



DETERMINATION OF MERGER NOTIFICATION M/11/038 -

RTÉ/TG4/JV

Section 21 of the Competition Act 2002

Proposed creation of a joint venture company between RTÉ and TG4

Dated 24 February 2012

Introduction

1. On 7 December 2011, in accordance with section 18 of the Competition Act 2002 (the "Act"), the Competition Authority (the "Authority") received a notification of the proposed creation of a joint venture company, Multiplex Broadcasting Services N.I. Limited ("JV"), by Raidió Teilifís Éireann ("RTÉ") and Teilifís na Gaeilge ("TG4").¹ Following completion of the proposed transaction, RTÉ would hold two-thirds of the shares in the JV and TG4 would hold the remaining one-third.
2. On 7 December 2011, the Authority advised the parties and the Minister that it considered the proposed transaction to be a media merger within the meaning of section 23 of the Act.
3. On 5 January 2012 the Authority served two Requirements for Further Information, on RTÉ and TG4, pursuant to section 20(2) of the Act. This automatically suspended the procedure for the Authority's Phase 1 assessment.
4. Upon receipt of the responses to the Requirements for Further Information, the "appropriate date" (as defined in section 19(6) of the Act) became 27 January 2012 and the new Phase 1 deadline became one month from that date.
5. The Authority also requested and received, on an on-going basis, further information and clarifications from the notifying parties.
6. During the investigation, the Authority sought the views of 12 advertising customers (including advertising agencies) of RTÉ and TG4. Most of these advertising customers are also customers of other broadcasters such as TV3, in the State, and UTV and Channel 4, in Northern Ireland.
7. The Authority also consulted with the Broadcasting Authority of Ireland ("BAI"), the Commission for Communications Regulation, and the UK

¹ Following pre-notification discussions, on 30 May 2011 the Authority advised the parties that it tentatively considered that, on balance, the proposed JV was capable of being notified to the Authority under Part 3 of the Competition Act 2002. No information produced during the Phase 1 review of the notification has caused the Authority to revisit that decision.

Communications Regulator ("Ofcom"). None of these agencies opposed the proposed transaction.

8. Having considered all the available information in its possession, the Authority has concluded that the result of the proposed transaction will not be to substantially lessen competition in any market for goods or services in the State.

The Undertakings Involved

RTÉ

9. RTÉ was established (as Radio Éireann) under the Broadcasting Authority Act 1960 as a public service broadcaster in the State. Section 114(1)(a) of the Broadcasting Act 2009 ("the 2009 Act") requires RTÉ to provide a public broadcasting service that "will be made available to the whole community on the island of Ireland". Pursuant to Section 81 of the 2009 Act the board of RTÉ must consist of twelve members.² The RTÉ board is the governing authority of RTÉ.
10. RTÉ operates mainly two free-to-air national television channels, RTÉ One and RTÉ Two. RTÉ One and RTÉ Two cover sports, movies, news and general entertainment, predominantly in the English language. RTÉ estimates that in 2010 the Irish language content of RTÉ One and RTÉ Two was less than 1% for each channel's programming schedule. Based on AC Nielsen data, RTÉ estimates that in 2010 its RTÉ One channel had a share of approximately 23% of television viewership in the State while RTÉ Two had a share of approximately 10% of television viewership in the State.³
11. RTÉ also sells television advertising airtime and sponsorship on its television channels and website. RTÉ estimates that in 2010 it received approximately [50-60]% of the total advertising revenue generated by television channels – Irish and non-Irish - shown in the State.
12. For the year ending 31 December 2010, RTÉ achieved a worldwide turnover of approximately €371.6 million (approximately €175 million accrued from commercial revenue and approximately €195 million accrued from the licence fee). Approximately 99% of RTÉ's revenue was achieved in the State.

TG4

13. TG4 was established (as Teilifís na Gaeilge) under the Broadcasting Authority Act 2001 as a public service broadcaster in the State. Section 118(1)(a) of the 2009 Act requires TG4 to provide a public broadcasting service that "will be made available to the whole community on the island of Ireland". Pursuant to Section 81 of the

² Ten members are appointed by the Government on nomination of the Minister; one member is a member of staff of RTÉ, appointed by the Government following an election; and, one member is the director general of RTÉ.

³ This is based on the AC Nielsen Television Audience Measurement Ireland. The share of television viewership takes into account all viewing including programmes that were recorded for viewing at a later date other than time of broadcast.

2009 Act, the board of TG4 must consist of twelve members.⁴ The TG4 Board is the governing authority of TG4.

14. TG4 operates one television channel, TG4. This channel covers sports, movies, news and general entertainment, mainly in the Irish language. TG4 estimates that the Irish language content accounts for approximately 50% of its programming schedule, while English language and other languages content account for approximately 28% and approximately 22%, respectively. Based on AC Nielsen data, TG4 estimates that in 2010 its channel had a share of approximately 2% of television viewers in the State.⁵
15. TG4 also sells television advertising airtime and sponsorship on its television channels and website. In 2010, TG4 estimates that it received less than 2% of the total advertising revenue generated by Irish and non-Irish television channels shown in the State.
16. For the year ending 31 December 2010, TG4 achieved a worldwide turnover of approximately €35.8 million. Turnover of approximately €3.5 million accrued from commercial revenue and the remaining approximately €32.3 million accrued from funding from the Irish Government. Approximately 98% of TG4's revenue was achieved in the State.
17. RTÉ has no shareholding in TG4 and, *vice versa*. Section 98 of the 2009 Act states that each of RTÉ and TG4 shall be independent in the pursuance of its objects.

The JV

18. As agreed by the UK and Irish Governments, the JV will broadcast RTÉ One, RTÉ Two and TG4 on a free-to-air basis in parts of Northern Ireland on the basis of a multiplex licence to be awarded by the UK Ofcom under the Wireless Telegraphy Act 2006. The JV will broadcast RTÉ One, RTÉ Two and TG4 only in part of Northern Ireland. The areas in Northern Ireland that will be covered by the JV, and some areas within the State that will be covered by over-spill, are represented in the map attached as Annex 1.
19. The draft Ofcom licence provides that the JV will broadcast from a 7th multiplex.⁶ Currently, there are six multiplexes in the UK that are assigned to other UK broadcasters including BBC, ITV and Channel 4. The draft Ofcom licence imposes various restrictions on the use of the draft Ofcom licence and the multiplex by the JV and the broadcasting activities of RTÉ and TG4. The key restrictions are the following:

(i) *"The Licensee must ensure that where the frequencies are used they must carry the following services:*

i. TG4;

ii. RTÉ 1;

⁴ Ten members are appointed by the Government on nomination of the Minister; one member is a member of staff of TG4, appointed by the Government following an election; and, one member is the director general of TG4.

⁵ *ibid.*

⁶ A multiplex is a method of broadcasting in which a single frequency within the spectrum is used to broadcast various television and/or radio channels.

- iii. RTÉ 2";⁷
 - (ii) "the Licensee must surrender the Licence if it decides not to establish, install or use Radio Equipment in accordance with this Licence";⁸
 - (iii) "Ofcom may revoke the Licence by notification in writing to the Licensee if the Radio Equipment is not established, installed and used in accordance with the provisions specified to in Schedule 1 of this Licence or if Ofcom is satisfied that the Licensee has ceased use of the Radio Equipment specified in Schedule 1 and Ofcom is satisfied it is appropriate to revoke the Licence";⁹
 - (iv) "[...]";¹⁰
 - (v) "The Licensee may only carry the television services set out in paragraph 7(2) of Schedule 1 of this Licence. If the Licensee wishes to carry additional television or radio services to those set out in that paragraph, it must obtain prior written consent from Ofcom. Ofcom may consult with the Secretary of State as it thinks appropriate when determining whether or not to give such consent";¹¹
 - (vi) "This Licence is not transferable".¹²
20. A Grant Agreement to be entered into by the Secretary of State of the Department for Culture, Media and Sport and the JV (the "Grant Agreement") imposes additional restrictions on the use of the multiplex by the JV and the broadcasting activities of RTÉ and TG4. The key restrictions, concerning which the JV does not have any discretion, are the following:
- (i) "The JV must be run on a not-for-profit basis and must be solely owned by RTÉ and TG4";¹³
 - (ii) "The 7th multiplex operated by the JV must achieve a minimum coverage level so that, taken together with overspill coverage from the Republic of Ireland, 80% of Northern Ireland's population will be able to receive TG4";¹⁴
 - (iii) "The JV must offer carriage of TG4 and any other services carried, including RTÉ, on a not-for-profit basis";¹⁵
 - (iv) "RTÉ and TG4 must broadcast the same advertising in Northern Ireland as carried in these services elsewhere in Ireland and there must be no advertising aimed solely or mainly at Northern Ireland";¹⁶

⁷ Ofcom Licence, Schedule 1, paragraph 7(2)(a).

⁸ Ofcom Licence, Section 3(1).

⁹ Ofcom Licence, Section 5.

¹⁰ Ofcom Licence, Schedule 1, paragraph 7(2)(b).

¹¹ Ofcom Licence, Section 9.

¹² Ofcom Licence, Section 17.

¹³ Grant Agreement, section 6(b).

¹⁴ Grant Agreement, section 6(c).

¹⁵ Grant Agreement, section 6(d).

¹⁶ Grant Agreement, section 6(e).

(v) "As much as possible of the 7th Multiplex operation shall be put out to competitive tender, principally:

- *Managed Transmission Services (MTS);*
- *Multiplexing; and*
- *Distribution".*¹⁷

21. Due to the limited capacity made available to the 7th multiplex, the JV will not transmit high definition content.
22. The directors of the JV will be appointed by the parties as follows: three directors will be appointed by RTÉ and two directors will be appointed by TG4. The administration of the JV will be carried out by RTÉ and TG4 employees who will be based in their respective offices in Dublin and Galway.

Rationale and Background to the Proposed Transaction

23. The parties state that they had no commercial motivation for the proposed JV. They state that "the proposed JV between RTÉ and TG4 is motivated by the bilateral wishes of the Irish and UK Governments and is not commercially motivated".¹⁸
24. In the Agreement of April 1998 between the UK and Irish Governments ("the Good Friday Agreement") and in the St. Andrew's Agreement of 2006, the UK Government undertook to explore the scope for achieving more widespread availability of TG4 in Northern Ireland. TG4 began broadcasting from the Divis analogue terrestrial transmitter located in Northern Ireland. This, combined with the terrestrial overspill transmission from transmitters in the State resulted in TG4 being currently available, on a free-to-air basis to approximately 60% of the population of Northern Ireland.¹⁹
25. Subsequently, in the context of the Good Friday Agreement, and given the pending Analogue Switch-Off ("ASO"), a Memorandum of Understanding ("MOU") was signed by the UK and Irish Governments on 2 February 2010. The MOU committed these Governments to cooperate to help ensure "the widespread availability on the DTT platform of TG4 in Northern Ireland" and "that arrangements are made to facilitate the widespread availability on the DTT platform of RTÉ services in Northern Ireland."
26. The UK and Irish Governments decided that the most effective way to provide for the continued provision of TG4 was by building a new television multiplex, the 7th in Northern Ireland. The Governments decided that in addition to carrying TG4, this multiplex will also carry RTÉ One and RTÉ Two television channel.
27. The UK Government agreed to fund TG4's costs in relation to the JV. RTÉ will fund its own part of the JV.

¹⁷ Grant Agreement, section 6(f).

¹⁸ Letter from RTÉ to the Authority dated 9 February 2012.

¹⁹ Press release from the Department of Communications, Energy and Natural Resources <<http://www.dcenr.gov.ie/Press+Releases/2010/RTE+and+TG4+available+in+NI.htm>>.

Third Party Submissions

28. The Authority received one third party submission during the Phase 1 investigation. The third party raised a concern that the JV would place RTÉ in a position to offer advertising on an “all Ireland” basis and thus make RTÉ more attractive for advertising agencies and advertisers in the State. This would allegedly result in an increase of RTÉ’s advertising revenue, thereby consolidating and strengthening its dominance on the advertising market in the State.

Market Enquiries

29. In the course of its investigation the Authority contacted 12 advertising customers of RTÉ, including advertising agencies, most of whom were also customers within the State of TG4 and TV3 (a national independent television service licensed by the BAI). The findings of the market enquiries are discussed in the appropriate sections below.

Industry Background

Terrestrial Television Channels

30. Four national television channels are currently available free-to-air through an analogue terrestrial television network in the State. This network is owned and run by RTÉNL, a wholly owned subsidiary of RTÉ. These channels are RTÉ 1, RTÉ 2, TG4 and TV3.

Switch from Analogue to Digital

31. The JV is scheduled to begin broadcasting at the same time as the switchover to digital terrestrial transmission (“DTT”) in the State, scheduled for 24 October 2012.²⁰ At that time all free-to-air analogue terrestrial transmissions would be defunct and would be replaced by DTT (known as Saorview). Saorview will carry eight free-to-air digital television channels, namely, RTÉ One, RTÉ Two HD, TV3, TG4, RTÉ News Now, 3e, RTÉjr and RTÉ One + 1.²¹

Terrestrial Spill-over

32. Terrestrial ‘spill-over’ occurs when a terrestrial television signal is received in a different jurisdiction to its origin. For example, terrestrial signals for RTÉ, TG4 and TV3 can be received in parts of Northern Ireland and terrestrial signals for BBC, UTV and Channel 4 can be received in parts of the State.
33. Tables 1 and 2 below summarise the current analogue terrestrial coverage of both the State and Northern Ireland (through spill-over) and the expected terrestrial coverage subsequent to the switch to digital and the JV becoming operational.

²⁰ The switchover in the State is part of a larger process across the EU. See, for example public information from the European Commission, <http://ec.europa.eu/information_society/policy/ecommm/current/broadcasting/switchover/index_en.htm>, and also the European Commission’s Communication of 24 May 2005 < <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0204:FIN:EN:PDF>>.

²¹ Saorview will also carry RTÉ and Digital Aertel and RTÉ radio services including its digital-only services.

34. Table 1 shows, on the basis of estimates provided by the parties, the proportion of the population within the State that can receive RTÉ, TG4 and TV3 by analogue terrestrial television broadcasts. Table 1 also shows the proportion of the population of Northern Ireland that can receive RTÉ, TG4 and TV3 by means of spill-over analogue terrestrial television broadcasts or, for TG4, the terrestrial transmission from the Divis analogue terrestrial transmitter as described in paragraph 21.

Table 1: Population Coverage of Analogue Terrestrial Television

Broadcaster	State	Northern Ireland (spill-over)
RTÉ (One & Two)	98%	38%
TG4	95%	54% ²²
TV3	85%	[...] ²³

Source: Information provided by the parties in response to RFI²⁴

35. Table 2 below shows, on the basis of estimates provide by the parties, the proportion of the population within the State that would be capable of receiving RTÉ, TG4 and TV3 by digital terrestrial television broadcasts once it becomes available. Table 2 also shows the proportion of the population of Northern Ireland that would receive RTÉ, TG4 and TV3 by means of digital spill-over following ASO or by means of the JV.

Table 2: Estimated Population Coverage Following Switch to Digital Terrestrial Television

Broadcaster	State	Northern Ireland (spill-over)	Northern Ireland (spill-over + JV)
RTÉ	98%	60%	95%
TG4	98%	60%	95%
TV3	98%	60%	60%

Source: Information provided by the parties in response to the RFI

36. Table 2 shows that digital broadcasting will improve coverage within the State for TG4 and (especially) TV3. Also, digital broadcasting will significantly increase spill-over for all of RTÉ, TG4 and TV3.²⁵ The joint

²² This figure includes TG4's coverage in Northern Ireland from the Divis analogue terrestrial transmitter.

²³ This is based on the fact that all of RTÉ, TG4 and TV3 are carried by RTÉNL.

²⁴ These coverage estimates are based on 2001 Census data. The parties advise that these estimates remain valid on the basis that there has been a relatively even 7% increase in population across Northern Ireland since 2001.

²⁵ This is based on the fact that RTÉ, TG4 and TV3 will be carried by RTÉNL and will be captured in the Saorview decoder.

venture will further increase RTÉ's and TG4's coverage of Northern Ireland.

37. A map depicting coverage from post-ASO transmitters in the State (including spill-over) is attached as Annex 2. A map showing how that coverage is supplemented by coverage through the JV is attached as Annex 3.

Cable, Satellite and Internet Platforms

38. In addition to the terrestrial platform, RTÉ, TG4 and TV3 are broadcast in the State on all of (i) cable, (ii) satellite, and (iii) internet platforms.²⁶ In addition, viewers and advertisers in the State can access a large number of non-Irish television channels through these platforms.
39. RTÉ and TG4 broadcast in Northern Ireland on (i) cable, (ii) satellite, and (iii) internet platforms, [REDACTED]
40. The parties state that approximately 49% of all TV households in Northern Ireland (i.e., approx. 353,000 homes) subscribe to Sky and approximately 11% of all TV households in Northern Ireland (i.e., approx. 79,000 homes) avail of Virgin Media Cable.²⁸ In addition, Ofcom has stated that there is a 75% broadband penetration into Northern Ireland which provides a further option for accessing RTÉ and TG4.²⁹
41. The parties submit that, on the basis of the cable and satellite figures above, 14% is a more accurate figure for the increase in potential coverage specifically attributable to the JV than a figure of 35% which could be inferred from the data in Table 2. The 14% figure is calculated on the basis of 60% of potential JV recipients already having cable or satellite access to RTÉ and TG4.³⁰
42. Even the 14% figure likely exaggerates the increase in viewership. According to the parties, only viewers with a UK Freeview HD receiver will be able to receive the JV's DTT signal. As high definition becomes more important to consumers, broadcasts over the 7th multiplex will be at a competitive disadvantage.
43. Market enquiries also indicate that viewer programme preferences may differ significantly between Northern Ireland and the State and hence any increase in potential coverage does not necessarily imply increased viewers or advertising impact. Significantly in this regard, the proposed JV will not be able to tailor either programme content or advertising to target Northern Ireland viewers. In addition, the programmes to be broadcast by the JV will be subject to rights issues (i.e., its parents will have to black out programmes for which they do not have UK broadcasting rights). This will further diminish any direct

²⁶ In addition to its terrestrial channel TV3, the broadcaster TV3 Television Network Limited also broadcasts channel 3e on cable and satellite platforms.
[REDACTED]

²⁸ Estimates provided by Ofcom.

²⁹ This is an increase from 52% in 2008. See <<http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr11/northern-ireland/>>

³⁰ Fourteen percent is calculated by multiplying 35% by (100-60)%.

impact of the JV on viewers and advertisers in Northern Ireland and any indirect impact on television advertising in the State.

Counterfactual

44. The Act requires the Authority to “form a view as to whether the result of the merger or acquisition would be to substantially lessen competition.” In practice, this requires deciding on a counterfactual, i.e., the state of competition in the absence of the proposed transaction. More generally, it is important to distinguish between changes in competition that would result from the joint venture, and changes that will result from other causes.
45. Although the set of competitive conditions in existence prior to a proposed transaction are often the appropriate counterfactual, this is not always the case. Specifically in relation to the proposed JV, it is important to distinguish between changes in the state of competition attributable to the JV and changes in competition that would have occurred anyway, such as those resulting from the MOU and ASO.
46. Here, the Analogue Switch-Off will occur in October 2012 without regard to the JV. Also, the implementation of the proposed JV is a consequence of an intergovernmental MOU, agreed pursuant to the Good Friday Agreement, to ensure the broadcasting of public service television stations (defined as RTÉ One, RTÉ Two and TG4) into Northern Ireland.
47. In light of the above, the Authority considers that the relevant counterfactual should take into account the MOU and the pending ASO. That is, the relevant counterfactual recognises that even in the absence of the proposed JV (i) there would still remain an intergovernmental commitment for the broadcasting of RTÉ One, RTÉ Two and TG4 into Northern Ireland, and (ii) digital broadcasting will replace analogue in October 2012, increasing the potential for free-to-air spill-over for all channels from the State into Northern Ireland.

Analysis

48. Even if it had not already been decided that RTÉ One, RTÉ Two, and TG4 will be broadcast into Northern Ireland, there would be reason to doubt that the JV would substantially lessen competition. Those reasons can be briefly outlined.
49. Television broadcasting is a so-called two sided market. That is, in this context a television broadcaster must supply services to two groups, viewers and advertisers. Analysis of the JV therefore addresses competitive effects for television viewers and television advertisers.³¹
50. As for any JV, analysis of competitive effects addresses (i) possible competitive effects between the JV and one or both of its parents, RTÉ and TG4; (ii) possible coordinated effects involving the JV parents, in

³¹ The European Commission e.g. in M.553- RTL/Veronica/Endemol IV 20 September 1995, and also the Competition Authority in M/07/040 – Comminicorp–SRH and M/10/020 – Sky/VMtv, have defined television advertising as a distinct product market. The Authority sees no reason to depart from this product market definition. The Authority does not consider it needs to define precisely whether the geographic market is the State or broader, such as the State and Northern Ireland. Irrespective of the geographic market the Authority’s analysis of competitive effects addresses effects within the State.

this case RTÉ or TG4; and (iii) possible unilateral effects for either or both of the JV parents, RTÉ or TG4.

Competition between the JV and its Parents

51. As shown in Annex 1 the proposed JV will broadcast RTÉ and TG4 programmes and advertising in substantial parts of Northern Ireland with some limited spill-over into the border areas of the State. The JV's parents, RTÉ and TG4, broadcast programmes and advertising mainly within the State at present and will continue to do so in future. It is unlikely that viewers in the State will purchase the required receiver for the JV – a receiver that gives fewer channels and programmes than they could receive from the Saorview receiver. Also, viewers in the State will not receive the JV's signal with the Saorview receiver. Consequently, there will be little geographic overlap in the activities of the JV and either of RTÉ and TG4 within the State, and it is not realistic to suggest that the JV could compete with its parents within the State. Therefore, the Authority is of the view that the proposed transaction will not raise any competition concerns between the JV and its parents within the State.

Coordination between the JV's Parents

52. Both RTÉ and TG4 are active in the broadcast of programmes and advertising in the State, but there is no apparent reason for concern about anticompetitive coordination. The JV is devoted to a particular, narrow purpose that does not include setting prices or output levels of its Parents' products or services. Moreover, RTÉ's and TG4's activities are significantly differentiated to an extent not likely to imply adverse competitive effects from coordinated behaviour under these circumstances. For example, TG4 carries a much greater proportion of Irish language content (approximately 50%) compared to RTÉ (approximately 1%), suggesting somewhat different audiences. Also whereas RTÉ earns a significant proportion of its turnover from advertising (approximately 47%), almost all (approximately 90%) of TG4's turnover is derived from Government funding. And, as noted earlier, TG4 has a market share of approximately less than 2% of the television advertising market.

Unilateral Effects from one or both Parents of the JV

53. The Authority's analysis has focused somewhat more on possible unilateral effects arising in the State with regard to RTÉ. (Given TG4's small presence in television broadcasting and advertising, it is not plausible that the JV could generate unilateral effects with respect to TG4). The Authority has analysed two possible theories of harm. First, whether RTÉ will have the incentive and ability to increase its prices. Second, and with reference to a third party submission, whether RTÉ will have the incentive and the ability, by advertising on an "all Ireland" basis, to strengthen its position in the advertising market in the State to the detriment of customers and advertisers.

Will RTÉ Increase its Prices?

54. One theory of harm posits an increase in the price of RTÉ television advertising airtime³² as a consequence of the proposed JV being put into effect and resulting in an increase in viewers of RTÉ programmes and advertising. This could happen in one of two ways. Although RTÉ does not currently subscribe to a service measuring viewership in Northern Ireland, it could begin doing so, and thus since advertising is priced per thousand viewers it would receive increased revenue for additional measured viewers. Alternatively or in addition, RTÉ could simply increase its prices per thousand measured State viewers on the basis of increased population coverage in Northern Ireland. For example, some advertisers who sell in the State also sell products or services in Northern Ireland, or might plan to do so in the future. (Other advertisers may have no interest in Northern Ireland customers).
55. RTÉ has indicated to the Authority that it does not now charge advertisers on the basis of viewers in Northern Ireland and does not intend to do as a result of the JV. For example, RTÉ stated the following in a communication to the Authority:
- "RTÉ does not currently factor in viewers in Northern Ireland when it sets its prices to advertisers as it is unable to quantify the amount of viewers in Northern Ireland. This is due to the fact that RTÉ does not currently subscribe to BARB (Broadcasters' Audience Research Board), which is the body collecting and distributing information on television audiences in the UK, including Northern Ireland."*³³
- "RTÉ has subscribed to BARB up until 2008 and was therefore able to quantify viewership in Northern Ireland until then. However, RTÉ has never used the viewing figures it received in relation to Northern Ireland as a trading currency. In other words it has never taken these additional viewers in Northern Ireland into account when calculating advertising prices."*³⁴
56. RTÉ's reassurances are supported by customer views. Market enquiries found very few concerns on the part of RTÉ's advertising customers. The vast majority of advertisers contacted as part of the Authority's market enquiries do not anticipate significant implications for television advertising within the State as a result of the proposed JV. Advertisers note that charging for advertising impact in Northern Ireland would represent a departure from established practice in television advertising in Ireland the UK and further afield. Broadcasters apparently do not charge advertisers on the basis of spill-over viewership of advertising impact. Rather, advertisers described spill-over advertising impact as a bonus, i.e., of some value but not charged for. Whether this is completely true is unclear, but advertisers expressed the view that in light of current practices it would be difficult for RTÉ to attempt to justify an increase in its price per thousand

³² RTÉ competitors use RTÉ prices as a benchmark upon which to discount, so any increase in RTÉ prices could conceivably increase other prices. But if RTÉ prices go up for reasons not applicable to a rival, it is not clear that the rival would be able to sustain a price increase.

³³ Correspondence from RTÉ to the Authority dated 27 January 2012. For information on the Broadcasters' Audience Research Board see <<http://www.barb.co.uk>>.

³⁴ Correspondence from RTÉ to the Authority dated 9 February 2012.

viewers based on increased uncounted viewers in Northern Ireland resulting from the JV.

57. The Authority also notes that at present neither RTÉ nor TG4 sells advertising airtime aimed solely or mainly at Northern Ireland. The same advertisements as shown in the State are shown in Northern Ireland. This is guaranteed to continue with respect to the JV, as noted above in paragraph 20 (iv).
58. In addition, further market enquiries indicated that:
- Advertisers generally buy from Northern Ireland broadcasters to reach audiences in Northern Ireland and broadcasters in the State to reach viewers in the State.
 - Advertisers who advertise in both Northern Ireland and the State would not likely be able to rely only on RTÉ post-JV. Rather, to achieve "all Ireland" coverage Northern Ireland TV channels would remain necessary.
 - Some advertisers might find RTÉ more attractive post-JV but the vast majority of advertisers (approximately 80-90%) focus on viewers in the State and (i) for them the extra coverage would not be valuable and (ii) they would resist a price increase (although the Authority recognises that it would be very difficult for any television advertiser in the State not to place advertising with RTÉ).
 - Advertisers also indicated that, as noted above, RTÉ's modest increased coverage in Northern Ireland will not necessarily translate into a corresponding increase in viewership of RTÉ in Northern Ireland.

RTÉ as seller of television advertising airtime on an All Ireland basis

59. As raised by a third party, another theory of harm is that over time RTÉ, on the basis of its "all-Ireland" coverage, will gain an advantage over competitors operating only within the State. As submitted by a third party, this process would allegedly be detrimental to advertising customers by allowing RTÉ to consolidate and strengthen its position in the State. A merger can lessen competition by enhancing or helping to preserve the market power of a dominant firm.³⁵
60. However, all of the considerations discussed in the previous section apply equally here. Market enquiries as summarised above do not support this theory of harm, and there are substantial reasons to doubt that the small increase in RTÉ's position in Northern Ireland will significantly affect its position in the State.³⁶

³⁵ The Authority is not making a finding that RTÉ is a dominant firm, but it notes that it recently made a preliminary finding of dominance. See Enforcement Decision <<http://www.tca.ie/images/uploaded/documents/E-12-001%20RTE%20Enforcement%20Decision.pdf>>.

³⁶ It is also noteworthy that the Authority recently issued an Enforcement Decision explaining its preliminary findings in an abuse of dominance case in which RTÉ provided undertakings to the Authority (Decision of the Competition Authority E/12/001). The Authority will continue to monitor RTÉ's actions and will not hesitate to take action were RTÉ to engage in any unlawful activity.

Increased Coverage Attributable to the Proposed JV

61. Most of the above addresses the consequences of RTÉ's enjoying somewhat greater coverage in Northern Ireland. Merger review is limited, however, to determining whether "the result of the merger" will be "to substantially lessen competition." Here, the relevant counterfactual must take into account the February 2010 MOU and also the October 2012 ASO. In light of that background, any competitive effects attributable to the proposed JV are not sufficient to indicate significant competition concerns. By way of illustration, Annex 2 shows the DTT coverage subsequent to the ASO and Annex 3 shows the geographical extent to which JV coverage extends beyond DTT spill-over.

Conclusion

62. The Authority concludes, on the basis of the available evidence that the proposed transaction will not lead to a substantial lessening of competition in the State.
63. In particular, market enquiries indicate that the clear majority of respondents provided reasons as to why they do not have significant competition concerns about the proposed JV either in terms of (i) increased prices for television advertising airtime or (ii) increased market power in the State as a result of being in a position to advertise on an all Ireland basis.
64. Both theories of harm should also be placed in the context of the relevant counterfactual, i.e., to include the competitive effects arising from both the MOU and ASO. When compared to the relevant counterfactual, the effects of the proposed JV on (i) population coverage in Northern Ireland, (ii) viewers in Northern Ireland, and (iii) the sale of television advertising airtime in the State is insufficient to indicate any substantial competition concerns.
65. The proposed transaction does not raise any vertical issues within the State.
66. In light of the above, the Authority considers that the proposed transaction will not raise substantial competition concerns in any market for goods or services in the State.

DETERMINATION

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed creation of the joint venture company Multiplex Broadcasting Services N.I. Limited between Raidió Teilifís Éireann and Teilifís na Gaeilge will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the Joint Venture may be put into effect, subject to section 23(9)(a) of the Act.

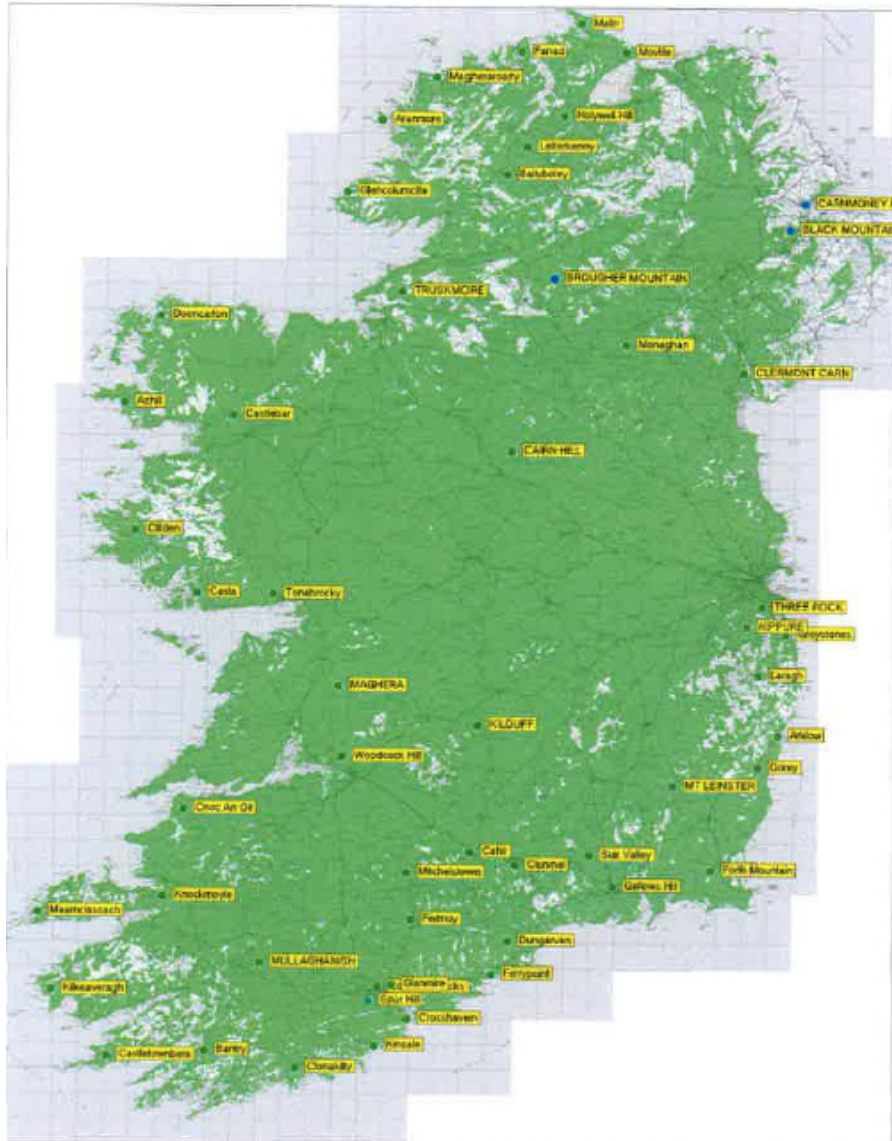
For the Competition Authority

Stephen Calkins

Member of the Competition Authority

Director, Mergers Division

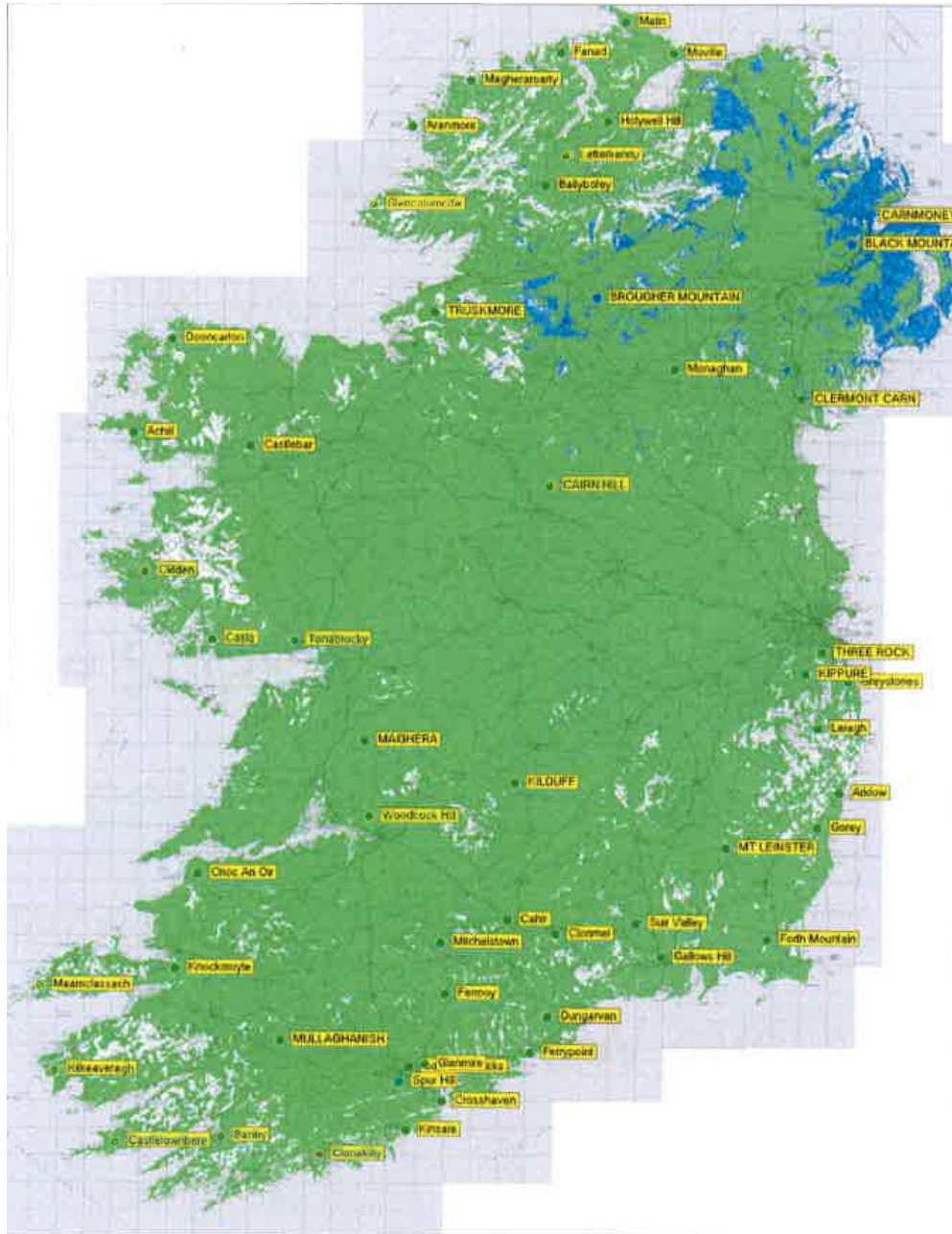
Annex 2: Coverage in the island of Ireland from DTT (Saorview)



Note: As depicted on the map, the grey parts of the island of Ireland are not covered by Saorview.

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Annex 3: Additional Coverage in Northern Ireland supplemented by the JV



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