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## O'Brien bidding to rule the airwaves

Can Denis O'Brien hold on to all his new radio stations? **Helen Shaw** looks at the ownership controls governing commercial broadcasting.

Denis O'Brien may have to offer up some of his new radio treasure chest in order to hold on to the real jewel in the €200 million Emap deal - national station Today FM. While much has been made of the fact that the Emap sale of Today FM, Dublin station FM 104 and Donegal's Radio Highland leaves O'Brien's company Communicorp with just under 25 per cent of all commercial radio licences, the cut-off point under the regulator's ownership rules, the deal will hit other barriers particularly in an assessment of the Dublin radio market on audience share and advertising.

Communicorp's purchase would give it control of a third of all national licences (Today FM and Newstalk) and three of Dublin's six commercial stations (FM 104, 98FM and Spin FM).

While O'Brien may well argue that holding both national commercial licences is balanced by RTÉ Radio's four national licences; in Dublin the combination of FM 104, 98FM and Spin 1038, all popular music stations with a strong appeal in the 15-34 age group, would leave O'Brien's company in a dominant position and a sale of Spin 1038 alone is unlikely to ease that position.

FM 104 and 98FM have long been direct competitors in Dublin with FM 104 currently the most popular - reaching 23 per cent of the audience.

The combined audience reach of FM 104, 98FM and Spin in Dublin, based on the last JNLR figures, is 53 per cent.

Communicorp may have to sell on FM 104 and smooth the path for what is a far more lucrative end-game; the creation of a dual national commercial vehicle, Today FM and Newstalk, a music/speech engine which would, for the first time, offer a commercial market alternative to the combined strength of RTÉ's 2FM and Radio 1.

What O'Brien's company wants and needs is Today FM. Not as an alternative to Newstalk but in order to make the Newstalk investment viable. Building a commercial speech-based service and growing it from local to national is expensive.

Couple that fledgling service (with its current 5 per cent national reach) with an established service like Today FM (and its 16 per cent reach) and you have economics of scale and a much stronger combined advertisement package to sell.

The question of whether the deal can go ahead unaltered rests with the industry regulator, the Broadcasting Commission of Ireland (BCI), and the Competition Authority. The BCI is effectively looking at the question of plurality of ownership and diversity of

content while the Competition Authority under the 2002 Act can test the impact of a media merger on a market competition basis; in terms of market share and advertisement revenue. Ultimately the Minister for Communications can have the final say.

The BCI's ownership and control policy was reviewed two years ago following the Ox Report on radio licensing (of which I was one of the authors), but with no significant changes in the policy since it is largely framed by the Radio and Television Act 1988 sections 6 (2) (g) and (h). One of the issues raised in Ox was that while one owner can hold up to 25 per cent of all commercial radio licences there is no distinction made between a national licence, like Today FM, and a local licence in a low populated zone. No account is taken of population/market size in the equation.

But under section 6 (2) (h) the BCI can assess "the desirability of allowing any person . . . to have control of, or substantial interests in, an undue amount of the communications media in the area specified". The BCI uses an audience model to assess this but how audiences are aggregated or what the benchmark is for "undue amount" is not defined and it is determined on a "case by case basis".

This allows the BCI to assess cross media ownership issues but while O'Brien has a shareholding interest in Independent News & Media, it is currently below 10 per cent. It also allows the BCI to explore the proposal in specific areas like Dublin city and county, and national by looking at the totality of all media in that area and by using a "test of substitutability" and an examination of the applicant's "opinion-forming power" and dominance of audience share in any communications media in which it holds an interest.

It is here that the Communicorp deal may hit a ramp in attempting to hold FM 104, 98FM and Spin as well as being the provider of two national services in Dublin city and county. Given that RTÉ has no local or regional services, Communicorp would dominate Dublin audiences although it is up to the Competition Authority to assess advertisement revenue. Estimates have put the combined advertising power of the proposed Communicorp group at about €55 million out of the €125 million spent on radio adverts and it represents the lion's share of Dublin. But beyond disgruntled underbidders, many in the industry quietly welcome the Communicorp deal. Ownership consolidation is seen as a necessary part of building a stable radio business which can invest in digital and new services.

In the UK, radio advertising has long since been outstripped by the internet, and while radio advertising is booming here the next five years will see a move from all traditional media to the internet.

Equally they see it as creating a serious competitor for RTÉ which boxes above its weight in its advertising pull because of its national network. In reality RTÉ Radio has long since lost dominance in sheer audience terms with over 56 per cent of listenership reach going to commercial regional/local stations alone. Its two mass-appeal stations (RTÉ Radio 1 and 2FM) compete with 33 commercial stations at local, regional and national level and by the end of the year there will be 34 licences with the addition of the new multi-cty licence aimed at the over 45s.

With five bids for this licence (including Communicorp and Today FM separately and *The Irish Times* as part of 4FM) several of them, (particularly TV3 and Martin Block of 4FM) may be feeling a lot more confident as it seems unlikely that a further "quasi-national" licence could be awarded to Communicorp. They also have the potential to pick up a Dublin station if O'Brien is advised to offload one.

It will be months before we know how the deal fares in the regulatory review. Within five years the landscape will change radically with fewer owners owning more multimedia based empires and much of our ownership policy may need to be reviewed. What is interesting is the emergence of Irish businesses like Communicorp, UTV and Crosbie Holdings to the radio stage.

Just a couple of years back - when Emap came in - it seemed that UK companies would be the key players but, given the decline in the radio market there, it is home interests which are shaping radio here. That is good news - since they are more likely to stay for the long run, invest and grow. And that has to be good for both listeners and workers alike.

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