NUJ Submission to
Media Mergers Guidelines Consultation
Introduction: The National Union of Journalists welcomes publication of the draft guidelines on Media Mergers by the Minister for Communications, Energy and Natural Resources Mr Alex White TD.

The draft guidelines, prepared under the Competition and Consumer Protection Act 2014, were published on 22nd December 2014 with provision for 30 days consultation, in accordance with the statutory requirements.

The Irish Executive Council of the National Union of Journalists hosted a round table discussion on 15th January 2015 to discuss the proposed guidelines.

At the outset the Council expressed grave disappointment at the decision to publish the guidelines over the Christmas period, with no realistic time for widespread consultation on a document which potentially, has profound implications for the shape of the print, broadcasting and digital/online media in Ireland.

Minister White is congratulated on the eventual publication of the draft guidelines, but the timing of the publication suggests that due consideration has not been given by the Department of Communications, Energy and Natural Resources to the importance of proper consultation with all stakeholders.

Publication of the guidelines in Christmas week can only have restricted the opportunity of many stakeholders to contribute to the consultation process.

While the draft guidelines are welcome the NUJ is fearful that the proposals are too late and too restrictive to undo much of the damage caused by successive governments in failing to put in place appropriate measures to exercise control on the development of powerful media conglomerates exercising a degree of control, power and influence on the print, broadcasting and on-line media sectors in Ireland.

In this regard we remain committed to the idea of a Commission on the Future of the Media in Ireland to examine all aspects of the media in Ireland.

In the meantime we strongly believe that all applications for changes in ownership of media organisations should be the subject of investigation by an advisory panel which would be automatically consulted by the Minister on receipt of notification.

Background: It is worth noting that the then government appointed an advisory group on media mergers in March 2008.
The work of that group, chaired by Mr. Paul Screenan SC was completed in June 2008 and presented to the Minister for Enterprise, Trade and Employment.

Inexplicably the report of the group was not published by the Tánaiste and Minister for Enterprise, Trade and Employment until 2\textsuperscript{nd} January 2009, again during the Christmas holiday period.

Ms. Coughlan promised to implement the report as part of legislation being brought forward during the course of 2009 to reform aspects of competition law and implement the merger of the National Consumer Agency and the Competition Authority.

In September 2011 the Minister for Communications Mr. Pat Rabbitte announced the transfer of responsibility for the approval of media mergers from the Department of Jobs, Enterprise and Innovation to the Department of Communications, Energy and Natural Resources.

Speaking at the Biennial Delegate Meeting of the National Union of Journalists Mr. Rabbitte confirmed that future approval of media mergers would include a public interest test and applications would not only be viewed from the perspective of competition law.

Mr. Rabbitte confirmed the proposed transfer at a conference in \textbf{February 2012}.

Ultimately the legislation giving effect to the changes was not introduced until Autumn 2014.

It is worth noting the delays from the initial report to publication of the advisory group report - and the subsequent delays between ministerial announcement and legislative effect to those announcements, as being illustrative of the inadequate pace of developments.

This is notwithstanding recognition of the importance of media diversity acknowledged by Minister White in publishing the draft guideline and by his predecessor in announcing the transfer.

\textbf{Media Matters}: The existence of a diverse media is essential to a functioning democracy. The exercise of the rightful liberty to freedom of expression is prescribed by Bunracht na hÉireann. The ownership and control of what the Constitution refers to as ‘organs of public opinion’ have a direct impact on society and the provisions of Appendix 1 of the Draft Guidelines on Media Mergers, the Media Mergers Notification Form clearly recognise that ownership of the media is not just a commercial transaction without implications beyond the ownership of a significant commercial asset.
Developments in the Republic of Ireland: The media industry is dynamic. Many of the changes which have occurred in the past decade have been the result of technological developments. However the failure of the State to adequately address the issue of concentration of ownership and cross-ownership in the print and broadcasting sector has had significant implications for diversity of both news and opinion and, for employment standards within an industry where employment can be precarious.

The NUJ believes that the current regulatory regimes are inadequate and that the new Media Merger proposals do not go far enough in tackling the shortcomings which exist.

It is also notable that the Competition Authority and the Broadcasting Authority of Ireland will continue to exert considerable power and influence, notwithstanding the record of both organisations. Elaboration on the precise role and the status of observations by the Competition Authority under the new regime is necessary.

The determination of the Competition Authority in relation to the acquisition of the Roscommon Champion newspaper by the publisher of the only other paid for title in the county, the Roscommon Herald, through a call option agreement is illustrative of the need for reform.

Tontine Rooms Holding Company acquired the Newry Democrat from TCH Democrat Media Limited (see Determination of Merger Notification M/10/030) and TCH Democrat Media Limited acquired the option to publish, the goodwill and intellectual property rights of the Roscommon Champion. This deal clearly diminished media diversity and plurality of ownership in Co. Roscommon and Co. Down.

The fate of the Johnston Press regional group is another example of the inadequacy of current policy, whereby significant changes in ownership have occurred with major implications not lonely for local democracy but also for employment standards within the regional press sector.

Within the broadcasting sector the Broadcasting Authority of Ireland has adopted a narrow perspective in relation to the interpretation of statutory obligations.

The inability of the current statutory regime to curb the development of Communicorp and the determinations of the BAI in respect of the control exercised by Mr. Denis O’Brien at its board meeting on 23rd July 2012 give rise to serious concern and raise fundamental questions about the appropriateness of the BAI as a body assigned special authority by the Minister for Communications to advise of media mergers.
In any event the NUJ has a particular concern at the proposal to extend the remit of the BAI beyond its present role.

In welcoming the draft proposals the NUJ recognises that there are many issues which cannot be resolved through these measures.

The fact that there is no provision for retrospective measures to redress the current media dominance by a small group of companies is of major concern.

We call again on the Minister for Communications to establish a Commission on the Future of the Media in Ireland.

The changes which have taken place since the Report of the Commission on the Newspaper Industry (June 1996) and the Forum on Broadcasting (March 2002) are enormous.

The issues of diversity, of greater participation of women in editorial structures, of training and re-training, of new models of ownership and the need to consider the consequences of technological change need to be resolved in a coherent manner which builds on the recognition contained in the Media Merger policy – the media and how it is controlled and operates is a matter of public interest with profound implications for democracy and society.

In responding to the specific proposals the NUJ makes the following general observations: It is noted that the guidelines, as currently framed, make no reference to the issues of cross-border/all-island companies or of the need for the Minister for Communications to give consideration to interests in media organisations outside the country.

All applications to the Minister for Communications should be subject to scrutiny.

The very importance of media plurality emphasised by the Minister for Communications in announcing the draft guidelines supports the proposition that there should be an automatic examination and analysis by an advisory body.

In responding to the specific proposals the NUJ wishes to make the following general observations:

It is noted that the guidelines, as currently framed, make no reference to the issues of cross-border/all-island companies of the need for the Minister for Communications to give consideration to interests in media organisations outside the country. Very important as the island of Ireland is more or less one media market.
All applications to the Minister for Communications should be subject to scrutiny. The very importance of media plurality emphasised by the Minister for Communications in announcing the draft guidelines supports the proposition that there should be an automatic examination and analysis by an advisory body.

In our view an independent media merger panel should be appointed by the Minister for Communications for a fixed term. There should be an independent Chair and the panel should include experts in the field of media, business, law, journalism and industrial relations.

The NUJ does not believe that the powers envisaged for the BAI are appropriate.

**Page 11: Clause 4.3.3:** The NUJ is of the view that this clause provides media companies with a means of circumventing legislative measures to protect media diversity by private negotiations outside of a transparent process. The NUJ is opposed to private discussions with “undertakings involved in the media merger”.

If such discussions are envisaged the consultative process should also include employees or their representative. Where an application is received for a media merger it should be the subject of public announcement.

**Page 12: Clause 4.3.4:** Noting the reference to commercial confidentiality due regard must be given to the public interest.

Clauses 4.3.2, 4.3.3, 4.3.4 and 4.4.2 on pages 11 to 13 envisage a role for the BAI which we do not believe is appropriate. The BAI has a specific remit in the regulation of the broadcasting media. There is no basis for extending that remit.

**Page 13 – Clause 4.4.4:** We believe that a panel should be formed to investigate applications. There should be a public hearing and the panel should have the right to hear representations from individuals and groups including employees or their representatives and others. While provision may be made for some evidence to be given in private the principle of public hearings is important when dealing with decisions relating to a matter of public interest.
Page 14 – Clause 4.4.6: The NUJ believes that the establishment of a panel should be automatic and not discretionary and that maybe in the draft the word “should”, ought to be substituted by the word “shall”.

Page 22 – Clause 5.4: The NUJ welcomes the recognition of the importance of editorial ethos.

Page 26 – Clause 5.11: The NUJ recommends that media businesses party to the proposed merger must submit commitments and that it should not be discretionary.

Page 27 – Clause 5.11: Bullet points – In relation to safeguards to ensure editorial freedom, among the examples outlined the NUJ would suggest the addition of Adherence to Press Council of Ireland’s Code of Practice for Newspapers and Magazines.

Appendix – Merger Notification Form

The NUJ broadly welcomes the principles contained in the Media Merger Notification Form and the following amendments are designed to enhance the proposed document.

In this regard from Pages 7 – 11 – The word ‘evidence’ should be inserted to replace “information”, or “details”.

Page 7 – Clause 3.2: Editorial control should also be included.

Page 7 – Clause 3.2: The NUJ would recommend that reference be made to adherence to best practice in relation to employment standards and to acceptance of statutory codes of practice.

Page 7 – Clause 3.6.3: There should be evidence of a diversity of opinions in matters of public debate.
Where a media organisation is consistently in favour or against one issue then it should be pointed out at this stage by the company. A company is free to adopt a position on a matter of public controversy but should not abuse a market position to prevent the expression of alternative opinions.

Page 8 – Clause 3.6.1: While the focus on editorial control is welcome media companies should be required to demonstrate proof of editorial independence by way of verifiable commitment to editorial investment.

Page 11 - Clause 3.9: Consideration should also be given to including a statement of a company’s statement of corporate social responsibilities.
Page 11 - Clause 3.12.3: The media is characterised by a variety of employment relationships. Details furnished must also include changes in the engagement of freelance or atypical workers and to the engagement of independent production units. The extent to which staff have been consulted should also be considered, in order to bring the process in line with TUPE legislation.

Page 11 - Clause 3.12.4. The word ‘system’ should be eradicated from the second line. It is meaningless. The impact to the remuneration of freelances, casuals and those on contracts for service should also be included.

Seamus Dooley
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