



**Consultation on the BAI Draft Media Plurality Policy
Statement of Outcomes**

**Broadcasting Authority of Ireland
June 2019**



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1. Introduction

The Broadcasting Authority of Ireland (“BAI”) has developed its Media Plurality Policy (“the Policy”). This document provides the outcomes from the public consultation undertaken in respect of a draft of this policy. The changes made on foot of the consultation are detailed.

Section 2 provides the background to the development of the Policy and the consultation undertaken. Section 3 details the outcomes of the consultation.

2. Context

Promoting diversity and plurality is a key theme in the current BAI Strategy Statement 2017-2019. The Strategy identifies four strategic objectives under this heading 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 increase the production and availability of culturally relevant audio-visual content for Irish audiences;
- To foster and promote quality programming in the Irish language; and
- To foster a media landscape that is representative of, and accessible to, the diversity of Irish society.

The BAI work plan developed in the context of this strategic theme identifies a series of key deliverables which are intended to support the achievement of these objectives. Of particular relevance to the plurality objective is the development of a Media Plurality Policy that will articulate an informed policy position on media plurality in Ireland.

In that context, in late 2018, the Authority agreed a draft BAI Media Plurality Policy to be issued for public consultation. This consultation was undertaken between December 2018 and end January 2019 and was promoted via a press briefing, press release and social media engagement. In total, 10 submissions were received. Of these, 4 were from private individuals, one was from a firm of solicitors and the remaining 5 were provided by broadcasters and their representatives. A list of respondents is provided at Appendix 1 and a copy of the submissions received is available on the BAI’s website: - www.bai.ie.



The primary purpose of the Policy is to articulate how the BAI understands media plurality and how it will frame the wide range of activities that the BAI undertakes and will continue to undertake in order to promote and support media plurality in Ireland. The Policy is also intended to situate the BAI's approach to promoting and supporting media plurality in the wider media context with reference to legislation and the BAI's Strategy Statement 2017-2019.

2. Consultation Outcomes

Having reviewed the consultation submissions, the Authority was satisfied that the overall structure of the Policy, as drafted, remained appropriate. More broadly, it also noted that most respondents were broadly supportive of the overall approach taken in the Policy but were also of the view that certain aspects warranted amendment. In view of the feedback received, the Authority updated the Policy accordingly. This section of the Statement of Outcomes sets out the views and proposals received in respect of each section of the draft Policy and the BAI's decisions in relation to them.

Section 1: Introduction

This section introduces the Policy and provides context for the BAI's role in respect of media plurality. It distinguishes between the roles of the BAI, the Competition and Consumer Protection Commission and the Minister for Communications, Climate Action and the Environment. The intent of the Policy is also broadly outlined.

Authority Decision

As a factual introductory section, no specific questions were asked in the consultation about the introduction and no observations were made by respondents. Accordingly, the Authority has agreed to adopt in the final Policy the draft wording as proposed.

Section 2: Media Plurality Definition

This section of the Policy provides a definition for 'Media Plurality'. In this respect, the Policy adopts the definition included in the Competition and Consumer Protection Act 2014 with a view to ensuring a consistent approach by the Competition and Consumer Protection Commission, the Minister for Communications, Climate Action and Environment and the BAI in respect of plurality, particularly in the context of media mergers. The Policy also adopts the definition of a 'Media Business', also included in the 2014 Act and situates the definition of 'Communications Media' included in the Broadcasting Act 2009 as a subset of the 'Media Business' definition. Further, the Policy elaborates on how plurality may be evident in practice. Finally, the scope of the definition is stated.



The consultation document invited views in respect of four questions concerning this section of the draft Policy. They were as follows:-

- What are your views on the proposal to adopt the definition of 'media plurality' contained in the Competition and Consumer Protection Act 2014 for the purpose of the BAI's Media Plurality Policy?
- The Policy also applies the definition of a 'media business' contained in the Competition and Consumer Protection Act 2014 and describes the definition of 'communications media' provided in the 2009 Act as being effectively a sub-set of the definition of 'media business'. What are your views on this approach?
- Are there any other definitions that you believe it would be helpful to include in the Policy?
- The Policy articulates the ways in which diversity of ownership and content may be reflected in media. This is not intended to be a definitive description. Notwithstanding this, what are your views on how the BAI has articulated the manner in which media plurality may be reflected in Irish media in terms of ownership and content?

Authority Decisions

The adoption of the definition was broadly supported by respondents to the consultation. Based on feedback to the consultation, the BAI has updated so as to:-

- Recognise that diversity of services does not guarantee diversity of content and that mergers do not automatically result in a loss of diversity of content;
- Highlight the relationship between sustainability and plurality i.e. that plurality is weakened without sustainable media services;
- Reflect the role of radio and television services regulated by the BAI as providers of plurality;
- Recognise minority social, linguistic and cultural communities in the Policy in addition to broader cultural, social and geographic communities highlighted in the draft Policy;

More generally, the Policy has been updated to emphasise the role of social media as a creator of audiovisual content and its impact on the media environment.



A number of other suggested changes to the Policy under this section were not adopted by the Authority. In particular, the commercial radio and television sector commented on what they consider to be the unsuitability of the definition of 'Communications Media' and the plurality provisions of the Broadcasting Act 2009 more generally. This issue had been highlighted previously in the context of the draft Ownership and Control Policy. The BAI's view is that the 2009 Act should be updated to reflect the current media environment and accommodate future developments in this environment. The Policy has been updated to reflect the BAI's views in this regard. The suitability of the legislative definition of 'Media Plurality' was also highlighted by a number of respondents but addressing this is a matter for the legislature rather than the BAI. For this reason, the definition as set out in the 2014 Act has been adopted in the final Policy.

One respondent representing the commercial radio sector expressed concern about the adoption of the definition of 'Media Business' contained in the Competition and Consumer Protection Act 2014. Their concern was that the focus in the definition on services providing news and current affairs content, coupled with the BAI's definition of 'Communications Media' (which includes broadcasters providing any type of content) would mean that all broadcasting services would be disadvantaged in comparison to media services that provide only entertainment content and which they state would fall outside the definition of a media business.

The BAI is of the view that, for the purposes of a plurality regime, a focus on businesses providing news and current affairs is appropriate. In addition, while the definition of a 'Media Business' in the 2014 Act has a focus on news and current affairs content, it also includes any business involved in "transmitting, re-transmitting or relaying a broadcasting service" and this means that all radio services represented by the respondent are covered in any event.

As with the adoption of the definition of 'Media Plurality', the intention in adopting the definition of a 'Media Business' is to align the BAI's Policy position with the media mergers regulation while also incorporating its own obligations under the Broadcasting Act 2009. In practical terms, the BAI's assessment of ownership and control changes will continue to be made with reference to the 2009 Act (which uses the term 'Communications Media') while the Minister will continue to utilise the definition of 'Media Business' as set out in the 2014 Act when making media merger assessments. Any such media merger will also have regard to the BAI's ownership and control assessment. Taken together, the BAI does not believe that the adoption of the definition will make any material difference to radio broadcasters. Rather, it reflects the view of the Authority that any consideration of plurality should include all media.



Section 3: Why Media Plurality is Important

This section of the Policy outlines why media plurality is important to Irish society. The important role of media is emphasised, current key challenges in the area of media plurality are identified and the manner in which the BAI's Policy sits within this challenging context is briefly articulated.

The consultation document invited views in respect of two questions concerning this section of the draft Policy. They were as follows:-

- What are your views on the manner in which the BAI explains the importance of media plurality?
- Are there any additional aspects of media plurality's importance to society that are not included and which the policy would benefit from being referenced?

Authority Decisions

The importance of media plurality as articulated in the Policy was broadly supported by respondents to the consultation. Based on feedback to the consultation, the wording has been updated to: -

- Reflect the role of Irish radio and television services as important for ensuring plurality;
- Note the reality that the media environment is not only innovative but also converging in terms of ownership and in terms of horizontal integration, where the media supply chain from transmission to content may be owned by the same company;
- Highlight that the move of advertising and news payment away from traditional media has an impact on both the sustainability and quality of news and cultural production;
- Recognise that regulating a particular industry in isolation from the wider media market is not appropriate in the current and evolving media environment. As the Authority is of the view that the 2009 Act should be updated to ensure that its plurality assessments under the aforementioned policy permit the inclusion of digital media, reference to this effect has been included in the final Media Plurality Policy.

Section 4: Objectives of the Media Plurality Policy

This section details the Policy objectives. These derive from the core BAI functions of the Broadcasting Act 2009 to ensure pluralism and also reflect the strategic objectives that arise from the BAI's Strategic Theme – Promoting Plurality and Diversity. They are also informed by the challenges identified in the prior section, including challenges in respect of trust and credible news and current affairs sources.



The consultation document invited views in respect of two questions concerning this section of the draft Policy. They were as follows:-

- What are your views on the four policy objectives detailed in Section 4?
- Do you believe that the BAI should include any additional objectives in terms of the BAI's role in supporting and promoting media plurality? If yes, what should these be?

Authority Decisions

The objectives as proposed received broad support from the respondents to the consultation. Based on this feedback, the draft objectives have been adopted in the final Policy with one amendment. Namely, the third objective has been updated so as to: -

- Make reference not only to the importance of increasing the production and availability of culturally relevant audio-visual content for Irish audiences but also the importance of ensuring its prominence so that audiences are aware of this content in a context where there is a plethora of content.

One respondent did not support the objectives should their adoption result in the treatment of assessments of plurality in the radio sector in the absence of that assessment also including internet media. While noting the views of the respondent, the BAI's remit regarding plurality assessments is linked to (and limited by) the provisions of the 2009 Act. While the BAI's overall approach to plurality will have regard to internet media, its formal assessment of plurality in the radio sector in the context of the provisions of the 2009 Act cannot include internet media as it does not fall under the definition of 'Communications Media'.

Section 5: How the BAI will support and promote Media Plurality

This section of the Policy details the more significant measures that the BAI takes to promote and support media pluralism in Ireland. In this regard, nine separate areas are detailed. These are: Licensing; the BAI Ownership and Control Policy; BAI Obligations under Media Mergers legislation; Research; Media Literacy; the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs; the Broadcasting Funding Scheme (including Sound and Vision and the Archiving Scheme); Irish Language Action Plan; and, Dialogue with Stakeholders.



The consultation document invited views in respect of three questions concerning the nine areas of activities identified in this section of the draft Policy. They were as follows:-

- What are your views in respect of each of the nine areas identified by the BAI as activities that it undertakes to support and promote media plurality? In particular, are you satisfied that the Policy clearly articulates the manner in which each area promotes and supports media plurality as defined in the Policy or are there changes that you think are desirable.
- Are there any additional activities that the BAI currently undertakes or that you would like it to undertake to support and promote media plurality which should be included in the Policy?
- Do you have any additional comments on the Policy as a whole?

Authority Decisions

Continued action in these areas was supported by stakeholders, although views about the way in which these should be undertaken were not uniform. Additional actions were also identified.

Based on feedback to the consultation, the BAI has updated the wording in the draft Policy in the following manner under each of the nine areas:-

- **Licensing:** a minor drafting change has been made to this part of the document to include reference to “minority social, linguistic and cultural communities”. This change is introduced to ensure consistency with the reference to these communities earlier in the Policy document.
- **BAI Ownership and Control Policy:** the wording has been updated to reflect the importance of updating legislation dealing with plurality assessments under the Broadcasting Act 2009. The change reflects the importance of updated legislation as a means for facilitating both media industry sustainability and plurality.
- **Media Mergers Legislation:** the wording of this section of the draft Policy has been adopted in the final version of the Policy.
- **Research:** the wording in this section of the document has been updated to include a general but time-specific commitment to undertake further plurality research. Specific research suggestions were also highlighted by respondents to the consultation. These included a proposal for research on the opinion-forming power of media and publishing up-to-date information on ownership of media and on media consumption.



The BAI is of the view that it is appropriate to include a commitment to additional research in the final Policy but to retain the flexibility to decide on a case-by-case basis which type of research is appropriate at any given time.

- **Media Literacy:** the draft wording of the Policy is included in the final version of the Policy with one amendment to highlight the importance of ensuring the ongoing support of media literacy activities.
- **BAI News and Current Affairs Code:** the draft wording of the Policy is adopted with two additions. Namely, the wording has been updated to highlight the value of regulated media as a facilitator of credible and trusted news and current affairs and a reference to the role of the Press Council of Ireland and the Press Ombudsman so as to detail existing regulation for Irish media news, current affairs and cultural content.

A number of submissions made reference to the manner in which broadcasters have or should achieve compliance with this Code and about what the BAI's news and current affairs code should contain. This feedback focused on areas such as the representation of minority viewpoints, assessments of balance and related considerations. The BAI is of the view that these concerns pertain to the operation of the news and current affairs code and to matters of compliance and it is therefore not necessary or suitable to address them in the context of the Media Plurality Policy.

- **Broadcasting Funding Scheme:** the Authority is satisfied to adopt the wording of the draft Policy in respect of the Broadcasting Funding Scheme without amendment.

Proposals from the commercial radio sector that the BAI incorporate a proposal to fund news and current affairs content via this Scheme has not been adopted in the final Policy. This is on the grounds that funding of this type of programming would require a change in legislation and this is outside the remit of the BAI.

One respondent also favoured additional support be provided for archiving. The BAI is of the view that this is not something that could be addressed via the Plurality Policy but is more pertinent in the context of the operation and any further review of the Archiving Scheme.



- **Irish Language Action Plan:** the Authority is satisfied to adopt the wording of the draft Policy in respect of the Irish Language Action Plan without material amendment.

One respondent stated that Irish language obligations should only rest with public service broadcasters. However, the Broadcasting Act 2009 is clear in respect of expectations regarding Irish language content. Furthermore, adopting such an approach would be contrary to the BAI's stated policy, not only in its Strategy Statement but also in the Irish Language Action Plan. For these reasons, this proposal is not adopted in the final Policy.

- **Dialogue with Stakeholders:** the Authority is satisfied to adopt the wording of the draft Policy in respect of the role of Dialogue with Stakeholders with one minor change. Namely, the inclusion of a general reference to public, commercial and community radio and television services regulated by the BAI and the importance of dialogue with these services.

Appendix: Broadcasting Act 2009 and BAI Strategy Statement 2017-2019

The Appendix sets out the core provisions of the 2009 Act and the BAI's strategy that relates to plurality. This section of the draft Policy will be retained as drafted.

Other Matters

Other issues that were highlighted in the consultation included:-

- questions about the *bona fides* of the process;
- the inclusion of a definition of 'minority viewpoints';
- the importance of applying the General Commercial Communications Code in a manner that balances commercial and public interests;
- a proposal to co-operate on diversity projects aimed at increasing diverse voices on-air;

Regarding the *bona fides* of the process, the BAI is satisfied that development of the Policy was transparent, informed by research and open to consultation. While not all respondents to the consultation will be satisfied with the outcomes and the outcomes are made public. In that context, the BAI found no basis for concluding that any issues arose with the Policy development process.



Authority Decisions

It is not proposed to define 'minority viewpoints' on the basis that it is the BAI's practice to limit definitions in its policies to those provided in statute or where they are absolutely necessary for the operation of a Policy (for example, the definition of 'Control' and 'Substantial Interests' in the case of the Ownership and Control Policy). In practice, the Authority has taken the view that (other than for the above reasons) terms are to be interpreted as commonly understood either in a broadcasting context or by normal usage.

On the issue of not unduly limiting commercial opportunities for broadcasters, this is a specific objective of the BAI's General Commercial Communications Code and does not therefore need any further elaboration in this context of the Policy.

Finally, the proposals on diversity initiatives are to be welcomed. These have been communicated to BAI staff with responsibility in this area who will give them further consideration before presenting any future proposals to the Authority. These proposals will be considered in the context of the BAI's Strategic Theme – 'Promoting Diversity and Plurality'.



Appendix 1

List of Written Responses to the Public Consultation

- RTÉ
- Wireless Media Group
- Communicorp Media
- Independent Broadcasters of Ireland (IBI)
- Virgin Media
- Matheson Solicitors
- Mr. S. Meagher
- Mr. E. Coffey
- Mr. M. Keogh
- Ms. C. Browne