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**AN BILLE UM MEÁIN CHRAOLACHÁIN AGUS MEÁIN  
EILE (CEART POIBLÍ ROCHTANA AGUS ÉAGSÚLACHT  
ÚINÉIREACHTA), 1998**

**BROADCASTING AND OTHER MEDIA (PUBLIC RIGHT  
OF ACCESS AND DIVERSITY OF OWNERSHIP) BILL, 1998**

*Mar a tionscnaíodh  
As initiated*

ARRANGEMENT OF SECTIONS

Section

- 1. Public right of access to certain broadcasts.
- 2. Prohibition of concentration of media ownership.
- 3. Offences.
- 4. Regulations.
- 5. Interpretation.
- 6. Short title.

#### Acts Referred to

Competition Act, 1991

1991, No. 24

Petty Sessions (Ireland) Act, 1851

14 & 15 Vic. c. 93



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# **BILL**

*entitled*

AN ACT TO PROVIDE FOR PUBLIC RIGHTS OF ACCESS TO  
CERTAIN BROADCAST EVENTS OF MAJOR IMPORT-  
ANCE TO SOCIETY AND TO GIVE EFFECT TO  
ARTICLE 3a OF COUNCIL DIRECTIVE 89/552/EEC ON  
THE CO-ORDINATION OF CERTAIN PROVISIONS TO  
BE LAID DOWN BY LAW, REGULATION OR ADMINIS-  
TRATIVE ACTION IN MEMBER STATES CONCERNING  
THE PURSUIT OF TELEVISION BROADCASTING  
ACTIVITIES, AS INSERTED BY ARTICLE 4 OF DIREC-  
TIVE 97/36/EC OF THE EUROPEAN PARLIAMENT AND  
OF THE COUNCIL OF 30 JUNE 1997; AND TO AMEND  
THE COMPETITION ACT, 1991, TO PROVIDE FOR  
DIVERSITY OF OWNERSHIP IN BROADCASTING AND  
OTHER MEDIA, AND TO PROVIDE FOR RELATED  
MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

**1.—(1)** No broadcaster established or operating within the State may broadcast on an exclusive basis events prescribed in that behalf under *subsection (2)* in such a way so as to deprive a substantial proportion of the public in the State of the possibility of following such events via live coverage or deferred coverage on free television.

Public right of  
access to certain  
broadcasts.

**(2)** The Minister shall within 2 months of the passing of this Act and from time to time thereafter by order prescribe for the purposes of this section a list of events which are in the opinion of the Minister (after engaging in a process of public consultation) of major importance for society and shall indicate in each case whether the event is to be available via whole or partial live coverage or where necessary and appropriate for objective reasons in the public interest and stated in the order, via whole or partial deferred coverage.

**(3)** No broadcaster established or operating within the State may exercise any exclusive rights purchased by such broadcaster on or after the 30th day of July, 1997, to events designated in that behalf under legislation of any other Member State of the European Community corresponding to this section or otherwise enacted for the purpose of giving effect in that Member State to Article 3a of

Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as inserted by Article 4 of Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997, in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events via live coverage or deferred coverage on free television as determined by that Member State under such legislation. 5

(4) Any person who contravenes this section shall be guilty of an offence and shall be liable— 10

(a) on summary conviction to a fine not exceeding £1,500 or in the case of a continuing offence to a fine of £150 per day; or

(b) on conviction on indictment thereof to a fine not exceeding £500,000 or in the case of a continuing offence to a fine of £5,000 per day. 15

(5) An order under this section shall not come into operation unless a draft thereof has been approved by both Houses of the Oireachtas. 20

(6) The Minister may by order amend or revoke an order under this section (including an order under this subsection).

Prohibition of concentration of media ownership.

**2.**—The Act of 1991 is hereby amended by the insertion after section 5 of the following section—

“Extension of meaning of ‘abuse of dominant position’.

5A.—(1) Without prejudice to sections 4 and 5, any contravention of subsection (2) by any one or more undertakings shall be deemed to be an abuse of a dominant position for the purposes of section 5. 25

(2) An undertaking which— 30

(a) itself is or is part of, or

(b) is directly or indirectly interested in, or in relation to which any associated undertaking is so interested in,

an undertaking that enjoys 25 per cent. or more of the market share of any media market in the State, shall not have any direct or indirect interest in any other undertaking which enjoys 25 per cent. or more of the market share of any other media market in the State. 35 40

(3) An undertaking shall be deemed not to have contravened subsection (2) if—

(a) the undertaking is acting in the exercise of its remit as a public service broadcaster within the meaning of the Ninth Protocol to the Treaty of Amsterdam done at Amsterdam on the 2nd day of October, 1997; 45

(b) the effect but for this paragraph of compliance with subsection (2) would be substantially to increase the market share of any media market enjoyed by any undertaking established or substantially controlled from outside the European Union, or in such cases as the Minister may by order declare, otherwise outside the State; or

(c) within 6 months from the passing of the *Broadcasting and other Media (Public Right of Access and Diversity of Ownership) Act, 1998*, it divests itself of any interest the enjoyment of which would contravene subsection (2).

(4) In this section—

‘associated undertaking’ means any undertaking wholly or partly and directly or indirectly under common ownership or control with the undertaking or part of a common group of companies with the undertaking;

‘media market’ means the market in the State for each of the following—

(a) broadcasting including terrestrial television (but not including a market specified in paragraphs (d) or (e) of this definition);

(b) newspapers;

(c) magazines;

(d) satellite and digital television, and other cable and MMDS services; and

(e) internet services;

‘undertaking’ includes an undertaking (including a person) who is directly or indirectly interested in the undertaking.”.

**3.—(1)** Summary proceedings for an offence under this Act may be instituted by the Minister. Offences.

(2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be instituted within 12 months from the date of the offence.

(3) Where an offence under this Act which is committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person who, when the offence was committed, was a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, that person

(as well as the body corporate) shall be guilty of an offence and shall be liable to be proceeded against and punished as if guilty of the offence committed by the body corporate.

(4) In relation to a body corporate whose affairs are managed by its members, *subsection (3)* shall have effect as if “director” included a member of the body corporate. 5

Regulations.

**4.—**(1) The Minister may make regulations for the purpose of giving full effect to this Act.

(2) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to anything previously done thereunder. 10

(3) Any order or regulation made under this Act may contain such consequential, supplementary and ancillary provisions as the Minister considers necessary or expedient. 15

Interpretation.

**5.—**(1) In this Act—

“Act of 1991” means the Competition Act, 1991;

“Minister” means the Minister for Arts, Heritage, Gaeltacht and the Islands. 20

(2) In this Act—

(a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is intended; 25

(b) a reference to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended;

(c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment, including this Act. 30

Short title.

**6.—**This Act may be cited as the Broadcasting and other Media (Public Right of Access and Diversity of Ownership) Act, 1998. 35



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**EXPLANATORY MEMORANDUM**

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*Introduction*

The purpose of the Bill is two-fold:

- (a) to implement Article 3a of the EU Broadcasting Directive;  
and
- (b) to define limits of cross-ownership of differing media, by  
providing in effect that a person or company cannot have  
a direct or indirect interest in more than 25 per cent. of  
two different media markets.

*Provisions of Bill*

*Section 1* implements Article 3a of the EU Broadcasting Directive. *Subsection (1)* provides that no broadcaster established or operating within the State may broadcast on an exclusive basis events prescribed under *subsection (2)* in such a way as to deprive a substantial proportion of the public in the State of the possibility of following such events via live coverage or deferred coverage on free television.

*Subsection (2)* provides that the Minister for Arts, Heritage, Gaeltacht and the Islands shall within 2 months from the passing of the Bill and from time to time thereafter by order prescribe a list of events which are in his or her opinion (after engaging in a process of public consultation) of major importance for society. The Minister shall indicate in each case whether the event is to be available via whole or partial live coverage or where necessary and appropriate for objective reasons in the public interest and stated in the order, via whole or partial deferred coverage.

*Subsection (3)* provides for events prescribed by the legislation of other EU Member States. *Subsection (4)* provides a fine of £500,000 maximum for breach of the section. *Subsections (5) and (6)* are technical provisions regarding orders.

*Section 2* amends the Competition Act, 1991, by extending the meaning of the term "abuse of dominant position". It defines limits of cross-ownership of differing media, by providing in effect that a person or company cannot have a direct or indirect interest in more than 25 per cent. of two different media markets. Thus the maximum interest is 100 per cent. of one market and 24.99 per cent. of one or

more other markets. There is a 6-month grace period to comply with the Bill. There are also exceptions to recognise the position of public service broadcasters as enshrined in the Amsterdam Treaty, Ninth Protocol, and also to cater for a situation where the divesting of an interest by a domestic company would lead to the purchase of that interest or an increase in market share by a foreign and in particular a non-EU company. The new section defines “media market” as the market in the State for each of the following five categories—

- (a) broadcasting including terrestrial television (but not including a market specified in paragraph (d) or (e));
- (b) newspapers;
- (c) magazines;
- (d) satellite and digital television, and cable and MMDS services; and
- (e) internet services.

*Section 3* provides for prosecution of offences under the Act.

*Section 4* provides for ministerial regulations.

*Section 5* defines necessary terms for the Act.

*Section 6* provides its short title.

*An Teachta Micheál D. Ó hUiginn,  
Meitheamh, 1998.*