

## Media Ownership

In 2012, the then Minister for Communications, Pat Rabbitte indicated that the Government proposed to legislate to deal with the question of media ownership in the context of a Competition Bill to be published in the autumn of 2012. He said that he had intended to deal with the issue in a single-issue “break-out” Bill but that this idea had been shelved. The impression given was that a media ownership Bill was certainly a priority for the Government. The Competition Bill was one which would have fallen within the responsibility of Minister Richard Bruton.

In 2011, Pat Rabbitte had expressed concern about the nature of media ownership in Ireland and had stated that it was “unhealthy for Irish democracy” and that “lack of political will” had prevented previous governments from dealing with the matter.

At that time, I delivered a paper at a seminar organised by Competition magazine that the new law should include provisions requiring persons who already had an over-concentration of media power to bring their media holdings into line with any new criteria by which future media mergers would be judged.

In other words, I was pointing out that it did not make sense to establish criteria by which any future merger or concentration of media power would be judged while at the same time leaving all existing arrangements untouched.

If any existing concentration of media power could be considered excessive in the context of any future merger or acquisition, I argued there was no constitutional reason in principle why the new law should not empower a regulatory body to require actual divestment of existing interests to achieve compliance with the criteria to be applied to other media owners in the future.

The concept of divestment in the area of competition law is not novel; the British regulator is, at the moment, requiring Ryanair to engage in divestment of the great majority of its shareholding in Aer Lingus.

While existing property rights are protected under the Constitution, they are not sacrosanct. If there is a legitimate, constitutional legislative purpose in controlling concentration of media ownership, then control of concentration by divestment of existing holdings is as legitimate as control to prevent further future concentration so long as persons obliged to engage in divestment are given a reasonable opportunity means of realising the fair present value of the interests or shares they must dispose of.

The oft-neglected terms of Article 45 of the Constitution actually mandate the Oireachtas to enact laws to counter monopolistic overconcentration of economic market power “in a few individuals to the common detriment”.

The proposed criteria announced this week by Pat Rabbitte’s successor, Alex White under the law enacted by the Government in 2014 do not address the existing situation at all. This is hardly surprising.

The reforming Act in 2014 studiously ignored existing media concentration while piously making provision for controlling future changes in media ownership changes. Shades of St Augustine, I think: "Make me holy, but not just yet".

The right to establish a media base to propagate a viewpoint is important; the internet has made that "freedom of speech" right a lot more accessible than it was in the context of regulated, impartial public broadcasting coupled with a national print media with limited or declining circulation offering little hope for new print media entrants.

Investment in the print media for profit is almost impossible. For instance, Denis O'Brien was reported in 2012 by Tom Lyons to have lost €500 million in his bid to acquire a minority shareholding in INM. The issues involved were also the subject of a very interesting Project Report in 2013 by Kenneth Kidney which is available online.

The manifest and proven capacity of investors and owners of the print media to influence news output is obvious; in a democracy where the Constitution expressly underlines the role of the media in educating public opinion, the moral and constitutional mandate for effective laws both to end and to prevent excessive concentration in media ownership is clearly present.

When the great and the powerful have the capacity to further their own interests through editorial influence in the media while at the same time deploying their considerable resources to produce a numbing effect by threat of legal action over the media which they do not control, the quality of our republican democracy is challenged.

Observers of the "too little, too late" proposals made this week by Alex White may ponder the criticism fairly made by Pat Rabbitte in 2012 that lack of political will by others (including myself) was the explanation for an unhealthy concentration of media ownership and control in 2012; but in the closing months of this Government in 2015, with all that has happened since it took office, we seem to be in the territory of conscious and deliberate choice rather than failure of will.