

32. Could you provide us with relevant updates on specific legal provisions related to market entry or operations of media companies (other than licensing), including capital entry requirements and corporate governance?

Further written detail on the media merger regime was requested at the Rule of Law virtual country visit on 7 March 2022.

Part 3A of the Competition Act 2002, as amended, requires that the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media assess the effect that a proposed media merger would have on plurality of media in the State, which means both diversity of ownership and diversity of content. A media merger is a merger or acquisition in which either two or more of the undertaking parties carry on a media business in Ireland or one of the undertaking parties carry on a media business in Ireland and at least one other undertaking party carries on a media business in another country. Depending on the scale of the undertakings involved, a media merger must be notified to either the Competition and Consumer Protection Commission (CCPC), in accordance with the Competition Act 2002, or the European Commission, in accordance with the EU Merger Regulation, who assess the media merger on competition grounds. Following clearance from either the CCPC or the European Commission, the undertaking parties have 10 working days from the date of clearance to notify the Minister.

In accordance with the Guidelines on Media Mergers issued under s. 28L of the Competition Act, the Minister's assessment evaluates a number of criteria including: the ownership and control of the relevant media businesses; the governance and editorial management of the relevant media businesses; the content type provided by the relevant media businesses and the availability of alternative content; the market share held by the relevant media businesses pre- and post-merger; the financial structure of the transaction; the financial standing of the relevant media businesses; and, the financial sustainability of the post-merger media businesses. Fundamentally, the Minister must determine whether the result of the proposed media merger will not be contrary to the public interest in protecting plurality of the media in the State.

Based on the assessment the Minister must make one of the following three possible determinations:

- That the media merger may be put into effect,
- that the media merger may be put into effect with conditions, subject to those conditions having been proposed as commitments by the Parties, or
- that the Minister intends to request the Broadcasting Authority of Ireland (BAI) to conduct a full examination of the proposed merger.

In cases where the Minister has requested a full media merger examination, following the examination by the BAI the Minister must make one of the following three possible determinations:

- that the media merger may be put into effect,
- that the media merger may not be put into effect, or
- that the media merger may be put into effect, subject to the conditions specified in the determination being complied with.

A targeted review of the operation of the media merger legislation set out in Part 3B of the Competition Act 2002 is being carried out at present, with a view to identifying minor technical amendments to the legislation and Guidelines on Media Mergers to ensure the continued robust operation of the media mergers regime.