



Consultation on BAI's Draft Broadcasting Services
Strategy & Licensing Regulatory Measures

Statement of Outcomes

Broadcasting Authority of Ireland

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1. Introduction

The Broadcasting Authority of Ireland (BAI) has revised its Broadcasting Services Strategy ('BSS') following a review process that included the commissioning of research on the economic and environmental aspects of the media sector and a public consultation on a revised draft BSS.

This document provides the outcomes from the consultation, outlining the changes made to the draft BSS and associated regulatory measures for licensing, which were informed by the research, feedback and submissions received by the BAI during the consultation.

Section 2 beneath sets out the legislative basis for the BSS, while Section 3 provides an outline of the research undertaken to inform the review and the drafting of the BSS consultation document. An outline of the public consultation on the draft BSS is set out in Section 4. For reference, the documentation used over the course of the review, including the consultation document, is available from www.bai.ie/en/consultations

Section 5 of this document details the outcomes of the consultation, including the Authority's deliberations and decisions in relation to the proposals and ideas from the written responses and input at the stakeholder event. This section is divided into sub-sections that follow the structure of the final BSS, which is included at Appendix 1.

2. Legislative Basis and Background

Section 26(2)(1)(a) of the Broadcasting Act 2009 ("2009 Act") requires the Authority to prepare a strategy for the provision of broadcasting services in the State additional to those provided by RTÉ, TG4 and the Houses of the Oireachtas Channel. In fulfilment of this requirement, the first such strategy, the Broadcasting Services Strategy ("the BSS"), was devised and published in March 2012.

The main purpose of the BSS is to inform the Authority's approach to the licensing of broadcasting services and provide for licensing plans as the need arises. It sets out the Authority's thinking on the importance and potential impact of its licensing activities, its purpose, the Authority's aims and vision and its approach to realising this vision.

In deciding to review the BSS at this time, the Authority was cognisant that the media environment has changed significantly in this time and a new Strategy Statement is in place for the period 2017-2019, which includes the strategic goal of *promoting diversity and plurality and enhancing innovation and sectoral sustainability*. A key deliverable of this new statement is to 'develop and implement a revised Broadcasting Services Strategy ("BSS") that continues to facilitate dynamic licensing policies and plans and promotes quality programming in the Irish language' and another, 'develop and implement a framework that promotes and supports creativity and innovation in the Irish audio-visual sector and across all BAI activities'.

In this context, the Authority agreed that the BSS required a comprehensive review and that any revised BSS should focus on high-level goals, objectives and broadcasting policy rather than detailed regulatory practices. The goals and objectives of the BSS should be embedded in the latest Strategy Statement. It was also agreed that the revision required a significant research project to support the deliberations and decisions of the Authority. This approach aligns with the Authority's stated commitment, and practice, to be expert and informed.

3. Research

As referenced in section 2, the Authority agreed that a detailed environmental and economic analysis of the broadcasting sector in Ireland was required to inform the development and revision of the BSS. In this regard, it was agreed that the research report should provide a comprehensive understanding of the current, and likely, drivers of change. It should provide recommendations to ensure that the revised BSS supports the BAI in achieving its stated objectives as set out in the Authority's Strategy Statement: *to regulate, foster and support broadcasting; to promote a plurality of voices, viewpoints, outlets and sources in Irish media; and, to foster diverse and culturally relevant quality content for Irish audiences, including in the Irish language.*

Further to a public tender process, the BAI employed the services of Mediatique Limited ("Mediatique")¹ to undertake the research and in tandem with the tender process, the Authority also placed a public notice for the call for 'Submissions of Interest' ("Call")² from parties interested in the establishment of new commercial sound broadcasting services on the FM band.

3.1 Mediatique Research Report

The Authority sought the delivery of a structured report which would provide a robust assessment of current and future dynamics in the Irish broadcasting market. Mediatique initiated the research project in September 2017 and completed it in early December 2017. The research was supplemented by a consumer survey on the key needs and preferences of Irish audiences and a call for submissions from parties interested in the provision of new commercial FM analogue radio services.

The research report, entitled '*A report on market structure, dynamics and developments in Irish media*' and issued in early 2018, provided analysis in the following key areas: -

- the current structure and dynamics of the broadcasting market and future trends;
- the needs and preferences of the audience (these findings are informed by a consumer survey commissioned by Kantar Media among 1,515 Irish households);
- the future structure and needs of the independent broadcasting sector, including station model types, sustainability, diversity and plurality issues;
- the future need for radio and television broadcast regulation;
- the possible options for establishing a policy on digital radio and progressing DTT; and,
- future regulation requirements and recommendations.

The key findings of, and recommendations arising from, the research include the following³:

- The Irish media landscape remains strongly attached to broadcast TV and radio, but is subject to a range of familiar structural challenges: connectivity /network access; proliferation of connected devices; consumer demands (anytime-anywhere); new entry; and, new business models / routes to market.
- The TV market is characterised by increasing consumer choice and control – and as a result, the primacy of live broadcast TV is under pressure. The shifting dynamics in the TV landscape

¹ Mediatique is a strategic advisory firm specialising in the media and communications industries.

² A list of the submissions is attached at Appendix 2.

³ Mediatique Presentation – Stakeholder event.

are: competitive platform market (free, pay, IPTV); pay TV at 65% - under pressure from skinny bundles; new models (SVOD, OTT, VOD players); and, growth in non-TV homes (est. 30,000).

- Similarly, the radio market is now part of a wider audio landscape – although live radio still predominates. The radio market is mature (extensive & crowded - national, regional, local, community) but changing: FM still dominates; younger listeners in decline – a major challenge; challenge of connectivity – streaming, on-demand, downloads; radio is now part of a wider “audio” market.
- Broadcast TV and broadcast radio are the primary media activities for Irish households – despite the increasing array of other media engagement that is now possible.
- Only a small minority of Irish consumers express dissatisfaction with the broadcast sector – most are satisfied with the range and quality of stations/channels available to them.
- Some households express dissatisfaction with the amount of Irish-made content available – this is highest among VOD services, followed by TV channels and lastly radio stations.
- Live broadcast TV will retain the lion’s share of all video consumption by 2022, although not for younger age groups. A similar picture exists for radio, although its share of overall audio consumption will remain consistently high.
- The key challenge facing the Irish market is one of money – and what impact a potential lack of growth in key revenue models will have on the ability to produce Irish content. Without commercially viable models (and/or increased public funding), the ability of the domestic market to sustainably fund Irish content of various kinds – drama, documentaries, news, whether on TV or radio – may be challenged.
- The changing broadcast landscape presents a number of issues for the BAI to consider including; stakeholder engagement; encouraging self-help among broadcasters; preparing for Brexit; maintaining Irish content investment; radio supply / capacity: choice vs sustainability; and, tracking the pace of change in media markets.

The research report includes a number of recommendations in the light of the evolving market context. The report and the associated presentations to the BAI and at the stakeholder event are available online at www.bai.ie/consultations

3.2 Consumer Survey

In order to identify the main needs and preferences of broadcast viewers and listeners in Ireland, Mediatique contracted with Kantar Media (“Kantar”) to undertake a consumer survey to interrogate individuals about their claimed behaviours and viewpoints⁴. The survey was structured in four main areas: claimed usage of media activities, including video and audio services; content preferences by station/channel type and genre; views on the quality, distinctiveness and scale of provision of broadcast services in Ireland; and, views on satisfaction with the amount of Irish content available on different media in Ireland. The report of the survey results is available on the BAI website www.bai.ie/en/consultations. The key findings of the survey include the following:

- Media consumers undertake an increasing range of activities, although both broadcast TV and broadcast radio remain the largest media in terms of activity and time spent.

⁴ Summary of results given Pages 40 – 50 of the Mediatique research report.

- Younger age groups are reducing their consumption of broadcast media at a faster rate than other groups; however, even among the youngest adults, TV and radio remain two of the most used media.
- In-home use of traditional broadcast equipment (standard analogue radio, TV via an aerial, set-top boxes) remain the primary means of receiving and consuming video and audio content; although take-up and use of connected devices continue to increase.
- Irish audiences claim a wide range of tastes and preferences for video and audio content. News, talk, popular music and easy listening are the most popular radio genres. Film, news, documentaries, drama and sport are the most popular TV genres.
- Irish audiences claim broad satisfaction with the range and quality of content available on broadcast media. There is no consensus around major gaps in provision – in broad terms, audiences believe that there is the right amount of content provision in key genres including Irish music, Irish language and news.
- There is some scope for Irish broadcasters to improve the way they reflect Irish culture and diversity, and to increase the amount of available content that is made in Ireland although, on average, most audiences are happy with the provision and performance of TV and radio broadcasters.

In summary, the survey reveals an increasingly complex picture of content consumption within a landscape that is still primarily led by broadcast media. There is overall satisfaction with the nature and range of broadcast content provision, and the output and performance of Irish broadcasters.

3.3 Call for Submissions

To supplement the research, the BAI invited submissions of interest for the provision of new commercial sound broadcasting services, on the FM band, from June to early August 2017. The call was open to suggestions as to the nature of the service/services to be provided and the areas to be served by such additional services. The submissions were sought for research and information purposes only. The submissions received were considered in the course of the research project from August to December 2017 with regard to the quality, range and type of programmes to be provided and in particular, the extent to which any new service would add to the diversity of services in any particular area. In this regard, the completed Mediatique research report includes a consideration of the submissions received.

The BAI received 18 responses to this call for submissions of interest in the provision of new commercial sound broadcasting services. A total of 10 responses concerned the provision of new radio services, with 3 responses for modifications to current services. These 13 submissions all concerned sound broadcasting services with a music-driven focus and are summarised in the table at Appendix 2. The remaining 5 responses set out observations on the current broadcasting sector.

New Service Proposals: The 10 proposed new music-driven services varied in both type and franchise area. In this regard, 3 of the proposals concerned a national franchise area, which from a technical perspective, is not feasible at this time. These services are niche in nature and quite distinct from one another.

One new service was proposed for Co. Wicklow, a youth music-driven service. A further 2 services were for county regions, amassing coverage of half of the Irish national marketplace. The remaining 3 services were for multi-city and/or multicity/large urban areas. It is noteworthy that four of these services

proposed country/Irish music-driven content. There is greater potential for technical coverage of these proposed franchise areas.

Modifications to Current Services: Three of the submissions received were for proposed modifications to current contracts. In this regard, all three were seeking to increase their respective franchise areas and thereby, significantly increase the potential audience.

Observations: The 5 submissions that did not call for new services urged caution given the current challenges and turmoil in the marketplace and also sought the abolition of the broadcasting levy. One submission highlighted the important role community radio can play in assisting the BAI achieve its stated objectives. Another requested that the BAI introduce a 60% quota for Irish music on playlists for Irish radio stations.

The BAI notified all potential respondents that all submissions would be open to interrogation during the review of the BSS and would be made available to the BAI's researchers. The submissions are available on request.

4. The Consultation

The public consultation on the BAI's draft BSS launched on 24th April 2018 at a stakeholder event and ran for 8 weeks, closing on 19th June 2018. A draft consultation document was published, including consultation questions, to facilitate and encourage engagement with the process.

4.1 Stakeholder Event

The Stakeholder Event was held in Dublin on 24th April and was attended by a wide range of representatives from the broadcasting sector and was well received. The running order for the event is attached at Appendix 3 for information. A copy of the presentation given by Mediatique on the research report, a transcript of the question and answer session, the feedback from the round-table discussions and a video of the opening sessions are available on the BAI's website www.bai.ie/en/consultations or can be provided on request.

While the focus of the day was the draft BSS, participants took the opportunity to address other matters such as broadcasters concerns about regulatory matters including changes to legislation, the levy, the General Commercial Communications Code, the BAI's Ownership and Control Policy and the BAI's Sound Broadcasting Contract. Concerns were expressed about the current economic conditions, particularly the impact of non-Irish content providers and developments within the media sector and in particular, the growth of unregulated on-line digital content. Reference was made to the €40m that UK broadcasters take from the advertising market in Ireland through the use of opt- out for Ireland without re-investing any of this revenue in programme content in Ireland. The feedback relating to such matters not related to the revision of the BSS has been circulated within the BAI and will inform and contribute to the relevant BAI activities.

4.2 Written Submissions

There were 19 written submissions received by the close of the consultation on 19th June 2018. These largely reflected, albeit in greater detail, the feedback received at the stakeholder event. In common with the feedback at the stakeholder event, matters were raised that did not directly concern the revision of the BSS and were circulated within the BAI to inform and contribute to the relevant BAI activities.

The submissions received were varied and a list of the respondents is attached at Appendix 4 for information. The submissions are available on the BAI's website www.bai.ie/en/consultations or can be provided on request.

4.3 Summary of Issues Arising from Consultation

There was very good engagement with the consultation by broadcasters across the sector, by parties interested in the provision of new radio services and by parties committed to supporting Irish language.

The feedback in general was broadly supportive of the Authority's draft BSS. There was a recognition of the Authority's role in regulating the broadcasting sector and the importance of its licensing activities. While there was broad support for the draft BSS as presented, there were some specific amendments, and additions, proposed to the draft text.

There were four main issues arising: 1. Sustainability; 2. Irish language; 3. The potential for a new niche FM sound broadcasting service outside the Dublin area; and, 4. Digital Audio Broadcasting.

4.3.1 Sustainability

Common to the stakeholder event and the written submissions was the concern amongst all broadcasters of sustainability. For community broadcasters, the lack of a consistent source of funding is undermining the development of the sector, both radio and television. For the commercial sector, the main issues are the continued challenging economic environment, the level of advertising revenue being taken from the marketplace by UK licensed broadcasters and the growth of unregulated digital content providers. All these concerns were identified in the Mediatique report. These matters are being addressed through a number of BAI work streams and are not specifically relevant to the content of the current draft BSS.

4.3.2 Irish Language

The issue of the level of current Irish language commitments for BAI licensed contractors was raised and proposals for a national Irish language station were made.

4.3.3 Potential New FM Service

The views concerning the potential for a new niche sound broadcasting service outside the Dublin area were diametrically opposed, with some strongly supporting the proposal and some, strongly advocating against the introduction of any new service.

4.3.4 Digital Audio Broadcasting

Regarding digital audio broadcasting, while there were differing views on this topic, there was general satisfaction with the approach as outlined in the draft BSS; the establishment of a working group. There were proposals calling for the establishment of a sound broadcasting multiplex.

4.3.5 Other issues

Other issues raised included the proposal by commercial broadcasting services that they be given the due recognition for their public service content in the BSS. A respondent called for the value of institutional broadcasters to be duly recognised. There were proposals for commitments to reducing the administrative burden placed on contractors and for the BAI to adapt suitable processes to facilitate a relaxation of legislative requirements. A request was made for the Authority to license services that

were popular as services that are not popular and have few listeners while international competitors emerge fails to serve the BAI's obligations.

The following sections detail the considerations and decisions of the Authority and the amendments and/or additions made to the draft BSS.

5. Consultation Outcomes

This section sets out views and proposals garnered through the consultation process and the BAI's consideration and decisions in relation to them. For ease of reference, this section follows the structure of the final BSS document:

5.1 BAI's vision (Section 4)

5.2 Realising that Vision (Section 5)

5.3 Licensing

5.4 Regulation

5.1 BAI's Vision

The BAI's Vision and key objectives for the BSS are set out in Section 4, pages 15 & 16, of the draft BSS. The consultation posed two questions;

- 1. What is your view of the Proposed Vision?**
- 2. Are there any specific changes or additions that should be considered? If so, please explain your thinking in this regard.**

In general, the feedback was broadly supportive of the Authority's Vision. However, there were a number of proposals to amend the Vision statement and/or objectives and they are summarised hereunder.

5.1.1 Sustainability; Six written submissions, including commercial radio operators and IBI (the representative body of the independent commercial radio sector), CRAOL (the representative body of the community radio sector) and RTÉ, suggested that 'sustainability' should be included within the Vision Statement. The BAI *'should aspire to license services which survive and thus grow to be valued by their audiences'*.

The issue of sustainability was also raised throughout the consultation event and is one which broadcasters across the industry consider critical. It was also threaded throughout a significant number of the written submissions, including the commercial and community and public service broadcasters, reflecting the concerns expressed at the stakeholder event.

Authority Consideration

In considering this issue, the Authority had regard to one of the main objectives of the BSS; *'to work with stakeholders to support the achievement of greater sustainability for the Irish audio-visual sector'*. This objective is drawn from the Authority's Strategy Statement and there are a number of working groups established between the BAI and commercial and community stakeholders to progress initiatives and

work approaches in this area. The Authority considered the working group approach to be the most appropriate to address the issue of sustainability strategically.

Accordingly, the Authority agreed that the draft text as presented was appropriate and would remain unchanged.

5.1.2 Public Service: Five written submissions, including one from IBI and TV3, objected to the differentiation of 'public service' and 'commercial' broadcasters in the Vision Statement. The argument was made that commercial broadcasters provide a public service and this point was also made in the course of the consultation event.

Authority Consideration

The Authority noted that the context for the references to the categories of broadcasters as set out in the draft BSS is embedded in section 26(1)(a) of the Broadcasting Act 2009 and also, the definition of broadcaster types in this Act. While it is evident that the commercial broadcasters do provide content of a public service nature, the legislation differentiates the broadcast licences they hold to that of the RTÉ group of stations and TG4. Given these legislative definitions, the Authority did not consider it appropriate to amend the draft wording.

This issue was also referenced in the Mediatique report in the context of sustainability and the potential to create a fund that would support journalism in news and current affairs. It is primarily this type of content that commercial broadcasters categorise as 'public service' and the Authority agreed that it would be appropriate to further explore this issue in the context of the Sustainability Working Groups.

The Authority agreed that the draft text as presented was appropriate and would remain unchanged.

5.1.3 Irish language: Four written submissions argued for stronger commitments to the Irish language. A submission from Conradh na Gaeilge submitted that it is not sufficient to include a commitment to the Irish language in an objective; it should be intertwined throughout the Vision and provided examples including '*sources of news through the medium of Irish should be facilitated*'. Raidió RíRá submitted that the Authority should extend its objective to Irish language programming to also include platforms; '*to foster and promote quality programming and platforms in the Irish language*'. The submission stated that the BAI should support not just Irish language programming, but also Irish language services.

Conradh na Gaeilge also submitted that there should be a commitment to a national Irish language radio station for young people in the objectives and Radió RíRá also asked for such a commitment.

The submission from CTA also referenced Irish language and submitted that the objective for Irish language programming should include a definite commitment to funding Irish language programming.

Authority Consideration

On review of the content and references to the Irish language, the Authority agreed that further commitment was required in the draft Vision statement text and associated objectives. Greater commitment would better reflect the current commitments of the Authority's Strategy Statement. Accordingly, the text of the Vision Statement and associated objectives was revised as follows:

Vision statement

'At the core of this optimum mix is a range of national, regional, local and community broadcasting services, complemented by an additional mix of niche services. Such services may be provided by commercial or not-for-profit business models to provide a diverse range of content, **including in the Irish language** and programming choices to Irish listeners and viewers.'

Objectives

- *To foster and promote quality programming in the Irish language **and to encourage the development of Irish language initiatives across the broadcasting sector;***

Television

The BAI will facilitate and encourage applications from other parties wishing to establish television services on cable, satellite and digital terrestrial television platforms, particularly from community television groups **and Irish language groups**.

Radio

The BAI is open to exploring other service types, including niche **and Irish language radio services**, and the regulatory basis upon which such services might be licensed, developed and sustained.

Acknowledging that the Irish language is fundamental to its work, the Authority agreed that its approach to Irish language content should be more pro-active and supportive. However, the proposals submitted to increase Irish language commitments for current broadcasting contractors were not appropriate for inclusion in the BSS. The Authority must have regard to the requirements of the 2009 Act in this respect. The proposals to license an Irish language national radio station would require further investigation and it was noted that none of the proposals received, including in the submissions of interest, would be feasible given the limited availability of transmission frequency and/or the structures proposed.

The Authority is developing an Irish Language Action Plan, which is due for implementation at the end of 2018 and this plan will have regard to the proposals and feedback received over the course of the review of the BSS.

5.1.4 Institutional broadcasters: One submission noted that institutional broadcasters are not included in the optimum mix of services and submits they should be as they provide a valuable service and add to diversity.

Authority Consideration

The Authority agreed with the submission, noting that the optimum mix as set out in the draft text of 'public service, commercial and community broadcasters' reflected the more prominent broadcaster types with significant audience impact and community input. The addition of 'institutional' was agreed and the text amended as follows:

*'The people of Ireland will be served by a vibrant and dynamic broadcasting sector consisting of a mix of public service, commercial, community and **institutional broadcasters**, who provide content and programming that caters for and reflects the diversity within Irish Society.'*

5.1.5 'Popular': One submission, from Communicorp, suggested that the word 'popular' should be inserted into the text as the development of laudable output or services that were not popular and had few listeners while international competitors emerge failed to serve the BAI's obligations.

Authority Consideration

The Authority aims to provide a diversity of services for Irish audiences and in this regard, a service may not be required to be popular and can meet a number of other important aims and objectives and as such, it was agreed that the insertion of the word 'popular' would not be an appropriate addition.

5.1.6 Administrative Burden: Four submissions, including IBI, suggested that a new objective should be added to the Vision, that of '*removing administrative burdens and creating an efficient and effective working environment that is more cost-effective, more streamlined, would save time, labour and operational costs*'.

Authority Consideration

The Authority has included an obligation on reducing administrative burden in its Strategy Statement which applies to all areas of the Authority's work. Also, under the regulation section of the BSS, the Authority has committed to review its licensing processes with a view to streamlining and reducing administrative burden. In this regard, new documentation for each licensing process will be devised in consultation with the relevant stakeholders on publication of the BSS.

The Authority considered that it would be more appropriate to include actual commitments specific to each licensing type that streamline particular processes and make them more efficient and effective where possible in this documentation. Accordingly, the Authority was of the view that that the objective as proposed would not be added to the text.

5.1.7 Digital radio: A suggestion was made that the BAI include a commitment to digital radio in its objectives under Vision; the BAI as a '*leader*' and '*facilitator*'. The respondent submitted that the obligation in the draft BSS commits to '*explore the opportunities for establishing digital audio broadcasting*', which was an obligation in the previous BSS that was not followed through.

Authority Consideration

The Authority was of the view that its commitment to establishing a working group under the Digital Audio Broadcasting section of the BSS sufficiently addresses the issue raised by the respondent. Accordingly, it was agreed that the text would not be amended.

5.1.8 Community broadcasting: The Community Television Association and CRAOL submitted that the Vision and objectives set out in the draft BSS were not currently being met by the BAI and it was critical that the BAI address the funding issues facing the community sector, which would assist the BAI in achieving the Vision and objectives as outlined. In particular, it would assist with a mix of voices, opinions and sources of news and current affairs and a better representation of the diversity of Irish audiences.

Authority Consideration

As previously mentioned, the BAI will commence the drafting of new licensing documentation later in 2018, including a revision of the policies for community radio and television. The issues raised will be addressed in the course of the drafting of this new documentation. Funding issues are also being addressed separately under the theme of Enhancing Innovation & Sectoral Sustainability in the Strategy

Statement, which includes a strategic objective to '*work with stakeholders to support the achievement of greater sustainability for the Irish audio-visual sector*'.

5.1.9 Other Matters: In the written submissions, IBI and two other commercial radio operators requested that the reference to 'constrained' in the 'Introduction' section to the draft BSS should be removed. In this regard, IBI argued that the BAI can adapt suitable processes to implement the legislation and should not be 'constrained' by it.

Authority Consideration

Legislation requires that the BAI ensure a number of obligations are met by licensees and it does not have the flexibility which is suggested in the submissions. In this regard, the Authority's policies must have regard to the news and current affairs content requirements, advertising minutage and criteria for programme content on commercial and community broadcasters and such like. The Authority has introduced a policy for derogation from news and current affairs and allows contractors to devise programme commitments to meet with the legislative programme content criteria. While it is evident that a number of licensees wish to see a level of relaxation in such requirements, this would require legislative changes. The BAI is committed to working with the industry through the Sustainability Working Group on such matters.

The Authority was of the view that this wording should not be amended.

5.2 Realising that Vision

The draft BSS identified two key areas of approach to Realising the Vision namely: a) Licensing; and, Regulation of Services. The feedback is set out hereunder.

5.2.1 Licensing – Appropriateness of licensing processes

In the draft BSS, the licensing types were set out and accompanied by an explanatory note on the Authority's approach to the licensing of each type. The BAI posed four consultation questions to elicit feedback on this section:

- 1. Having regard to the relevant statutory provisions, what is your view on the appropriateness of the licensing approaches proposed in this Section of the Strategy?**
- 2. Do you agree that the BAI should explore the potential for at least one new FM radio service outside the Dublin region? If you do not agree, please give reasons why.**
- 3. What further steps might the BAI take to encourage the development of new radio and television services?**
- 4. Are there other licensing policies or practices that the Authority could adopt with a view to realising its vision?**

In general, the feedback was broadly supportive of the Authority's approaches to its licensing activities as set out in the draft BSS. However, there were a number of proposals to amend some of the processes and there was a significant level of feedback concerning the proposal to explore the potential for at least one new FM service outside of Dublin and also, on digital audio broadcasting. They are summarised hereunder.

5.2.1.1 Commercial Sound Broadcasting Services & the Exploration of at least one new FM service

The feedback received through the consultation event and written submissions predominantly dealt with the commitment to explore at least one new FM service. Over the course of the event, the issue of viability and sustainability was continually raised and in the context of any potential new service, the strong message from a majority of the current contractors was that the marketplace is already saturated and facing increased competition and continued uncertainty. The argument made is that the potential is not there for a new niche service to be viable and its introduction could negatively impact on current services in a marketplace still experiencing downward revenue trends, as evidenced in 2017. The assertion in the Mediatique report that a new unique service would allow for an increase in aggregate radio listening was disputed. The closure of TX FM and a number of community stations was also referenced.

At the stakeholder event, the BAI Chief Executive, Michael O'Keeffe, acknowledged the level of resistance amongst event attendees to this particular commitment but noted that the Authority must also be mindful of ensuring diversity of choice for listeners and efficient use of spectrum.

In the written submissions, the issue of viability and sustainability was raised in a number of the submissions made by current contractors and IBI.

Communicorp submitted that the market has reached saturation point and the industry needs support to ensure its long-term sustainability and this was where the Authority's focus should be. There was no evidence that new services grow overall radio audience and revenue rather they cannibalise existing revenues. Additional licensed operators would find sustainability a challenge and established operators would be placed at risk. They cited the constrained revenue prediction in the Mediatique report and stated that the marketplace could not support more stations citing the total advertising market was down 22% in the last 10 years. The current marketplace would not allow for stations to invest in new talent and create content to ensure the sector delivered high quality output that was fair, balanced and accurate, which was critical now given the global phenomenon of fake news. The sector must be able to invest and compete at the same high level as unregulated foreign digital platforms. Communicorp also asked that the Authority consider re-wording the text concerning the potential of a new service to *'the BAI commits to exploring whether or not to license one or more new ...'*

Wireless Group submitted that by considering a new FM service with the continued turmoil in the marketplace with ever growing digital competition for both revenue and audiences, the Authority was acting contrary to its strategic commitment of sectoral sustainability.

There were however some independent radio contractors who supported the commitment as well as a temporary contract holder and an Irish language on-line radio station. The majority of these submissions suggested new services that were niche music or Irish language.

With regard to Irish language, three written submissions were made in support of the licensing of a national Irish language radio service for younger listeners. The proposals involved either extending Raidió na Life's current franchise area or the licensing on FM on a national basis of the on-line Irish language station Raidió RíRá. It was submitted that such a service is much needed and research findings of a Kantar survey were used to support the argument for the establishment of such a service. These submissions also stated that the Authority should ensure that all licensees, both community and commercial, are held to account for Irish language programme commitments and there was criticism of

the level of Irish language provided by existing English language radio services and the regulation of Irish programming commitments by the Authority.

Two written submissions from commercial broadcasters were received in support of a new niche service. Radio Nova submitted that such a service would add to the diversity of choice for listeners and as a defined unique service, would not significantly impact on the revenues of current contractors operating in the relevant franchise areas. The IBI submission acknowledged that there is a cohort of IBI members who support the licensing of new services as proposed by the BAI; a focussed niche service outside the Dublin area. However, in common with a number of submissions, any such proposal must be preceded by a sectoral impact analysis to assess the likely impact on current operators and ensuring any new service adds to diversity in the relevant franchise area. The licensing process must also be based on open competition.

The IBI submission also referenced the statement in the Mediatique report that *'relatively constrained revenues will be a hallmark of commercial radio for the next few years'* and submitted that this statement should provide the BAI with clear direction when considering new licences. In this regard, if the BAI is minded to license a new service, it should consider allowing co-location with an existing service and the sharing of non-programming functions such as administration and finance to reduce costs.

A submission from 8radio Licensing Limited expressed disappointment with the proposal for only one potential new service, which it stated demonstrates a lack of confidence in the radio industry by the BAI and too much attention to current operators rather than the needs of the current marketplace.

Authority Consideration

Regarding a national Irish language sound broadcasting service, the Authority noted that the transmission network would not support such propositions as there is insufficient national frequency available at this time. However, there may be potential for such a service on a more limited regional basis, although there would be significant funding challenges to establish and operate it on a permanent basis. Any such initiative can be further explored under the BAI's Irish Language Action Plan.

The context for the proposal for the Authority to explore the potential for at least one new FM radio service outside the Dublin area was as outlined hereunder:

-greater diversity for the audience in the rest of Ireland, a service that would complement the current mix and not compete directly with current services; for the diversity of business model that could be employed (as evident in the varied business models received in the Authority's call for submissions from parties interested in providing new FM sound broadcasting services); to provide greater efficiency of use of spectrum; and, to develop the radio brand as a premium advertising medium which could increase aggregate radio advertising revenues.

The proposal was also informed by the research undertaken by Mediatique to support the revision of the BSS. In this regard, the relevant findings of the Mediatique report identified the need for the radio sector to innovate and to work collectively to progress digital options and to make the case for the effectiveness of radio advertising. In the absence of digital audio broadcasting progression, the report recommended that the Authority consider the licensing of at least one new FM service. While the Dublin market looks well served, many other areas receive a far more limited array of stations and there is scope for additional propositions, having regard to diversity, sustainability, plurality and the efficient use

of spectrum. The Authority noted that the Kantar audience research stated that there was broad satisfaction amongst listeners with current Irish radio content.

The Mediatique research was supported by a call for 'Submissions of Interest' in the provision of new services by interested parties. There were 13 submissions received for new services, as referenced earlier in this report.

In assessing the research and feedback, it was evident to the Authority that the commitment to explore a new FM service was contentious and noteworthy that the economic forecast in the Mediatique report was that advertising revenues would continue to be constrained. Nevertheless the report made a case for a new niche service, but did also raise the question of timing⁵.

Also, there is interest in the provision of a new niche service demonstrated through the call for submissions of interest in 2017 and the written submissions to the consultation. Importantly, a new service has the potential to provide greater diversity of choice for audiences outside the Dublin area and to ensure greater efficiency in the use of spectrum. The Authority was cognisant that in considering the licensing of a new service, the Authority can consider new structures which have been permitted for current contractors such as co-location and the sharing of non-programming functions that would permit potential applicants to minimise the cost of running a new niche service. The Authority can also consider the franchise area to be licensed, ensuring that it would be of sufficient audience size to support the viability of any new service. Further, in keeping with the Authority's commitment to evidenced based decision-making, a sectoral impact study could be conducted to ascertain the potential impact, and audience needs, for any proposed new service.

However, the Authority had to be mindful of the economic conditions and continued turmoil in the market place. In this regard, the Authority gave due consideration to the timing of a licensing process for an additional service; the Authority considered whether it was appropriate to implement this approach at this time.

While there is definite interest in a new service and it would assist in the achievement of important BAI objectives such as greater diversity and spectrum efficiency, the economic forecast that advertising revenue will remain flat at best over the next five years, following downturns in 2017 and 2018, required consideration. In this regard, the Authority has committed to enhancing sectoral sustainability and developing sustainable funding models as a priority and work has commenced with the sector.

The Authority had regard to the suggestion in the Mediatique report that the Authority may wish to delay initiating a new licensing process in order to give commercial radio operators a chance to improve profitability and growth prospects. This suggestion takes cognisance of the current challenging conditions and recognises the need to provide time for individual broadcasters and the sector as a whole to work to improve performance. This approach would permit the Authority to review and assess the findings of the Working Group on Sustainability and provide the group with the chance to implement strategies and assess impact, if any.

The Authority was cognisant that the economic considerations are such, and have been for over 10 years now, that while a new FM service may help achieve a number of objectives as outlined above in the short-term, if it were to impact negatively on a current service/s and threaten its / their sustainability

⁵ Sections 7.32 – 7.36 of Mediatique report.

and quality of service, there is the potential that a new FM service may not add to diversity in the medium-term. The Authority agreed that it should still commit to exploring a new FM service, but not on the launch of the revised BSS as is currently committed to.

The Authority agreed to commit to exploring the licensing of a new sound broadcasting service but only on evidence that the revenue trend for the industry is improving and this includes all funding sources, not just advertising revenues. It was agreed that the BSS text would be amended as follows:

When signs of improving revenues and profitability are evident, the BAI commits to exploring the licensing of at least one new sound broadcasting service on the FM band. The Authority will proactively monitor industry trends and the impact on various initiatives to support the broadcasting sector over 2019, including the Authority's Sustainability Working Group.

5.2.1.2 Community Sound Broadcasting Services

There was broad support for the approach to community sound broadcasting services. The role of community radio stations was acknowledged and commended. The common theme of sustainability and the need to establish consistent funding models was again noted.

The submission from CRAOL that represents the community radio stations stated that the viability of the sector was under threat and that the BAI needed to support the sector to identify a consistent source of funding.

IBI and Communicorp, both supportive of the community radio strand, submitted that the Authority should undertake a sectoral impact study in the relevant area as permitted under the 2009 Act prior to the licensing of such services. IBI and Radio Nova also made the point that the diversity of choice for audiences in the relevant area should be a fundamental assessment criterion in awarding any community licence.

The submissions concerning Irish language requested that the Authority strengthen the Irish language obligations for community radio broadcasters. There were also separate requests for considering the licensing of an Irish language service nationally, including using the community radio structure, and for an extension to current Irish language stations, namely Raidió na Life or Raidió RíRá.

One submission requested a change in the text to provide further clarity on the term of licence for full community radio services as the difference between temporary licences and full community licences was not evident in the current text.

Authority Consideration

The issue of viability and consistent funding sources were the main concerns arising from the consultation for community radio services. These challenges had been identified through the Authority's licensing of community services in recent years and were borne out by developments such as the recent closure of a number of community services.

These issues are currently being addressed through the Authority's Sustainability Working Group which has met with the sector. On publication of the revised BSS, the current guidelines for community radio licensing will be revised and this would be an appropriate process to explore possible funding models. Information garnered through the Sustainability Working Group will be valuable in this regard.

The request that the BAI conduct a sectoral impact study prior to licensing a community radio service is somewhat moot given the Authority's approach to the licensing of such services. Interested community groups must first successfully complete a number of temporary radio services and any impact on any commercial services would surface over the periods of such licences. The BAI closely monitors the progress of these groups to ensure that the service is for, and by, the community it serves, including the not-for-profit status. Importantly, such services have a limited franchise area, in general, not extending past a five-mile radius and there is no evidence to-date of any of the current community radio stations impacting on the revenue earning capacity of commercial radio operators.

As with all licensing processes, the issue of imposing specific Irish language content commitments would require further consideration as it is not a policy of the Authority to impose any particular obligation on a broadcasting contractor in respect of any programming obligations other than the programming elements required under statute. The Authority's Irish Language Action Plan will have regard to these proposals and feedback.

The Authority agreed that the text regarding the difference in the contract term for temporary and full-time community radio licences will be amended to include the reference to the 10 year term for a full community radio service. Otherwise, the text will remain unchanged.

5.2.1.3 Temporary and Institutional Sound Broadcasting Contracts

There is general support for the Authority's stated approach to such contracts and their merit was acknowledged.

Communicorp submitted that such licences should only be awarded for niche or particular event based purposes and a licence which returns annually and creates a market distorting effect should not be permitted. This view was supported by Red FM, who further submitted that temporary services, while not permitted to carry advertising, could sound heavily commercialised. This issue was also raised in the course of the consultation event.

8Radio Vision Limited submitted that such licences are valuable but noted that when non-community services have completed their temporary licences and proved their concept, there were very limited routes of progression in terms of licensing.

The submissions concerning Irish language requested that the Authority strengthen the Irish language obligations for temporary and institutional radio broadcasters.

CRAOL submitted that the BAI progression from temporary to 100-day pilot community services to a full-time community service was difficult and that the BAI should devise guidelines for the transitional phases, including concrete procedures and timelines and more regular and structured feedback should be provided to temporary services to help them develop and sustain their services.

One submission requested that the text should be amended to clarify the licensing period that applies to institutional licences as it is currently not given, which contrasts with the time frames provided for temporary services.

Authority Consideration

The main issue arising from the consultation was the need for a more structured approach to the transition from a pilot community licence to a full community licence. As stated previously, the Authority

will devise guidelines for the licensing of such services on publication of the revised BSS and this should address the concerns raised.

Regarding the view that a temporary licence should only be awarded for niche or event purposes, this is how such licences are generally awarded with the exception of the pilot scheme for community groups. The majority of applicants for temporary licences are repeat applicants including schools, colleges and event organisers. The Authority was of the view that these concerns would be more appropriately dealt with as part of the work in the redrafting of the guidelines for such services on publication of the revised BSS.

As with all licensing processes, the issue of imposing specific Irish language content commitments would require further consideration as it is not a policy of the Authority to impose any particular obligation on a broadcasting contractor in respect of any programming obligations other than the programming elements required under statute. This issue will be explored through the Authority's Irish Language Action Plan.

The Authority agreed that the clarification of the timeline for institutional contracts is an amendment that should be made to the BSS text. Otherwise, the text in this section would remain unchanged.

5.2.1.4 Television Programme Service Contract

There was broad support for the approach. The only amendment identified is by the submissions concerning Irish language which requested that the BAI strengthen the Irish language obligations for television broadcasters.

Authority Consideration

The licence is currently extant and any policy concerning Irish language commitments would have to be dealt with separately and negotiated with the current contractor. This issue will be further explored through the Authority's Irish Language Action Plan. It is agreed that the text in this section would remain unchanged.

5.2.1.5 Content Provision Contracts

The main issue raised through the consultation was the need for the BAI to consider the fees for such contracts and ensure that it maximised the revenue available. Reference was made to the potential for additional applications for such services from operators based in the UK post-Brexit. The feedback asked for the levy to be extended to these contracts and TV3 submitted that such a levy should not be retrospective.

8Radio Vision Limited submitted that the cost of making an application for a content provision contract is excessive, 400% higher than the UK equivalent, and the process complex and time consuming.

The submissions concerning Irish language requested that the Authority strengthen the Irish language obligations for content provision contracts.

Authority Consideration

The issues in the feedback are being currently reviewed by the BAI and the need to prepare for any post-Brexit impact on the licensing activities of the BAI has been made a priority work area. The issue of extending the levy to such contracts is a legislative one and the legislation is currently being reviewed in this regard by the Department of Communications, Climate Action and Environment.

The cost and the process for licensing such services is also currently under review and this will feed into the drafting of licensing guidelines for content provision contracts.

As with all licensing processes, the issue of imposing specific Irish language content commitments would require further consideration as it is not a policy of the Authority to impose any particular obligation on a broadcasting contractor in respect of any programming obligations other than the programming elements required under statute. This issue will be further explored through the Authority's Irish Language Action Plan.

It was agreed that this section of the BSS would remain unchanged.

5.2.1.6 Community Content Provision Contracts

There was general support for the open approach to community content provision contracts. However, it was noted in the responses from the Community Television Association, CRAOL and DCTV that the current operators were struggling to survive. There was a call for the BAI to actively support the development of a sustainable funding model and to reduce regulatory burden on such services. The Mediatique report set out the difficulties for community television and purported that it will require some form of public funding if it is to survive and develop.

One respondent submitted that the BAI should consider providing more information on these contracts, setting out requirements and explaining the details of the relevant contracts and explore ways and means of generating interest in such contracts.

Communicorp Media submitted that there should be no further development in this area as market conditions were challenging and the scale of the Irish market was too small. Ofcom, the UK regulator, currently reported the challenges facing community TV in the UK where there are much larger markets.

The submissions concerning the Irish language requested that the Authority strengthen the Irish language obligations for community content provision contracts.

Authority Consideration

The issues raised by current contractors and parties involved with community television concerning sustainability are valid and will be addressed through the Sustainability Working Group which will meet with the contractors. The Authority agreed that the issue of public funding was not appropriate for inclusion in the BSS.

As with all licensing processes, the issue of imposing specific Irish language content commitments would require further consideration as it is not a policy of the Authority to impose any particular obligation on a broadcasting contractor in respect of any programming obligations other than the programming elements required under statute. This issue will be further explored through the Authority's Irish Language Action Plan.

As there was broad support for the open approach, the current text was considered appropriate by the Authority and no changes will be made.

5.2.1.7 Electronic Programme Guides (EPG)

The majority of submissions noted the BAI's approach and there was only one submission that believed the approach was not appropriate. In this regard, RTÉ submitted that due to the rapid evolution of user

interfaces on television platforms and content gateways, the BAI should engage with domestic and international stakeholders in the Irish market to ensure a suitable process is in place to ensure public service content is easily discoverable and prominent and cites the current drive in the UK by the BBC and Channel 4 for PSB prominence.

This issue was also discussed at the stakeholder event and TG4 raised the issue of cost for carriage on digital platforms and the important issue of prominence and search.

Authority Consideration

The BAI has acknowledged that PSB prominence is a key issue and agrees with the Mediatique report finding of the need for the BAI to have a watching brief on the implications of on-going innovations in search and navigation practices. However, the BAI will have to wait for the transposition of the AVMSD before taking any initiative in this area and in the meantime will keep abreast of this issue. It was agreed that this section of the draft BSS would remain unchanged.

5.2.1.8 Multiplex Contracts DTT

There was broad support for the approach detailed. Accordingly, it was agreed that this section of the draft BSS would remain unchanged.

5.2.1.9 Multiplex Contracts - Digital Audio Broadcasting (“DAB”)

There were a mix of opinions arising from the consultation concerning DAB with a few submissions strongly supporting its development and requesting that the BAI take an active role as soon as possible. In general though, the approach as outlined by the BAI was supported.

The submissions from commercial operators broadly supported the exploration of DAB subject to the Authority considering the impact of any new stations on existing licensees, the significant additional costs of transmission and the examination of any risks to localness, diversity and sustainability.

Those operators that support the proposition see it as a means to develop the radio sector, to add to diversity of choice for Irish audiences and an opportunity to benefit from the ownership of a multiplex and increase revenues. They submitted that Ireland is being left behind in an international context in such development.

Easy Media Broadcasting supported this development but any new FM radio service would need to be established on FM first to ensure viability, and to secure a reasonable level of sustainability. Given the economic environment that currently faces the radio industry, a high level of investment in the development of digital radio may be difficult to justify at this time. It would require new distinctive services which may be inappropriate in the current economic circumstance as it would further segment audiences and increase competition.

Digital Broadcasting submitted that the BAI needs to take an active role now and start the consultation on digital broadcasting without delay. At the same time, the Authority should license a regulatory trial of DAB as part of the cross industry consultation. New services should be prioritised and DAB should complement, not replicate the FM network. 8Radio Vision Limited also requested that the BAI move to seek submissions of interest from DAB multiplex providers.

Red FM submitted that progress in digital would benefit the sector as a whole and there were ways to approach its development such as DAB, DAB+ or other variations. Wireless Group supported the

industry working group approach and would share its experience of DAB in the UK market and their understanding of how it could be deployed in ways which ultimately supported the development of existing operators and provided benefits to listeners.

RTÉ submitted that international research on DAB highlights that no market would successfully launch DAB or DAB+ without collaboration and consensus from key stakeholders in the sector. Any further development in the area of DAB would need to consider the broader listening landscape, likely future consumption patterns and commercial sustainability. That an industry wide approach would be required to develop any digital solution was also raised and discussed at the consultation event.

Those operators who did not support its development cited the lack of audience demand for digital radio and the lack of demand for additional services evidenced by the Kantar research which stated that Irish audiences were satisfied with the current choice of radio stations and programmes. Further, there was a lack of funding available to radio broadcasters for the investment necessary to develop digital radio broadcasting. The expense of DAB and its lack of success in the UK is also cited. Communicorp Media submitted that the introduction of a new platform would simply disrupt a fragile market and place existing operators in jeopardy and DAB would be a solution to a problem that does not exist.

Authority Consideration

There was support across the sector for the approach to digital audio broadcasting proposed by the BAI, including the cross industry working group suggestion. The Mediatique report advised that the sector needs to look at digital development if it wants to secure its long-term sustainability and in particular, if it is going to attract younger audiences who consume their listening on digital platforms. While a proposal for DAB was included in the report, the findings were not intended to be definitive and the progression of digital audio broadcasting will likely consist of a number of variants including IP.

While there were submissions requesting that the BAI move to establish a multiplex, this would appear to be contrary to the commitment to explore the potential with a working group, the approach that the majority of respondents supported. In this regard, the Authority agreed that the proposed approach was appropriate and the text in of this section would not be amended.

5.2.1.10 Steps to encourage the development of new services and other licensing practices and policies that could be adopted

A number of submissions included proposals of how new services could be developed and licensing practices that would support the Authority to achieve its vision. In this regard, there were suggestions for the BAI to actively explore other service types including lower power AM services, opening up the spectrum for niche / neighbourhood stations and by providing master classes in community radio content provision. In particular, it was suggested that the Authority should commit to exploring a not-for-profit micro-powered broadcasting service model similar to those developed in the United States, New Zealand and the Netherlands. Such services would support creativity and innovation and could provide low powered facilities for artists, libraries, national and secondary schools for example. The roll out of a digital radio multiplex would support the development of new services across the country.

Participants at the event and respondents suggested that the BAI should have less regulatory licensing processes for particular types of services to encourage new entrants to the marketplace and to facilitate their sustainability. Consideration must also be given to new business models and types of services.

Regarding community services, respondents submitted that the BAI needs to provide more support at the initial set-up stages and provide clear and detailed information on the structure and goals potential community groups need to meet to successfully attain a community contract and then sustain it.

However, a number of respondents expressed concerns about the potential for new services and requested that the BAI exercise caution in this regard.

Authority Consideration

The consultation feedback received for this section will be used to inform the devising of guideline documentation for the BAI's licensing, contracting and compliance activities for independent radio and television services.

5.2.2 Regulation of Services

This section of the draft BSS set out how the Authority conducts its regulatory functions. Cognisant of its strategic values of being fair, independent, expert and accountable, seven principles that would inform the approach to licensing activities were listed: -

- Ensure broadcasting contractors adhere to their contractual commitments and, in particular, to diversity and plurality;
- Keep the administrative costs of meeting licensing obligations to a minimum;
- Reduce unnecessary regulatory burden;
- Devise licensing procedures that minimise the cost of making a licence application;
- Ensure its regulation practices are efficient, effective and responsive;
- Consult on the regulatory activities with licensed contractors; and,
- Publish detailed documentation for each licensing category, that sets out its licensing and regulatory approach for that particular category.

Three questions were posed for the purpose of the consultation:

- 1. Having regard to the Authority's regulatory principles, what is your view on the appropriateness of the listed principles? Are there any additional principles that should be considered? If yes, please set out your rationale.**
- 2. Are there approaches to regulatory measures that could reduce the administrative burden of contractors without compromising the integrity of contractual obligations? Please set out the rationale for any approaches suggested.**
- 3. Are there approaches to licensing application processes that could reduce the cost of making applications for potential applicants without compromising the integrity of the licensing process? Please set out the rationale for any approaches suggested.**

5.2.2.1 Appropriateness of Principles

There was broad support for the principles from the commercial operators in the written submissions, including IBI. There were two proposals made.

Communicorp Media submitted that the principles should be modified in scope and set out the principles they believed relevant under the 2009 Act and propose two new principles as follows: *'inform its decision-making with independent pan-media qualitative and quantitative analysis'* and *'take into*

account the economics and behaviours of the changing landscape and view decisions for each medium within a total media context'.

RTÉ submitted that a more strategic principle should be included in the mix and suggested that the text in the introductory paragraph to the regulatory principles section should be one of the underlying principles; *'need to balance sectoral sustainability with audience needs and preferences and the statutory requirements for plurality and diversity'.*

RTÉ's submission reflects the feedback from the roundtable discussion at the stakeholder event. The suggestions from the group were that the principles should be more strategic in approach and in this regard, have a greater sense of the horizon and the protection around what could be achieved, more explicit and factor in some dialogic feedback with actual stakeholders to get a sense on how the principles are working. They should demonstrate a greater sense of the reality of international competition and the corrosive role it is playing in the marketplace and roaming free of such services with no regulation while all Irish broadcasters must fund regulation. Sustainability should be embedded in the principles and also, some of the principles seem arbitrary, perhaps based on a moment in time. The value of the independent research report conducted by Mediatique was commended and could be done annually.

The additional proposals for the principles listed, while relevant, are matters that will inform the regulatory work of the Authority regarding licensing. The Authority commits to being 'fair' and 'expert' and also, when assessing contractual matters and developing codes and rules and such policies, will have regard to economic and environmental factors. The proposals that the Authority have regard to non-regulated content providers in the list of principles would not be appropriate. The point that the principles should be bolder, be more explicit was not supported by examples. The Authority noted that the devising of guidelines for each licensing type will give further effect to the principles it has listed and should address a number of the issues raised through the consultation.

The Authority agreed that the proposal that a principle should include consultation with the industry should be included into the current draft principle to consult as follows:

'consult on the regulatory principles and regulatory activities with licensed contractors'

Otherwise, the text will remain unchanged.

5.2.2.3 Approaches to Reducing Administrative Burden

The majority of respondents were silent on this matter, with five respondents providing proposals. IBI submitted that the BAI should adopt the methodology currently used by the European Parliament with its REFIT programme and allow representatives from the broadcasting sector to present its case for reduced administration on a regular basis with the BAI.

Communicorp Media submitted that the use of e-document, online portals and other technological advancements would deliver significant speed and ease of use improvements for the BAI and stakeholders.

Three submissions from the community sector called for the burden of compliance for radio and TV community broadcasters to be reduced.

Authority Consideration

The proposals submitted are encapsulated in the principles listed in the BSS and when the BAI is devising its guidelines for each licensing category, it will consult with the relevant contractors on the issue of administrative burden. The BAI has also committed to looking at smarter and more efficient ways of doing business including e-options and a contractor portal.

5.2.2.4 Approaches to licensing process

The responses to this question were submitted mainly by the commercial sector. IBI submitted that the BAI must conduct Sectoral Impact Studies prior to licensing any new service.

Communicorp Media submitted that the current licensing process for a commercial service is onerous and unnecessary and that the BAI should focus on output not inputs. In this regard, the programme policy statement and a synopsis of the business structure and finance should suffice. The interrogation of the proposed programme schedule, staffing matters and studio facilities are not fundamental to licensing and a streamlining of the process should eliminate these aspects. Such refinement would make the subsequent contracting phase simpler, reducing regulatory burden. The BAI needs to refine how it measures a contractor's performance and it should be based on output; for example, it is the content of the news bulletin that should be measured and not the number of news staff - a large newsroom is not necessarily the best newsroom, so approval to changes in news production should not be a requirement. Also, the speech elements on music stations need not be specified. Wireless Group also submitted that the BAI's regulatory approach should focus on output and not inputs.

Authority Consideration

The consultation feedback received for this section will be used to inform the devising of guideline documentation for the BAI's licensing and contracting activities for independent radio and television services.

5.2.2.5 Licensing Documentation

There were a number of submissions on this section. IBI welcomed this development and suggested that the BAI consult with the industry when drafting such documentation to draw from their vast experience in making licence applications.

TV3 submitted that the BAI should always consider whether the obligations as detailed in a contract are likely to have an onerous or detrimental effect on the commercial success of the licence holder.

The respondents concerning Irish language submitted that the Authority should take the opportunity to ensure broadcasters understand their obligations regarding Irish language and that there was accessible information and clear guidance on how these obligations could be fulfilled.

CRAOL submitted that the BAI needs to develop guidelines, including goals and milestones, for temporary licensed community services to achieve before seeking expressions of interest for a full licence. A Governance Code should also be devised.

The consultation feedback received for this section will be used to inform the devising of guideline documentation for the BAI's licensing and contracting activities for independent radio and television services.

5.3 Licensing Regulatory Measures

In the course of the review of the Broadcasting Services Strategy ("the BSS"), the Authority agreed that the approach to the content for the revised BSS should be high level, consistent with the Authority's approach to its other strategy documentation.

In this regard, it was noted that the section on regulation in the current BSS provides specific details on the following regulatory measures:

- News & Current Affairs 120 minutes and 20% Requirements
- Opt-out Programming (Radio only)
- Opt-out Advertising (Radio only)
- Programme Automation and Networking (Radio only)
- Sharing of non-Programme Functions (Radio only)
- Studio Location

The BSS consultation document addressed these matters at page 22 of the document as follows:

'The BAI will devise and publish supporting documentation for each of the licensing categories that will set out in detail the BAI's approach to that licence category. There is currently a policy document for community radio, which will be revised and updated.'

'The development of this documentation will allow the BAI to assess and review regulatory measures for each licensing category regularly thereby allowing for responsive and timely revisions to such regulatory measures as the need arises. It will also provide clearer and more tailored information for stakeholders. This documentation will be drafted in consultation with the sector and published within a year of the implementation of this new Strategy.'

The Authority agreed to include these regulatory measures in the consultation phase for a number of reasons and in particular, that some of them, such as the minimum content rules for news and current affairs, might be critical in the context of sustainability and for any potential new licences as outlined in the Mediatique research report⁶. Also, the potential for opt-out advertising has been the subject of some discussion within the industry and raised in the Mediatique research report.

There was good engagement with the consultation by broadcasters, particularly the commercial radio broadcasters, and by parties committed to supporting Irish language, on the regulatory measures as set out in the draft consultation document.

One of the main purposes for consulting on the draft regulatory measures was to elicit views of stakeholders, particularly industry stakeholders, on current licensing practices and how such practices impact on the provision of their radio services and the appropriateness of the regulatory measures as currently constructed.

⁶ Section 5 of Mediatique research report.

The feedback received through the consultation phase is provided hereunder in the order of the topics as set out in the consultation document.

5.3.1 News & Current Affairs:

The draft BSS consultation document set out the Authority's current approach to derogation from the News & Current Affairs requirements of the 2009 Act and the Authority sought feedback on the approach and whether it is appropriate that derogation can only be sought by niche services, or should it be broadened out to other types of broadcasting services.

The consultation posed two questions;

- 1. What is your view of the three influencing factors to which the BAI will have regard when considering a request for derogation? Are there any other factors that the BAI should consider?***
- 2. Should the BAI consider any further relaxation of the regulatory measure for derogation for news and current affairs? If yes, please set out your rationale.***

In general, the written feedback was broadly supportive of the Authority's current approach. The written submissions received, mainly from the independent sound broadcasting sector including its representative body IBI, can be broken down into three groupings; those seeking relaxation of the rules, those satisfied with the status quo, and those seeking additional criteria.

Support for further relaxation of the requirement

Communicorp Media submitted that the BAI needs to be more flexible in its approach to derogation and should permit the option of derogation for all sound broadcasting contractors. While acknowledging the importance of news and current affairs content, such an approach takes cognisance of the current marketplace which has experienced a proliferation of news and current affairs sources and the interests of listeners. The respondent submitted three criteria for considering derogation requests: 1. the overall character of the broadcasting service and the expectations of its audience; 2. the quality of news and current affairs output from all broadcasters in the relevant franchise area; and, 3. the degree of opinion-forming power of the service in the context of all available media. Also, derogation decisions should be supported by qualitative listener research which would include consideration of the opinion-forming power of radio stations alongside that of other media.

Conradh na Gaeilge submitted that where a group are broadcasting on a temporary basis, the Authority should consider further relaxation of its rules for derogation.

Support for the status quo

The representative body for independent commercial radio IBI and the multi-city niche music station 4FM supported the Authority's current approach and submitted that derogation can impact positively on the broadcast output of a radio station. The audience continues to receive news and current affairs, but it is tailored to suit what the listener wants and expects.

Wireless Group submitted that it strongly supported the BAI's ability to apply derogations for niche and music-driven services. The Authority's current approach facilitates strong incentives for broadcasters to produce appealing programming, fosters innovation and sectoral sustainability and empowers local programming teams to develop editorial plans which respond to the needs of their listeners. This

approach also recognises the publicly funded contribution to high quality news which is made by RTÉ and the contribution by broad-formatted services as well as Newstalk.

The local music-driven station Radio Nova also agreed with the Authority's current approach and submitted that no further relaxation of the rules is required.

Support for additional criterion

The local station Midlands 103 submitted that it attaches high importance to news and current affairs and supported the current approach to derogation and suggested an additional criterion; it should be ensured that any economic savings resulting from a derogation should be required to be invested in programming which increases diversity of output and they should be granted for a fixed term only (maximum three years) and reviewed thereafter. There is no further need for relaxation of the rules.

Raidió RíRá submitted that the BAI needs to encourage more Irish language news and current affairs programming and must ensure that Irish language programmes are not broadcast only late at night and the weekends.

Round-table discussion Feedback

The feedback from the roundtable discussion at the stakeholder event supported in broad terms the Authority's current approach to derogation for niche music-driven services only. From a cost perspective, derogation for such niche services provides them with the opportunity to be viable. It also facilitates greater diversity of choice for listeners in the context of the news and current affairs content provided by other licence categories such as local and national services. However, the BAI needs to provide greater support for these content providers and have regard to the difficulties in sourcing journalists and staff to work in this area given the increased competition from digital providers. The Authority should also consider relaxing the rigidity of the 7-to-7 requirement; in the context of community of interest services such as student services, this requirement can be counter-productive as the 7-to-7 requirement does not align with regular listener habits. In the context of commercial services, regard should be given to other investment initiatives they undertake such as the online provision of news and current affairs content.

Authority Consideration

The feedback is generally very supportive of the Authority's current approach with only one strong opposing view. The limiting of derogation to niche/music-driven services is positively viewed in the context of the viability of such services and the diversity of choice it affords listeners. The derogation was introduced with the 2009 Act and the majority of niche/music-driven services that qualify for derogation have submitted, and been granted, derogation at various percentages.

The Authority noted that its approach to its licensing processes in this area has been informed by research; both listener research and also, market research on the matters of diversity and plurality of news and current affairs content. Research has demonstrated that listeners place a high value on the news and current affairs content on radio and there is strong demand for such content⁷.

The Mediatique research report recommends that the BAI engage with bidders and existing licence holders on making greater use of the availability of news and current affairs derogations but also

⁷ Such as the Kantar Media research undertaken to supplement the Mediatique report.

acknowledged that any changes could have significant impacts and advise the undertaking of a review before widespread implementation of any such change⁸.

The Authority noted that research reveals that news and current affairs content is highly valued by audiences. Further, over the course of the consultation, it was evident that broadcasters place a high value on such content. The Authority would also note that with the challenges faced by the print media and the proliferation of unregulated online media, the news and current affairs output of BAI licensed services is a valuable resource for Irish audiences. In this regard, the Authority agreed that the permitting of all licensees to apply for derogation is not appropriate at this time as it would be counter to some of the main objectives underlying the Authority's strategic aims and objectives. Accordingly, the Authority agreed that it will not relax the news and current affairs derogation requirement at this time and it will continue to be applicable to music-driven, youth and niche services only.

5.3.2 Opt-out Programming:

The draft BSS consultation document proposed that the Authority may consider relaxing the requirement for opt-out programming and permit opt-out programming without the requirement to develop additional studios having regard to the developments in technology. The three underlying criteria that the Authority would consider for such opt-out programming were as follows: 1. Whether the granting of such permission would compromise the focus of the content for the intended audience; 2. Whether the arrangements proposed support the principles of diversity and plurality, particularly in relation to serving audience needs; and, 3. Whether the proposals are consistent with the nature of the service licensed i.e. national, regional, local.

The consultation posed two questions;

- 1. What is your view of the criteria that the BAI has regard to when considering a request for opt-out programming?**
- 2. Should the BAI consider any modification/s to its regulatory approach to opt-out programming? If yes, please set out your rationale**

The feedback was very supportive of the Authority's proposed approach to relaxing the requirement for additional studios for the purpose of broadcasting opt-out programming and in particular, acknowledged the Authority's regard to technological developments and importantly, that any opt-out programming consideration would have regard to the diversity of choice for listeners.

However, when considering the principle of whether to grant opt-out programming, the feedback was mixed with four submissions seeking an additional criterion for assessing any such proposals, four seeking further relaxation of the requirement and one satisfied with the status quo.

Support for Additional Criterion

Midlands 103, Wireless, Red FM and Communicorp while supportive of the current criteria listed, all referenced the need for the Authority to be cognisant of the potential impact of any opt-out programming on the audiences and the revenues of other radio services in the relevant franchise area.

⁸ Page 93 of Mediatique research report.

Any consideration of an opt-out programming proposal should include an impact study on the viability of the radio services in the relevant franchise area. The importance of localness in terms of both local content and local interaction is cited. Such opt-out programming should also be in keeping with a licensee's programming policy statement and serve its stated target audience.

Support for the Status Quo

Easy Media Broadcasting submitted that it welcomed the Authority's view and that any opt-out broadcast proposals should only be allowed, where the Authority is of the opinion that the proposed material adds significant diversity to the franchise area.

Support for further relaxation of the requirement

In favour of relaxing the regulation, IBI submitted that the development of radio apps and the Irish RadioPlayer have seen radio stations using opt-out programming to great effect. Examples of this include radio stations with a franchise area covering more than one county broadcasting different sporting fixtures to each of the various counties at the same time, or General Election debates from 2 different constituencies broadcasting at the same time to the relevant counties. 4FM concurs with the views as set out by IBI.

Radio Nova submitted that opt-out programming by its very nature can provide more diversity and more targeted programming to the audience thus serving the listener better. The requirement for a separate studio has in the past made opt-out programming an expensive option for radio stations. Radio Nova further submitted that the BAI should be more flexible in this regard if diversity is being served.

Conradh na Gaeilge submitted that there are possibilities to use opt-out programming to add to the Irish language programmes broadcast.

Evident in the feedback is the very strong support for the removal of the requirement for additional studios. The development in technology, both for the making and broadcasting of programmes, somewhat negates the requirement for a separate studio evidenced by the use of radio apps and the Irish RadioPlayer as referenced in a number of the consultation responses. Given the financial challenges facing the industry, it also facilitates a reduction in the costs required for any opt-programming.

Authority Consideration

Regarding the practice of opt-out programming, it is evident that there is a real concern expressed by local services of the potential increased competition for audiences and associated revenues if opt-out programming is permitted. The Authority was of the view that the concern was well supported in the submissions and also validated by the research findings of the Mediatique report. In this regard, the Authority agreed that it would relax this regulation and is open to submissions for requests for opt-out programming, but an additional criterion will apply as follows:

* The impact on the viability of other services in the franchise area.

Regarding the requirement for separate studios, given technological advancements and the consultation feedback, the Authority will no longer require separate studios for the broadcasting of opt-out programming.

These changes will become effective as of 1st November 2018.

5.3.3 Opt-out Advertising:

The draft BSS consultation document proposed that the Authority may consider relaxing the requirement for opt-out advertising and permit opt-out advertising without the requirement for opt-out programming and/or to develop additional studios having regard to the developments in technology. The two criteria that the Authority would consider for such opt-out advertising were set out that of the likely impact on the viability of the service as well as the general impact on the viability of other services in the franchise area and the wider broadcasting sector.

The consultation posed two questions;

- 1. What is your view of the criteria that the BAI has regard to when considering a request for opt-out advertising?**
- 2. Should the BAI consider any modification/s to its regulatory approach to opt-out advertising? If yes, please set out your rationale.**

In common with the feedback on opt-out programming, there was strong support for the removal of the requirement for additional studios for the purpose of broadcasting opt-out advertising.

However, the feedback on the practice of opt-out advertising, from both the stakeholder event and written consultation submissions, was mixed and reflected the type of sound broadcasting contract the respondents held. In this regard, IBI best summarised the two conflicting views among its members in relation to this topic as follows: *Radio stations that do not support opt-out advertising view it as being in direct competition with local radio services, undermining the commercial offering of the local radio station and by extension posing a threat to the viability of the local station. This would in turn impact the level of service which the local station could provide to its audience and lessen the financial investment a station would be able to make in its news, current affairs and speech programming. Stations that support opt-out advertising see the current restrictions as impediments to allowing radio stations compete with other forms of media, which already offer tailored and targeted advertising to clients. Radio advertising is a difficult enough sell in the current climate and a blanket ban on opt-out advertising is further hampering radio's ability to sell its airtime. While there is no concrete proof that there will be a demand for opt-out advertising, some radio stations would like the market to decide that rather than it being dictated by regulation.*

Opposition to any modification of the requirement

The submissions opposed to any change to the opt-out advertising regulation cited the issues of viability and importance of localness. Current market conditions were already competitive and strained. Any increased competition in the advertising market could undermine the viability of dedicated local services and endanger the highly valued local news and current affairs and other local programming.

Wireless submitted that the local direct market was not in a position to sustain additional radio services and supported the BAI's emphasis on assessing the likely impact of opt-out proposals on the viability of existing services.

Midlands 103 submitted that there was no justification for permitting opt-out advertising on programming that is simulcast on two services. This practice was prone to abuse, creating a second income stream so these operators can undercut neighbouring stations. It was an anti-competitive practice that warrants urgent review.

Support for the Status Quo

Easy Media Broadcasting supported the Authority's approach and in particular, in considering any such proposals that the BAI shall have regard to the likely impact on the viability of the service as well as the general impact on the viability of other services in the franchise area and the wider broadcasting sector.

Support for further relaxation of the requirement

Communicorp submitted that the BAI should be cognisant of the restrictions and limitations around opt-out advertising that prevent radio stations competing with other forms of media that can offer tailored and targeted advertising to clients. The potential for regional and national stations to offer opt-out advertising would further enhance the commercial offering to advertising clients and the viability of the sector. The limited use of opt-out advertising should be permissible provided no such advertising is likely to impact appreciably on revenues for other services in the relevant area.

Classic Hits 4FM submitted that it operates a niche, multi-city licence with a unique non-contiguous transmission area. The non-contiguous nature of the service area and the fact that the licence is intended to cover multiple cities rather than a defined (and continuous) geographical area (such as national and regional stations) should allow for some opt-out advertising to be permitted. The Authority should remove the 'in limited circumstances' limitation on opt-out radio advertising and rely on the remainder of the criteria as set out in the BSS as the limitation is not necessary. Radio Nova supports the approach as set out by 4FM.

RTÉ submitted that while recognising that the Authority was consulting on opt-advertising for radio only, it would welcome an expansion of the proposed scope of this regulation to include television.

Round-table discussion Feedback

The discussion at the stakeholder event revealed the dichotomy of views in the sector. There was no consensus on the issue and the reason was evident; it depended on the type of service the stakeholder provided. In this regard, if the stakeholder was a national station looking at opt-out advertising it would look at it as an opportunity or if representing a number of local radio stations on a national grid. However, if operating a local service, it would view any opt-out in the area as a new direct competitor. There was however consensus that nobody supported the need for separate studios if a station wanted to broadcast a separate advertising stream and so that requirement should be removed.

Authority Consideration

The written submissions and feedback at the stakeholder event generally support the approach as set out by the Authority to opt-out advertising. There was clear support for the removal of the requirements for separate studios and opt-out programming. However, it was evident that there was a real concern expressed by local services of the potential for increased competition in the advertising market if opt-out advertising is permitted. The issues of viability and sustainability underlie the concerns of local services. In this regard, the current criteria for considering any opt-out advertising proposals includes regard to the likely impact on other services in the relevant franchise area and the wider broadcasting sector. Further, such proposals will only be considered in limited circumstances.

The Mediatique research report recommends that the BAI engage with bidders and existing licence holders on making greater use of the availability to offer opt-out airtime sales in different licence areas

but also acknowledges that any changes could have significant impacts and advise the undertaking of a review before widespread implementation of any such change⁹.

The Authority noted the current challenging economic environment and continued turmoil in the marketplace. The consultation feedback was generally supportive of the Authority's current approach and the Mediatique research findings validated the current approach. Accordingly, the Authority agreed that it was not appropriate to relax the requirements for the practice of opt-out advertising at this time. However, given technological advancements and the consultation feedback, the Authority will no longer require separate studios for the broadcasting of opt-out advertising.

This change will become effective as of 1st November 2018.

5.3.4 Programme Automation & Networking

The draft BSS consultation document proposed that the Authority may consider greater levels of programme automation and networking in certain circumstances and set out the four underlying criteria that the Authority would consider for programme automation and networking: 1. Impact on the audience for the service; 2. Potential to increase the viability of the service, particularly in the case of niche services; 3. in the case of community radio services, the impact on the proposals on the ethos of the service; and, 4. In the case of proposals to automate elements of the programme service, the time of day – generally, it is expected that automated content would occur during off-peak hours.

The consultation posed two questions;

1. What is your view of the BAI's approach as detailed in the Strategy consultation document in respect of the following regulatory measures:

Programme Automation and Networking

2. Should the BAI consider any modification(s) to its approach to any of these regulatory measures? If yes, please set out your rationale.

The feedback on programme automation and networking in general argues for greater relaxation in the regulation of these areas and particularly for off-peak programming. Such a change would permit broadcasters to access the benefits of new technology and in a time of severe economic challenge, it would facilitate costs savings for broadcasters. Further, there would be no impact on the broadcast output and accordingly, no impact on the audiences. There was some support for maintaining the status quo with one submission strongly opposed to any relaxation of the requirements.

Support for the status quo

Red FM submitted that it is concerned about the prospect of increased networking as it is solely to the benefit of larger operators, who can reduce costs and maintain their programming because of their scale, while smaller operators suffer. The effect of networking in cases may be to reduce local content and audience interaction in the market in pursuit of cost savings, yet, for large groups, with deep pockets, it makes no sense to claim that there is a viability argument to justify such moves. Reducing requirements for local content, or allowing larger groups to access cost savings, simply because of their scale is innately unfair to individual local operators and pushing the industry to forced consolidation in pursuit of cost savings. Any requests for networking of programmes should be weighed by the BAI in

⁹ Recommendation of Mediatique research report page 94.

terms of the impact on each of the local markets where networked programmes would replace local programmes.

Midlands 103 submitted that it supports the judicious use of automation provided that the programme commitments for the specific service are met, but only during off-peak hours. Networking should be permitted other than for news services. It is not compatible with the BAI's core objectives of promoting plurality, diversity and access.

Support for further relaxation of the requirements

Easy Media Broadcasting submitted that it strongly subscribes to the Authority's approach regarding the need to consider greater levels of automation and networking in certain circumstances, particularly in respect of the potential to increase the viability of niche services and the audience which they serve.

IBI submitted that programme automation forms part of the operations of every radio station in the country and that station management is acutely aware that the personality of the programme presenter is one of the key reasons why an audience tunes into or indeed turns away from a given station at a given time. As a result, programme automation, while used by radio stations will never become the norm.

IBI further submitted that networking of programmes should be facilitated and that the self-regulation by the radio stations on the networking of programmes reduces the requirement for strong and heavy regulation. The availability of networked programmes could ease financial strain and assist with viability and such a position would have to be given due consideration. Therefore, applications for, and enquiries about, networking of programmes should be facilitated by the BAI. 4FM submits that it supports the rationale as set out by IBI.

Communicorp submitted that at present there appears a regulatory distinction between 'automated' and 'live' which does not exist in listeners' minds. Whilst some radio content will need to be live, other programming may be improved by the automation of some elements. Today's sophisticated 'voice-tracking' software is used on stations around the world, allowing a presenter to record any content and audition its context perfectly, before it is scheduled for airing. Licensees should choose the best way of delivering output to its listeners of the highest quality. The BAI should judge by what is produced, not how it is delivered. There is nothing inherently inferior about material which is not live.

Communicorp further submitted that networking allows programmes to be shared across more than one station and this can allow listeners over larger areas to enjoy top quality programme offerings. Smart networking can now allow for much localisation of remote transmitters, where listeners can still hear their local content, fed seamlessly into the networked feed. Such an approach also lends for efficiencies which are critical at this stage in the radio medium's life.

Conradh na Gaeilge submitted that it is strongly recommended that Irish language material be created and broadcast by the same methods that are being used for other material being broadcast by the station and that this would be in alignment with the aims of the station. That being said, if presenters who are capable of creating and broadcasting content through Irish can't be found, other methods are recommended to fulfil language obligations according to the appropriate rules. Through the syndication of Irish language material from other stations, local stations who cannot broadcast Irish content in any other way can ensure that they don't fail in meeting their obligations.

Radio Nova submitted that it does not believe there is any necessity to impose policies or restrictions on programme automation and that networking of programmes should be facilitated by the BAI.

Wireless Group submitted that it supports a flexible and responsive regulatory regime which allows broadcasters to access the benefits of new broadcasting technology and believes that the BAI's focus should be on programming output rather than methods of production; the quality of the programming rather than how it was produced. There will be cases where networking and automation will help viability, and these should be approved by the BAI where no change will result to the character of the service. In the case of proposals to automate elements of the programme service, a relaxed regime should apply to off-peak day parts with lower listenership.

Authority Consideration

The feedback reveals broad support for allowing greater autonomy for broadcasters to decide on the level of programme automation and networking that they include in their schedules. It is in their best interest to serve their audiences and accordingly, they are best placed to determine how to provide quality programming to their audiences, whether automated or networked. Further, developments in technology support the provision of high quality programming, live, automated or networked.

Regarding programme automation, the Authority currently permits automated programming on application during the overnight schedule, normally 1am – 7am, which the majority of stations avail of. Otherwise, automation has been permitted in off-peak hours based on a case-by-case basis.

Regarding programme networking, there are a number of stations that share programming and in particular, the niche music services including iRadio, Radio Nova, Sunshine and 4FM. Newstalk provides a news feed to a large number of independent stations. Otherwise networking is not a common feature across the independent radio sector.

It is noteworthy that the majority of submissions, while seeking a relaxation of the requirements, still set out criteria that the Authority should consider when assessing any such proposals. The matter of the impact on local content and local radio is threaded through suggested criteria. In this regard, the Authority agreed that a relaxation of this requirement could potentially negatively impact on local content and audiences. Further, it could impact on the sustainability of local services. Accordingly, the Authority agreed that it would not amend its approach at this time. There will be no changes made to the regulatory process for programme automation and networking.

5.3.5 Sharing of Non-programme Functions:

The draft BSS consultation document set out the Authority's proposed approach to the sharing of non-programming functions including the following:

In the case of commercial radio services, the BAI shall continue to consider proposals related to the sharing of non-programming functions such as finance, engineering and administration. It may also be open to considering proposals for a further extension of shared services, provided that this does not impact on the delivery of the core programme service. The BAI shall have particular regard to the nature of the proposed service when considering such matters.

The consultation posed two questions;

1. What is your view of the BAI's approach as detailed in the Strategy consultation document in respect of the following regulatory measures:

Sharing of non-programming functions

2. Should the BAI consider any modification(s) to its approach to any of these regulatory measures? If yes, please set out your rationale.

There was a consensus across the consultation responses that the BAI should not be involved in this aspect of a radio stations operations.

IBI submitted that the sharing of non-programme functions must be permitted. It provided radio stations with cost savings which allow for further investment in other areas of the radio station thus ultimately benefitting the audience. The involvement of the BAI in regulating non-programme functions of a radio station is micro-management and something that the BAI should not be involved in.

Communicorp submitted that licensees are best-equipped to judge how to deliver their non-programme functions; they will naturally seek to operate their businesses as efficiently as possible. The location of non-programme functions is not an area which the Act requires the BAI to consider and thus not one in which it should concern itself.

Conradh na Gaeilge submitted that the sharing of non-programme functions should be recommended, especially for new or emerging broadcasters. This would take the workload off the station itself and would encourage learning and support by sharing information between groups because of the continuous contact which would be facilitated because of it.

Radio Nova submitted that the sharing of non-programme functions should be permitted.

Wireless submitted that the BAI should focus its regulatory resources on aired output rather than back office and non-programming functions such as finance, engineering and administration. Shared services can play an important role in supporting the viability of programming investment. Therefore, the BAI should not overly concern itself about how stations structure back office functions provided that they are meeting their programming obligations.

Authority Consideration

It is evident from the feedback that the commercial radio operators believe that the BAI's approach to the area of the sharing of non-programming functions is excessive and unnecessary.

While the respondents contend that this regulation is not required, the Authority is responsible for the regulation and development of the independent radio sector and this includes having regard to how the sound broadcasting services are provided. Accordingly, the Authority agreed that it was not appropriate to remove this regulation at this time. However, taking cognisance of the feedback, the Authority agreed that the regulation would move from an 'approval' requirement to a 'notification' requirement.

This change will be effective as of 1st November 2018.

5.3.6 Studio location:

The draft BSS consultation document set out the Authority's proposed approach to the location of the main studios of a radio station as follows:

The BAI shall require that broad-based local radio and community radio and television services locate their principal studios in the relevant franchise areas. In the case of other commercial services, including niche services and operators of content provision contracts, the BAI may permit co-location with another service(s) or location of the service outside of the franchise area, provided that such location does not result in listeners or viewers being unduly affected by the proposed arrangements.

The consultation posed two questions;

1. What is your view of the BAI's approach as detailed in the Strategy consultation document in respect of the following regulatory measures:

*** Studio location**

2. Should the BAI consider any modification(s) to its approach to any of these regulatory measures? If yes, please set out your rationale.

The feedback was very supportive of the proposed approach with only one opposing view expressed in the submissions.

Support for the approach

Easy Media Broadcasting submitted that it is in total agreement with the BAI's decision to recognise that particularly in the case of niche services, the Authority may permit co-location with another service or location of the service outside of the franchise area, provided that such location does not result in listeners being unduly affected by the proposed arrangements.

Midlands 103 submitted that local radio stations should be based locally. They are a focal point for their areas, and their presence is a key part of an area's character.

IBI submits that it supported what is set out regarding studio location and welcomes the flexibility to explore co-location should the situation warrant it. 4FM and Radio Nova also supported this approach.

Wireless Group submitted that it supports the flexible policy of studio location as set out in the consultation which mirrors its recommendation of regulation focus being on broadcasting output, rather than production inputs and the internal operating structures of stations.

Support for further relaxation of the requirement

Communicorp submitted that today's technology allows radio stations to broadcast from anywhere with ease, just as it allows overseas businesses to operate with ease from Ireland. Radio should be no different, and the BAI should not stand in radio's way of delivering the best content from wherever it is most appropriate within Ireland. Listeners attach value to the content they hear and the relationship they build with the presenters and they care little about the location of the studios. Whilst local radio stations have traditionally been based in their areas, originally for technical reasons, it lends little, if any, intrinsic value to the listener. In the UK and United States there is a much more liberal approach to studio location, which has not impacted adversely on audiences.

Authority Consideration

The feedback is broadly supportive of the approach to studio location as set out in the consultation document including the focus on commercial services other than local services. However, there is one

submission that argues for a complete relaxation of this regulation as technological developments and changing listener habits make this regulation outdated and redundant.

Given the current structure of the broadcasting sector, including the long-established locations of the local radio stations and the strong level of support arising from the consultation for the Authority's approach to studio location, the Authority agreed that its current approach was appropriate.

5.3.7 Any other regulatory matters:

The draft BSS consultation document included a question for potential respondents to submit views 'on any other regulatory policies and practices that the BAI could adopt with a view to realising its vision'.

Ten respondents submitted views on various regulatory policies and practices that the Authority could adopt to realise its vision and covered a number of areas including:

- Amending the General Commercial Communications Code: a relaxation of the rules pertaining to radio is necessary if radio is to compete on an even playing field with other media operators and in particular, digital media operators. The concept of transparency should be the only key focus of the rules.
- Proactive support of the broadcasting sector: The BAI must work with the industry to attain greater sustainability and on initiatives to improve commercial performance. Reference is made to the Mediatique report finding of the need for a concerted radio industry co-operation to reposition radio as a premium advertising product.
- A more flexible regulatory approach.
- Work with interested parties to develop a licensing plan and new business models for consideration by the Authority
- Greater support for Irish Language Programming: Rules should be established for when and how much Irish language programming should be broadcast, and greater awareness of Irish language listeners needs is required.

Authority Consideration

A significant level of the feedback received under this section re-iterated matters raised by the respondents to other sections of the consultation and accordingly, was considered when drafting the revised BSS where relevant. However, some of the feedback relates to other BAI policies and has been circulated for use to inform the relevant area of work, for example, the views on suggested revisions to the General Commercial Communications Code.

Appendix 1

BAI Broadcasting Services Strategy (November 2018)

Contents

- 2. Introduction to the Broadcasting Services Strategy
- 3. Context for the Broadcasting Services Strategy
- 4. BAI's Vision
- 5. Realising that Vision

1. Foreword

The broadcasting sector in Ireland may sometimes appear like a small boat adrift in an unsettled ocean, such have been the global challenges in recent years. However, the wise sailor knows that in a tempest one must first find a fixed point to navigate by. That is the ultimate purpose of a Broadcasting Services Strategy.

The BAI Strategy Statement for 2017-19 committed the Authority to *'develop and implement a revised Broadcasting Services Strategy that continues to facilitate dynamic licensing policies and plans, and promotes quality programming in the Irish language'*. This BSS document delivers on that commitment.

The first BSS, which was published in March 2012, anticipated change and evolution in the media landscape. However, the degree of the change since then has been significant and, in particular, the pace of change accelerated exponentially and continues to do so. The broadcasting environment is now one of significant disruption and challenge. In preparing this revised BSS, the BAI was mindful of this environment, the legislative requirements and key economic, regulatory and technological factors.

This new BSS has been informed by extensive public consultation including a focussed stakeholder event. We are grateful to all those who participated or who made submissions. It has also been informed by an independent assessment of the broadcasting landscape which was undertaken on our behalf by Mediatique and by a survey of viewer and listener attitudes conducted by Kantar Media. The latter revealed a broad satisfaction with the existing range and quality of content available on broadcast media while identifying scope for even more diverse and culturally relevant content.

The BAI envisages an Irish media landscape that reflects and shapes who we are. We believe that the people of Ireland should be served by a vibrant and dynamic broadcasting sector. To this end, the BSS aims to ensure that Irish audiences are served by a diverse range of broadcasting services that are open and pluralistic in nature.

Central to realising this goal is an optimum mix of national, regional, local, community and niche broadcasting services. The strategy has a number of more specific related objectives including facilitating a mix of voices, opinions and sources of news and current affairs; promoting quality programming in Irish language; promoting creativity and innovation throughout the Irish audio-visual sector; and working with stakeholders to achieve greater sustainability

That is the broad framework. It is based on a clear vision and goals. We think that it will facilitate the growth and development of the Irish media landscape in the period ahead.

Pauric Travers

2. Introduction to the Broadcasting Services Strategy

The Broadcasting Authority of Ireland

The Broadcasting Authority of Ireland (BAI) is the body responsible for the regulation of broadcasting in Ireland. Its functions and responsibilities are set out in the Broadcasting Act 2009 (“the 2009 Act”). Section 26 (1)(a) of the 2009 Act requires the BAI to “*prepare a strategy for the provision of broadcasting services in the State in addition to those provided by RTE, TG4, the Houses of the Oireachtas and the Irish Film Channel (not yet established)*”.

Authority’s Strategy Statement

The first BSS, which was published in March 2012, anticipated change and evolution in the media landscape. However, the degree of the change since then has been significant and, in particular, the pace of change accelerated exponentially and continues to do so. The broadcasting environment is now one of significant disruption and challenge.

The BAI was cognisant of this continuous change and the ongoing structural and financial challenges facing the broadcasting sector when devising its Strategy Statement 2017 – 2019. A key deliverable further to this statement is to “*develop and implement a revised Broadcasting Services Strategy that continues to facilitate dynamic licensing policies and plans and promotes quality programming in the Irish language*”. The BSS is consistent with, and reflects, the mission, vision, values and strategic goals of the BAI as set out in this Strategy Statement.

The BSS provides the framework for the formulation of licensing plans and associated licensing activities by the BAI. It is one of the key means by which the Authority fulfils many of its statutory objectives and, in particular, its key statutory objective of endeavouring to ensure that the number and categories of broadcasting services in the State best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity. It also supports the provision of open and pluralistic broadcasting services in Ireland.

Broadcast Environment

To support an informed and responsive revised BSS, the BAI commissioned an independent expert assessment of the broadcasting landscape. This included consideration of current trends and likely drivers of change nationally and internationally; potential for new services and models; sustainability of revenues; the needs and preferences of the audience; consumer behaviour; platform and distribution developments; and, the regulatory framework. The research report published is entitled ‘*A report on market structure, dynamics and developments in Irish media*’. This research report was supported by audience research conducted by Kantar Media to identify the main needs and preferences of broadcast viewers and listeners in Ireland. The research was also informed by the BAI’s public call for submissions from parties interested in the provision of new analogue sound broadcasting services on the FM band to add important insight on the potential for new services, which was further interrogated in the course of the research project.

These research and consultation activities have facilitated the BAI to provide a revised BSS that facilitates a framework for the licensing and regulation of the independent broadcasting sector that is cognisant of the current and future challenges facing the sector in a rapidly evolving media landscape,

one that will ensure the continued provision of culturally relevant and diverse content for Irish viewers and listeners.

The research, submissions of interest and the submissions received in response to the public consultation and the feedback garnered at a targeted stakeholder event have greatly informed and shaped the Authority's decisions in respect of the final BSS. This information, excluding personal and/or commercially sensitive information, and other BAI publications and information are available on www.bai.ie.

Broadcast Services

The BAI's intentions for this BSS are to facilitate the long-term sustainability of the independent broadcasting sector, to support and foster plurality and diversity of content for Irish audiences including in the Irish language, and to support innovation and development, now and into the future.

The BSS outlines the BAI's vision for the optimum mix of broadcasting services, which is centrally concerned with the content that is available to Irish audiences. It articulates the policies that will guide the licensing and associated regulatory activities of the BAI to support the achievement of its stated objectives and the commitment of the BAI to being responsive to the ever-changing media landscape. It sets out the principles that the BAI will apply when conducting its statutory functions and regulatory practices over the lifetime of the BSS, in order to facilitate the realisation of that vision.

3. Context for the Broadcasting Services Strategy

There are several influencing factors fundamental to the preparation of the Broadcasting Services Strategy. There is the existing broadcasting environment, including the current mix of services already established and available to Irish audiences, the legislation which underpins the establishment and licensing of broadcasting services in the State, and a range of economic, regulatory and technological factors impacting upon the provision of services. Each of these is discussed in more detail below, informed by the BAI's research findings.

Legislation

The Broadcasting Act 2009 envisages that three principal strands of broadcasting will shape the Irish broadcasting environment – public, commercial and community. From an audience perspective there may be similarities in some of the content delivered by the various broadcasters within these strands, however, each has characteristics or features unique to that strand such as: the way in which they are owned and controlled; the means by which, and the persons to whom, they are accountable; the mechanisms by which they are funded; and, of course, the nature of the content provided. The 2009 Act prescribes specific objects for each of the public service broadcasters¹⁰ and sets out the defining characteristics of community broadcasters¹¹.

The role of the BAI is to facilitate and support the continued provision of a range of television and radio services within the three principal strands of broadcasting in order to realise the vision of the statute and to ensure vitality in the mix and range of services available to Irish audiences. This is achieved across the full range of the BAI's statutory functions including, in particular, through the licensing of television and radio services.

The 2009 Act is prescriptive in its requirement of the BAI to develop and implement a licensing plan and in respect of the types of broadcasting contracts into which the Authority may enter as well as the mechanisms for the award of such contracts. The statute also shapes and influences the broadcasting environment through a range of provisions such as media concentration requirements, news and current affairs provision by broadcasting services, etc. Further provisions of the 2009 Act impose a range of advertising and programming regulations, as well as a range of contractual conditions on broadcasters.

Current Landscape

The Irish broadcast media market is mature and competitive. It comprises multiple business models and numerous operators providing a range of both domestic and international audio and video content. It is characterised by evolving consumer behaviour around content consumption, where and when desired, increasing fixed line and mobile connectivity, and growing device take-up, including smartphones, tablets and connected TVs.

It has experienced significant structural and behavioural changes over the last ten years in common with international trends, leading to greater complexity and competition for both the radio and television sectors. These drivers of change can be categorised under four broad headings; technology and

10 Section 114 and Section 118

11 Section 64

connectivity; ownership of connected devices; changes to consumer behaviour; and, changes to corporate strategy.

Technology and Connectivity

The high-level of broadband penetration and increasing download speeds year-on-year are allowing individuals to access internet delivered services which are viable complements to, or substitutes for, traditional broadcast media.

Ownership of Connected Devices

The ownership of traditional radio and TV sets coupled with the ownership of internet connected devices such as smartphones, tablets and smart TVs, is enabling the consumer to have greater control over their engagement with broadcast media (e.g. personal video recorders are now in 59% of Irish homes, allowing viewers to record and store content, and on-demand services are now available to anyone with a broadband connection).

Changes in Consumer Behaviour

Consumers are making greater use of on-demand services and viewing/listening outside the traditional broadcast window, on multiple devices, in and out of the home.

Changes to Corporate Strategy

Content is now packaged in several ways including via multiple outlets across free and pay, subscription and discrete payments (e.g. Virgin Media One and RTÉ on-demand services, Netflix and Amazon now provide over-the-top on-demand access to deep libraries of high quality content).

Current listenership and viewership performance figures reveal that Ireland remains a country strongly attached to broadcast radio and TV: 82% of adults 15+ age in Ireland listen to radio stations every day (JNLR Report, April 2017), while 67.5% of all individuals watch live TV channels everyday (TAM Ireland figures for 2016). The Kantar audience survey revealed an increasingly complex picture of content consumption within a landscape that is still primarily led by broadcast media. There is overall satisfaction with the nature and range of broadcast content provision and the output and performance of Irish broadcasters.

- **Television Broadcasting**

Current Structure

Television services in Ireland include public service, commercial and community stations, provided principally on a national level across a range of platforms, including terrestrial, satellite, cable and IPTV. Public broadcasting television channels are provided by RTÉ and TG4. RTÉ's most popular services include RTÉ 1 and RTÉ 2. TG4 provides a valuable Irish language service to the island of Ireland. Virgin Media Television Limited¹² is the only privately-owned terrestrial alternative to the public service television broadcasters and operates four services – Virgin Media One, Virgin Media One+1, Virgin Media Two and Virgin Media Three. RTÉ1, RTÉ2 and Virgin Media One achieve significant viewership amongst Irish audiences.

¹² Formally TV3 Television Network Limited.

Irish households are also able to receive the Houses of Oireachtas TV, and a combination of UK and international channels (including BBC, Channel 4 and Sky One) depending on which TV platform/service the household uses.

Since the late 1990s, a small number of additional commercial and community channels have been introduced on cable and satellite systems, providing additional choice to Irish audiences accessing those systems, e.g. eir Sport. There are two community television services, in Dublin and Cork.

Current Dynamics of the TV Landscape

The television sector has experienced major changes over the past five years, with viewers benefiting from greater choice of content, prices and providers, as well as an increasing choice over when and where they can watch video content. This mix of channels and services provides Irish audiences with a wide choice of viewing options (broadcast, catch-up, on-demand) on multiple devices (at home and on the move). This presents challenges for the sustainability of Irish content funding, as international channels can generate income from the Irish market but invest very little in Irish content. This increase in choice also challenges the maintenance of current levels of viewership to Irish channels.

The new players in the Irish TV marketplace offering new forms of online distribution are providing competition for the traditional pay TV providers and free-to-air platforms the most common form of which is subscription video-on-demand (SVOD) services. The largest such provider is Netflix which can now be found in nearly a third of Irish households. Recent entrants to the market are Amazon Instant Video and Now TV. Broadcasters have grown their user bases for video-on-demand services such as Virgin Media player and RTÉ Player.

A significant trend in TV content viewing is the move among younger listeners to alternative devices and formats. However, broadcast television viewed on the TV set dominates total video viewing. There is a decreasing trend in live viewing, with increasing trends in recorded content and on-demand viewing.

Future Dynamics of the TV Landscape

It is predicted that over the coming years the penetration of connectivity and connected devices will increase, in turn continuing to drive consumption of video content on a non-linear basis. Live TV continues to decline in share but at a slower pace, influenced by factors such as late adopting homes and the importance of live sport, news and entertainment. However, live TV will remain the major component of all TV viewing in 2022. Audiences will make greater use of non-TV devices to view TV content. There will be relative stability in the platform market. The key change between now and 2022 will be the continuation of the shift to cheaper pay TV bundles. The level of non-TV homes will increase slowly and 41% of households will have subscription video-on-demand.

The sustainability of the Irish television sector and the maintenance of viewership, balancing audience needs and ensuring culturally relevant content, will be significant priorities.

- **Radio Broadcasting**

Current Structure

At national level, the Irish radio sector now consists principally of seven terrestrial radio services, four provided by RTÉ, and three of which are licensed by the BAI. They provide a mix of speech and music-driven services, as well as Irish language and classical music services. In addition, RTÉ provides a range of specialist services on digital platforms.

Regional radio services primarily target youth audiences, while, at local level, the radio sector consists of a mix of music-led and more broad-based, music and speech services. Community radio services also feature across the country, targeting primarily small geographical communities and communities of interest.

RTÉ's radio services are well established and cater for audiences at a national level with a range of news and current affairs, music and Irish language services, principally serving audiences aged 25 and over.

Regional stations were developed in the South East, South West, North West and Midlands/North East areas and these provide services to younger audiences which are also served by local services in the urban areas of Dublin and Cork. Over the mid-to-late 2000s, a number of niche music services commenced broadcasting, mainly based in Dublin, but with one broadcasting on a multi-city basis. A radio service provided on a quasi-national basis caters for Christian interests.

Community radio is prominent in Ireland and a strong network of stations has developed since the first services were licensed on a pilot basis in 1995. Regulatory policy and more recent statutory developments in this area are regarded as providing a strong underpinning for community radio in comparison with other European jurisdictions. The most important dimension of community radio services is the involvement of local communities in all aspects of the service.

Up to thirty temporary or special event sound broadcasting contracts are awarded each year by the BAI serving, for example, college festivals, training for students, annual events and pilot community services.

Finally, institutional sound broadcasting services remain a part of the mix of services providing a valuable service to their listeners, particularly those in hospitals.

Current Dynamics of the Radio Landscape

The radio market is mature, with a dominance of analogue FM radio services. It is now facing similar challenges to those of the television sector; a decline in younger listeners and connectivity – streaming, on-demand and downloads. It now operates as part of a wider audio market. There is also a weakness in the value advertisers place on the radio brand.

Radio listening in Ireland continues to be extremely strong (82% reach for Adults 15+ in 2016, JNLR) and is relatively very strong in a European context. In addition to the well-performing portfolio of public service stations, independent commercial operators enjoy widespread popularity at national, regional, and local levels. While overall listening and reach have been relatively stable since 2010, statistics for the whole population obscure a significant drop in radio consumption by younger listeners. Traditional

radio sets (standalone or in-car) are still the dominant devices for listening to radio among all Irish listeners including the younger audience and this reflects the high level of ownership of such devices, the times of the day with the highest listenership and listener habits.

Future Dynamics of the Radio Landscape

Over the next five years, increased connectivity will lead the radio market to become increasingly converged and crowded as more listeners gain access to new forms of audio entertainment. Nevertheless, it is forecast that live radio will remain prominent, with a slight decline in radio listening by 2022 but reach will remain stable. Increased connectivity and device penetration will drive growth in alternative audio formats such as owned music, podcasts/radio catch-up and streaming, with the latter predicted to be the likely source of most growth. The growth of podcasts should be strong in Ireland, particularly given the popularity of talk radio. Irish audiences think highly of Irish radio as evidenced by the Kantar audience survey. The development in podcasts will depend on the major broadcasters who have the capacity to produce and market podcast content, building cross-format brands.

Regulatory Policy and Practice

The 2009 Act prescribes to a great extent the regulatory role of the BAI, including a number of regulatory measures relevant to the BSS. These include, for example: limits imposed on the ownership and control of broadcasting services; the application of the derogation in respect of the statutory 20% news and current affairs requirement on commercial and community radio services; the amount of advertising time available to certain broadcasters; the restrictions imposed under programming and advertising codes; the requirements imposed on applicants for licences, both in the application process and during contract negotiations and the manner in which services are subsequently regulated from a compliance perspective.

The BAI is committed to regulatory policies and practices that are fair and proportionate, that balance the needs of the sector with the needs of the Irish audiences. The BAI will explore and support regulatory developments that could potentially enhance the sustainability, development and creativity of the sector. The BAI is committed to continually reviewing and improving its administrative capabilities and to seeking greater effectiveness and efficiencies in its regulatory practices. This will include faster response times on regulatory engagement and more regular communications with stakeholders.

The BAI commits to reviewing the regulatory environment governing commercial and community radio on the publication of this BSS.

Economic Environment

Sources of Funds

Irish broadcasters are funded in a mix of ways. Public service broadcasters receive public funding to varying degrees and are also commercially active, primarily through on-air advertising activities. RTÉ is required under the 2009 Act to exploit commercial opportunities in the pursuit of its statutory objects, although public funding generally tends to account for between 45% and 55% of its total funding.

A mix of public funding (including a portion of the television licence fee) is the principal means of funding of the Irish language television broadcaster, TG4.

The main source of funding for commercial television and radio broadcasters is advertising revenue, while the community broadcasting sector depends mainly on government grants and volunteer involvement.

A portion of the television licence fee (currently 7%) is made available to a broadcast fund, operated by the BAI and accessible to all broadcasters targeting Irish audiences. The fund is disbursed through a scheme or schemes, including a programming scheme for television and radio programme initiatives and an archiving scheme for the archiving of programme material produced for broadcast on television and radio.

Current and Predicted Economic Dynamics

As in most mature media markets, broadcasting advertising income has been under pressure in Ireland as a result of structural and cyclical challenges. However, the impact of the significant falls in revenue due to the recession that started in 2008, coupled with Ireland's specific characteristics (a small nation sharing a linguistically porous border with much larger markets), has meant that the challenges in the advertising sector specifically, even as the underlying economy improved from 2014, have been peculiarly acute. Since 2007, when TV advertising reached a high of €311m and radio advertising hit €140m, the trend has been downward for both TV and radio advertising over the last ten years. Revenues achieved for 2016 were €240m and €127m for TV and radio, respectively. The market has been further impacted by Brexit and political uncertainty has compounded pressure on advertising revenues for the broadcasting sector. Research forecasts advertising revenues for both radio and TV will be flat at best over the next five years, following a downturn in 2017 continuing in 2018.

Despite the structural changes including the migration to digital platforms and content, both the radio and television sectors perform strongly in listenership and viewership terms. However, the radio sector has not succeeded in achieving a premium brand advertising rate despite its significant listenership. Also, the advertising revenues for radio and television are below pre-recessionary figures. The growth in the preference of advertisers to use digital media is increasing and will further pressurise traditional media revenues. The sector will need to adopt new business models if it is to continue to develop and attract viewers and listeners, particularly younger audiences.

Like other broadcasters in the Irish radio sector, community radio broadcasters face challenges on the economic front, particularly in view of the significant reductions in the level of public funding available to support such services. The representative community radio body, CRAOL, has been highlighting the significant financial challenges facing the community stations. The challenge not only impacts on the operational aspects of the services, but the sustainability and subsequent viability. Accordingly, the challenges are both operational and strategic. The level and availability of grants and other public funding is therefore impacting on the development of existing services, as well as any potential additional community broadcasting services.

Technological Factors

The BAI's role includes the management and planning of spectrum for suitable frequency bands for analogue radio and to plan for the development of Digital Terrestrial Television (DTT) and digital radio platforms. Regarding radio, spectrum continues to be available in most parts of the country to support the development of further analogue FM services. However, spectrum is currently limited regarding such radio services broadcasting to large geographically-spread audiences.

The development of DTT in Ireland has to-date been prevented by the level of costs to establish, and the costs of access to, such platforms. The cost barriers to entry are continually monitored by the BAI to ensure that any opportunity to progress DTT is identified.

The BAI will explore the potential for digital radio with the broadcasting sector over the next few years, cognisant of the impact the evolution of technologies, and the associated increase in devices, is having on listeners' behaviours.

Technological Developments

In common with all territories, the broadcast landscape in Ireland is subject to a set of structural challenges that have led to increasing complexity and competition in the provision of video and audio services. As stated previously, these relate to consumer behaviour, technology and business models. Broadcast viewers are increasingly able to access content from new providers across a range of networks and connected devices. This extends choice in Irish households but adds a degree of complexity to the landscape, not least by aiding the entry of international players to the market.

Traditional providers of media need to continue to evolve their business models. TV broadcasters have launched HD services and broadcast Video-on-Demand (e.g. Virgin Media Player, RTÉ player) and are experimenting with new forms of dynamic advertising, but there will be more pressures to come.

The Platform Market

The TV platform market in Ireland is competitive. It is dominated by the pay TV platform (65% in 2017) with Sky and Virgin being the two largest platforms, with free-to-air satellite and DTT (via Saorview and Freeview) offering free alternatives with fewer channels and less functionality. Internet Protocol TV (IPTV) is also emerging as a competitive alternative mode of TV transmission via eir TV and Vodafone. Recent noted trends are the increase in popularity of free TV options at the expense of pay TV and the 'skinny bundle' options from IPTV providers at the expense of the traditional 'big bundle' pay TV subscriptions.

Pay TV Dynamics

While there is a recent notable growth in household take-up of free TV, the pay TV market is currently protected to a large extent from a significant switch to free-to-air options by a number of factors including the demand for sport, film and entertainment premium content that is only available behind a pay wall and the convenience and ease of use, combined with technological superiority in the form of personal video recorders and video-on-demand access as standard.

Communications services bundling

The convergence of media is evident in the bundling of TV content with broadband, fixed and mobile telephony offerings by the main providers Virgin Media, Sky, eir and Vodafone. The trend is a shift in focus from TV to connectivity (fixed and mobile broadband).

Radio consumption - devices and networks

The majority of radio listening in Ireland continues to take place on traditional sets, both standalone and in the car. In 2016, 92% of households had an FM/AM radio and 90% had an in-car radio, comparing to a DAB radio set penetration of only 20% (JNLR Media and platform report 2016, February 2017). Despite the recent growth in DAB take-up among the population from 10% in 2012 (JNLR Media and

platform report 2016, February 2017), it still only accounts for a small proportion of overall listening, partly because 55+ listeners, who are proportionately heavier listeners of radio, are less likely to own DAB sets. Mobile devices (e.g. smartphones, MP3 players) and computers are popular among younger listeners reflecting their growing preference to consume audio on mobile devices. However, despite the relatively widespread ownership of smartphones, overall radio listening on these devices is constrained by mobile data allowances and cost, low uptake of Irish online/app based radio, and pre-existing user habits. That is, most listeners are accustomed to listening through traditional sets, and they are more likely to listen to the radio at times of day when they have access to traditional/car radios.

Despite the significant digital disruption and changes in consumer behaviours, particularly in the younger demographics, the traditional radio and TV broadcasting services will continue to be dominant in the Irish marketplace over the coming years. The sector has proved to be very resilient in Ireland but now needs to evolve to find new ways to prosper in the changing media landscape.

4. BAI's Vision

The ultimate purpose of the Broadcasting Services Strategy is to ensure that Irish audiences are served by a diverse range of broadcasting services that are open and pluralistic in nature. Central to the BAI's vision is choice and diversity for audiences and an expectation that all audiences will be served. It will provide a framework for an Irish media landscape that reflects and shapes who we are.

The vision is encapsulated as follows:

The people of Ireland will be served by a vibrant and dynamic broadcasting sector consisting of a mix of public service, commercial, community and institutional broadcasters, who provide content and programming that caters for and reflects the diversity within Irish Society.

At the core of this optimum mix is a range of national, regional, local and community broadcasting services, complemented by an additional mix of niche services. Such services may be provided by commercial or not-for-profit business models to provide a diverse range of content, including in the Irish language and programming choices to Irish listeners and viewers.

The Broadcasting Services Strategy has a number of specific objectives as follows:

- *To facilitate a mix of voices, opinions and sources of news and current affairs in audio-visual media which enhances democratic debate and active citizenship in Ireland;*
- *To foster a media landscape that is representative of, and accessible to, the diversity of Irish society;*
- *To foster and promote quality programming in the Irish language and to encourage the development of Irish language initiatives across the broadcasting sector;*
- *To encourage creativity and innovation as distinctive features of the Irish audio-visual sector;*
- *To work with stakeholders to support the achievement of greater sustainability for the Irish audio-visual sector; and,*
- *To ensure an increased focus on creativity and innovation across all BAI activities.*

The BAI acknowledges the importance of the current mix of television and radio services that make up the broadcasting landscape in Ireland; the suite of independent commercial, community and institutional

broadcasters coupled with the public service broadcasters across both the television and radio broadcasting sectors.

Television

The BAI considers that a national, commercial television service is vital to the achievement of diversity and plurality in the sources and content of news and other programme content available to serve audiences. In this regard, the BAI recognises the important role that public service television channels play in the overall mix.

The specialist digital television services licensed under content provision contracts also add to the diversity of choice for Irish viewers.

The BAI will facilitate and encourage applications from other parties wishing to establish television services on cable, satellite and digital terrestrial television platforms, particularly from community television groups and Irish language groups.

Radio

The BAI considers that national, local and community radio services are essential components of the radio landscape in Ireland, while regional radio fulfils the provision of services to youth audiences at present. The BAI is open to exploring other service types, including niche and Irish language radio services, and the regulatory basis upon which such services might be licensed, developed and sustained.

This broad range of independent television and radio services is vital to the achievement of the BAI's stated mission to promote a plurality of voices, viewpoints, outlets and sources in Irish media and further, to foster diverse and culturally relevant quality content for Irish audiences. The BAI values this landscape and will continue to work in collaboration with the sector to sustain and progress its valuable contribution to Irish audiences.

Broadcast Platforms

Digital Terrestrial Television

The BAI is statutorily obligated to endeavour to arrange for the establishment, maintenance and operation of three national television multiplexes. The BAI has discharged these statutory duties through the operation of a multiplex licensing process in 2008, which was unsuccessful due to the withdrawal of the applicants from commercial discussions. The barriers to entry were significant and continue to be so, as evidenced in the independent review reports on the marketplace commissioned by the BAI (2013 & 2017). The BAI will continue to analyse the marketplace and assess the capacity for the potential to establish such multiplexes.

Digital Radio Broadcasting

The BAI is statutorily empowered to arrange for the establishment, maintenance and operation of sound broadcasting multiplexes. The BAI will explore the opportunities for establishing digital audio broadcasting through consultation and working with the industry, and conducting an analysis of the Irish marketplace and international developments.

5. Realising that Vision

The services, content and platforms that may be licensed by the BAI are framed by Part 6 of the 2009 Act. It sets out a range of broadcasting service, content provision and multiplex contracts that the Authority may enter into, as follows:

- Commercial Sound Broadcasting Contracts (section 63)
- Community Radio Sound Broadcasting Contracts (section 64)
- Temporary and Institutional Sound Broadcasting Contracts (section 68)
- A Television Programme Service Contract (section 70)
- Content Provision (Television & Sound broadcasting) Contracts (section 71)
- Community Content Provision (Television & Sound broadcasting) Contracts (section 72)
- Electronic Programme Guide (EPG) Contracts (section 74)
- Multiplex Contracts - Digital Terrestrial Television (DTT) (section 131)
- Multiplex Contracts - Digital Radio Broadcasting (section 136)

Over the period of this BSS, licensing plans will be developed based on up-to-date market information, both economic and environmental data, including audience needs and preferences. The BAI's licensing activities will aim to achieve the objectives of fostering a media landscape that is representative of, and accessible to, the diversity of Irish society, that facilitates pluralism, and offers a wide variety of quality content to viewers and listeners, including in the Irish language. Contracts for relevant broadcasting and content provision contracts will be awarded using a combination of competitive and open licensing processes. The potential for DTT and digital radio broadcasting will be explored through research activities and in collaboration with the sector.

The mechanisms by which this will be achieved are as follows:

- **Commercial Sound Broadcasting Contracts – Section 63**

The BAI will develop licensing plans for the provision of commercial sound broadcasting services as the need arises. Competitive licensing processes will be operated in respect of all such contracts, which includes the potential for a fast-track licensing procedure. The BAI will consult with the sector when formulating licensing plans, in particular, on the make-up of franchise areas and having regard to factors such as diversity, plurality, economic viability and spectrum availability.

When signs of improving revenues and profitability are evident, the BAI commits to exploring the licensing of at least one new sound broadcasting service on the FM band. The Authority will proactively monitor industry trends and the impact on various initiatives to support the broadcasting sector over 2019, including the Authority's Sustainability Working Group.

The BAI commits to supporting the continued development of the commercial radio sector and to achieving greater sustainability.

- **Community Sound Broadcasting Contracts – Section 64**

The BAI's approach to the licensing of community sound broadcasting services is informed by the organisation's experience in licensing such services since 1995. In particular, it recognises the organic way in which such services become established and developed. The approach facilitates the BAI in responding to developments in community broadcasting flexibly and in a manner that recognises the resources available to the BAI in support of such activities and/or, indeed, the resources available to a prospective community broadcasting service. For this reason, an open approach to licensing generally shall be operated by the BAI in respect of community radio services. A community sound broadcasting contract can be awarded for a period of up to ten years generally.

Community radio groups are permitted to apply for both 30-day temporary and 100-day pilot community sound broadcasting contracts. In applying for any of these sound broadcasting contracts, the BAI advises that the community ethos should be imbued in the service from the outset. The BAI encourages prospective services to consider appropriate means of engaging and equipping members of the community to participate fully in their service. As set down in section 64 of the 2009 Act, the BAI expects the following three tenets shall form the basis of a community radio applicant qualifying for a community sound broadcasting contract:

1. members of the management and staffing structures are representative of, and accountable to, the community concerned;
2. the broadcast programme material will specifically address the interests of, and seek to provide a social benefit to, the community concerned; and,
3. the service will have a not-for-profit structure.

The BAI commits to supporting the continued development of the community radio sector and will work with the sector to develop sustainable funding models and the future licensing of such services.

- **Temporary and Institutional Sound Broadcasting Contracts – Section 68**

This licensing category is operated using an open application process and potential applicants can make submissions for a temporary radio service for a licensing period of 30 days or less, or for a pilot community radio service for a period of 100 days. An institutional sound broadcasting contract can be awarded for a period of up to five years generally.

The BAI does not consider it appropriate that services provided under these short-term contracts should carry commercial advertising and they should be funded through sponsorship and other sources.

- **A Television Programme Service Contract – Section 70**

The BAI has fulfilled its obligation under section 70 to licence a television programme service on a national basis (Virgin Media One).

- **Content Provision (Television & Sound broadcasting) Contracts – Section 71**

Open licensing processes shall apply in respect of digital television and/or radio content provision contracts.

- **Community Content Provision (Television & Sound broadcasting) Contracts – Section 72**

Open licensing processes shall apply in respect of digital television and/or radio community content provision contracts. The BAI is committed to exploring the further development of community television and will continue to work with the community sector to explore sustainable models and funding opportunities.

- **Electronic Programme Guides (EPGs) – Section 74**

This licensing activity provides for contracts for broadcast information to members of the public in relation to the schedule of programme material the subject of any broadcasting service. This provision is somewhat outdated due to technological advancements and is not fully aligned to European legislation and, in particular, the provisions of the Audiovisual Media Services Directive (AVMSD) pertaining to EPGs. Revisions to the AVMSD are anticipated in the near future and when these are ratified, the BAI will develop a policy for licensing EPG contracts.

- **Multiplex Contracts – Digital Terrestrial Television (DTT) – Section 131**

Work undertaken by the BAI on DTT to-date revealed that market conditions would not support the launch of commercial DTT services. This work involved a number of independent reviews of the marketplace and the Mediatique research report of December 2017 supports these views.

In this context, the BAI commits to its current approach to DTT, that of commissioning an independent review approximately every three years to ascertain the capacity of the market place, including the identification of potential applicants.

- **Multiplex Contracts – Digital Radio Platforms – Section 136**

To date, the BAI and the industry have not explored this area of licensing activity in any great depth due to a number of factors, in particular, the significant contraction in advertising revenues caused by the recession in 2008 and the continued pressure on advertising revenues since then.

The radio sector has withstood digital disruption to date, but there is a fundamental shift in the listening habits of the younger audience that requires that the radio industry consider how it will engage with this audience in five or more year's time. The commercial radio sector needs to evolve its business model and develop digital strategies that have the potential to secure the viability of the radio sector in the longer term.

The BAI is committed to exploring the potential for digital radio, including platforms. This will be accomplished by establishing a working group to review sustainability in the radio sector and commissioning an independent expert review of the potential for digital audio broadcasting.

Regulatory Principles

The BAI is mindful of its role to regulate the broadcasters licensed further to this BSS and is cognisant of the challenges facing the broadcasting sector, in particular, the need to balance sectoral sustainability with audience needs and preferences and the statutory requirements for plurality and diversity in broadcasting. In carrying out its regulatory functions pursuant to this BSS, the BAI will regulate in accordance with its strategic values of being fair, independent, expert and accountable.

The BAI will:

- Ensure broadcasting contractors adhere to their contractual commitments and, in particular, to diversity and plurality;
- Keep the administrative costs of meeting licensing obligations to a minimum;
- Reduce unnecessary regulatory burden;
- Devise licensing procedures that minimise the cost of making a licence application;
- Ensure its regulation practices are efficient, effective and responsive;
- Consult on the regulatory principles and regulatory activities with licensed contractors; and,
- Publish detailed documentation for each licensing category, that sets out its licensing and regulatory approach for that particular category.

Licensing Documentation

The BAI will devise and publish supporting documentation for each of the licensing categories that will set out in detail the BAI's approach to that licence category. There is currently a policy document for community radio, which will be revised and updated.

The development of this documentation will allow the BAI to assess and review regulatory measures for each licensing category thereby allowing for responsive and timely revisions to such regulatory measures as the need arises. It will also provide clearer and more tailored information for stakeholders. It will have regard to the following regulatory measures where relevant:

- *News & Current Affairs 120 minutes & 20% Requirements*
- *Opt-out Programming (radio only)*
- *Opt-out Advertising (radio only)*
- *Programme Automation & Networking (radio only)*
- *Sharing of non-programme functions (radio only)*
- *Studio location*

This documentation will be drafted in consultation with the sector and published within a year of the implementation of this new BSS.

Appendix 2

Summary of Submissions of Interest

The BAI received 18 responses to its call for submissions of interest in the provision of new commercial sound broadcasting services. A total of 10 responses concerned the provision of new radio services, with 3 responses for modifications to current services. These 13 submissions all concerned sound broadcasting services with a music-driven focus and are summarised in the table below. The remaining 5 responses set out observations on the current broadcasting sector.

New Service Proposals

The 10 proposed new music-driven services vary in both type and franchise area. In this regard, 3 of the proposals concern a national franchise area, which from a technical perspective, is not feasible at this time. These services are niche in nature and quite distinct from one another.

One new service is proposed for Co. Wicklow, a youth music-driven service. A further 2 services are for county regions, amassing coverage of half of the Irish national marketplace. The remaining 3 services are for multi-city and/or multicity/large urban areas. It is noteworthy that four of these services propose country/Irish music-driven content. There is greater potential for technical coverage of these proposed franchise areas.

Modifications to Current Services

Three of the submissions received are for proposed modifications to current contracts. In this regard, all three are seeking to increase their respective franchise areas and thereby, significantly increase the potential audience.

Observations

The 5 submissions setting out observations and not calling for new services urged caution given the current challenges and turmoil in the marketplace and also sought the abolition of the broadcasting levy. One submission highlighted the important role community radio can play in assisting the BAI achieve its stated objectives. Another requested that the BAI introduce a 60% quota for Irish music on playlists for Irish radio stations.

The BAI notified all potential respondents that all submissions would be open to interrogation in the review of the Strategy and would be made available to the BAI's researchers.

Summary Table - Proposed New Services & Modifications to Current Services

No.	Submitted by	Proposed Service	Franchise Area	Target Audience
1	Raidió Rí Rá	24-hour music-driven youth station. Speech programming would be light and fun. Real-time news about Irish/Irish speaking community.	National (roll out to include Northern Ireland within three years).	12-30 years
2	Mr. N. Mahoney & Ms. T Lee	24-hour station with a mix of entertainment, music and speech. Emphasis on fun, positive and upbeat.	National	25-54 years

No.	Submitted by	Proposed Service	Franchise Area	Target Audience
3	Radio Kerry / Shannonside Nthn Sound / Midwest Radio	24-hour music-driven station. Focus on contemporary & country music, emphasis on American and Irish (established and new) artists. Some light entertainment talk shows.	Cities of Dublin, Cork, Limerick, Galway and Waterford.	35+
4	Clare FM / Tipp FM	24-hour country music station for all ages	80% of County Galway and County Limerick, North Kerry, County Tipperary and County Clare	Country music fans - all ages
5	8Radio.com	Alternative music	Dublin City and County, Cork City and part County, Limerick City and part County and Galway City and part County (rollout to other urban areas to be explored)	25-54 years
6	Easy Media Broadcasting Ltd. t/a Country FM	24-hour country music station. Classic and contemporary country music with large Irish country music output.	Dublin City and County, North West and Midlands/North East	35+
7	East Coast Radio Ltd.	24-hour contemporary music with a focus on youth audience. Pop music and entertainment pertaining to youth audience.	County Wicklow	15-34 years
8	Midlands Community Radio Services t/a Midlands 103	24-hour Irish- music station. Mix of county, contemporary, classic and new Irish artists. Speech programming has focus on Irish culture and experience.	Carlow, Kildare, Kilkenny, Laois, Leitrim (south), Longford, Louth, Meath, Offaly, Roscommon, Tipperary and Westmeath.	45+
9	Classic Rock Broadcasting Ltd t/a Radio Nova	24-hour rock music station. Mix of mainstream, classic and adult rock. Between 20-30% Irish music.	Dublin City, County and commuter belt, Cork City and part-County, Limerick City and part-County, Galway City and part-County, Kilkenny/Carlow, The North East, The Midlands, The South East	25+
10	Skylark Media Services	24-hour national urban music-driven. Focus on older audience with music from 50s-80s. Programmes will look back at these decades.	Dublin City, County and commuter belt, Cork, Limerick, Galway, Waterford, Drogheda, Dundalk, Navan, Wexford, Kilkenny, Carlow and Athlone (further rollout over three years)	55+
11	Choice Broadcasting Ltd. t/a Classic Hits 4FM	24-hour music-driven station. Music from 60s-present day. Speech programming - talk shows	Dublin City, County and commuter belt, Cork City and County, Limerick City and County, Galway City and County, County Clare, Waterford City, Kilkenny City, Athlone, Portlaoise, Sligo, Dundalk and Drogheda	40+

No.	Submitted by	Proposed Service	Franchise Area	Target Audience
12	Mr. Ken Murray	24-hour music station. Focus on traditional Irish and country music. Content aimed at people from/living in rural Ireland.	National	26-65 years
13	Star Broadcasting Ltd t/a Sunshine FM	Easy listening	Cork City and County, Limerick City and County, Galway City and County, Waterford City, Kilkenny City	15+

Appendix 3

Running Order for Stakeholder Event

Running order Public Consultation Draft Broadcasting Services Strategy

Date 24/04/2018 **Time:** 09.30am **Venue:** AVIVA, Lansdowne Road, Dublin 4.

- 9.30** ***Registration***
Registration and refreshments.
- 10.00** ***Welcome by event Chair***
Colette Fitzpatrick will welcome everyone and provide an outline to the day.
- 10.10** ***Introduction by BAI Chairperson, Pauric Travers***
The Chairperson will provide background and context to the development of the Draft Broadcasting Services Strategy
- 10.20** ***Presentation of Research, Mediatique***
Mathew Horsman and Sophie Outhwaite of Mediatique will present the research commissioned by the BAI on the *Market Structure, Dynamics and Developments in Irish Media*. To be followed by a Q&A with invited guests.
- 11.00** ***Draft Broadcasting Services Strategy, BAI CEO***
Michael O’Keeffe, BAI CEO, will introduce the Draft Broadcasting Service Strategy.
- 11.15** ***Break***
Tea, coffee and snacks.
- 11.30** ***Roundtable discussions***
Attendees will have group discussions on the Draft Broadcasting Services Strategy under four thematic areas: licensing, regulation, news and current affairs and opt-out advertising.
- 12.15** ***Feedback***
Each group will provide feedback from their discussions to the wider event audience. The session will be moderated by Colette Fitzpatrick.
- 13.00** ***Wrap-up and event close***
Colette Fitzpatrick will offer attendees an opportunity to direct any final questions to the speakers. Following this Colette Fitzpatrick will close the event.
- 13.30** ***Lunch***
Buffet lunch provided.
- 14.30** ***Event ends***

Appendix 4

List of Written Responses to Consultation

No.	Respondent
1	Easy Media Broadcasting
2	Dr. John Walsh NUIG
3	Classic Hits 4FM
4	Mr. Ralph McGarry
5	Midlands 103
6	IBI
7	Communicorp Media
8	DCTV
9	CTA
10	Digital Broadcasting
11	8Radio
12	TV3
13	Conradh na Gaeilge
14	Radio Nova
15	Radó Rí-Rá
16	Wireless Group
17	CRAOL
18	Red FM
19	RTÉ