

Communications Chambers on behalf of the BAI

Consultation on developments in media plurality in Ireland

6 April 2021

1. Introduction

Every three years the BAI is required to undertake a review of: ownership of media businesses in the State; how ownership and control has changed; and the implications for media plurality. The first two such reviews were conducted in 2015 and 2018.¹

The BAI has now started work on its third review, supported by consultants Communications Chambers.²

As part of this review, Communications Chambers is seeking comment from stakeholders on issues related to changes in plurality, and how it should be assessed, for the period 2018-20.

This short paper sets out the statutory context; our proposed conceptual approach; the questions on which we seek stakeholders' input; and how to respond.

¹ BAI, *Report on ownership and control of media businesses in Ireland 2012-2014*, 22 June 2016; BAI, [Report on ownership and control of media businesses in Ireland 2015-2017](#), 26 September 2018

² Further information on Communications Chambers is available at the organisation's [website](#)

2. Statutory context

The *Competition and Consumer Protection Act 2014* specifies that:

The Broadcasting Authority of Ireland shall, not later than one year from the date of the commencement of this section, and every 3 years thereafter, prepare a report which shall—

- (a) describe the ownership and control arrangements for undertakings carrying on a media business in the State,
- (b) describe the changes to the ownership and control arrangements of such undertakings over the previous 3 years, and
- (c) analyse the effects of such changes on plurality of the media in the State

Note that the Review is to address *changes* in plurality, not its absolute level or sufficiency. The Act provides the following definitions:

‘carries on a media business in the State’ means, in relation to a media business—

- (a) having a physical presence in the State, including a registered office, subsidiary, branch, representative office or agency, and making sales to customers located in the State, or
- (b) having made sales in the State of at least €2 million in the most recent financial year;

...

‘media business’ means the business (whether all or part of an undertaking’s business) of—

- (a) the publication of newspapers or periodicals consisting substantially of news and comment on current affairs, including the publication of such newspapers or periodicals on the internet,
- (b) transmitting, re-transmitting or relaying a broadcasting service,
- (c) providing any programme material consisting substantially of news and comment on current affairs to a broadcasting service, or
- (d) making available on an electronic communications network any written, audio-visual or photographic material, consisting substantially of news and comment on current affairs, that is under the editorial control of the undertaking making available such material;

The 2014 Act also establishes a regime for Media Mergers, and in particular allows the Minister to block mergers that she believes will be contrary to the public interest in plurality.³ In phase 1 of this regime, a preliminary assessment is made as to whether a proposed transaction raises concerns. If not, the Minister may approve it at this stage. Transactions which do raise potential concerns undergo a Phase 2 review (by the BAI and an Advisory Group) to support the Minister's final decision.

³ Details on the regime are available at DTCAGSM, [Media Mergers](#)

3. Conceptual framework

Part of the work of the review is to identify media businesses, describe their current ownership, and how ownership has changed. This will draw both on the database created for the previous review, and the new 'Media Ownership Ireland' database⁴ developed for the BAI by DCU. (The Act also calls for a consideration of control, which in some cases is a more subtle issue than ownership).

Further, the Act requires an assessment of how changes in ownership and control have affected plurality. As in the previous reviews, we believe it is important to supplement this assessment with a consideration of wider market changes that may also have affected plurality. For example, if a media owner grew organically to have dominant share of news consumption, this would raise plurality concerns, even though there had been no changes of control.

Such wider changes may be the result of new entrants or closures, of changes in patterns of news consumption across outlets, or changes in the way in which consumers access their news (for example, consumption via social media). Thus our questions for consultation address these wider issues as well as the specific scope of the Act.

⁴ DCU, [Media Ownership Ireland](#)

4. Questions for consultation

We set out below the questions on which we would be grateful for stakeholders' input. If there are other issues which stakeholders feel are materially relevant to an assessment of changes in plurality for 2018-2020, they are welcome to address them.

As far as practical, we ask respondents to provide supporting evidence for their submissions.

Q1: Have any media mergers completed in the period 2018-20 had a material impact on plurality?

In the period 2018-20, all proposed mergers were approved under the Media Mergers regime⁵ by the Minister, and on the basis of Phase 1 reviews. None were referred to a Phase 2 review. (For details, see section 6)

The Act requires the Minister to block transactions which will be "contrary to the public interest in protecting plurality of the media". Thus it follows that the Minister did not believe at the time that any of these mergers would be contrary to the public interest.

However, it does not necessarily follow that none of the transactions had a material impact on plurality. First, the Minister is entitled to take an array of factors into account in making his or her decision. For instance, absent a transaction might one of the outlets concerned close, meaning that some loss of plurality is inevitable?

Second, the assessment by the Minister (and by the BAI and the Advisory Group in any Phase 2 review) is necessarily forward looking, and it is at least possible that the outturn of a transaction is different from that expected at the time of approval.

Third, one or more of the transactions may have had a positive impact on plurality.

Against this background, do you believe that any of the media mergers in the period had a material impact – positive or negative - on plurality? Why?

Q2: What has been the aggregate impact of transactions in this period?

Transactions are necessarily assessed individually under the merger regime. However, it is possible that a series of small transactions that

⁵ DTCAGSM, [Media Mergers](#)

are separately approved nonetheless have a significant aggregate impact. What do you consider has been aggregate impact of transactions 2018-20 on media plurality (be that positive, negative or neutral) and why?

Q3: Are there market developments (aside from mergers) that have had material impact on plurality

As we have noted, transactions are not the only drivers of changes in plurality. Other factors may lessen or increase it, and while these are outside the statutory specification of the BAI's review, an understanding of such factors is useful context.

These factors may include:

- Changes of share for different news outlets
- Shifting patterns of news consumption via different media (for example, newspaper circulation has continued to fall sharply over the period)⁶
- Increasing relative importance of news consumption via social media (which, for example, was a source of news for 30% of people in 2019, up from 21% just two years earlier)⁷
- Direct engagement between audiences and politicians via social media
- Changes in the nature of output of outlets
- Increased homogenisation or diversity of output within outlets under common ownership (internal plurality, perhaps affected by increased or reduced editorial independence, for example)
- New outlets or closures
- Changes in news gathering capabilities and investment
- Changes in the funding of journalism, such as (for example) the rise of digital subscription models⁸

Do you feel that any of the factors above have had impact on media plurality and/or acceptable levels of plurality between 2018 and 2020, and why?

Are there other developing issues which you feel are important context for understanding media plurality in the State?

⁶ See the [Digital News Report Ireland 2020](#) for a survey of developments in Irish news consumption

⁷ EC, [Standard Eurobarometer 92 Annex](#), December 2019. EC, [Standard Eurobarometer 88 Annex](#), December 2017. EC

⁸ See, for example, Irish Examiner, [Irish Examiner launches digital subscription model](#), 23 March 2021; Independent, [INM owner Mediahuis reports 2020 profit despite impact of Covid](#), 25 February 2021; Irish Times, [Operating profit at Irish Times group up 46% to €3.82m in 2019](#), 11 September 2020

5. How to respond

This consultation is being run by Communications Chambers on a confidential basis – that is, we will not publish responses nor provide them to the BAI. Instead, they will provide anonymised input to our report to the BAI. Naturally respondents may choose to publish their own responses themselves if they wish.

If your response contains confidential information, please indicate accordingly.

The deadline for responses is **30th April 2021**. Responses should be submitted to **rob@commcham.com**, as should any questions regarding the consultation process.

6. Notified media mergers, 2018-2020

Purchaser	Purchaser's key Irish media assets	Target	Target's key Irish media assets	Notification	Determination	Review phases	Outcome
Bay Broadcasting Ltd	Classic Hits 4fm, Sunshine 106.8 & Radio Nova (via existing 38% interest in the target)	Classic Rock Broadcasting (remaining 62%)	Radio Nova	1-Feb-18	6-Mar-18	1	Approved
Toohill Telecom Holdings Ltd	None	Eircom Holdco S.A.	Eir Vision, eir Sport	8-Feb-18	8-Mar-18	1	Approved
CMNL Limited	The Anglo Celt, Meath Chronicle, Westmeath Examiner, Westmeath Independent, Connaught Telegraph, Offaly Independent	North Dublin Publications Limited (49.9%)	Northside People East, Northside People West, Southside People	20-Feb-18	30-Apr	1	Approved
Palariva (The Irish Times)	Irish Times	Sappho (Landmark Media)	Irish Examiner, Evening Echo, Waterford News and Star, Western People, Roscommon Herald, Laois Nationalist, Kildare Nationalist, Nationalist and Leinster Times, breakingnews.ie, benchwarmers.ie, Beat 102-103, WLR FM, Red FM.10	8-May-18	15-Jun-18	1	Approved
Comcast Corporation	6 TV channels incl CNBC, Euronews, Buzzfeed, Vox, Cheddar	Sky plc	Sky platform, 30 Sky channels incl Sky News	15-Jun-18	1-Aug-18	1	Approved
Virgin Media Limited	TV3 group TV channels, cable platform	Casey Cablevision Limited	Cable platform	12-Jul-18	2-Aug-18	1	Approved
Twenty First Century Fox Inc	Broadcast channels including FOX, National Geographic and YourTV. In addition the Murdoch Family Trust held a 39% stake in both 21CF and News Corp (which owns the Wireless Group, and the UK <i>Sun</i> and <i>Times</i>)	Sky plc	Range of channels including Sky News. The Sky DTH platform	31-Aug-18 (renotification)	18-Sep-18	1	Approved, but did not proceed
Reach plc	Irish Mirror, the Irish Sunday Mirror	Northern & Shell Network Ltd, International Dist'n 2018 Ltd, 50% of Independent Star Ltd	Irish Daily Star, buzz.ie	25-Sep-18	3-Dec-18	1	Approved
Formpress Publishing Ltd	14 regional newspapers (Donegal Democrat, Donegal People's Press, Dundalk Democrat, Kilkenny People, Leinster Express, Leinster Leader, Leitrim Observer, Limerick Chronicle, Limerick Leader, Longford Leader, Clonmel Nationalist, Offaly Express, South Tipp Today, Tipperary Star)	Assets & goodwill of River Media	Letterkenny Post, Finn Valley Post, Inish Times, Kildare Post, Donegal Post, Derry News, County Derry Post	14-Jan-19	1-Mar-19	1	Approved

Purchaser	Purchaser's key Irish media assets	Target	Target's key Irish media assets	Notification	Determination	Review phases	Outcome
Kerry Acquisitions Ltd	Radio Kerry, Shannonside, Northern Sound	Certain shares of Clare FM and 52% Dreamglade Limited	Clare FM, Tipp FM	19-Mar-19	10-Apr-19	1	Approved
Mediahuis N.V.	Existing stake in INM (see right)	Independent News & Media plc	Three national dailies: Irish Independent, The Herald, Irish Daily Star. Two national Sunday newspapers: Sunday Independent, Sunday World. Thirteen regional newspapers: The Argus, Bray People, The Corkman, The Drogheda Independent, Enniscorthy Guardian, Gorey Guardian, Fingal Independent, Kerryman, New Ross Standard, The Sligo Champion, Wexford People, Wexford Reporter, Wicklow People	21-Jun-19	29-Jul-19	1	Approved
Formpress Publishing Ltd	The Donegal Democrat, The Leinster Leader, The Kilkenny People, The Limerick Leader, The Longford Leader, The Tipperary Star, The Leinster Express, The Leitrim Observer, The Clonmel Nationalist, The Dundalk Democrat, The Donegal People's Press, The Letterkenny People, The South Tipp Today, The Leader, The Inish Times, The Kildare Post, The Donegal Post, Kilkenny Reporter	Assets of Midland Tribune	The Midland Tribune, The Tullamore Tribune	22-Oct-19	21-Nov-19	1	Approved
DMG Media	Irish Daily Mail & Irish Mail on Sunday	JPIMedia Publications	i newspaper	20-Mar-20	5-May-20	1	Approved
Greencastle Acquisition Limited	[None]	Maximum Media Network Limited	Jo.ie, her.ie	20-Aug-20	2-Oct-20	1	Approved
Reach Publishing Group	Irish Mirror, the Irish Sunday Mirror plus existing holding in Irish Daily Star, buzz.ie	Remaining 50% of Independent Star Limited	Irish Daily Star, buzz.ie	10-Sep-20	19-Nov-20	1	Approved
Rocket Sports Internet Limited	Various sports news websites	Benchwarmers Limited	benchwarmers.ie	5-Oct-20	20-Nov-20	1	Approved

Notes: Asset lists are not exhaustive, and are summaries of those held at the time of the notification
Online assets ancillary to those shown, or aimed at other countries, have not been listed