[IE] Minister Publishes Draft Media Merger Guidelines

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The recently enacted Competition and Consumer Protection Act 2014, which significantly reforms the law on media mergers in Ireland, provides that the Minister for Communications, Energy and Natural Resources may publish certain guidelines on the operation of the Act. In particular, section 74 (inserting a new section 28L) tasks the minister with defining some important terms contained in the 2014 Act. The minister has now published a draft version of these guidelines, a 27-page document entitled "Guidelines on Media Mergers", for public consultation.

Under the 2014 Act, all proposed media mergers must be notified to the communications minister. The minister must then apply a public interest test and determine whether the result of the media merger "is likely to be contrary to the public interest in protecting plurality of the media". Importantly, while the Act does not define "significant interest", the new Guidelines provide the following definition: "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".

Moreover, in relation to voting power at a general meeting of the media business or the nominal value of the shareholding, the Guidelines provide that (a) a holding or voting strength of between 10% and 19% (directly or indirectly) "may" constitute a significant interest, and (b) a holding or voting strength of more than 20% or more of the voting power (directly or indirectly) "will generally" constitute a significant interest.

In addition to providing guidance on what will constitute "significant interest", other important criteria, which the minister takes into account during his determination are elaborated upon, including "ownership and control", "market share", "governance", "editorial ethos", "diversity of content" and the "scale and reach" of RTÉ and TG4 (public service broadcasters) to protect the public interest in plurality of the media.

The minister has also published a draft version of the "Media Merger Notification Form" and the information to be submitted by undertakings proposing a media merger. All interested parties are invited to make submissions on the draft

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guidelines and notification form, with the consultation period ending on 22 January 2015.

Department of Communications, Energy and Natural Resources, "Guidelines on Media Mergers", 8 December 2014

http://www.dcenr.gov.ie/NR/rdonlyres/1B0838C2-4E1B-4460-893D-8E01C03B7C43/0/Guidelines.pdf

Department of Communications, Energy and Natural Resources, "Media Merger Notification Form", 8 December 2014

http://www.dcenr.gov.ie/NR/rdonlyres/84EB27D2-D242-4C4A-AB1E-3317DCA64FB8/0/Appendix1MEDIAMERGERNOTIFICATIONFORM.pdf

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