



***Independent Study on  
Indicators for Media Pluralism  
in the Member States – Towards  
a Risk-based Approach***

Prepared for the European Commission  
Directorate-General Information Society and Media  
SMART 007A 2007-0002

*by*

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**Final Report - Annex III**

**COUNTRY REPORTS**

**Ireland**

Contract No.: 30-CE-0154276/00-76  
Leuven, July 2009



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By the Commission of the European Communities  
Directorate-General for Information Society and Media

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**Important Notice**

By K.U.Leuven, Jönköping International Business School, Central European University and Ernst & Young Consultancy Belgium

The country reports are not in any way intended to be an implementation of the Media Pluralism Monitor in the Member States. They were drafted during the initial stages of the study, with the intention of obtaining a better view of regulatory measures in the broad sense – including co- and self-regulatory measures – adopted in the Member States to promote or safeguard, directly or indirectly, pluralism in the media. The intention was to obtain a high-level snapshot of possible implementation problems and not to express any value judgements on existing rules. The resulting overview facilitated the development of methods for assessing the effective implementation of regulatory safeguards, which had to be, according to the Terms of Reference for the study, an intrinsic element of the legal indicators. We strongly recommend that you also download the file containing our Introduction as it sets out our approach to the initial stages of the project in detail and includes a short manual on how to read the country reports. We draw your attention to the Overview file as well.

Please note that the country reports were finalized in the middle of 2008 and do not therefore reflect progress made with the transposition of the Audiovisual Media Services Directive or any subsequent initiative by Member States. They are made available not as final deliverables of the study, but as interim deliverables, intended to illuminate part of the route taken by the study team and thereby to contribute towards the full transparency of the MPM project.

## 13. Overview of legal and policy measures promoting/supporting media pluralism

### [IRELAND]

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**General Note:** The whole structure of broadcasting in Ireland is about to be overhauled in the Broadcasting Bill 2008. The Broadcasting Bill has finished in the Senate and will come before the Dáil (Assembly) in September. It is expected to be passed in November.

#### National regulations relevant in the area of media pluralism

- **Legislation**

- Constitution, 1 July 1937
- Broadcasting Bill 2008 (in preparation)
- Broadcasting (Amendment) Act 2007
- Broadcasting Act, 2001
- Broadcasting (Major Events Television Coverage) Act, 1999 (amended 2003)
- Broadcasting Authority Act, 1960; Broadcasting Authority (Amendment) Act 1976
- Competition Act 2002
- Radio & Television Act, 1988
- Broadcasting (Funding) Act, 2003
- Freedom of Information Act, 1997 (Amendment Act 2003)
- European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2003 S.I. 306 of 2003
- European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2003 S.I. 307 of 2003
- European Communities (Electronic Communications Networks and Services)(Universal Service and Users' Rights) Regulations 2003 S.I. 308 of 2003
- European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 S.I. 305 of 2003
- Referendum Act 1998

- **Codes of conduct**

- Code of Practice for newspapers and periodicals

- **Other**

- Public Broadcasting Charter
- Ownership and Control Policy (2005)
- Code of Practice for newspapers and periodicals
- BCI, Television Licensing Policy, Broadcasting Act 2001
- BCI Election Guidelines

**TABLE 1. Constitutional protection of press and communication freedoms**

Measure	Source	Scope of application	Key features
<b>1.1. Freedom of expression</b>	Art. 40, § 6.1, i Constitution		The citizens have a right to express freely their convictions and opinions. The State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State. Publication or utterance of blasphemous, seditious or indecent matter is an offence.
<i>Note: Supreme Court decision of 1999 (Corway v Independent Newspapers) cast doubt on law of blasphemous libel and unlikely such a case could succeed in future. This decision is a positive development as the law on blasphemy is so uncertain and, as the Court said, difficult to reconcile with the Constitutional framework, particularly Article 44 re freedom of conscience and religious practice.</i>			
<b>1.2. Freedom of/ right to information</b>	Freedom of Information Act, 1997		
<i>Is there – besides constitutional provisions – a specific act dealing with citizens’ or journalists’ access to public sector information?</i>	No		
<i>Are there specific rules dealing with journalists’ access to events for news reporting?</i>	No		
<b>1.3. Explicit recognition of media pluralism</b>	Section 11 (2) Broadcasting Act 2001	AAVM (TV + R)	Broadcasting Commission of Ireland should ensure pluralism and diversity.
<i>Note: The scope of the Broadcasting Act is mainly linear. Both linear and non-linear will be provided for in new Bill 2008.</i>			
	Public Broadcasting Charter (provided for by Section 28 Broadcasting Act 2001)	AAVM (TV + R)	The public broadcaster shall reflect the need to preserve media pluralism.
	Section 2 (i) Ownership and Control Policy (2005)		The BCI’s policy objectives for assessing ownership and control measures are the promotion of plurality of ownership of the communications media and promoting diversity in viewpoint, outlet and source, that is, diversity in the opinions expressed, in programming delivery and content, and in the sources of information available to the public.
<b>1.4. Protection of journalistic sources</b>	No specific legal protection of journalistic sources, but ECHR Act 2003 incorporates ECHR at sub-constitutional level. This means that Article 10 jurisprudence can be argued in Irish courts.		
<i>Example: Mahon v Kennedy and Kenna, High Court, 2007. The High Court accepted ECHR jurisprudence but in the circumstances of the case ordered journalists to answer questions to show that the Tribunal of Inquiry was not the source of the leak and thus maintain public confidence in the Tribunal.</i>			

	Principle 6 Code of Practice for newspapers and periodicals  Principle 7 NUJ Code		Journalists shall protect confidential sources of information.
<b>1.5. Right of reply</b>	Principle 1 Code of Practice for newspapers and periodicals	PN + M	When appropriate, a retraction, apology, clarification, explanation or response shall be published promptly and with due prominence.
	Broadcasting Act	AAVM (TV + R)	
<i>Note: There is a form of right of reply in legislation from 1990 to 2001 Broadcasting Acts, which will be developed, made explicit and strengthened in the new Broadcasting Bill 2008.</i>			
<b>1.6. Ratification of international instruments:</b> - CoE's Framework Convention For The Protection Of National Minorities - UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Oct 2005)	-Yes -Yes		

**TABLE 2. Editorial independence**

Measure	Source	Scope of application	Key features
<b>2.1. Journalists</b>			
<i>Note: Frequent actions and large awards of compensation related to defamation are a major problem for journalists and broadcasters but a new Defamation Bill is currently being debated in the Oireachtas (Parliament). Also Supreme Court decisions based on constitutional principle of open justice and ECHR decisions are having a positive impact. Furthermore, Contempt of Court – common law, ranges from punishment for refusal to disclose sources to restrictions on court reporting.</i>			
<b>2.2. News / information programmes</b>	Section 18 (1) Broadcasting Authority Act 1960, as amended by s.3(1) 1976 Act Section 9(1) Radio and Television Act 1988 Section 28(2) Broadcasting Act 2001	AAVM (TV + R)	News, current affairs which relate to matters of public controversy that are the subject of current public debate, must be presented objectively and impartially. Also related information which is published distributed or sold.
	Section 38 (6) Broadcasting Act 2001	AAVM (TV + R)	The Commission shall have regard to the promotion of diversity in the sources of information available to the public and in the opinions expressed in the communications media.
	Code of conduct from National Union of Journalists		
	Section 18 (1) Radio and Television Act, 1988; Section 9 (1) Radio and Television Act, 1988	AAVM (TV + R)	All news broadcast by sound and television broadcasting contractors is reported and presented in an objective and impartial manner and without any expression of their own views.
<b>2.3. Other media content</b>			
	Section 20(4) Broadcasting Authority Act 1960 (PSB) Section 18 (1) Radio and Television Act, 1988; Section 10 (3) Radio and Television Act, 1988	AAVM (TV + R)	Ban on paid political advertisements (also religious and relating to trade dispute).
<b>2.4. Subsidies/ Training of journalists (independence, ethic, recruitment, etc.)</b>			Training of Irish language Journalists.
<b>2.5. Consultative programming structure for participation of the public/citizens to media (i.e. a mechanism to allow citizens to participate in editorial decisions, under the form of e.g. an ombudsman, ethics or liaison committee, "Société des rédacteurs"...)</b>	Section 39(4) and (6) Broadcasting Act 2001 re		Community broadcasting

**TABLE 3. Cultural pluralism**

Measure	Source	Scope of application	Key features
<b>3.1. Structural rules (guaranteeing or promoting access by the various cultural groupings to media companies’ bodies, structures...)</b>			
3.1.1. Special representation requirements in media company structures	(Forthcoming Broadcasting Bill 2008)		
3.1.2. Special representation requirements in media advisory bodies	(Forthcoming Broadcasting Bill 2008)		
3.1.3. Legal or policy measures either prohibiting discrimination in recruitment or promoting equal opportunities (ethnic minorities, gender, age, disabled...)	Employment Equality legislation		
	Section 22 (5) Broadcasting Act, 2001	AAVM (TV + R)	Where the number of members of the Broadcasting Complaints Commission (BCC) for the time being is 7, not less than 3 of them shall be men and not less than 3 of them shall be women.
	Section 22 (6) Broadcasting Act, 2001	AAVM (TV + R)	Where the number of members of the Broadcasting Complaints Commission for the time being is 8 or 9, not less than 4 of them shall be men and not less than 4 of them shall be women.
<i>Note: Representation of men and women applies to all public sector Boards and organizations in the State.</i>			
<b>3.2. Representation of the various cultural groupings in the media</b>	(Forthcoming Broadcasting Bill 2008)		
3.2.1. Access to airtime for cultural groupings			
3.2.2. Content obligations			
3.2.2.1. Promotion of European works	Section 18 (4) Radio and Television Act, 1988 Section 41(4) Broadcasting Act 2001	AAVM (TV)	A reasonable proportion of the programme service is produced in another Member State of the European Communities.
3.2.2.2. Promotion of European independent works	Section 18(4)(b) Radio and Television Act 1988	AAVM	A reasonable proportion of the programme service is devoted to original programme material produced by persons other than the contractor, his subsidiary, his parent or existing broadcasting organisations.
3.2.2.3. Promotion of national/regional works	Section 18 (4) Radio and Television Act, 1988	AAVM (TV)	A reasonable proportion of the programme service is produced in the State.
	Section 38(2)(b) Broadcasting Act, 2001	AAVM	A substantial proportion of the programme material will be made in the locality.
	BCI Television licensing policy		The BCI has decided that 51% shall constitute a substantial proportion of material that should be made in the locality served by cable or MMD system.

<p>3.2.2.4. Language requirements</p>	<p>Section 28 (2) Broadcasting Act 2001          Section 13 Broadcasting Authority (Amendment) Act 1976, amending s.17(a) of the Broadcasting Authority Act 1960;          Section 18(3)(a) Radio and Television Act 1988,          Section 11(2) Broadcasting Act 2001</p>	<p>AAVM (TV + R)</p>	<p>The public broadcaster should offer programmes in the Irish and English language and have particular regard for the Irish Language.</p>
	<p>Section 18 (1) Radio and Television Act, 1988; Section 6 (3) Radio and Television Act, 1988</p>	<p>AAVM (TV + R)</p>	<p>Determination of applications for award of sound and television broadcasting contracts: the preservation as a spoken language of the Irish language.</p>
<p>3.2.3. Representation of minorities on the screen (e.g. presenting the news, in drama, movies...; can be engagement in an internal charter or can be imposed statutory)</p>			
<p>3.2.4. Subsidies (apart from general PSB funding)</p>	<p>Section 2 (1) Broadcasting (Funding) Act, 2003</p>	<p>AAVM (linear TV + linear Radio) (Television programmes on free-to-air services that are near universal on cable or MMD; radio programmes from RTE or broadcasters licensed by BCI)</p>	<p>The Commission shall prepare and submit to the Minister for his or her approval a scheme or a number of schemes for the granting of funds to support all or any of the following—          (a) new television or radio programmes on Irish culture, heritage and experience, including—          (i) history (including history relating to particular areas, groups or aspects of experience, activity or influence),          (ii) historical buildings,          (iii) the natural environment,          (iv) folk, rural and vernacular heritage,          (v) traditional and contemporary arts,          (vi) the Irish language, and          (vii) the Irish experience in European and international contexts,          (b) new television or radio programmes to improve adult literacy,          (c) programmes under <i>paragraphs (a) and (b)</i> in the Irish language,          and          (d) the development of archiving of programme material produced in the State.</p> <p>[N.B. scheme extends to films. The scheme is financed by taking 5% of the television licence fee and all broadcasters in the State can apply.]</p>

	Section 2 (2) Broadcasting (Funding) Act, 2003	AAVM (TV + R)	<p>A scheme—</p> <p>(a) may only fund television programmes under <i>subsection (1)</i> which are broadcast—</p> <p>(i) on a free television service which provides near universal coverage in the State, or</p> <p>(ii) on a cable or MMD system as part of a community content contract under section 39 of the Act of 2001, and which, other than in the case of programmes for children or educational programmes, are broadcast during peak viewing times,</p> <p>(b) may only fund radio programmes under <i>subsection (1)</i> which are carried on sound broadcasting services licensed by the Commission or operated by Radio Telefis Eireann and which, other than in the case of programmes for children or educational programmes, are broadcast during peak listening times,</p> <p>(c) may provide funding for projects relating to matters such as research, needs assessments, analyses, feasibility studies and pilot projects in relation to <i>subsection (1)(d)</i>, including such projects undertaken by or on behalf of the Minister, and</p> <p>(d) may not provide funding for programmes which are produced primarily for news or current affairs.</p>
	Section 3 (1) Broadcasting (Funding) Act, 2003	AAVM (TV + R)	<p>The objectives of a scheme in relation to programmes are to—</p> <p>(a) develop high quality programmes based on Irish culture, heritage and experience,</p> <p>(b) develop these programmes in the Irish language,</p> <p>(c) increase the availability of programmes referred to in <i>paragraphs (a)</i> and <i>(b)</i> to audiences in the State,</p> <p>(d) represent the diversity of Irish culture and heritage,</p> <p>(e) record oral Irish heritage and aspects of Irish heritage which are disappearing, under threat, or have not been previously recorded, and</p> <p>(f) develop local and community broadcasting.</p>

		PN	<p>Irish language newspapers and magazines receive funding from Foras na Gaeilge. A Sunday Irish language newspaper, circulation c.5,000 copies, is in receipt of 1.28 million Euro for the period 2005-8, with possible increase linked to sales targets.</p> <p>A daily newspaper published in Belfast received £400,000 stg from Foras na Gaeilge for the period 2006- December 2008. However, it ceased printing in February 2008 and continued its online publication only. Foras na Gaeilge stated that this would be a breach of contract and funding would be withdrawn.</p> <p>Metro Eireann, a weekly newspaper for immigrants also receives government funding</p>
<p><i>Note: Foras na Gaeilge is a North-South body established on 2 December 1999 under the Belfast Agreement. It is funded by the Department of Culture, Arts and Languages in Northern Ireland (25%) and by the Department of Community, Regional and Gaeltacht Affairs in the Republic (75%).</i></p>			
<p><b>3.3. Accessibility</b>  <i>(i.e. special measures to promote access to media contents by special needs groupings in society, like the elderly, disabled...)</i></p>	Section 19 (11) Broadcasting Act 2001	AAVM (TV + R)	<p>BCI is required to make rules requiring each broadcaster to take specified steps to promote the understanding and enjoyment by-</p> <p>(a) persons who are deaf or hard of hearing, and</p> <p>(b) persons who are blind or partially sighted, of programmes transmitted on any broadcasting service provided by him or her”.</p>
	Section 19 (12) Broadcasting Act 2001	AAVM (TV + R)	<p>Broadcaster must ensure a specified percentage of programmes by which the understanding and enjoyment by persons referred to in Section 19 (11) Broadcasting Act may be promoted.</p>

**TABLE 4. Political pluralism**

Measure	Source	Scope of application	Key features
<b>4.1. Structural rules (relating to the organization and structures of media companies/ advisory bodies)</b>			
4.1.1. Restrictions to politicians' ownership/control of media (avoid one dominating voice)	Section 6(2) Radio and Television Act 1988	AAVM (TV + R)	BCI to have regard <i>inter alia</i> to 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 or an undue amount of the communications media in the area specified.
	Section 38(6) Radio and Television Act 198	AAVM (TV + R)	BCI to have regard to undue amount of the communications media in the locality served by the cable or MMD system proposed. BCI applies this test when considering applications for all content contracts under the 2001 Act.
4.1.2. Requirements of independence from political parties / politicians	(Forthcoming Broadcasting Bill 2008)		
4.1.3. Incompatibility of political mandate with membership in media advisory or regulatory bodies	Section 4(5) Broadcasting Authority Act 1960	AAVM (TV + R)	Membership of Dáil (National Assembly), Senate or European Parliament incompatible with membership of RTÉ Authority.
<i>Note: Broadcasting Bill 2008 will continue incompatibility provisions and extend them in relation to all the regulatory bodies.</i>			
	Section 22(13) and (14) Broadcasting Act 2001		Same provision regarding members of Broadcasting Complaints Commission.
	Second Schedule, s.11(1) and (2) Broadcasting Act 2001		Same provision regarding membership of the body in charge of TG4, the Irish-language television station.
4.1.4. Representation requirements in media companies' bodies (board of directors...)	<i>As above</i>		
4.1.5. Representation requirements in media advisory bodies and/or regulators	(Forthcoming Broadcasting Bill 2008 will set out in detail)		
<b>4.2. Content rules (relating to media programmes, press articles, other content)</b>			
4.2.1. (Equal/proportionate) Access to airtime for political groupings	Referendum Act 1998 – equal airtime for “yes” and “no” sides		
4.2.1.a. Non-paid access, e.g. right to insert own programmes or messages on the public channels	Section 9 (2) Radio and Television Act, 1988	AAVM (R)	Nothing shall prevent a sound broadcasting contractor from transmitting political party broadcasts. In the allocation of time for such broadcasts, the contractor shall not give an unfair preference to any political party.
<i>Note: Section 9 (3) Radio and Television Act, 1988 mentions a code governing standards and practices about political broadcasting. These matters and others are covered in the BCI's Code of Programme Standards 2007.</i>			

	Section 18 (1) Radio and Television Act, 1988; Section 18 (2) Broadcasting Authority Act 1960	AAVM (TV)	Nothing shall prevent a television broadcasting contractor from transmitting political party broadcasts. In the allocation of time for such broadcasts, the contractor shall not give an unfair preference to any political party.
4.2.1.b. Paid access: rules on political advertising	Section 20(4) Broadcasting Authority Act 1960		No advertisement shall be broadcast which is directed towards a political end.
	Section 10 (3) Radio and Television Act	AAVM	No advertisement shall be broadcast which is directed towards a political end
4.2.2. Government announcements	Section 31(2) Broadcasting Authority Act 1960		Minister may direct RTÉ Authority in writing to allocate broadcasting time for any announcements by or on behalf of any Minister of State and Authority shall comply.
4.2.3. Impartiality obligations	Section 18 (2) Broadcasting Authority Act		The RTÉ Authority can transmit political party broadcasts.
4.2.4. Fair representation of political viewpoints; special rules in election periods	BCI Election Guidelines		Covers issues such as 24 hour moratorium on coverage before elections.
	Referendum Act 1998		Equal time to “yes” and “no” sides.

**TABLE 5. Geographical pluralism**

Measure	Source	Scope of application	Key features
<b>5.1. Licensing policy fostering local/regional types of media</b> (for instance: is part of the spectrum explicitly reserved for regional/ local media; are there any rules safeguarding the local character of these media once they are operating, e.g. restrictions to cooperate or centralize programming/advertising decisions...)	Section 6 (2)(f) Radio and Television Act, 1988	AAVM (R)	Determination of applications for award of sound broadcasting contracts: the desirability of having a diversity of services catering for a wide range of tastes including those of minority interest.
	Section 6(2)(i) Radio and Television Act, 1988		Serve local communities and communities of interest.
	Section 18 (1)(f) Radio and Television Act, 1988	AAVM (TV)	Determination of applications for award of television broadcasting contracts: the desirability of having a diversity of services catering for a wide range of tastes including those of minority interest.
	Section 3 (1)(f) Broadcasting (Funding) Act, 2003	AAVM (TV + R)	The objectives of a scheme include to develop local and community broadcasting.
	Section 38 Broadcasting Act, 2001	AAVM (Local interest channels)	Encourage broadcasting of material of special interest to persons living in a specific geographical location.
	Section 39 Broadcasting Act, 2001	AAVM (Community channels)	Licences to broadcast to a geographical entity, a town or other urban or rural area. The programme material must specifically address the interests of the community concerned.
	Section 41(2) Broadcasting Act 2001	AAVM (TV + R)	BCI may enter into a cable or MMD content contract if satisfied it will result in the range and diversity of broadcasting services available in the relevant area being increased.
<b>5.2. Structural measures: access of various localities to media (e.g. obligation to have branches throughout country)</b>			
<b>5.3. Content obligations: requirements to cover local events, etc.</b>			
<b>5.4. Regional State Aids</b>			
<b>5.5. Rules on national minorities</b>			
<b>5.6. Rules on social inclusion of remote areas (Aménagement du territoire)</b>			MMD system serves remote areas with sparse populations where cable not viable.

**TABLE 6. Pluralism of ownership/control**

Measure	Source	Scope of application	Key features
<b>6.1. Sector specific rules limiting media ownership</b>			
6.1.1. Moment of intervention			
6.1.1.1. <i>At moment of market entry (licensing procedure)</i>	Radio and Television Act 1988 Broadcasting Act 2001		Consideration of any person or group owning or having control over an undue number or amount (see details above)
6.1.1.2. <i>At the moment of mergers &amp; acquisitions</i>	Sections 22 and 23 Competition Act 2002		BCI to consider, reference to Competition Authority and finally to Minister (see details below)
6.1.1.3. <i>Other (constant monitoring/supervision)</i>	Section 14 Radio and Television Act 1988		Prohibition on assignment of contract, any alteration to Memorandum or Articles of Association, material change in ownership or range and quality of programming without prior consent of BCI.
6.1.2. Scope (i.e. trying to prevent one of the following forms of concentrated ownership and/or control)			
6.1.2.1. <i>Monomedia</i>			
6.1.2.2. <i>Crossmedia</i>			Regional or national newspaper owners can hold only one private licence.
6.1.2.3. <i>Vertical integration with networks</i>			
6.1.2.4. <i>Integration with advertising sector</i>			
6.1.2.5. <i>Integration with other (e.g. energy) sectors</i>			
6.1.2.6. <i>Control over both commercial and public media</i>			
6.1.3. Criteria used to define thresholds for maximum ownership and/or control			
6.1.3.1. <i>Number of licences</i>	Section 6 (2)(g) Radio and Television Act, 1988; Section 2 (ii)(d) Ownership and control policy, 2005		The BCI has to have regard to the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue number of sound broadcasting services in respect of which a sound broadcasting contract has been awarded.  In order to provide guidance and a degree of certainty for entities, the BCI will continue to provide minimum and upper thresholds in respect of what it considers an “undue number”. The BCI will operate three thresholds: 1. A number equivalent to 15% or less of the total number of commercial sound broadcasting services licensed under the 1988 Act is considered an acceptable level for any one entity [...]

			<p>[...]</p> <p>2. A number equivalent to between 15% and 25% will require more careful consideration by the BCI.</p> <p>3. A number equivalent to over 25% would be unacceptable.</p>
6.1.3.2. <i>Market shares</i>			
6.1.3.3. <i>Circulation and audience shares</i>	<p>Section 6 (2)(h) Radio and Television Act, 1988;          Section 2 (ii)(e) Ownership and control policy, 2005</p>		<p>The BCI has to have regard to 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 the area specified in the notice.</p> <p>The BCI is of the view that “undue amount” should mean “more than a reasonable share of the range of communications media available to audiences in the franchise area”. The BCI will apply the audience share model as a measure for determining the undue amount of communications media in a specified area.</p> <p>In assessing ‘an undue amount of communications media in a relevant area’, the BCI will apply the following criteria in making its determination: (i) An examination of the totality of the communications media in the area specified, including a different weighting to be given between national and local services;          (ii) The application of a test of substitutability, i.e. in assessing the extent to which one communications media can be deemed to be a substitute for another, regard will be had to the characteristics of the communications media in question, the cost to the user and/or its target audience; and          (iii) An examination of the applicant’s ability to influence opinion-forming power and its dominance of the audience share of any communications media in which it held an interest.</p>
6.1.3.4. <i>Capital shares</i>			<p>May be factors in deciding “control” or “substantial interests”. (see above)</p>
6.1.3.5. <i>Voting shares</i>			<p>May be factors in deciding “control” or “substantial interests”. (see above)</p>
6.1.3.6. <i>Advertising revenues</i>			
6.1.3.7. <i>Involvement in number of media sectors</i>			
<b>6.2. Sector specific rules preventing cooperation between media companies</b>			

<b>6.3. (Sector specific or general) rules preventing (non-EU) foreign ownership</b>			Subject to BCI approval. Must have a registered office in the EU. BCI will also have regard to the extent to which reciprocal arrangements for investment and licensing are in place with the relevant foreign states.
<b>6.4. General competition rules</b>	Competition Act 2002		Recognizing the specific case of media companies within the regulation of competition.
6.4.1. Antitrust			
6.4.1.1. <i>Specific provisions for media sectors</i>			
6.4.1.2. <i>Case law in media sectors (examples of leading cases; any specificities?)</i>	Independent Newspapers/ Sunday Tribune newspaper (Pre-2002 Act)		
	Scottish Radio Holdings takeover of FM 104, 5 February 2004 (Considered by Competition Authority under 2002 Act – conditions attached)		
	Scottish Radio Holdings takeover of Highland Radio, 26 August 2005 (Considered by Competition Authority under 2002 Act – conditions attached)		
	Communicorp takeover of certain assets and businesses of Scottish Radio Holdings (Today FM, FM 104 and Highland Radio), 7 December 2007 (Considered by Competition Authority under 2002 Act – conditions attached)		
6.4.2. Merger control	Sections 22-23 Competition Act 2002		<p>When the Competition Authority receives notification of a merger which it considers to be a media merger, it must inform the parties that it is of this opinion, and forward a copy of the notification to the Minister.</p> <p>A “media merger” is defined as “a merger or acquisition in which one or more of the undertakings involved carries on a media business in the State”; “media business” means “(a) a business of the publication of newspapers or periodicals consisting substantially of news and comment on current affairs; (b) a business of providing a broadcasting service; (c) a business of providing a broadcasting services platform.”</p> <p>No particular percentages are stated.</p>

	<p>Statutory Instrument (S.I.) No. 122 of 2007, revoking S.I. No. 622 of 2002</p>		<p>Specifically, for media mergers the Authority will also examine:          -the extent to which ownership or control of media businesses in the State is spread amongst individuals and other undertakings          -the extent to which the diversity of views in Irish society is reflected through the activities of the various media businesses in the State, and the share in the market in the State of any “media business” held by any of the undertakings involved in the media merger.</p> <p>Ministerial Orders (s.18 Competition Act 2002) re mergers in which two or more of the undertakings carry on a business in the State, and in which one or more of the undertakings involved carries on a media business in the State and one or more of the undertakings involved carries on a media business elsewhere.</p>
<p><i>Note: The criteria are set out in Section 23(10) of the 2002 Act and reprinted below. They are currently under review.</i></p>			
<p>6.4.2.1. Specific provisions for media sector (e.g. possibility for government to overrule NCA decision)</p>	<p>Section 22 Competition Act 2002</p>		<p>The Minister can override Authority approval with or without conditions.          If the Authority blocks a media merger, it will not be referred to the Minister and therefore the Minister cannot unblock it, but if the Authority approves a merger, either absolutely or conditionally, the Minister can block it or can apply new or stricter conditions. In making such a determination the Minister must have regard to, and only to, the “relevant criteria”, which are (Section 23(10)):</p> <ul style="list-style-type: none"> <li>(a) the strength and competitiveness of media businesses indigenous to the State;</li> <li>(b) the extent to which ownership or control of media businesses in the State is spread amongst individuals and undertakings;</li> <li>(c) the extent to which ownership and control of particular types of media business in the State is spread amongst individuals and other undertakings;</li> <li>(d) the extent to which the diversity of views prevalent in Irish society is reflected through the activities of the various media businesses in the State; and</li> </ul> <p>[...]</p>

			[...] (e) the share in the market in the State of one or more of the types of business activity falling within the definition of “media business” in this subsection that is held by any of the undertakings concerned, or by any other individual or other undertaking who or which has an interest in such an undertaking.
<i>Note: The Minister, who is currently reviewing the operation and implementation of the Competition Act 2002, has established a group (April 2008) to review the current legislative framework relating to the public interest aspects of media mergers in Ireland.</i>			
6.4.2.2. Case law in media sectors (examples of leading cases; any specificities?)			
<b>6.5. Transparency obligations</b>			
6.5.1. Transparency towards consumer (e.g. identification obligation; cf. Art. 3a AVMS Directive)	(Forthcoming Broadcasting Bill 2008)		
6.5.2. Transparency obligations towards regulator or in general (info on capital structure, balance sheets, either in specific media laws or in general company laws...)	Section 38 (7) Broadcasting Act, 2001		Before entering into a local content contract the Commission may require the person referred to in that subsection to furnish to it such information as it specifies with respect to the extent (if any) of— (a) any interest of a proprietary or financial nature held by him or her in relation to the provision of broadcasting services (including sound broadcasting services) in the State or the publication of any newspaper, magazine or journal in the State, or (b) the control he or she may exercise in relation to the provision of any such service or the publication of any such newspaper, magazine or journal.

**TABLE 7. Pluralism of media types and genres**

Measure	Source	Scope of application	Key features
<b>7.1. Minimum service in a number of programme strands for commercial / community / public service media</b>	BCI, Television licensing policy		Provide a licensing regime which: increases the number and categories of television programme services and content, which, in particular, cater for the specific interests and needs of the people of the island of Ireland, (including local and regional communities).
	Section 28 (2) Broadcasting Act 2001	AAVM (TV + R)	The public broadcaster shall offer programme schedules that entertain, inform and educate, provide coverage of sporting, religious and cultural activities that provide coverage of programmes of news and current affairs including proceedings in the Houses of the Oireachtas and the European Parliament.
	Section 29 Broadcasting Act 2001, amending Section 16(1) Broadcasting Authority Act 1960		Local broadcasting services.
	Section 6 (2) Radio and Television Act, 1988; Section 18 (1) Radio and Television Act, 1988	AAVM (TV + R)	Determination of applications for award of sound and television broadcasting contracts: -the quality, range and type of the programmes proposed -new opportunities for Irish drama, music and entertainment
<b>7.1bis. Special framework for community media (“medias associatifs”): Is there a special legal framework granting protection to community media (including rules determining the criteria - e.g. being independent of political parties, non-profit, respecting the law, etc. - in order to qualify as community media; granting certain privileges to that type of media, like guaranteed access to spectrum or networks, etc.)</b>	Section 39 Broadcasting Act 2001 BCI Policy on Community Radio Broadcasting		Members must be representative of the community concerned, specifically addressing interests of that community, achieving monetary reward no greater than an amount reasonably necessary to defray expenses
<b>7.2. Events list</b> (please indicate what type of events are listed, e.g. only sports events or also cultural, political events...)	Broadcasting (Major Events Television Coverage) Act, 1999 + Broadcasting (Major Events Television Coverage) (Amendment) Act 2003  S.I. No. 99 of 2003		The list only contains sports events.
<b>7.3. Short news reporting</b>			
<b>7.4. Fixed book price</b>			Free book price
<b>7.5. Public service media</b>			
7.5.1. Structural rules - organization			
7.5.1.1. Independence (from government, political powers, economic powers; is this explicitly guaranteed, how?)	Section 2 Broadcasting Authority (Amendment) Act 1976	AAVM (TV + R)	Removal of a Member of the RTÉ Authority only by resolution passed by both Houses of the Oireachtas (Parliament).
<i>Note: Important provision to secure independence as whole Authority was previously removed by the then Minister.</i>			

	Section 18 Broadcasting Authority Act, 1960 – as amended by Section 3 Broadcasting Authority (Amendment) Act 1976	AAVM (TV + R)	It shall be the duty of the Authority to ensure that all news broadcast by it is reported and presented objectively and impartially and without any expression of the Authority's own views; that the broadcast treatment of current affairs, including matters of public controversy or the subject of current public debate, is fair to all interests concerned and presented objectively and impartially and without any expression of the Authority's own views; that any published information which relates to the above news and current affairs, is also presented objectively and impartially.
	Section 16 Broadcasting Authority (Amendment) Act 1976	AAVM (TV + R)	Amended Section 31 Broadcasting Authority Act, 1960 narrowing the power of the Minister to direct the RTÉ Authority to refrain from broadcasting particular matter and introducing the safeguard that Ministerial orders in this regard remain in force for no longer than twelve months and every such order laid before each House of the Oireachtas (Parliament).
7.5.1.2. Election of management, composition of board members...(government? Parliament? Other?)	Section Broadcasting Authority Act, 1960		Members of the RTÉ Authority are appointed by Government.
	Section 2 Broadcasting Authority (Amendment) Act 1976		A member of the Authority may be removed by Government for stated reasons if, and only if, resolutions are passed by both Houses of the Oireachtas (Parliament).
7.5.1.3. Specific representation requirements for board of directors, other bodies	Section 4 Broadcasting Authority Act, 1960  (Forthcoming Broadcasting Bill 2008)		Members of Authority cannot be members of either House of the Oireachtas (Parliament).
7.5.1.4. Advisory bodies: ensured broad representation of cultural, political and geographic groupings	(Forthcoming Broadcasting Bill 2008)		
7.5.1.5. Employment: ensured broad representation of cultural, political and geographic groupings			
7.5.2. Structural rules - funding			
7.5.2.1. Source of funding (state / tax money, public / licence fees, advertising, merchandising...)	Section 28(8) Broadcasting Act, 2001; Section 22 Broadcasting Authority Act		
7.5.2.2. Sufficiency of resources (taking into account the missions and new media activities)	(Forthcoming Broadcasting Bill 2008 - re licence fee increases, payments to RTÉ by other broadcasters for use of transmission facilities, etc.)		
7.5.3. Definition of public service remit			
7.5.3.1. Obligation to provide a varied and pluralistic offer	Section 28(2) Broadcasting Act 2001	AAVM (TV + R)	The programme schedules of the public broadcasting should provide a comprehensive range of programmes in the Irish and English languages that reflect the cultural diversity of the whole island of Ireland.
	Section 16(2)(c) Broadcasting Authority Act, 1960	AAVM (TV + R)	Obligation to originate programmes and procure programmes from any source.

	Public Broadcasting Charter		<p>The public broadcaster has some obligations, such as to:</p> <ul style="list-style-type: none"> <li>- reflect the democratic, social and cultural values of Irish society and the need to preserve media pluralism;</li> <li>- strive to reflect fairly and equally the regional, cultural and political diversity of Ireland and its peoples;</li> <li>- reflect regional diversity and include a significant range and proportion of indigenous programming made outside the greater Dublin area;</li> <li>- reflect the lives and concerns of all social strata in Ireland;</li> <li>- its news reporting and public affairs coverage should be undertaken from a variety of perspectives and not just from a Dublin viewpoint;</li> <li>- ensure that children are respected as young citizens with a valued contribution to make and a voice of their own;</li> <li>- actively support the use of the Irish language in everyday life through the production of suitable programming;</li> <li>- take measures to increase the accessibility and relevance of programming to those with a physical, sensory or intellectual disability.</li> </ul>
7.5.3.2. <i>Obligation to engage in new media activities</i>			
7.5.4. Content obligations (not yet mentioned in table 3, 4 or 5)	<p>Section 13 of the Broadcasting Authority (Amendment) Act, 1976</p> <p>(Forthcoming Broadcasting Bill 2008 will contain provisions re RTÉ and TG4 (Irish-language tv station))</p>	AAVM (TV + R)	<p>RTÉ has obligation to: be responsive to the interests and concerns of the whole community, peace, culture, language; uphold the democratic values enshrined in the Constitution, especially freedom of expression. Have regard to the need for the formation of public awareness and understanding of the values and traditions of countries other than the State, in particular members of the EEC.</p>
7.5.5. Universal coverage obligations	(Forthcoming Broadcasting Bill 2008 - provisions re universal and near universal coverage)		
	Section 28 Broadcasting Act 2001	AAVM (TV + R)	<p>The public broadcaster is a free-to-air service and should be made available, in so far as it is reasonably practicable, to the whole community on the island of Ireland.</p>
	Section 45 Broadcasting Act 2001	AAVM (TV + R)	<p>TG4 (the Irish-language broadcaster) should be made available, in so far as it is reasonably practicable, to the whole community on the island of Ireland.</p>
	Section 5(5) Broadcasting Act 2001	AAVM (TV + R)	<p>Re Multiplexes – transmission company will endeavour to ensure services provided by it are available to the whole community in the State.</p>

**TABLE 8. Distribution (networks/network facilities/print distribution)**

Measure	Source	Scope of application	Key features
8.1. Guarantees for 'public contents' to be distributed (must carry or other)	Section 37 Broadcasting Act, 2001		BCI may require community broadcaster to transmit programme material supplied under a community content contract.
8.2. Guarantees for network operators to distribute 'public contents' (must offer or other)	No must-offer obligation.		
8.3. Ex ante regulation (in electronic communications): SMP market analysis for broadcasting transmission			
8.3.1. Implementation of market analysis procedure in ECNS Directives			
8.3.2. Result of (first) round of market analysis of market 18			
8.4. Ex ante regulation for associated facilities of networks, so-called 'bottleneck facilities'			
8.4.1. Conditional access	European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2003 S.I. 307 of 2003 (Reg. 2 for definition)  European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 S.I. 305 of 2003 (Reg. 7)		Offering services on a fair, reasonable and non-discriminatory basis.
8.4.2. EPG (or other search tools)	Section 16-17 Broadcasting Act, 2001  European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 S.I. 305 of 2003, Section 6 (2)(b) European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2003 S.I. 307 of 2003 BCI		The preparation or making available of an EPG is subject of obtaining an EPG contract from BCI. Holders of such a contract are required to <ul style="list-style-type: none"> <li>• comply with guidelines made by BCI</li> <li>• enable access by the public to schedules of programme material provided by RTE, TnaG, TV3 and any broadcasting service provided “in Northern Ireland by any person being a service that is receivable throughout the whole of Northern Ireland and which is provided by terrestrial means”.</li> </ul>

*Note: EPG Guidelines were issued by BCI in December 2007 – see [www.bci.ie](http://www.bci.ie). N.B. TnaG is the former name for TG4, the Irish-language television station.*

8.4.3. API	European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 S.I. 307 of 2003 (Section 28) European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 S.I. 305 of 2003, Section 6 (2)(b) ComReg		BCI must be consulted if access obligations are placed on API providers.  Open standards are used.
8.4.4. Other			
<b>8.5. Interoperability requirements</b>			
<b>8.6. Specific rules for distribution systems in print media</b>			
<b>8.7. General competition law</b>	Yes. For the decisions see the website of the Competition Authority for details ( <a href="http://www.tca.ie">www.tca.ie</a> ).		
<b>8.8. Policies fostering distribution systems (libraries, broadband networks...) - are these in line with EU state aid rules?</b>			
<b>8.9. State Aids to distribution platforms and/or schemes (can be based on one or more of the following criteria: - Regional - Linguistic/minority - National )</b>			

**TABLE 9. Supervision**

Measure	Source	Scope of application	Key features
<b>9.1. National Regulatory Authority</b>			Broadcasting Commission of Ireland (BCI) ( <a href="http://www.bci.ie">http://www.bci.ie</a> )
<i>Note: In the forthcoming Broadcasting Bill 2008 the BCI will become BAI (Broadcasting Authority of Ireland).</i>			
9.1.1. Structure/ organisation			
9.1.1.1. Guarantees for independence	Radio and Television Act, 1988		The members of the Commission shall be appointed by the Government.
	Radio and Television Act, 1988		Incompatible: member of Oireachtas (Irish Parliament) or the European Parliament.
9.1.1.2. Representation requirements			
9.1.2. Credibility and efficiency	(Forthcoming Broadcasting Bill 2008)		
9.1.2.1. Sufficient resources	Section 58 Broadcasting Act 2001  (Further provision in Forthcoming Broadcasting Bill 2008)		Minister to pay such amount as reasonable for BCI to defray its expenses in relation to its role.
9.1.2.2. Tasks and duties		AAVM (TV + R)	Oversee the broadcasting sector and award broadcasting licences.
	Section 18 (3) Radio and Television Act, 1988	AAVM (TV)	The Commission shall ensure that the television programme service provided under this Act shall in its programming— ( a ) be responsive to the interests and concerns of the whole community, be mindful of the need for understanding and peace within the whole island of Ireland, ensure that the programmes reflect the varied elements which make up the culture of the people of the whole island of Ireland, and have special regard for the elements which distinguish that culture and in particular for the Irish language; ( b ) uphold the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression; [...]

			[...] ( c ) have regard to the need for the formation of public awareness and understanding of the values and traditions of countries other than the State, including in particular those of such countries which are members of the European Community; and ( d ) includes a reasonable proportion of news and current affairs programmes; and the television programme service contractor shall comply with any requirements of the Commission in respect of such matters.
	Section 1, ii, Ownership and Control Policy		The BCI aims to put the public into a position which gives them access to a diversity of programming from a variety of sources in the form of broadcasting services of such number and categories as will best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity.
9.1.2.3. <i>Effective sanctioning powers</i>	1988 and 2001 Acts  (To be strengthened in Forthcoming Broadcasting Bill 2008)		Ultimate sanction is withdrawal or non-renewal of licence. Decision of BCI (then IRTC) in this regard upheld by courts in case taken by Limerick Radio One in 1997.
9.1.3. Cooperation with other regulators	Commission for Communications Regulation and		
			<b>Broadcasting Complaints Commission</b>
<i>Note: The forthcoming Broadcasting Bill 2008 will provide for a Compliance Committee with a broader remit to replace the BCC.</i>			
9.1.1. Structure/ organisation	2001 Act		
9.1.1.1. <i>Guarantees for independence</i>	Section 22 (13) Broadcasting Act, 2001		Where a member of the Commission is— (a) nominated as a member of Seanad Éireann, or (b) nominated as a candidate for election to either House of the Oireachtas or to the European Parliament, or (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to the European Parliament, he or she shall thereupon cease to be a member of the Commission.
	Section 22 (14) Broadcasting Act, 2001		A person who is, for the time being, entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament shall, while he or she is so entitled or is such a member, be disqualified from becoming a member of the Commission.

	Section 22 (15) Broadcasting Act, 2001		A member of the Authority, the Broadcasting Commission of Ireland or Teilifis na Gaeilge or an officer or servant of any such body shall be disqualified from becoming or being a member of the Commission.
9.1.1.2. <i>Representation requirements</i>			
9.1.2. Credibility and efficiency	(Forthcoming Broadcasting Bill 2008 will include such provisions)		
9.1.2.1. <i>Sufficient resources</i>	Section 23 Broadcasting Act 2001		Now on a secure basis under 2001 Act and facilitated administratively and financially by BCI.
9.1.2.2. <i>Tasks and duties</i>	Section 21 Broadcasting Act, 2001		Enforce the provisions of Parts II (Supply and transmission of programme material), III (Standards in broadcasting) and V (additional broadcasting services) of the Broadcasting Act, 2001.
9.1.2.3. <i>Effective sanctioning powers</i>	Section 24(11) Broadcasting Act, 2001		Broadcasters required to carry statement of Commission’s decision and any correction of facts where complaint upheld in full or in part.
9.1.3. Cooperation with other regulators			
<b>9.2. Press Council</b>	Set up as independent body, financed by print media (newspapers, both national and regional, and magazines)  Also due to be given statutory recognition in Defamation Bill 2006, currently being debated in the Dáil (National Assembly)		It takes decisions in cases of significance or complexity which have been referred to it by the Press Ombudsman. It also decides on appeals from decisions of the Press Ombudsman. The job of the Ombudsman is to investigate complaints of breaches of a new Code of Practice which the press industry signed up to in 2007. The aim is to provide the public with a method of resolving any complaints they may have in relation to newspapers and periodicals that breach the Code.
			Independent of Government and, in operation, independent of media.
9.2.1. Broad representation of sector	Yes.		Appointment by public application process
9.2.2. Sufficient resources	Yes.		Print media to provide finance.
9.2.3. Credibility			
<b>9.3. Competition Authority</b>			The Competition Authority ( <a href="http://www.tca.ie/home/index.aspx">http://www.tca.ie/home/index.aspx</a> )
9.3.1. Structure/ organization <i>(What this row should learn is whether there is a problem for media pluralism because NCA does not function properly; it should not contain an in-depth analysis of functioning of NCA!)</i>	Sections 22 and 23 Competition Act 2002		Media mergers (as above)
9.3.2. Cooperation with other regulators			