Guidelines on Media Mergers
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Section 1: Introduction

In March of 2008, an advisory group was established to review the existing legislative framework regarding the public interest aspects of media mergers in Ireland. The Group was asked to examine the provisions of the Competition Act 2002 in relation to media mergers. The Group’s recommendations were generally incorporated in the Competition and Consumer Protection Act 2014, amending the Competition Act 2002, with a few changes. One key change was the passing of responsibility for the Media Mergers process from the Minister for Jobs, Enterprise and Innovation to the Minister for Communications, Energy and Natural Resources, giving him a statutory function under Part 4 of the new Act to make a determination on whether a proposed media merger will be contrary to the public interest in protecting the plurality of media in the State.

The introduction of this reform is in recognition of the fact that a free and pluralistic media is an essential component of our modern representative democracy. The media enjoy a position of special rights and responsibilities and are an important conduit for the exercise of freedom of expression, the development of civic discourse and the proper and adequate representation of the diversity that exists in our society. Given this critical role it is vital to the public interest that the State protect media pluralism as far as is practicable.

The concentration of ownership of media organisations into the hands of a relatively small number of individuals or businesses represents a potential detriment to media plurality. It runs counter to the public interest that the organs of free expression should be overly influenced and potentially controlled by any one individual, group or organisation; as such it is undesirable to allow any one media business or individual to hold excessive significant interests within a sector or particularly across different sectors of media businesses in the State. The objective of this new legislation is the pursuit of the public interest to protect and promote a diverse media, both in terms of ownership and content.

The new Part 3A of the Competition Act 2002 (the Act) updates legislation addressing issues such as fragmented media, the rise of online media and an increasingly dynamic media sector. The primary and most important element of this section of the Act is a new public value test, involving a more thorough definition of media concentration than before and which deals specifically with cross media ownership. The legislation includes a statutory definition of media plurality which refers to both ownership and content. These Guidelines aim to assist media undertakings and interested parties to understand the process involved...
and how the Minister for Communications, Energy and Natural Resources will apply the relevant criteria in making a determination on whether a proposed media merger will be contrary to the public interest in protecting plurality of media in the State. The guidelines may be changed from time to time, as deemed appropriate.
Section 2: Interpretation of Terms

All terms in these guidelines have the same meanings as defined in the Act.

The following supplementary definitions are provided for clarity and guidance with regard to these Guidelines.

’relevant media asset’ means

Holdings in media businesses other than those party to the merger that amount to a significant interest, that are held either by the undertakings party to the merger or by those with significant interests in the undertakings party to the merger.

‘sector’ means

1. Print Media – including newspapers and magazines

2. Audio Visual Media – including Television and Radio

3. Internet Media – Including Internet

‘significant interest’ means

Has sufficient voting, financial or ownership strength within the relevant media business or media businesses to influence directly or indirectly, to an appreciable extent, the direction or policy of the media business or media businesses with regard in particular to news, current affairs or cultural content. This includes sourcing, production, supply or delivery of such content.

The following thresholds in relation to voting power at a general meeting of the media business, or the nominal value of the shareholding, are provided by way of guidance in terms of what constitutes a significant interest:

- A holding or voting strength of between 10% and 19% (directly or indirectly) may constitute a significant interest.

- A holding or voting strength of more than 20% or more of the voting power (directly or indirectly) will generally constitute a significant interest.
**Near Relative** - A person (being a natural person) is deemed, for the purposes of this definition to have a significant Interest in any person in which his/her Near Relative has an Interest, and is deemed, for the purpose of this definition, to have a significant Interest in any person in which his Near Relative has a significant Interest. A near relative means:

(a) spouse, civil partner, cohabitant (within the meaning of section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 or any analogous legislation of another jurisdiction); and/or

(b) child, stepchild, brother, sister, parent, or grandparent; or (where appropriate) the spouse, civil partner or such a cohabitant of any of the aforesaid.
Section 3: How to Apply

This section outlines the procedures for dealing with mergers and acquisitions notified to the Department of Communications, Energy and Natural Resources. It is applicable from the 31 October, 2014.

3.1 Notifying the Department of Communications, Energy and Natural Resources

In accordance with section 28B of the Competition Act 2002 (“the Act”), each of the undertakings involved that notified the Competition and Consumer Protection Commission (“the Commission”) under section 18(1), or the European Commission, as the case may be, shall notify the Minister for Communications, Energy and Natural Resources (“the Minister”) in writing, and shall provide him with full details, of the proposal to put the merger or acquisition into effect.

Notifications must be made on or before the “relevant date”. The relevant date means in relation to media mergers, 10 working days from whichever of the following dates is applicable:

a. The date of a determination by the Commission

b. The day after the period in which the Commission must make its determination if this period has elapsed without the Commission having informed the undertakings of the determination that was made

c. Where the Commission had made a determination that it intends to carry out a phase 2 investigation in relation to the merger or acquisition the day after

d. The date of a decision of the European Commission on the control of concentrations between undertakings

e. The date that Article 10(6) of Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings comes into effect.
Notifications are made on the Department’s Notification Form. Undertakings are encouraged to make a joint notification, though they are not obliged to do so. Where undertakings do make separate notifications, the “appropriate date” from which the merger review procedure commences, as defined in section 28D (9) (10) (11) of this Act shall be the date of receipt of the last notification. In the situation where one of the parties, which should have notified, fails to notify, the appropriate date is the latest date by which the non-notifying party could have notified on time.

For the purposes of establishing the “appropriate date” (which is the date when the undertaking actually notifies the Minister and is used to calculate the time for requesting further information) a notification shall be deemed to have been received by the Department when a complete copy of same, in hardcopy format, is delivered to the address below between the hours of 9.15 and 17.30, Monday – Friday (excluding public holidays). Where a notification is received later than 17.30 it shall be deemed to have been received on the next working day. In addition to the hard copy, the Notification Form and as many of the other notification documents as are capable of being supplied electronically should be so supplied.

All notifications should be addressed to:

Media Mergers Applications

Department of Communications, Energy and Natural Resources,

29-31 Adelaide Road

Dublin 2

Email: mediamergers@dcenr.gov.ie
Section 4: Media Merger Process

4.2 Limitation on media merger being put into effect

The Commission must also notify the Minister of its determination on the media merger notification. A merger shall be deemed void if it has been put into effect before the Minister has made a determination or it has not been put into effect within 12 months of the determination being made.

4.3 Initial Examination (Phase 1 Assessment)

The Minister will inform the undertakings, that have made the media merger notification, within 30 working days (or 45 days where proposed commitments referred to in section 28D (5) have been made) from the relevant date or from the appropriate date, whichever is the later, of whichever of the following determinations he has made.

a) That in his opinion the result of the media merger will not be contrary to the public interest in protecting plurality of the media in the State, and accordingly that the media merger may be put into effect

b) That, in light of proposed commitments offered by the undertakings, in his opinion the result of the media merger will not be contrary to the public interest in protecting plurality of the media in the State, and accordingly the media merger may be put into effect subject to incorporation of those proposed commitments as specified conditions to be complied with or

c) That he is concerned that the media merger may be contrary to the public interest in protecting plurality of the media in the State, and accordingly that he intends to request the Broadcasting Authority of Ireland (BAI) to carry out an examination under section 28E of the Act.
4.3.1 Basis of the Determination

In making a determination as to whether the result of the media merger is likely to be contrary to public interest in protecting the plurality of the media in the State, the Minister shall have regard to –

a) The relevant criteria

b) these guidelines issued under section 28L

c) All submissions made and information provided to the Minister by the undertakings involved in the media merger

d) And take full account of, where applicable, the determination of the Commission under paragraph (a) of section 21(2) or under paragraph (a) or (c) of section 22(3)

e) And take full account of, where applicable, the decision by the European Commission under Article 6(1)(b) or Article 8(1) or (2) of Council Regulation (EC) No. 139/2004 on the control of concentration between undertakings,

f) Relevant reports published by the Minister under section 28M, and

g) Relevant research published by the BAI under section 28M

4.3.2 Requirement to provide additional information

The Minister may make a written request under section 28D (3), upon any one or more of the undertakings involved to provide further specified information within a specified time period.

This information must be requested within 30 days from the appropriate date (notification date) which is on or before the relevant date.

4.3.3 Proposals

The Minister may enter into discussions with the undertakings involved in the media merger or with any individual or any undertaking with a view to identifying measures
which would ameliorate any potential negative effects of the media merger on the plurality of the media in the State

In the course of these discussions any of the undertakings involved in the media merger concerned may submit to the Minister proposed commitments with regard to the manner in which the media merger may be put into effect. This would be done with a view to the proposed commitments becoming binding on them if the Minister incorporates the proposed commitments as specified conditions to be complied with in his determination.

4.3.4 Notification and Publication of a determination

Once the Minister has made a determination he

a) Shall furnish to the undertakings involved a copy of the determination, and

b) May publish with due regard for commercial confidentiality –

   i. The fact of the making of the determination

   ii. Whether the determination was made under paragraph (a), (b) or (c) of section 28D (1) and

   iii. Where his determination was made under sub section 28D (1) (b), a summary of the conditions specified in the determination.

After the Minister has furnished the determination to the undertakings involved he or she may correct the determination at any time before the determinations is published to remove any clerical or typographical errors but may not reconsider or re-open any aspect of the determination.

The Minister will publish the determination within 15 working days from the date of the determination, with due regard for commercial confidentiality.
4.4 Full Examination (Phase 2 Assessment)

4.4.1 Determination to carry out a full investigation

Where having considered the information provided and all the submissions received, the Minister is unable on the basis of the information before him to form the view that the result of the merger acquisition will not be contrary to the public interest in protecting the plurality of the media in the State, he will request the Broadcasting Authority of Ireland (BAI) to carry out a full investigation i.e. proceed to Phase 2.

4.4.2 Publication of the determination to carry out a full investigation

As soon as the BAI receive this request they must publish a copy of the request on their website.

4.4.3 Submissions

The BAI must invite public submissions and forward a copy of the request to the relevant Oireachtas Committee inviting them to make a submission. All submissions must be made within 20 days from the date of publication of the request. Submissions should clearly indicate any information which should be treated as confidential.

4.4.4 Discussions and Proposals

The BAI may enter into discussions with the undertakings involved with a view to identifying measures which would amend any potential negative effects of the media merger on plurality of media in the State.

In the course of discussions any of the undertakings involved in the media merger concerned may submit to the BAI, not later than 20 working days before the BAI is due to make its report to the Minister proposed commitments with regard to the manner in which the media merger may be put into effect with a view to the proposed commitments becoming binding on it or them if the Minister incorporates the proposed commitments as specified conditions to be complied with in his determination in relation to the media merger.
4.4.5 Requirement to provide further information

Where the BAI requires further information in making its report it may, by notice, in writing, served on the undertakings, require any one or more of the undertakings involved to supply to them specified information within a specified period. The undertaking is obliged to comply with this request.

The level of detail required will determine the length of the specified period. Such a request must be made no later than 20 days before the BAI is required to make its report.

4.4.6 Establishment of an Advisory Panel

The Minister may establish an advisory panel to provide its opinion to the BAI on the application of the relevant criteria to the media merger in question once it becomes a full media merger investigation. The panel should consist of between 3 and 5 persons of requisite experience appointed by the Minister. The panel must produce a report on the relevant criteria within 20 working days from the date of the request and must provide clarification of its opinion in writing if requested by the Minister. Once the Minister makes a determination the panel will be dissolved.

4.4.7 Recommendation by the BAI

The BAI has 80 working days to report back to the Minister including a recommendation on whether the media merger should be put into effect with or without conditions or whether the media merger should not be put into effect by the Minister.

After the BAI has furnished its report to the Minister they have 7 days to correct the report to remove any clerical or typographical errors but may not reconsider or reopen any aspect of the determination.

4.4.8 Basis of the BAI's recommendation

The BAI when making it report shall form a view as to whether the result of the media merger is likely to be contrary to public interest in protecting the plurality of the media in the State. The BAI shall have regard to –
(a) The relevant criteria

(b) Any guidelines issued by the Minister under section 28L

(c) All submissions made and information provided
   i. to the Minister by the undertakings involved in the media merger
   ii. to the BAI by the undertakings involved in the media merger, by any other person in response to an invitation for submissions or by the Joint Oireachtas Committee in response to an invitation.

(d) And take full account of, where applicable, the determination of the Commission under paragraph (a) of section 21(2) or under paragraph (a) or (c) of section 22(3)

(e) And take full account of, where applicable, the decision by the European Commission under Article 6(1)(b) or Article 8(1) or (2) of Council Regulation (EC) No. 139/2004 on the control of concentration between undertakings,

(f) Where applicable the opinion of the Advisory Panel

(g) Any responses made by the undertakings in relation to the draft report and recommendation

(h) Relevant reports published by the Minister under section 28M, and

(i) Relevant research published by the BAI under section 28M

4.4.9 Provision of Draft Report

The BAI must furnish a draft report and draft recommendations to the undertakings involved not later than 30 working days before it is due to make its report to the Minister. They must also forward a copy of any opinion and clarifications issued by the Advisory Panel and any submissions received.

The undertakings have 10 days from the receipt of the draft report to respond to the BAI.
4.5 **Determination of the Minister for Communications, Energy and Natural Resources after full media merger examination.**

The Minister has 20 working days from the date that the report of the BAI was made to him to make a determination on the grounds that the result of the media merger will or will not as the case may be, be contrary to the public interest in protecting plurality of the media in the State whether the media merger

(a) May be put into effect

(b) May not be put into effect

(c) May be put into effect, subject to the conditions specified in the determination being complied with

4.5.1 **Notification and Publication of the Determination**

After the Minister has furnished the determination to the undertakings involved he may correct the determination at any time before the determinations is published to remove any clerical or typographical errors but may not reconsider or re-open any aspect of the determination.

The undertakings may request the Minister in writing to omit from the public version of the determination any information that they consider to be commercially sensitive. This must be done within 15 days of the determination.

The Minister must publish on the internet his determination after 15 working days from the date of the determination but not later than 30 working days from this date.

The Minister must lay a copy of the BAI Report on the operation of media in the State before each House of the Oireachtas.

4.6 **Review of Conditions in a Determination**

Where the Minister has made his determination subject to conditions, he may with the consent of the undertakings amend or revoke, in writing, one or more of the
conditions made in the original determination after the parties have sent a formal request to review the determination. This is likely to arise where opinion that market conditions applicable to the merger have substantially changed since the date of the BAI report to the Minister. The undertakings have 40 days from the date of the determination to request this review and the Minister has 40 days to amend or revoke in writing one or more of the conditions.

4.7 Enforcement of certain determinations

The High Court can grant an injunction to enforce compliance on the motion of the Minister, the BAI or any of the undertakings involved in the media merger.

4.8 Judicial Review

An application to the High Court for leave to seek a judicial review must be made within 40 working days from the determination; if it is outside the 40 working days then the undertaking must have a good reason why it is and show that it would not be unjust to grant leave outside the 40 working days. There must be an arguable case for leave to be granted.

The High Court can make any orders that it sees fit, including sending the matter back to the Minister.

The permission of the High Court is required to bring an appeal to the Supreme Court; this permission will only be given if the issue is a point of law of exceptional public importance. This does not apply in relation to Constitutional matters.

4.9 Fees

The BAI may charge, receive and recover, for the costs incurred by it during a full media merger examination. The amount of the fees may be determined with the approval of the Minister.

4.10 Reports

In addition, the BAI must publish a report on the operation of media in the State. This must be done within 1 year of the commencement of the Act and must be updated
every 3 years thereafter. The report will describe ownership and control arrangements for undertakings carrying on a media business in the State, describe the changes to the ownership and control arrangements of such undertakings over the previous 3 years and analyse the effects of such changes on plurality of the media in the State.

The BAI shall also conduct and publish the results of periodic methodological research on matters relating to plurality of the media, which may include the development of appropriate measurement indices.

4.11 Research

The BAI may also be requested to conduct research on matters relating to plurality of the media and publish the results of such research.
Overview of the Proposed Media Mergers System

Notification of the proposed media merger to Minister on or before the relevant date

Initial (phase 1) assessment carried out by DCENR

Proceed to full media mergers (phase 2) assessment carried out by BAI

Recommendation to Minister to proceed, proceed with conditions or not to proceed

Minister makes a decision to proceed with the merger with or without conditions

Review of Conditions

Minister makes a decision not to proceed

Advisory Panel may be appointed by the Minister to assist the BAI with the phase 2 assessment

Proceed with Merger

Proceed with Merger with Conditions
Section 5: Application of the Relevant Criteria

As part of the notification process media businesses will be required to complete the media merger notification form in full. (Appendix 1). Undertakings may also be required to submit additional information. This information will then be assessed under the Relevant Criteria headings as set out in the Act. The information will be evaluated under each of the headings below which comprise ownership and control; market share; governance; editorial ethos; content; sources and finance. Regard will be given to the presence of other media players in the relevant sector and across the State in this evaluation. Before coming to a determination the Minister will also have regard to the adequacy, if applicable, of the scale and reach of RTE and TG4 and the ownership and control policy of the BAI in protecting plurality should the merger proceed.

In addition the Minister will have regard to any proposed commitments offered by the undertakings and any impositions he wishes to impose. The Minister will then issue a determination either to approve the merger, approve the merger with conditions or determine that the merger may be contrary to protection of plurality and direct the BAI to carry out a Phase 2 examination.

The Phase 2 examination will provide the Minister with a broader, more in-depth view than that achievable under the Phase 1 examination.

The objective of the Act is the pursuit of the public interest in the protection of media plurality in the state and in particular to prevent the diminution of this essential public interest by way of media merger and the concentration of the media, both in terms of ownership and content. To achieve this important objective the Minister will seek information on and have regard to the situation on a before and after the proposed merger basis. This will allow the Minister both to assess the impact of the parties to the proposed merger on media plurality as is and the effect of allowing the merger to proceed.

5.1 Ownership and Control

Ownership and control represent primary indicators of media plurality in the state.
The Minister will examine media businesses party to the proposed merger in relation to levels and structure of ownership and control.

The Minister will not only examine the ownership and control structure of the media businesses that are party to the merger but will also have regard to other relevant media assets.

This is essential as determinations on public interest and media plurality must be made across all media sectors. Individual holdings that may not appear pertinent can have a serious impact when considered collectively.

For a comprehensive list of information required under this section please refer to Appendix I.

5.2 Market Share

Market share is an important indicator of media pluralism in the State. As the market share of undertakings increases pluralism may be affected. To achieve the objectives of the legislation in protecting the plurality of media in the State the Minister will have regard to the market share of each of the media businesses and other relevant media assets. This will include but is not necessarily limited to; readership, listenership and viewership demographics as relevant.

The Minister will engage in a complete examination to ensure that the market share is understood in its proper context in order to protect the public interest in maintaining a plural and diverse media. This may involve looking at market share in relation to subgroups within the various sectors, such as gender, geographical areas, age profile and socio-economic groups, specific interest groups.

The more sectors that an individual or entity has significant interests in the lower the threshold where it is considered to have an adverse effect on plurality. The cross-media sectors for consideration are Television, Radio, Print Media, Internet, other media interests.

For a comprehensive list of information required under this section please refer to Appendix I
5.3 Governance

Governance structures in media businesses may have a significant impact on content and thus media plurality in the State, evidence of corporate governance standards may also be relevant. The Minister will examine the governance structure of parties to a proposed merger and other relevant media assets, and their future plans for the proposed merged entity including the composition of the boards of directors, boards of management, management systems etc. Higher levels of consolidation of management structure of the parties to the proposed merger may adversely affect media pluralism in the State.

For a comprehensive list of information required under this section please refer to Appendix I.

5.4 Editorial Ethos

Editorial ethos may have a significant impact on the content of media businesses and thus on media plurality. To achieve the aims of the legislation the Minister will have regard to the levels of control and influence exercised by the management structure of the media business on the editorial function, the nature and level of editorial accountability to corporate management and particularly shareholders.

Consideration may be given to the personnel involved in the editorial control of the applicable media businesses. The level of editorial independence may be a positive determining factor; that is non-interference by financiers, investors or shareholders.

Editorial positions as well as the political or cultural allegiances of the media business, either by declaration or financial contribution, may be viewed in pursuance of the objectives of the legislation in protecting the public interest in maintaining the plurality of media in the State.

For a comprehensive list of information required under this section please refer to Appendix I.
5.5 Content

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

The Minister will examine the breakdown of content for each of the media businesses party to the merger in terms of news, current affairs, opinion and cultural interests and user generated content. Consolidation of content between the parties to the merger may diminish the plurality of media in the State contrary to the public interest.

For a comprehensive list of information required under this section please refer to Appendix I

5.6 Sources

The sourcing policy employed by media businesses may have an impact on diversity of content and thus on media pluralism in the state. A reduction in the diversity of sources may have an adverse effect on the plurality of media in the State.

To secure the objective of the legislation The Minister will have regard to the nature of sources and methods of sourcing engaged by the media organisation and other relevant media assets.

For a comprehensive list of information required under this section please refer to Appendix I.
5.7 Other media

In order to achieve the objectives of the legislation in pursuing the public interest in protecting the plurality of media in the state the Minister will have regard to any alternative content provided by other media businesses in an area and across all media sector which may, protect against any adverse impact the proposed merger could have on media plurality in the State.

For a comprehensive list of information required under this section please refer to Appendix I.

5.8 Financial

The financial structure of media businesses may have important implications for the ownership, control and independence of the media businesses; consequently it is of relevance in achieving the objectives of the legislation in pursuing the public interest in protecting media plurality in the state.

The Minister will have regard to the financial structure of the media businesses party to the proposed merger, of particular relevance is the proposed structure of debt following the proposed merger.

The higher the degree of consolidation of the financial structure between the parties to the proposed merger the more likely it is that this may affect media pluralism.

For a comprehensive list of information required under this section please refer to Appendix I.

5.9 The scale and reach of RTÉ and TG4;

RTÉ & TG4 are independent national Public Service Broadcasters whose remit and obligations are set out in Part 7 of the Broadcasting Act 2009. RTÉ and TG4 are obliged inter alia to establish, maintain and operate national television and sound broadcasting services which have the character of a public service, are free-to-air and
are be made available, in so far as it is reasonably practicable, to the whole community on the island of Ireland.

These Public Service Broadcasters are obliged to provide a comprehensive range of programmes in the Irish and English languages that reflect the cultural diversity of the whole island of Ireland and include programmes that entertain, inform and educate, provide coverage of sporting, religious and cultural activities and cater for the expectations of the community generally as well as members of the community with special or minority interests and which, in every case, respect human dignity.

The Public Service Broadcasters are, in addition, obliged to provide programmes of news and current affairs in the Irish and English languages, to facilitate or assist contemporary cultural expression and encourage or promote innovation and experimentation in broadcasting.

The Public Service Broadcasters have an impact on media pluralism in the state. Accordingly the Department of Communications, Energy and Natural Resources, when considering the appropriateness of proposed media mergers, will have regard to the contemporary scale and reach of the Public Service Broadcasters and their consequential impact on the plurality of the media in the State and how they interplay with the parties to the proposed merger.

5.10 Part 6 of the Act of 2009 and the ownership and control policy of the Broadcasting Authority of Ireland

The BAI has a statutory remit to protect media plurality in broadcasting. Part 6 of the Broadcasting Act 2009 provides the statutory framework for the licensing and regulation of broadcasting and multiplex services in Ireland. In addition, the BAI has a policy on the ownership and control of its broadcasting and multiplex contractors - the BAI Ownership & Control Policy (2012) (“the Policy”), which gives practical effect to the statutory objectives of Part 6.

The BAI applies this Policy in assessing the ownership and control elements of applications for broadcasting, content provision and multiplex contracts and to assess relevant requests for variations or any compliance issues that may arise subsequently.
in respect of such contracts. In applying the Policy, the BAI assesses the following, as outlined under the Broadcasting Act:

(i) the desirability of allowing a person, or group of persons, to have control of, or substantial interests in, an undue number of sound broadcasting services in respect of which a sound broadcasting contract has been awarded under the 2009 Act;

(ii) the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue number of sound broadcasting services in a specified area

(iii) the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue amount of the communications media in a specified area. Section 71 of the 2009 Act does not include a specific provision in relation to media concentration in respect of applicants for other content contracts under that Section. However, the BAI, as a matter of policy, applies this test when considering applications for all “Content Provision Contracts”.

The decisions and recommendations made by the BAI under its statutory remit and the Policy will be taken into consideration by the Minister, if relevant.

5.11 Proposed Commitments

Media businesses party to the proposed merger may submit proposed commitments as part of the notification process. The Minister will consider commitments submitted that set out ways and means to be employed by media businesses to protect the public interest in maintaining the plurality of media in the state. The Minister will consider proposals that may involve positive action or commitments to refrain from particular actions.

The Minister will only accept commitments that are readily verifiable and would amount to concrete contractual arrangements that would be binding on the media businesses.
In the initial assessment the Minister may allow the media merger to proceed with the proposed commitments as conditions. If the proposed commitments are incorporated in the determination they effectively become provisions of the determinations. A breach of a provision of the determination is an offence and there are penalties for such a breach.

Should the media businesses breach any of the proposed commitments the merger may be null and void. The media businesses would then have to reinitialise the process. That the media businesses failed to fulfil any of the commitments would be considered as a negative point in any application for a media merger.

The following list gives examples of possible commitments that may be considered to positively promote plurality.

- The divestment or sale of specified assets.
- A restriction on the purchase of particular assets for a specified period of time.
- A restriction on the publication or the purchase of particular content.
- A restriction on the exchange of competitively sensitive information between the merged companies post-merger.
- Physical separation of the merged companies.
- Safeguards to ensure editorial freedom
- Imposition of financial restrictions.
- To protect the unique editorial ethos of a particular product or service.

This list is neither prescriptive nor exhaustive.

For a comprehensive list of information required under this section please refer to Appendix I.