Ownership and control policy of broadcasting services in Ireland: reflections on recent proposals

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By

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Abstract

The Broadcasting Authority of Ireland (BAI) is proposing: in assessing changes in the ownership and control of broadcasting licenses that the viability/sustainability of broadcasting services should be ranked second out of eight policy objectives; and, facilitating greater concentration of ownership of commercial radio stations through limited relaxation of the current ownership thresholds. There is insufficient justification for either proposal. The viability/sustainability objective is already addressed on an ex ante basis when a broadcaster is licensed. The ex ante evaluation should be strengthened by retaining (rather than abolishing) the existing BAI two-year time limit on a licensee being able to transfer ownership. If the viability/sustainability objective is, however, to be retained then it should be ranked much lower than second out of eight objectives. In terms of the BAI's proposals for facilitating greater concentration of ownership of commercial radio stations, serious consideration should be given to retaining (not abolishing) the Five Additional Factors that go to the heart of plurality and diversity which are core, not peripheral, to the aims and objectives of the BAI. Furthermore the BAI should provide greater clarity how the tests to approve the transfer of a radio license are applied, through guidance and the publication of reasoned decisions.

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I Introduction

The Broadcasting Authority of Ireland (BAI) is an independent statutory body charged with certain key regulatory roles in respect of broadcasting services in Ireland, including licensing and approving changes in ownership and control.[1] In January 2019 the BAI concluded a public consultation on its proposed draft *Ownership and Control Policy* with regard, *inter alia,* to its regulation of radio and television services.[2,3]

Important changes in BAI's ownership and control policy are proposed compared to the existing 2012 ownership and control policy. These changes are designed, *inter alia*, to:

- support the viability and sustainability of broadcasting services by making this an explicit highly ranked policy objective; and,
- facilitate increased concentration in the provision of commercial radio services through limited relaxation of current State-wide ownership thresholds.

To assist the BAI in its review of the *Ownership and Control Policy* the BAI commissioned: research on the market structure, dynamics and development of the Irish media; and, a summary of the views of targeted stakeholders in response to a series of questions prepared by the BAI.[4]

This paper is divided into five sections. After setting the scene with some contextual background information in Section II, attention turns to the substantive BAI proposals. In Section III those with respect to sustainability and viability are analysed, Section IV addresses the issue of thresholds and measuring undue concentration. While the proposals considered in Section III cover broadcasting services, Section IV refers to a subset of these services, sound broadcasting services. Section V concludes.

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[1] For further information on the role and function of the BAI see www.bai.ie.
[2] Collectively referred to as broadcasting services. Sound broadcasting services and radio stations are used interchangeably.
[3] The BAI also conducted a review of its media and plurality policy (BAI, 2018b), for which it commissioned and published Kevin (2018).
[4] Mediatique (2017) and Flynn (2018), respectively.

II Background

Introduction

The BAI in the introduction to its draft proposed *Ownership and Control Policy* sets out the context within which it is conducting its review:

> *The work of the BAI is principally guided by the Broadcasting Act, 2009 … . One of the principle objectives of the BAI … is 'to provide for open and pluralistic broadcasting services'. The BAI must also 'promote diversity in control of the more influential commercial and community broadcasting services'. These objectives are also reflected in the BAI's Strategy Statement (2017-2019) under the strategic theme - '**Promoting Plurality and Diversity**'. The BAI has developed its Ownership and Control Policy so as to give practical effect to the achievement of these objectives. The Policy is intended to provide clarity and certainty in respect of the ownership and control of commercial broadcasting, community and multiplex contractors.*
>
> *In practical terms, the Policy is used by the BAI to assess applications for broadcasting, content provision and multiplex contracts. It is also used to assess requests for variations to the ownership and control structures of these contractors. More broadly, the Policy is designed to facilitate the continued development of a viable and diverse broadcasting sector that is characterised by a plurality of ownership.*[5]

In other words, the BAI's interest in regulating broadcasting services is seen through the lens of diversity and plurality.

Regulatory Regime[6]

The BAI is responsible for the *licensing* of broadcasting services, except for those supplied by RTE, the public broadcaster. However, with respect to *changes* in ownership and control of

[5] BAI (2018a, p. 2, emphasis in original). A multiplex is defined as "*an electronic system which combines programme material and related and other data in a digital form and the transmission of that material and data so combined by means of wireless telegraph directly or indirectly for reception by the general public*" (BAI, 2018a, p. 32).

[6] The current regulatory regime for media mergers and the role of the BAI, CCPC, DCCAE and the Minister is set out in Andrews, Gorecki and McFadden (2015, pp. 362-373) and the guidance issued by the DCCAE (DCNER, 2015). The legislation that underpins the regime consists of: the Competition and Consumer Protection Act 2014, which amends the earlier Competition Act 2002; and, the Broadcasting Act 2009.

broadcasting services there is a more complex regulatory regime, in which the BAI and its *Ownership and Control Policy* plays an important role. More complex in that the Competition and Consumer Protection Commission (CCPC) and the Department of Communications, Climate Action and Environment (DCCAE), together with its Minister (the Minister), are also are significant decision-makers. "Media mergers," which includes newspapers and periodicals, broadcasting services and internet media, is included in the remit of the CCPC, DCCAE and the Minister. However, the remit BAI is primarily, although not exclusively, broadcasting services. Hence a merger involving broadcasting services requires BAI clearance for any license transfer as well as approval by the CCPC and the Minister. The current media merger regulatory regime dates from 2014.[7]

The CCPC assesses a media merger on competition grounds. If the media merger leads to a substantial lessening of competition (SLC) then it is prohibited. The merging parties are *not* required to notify a CCPC-prohibited merger to the Minister.[8] If as is usually the case the CCPC approves a media merger on the grounds that it will not lead to a SLC, with or without conditions, then the merger *has* to be subsequently notified to the Minister. In assessing whether or not the media merger is likely to be contrary to the public interest in protecting the plurality of the media in the State, the Minister shall have regard to, *inter alia*, the "relevant criteria."[9] These criteria refer to the likely impact of the merger on media plurality, the undesirability of allowing one firm to hold significant interests within and across different media and the BAI's *Ownership and Control Policy*.[10]

If after an initial or phase one examination review the Minister comes to the view that the media merger would *not* be contrary to the public interest the Minister informs the merging parties that the merger may be put into effect.[11] If, however, after the initial examination of the media merger, the Minister comes to the view that the merger could be contrary to the public

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[7] Based on the report of the Advisory Group on Media Mergers (2008).
[8] If the media merger is notified to the European Commission as opposed to the CCPC the same rules apply.
[9] Section 28D(2), Competition Act 2002 as amended.
[10] Section 28A, Competition Act 2002 as amended, defines the relevant criteria.
[11] The Minister's decision is informed by an examination review prepared by the DCCAE with a recommendation for the Minister's consideration.

interest then the Minister must request the BAI to conduct a full examination. The BAI is required to conduct the full examination even if the media merger does not involve broadcasting services. Indeed, in the only full examination on which the BAI had to report between 2015 and 2019 involved newspapers.[12] The BAI's examination of the media merger is guided, *inter alia*, by the relevant criteria. The BAI submits its report to the Minister including a recommendation on whether the media merger should be put into effect with or without condition or whether the media merger should be prohibited. The Minister must have regard to this report in making his/her final decision.

While there are obligations under the contract of a BAI-licensed broadcaster regarding notification of changes in ownership, these obligations are not specifically aligned with the media merger statutory deadlines.[13] In some cases, for example, the merging parties seek clearance for the broadcasting license transfer from the BAI before the media merger is notified to the CCPC,[14] while in other cases clearance is sought while the CCPC is assessing the media merger.[15] The CCPC and the DCCAE have expressed concerns with respect to the alignment of the BAI timelines in relation to those of the CCPC.[16]

If the media merger involves the transfer of ownership and control of a broadcasting license, then in the DCCAE's examination review reference is made to position of the BAI in terms of whether or not it has approved the change in ownership and control. In every case to date the BAI has approved the transfer. The BAI's evaluation of proposed changes in ownership and control of broadcasting services license taking into account its *Ownership and Control Policy* are not published by the BAI while the DCCAE examination review to the Minister contains no more than the fact that the BAI approved the transfer.[17]

[12] For details see BAI (2017). February 2019.
[13] These obligations are set out in sections 5 and 12 of the BAI (2015c) sample sound broadcasting contract. See also BAI (n.d; 2014).
[14] See, for example, DCCAE (2018a).
[15] See, for example, DCCAE (2016a).
[16] These are summarized in Flynn (2018, p 8).
[17] An exception is DCCAE (2016b, paras. 2.107-2.112).

In contrast, the CCPC's assessment of the competitive implications of a media merger is published.[18] Equally the reasoned examination review together the DCCAE's recommendations to the Minister and the Minister's determination are published, as is any full examination conducted by the BAI.[19] We will return to the issue of publication in Sections III to V.

Media Ownership and Control: Recent Trends

One of the roles of the BAI under the media merger regime introduced in 2014 is to produce a report that shall describe: the ownership and control arrangements for firms carrying on a media business in the State; the changes in ownership and control over the past three years; and, analyse the effects on plurality of the media in the State.[20] Two such reports have been completed referring to: 2012-2014; and 2015-2017. These reports are one of the factors – in addition to the relevant criteria – that the Minister must have regard when evaluating a media merger.[21]

The 2012-2014 report on ownership and control reported that there had been little change over that period.[22] Although there were three broad changes in ownership and control they did not "*have a material impact on plurality as they represented a 'one in, one out' change, rather than one media business/individual obtaining a share of media ownership that reduced diversity of ownership or diversity of content*."[23] The situation as of 2014 is summarized in Panel A of Table 1, which pays particular attention to Irish news and current affairs.[24]

In the period 2015-2017 (and beyond) it appears that again there has been an element of one in, one out change in ownership and control. TV3, for example, was acquired by Liberty Global

[18] On its website: www.ccpc.ie.
[19] On its website: https://www.dccae.gov.ie/en-ie/communications/topics/broadcasting-media/media-mergers/media-merger-determinations/Pages/mediamergerdeterminations.aspx.
[20] Section 28M(1) of the Competition Act 2002 as amended.
[21] Section 28D (2) of the Competition Act 2002 as amended.
[22] As the BAI (2015a) note in drawing up the report attention is paid the DCENR (2105)'s merger guidelines for media mergers.
[23] BAI (2015a, p. 6).
[24] This is particularly the case for TV which excludes, for example, Sky and BBC. If Panel A of Table 1 were re-estimated for all news viewing in Ireland, RTE's share would fall from 86.6 per cent to 74 per cent (Kenny & Suter, 2015, p. 13).

(Virgin Media) in 2015/16.[25] However, there have also been some changes of ownership and control that are likely to lower diversity and plurality:

- News Corp, which already had extensive national daily and Sunday newspapers in Ireland, acquired six radio stations in 2016;[26]
- the *Irish Times* acquired Landmark Media, which included newspapers (e.g. *Irish Examiner*) and radio stations in 2018;[27] while
- two existing radio station groups purchased several additional radio stations in 2018 and 2019.[28]

Hence it appears that since 2014 there have been *within* media increases in concentration (i.e. newspapers and radio stations) and *across* media (i.e. newspapers and radio stations).

There is some evidence to support these inferences in terms of market shares presented in the most recent BAI report for 2015-2017.[29] These are presented in Panel B of Table 1, but updated to reflect ownership in 2018. There is a marked increase in concentration in ownership of national newspapers: the leading three media groups accounted for 82.7 per cent of this market in 2018, up from 68.7 per cent in 2014. Equally, the number of media groups with cross media interests increased from four to five.[30] In contrast, there has been little change in the

[25] For details see DCCAE (2015).

[26] News Corp owns the *Irish Sun*, the *Times* Ireland Edition, *Irish Sun on Sunday* and the *Sunday Times*. For further details see DCCAE (2016a).

[27] For details see DCCAE (2018b).

[28] See Table 2 and DCCAE (2018a) for details.

[29] The BAI (2018d, p. 9) "*agrees with the conclusion of the Research [Kenny & Foster, 2018] that there has not been a significant change in plurality of media in the State over the period [2015-2017] as a result of the relevant changes in ownership and control*." However, the commentary in the text of this paper is based on Panel B of Table 1 refers to 2018, rather than 2015-2017. Kenny & Foster (2018, p. 43) argue that cross media mergers such as News Corp's acquisition of Wireless Group's six radio stations may allow such so-called second tier groups to better compete with the very largest media groups. However, this analysis ignores the fact that both News Corp and Wireless were substantial media groups in their own right, with extensive non-Irish media businesses. For details see CCPC (2016).

[30] I.e from RTE, INM/Communicorp, Landmark Media and Irish Times to RTE, INM/Communicorp, Irish Times, News Corp, and TV3. It could be argued that national newspapers, TV and radio often have an online presence. Hence in considering whether or not there has been an increase in cross media groups it might be more appropriate to exclude online. If this were done there would still be an increase in the number of cross media groups from three (i.e. RTE, INM/Communicorp and Landmark Media) to four (i.e. RTE, INM/Communicorp, Irish Times & News Corp).

market share of the leading three media groups with respect to radio stations, [31] but the mergers involving consolidation in this sector referred to above are included in "Other."

Table 1
Market Shares,[a] Selected Media Groups, by Media Sector, Ireland, 2014 and 2017/2018

Panel A: 2014				
Media Group	**Media Sector**			
	Irish TV	**Online**	**Radio**	**National Newspapers**
Public [b]				
RTE	86.6%	8.2%	31.7%	-
Commercial				
INM/Communicorp	-	43.3%	21.5%	45.7%
Landmark Media	-	5.3%	2.7%	7.1%
UTV Media	-	-	14.1%	-
TV3	13.0%	-	-	-
Irish Times	-	25.4%	-	15.9%
Radio Kerry Group	-	-	5.1%	-
Other	0.4%	17.8%	24.9%[c]	31.2%
Total	**100%**	**100%**	**100%**	**100%**
Panel B: 2017/2018[d]				
Media Group	**Media Sector**			
	Irish TV	**Online[e]**	**Radio**	**National Newspapers**
Public [b]				
RTE	83.4%	14.7%	32.8%	-
Commercial				
INM/Communicorp	-	31.0%	19.0%	43.8%
Irish Times	-	19.8%	2.8%	22.2%
News Corp	-	6.7%	12.5%	16.7%
TV3	15.5%	2.9%		
Journal Media	-	15.5%		
Other	0.4%	9.5%	33.0%	17.4%
Total	**100%**	**100%**	**100%**	**100%**

a. Measured as shares of the listeners, viewers or users.
b. Although RTE is the public broadcaster, its broadcasting services include several which can be classified as commercial in that they sell advertising.
c. The next largest radio group is Highcross Communications (iRadio) with 3.9% share.
d. The market share percentages refer 2017, while the media group structure reflects 2018.
e. Excludes SM.

Source: Kenny & Suter (2015, Figure 2, p. 5); & Kenny & Foster (2018, Figure 16, p. 39).

[31] The media group market shares of the leading three radio station owners was 67.3 per cent in 2014 and 64.3 per cent in 2018.

Although Reporters Without Borders For Freedom of Information (RWB) in their 2018 World Press Freedom Index ranks Ireland 16th out of 180 countries,[32] it nevertheless heads its commentary on Ireland, '*Unhealthy Concentration*.' RWB's justifies this heading by commenting that,

> *"The highly concentrated nature of media ownership in Ireland continues to pose a major threat to press freedom, and contributed to Ireland's two-place fall in the 2018 World Press Freedom Index. Independent News and Media (INM) controls much of the daily and Sunday newspaper market, while broadcasting is dominated by the semi-state company RTE*."[33]

While the BAI does not include RTE within its licensing remit, in making decisions concerning, for example, changes in ownership and control of commercial broadcasting services, the BAI currently takes into account cross-media ownership.[34]

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[32] Over the period Ireland ranked between 9th and 16th, with a mean rank of 13.5.
[33] https://rsf.org/en/ireland.
[34] For details see Section IV.

III Policy Objectives: Sustainability & Viability

Proposal

An "*important change*"[35] in BAI's proposed *Ownership and Control Policy* is the inclusion of an additional policy objective:

> *To support both the viability of broadcasting services and the greater sustainability of the broadcasting sector as a whole.*[36]

This is the second ranked of the eight proposed policy objectives (Box 1). It is the only one solely related to viability/sustainability, although there is reference to "*financial resources*" in policy objective (v) to which we will return to below. There is no comparable policy objective among the seven current (i.e. 2012) *Ownership and Control Policy* objectives.[37] These current policy objectives are largely related to issues such as diversity, pluralism and democratic values.

Viability appears to refer to whether or not the broadcasting service has sufficient revenues to fund its services at a point in time, whereas sustainability refers to whether or not the current business model is capable of funding the broadcaster's services over the longer term. In considering whether or not the BAI should award a new FM radio license, for example, existing licensees argued that given the saturated nature of the market there were doubts concerning the viability of any new FM station and if such an FM license were awarded about the sustainability of existing licensees.[38]

The BAI's proposed *Ownership and Control Policy* explains how the new policy objective on viability and sustainability will be implemented. When there is a proposed *change* of ownership and control of a broadcasting service, the BAI "*shall have regard to the extent to*

[35] BAI (2018a, p. 8).
[36] BAI (2018a, p. 9).
[37] BAI (2012, p. 5).
[38] BAI (2018c, p. 14). These arguments are redolent of those used by incumbents to prevent entry in a range of activities in Ireland including pubs and pharmacies. For details see Gorecki (2011) and OECD (2001).

which the proposal will support the viability of a contractor and/or sectoral sustainability."[39] More specifically, the BAI "*shall have regard to the following*:-

- *The extent to which any proposal to vary the ownership or control of the contract will support the viability of the Contractor?*

- *The extent to which any proposal to vary the ownership or control of the contract will support the sustainability of the Broadcasting Sector as a whole?*

- *The suitability of any proposal in the context of the objectives and provisions of the BAI Broadcasting Services Strategy.*

The first point relates to an individual sector, the second to the broadcasting sector.

Box 1: The BAI's Proposed Policy Objectives, Ownership and Control in Broadcasting Services

i.To promote open and pluralistic broadcasting services, with particular reference to radio and television services;

ii. To support both the viability of broadcasting services and the greater sustainability of the broadcasting sector as a whole;

iii. To ensure that the ethos of a broadcasting service is such that it will best serve the needs of the audience it is licensed to serve;

iv. To contribute to the promotion of diversity in control of the more influential commercial and community broadcasting services;

v. To ensure that broadcasting and multiplex contracts are held by persons who are of suitable character, and who have available to them adequate expertise, experience and financial resources;

vi. To promote diversity in voices, viewpoints, outlets and sources, that is, diversity in the opinions expressed, in programming delivery and content, in ownership and in the sources of information available to the public;

vii. To contribute to the upholding of the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, and;

viii. To contribute to the achievement of a regulatory environment that will sustain independent and impartial journalism.

Source: BAI (2018a, p. 9).

[39] BAI (2018a, p. 19).

Rationale

Introduction

Two rationales are relied upon by the BAI for the proposed additional policy objective on viability and sustainability: the views of targeted stakeholders; and, the recommendation of a BAI-commissioned report on market structure, dynamics and developments in Irish media. In order to get a better understanding of the two rationales used by the BAI to include a policy objective relating to viability and sustainability we examine not only the BAI's stated justification but also the two sources identified by the BAI.

Targeted Stakeholder Views

BAI Rationale

The first BAI rationale for the proposed additional policy objective on viability and sustainability is based on the response to the BAI's targeted stakeholder consultation on its review of the ownership and control policy.[40] Targeted stakeholders included providers of broadcasting services, the National Union of Journalists, third level colleges, the CCPC and the DCCAE.[41] However, the targeted stakeholders were dominated – in terms of numbers - by commercial radio and TV stations.[42] On the relevance of this targeted consultation exercise, the BAI states that the "*issues of viability and sustainability were identified by **broadcasters** participating in the targeted consultation as ones that should be given greater emphasis in the Policy. The BAI agreed with this view and has updated the Policy accordingly*"[43]

Discussion

Dr Roddy Flynn, School of Communications, Dublin City University, was commissioned by the BAI to provide a summary of the targeted stakeholder consultation on the BAI review of

[40] These views are summarized in Flynn (2018). In a number of cases written responses were made by the targeted stakeholders (e.g. as noted below in answering a questionnaire). These documents, either unredacted or redacted, do not appear to be posted on the BAI's website.
[41] Flynn (2018, p. 3).
[42] Flynn (2018, Appendix 1, pp. 44-45).
[43] BAI (2018a, p. 8, emphasis supplied).

ownership and control policy. Flynn's summary of the views of the targeted stakeholders also includes the methodology employed. Stakeholders were requested to complete a BAI designed questionnaire. The summary report is organized as a series of targeted stakeholder responses to these questions. There were also follow up interviews conducted by Flynn.[44] The resulting report does not evaluate or comment on the responses.

One of the questions that the targeted stakeholders were asked was: "*Should any additional objectives be included?*"[45] In response Flynn (2018, p. 12) states "*many respondents emphasize the need to include the viability and sustainability of the indigenous radio sector,*" in view of its "*precarious state*."[46] Other respondents wanted to extend the remit of the application of viability/sustainability policy objective to include television services, again with emphasis on the indigenous sector.[47] The implications of the viability/sustainability objective were outlined: the BAI might permit the use of the Sound and Vision Fund for news and current affairs programmes; and the Broadcasting Levy – not levied upon online competition – could be reduced.[48]

It should be noted that no evidence is presented by Flynn (2018) to substantiate the point that broadcasting services as a whole need to be supported because of their "*precarious state*."

Mediatique Report Recommendation

BAI Rationale

The second BAI rationale for the proposed policy objective on viability and sustainability is based on the BAI-commissioned Mediatique (2017). The BAI argue that Mediatique "*highlighted the issues of viability and sustainability and recommended that the BAI have regard to these issues in the context of its Ownership and Control Policy.*"[49] In other words, the

[44] Flynn (2018, p. 5).
[45] Flynn (2018, p. 12).
[46] Elsewhere in Flynn (2018, p. 7) the language is much stronger. "*For many respondents, the effect of this [online competition] is to create an imbalanced playing field across media undermining the viability of locally-regulated radio (and television) stations, threatening their very existence.*"
[47] Flynn (2018, p. 12).
[48] Flynn (2018, p. 12).
[49] BAI (2018a, p. 18).

broadcasters' concerns about viability/sustainability elicited through the targeted consultation are consistent, the BAI argues, with the evidence and recommendations of Mediatique, a "*strategic advisory firm specialising in the media and communications industries*."[50]

Discussion

The BAI quite sensibly commissioned Mediatique (2017, para. 1.5) that "*analysed the sustainability of the revenue models that underpin expenditure on audio and visual content, particularly Irish content, and to consider whether the current regulatory framework needs to evolve in line with the identified market dynamics.*" Sensible because BAI's reliance on the views of targeted stakeholders that are broadcasters, without a firm empirical underpinning, risks the BAI recommendation concerning the proposed additional policy objective on viability and sustainability being seen as an example of regulatory capture.[51] Regulatory capture is where the regulator operates in the interests of the regulated entity. In other words, the regulator's policy prescription accords with the preferences and objectives of the regulated entities, rather than the welfare of listeners and viewers.

Mediatique's characterization of radio and TV broadcasting services in Ireland is as "*mature and competitive, hosting multiple business models, scores of operators providing a wide range of both domestic and international audio and video content.*"[52] Mediatique does identify challenges to the current revenue models of broadcasters which puts pressure on the funding of domestic Irish content. These pressures are the relative weakness of the advertising market and the continued austerity with respect to the license fee, which primarily funds public broadcasting. Mediatique (2017, paras. 8.6 and 8.7) makes a number of recommendations as to how broadcasters can "*innovate to improve revenue generation*" as well as a number of proposed regulatory developments that "*might enhance the ability of the Irish media sector to develop and fund Irish content.*"

[50] http://www.mediatique.co.uk.

[51] In Flynn (2018, p. 12) the only targeted interests identified with respect to the sustainability and viability objective were industry-based: TV3/Virgin; Beat 102-103 FM; and the Independent Broadcasters of Ireland. As noted above in bold in the text, the BAI specifically mention endorsing the views of broadcasters in the context of viability and sustainability.

[52] Mediatique (2017, para. 8.1).

Mediatique does not, however, characterize the broadcasting sector as being in a *"precarious state."*[53] In the case of commercial radio, for example, it is the case that advertising revenue is expected to be flat at best over the next five years;[54] margins have been reduced from 30 per cent prior to the financial crisis to between 10 and 12 per cent,[55] and, "*operating profits have declined markedly across commercial radio since the recession.*"[56] Furthermore, one radio station license failed to get any bidders when it expired.[57]

However, notwithstanding these negative factors, there are a number of positive signs. Radio listenership is high in Ireland compared with other EU Member States.[58] There are "*no signs of any other licensee currently preparing to abandon the field*."[59] It is not clear that the appropriate benchmark to measure advertising revenues and margins are those recorded at the height of the most recent economic cycle. The BAI's proposed *Ownership and Control Policy* states as a "*fact that the radio sector in Ireland remains viable and sustainable,"*[60] while a recent Deloitte report predicts for 2019 a modest increase in global radio advertising revenues.[61]

If the commercial radio sector is in a *"precarious state*" and its "*very existence*" threatened then it seems unlikely that radio stations would attract the interest of buyers. However, that it not the case: Irish commercial radio stations continue to attract interest from both large international buyers as well as from smaller locally owned firms. As shown in Table 2 over the period 2016 to the present approximately a third of the 34 licensed commercial radio stations in Ireland[62] experienced changes in ownership and control, although the column marked "Price

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[53] Or that its "*very existence*" is threatened. See footnote 46 above.
[54] Mediatique (2017, p. 3).
[55] Mediatique (2017, para. 5.35).
[56] Mediatique (2017, para. 5.50).
[57] Mediatique (2017, para. 5.50).
[58] Mediatique (2017, Figure 1, pp. 10-11).
[59] Mediatique (2017, para. 5.50).
[60] BAI (2018a, p. 20).
[61] Stewart (2018). Although there is no specific reference to Ireland, in the relation to the UK Stewart states, "*In Q1 2018, for example, not only was radio ad spending in the United Kingdom up 12.5 percent year over year (after a lengthy period of decline), but radio advertising was the fastest-growing type of advertising, outpacing even internet advertising*" (ibid, p. 63).
[62] Mediatique (2017, Figure 22, p. 31) provides a listing of all commercial radio licenses extant between 1988 and 2017. There were 35 BAI-licensed commercial radio stations listed as of around 2011. However, when TXFM's

Paid" may refer to more than just the radio stations listed in the adjacent column. In the case of News Corp, for example, it paid €255 million for six Irish radio stations plus a number of other radio stations in the UK.

While the broadcasting sector faces a challenging market, Mediatique did not "*recommend[ed] that the BAI have regard to these issues [viability and sustainability] in the context of its Ownership and Control Policy.*"[63] Such a recommendation is not included in the list presented by Mediatique (2017, pp. 91-93). While it is the case that Mediatique (2017, p.4) refers to "*key policy options*" such as "*potential changes to the regulatory environment governing commercial radio, including … further modest deregulation of ownership restrictions* …" it is difficult to argue that these have any relevance to the issue of viability/sustainability.

Table 2
Acquisition of Commercial Sound Broadcasting Services, Licensed by the BAI, Ireland, 2016 - Jan 2019[a]

Acquirer	Target	Radio Stations[b]	Price Paid/(Year)
News Corp	Wireless Group	Q102, FM104, 96FM, C103, Live95M, LMFM	€255 million[c] (2016)
Bay Broadcasting	Classic Rock Broadcasting	Radio Nova	€3.01 million (2018)
Palariva (Irish Times)	Sappho (Landmark Media)	Beat 102-103, WLR FM & Red FM	n.a.[d] (2018)
Radio Kerry Group	Clare Community Radio Holdings & Dreamglade	Clare FM, Tipp FM	€2.67 million (2019)

a. All media mergers in Ireland are subject to review by the Department of Communications, Climate Action and Environment. This provided the frame of reference for acquisitions of radio stations for 2016 to 2019, plus a press report and a CCPC filing concerning the 2019 acquisition. A press report was relied upon for the valuation of Wireless Group.
b. In some instances full control was not obtained.
c. One radio station in Northern Ireland was also acquired: U105.8FM, plus a number of radio stations in Great Britain.
d. Various newspapers were also acquired, including the *Irish Examiner*. n.a. = not available.

Source: https://www.dccae.gov.ie/en-ie/communications/topics/broadcasting-media/media-mergers/Pages/Media-Mergers.aspx; https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-19-002-kerry-fm-clare-radio-dreamglade/; Brennan & Slattery (2016) and Deegan (2019).

license expired in 2016 the holders decided not to re-apply and there were no alternative bidders (ibid, para. 5.50). Hence from 2016 onwards there were 34 BAI-licensed commercial radio stations in operation. It is that number we use in this paper.

[63] BAI (2018a, p. 18).

Consultation Questions

Introduction

In its public consultation exercise on the proposed *Ownership and Control Policy* the BAI poses a number of consultation questions: on the inclusion of the viability and sustainability objective;[64] and the three issues, set out above, to which the BAI shall have regard when interpreting the viability/sustainability objective.[65] In framing a response to these highly relevant consultation questions a number of factors need to be borne in mind.

Sound Rationale?

It is not at all clear that there is a sound rationale for the inclusion of the viability and sustainability objective in the BAI proposed *Ownership and Control Policy.* Reliance on the self-interested views of broadcasters is not an appropriate basis for policy. While the available evidence suggests the environment in which broadcasters are operating is challenging, Mediatique (2017), the expert report commissioned by the BAI, did not recommend that viability/sustainability be added as an objective for the BAI's *Ownership and Control Policy.* Rather it made other suggestions. Furthermore the BAI itself remarks that the commercial radio sector is viable and sustainable.

Double Counting?

At the present time, when the BAI licenses a broadcaster it already takes into account its financial resources and the extent to which the application accords with good business and economic principles.[66] The BAI has, for example, under current legislation, to have regard to:

> *"the adequacy of the financial resources that will be available to each applicant and the extent to which the application accords with good business and economic principles."*[67]

[64] BAI (2018a, p. 9, q. 2).
[65] BAI (2018a, p. 19).
[66] For details of the information sought by the BAI in the licensing process see, for example, BAI (2015b) in relation to a sound broadcasting license application.
[67] BAI (2018a, p. 17).

In implementing these provisions with respect to commercial broadcasting the BAI shall have regard to the following:

> *"Does the applicant have available to it adequate financial resources and does its approach accord with good business and economic principles, having regard to the nature of the service proposed?"*[68]

In other words, when the BAI licenses a broadcaster it considers questions of future or prospective viability and sustainability. Indeed, the BAI (2018a, p. 17) specifically state that "*good licensing processes are appropriately focused on ensuring that those granted licenses have in place financing and a business model that will ensure ongoing viability and sustainability of the particular service licensed*." After all the license is likely to be for a 10 year period. The BAI will, no doubt, in making these judgments in the future be assisted by the projections and considerations set out in Mediatique (2017).

In view of this it is difficult to understand why the BAI should consider, in reviewing a variation in ownership and control, the viability/sustainability of a contractor subsequent to the initial license being granted by the BAI. If a license holder experiences financial or other difficulties then is that relevant? If the license holder can no longer provide the licensed service why should not the licensing process be started afresh or the license awarded to the second ranked applicant (if there was more than one) when the license was originally awarded? If a change of ownership and control is to be considered why shouldn't the other policy objectives set out in Box 1 be sufficient to determine the BAI's decision?

Ex ante, Ex post and Appropriate Incentives

At the present time the ability of licensed broadcasters to provide licensed services is evaluated for their financial soundness at the point of licensing, i.e. on an ex ante basis. This creates the correct incentives for the licensed broadcaster to provide projections that are credible and reliable. What the BAI is arguing for in its proposed *Ownership and Control Policy* is that there should also be ex post considerations of viability and sustainability when there is a change in ownership and control of broadcasting services. If licensed operators believe that overly

[68] BAI (2018a, p. 18).

optimistic forecasts in their initial license applications can be to some extent offset or given positive consideration at a later stage because of the viability and sustainability objective this is likely to complicate the BAI ex ante assessment.

The existing (i.e. 2012) *Ownership and Control Policy* contains a provision that to some degree ameliorates these concerns. Under the current policy the BAI *"looks unfavourably upon proposed changes in ownership within a **two-year period** after the award of a contract."*[69] The rationale for this is set out by the BAI in its existing *Ownership and Control Policy* as follows:

> *"This policy provision takes account of the competitive nature of the licensing process for these contracts and the resources dedicated to the preparation of applications by each applicant group. The BAI believes this approach is desirable because a change in ownership within a two-year period would be likely to undermine the integrity of the licensing process itself and be unfair to unsuccessful applicants."*[70]

However, under the proposed *Ownership and Control Policy* these provisions concerning little or no change in ownership for two years are to be abolished because of the "property rights" of shareholders, unspecified changes in the wider media market and license provisions that ensure the contracted services will be provided.[71] When a shareholder invests in a broadcasting license that is difficult to sell within two years, surely that is just one of the many conditions attached to the license? Presumably the same logic of interfering with shareholder's property rights would also apply to the programming requirements of the license. Finally, it is not clear that the programming changes will reduce or eliminate the incentives identified above.[72] In sum, the two year moratorium should be retained.

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[69] BAI (2012, p. 11, emphasis in original).
[70] BAI (2012, pp. 11-12).
[71] BAI (2018a, p. 12).
[72] The programming changes proposed by the BAI (2018a, p. 25) include the addition of the following criteria when assessing programming as follows: "*Whether, in the context of news and current affairs programming proposals and/or practices, the proposals effect a sufficient and demonstrable commitment to achieving and sustaining impartial, credible and independent journalism*." Such behavioural considerations are difficult to monitor and enforce. Hence it is much more appropriate to consider the issues, in the case of sound broadcasting services,

How Will it Work?

There is no BAI guidance or rational provided on how the application of the viability and sustainability policy objective will be implemented. At least two issues need to be addressed here: definitions and trade-offs.

There are no definitions of viability and sustainability presented by the BAI in its proposed *Ownership and Control Policy.* Does, for example, viability mean that the broadcaster has to be a failing firm as set out in guidance issued by the CCPC (2014) in respect of mergers? Does sustainability refer, for example, to the period for which the broadcaster is licensed as a commercial radio or TV operator? Is viability/sustainability confined only to the operations of the licensed broadcasting service? If the licensed broadcasting service is part of a larger firm how will issues of common costs be dealt with by the BAI?

In terms of trade-offs, as noted above, most of the other objectives of the proposed *Ownership and Control Policy* relate to long standing issues/objectives such as diversity, plurality and democratic values. If one accepts the BAI view that issues of viability/sustainability are likely to become more important in the future, then that raises the issue of how the BAI is going to trade-off viability/sustainability against diversity, plurality and democratic values. How much (say) diversity will be sacrificed in order to ensure the viability of an individual broadcaster?

These are inherently difficult if not impossible dimensions to weigh. Oranges and apples are being compared. Notwithstanding the difficulty of comparing and making trade-offs, the fact that the BAI has proposed that the viability/sustainability objective is placed second of eight objectives suggests that it will be given considerable weight by the BAI above the long standing objectives of diversity, plurality and so on. This result is likely to be a substantial reordering of the priorities of the BAI in favour of the interests of incumbent broadcasters that experience

relating to undue concentration when examining the State-wide thresholds and the Five Additional Factors. These are discussed in Section IV.

viability/sustainability problems and is likely to lead to greater concentration and less diversity.[73]

Conclusion

The BAI is right to raise the issue of viability and sustainability of broadcasters that are licensed to provide commercial radio and TV for Irish audiences. It is vitally important that licensed broadcasters have the expertise and financial resources to be able to deliver the services for which they are contracted with the BAI. The issue becomes, of course, the best way for that to be secured.

Serious consideration should be given to removing viability/sustainability from the list of proposed *Ownership and Control Policy* objectives. There is, for reasons set out above, insufficient justification. The issue of viability/sustainability is already addressed on an ex ante basis when a broadcaster is licensed. This ex ante evaluation should be strengthened by retaining (rather than abolishing) the existing BAI two-year time limit on a licensee being able to transfer ownership.

If the viability/sustainability objective is, however, to be retained then it should be ranked much lower than second out of eight objectives. Furthermore, the BAI should not only provide guidance as to the tests to be met concerning viability and sustainability, but also publish reasoned decisions when applying these and the other policy objectives set out in Box 1. This would bring the BAI in line with the 2014 regime for media mergers, which includes broadcasting services, where both the CCPC and the DCCAE provide detailed guidance and publish reasoned decisions.

[73] There is some evidence to support this contention since the BAI (2018a, p. 20) state: "*The BAI's decision is informed by the fact that the radio sector in Ireland remains viable and sustainable and the loosening of the 25% maximum level is therefore not desirable since it would raise the potential of a reduction in media pluralism without any basis.*"

IV Thresholds and Measuring an Undue Concentration of Sound Broadcasting Services

Proposal

Under the Broadcast Act 2009 there are,

> "*statutory provisions that require the BAI, when assessing applications for new contracts, to consider the desirability of allowing any individual or group of persons to have control of, or substantial interests in an undue number of the total number of broadcasting services in the State, as a whole …, or in a specified area … .*"[74]

The BAI must also consider,

> *"the desirability of allowing any individual or group of persons to have control of, or substantial interests in, an undue amount of communications media … . Communications media include broadcasting services and platforms and newspapers and periodicals consisting of substantially of news and comment on current affairs but so not include digital media."*

Thus the BIA is charged with addressing concerns over undue concentration in broadcasting services and communications media more broadly, but excluding digital media.

The BAI's existing and proposed method of determining whether or not there is an undue concentration of ownership and control by a single entity refers exclusively to commercial sound broadcasting services for which it has licensing responsibility. The resulting thresholds "*provide a key mechanism for managing plurality and diversity in terms of ownership and they are applied not only at the licensing stage but also in the context of consideration of requests for changes in ownership and control*."[75]

The BAI proposed *Ownership and Control Policy* changes with respect to the State-wide thresholds for determining undue concentration of commercial sound broadcasting services represent a limited relaxation of the degree to which a single entity can own and control such services. While no one entity can own and control more than 25 per cent of the *number* of

[74] BAI (2018a, p. 19).
[75] BAI (2018a, p. 20).

sound broadcasting services under both the current and proposed thresholds, the BAI is content that in future one entity can own up to 20 per cent of the number of commercial sound broadcasting licenses with no regulatory barriers, whereas the current threshold is 15 per cent.[76]

Table 3
Thresholds for Acceptable/Unacceptable Levels of Concentration by A Single Entity, Current & Proposed, Commercial Sound Broadcasting Services, Licensed by the BAI, Ireland

Percentage of Sound Broadcasting Licenses in Which One Entity Has Control and/or a Substantial Interest (Number of Licenses)[a]	Current Threshold Requirement (i.e. 2012 to the present)	Proposed Threshold Requirement
15 per cent or less (5 licenses or less)	Acceptable Level of Concentration	Acceptable Level of Concentration (i.e. less than 20 per cent)
15-20 per cent (6 licenses)	Compliance Audit[b] Required to Determine if Acceptable or Unacceptable Level	
20-25 per cent (7 or 8 licenses)	Compliance Audit[b] Plus Five Additional Factors[c] Required to Determine if Acceptable or Unacceptable Level	Compliance Audit[b] Required to Determine if Acceptable or Unacceptable Level
More than 25 per cent (9 licenses or more)	Unacceptable Level of Concentration	Unacceptable Concentration Level

a. The thresholds are expressed by the BAI as percentages, with no reference made to the corresponding number of licenses. The number of commercial licenses is 34. 25 per cent of 34 is 8.5. Since nine license would take the owner above the 25 per cent threshold (i.e. 9/34=26.5 per cent) the upper bound is considered to be eight. This is consistent with Flynn (2018, p. 22).
b. "The BAI shall make such a consideration with reference to a Compliance Audit, submitted by the entity, in respect of all of its sound broadcasting services over a two-year period. This period shall commence twelve months in advance of the date on which the application is received. The Compliance Audit shall set out the relevant contractor's compliance with regard to all of the statutory, policy and contractual provisions. Guidelines for the submission of a Compliance Audit are available from the BAI."
c. "In addition the BAI shall have regard to the following five factors: I. The number of services where an entity has control rather than a substantial interest; II. The extent to which the relevant services are operating in common or separate franchise areas; III. The relative audience shares of the relevant services when compared with all sound broadcasting services licensed under the 2009 Act; IV. The extent to which the relevant services have a common target audience focus; V. The extent to which the relevant services represent a concentration of the supply of news and information taking into account all communications media."

Source: BAI (2012, pp. 9-10; 2018a, pp. 21-22).

[76] Media mergers would, of course, still be subject to the remit of the CCPC, the DCCAE and the Minister as outlined in Section II.

Under both the current and proposed thresholds if a single entity wishes to control 20 to 25 per cent of the number of sound broadcasting licenses then it must be subject to a review by the BAI. However, the review is much more thorough under the current system than the proposed revisions. In both cases a Compliance Audit[77] must be conducted, but under the current system the BAI also has to have regard to five factors on issues of plurality, diversity and competition such as the degree to which the services operate in common or separate franchise areas or the extent to which the relevant services have common target audiences and relevant audience market shares or the extent of concentration in the supply of news and information taking into account *all* communication media.[78] These will be referred to the Five Additional Factors.

The proposed changes in the BAI percentage thresholds are presented in Table 3, together with the corresponding number of commercial radio licenses which were not included in either the current nor the proposed *Ownership and Control Policy.* The proposed changes would see one entity owning up to and including six radio licenses with no BAI regulatory intervention, and up to and including eight with minimal BAI regulatory intervention. Theoretically, three entities could own cumulatively up to 24 of the 34 commercial radio licenses.

Rationale

On the rationale for the retention of the 25 per cent upper bound threshold the BAI argues that,

> *"… maintaining healthy pluralism in this sector [sound broadcasting] is a key strategic concern for the BAI. For this reason, the BAI is proposing to retain the current upper threshold of 25% of the total number of sound broadcasting services that any one individual or legal entity may own. The BAI's decision is informed by the fact that the radio sector in Ireland remains viable and sustainable and the loosening of the 25% maximum level is therefore not*

[77] On a Compliance Audit the BAI (2018a, p. 21) states, "*The BAI shall make such a consideration with reference to a Compliance Audit, submitted by the entity, in respect of all of its sound broadcasting services over a two-year period. This period shall commence twelve months in advance of the date on which the application is received. The Compliance Audit shall set out the relevant contractor's compliance with regard to all of the statutory, policy and contractual provisions. Guidelines for the submission of a Compliance Audit are available from the BAI."*

[78] These criteria are listed in footnote c of Table 3.

> *desirable since it would raise the potential of a reduction in media pluralism without any basis."*[79]

In terms of the revisions of the thresholds below the 25 per cent cap, the BAI offers the following rationale,

> *"… the BAI does not consider the number of thresholds and the current tests applied in respect of ownership of the total number of services remain warranted. For this reason, the number of thresholds to be applied is being reduced from four to three and the extent of the tests that are applied in the case of higher percentages of ownership are reduced. In this regard, a person or legal entity will be permitted to own up to 20% of the total number of services without any tests being applied.*
>
> *In the case of ownership between 20-25% of the total number of sound broadcasting services, individuals or legal entities seeking ownership to this level will be required to successfully pass a compliance audit but the five additional tests [Five Additional Factors] currently applied at this level of ownership are not retained."*[80]

No reference is made to either Mediatique (2017) or Flynn (2018).

Consultation Questions

Introduction

In the public consultation on the proposed *Ownership and Control Policy* the BAI asks for respondent's views in relation to its recommended State-wide thresholds for ownership of radio stations: the increase in the lower bound threshold from 15 to 20 per cent; the retention of the upper bound threshold of 25 per cent; and, the application of only a Compliance Audit governing ownership and control within the 20 to 25 per cent threshold. The BAI also asked for any other amendments that respondents might consider appropriate in relation to the proposed thresholds.[81] In framing our response to these issues a number of factors need to be borne in mind.

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[79] BAI (2018a, p. 20).
[80] BAI (2018a, p. 20).
[81] BAI (2018a, p. 22) sets out the 'Consultation Questions.'

Sound Rationale?

The BAI does not provide an extensive reasoned rationale for the revised thresholds on the number of radio stations that can be owned and controlled by a single entity at a State-wide level. Indeed, no justification is offered for the revision of the thresholds below the 25 per cent cap. On maintaining the cap at 25 per cent the BAI seems to be implying that there is a positive relationship between the viability/sustainability of the radio sector and the degree of concentration: in other words, the greater the degree of concentration, the more likely it is the sector will be viable and sustainable. This is turn implies a negative trade-off between viability/sustainability and plurality and diversity.

No evidence is presented by the BAI to support the contention the increased concentration is associated with enhanced viability and sustainability. The issue is in any event a complex one.[82] Empirical research across a number of industries suggests a weak positive relationship between concentration and a measure of profitability. However, this has been subject to considerable criticism. Furthermore the measure of concentration used in these studies takes into account the relative size of the firms based on their sales (or a similar measure of size) whereas the BAI's measure of concentration, implicit in the thresholds, is based on the percentage of the number of commercial radio stations owned, irrespective of their size (measured, for example, using audiences or advertising revenues).

Mediatique (2017) does not recommend a revision of the thresholds.[83] It does refer under '*Regulatory Challenges and Options'* to "*considering the case for further modest deregulation of ownership restrictions*" under "*potential changes to the regulatory environment."*[84] However, in its recommendations under '*Ownership Restrictions,'* Mediatique (2017) argues that the BAI "*should consider changing the basis on which ownership restrictions are set for commercial radio stations – taking into account license/target area size*."[85] In other words, Mediatique

[82] See, for example, the discussion in Lipczynski, Wilson & Goddard (2017, pp. 359-387).
[83] Mediatique (2018a, pp. 91-93) lists the recommendations.
[84] Mediatique (2018, p. 4).
[85] Mediatique (2018, p. 93). See also Mediatique (2018, para. 7.19).

(2017) seems more concerned with the way in which the importance of a radio station is measured than the actual thresholds themselves.

There was no consensus among the targeted stakeholders as to the appropriate ownership thresholds.[86] Some respondents were satisfied with the existing thresholds, others thought that thresholds should be retained but increased, while several respondents thought that the thresholds should be abolished. The latter group included those entities with the largest number of radio licenses: Communicorp; and, News Corp.[87] A number of respondents felt that the importance of radio stations should be weighed by audience size.

The Removal of the Five Additional Factors

The BAI proposes relaxing the ownership restrictions on how many radio stations a single owner can own, but within the 25 per cent cap. Essentially, if the owner complies with their license then there is no bar to reaching the cap. This reflects the fact that the BAI proposes to remove the Five Additional Factors, which currently would operate in the 20-25 per cent threshold range. There are a number of arguments against this proposed change.

The Five Additional Factors are concerned with questions that go to the heart of plurality and diversity. These tests take into account the degree to which the radio stations of the acquirer and target operate in the same or separate franchise area, market share measured by audience size,[88] the extent to which the acquirer and target have the same target audience and the degree to which the acquirer and target "*represent concentration of the supply of news and information taking into account all communications media*."[89] Just because a radio station owner complies with its license conditions does not remove possible concerns about plurality and diversity.

[86] Flynn (2018, pp. 22-24). On the number of licenses held by each owner, see Table 4.
[87] Flynn (2018a, p.23) actually refers to Wireless Group Limited, which was acquired by News Corp in 2016 (Table 2). For consistency we refer to New Corp in the text.
[88] The use of audience is consistent with the recommendations of Mediatique (2017) and some of the respondents to the targeted stakeholder consultation discussed above.
[89] BAI (2012, pp. 9-10).

The Five Additional Factors are concerned with the future impact of the proposed change in ownership. Like all merger analysis it is forward looking. The factors relate to the impact of the fact that distinct entities are all brought under common control, perhaps by a single individual. Examination of the compliance record does not address such significant issues.

Are the Ownership Thresholds Less Binding?

The proposed ownership thresholds relax the regulatory requirement for a single entity to own multiple radio stations up to the 25 per cent cap. However, the impact of the relaxation depends in part how binding are the current constraints, which in turn depends on the current structure of ownership (Table 4). All of the current owners of radio stations are able to acquire additional radio stations because none are at the 25 per cent cap (i.e. none own eight stations).

Table 4
Ownership of Commercial Sound Broadcasting Services, Licensed by the BAI, Ireland, 2019.

Owner	Names	Number
News Corp	Q102, FM104, 96FM, C103, Live95FM, LMFM	Six (18%)
Communicorp	Today FM, 98FM, Spin103.8, Newstalk, Spin South West	Five (15%)
Radio Kerry Group	Shannonside104FM, Radio Kerry, Northern Sound Radio, Clare FM, Tipp FM	Five (15%)
Bay Broadcasting	Radio Nova, Classic Hits 4 FM, Sunshine 106.8	Three (9%)
Palariva (Irish Times)	Beat 102-103, WLR FM, Red FM	Three (9%)
Highcross Communications	iRadio NE &Midlands, iRadio NW	Two (6%)
Ten Separate Owners Each Owning One Radio Station	East Coast FM, KCLR 96FM, KFM, Mid West Radio, Midland's 103, Ocean FM, South East Radio, Spirit Radio, Highland Radio, Galway Bay FM	Ten (3% each)
Total		**34 (100%)**

Methodology. Kenny & Suter (2015) provide a snapshot of ownership in 2014. Subsequent changes in ownership of radio stations have to be notified as media mergers to the BAI, CCPC and the DCCAE. Radio Kerry's acquisition of Clare FM and Tipp FM was been notified to the CCPC on 25 January 2019, but no decision has been made by the CCPC or the BAI or DCCAE. In the case of TXFM105.2 when the license expired in 2016 the holders decided not to re-apply and there were no alternative bidders. Table valid as of 31 January 2019.

Source: CCPC (merger determinations, various); DCCAE (merger examinations, various); Kenny & Suter (2015, Figure 2, p. 5; pp.38-52); & Mediatique (2017, para. 5.50).

News Corp could add two radio stations to reach the cap of eight, subject only to a Compliance Audit under the proposed thresholds. Under the current thresholds such an acquisition would be subject to the Five Additional Factors which would take into account, *inter alia*, the extensive interests of News Corp in national daily and Sunday newspapers. Communicorp and the Radio Kerry Group could each add one station with no regulatory impediment under the proposed thresholds, but a Compliance Audit under the current thresholds. Finally, if Communicorp or the Radio Kerry Group added a second and third radio station then they would be in the same position as News Corp. This would mean, for example, that Communicorp's extensive other media interests, as set out in Table 1, would be taken into account under current thresholds but not the proposed thresholds.

Measuring the Thresholds: Which Metric?

At the present time the BAI in determining whether a single entity exceeds the various State-wide ownership thresholds is concerned solely with the number of radio stations the entity owns in relation to the total number of radio stations. This is equivalent to weighing all radio stations equally. Given that there are 34 licensed radio stations, each radio station has a weight of 1/34 or 2.9 per cent. The question is whether or not this is a reasonable assumption.

To answer this question an alternative weighting system is needed. Obvious alternatives include audience size, advertising revenue or a composite measure of mean daily minutes of listening multiplied by the proportion of the listeners that tuned in the day before.[90] It seems likely no matter which metric is selected that there will be considerable inequality in size across radio stations. Some licenses are State-wide, others are regional, some confined to particular cities such as Dublin and Cork. The licenses also vary by the age group targeted and the programming content.

An attempt to estimate the audience market share by radio ownership group is presented in Table 5. It should be viewed as a work in progress. As the notes to the table make clear a number of assumptions have been made in order to generate the column headed 'Share of

[90] The latter is proposed, for example, by Mediatique (2017, para. 2.101).

Radio Audience of Commercial Radio Stations.' Nevertheless, notwithstanding these caveats, a number of inferences can be drawn from the table.

Table 5
Measures of Ownership Concentration, Commercial Sound Broadcasting Services, Licensed by the BAI, Ireland, 2014/9.

Owner (Number of Radio Stations)	Share of Number of Commercial Radio Stations (%)	Share of Radio Audience of Commercial Radio Stations (%)
News Corp (6)	18%	20.6%
Communicorp (5)	15%	31.5%
Radio Kerry Group (5)	15%	11.6%
Bay Broadcasting (3)	9%	6.1%
Palariva (Irish Times) (3)	9%	4.0%
Highcross Communications (2)	6%	5.7%
Ten Separate Owners Each Owning One Radio Station (10 x1)	3% each for total of 30%	2.0% each for total of 20.0%
Measure of Concentration		
HHI Index	1,062	1,677

Methodology. The market shares refer to 2014 but with the 2019 ownership (Table 4). Kenny & Suter (2015, Figure 2, p. 5) provide a snapshot of ownership by market share in 2014. It was assumed that the market share of TXFM105.2 was zero in 2014, which is likely to impact a slight upward bias in Communicorp's audience market share. Nineteen of the thirty four radio stations were matched using Kenny & Suter (2015). It was assumed that the remaining audience market share was equally shared between the remaining 15. The HHI index is the sum of the squares of the market shares of each of the owners. It will vary between 10,000 (one firm owns all the radio stations) and each of the 16 owners has an equal share (i.e. 6.25 per cent) or 625.

Source: Table 4; and, Kenny & Suter (2015, Figure 2, p. 5).

The use of audience measure market share, but retaining the proposed threshold percentages in Table 3, suggests that one owner, Communicorp, is in excess of the 25 per cent cap,[91] while News Corp should it decide to acquire additional radio stations will have to complete a Compliance Audit.[92] All the remaining radio stations are well under the proposed 20 per cent market share threshold, suggesting that they face much lower, if any, regulatory barriers to acquiring additional radio stations. In other words, if the same thresholds are retained as in Table 3 but applied to audience size as the measure of market share then the result in terms of the impact of the thresholds is dramatically different.

[91] If the data in Panel B, Table 1, was used then Communicorp's share for 2017 would be 28.3 per cent rather than 31.5 per cent for 2014.
[92] If the data in Panel B, Table 1, was used then News Corp's share for 2017 would be 18.6 per cent rather than 20.6 per cent for 2014.

A Summary Measure of Concentration

The BAI approach to market share analysis only considers thresholds in relation to one entity. Generally in considering whether or not there is excessive concentration summary measures are used that reflect the number and relative size of all of the firms concerned. One widely used measure is the Herfindahl-Hirschman Index (HHI), which is included in the bottom row of Table 5. This index is defined as the sum of the squares of the market shares of each of the radio station owners. It will vary between 10,000 (one firm owns all the radio stations, 100^2=10,000) and 625 (each of the 16 owners has an equal share, 6.25^2x16=625). The HHI is used by competition agencies to categorize markets in terms of low, high and very high concentration. It is a benchmark, albeit partial, against which to measure whether concentration is high in radio station ownership. Competition policy is concerned with plurality and diversity in terms of the number and size distribution of firms in contributing to a thriving market.[93]

The thresholds used by Ireland's competition agency using the HHI are set out in Table 6, together with those implicit in the current and proposed BAI thresholds. The thresholds used by the BAI appear to be greater than that used by the CCPC. For example, low concentration where there are unlikely to any concerns is much higher for the BAI under current and proposed thresholds.

Table 6
HHI Concentration Thresholds, CCPC & BAI.

Threshold Description	CCPC	BAI: Current (i.e.2012 to the present)	BAI: Proposed
Low	1,000	1,500	2,000
High	1,000-2,000	1,500-2,500	2,000-2,500
Very High	2,000	2,500	2,500

Methodology: To derive the BAI thresholds it was assumed that firms held market shares indicated by the thresholds in Table 2. For example, if the threshold was 25 per cent, then it was assumed each firm had 25 per cent of the market. 4.25^2=2,500.

Source: CCPC (2014, para. 3.10) & Table 2.

[93] Of course if a competition agency were undertaking such an exercise it would consider the degree to which publicly owned radio stations competed with commercial radio stations. The former are excluded from the analysis here. As shown in Table 1 the State broadcaster accounts for about a third of radio audiences.

If we consider these thresholds in relation to the estimated HHI's in Table 5 then it appears while using the HHI estimate based on the number of radio stations that there are no concerns about undue concentration: 1,062 is well below the low concentration level of the BAI's current (1,500) and proposed (2,000) thresholds and only slightly above the CCPC threshold (1,000). However, the HHI estimate based shares measured in terms of audiences is 1,677. This falls into the high concentration category using the CCPC (1,000-2,000) and current BAI thresholds (1,500-2000), but would be considered low using the BAI's proposed thresholds (2,000). In other words, the BAI's proposed thresholds suggest a marked relaxation in ownership concentration thresholds.

A Caveat: Specified Area

Introduction

Apart from the apparent lack of a sound rationale, the criticisms of the proposed State-wide BAI thresholds set out in Table 3 centre on the abolition of the Five Additional Factors and the metric used to measure market share. It could be argued, however, that the current and proposed *Ownership and Control Policy* do take these factors into account in the tests for undue concentration in specific areas for: radio stations; and, communications media. We consider each in turn. It should be noted that in both cases the BAI proposes no changes.

Specified area refers to the geographic area covered in the commercial radio license issued by the BAI. The specified area may be State-wide (e.g. Today FM), regional (e.g. South West) or confined to a single county (e.g. Sunshine 106.8, Co. Dublin). Hence there can be a certain amount of overlap in a specified area by different commercial radio stations.

An Undue Concentration of Radio Stations in a Specified Area

In considering whether or not there is an undue number of sound broadcasting services in a specified area under the control of a single entity, rather than replicating the thresholds in Table 3 for a specified area, undue number is defined by the BAI as "*more than a reasonable* *share of the range of sound broadcasting services available in a specified area*."[94] The BAI take the view that there is "*no obvious practical matrix for determining what constitutes a 'reasonable share of the range of sound broadcasting services' in all cases*."[95] In other words, there are no bright line thresholds.

The BAI, however, takes into account two factors when considering reasonable share:

> *i. the total number of the sound broadcasting services in the relevant geographical area;*
>
> *ii. the share of the total audience of the various sound broadcasting services in the relevant geographical area (the "audience share" model).*[96]

A couple of tests are also applied in respect of the reasonable number in a specified area: substitutability[97] and dominance.[98] In both cases the tests are drawn from competition policy: substitutability is at the heart of market definition,[99] while dominance is a necessary condition for a firm with market power to be held accountable for abusing that position.[100] However, no change in these tests is proposed, although the BAI does pose a consultation question concerning whether or not there are amendments that should be considered.

Several points can be made concerning the BAI analysis with respect to undue concentration of radio stations at the specified area. First, to some degree the criticisms made above concerning the proposals at the State-wide level will be taken into account at the specified area. For example, market share is based on audience size rather than the number of radio stations. However, the BAI needs to be more explicit as to the relationship between the analysis at the State-wide level and that at the specified area.

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[94] BAI (2018a, p. 22)
[95] BAI (2018a, p. 22).
[96] BAI (2018a, p. 22, footnote omitted)
[97] "*I.e. in assessing the extent to which one sound broadcasting service may be deemed to be a substitute for another*." BAI (2018a, p. 23).
[98] "*Regarding an applicant's ability to influence opinion-forming power, a test of* ***dominance****, applying the applicant's audience share of the sound broadcasting services (in which it holds a substantial or controlling interest) in the relevant geographical area*." (BAI, 2018a, p. 23, emphasis in original).
[99] CCPC (2014, pp. 6-11).
[100] Whish & Bailey (2018, pp. 187-221).

Second, at the specified area reference is made to sound broadcasting services which is wider than BAI licensed sound broadcasting services which are the subject of the State-wide test set out in Table 3. The difference between the two definitions is that sound broadcasting services includes RTE, the public broadcaster, in addition to those radio stations licensed by the BAI. Hence BAI licensed services are a subset of sound broadcasting services.

Third, if we were to apply the thresholds in Table 3 to the specified area, then the results in terms of approving a sound broadcasting merger are sensitive to whether all sound broadcasters (i.e. "All Radio Stations" in Table 7) or BAI licensed sound broadcasters (i.e. "BAI Licensed Radio Stations" in Table 7) are used. A recent case makes the point; the BAI approved the acquisition by Bay Broadcasting of Radio Nova. If we accept – as the CCPC does in its analysis of the merger – that the relevant specific area is Co. Dublin, then Table 7 presents market shares using the number of radio stations and audience size, measured by minutes listened.

Several inferences can be drawn from the table. In terms of market share measured by *numbe*r of radio stations, the acquisition of Radio Nova by Bay Broadcasting would have been prohibited for BAI licensed radio stations (i.e. 22.2 per cent + 11.1 per cent > 25 per cent), but not using radio stations including those of RTE (i.e. 16.7 per cent + 8.3 per cent <= 25 per cent). Irrespective of whether market share is measured in relation to the number of BAI licensed radio stations or radio stations including RTE, Communicorp's market share is above the 25 per cent maximum (i.e. 44.4 per cent and 33.3 per cent, respectively).

Turning to market share measured by *audience*, the acquisition of Radio Nova by Bay Broadcasting would have been approved, no matter whether or not BAI licensed radio stations (i.e. 12.6 per cent + 7.0 per cent < 20 per cent) or radio stations including RTE (i.e. 7.2 per cent + 4 per cent < 20 per cent) was used. Irrespective of whether BAI licensed radio stations or radio stations including RTE, Communicorp is above the 25 per cent maximum (i.e. 48 per cent and 27.6 per cent); while News Corp is only above the maximum for BAI licensed radio stations (i.e. 33.0 per cent). RTE exceeds the maximum threshold for radio stations including RTE (i.e. 42.5 per cent). However, in the absence of reasoned decisions by the BAI it is impossible to know with any certainty how decisions are made and legislative terms interpreted at the specified area.

Table 7
Market Shares, by Number & Share of Minutes Listened, All Adults Aged 15+, Commercial Sound Broadcasting Services, Various Definitions, Radio Stations, Co. Dublin, Oct, 2016-Sept. 2017.

Owner	BAI Licensed Radio Stations		All Radio Stations	
	Market Share: Minutes Listened	**Market Share: No. Stations**	**Market Share: Minutes Listened**	**Market Share: No. Stations**
RTE				
Radio 1	-	-	35.1%[a]	8.3%
2FM	-	-	3.9%[a]	8.3%
Lyric FM	-	-	3.3%[a]	8.3%
Market Share	-	-	42.5%	25.0%
News Corp				
FM104	21.0%	11.1%	12.1%	8.3%
Q102	11.0%	11.1%	6.3%	8.3%
Market Share	*33.0%*	*22.2%*	*18.4%*	*16.7%*
Communicorp				
Newstalk	17.2%	11.1%	9.9%	8.3%
Today FM	6.6%	11.1%	3.8%	8.3%
Spin 103.8	12.9%	11.1%	7.4%	8.3%
98FM	11.3%	11.1%	6.5%	8.3%
Market Share	*48%*	*44.4%*	*27.6%*	*33.3%*
Bay Broadcasting				
Classic Hits 4 FM	8.9%	11.1%	2.1%	8.3%
Sunshine 106.8	3.7%	11.1%	5.1%	8.3%
Market Share	*12.6%*	*22.2%*	*7.2%*	*16.7%*
Classic Rock Broadcasting				
Radio Nova	7.0%	11.1%	4.0%	8.3%
Market Share	*7.0%*	*11.1%*	*4.0%*	*8.3%*
Total	**100%**	**100%**	**100%**	**100%**

a. The breakdown of RTE's minutes listened, by Radio 1, 2FM and Lyric FM, refers to the period April 2015 to March 2016. CCPC (2018, Table 1, p. 6) did not provide this breakdown.

Source: CCPC (2018, Table 1, p. 6) based in Joint National Listenership Research and JNLR (2016, Table 5, p. 6).

Fourth, an issue may arise as to which radio stations should be included in analysis for a specified area. In Table 7 we have followed the convention of including radio stations listed by the CCPC as having listeners in Co. Dublin. However, it could be argued that attention should be confined to those radio stations whose license specifies that their broadcast or franchise area is Co. Dublin.[101] That would dramatically reduce the number of radio stations to: FM104; Spin 103.8; Q102; Sunshine 106.8; and, Radio Nova.

An Undue Concentration of Communications Media in a Specified Area

The BAI should, under the Broadcasting Act 2009, also have regard to the desirability of whether or not there is undue concentration in communications media in a specified area.[102] Communications media includes not only broadcasting services but also the "*publication of newspapers or periodicals consisting substantially of news and comment on current affairs*."[103] In determining whether or not there is undue concentration in communications media, the BAI replicates that the methodology used to assess undue concentration of radio stations in a specified area. Again market share is measured in terms of audiences, while there is also the use of the concepts of substitutability and dominance. However, there is little elaboration as to how these concepts are defined or what is meant by more than a reasonable share or how cross-media ownership and control should be taken into account.

Conclusion

When the BAI reviews a change in ownership and control of a radio station to determine whether it will lead to an undue number of stations under the ownership and control of a single entity, it considers this question at the level of the State and with reference to a specified area. The BAI also has to consider whether the change in ownership and control will lead to an undue amount of communications media in a specified area coming under common ownership and control. Thus the BAI is charged with applying a threefold set of tests. Under the BAI's revised *Ownership and Control Policy* the only changes proposed relate to the limited relaxation of ownership restrictions at the State-wide level. No changes are proposed at the specified area

[101] CCPC (2018, para. 34) argues that advertisers "*seeking to target only listeners located in Co. Dublin are likely to advertise on radio stations whose franchise area is limited to Co. Dublin*."
[102] BAI (2018a, pp. 23-24).
[103] BAI (2018a, p. 31).

level, although respondents are asked if they have any amendments that they would like to advance.[104]

The BAI is right to raise the issue of the appropriate tests to be employed in reviewing changes in ownership and control of radio stations. As the BAI has gained experience reviewing such transactions there may be ways in which the process can be streamlined and/or the tests clarified so as to reduce the regulatory burden on business and, at the same time, ensure greater compliance with the BAI's *Ownership and Control Policy* which is vital to maintain diversity and plurality. Furthermore, the new media merger regulatory regime involving the CCPC and the DCCAE, which commenced in 2014, may have caused the BAI to reconsider various concepts and tests.

Against this contextual background several points can be made concerning the consultation questions raised by the BAI with respect to sound broadcasting services.

First, the BAI needs to specify clearly the relationship between the three sets of tests used to review a change in ownership and control of a radio station. It is assumed that these three tests all have to be satisfied. In other words, there is not a trade-off in that two out of the three have to be satisfied or that there is some balancing of the degree to which the three tests are satisfied.

Second, while the State-wide tests have clear bright lines, the two specified area tests, one for radio stations including those of the public broadcaster, the other for communications media, appear to contain no such bright lines. Instead there is reference to "*more than a reasonable share*," but with no definition of what that might be. This is in turn implies a substantial element of judgment and discretion by the BAI in deciding what is unreasonable. If the BAI published reasoned decisions, as suggested above in the discussion of viability/sustainability, then a body of decisions would be built which would provide some guidance to radio station owners and others. Furthermore based on this body of jurisprudence the BAI could develop guidelines on how the terms should be interpreted.

[104] BAI (2018a, pp. 23-24).

Third, the BAI has not made a compelling case for the relaxation of the State-wide ownership and control thresholds. This applies especially to the removal of the Five Additional Factors from application to ownership changes in the 20 to 25 per cent range. As noted in the discussion under 'A Caveat: Specified Area' to some extent the issues raised under the Five Additional Tests might be considered under the two specified area tests. However, the fact that the BAI makes no reference to this possibility in its proposed *Ownership and Control Policy* and the fact that it is not at all clear how the specified area tests are applied makes it unlikely that these tests are an adequate substitute for the Five Additional Factors.

Fourth, in measuring the degree to which a single entity can own more than one radio station the BAI should consider the use of audience size or some other metric of the importance of a radio station rather than the share the number of radio stations. One possible solution is to retain State-wide ownership thresholds for the number of BAI-licensed radio stations that a single entity can own and control, but for the BAI to articulate much more clearly how it takes into account market share at the specified area. There are several alternative approaches that could be used.

- The BAI states that it uses the concept of dominance at the specified area. Reference to competition case law suggests a minimum market share of 40 per cent is necessary to establish dominance.[105] However, other factors beside market share need to be taken into account before concluding that a firm is dominant;[106] and,
- The BAI commissioned research on plurality policies, guidelines, practices and rules. Austria, Germany and the UK have established media ownership thresholds for market dominance or significant market power varying from 20 to 30 per cent.[107] In the case of Germany the threshold drops from 30 to 25 per cent "*where a company has interests in*

[105] Whish & Bailey (2018, Figure 1.1, pp. 46-48).
[106] In the case of commercial sound broadcasting 40 per cent may not be appropriate given the high barriers to entry into commercial sound broadcasting and the fact that radio stations – even in the same specified area – may be aimed at different audiences. Furthermore due attention would need to be given to the State owned broadcaster which, as shown in Table 1, accounts for about a third of the audience. For further discussion see Whish & Bailey (2018, pp. 42-46).
[107] Kevin (2018, Table 8.3, p. 92).

media/related business."[108] Such a lower threshold is consistent with the DCCAE's *Guidelines on Media Mergers*.[109]

Whether any of these would be an appropriate benchmark is for the BAI to decide, but at least these examples from competition law and media regulation provide a point of departure.

[108] Kevin (2018, Table 8.3, p. 92).
[109] DCNER (2015, p. 23).

V Concluding Comments

The BAI has quite rightly decided to review its vitally important *Ownership and Control Policy* which underpins achieving its objectives with respect to plurality and diversity. It sensibly commissioned research on the media scene and the views of targeted stakeholders. The BAI is proposing:

- in assessing changes in the ownership and control of broadcasting licenses that the viability/sustainability of broadcasting services should be ranked second out of eight policy objectives; and,
- facilitating greater concentration of ownership of commercial radio stations through limited relaxation of the current ownership thresholds.

There is insufficient justification for either proposal.

The viability/sustainability objective is already addressed on an ex ante basis when a broadcaster is licensed. The ex ante evaluation should be strengthened by retaining (rather than abolishing) the existing BAI two-year time limit on a licensee being able to transfer ownership. If the viability/sustainability objective is, however, to be retained then it should be ranked much lower than second out of eight objectives.

In terms of the BAI's proposals for facilitating greater concentration of ownership of commercial radio stations, serious consideration should be given to retaining (not abolishing) the Five Additional Factors that go to the heart of plurality and diversity which are core, not peripheral, to the aims and objectives of the BAI. Furthermore the BAI should provide greater clarity how the three tests – the State-wide and the two area-based - to approve the transfer of a radio license are applied and relate to each other.

Given concerns expressed by Reporters Without Borders about the "*Unhealthy Concentration*" in Irish media and with little or no indication of decline in such concentration, indeed, if anything the reverse is the case, gives pause for thought in terms of the BAI's proposals which privilege viability and sustainability and raise virtually no BAI regulatory barriers to four as opposed to five entities, which may be individuals, owning all of the BAI licensed commercial radio stations operating in Ireland.

Policy implementation and public understanding of the BAI's interpretation and administration of its *Ownership and Control Policy* would be greatly enhanced by increased transparency. The BAI should consider not only publishing guidance in relation to terms such as viability and sustainability, the Five Additional Factors, the specified area tests, and so on, but also publishing reasoned decisions on applications for changes in ownership and control of broadcasting licenses. Such changes would bring the BAI would be consistent with the practice of both the CCPC and the DCCAE under the media merger regime introduced in 2014.

REFERENCES

Advisory Group on Media Mergers (2008) *Report*. Dublin: Department of Enterprise, Trade and Employment.

Andrews, Philip, Paul K Gorecki & David McFadden (2015) *Modern Irish Competition Law*. Netherlands: Wolters Kluwer.

Brennan, Joe & Laura Slattery (2016) "Wireless Group Shareholders Accept News Corp Swoop." *Irish Times*, 18 August.

Broadcasting Authority of Ireland (BAI) (n.d.) *Request Form. Changes to Commercial Radio Contract.* Dublin: BAI.

Broadcasting Authority of Ireland (BAI) (2012) *Ownership and Control Policy*. Dublin: BAI.

Broadcasting Authority of Ireland (BAI) (2014) *Guide to Contract Variation Request.* Dublin: BAI.

Broadcasting Authority of Ireland (BAI) (2015a) *Report on Ownership and Control of Media Businesses in Ireland 2012-2014*. Dublin: BAI.

Broadcasting Authority of Ireland (BAI) (2015b) *Guide to Submissions Provisions of a [Format] Sound Broadcasting Service for [Area].* Dublin: BAI.

Broadcasting Authority of Ireland (BAI) (2015c) *Sound Broadcasting Contract*. Dublin: BAI.

Broadcasting Authority of Ireland (BAI) (2017) *The BAI Report on the Merger of CMNL Limited and Independent News and Media Ireland Limited*. Dublin: DCCAE.

Broadcasting Authority of Ireland (BAI) (2018a) *Public Consultation Draft BAI Ownership and Control Policy*. Dublin: BAI.

Broadcasting Authority of Ireland (BAI) (2018b) *Draft BAI Media Plurality Policy Public Consultation*. Dublin: BAI.

Broadcasting Authority of Ireland (BAI) (2018c) *Statement of Outcomes. Consultation on BAI's Draft Broadcasting Services Strategy & Licensing Regulatory Measures*. Dublin: BAI.

Broadcasting Authority of Ireland (BAI) (2018d) *Report on Ownership and Control of Media Businesses in Ireland 2015-2017.* Dublin: BAI.

Competition and Consumer Protection Commission (CCPC) (2014) *Guidelines for Merger Analysis* (*Merger Guidelines*). Dublin: CCPC.

Competition and Consumer Protection Commission (CCPC) (2016) *Determination of Merger Notification M/16/033 – News Corp/Wireless.* Dublin: CCPC.

Competition and Consumer Protection Commission (CCPC) (2018) *Determination of Merger Notification M/17/056 – Bay/Radio Nova.* Dublin: CCPC.

Deegan, Gordon (2019) "Locals in Line for Clare FM Windfall." *Irish Times*, 12 January.

Department of Communications, Climate Action and Environment (DCCAE) (2016) *Liberty Global (Virgin Media) & UTV Ireland*. Phase One Examination Review. 2 November. Dublin: DCCAE.

Department of Communications, Energy & Natural Resources (DCENR) (2015) *Guidelines on Media Mergers*. Dublin: DCENR.

Department of Communications, Climate Action and Environment (DCCAE) (2015) *TV3 & Liberty Global.* Phase One Examination Review. 24 November. Dublin: DCCAE.

Department of Communications, Climate Action and Environment (DCCAE) (2016a) *News Corp & Ireland & Wireless Group.* Phase One Examination Review. 9 September. Dublin: DCCAE.

Department of Communications, Climate Action and Environment (DCCAE) (2016b) *Liberty Global (Virgin Media) & UTV Ireland.* Phase One Examination Review. 2 November. Dublin: DCCAE.

Department of Communications, Climate Action and Environment (DCCAE) (2018a) *Bay Broadcasting Limited & Classic Rock Broadcasting Limited.* Phase One Examination Report. 27 February. Dublin: DCCAE.

Department of Communications, Climate Action and Environment (DCCAE) (2018b) *Palariva Limited (Irish Times) & Sappho Limited (Landmark Media)*. Phase One Examination Review. 11 June. Dublin: DCCAE.

Flynn, R. (2018) *Stakeholder Consultation for 2018 BAI Review of Ownership and Control Policy*. Dublin: BAI.

Gorecki, Paul K (2001) "Do You Believe in Magic? Improving the Quality of Pharmacy Services through Restricting Entry and Aspirational Contracts, the Irish Experience." *European Journal of Health Economics*. Vol. 12, No. 6, December, pp. 521-531.

Joint National Listenership Research (JNRL) (2016) "Ipsos/MRBI/JNLR 2016/1 Summary Results." Press Release. April. Dublin: JNLR.

Kenny, Robert & Tim Suter (2015) "Ownership and Control of Media Businesses in Ireland." Communications Chambers. Appendix One in BAI (2015a).

Kenny, Robert & Robin Foster (2018) "Ownership and Control of Media Businesses in Ireland, 2015-2017" Communications Chambers. Appendix 1 in BAI (2018d).

Kevin, Deirdre (2018) *Jurisdictional Review of Plurality Policies Guidelines, Practices and Rules*. Dublin: BAI

Lipczynski, John, John Wilson & John Goddard (2017) *Industrial Organization. Competition, Strategy and Policy*. 5th Edition. Harlow: Pearson.

Mediatique (2017) *A Report on Market Structure, Dynamics and Developments in Irish Media*. Supplied in Support of the BAI's Consultation on its Broadcasting Services Strategy. London: Mediatique.

Organisation for Economic Co-Operation & Development (OECD) (2001*) Regulatory Reform in Ireland.* OECD Reviews of Regulatory Reform. Paris: OECD.

Paul, Mark (2018) "BAI 'Stands Over' O'Brien INM Ruling." *Irish Times*, 12 December.

Stewart, Duncan (2018) "Radio. Revenue, Reach, and Resilience." *Deloitte Insights. Technology, Media, and Telecommunications Predictions 2019*, pp. 60-70. ttps://www2.deloitte.com/insights/us/en/industry/technology/technology-media-and-telecom-predictions/radio-revenue.html

Whish, Richard & David Bailey (2018) *Competition Law*. 9th Oxford: Oxford University Press.