

**The Republic of Ireland's Media Space:  
Ownership, Regulation and Policy**

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## **Introduction**

Irish society has undergone profound social, political and economic change over the past two decades. The dramatic growth of the Irish economy in the past five years (the 'Celtic Tiger'), the peace process in Northern Ireland, and changing social attitudes on issues like abortion and divorce provide a backdrop to understanding the place of the media in contemporary Irish society. For many commentators the mass media have been integral to an ongoing modernisation, or liberalisation, of Irish society. The future of *Radio Telefís Éireann* (RTÉ), the Irish Republic's public service broadcaster which has dominated broadcasting in the state since its inception in the 1920s, has been a matter of continuous debate recently. A Broadcasting Bill is currently before the *Oireachtas* (the Irish Parliament) seeks to introduce digital terrestrial television to Ireland. The protracted passage of this bill into legislation is indicative of both political and economic struggles over the future of Irish broadcasting, and indeed the shape of the wider media landscape in the Irish Republic. Ireland's media space is influenced by historical and geographical relations with its nearest neighbour, the United Kingdom. The Irish media market is increasingly penetrated by UK titles and interests.

## **Regulating Media in the Irish Republic**

The regulatory framework governing the Irish media is currently in a state of considerable flux. The publication of a Green Paper (draft policy proposals) by the Minister for the Arts, Culture and the Gaeltacht on the future of Irish broadcasting in April 1995 occasioned a wide-ranging review of the role of public service broadcasting in the digital age, issues of media ownership and control, and cross-media ownership. Almost six years later these proposals have yet to be translated into legislation. The Broadcasting Bill published in 1999 is still before the Irish Parliament and is expected to become law before summer 2001. Much of the difficulty in framing this legislation can be understood with reference to the rather uneven development of media policy in the Irish state over the past 40 years and the rapid pace of change within the media sector recently. The incorporation of EU law into the Irish media's regulatory framework has been another factor shaping the media landscape in the Republic of Ireland.

The ownership and control of Ireland's mass media is principally subject to the following legislation:

### *Public Sector Broadcasting*

*Radio Telefís Éireann* (RTÉ), is currently governed by the RTÉ Authority, which is appointed by the government, under the Broadcasting Authority Acts, 1960 to 1993. Under the legislation before the Irish Parliament, RTÉ will continue to be the responsibility of the Minister for the Arts, Culture and the Gaeltacht. Ownership of some of RTÉ's assets became a contested political issue in 2000 (see below) as the Broadcasting Bill was debated by Parliament. RTÉ is funded through a combination of licence fee and advertising revenue.

### *Independent Broadcasting*

The Radio and Television Act 1988 established the Independent Radio and Television Commission (IRTC) as the regulatory authority overseeing the independent broadcasting sector in the Republic (<http://www.irtc.ie>). The competence of the IRTC in matters of media ownership resides in their arbitration of any change in the shareholding of independent broadcasting companies. One of the central components of the 1999 Broadcasting Bill before the Irish Parliament is to rename the IRTC. The new body will be known as the Broadcasting Commission of Ireland (BCI) and it will take on additional functions relating to digital terrestrial broadcasting.

At present there is only one licensed independent television channel in Ireland (TV3), so the IRTC's regulatory role in terms of ownership has been focussed on the independent radio sector. The IRTC perceive their remit in respect of ownership and control of independent broadcasting as promoting diversity. The IRTC emphasise Sections 6(2)(g) and (h) of the 1988 Act when considering the award of broadcasting contracts. These sections stipulate that the IRTC must consider *inter alia*:

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 the [1998] Act [and] The desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue amount of communications media.

In conjunction with these guiding principles the IRTC operate a series of rules, which affect media ownership. In any one sound<sup>1</sup> broadcasting service contractor, a single interest cannot exceed 46%. This ownership limit is restricted to 27% if that single interest is

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<sup>1</sup> Although the IRTC's current rules and procedures refer to 'sound' broadcasting we can assume that once the 1999 Broadcasting Bill is enacted the regulatory competences of the Broadcasting Commission of Ireland will include digital television and radio.

deemed to be a 'Relevant Person' or 'Media Operator'. These categories encompass a wide variety of media interests including: radio and television broadcasters; cable operators; broadcast production companies; advertisement production companies; newspapers and magazines; advertising agencies; communications and telecommunications enterprises; political parties and public representatives; churches; and nationals from outside the European Union. Moreover, the IRTC requires contractors to 'disclose in full the manner and degree to which Relevant Persons have an interest in the contractor and the Contractor (and any shareholder, officer or employee of the contractor) has an interest in a Media Operator' (IRTC, September 2000).

In terms of cross media ownership the IRTC reviews each application individually, on a case by case basis, with reference to the 1988 Act, sections 6(2)(g) and (h). The Commission also has a veto over the appointment of senior management personnel in regulated broadcasters, and the memoranda and articles of association of contractors. Critically, the IRTC must also approve the terms of, and amendments to, shareholders' agreements as well as the introduction of any new shareholders' agreements. Nevertheless, the IRTC recognise that their guidelines on media ownership are very much out of date. They are due to revise these guidelines in April 2001, by which time they will be the Broadcasting Commission of Ireland. The anomalies in regulating cross media ownership in the Republic of Ireland are perhaps best illustrated by a case where a broadcasting interest might purchase a stake in a newspaper. Such an acquisition is not part of the IRTC regulatory remit. The IRTC is only concerned with changes to the shareholding of independent broadcasters. Ownership of the press comes under the jurisdiction of the Minister for Enterprise, Trade and Employment.

### *Print Media*

Ownership and control over the print media in Ireland is regulated by the Competition Authority through a variety of statutory instruments such as the Competition Acts, 1991 to 1996. Oddly, there is no specific legislation dealing with press ownership in Ireland. Policy concerning the print media privileges economic issues, rather than properly recognising the press as special political and cultural institutions. However, the distinct characteristics of the press have recently been considered by the Competitions and Mergers Review Group (CMRG), who reported to the Minister for Enterprise, Trade and Employment in March 2000. The recommendations of this group suggest that ultimate jurisdiction over press ownership, and cross media ownership issues, will rest with the minister, although the minister is not obliged to accept any of these recommendations.

The chapter of the Report of the Competitions and Mergers Review Group dealing specifically with the press has its origins in a highly controversial press ownership dispute in the mid-nineties. The collapse of Irish Press Newspapers in 1995, despite Independent Newspapers (the largest newspaper group in Ireland) purchasing 24.9% of the Irish Press, raised serious questions about the levels of concentrated ownership in the print media sector. When Independent Newspapers bought into Irish Press Newspapers their combined market share of 70% caused considerable concern. Between them they accounted for almost two-thirds of all Irish daily newspapers, and 85% of both the evening and Sunday markets. The minister referred the share purchase by Independent Newspapers to the Competition Authority who ruled that the Independent had abused its dominant position and recommended that the minister act against Independent Newspapers.

Journalists working for Irish Press Newspapers sought outside investors to keep the Irish Press group in business. Their efforts came to naught and they blamed collusion between the management of both Independent and Press groups for blocking other interests gaining control of the Irish Press newspapers (Kelly and Truetzschler 1997). Independent Newspapers rejected these claims and signalled their intention to defend their interests in the courts should the minister seek to act on the Competition Authorities judgement. As the Irish Press went out of business the minister appointed a Commission on the Newspaper Industry (CNI) in to examine the issues of media ownership and dominance that the putative take-over of the Irish Press by Independent Newspapers had raised.

The CNI was an ad hoc group, and comprised 21 members, chaired by a senior Judge. There were 5 academic experts, 4 newspaper representatives, 2 trade unionists, including a representative of the National Union of Journalists (NUJ), 2 business / management consultants, a representative of the advertising industry, a representative from the Dublin Chamber of Commerce (a business representative group) who was a public relations professional, a lawyer, and representatives from the National Women's Council, the Irish speakers association (Gael Linn), a senior journalist, and a cultural administrator. The Commission on the Newspaper Industry reported back to the minister in June 1996 with a series of recommendations. Three of their recommendations, relating to changes in ownership, acquisition of control, and concentration of ownership on a media wide basis, were then referred to the Competitions and Mergers Review Group to consider in detail.

The CMRG had the following membership: Chairman: Michael M. Collins SC; Owen Killian (IBEC, a business/employers trade association); Mr. Myles O'Reilly; Dr. Robert Berney (ISME); Mr. Paul Sweeney (ICTU, a trade union); Mr. David Barniville BL (The Bar Council); Mr. Gerald FitzGerald (The Law Society); Mr. Peter Dargan (The Consumers Association of Ireland); Mr. Damien Moloney (Office of the Attorney General); Mr. Moore McDowell (academic economist) and a civil service representative from the Department of Enterprise and Employment, Mr. Barry Harte. The CMRG made an interim recommendation that any change in ownership of an Irish newspaper (merger or take-over) should be considered against a clearly defined 'common good'. The 'common good' was to be understood in terms largely identified by the CNI report in 1996. The CMRG recommended that ministerial decisions in this sector should have particular regard to:

- (a) the strength and competitiveness of the indigenous newspaper industry;
- (b) the plurality of ownership;
- (c) the plurality of titles;
- (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 (CMRG 2000: 249)

The CMRG added the final benchmark (f) to those set out by the CNI in order to take account of cross-media ownership issues. There was a recognition that the newspaper industry could not be treated in isolation from other media sectors. Although the Competition Authority lobbied the CMRG against the 'protectionist intention' of criteria (a), (d) and (e) above, the review group insisted that these were matters that the minister should properly consider: 'the nature of the media sector is such that issues such as 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' (ibid: 251). In essence the CMRG established that the issues pertinent to the analysis of mergers in the media sector are 'qualitatively different from those criteria which make up conventional micro-economic competition analysis' (ibid: 252). In so doing the CMRG are suggesting that competence in such matters will, in the final analysis, rest with the minister. Clearly, without a statutory definition of the 'common good' ministers can exercise considerable discretion in this policy field. It is also the case however, that any ministerial decision in this area will be open to judicial review.

While the recommendations of the CMRG didn't carry any official status they have informed the drafting of a new competition bill that will come before the Irish Parliament in 2001. This bill is likely to give the competition authority regulatory power over all mergers and acquisitions **except** media mergers. In line with the CMRG's recommendations the minister will retain authority over media ownership. How this fits with the regulatory powers of the IRTC / Broadcasting Commission of Ireland, remains somewhat unclear at this juncture.

The CMRG also grappled with the issue of how to regulate *de facto* mergers in instances where control of a newspaper is achieved by means other than the purchase of shares. The provision of finance (such as Independent Newspapers £2 million loan to Irish Press Newspapers, in addition to the purchase of a 24.9% shareholding), services and facilities were seen as the most obvious ways that a decisive influence over a newspaper could be established. While the CMRG considered the suitability of the Australian model (Australian Broadcasting Services Act 1992) to the Irish situation, it finally recommended the adoption in Irish mergers law of the control test set out in Article 3 of the EU Merger Regulation (Council Regulation (EEC) No. 4064/89, 21 December 1989).

The CMRG were of the view that [arguments from the EU definition of a merger ought to be mirrored into Irish law:](#)

The Group notes that Article 3 of the Merger Regulation defines concentrations (or mergers) in the light of the acquisition of "direct or indirect control". Article 3(3) then goes on to define control and provides that "control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:

(a) ownership or the right to use all or part of the assets of an undertaking;  
(b) rights or contracts which confer decisive influence on the composition, voting or decision of the organs of an undertaking". Article 3(4) then provides that:

"control is acquired by persons or undertakings which:

(a) are holders of the rights or entitled to rights under the contracts concerned; or

(b) while not being holders of such rights or entitled to rights under such contracts have the power to exercise the rights deriving therefrom".

The adoption of such a test in Irish law would, in the view of the Group, not differ greatly from the existing test. However, it would have the advantage of spelling out the concepts of direct and indirect control more clearly than is currently done in Irish law. (CMRG, 2000: p265-66).

*Telecommunications: Cable and MMDS*

The Office of the Director of Telecommunications Regulation (ODTR) was established in June 1997 under the Telecommunications Miscellaneous Provision Act 1996. The ODTR sees its remit as making the liberalised telecoms market in Ireland work in accordance with EU and Irish law. The ODTR is the licensing authority for the use of radio frequency spectrum in Ireland, and for other platforms such as cable and MMDS. For the purposes of franchise allocation Ireland was divided into 29 areas, each requiring a separate and exclusive cable operating licence. The licence for cable operators requires that the four national terrestrial channels (RTE1, Network 2 (formerly RTE2), TnaG (Irish Language station) and TV3) must be carried by all cable networks. There are no regulations controlling foreign ownership of Irish cable companies. Licenses are awarded to cable operators on the basis of their financial and technical competence and the fee paid by operators is calculated at 3.5% of turnover.

The regulation of cable and MMDS systems has not been without controversy. This is partly due to a broadcasting legacy of the 1980s, where many unlicensed operators in rural areas set up UHF retransmission, or deflector, systems to receive UK terrestrial broadcasting. In 1997 the ODTR, after vigorous lobbying by licensed cable and MMDS operators, sought to address the issue of unlicensed 'deflectors' by offering temporary licenses until the end of 2000, with the possibility of extension until the end of 2001, for those operators who would comply with tax and planning regulations. How this fudged policy equates with the ODTR's mission of liberalising the Irish market in accordance with EU and Irish law remains an open question.

**Regulating Media Content in the Irish Republic**

Media content in the Republic of Ireland is largely policed by the Irish Courts, mainly through statutes such as Contempt of Court, Copyright, Official Secrets, Public Order provisions and Censorship. The CNI, in their report to the minister for Enterprise and Employment in 1996, argued strongly in favour of a review of Ireland's restrictive libel laws. Libel awards in the Irish Courts tend to be comparatively high and such is the concern amongst newspapers that some have voluntarily appointed their own ombudsmen to self-regulate their activities and thereby avoid an immediate recourse to the Courts when faced with complaints. Ireland doesn't have a press complaints body as yet, although Irish newspapers have been keen to see such a statutory body created, in the hope it will protect them against the established trend of swingeing libel damages. There is also a Censorship

of Publications Board which polices issues like pornography, taste and decency, whose decisions are again, open to judicial review.

The regulation of broadcast content is overseen by the Broadcasting Complaints Commission, though the powers of this body are considered very limited. The Broadcasting Complaints Commission can only ensure that a 'right to reply' is granted to those judged to have been treated unfairly by broadcasters. However, under the proposals set out in the 1999 Broadcasting Bill, the Broadcasting Commission of Ireland, in consultation with RTÉ, will develop and then implement codes in relation to taste and decency, as well as rules governing advertising and commercial promotion on Irish television and radio.

### **Minority interests and Irish Media Policy**

The Broadcasting Bill before the Irish Parliament continues a tradition of fostering and promoting some minority interests in the Irish media. While the print media has no specific subventions for minority interests the Irish language lobby have been successful lately in obtaining considerable funding for *Gaelic* (Irish language) broadcasting. In October 1996 the Irish language terrestrial television station, TnaG, began broadcasting. The emphasis of its commissioning policy was to encourage original material from independent production companies. The channel is guaranteed 'must carry' status on all of Ireland cable channels. TnaG has a strong public service remit, and broadcasts the proceedings of the Irish Parliament in addition to an English-language news service. Nevertheless, TnaG managed to build its audience by securing the rights to broadcast popular sporting events rather than through its staple diet of Irish language programming, news and current affairs.

Under proposals in the 1999 Broadcasting Bill TnaG will be established as a statutory corporate body (independent of the RTÉ Authority) with members appointed by the government. The growth and institutionalisation of Irish language broadcasting can be understood in relation to the marked growth in the Irish economy (and subsequent surpluses available to the Irish exchequer) and the Northern Ireland peace process. As Doyle notes: 'Even where state intervention supports an 'artificially' high level of indigenous media supply, the level of such support will be a function of the overall wealth of the economy, and competing 'welfare' claims for public expenditure' (1998: 7). However, the peace process should not be underestimated as a factor establishing TnaG as an independent body. The cultural or equality agenda in Northern Ireland is a serious part of contemporary politics and the promotion of the Irish language is encouraged by both

nationalist and republican political parties. Thus, a combination of economic and political factors has secured the independence of Irish language programming.

Local media, particularly community radio, has been one of the notable success stories in Ireland's media scene over the last decade. The 1999 Broadcasting Bill proposes that local communities should be directly involved and consulted, on an on-going basis, regarding the programming produced by their local stations. It will be the responsibility of the Broadcasting Commission of Ireland (BCI) to ensure that local demands are satisfied by those awarded local broadcasting contracts. The BCI will be empowered to survey local community members to determine opinion on the quality of local programme material and whether this adequately addresses the interests of the community. Moreover, section 53 of the Bill proposes that the BCI establish a £500,000 fund to be granted to local and community radio stations to assist with transmission costs.

### **Media Ownership concerns in the Irish Republic: a brief sketch**

Foreign ownership of Irish media has historically been rather limited, even though there is no legislation blocking foreign ownership of Irish media. The comparatively low level of foreign interest in Irish media may change as the buoyant Irish economy attracts overseas investors. Scottish Radio Holdings have interests across radio in both the North and the Republic, alongside some regional newspaper titles. Both CanWest and Granada Media Group purchased a 45% stake in Ireland's only independent commercial television station, TV3. In 1999 NTL purchased Cablelink, the largest cable operator in the state. Relatedly, BskyB have begun to sell local 'insert' advertising on both Sky 1 and Sky News services carried by the cable company NTL in the Dublin market, prompting fears that up to £5 million may be lost to the indigenous market.

Unquestionably the greatest debate on media ownership in the Republic of Ireland has centred on the interests of the Independent Newspaper group. Independent Newspapers are the dominant force in the Irish print media sector, and have attracted the opprobrium of the Competition Authority. Tony O' Reilly, owner of 27% of Independent Newspapers is Ireland's pre-eminent 'press baron', though the Competition Authority and Minister for Enterprise, Trade and Employment seem satisfied that his interests in over 70% of the print media market (by market share) does not impede editorial diversity. Titles under Independent Newspaper control include the Irish Independent, Sunday Independent, Sunday World, Evening Herald, the Star, and several regional titles. O' Reilly's other media interests in Ireland extend to a 50% stake in Princes Holdings, which owns Ireland's

second largest cable operator, Irish Multichannel. Abroad, Independent Newspapers have interests across newspaper and magazine publishing, digital media and outdoor advertising in the UK, France, South Africa, Australia, and New Zealand.

### **Contemporary Media Policy debate in Ireland**

The 1995 Broadcasting Green Paper sparked a sustained debate on the role and response of the media, especially the public service broadcaster RTÉ, to the twin processes of technological convergence and globalisation. RTÉ has been central to the discourse on the media in Ireland and is the largest cultural agent in the state. The roots of this can be traced to the historical project on national culture building ascribed to the state broadcaster by successive governments. The particular importance of RTÉ to Irish public life is often located in the proximity of the Irish state, and its media system, to that of its nearest neighbour, the United Kingdom, and to a lesser extent, to the multiple links between Ireland and the United States. Lee locates the broader parameters of the recent media policy debate in Ireland as follows:

We [the Irish] are one of the most peculiarly situated states in the entire media cosmos. As one of the smallest English-speaking states in the world, with exceptionally close personal ties to England and America, we are uniquely open to the impact of international television, which is dominated by English, American, and, to some extent, Australian, concepts of what constitutes television culture. There is no state in quite the same situation. It has been suggested that Ireland occupies much the same position in relation to Britain as Canada occupies in relation to the United States. There are obvious similarities. But Ireland's position is nevertheless essentially different from Canada's. We are not just a small state beside a big one. We are also a formerly colonised people beside former colonial masters. Irish mindsets are influenced not only by geographical proximity, as Canadians are, but also by a historical experience that is quite different...Canada also has a highly conscious French-speaking culture, which obliges other Canadians to interrogate themselves, however reluctantly, about the nature of Canadian identity (Lee, 1997: 11).

In this formulation, which is shared by many political influentials in Ireland, public service broadcasting is the most important element in Ireland's resistance to the homogenising forces of international media corporations. In part this helps explain the extraordinary row that erupted in March 2000 over proposals in the 1999 Broadcasting Bill to divest RTÉ of its interests in broadcasting transmission systems. Under plans to introduce digital terrestrial television<sup>2</sup> to Ireland RTÉ and Telecom Eireann were pressured to sell their interests in Cablelink (then the largest cable operating company in Ireland). In addition RTÉ

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<sup>2</sup> Digital Terrestrial Transmission (DTT) was preferred above satellite digital transmission because it was felt that foreign interests would most likely control the latter.

was to sell off the majority of its interests in transmission facilities to a new public/private venture called DIGICO, which would be responsible for upgrading the current analogue infrastructure and managing the new DTT system. The plans provide for six multiplexes, each with five channels. Multiplexes are to be allocated to RTÉ, a shared multiplex between TV3 and TnaG, and the remaining multiplexes for other commercial services such as UK terrestrial channels.

The original proposals stipulated that RTÉ would retain 'up to 40%' of the transmission system. However controversy erupted when the consultants advising the minister on the sell off of RTÉ's facilities valued these assets between £30-40 million, half the valuation placed on them by their owners, RTÉ. A leaked document indicated that the government was considering selling all of RTÉ's stake in transmission to make up the funding shortfall. The public dispute that followed was led by a former minister in charge of broadcasting, who lambasted the proposals and criticised the valuation arrived at by the ministers consultants for ignoring the fact that 'not a single technology company in the known world is selling its assets in terms of current earnings' (O'Toole, 2000). The privatisation of transmission was overtly portrayed as a contempt of national identity and integrity. After some intensive lobbying by RTÉ, both in public and private, a compromise was arrived at where RTÉ would retain a 28% stake in DIGICO.

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