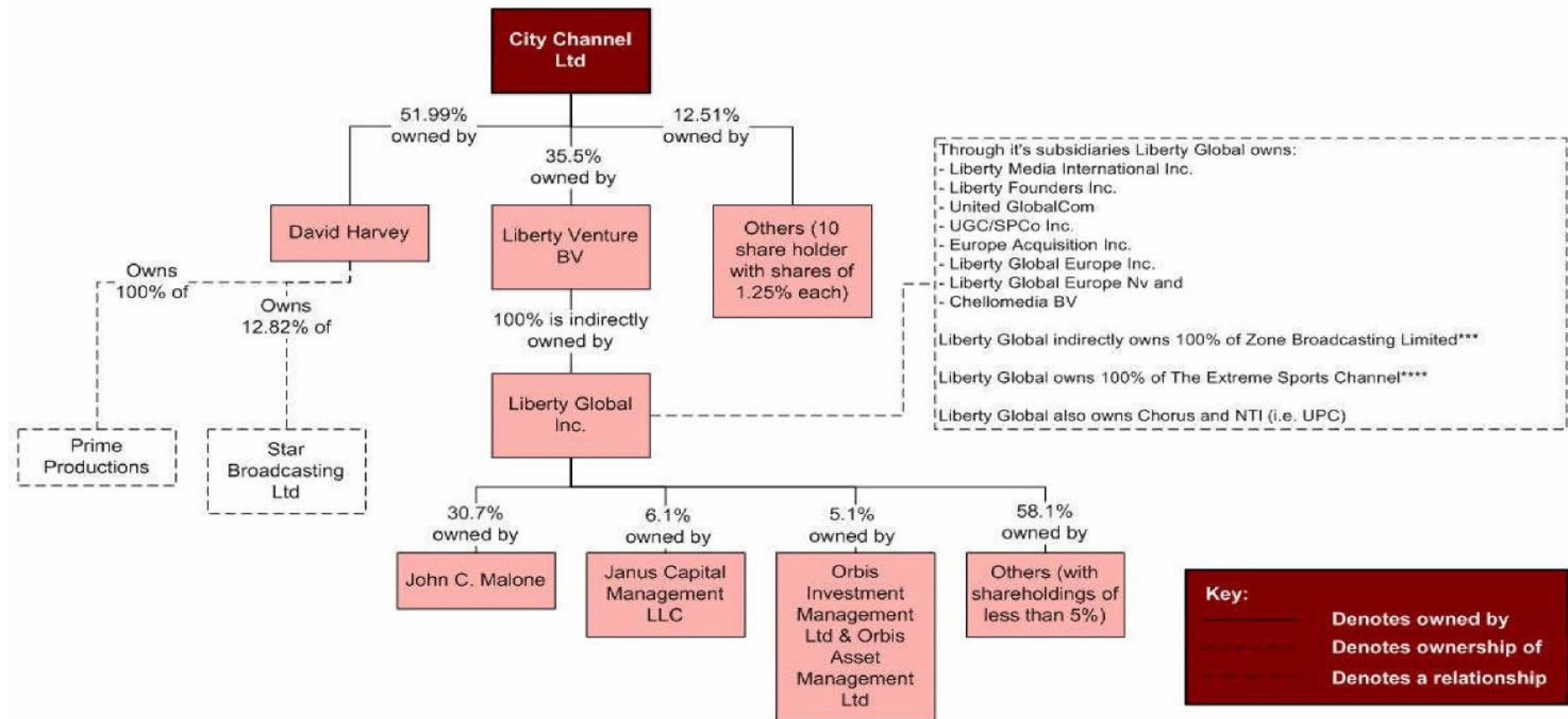
\* Star Broadcasting Limited - a company which is a contractor with the BCI in respect of the sound broadcasting service "Dublin's Country Mix"

\*\* Prime Productions Limited (t/a Eclipse Productions) - television production company producing programmes for broadcast in the State

\*\*\* Zone Broadcasting Limited provides the Reality TV Channel, which is available on BSkyB's free-to-air satellite with services in the UK and which, while not specifically targeted at Ireland, may also be viewed in this country

\*\*\*\* The Extreme Sports Channel is also owned and operated by Zone Broadcasting Ltd. The channel is carried on the BSkyB platform and, as discussed above, will therefore be available throughout the island of Ireland. In addition it is carried by Virgin Media in the UK and will therefore be available to Virgin Media customers in Northern Ireland as well as being carried by UPC Ireland, now a wholly owned subsidiary of Liberty Global Inc.

**Indicative Illustration of City Channel's Ownership and Other Media Interests:**



## D. Irish Television Viewing Figures

RTÉ One held the highest audience share between 2002 and 2007 (circa 25%), with RTÉ Two and TV3 retaining a considerable audience share over the same period (12%-14%). Since 2004, audience share has been in decline (ranging from 0.4%-7%). Of the international channels, BBC1, UTV and Channel 4 have the highest audience shares (4%-5% in 2007).

### International and National Television Stations Broadcasting in Ireland, 2003-2007 (national)

Television Station	Market Share, 2003, %	Market Share, 2004, %	Change, 2003-4, %	Market Share, 2005, %	Change 2004-5, %	Market Share, 2006, %	Change 2005-6, %	Market Share, 2007, %	Change 2006-7, %
RTÉ One	25.4	25.8	1.6	25.7	-0.4	25.5	-0.8	25	-2.0
RTÉ Two (aka Network 2)	12.4	12.5	0.8	12.1	-3.2	13.0	7.4	12.1	-6.9
TV3	13.0	13.5	3.8	12.9	-4.4	12.3	-4.7	12.2	-0.8
TG4	2.9	3.1	6.9	3.2	3.2	3.0	-6.3	2.7	-10.0
BBC1	7.1	6.6	-7.0	6.4	-3.0	6.1	-4.7	5.4	-11.5
BBC2	4.3	3.8	-11.6	3.7	-2.6	3.4	-8.1	3.2	-5.9
UTV	7.3	6.5	-11.0	5.8	-10.8	5.5	-5.2	4.8	-12.7
Channel 4	4.2	4.2	0.0	4.1	-2.4	4.2	2.4	3.8	-9.5
E4	1.6	1.4	-12.5	1.4	0.0	1.3	-7.1	1.2	-7.7
Sky One	3.9	3.1	-20.5	2.4	-22.6	2.2	-8.3	2.1	-4.5
Sky News	2.0	1.6	-20.0	1.7	6.2	1.3	-23.5	1.3	0.0
Sky Sports 1	~	1.1	~	1.1	0.0	1.1	0.0	1.1	0.0
Sky Sports 2	~	0.6	~	0.5	-16.7	0.5	0.0	0.5	0.0
MTV	~	1.3	~	1.1	-15.4	0.9	-18.2	0.9	0.0
Nickelodeon	~	1.3	~	1.1	-15.4	1.2	9.1	1.0	-16.7
Paramount	~	~	~	0.5	~	0.6	20.0	0.7	16.7
Setanta Ireland	~	~	~	0.2	~	0.5	150.0	0.6	20.0
Channel 6	~	~	~	~	~	0.4	~	0.6	50.0
Living	~	~	~	~	~	0.3	~	1.2	300.0
Nick Jr	~	~	~	~	~	~	~	0.3	~
Other	15.9	13.7	-13.8	16.1	17.5	16.9	5.0	19.3	14.2
TOTAL	100.0	100.1	~	100.0	~	100.2	~	100.0	~

**SOURCE:** AGB Nielsen Media Research, TV Trends 2003-2007, Station Shares - National Share All Individuals, All day 2003-7

**NOTES:**

1) "All Day" refers to Mon-Sun 0300-2659 while "Peak" refers to Mon-Sun 1800-2329

2) "Market Share" is the percentage of the viewing audience accounted for by a particular channel at a specific point in time, i.e. of those people who are watching television, what proportion are viewing channel X

## E. Irish Digital Subscribers

Of the digital subscribers in Ireland, in 2008, the majority (51%) use UPC's services, with the remaining 49% using Sky. Sky's share of digital subscribers has grown by 10% since 2004, from a share of 39%.

### Broadcasting Subscriptions in Ireland by Operator

Operator	Number of Subscriptions													
	2004		2005			2006			2007			2008		
	Total	% Total	Total	% Total	% Inc '04	Total	% Total	% Inc. '05	Total	% Total	% Inc. '06	Total	% Total	% Inc. '07
Sky	337,000	39%	393,000	41%	17%	465,020	45%	18%	535,000	49%	15%	548,000	49%	2%
UPC	530,000	61%	568,500	59%	7%	575,000	55%	1%	564,000	51%	-2%	578,600	51%	3%
<b>Total</b>	<b>867,000</b>	<b>100%</b>	<b>961,500</b>	<b>100%</b>	<b>11%</b>	<b>1,040,000</b>	<b>100%</b>	<b>8%</b>	<b>1,099,000</b>	<b>100%</b>	<b>6%</b>	<b>1,126,600</b>	<b>100%</b>	<b>3%</b>

#### SOURCE:

2004-2007 data: ComReg, Irish Communications Market, Quarterly Key Data Report, March 2008, March 2007, March 2006, March 2005

2008 data: BSkyB and UPC company websites.

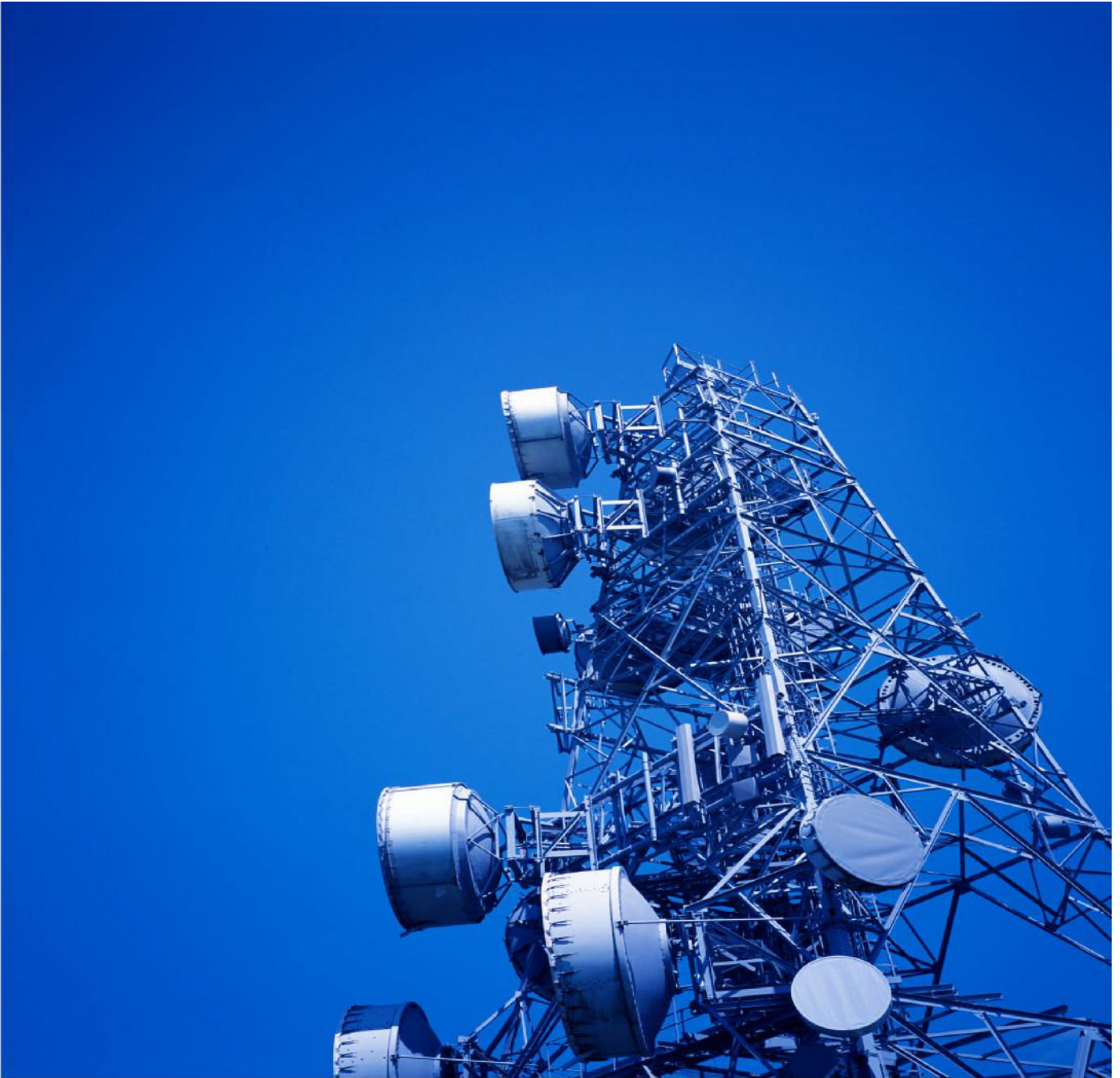
#### NOTES:

1) UPC Communications Ireland Limited is the parent company of ntl Ireland and Chorus Communications

2) All figures are calculated from the period ending December of each year.

#### ASSUMPTION:

1) UPC subscriber numbers from 2004-2007 are calculated by subtracting Sky subscription figures from Total figures.



## Section 3: Radio Data



## A. Radio Stations Broadcasting in Ireland

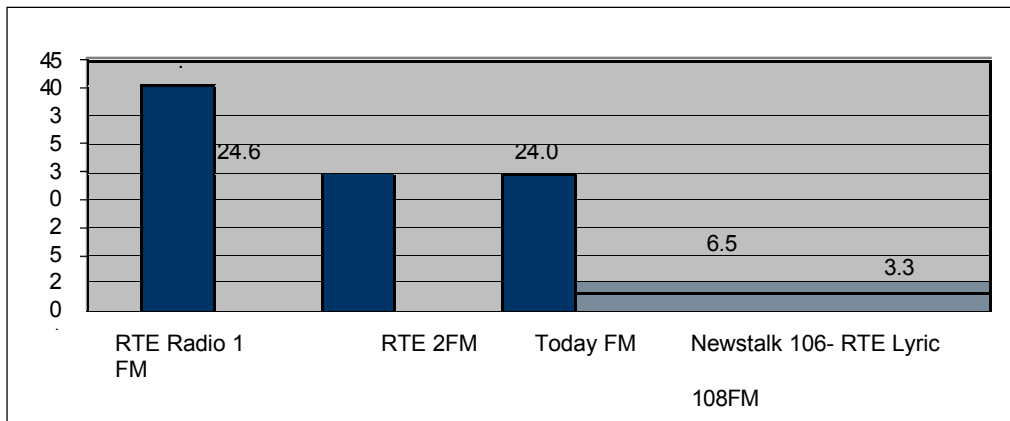
RTE Radio 1 dominated the national market in 2007, with a listener share of 42%. Other popular stations included 2FM and Today FM.

### (i)A National Radio Stations Broadcasting in Ireland

National Radio Stations	Market Share, 2007, %	Ownership by Major Groups
RTE Radio 1	41.5	RTE
RTE 2FM	24.6	RTE
Today FM	24.0	Communicorp - 100%
Newstalk 106-108FM	6.5	Communicorp - 100%
RTE Lyric FM	3.3	RTE
<b>TOTAL</b>	<b>100</b>	~

**SOURCE:** JNLR Weekday Share Figures (7am-7pm), January 2007 - December 2007  
Ownership information provided by the Broadcasting Commission of Ireland

### (i)B Market Share, 2007 (%)



**SOURCE:** JNLR Weekday Share Figures (7am-7pm), January 2007 - December 2007

### NOTES:

1) "Market Share" - Share of all minutes listened (e.g. between 7am and 7pm) to Irish Commercial Radio. In other words, of all the minutes listened to Irish commercial radio between 7am-7pm, Station A achieves x%, Station B achieves y%.

2) Market share is a better measure of station loyalty than reach. While reach picks up listeners who flick in and out of the station, market share shows the depth of listening to a station.

### WORKINGS:

The table below has been extracted from Appendix 3: All Radio Stations Broadcasting in Ireland, and has been used to derive (i)A above.

All Radio Stations	Market Share, 2007, %
RTE Radio 1	21.6
RTE 2FM	12.8
Today FM	12.5
Newstalk 106-108FM	3.4
RTE Lyric FM	1.7
<b>TOTAL</b>	<b>52.0</b>



## A. Radio Stations Broadcasting in Ireland

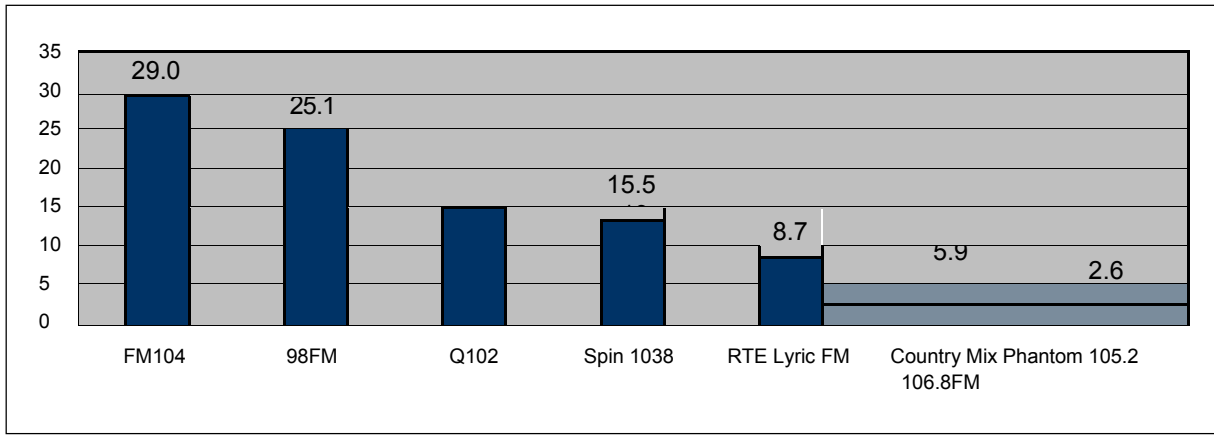
Within the Dublin and Cork local radio markets, FM104 and Cork's 96FM dominate their respective markets. Within their respective local transmission areas, Highland Radio and Midwest Radio both have a 50%+ share.

### (ii) A Regional and Local Radio Stations Broadcasting in Ireland

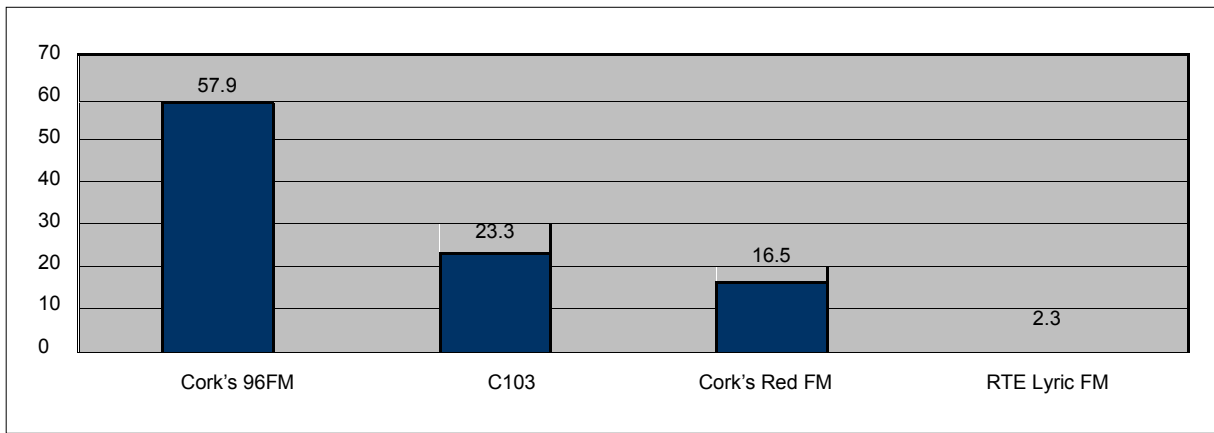
Regional/ Local Radio Station	Market Share, 2007, %	Ownership by Major Groups
<b>Regional</b>		
Beat 102-103FM	11.4	Thomas Crosbie Holdings - 100%
Spin South West *	8.2	Communicorp - 100%
<b>Dublin</b>		
FM104	29.0	UTV - 100%
98FM	25.1	Communicorp - 100%
Q102	15.5	UTV - 100%
Spin 1038	13.3	Communicorp - 100%
RTÉ Lyric FM	8.7	RTÉ
Country Mix 106.8FM	5.9	Yoman International Group Ltd – 24% Gerry Carron – 28%
Phantom 105.2	2.6	Wireless Media Ltd – 26%
<b>TOTAL</b>	<b>100.0</b>	~
<b>Cork</b>		
Cork's 96FM/ C103	81.2	UTV - 100%
<i>Cork's 96FM</i>	57.9	UTV - 100%
<i>C103</i>	23.3	UTV - 100%
Cork's Red FM	16.5	Thomas Crosbie Holdings - 100%
RTÉ Lyric FM	2.3	RTÉ
<b>TOTAL</b>	<b>100.0</b>	~
<b>Local</b>		
Highland Radio	62.5	Emap - 100%
Mid West Radio	51.1	Thomas Crosbie Holdings - 17.65 % Connacht Telegraph Ltd 17.65%
Shannonside/Northern Sound	49.6	Radio Kerry Holdings Ltd - 100%
Tipp FM	49.2	Irish Press Media – 28.5% Butville Limited – 27.7%
WLR FM	45.0	Thomas Crosbie holdings - 100%
Limerick's Live 95FM	43.6	UTV - 100%
Radio Kerry	43.4	Radio Kerry Holdings Ltd - 100%
Clare FM	37.7	Clare Community Radio Holdings PLC - 100%
KCLR 96FM	34.7	John Prucells 19.40 % Irish Radio and Media Holdings 17.07%
LM FM	34.2	UTV - 100%
Midlands 103FM	34.0	Provincial Radio PLC - 100%
South East Radio	33.1	Filbeck Limited - 100%
Ocean FM	31.9	Eagle Island Holdings Ltd. - 21.75% Padraig O'Dwyer 22% North West Media Ltd. 21.75 %
Galway Bay FM	27.1	Connacht Tribune Ltd. - 100%
Kfm	23.9	County Kildare Broadcasint Ltd - 20%
East Coast FM	18.7	Sean Ashmore 24.994% Heart Media Ltd. 56.191 %

**SOURCE:** JNLR Weekday Share Figures (7am-7pm), January 2007 - December 2007  
Ownership information provided by the Broadcasting Commission of Ireland

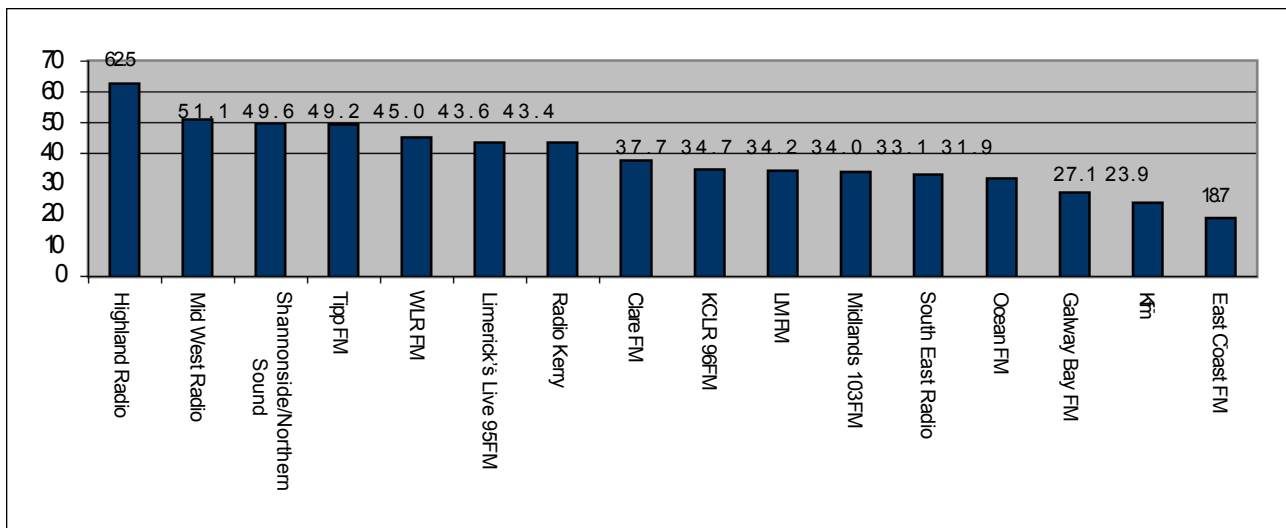
**(ii)B Local Radio Station Share in Dublin, Market Share, 2007 (%)**



**SOURCE:** JNLR Weekday Share Figures (7am-7pm), January 2007 - December 2007



**(ii)C Local Radio Station Share in Cork Market Share, 2007 (%)**



**SOURCE:** JNLR Weekday Share Figures (7am-7pm), January 2007 - December 2007

**(ii)D Local Radio Station, Market Share, 2007 (%)**

**SOURCE:** JNLR Weekday Share Figures (7am-7pm), January 2007 - December 2007

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**NOTES:**

1) "Market Share" - Share of all minutes listened (e.g. between 7am and 7pm ) to Irish Commercial Radio. In other words, of all the minutes listened to Irish commercial radio between 7am-7pm , Station A achieves x%, Station B achieves y%.

2) Market share is a better measure of station loyalty than reach. While reach picks up listeners who flick in and out of the station, market share shows the depth of listening to a station.

3) Market share for regional and local radio stations is expressed with regard to the franchise area within which each of the stations operate.

\* Figures provided for Spin South West are for the survey period July-December 2007

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**WORKINGS:**

The table below has been extracted from Appendix 3: All Radio Stations Broadcasting in Ireland, and has been used to derive Dublin and Cork figures in Table (ii)A above

<b>Dublin</b>	
FM104	12.4
98FM	10.7
Q102	6.6
Spin 1038	5.7
RTE Lyric FM	3.7
Country Mix 106.8FM	2.5
Phantom 105.2	1.1
<b>TOTAL</b>	<b>42.7</b>
<b>Cork</b>	
Cork's 96FM/ C103	52.2
<i>Cork's 96FM</i>	37.2
<i>C103</i>	15.0
Cork's Red FM	10.6
RTE Lyric FM	1.5
<b>TOTAL</b>	<b>64.3</b>

## B. Irish Radio Listenership Figures

Of the national stations, between 2006 and 2007, RTE 2FM experienced a decrease in market share, whereas RTE Radio 1 and Today FM's market share has increased over the same period.

Within the Dublin and Cork local markets, FM 104 and Cork's 96FM are high performers in their local market. In the local markets outside Dublin and Cork, the majority of local radio stations appeared to experience a drop in their local market share between 2006 and 2007 (ranging from 25% to 50%).

National, Regional and Local Radio Stations Broadcasting in Ireland, 2003-2007: Market Share held by Radio Stations on a National! Regional! Local and City Basis (i.e. market share held in each specific area)

Radio Station	Market Share 2003, %	Market Share 2004, %	Change, 2003-4, %	Market Share 2005, %	Change 2004-5, %	Market Share 2006, %	Change 2005-6, %	Market Share 2007, %	Change 2006-7, %
<b>All Radio Stations</b>									
Any Regional/ Local	46.0	47.0	2.2	50.5	7.4	51.0	1.0	47.6	-6.7
RTE Radio 1	25.0	24.0	-4.0	22.2	-7.5	20.9	-5.9	21.6	3.3
RTE 2FM	17.0	17.0	0.0	14.4	-15.3	12.9	-10.4	12.8	-0.8
Today FM	9.0	10.0	11.1	10.9	9.0	12.1	11.0	12.5	3.3
Newstalk 106-108FM	~	~	~	~	~	~	~	~	~
RTE Lyric FM	1.0	2.0	100.0	1.6	-20.0	1.7	6.2	1.7	0.0
<b>All Radio Stations (excl Dublin and Cork regions):</b>									
Any Regional/Local	45.0	46.0	2.2	49.4	7.4	51.3	3.8	48.2	-6.0
RTE Radio 1	21.0	20.0	-4.8	18.8	-6.0	16.7	-11.2	17.8	6.6
Today FM	11.0	12.0	9.1	13.5	12.5	14.4	6.7	15.8	9.7
RTE 2FM	22.0	19.0	-13.6	16.6	-12.6	15.5	-6.6	14.6	-5.8
Newstalk 106-108FM	~	~	~	~	~	~	~	2	~
RTE Lyric FM	1.0	1.0	0.0	1.2	20.0	1.2	0.0	0.9	-25.0
<b>Regional Radio Stations:</b>									
Beat 102-103FM	8.0	8.0	0.0	8.1	1.3	10.9	34.6	11.4	4.6
Spin South West *	~	~	~	~	~	~	~	8.2	~
<b>Dublin Region:</b>									
RTE Radio 1	36.0	33.0	-8.3	31.6	-4.2	30.4	-3.8	31.1	2.3
FM104	15.0	14.0	-6.7	13.6	-2.9	13.3	-2.2	12.4	-6.8
RTE 2FM	10.0	12.0	20.0	11.6	-3.3	10.6	-8.6	11.9	12.3
98FM	17.0	14.0	-17.6	11.2	-20.0	14.1	25.9	10.7	-24.1
Newstalk 106-108FM	2.0	3.0	50.0	4.8	60.0	6.7	39.6	7.2	7.5
Q102	~	8.0	~	9.5	18.8	6.2	-34.7	6.6	6.5
Today FM	7.0	7.0	0.0	6.4	-8.6	7.5	17.2	6.5	-13.3
Spin 1038	2.0	4.0	100.0	5.1	27.5	4.8	-5.9	5.7	18.8
RTE Lyric FM	2.0	2.0	0.0	2.6	30.0	2.5	-3.8	3.7	48.0
Country Mix 106.8FM (previously Dublin's Country 106.8FM, and Dublin's Country Mix)	3.0	3.0	0.0	2.8	-6.7	2.8	0.0	2.5	-10.7
Phantom 105.2	~	~	~	~	~	~	~	1.1	~
Lite FM	5.0	~	~	~	~	~	~	~	~
<b>Cork Region:</b>									
Cork's 96FM/ C103 (previously Country Sound)	48.0	47.0	-2.1	52.6	11.9	51.7	-1.7	52.2	1.0
Cork's 96FM	~	~	~	~	~	~	~	37.2	~
RTE Radio 1	25.0	25.0	0.0	18.6	-25.6	19.3	3.8	18.5	-4.1
C103	~	~	~	~	~	~	~	15	~

Radio Station	Market Share 2003, %	Market Share 2004, %	Change, 2003-4, %	Market Share 2005, %	Change 2004-5, %	Market Share 2006, %	Change 2005-6, %	Market Share 2007, %	Change 2006-7, %
Cork's Red FM (previously Red 104- 106FM)	9.0	5.0	-44.4	10.1	102.0	9.4	-6.9	10.6	12.8
Today FM	7.0	8.0	14.3	6.9	-13.8	11	59.4	9.3	-15.5
RTÉ 2FM	8.0	13.0	62.5	9.2	-29.2	5.4	-41.3	5	-7.4
Newstalk								1.6	
RTÉ Lyric FM	1.0	2.0	100.0	1.4	-30.0	1.9	35.7	1.5	-21.1
<b>Local Radio Stations:</b>									
Highland Radio	55.0	61.0	10.9	64.1	5.1	69	7.6	62.5	-9.4
Mid West Radio	52.0	50.0	-3.8	50.5	1.0	55	8.9	51.1	-7.1
Shannonside/Northern Sound	45.0	46.0	2.2	47.1	2.4	56	18.9	49.6	-11.4
Tipp FM	33.0	36.0	9.1	46.7	29.7	45	-3.6	49.2	9.3
WLR FM	48.0	48.0	0.0	47	-2.1	48	2.1	45	-6.3
Limerick's Live 95FM	33.0	41.0	24.2	47.5	15.9	62	30.5	43.6	-29.7
Radio Kerry	45.0	45.0	0.0	47.6	5.8	52	9.2	43.4	-16.5
Clare FM	38.0	32.0	-15.8	35.3	10.3	41	16.1	37.7	-8.0
KCLR 96FM (previously Radio Kilkenny)**	41.0			34.3		46	34.1	34.7	-24.6
LM FM	27.0	31.0	14.8	34.4	11.0	39	13.4	34.2	-12.3
Midlands 103FM (previously Midlands Radio 3)	21.0	33.0	57.1	34.6	4.8	38	9.8	34.0	-10.5
South East Radio	39.0	32.0	-17.9	38.1	19.1	43	12.9	33.1	-23.0
Ocean FM **				39.9		54	35.3	31.9	-40.9
Galway Bay FM	35.0	33.0	-5.7	33.8	2.4	54	59.8	27.1	-49.8
Kfm		22.0		22.5	2.3	37	64.4	23.9	-35.4
East Coast FM	49.0	35.0	-28.6	31.7	-9.4	30	-5.4	18.7	-37.7
North West Radio	44.0								
Tipp Mid West Radio	43.0								
CKR	22.0								

SOURCE: JNLR Weekday Share Figures (7am-7pm), January 2007 - December 2007

#### NOTES

- 1) "Market Share" - Share of all minutes listened (e.g. between 7am and 7pm ) to Irish Commercial Radio. In other words, of all the minutes listened to Irish commercial radio between 7am-7pm , Station A achieves x%, Station B achieves y%.
- 2) Market share is a better measure of station loyalty. While reach picks up listeners who flick in and out of the station, share shows the depth of listening to a station.
- 3) Market share for regional and local radio stations is expressed with regard to the franchise area within which each of the stations operate.
- 4) \* Figures provided for Spin South West are for the survey period July-December 2007
- 5) \*\* Figures for KCLR and Ocean FM are unavailable for the 2004 period due to insufficient sample size



## Appendices

## Appendix 1 - All Newspapers - Master Schedule

### Sunday Paper

Title	Edition	Circulation July-Dec 2007	Cover Price
Sunday Independent	Irish Title	282,459	€2.40
Sunday World	Irish Title	283,801	€2.20
Sunday Tribune	Irish Title	70,058	€2.50
Sunday Business Post	Irish Title	53,871	€2.20
Irish Mail on Sunday*	Irish edition of UK title	113,577	€2.00
Irish Daily Star Sunday**	Irish edition of UK title	64,052	€2.00
Irish News of the World	Irish edition of UK title	156,666	€1.20
Irish Sunday Mirror	Irish edition of UK title	47,427	€1.30
The People	UK edition	33,728	€1.20
Sunday Times	Irish edition of UK title	104,464	€2.50
Sunday Express	UK title	6,447	€1.40
Independent on Sunday	UK edition	3,060	€2.10
The Observer	UK Sunday	11,289	€2.30
Sunday Telegraph	UK Sunday	3,410	€2.00
Le Journal de Dimanche	French edition	n/a	€2.20
El Pais Sunday	Spanish edition	n/a	€3.00
El Mundo Sunday	Spanish edition	n/a	€2.00
ABC Sunday	Spanish edition	n/a	€3.00
Daily Ausaf	Pakistani edition	n/a	€2.00
<b>Total</b>		<b>1,234,309</b>	

#### SOURCE:

Easons  
ABC, July -December 2007

### Daily Paper

Title	Edition	Circulation July-Dec 2007	Cover Price (Mon-Fri)	Cover Price (Sat)
Irish Independent	Irish Title	160,854	€1.80	€2.00
Irish Times	Irish Title	119,051	€1.80	€2.00
Irish Daily Star	Irish Title	112,042	€1.35	€1.35
The Irish Examiner	Irish Title	55,948	€1.70	€1.70
Irish Daily Mirror	Irish Version of UK Title	74,786	€1.00	€1.00
The Irish Sun	Irish Version of UK Title	107,079	€0.90	€1.00
Irish Daily Mail*	Irish Version of UK Title	59,913	€0.70	€1.00
Evening Echo	Evening Title	25,904	€1.30	€1.30
Evening Herald	Evening Title	82,084	€1.10	€1.10
Herald AM	Free Daily	80,295	Free	Free
Metro	Free Daily	74,025	Free	Free
Daily Express	UK edition	3,924	€0.75	€1.00
Daily Telegraph	UK edition	3,654	€1.00	€1.50
Financial Times	UK edition	4,757	€2.20	€2.80
Guardian	UK edition	4,585	€1.00	€1.80
The Independent	UK edition	2,502	€1.10	€1.80
The Times	International edition	3,947	€0.95	€1.40
Irish News	Northern Ireland	n/a	€1.00	€1.00
Belfast Telegraph	Northern Ireland	n/a	n/a	n/a
Racing Post*	UK edition	10,800	€2.40	€2.40
Wall Street Journal	European Edition	n/a	€2.50	n/a
USA Today	USA title	n/a	€2.00	n/a
International Herald Tribune	International edition	n/a	€2.50	€2.50
Le Monde	French edition	n/a	€2.00	€2.00
Le Figaro	French edition	n/a	€2.10	€2.10
L'equipe	French edition	n/a	€2.10	€2.10
Liberation	French edition	n/a	€2.25	€2.25
La Repubblica	Italian edition	n/a	€2.00	€2.00
Corriere della Sera	Italian edition	n/a	€2.00	€2.00
Gazzetta dello Sport	Italian edition	n/a	€2.00	€2.00
Il Sole 24 Ore	Italian edition	n/a	€2.00	n/a
El Pais	Spanish edition	n/a	€2.00	€2.00
El Mundo	Spanish edition	n/a	€2.00	€2.00
ABC	Spanish edition	n/a	€2.10	€2.10
Frankfurter	German edition	n/a	€2.10	€2.70
Die Welt	German edition	n/a	€3.20	€3.50
Daily Ausaf	Pakistani edition	n/a	€2.00	€2.00
Laif	Weekly Polish	n/a	€0.50	n/a
Irish Farmers Journal	Weekly Farming		€2.20	n/a
<b>Total</b>		<b>986,150</b>		

#### SOURCE:

Easons  
ABC, July -December 2007  
Newsread

## Appendix 2: All Television Stations Broadcasting in Ireland - Master Schedule

Television Stations	Market Share, All Day 2007, %	Market Share, Peak 2007, %
RTÉ One	25.0	31.5
RTÉ Two (aka Network 2)	12.1	12.2
TV3	12.2	13.1
TG4	2.7	2.4
BBC1	5.4	4.8
BBC2	3.2	2.9
UTV	4.8	5.1
Channel 4	3.8	3.6
E4	1.2	1.1
Sky One	2.1	2.3
Sky News	1.3	0.8
Sky Sports 1	1.1	0.8
Sky Sports 2	0.5	0.5
MTV	0.9	0.6
Nickelodeon	1.0	0.4
Paramount	0.7	0.6
Setanta Ireland	0.6	0.5
Channel 6	0.6	0.5
Living	1.2	1.1
Nick Jr	0.3	0.1
Other	19.3	15.0
TOTAL	100.0	99.9

**SOURCE:** AGB Nielsen Media Research, TV Trends 2007, Station Shares - National Share All Individuals, All Day and Peak 2007

### NOTES:

- 1) "All Day" refers to Mon-Sun 0300-2659 while "Peak" refers to Mon-Sun 1800-2329
- 2) "Market Share" is the percentage of the viewing audience accounted for by a particular channel at a specific point in time, i.e. of those people who are watching television, what proportion are viewing channel X



### Appendix 3: All Radio Stations Broadcasting in Ireland - Master Schedule

National, Regional and Local Radio Stations	Market Share, 2007,%
<b>All Radio Stations</b>	
Any Regional/Local	47.6
RTE Radio 1	21.6
RTE 2FM	12.8
Today FM	12.5
Newstalk 106 -108FM	3.4
RTE Lyric FM	1.7
TOTAL	99.6
<b>All Radio Stations (excl Dublin/Cork regions)</b>	
Any Regional/Local	48.2
RTE Radio 1	17.8
Today FM	15.8
RTE 2FM	14.6
Newstalk 106-108FM	2.0
RTE Lyric FM	0.9
TOTAL	99.3
<b>Regional</b>	
Beat 102-103FM	11.4
Spin South West *	8.2
<b>Dublin Region</b>	
RTE Radio 1	31.1
FM104	12.4
RTE 2FM	11.9
98FM	10.7
Newstalk 106-108FM	7.2
Q102	6.6
Today FM	6.5
Spin 1038	5.7
RTE Lyric FM	3.7
Country Mix 106.8FM	2.5
Phantom 105.2	1.1
	99.4

National, Regional and Local Radio Stations	Market Share, 2007,%
<b>Cork Region</b>	
Cork's 96FM/ C103	52.2
Cork's 96FM	37.2
RTE Radio 1	18.5
C103	15.0
Cork's Red FM	10.6
Today FM	9.3
RTE 2FM	5.0
Newstalk	1.6
RTE Lyric FM	1.5
<b>Local Regions</b>	
Highland Radio	62.5
Mid West Radio	51.1
Shannonside/Northern Sound	49.6
Tipp FM	49.2
WLR FM	45.0
Limerick's Live 95FM	43.6
Radio Kerry	43.4
KCLR 96FM	34.7
LM FM	34.2
Midlands 103FM	34.0
South East Radio	33.1
Ocean FM	31.9
Galway Bay FM	27.1
Kfm	23.9
East Coast FM	18.7

SOURCE: JNLR Weekday Share Figures (7am-7pm), January 2007 - December 2007

#### NOTES:

- 1) "Market Share" - Share of all minutes listened (e.g. between 7am and 7pm ) to Irish Commercial Radio. In other words, of all the minutes listened to Irish commercial radio between 7am-7pm , Station A achieves x%, Station B achieves y%.
- 2) Market share is a better measure of station loyalty than reach. While reach picks up listeners who flick in and out of the station, market share shows the depth of listening to a station.
- 3) Market share for regional and local radio stations is expressed with regard to the franchise area within which each of the stations operate.
- 4) \* Figures provided for Spin South West are for the survey period July-December 2007
- 5) All percentages provided in the table above are the exact figures collected by JNLR.
- 6) 'All radio stations', 'Dublin', 'Cork', 'Regional' and 'Local' indicates the percentage of people in those regions / transmission areas, which listen to specific radio stations. For example 'all radio stations' indicates the number of people in Ireland that listen to specific national radio stations and local / regional radio stations and 'Dublin' highlights the number of people within Dublin that

**Appendix D:**

**Comparative Report on Media  
Mergers**

**Emily Gibson BL**

**REPORT FOR THE ADVISORY GROUP ON MEDIA MERGERS AS  
ESTABLISHED BY THE MINISTER FOR ENTERPRISE, TRADE AND  
EMPLOYMENT**

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**COMPARATIVE REPORT ON MEDIA MERGERS**

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**EMILY GIBSON BL**

**APRIL 2008**

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## **1. INTRODUCTION**

This Report considers the mechanisms used to approve media mergers in a number of different jurisdictions. Some of these jurisdictions have specific rules and procedures for the approval of media mergers, while others rely on general competition merger regulation together with sector specific regulation on cross-ownership, foreign ownership and transparency.

The Report aims to highlight these various rules and provides an overview of the timescales and applicable tests for the approval of media mergers. The jurisdictions whose approaches to media mergers are examined in this Report are England, Wales and Northern Ireland, Scotland, The United States, Canada, Australia, New Zealand, South Africa and the following EU Member States: Austria, Belgium, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden.

## **ENGLAND, WALES AND NORTHERN IRELAND**

### **Media Ownership Regulation**

#### **General competition laws combined with sector specific regulation**

Media ownership regulation in the UK is governed both by the provisions of the Enterprise Act 2002, the Communications Act 2003 and the Media Ownership (Local radio and appointed news provider) Order 2003. General competition law is combined with some specific provisions of sector specific legislation to achieve the objectives of pluralism and diversity in media ownership policy and regime. The UK regulatory regime was significantly liberalised in the Communications Act 2003.

### **Merger Review**

The primary competition regulator in the UK is the Office of Fair Trading (the OFT), which regulates competition in all markets within the UK pursuant to the Competition Act 1998, the Enterprise Act 2002 and relevant European legislation.

The Communications Act 2003 established the Office of Communications (OfCom) as the independent regulator and competition authority for the UK communications sector (including telecoms, television and radio). Under the Competition Act and Enterprise Act, OfCom has concurrent enforcement powers with the OFT in relation to “activities connected with communications matters”.<sup>1</sup> OfCom plays a specific role in relation to media mergers.

The framework for the assessment of mergers in the UK is set out in the Enterprise Act. A merger will be created if two or more enterprises cease to be distinct and either

- the enterprises which cease to be distinct supply or acquire goods or services and, as a result of the transaction, would together supply or acquire at least 25 % of all those particular goods or services of that kind supplied in the UK or a substantial part of the UK; or
- the annual UK turnover of the enterprise being acquired exceeds £70 million.

Two or more enterprises will cease to be distinct where they are brought under common ownership or control. Control includes situations falling short of outright control as Section 26 of the Enterprise Act 2002 gives the OFT jurisdiction to consider the acquisition of “material influence” i.e. the acquirer’s ability materially to influence the policy of the target company. A share of voting rights of over 25 % is likely to be considered as conferring the ability to materially influence policy. The

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<sup>1</sup> S. 371 Communications Act 2003, to enforce the Competition Act 1998 This power is to be exercised concurrently with the OFT. There are concurrency rules in place to co-ordinate the exercise of concurrent jurisdiction under the Competition Act 1998, Competition Act 1998 (Concurrency) Regulations 2000 (the 'Concurrency Regulations').

OFT may examine any case where there is a shareholding of 15 % or more in order to ascertain if the holder has the ability to materially influence policy.

The UK merger regime is one of voluntary notification. Parties can notify the merger to the OFT. The OFT will examine newspaper, broadcasting and cross media mergers in the same way as other mergers under the Act. Under the Enterprise Act, however, the OFT must refer relevant merger situations (whether anticipated or completed) to the Competition Commission for detailed investigation where the OFT believes there to be a ‘realistic prospect’ that the transaction will result in a substantial lessening of competition.

The Secretary of State for Trade and Industry enjoys discretion to intervene in these referral cases by issuing an Intervention Notice (IN) if it is believed that a case raises media public interest issues. This may arise in two kinds of merger situations. .

- a) In a “relevant merger situation”, the Secretary of State may intervene where:
- two or more enterprises cease to be distinct as a result of the merger<sup>2</sup>; and where either
    - The value of the turnover in the UK of the enterprise being taken over exceeds £70 million (the turnover test); and / or
    - The merger would result in the creation or enhancement of at least a 25 % share of supply of goods or services of any description in the UK or in a substantial part of the UK (the share of supply test)<sup>3</sup>.
- b) In a “special merger situation” the Secretary of State may intervene:
- where two or more enterprises cease to be distinct and
    - one of the merging parties has an existing 25 % or more share of the supply of newspapers or broadcasting in the UK or in a substantial part of the UK<sup>4</sup>.

If there is intervention in a “relevant merger situation” a public interest assessment will be carried out in addition to the standard competition assessment by the OFT. In a “special merger situation” case, any assessment will be limited to the public interest.

The Secretary of State may also intervene on specified media public interest grounds in cases falling under the European Merger Regulation by serving a European intervention notice<sup>5</sup>.

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<sup>2</sup> Section 26, Enterprise Act 2002

<sup>3</sup> S. 42 Enterprise Act 2002

<sup>4</sup> Section 59 (3C), (3D) Enterprise Act 2002

<sup>5</sup> A European Intervention notice is served pursuant to Section 67 of the Enterprise Act. The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 then sets out the procedures for reference etc obliging OFT to report etc. This Order has been amended by the Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 which provides a role for OFCOM in such European merger cases and mirrors the role in domestic cases where media public interests are invoked.



The Secretary of State can make a reference to the Competition Commission if it is believed that, on the basis of the public interest consideration alone, the merger operates or may be expected to operate against the public interest. OfCom will be obliged to prepare a report on the media public interest issues if there is intervention on these grounds.

When the Secretary of State believes a merger raises media public interest considerations, he/she intervenes by issuing an intervention notice specifying these considerations.

OfCom must then provide a report to the Secretary of State with advice and recommendations on the specified media public interest considerations within a deadline specified by the Secretary of State. OfCom's report to the Secretary of State must also contain a summary of any representations about the case which have been received by OfCom in response to OfCom's consultation. The Secretary of State will publish a non-confidential version of OfCom's report.

In addition, the OFT will be obliged to provide a report on the jurisdictional issues and, for "relevant merger situations", competition issues. The Secretary of State will be bound by the OFT's findings on these issues.

The media public interest considerations are divided into:

- a newspaper test for mergers involving newspaper enterprises
- a broadcasting and cross media test for mergers involving broadcasting enterprises or mergers between broadcasting enterprises and newspaper enterprises.

The public interest considerations for newspaper mergers are:

- **Section 58 (2A)**: the need for accurate presentation of news in newspapers and the need for free expression of opinion in newspapers involved in the merger; and
- **Section 58 (2B)**: the need for, to the extent that is reasonable and practicable, a sufficient plurality of views expressed in newspapers as a whole in each market for newspapers in the UK or part of the UK.

The public interest considerations for broadcasting and cross-media mergers are set out in **Section 58 (2C)**:

- (a) the need for there to be a sufficient plurality of persons with control of the media enterprises serving that audience in relation to every audience in the UK or a locality of the UK;
- (b) the need for the availability throughout the UK of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests; and

- (c) the need for persons carrying on media enterprises and for those with control of such enterprises to have a genuine commitment to the attainment in relation to broadcasting of the standard objectives contained in the Act relating to due impartiality of news, taste and decency<sup>6</sup>.

The decision on whether to intervene in a media merger will be taken when only basic information is known about the specific transaction. The Department of Trade and Industry (DTI) expects that its approach to this issue will “develop in the light of experience”.<sup>7</sup> It maintains that “this is not an area suited to generalization” and that each case must be considered on its own facts and merits. The DTI has suggested that where a proposal generates a significant volume of adverse third party comment this may prompt intervention.<sup>8</sup>

### Newspaper Mergers

The DTI has offered some general guidance regarding a range of scenarios in which intervention based on the newspaper media public interest considerations may occur<sup>9</sup>. First, as regards the acquisition of a non-media business by a newspaper owner, it has indicated that intervention will be “extremely rare”.<sup>10</sup> The DTI has mooted the possibility of intervention, however, where the form of the transaction does not reflect the reality of the situation, or where the transaction has some “unusual features”. The DTI expects section 58 (2A) and (2B) to be interpreted in line with the decisions taken under the Fair Trading Act 1973 regime, notwithstanding that such cases did not give rise to binding precedent.<sup>11</sup>

Second, in respect of the acquisition of a newspaper business by a non-media business, the DTI has indicated that such a transaction is likely to raise newspaper public interest concerns only in the exceptional circumstance where the identity of the acquirer itself gives rise to disquiet. Intervention will follow only from very significant adverse public criticism or evidence of very significant prejudicial conduct.

Third, where a merger is agreed between two newspaper businesses, intervention will depend upon the identity of the parties, and the extent and nature of any overlaps between their respective activities. The DTI’s guidance notes a “recognisable correlation between high levels of concentration and the potential for newspaper ownership concerns to arise.” The degree of concentration created will also be of interest to the OFT in its competition assessment. The level of concentration that

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<sup>6</sup> These are stated in S. 319, Communications Act, and developed in a Standards Code published by OfCom.

<sup>7</sup> *Enterprise Act 2002: Public Interest in Media Mergers: Guidance on the operation of the public interest merger provisions relating to newspaper and other media mergers*, DTI, May 2004 Paragraph 6.1

<sup>8</sup> Paragraph 6.6

<sup>9</sup> Those stipulated in S. 58 (2A) and (2B) <http://www.berr.gov.uk/files/file14331.pdf>

<sup>10</sup> Para 6.5

<sup>11</sup> s. 59 (3), Fair Trading Act 1973 required the Competition Commission to investigate “whether the transfer in question may be expected to operate against the public interest, taking into account [relevant] matter...and, in particular, the need for accurate presentation of the news and free expression of opinion”.

might prompt intervention in local markets on public interest grounds is higher than that which would normally indicate potential competition problems. Such a merger would have to reduce the number of publications on local markets to only one or two titles before a decision to intervene on newspaper public interest grounds would be taken. Conversely, on national markets intervention may be deemed appropriate at lower levels of market concentration that would normally be of interest to competition authorities.

Fourthly, as regards the acquisition of a newspaper business by a non-newspaper media business, the Secretary of State would not normally intervene on newspaper public interest grounds. The character of the editorial policy displayed in other media interests, however, may provide insight into the perspective that will be furthered through the acquired publication. Cross-media ownership may prompt consideration under the broadcasting and cross-media considerations.

### **Broadcasting & Cross-media**

As regards intervention in broadcasting and cross-media public interest cases the DTI has indicated that intervention on the basis of the broadcasting and cross-media public interest considerations will normally take place only where media ownership rules have been removed by the Communications Act 2003.<sup>12</sup> The DTI also indicated that in “exceptional circumstances” the Secretary of State may consider intervention in areas where cross-media ownership rules still apply, or in areas where there have never been such rules. This will only occur where the transaction gives rise to “serious public interest concerns”.<sup>13</sup> The exceptional circumstances are not clearly defined. Three possible exceptional circumstances however have been raised by the government:

- where the merger would see a large number of news or educational channels coming under single control;
- where the merger would see all music channels come under the same control, and
- where a prospective new entrant to local radio ownership has not shown a genuine commitment to broadcasting standards in other media or countries.

### **Intervention procedure**

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<sup>12</sup> Paragraph 8.2. These are: -mergers involving national newspapers with more such that the acquirer would control licences accounting for an audience share of greater than 15% (though such acquisitions are less likely to raise concerns where the acquirer is already an existing ITV licence holder in view of ITV's proven track record as a public service broadcaster); - mergers involving two Channel 3 licences for the same area; mergers involving a Channel 3 licence holder and the Channel 5 licence holder; - mergers involving the national ITV licence holder and the Channel 5 licence holder; mergers involving the national Channel 3 licence holder and a national radio service; mergers involving the Channel 5 licence holder and a national radio service; - mergers involving two or more national radio services; mergers involving owners from outside the European Economic Area (except where prior to the Communications Act 2003 there were no restrictions on non-European Economic Area ownership) than 20% of the market and the Channel 5 licence holder; mergers involving national newspapers with more than 20% of the market and a national radio service; mergers involving a change in control of one or more Channel 3 licences

<sup>13</sup> Paragraph 8.8

In response to an intervention notice, OfCom applies these tests to relevant mergers and reports the results to the Secretary of State (within a 40-working-day period) along with a recommendation on whether the merger should be referred to the Competition Commission for further consideration.

The Secretary of State then makes a judgment on whether to refer the case to the Competition Commission in the light of the reports received from OfCom and the OFT (where relevant). Where the Secretary of State decides that media public interest considerations are relevant, references can be made either because:

- the merger results in a substantial lessening of competition and, taking account of this together with any public interest issues, the merger will operate or be expected to operate against the public interest; or,
- while there is no substantial lessening of competition arising from the merger, the public interest issues are such that the merger may be expected to operate against the public interest.

The Secretary of State will also consider whether undertakings in lieu of a reference are justified. If a reference is made on public interest grounds (with or without competition grounds) the Secretary of State will also make the final decision on the merger following the Competition Commission's report. OfCom may also give advice to the Secretary of State as it considers appropriate in relation to either the Competition Commission's report or the taking of enforcement action by the Secretary of State (i.e. remedies).<sup>14</sup>

### **Merger timescale**

Parties may notify a merger to the OFT either by way of a statutory merger notice or by informal submission. The former gives the OFT up to 30 working days to assess the merger, extendable to 40 working days if the OFT is seeking undertakings in lieu of a reference or where there is a public interest intervention by the Secretary of State.<sup>15</sup> When an informal submission is used instead of a merger notice, the OFT aims to reach a decision within 40 working days of receipt the submission.

### **Referral to Competition Commission**

Where a merger is referred to the Competition Commission on competition or public interest grounds<sup>16</sup>, the Competition Commission must complete its investigation within 24 weeks of the reference being made (subject to an extension of up to 8 weeks in exceptional cases). In non-public interest cases, the verdict of the Competition Commission in clearing (whether or not subject to remedies) or blocking the transaction is final, subject to any appeal as described below.

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<sup>14</sup>OfCom Guidance for the public interest test for media mergers  
[http://www.OfCom.org.uk/tv/ifi/guidance/pi\\_test/pi\\_test.pdf](http://www.OfCom.org.uk/tv/ifi/guidance/pi_test/pi_test.pdf)

<sup>15</sup> Triggering the preparation, in media public interest cases, of a report by OfCom to the Secretary of State within this 40-working-day period

<sup>16</sup> S. 45(2) Enterprise Act 2002

## **Public Interest Intervention**

In cases involving a public interest intervention notice, the Secretary of State has 30 working days from delivery to him of the Competition Commission's report in which to exercise his discretion to approve or prohibit the merger on public interest grounds. The Secretary of State is bound to accept the Competition Commission's conclusions on competition matters (and so could not block the merger on competition grounds despite a Competition Commission clearance) but has the final say in relation to public interest matters (and so could conceivably block a merger on such grounds despite a Competition Commission clearance). The Secretary of State is likely, generally, not to clear a merger on public interest grounds in the face of a negative Competition Commission decision on competition grounds, as to do so would involve overriding the Competition Commission's conclusions on competition issues. The Secretary of State might, however, do so in extreme circumstances where, for example, a newspaper would be closed if a transfer to a new owner were to be blocked on competition grounds and there were strong public interest grounds for keeping the paper open. The Secretary of State may also balance competition and public interest aspects in deciding on appropriate remedies.

## **Ownership restrictions**

The Communications Act 2003 and the Broadcasting Acts impose restrictions on the persons who may own or control broadcasters. The Communications Act sets out detailed cross-ownership rules while relaxing many of the former restrictions under the Broadcasting Acts as to who may hold licences. As a result, these restrictions now relate mainly to political bodies and advertising agencies. Previous restrictions in respect of local authorities and religious bodies have also been modified, and the rules prohibiting persons not resident or established in the EEA from holding broadcasting licences have been removed.

Local authorities may hold broadcasting licences or control persons holding such licences, provided the licensed services are used to carry out the legal functions of a local authority. Religious bodies may own local digital sound programme licences, national digital sound programme licences, TV restricted service, digital programme service a licences and digital additional service licences, in addition to the local analogue radio and satellite or cable broadcasting licences that they were previously allowed to hold.

## **Cross-Ownership**

The Communications Act 2003 substantially removed former restrictions on cross-media ownership in the UK by removing certain prohibitions and raising the relevant market share thresholds. Only three areas of restriction have been retained<sup>17</sup>:

- A rule limiting joint ownership of national newspapers and Channel 3 (ITV). No publisher controlling more than 20 % of the national newspaper market (or company holding a 20 % interest in such a national newspaper publisher) may

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<sup>17</sup> Section 350 Communications Act 2003

itself hold a Channel 3 licence or more than a 20 % stake in a Channel 3 company. Conversely, no Channel 3 company may hold more than a 20 % stake in a national newspaper publisher;

- A parallel, regional rule. No one owning a regional Channel 3 licence may own more than 20 % of the local or regional newspaper market in the same region; and
- The rules, which form part of the local radio ownership scheme, aimed at ensuring that there are at least two local or regional commercial media voices (in television, radio and newspaper publishing) in addition to the BBC<sup>18</sup>.

The Media Ownership (Local radio and appointed news provider) Order 2003 provides that no single person may hold together:

- A local analogue radio licence;
- A regional Channel 3 licence whose potential audience includes 50 % of the audience of the analogue radio service; and
- One or more local newspapers which have a local market share of 50 % or more in the local coverage area.

Any person who

- Runs a local newspapers (s) that account for more than a 50 % share of circulation in the coverage area; or
- Holds a regional Channel 3 licence, the coverage of which overlaps with an area covered by a local “sound broadcasting services” licence;

may not acquire a further local analogue radio licence if it overlaps with two other local radio licences which also overlap with each other and that person would acquire more than 45 % of the available points in that coverage area.

There are no restrictions on the holding of national analogue radio licences. However, at local level, no person may acquire a further licence where he already holds more than two local licences which overlap and the addition of the acquired licence would give rise to that person holding 55 % or more of the total points available in that area.

In the case of digital multiplexes the rules provide that no person may hold more than one national radio multiplex at the same time. At local level no person may hold two licences for overlapping radio multiplex services. Services will be considered to overlap where the potential audience for one multiplex exceeds 50 % of the potential audience of the other multiplexes.

OfCom has published guidance on the definition of control of media companies. The guidance sets out OfCom’s approach to determining whether a person “controls” a company holding a broadcasting licence or a company running a newspaper, under the statutory definition of “control” in the Broadcasting Act 1990 (as amended) in

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<sup>18</sup> The Media Ownership (Local radio and appointed news provider) Order 2003

circumstances where he neither holds nor is beneficially entitled to more than 50 % of the equity share capital in the body nor possesses more than 50 % of the voting power in that body. A “person” can be an individual, or a company or other legal entity.<sup>19</sup>

### **OfCom Review**

Section 391 of the Communications Act 2003 (“the Act”) requires OfCom to review the media ownership rules (“MO rules”) at least every three years and, as a result of that review, make recommendations to the Secretary of State if in OfCom’s view changes to the MO rules are needed. On 14 November 2006, OfCom published a report setting out its conclusions following a review of the media ownership rules, as contained in the Communications Act 2003<sup>20</sup>. OfCom has concluded that no changes need to be made to any of the media ownership rules at this time, although it intends to consider those relating to radio ownership further as part of a wider review of commercial radio.

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<sup>19</sup> [http://www.OfCom.org.uk/consult/condocs/media2/statement/media\\_statement.pdf](http://www.OfCom.org.uk/consult/condocs/media2/statement/media_statement.pdf)

<sup>20</sup> [http://www.OfCom.org.uk/research/media\\_owners/rulesreview/rules.pdf](http://www.OfCom.org.uk/research/media_owners/rulesreview/rules.pdf)

## **SCOTLAND**

There are no separate rules in respect of media mergers in Scotland. The position as set out in relation to England, Wales and Northern Ireland applies.



## THE UNITED STATES

### General competition laws combined with sector specific regulation

There is no special rule applied by the antitrust authorities<sup>21</sup> to mergers between media companies. Media mergers are subject to the standard “substantial lessening of competition test”, in Section 7 of the Clayton Act<sup>22</sup>. Under the Clayton Act, all transactions above a certain financial threshold must be notified to both the Justice Department and the FTC<sup>23</sup>.

Specific regulatory rules govern the communications sector. These are maintained and implemented by the Federal Communications Commission (FCC) under Federal Law (the Telecommunications Act 1996). The FCC will review media mergers to see whether they comply with the FCC’s existing rules. If the proposed media merger violates no rule, no further inquiry is necessary. Only if the proposed media merger violates an FCC rule will the FCC look further, to see if some waiver or condition is necessary. The three main goals of FCC media regulation are competition, viewpoint diversity and localism in US media markets.

### FCC Ownership Regulation

With jurisdiction over broadcasting at the federal level, the transfer of FCC licences or authorisations from one media entity to another must be approved by the FCC to ensure that the transfer will not violate any FCC rules or governing statutes and will serve the public interest. Some media mergers are subject to a broad balancing test, whereby the FCC must determine that “public interest benefits” will outweigh “public interest harms”. Broadcast-only mergers are not subject to this broad test, however, but rather an evaluation of whether a transaction will comply with all of the agency’s broadcast ownership rules.

The FTC and DoJ, both with responsibility for enforcing general competition rules, also review certain proposed licence transfers. Pursuant to a 2002 Memorandum of Agreement between the DoJ and FTC, the DoJ has primary responsibility for reviewing mergers involving companies in the media, communications, publishing and entertainment industry<sup>24</sup>. There are no specific legal mechanisms under federal law to ensure that the FCC and DoJ do not reach conflicting results on a particular transaction or to ensure the consistent application of competition and sector-specific regulation. As a practical matter, however, the two agencies cooperate with each other, with the FCC ordinarily delaying its decision until the DoJ has concluded its review.

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<sup>21</sup> The Federal Trade Commission and the Antitrust Division of the Department of Justice (DoJ) are the agencies of the federal government responsible for reviewing mergers and acquisitions. Both agencies have authority to enforce the Clayton Act.

<sup>22</sup> The procedural system of pre-merger notification is governed by the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

<sup>23</sup> Although there is no minimum jurisdictional threshold, only transactions involving more than US\$59.8 million in stock or assets are subject to a mandatory report-and-wait requirement under the Hart-Scott-Rodino (HSR) pre-merger notification programme.

<sup>24</sup> <http://www.ftc.gov/opa/2002/03/clearance.shtm>

## **Procedure**

Parties proposing to enter into a merger or transaction involving the transfer of FCC licences must submit a formal application to the agency. FCC public notice of the application triggers a 30-day period during which interested parties may submit comments, either in favor of or in opposition to the application. The applicants then have an opportunity to respond to any such comments.

The FCC has established a goal of deciding major transactions within 180 days, although the approval process for complex deals often takes longer. Less complex transactions generally are approved within several months.

## **Media ownership and Cross Media Ownership**

The Telecommunications Act 1996 (the Telecommunications Act) built on the original Communications Act 1934 and was the first substantial change to the industry in 62 years. Changes in the rules for broadcast ownership of both radio and television were relaxed. Ownership limits on television and radio stations were lifted. Group owners could now purchase television stations with a maximum service area cap of 35% of the US population, up from the previous limit of 25% established in 1985.

S. 202 (h) of the Telecommunications Act requires the FCC to review its ownership rules (except the national television ownership limit) every four years<sup>25</sup> and “*determine whether any of such rules are necessary in the public interest as a result of the competition*”. Under S. 202 (h) the FCC “*shall repeal or modify and regulation it determines to be no longer in the public interest*”.<sup>26</sup>

The six rules in effect and the years of their original adoption are:

### **Newspaper/Broadcast Cross-Ownership Prohibition (1975)**

The newspaper/broadcast cross-ownership rule prohibits common ownership of a full-service broadcast station and a daily newspaper when the broadcast station’s “contour” or service area encompasses the newspaper’s city of publication.

### **Radio/TV Cross-Ownership Restriction (1970)**

The original radio/TV cross-ownership rule prohibited common ownership of a radio and TV station in the same market. The current cross-media ownership rules allow an entity to own one television station (two if the market is large enough to trigger the

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<sup>25</sup> S. 202(h) In 2004, Congress revised the then biennial review requirement to require such reviews quadrennially. Congress also eliminated the national television multiple ownership rule from the quadrennial review requirement. *See* 2004 Consolidated Appropriations Act, 118 Stat. at 3. Consumer Federation of America and Consumers Union (“CFA/CU Petition”) ask for reconsideration of the 2002 biennial review of the Commission’s broadcast ownership rules concerning issues relating to the national television ownership limit. CFA/CU Petition at 5-10. Because Congress subsequently set national television ownership limits by statute and excluded this rule from the quadrennial review requirement, those arguments are moot. *See Prometheus Radio Project, et al. v. FCC*, 373 F.3d 372, 395-397 (3d Cir. 2004) (“*Prometheus*”). In this Order, “Petition” refers to a petition for reconsideration filed in response to the 2002 Biennial Review Order, *see* note 6, *infra*.

<sup>26</sup> 1996 Act, 110 Stat at 111-12.

provisions of the local television ownership rule) and a varying number of radio stations in a local market depending on the number of independently owned media “voices” that are left in the market.

### **Local TV Multiple Ownership Rule (1964)**

The local TV ownership rule allows an entity to own two television stations in the same Designated Market Area (DMA) (as defined by Nielsen Media Research) provided: (1) the contours or service areas of the stations do not overlap; and (2) at least one of the stations is not ranked among the four highest-ranked stations in the DMA (based on market share), and at least eight independently-owned commercial or non-commercial broadcast television stations would remain in the DMA after the proposed combination.

### **Dual TV Network Rule (1946)**

The dual network rule originally prohibited any entity from maintaining more than a single radio network. A few years later, the rule was extended to television networks. Today, the dual network rule prohibits a merger between or among these four television networks: ABC, CBS, Fox, and NBC.

### **Local Radio Ownership Rule (1941)**

Initially, the FCC’s local radio ownership rule prohibited common ownership of same service radio stations (AM or FM) that served substantially the same area. Currently, the FCC’s local radio ownership rule imposes the following limitations: (1) in a radio market with 45 or more commercial radio stations, a party may own, operate, or control up to 8 commercial radio stations, not more than 5 of which are in the same service; (2) in a radio market with between 30 and 44 commercial radio stations, a party may own, operate, or control up to 7 commercial radio stations, not more than 4 of which are in the same service; (3) in a radio market with between 15 and 29 commercial radio stations, a party may own, operate, or control up to 6 commercial radio stations, not more than 4 of which are in the same service; and (4) in a radio of common ownership market with 14 or fewer commercial radio stations, a party may own, operate, or control up to 5 commercial radio stations, not more than 3 of which are in the same service, except that a party may not own, operate, or control more than 50 % of the stations in that market.

### **National TV Ownership Rule (1941)**

When the FCC first adopted national ownership restrictions for television broadcast stations in 1941; it put numerical limits on the number of stations that could be commonly owned. The rule has been amended a number of times thereafter to increase the permitted level.

Currently, the national TV ownership rule prohibits an entity from owning television stations that would reach more than 39% of U.S. television households. “Reach” is defined as the number of television households in the TV DMA to which each owned station is assigned. All TV households in the DMA are attributed to VHF stations; 50% of TV households in the DMA are attributed to UHF stations.”

## Ownership Regulation FCC 2003 Review

Ownership regulation was not a major source of political and public outcry in 1996 but it became so when, in a mandated review in 2003, the FCC attempted to further relax the rules. On June 2, 2003, the FCC on foot of its 2002 Biennial Review Order, modified five of its media ownership rules, easing restrictions on the ownership of multiple television stations (nationally and in local markets) and on local media cross-ownership, and tightening restrictions on the ownership of multiple radio stations in local markets. The new rules have never gone into effect.

On June 24, 2004, the United States Court of Appeals for the Third Circuit ("Third Circuit"), in *Prometheus Radio Project vs. Federal Communications Commission*, found the FCC did not provide reasoned analysis to support its specific local ownership limits and therefore remanded portions of the new local ownership rules back to the FCC and extended its stay of those rules pending review. The Third Circuit concluded that the review requirement under S. 202 (h) "necessary in the public interest" is a "'plain public interest' standard under which necessary means 'convenient', 'useful' or 'helpful', not 'essential' or indispensable".<sup>27</sup> It further concluded that the second sentence of S. 202 (h) requires the FCC to repeal or modify any regulations that it has determined do not satisfy the standard set forth in the first sentence.

In June 2006, the FCC adopted a *Further Notice of Proposed Rulemaking* seeking comment on how to address the issues raised by the Third Circuit and initiating a statutorily-required quadrennial review of all of its media ownership rules, but did not propose specific rule changes<sup>28</sup>. In November 2006, the FCC announced that it had commissioned 10 economic studies of media ownership, which were made available for public comment during 2007.

On 18 December 2007, the FCC announced its quadrennial review of the broadcasting ownership rules.<sup>29</sup> The FCC amended the 32-year-old absolute ban on newspaper/broadcast cross-ownership, which effectively allows a newspaper to own one television station or one radio station in the 20 largest markets, subject to strict criteria and limitations.

Under the new approach, the Commission presumes a proposed newspaper/broadcast transaction is in the public interest if it meets the following test:

- (1) the market at issue is one of the 20 largest Nielsen Designated Market Areas ("DMAs");
- (2) the transaction involves the combination of only one major daily newspaper and only one television or radio station;
- (3) if the transaction involves a television station, at least eight independently owned and operating major media voices (defined to include major newspapers and full-power TV stations) would remain in the DMA following the transaction; and

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<sup>27</sup> 373 F.3d at 394

<sup>28</sup> <http://openers.cdt.org/document/RL31925>

<sup>29</sup> FCC 07/216

(4) if the transaction involves a television station, that station is not among the top four ranked stations in the DMA.

Major newspapers are defined as newspapers that are published at least four days a week within the DMA and have a circulation exceeding five % of households in the DMA.

All other proposed newspaper/broadcast transactions would continue to be presumed not in the public interest. However, the Report and Order addresses two limited circumstances in which this negative presumption would be reversed. With respect to the remaining broadcast ownership rules currently under review, the Commission determined that any further relaxation of ownership rules in the radio or television broadcast markets should not be allowed. The Commission made no changes to the local television “duopoly” rule, the local radio ownership rule, local radio-television cross ownership rule and the dual network rule currently in effect.

The FCC’s media ownership rules, adopted in December 2007 and released 5 March 2008 are being challenged in both the Senate and the House<sup>30</sup>. The Senate Commerce, Science and Transportation Committee have recently voted to reject the rules.

### **Foreign Ownership**

Under the Communications Act 1934, a foreign entity may directly own no more than 20 % of the stock of a broadcast licensee. In addition, foreign entities may not indirectly own more than 25 % of the stock of a broadcast licensee. The FCC has discretion to allow greater indirect foreign ownership, but this is rarely permitted in the broadcast context.

### **Newspaper Preservation Act**

The U.S. antitrust laws and the enforcement policy of the U.S. antitrust agencies do not take a special approach to preserving competition in the review of media mergers. There is one exception to this rule: the Newspaper Preservation Act, 15 U.S.C 1801-1804.

Under the Newspaper Preservation Act joint operating arrangements receive a limited antitrust exemption if the Attorney General determines that one of the newspapers in question is a "failing newspaper," and if the proposed arrangement furthers the purpose of the Act, which is the preservation of "editorially and reportorially independent and competitive" newspapers.

Note that “failure to obtain advance approval of such an arrangement merely subjects the arrangement to the ordinary antitrust tests without the benefit of any special immunity by virtue of this statute,” and “[w]hile the statute permits joint

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<sup>30</sup> <http://www.paidcontent.org/entry/419-senate-committee-rejects-fcc-cross-ownership-relaxation/>

arrangements, it expressly refuses to immunize exclusionary practices that ‘would be unlawful under any antitrust law if engaged in by a single entity.’<sup>31</sup>

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<sup>31</sup> IA Phillip E Areeda & Herbert Hovenkamp, Antitrust Law 251 e 143-144 (2<sup>nd</sup> Edn,2000)

## CANADA

### **General Competition Law together with sector specific regulation**

In Canada, media mergers are governed by the general competition rules, the Competition Act 1985,<sup>32</sup> together with some sector specific regulation.

The Competition Act is enforced by the Commissioner of Competition (the Commissioner) and the Commissioner is supported by the Competition Bureau (the Bureau), an independent law enforcement agency under the federal Department of Industry.

The Canadian Radio-Television and Telecommunications Commission (CRTC), is an independent public authority, established in 1968, that regulates and supervises all aspects of the Canadian broadcasting system. It has been given its powers since then by both the Broadcasting Act 1991<sup>33</sup> and the Telecommunications Act 1993<sup>34</sup>.

Under the Broadcasting Act, the CRTC has powers to review changes in ownership or control of licences under the Act. In terms of broadcasting mergers, both the CRTC and the Bureau have parallel jurisdiction. Any transaction must comply with the legislation administered by both organizations.

### **CRTC Ownership Regulation**

Review by the Commission under the Broadcasting Act applies to changes in ownership or control of licensees. Under the Broadcasting Distribution Regulations, a licensee has various obligations involving mergers and acquisitions. A licensee must notify the CRTC of the occurrence of any transaction that results in a person or persons acquiring 20 % or more of the voting interests of the licensee, must seek prior approval of the CRTC in respect of any transaction in which a person or persons would be acquiring 30 % or more of the voting interests of the licensee and must seek prior approval of the CRTC in respect of any transaction that results in a change of the effective control of the licensee by any means.

In addition to showing that the transaction will not result in a violation of the foreign ownership restrictions or in an undue reduction in editorial voices and diversity, the applicant must demonstrate that the proposed transaction is generally in the public interest and that the acquirer has the human and financial resources necessary to improve the licensed undertaking and make a contribution to the enhancement of the broadcasting system.

In this regard, the acquirer, where a change in ownership or control of a programming undertaking is involved, must provide a specific package of clear and unequivocal tangible benefits to subscribers and their communities, or to the broadcasting system as a whole. Such tangible benefits must represent a prescribed percentage of the purchase price and may include commitments to operating expenditures, normally in

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32 Competition Act 1985 R.S., 1985, c. C-34 <http://laws.justice.gc.ca/en/showtdm/cs/C-34//en>

33 <http://laws.justice.gc.ca/en/B-9.01/index.html>

34 <http://www.crtc.gc.ca/ENG/LEGAL/TELECOM.HTM>

the areas of additional programming staff or programming improvements, grants or contributions to Canadian talent or programming development funds and programming research and development initiatives.

The CRTC will also consider intangible benefits such as the experience and resources of the purchaser, local ownership, entry of new players and the promise to maintain or improve a struggling service.

Generally, the CRTC will review and process an application for a change in ownership or control of a broadcasting undertaking subject to a public hearing or a public process within six to nine months. Simple changes in ownership or change of control applications may be reviewed without a public process and completed in two to three months, or even less.

### **Merger Control – Competition Bureau**

Under the Competition Act, all mergers are subject to review and those which exceed prescribed economic thresholds must be formally pre-notified to the Bureau.<sup>35</sup> The test applied is whether or not the proposed transaction is likely to result in a *substantial lessening or prevention of competition* under the criteria established under the competition legislation. In addition, the Commissioner has the jurisdiction to review all mergers, even if they do not cross these thresholds.

The Competition Act establishes two pre-merger notification options, a ‘short-form filing’ and a ‘long-form filing’, depending on the complexity of the merger and the required competitive analysis. A long-form filing may be made at the option of the notifier or be required by the commissioner after receiving the short-form filing. The information required in a filing relates to the nature of the businesses carried on by the merging parties and their affiliates, their principal suppliers and customers, as well as general financial information.

With a short-form filing, the merging parties must wait at least 14 days from the date of the filing before consummating the transaction. With a long-form filing, the mandatory waiting period is 42 days. However, in most cases, the parties typically agree with the commissioner not to close the transaction before the Bureau has had an opportunity to complete its investigation and review.

In the ordinary course of events, a transaction that raises no substantive competition law concerns is classified as ‘non-complex’ and dealt with by the Commissioner within approximately two weeks. A transaction raising some substantive concerns may be classified as ‘complex’, in which case the commissioner’s nonbonding service

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35 The obligation to notify is contingent upon satisfaction of both a party-size threshold and a transaction-size threshold: • Party-size threshold: Parties to a transaction, together with their worldwide ‘affiliates’ (defined generally as those entities in a relationship of control to one another or under common control), have assets in Canada or revenues from sales in, from or into Canada (domestic sales plus exports and imports) in excess of C\$400 million in the most recently completed fiscal year. • Transaction-size threshold: Generally, the assets in Canada which are the subject of the transaction or the revenues generated from those assets (domestic plus export sales) are in excess of C\$50 million (or C\$70 million in the case of a proposed amalgamation).



guidelines provide that the review may take up to 10 weeks. A transaction raising serious substantive concerns may be classified as ‘very complex’ and review may take up to five months.

### **Interface between the CRTC and the Competition Bureau**

Although there is no formal statutory mechanism to address issues of conflicting jurisdiction, the CRTC and Bureau issued a joint interface document in 1999 that sought to delineate the respective authorities of the two government bodies in the regulation of the broadcasting industry.<sup>36</sup>

With respect to merger review, the joint interface document states that parallel jurisdiction exists between the two bodies, and any transaction must comply with the legislation administered by both bodies. The prior approval of the CRTC is required for changes of control or ownership of licensed broadcasting undertakings. Whereas the Bureau’s examination of mergers relates exclusively to competitive effects in the market, the CRTC’s consideration involves a broader set of objectives. The Bureau has recognized that diversity of voices is not an issue of economic competition and consequently, does not fall within the purview of the Bureau’s mandate<sup>37</sup>. The CRTC has recently called for a clarification of its role and the role of the Bureau in “communications” mergers, and advocated that it have “ultimate responsibility” for approving such mergers.<sup>38</sup>

The Bureau’s concerns in radio and television broadcast markets relate primarily to any impact on advertising markets and, with respect to Broadcasting Distribution Units (BDUs), to the choices and prices available to consumers. The CRTC’s concerns may include those of the Bureau but are more closely related to the attainment of the cultural objectives of the Broadcasting Act.

In contrast to the CRTC, the Bureau’s reviews of media mergers focus on their economic aspects, such as advertising. However, as the CRTC itself has recognized, concentration of economic aspects is not wholly divorced from the question of diversity of voices, insofar as common to each is the question of who ultimately controls the media undertakings.<sup>39</sup>

### **Regulated conduct doctrine**

In Canada, there is also a common law or judge-made doctrine known as the regulated conduct doctrine. This doctrine provides that, in certain circumstances, conduct that is regulated by an industry-specific federal or provincial regime may be immune from scrutiny under the Competition Act. To the extent that the CRTC reviews and

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<sup>36</sup> CRTC / *Competition Bureau Interface*, 8 October 1999.

<sup>37</sup> <http://www.oecd.org/dataoecd/15/3/17372985.pdf>, page 210

<sup>38</sup> CRTC “A Competitive balance for the Communications Industry: Submission of the Canadian Radio-Television and Telecommunications Commission to the Competition Policy Review Panel” 11 January 2008

<sup>39</sup> See BPN CRTC 2008-4 at para.37 (“With respect to market dominance, while this concern is largely an economic issue relating to questions of competition, issues of dominance also have social and cultural dimensions.”)

approves a broadcasting merger, parties may challenge the Bureau's jurisdiction pursuant to this doctrine.

### **Foreign Ownership restrictions**

The Broadcasting Act 1991 states that "the Canadian broadcasting system shall be effectively owned and controlled by Canadians". Pursuant to subsection 26(1) of the Broadcasting Act, the federal cabinet issued Ineligibility of Non-Canadians, a direction which provides that, with respect to a corporate broadcasting licensee:

- the corporation must be incorporated or continued under Canadian law;
- its CEO must be a Canadian;
- at least 80 % of its directors must be Canadians; and
- at least 80 % of its voting shares and at least 80 % of the votes must be owned and controlled by Canadians<sup>40</sup>.

This policy is regulated by the CRTC.

With respect to a parent corporation of a licensed broadcasting undertaking, it must be incorporated or continued under the laws of Canada or a province, at least two-thirds of its voting shares and at least two-thirds of the votes must be owned and controlled by Canadians and neither the parent corporation nor any of its directors can exercise control or influence over any programming decisions of the licensee, unless the criteria applicable to the licensee subsidiary are met by the parent. In addition to this *de jure* test; non-Canadians cannot exercise 'effective control' over a licensee, "whether on the basis of personal, financial, contractual, or business relations or any other considerations relevant to determining control". Under this test, factors including corporate structure, the ability to appoint directors, contractual arrangements such as the holding of debt, and the relative broadcasting experience of shareholders will be considered.

### **Cross-Media Ownership**

Canada's policies on cross-ownership of media have discouraged concentration of ownership in the media industries and therefore cross-ownership of television, radio, broadcasting distribution, newspapers and magazines. Nevertheless, with increasing consolidation, the CRTC has permitted companies to own BDUs, television stations, specialty television channels, pay-TV services and radio stations, despite their ownership of magazines and newspapers.

On 15 January 2008 the CRTC issued new policies in respect of cross-media, television and BDU ownership. Under the policies as a general rules:

- a person will be permitted to control undertakings in only two of three types of media (radio, conventional "over-the-air" television and newspapers) serving the same (local) market (cross-media ownership policy);

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<sup>40</sup> Order Amending the Direction to the CRTC (Ineligibility of Non-Canadians)  
P.C. 1998-1268 15 July, 1998 <http://canadagazette.gc.ca/partII/1998/19980805/html/sor378-e.html#a>

- the CRTC will not approve applications for transfers of effective control that would result in common ownership of television undertakings (conventional, specialty and pay) with a total national audience share (across all types) greater than 45%, will carefully examine applications that would result in a share between 35% and 45%, and will expeditiously review applications resulting in a share less than 35% (television ownership policy); and
- the CRTC will not approve applications for transfers of effective control of BDUs that would allow one person to control all BDUs in any given market (BDU ownership policy).

## AUSTRALIA

### General Competition Law together with sector specific regulation

Media mergers are governed by the general competition rules and sector specific regulation. Two national public bodies are involved: the Australian Competition and Consumer Commission (ACCC) and the Australian Communications and Media Authority (ACMA). Australia has recently introduced significant media legislation reforms.

#### Merger Control

The ACCC is the national competition regulator and regulates the competition law aspects of mergers and acquisitions in general including the broadcasting sector under Australia's primary competition regulation, the Trade Practices Act 1974. Section 50 of the Trade Practices Act prohibits the acquisition of shares or assets if the acquisition could have the effect, or be likely to have the effect, of *substantially lessening competition* in a market in Australia.

The ACCC released a paper on media mergers which indicates that the ACCC will analyse media mergers in light of the same processes and frameworks that exist for mergers in other industries<sup>41</sup>.

#### Media Regulation

The ACMA is a statutory authority responsible for the regulation of broadcasting, the internet, radio and telecoms. ACMA's regulatory functions are set out in Part 2, Division 2 of the Australian Communications and Media Authority Act 2005. ACMA issues broadcasting licences and regulates content for radio and television. The ACMA also regulates the ownership and control of broadcasters under the Broadcasting Services Act 1992<sup>42</sup>, which contains restrictions on concentration of ownership within the broadcasting sectors and ownership across different media.

The ACCC and ACMA recently announced that merger parties will be asked to waive confidentiality in relation to information provided to the ACCC or the ACMA, to allow the exchange of information between the two agencies. The agencies will aim to conduct coordinated investigations of mergers, in order to avoid overlap and duplication of their inquiries.<sup>43</sup>

#### Procedures

##### ACCC

Companies may apply to the ACCC for either informal or formal merger clearance, both of which are voluntary processes. Under the informal merger clearance process,

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<sup>41</sup> <http://www.accc.gov.au/content/index.phtml/itemId/758218/>

<sup>42</sup> [http://www.austlii.edu.au/au/legis/cth/consol\\_act/bsa1992214/](http://www.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/)

<sup>43</sup> <http://www.acma.gov.au/webwr/assets/main/lib101061/briefing%20paper%20-%20media%20reform%20-%20prior%20approvals.pdf>

a company may approach the ACCC to give its view as to whether the proposed merger will contravene section 50 of the Trade Practices Act. Although there are no formal requirements or set timeframes when applying for informal merger clearance, the ACCC encourages applicants to provide written submissions in respect of the proposed merger and will generally make market enquiries. If satisfied that the proposed merger is not likely to contravene Section 50, the ACCC will provide a letter confirming that it does not propose to intervene in the proposed merger. However, the 'no action letter' does not prevent the ACCC from subsequently taking action, nor does it prevent a third party from doing so.

Following amendments to the Trade Practices Act, which commenced on 1 January 2007, companies may now apply to the ACCC for formal merger clearance in relation to a proposed merger. Formal merger clearance operates in parallel to informal merger clearance and provides additional protection for companies as it prevents both the ACCC and third parties from commencing legal action under section 50 for a merger that has been granted clearance. Formal clearance requires the company to make detailed submissions in a prescribed form. The ACCC ordinarily has 40 business days to make a determination on an application. If no determination is made within that period, the ACCC is taken to have refused the application. However, the ACCC is able to extend the period by an additional 20 days if it decides the matter cannot be determined in time due to its complexity or other special circumstances. Companies can also appeal from an unfavourable decision of the ACCC to the Australian Competition Tribunal.

### **Guidance on Media Mergers ACCC**

Following the announcement of significant media reform proposals by the Federal Government on 13 July 2006, the ACCC issued a paper on Media Mergers.<sup>44</sup> The ACCC's paper provides guidance on its approach to media mergers. It discusses how the ACCC might consider issues such as the various dimensions of media markets—products, geographic and functional—as well as the relevant timeframe for considering media mergers.

The Media Merger Guidance Paper does not seek to propose any change to the framework that the ACCC currently applies in assessing mergers, either in terms of:

- the ACCC's primary concerns in the media sector; or
- the analysis that the ACCC will apply when approaching a proposed transaction.

Instead, the ACCC notes that any guidance can only be general in nature and that each individual proposal will be considered on its merits according to its own particular factual circumstances. The Guidance Paper states that the ACCC has been concerned for some time about exclusive content acquisition and, in particular, its potential to inhibit competition in emerging modes of media (such as subscription television, the internet and 3G mobile services).

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<sup>44</sup><http://www.accc.gov.au/content/item.phtml?itemId=758231&nodeId=d8c88cae227b9786b4348534581efdda&fn=Media%20mergers.pdf>

The ACCC states that traditionally there are three broad product categories that are likely to be relevant when considering a media merger:

- the supply of advertising opportunities to advertisers
- the supply of content to consumers, and
- the acquisition of content from content providers.

The ACCC then notes that these types of products have typically been delivered through various forms of delivery such as:

- print media
- radio
- free to air (FTA) and pay TV
- online media, and
- mobile phones.

Against this background, the ACCC emphasises that cross-media mergers, like all mergers, will be assessed in terms of their implications for competition in markets in Australia under the merger test in section 50 of the Trade Practices Act 1974, having regard to the ACCC's Merger Guidelines. This includes considering the market's product, geographic, functional and time frame characteristics, and whether under the section 50 test, competition is lessened substantially in that market. The Media Merger Guidance Paper provides some analysis of what these market dimensions may consist in terms of media markets.

The ACCC has emphasised that the focus of merger analysis is to determine whether, post-merger, there are sufficient constraints to prevent the merged entity from exercising market power and whether the proposed merger contravenes the section 50 merger test. Key factors that it will take into account in assessing a cross-media merger, like other mergers, will be:

- The degree of market concentration. This is particularly relevant in Australia, which is a smaller economy and is unable to support the number of competitors that could be seen, for example, in a market like the US.
- The height of barriers to entry, in order to determine whether new supply is likely whether by import or new entry. This is particularly important in the media sector, where "network effects" mean that it is the outlet with the greatest number of buyers/consumers that is likely to attract further consumers.
- Whether there is countervailing power in the market. For example, while consumers may have little ability to affect the behaviour of a media outlet, a supplier of content will have the ability to negotiate - or choose not to negotiate - with a media outlet.
- The effects of any vertical integration in the industry. In this regard, the ACCC will take account of any effects the merger may have for independent entities to compete in the upstream (content) or downstream (distribution) segments.

## **Cross-Media Ownership**

The *Broadcasting Services Amendment (Media Ownership) Act 2006* contains the following restrictions on cross-media ownership<sup>45</sup>:

- owners may not control more than two of the three media platforms (commercial television, commercial radio or newspapers) in any one market;
- a ‘voices test’ prevents the number of independent media operators falling below five voices/points in metropolitan areas and four voices/points in regional areas. A point is attributed to (1) each regulated platform that is not part of a media group and (2) a media group, being two or more media operations under common control;
- commercial radio and television licensees and newspaper publishers with cross-media interests are subject to new disclosure obligations; and
- the ACMA has established a Register of Controlled Media Groups (RCMG) to identify the ownership and control of media groups in each licence area.

A breach of the new media diversity test and the two out of three rule constitutes a criminal offence and a civil contravention which carry financial penalties. Breaches may also result in the issue of remedial directions which may require controllers to divest certain interests.

## **Foreign ownership**

Broadcasting-specific restrictions on foreign investment in Australia’s media sector have been removed. The media remains a “sensitive sector” under the Foreign Investment Policy that operates under the Foreign Acquisitions and Takeovers Act 1974, meaning that all direct media investment and all portfolio investment over 5% will be required to be notified to and approved by the Treasurer.

## **Register of Controlled Media Groups (RCMG)**

The RCMG lists the media groups in each licence area, the media operations that form part of a group and the controllers of those operations. The RCMG provides new information to industry and the community on the existence of registrable media groups in licence areas across Australia<sup>46</sup>.

Licensees of commercial television and commercial radio services (other than non-broadcasting services bands licensees) and publishers of newspapers associated with the licence areas of these services were required to notify ACMA of the controllers of those operations and the directors of the licensees and publishers. Controllers were also required to notify ACMA.

## **Updates to the RCMG**

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<sup>45</sup> These rules came into force on 4 April 2007

<sup>46</sup> Published by ACMA on 27 March 2007

Commercial television and commercial radio licensees and publishers of newspapers associated with the licence areas of their licences are required to notify ACMA of any changes in control within five days of becoming aware of those changes. Persons who come into a position to exercise control of such licences and associated newspapers are also required to notify ACMA within five days of becoming aware of coming into that position.

ACMA will update the RCMG when it is notified of relevant changes in control. Provided that a transaction creating a new group does not result in an unacceptable media diversity situation or an unacceptable three-way control situation, ACMA will update the RCMG with an unconfirmed entry within two days of receiving notification. ACMA is then required to review and confirm or cancel the entry within 28 days. Similar requirements apply to the removal and alteration of entries.

ACMA has stated that an unacceptable media diversity situation will arise if there are fewer than five points in any metropolitan licence area or fewer than four points in any regional licence area. In general, each registrable media group constitutes one point, as does each separate media operation that is not part of a registrable media group. An unacceptable three-way control situation exists if a person is in a position to exercise control of a commercial television licence, a commercial radio licence and an associated newspaper in the one radio licence area.

### **Compliance with ownership and control provisions**

If ACMA is satisfied that there is an unacceptable media diversity situation or an unacceptable three-way control situation, or that a person is in breach of the ownership and control rules, it may, by notice in writing, direct a person or, in some cases, the licensee to take action so that the situation ceases to exist or the person is no longer in breach.

### **Annual notifications**

Since 1 February 2007, section 62 of the Broadcasting Services Act has required that commercial television licensees, commercial radio licensees and publishers of newspapers that are associated with the licence area of a commercial radio broadcasting or a commercial television broadcasting licence provide ACMA with details of the persons in a position to exercise control of the licence or newspaper and directors of the licensee or publisher at the end of each financial year.

### **Associated Newspaper Register**

Under section 59 of the Broadcasting Services Act, ACMA is required to maintain a public register of newspapers that are ‘associated’ with commercial radio or commercial television broadcasting licence areas. The Associated Newspaper Register is relevant to determining the composition of registrable media groups and assists ACMA and industry in monitoring compliance with the media diversity requirements under Division 5A of Part 5 of the Broadcasting Services Act and is available on ACMA’s website.



## **Broadcasting Financial Results**

To inform itself and the government on industry trends, ACMA requests that commercial television and commercial radio licensees submit details of their financial performance each year. Licensees provide information on revenue, expenses, profits, assets and liabilities for each of their broadcasting services. ACMA aggregates the information and publishes it as Broadcasting Financial Results.

## **NEW ZEALAND**

### **General Competition Laws only – no sector specific regulation<sup>47</sup>**

#### **Merger Control**

There is no sector-specific regulation of mergers, acquisitions and joint ventures in the broadcasting sector. Mergers and acquisitions in the broadcasting sector are regulated by the Commerce Act 1986. The Commerce Act prohibits the acquisition of assets of a business or shares if the acquisition would have, or would be likely to have, the effect of substantially lessening competition.

The Commerce Commission, New Zealand's primary competition regulatory agency, was established under the Commerce Act 1986 and is appointed by the Governor General on the recommendation of the Minister of Commerce. The Commission is an independent Crown entity and is not subject to direction from the government in carrying out its enforcement and regulatory control activities.

The Commerce Act provides for clearances, which may be granted by the Commerce Commission on the application of a person who proposes to acquire assets of a business or shares. A clearance effectively disapplies the provisions of the Commerce Act to any such acquisition, where the Commerce Commission is satisfied that the acquisition will not have or will not be likely to have the effect of substantially lessening competition in a market.

The statutory time frame for provision of clearances is 10 working days from application – however, the Commerce Commission usually seeks to agree a longer time frame for consideration of applications. The Commerce Act also provides for authorisations, where the Commission may approve a transaction, which would have the effect of substantially lessening competition in a market, if it is satisfied that the acquisition will result, or will be likely to result, in such a benefit to the public that it should be permitted. Authorisations have a statutory timeframe for a consideration of 60 working days, which again, is usually extended by agreement with the Commerce Commission.

#### **Broadcasting Standards Authority**

The broadcasting sector is primarily regulated by the Broadcasting Standards Authority. The Broadcasting Standards Authority is an independent statutory body established under the Broadcasting Act 1989. The Authority's mission is *'To establish and maintain acceptable standards of broadcasting on all New Zealand radio and television, within the context of current social values, research and the principle of self-regulation, in a changing and deregulated industry.'*

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<sup>47</sup> <http://www.bsa.govt.nz/publications/BSA-FutureOfMediaRegulation.pdf>

## **Cross-Media Ownership & Foreign ownership**

There are no specific restrictions relating to the ownership or control of broadcasters in New Zealand, and foreign investors may participate in broadcasting activities in this country. However, foreign investors wanting to invest in broadcasting activities are subject to the generic restrictions of the Overseas Investment Act 2005. The Overseas Investment Act requires an “overseas person” to obtain consent from the Overseas Investment Office before it invests in “sensitive land” (whether directly or by acquiring shares in a company which owns land) or “significant business assets”. The latter includes the purchase of a 25 % or more ownership or control interest in a company where the consideration paid, or value of the assets of the company or group, exceeds NZ\$100 million; and also includes a business acquisition for more than NZ\$100 million.

## **SOUTH AFRICA**

### **General competition laws combined with sector specific regulation**

Media ownership is regulated by the general competition law, the Competition Act 1998, together with sector specific regulation. The Competition Act is enforced by the Competition Commission, the Competition Tribunal and the Independent Communications Authority of South Africa (ICASA)<sup>48</sup>. The ICASA is the statutory body that regulates broadcasting activities within the framework of the control-related provisions of the Electronic Communications Act and as well as applicable licence conditions under the Broadcasting Act.

### **Merger Control - Competition Law**

Prior notification of all mergers beyond a specified threshold is obligatory and mergers may not be implemented until they have been approved by the Commission (if ‘intermediate mergers’), or the Tribunal (if ‘large mergers’).

An intermediate merger occurs where:

- The combined turnover in, into or from South Africa of the target and acquiring firms is valued at or above 200 million rand but below 3.5 billion rand;
- The turnover of the acquiring plus assets of the target firm are valued at or above 200 million rand but below 3.5 billion rand; or
- The assets of the acquiring firm plus turnover of the target firm are valued at or above 200 million rand but below 3.5 billion rand; and either:
  - The annual turnover in, into or from South Africa of the target firm exceeds 30 million rand; or
  - The asset value of the target firm exceeds 30 million rand.

A large merger occurs where either:

- The combined turnover in, into or from South Africa of the acquiring firm and the target firm is valued at or above 3.5 billion rand;
- The combined assets of the acquiring firm and target firm are valued at or above 3.5 billion rand;
- The turnover of the acquiring firm plus the turnover of the target firm are valued at or above 3.5 billion rand; and either:
  - The annual turnover of the target firm in, into or from South Africa exceeds 100 million rand; or
  - The asset value of the target firm exceeds 100 million rand.

Mergers which fall below the notification threshold (‘small mergers’) are nevertheless still subject to the jurisdiction of the Competition Act – that is, while they do not have to be notified, the Commission may nevertheless elect to investigate a ‘small merger’

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<sup>48</sup> S. 3 (1A) of the Competition Act 89 of 1998 entrusts responsibility for regulating competition in the communications sector to both ICASA and the Competition Commission, thus establishing concurrent jurisdiction.

and, in the event that the transaction fails the tests specified in the Act, the Commission may approve, prohibit or impose conditions on the transaction. If parties to a small merger wish to have their merger cleared prior to implementation then they may voluntarily notify their transaction to the competition authorities.

The Commission or Tribunal must apply three tests: First, whether or not the merger is likely to *substantially prevent or lessen competition*. Second, if it is decided that the merger *will* lessen competition, then it must be decided whether or not the merger will result in “*technological, efficiency or other pro-competitive gains*” that will outweigh the anticompetitive effects of the merger<sup>49</sup>. Third, and regardless of the outcome of the evaluation of the competition impact of the merger, a *public interest* test must be administered. In other words, even if the merger passes muster on the competition evaluation, it will still have to be assessed on public interest grounds.<sup>50</sup>

The public interest considerations are not unlimited and are specifically stated in the Competition Act. In determining whether a merger can or cannot be justified on public interest grounds, the Commission or Tribunal must consider the effect that the merger will have on a particular industrial sector or region; employment; the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive; and the ability of national industries to compete in international markets.

## **Procedure**

The Competition Act provides that parties to a merger may not implement the merger before obtaining the requisite approval. In the case of an intermediate merger, the Competition Commission must approve or prohibit the merger within 20 business days of certifying that a merger notification is complete, but may extend the period in which it has to consider the merger by no more than 40 business days. If no response is received from the Competition Commission within the time specified the merger is deemed approved.

In the case of a large merger, the Competition Commission investigates, makes a recommendation and refers the merger to the Competition Tribunal for approval, with or without conditions, or prohibition. The Commission is required to refer the matter to the Tribunal within 40 business days from receipt of notification of the transaction. The Tribunal may, on application by the commission, grant extensions of 15 business days each. The Tribunal must set a date for a hearing within 15 days of the matter being referred to it. A certificate of approval or prohibition must be issued within 25 days of the end of the hearing and reasons must be provided within 30 days of the issue of the certificate.

## **ICASA**

The Electronic Communications Act provides for three main broadcasting service categories, namely public broadcasting, commercial broadcasting and community

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<sup>49</sup> Section 12A(1)(a)(i)

<sup>50</sup> Section 12A(3)

broadcasting. Broadcasting services are required to be licensed, in terms of either an individual or class licence depending on the relative scope of the service to be provided. Individual licences are generally required in respect of services which have a significant impact on socio-economic development and are granted pursuant to a relatively intensive and lengthy adjudication process.

One of the objects of the Electronic Communications Act is to provide for the regulation and control of broadcasting matters in the public interest. ICASA has the power to impose certain sector-specific ex ante and ex post controls on communications licensees in the interests of effective competition.

### **Interface between Competition Commission and ICASA**

There is no mechanism under national law to avoid conflicting exercise of jurisdiction by the two authorities and there is no specific mechanism to ensure the consistent application of competition and sector-specific regulation, but ICASA and the Competition Commission concluded an agreement in 2002 defining their respective areas of jurisdiction and regulating interaction between them<sup>51</sup>. Where a transaction requires the approval of both regulators, the public shall submit separate and concurrent applications to the Commission and to the Authority for their respective consideration. Both shall then make independent determinations on the basis of the criteria and mandates of their respective legislation, but may, in arriving at those decisions, consult with each other.

The agreement further provides that where the two regulators arrive at different determinations they may discuss the matter between themselves in order to identify the reasons for the difference. If the difference can be resolved, the regulators shall make known their unanimous decision in respect of the application. If not, each shall make known its own decision and, if either of the regulators does not approve the transaction, such transaction shall not be approved.

### **Ownership restrictions**

The Electronic Communications Act 2003 imposes restrictions on the ownership and control of commercial broadcasting services. The Act provides that no person may directly or indirectly exercise control over more than one commercial television broadcasting licence, or over more than two commercial FM/AM sound broadcasting services. However, ICASA may, upon application, exempt any person from the application of these restrictions.

The participation of foreign investors in commercial broadcasting services is restricted in the Electronic Communications Act. A foreign person or foreign-owned entity may not, whether directly or indirectly, exercise control over a commercial broadcasting licensee or have a financial interest or an interest either in voting shares or paid-up capital in a commercial broadcasting licensee exceeding 20 %. Not more than 20 % of the directors of a commercial broadcasting licensee may be foreign persons.

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<sup>51</sup> <http://www.info.gov.za/gazette/notices/2002/23857.pdf>

## **Cross-Media Ownership**

The Electronic Communications Act provides for certain restrictions on cross-media control of commercial broadcasting services. No person who controls a newspaper may acquire or retain financial control of both a commercial sound and commercial television broadcasting service. No person who is in a position to control a newspaper may be in a position to control a commercial sound or television broadcasting service in an area where the newspaper has an average circulation of 20 % of the total newspaper readership, if the licence area of the sound broadcasting service overlaps substantially with the circulation area of the newspaper.

Substantial overlap is interpreted to mean an overlap of 50 % or more, while a 20 % shareholding in a sound or television broadcasting service is deemed to constitute control. ICASA may exempt affected persons from adherence to any of these limitations.

## AUSTRIA

### **Specific Competition law dealing with media mergers together with sector specific regulation**

The Austrian legal order comprises one of the most developed ranges of instruments to protect media pluralism within the EU member states. These instruments consist of a combination of media specific regulation in the form of broadcasting licensing rules, specific merger thresholds and assessment criteria applicable to media concentrations under cartel law and transparency rules with regard to media ownership.

### **Merger Control**

Austrian competition policy falls within the remit of the Federal Ministry of Economics and Labour. The application of the provisions of competition and cartel law are entrusted to the Federal Competition Authority that was created under the auspices of the Ministry as part of the competition law reform in late 2002.

There is a range of provisions of the Austrian Cartel Act<sup>52</sup> relating to mergers involving media companies. A concentration will be deemed to be a media concentration, whenever at least two of the parties involved in a merger are considered either as (i) media enterprises or media services, (ii) media support companies,<sup>53</sup> or (iii) enterprises that hold at least 25 % of the shares in any one of the aforementioned. Furthermore, a concentration will also be qualified a media concentration, when only one of the enterprises qualifies according to the criteria set out, and another one has 25 % of its capital held by one or more media enterprises, media services or media support companies.

Media concentrations are treated differently relative to other mergers both by virtue of the applicability thresholds that invoke the merger control procedure in such cases and the assessment criteria to be applied. While normal mergers have to be notified only if the combined annual turnover of the enterprises involved exceeds €300 million worldwide and €15 million domestically, with at least two of them achieving worldwide turnovers of more than 2 million individually, these thresholds are lowered to 1/200 for media enterprises and media services and 1/20 for media support companies.

If applicability has been established using these lowered threshold values, the concentration will be assessed with regard to the possible creation or strengthening of a dominant position; where either one of those is the likely outcome of the merger, the

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<sup>52</sup> Bundesgesetz vom 19. Oktober 1988, BGBl 1988/600, über Kartelle und andere Wettbewerbsbeschränkungen (KartG 1988) i.d.F. BGBl 33/2003, available: <http://www.bwb.gv.at/BWB/Gesetze/Kartellgesetz/default.htm> An English translation can be downloaded from: [http://www.bwb.gv.at/NR/rdonlyres/4E837A92-B3BC-494A-92ED-833A4613FCCA/0/kartellgesetz\\_englisch.pdf](http://www.bwb.gv.at/NR/rdonlyres/4E837A92-B3BC-494A-92ED-833A4613FCCA/0/kartellgesetz_englisch.pdf).

<sup>53</sup> Media support companies are “1. Publishing houses (provided that they are not media enterprises), 2. Printers and enterprises of the pre-printing stage, 3. Enterprises procuring or brokering advertising orders, 4. Enterprises that handle the distribution of media products on a large scale [and], 5. Film rental businesses.”; Chapter V, Section 42c, Subsection 2 KartG.



concentration shall be denied clearance. In addition to this general assessment criterion, media pluralism itself is accounted for when assessing media concentrations, in as far as a concentration may also be prohibited exclusively on grounds of an expected negative impact on media diversity,<sup>54</sup> provided it is not imperative “for the maintenance or improvement of the international competitiveness of the enterprises involved” and “economically sound”.<sup>55</sup>

### **Disclosure of Ownership Structure**

Under the current rules for the licensing of broadcasting operations,<sup>56</sup> which are administered by Austria’s convergence regulator *KommAustria* (set up in 2001), both radio and television operators are required to disclose their ownership structure when applying for a broadcasting license.<sup>57</sup> Where the information provided is lacking or insufficient, the regulator is entitled to request additional information, and ultimately to dismiss the application, if such a request is not complied with by the applicant.

### **Changes in Ownership Structure**

Changes in the ownership structure have to be immediately notified to the regulator. Any transaction of capital that involves more than 50 % of shares in the case of radio, or more than 25 % in the case of television, has to be notified ex ante to the regulator, who will then assess whether the license decision can be upheld given the new ownership situation. For a radio broadcaster, failure to notify such transactions will invoke a procedure leading to the revocation of the license, provided that the operator fails to comply with the orders of the regulatory body, or has repeatedly been addressed for violations of this provision, whilst in the case of national TV broadcasting licenses, a transfer of more than 50 % of shares will immediately lead to the revocation of the license.

### **Limitation on Licences**

Decisions concerning the allocation of broadcasting licenses are generally taken with a view to promoting diversity, and both radio and television broadcasters are obliged to reflect the diversity of opinion in their programming.<sup>58</sup> As an additional safeguard

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<sup>54</sup> Chapter V, Section 42c, Subsection 5 KartG. Pursuant to Chapter IV, Section 35, Subsection 2a, “[m]edia diversity shall be understood to mean a diversity of independent media enterprises which are not associated within the meaning of Section 41 and through which news reporting with due regard to different opinions is ensured.”

<sup>55</sup> Chapter V, Section 42c, Subsection 5 i.c.w. Chapter V, Section 42b, Subsection 3, Nr. 2 KartG.

<sup>56</sup> *Bundesgesetz, mit dem Bestimmungen für privaten Hörfunk erlassen werden (Privatradiogesetz - PrR-G)*: [http://www.rtr.at/web.nsf/deutsch/Rundfunk\\_Rundfunkrecht\\_Gesetze\\_RFGesetze\\_PrR-G](http://www.rtr.at/web.nsf/deutsch/Rundfunk_Rundfunkrecht_Gesetze_RFGesetze_PrR-G);

*Bundesgesetz, mit dem Bestimmungen für privates Fernsehen erlassen werden (Privatfernsehgesetz - PrTV-G)*, [http://www.rtr.at/web.nsf/deutsch/Rundfunk\\_Rundfunkrecht\\_Gesetze\\_RFGesetze\\_PrTV-G](http://www.rtr.at/web.nsf/deutsch/Rundfunk_Rundfunkrecht_Gesetze_RFGesetze_PrTV-G).

<sup>57</sup> Where shares in the broadcaster are held by partnerships, limited liability companies or cooperative societies, the ownership structures of these companies have to be made known as well. Chapter III, Section 7 Subsection 5 PrR-G; Chapter III, Section 4, Subsection 2 and Subsection 4, Nr. 2 i.c.w. Chapter IV, Section 10, Subsection 6 PrTV-G.

<sup>58</sup> Diversity of opinion as a selection criterion is laid down in Chapter II, Section 6, Subsection 1 PrR-G for radio and in Chapter III, Section 7, Subsection 1, Nr. 1 and Section 8, Subsection 2 PrTV-G. The general obligation to reflect the diversity of opinions in their programming is reflected in Chapter IV, Section 16, Subsection I PrR-G (for radio) and Chapter VII, Section 30, Subsection 1 PrTV-G (for television).

against the concentration of ownership interests, the acts on private radio and television stipulate that a person can only hold multiple radio or analogue terrestrial TV licenses when the transmission areas served by the respective licenses do not overlap; this restriction also applies where the person itself is not the holder of the license, but exercises significant influence over its application by way of a shareholding of more than 25 % of capital shares or voting rights or in a manner comparable thereto.

In addition to this general limitation on the number of licenses that may be held per geographical area, there exist further specific limitations for each medium: for radio, this implies that an owner of media operations is banned from participation in a radio broadcaster that is organised as an association. For analogue terrestrial television, this means that a media owner will forfeit eligibility for a national broadcasting license, where he achieves a market share of more than 30 % in terrestrial radio broadcasting, or the daily press, or the weekly press, or services more than 30 % of the population by way of his cable services. At the regional level, a broadcasting license cannot be awarded where an applicant meets more than one of these criteria in the transmission area that is to be serviced by the TV broadcasting operation.

### **Transparency Obligations**

Section 25 of the Media Act<sup>59</sup> obliges the owners of all periodic media to publish once a year their name or the name of the company through which they operate, the character of their business activities and the ownership structure. Where the owner of the medium is a company itself, all shareholders with a direct interest of more than 25% or an indirect interest of more than 50 % therein shall also be disclosed. Along with the ownership data, the company is also required to publish a statement on its editorial line. This provision to increase transparency with regard to ownership interests is complemented by provisions in the acts on private radio and television which hold that shares cannot be issued anonymously.

However, there are no requirements for companies owning newspapers to publish financial reports. Bank secrecy laws, protected by the Austrian Constitution, provide further barriers to transparency, particularly as Austria opted out of the EU's 2005 Savings Tax Directive until 2015 which would have required the automatic exchange of automatic exchange private information on individuals within the EU.

### **Cross - Media Ownership and Foreign Ownership**

The issue of cross-media ownership is addressed twice in Austrian legislation: the Cartel Act addresses possible negative repercussions on media pluralism arising from cross-media ownership by way of its broad understanding of media concentrations, which allows for the taking into consideration of upstream and downstream markets as well as cross-sectorial activities.

Secondly, the licensing regime for terrestrial television broadcasting operators explicitly excludes a number of possible ownership scenarios in order to prevent

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<sup>59</sup> *Bundesgesetz vom 12. Juni 1981 über die Presse und andere Publizistische Medien (Mediengesetz)*, BGBl. Nr. 314/1981 i.d.F. BGBl. I Nr. 136/2001, available from: <http://www.ris.bka.gv.at/bundesrecht/>.

possible threats to media pluralism that might arise from cross-media ownership at the national level or in a more narrowly delimited geographical area.

Sector-specific audiovisual legislation also contains certain limitations on foreign media ownership in the broadcasting field. Under the current rules, both radio and television broadcasters have to be Austrian citizens, legal persons or partnerships established in Austria, although citizens and undertakings of EEA Member States are entitled to equal treatment and thus are considered to have the same rights as their Austrian counterparts for the purpose of the provisions relating to foreign ownership. Where a broadcaster is organised as either a partnership, limited liability company or a cooperative society, no more than 49 % of shares can be foreign-owned.

## **BELGIUM**

### **General Competition Rules apply together with sector specific regulation at federal and community level.**

The regulatory competences affecting the media are spread across several levels in Belgium. While competition policy and regulation are located at the federal level, both broadcasting and the press fall within the remit of the communities that represent Belgium's three linguistic groups, i.e. the French-speaking, the Dutch-speaking and the German-speaking part of the population.

### **Merger Control**

The Competition Act 2006 provides that concentrations that significantly impede effective competition must be blocked.

Transactions in the broadcasting sector are subject to mandatory notification prior to clearance if they amount to a merger or acquisition for the purposes of the Competition Act 2006, and meet the turnover thresholds. Under Belgian law, a merger or acquisition occurs where:

- two previously independent parties merge;
- a company or person already controlling another party acquires control over the whole or parts of another company or person; or
- two or more parties form a 'full-function' joint venture, i.e., one which 'performs on a lasting basis all the functions of an autonomous entity'.

A merger or acquisition must be notified to the Belgian competition authorities if the parties' aggregate Belgian turnover exceeds €100 million and at least two of the parties each have a Belgian turnover of at least €40 million.

Transactions qualifying as a merger or acquisition must be notified to the competition authorities before their implementation. The notification form (the form C/C) usually requires a significant amount of detailed information, unless the transaction does not lead to a combined market share of 25 % or more on a market, in Belgium (or part thereof), in which case only limited information is required.

### **Media Ownership Regulation**

Until the early 1990s, the broadcasting competence of the communities involved programming content only, while technological aspects of broadcasting such as frequency allocation were decided at the federal level.

Following two rulings by the Cour d'Arbitrage in 1990 and 1991, the system of "double authorisation", i.e. the granting of technical licenses by the federal government parallel to granting of content-based programme authorisations by the communities, was abolished. Today, both of these functions are carried out by the

communities, each of them having instituted, through legislation, a distinct body responsible for questions of audiovisual regulation.<sup>60</sup>

## Walloon Region

In the French-speaking part of Belgium, the *Conseil Supérieur de l'Audiovisuel* (CSA) has been given an important role in safeguarding media pluralism via the licensing mechanism. The French Broadcasting Decree requires service or network providers to inform the CSA and in particular the *College d'Autorisation et de Contrôle* (CAC) within it, of their ownership structure and their shareholder's interests in other media companies.

Considering the media assets held by a potential licensee, the CAC has to determine whether or not the applicant can be deemed to occupy a dominant position (*position significative*). Such a position will be assumed to exist if more than 24 % of the capital in two broadcasting companies of the same kind (i.e. television or radio) are held by the same person, or if a larger number of broadcasting operations attributable to the same person account for more than 20% of the audience in either the television or radio market in the French-speaking community.<sup>61</sup>

In this case, an assessment will have to be made regarding possible repercussions that this position has for the diversity of broadcasting services being offered in the relevant market. If the CAC concludes that the concentration of ownership interests implies a threat to pluralism, it then has a period of six months to reach an agreement with the person concerned with a view to restoring pluralism to the market. Failing to consent to such an agreement, or to effectively implement it, the owner would be faced with a range of possible sanctions, spanning from the imposition of a fine to the revocation of one or more of the operator's licenses.

## Flanders

In Flanders, too, the manner in which licenses are accorded to broadcasters has been regulated in a way that is intended to put a stop to excessive concentrations in the broadcasting field. Instead of applying an ownership share model to test possible issues of market dominance, the legislator has chosen to institute an absolute limit on the number of broadcasting licenses that any one person may hold. Consequently, no legal entity may operate more than one community-wide, regional or local radio broadcaster,<sup>62</sup> and there is a direct prohibition against any type of linkage, directly or indirectly, between radio operators at the community-wide and regional levels.<sup>63</sup> Radio broadcasters at these levels can engage in cooperation with other broadcasters only, if such cooperation does not lead to “a structural uniformity of programming

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<sup>60</sup> In Flanders: *Decreten, gecoördineerd op 25 Januari 1995*, supra note 8, Art.116 *bis* et seq.; in Walloon: *Décret du 27février 2003 sur la radiodiffusion*, Art.130 et seq.; available from: <http://www.csa.cfwb.be/pdf/Décret%20radiodiffusion.pdf>.

<sup>61</sup> *Décret du 27 février 2003 sur la radiodiffusion*, supra note 16, Art.7, §2.

<sup>62</sup> *Decreten, gecoördineerd op 25 Januari 1995*, Art.38, §1, no.2 (community-wide radio); Art.38quinquies, §1, no. 2(regional radio); Art. 38, no. 2 (local radio). The effectiveness of this provision has been criticized by the Flemish regulator itself, who pointed out that such a rule cannot prohibit mergers or cooperation agreements giving one operator control over another licensee as long as the latter retains a distinct legal personality

<sup>63</sup> *Ibid* Art.38, §1, no.2 (community-wide radio); Art.38, §1, no. 2 (regional radio).

behavior”<sup>64</sup> (i.e. collective dominance). A similar restriction applies to the cooperation between television broadcasters within the geographical area covered by the Flemish Broadcasting Decree,<sup>65</sup> yet there are no limitations to the number of TV broadcasting licences that can be held by one person.<sup>66</sup>

### **Cross -Media Ownership**

There are no significant cross-ownership restrictions in the Flemish and French communities in Belgium. The Flemish community imposes certain restrictions on broadcasters as part of their licensing conditions. No more than one-fifth of the board of directors of a regional broadcaster may hold a leading position in, or be a director of: (i) a press or advertising company; (ii) the public Flemish broadcaster, VRT; (iii) a private broadcaster transmitting to the entire Flemish community; or (iv) a cable television operator. No more than one-fifth of the board of directors of a broadcaster licensed to provide a ‘television service’ may hold a leading position in, or be a director of, a cable network operator.

For these purposes, a television service means a service other than the provision of public or private local, regional, pay television, teleshopping or themed broadcasting service (e.g., video-on-demand). These provisions only prevent cross-directorships: they do not prevent companies from having the same direct or indirect shareholders (i.e., being part of the same group). In the French community, the French Broadcasting Decree requires service or network providers to inform the Collège d’Autorisation et de Contrôle (the CAC) of their ownership structure and their shareholders’ interests in other media companies.

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<sup>64</sup> *Ibid* Art. 37 (community-wide radios), Art. 38 (regional radios, excluding cooperation with local radios in the region they serve; with regard to the latter, see also Art.38). Regional radio broadcasters can cooperate with regional tv stations in programme production, information gathering and advertising sales.

<sup>65</sup> Decreten, gecoördineerd op 25 Januari 1995, Art. 73.

<sup>66</sup> However, there is a limit to the total number of regional television broadcasting licenses that may be awarded by the Vlaamse Commissariaat voor de Media. To this effect, Art.52, § 1 holds that no more than 11 such TV stations may be licensed, to be distributed evenly among the provinces.

## **CYPRUS**

### **General Competition Law together with sector specific regulation**

#### **Media Ownership Regulation**

The Ministry of Communications and Works is responsible for frequency allocation and there is close co-operation between the Cyprus Radio-Television Authority (CRTA), the Ministry of Interior and the Ministry of Communications and Works, regarding broadcasting issues and drafting of proposals for Law and Regulation amendments. The authority is responsible for licensing of national and local television stations and national, local and small local radio stations, as far as terrestrial analogue broadcasting is concerned. As yet they have no competences for digital broadcasting. The media is regulated through the following pieces of legislation. The Law 2328/1995: "On the legal status of private TV and local radio, regulation of matters related to the electronic market, and other clauses", was enacted in order to open the market to private broadcasting and regulate local radio.

Aside from setting out the licensing process the law also included aspects of content and programming in line with the provisions of the directive on Transfrontier Broadcasting. The legal framework, under which the CRTA regulates the stations, consists of the Radio and Television Stations Law 7(I)/98 (as amended) and the Radio and Television Stations Regulations of 2000. There are no restrictions regarding horizontal concentration in the press sector, so a company can be involved in as many regional or national publications as they wish.

#### **Merger Control**

The Commission for the Protection of Competition in Cyprus regulates Cypriot markets but has no specific provisions within the legislation regarding the media sector.<sup>67</sup> The legal bases for action in the area are the Protection of competition Law 207/89 and the Control of Concentrations between Undertakings Law 22(1)/99. Mergers are examined where enterprises are considered to be 'of major importance': where the 'aggregate turnover achieved by at least two of the participating enterprises exceeds, in relation to each one of them, two million Cyprus pounds' (at least one of them must operate in the Republic of Cyprus (Article 3).

Article 2 defines a dominant position as a 'position of economic power enjoyed by an enterprise which renders it capable of substantially obstructing competition in the market of a specific product or service and of acting to a marked degree independently of its competitors and customers and effectively independently of consumers' This is not further defined by a market share.

However, the merger of companies will be examined where: (a) two or more of the enterprises participating in the concentration engage in business activities in the same market or a specific group of products or services (horizontal relationship), and the concentration of their activities leads to a combined market share of 15% and above;

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<sup>67</sup> <http://www.competition.gov.cy/>

or (b) any of the enterprises participating in the concentration engages in business activities in a market of products in a preceding or subsequent stage of the procedure of production of products or of specific groups of products in the markets of which any of the other enterprises participating in the concentration engages in activities (vertical relationship) and provided any of the market shares of these enterprises amounts to 25% or more, irrespective of whether or not there exists a supplier/customer relationship among the enterprises that participate in the concentration (Schedule 1, section2, Article1).

### **Media Ownership & Foreign Ownership**

There are no media ownership restrictions in relation to the print media which is largely self-regulated. In terms of cross-media ownership, licences are not awarded for television if an owner controls more than 5% of shares in a newspaper, magazine or publishing house or over 5% of another television station with national coverage. There are foreign ownership restrictions (5%) for non-EU owners of broadcasters.

### **Transparency Obligations**

There are detailed rules regarding transparency of ownership and financial backing of mass media companies and their relationship with advertising companies.<sup>68</sup> Regarding monitoring, broadcasting companies must register their shareholders with the Companies Register. The information is made public ally available. Further, annual accounts of broadcasting stations must be published in the press. A copy of these accounts must be submitted to the Advisory Broadcasting Council. These must indicate funding advertising, loans, and contributions. Changes in shareholder ownership must be approved by ministerial Council. There are no ownership restrictions for the press. Newspapers owners must make available information as to the name and address of the owner, the title of the newspaper, the frequency of its publication and the address of the place where it is printed. The name and address of the publisher and place of publication must be published in all the issues of the newspaper.

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<sup>68</sup> Law 2328/1995



## **CZECH REPUBLIC**

### **General Competition Law together with sector specific regulation**

Apart from the general competition policy that also applies to the media sector, there are rules on consolidation between broadcasters.

The Media in the Czech Republic are regulated by the Council for Radio and TV Broadcasting (CRTB) which is responsible for frequency allocation, licensing and safeguarding the independence and plurality in Radio and TV broadcasting and retransmission. The field of responsibility of the Czech Office for the Protection of Competition as the general competition authority also comprises media concentration. Important laws include the Act on the Protection of Competition of April 2001, the Press law of 2000 and the Broadcasting Act of 2001. The Press Law of 2000<sup>69</sup> does not contain any rules on ownership; therefore the general competition policy applies

### **Merger Control**

Only concentrations (i.e., mergers or acquisitions of sole or joint control over an undertaking) which fulfill at least one of the following sets of conditions are subject to prior approval of the Competition Office:

- a concentration of undertakings where the combined aggregate net turnover derived in markets in the Czech Republic by all undertakings concerned exceeds in the preceding accounting period 1.5 billion korunas (approximately €53.5 million), and the aggregate net turnover derived in markets in the Czech Republic by each of at least two of the undertakings concerned in the preceding accounting period exceeds 250 million korunas (approximately €9 million); or
- a concentration of undertakings where the net turnover of the acquired undertaking derived in markets in the Czech Republic exceeds in the preceding accounting period 1.5 billion korunas (approximately €53.5 million) and the net worldwide turnover of at least one of the other undertakings participating in the concentration exceeds in the preceding accounting period 1.5 billion korunas (approximately €53.5 million).

Clearance is given by the Office to those concentrations which do not distort significantly the competition on the relevant market, in particular as a result of the creation or strengthening of a dominant position. If the combined market share of the undertakings participating in the concentration does not exceed 25 % of the relevant market a rebuttable presumption applies so that the concentration is not capable of significantly impeding competition.

Since the broadcasting licences are based on certain prerequisites concerning the ownership and control structure of its holder, transactions in the media sector typically require also the prior consent of the CRTB with the modification of these prerequisites. Mergers require the Broadcasting Council's approval if a natural or

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69 Available on the website of the Czech Publishers association: <http://www.uvdt.cz/english.htm>

legal person gains a substantial influence (direct or indirect interest greater than 34% of the voting stock or a certain influence on the decision-making process).

There are no restrictions on foreign ownership of the Czech Media.

## DENMARK

### General competition rules together with sector specific legislation

#### Merger Control

Under current Danish competition law, media companies and their activities are assessed according to the same criteria as other economic enterprises. This means that mergers involving media companies will be subject to the merger control procedure as it is laid down in the Danish Competition Act (as amended)<sup>70</sup> if the aggregate turnover of the undertakings involved exceeds DKK 3.8 billion (approx. €0.51 billion) in the relevant Danish market and at least two have an individual turnover of more than DKK 300 million per year, or if the aggregate turnover of at least one company is more than DKK 3.8 billion (approx. €0.51 billion) in Denmark and the turnover of another company exceeds DKK 3.8 billion internationally.

The substantive test to be applied by the Competition Council is whether the concentration significantly impedes effective competition, in particular as a result of the creation or strengthening of a dominant position. Unless this is the case, the concentration must be approved.

Under current conditions, these rules imply that most of the conceivable mergers between major media companies would have to be assessed by the Competition Authority; however, under these rules some of the smaller national newspapers could be taken over by larger media groups without any assessment of the case by the Competition Authority. Concerning television, no mergers between any of the major broadcasting operators at the national level are possible without an assessment by the national authorities.

#### Broadcasting Regulation

In Denmark, the three government institutions responsible for the regulation of media activities are the Ministry of Economic Affairs, the Ministry of Cultural Affairs and the Prime Minister's Office. The Ministry of Economic Affairs establishes the general framework for the economic activities of media companies through general competition law and policy. The Ministry of Cultural Affairs develops Danish broadcasting policy, including audiovisual regulation, funding and coordination of legislative developments in the field of broadcasting with other policy areas. In this capacity, it is aided by the Radio and Television Board (*Radio-og TV nævnet*), whose tasks apart from its advisory function comprise the registering and licensing of radio and TV broadcasters, the monitoring of programming content and the handling of

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<sup>70</sup> Chapter 4, § 12 *LBK nr 539 af 28/06/2002, Bekendtgørelse af konkurrenceloven*, available from: [http://www.retsinfo.dk/LINK\\_0/0&ACCN/A20020053929](http://www.retsinfo.dk/LINK_0/0&ACCN/A20020053929); an English translation is available from the homepage of the Danish Competition Authority at: <http://www.ks.dk/english/competition/legislation/comp-act539-02/>. The main legislation on Danish merger control is contained in the Danish Competition Act (Consolidated Competition Act No. 539 of 28 June 2002 as amended by Act No. 785 of 8 August 2005 and Act. No. 572 of 6 June 2007), which is modelled on EC competition law

complaints about advertising pursuant to the Media Liability Act<sup>71</sup> and the Radio and Television Act 2002 (as amended in 2003)<sup>72</sup>.

The Board itself is hosted by the Media Secretariat, which provides administrative support and functions as a knowledge centre in media affairs for the Danish government. Finally, the Prime Minister's Office has traditionally been responsible for the regulation of the printed press.

The current legislative framework in the audiovisual field contains no specific rules to limit the amount of media assets that may be held by any one person. While the licensing procedure that applies to terrestrial analogue broadcasters, as specified by the Radio- and Television Act, allows for the possibility of including ownership as one of the criteria to be considered when carrying out a tender for national broadcasting licenses, no absolute quantitative thresholds have been established ex ante as is the case in other EU Member States.

The registration procedure to which all broadcasters employing cable, satellite or FM technology (and targeting more than a local area) are subject, contains no reference to ownership as a parameter by which to judge whether or not registration will be granted. While operators do have to provide information on, inter alia, the ownership structure and the economic situation of their company as part of the registration process, registration itself depends on the completeness of the information provided rather than an evaluation of the ownership structure itself.

Danish law contains no legal restrictions on the press in terms of authorizations or other kinds of sector specific regulation of the press

### **Cross-Media Ownership and Foreign Ownership**

Just as there are no specific assessment criteria for media activities in general competition law, neither are there any limitations on cross media ownership or foreign ownership in Danish legislation.

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<sup>71</sup> Chapter 5, § 35

<sup>72</sup> Chapter 7, § 44 , Act no. 439 of 10 June 2003

## **ESTONIA**

### **General competition rules together with sector specific legislation**

#### **Merger Control**

There are no specific provisions in the Competition Law 2006<sup>73</sup> with regard to the media. Therefore, the general competition rules on concerted practices and mergers also apply to the media sector. The Competition Board prohibits concentrations that significantly impede competition, in particular as a result of the creation or strengthening of a dominant position.<sup>74</sup>

A merger or an acquisition (referred to in the Competition Act as ‘concentrations’) is subject to control in Estonia if:

- during the previous financial year, the aggregate worldwide turnover of the parties to the concentration exceeded 500 million kroons (€31,990,394); and
- the aggregate worldwide turnover of each of at least two of the parties to the concentration exceeded 100 million kroons (€6,398,079); or
- if the business activities of at least one of the merging undertakings or of the whole or part of the undertaking of which control is acquired, are carried out in Estonia.

Competition principles have to be taken into consideration by the Ministry of Culture when issuing licences for private broadcasters. The Commercial Code (that also applies to the media industry) obliges companies to enrol in a business register, which is publicly accessible.

#### **Broadcasting Regulation**

The Estonian broadcasting sector is regulated by the Broadcasting Act of 19 May 1994. The Act entered into force on 15 June 1994 and has since been amended numerous times. Part of the Act is applicable to all broadcasters established in Estonia, while one part regulates the public service television and radio.

Broadcasting is defined in Article 2 of the Act and means the transmission over the air (including that by satellite) or via a cable network, in un-encoded or encoded form, of radio or television programme services intended for reception by the public with commonly used receivers. According to Article 5, the term Broadcaster (a radio or television broadcaster) means an undertaking, a non-profit association, a foundation or a legal person in public law which has editorial responsibility for the composition of one or several programme services and which broadcasts the programmes or has them broadcast.

Broadcasting in Estonia is an activity subject to a broadcasting licence, except for the two public service broadcasters that are subject to separate regulation under the Broadcasting Act. Violation of the Broadcasting Act and the individual licence conditions may lead to fines and revocations of the licence.<sup>75</sup>

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<sup>73</sup> Competition Act 2006, <http://www.konkurentsiamet.ee/eng/dokumendid/compet.pdf>

<sup>74</sup> S. 22 (2) (3) Competition Act 2006

<sup>75</sup> <http://www.hans-bredow-institut.de/forschung/recht/co-reg/reports/1/Estonia.pdf>

## **Cross Media Ownership and Foreign Ownership**

Cross-ownership of media companies is generally permitted in Estonia. However, the Ministry of Culture can refuse to issue a broadcasting licence if:

- the issuance of the broadcasting licence would result in a press or information monopoly or cartel in the territory planned for the broadcasting activity, or the broadcasting in the planned territory or part of the territory of Estonia would accumulate in the hands of persons who cooperate with each other;
- the issuance of the broadcasting licence would violate the requirements of free competition and equal grounds for business in the territory planned for the broadcasting activity or a part of the territory of Estonia; and
- the person operating as a television and radio broadcaster or the responsible publisher of a daily or a weekly newspaper would become simultaneously a person operating as a television and radio broadcaster and the responsible publisher of a daily or a weekly newspaper in the territory planned for the broadcasting activity or a part of the territory of Estonia (this restriction shall not extend to the television guide published by a broadcaster itself).

There are no restrictions with regard to foreign ownership of the broadcast media: any person (whether Estonian citizen or foreigner) can own or operate a broadcast company.<sup>76</sup>

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<sup>76</sup> S. 23 (1) Broadcasting Act

## FINLAND

### General competition rules together with sector specific legislation

#### Media regulation

The legal framework for the mass media has undergone significant changes in the recent years. In January 1999, the Act on Television and Radio Operations<sup>77</sup> entered into force, which *inter alia* implemented the Television Without Frontiers Directive. It replaced the Freedom of the Press Act (1/1919) and the Broadcasting Liability Act (219/1971).<sup>78</sup>

The Communications Market Act 2003 installed uniform rules for communication network operators and also adopted some changes to the responsibilities of the authorities involved. Responsibilities with regard to the regulation of mass media are divided between the Ministry of Transport and Communication<sup>79</sup> and the national regulatory authority: the Finnish Communications Regulatory Authority (FICORA).<sup>80</sup>

Licences to operate television or radio broadcasting over the air are granted on application by the Ministry of Transport and Communication (Council of State). The FICORA supervises advertising and sponsorship in television and radio broadcasting and compliance with some specific provisions on programmes.

According to the Act on Television and Radio Operations, the authority grants short term licences<sup>81</sup> for analogue radio broadcasting or digital terrestrial radio or television broadcasting. Broadcasters, who transmit their programmes terrestrial, in particular cable television broadcasters, do not have to apply for a licence but submit a notification to the FICORA. The Public Service Broadcaster YLE has to file a yearly report on its public service operations with the FICORA, which then has to send its opinion on YLE's Report to the Council of State.<sup>82</sup>

The FICORA administers the licence fees that the television or radio broadcasters pay to the Television and Radio Fund. The provisions on licence fees are issued in the Act on the State Television and Radio Fund. There are no restrictions on the ownership of the media in Finland. According to Section 10 of the Act on Radio and Television Operations, "the licensing authority shall, taking into consideration the television broadcasting and radio broadcasting of the area in question as a whole, aim at promoting freedom of speech as well as safeguarding the diversity of the provision of programmes as well as the needs of special groups of the public."

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<sup>77</sup> Act on Television and Radio Operations,  
[http://www.mintc.fi/lvm\\_old/data/www/sivut/english/tele/massmedia/1998\\_744.htm](http://www.mintc.fi/lvm_old/data/www/sivut/english/tele/massmedia/1998_744.htm)

<sup>78</sup> <http://www.hans-bredow-institut.de/forschung/recht/co-reg/reports/1/Finland.pdf>

<sup>79</sup> <http://www.mintc.fi/www/sivut/english/tele/massmedia/index.html>

<sup>80</sup> <http://www.ficora.fi/englanti/index.html>

<sup>81</sup> Act on Television and Radio Operations, Section 7 (2): no longer than 3 months

<sup>82</sup> Act on Yleisradio OY, Section 12a: [http://www.mintc.fi/www/sivut/english/tele/massmedia/yle\\_legisl.htm](http://www.mintc.fi/www/sivut/english/tele/massmedia/yle_legisl.htm)

## **Merger Control**

The Act on Competition Restrictions<sup>83</sup> does not contain specific provisions for the media sector, therefore the general competition rules on mergers apply. Control of concentrations only applies if the combined turnover of the parties to the concentration exceeds €350 million and the turnover of a minimum of two parties derived from Finland exceeds €20 million (Article 11a I).

According to Article 11 d (1) of the Act, the Market Court may, upon the proposal of the Finnish Competition Authority,<sup>84</sup> prohibit or order a concentration to be dissolved or attach conditions on the implementation of a concentration, if, as a result of it, a dominant position shall arise or be strengthened which significantly impedes competition. Article 3 (2) provides a definition of the notion “dominant position” without providing specific thresholds. However, due to its obligation to define and analyse markets under the Communications Market Act, the FICORA has increased its cooperation with the Finnish Competition Authority.

## **Cross Media Ownership and Foreign Ownership**

The legal framework in Finland does not contain restrictions on cross media ownership or foreign ownership of media undertakings. This is reflected in the activity of the main players on the Finnish media market, who hold shares in a variety of media sectors.

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<sup>83</sup> Act on Competition Restrictions, <http://www.kilpailuvirasto.fi/cgi-bin/english.cgi?luku=legislation&sivu=act-oncompetition-restrictions-amended>

<sup>84</sup> <http://www.kilpailuvirasto.fi/cgi-bin/english.cgi>



## FRANCE

### Media Ownership Regulation

The Competition media rules in France concern horizontal and diagonal concentration. According to Article 11 of the Law n° 86-897,<sup>85</sup> an individual or legal entity cannot run or control daily publications dealing with political or general news that have a total circulation of more than 30 % of the market of that type. This provision applies only to daily papers and not to other types of publications (e.g. weekly/monthly papers or magazines).

Television broadcasting is subject to three limits: based on capital share, number of licences (together with audience share), and participation in more companies in the same sector. Accordingly, an individual or a legal entity cannot hold, directly or indirectly, more than 49 % of the capital or the voting rights of an analogue terrestrial television channel at national level (more than 6 million inhabitants).<sup>86</sup> For analogue terrestrial broadcasters at regional level (less than 6 million inhabitants) the limit is set to 50 % of the share capital. The same (50 %) limit applies to satellite broadcasters.

There are also rules on the participation in more than one company within the same sector. If a single person holds more than 15 % of the capital share of one nationwide analogue terrestrial broadcaster, his participation in a second should be less than 15%. If one person owns more than 5 % of the capital shares of two broadcasting companies, his share in a third cannot be more than 5 %. Similar rules apply to satellite broadcasters. If a single person holds more than one third of the capital share of one satellite broadcaster, his participation in a second should be less than one third. If one person owns more than 5 % of the capital shares of two satellite broadcasting companies, his share in a third cannot be more than 5 %. In addition, a person or legal entity can neither hold more than one licence for nationwide analogue terrestrial television, nor one licence for analogue terrestrial television at national level and one at regional level (with the exception of overseas territories).

The licence-holder of a nationwide analogue terrestrial television can hold up to five licences for digital TV programmes. A single person can hold two licences for satellite broadcasting. At regional or local level, a single person can hold only one licence (analogue or digital) within the same geographical area. One person or legal entity may own several analogue or digital regional or local licences as long as they do not cover more than six million inhabitants. The same applies to cable licences as long as they do not cover more than eight million inhabitants. Audience share thresholds are used in the field of radio. An individual or legal entity can own several networks, or several services, as long as the total population of the areas in which they broadcast does not exceed 150,000,000 inhabitants<sup>87</sup>.

### Merger Control

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<sup>85</sup> Law n° 86-897 of 1 August 1986 as modified.

<http://www.legifrance.gouv.fr/texteconsolide/PCEAI.htm>

<sup>86</sup> Article 39 of the of the Broadcasting Law n° 86-1067 of 30 September 1986 as revised by Law n°2000-719 of 1 August 2000 [http://www.csa.fr/infos/textes/textes\\_detail.php?id=8784](http://www.csa.fr/infos/textes/textes_detail.php?id=8784)

<sup>87</sup> Article 41

The French merger control regime is regulated by articles L430-1 to L430-10 of the French Commercial Code. The general competition rules apply to media mergers.

The French competition authorities have jurisdiction to examine a concentration and prior notification is compulsory only where the following cumulative thresholds are met:

- aggregate worldwide turnover of all the parties to the transaction exceeds €150 million;
- individual turnover in France of each of at least two parties to the transaction exceeds €50 million; and
- the transaction does not meet the EC Merger Regulation thresholds.

Since the latest amendments to the Broadcasting Law in 2000, both the broadcasting regulatory authority, the *Conseil supérieur de l'audiovisuel* (CSA) and the Competition Authority (*Conseil de la concurrence*) are competent in competition and ownership matters in the broadcasting field and therefore work closely together. The Competition Authority consults with the CSA in mergers and other concentration cases (the CSA has a one month deadline in which to give its opinion).

Hence, both the audiovisual specific competition provisions that fall under the supervision of the CSA and general competition law applied by the Competition Authority should be respected in order for mergers in the broadcasting field to be approved. In addition, public interest objectives such as diversity, freedom of expression, and plurality of operators and the effort to maintain free competition and avoid the abuse of a dominant position are among the criteria used by the CSA in order to issue broadcasting licences. Also with regard to DTT, the CSA awarded the licences pro channel and not per multiplex, in order to protect pluralism. Pluralism and diversity were guiding principles for the awarding of licences and priority was given to free-to-air and local programmes.

### **Cross-Media Ownership**

In order to avoid multimedia concentration and to ensure the principle of pluralism in the media sector, the 1986 Radio and Television Law lays down the 'two-in three' rule.<sup>88</sup> This rule was adopted primarily to address analogue television operators, and states that these operators may not, beyond certain thresholds, operate or control (or both) more than two out of three of the following types of media:

At national level<sup>89</sup>:

- one or more terrestrial television services broadcast by analogue means and serving areas with a population of over four million;
- one or more radio services serving areas with a population of over 30 million; or
- one or more daily newspapers providing general and political information, which account for more than 20 % of the overall market for this type of newspaper, in the

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<sup>88</sup> Articles 41-1 to 41-2-1

<sup>89</sup> Articles 41-1 and 41-1-1

previous 12 months before the date on which an application for an authorisation was submitted.

The 'two-in-three' rule has been extended, with variations, to apply to digital television operators. At regional and local level:<sup>90</sup>

- one or more terrestrial television services (whether national or not) broadcast by analogue means in the concerned area;
- one or more radio services (whether national or not), of which the combined potential audience in the concerned area exceeds 10 % of the combined potential audiences in the same services area; or
- one or more daily newspapers (whether national or not) providing general and political information, sold in the same area.

### **Foreign Ownership**

There are restrictions on foreign ownership of the French media. Individuals or legal entities from outside the European Union cannot hold more than 20% of either the capital of a daily paper, or of the capital of companies, which hold a terrestrial radio, or television broadcasting licence in the French language. This provision is also applicable to digital terrestrial television.<sup>91</sup>

### **Transparency Obligations - Press**

1986 saw the enactment of three new media laws: the August Press Law<sup>92</sup>, the September Freedom of Communication Law<sup>93</sup> and the November Press Law. The November Press Law amends all previous laws. The 1986 laws contain many rules relating to transparency and ownership.

According to Article 37 of the November press law, the following company information should be made publicly available firstly, if the company belongs to an individual, the name(s) and forename(s) of the owner(s) and co-owner(s); secondly, if the company is a legal entity, the name of the company, its location, its legal form, names of its legal representatives and three principle associates; thirdly, in all cases, the name of the director of the publication and that of those responsible for editing; and fourthly, a list of edited publications and a list of other media activities (audiovisual) the company partakes in.

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<sup>90</sup> Articles 41-2 and 41-2-1

<sup>91</sup> Article 40 of the Law of 30 September 1986

<sup>92</sup> No. 86-897

<sup>93</sup> No. 86-1067

## GERMANY

### **Special recognition of Media Mergers in Competition Law together with sector specific regulation**

#### **Media Ownership Regulation**

The regulatory framework for the media in Germany is drawn up by a variety of actors. The Federal Ministry of Economics and Labour is responsible for establishing the general policy framework under which companies operate, including questions of competition policy. Moreover, the minister responsible may play a particular role regarding media mergers under the German competition act.

Due to the country's federal structure, certain competences are attributed to the different states with regard to media regulation. Regarding broadcasting, competences are located exclusively at the state level. However, the constitution foresees the possibility for the federal legislator to establish a framework law for state legislation concerning the press.<sup>94</sup> So far, no use has been made of this clause. The press laws in the states are based on self-regulation, and the German Press Code reflects these laws. There are no state regulatory bodies for press supervision, no licensing regime for press companies, and all state press laws contain an explicit prohibition of any such limitations on the access to the press industry.

The broadcasting sector is regulated by the federal states, based on the media laws of the individual federal states as well as the 2006 Interstate Treaty on Broadcasting (Rundfunkstaatsvertrag-(RStV)). Issues of broadcasting policy and proposals for new legislation are usually within the remit of the Ministry of Cultural Affairs of each state, or are negotiated among the states in the Rundfunkkommission der Länder.

As the latter has no legislative powers, the treaties it negotiates have to be ratified by the state parliaments. The media laws of the federal states commonly refer to the plurality of opinion as part of the licensing procedure. In terms of ownership this entails that no single company or channel may exercise an undue degree of influence on processes of opinion formation ("exercise dominant opinion-forming power").

The criteria for establishing such dominance differ from state to state: some states impose a limit on the number of broadcasting enterprises that a single company may be involved in; others grant an unlimited number of licences as long as this does not enable the company to exercise dominant-opinion forming power (both approaches may be combined with restrictions on cross-media ownership). The latter approach mirrors the regime governing national television, which is binding on all states. According to this system, dominance will be assumed if the channels attributable to a company reach an average market share of 30%, or more, of the national market in a

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<sup>94</sup> Publishing law, on the other hand, is an exclusive competence of the federal legislator; cf. Art. 73 of the Basic Law

given year, or if a market share of 25% is attained and the company holds a dominant position in a media -related market.

The regulation of broadcasting is carried out by the regulatory authorities for broadcasting of the federal states<sup>95</sup>, the German Commission on Concentration in the Media<sup>96</sup> (KEK) and the Conference of the Directors of the State Media Authorities<sup>97</sup> (DLM). The regional regulators are responsible for the issuing of all licences, including those of national broadcasters, and the supervision of radio and regional television.

The other organisations are involved in the safeguarding of media pluralism with regard to national television. Any application for a nationwide TV broadcasting licence will first be assessed by the KEK with regard to pluralism of opinion, taking into account the assets already held by the applicant. The result of this assessment is binding on the regulatory authority responsible for the issuing of the licence who may appeal the KEK's decision to the DLM who may then overturn it within three months. Similarly, it is up to the KEK to judge whether changes in the ownership structure of a given national television broadcaster constitutes a threat to the pluralism of opinion.

### **Merger Control**

The German competition law regime recognises the special character of media companies in two ways: firstly, by way of Section 38 (3) of the Act Against Restraints on Competition (as amended), the thresholds which will invoke the merger control procedure<sup>98</sup> are lowered to one twentieth (5%) of the normal values, for companies involved in the “publication, production and distribution of newspapers, magazines and parts thereof, the production, distribution and broadcasting of radio and television programmes, and the sale of radio and television advertising time.”<sup>99</sup>

Secondly, the number of thresholds to be passed to invoke the procedure is lowered from two to one where a merger affects competition in the markets related to newspapers and magazines (as outlined above e.g. publication, production and distribution): in this case, the only factor to be considered is the domestic turnover of any one of the companies involved in the merger, where otherwise world turnover is also a threshold.

The assessment of a merger involving media companies will be conducted using the general criteria of competition law. Following the general procedure, if the Federal Cartel Office has declined clearance of the concentration, the Minister of Economics and Labour has the possibility of granting, upon application, a ministerial

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<sup>95</sup> The Landesmedienanstalten

<sup>96</sup> Kommission zur Ermittlung der Konzentration im Medienbereich

<sup>97</sup> Konferenz der Direktoren der Landesmedienanstalten

<sup>98</sup> Under the Act against Restraints of Competition, as amended, a merger, joint venture or acquisition must be notified prior to its completion if the combined worldwide turnover of all participating parties exceeds €500 million and at least one participating party achieves a turnover of more than €25 million within Germany. However, no notification is required in the aforementioned cases if one party to the merger, joint venture or acquisition is an independent party with a worldwide turnover of less than €10 million or if the relevant market has a total annual value of less than €15 million.

<sup>99</sup> Act Against Constraints on Competition, available from [http://www.bundeskartellamt.de/GWB\\_E.PDF](http://www.bundeskartellamt.de/GWB_E.PDF)

authorisation of the merger provided that the economic advantages arising from it outweigh the restraints on competition that it causes, or if there is an overriding public interest to justify it.

### **Cross Media Ownership and Foreign Ownership**

While there are no explicit provisions regarding cross-media ownership in German anti-trust and competition law, there are certain limits to cross-media ownership flowing from sector-specific legislation, as it exists in the form of the Interstate Treaty on Broadcasting and the state media laws<sup>100</sup>.

There are no limits on foreign ownership under either type of regulatory framework. A company is considered to exercise dominant opinion-forming power either if the channels attributable to it reach an average market share of more than 30 % of the national market in a given year, or if a market share of 25 % is attained and the company holds a dominant position in a media-related market. The notion of such a media-related market introduces the possibility of considering other media assets owned by the company, including those in press and advertising.

Dominance in these markets is to be established by reference to the criteria contained in the Act Against Restraints on Competition.<sup>101</sup> Moreover, the federal states have introduced restrictions on cross-media ownership into their media laws in order to prevent the emergence of dominant opinion-forming power across sectors, primarily at the local level. By way of example, the Northrhine-Westphalian media law stipulates that press companies that have a dominant position in either the newspaper or magazines market must not at the same time have a controlling stake in any one broadcaster located in the same area served by its press products.<sup>102</sup>

With regard to local broadcasters, companies “with one or more newspapers” are not allowed to own more than 75% of shares and/or voting rights in the operating company.<sup>103</sup> As most of the radio stations in Germany are local or regional rather than national, this type of legislation has resulted in newspaper groups only holding limited shares where they are involved in radio broadcasters at these levels, thus leading to a high degree of ownership fragmentation regarding some of the most popular regional broadcasters.

### **Transparency Obligations**

Transparency of media holdings is required by a number of different federal laws (these apply to all companies, so to both press and broadcasting groups). The 1987 Commercial Law<sup>104</sup> requires that limited companies provide the names of all members of the board of management and name the seat of the parent company. Consolidated company accounts must be made public. The 1965 federal Corporation

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<sup>100</sup> Cross Media Relations: A Challenge for Media Concentration Control <http://www.kek-online.de/Inhalte/summary2007.pdf>

<sup>101</sup> Cf. the definition given in Chapter III, Section 19, Subsection 2 of the Act Against Constraints on Competition.

<sup>102</sup> Landesmediengesetz Nordrhein-Westfalen vom 2. Juli 2002, Section 33, Subsection 3.

<sup>103</sup> Landesmediengesetz Nordrhein-Westfalen vom 2. Juli 2002, Section 59, Subsection 3.

<sup>104</sup> Handelsgesetz updating the Commercial Law of 1897

Law<sup>105</sup> further requires companies to make an immediate public announcement as soon as shareholdings of 25% or 50% are reached. The 1965 Accounting Law<sup>106</sup> imposes further requirements on the publication of company accounts.

The extent of publication depends on the legal form a company takes. There are no provisions in Germany which require the disclosure of financial sources on privately owned companies (including advertising companies). This presents serious limitations to transparency of ownership. Some further transparency measures are applied at the state level. State laws require publishers to print a listing in their newspapers about their staff (including the name of the editor and publisher), operation and circulation. But generally the states have produced weak regulation for transparency.

### **Changes in ownership structure**

Section 29 of the RStV provides that any proposed change in the ownership structure of a broadcaster or a company to which a channel is attributed and any change in other relevant influences on them must be notified. Only concrete changes are notifiable, which means that the transaction must be definite and its main features must already have been settled. The notification duty applies not only to changes in ownership by transfer of interests, but also to contracts regarding the exercise of voting rights, such as voting trust agreements and fiduciary (trust) agreements.

Ownership changes in quoted joint stock companies, including those made through stock exchange trading, must be notified if they cause the transfer of more than 5% of the capital or voting rights, or if they lead to holdings reaching, exceeding or falling below the 25 %, 50 %, or 75 % thresholds. In addition, companies that hold a broadcasting licence or to which broadcasters are attributable must ensure that the notification duties of Section 29 RStV can be complied with, e.g. through disclosure rules in their partnership agreements. Broadcasters, in particular smaller ones, frequently executed ownership changes before the KEK had declared them to be acceptable or the competent state media authority had cleared them.

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<sup>105</sup> Aktiengesetz

<sup>106</sup> Buchführungsgesetz

## **GREECE**

### **General competition laws together with sector specific regulation**

#### **Media Regulation**

The media in Greece is regulated by several institutions. The Greek National Council for Radio and television (NCRT) is responsible for enforcing media legislation.<sup>107</sup> The Council ensures freedom of expression and pluralism, oversees journalism ethics in broadcasting, and oversees the quality of radio and television broadcasts as set out in the Constitution. The NCRT is the only responsible body with regard to the control of media companies and the imposition of fines. Furthermore, it is the competent authority for allocating licences and to take any decision of non-regulatory character. However, the NCRT has no consultative or regulatory powers.

#### **Ownership restrictions**

The Ministry of Transport and Communications, and the Ministry of Press and the Mass Media grant licenses for terrestrial television and radio, for cable and satellite television, in consultation with the National Radio and Television Council. The ministries also regulate the printed press market. The NCRT is responsible for implementing media ownership restrictions in Greece. While the NCRT makes decisions in this area, all decisions must be checked and approved by the Ministry for the Press and Mass media.

The capacity of owner, partner, main shareholder or management executive of an information media enterprise is incompatible with the capacity of owner, partner, main shareholder or management executive of an enterprise that undertakes towards the Public Administration or towards a legal entity of the wider public sector to carry out works or supplies or to provide services. This includes the activities of all types of related persons, such as spouses, relatives, financially dependent persons or companies.

Regarding the printed media Law 2328/95 Article 13<sup>108</sup> outlines the horizontal limits of media ownership in the newspaper industry. It provides that a physical or a legal person and his/her relatives up to the fourth degree can be holders of or participate in:

- up to two daily political newspapers (a morning and an afternoon one) issued in Athens, Piraeus or Thessaloniki.
- one daily financial paper and one daily sports paper issued in Athens, Piraeus or Thessaloniki,
- two non-daily provincial newspapers issued in different regions and only one Sunday publication.

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<sup>107</sup> Established under Law no. 1866 of 6 October 1989 amended by Law no. 2683/2000

<sup>108</sup> Paragraphs 10-14



## **Merger Control**

There are no specific competition law provisions relating to media mergers. Pursuant to Law 703/77, the concentrations of undertakings must be notified to the Hellenic Competition Commission within 10 days of the conclusion of the agreement or the publication of the offer or exchange or the acquisition of participation. Such events warrant the control of the undertakings, in cases where cumulatively: the aggregate national turnover of all the undertakings participating in the transaction (participating undertakings for the purposes of Law 703/77 are defined therein) is €150 million; and at least two of the participating undertakings have an aggregate national turnover exceeding €15 million each.

The Competition Commission will prohibit all concentrations of undertakings which are subject to pre-merger notification and which would significantly impede competition in the national market or in a substantial part thereof, in relation to the characteristics of the products or the services concerned, and in particular by the creation or strengthening of a dominant position.

## **Cross Media Ownership and Foreign Ownership**

Regarding cross media ownership a ‘two out of three’ rule exists. A single company or individual cannot participate in more than two media categories (television, radio, and newspapers). A company can only hold one licence to operate a television station or participate in a company which holds such a licence.

A natural or legal person can only be a shareholder or participate in one company which possesses such a licence and can hold no more than 25 % of the share capital. Such a person may participate either in a company that possesses a licence for the incorporation, establishment and operation of a radio station, or in a company, which publishes a daily or weekly newspaper circulating in the whole territory of Greece.

The participation of foreigners (outside of the European Union) in the shareholding of limited companies with a license to broadcast free to air television or limited companies with a license to broadcast free to air radio should not exceed 25% of the total capital.

## **Transparency obligations**

Transparency of ownership of the media and restriction of ownership of the media is addressed in the Greek Constitution<sup>109</sup>, which calls for further legislation to regulate the media field<sup>110</sup>. The ownership status, the financial condition and the financing means of information media should be disclosed, as specified by law. The measures and restrictions necessary for fully ensuring transparency and plurality in information shall be specified by law. The CNRT can request information regarding the organisation and financing of radio and television stations<sup>111</sup>.

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<sup>109</sup> Article 14 par 9

<sup>110</sup> Law 3310/2005 “Measures for the transparency guarantee and the dissuasion of violation during the public conventions contracting process”.

<sup>111</sup> Article 1 par 17 of the Law 2328/1995



## HUNGARY

### General competition law together with sector specific regulation

#### Media Ownership Regulation

The media in Hungary is regulated by several organisations. The National Radio and Television Commission (ORTT) is responsible for the broadcasting sector regarding licensing, broadcasting agreements and monitoring of content. The National Communications and Information Council perform an advisory role for the Government on media policy including EU media regulation. The National Communications authority has responsibilities for the telecommunications and cable and satellite sectors. Important laws include the Hungarian Law on Radio and Television (1996) (the Media Act) and the Act on the Prohibition of Unfair Market Practices. The Media Act regulates the principles underlying the provision of programme services (including advertising, the protection of minors and programmes of public interest), the tasks of the National Radio and Television Board (the NRTB) in supervising media activity, its procedural rules, and the conditions for obtaining authorisation to broadcast.

#### Merger Control

General Hungarian, as well as European, merger control rules apply for mergers in the broadcasting sector. Under the Hungarian Competition Act, concentrations (i.e., the acquisition of control, mergers between undertakings and the creation of a full-function joint venture) must be notified to the HCO in the following circumstances: the aggregate net Hungarian turnover of the undertakings concerned (as defined in the Hungarian Competition Act) exceeds 15 billion forints (approximately €60 million); and there are at least two undertakings concerned that each have a net Hungarian turnover above 500 million forints (approximately €2 million).

The substantive test under the Hungarian Competition Act is the so-called ‘dominance test’, i.e., the HCO will prohibit the proposed concentration if such concentration leads to the creation or strengthening of a dominant position on any of the relevant markets.

The Hungarian Competition Office is responsible for such review, during which it closely cooperates with the NCA and the NRTB, and may request market information from them if this is necessary for the decision.

Reference is made within the Law on Radio and Television to the Act on the Prohibition of Unfair Market Practices concerning mergers and acquisitions. Any merger or acquisition which leads to the accumulation of an influence on the market as defined in the Law on Radio and Television Act may not be authorized i.e. if it results in the infringement of the provisions contained in the media law<sup>112</sup>. Hence, there is a requirement for competition policy to note the restrictions within media law regarding ownership.

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<sup>112</sup> Section 127 (3)

## **Cross Media Ownership and Foreign Ownership**

Individuals or companies who have a controlling share, or have publisher's or founder's rights in a daily newspaper with a nationwide circulation, (or in a weekly newspaper with a nationwide circulation, other than a weekly listing television and radio programmes) may not acquire a controlling share in a broadcaster or broadcast transferor operating with national broadcast diffusion, without being connected to a network, and vice versa.<sup>113</sup>

Individuals or companies having a controlling share, publisher's or founder's rights in a daily newspaper with a regional circulation, the number of copies of which sold daily reaches ten thousand may not acquire a majority share in a broadcaster or broadcast transferor, the reception area of which overlaps with 80% of the distribution area of the newspaper, and vice versa<sup>114</sup>. Exceptions to this, where someone may acquire a less than majority ownership include: if another local or regional broadcaster or broadcast transferor covering at least 70% of the given area of reception is already in existence<sup>115</sup>. The amendment (of 1999) to the Telecommunications Law forbids any company that provides telephone services, from having a majority controlling stake in a cable company.

Regarding foreign ownership a minimum of 26% the shares of a broadcasting company are required to be owned by Hungarian citizens and residents. Any entity may own up to 49% of the shares of a company. Certain persons and entities such as MPs and political parties are prohibited from performing broadcasting activities.

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<sup>113</sup> Section 125 par 1 and 2

<sup>114</sup> Section 125 par 3

<sup>115</sup> Section 125, par 4

## ITALY

### General competition law together with sector specific regulation

#### Media Regulation

The 1997 New Media Act<sup>116</sup> established an Authority for Communications (Autorita per le garanzie nelle comunicazioni) (AGCOM). The authority was set up in 1998 replacing the Press and Broadcasting Authority. It established a Register for Communications Operators. The Italian authority registers not just companies with television and radio interests but all companies offering communications services. The new Authority monitors media mergers and acquisitions (across all media, including telecommunications and new services) and draws the attention of the competition authority to any undesired market concentration.

#### Media Ownership Regulation

The Broadcasting Consolidated Act 2005,<sup>117</sup> incorporates the media ownership restrictions in the Gasparri Law, which aims to ensure pluralism. In particular, section 43 of the Broadcasting Consolidated Act provides that, when the digital broadcasting spectrum has been fully allocated, no content provider shall be permitted to hold, directly or through subsidiaries, an authorisation to broadcast more than the 20 % of television programmes (or 20 % of all radio programmes, as the case may be) nationwide by means of terrestrial technologies.

In order to prevent the creation of a dominant position, the Broadcasting Consolidated Act provides that no registered communication operator may earn, directly or through subsidiaries, revenues exceeding 20 % of the so-called 'CIS', (ie, the communications integrated system, which includes all media sector activities, such as broadcasting, sponsorship, radio, cinema, advertising, publishing of newspapers, magazines, as well as e-publishing).

#### Merger Control

General competition law and cartel-law regulations<sup>118</sup> are applied to the media sector, by the Italian Competition authority (Autorità Garante della Concorrenza e del Mercato) which guarantees competitiveness and fair market conditions.

All transactions between parties whose aggregate national turnover exceeds €432 million or in which the national turnover generated by the acquired entity exceeds €43 million, are subject to prior notification to the Italian Antitrust Authority.<sup>119</sup> The turnover thresholds are updated annually.

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<sup>116</sup> No. 249 of 1997

<sup>117</sup> Legislative Decree No. 177 of 31 July 2005 (the Consolidated Broadcasting Act)

<sup>118</sup> Law No. 287/90

<sup>119</sup> Section 16 paragraph 1 of Law 287/1990

The Competition Authority is required to request a non-binding opinion by AGCOM on the draft decisions related to mergers and acquisitions, concerning the communications market. AGCOM has a deadline of 30 days to express its opinion. After this time the measures are implemented.<sup>120</sup> Conversely, AGCOM is required to request from the Competition Authority a non-binding opinion on certain issues (e.g. definition of the operators with a significant market power, interconnection offer, etc.).

### **Cross-Media Ownership**

Cross-media ownership provisions as laid down in the 1997 Act are still in place. The holder of a national television licence is prohibited from controlling a local television station. Only one local television broadcasting licence may be held in the same region. A company is allowed to hold several licences in different geographic areas as long as they are neighbouring regions and the population covered does not exceed 15 million (out of a total of approximately 57 million), with a cap of four regions in the north and five regions in the south.

The same thresholds are applied to radio. A single entity cannot hold more than 20 % of the total number of national analogue radio licences. (AGCOM can raise this threshold however according to the 2004 Act if pluralism and competition are somehow guaranteed). A single entity operating at national level is not allowed to exceed 30 % of total revenues (advertising and sponsorship) collected in the radio sector. (AGCOM also has the power to raise this limit).

Section 43, paragraph 12 of the Broadcasting Consolidated Act prevents television undertakings that operate nationwide and through more than one broadcaster from acquiring, prior to 31 December 2010, any interest in companies that publish daily newspapers. This restriction also applies to group companies of the television undertaking. Additionally, such television undertakings may not participate in the incorporation of companies that publish daily newspapers.

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120 Delibera no. 346/01/CONS of 6 August 2001, at: [http://www.agcom.it/provv/d\\_346\\_01\\_CONS.htm](http://www.agcom.it/provv/d_346_01_CONS.htm)

## **LATVIA**

### **General Competition Law together with sector specific regulation**

#### **Media Ownership Regulation**

The media is regulated in Latvia on the basis of the Law on the Press and other forms of Mass Media (1990), the Radio and Television Law (1995), and the Latvian Electronic Mass Media Act (1995). The National Broadcasting Council of Latvia (Nacionāla Radio un Televīzijas padome, NRTP), established in 1990, is responsible for broadcasting policy, licensing and the budget for state broadcasting interests.

A separate body, the LVEI (Latvijas Valsts elektrosakuru inspekcija) allocates radio frequencies and licenses. The Department of Communications within the Ministry of Transport has overall responsibility for the technical aspects of radio communications and defines the rights, duties, and responsibilities of public and private operators in the telecommunications sector.

#### **Merger Control**

Under the competition law, regulated by the Competition Authority<sup>121</sup> there are no specific provisions regarding the media.

The relevant legislation is the Republic of Latvia Competition Law (the Competition Law). The Republic of Latvia Competition Council (the Competition Council) investigates mergers and other concentrations. The Competition Council prohibits mergers as a result of which a dominant position is created or strengthened or where competition in any relevant market can be considerably reduced.

However, the law prohibits any market participant to abuse a dominant position in the relevant market. A dominant position is achieved when one or more market participants take over at least 40% of the market share. The Advertising Law of 1999 regulates the nature of advertising, the protection of rights and interests of individuals and the public, and also the promotion of competition. Regarding the latter the focus is on the prevention of both misleading and comparative advertising.

#### **Cross Media Ownership and Foreign Ownership**

There are no limitations on cross-media ownership in Latvia. An individual who is the sole shareholder or a controlling share-holder in a broadcasting company may not own more than 25 % of the share capital in another broadcasting company. The restriction also applies to the spouse of such individual

The Law on Foreign Investment<sup>122</sup> restricted foreign ownership of the Latvian mass media to a maximum of 20%. This was amended by parliament to 49% in 1996 and adopted by the Radio and Television Law. However, in October 1999 the Parliament

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<sup>121</sup> <http://www.competition.lv/Alt/ENG/EFS.htm>

<sup>122</sup> November 1991

again amended this provision of the Radio and Television Law. Therefore at present there are no restrictions on foreign ownership rights.

### **Transparency Obligations**

There is a lack of transparency into media ownership. Information on ownership is not publicly accessible. The Broadcasting Council is proposing stricter rules on disclosure of ownership along the lines adopted by the Financial and Capital Market Commission. Anonymous off-shore companies present a particular problem to Latvia.



## LITHUANIA

### General competition law together with sector specific regulation

#### Media Ownership Regulation

The media in Lithuania is regulated by several organisations. The Lithuanian Radio and Television Council (LRT Council) oversees the LRT (the Public Service Broadcaster). The Lithuanian Radio and Television Commission (LRTK) is the regulator for commercial broadcasting, cable television and MMDs operators.

#### Merger Control

Within Competition Law there are no specific provisions for the media sector. According to Article 10 of The Law on Competition<sup>123</sup>, the Competition Council of Lithuania must be notified of a merger when the combined aggregate income of the companies involved (using income from the previous year) exceeds LTL 30 million (€8.9 m), and when the total income of at least two of the undertakings is more than LTL 5 m (€1.45m). Article 3 (par 11) of the law defines a dominant position as being a market share of 40% for one undertaking. Where three or less undertakings jointly have 70% or more of the market, each will be considered to enjoy a dominant position.

The substantive test applied by the Competition Council is whether a concentration would bring about the creation or strengthening of a dominant position or would significantly impede (substantially lessen) effective competition on a relevant market. A concentration may be approved conditionally in order to prevent the creation or strengthening of a dominant position, and blocked if such concentration does not pass the said test.

#### Transparency Obligations

On 30 March each year, companies are required<sup>124</sup> to provide the government with data on shareholders who control at least 10 % of shares; the names and surnames of shareholders; and their personal identification code. They are also obliged to provide property information and cross-media ownership details.

#### Structure of ownership

There are certain provisions requiring transparency of ownership of the media. Article 24 of the law requires that producers and disseminators of public information (not including those licensed by the LRTK) submit to a government institution annually data regarding shareholders or co-owners of the enterprise owners who have the right of ownership or administer at least 10 % of all the shares or assets. Members of the government, parliament and other state institutions must declare any interests they have in the media sector.

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<sup>123</sup> Law on Competition 1999. Available from: <http://www.konkuren.lt/english/merger/legislation.htm>

<sup>124</sup> Article 24 of the Law on Provision of Information to the Public

### **Changes in ownership**

The Radio and Television Commission of Lithuania must be informed of the intention to sell or transfer at least 10% of shares in the company/outlet. If the proposed sale is of more than 10% of the shares, a written consent from the Radio and Television Commission of Lithuania regarding the sale or other transfer of the aforementioned shares, shall be required, prior to the sale or other transfer of shares taking place. This requirement shall apply also where the sale of assets implies that control of a broadcaster or operator shall pass to another person.<sup>125</sup>

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<sup>125</sup> Article 23, par.3

## LUXEMBOURG

### Sector specific regulation only - no merger control

Competence for the regulation of media enterprises and their activities is spread among a number of different authorities in Luxembourg. Firstly, as the part of government responsible for general economic and competition policy, the Ministry of Economics plays an important role as facilitator of functional markets in the media industry. It is the task of the Ministry of Culture, on the other hand, to aid media production through the operation of the National Audiovisual Centre (protection of audiovisual heritage) and the National Audiovisual Fund (aid to contemporary production).

The Media and Communications Service serves a number of commissions who perform functions ranging from advising government policy makers to implementing the principles of media regulation as defined in the pertinent legislation. The legal basis for their activities is the law of 27 July 1991 on electronic media,<sup>126</sup> which also outlines the composition of these bodies.

The Independent Broadcasting Commission (*Commission Indépendante de la Radiodiffusion*) has the widest competence and its primary task is the authorisation of channels with low power transmitters and radio networks. It also advises the government regarding all other authorisation decisions related to broadcasting operations. The IBC has a structurally important position, controlling market access for local radio stations and transmission networks and shaping government decisions on national authorisations. It is the ability to issue binding decisions of its own which sets it apart from the two other commissions active in the realm of media policy.

The National Program Council (*Conseil National des Programmes*) has a more advisory function, drawing up opinions or position papers on various media related topics (based on a request from the Minister or acting on its own initiative), and the Advisory Media Commission (*Commission Consultative des Médias*) fulfills a monitoring function to ensure broadcasters' compliance with program content regulations. While the Council operates independent of government, it has no decision making power and cannot issue sanctions.

While the current regulatory regime grants a variety of stakeholders a say in the drawing up of media policy,<sup>127</sup> in reality, it provides just one minor restriction on media ownership. Section 18, Subsection 2 of the Law on Electronic Media of 27 July 1991 stipulates that “no legal or physical person may own parts in more than one limited liability company having been granted the allowance to distribute a program via a radio transmission network, nor may he or she hold more than a 25% share of

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126 Loi du 27 juillet 1991 sur les médias électroniques [Law of 27 July 1991 on the Electronic Media, as amended by the law of 2 April 2001]:

[http://www.etat.lu/legilux/DOCUMENTS\\_PDF/MEMORIAL/memorial/a/2001/a0880108.pdf](http://www.etat.lu/legilux/DOCUMENTS_PDF/MEMORIAL/memorial/a/2001/a0880108.pdf)

127 While the Advisory Media Commission brings together media professionals representing companies, professional associations and trade union organizations of the media sector, the National Program Council represents a variety of societal interests and the IBC is organized as an expert committee.

such a society or of its voting rights, including indirect participations.” The effort to prevent ownership concentration in the radio broadcasting market implicit in this provision has to be seen in the context of there being a limited range of broadcasting frequencies available for radio transmissions as well as the small market volume. While the Luxembourgian television market simply cannot support a national competitor to RTL, there is room for more than one economically viable radio network, and thus the prevention of any one operator exercising a controlling influence over more than one of these networks is a necessary condition to safeguard competition.

### **Merger Control**

There are no merger control provisions in place.

### **Cross Media Ownership and Foreign Ownership**

Under present legislation, there are no restrictions on cross-media ownership or to foreign ownership.

### **Transparency Obligations**

To reinforce the separation of interests in the sphere of the media, the new Law on the Freedom of Expression in the Media has introduced a provision that prescribes the publishing of certain information on the identity of shareholders whose influence exceeds 25 % of capital shares.<sup>128</sup> Where two or more legal entities have control of a publication, both the name, surname, country of residence and the profession of those persons controlling these legal entities have to be made known to the public, when they hold more than 25 % of shares therein, are members of their administration or board of governors or if they are involved in the daily management of these legal entities.

Where a person thus identified also is a member of the administration or the board of governors of another legal entity owning or editing another publication, or holds, directly or indirectly, a share of more than 25 % of stocks in another publication, the title of this publication, the registered name of the company publishing it as well as its legal form, objective and place of establishment have to be made known as well. Although the publication requirement does not apply to companies licensed according to the Law on Electronic Media of 1991, these are still obliged to hold the relevant information at the disposal of the public so as to ensure a certain amount of transparency.<sup>129</sup>

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<sup>128</sup> Section 76

<sup>129</sup> Op.cit., Section 77; equally exempt from the publication requirement are minor publications which go to serve the needs of the business community or facilitate social relations in general, such as formulas, labels, price lists, ballots and business cards (Section 78).

## NETHERLANDS

### General competition law together with sector specific regulation

The general competition laws together with a few sector specific rules apply to media mergers in the Netherlands. Since 1998, the Dutch Competition Authority (Nederlandse Mededingingsautoriteit (NMa))<sup>130</sup> is responsible for implementing the 1997 Competition Act. The Dutch Media Authority, the Commissariat for the Media (Commissariaat voor de Media) (CvM), is tasked with a variety of functions specified in the Dutch Media Act 1991,<sup>131</sup> focusing on both public service and commercial broadcasters and on cable operators.

### Merger Control

Mergers, acquisitions and joint ventures in the media sector are subject to the same jurisdictional thresholds as mergers in all other sectors. Mergers must be notified under the Competition Act if:

- the combined aggregate worldwide annual turnover of the undertakings exceeds €113.45 million;
- each of at least two of the undertakings concerned has an annual turnover within the Netherlands of at least €30 million.

On 1 October 2007, the Competition Act was amended. The substantive assessment criterion is now whether the merger might lead to significant restriction of competition on the Dutch market or on part of that market, particularly due to the creation or strengthening of a dominant position.

### Cross-Media Ownership

Chapter IV of the 2001 Media Act set out rules on cross-media ownership. Section 71b prohibits a company with more than 25 % share of the newspaper market from having more than 30 % of the voting rights in a commercial television broadcaster. Companies and legal persons are not permitted to own a commercial television channel if they have a market share of over 50 % of the daily or nondaily newspaper market in a specific region if that region lacks an alternative television service.

The CvM can withdraw a broadcast license if a commercial broadcaster, or one or more of the legal persons or companies with which it forms a group, has had a joint or individual share of 25 % or more of the market for daily newspapers for a period of two consecutive years; or a legal person, or one or more legal persons or companies with which it forms a group, has a joint or individual share of 25 % or more of the market for daily newspapers and, can: either exercise more than one third of the voting rights in a shareholders meeting; have the power to appoint or dismiss more

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<sup>130</sup> [http://www.nmanet.nl/en/Over\\_de\\_NMa/default.asp](http://www.nmanet.nl/en/Over_de_NMa/default.asp)

<sup>131</sup> The Dutch Media Act is available in English at the *Commissariaat's* website: <http://www.cvdm.nl/pages/english.asp?m=a&>

than one third of the directors or the members of the supervisory board of the relevant commercial broadcasting establishment.

In 2007 the Netherlands introduced an Interim Act on Media Concentrations<sup>132</sup>. Under this law, daily newspapers are not permitted to reach above 35 % or more of the total Dutch newspaper market. A concentration of the combined markets of daily newspapers, commercial radio and/or commercial television which result in a total market share on these two or three markets of 90 % is also prohibited.

### **Transparency Obligations**

The Netherlands requires a high degree of transparency from companies than most member states. All companies have to publish annual accounts public ally. There are further general obligations under company law to publish shares listed on the Stock Exchange in at least one national daily newspaper. The CvM has additional power to inspect the company reports and accounts of media companies.

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<sup>132</sup> <http://www.cvdm.nl/dsresource?objectid=7510&type=org>

## **POLAND**

### **General competition law together with sector specific regulation**

The National Broadcasting Council (Krajowa Rada Radiofonii i Telewizji, (KRRiTV)) was established under articles 213-215 of the Constitution of Poland, and charged with formulating broadcasting policy and licensing, and the overall protection of free speech, independence of broadcasters, audience interests and the protection of a plural broadcasting system. The Office for Telecommunications and Post Regulation (URTIP) has the competence to allocate broadcasting frequencies. The regulation of the media in Poland is based on the Press Law (1984), the Broadcasting Act (1992), Telecommunication Law (2000) and Act on Competition and Consumer Protection (2000).

### **Merger Control**

There are no specific provisions for the media within competition law. While the Broadcasting Act stipulates that a license will not be awarded if the applicant would then 'achieve a dominant position in mass communications in the given area', it provides no thresholds for measuring this dominance. They are hence, the same as for other industries, as outlined by the Act on Competition and Consumer Protection, which defines a dominant position as being a share of more than 40 % of the market.

### **Cross-Media ownership & Foreign Ownership**

The Broadcasting Act 2002 introduced rules on cross-media ownership: a company already holding a television or broadcasting licence (which covers more than 80 % of the population) is not able to acquire another nationwide television or radio station. Similarly publishers of national or regional daily newspapers with a market share in excess of 30 % would not be permitted to acquire television or radio networks covering the entire country.

The 1992 Radio and Television Act contains restrictions on foreign ownership and foreign content in programming. Changes in the ownership structure of the licence-granted entities (also in the case of Polish only share-holders) must be accepted by the National Broadcasting Council (KRRiT).

## PORTUGAL

### General competition law together with sector specific regulation

The media regulatory authority, the High Authority for Social Communication (Alta Autoridade para a Comunicação Social, AACS)<sup>133</sup>, is responsible for licensing and regulating terrestrial broadcasting. The Autoridade Nacional de Comunicações (Anacom) regulates telecommunications markets, and is also responsible for DTT licensing and cable television licensing.

The main relevant legislation is the Press Law (1999)<sup>134</sup> and the Television Law (2003). According to the Press Law there are no limitations of ownership of publications: they can be owned by any individual or group.<sup>135</sup> Article 16 of the law applies to the transparency of ownership of publications. Publishing companies are obliged to inform the High Authority for Social Communication (Alta Autoridade para a Comunicação Social, AACS) annually of the details regarding shareholders in the company. Additionally publishing companies must publish annually in their best selling newspaper, the details of annual accounts and shareholder interests.

### Merger Control

A new Competition Authority was recently created in Portugal in January 2003.<sup>136</sup> The authority replaces the previous Competition Council and the Directorate General of Competition and Trade, as an independent and financially autonomous institution.<sup>137</sup>

The general competition regime applies to the media sector. Within the more recent competition legislation, Law No. 18/2003 of 11 June<sup>138</sup>, reference is made to concentration and mergers within the media sector. According to Article 57<sup>139</sup>, the Competition Authority works in co-operation with the AACS. When deciding on concentrations and mergers within the media sector, the Competition Authority decisions are subject to a binding prior opinion of the AACS, who assess the impact of such a merger on the freedom of expression and the diversity of opinion.

### Cross-Media Ownership and Foreign Ownership

There are no restrictions on cross media ownership within the Portuguese legal framework. There are also no restrictions on foreign ownership of the media.

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133 Lei da Alta Autoridade para a Comunicação Social/ Lei n.º 43/98 - de 6 de Agosto. The law was amended twice in 2002: Lei n.º 8/2002, de 11 de Fevereiro and Lei n.º 18-A/2002 de 18 de Julho. Website of the AACS: <http://www.aacs.pt>

134 Lei n.º 2/99 de 13 de Janeiro Aprova a Lei de Imprensa

135 Lei n.º 2/99 de 13 de Janeiro Aprova a Lei de Imprensa, Article 6.

136 Decree-Law 10-2003 of January 18, 2003

137 <http://www.autoridadedaconcorrenca.pt/index.aspx>

138 Law No. 18/2003 of 11 June APPROVING THE LEGAL FRAMEWORK FOR COMPETITION

139 CHAPTER VII: Final and transitional provisions, which amends Article 4(4) of the Law No. 2/99 of 13 January



## **SLOVAKIA**

### **General competition law together with sector specific regulation**

#### **Media Ownership Regulation**

In Slovakia, the Council for Broadcasting and Retransmission issues broadcasting licences. The Act on Broadcasting and Retransmission<sup>140</sup> includes rather detailed provisions on media concentration that have to be applied by the Council when granting or revoking a licence. These provisions state that: Any legal entity or natural person can only be linked with one nationwide broadcaster (TV or radio). Such a “link” or “property connection” is established when a person holds at least a 25 % share of the issued capital of a second person, or a 25 % share of the overall voting rights in the company. The law also restricts cross-ownership between radio and TV broadcasters and between broadcasters (TV or radio) and a publisher of a nation-wide press publication.

Furthermore, a publisher of periodicals that appear at least five times a week and are distributed in at least half of the territory of the Slovak Republic must not be a licensed broadcaster for multi-regional or nationwide broadcasting services at the same time. However, links of an individual (or legal entity) to other regional or local broadcasters are allowed if all of the broadcasters with whom this person is connected through capital can be received by a maximum of 50 % of the total population. The same threshold applies to broadcasting networks. The Council is empowered to request documents and data necessary to assess whether these conditions are met. There are no restrictions on foreign ownership laid down in the Act on Broadcasting and Retransmission.

The Press Law<sup>141</sup> does not contain further anti-concentration or ownership transparency rules for the press sector (whereas the broadcasting act itself refers to ownership of newspapers as an aspect to be considered when granting a TV licence). However, under the Press Law publishers are obliged to register with the Ministry of Culture and provide some basic information (address, name of editor in chief etc.) but not on matters of ownership.

#### **Mergers**

The Antimonopoly Office<sup>142</sup> monitors compliance with the Act on Protection of Competition. The law does not include specific provisions on the media sector (however, the Act on Broadcasting and Retransmission does). Therefore, the Antimonopoly office does not consider issues of media pluralism or diversity when it examines mergers of media undertakings, but only applies the general competition rules on merger control.

Mergers or acquisitions are subject to control by the Anti-Monopoly Office of the Slovak Republic if the combined worldwide turnover of the parties to the transaction is at least 1.2 billion Slovak korunas (approximately €34.8 million) and at least two of

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<sup>140</sup> Act No 308/2000

<sup>141</sup> Act No. 81/1966

<sup>142</sup> <http://www.antimon.gov.sk/eng/>

the parties to the transaction each achieved turnover in the Slovak Republic of at least 360 million Slovak korunas (approximately €10.5million) during the last accounting period before the transaction; or at least one party to the transaction achieved turnover in the Slovak Republic of at least 500 million Slovak korunas (approximately €14.5million) and at least one further party to the transaction achieved worldwide turnover of at least 1.2 billion Slovak korunas (approximately €34.8 million) during the last accounting period before the transaction.

## SLOVENIA

### General competition law together with sector specific regulation

#### Media Ownership Regulation

The Republic of Slovenia, in preparation for EU membership, introduced further media legislation through the Mass Media Act of 2001. Like the other new member states this act incorporates the EU *acquis communautaire* in the field of audiovisual policy (Television Without Frontiers Directive). The act also deals with aspects of journalism rights and responsibilities. However, in contrast to many of the new member states (and several older member states) the legislation also contains specific provisions for the protection of media plurality and diversity (Article 56) and the restriction of concentration of media ownership (Article 58).

The main authorities in the area of media regulation are the Ministry of Culture, the Slovenian Broadcasting Council,<sup>143</sup> which is integrated into the Agency for Telecommunications, Broadcasting and Post. The role and remit of the Broadcasting Council includes policy development on programming and licensing, the allocation of licenses and frequencies to broadcasters, and providing opinions on the restriction of concentration in the sector.

#### Merger Control

Slovenian competition policy has no specific provisions relating to the media sector.

The current legislation, the Prevention of the Restriction of Competition Act (1999),<sup>144</sup> with subsequent decrees, provides the process for examining concentrations of firms. A concentration must be notified if:

- the combined aggregate annual turnover of all the companies concerned, including affiliated companies, exceeds €33.3 million) before tax in the Slovenian market in each of the last two years; or
- all the companies concerned, including affiliated companies, jointly achieve more than a 40 % market share in Slovenia, or a substantial part of it, with goods or services which are the subject of the transaction, or with their substitutes.

#### Cross Media Ownership and Foreign Ownership

Regarding cross media ownership the Mass Media Act (2001) outlines the following restrictions: A publisher of a daily informative newspaper or a single legal or natural person or group of connected persons that holds an ownership stake of more than 20 or a share in the management or voting rights or more than 20 % in the capital or assets of such a publisher may not also be the publisher or a cofounder of a radio or television station and may not perform radio or television activities.

Likewise, a broadcasting company of a radio or television station or a single legal or natural person or group of connected persons that holds an ownership stake of more

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<sup>143</sup> <http://www.gov.si/srd/eng/index.html>

<sup>144</sup> The Restriction of Competition Act. Available: <http://www.sigov.si/uvk/ang/2legal/1basis.html>

than 20 % or a share in the management or voting rights of more than 20 % in the capital or assets of such a publisher may not also be the publisher or a co-founder of the publisher of a daily informative printed medium. For publishers or legal or natural persons as outlined above who already have an ownership or voting right of 20 % in one media outlet may not may hold an ownership stake of more than 20 %, or a share in the management or voting rights of more than 20 %, in the assets of any other publisher or broadcasting organisation.

Under Article 59 individuals, companies and publishers are prevented from being active in both the television and radio sectors (exceptions may occur through the licensing system as outlined under articles 105- 106).

Restrictions also apply regarding activity in both the advertising and broadcasting sectors.<sup>145</sup> An organisation or individual with more than 10 % interest (voting or management rights) in an advertising agency may not be the publisher or founder of a radio or television station and is limited to a 20 % share (management or voting rights) in a broadcasting organisation. There are also restrictions regarding activity between telecommunications activities and radio and television activities<sup>146</sup> wherein an operator that provides telecommunications services (which includes, as described in article 111, the provision of terrestrial networks, satellite, or cable distribution or cable communications systems used for disseminating programming) may not be the publisher of a radio or television station, and may not disseminate programming or advertising, unless they have qualified for a license to do so (under article 105).

There are no particular limitations on the involvement of foreign nationals in the mass media of Slovenia. The previous media legislation (Mass Media Act 1994) had a 33% limit of capital share for individuals and companies, which also applied to foreigners. This restriction was removed in the Mass Media Act of 2001.

### **Transparency Obligations**

Regarding transparency of ownership, Article 12 of the Mass Media Act outlines the system of registration of mass media companies, their ownership structures and sources of financing. This information must be provided annually and additionally any major changes to the information, particularly the ownership structure, must be notified to the registry.

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<sup>145</sup> Article 60

<sup>146</sup> Article 61

## SPAIN

### **General Competition Laws together with sector specific regulation**

Spain has no national regulatory authority for broadcasting even though Spain is a unitary state (unlike federal Germany). However, (like Germany) it is monitored by a constitutional court). This has meant that, in practice, some of the regions have relative autonomy in certain policy areas, including broadcasting. But only Catalonia has its own regional authority for the media.

### **Merger Control**

A new Competition Law<sup>147</sup>, came into force on 1 September 2007 (the Competition Act). The new Competition Act substantially amended the Spanish competition system regarding the authorities responsible for its enforcement. It also brought about significant changes in terms of substance and procedure to the merger control rules.

The National Competition Commission (Comisión Nacional de Competencia, the CNC). The CNC integrates into a single body the former first-tier Spanish competition authority (Servicio de Defensa de la Competencia) and the second-tier authority (Tribunal de Defensa de la Competencia).

Under the new Competition Act, the CNC has greater involvement in merger control review, since it has the final decision on merger control proceedings in the majority of the cases. The government has limited decision-making powers in merger control matters, and no longer has the final say as regards merger control approvals. The new Competition Act limits the government powers to intervene in those limited cases where the CNC decides either to prohibit a concentration or to clear it subject to conditions. Additionally, the intervention of the government must be based on certain public interest criteria, other than the defence of free competition.

The new Competition Act provides two alternative thresholds based on market share and turnover. The Competition Act applies where:

- a share of 30 % or more of the national market or a ‘defined’ geographic market within it, of a given product or service, is acquired or increased; or
- the aggregate turnover in Spain of the companies involved exceeded €240 million during the past financial year provided that the turnover in Spain of each of at least two parties exceeded €60 million.

The market share threshold can be satisfied by the target company only.

Filing is mandatory for those transactions exceeding either of the two above-mentioned thresholds. There are no exceptions to this obligation.

The substantive test for clearance is that a qualifying transaction (in other words, one which meets the thresholds) “may prevent the maintenance of effective competition in whole or in part of the national market”. The test is set out in the Competition Act

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<sup>147</sup> Law 15/2007 of 3 July

together with additional criteria that the CNC may take into consideration when adopting its decision on a proposed transaction; structure of the relevant markets, competitive position and economic strength of the parties involved in the transaction; actual and potential level of competition; suppliers and consumers' available choices; existence of barriers to entry; evolution of supply; countervailing power of the demand; and efficiencies.

### **Media Ownership Regulation**

Article 19 of the Spanish Television Act 10/1988 established that no legal or physical person could hold directly or indirectly stocks in more than one company; neither could have more than 25% of the capital of the company. However, in 1997, the Act 66/1997, 30 December 1997, on tax, administrative and social measures,<sup>148</sup> increased the percentage from 25% up to 49%. In 2002, a similar provision modified Article 19 of the Act 10/1988, establishing the possibility of stock participation in more than one television company whenever its geographical scope is regional or local and never coincidental in the same scope, and within future legal limits. Finally, in 2003, the percentage was raised again up to 100%.

### **Cross-Media Ownership**

The Spanish Television Act 10/1988 establishes that an entity holding more than 5 % of the shares of a television broadcaster with national coverage (except satellite broadcasters) may not generally hold more than 5 % of the shares of any other television broadcaster in Spain regardless of whether the coverage of the latter is national, regional or local. Furthermore, an entity holding more than 5 % in a regional or local television broadcaster may not hold shares in excess of 5 % of another regional or local broadcaster within the same area.

With regard to radio broadcasters, Law 31/1987<sup>149</sup> establishes certain cross-ownership restrictions which aim to protect pluralism in radio broadcasting. By way of example, the same entity may not control, directly or indirectly, more than 50 % of the authorisations for broadcasting within the same coverage area or hold more than five authorisations for broadcasting within the same coverage area. There are no other cross-media ownership restrictions in Spain. In particular, there are no cross-media ownership restrictions between radio, television and newspapers.

### **Transparency Obligations**

There are rules requiring television companies to register the membership of their management boards with the Ministry of Transport and Communications. All shares in broadcasting must be nominative. Any changes in capital need to be reported to the register. Private broadcasting companies 314 are subjected annually to an external audit, the results of which are registered with the Ministry of Transport and Communications.

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<sup>148</sup> Ley 66/1997, de 30 de diciembre, de medidas fiscales, administrativas y de orden social.

<sup>149</sup> As amended by Law 10/2005 of 14 June 2005

## SWEDEN

### Sweden

#### General Competition law together with sector specific regulation

##### Media Ownership Regulation

Pursuant to Chapter 2, Section 2 of the Swedish Radio and Television Act of 1996<sup>150</sup>, the Radio and Television Authority (RTA) is responsible for the granting of licences to community and local radio, whereas broadcasting activities at the national level for both television and sound radio broadcasting have to be licensed by the government. The RTA also monitors developments in the media field.

In taking decisions on the granting of local and community broadcasting licences, the RTA has to observe a number of factors relating to the issue of ownership as well: no licences for community radio must be accorded to persons who already hold a local or digital sound broadcasting licence, and no person may hold more than one local radio broadcasting licence in any given transmission area. In this way, the legislator has tried to establish a clear division between commercially motivated operators of local radio stations and the functioning of community radios as the voices of local civic society.

The RTA also takes into account additional criteria when deciding applications for local radio broadcasting licences, including, *inter alia*, issues of cross-media ownership and decisive influence deriving from ownership shares. In order to preserve an environment conducive to diversity of opinion, the Authority has the possibility of granting a licence subject to conditions that impose on the licensee a certain ownership structure with the goal of preventing sudden changes in the control structure of the operator. Additionally, narrow restrictions on the transferral of local radio broadcasting licences, prohibits exchange of licences between companies, which raises concern regarding media pluralism in a given transmission area.

##### Merger Control

Swedish merger control is regulated by the Swedish Competition Act (the Act), enacted in July 1993<sup>151</sup>. There are no specific rules for the media sector. The Competition Authority has jurisdiction over the Competition Act.

The thresholds that trigger a requirement to file with the Competition Authority are that the acquirer (including group companies) and the target company have a total annual worldwide turnover of 4 billion kronor and that the acquiring entity and the target company have a total turnover in Sweden of 100 million kronor. Transactions leading to the creation or strengthening of a dominant position are not permitted.

The Competition Authority normally has 25 working days to review the proposed transaction, but should the transaction be complicated, the review may be extended by

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<sup>150</sup> Radio and Television Act of 19 July 1996 (SFS 1996:844), as last amended by Amending Act of 25 July 2003

<sup>151</sup> [http://www.konkurrensverket.se/t/Page\\_905.aspx](http://www.konkurrensverket.se/t/Page_905.aspx)

three months. Should a proposed transaction require the transfer of a licence from one holder to another, this would require the approval of the RTA.



## ANNEX A

### UK - PUBLIC INTEREST INTERVENTION

#### CASE NOTE: BskyB/ITV

On 26 February 2007, the Secretary of State issued the first media public interest intervention notice under the new regime, in relation to the OFT's investigation of BSkyB's purchase of a 17.9 % stake in ITV, the Channel 3 broadcaster. As a result, Ofcom commenced an investigation into whether BSkyB's acquisition of the shareholding had damaged the public interest, taking into account the broadcasting public interest considerations. Both Ofcom and the OFT reported back to the Secretary of State. On 24 May 2007, the Secretary of State decided to refer the case to the Competition Commission (under S. 45 (2) Enterprise Act 2002).

Following publication of its provisional findings for consultation on 2 October 2007, the Competition Commission submitted its final report to the Secretary of State on 14 December 2007. In its final report, published by the Secretary of State on 20 December 2007, the Competition Commission essentially confirmed its provisional findings.

It concluded that the transaction gave rise to a relevant merger situation under the Enterprise Act and that it would be likely to lead to a substantial lessening of competition in the market for all television arising from a loss of rivalry between ITV and BSkyB in this market. As a result of its assessment of the competitive effects of the merger, the Competition Commission concluded that overall, the acquisition may be expected to operate against the public interest.

On remedies, the Competition Commission recommended that a partial divestment by BSkyB of its shareholding to a level below 7.5% would be effective in remedying the substantial lessening of competition and the adverse effects resulting from the acquisition. Further, it considered that a partial divestiture would be less intrusive and more proportionate than a full divestiture, yet still equally effective.

On 29 January 2008, having considered the Competition Commission report and representations from BSkyB and other third parties (including Virgin Media) the Secretary of State decided that:

- having regard only to the relevant media public interest consideration (media plurality), the merger may not be expected to operate against the public interest;
- taking account of the Competition Commission's decision that the transaction is likely to result in a substantial lessening of competition within the UK market for all TV, he decided to make an adverse public interest finding;
- there was no sufficient reason to depart from the Competition Commission's conclusions that there is insufficient evidence that BSkyB's shareholding in

ITV would give it the ability or incentive to exert editorial influence over ITV's news output, and therefore, that there is no adverse effect on the range of information and views available to the relevant audiences;

- it was reasonable for him to place significant weight on the Competition Commission's recommendation that BSkyB should partially divest its shares to a level below 7.5%, combined with behavioural undertakings not to seek representation on the ITV Board; not to dispose of the shares to an associated person; and not to reacquire shares in ITV.

The Secretary of State also noted that the partial divestment remedy would also be appropriate to address any adverse effect on media plurality that might be identified; and he should accept the Competition Commission's views that alternative remedies would not be as effective in addressing the substantial lessening of competition.

On 21 February 2008, BSkyB announced that it intended to lodge an appeal with the Competition Appeal Tribunal ('CAT') for a review of the key findings of the Competition Commission's report and the Secretary of State's consequent decision. On 27 February 2008, the CAT published summaries of applications made by BSkyB and Virgin Media, Inc under section 102 of the Enterprise Act 2002.

BSkyB is challenging the Competition Commission's findings that there was a relevant merger situation and that BSkyB's investment can affect critical business decisions and prevents ITV from pursuing an independent competitive strategy. Further, it is challenging the finding that the merger would result in a substantial lessening of competition and the decision that it should divest part of its stake in ITV, which it believes is an unreasonable and disproportionate remedy. Virgin Media, however, is challenging the finding that the merger would not be expected to operate against the specified public interest consideration and the decision that only a partial divestment by BSkyB is appropriate.

BSkyB claims that:

- the Competition Commission committed errors of law and material errors of fact, failed to take relevant evidence and considerations into account, took account of irrelevant considerations and acted unfairly and irrationally in reaching its conclusions;
- both the Secretary of State and the Competition Commission had misdirected themselves as to the scope and exercise of their respective discretion to recommend and impose remedial action; and
- both the Secretary of State and the Competition Commission erred in rejecting BSkyB's alternative remedies, in particular that it give up its voting rights.

BSkyB requests that the CAT quash, in whole or in part, the report and the decision and refer the matter back to the Competition Commission with a direction to reconsider and make a new report to the Secretary of State.

Virgin Media claims that the Report and the Secretary of State's decision do not require a big enough divestment by BSkyB. Virgin had said that it would tell the CAT

that BSkyB should be forced to sell the entire holding. It claims that both the Competition Commission and Secretary of State:

- failed correctly to assess the relevant public interest consideration by taking into account irrelevant considerations;
- made manifest errors of appreciation, applied inconsistent reasoning and reached an irrational conclusion;
- made errors of law and misdirected themselves as to the relevant legal questions in interpreting and applying the public interest provisions in the Enterprise Act; and
- acted unreasonably and made manifest errors in determining the appropriate remedy to address the identified adverse effects, and failed to have regard to relevant considerations.

Virgin Media also claims that both the Competition Commission and the Secretary of State erred in concluding that BSkyB's stake purchase in ITV had not adversely affected the 'sufficiency of plurality' in the UK media market. Further, they also erred in not imposing remedies for public interest concerns. Virgin Media requests that the CAT sets aside the report and the decision in so far as they relate to the public interest test, determine the correct interpretation of the public interest test and refer the matter back to the Competition Commission and/or the Secretary of State for proper consideration.

This is the first time that a merger decision has been challenged under the Enterprise Act by both a directly affected party and by a third party. In addition, the CAT has not previously been asked to consider issues relating to jurisdiction under the Enterprise Act and the acquisition of material influence.

## **Appendix E:**

# **Media Mergers Notified to Minister by the Competition Authority 2003-2007**

**Mergers notified to the Minister by the Competition Authority  
pursuant to Section 23 of the Competition Act 2002  
2003 – 2007**

	2003	2004	2005	2006	2007	Total
<b>Media Mergers</b>	<b>11</b>	<b>13</b>	<b>24</b>	<b>22</b>	<b>17</b>	<b>87</b>
<b>Cleared at Phase 1 (P1)</b>	<b>10</b>	<b>13</b>	<b>23</b>	<b>22</b>	<b>16</b>	<b>84</b>
<b>Cleared at Phase 2 (P2)</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>3</b>

The Competition Authority submitted 87 notifications to the Minister for consideration in relation to proposed media mergers in accordance with section 23(1) of the Competition Act 2002 ('the Act'). The Authority carried out investigations under Section 21 of the Act in relation to 84 proposed media mergers (Phase 1) and the Minister did not propose to make a direction to the Authority to carry out an investigation under Section 22 (Phase 2 Investigations) of the Act. In the case of 3 proposed media mergers, having considered the notification received, the Authority decided to carry out Phase 2 investigations. The Minister having considered the proposals in the context of the relevant criteria in the Act decided not to make an order under section 23(4) of the Act in relation to those mergers.

**2003**

Notification No. – Parties	Economic Sector	Date Notified	Status	Business Activities
M/03/010 - Thomas Crosbie Holdings Ltd / Smurfit Communications	Media	30/04/03	Cleared (P1) 26/05/03	Thomas Crosbie Holdings Ltd's business includes publication of national and regional newspapers. Smurfit Communications (GB) Ltd's business includes publication of newspaper & periodicals.
M/03/016 - GUS Ireland / March UK	Publishing	16/06/03	Cleared (P1) 15/07/03	March UK Ltd's business includes mail order catalogues, high street stores and ultimately control of the Scotsman Publications Ltd and Business Publication Ltd. GUS Ireland's business includes mail order catalogues.
M/03/019 - Haléns Holdings AB / March U.K. Limited	Home shopping catalogue	18/06/03	Cleared (P1) 15/07/03	March UK Ltd. - see above. Haléns Holding AB's business includes mail order catalogues.
M/03/020 - ARG Equation Limited / March U.K. Limited	Home shopping catalogue and retailing	18/06/03	Cleared (P1) 15/07/03	March UK Ltd., as above. ARG Equation Ltd's business includes retail, mail order catalogues and financial services.
M/03/022 - The Agricultural Trust / The Irish Field	Publishing	11/07/03	Cleared (P1) 06/08/03	The Agricultural Trust is a Charitable trust which publishes The Irish Farmers Journal. The Irish Field, a weekly horse newspaper, is owned by Irish Times Ltd.

## 2003 continued

Notification No. – Parties	Economic Sector	Date Notified	Status	Business Activities
M/03/027 - Guardian Media / Trader Media	Publishing	08/08/03	Cleared (P1) 26/08/03	The Guardian Media Group PLC has media interests in national, regional and local newspapers, magazines, the Internet and Radio. Trader Media Group Ltd's interests include publication of specialist advertising-only publications.
M/03/030 - News Corporation / Hughes Electronic Corp	Media	10/09/03	Cleared (P1) 09/10/03	News Corp. Ltd is a diversified international media and entertainment company, in Ireland its principle business interests are newspaper printing and sales. It also owns approx 35% of the issued share of BskyB. Hughes is a provider of digital television entertainment in the Americas & Caribbean and broadband services
M/03/033 - Scottish Radio Holdings / Capital Radio Productions Ltd T/A FM104	Media	23/10/03	Cleared with conditions (P2) 23/02/04	SRH is a Media group whose activities, through its subsidiaries, are radio and publishing in the United Kingdom and the Republic of Ireland. FM104 is a Regional radio station which broadcasts in the Dublin region.
M/03/036 - 3i Group/Trinity Mirror	Publishing	01/12/03	Cleared (P1) 31/12/03	3i Group is a venture capital and private equity company with investments in software and IT services, healthcare and childcare, real estate, textiles, frozen foods, general retail, security, building materials, engineering and machinery and Local Press Ltd. Trinity Mirror publishes a number of regional newspapers, including the Derry Journal, the Donegal Democrat and the Letterkenny Listener.
M/03/040 - Alpha Newspaper Group / Veldstar Ltd	Publishing	17/12/03	Cleared (P1) 16/01/04	Alpha Newspaper Group is involved in newspaper publishing primarily in Northern Ireland. Veldstar publishes the Roscommon Champion and the Longford News.
M/03/041 - Alpha Newspaper Group / Midland Tribune	Publishing	17/12/03	Cleared (P1) 16/01/04	Alpha Newspaper Group as above. Midland Tribune publishes the Midland Tribune and the Tullamore Tribune.

## 2004

Notification No. _ Parties	Economic Sector	Date Notified	Status	Business Activities
M/04/001 - Celtic Media Group/ Anglo-Celt	Publishing	02/01/04	Cleared (P1) 29/01/04	Celtic Media Group's two main business activities are (a) printing, publishing and distributing the Meath Chronicle newspaper and (b) contract printing for other newspapers. Anglo-Celt is the printer, publisher and distributor of the Anglo-Celt newspaper.

**2004 continued**

<b>Notification No. – Parties</b>	<b>Economic Sector</b>	<b>Date Notified</b>	<b>Status</b>	<b>Business Activities</b>
M/04/002 - Independent Newspapers / Internet Interaction	Publishing / Internet	09/01/04	Cleared (P1) 19/02/04	Independent Newspapers publishes a number of newspapers in Ireland, including both national and regional titles. Internet Interaction is an internet service provider. It also hosts and manages the <a href="http://unison.ie">unison.ie</a> website which provides access to content from a variety of Irish newspaper titles.
M/04/003 – Radio 2000 T/A 98FM/Newstalk 106	Radio Broadcasting	13/01/04	Cleared (P1) 05/03/04	Both Radio 2000 and Newstalk 106 operate a radio broadcasting service
M/04/005 - Press Holdings International/ Hollinger	Publishing	23/01/04	Cleared (P1) 20/02/04	Press Holdings International is a newspaper publisher. Hollinger is a publisher, printer and distributor of newspapers and magazines
M/04/011- Liberty Media / Princes Holdings	Media/ Television	18/02/04	Cleared (P1) 16/03/04	Liberty Media is involved in television programming and broadcasting. Princes Holdings owns 100% of Chorus Communication Limited. Chorus is principally active in the provision of digital and analogue television retransmission services, and telecommunications services.
M/04/025 - Thomas Crosbie Holdings / Roscommon Herald	Newspaper	23/04/04	Cleared (P1) 28/05/04	Thomas Crosbie Holdings publishes daily and weekly national and regional newspaper titles. Roscommon Herald is a weekly newspaper publication.
M/04/030 - Celtic News Group / Westmeath Offaly Print Company, Westmeath Offaly Independent Holdings and	Newspaper	06/05/04	Cleared (P1) 02/06/04	Celtic News Group Celtic publishes weekly regional newspapers. Westmeath Offaly Print Company, Westmeath Offaly Independent Holdings and Westmeath Examiner publish newspapers
M/04/037 - Setanta Sport / Celtic F.C. (A joint venture to establish and develop a T.V. channel)	Broad-casting	17/06/04	Cleared (P1) 14/07/04	Setanta Sport's core business is televised broadcasting of sports events. Celtic manages the business of Celtic Football Club, a professional soccer club based in Glasgow, Scotland. Celtic's principal business in the State relates to retail activities.
M/04/038 - Press Acquisitions / Telegraph Group	Newspaper	29/06/04	Cleared (P1) 19/07/04	Press Acquisitions Press, a newly incorporated company established for the purpose of this acquisition, is ultimately controlled the owners of Scotsman Publication Ltd and Business Publishing Ltd. Telegraph Group publishes a number of UK titles including newspapers and magazines.

## 2004 continued

Notification No. – Parties	Economic Sector	Date Notified	Status	Business Activities
M/04/056 - NTL / Virgin Net	Internet broadband access and communications	28/09/04	Cleared (P1) 28/10/04	NTL supplies residential telephony, cable television, Internet access and interactive services and wholesale Internet access solutions for UK Internet service providers. Virgin Net offers three main services: “pay-as-you-go” Internet access; pre-paid unlimited monthly Internet access; and broadband access through a digital subscriber line.
M/04/077 - Independent Newspapers/ Gabani	Internet	20/12/04	Cleared (P1) 20/01/05	Independent Newspapers publishes a number of newspapers. Gabani is the holding company for Internet Interaction Limited (see M/04/002).
M/04/078 - Ulster Television plc / Coderidge Limited	Radio Broadcasting	23/12/04	Cleared (P1) 21/01/05	Ulster Television plc is a media group that operates in three principal areas: commercial television, radio and new media. Coderidge Limited provides a local radio broadcasting service.
M/04/079 - AIG Global Sports and Entertainment Fund, L.P / Setanta Sport Holdings Limited	Television broadcasting of sporting events	23/12/04	Cleared (P1) 14/01/05	AIG is part of the AIG Group, an insurance and financial services organisation. Setanta Sport Holdings Ltd broadcasts televised sporting events to business and residential customers.

## 2005

Notification No.– Parties	Economic Sector	Date Notified	Status	Business Activities
M/05/005 - Radio Two Thousand (T/A 98FM) / Maypril (T/A Spin 103.8)	Radio Broadcasting	09/02/05	Cleared (P1) 09/03/05	Radio Two Thousand operates a radio broadcasting service. Maypril is licensed to provide “hot urban contemporary” music services
M/05/020 - UTV / Wireless	Radio Broadcasting	13/05/05	Cleared (P1) 01/06/05	UTV is active in the media sector in Ireland. It operates in three principal areas: commercial television; radio; and new media. Wireless is a radio group and is active in the media sector in the UK.
M/05/022 - Alpha Publications / Midmedia	Publishing	17/05/05	Cleared (P1) 30/05/05	Both Alpha Publications and Midmedia are involved in newspaper publishing.
M/05/024 - UGC(Chorus) / NTL	Electronic communications and broadcasting	24/05/05	Cleared with conditions (P2) 04/11/05	UGC(Chorus) is a broadband communications provider of video, voice and Internet services. NTL provides cable and MMDS pay-TV services, along with electronic communications services.
M/05/025 - SRH / Highland Radio	Radio Broadcasting	01/06/05	Cleared with conditions (P1) 12/08/05	SRH is a media group whose activities, through its subsidiaries, are radio broadcasting and newspaper publishing. Highland Radio is a local radio station



**2005 continued**

<b>Notification No. – Parties</b>	<b>Economic Sector</b>	<b>Date Notified</b>	<b>Status</b>	<b>Business Activities</b>
M/05/026 - Radio Kerry / Midland Radio	Radio Broadcasting	02/06/05	Cleared (P1) 01/07/05	Radio Kerry is a Local commercial radio station. Midland Radio operates two local commercial radio stations
M/05/029 – Setanta / NASN	Media	09/06/05	Cleared (P1) 08/07/05	Setanta, a company registered in Ireland which has a number of media interests, and broadcasts televised sporting events. NASN produces and operates a specialist television channel dedicated to N.American sports.
M/05/030 - Benchmark Europe / Setanta	Media	09/06/05	Cleared (P1) 08/07/05	Benchmark Europe is a Delaware limited partnership and a venture capital fund. The main business of the Setanta group companies is the broadcasting of televised sporting events.
M/05/036 - Emap / SRH	Media	28/06/05	Cleared (P1) 28/07/05	Emap is a FTSE 100 media company. SRH is a media group whose activities, through its subsidiaries, are radio broadcasting and newspaper publishing
M/05/037 - Johnston Press / Score Press	Media	29/06/05	Cleared (P1) 28/07/05	Johnston Press is a newspaper publisher. Score Press is a newspaper publisher and printer.
M/05/038 - Leinster Leader / Tallaght Publishing	Newspaper	29/06/05	Cleared (P1) 22/07/05	Leinster Leader is a regional weekly newspaper publisher. Tallaght Publishing is a local newspaper publisher
M/05/051 - Trinity Mirror / Smart Media	Media	17/08/05	Cleared (P1) 15/09/05	Trinity Mirror is a newspaper publisher. Smart Media operates a website advertising new homes
M/05/052 - Trinity Mirror / Financial Jobs Online	Media	17/08/05	Cleared (P1) 16/09/05	Trinity Mirror is a newspaper publisher. Financial Jobs Online operates a website advertising jobs in finance
M/05/053 - General Electric (NBC) / Business News (CNBC)	Media / TV	19/08/05	Cleared (P1) 19/09/05	General Electric is a global diversified technology and services involved in many fields including aircraft engines, lighting, financial services, healthcare, medial systems and consumer finance. It owns 80% of NBC Universal Ltd. Business News (CNBC) is a company engaged in the production of business and financial news and television programming in Europe
M/05/058 - Trinity Mirror / Hotgroup	Media	12/09/05	Cleared (P1) 06/10/05	Trinity Mirror is a newspaper publisher. Hotgroup is a technology-driven recruitment company
M/05/061 - Trader Publishing / Webzone	Publishing	19/09/05	Cleared (P1) 03/11/05	Trader Publishing publishes a motoring-related classified advertising publication, Irish Auto Trader and operates an online classified motor vehicle advertising site. Webzone is active in the provision of several information technology services such as website design, development, hosting, domain and e-mail services.

**2005 continued**

<b>Notification No. – Parties</b>	<b>Economic Sector</b>	<b>Date Notified</b>	<b>Status</b>	<b>Business Activities</b>
M/05/062 - Johnston Press / Local Press	Publishing	21/09/05	Cleared (P1) 21/10/05	Johnston Press is a newspaper publisher. Local Press is involved in newspaper publisher.
M/05/065 - Johnston Press / The Leinster Leader	Media	30/09/05	Cleared (P1) 02/12/05	Johnston Press is a newspaper publisher. Leinster Leader is a regional weekly newspaper publisher.
M/05/069 - Sky Broadband / Easynet	Broad-casting / Broadband	28/10/05	Cleared (P1) 24/11/05	Sky Broadband, a wholly owned subsidiary of BskyB, is a broadcaster and retailer of television channels. Easynet provides business data communications services and a range of retail broadband & narrowband internet services. In the State Easynet provides only very limited business data communication services, specifically IP Virtual Private Networks.
M/05/070 - NTL UK / Telewest	Media	02/11/05	Cleared (P1) 02/12/05	NTL UK provides multi-channel TV, telecommunications and internet services to residential and business customers. Telewest supplies non-premium thematic channels to TV service providers in the UK.
M/05/071 - Associated Newspapers & Irish Times & Metro / Fortunegreen	Publishing	04/11/05	Cleared (P1) 01/12/05	Associated Newspapers & Irish Times & Metro are newspaper publishers and advertisers. Fortunegreen is a newspaper publisher and printer.
M/05/072 - Benchmark Europe II / Setanta Sport	TV Broad-casting	18/11/05	Cleared (P1) 12/12/05	Benchmark Europe II produces and operates a niche television channel dedicated to N.American sports. Setanta Sport's core business is televised broadcasting of sports events.
M/05/079 - Radio County Sound / Dooley and Feeney	Media	07/12/05	Cleared (P1) 01/03/06	Radio County Sound, a local commercial sound broadcaster, owns the target company which publishes a free newsheet. Messrs Dooley and Feeney are active in several media and non-media businesses
M/05/083 - Trinity Mirror Digital / Paldonsay	Media – News-paper Publishing and Electronic and online media	23/12/05	Cleared (P1) 11/01/06	Trinity Mirror Digital is a newspaper publishing group. Paldonsay operates a website advertising online recruitment services.

**2006**

<b>Notification No. – Parties</b>	<b>Economic Sector</b>	<b>Date Notified</b>	<b>Status</b>	<b>Business Activities</b>
M/06/005 - Emap / Cafeslim	Media and online weight management solutions	23/01/06	Cleared (P1) 23/02/06	Emap, a broad based media group, is active in radio & tv broadcasting, print media such as consumer magazines and advertising. Cafeslim, the target, provides online weight management solutions.
M/06/007 - Disney / Pixar	Motion Picture	20/02/06	Cleared (P1) 16/03/06	Disney, a diversified worldwide entertainment group, broadcasts the Disney channel in the State. It also has a subsidiary in Ireland which is active in the sale of Disney's consumer products. Pixar is a digital animation studio.
M/06/008 - Thomas Crosbie Holdings Ltd / Wexford Echo	Media / Newspaper Publishing	24/02/06	Cleared (P1) 21/03/06	Thomas Crosbie's business includes publication of national and regional newspapers and minority shares in some regional radio stations. Wexford Echo Newspaper Limited publishes a number of weekly regional newspapers
M/06/014 - Magnet / Netsource	Media - Broadband connection	08/03/06	Cleared (P1) 05/04/06	Magnet, the acquirer, is active in the provision of multi-play digital telephony, multi-channel digital television and high-speed broadband with ancillary services in Ireland. Netsource, the target, is a limited liability company incorporated in Ireland and is active in the provision of broadband connection and ancillary services.
M/06/021 - Independent / PropertyNews	Media Publishing	06/04/06	Cleared (P1) 05/05/06	Independent Newspapers publishes a number of newspapers in Ireland, including both national and regional titles and is involved in the electronic media sector. PropertyNews Magazine is free monthly magazine, distributed to over 200 estate agents in Northern Ireland and operates as an advertising medium for estate agents in Northern Ireland. It also owns <a href="http://propertynews.com">propertynews.com</a> which lists property for sale, of which 20% are located in the State.
M/06/023 - GE / Zenon	Water and Wastewater Treatment	12/04/06	Cleared (P1) 08/05/06	GE, the acquirer, is a global diversified technology and services company. Zenon, the target, designs and provides advanced membrane filtration products and services for water purification, wastewater treatment and water re-use to municipalities and industries, worldwide.

**2006 continued**

<b>Notification No. – Parties</b>	<b>Economic Sector</b>	<b>Date Notified</b>	<b>Status</b>	<b>Business Activities</b>
M/06/028 - Doughty Hanson / TV3	Broadcasting	23/05/06	Cleared (P1) 14/06/06	Doughty Hanson is a private equity fund manager that directly or through its subsidiaries organises and administers a number of private equity investment funds on behalf of institutional and private investors. TV3 is licensed by the Broadcasting Commission of Ireland to provide a free-to-air national commercial television network in Ireland.
M/06/032 - Trinity Mirror / Email 4 Property	Internet	08/06/06	Cleared (P1) 26/06/06	Trinity Mirror is a UK based newspaper publisher which publishes a number of titles in the State and is also involved in the provision of electronic and online media services. Email 4 Property, the target, is a UK-based company operating an internet directory service which acts as a marketing tool for estate agents in the UK.
M/06/040 - Ken Peterson / Leap	Broadband	30/06/06	Cleared (P1) 25/07/06	Ken Peterson, the acquirer, has a 100% shareholding in Columbia Ventures Corporation (“CVC”), a US based international entrepreneurial investment company that owns and operates a portfolio of telecommunication and manufacturing businesses world-wide, and through Magnet is active in the provision of multi-play digital telephony, multichannel digital television and high-speed broadband with ancillary services in the State. Leap, the target, was Ireland’s first broadband wireless specialist service provider to the business market serving customers and businesses.
M/06/043 - General Electric / Biacore	Vehicle Management	06/07/06	Cleared (P1) 25/07/06	GE, the acquirer, is a global diversified technology and services Company. Biacore, the target, is a global supplier of systems for protein interaction analysis in the academic, pharmaceutical, biotechnology and diagnostic sectors.
M/06/049 - Newsread / Wholesale Newspapers	Media: newspaper publication and distribution	24/07/06	Cleared (P1) 04/10/06	Newsread UK, which does not operated in the State, is a wholly owned subsidiary of Independent Newspapers and Media Plc. which publishes a number of newspapers in Ireland, including both national and regional titles and is involved in the electronic media sector. WNS is active in the wholesale distribution of national, regional and international newspapers in NI and in Donegal , which include INM products.
M/06/053 - GE / Memphis	Aviation components	14/08/06	Cleared (P1) 04/09/06	GE is a global diversified technology and services company. Memphis’, main activity is the sale of used aircraft parts and components for aircraft.

**2006 continued**

<b>Notification No. – Parties</b>	<b>Economic Sector</b>	<b>Date Notified</b>	<b>Status</b>	<b>Business Activities</b>
M/06/054 - Pearson (FT) / Mergermarket	Electronic business news and intelligence products	15/08/06	Cleared (P1) 14/09/06	Financial Times Group Limited, a wholly-owned subsidiary of Pearson plc, publishes the Financial Times newspaper and operates <a href="http://FT.com">FT.com</a> , an online version of the Financial Times with archive articles and updates and breaking news stories. Mergermarket is active in the provision of electronic real-time subscription-based financial information services.
M/06/059 - The Irish Times / MyHome	Property advertising	25/08/06	Cleared (P1) 25/09/06	The Irish Times Limited publishes The Irish Times newspaper. In this context, it provides newspaper advertising for properties. It also provides a web-based listing service for advertising properties. MyHome trades as <a href="http://MyHome.ie">MyHome.ie</a> and provides a web-based listing service for advertising properties
M/06/061 - D'Olier / Gloss ( A joint venture)	Media and Publishing	01/09/06	Cleared (P1) 22/09/06	D'Olier Investments Limited is an incorporated company of the Irish Times Limited which is involved in the publication of newspapers and other media activities. Gloss Publications Limited is involved in the brochure publishing and consultancy activities.
M/06/062 - Euromoney / Metal Bulletin	Financial and Business Information Services	01/09/06	Cleared (P1) 21/09/06	Euromoney is involved in financial services media and publishing and in the State is involved in the sale of publications in niche areas and advertisements in those publications. Metal Bulletin provides market sensitive information about financial, metals, minerals and mining sectors.
M/06/067 - Connaught Tribune/Galway Bay FM	Newspaper and Radio	25/09/06	Cleared (P1) 24/10/06	CT, the acquirer, is active in newspaper publishing, advertising in newspapers, and printing of newspapers. Galway Bay FM, the target, is a local commercial radio station licensed by the BCI to provide sound broadcasting services in the Galway City and County franchise area.
M/06/071 - JA Trading/ River Newspapers	Media	27/10/06	Cleared (P1) 23/11/06	JA is active in the publication and operation of local newspapers and is also active in printing. RN is active in the operation of local newspapers.
M/06/079 - Guardian Media Group plc/ Century Radio Limited/ Century Radio 105 Limited	Radio Broadcasting in the United Kingdom	17/11/06	Cleared (P1) 06/12/06	Guardian Media Group is a multi-media organisation with interests in national newspapers, regional newspapers, magazines, radio and internet businesses. Century Radio Limited and Century Radio 105 Limited operate regional radio stations in the north-east and north-west of England

## 2006 continued

Notification No. – Parties	Economic Sector	Date Notified	Status	Business Activities
M/06/089 - Doughty Hanson/ Setanta Sport	Television broadcasting	08/12/06	Cleared (P1) 05/01/07	Doughty Hanson is a private equity fund manager that directly or through its subsidiaries organises and administers a number of private equity investment funds on behalf of institutional and private investors. Doughty Hanson is the indirect owner of the entire issued share capital of TV3 Television Network Limited. Setanta's main business is the broadcasting of televised sporting events.
M/06/090 - ESPN Global Limited/ NASN Limited	Television broadcasting and syndication of programme material	11/12/06	Cleared (P1) 03/01/07	ESPN Global Limited US sports is a media and entertainment company with substantial operations worldwide in cable and non-broadcast television, publishing, radio and new media. There is only one ESPN channel, "ESPN Classic", available in Ireland to subscribers to Sky. NASN which registered in Ireland and is currently jointly owned by Setanta Media Holdings and Benchmark II, LP., produces and operates a niche television channel dedicated to North American sports.
M/06/094 - BSkyB/365 Media	Gambling and media	22/12/06	Cleared (P1) 11/01/07	BskyB is primarily active in the provision of broadcasting services and products and the sale of television channels in the UK and in the State. 365 Media is active in the provision of remote gambling services and the provision of editorial services which it provides on a b2b basis.

## 2007

Notification No. – Parties	Economic Sector	Date Notified	Status	Business Activities
M/07/003 - GE/ Vetco	Onshore and offshore oil and gas production supplies	08/01/07	Cleared (P1) 25/01/07	GE is a diversified global technology and services company whose activities are made up of six primary business units: GE Infrastructure; GE Industrial; GE Commercial Finance; NBC Universal; GE Healthcare; and GE Money. Vetco is a worldwide supplier of systems, products and services for on-shore and offshore oil and gas production.
M/07/005 - River Newspapers NI/ Olok	Media sector, in particular, that of regional newspapers	12/01/07	Cleared (P1) 09/02/07	River Newspapers owns and operates The Derry News. Olok owns the title and business of The Irish Times.
M/07/006 - GMG/Saga	Media	17/01/07	Cleared (P1) 14/02/07	Multi-media organisation with interests in national newspapers, regional newspapers, magazines, radio and internet businesses. Saga operates regional radio stations in the United Kingdom

**2007 continued**

<b>Notification No. – Parties</b>	<b>Economic Sector</b>	<b>Date Notified</b>	<b>Status</b>	<b>Business Activities</b>
M/07/008 - CBS Outdoor/ Haveco	Marketing and media solutions	31/01/07	Cleared (P1) 13/02/07	In Ireland, CBS Outdoor operates an advertising estate that includes roadside billboards, retail media and transit advertising. Haveco is a marketing and media solutions company active in Ireland which specialises in sports stadium advertising and contract publishing.
M/07/010 - Irish Times/ Gazette Group	The newspaper publishing and advertising sector	27/02/07	Cleared (P1) 22/03/07	Irish Times Ltd primarily publishes the Irish Times newspaper. In this context it provides newspaper advertising. Gazette Group publishes weekly regional newspapers for the population of West Dublin
M/07/019 - Agricultural Trust/ Irish Catholic	Specialist weekly periodicals	09/05/07	Cleared (P1) 23/05/07	Agricultural Trust organises the publication and distribution and sale of a weekly agricultural newspaper known as The Irish Farmer's Journal and a weekly horse newspaper known as The Irish Field. The Irish Catholic organises the publication and distribution and sale of a weekly Catholic newspaper known as The Irish Catholic.
M/07/021 - Thomas Crosbie Holdings/ WKW FM	Media	11/05/07	Cleared (P1) 17/08/07	A holding company for the Group's media interests which include 18 newspaper titles, shareholdings in Red FM and Mid West Radio and a number of online businesses. WKW FM is a sound broadcasting contractor trading as "Beat 102-103".
M/07/022 - Thomas Crosbie Holdings/ South East Broadcasting	Media business	11/05/07	Cleared (P1) 05/09/07	Thomas Crosbie Holdings - as above. South East a sound broadcasting contractor trading as "WLR fm".
M/07/029 - NTL/ Clane	Retail pay TV	01/06/07	Cleared (P1) 27/06/07	NTL Provides telecommunications services. Clane provides retail multi-channel pay TV (analogue cable only).
M/07/040 – Communicorp/ SRH	Radio broadcasting	30/07/07	Cleared with conditions (P2) 07/12/07	Communicorp is a Media group whose Irish radio interests include control of 98FM, Spin 103.8 and Newstalk 106-108 FM and shareholdings in East Coast Radio and Spin South West Limited. The Irish radio business of SRH consists of FM104, Highland Radio & Today FM.

**2007 continued**

<b>Notification No. – Parties</b>	<b>Economic Sector</b>	<b>Date Notified</b>	<b>Status</b>	<b>Business Activities</b>
M/07/046 Smart Telecom/ E-nvi	The Irish electronic communications sector comprising the provision of multi-channel TV telephony and broadband services	20/08/07	Cleared (P1) 17/09/07	Smart Telecom provides a range of telecommunication services to residential and business customers alongside the largest independent network of payphone kiosks in the State. E-nvi is involved in the provision of electronic communications services in new residential developments
M/07/047 – LGI Ventures BV/ City Channel	Production of television programmes and television broadcastin	22/08/07	Cleared (P1) 12/09/07	LGIV is an international communications and media operator. City Channel is involved in the production and supply of television programming in the Republic of Ireland
M/07/048 - News Corporation/ Dow Jones	Newspaper publishing	27/08/07	Cleared (P1) 13/09/07	News Corporation is s global media and entertainment company active in the United States, Europe, Australia, Asia and in the Pacific Basin. Dow Jones is a US-based publisher of business and financial news and information through newspapers, newswires, magazines, the Internet, indexes, television and radio.
M/07/050 - Universal/ Sparrowhawk	Media	04/09/07	Cleared (P1) 28/09/07	Universal is a wholly-owned subsidiary of NBCU. NBCU is active in the development, production and marketing of entertainment, news and information. Sparrowhawk is active in the provision of pay-TV channels, mostly under the Hallmark brand. In addition, it derives some limited revenue from the licensing of its International Library content for broadcasting on TV channels and for home entertainment.
M/07/061 – Newscorp/ NGT/ NGC-UK	The production and supply of television	26/10/07	Cleared (P1) 22/11/07	Newscorp is an international media and entertainment company. NGT is an international media and entertainment company.
M/07/064 – Johnston Press/ Clonnad	Regional newspapers and local free-sheet/com m unity newsletters	12/12/07	Cleared (P1) 19/02/08	Johnston Press owns a local newspapers and operation of printing-press facilities. Clonnad publishes the "South Tipp Today" free-sheet.
M/07/069 – UTV Radio (ROI) Ltd/ FM104 (CRPL)	Radio	21/12/07	Cleared (P1) 17/01/08	UTV is involved in Radio broadcasting. FM104 is a Regional radio station which broadcasts in the Dublin region.



## **Appendix F:**

# **Newspaper Advertisement for Public Consultation**

## Public Consultation in relation to Media Mergers

As part of the review being undertaken on the operation and implementation of the Competition Act 2002, the Minister for Enterprise, Trade and Employment, Micheál Martin T.D., has established a Group to review the current legislative framework relating to the public interest aspects of media mergers in Ireland.

The Group has been asked to examine the provisions in the Competition Act 2002 in relation to media mergers and in particular the “relevant criteria” specified in the Act (Section 23) under which the Minister may consider media mergers. These criteria essentially relate to diversity/plurality, the strength and competitiveness of media businesses indigenous to the State and the dispersion of media ownership amongst individuals and other undertakings.

The Terms of Reference of the Group are:

- To review and consider the current levels of plurality and diversity in the media sector in Ireland
- To examine and review the “relevant criteria” as currently defined in the Act
- To examine and consider how the application of the “relevant criteria” should be given effect and by whom
- To examine the role of the Minister in assessing the “relevant criteria” from a public interest perspective and the best mechanism to do so
- To examine international best practice including the applicability of models from other countries
- To make recommendations, as appropriate, on the above

To assist the Group in carrying out its task, the views of the general public and all interested parties in relation to the issues within the Terms of Reference are being sought. The Group is particularly interested in receiving the views of the general public and all interested persons on the current levels of plurality and diversity in the media sector in Ireland. The Group is required to report to the Minister for Enterprise, Trade and Employment by the end of June 2008. Consequently, it is necessary to receive submissions by **noon on Wednesday, 7<sup>th</sup> May 2008.**

Please forward comments/submissions by e-mail to: [media@entemp.ie](mailto:media@entemp.ie)

or by post to:

Advisory Group on Media Mergers  
c/o Competition and Consumer Policy Section  
Department of Enterprise, Trade & Employment  
Earlsfort Centre  
Lower Hatch Street  
Dublin 2

Please note that all comments, observations and submissions will be subject to the Freedom of Information Acts 1997-2003. Consequently, when submitting material, parties should identify any information which they do not wish to have released together with an accompanying explanation.

For further information and assistance, you can contact the Secretary of the Advisory Group, Cathal O’Gorman, at (01) 6312608.

## **Appendix G:**

# **List of Newspapers in which the Advertisement for the Consultation was placed**

## **Newspapers in which the Advertisement for the Public Consultation was published**

### **Friday, 11th April 2008**

- Irish Examiner
- Irish Independent
- Irish Times
- The Sun
- Daily Star
- Irish Daily Mirror
- Irish Daily Mail
- Metro
- Herald AM
- Belfast Telegraph
- Irish News

### **\*Sunday, 13th April 2008**

- Sunday Independent
- Sunday Tribune
- Sunday World
- Sunday Times
- Irish Mail on Sunday
- Foinse

\*The advertisement did not appear in The Sunday Business Post due to a production difficulty.

## **Appendix H:**

### **List of Bodies invited to make a Submission**

## **List of Bodies invited to make a Submission**

The Competition Authority  
National Newspapers of Ireland  
R.N.A. I. (Regional Newspapers Association of Ireland)  
Associated Newspapers (Ireland) Ltd  
Irish Mail on Sunday  
Sunday Independent  
Irish Independent  
Evening Herald  
Irish Daily Mirror  
Irish Daily Star  
Irish Examiner  
Irish News of the World  
Irish Sunday Mirror  
The Irish Times  
The Sunday Business Post  
The Sunday Times  
Sunday Newspapers Ltd  
Sunday Tribune  
Sunday Business Post  
The Anglo Celt  
Clare Champion  
The Connacht Tribune  
The Connaught Telegraph  
The Kerryman/The Corkman  
Derry Journal  
Donegal Democrat  
Donegal News (Derry People)  
Drogheda Independent  
The Argus  
Dundalk Democrat  
Fingal Independent  
Kilkenny People  
Leinster Express/Offaly Express

Leinster Leader  
Leitrim Observer Ltd  
Limerick Chronicle  
The Longford Leader  
Mayo News  
Channel 6 Broadcasting Limited  
Chorus  
City Channel  
City Channel Waterford  
City Channel Galway  
DCTV  
NASN Television Limited  
P5 TV  
Setanta Sports Ireland NTL  
Setanta PPV 1 Sky Channel 435  
Setanta PPV 2 Sky Channel 435  
TV3  
100 - 102 Today FM  
Newstalk 106FM  
Beat 102-103 FM  
SPIN South West  
iRadio North West  
98FM  
Clare FM  
Cork's 96FM  
C103  
Dublin's Country Mix 106.8 FM  
East Coast FM  
FM104  
Galway Bay FM  
Highland Radio  
KCLR 96FM  
Kfm  
Limerick's Live 95FM  
LM FM



Midlands 103  
Mid West Radio  
Northern Sound Radio  
Ocean FM  
Phantom 105.2  
Q102  
Red FM 104-106  
Radio Kerry  
South East Radio  
Spin 1038  
Tipp FM  
WLR FM  
Dublin City FM  
Cork Campus Radio  
Flirt FM  
Raidió na Life  
Wired FM  
Claremorris Community Radio  
Community Radio Castlebar  
Connemara Community Radio  
Dublin South FM  
Dundalk FM100  
Liffey Sound FM  
Near FM  
Phoenix FM  
Radio Corca Baiscinn  
Raidió Pobal Inis Eoghain  
West Dublin Access Radio  
Tipperary Mid West Community Radio  
West Limerick 102  
CUH FM Hospital Radio  
Mater Hospital Radio  
Regional Hospital Radio 94.2fm  
South Tipperary General Hospital Radio  
St. Ita's Hospital Radio

Dublin City FM

National Union of Journalists (NUJ)

Irish Congress of Trade Unions (ICTU)

Irish Business and Employers Confederation (IBEC)

Irish Small and Medium Enterprises Association (ISME)

Consumers' Association of Ireland

The Bar Council

Law Society of Ireland

Institute of Advertising Practitioners in Ireland (IAPI)

Association of Advertisers in Ireland

# **Appendix I:**

## **List of Submissions received**

## **Submissions received in relation to Public Consultation on media mergers**

### **Name/Organisation**

1. Mrs. Betty Cummings
2. Captivate Media
3. Irish Executive Council of the National Union of Journalists  
(NUJ)
4. Competition Authority
5. UPC Ireland
6. National Newspapers of Ireland (NNI)
7. Matheson, Ormsby & Prentice on behalf of Independent  
Newspapers (Ireland) Limited (INI) part of Independent  
News and Media PLC (INM)
8. MediaForum
9. Dublin Community TV (DCTV)
10. Communicorp
11. Irish Congress of Trade Unions (ICTU)
12. The Community Radio Forum of Ireland
13. Channel 6 Broadcasting Limited
14. McCann Fitzgerald