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Digital Television Policy in Ireland: From Inception to Analogue Switch Off

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Abstract

On the 24th of October 2012 the Republic of Ireland switched off its analogue spectrum marking a crucial juncture in its transition to a fully digital television system. After 14 years of policymaking, the Irish state had met both its digital switchover and analogue switch off deadlines. This article will trace the long trajectory of Ireland's transition to digital television and evaluate the state's policy performance in the much-changed context of digital media governance. Amongst the myriad policy goals that were incorporated under the rubric of digital television policy (information society goals, network development goals, television policy goals) successive governments achieved some policy goals but not all. In Ireland the signal policy failure has been in relation to the late launch and compromised model of Digital Terrestrial Television. Whereas there are varied factors and contexts that have shaped Ireland's digital transition the article will trace the part played by Ireland's negotiation of EU governance in this area and Ireland's own state structure and its implication for policy making at critical points in Irelands digital transition. The Irish state's status as a competition state engendered a policy approach that frequently became wedged between the twin pressures of interest group manoeuvring and the European Union's evolving approach to governing state aid towards DTV.

Keywords: Media Governance: Competition: Public Broadcasting: Digital Switchover

Introduction

This article will trace the development of the digital transition in Ireland, from its inception in 1997 to analogue switch off in 2012. In policy terms the transition to digital television can be characterised as a significant moment in the shift from government directed media policy to media governance. Media governance has been defined as 'formal and informal, national and supranational, centralised and dispersed mechanisms that aim to organise media systems' (Iosifidis 2011). The increased significance of EU competency in its member states' media and communications policy is one aspect of the transition to media governance. It can also be argued that in the digital transition, competition, the market and market governance became key co-ordinates in EU media governance, reflecting the EU's own competitive digital agenda (Michalis 2007). This is the wider framework for the EU's policy development in this area.

The article will detail and evaluate Irish state's policy performance in the digital transition, in the much-changed context of digital media governance. It will evaluate the state's success in achieving a range of policy goals through the consideration of three distinctive phases in policymaking towards digital television across multiple agencies of policymaking. Centrally it will outline how the interaction of Ireland's competition oriented policy dynamics, corporate strategising and the European Union's competitive media governance effected the achievement of some policy goals but not others.

Ireland's Media System and the Political Economy of the State

In the literature on media systems, Ireland is often grouped with the UK and the US as a liberal media system (Hallin and Mancini 2004). However, this describes only one aspect of the characteristics of the Irish media system without reference to its place within wider international dynamics. Ireland's media system is shaped by, amongst other factors, the small size of the state, its open economy, its insertion into the supranational governance of the EU and the competitive contexts that emerge from its overlap with the UK's media system.

The Irish state is shaped by the nature of its insertion into the global political economy. Often labelled the most globalised nation in the 2000s, its economic boom/bubble (1994-2007) was partially predicated on openness to the international economy and adjustments to liberalisation, re-regulation and privatisation overseen by a succession of centre-right coalitions. One categorisation of the Irish state is that of the competition state. A competition state is defined as a state that prioritises 'economic competitiveness over social cohesion and welfare' (Kirby 2009). As a competitive state Ireland's political economy is oriented to attracting foreign direct investment of which a key policy mechanism is low corporation tax and light touch regulation. Complementing foreign direct investment (FDI) are varied policies that co-ordinate indigenous enterprises that piggyback on the infrastructure and revenues created by inward investment (O'Rian 2004). However critics have also detailed the social consequences of Ireland's political economy. The low tax regime and the dependence on FDI has consequences for the capacity and autonomy of the state which at times has proven under-resourced and vulnerable to interest group influence (Adshead 2008). In relation to media governance, policy and politics mediate the structural emphases of the competition state but indigenous policy makers, interest groups and institutions compete within this powerful, overarching economic framework.

Governance and Digital Television Policy Goals

The framework for digital television diffusion was developed at European level under the auspices of digital television policy and the wider policy approach to media convergence. Core to the European policy approach is the concept of platform competition and regulatory neutrality in platform diffusion (European Commission 2002). The key dynamics of market driven investment and regulated competition of satellite, terrestrial and cable platforms entail a central role for the European Commission's competition directorate. However the Commission's policy towards state aid in relation to platform development and the part played by public service broadcasters as a policy instruments for DTV development has been a slowly evolving one. The Commission accepts that public broadcasters can play a role in DTV development but only on the basis that their activities do not distort competition amongst DTV platforms (satellite, cable and terrestrial). States, through their public broadcasters, can intervene in the development of digital television platform development on the basis of either market failure or common interest objectives (Schoser and Santamato 2006). The Commission deals with these issues on a case-by-case basis. It is argued here, in the Irish context, uncertainty surrounding the restrictions on state aid to platform development created uncertainty in the policymaking of successive governments. It also created the conditions wherein interest groups with an advantage in undermining DTT could strategically invoke state aid claims.

In Ireland, the Minister with responsibility for broadcasting in the period from 1994-1997, Michael D Higgins, had developed both a policy and legislation for digital television just as the European approach was crystallising. He envisaged a single platform for Irish television services with a newly developed 'super regulator' taking responsibility for launching and regulating the platform. However, with a change of government in 1997, the initiative in policymaking was to shift to the telecommunications department and regulator. Reflecting the overlap of broadcasting and telecommunications policy fields, Irish policy towards DTV was developed not by the Department of Arts Heritage Gaelteacht and the Islands (the broadcasting ministry) but by the Department of Enterprise in conjunction with the telecommunications regulator, the Office of the Director of Telecommunications (ODTR). The policy and its origins reflected a changed emphasis on the strategic place of information communication technology and telecommunications in Ireland's competitive development and the role of private investment and European led market liberalisation in the development of networks, infrastructure and services. A 1998 research report by NERA, commissioned by the ODTR, adapted the European competitive platform approach and proposed competition amongst all potential platforms (cable and terrestrial) (NERA 1998). A component of this model was the public broadcaster, RTE's proposal in 1997 for a Digital Terrestrial Television platform that would be a hybrid public/pay service owned operated under public/private partnership (RTE, 1997).

The inclusion of DTT in the mix of platforms was predicated on achieving specific policy aims, many of which were aligned to national television policy. The policy goals associated with DTT (as in other countries which adapted the platform) can be summarised as:

- Freeing up analogue television spectrum for new communication services (socio economic goals)
- Ensuring that citizens still have access to non pay television services regardless of their location or wealth (universal service and universal access goals)

- To offer competition to cable and satellite multichannel platforms so that plurality exists in the digital television supply market (market competition goals/plurality goals)
- To allow for the continuation of a nationally regulated free to air television ecology (television policy goals)
- To support the cultural centrality of public service broadcasting in national broadcasting policy and public purposes more generally in communications policy (public service goals)

DTT thus had the capacity to meet many public interest criteria associated with media and communications policy making. Primarily, DTT would enable continuity for the analogue broadcasting ecology in Ireland. It would act as a bridging technology wherein the cultural space of Irish television would be sustained and regulated according to democratic rationale. It would potentially sustain diversity and plurality in the emerging digital media environment.

Digital Television Policy Development 1997-2003

Ireland's pre-digital television structure was characterised by the availability of four free to air terrestrial channels in 1.4 million households. RTE, funded by combined license fee and advertising/commercial revenue, operated two television channels RTE 1 and RTE 2. TG4, an Irish language channel, was introduced in 1996 and was funded by a direct subsidy from government, commercial revenues and a subsidy in kind from RTE. The commercial national channel, TV3 was provided for by legislation in 1988 but only found financial support to launch in 1998. In addition to the terrestrial channels most of the population also received the four main UK terrestrial channels (BBC1, BBC2, ITV and Channel 4) off-air or through cable. It is estimated that 33% of households along the eastern seaboard and along the border with Northern Ireland could receive the UK terrestrial channels off-air. Approximately 50% of the population received the UK channels through cable or MMDS (a line of sight analogue multichannel distribution system) services. In the pre-digital environment multichannel television was widely diffused and it was UK terrestrial channels (both off-air and subscription) that provided a second tier of viewing for Irish households.

In 1997 the UK satellite operator BSkyB, 36% owned by News International, had switched to digital multichannel delivery and had strategically decided to market and sell its services, direct to home, in Ireland. The cable industry, stimulated by European and national telecommunications policy was consolidating and was over the coming years, to see a number of smaller operators bought out so that only two players of significance were left in the market: NTL, owned by a North American telecommunications company of the same name, and Chorus, owned jointly by Independent News and Media and Liberty Media (a subsidiary of AT&T). By as early as 2000 BSkyB's satellite service SKY had amassed 220,000 customers benefitting from the demand from rural dwellers beyond the reach of the mainly urban cable providers. If DTT was to be successful it would have to be developed and deployed with haste.

A project management group (PMG) was set up to develop the regulatory, financial and technological model for DTT. It, consisted of civil servants from the broadcasting department and the department of finance, consultancy groups (with financial, technical and legal expertise), and RTE. The model proposed by RTE and adopted by the PMG entailed giving RTE a 40% shareholding (on the basis of it selling it's network) in an integrated multiplex and distribution company named Digico. The other 60% would go to interested private partners with experience in wireless distribution markets. Within the PMG, however, objections arose over RTE's asset share in the spectrum resource. The financial advisers, AIB Capital Markets, sought to reassess RTE's role in Digico. External to the group, the newly licensed commercial broadcaster TV3 posited that RTE's benefitting from the spectrum resource could be construed as state aid. The telecommunications regulator the ODTR, also from outside the group, objected to RTE gaining a shareholding in a terrestrial spectrum asset, arguing it should be auctioned in the market like other spectrum assets. The legal advisors within the project management group, NERA, advised that RTE's benefitting from the Digico resource could be justified under European state aid rules.

AIB eventually advised that, to avoid potential state aid issues, RTE should have no share in Digico. RTE rejected these arguments suspecting a conflict of interest on the part of AIB Capital Markets (it was also advising a potential customer for the network, Crown Castle) and resisted its exclusion from the management of the DTT platform (Corcoran, 2004). At a political level, the then Minister, Sile DeValera was under considerable lobbying pressure from TV3. Backed by its parent company CanWest, it had already brought a complaint of state aid against RTE to the European Commission and threatened to do so again if RTE was seen to benefit from Digico (Murphy, 2004). TV3 was also successful in mobilising a number of the Minister's own party backbenchers to challenge RTE's role in Digico in the Dail (parliament). Under these circumstances the Minister decided not to support RTE's role in Digico and the Digico model was dropped.

A second model was developed and legislated for in the 2001 Broadcasting Act wherein government enabled RTE to sell its transmission network and legislated for the auctioning of a commercial multiplex license as a single entity. The public free to air services would be available on a free to air multiplex. The economic climate had changed, however, and in the context of the stock market crash in technology companies, interest in developing a commercial multiplex had evaporated. One bidder for the multiplex option, IT's TV, had put forward a service offering which included the provision of mobile broadband and telephony based on an evolving European project for wireless internet access (WINDS/WIRELESS). The bidder, however, lost financial backing when the parameters for non-televisual services were reduced in the licence offering. Again, the telecommunications regulator objected to this as a potential incursion into the evolving 3G market. With no interest in the multiplex operation license the initial momentum behind DTT had now faltered.

Digital Television Policy 2003- 2006

By 2003, in a market of 1.4 million households both cable and satellite platforms were steadily developing. Both NTL and Chorus continued upgrading their networks and NTL now had 365,000 subscribers, with Chorus at 240,000. The UK licensed satellite broadcaster SKY had 280,000 subscribers and was driving uptake through advanced television technology and its access to high value film and sport content (Corcoran, 2004). The cable companies had both announced a triple play strategy, with the intention to offer telephony and internet access alongside their television channel packages. This entailed significant infrastructure upgrade and each depended upon multichannel television subscriptions to finance and drive those upgrade plans.

For the telecommunications regulator this was an important element of its strategy in developing competition in fixed line telephony and broadband markets.

A 2002 Communications Act, to avert policy divergence, placed responsibility for broadcasting within the Department of Communications, meaning telecommunications and broadcast regulation were now under the one ministerial roof (with separate regulators). In 2003 the new Minister for Communications, Dermot Ahern announced a new plan and strategy for Digital Terrestrial Television. The island of Ireland is politically divided into two states, Northern Ireland, which is part of the United Kingdom (and its media system), and the Republic Of Ireland, which achieved its independence from the UK in 1922. The new plan entailed developing an all island digital terrestrial platform that would provide, free to air, the Irish and UK terrestrial television channels. The service would thus mesh with the UK digital service operating across the UK territory of Northern Ireland. The model was influenced by the 2002 re-launch of DTT as Freeview in the UK. It was also part of the political aspirations to consolidate the Northern Ireland peace process under the Good Friday Agreement which acknowledged the importance of cultural exchange via broadcasting. Crucially, an all Ireland model, including the UK channels, would solve a central problem in the development of DTT i.e. sourcing popular content that could make a FTA model attractive. The majority of Irish households watch Irish channels as a first tier preference with the UK terrestrial channels (BBC, ITV, Channel Four) a second tier preference. Based on consultations with officials in Northern Ireland the plan proposed developing a consortium made up of UK and Irish terrestrial broadcasters.

The model was, however, not without its problems, there were rights issues for broadcasters both sides of the border. Acquired programming was sold on the basis of national rights with Northern Ireland and the Republic as separate markets. The cost to Irish broadcasters of acquiring rights for programming to be distributed in Northern Ireland would be prohibitive. However a group consisting of Irish and Northern Irish terrestrial channels (TV3, RTE, TG4, UTV, BBCNI), the Television Broadcasters of Ireland Group, did not believe these issues were insurmountable. Another issue involved the BBC's launch of its Free-sat service in mid 2003. This was the BBC's attempt to escape the cost of providing access cards to BSkyB satellite set top box owners in the UK by distributing its channels un-encrypted. This presented a potential set back for a Freeview style service in Ireland. All the UK channels would be available for free via satellite, long before a DTT service was developed. Once again Ahern, argued that these problems were not insurmountable. However, the chief obstacle to this politically driven plan came from elsewhere.

The cable operators, Chorus and NTL made clear their opposition to the government's plans to develop an all Ireland freeview style service. A free to air option would threaten their free to air basic subscription service, a central plank in their triple play strategies. In 2003, Chorus and NTL proposed to Government an alternative plan for a MMDS free to air service that would be supported via government subsidy, a clear attempt to suppress development of the Freeview model. However, MMDS could not provide more than 70% coverage of the population (at significant cost) and would thus fail on the universal service criteria. In 2003, civil servants at the Department of Communications signalled their concern that an all Ireland free to air model could be construed as state aid to the DTT platform. The European Commission's pursuit of investigations into allegations of state aid to DTT in both Sweden and Germany was cited as a key concern. If a DTT operator in Ireland had free access to channels that the cable and satellite platforms paid for, this could be construed as a competitive advantage and could potentially come under scrutiny from the European Commission. Any investigation into state aid by the Commission would delay the development of the DTT platform and could lead to the reversal of advanced policy strategies. In Ireland, there was a double concern with the potential 'reputational damage' to the competition state, always conscious of discouraging foreign direct investment. The government decided that any plans for the all Ireland free-view model would have to be delayed until the outcome of the Commission's inquiries into Germany and Sweden were known.

It was later, in correspondence with the Department, Chorus and NTL made clear that the all Ireland free to air model could cause them to re-think their investment plans in Ireland in relation to network upgrade and competitive service development. In a submission to a Departmental consultation on strategy, the position was outlined;

> A solution should be found for the free to air transmission of national digital television programming. This could be single platform (e.g. DTT) or multi-platform. Care should be taken to avoid State Aid issues, which have arisen in other countries e.g. Sweden and Germany. Solutions, which have worked elsewhere (e.g. Freeview in UK), will not work here, because of copyright and other issues. Accordingly, all parties in the transmission/retransmission market should be fully consulted and a proper tender process should be followed (Chorus 2005).

The cable company, Chorus, had a double interest in suppressing the possible free to air model. By 2004, Liberty Global had bought out the other shareholder, Independent News and Media, and was thus the 100% shareholder in Chorus. At this point in time, and until 2008, Liberty Global was also the largest single shareholder in News Corporation, which, itself, held majority shares in BSkyB (Flynn, 2011). Ultimately, Liberty Global would twice benefit from the absence of a competitive free to air platform.

A 2004 briefing document for the Department by economic consultants, NERA, had determined that a pay television DTT model was unlikely to be viable (Murphy, 2004). There was no indication of private sector interest in developing the multiplex yet a free to air public service driven model was ham strung by the threat of competition issues. Between a rock and a hard place, the Minister moved forward and in 2004 launched a pilot project covering counties Dublin and Dundalk. The plan was to test, on a trial basis, a free to air platform made up of Irish and UK channels. In 2006 the first phase of the trial set about testing network and multiplex technology to lead the way for the eventual role out of DTT. In 2007 content was sourced from the Irish terrestrial broadcasters, Irish radio broadcasters and UK terrestrial channels and 1,000 members of the public were provided with set top boxes. Interactive services were also trialled but later dropped due to lack of demand and fears over the licensing status of the MHP interactive operating system.

The purpose of the trial was to partly test the technology and to market test the service, but also to encourage interested parties to engage in multiplex operation, service provision and network operation. The potential market for DTT was fast shrinking and it was clear that the government was keeping an open mind on the potential model for DTT development. A free to view model featuring UK channels, for the Republic of Ireland only, had not been ruled out.

Dermot Ahern, had proven an active minister alive to the wider politics of platform development and broadcasting policy. In contrast to his predecessor, he was influenced less by the lobbying tactics of the cable and commercial television sector. He understood the importance of retaining a platform in national regulatory control that could provide universal service, universal access and support nationally based television production. In 2002 he had sanctioned an increase in RTE's license fee with the clear understanding that increased programme output and additional services from RTE would benefit any potential DTT platform. In 2004 he had presided over an informal European broadcasting ministerial meeting wherein he argued the need for regulatory input from countries targeted by satellite operations such as SKY, contra to the European Unions 'country of origin' regulatory principle. He understood the politics of DTT as bulwark against corporate control of television distribution and how these goals had motivated its development in the UK. In contrast to his predecessor, Ahern was willing to invest political capital in DTT development, risk upsetting powerful vested interests and take unpopular decisions regarding the contested role of the public broadcaster in digital development. However, constrained by the blocking tactics of multichannel pay-tv operators and the threat of sanctions from the EU in relation to state aid, his plans for DTT were ultimately frustrated.

Digital Television Policy 2007-2012

In 2006, a new minister, Noel Dempsey, took the political decision to legislate for DTT once again. The new licensing model was influenced by the re-launched DTT platforms in the UK and Spain wherein multiplexes could be potentially licensed to multiple bidders. A Broadcasting Amendment Bill was introduced into parliament and eventually passed in 2007. The Broadcasting Amendment Act created the structure and delegated responsibility for the development of DTT to Comreg (formerly the ODTR, the telecommunications regulator), the BCI (broadcasting regulator) and RTE. Under the Broadcasting Amendment Act Comreg would issue two multiplex licenses to RTE for the development of a free to air platform containing the Irish terrestrial channels. Four licences were to be issued to the BCI to be tendered as commercial multiplexes. Once again, the proposal was for a hybrid, free to air (two multiplexes) and pay offering (four multiplexes). The significant difference from the original 2001 Act was the arrangement for the multiplex licenses to be awarded to a number of different operators, not a single overarching company. Private sector operators could take up a multiplex on a flexible basis.

NTL and Chorus had, in 2005, merged (rebranded as UPC) under the ownership of one of the parent companies, Liberty Global Europe. An international communications corporation with cable systems established in 17 European countries, Liberty Global continued to invest in network upgrade. SKY also continued to add to its service and content (Sky interactive, Sky+, Sky Anytime) and was steadily catching up on the cable provider. However, due to the interlocking shareholding of these companies, it is clear that they retained mutual interests in sustaining a duopoly of multichannel provision in Ireland.

UPC objected to aspects of the Broadcasting Amendment Bill and the subsequent Act. In 2006, in a consultation on the Bill, UPC requested that the wording surrounding RTE's access to multiplexes be clarified. Later, in a consultation on a concurrent Broadcasting Bill clarification was sought in relation to RTE's involvement in the provision of a network and services for DTT. UPC was concerned with the ambiguity surrounding RTE's role in the DTT platform, and the fact that a Free to Air model containing UK channels was still possible.

RTE, frustrated by the strategic use of state aid threats, took the unusual decision to contact the Commission directly to explain the importance of including UK terrestrial channels on the free to view platform (RTE, 2007). It outlined its duties under the 2007 Broadcasting Amendment Act in relation to digital switch over and analogue switch off. It argued that analogue free to air had the largest share of television reception in Ireland (2007) at 32% with Cable and Satellite accounting for 30% each and MMDS accounting for the remaining 8%. RTE outlined that of the 32% of Free to Air homes, 13% had access to the UK free to air terrestrial channels through overspill. In all television households the Irish and UK channels accounted for a viewing share of 52% and 18% respectively, demonstrating the dominant patterns of viewing and also the value of Irish and UK channels to all platforms.

The UK channels formed a large part of the expectation of what should be available to the audience. Furthermore the clause in the distribution deals the UK terrestrials had with the subscription platforms (UPC and Sky) limited their distribution on a free to air basis and was blocking the potential of a free to air platform containing both Irish and UK channels. RTE suggested that the political case for all-Ireland (both Northern Ireland and the Republic of Ireland) distribution of UK and Irish channels would be a strong public interest argument for the provision of the main public service channels both side of the border. Outlining its spending RTE pointed to the €222 million it allocated to indigenous television production for RTE 1 and RTE 2. With a license fee level of €125m, it depended significantly on the commercial success of its initiatives as a subvention to its public service output.

In 2007 UPC communicated its concerns over the emerging DTT strategy to the Communications Department. A key issue was 'the possibility that the multiplex or multiplexes operated by RTE (and consequentially, the digital terrestrial transmission network) having been established with state funding, will be used to provide multichannel television services' (Mc Cann Fitzgerald 2007). UPC stated that for both itself and SKY, the UK terrestrial channel were a significant driver for the diffusion of its services. It laid out its case:

> Entry by RTE into the multichannel TV market using the multiplex or multiplexes allocated to it on the terms set out in the bill and in reliance on a terrestrial transmission network upgraded with State resources would not only be unfair but would also severely distort competition. If it occurred it could place at risk the advances made by the commercial transmission platform operators in terms of technical innovation and customer choice. The incentives for UPC to continue investing in the development of its services in the State could change materially if it faced a state aided competitor. Allowing RTE the possibility of extending its existing control of the analogue network into the digital sector where competition flourishes would be a deeply retrograde step in terms of broadcasting policy and would not promote consumer welfare. (Mc Cann Fitzgerald, 2007)

Once again, UPC sought to challenge any potential free to air option that combined both Irish and UK channels as it posed a threat to its basic television package offerings.

In 2007 RTE placed notices in the Official Journal of the European Union seeking expressions of interest in a DTT platform that carried mainly Free to Air channels including the Irish and UK terrestrials but could also facilitate the development of new niche channels and national subscription channels. It recommended a service that would be synchronised with DTT roll out in Northern Ireland and would reciprocate services and be available to the whole of the population on the island of Ireland. In distinction to the earlier all Ireland model, the platforms in Northern Ireland and the Republic would be distinct but synergistic entities. On this occasion, the Department refused to amend its legislation to prevent RTE from developing this model of a free to air multichannel DTT. UPC formally lodged a complaint with the European Commission. It questioned the legality of the legislation under Article 87 to 89 of the EC Treaty for the reasons outlined above. This was to provide a crucial obstruction to the further development of the RTE driven free to air platform. With this impediment in place policy appeared to go backwards.

The decision was taken to progress with a hybrid Free to Air/Pay service platform. With technical trials still running in the background the BCI (broadcasting regulator) undertook a round of consultations with the industry and developed a policy for the licensing of the commercial DTT multiplexes. In 2008 three separate entities emerged to bid for all three multiplex licenses. Boxer TV was made up of Communicorp and Boxer TV Sweden. Easy TV was made up of RTE and Liberty Global (the parent company of UPC). One Vision included TV3, Eircom, Setanta and Arqiva (a UK based telecommunications company). After the submission of detailed bids based on cost and service criteria all three muliplexes were to be awarded to Boxer TV.

RTE, for its part, began upgrading the terrestrial broadcast network. Its wholly owned subsidiary, RTE Networks Limited (RTENL) planned for a staggered roll out with the aim of covering the easy to reach 75% of the population by 2009 and 90% by 2010. The new communications Minister, Eamon Ryan announced the beginning of an information campaign to inform consumers about digital switchover and a planned launch for September 2009. At a technical level it was decided to use MPEG-4 audiovisual coding, MHEG5 middleware and DVB-SSU for software downloads. The new service was named Saorview (saor being the gaelic language word for 'free').

This move anticipated the UK's planned transition to the MPEG-4 standard and the possible future co-ordination of the services North and South of the border. MPEG-4 was considered to be more suited to HDTV, which would be a potential driver of DTT. UPC in a consultation on new services reminded the Department 'UPC's complaint is still with the European Commission. In the context it is only fair to say that as long as RTE benefits from state funding and ambiguities continue to exist in relation to the funding of either the proposed new services or the upgrade of the network, UPC will monitor developments for the roll out of Saorview' (DCENR, 2011a).

As part of its submission Boxer TV had committed to investing €168 into multiplex and service development and offering tiered channel offerings on the platform by February 2009. However, by April, the BCI announced that Boxer TV was handing back the licenses. The consortium announced for its part that it had encountered 'prevailing and anticipated economic circumstances' and also cited difficulties with concluding a contract for transmission services with RTENL (BCI, 2009). The BCI (restructured as the BAI in 2009) offered the contract to the 2nd place consortium One Vision, but after contract negotiations lasting one year, they withdrew from the process also citing difficulties in concluding a contract with RTENL. Easy TV, were then offered the license but also declined. By summer 2010 it appeared that the terrestrial platform was to, once again, fail to launch.

The inability to conclude a contract with RTENL was cited by both BoxerTV and One Vision as a key reason for not taking up the multiplex licenses. RTENL had demanded an upfront bond of €20 million as insurance against either company pulling out of its contract following RTENL's upgrade investment. It pointed out the investment in the hybrid model carried risks for all parties. It had at that point spent €40 million on network upgrade and was planning on investing a further €30 million. The BAI later announced that commercial DTT would only be viable if RTE was separated from its transmission business and the legislation changed to allow the BAI to intervene in contract negotiations (BAI, 2010). This analysis, however, sidestepped the economic contexts that both companies had also cited as reasons for not pursuing the roll out of commercial DTT. The deepest economic recession in the history of the state coupled with the saturation of the pay television market in Ireland were powerful contextual factors. As had happened with the attempted commercial multiplex auction in 2001, recession had drained confidence in a pay-tv market that, in 2009, appeared neatly divided between the two largest pay television operators in Europe, Sky and UPC (Liberty Global was, in 2009, the largest pay television company in Europe with BSkyB the second largest).

A more significant issue thus existed in relation to the political choices made to pursue the hybrid model for DTT development. The reality was that there were few other options open to policymakers. Ireland's audiovisual production base would not support the development of additional content sufficient to launch a free platform and, with state aid threats hanging in the background, there was no possible way of sourcing the terrestrial channels from the UK. The viability of the hybrid free to air/pay model that was pursued was always high risk. In both the UK and Spain, the original hybrid DTT models had failed due to the saturation in pay tv markets. This led to the re-launch of those platforms as fully free to air options. Whereas there were other countries that had successfully launched a hybrid DTT platform they had done so early or in conditions when there were limited entrants into the pay TV market and new local content was included (e.g. Finland, Austria). In a saturated market like Ireland, the case for pay television on a terrestrial platform was always questionable. Both cable and satellite offered pay television services and had already captured a considerable segment of Irish television households through bundled service deals (UPC triple play) or premium content (SKY). The pay TV services proposed by the DTT consortia did not significantly improve on the price or content offerings of SKY and UPC. In a market of 1.46 million television households where 73% were already pay-tv households the business argument was not compelling (Comreg, 2007).

During the one-year hiatus wherein the BCI attempted to find a commercial multiplex provider, RTE had continued with its development of the free to air multiplex as it was compelled to do under the 2009 Broadcasting Act. The multiplex was however delayed until October 2010 due to the uncertainty surrounding the commercial licences. The platform, named Saorview, initially launched to 90% of the population with a commitment from the Minister that a full (98%) national digital terrestrial television service would be available by October 2011 and that analogue switch over (ASO) would be achieved by late 2012 (the channel line up included RTE 1 & 2, TV3, 3E, TG4 and four additional RTE services). RTE appointed a Director of Digital Switchover to co-ordinate public awareness of the free to air platform. RTE was also permitted to plan services for a second FTA multiplex for Saorview to be activated after analogue switch over. RTE also funded and launched Freesat, with all the same services as Saorview, to reach the additional 2% of the population RTE continued to develop new channels for this platform whereas the broadcasting regulator sought expressions of interest from other potential content providers. The Department of Communications, Energy and Natural Resources (DCENR) initiated an information campaign in March 2011 and a new Communications Minister appointed public relations and advertising firms to inform the public of the digital switchover and analogue switch off. Saorview was officially launched with additional (RTE) channels in May 2011 and analogue switch off was achieved on the 24th of October 2012.

Policy goals and policy outcomes

In the transition to a digital television system in Ireland there was a complex trade off of policy goals that reinforce the analysis that Ireland's status as a competition state has significant consequences for socially oriented policy goals. There have been many successfully attained policy goals in the digital transition; the generation of competitive broadband infrastructure and services (UPC); competition in the Pay TV market (between UPC and SKY); the development of a base of free to air television services, universally accessible and free to air (Saorview); the release of analogue spectrum to be auctioned for mobile wireless services. However it is also worth reflecting upon the policy goals centring on DTT.

In the first instance DTT offered a subscription free service to the 13% of the population who were not UPC, Sky or BBC/Freesat customers. The DTT platform offers technological improvements in programme quality and reception but thus far has little to offer that will extend plurality and diversity of content. RTE has developed additional channels (RTE+1, RTE HD, RTE News 24, RTE Jr) but are essentially re-presenting content that was already available. The 2009 Broadcasting

Act had legislated for the development of two more public service channels, an Irish Film channel and an Oireacthas (Parliament) channel. However, the global financial crisis had hit Ireland hard. Ireland's banking system had been rescued by a bank guarantee from the government turning private debt into public debt. On foot of this Ireland was obliged to take a loan from the ECB, the IMF and the European Commission. The enforcement of austerity policies, requested by its lenders, ensured that the additional public service channels were put on hold. A successful DTT platform always hinged on the launch of a platform with culturally relevant content, and, given the small state constraints of Irish broadcasting, this was most likely to be achieved through sourcing UK content. This would help launch DTT with the prospects of attracting more indigenous channels as the platform diffused.

The frustration surrounding the development of a DTT option, on successive occasions, presents serious consequences for the audiovisual landscape in Ireland. It is arguable that the capacity for content development now rests with the ability to define the terms of distribution (through platforms and services) and the integration of service distribution with content production. Irish channels will be, for the most part, guests on the dominant distribution systems of SKY and UPC, driving subscriptions but ultimately funding their competitors. This has potential implications in relation to future costs of distribution and the changing terms of service. There is regulatory protection in relation to 'must carry' rules and significant market power regulations but there are limits to this protection.

An additional aspect of the trade off in policy goals relates to the costs of the transition that have been borne by RTE and the implications that has for digital public services. RTE's new services are cleverly low cost but add little in relation to new and innovative cultural and informational content. On the other hand RTE has invested €70 million in the terrestrial network upgrade and borne the costs of marketing and managing both the Saorview and Freesat platforms as well as developing new services to forward analogue switchover policy. These costs are ongoing and have consequences for the resources available for content production.

The attainment of a universal free to air service was in the final phase of DTV policy driven by the need to meet the European mandated ASO. Another key goal was the freeing up of the ‘digital sweetspot’ to auction spectrum to raise revenue for the state. What is left of universal availability and access to services in Irish television policy? In the competitive policy framework a two-tier television market has emerged wherein a 87% of households subscribe to cable and satellite services whilst, for 13% of the population, an underfunded and potentially marginal DTT technology is available. The 13% are characterised as being mainly rural, old and less well off. According to a Behaviour and Attitudes survey of 2010 ‘there are significant socio-economic skews amongst analogue households towards manual workers and state benefit recipient heads of household, and members of the farming community’ (Behaviours and Attitudes, 2010). In the period of switchover the government avoided drawing on legal state aid mechanisms to boost the terrestrial platform relying primarily on market investments that never came. So the subsidised set top boxes, interactive services, new institutional structures and research and development funding that has been used in other small states struggling to sustain a national platform were never called upon. The costs borne by RTE (ultimately funded by the license fee payer) stand in contrast to the gains to the exchequer in the recent auctioning of the spectrum freed up by ASO to be made available to 4G operators, i.e. €430 million. Without subsidies for set top boxes, a demographic consisting of the poorest, oldest and most geographically isolated, through their own spending, helped to deliver the conditions for Ireland’s analogue switch off and the State’s digital dividend.

Conclusion

When a new communications minister took office in 2011, part of his internal brief included ‘key immediate issues in broadcasting…the continued liaison with the European Commission on State Aid on foot of complaint from UPC in regard to Digital Terrestrial Television’ (DCENR, 2011b). The fidelity to competitive dynamics at national and supranational level (EU), and, the limitations placed on interventionist mechanisms in Irish media and communications policy correspond with the wider structural dynamics of the competition state and the competitive supranational state. Remaining within the stricture of European competition policy and unable to marshal legal state aids to deliver social and cultural goods, media governance in Ireland is increasingly characterised as market governance. The reliance on and attention to the needs of foreign direct investment entail policy goals that can be attained when they are aligned with the strategies and actions of market and corporate interests. In a small media state, existing in hyper competitive contexts, these pressures are exacerbated. The absence of the levers for a new form of state interventionism points to a weak state capacity unable to realise political and social rationales in media policymaking.

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