Media mergers under scrutiny in Ireland

In December 2014, Ireland's Department of Communications, Energy and Natural Resources published draft guidelines on media mergers and invited comments until 22 January. Stephen Dunne, journalist and PhD candidate at Dublin City University, looks at the guidelines and at the implications of this move.

Democratic governments are wary of picking a fight with wealthy media moguls and their powerful media companies at the best of times. When it comes to standing in the way of mergers or takeovers though, politicians often acquiesce with alarming ease.

In the recent past, British and Irish media markets have experienced severe corporate bloodletting with the names Murdoch and O'Brien looming large in the boardrooms in London and Dublin. The political classes, however, have raised nothing but perhaps the odd eyebrow.

The Leveson Inquiry's airing of the symbiotic relationship between the media and politicians – so memorably highlighted as it exposed the behind-the-scenes machinations of News Corp's now-stalled BSkyB takeover – may be behind a gradual shift.

While Whitehall may favour the status quo for now, here in Ireland, we are finally seeing how government intends to change the way it will assess future media mergers after Alex White, Dublin's communications minister, published draft guidelines on the subject last month."The objective of this new legislation," the guidelines state, "is the pursuit of the public interest to protect and promote a diverse media, both in terms of ownership and content."

From the outset, the proposed guidelines take aim at the main media players by arguing that media plurality suffers when "one individual, group or organisation" holds "significant interests within a sector or…across different sectors of media business". A "significant interest" may occur where a company or individual maintains a "holding or voting strength" of between 10% and 19% either directly or indirectly, while a second threshold of more than 20% "will generally" constitute a significant interest.

Structurally, the draft proposes that the Department of Communications be the first to test any deal on plurality grounds. If the Minister and his/her civil servants are unsure, they can then refer it to the Broadcasting Authority of Ireland (BAI), the statutory broadcasting regulator. The BAI will then launch a full merger assessment, returning its recommendations to the Minister, who makes the final decision.

The media merger must be examined according to the "relevant criteria" identified in the draft proposals. The first criteria are ownership and control, which "represent primary indicators of media plurality". This requires that an assessment of the corporate structures of the companies proposing to merge be undertaken, including "other relevant media assets". "This is essential," the guidelines note, "as determinations on public interest and media plurality must be made across all media sectors. Individual holdings that may not appear pertinent can have a serious impact when considered collectively".

Market share is the second criterion identified. The guidelines propose that a "complete examination" of audience demographics be conducted, and "the more sectors that an individual or entity has significant interests in the lower the threshold where it is considered to have an adverse effect on plurality."

Mergers also face examination on governance; where consolidation of management structures will be considered a negative, editorial ethos; the level of freedom from corporate control or influence, and content; diversity in content and employment practices. Other criteria are also identified, including the deal's financial structure (debt) and the scale and reach of state broadcasters RTE and TG4.

Similar, but more limited, criteria had already been in place under the Competition Act 2002, but they didn't clearly define what constituted a significant interest and didn't fully recognise cross-media ownership issues. Last year, Dublin enacted a replacement – the Competition and Consumer Protection Act 2014 – with the media merger guidelines giving clarity to the new standards.

A public consultation on the guidelines is open until January 22. The early reaction has been mixed. Seamus Dooley, the Irish secretary of the NUJ, has given a guarded welcome, highlighting the new public value test and the clarity on significant media holdings, while the The Irish Times newspaper praised the "useful and largely sensible" draft. However, both have also claimed the measures are too late and are undermined by a failure to apply retrospectively to recent mergers. "Successive governments have allowed a small group of powerful people to gain control of the media and the draft…is incapable of undoing that damage," said Dooley in a statement.

One of those powerful people is Denis O'Brien. O'Brien, whose net worth is around $5bn according to Forbes, controls, and has significant interests in, large swathes of Irish media. Through his company Communicorp, O'Brien owns national broadcasters Newstalk and Today FM, as well as some popular regional music stations in the capital. Newstalk supplies its news content to more than 20 local radio stations throughout Ireland. He is the largest shareholder in Independent News & Media (INM). The company has gone through significant restructuring in recent years but still maintains its presence through the Irish Independent and Sunday Independent, both leaders in their respective markets, three national tabloid newspapers and 13 local newspapers.

Numerous commentators have expressed concern about O'Brien's significant cross-media interests in the past. His strength in the industry here is unmatched. However, as the NUJ has pointed out, the new rules do not retrospectively apply, thus leaving the status quo untouched.

Nevertheless, the recognition given to cross media ownership concerns, the formal definition of a significant interest and the focus on individual media owners in the merger guidelines – as well as the market share, governance and editorial ethos provisions – should increase scrutiny of future mergers at the very least. It's unlikely that any further activity by O'Brien or by others with significant media interests will go unchecked in the future. Government now has the tools to halt the seemingly continuous march of media ownership concentration. But the question is, will it use them effectively?

This article gives the views of the author, and does not represent the position of the LSE Media Policy Project blog, nor of the London School of Economics and Political Science.

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