



Note to Authority

## Broadcasting Authority of Ireland

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# **Public Consultation on BAI's Draft Media Plurality Policy**

**RTÉ Submission  
30 January 2019**

## **Introduction**

RTÉ fully respects the value of media plurality as being an essential cornerstone of a healthy media sector and a high-functioning democracy, and as such welcomes the very important role of national regulation in this regard.

National cultural expression and audience choice will ultimately be best supported if there is a sufficiently strong and vibrant national media sector. A healthy, diverse and pluralist media sector requires national policy objectives and activities to foster and support enhanced sectoral sustainability and to ensure prominence of culturally relevant content.

The provisions of the revised Audiovisual Media Services Directive (AVMS Directive) which are due to be transposed into Irish law by September 2020 will have implications in terms of media sharing and distribution. Its provisions will also have relevance in terms of issues of media ownership, regulation and concentration within the EU. Therefore we hope that the developing regulatory framework will reflect these provisions when implemented.

## **Media Plurality Definition**

### **1. 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?**

As we understand it, media plurality is concerned with ensuring that the public are exposed to a range of different opinions, views and information from a variety of sources. We note the proposal to incorporate into the BAI Policy the definitions of media plurality as set out in Irish Competition Law. We believe it is important to note at the outset, that there is a difference between the interests of competition and the consumer on the one hand and the interests of the citizen and media plurality on the other. Plurality is not the same as competition. Markets might focus for example on the most popular types of news which in the absence of anti-competitive effects would benefit the consumer. However at the same time society would benefit from a much more diverse range of news and views to be widely available. Markets might tend towards a few large suppliers (again which might not adversely affect competition in terms of consumer choice); however society would prefer or benefit from a larger number of different suppliers to ensure or safeguard pluralism. Competition law devotes itself to transactional reviews and therefore if this proposal is adopted it is important that there is clear relationship between competition and plurality assessments when dealing with specific transactions. The specific transactions which are of concern in the context of competition law are media mergers. These are also of clear concern in the context of ensuring plurality. We do believe that the provisions in the CCPC Act do go some way towards addressing those parallel aspects as well as providing a meaningful role for the BAI in the context of its input into any final approval or decision in this area. We broadly support the proposal at Question 1 subject to the following comments and observations.

There is, as the BAI document points out, both an internal and external aspect to plurality; ownership and content and both are linked. We have reviewed the definition of “media plurality” in the Consumer and Competition Act 2014 (CCPC Act) which explicitly acknowledges this distinction. We have reviewed the specific definitions of “diversity of content” and “diversity of ownership” at Part 3A of the CCPC Act dealing with media mergers. We have also reviewed the Guidelines on Media Mergers Document which outlines specific ownership thresholds which arise in the context of ownership. Specific thresholds are welcome. We would suggest that definition of “significant interest” is kept under review and is informed by reports of the BAI on the audiovisual media sector in Ireland. (See *response to Q9 (iv) Research for related suggestions*). As we know media consumption in Ireland has changed dramatically and as a small primarily English speaking country our media economy is heavily influenced by consumption of online media provided by digital intermediaries/ and media service providers located outside of the State by way of on demand services, video sharing platforms and pay television services. Our understanding is that businesses which are not established in the State but which provide sales within a certain threshold (€2 million) would come under any consideration in the context of a media merger.

As the BAI's *Jurisdictional Review of plurality policies, guidelines, practices and rules* by CommSol Ltd<sup>1</sup> (the ComSol Report) points out, it is important that any market assessments in the context of media mergers as well as any metrics that try to assess or measure plurality or indeed market power (see previous comment) take into account such entities/service providers. That report refers to online advertising revenues as being currently dominated by Google and Facebook in Ireland and having a combined share of close to 60% in 2016. Major technology companies impact on media economies of smaller countries such as Ireland. This may present practical difficulties for the BAI who do not currently regulate these platforms. From a competition perspective it may be difficult to measure market shares in an online context. There are provisions in the AVMS Directive which when implemented in Ireland could assist in this process and would support plurality. For example, the AVMS Directive requires that details of ownership of on demand media service providers and video sharing platforms be provided to the national regulator which would at least assist in terms of ensuring transparency of media ownership. Further provisions in the AVMS Directive seek to extend regulation of content of on demand services and video sharing platforms that are based and/or established in the State. These measures can only assist in safeguarding and protecting pluralism.

Notwithstanding that BAI is a partner in the Reuters Institute Digital News Reports (Ireland) the practical limitation on the BAI's role in relation to the print/press is also noted. Ownership of print/press is of significant importance in the context of ensuring and safeguarding plurality. We accept that in overall terms assessing media plurality in practice is challenging. There is always a measurement challenge and both sides of the coin needs to be looked at in that respect (the supply side- provision) and the demand side – consumption. On the supply side it is more straightforward in terms of who owns what and what is readily available to the consumer. On the

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<sup>1</sup> <https://www.bai.ie/en/consultations/draft-bai-media-plurality-policy/>

demand side it is an assessment of how consumption of say a news medium (print, broadcast or online) has an impact on minds/or behaviour; protecting media plurality is concerned with the prevention of undue influence and that can be very difficult to measure at the best of times. RTÉ supports the suggestion in the CommSol Report that an independent body be established to monitor changes in print/press industry which might then be shared with the BAI or vice versa. This would present an overall view of the media plurality and ultimately inform any decision made in relation to a media merger under the CCPC Act. Although this might present practical difficulties, it is clear that in the context of the *2018 Recommendation of the Committee of Member States on Media Pluralism and Transparency of Media Ownership* that media is understood as including print, broadcast and online media.

In addition the Recommendation proposes that Member States encourage “an independent national media regulatory body or other designated body to publish regular reports on media ownership”. This Recommendation further provides that States are encouraged to develop and apply suitable methodologies for the assessment of media concentration “across sectoral boundaries”. It proposes “an audience based approach which would take into consideration the offline and online footprint of the media”. Whilst recognising the BAI’s remit, RTÉ wishes to emphasise the importance of having overall independent reports and assessments of this nature taking in print/press, broadcast and online media and the value of same in informing a decision by the Minister in relation to media mergers under Part 3A of the CCPC Act.

**2. 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?**

We have reviewed the definition of “media business” as set out at Section 28A(1) of the CCPC Act. The definition is helpful in that it clearly takes in online/digital intermediaries. It is also helpful that, as we understand it, the definitions of “broadcast service” and “programme material” are in effect a cross-reference back to those definitions which are set out in the Broadcasting Act, 2009. Given that this definition applies to a consideration by the Minister of a media merger which is in effect two or more undertakings carrying out a “media business” in the State, we re-iterate the comment made above (in response to consultation Question 1) in that it is important to ensure that businesses who have a significance presence in the Irish market but which are established or located outside of the jurisdiction come within this definition. We also re-iterate the practical value of having an independent and overall assessment done on a regular basis with regard to changes in print, online and broadcast media in Ireland.

### **3. Are there any other definitions that you believe it would be helpful to include in the Policy?**

RTÉ suggests that it would be useful to include at least some form of reference to “Transparency of Media Ownership” and this definition/term could be cross referenced to the requirements of the AVMS Directive which (when implemented) will require providers of audio visual services coming under the jurisdiction of the BAI ( or relevant regulatory body) to register their details ( ownership structure/beneficial owners) with the regulator in the interests of transparency, so as to enable the BAI to decide what information should be made accessible to users. This requirement is outlined in the draft Policy in the context of licensing applications, however it should apply beyond that context.

The AVMS Directive also recognizes the need for due prominence of local content on audio visual services and platforms. Given that technology and user interfaces are evolving, it would be useful for the BAI to consider a definition of “Primary Audience User Interface” which might help anchor guarantees of prominence for public service media channels.

### **4. 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?**

The exploration of both Diversity of Ownership and Diversity of Content is to be welcomed. However, we would also suggest that the overall regulatory framework makes assessments based on the realities of media consumption which is increasingly converged. For example, as more and more online and print titles in particular extend their reach into activities which would previously have been defined as broadcasting, the distinctions become less clear creating potential disparity and confusion as to the guidelines in operation, and how they may be applied. This risks undermining the overall value and impact of regulation.

Given the impact of media convergence on how individuals in Ireland consume media and the proliferation of online platforms, on-demand services, social media platforms providing news and current affairs content, there is an argument that this has increased diversity and plurality. However the reality is that many of these platforms are not regulated and can direct and aggregate content in a particular way which means that consumers do not have access to a diverse range of views. In this context, the role of public service media providers who are mandated at law to provide fair objective and impartial news and current affairs and other content becomes all the more important. Again we would point to provisions in the AVMS Directive which when implemented in Ireland could assist in safeguarding plurality. As already pointed out above, the Directive provides that Member States may impose prominence requirements. The nature of those requirements appears to be a matter for each Member State and therefore the opportunity should be taken to review licensing policy around EPGs. The opportunity should also be taken to

assess search and navigation trends (which are only set to become more sophisticated) to ensure that platforms are compelled to afford prominence to PSM content.

## **Why Media Plurality is Important**

**5. What are your views on the manner in which the BAI explains the importance of media plurality?**

**6. 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?**

The draft policy makes a clear and compelling case for the importance of Media Plurality. Comments provided here are in respect of both Questions 5 and 6.

Media Plurality is only achievable if the breadth of media activities is sustainable. 'Enhancing Sectoral Sustainability' is a stated ambition of the BAI, and given that the overall operating environment for Irish media providers continues to remain very financially challenging, the issue of sustainability should be included within assessments and consideration of plurality.

Similarly, as set out above, prominence of PSM channels and content is therefore another area that should be a feature of media plurality considerations. In the UK for example, Ofcom published the PSB, Local TV discoverability report and have begun a Public consultation process to engage with stakeholders in the television industry to update the prominence regime. Ofcom have proposed revisions to the EPG Code and is considering extending the prominence regime to VOD discovery and the rules around navigation to PSB content.

RTÉ's own research demonstrates that the Irish audiences expect public service content and channels to be easily findable and discoverable, and furthermore believe this is important that they are. The transposition of the revised AVMS Directive can ensure prominence for public service media providers, and presents the opportunity to modernise the legal and regulatory framework to give efficacy to culturally relevant content: that it is not only produced, but available, findable and discoverable. RTÉ would urge the BAI to take a more pro-active role in this area, now and over this transposition period.

## Objectives of the BAI Media Plurality Policy

### 7. What are your views on the four policy objectives detailed in Section 4?

*Encouraging and facilitating a plurality of high quality media outlets and their ownership*

Overall RTÉ fully supports this objective; it helps to maintain standards and to ensure citizens have access to a broader range of views, content and information. However, as stated earlier the issue of sustainability should be included within assessment of the macro picture. Plurality is only achievable if a breadth of media activities is sustainable. For example, some very valuable journalistic activities - investigative reporting, specialist correspondents, current affairs programming, international reporting, and indeed local reporting on the activities of local authorities and the courts – are expensive to sustain, but are essential to informed public debate and discussion. Ensuring quality is as important as plurality itself.

*Fostering a media landscape that is representative of, and accessible to, the diversity of Irish society;*

RTÉ fully supports this objective and would welcome additional supporting activities from BAI to help deliver on this mutual objective and to understand its effectiveness. There is scope for partnership activities between BAI, RTÉ and other relevant stakeholders to take steps to improve the diversity of representation on Irish media and monitor this progress over time. *Suggestions are offered under Q9(iv) Research and Q10 Additional Activities.*

*Increasing the production and availability of culturally relevant audio-visual content for Irish audiences, including quality programming in the Irish language;*

RTÉ fully supports this objective and would also underscore its importance, given the extent of international media and content providers within a small, and precarious national media eco-system. The reduced levels of public funding for public service content over recent years, has greatly reduced the level of investment in home produced content within the independent sector in particular – this has consequences in terms of the provision of Irish content, voices, stories and heritage. At a time when many international media entities have such extensive ambition (and corollary investment ), the potential for further erosion Ireland's cultural expression remains an area of high risk. The value of such content is however only fully realised when audiences get to consume it – see *comments below re prominence.*

*Facilitating a mix of trusted and credible voices, opinions and sources of news and current affairs in audio-visual media which enhances active citizenship in Ireland, democratic debate and which supports the integrity of the democratic process.*

RTÉ fully supports this objective but would express the view that the value of this facilitation will be potentially undermined if it is not also allied to stronger protection as regards the availability of such content, by virtue of the ever-increasing challenges around prominence. If there is recognition of its importance within the evaluation of democratic debate and the enriching of citizen life, then this would be more effectively achieved if it is also supported by protection and regulation in this context.

RTÉ would also cite the importance of Media Literacy within this broader debate; citizens are better placed to engage with 'trusted and credible voice' and different sources of news, if they feel empowered and informed as to its importance, and how to navigate choices.

**8. 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?**

As stated under response to Q7 and elsewhere in this submission, RTÉ would welcome increased levels of commitment as regards; sustainability of the sector, protection of indigenous content, prominence, representations of diversity, and media literacy.

## **How the BAI will support and promote Media Plurality**

**9. 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.**

RTÉ has engaged in reviews and consultations on many of the various schemes, policies and activities set out below. As such, we highlight here only the points relevant to achieving the objectives of media plurality.

**i. Licensing;**

In its June 2018 submission to the BAI's consultation on its draft Broadcasting Services Strategy RTÉ supported the various regulatory principles outlined, however suggested that balancing sectoral sustainability with audiences needs should be incorporated as an overarching principle.

Aligned to prominence points made earlier, RTÉ welcomes the BAI's acknowledgement the provisions of Sections 74 and 75 of the Broadcasting Act 2009 are outdated.

RTÉ welcomes that BAI would publish detailed documentation for each licensing category, setting out the licensing and regulatory approach for that particular category. This would

serve to further support the transparency objectives of the BAI's Ownership and Control Policy.

## **ii. The BAI Ownership and Control Policy;**

An open and free media landscape with divergent opinions and ideas is a key aspect of a democratic society and therefore media pluralism is of significant importance in terms of media policy in Ireland. In a converged media landscape RTÉ suggests that the issue of media ownership and content creation can no longer be looked at in isolation from the issue of ownership of service (e.g. platform, channel, station). Increased horizontal concentration and cross-media ownership presents threats to pluralism. RTÉ would therefore welcome consideration of this particular issue within any proposed amendments to the BAI regulatory oversight.

Under BAI's consultation Question 9(ix) the BAI proposes publishing reports detailing the ownership and control of media in Ireland. RTÉ would fully support this initiative which would deliver on BAI's wider transparency objectives, provide greater clarity on market dynamics to all stakeholders, and is of ultimate benefit to audiences providing information the support a more informed and media literate society.

## **iii. BAI's Obligations under Media Mergers Legislation;**

In addition to the comments provided in response to Q1, we would point to the Ofcom Media Plurality Measurement Framework as one which might provide a workable format for an overall composite report on the Irish media market. Such a report would provide important market analysis that would also help inform any Ministerial decision in the context of the CCPC Act.

## **iv. Research;**

RTÉ welcomes the various existing research initiatives undertaken by the BAI for example the Reuters Institute Digital News Reports (Ireland) and the BAI-commissioned *Mediatique report: A report on market structure, dynamics and developments in Irish media*<sup>2</sup> of December 2017.

Enhancing Sectoral Sustainability is a stated ambition of the BAI, and it is therefore important that all decisions which are made in fulfillment of this objective, are based on accurate and comprehensive media market intelligence. As the research provided by Mediatique confirms, international media consumption (and the resulting divergence of commercial income) is an important element within this consideration.

The Irish market is changing rapidly with an increasing consumption of online content and news sources. RTÉ suggests that it would be beneficial to have an overall media

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<sup>2</sup> [https://www.bai.ie/en/media/sites/2/dlm\\_uploads/2018/04/180410-Mediatique-Report.pdf](https://www.bai.ie/en/media/sites/2/dlm_uploads/2018/04/180410-Mediatique-Report.pdf)

consumption report/ assessment available and updated on a regular basis in relation to the Irish market which would include metrics that take in consumption by platform (TV, Radio, Newspapers, and internet) including advertising. This suggestion aligns with Meditique's 2017 Recommendation (page 89, Market Analysis, paragraph 7.57). Regular (e.g. annual) independent market reports by BAI such as this would facilitate a shared understanding of the market. This could also helpfully inform licensing assessments, media mergers, and sectoral impact assessments for the BAI.

RTÉ fully supports the BAI's suggestion that it may undertake 'reports detailing the ownership and control of media in Ireland'. Published reports such as these would benefit audiences as a contributing tool in more media literate society, and would support a greater understanding of the market amongst the industry stakeholders.

One of BAI's objectives under Promoting Diversity & Plurality is to 'foster a media landscape that is representative of, and accessible to, the diversity of Irish society. This fully aligns with RTÉ's recently launched *Diversity and Inclusion (DI&) Strategy*<sup>3</sup> which recognises that the make-up of Ireland's population and Irish society itself has changed significantly over the last two decades. RTÉ's D&I strategy sets out RTÉ's plan to be to be a leader in D&I, where it will more authentically reflect modern Irish society and appeal to Ireland's changing population. One of the important aspects of RTÉ's D&I strategy is measuring on-air diversity. Obtaining accurate and consistent diversity data is challenging however is crucial to ensure the ever-changing Ireland is reflected on screen or air. Data on D&I representation could similarly be of benefit to the BAI.

RTÉ and BAI could therefore potentially partner to achieve these mutual aims for the benefit of Irish audiences. This would merit exploration and discussion, however could include best-practice research, building on RTÉ's own research to date. This would help to determine a fit-for-purpose approach in Ireland, leading potentially to a national diversity monitoring project, along with other relevant partner organizations.

Other areas where BAI could add value to the media sector and related policy making is undertaking research where there are gaps in shared industry knowledge and/or understanding of audience behaviour. Research into media habits and preferences of children is one example. Similarly, *Ofcom's Digital Day*<sup>4</sup> is a particularly interesting research project, presenting a picture of overall media consumption throughout the day, on different devices in- and out-of-home. This includes viewing, listening, text and voice communications, and the consumption of print media. A study of this nature, for Ireland would be highly informative for the sector, and could be repeated at intervals of a few years.

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<sup>3</sup> <https://static.rasset.ie/documents/about/2018/11/20472-rte-diversity-strategy-documentv3-2.pdf>

<sup>4</sup> <https://www.ofcom.org.uk/research-and-data/multi-sector-research/general-communications/digital-day>

If available, this type of study could also prove insightful when the transposition of the AVMS Directive is being considered nationally.

**v. Media Literacy;**

RTÉ welcomes the work done to date by the BAI via Media Literacy Ireland in facilitating and supporting both sectoral and public debate on this important topic. We would also urge the BAI to continue to commit to the objectives as outlined. RTÉ would cite that that statements and campaigns, both historical and upcoming, stand to have greater credibility and impact, by virtue of the citizen advocacy and protection role that the BAI is mandated with. Therefore its continued leadership in this regard will be increasingly important.

**vi. BAI Code of Fairness, Objectivity and Impartiality in News & Current Affairs;**

While ensuring a diversity of viewpoints are readily available is an important objective, it is also imperative that national policy and regulation provide for quality, trusted and credible news and current affairs. Trust is the cornerstone of RTÉ's public service remit in News & Current Affairs. The public rightly expect that our output is accurate, fair, objective and impartial. In an age when quality journalism is under threat on several fronts, not least in the digital sphere, it is vital for democracy that RTÉ as the public service broadcaster, is totally committed to being at the forefront of the highest journalistic standards and values.

While the Broadcasting Act (2009) and the BAI, through its Codes, requires broadcasters to maintain standards, RTÉ also sets our own rigorous internal standards. To this end, the RTÉ's Journalism Guidelines and our Programme Standards Guidelines detail the values and standards we set for ourselves. These Guidelines are subject to review and updated Guidelines will be published this year. RTÉ's updated Guidelines will reflect the application of standards in online/digital journalism. This is an area the BAI could also give consideration to more generally as audiences do not necessarily differentiate at the point of consumption. These points also underscore the importance of media literacy under the umbrella of media plurality. In any case the transposition of the AVMS Directive can bring into scope video sharing platforms and can bring alignment of standards and regulation to the wider media market.

**vii. Broadcasting Funding Scheme, including Sound and Vision and the BAI Archiving Policy;**

The Broadcasting Fund Scheme helps ensure diversity of quality content of national relevance and RTÉ is both a supporter and beneficiary of this initiative.

RTÉ has been a major beneficiary of the Sound & Vision Scheme (S&V scheme) over the years, both for television and, in relative terms, radio. The S&V scheme, among other policy initiatives, has helped to foster an independent radio production sector, which is to be

welcomed. It has also enabled RTÉ to deliver content that we would not otherwise have had the funding to make.

The scheme requires broadcasters to have 90% coverage in Ireland, which presumably has the intention of ensuring access to the content funded by the scheme. The prominence of public service channels and/or content is at risk, and arguably diminishing on third-party platforms. This could have the effect of culturally relevant content, funded via this scheme, not reaching its intended audience, and could serve undermine the efficacy of the scheme if this diverse content is not discovered by or easily accessible to audiences. This same point applies to public service content funded by licence fee and other culturally relevant content from the domestic sector.

Broadcast archives are increasingly recognised as authenticated, important documents for society and a significant and reliable source of historic materials in the creation of culturally relevant audio-visual content for Irish audiences. This in turn supports Media Literacy and the empowerment of Irish citizens. The continuation of the BAI's Archiving Scheme is therefore very welcome and critical to the preservation of vulnerable and obsolete broadcast materials and to developing a culture of archiving in the broadcast sector.

Digital archiving is now a major component of the future of broadcast archives for society. Broadcasters must continue to evolve their learning and development for the sector to avoid risks for the future. Digital content is highly vulnerable and policy is important to ensure this is addressed. RTÉ would also welcome specific support for the sector through learning and education programmes which could include for example: audiovisual associations and organizations relevant to the sector; the promotion of literacy in the field of broadcast audio-visual archives; and the study and evaluation of audiovisual archives.

#### **viii. Irish Language Action Plan;**

RTÉ submitted its feedback in December 2018 on the BAI's Draft Irish Language Action Plan. In that submission, we noted that while the functions of RTÉ and BAI differ, the underlying Irish Language policy objectives are aligned within a shared legislative framework (Broadcasting Act 2009, the Official Languages Act 2003, and the State's 20-Year Strategy for the Irish Language 2010-2030). RTÉ therefore supports the BAI's draft plan and the objectives it addresses and agrees that they contribute to media plurality and diversity of content for Irish audiences.

We made a number of constructive suggestions that would promote the wider objectives of diversity of content and voices. One was for changes to the Broadcasting Fund scheme to allow Irish language content to be shared across broadcasters at no additional cost. This would improve the reach and availability of Irish language content. Another was a potential

media training partnership between RTE, BAI and other relevant stakeholders that would grow the number -and enhance skillset - of Irish language speakers with media production skills. This would positively impact both the volume and quality of Irish language content available.

#### **ix. Dialogue with Stakeholders.**

Dialogue with stakeholders on wider policy issues and is welcomed by RTE. This benefits the sector and promotes better understanding and engagement in general. As regards engagement on media plurality and the stakeholders referenced in the draft policy, RTE would suggest that broadcasters should also be explicitly referenced as stakeholders in this mix. We acknowledge that broadcasters are regularly engaged with, for example as members of the Media Literacy Ireland and in consultation on the various supporting activities and policies.

#### **10. 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?**

We have referred to diversity of representation and *RTE's Diversity and Inclusion strategy* under Q4 Objectives and Q9 Research. There is another area where BAI could meaningfully support and promote media plurality, that would further its own Strategic Objective 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'.

Finding new contributors and sources of views and opinions for programme makers is one the important action items within RTE D&I strategy. Plans include a new voices database and training for those new voices. We would welcome BAI's support in an initiative that would assist the Irish media sector to find and develop possible contributors from a range of areas, backgrounds and perspectives.

#### **11. Do you have any additional comments on the Policy as a whole?**

RTE would welcome the opportunity to discuss the points raised here with BAI. The implementation of the AMVMS Directive into Irish law will also provide opportunities to assess and develop this policy further in ways which can safeguard and bolster plurality in the media sector in Ireland.

## **Draft BAI Media Plurality Policy**

### **Wireless comments – January 2019**

#### **1. Introduction**

- 1.1. Wireless is the parent company of six BAI licensed FM radio services in the Republic of Ireland. These are Dublin's FM104 and Q102, Cork's 96FM and C103, LMFM and Limerick's Live 95 FM. Wireless also operates radio services in the United Kingdom. Wireless is owned by News Corp UK and Ireland Limited, publisher of The Times, The Sunday Times and The Sun.
- 1.2. It is our strong belief that the diversity and plurality of media ownership should be considered on a cross-media basis. This is in view of the rapidly changing digital ecology which makes different media sources inherently more substitutable for each other, and in light of the advanced media literacy of Irish consumers.
- 1.3. Wireless believes that retaining radio-specific rules on the diversity of ownership of broadcasting contracts acts counter to the interests of Irish consumers and citizens. We advocate the removal of all restrictions based on concentration of ownership of radio, in favour of overarching competition law rules and a light-touch plurality regime based on an operator's overall share of media businesses as defined in the Competition and Consumer Protection Act 2014 (CCPA). This proposal is the focus of our responses to the BAI's twin consultations on Ownership and Control and Media Plurality.

#### **2. Detailed response**

##### ***Q1. 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?***

- 2.1. Wireless notes that the definition of 'media plurality' contained in the CCPA adopts a cross-media approach. We support such an approach, since we do not believe that it is appropriate to consider media plurality within individual media sectors in isolation from such cross-media considerations.
- 2.2. As set out in our parallel response to the BAI's Ownership and Control consultation, we regard the current concentration of ownership restrictions for radio as unnecessary and counter-productive to the sector's commercial development, and to the interests of Irish consumers and citizens. Accordingly, we advocate the removal of all rules which restrict the diversity of ownership of radio, in favour of an approach which looks at an operator's overall share of the media business sector (including digital and social media services).
- 2.3. We believe that such a cross-media ownership regime, coupled with overarching competition law principles, will support a more viable and healthy radio sector and so maximise public value from the broadcasting spectrum. Such an approach will also help to address the manifest disparity between the way in which radio continues to be regulated, and the policy approach applied to other influential forms of media. Such other influential forms of media include print, digital and social media services, all of which account for a significant share of consumer attention and underpin a substantial share of the Irish news media.

***Question 2. 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?***

- 2.4. Wireless considers the definition in the 2009 Act to be outdated, and advocates the development of a media plurality policy based on the media industry categorisation set out in the CCPA – i.e. including consideration of digital and social media services.

***Question 3. Are there any other definitions that you believe it would be helpful to include in the Policy?***

- 2.5. Wireless does not have any further comments to make in response to this question.

***Question 4. 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?***

- 2.6. As set out in our response to the BAI’s Ownership and Control consultation, Wireless believes that consolidation of radio services into larger groups such as Wireless has brought clear benefits to listeners of the relevant stations as well as to the wider radio sector, delivering economies of scale which have led to investment in new product innovations, cross-media sales, enhanced editorial collaboration and creative synergies. Under the right circumstances, further consolidation involving ourselves or others would offer a path to extending these benefits.
- 2.7. Rather than acting against the interest of listeners, there are numerous examples from around the world of how common ownership of radio services contributes to differentiated programming output. This is due to the natural incentive that exists for an operator to differentiate the output of services. The current policy assumption that diversity of programming is positively correlated to diversity of ownership is therefore flawed.
- 2.8. We also note that the rise of digital and social media companies such as Facebook and Google has created new avenues for publication of content and airing of diverse viewpoints on news and current affairs. As a consequence of disparities in regulatory models, these companies are able to act nimbly and responsively to a changing media marketplace in a way that independent radio operators are unable to replicate. Such companies are also able to command ever-increasing shares of Irish advertising budgets, jeopardising the long-term commercial development of a vibrant independent Irish radio sector.

***Question 5. What are your views on the manner in which the BAI explains the importance of media plurality?***

- 2.9. We believe that the BAI’s explanation should emphasise that the expansion of new forms of communications has rendered obsolete historic approaches to media plurality policy which looked at individual media sectors in isolation. Instead of the current outmoded approach, a cross-media approach to media plurality is required.

***Question 6. 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?***

2.10. Wireless does not have any further comments to make in response to this question.

***Question 7. What are your views on the five policy objectives detailed in Section 4?***

2.11. Wireless does not support the five policy objectives insofar as they encourage the BAI to regulate for media plurality on a radio-specific basis. This is for the reasons given in our response to Question 1.

***Question 8. 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?***

2.12. The BAI should set itself the objective of assessing media plurality on a cross-media basis, based on the definition of Media Businesses which appears in the CCPA.

***Question 9. 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.***

***Question 10. 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?***

***Question 11. In the case of commercial and community broadcasting services, what are your views on the specific tests applied? Should any other tests/questions apply?***

***Question 12. Do you have any additional comments on the Policy as a whole?***

2.13. Wireless does not have any further comments to make in relation to these questions.



## **Communicorp Response to Draft BAI Media Plurality Policy 2018**

**1. *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?***

Communicorp supports an approach to regulation that encompasses all relevant players in the media space so that all sources of opinion forming power and their extent are identified, accurately.

Communicorp agrees that when exercising its functions under the Competition and Consumer Protection Act 2014 (‘the CCPA 2014’), the BAI should work within its definitions, including that of plurality, which is clearly intended to be wide-ranging.

**2. *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?***

Given the degree of overlap, Communicorp agrees that the definition of ‘communications media’ under the 2009 is subsumed within the definition of ‘media business’ under the CCPA 2014.

Communicorp considers it crucial that a broad view be taken of communications media in line with what is intention of the Oireachtas. Continuing to approach media regulation based on a pre-digital view of what is communication media is no longer sustainable.

To continue to do so may also mean that from a plurality perspective, the influence of traditional media may be overstated.

**3. *Are there any other definitions that you believe it would be helpful to include in the Policy?***

Consistent with what Communicorp has indicated with respect to questions 1 and 2, we suggest that what is meant by (d) within the definition of ‘media business’ should be made clear, in particular with respect to social media.

While we welcome the BAI’s confirmation in principle that social media businesses are treated as ‘media businesses’, the BAI may wish to give some further high level guidance on this issue.

**4. *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?***

In terms of the ways in which diversity of ownership and content is reflected, Communicorp would suggest that the ability of the independent broadcasting sector to adapt to competition from new media is an important indicator of the strength of plurality.

We think that competition and in particular whether regulation is impeding the independent sector's ability to compete is an essential component of the plurality picture.

**5. *What are your views on the manner in which the BAI explains the importance of media plurality?***

Communicorp accepts and supports the BAI's explanation of importance of media plurality in terms of facilitating civic and political discourse. It also performs other important functions such as shaping and informing culture.

Media plurality also has an important economic significance by ensuring that businesses have a range of outlets which they can avail of for marketing and communications purposes. These should be reflected in the description of the importance of plurality.

In terms of the BAI's explanation of the importance of plurality, we note a concern to reduce 'undue' influence. Communicorp suggest that several of the matters listed as challenges stemming from technological change (such as disinformation) could also be identified as examples of 'undue' influence. It is worth noting that the majority of those challenges have emerged from or are primarily related to social media not traditional and regulated media.

**6. *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.***

Communicorp is concerned that although describing changes in wider media that impact on plurality, the draft Media Plurality Policy does not address at all the unique contribution that independent broadcasting makes to the maintenance of plurality more generally.

That needs to be recognised as distinct from the contribution that is made to plurality from other media, which are the source of many of the serious challenges recognised in this consultation, such as disinformation campaigns etc.

Impartial and comprehensive journalism is delivered by the independent sector. That is based on a combination of regulation, tradition, and ethos.

The position of the independent sector in anchoring viable pluralism across all media needs to be emphasised much more prominently in the Media Plurality Policy. That recognition should in turn lead to the adaption of regulation of the independent sector so as to secure its sustainability.

**7. *What are your views on the four policy objectives detailed in Section 4?***

Communicorp is concerned that the importance of sectoral sustainability is not identified as key to ownership diversity.

While a plurality of different operators is important, in the broadcasting sector, regulation must recognise the business challenge inherent in maintaining diverse formats in the face of what the BAI acknowledge as the erosion of advertising revenues.

Consistent with the proposed introduction of an objective as to ‘sectoral sustainability’ in the draft Ownership and Control Policy, Communicorp strongly advocates that sectoral sustainability for the independent broadcasting sector be identified as critical.

**8. *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?***

Consistent with what Communicorp has already indicated, we urge the BAI to add as a fifth objective the maintenance of the sustainability of the independent broadcasting sector.

That would be consistent with what the BAI is proposing as part of its draft Policy on Ownership and Control, in respect of which Communicorp argues that its implementation be taken forward much more comprehensively.

**9. *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.***

Communicorp does not wish to comment on each of the nine specified matters, but has observations on a number of them:

Firstly, with respect to (ii) The BAI Ownership and Control Policy;

Communicorp is concerned the presentation of the draft policy on Ownership and Control in that it simply makes reference to it in general terms. Instead, Communicorp would call on the BAI to be explicit that in some instances a trade-off is necessary between ownership diversity and output diversity.

Supporting an array of formats and output, which remains a primary BAI goal, is likely to require further sectoral consolidation. With appropriate safeguards, that is likely to be key to media diversity more generally.

Secondly, with respect to (iv) Research;

Communicorp once again calls on the BAI to conduct domestic research on opinion forming power for all media businesses (widely defined). Fundamentally, it is a concern about the excessive accumulation of opinion-forming power that drives the need for a policy on plurality and so it should inform all decision-making by the BAI in the sector.

Thirdly, with respect to (ix) Dialogue with Stakeholders

We would cross-refer to submissions made as to the very serious misgivings that Communicorp has concerning the process and likely conclusions of the review of the draft Policy on Ownership and Control.

Those concerns relate in the main to the nature of engagement by the BAI with detailed arguments made by interested parties including Communicorp in previous consultations.

Without better engagement, there is a very real risk of confidence and buy-in to the entire regulatory system being lost.

***10. 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?***

The BAI has outlined the Sound and Vision fund as a vehicle to support media plurality.

One of the objectives of the media plurality policy is to “facilitate a mix of trusted and credible voices, opinions and sources of news and current affairs in audio-visual media

which enhances active citizenship in Ireland, democratic debate and which supports the integrity of the democratic process”.

The BAI has also included its desire to combat fake news and misinformation as one of its objectives citing changes in media consumption and the knock-on effect of this on the reliability and trustworthiness of news content, news filters and algorithms and their impact on limiting exposure to a diversity of views and the threat to the news production due to the decrease in commercial communications.

We believe the Sound and Vision fund should be extended in remit to allow it fund live speech programming and facilitate and support broadcasters in producing the high quality, trusted content featuring a wide variety of voices and sources that the BAI’s Media Plurality Policy strives for.

**11. Do you have any additional comments on the Policy as a whole?**

In this consultation the BAI acknowledges that its policy on plurality had been developed in an environment ‘where traditional regulation that seeks to address plurality by increasing the number and mix of service available to audiences is no longer sufficient on its own’. While that is true, Communicorp is concerned that even sustaining what is now the independent sector, is itself increasingly difficult, hence our emphasis on securing the sustainability of the independent broadcasting sector.

The five principal challenges identified by the BAI as emerging from technological change are in the main social media driven phenomena: yet, the BAI does not have any significant powers over those businesses. It is telling that belatedly certain social media players have begun to invest in replicating some of the elementary news verification and editorial processes that are fundamental characteristics of the independent broadcasting sector.

Overall, Communicorp is concerned as to whether in relation to challenges to plurality the BAI is actually in a position to take comprehensive remedial action. The danger instead is that the independent broadcasting sector is subjected to further regulation in a futile attempt to resist changes and dynamics that are outside its control, thereby further eroding the viability of the independent sector.

That is apparent to some degree in reading the draft Policy on Ownership and Control that is under separate parallel consultation.



## IBI Response to BAI Consultation on Media Plurality

January 30<sup>th</sup> 2019

## **Introduction**

The Independent Broadcasters of Ireland (IBI) represents Ireland's national, regional, multi-city and local radio stations. The mission of the IBI is to promote a strong and vibrant radio sector which reflects the preferences, interests and needs of the listening public. Within our membership there exists a diverse collection of radio stations – significant diversity in ownership, target audience, location and franchise area. Independent radio stations make a significant contribution to the Irish economy and to the social and cultural life of each community that they broadcast to.

Listenership to independent broadcasting in Ireland has never been stronger. In the region of 70% of the Irish population tune into independent radio daily, which clearly shows the value listeners place on the programming provided by IBI member stations. Independent radio provides a valuable public service to Irish radio listeners on a daily basis.

The sustained success of independent broadcasting over the past 30 years reflects the talent, expertise and commitment of the operators. It is a direct result of radio stations putting the listener at the centre of their business. Giving the listener what they want to hear – high quality programming – results in increased and retained listeners, the success of which can be seen in every set of JNLR results and the high numbers of listeners which choose to tune in to independent radio stations. The commercial operations of the business are intrinsically linked to the delivery of quality programming and striking the right balance between the two is central to every broadcaster's long-term viability and success.

The IBI is focused on the continuous improvement of the broadcasting environment in Ireland, on future trends and the monitoring of sectoral developments. This is all with a view to representing the interests of independent radio sector on issues which will determine the future of broadcasting, and to engage fully with the Regulator and other stakeholders in all matters.

Ireland has a proud tradition of radio broadcasting and the IBI aims to ensure that independent broadcasters are to the fore in shaping the future of the Irish broadcasting industry.

## Media Plurality Definition

### CONSULTATION QUESTIONS

1. *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?*

*This would appear to be a sensible approach to take. With a number of different bodies working on different aspects of media plurality it is easier for all concerned if a common definition is used.*

2. *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?*

*The definition of media business from the Competition and Consumer Protection Act 2014 reads as follows:*

*“‘media business’ means the business (whether all or part of an undertaking’s business) of –*

- a. The publication of newspapers or periodicals consisting substantially of news and comment on current affairs, including the publication of such newspapers or periodicals on the internet.*
- b. Transmitting, re-transmitting or relaying a broadcasting service,*
- c. Providing any programme material consisting substantially of news and comment on current affairs to a broadcasting service, or*
- d. Making available on an electronic communications network any written, audio-visual or photographic material, consisting substantially of news and comment on current affairs that is under the editorial control of the undertaking making such material.*

Whilst there is general agreement on the using of definitions provided by other bodies, there are some questions raised by the CCPC’s definition of “media business”. We accept the BAI’s premise that this definition focuses on businesses with a significant level of activity in Ireland and businesses providing news, current affairs and cultural content. When added to the definition of communications media businesses the BAI intends that the definitions will incorporate print publishing, broadcasting (including broadcasting platforms) and internet media, including social media. The one big issue with the definition is its reliance on news and current affairs content to signify whether a business is a media business or not and this appears to leave rather large gaps in the lists of businesses that fall under the definition. Based on this definition the broadcasting of any programme, regardless of its content makes the broadcaster a media business however, the publishing either in print or online, of entertainment stories would not make the publisher a media business. This seems slightly at odds what the general understanding of media business and also would appear to be putting additional responsibilities on broadcasters that are not on other forms of media business.

3. *Are there any other definitions that you believe it would be helpful to include in the Policy?*

No additional definitions required

4. *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 way media plurality may be reflected in Irish media in terms of ownership and content?*

There is no issue with how the BAI's has reflected media plurality in Ireland.

## **Why Media Plurality is Important**

### **CONSULTATION QUESTIONS**

5. *What are your views on the manner in which the BAI explains the importance of media plurality?*

The explanation of the importance of media plurality is concise, straightforward and easy to understand.

6. *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?*

No

## **Objectives of the BAI Media Plurality Policy**

### **CONSULTATION QUESTIONS**

7. *What are your views on the five policy objectives detailed in Section 4?*

The objectives as outlined are perfectly adequate for a media plurality policy. The importance of a balanced, fair and trustworthy source of information is becoming increasingly important to audiences. This was highlighted in the Council of Europe's 2018 guidelines on media pluralism and transparency of media ownership;

*"Internet intermediaries have acquired increasing control over the flow, availability, findability and accessibility of information and other content online. This may affect the variety of media sources that individuals are exposed to and result in their selecting or being exposed to information that confirms their existing views and opinions, which is further reinforced by exchange with other like-minded individuals. Selective exposure to media content and the resulting limitations on its use can generate fragmentation and result in a more polarised society".*

In comparison, radio is the most trusted form of media in Europe. A recent EBU report states that 60% of Europeans trust radio making it the most trusted medium in Europe. Added to this the results of the Eurobarometer Report released in January 2019 which shows trust in Irish radio is at 68%, significantly above the European average. In comparison only 1 in 4

people trusts the internet and a massive 85% have no trust in social networks. Trends over the last few reports show a growing gap between the trust people have in traditional media and new media.

Radio stations' content has always been guided by Codes and Regulations. Broadcasters are compliant with these regulations and in doing so provide a broadcasting output that is truthful, responsible, impartial and reflects the audience that they broadcast to. By adhering to the programming regulations radio stations are ensuring that their content is fair and balanced, and ownership and control issues are lessened.

8. *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*

No additional objectives are suggested

### **How the BAI will support and promote Media Plurality**

#### **CONSULTATION QUESTIONS**

9. *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?*

The 9 areas identified are clear and sufficiently tie in to the promotion of media plurality

10. *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?*

Sound and Vision funding as a vehicle to support media plurality has been outlined by the BAI. Given that the definition of media business which was included earlier in the consultation document shows a clear and definite lean towards media businesses **providing news, current affairs and cultural content**. Therefore, it would stand to reason that the BAI would extend the Sound and Vision funding scheme to allow it to fund such programmes i.e. news and current affairs in addition to the cultural content already covered by the scheme.

One of the objectives of the media plurality policy is to "facilitate a mix of trusted and credible voices, opinions and sources of news and current affairs in audio-visual media which enhances active citizenship in Ireland, democratic debate and which supports the integrity of the democratic process". The BAI has also included its desire to combat fake news and misinformation as one of its objectives citing changes in media consumption and the knock-on effect of this on the reliability and trustworthiness of news content, news filters and algorithms and their impact on limiting exposure to a diversity of views and the threat to the news production due to the decrease in commercial communications.

Bearing all this in mind, the logical step would be the expansion of the Sound and Vision Funding Scheme to include live speech programming and facilitate and support broadcasters in producing the high quality, trusted content featuring a wide variety of voices and sources that the BAI's Media Plurality policy is aiming for.

The IBI welcomes the fact that dialogue with stakeholders is included as an action point by the BAI. It is the media that will be implementing this policy once finalised and ongoing interaction with the various branches of the media will ensure that the policy is successful. This has to be a two-way process however and it is equally important that the BAI takes on board suggestions, comments and feedback from broadcasters as it is for broadcasters to follow the direction of the BAI.

11. Do you have any additional comments on the Policy as a whole?



Media Plurality Policy Consultation  
Broadcasting Authority of Ireland  
2 – 5 Warrington Place  
Dublin 2, D02 XP29

February 6, 2019

By Email: [consultations@bai.ie](mailto:consultations@bai.ie)

To whom it may concern,

Virgin Media welcomes the opportunity to provide the following input to a select number of questions in the proposed draft Media Plurality Policy (the Policy). These views are in addition to those that were previously shared with the BAI as part of the stakeholder engagement process that took place in advance of the publication of the draft Policy.

In the event that you have any questions or require additional information on any of the responses, please do not hesitate to get in touch.

Yours sincerely

A handwritten signature in dark ink, appearing to read "K. Sullivan".

Kate O'Sullivan  
VP Corporate Affairs  
Virgin Media

## Virgin Media response to the public consultation on the draft BAI Media Plurality Policy

**Questions 1- 2:** Virgin Media agrees with these proposals.

**Question 3:** There may be merit in acknowledging that a variety of media providers contribute to media plurality in Ireland. Depending on the commercial model involved and how they are funded, they will contribute in different ways to media plurality in the State. For example, public service broadcasters, and in particular those that are part-funded through the TV licence fee have certain targets to meet on News and Current Affairs as well as other content quotas, and this is and should continue to be a major contributor to ensuring media plurality in Ireland.

**Question 4:** When considering media plurality, the BAI should give due consideration to the availability and reach of media sources that may fall outside Ireland's regulatory remit but given their popularity with Irish audiences, contribute (significantly) to media plurality in the country.

**Questions 5-6:** Virgin Media agrees media plurality is important in any society. As referenced in the response to Question 4, the widespread availability of media providers (including those that may be located outside of the State) should not in of itself be viewed as a negative development. Media plurality can be achieved through the existence of a diverse range of providers who offer diverse views. In today's world, where citizens are increasingly accessing content in an online rather than an offline environment, and consuming media that they have 'pulled' rather than what has been 'pushed' to them, it is difficult for any regulatory body to adopt a one-size-fits-all approach to media plurality. In this regard, the policy framework as it historically applied to broadcasters may be a useful starting point for the BAI in how it approaches media plurality in the future. As the BAI is well aware, requirements on broadcasters vary depending on whether the broadcaster receives public funding or not, and the types of services that are offered (linear or non-linear).

**Questions 7:** The requirement to provide quality Irish language programming should primarily lie with public service broadcasters that receive funding from the TV licence fee. As and where appropriate, the commercial sector should be encouraged to offer programming in the Irish language but this cannot be a mandatory requirement.

**Question 8:** No comment.

**Question 9:**

- i) Licencing – No comment
- ii) Ownership & Control – Virgin Media's views on this policy will be provided to the separate consultation on this issue
- iii) Obligations under Media Mergers Legislation – No comment
- iv) Research – No comment
- v) Media Literacy – Virgin Media supports this programme however we believe the BAI should consider whether (through the licence fee or otherwise) funding should be secured to ensure this remains a sustainable initiative.
- vi) Code of Fairness, Objectivity and Impartiality in News & Current Affairs – No comment
- vii) Broadcasting Funding Scheme – Sound & Vision and Archiving – The funding level from the Television Licence fee at 7% is too low and should be revised
- viii) Irish Language Action Plan – No comment
- ix) Dialogue with Stakeholders – No comment

**Question 10:** With regards to The General Communication Code, BAI should ensure that there is an appropriate balance in the Code between the need to offset any perceived harm caused by certain commercial activity (e.g. Advertising, Sponsorship etc.) and the dependency certain organisations have on this activity for their very existence. If it is accepted that commercial organisations are an important contributor to media plurality, then the manner in which the Code is applied has to ensure that this does not remove vital sources of income for these organisations.

**Question 11:** No.

BAI Ownership and Control Consultation  
Broadcasting Authority of Ireland  
2 - 5 Warrington Place  
Dublin 2  
D02 XP29  
**By Email [consultations@bai.ie](mailto:consultations@bai.ie)**

30 January 2019

Dear Sirs

## **Response to BAI Consultations on Media Plurality Policy and BAI Ownership and Control Policy**

Matheson welcomes the opportunity to comment on the draft versions of the Media Plurality Policy and Ownership and Control Policy, as published by the BAI on 11 December 2018.

Matheson is a market leader in providing legal advice to media companies based in Ireland and elsewhere. We have substantial experience in the provision of legal advice in the context of media merger transactions and advising on the Irish broadcasting framework.

We have the following comments:

- **Media plurality definition**

In general, Matheson welcomes moves to ensure that the approach to particular definitions by the Competition and Consumer Protection Commission ("**CCPC**") is followed also by the BAI. Our clients are consistently seeking to invest in well-regulated and predictable environments and the common approach to definitions plays an important role in this regard.

- **Ownership and control and substantial interests**

The BAI appears to be continuing to take a wide view of the meaning of "ownership" of a media business. The adoption of a definition of ownership of a media business to include the ability to review and take account of the ownership of shares in a media business which does not amount to actual ownership of a media business is confusing. We suggest that the BAI look again at its policy in this regard. It seems to us that arguably the key consideration for both sets of Policy documents is whether or not a person or undertaking has the ability to control a media business. This would be consistent with the CCPC's analysis under the

Competition Acts 2002-2014 and the EU Merger Regulation. There may be an argument that some categories of share ownership rights/some circumstances either taken alone or along with other considerations should be reviewed where such rights gives rise to a “material interest” in a media company, similar to UK media merger practice. However, such reviews should always take account of whether there is a genuine ability to influence, taking account of safeguards. Any other approach tends to lead to unpredictability and is likely to undermine the objectives of viability and sectoral sustainability.

When reviewing control in the context of plurality, the question should be whether there is an ability to *control the policy of a company with regard to programme output*. To the extent that there are meaningful safeguards in place to prevent such influence, then proper account should be taken on these measures, as in those circumstances, such control of the entity overall might not raise plurality issues.

We do not consider the guidance on when an interest is “substantial” in the draft Ownership and Control Policy to be compelling overall. We believe that the emphasis should be on the ability to influence to an appreciable extent the strategic direction of the entity as regards programme output (as explained in the core paragraph). We do not support the rough “rule of thumb” guidance as regards shareholdings of more than 10 per cent as shareholdings that “may be deemed to constitute a substantial interest” as helpful to the core paragraph and in our view, this paragraph merely tends to confuse.

- Objectives of the draft Policy on Media Plurality/how this will be supported by the BAI

We consider the four objectives outlined to be reasonable. In our view, the critical issue is how media plurality is supported in an effective and practical manner.

We welcome that account is taken of the severe revenue decline, strong online competition/e-substitution and threat to sustainability facing media companies. It is important to note that industry consolidation may be necessary to support investment and ultimately a more sustainable and vibrant future for industry players and the public audience alike.

- Objectives of the draft Ownership and Control Policy

We support the additional references in the objectives to viability and sectoral sustainability. We believe that the BAI may be overemphasising the importance of diversity of ownership when it might be better to focus on diversity of control.

There is a clear need for the BAI policy to adjust to take due account of the severe revenue decline, strong online competition/e-substitution and threat to sustainability facing licensed operators. The proposed increase to thresholds for ‘undue number’ of licenses represents a much needed first step towards a new order where there is acceptance by the BAI that industry consolidation may be necessary to support investment and ultimately a more sustainable media sector. We believe that the BAI should seriously consider raising the suggested thresholds further as even the suggested thresholds remain obstacles to commercial viability and sustainability.

We hope that the views expressed in this letter are of some assistance to the BAI in its review.

Yours faithfully

Sent by email, bears no signature

**MATHESON**

## **Response to BAI on Media Plurality**

**Comment on ‘Media Plurality’ as defined in BAI’s policy document and the need for a more specific definition which would incorporate both acknowledgement and endorsement of minority language usage in Irish society.**

### **Introduction:**

There are sizeable minorities in Ireland for whom English is neither the dominant nor sole language of communication.

Many of the ‘New Irish’ families consciously promote the use of the mother language in their children whilst they, the children, become assimilated into an English speaking environment.

The language of the home is a mix of English and the mother language of a parent.

Language, for these people, is enormously important; it represents and is at the core of their culture and tradition.

What applies to these significant minorities such as Poles, Syrians, Romanians, and Chinese applies equally to Gaelic speakers.

The greatest single demonstration of acknowledging and endorsing the culture and tradition of these minority peoples is for them to hear their language spoken: Dziękuję Ci (thank you) to a Polish employee at a check-out, ‘multumesc’ to a Romanian’ can have enormous impact.

### **Current Practice:**

In the English speaking world there is a reluctance to move outside the pale of that language. Perceptions of the superiority of English and the inferiority of other languages can linger in the subconscious mind. In Ireland foreign rule denigrated the Gaelic tongue. In the US the English language was to be the only state recognised language. Britain’s colonial period witnessed an intolerance of native languages. Early BBC commentators referred to Gaelic as ‘Erse’. Conversely, from the time of the foundation of the Irish State, the Government support for the revival of Gaelic was tainted by ‘compulsory Irish’ and a favoured status accorded to Gaelic speakers.

With the exception of TG4 and Nuacht on RTE1 and occasional and rare programmes a person would be justified in claiming that there would seem to be a taboo, a prohibition on the use of any language other than English in TV programmes. Chat show TV presenters would contend that this blanket mono-lingual practice is the only feasible one which can work; they might also add that inclusivity demand this be so.

It is time to end this taboo, this probation. In a diverse society it is time and it is possible, to respect and endorse minority languages used in our society. And TV is one media which can be at the forefront of this new departure, one in which TV stations can adopt a policy of positive discrimination which is also inclusive.

**Enhanced role of BAI in endorsing a multi-lingual society. A new departure.**

That TV stations adopt a policy of positive discrimination towards minority languages. This would constitute a new departure from existing TV practice.

That the hallmark of such a policy be one of inclusivity; language, rather than becoming a barrier would become a vibrant expression of the diverse society in Ireland today.

**An example of implementation:**

Main news bulletins: on selected occasions a news item which emanates from and is representative of a minority language would be chosen. Interviewees involved in the featured event would be informed of the Station's policy of a choice being given to speak in their native language, with a translation offered to viewers through streaming/subtitles on screen.

Examples of news items for implementation of above practice:

1. A visiting Italian rugby team lands at Dublin Airport
2. Chinese New Year celebrations
3. Fisherman from Gaeltacht rescues sailors adrift
4. French Film Festival

**Impact of new departure:**

The use of the spoken word as outlined above could be a major influential force in endorsing our diverse, multi-cultural society. In the explicit examples above it should be borne in mind that in an evening news bulletin whose format is fundamentally an English language one the use as suggested in examples 1 to 4 above is not mere tokenism but a fundamental shift towards actively and consciously acknowledging and endorsing a language other than English and doing so inclusively. Crucially: acknowledging one minority language endorses all other languages.

**Enhancement of new policy on language usage:**

As a means towards implementing this new policy BAI would involve groups and individuals such as: minority language communities, public consultation, media linguistic experts, Third Level Colleges, embassies, expertise in the advertising industry.

**Role of BAI:**

To adopt a policy as outlined above, i.e. usage of minority languages in TV programming

To become a catalyst for innovation in multi-language usage

To promote inclusivity

Support TV stations on stratagems for implementing this new departure

Financial support to TV stations; especially in initial stages

Financial support for research on means of implementing this new policy

Research on impact on viewers

Annual review of implementation

Acceptance that the adoption of this policy will need time to evolve, to find acceptance and to constantly renew itself.



**Subject:** FW: New Consultation Submission

**From:** BAI [mailto:noreply@bai.ie]

**Sent:** Wednesday 12 December 2018 08:07

**To:** Consultations Distribution Group <consultations@bai.ie>

**Subject:** New Consultation Submission

Thank you for your submission. Here is a summary of your response.

- **Form Title :**
  - Draft BAI Media Plurality Policy
- **Appendix 3 Question 1 :**
  - 1. 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?
- **Appendix 3 Answer 1 :**
  - Acceptable in principle. An exposure to diversity can lead to more open and accepting minds. Nevertheless, as the recent scandals with facebook and fake news have shown, there is a law of unintended consequences. Increased diversity could also include near to far fight left and right viewpoints.
- **Appendix 3 Question 2 :**
  - 2. 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?
- **Appendix 3 Answer 2 :**
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- **Appendix 3 Question 3 :**
  - 3. Are there any other definitions that you believe it would be helpful to include in the Policy?
- **Appendix 3 Answer 3 :**
  -
- **Appendix 3 Question 4 :**
  - 4. 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?
- **Appendix 3 Answer 4 :**
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- **Do Not Answer All :**

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- **Appendix 4 Question 1 :**
  - 5. What are your views on the manner in which the BAI explains the importance of media plurality?
- **Appendix 4 Answer 1 :**
  - It is overly concerned with external media, such as Netflix, Amazon etc. The state broadcaster is even more guilty of groupthink and existence in a echochamber.
- **Appendix 4 Question 2 :**
  - 6. 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?
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- **Appendix 5 Question 1 :**
  - 7. What are your views on the five policy objectives detailed in Section 4?
- **Appendix 5 Answer 1 :**
  - Who exactly detrmines the "trusted and credible voices" to which are we to listen to. The civil service and state broadcaster were already found to be unreliable and prone to groupthink in the last economic crash. The recent 8th amendment referendum was another example, with much too much attention focused on ill-educated politicians as a credible voice and somehow representative of the people\'s views.
- **Appendix 5 Question 2 :**
  - 8. 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?
- **Appendix 5 Answer 2 :**
  - Acceptance of our Eastern European, African and Asian citizens, and their heritage. One cannot demand a plurality in the media, while also advocating increasing concentration on Irish to the exclusion of others
- **Appendix 6 Question 1 :**
  - 9. 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.
- **Appendix 6 Answer 1 :**
  - 1; We now come to the crux of this entire effort. It should be openly admitted that this entire exercise is simply another attempt to increase the tax on citizens owning a television. 2; RTE has not defended pluralism in Ireland, as its content is either US or UK products, with very limited Irish made entertainment, while the news outlets have proven sadly lacking in holding power to account. 3; The BAI mandate on pluralism appears to be a licence for either propaganda or censorship depending on the government requirments 4; These reports serve no use if rise of far left/right news media outlets and their bile is left unchecked and unexposed by the state broadcaster 5; A noble attempt to counteract fake news media and to be encouraged 6; Fine in theory, but how does the BAI enforce this if an Irish viewer is watching sites such as FOX News or Infowars? 7 & 8; Excellent notion, with both 2FM and RTE 2 largely "Americanised", these 2 stations should be shut down, and the funding

pumped into increased Irish language content and dubbing of quality overseas documentaries. 9; No opinion

- **Appendix 6 Question 2 :**

- 10. 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?

- **Appendix 6 Answer 2 :**

- Greater attention should be paid to the activities and personnel of the state broadcaster. Are there a plurality of voices in RTE? Does a protected coterie of individuals on +200k represent a plurality? How can an organisation be an independant voice if it is beholden to both the state and private business for funding?

- **Appendix 6 Question 3 :**

- 11. Do you have any additional comments on the Policy as a whole?

- **Appendix 6 Answer 3 :**

- A noble attempt to create a more open and especially honest dialogue in news outlets. Sadly it is open to much criticism, due to an unwillingness to adress flaws with the state broadcaster, including a lack of plurality. I also strongly doubt the ability of the BAI to control or censure the product of more neferious news outlets. In the final analysis, the questions must be asked; Is this nothing more than an attempt to raise funds for RTE by forcing streaming services to buy RTE content? Will RTE truly follow this mandate and cease spending taxpayers money on US and UK content? How does one achieve a plurality but deny access to bigoted sexist or racist content providers? Should access be denied, or should time be spent to expose and undermine their philosophies?

- **Full Name :**

- [REDACTED]

- **Email :**

- **Phone Number :**

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1. 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?

Insufficient for 2019. This does not factor in technology firms that host for profit and public distribution media.

2. 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?

Insufficient for 2019. This does not factor in technology firms that host for profit and public distribution media.

3. Are there any other definitions that you believe it would be helpful to include in the Policy?

See 1 & 2 above.

4. 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?

5. What are your views on the manner in which the BAI explains the importance of media plurality?

“Threats to the financial ecosystem” is subjective and arbitrary. Many pension companies bet against an economy in which their pension holders are workers, including Ireland.

6. 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?

“Threats to the financial ecosystem of news and cultural production due to the loss of income from news payment and from advertising.” Should read “Threats to the financial, social and environmental ecosystem of news and cultural production due to the loss of income from news payment and from advertising.”

7. What are your views on the five policy objectives detailed in Section 4?

Who is the arbiter of ‘high quality’ and can you spell out the criteria?

“mix of trusted and credible voices, opinions and sources” again this is subjective and arbitrary. Who is the arbiter and what are the criteria?

This should really be decided by a random, diverse and informed jury of the listenership.

8. 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?

Three areas: the limiting of the agenda, the framing of debate and the exclusion of critical analysis for the benefit of 'the national interest'. Topics are discussed, but only within the agenda as set by the broadcaster and not as sought by the audience. The framing of the debate is often through assumptions, biases or behaviour techniques. And the national interest means that regional and international perspectives are denigrated or excluded.

A good example of all three was on 28/1/19 episode of RTE's Claire Byrne show. The question on Irish Unity was the worst of all three of the above.



Why was Nigel Farage brought on as an expert, why was the audience not shown the opinions of British (Welsh and English) people as to the upside of Brexit for them, socially and economically. Why is every presenter waving the Irish flag on this topic on every station to the point of excluding any critical debate vis-a-vis the potential economical upside. Be an upside through businesses opening to provide replacement produces and services, or the flow of EU construction workers from the UK to Ireland to aid in solving the Irish housing issue?

9. 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.

**BAI's 6. BAI Code of Fairness, Objectivity and Impartiality in News & Current Affairs:** should involve random, public, informed, diverse juries to adjudicate on what is fair, objective and impartial from a sample of the public. This fits in with '4 Research'.

BAI should host the open standardised data on the meta data around the programming broadcasted by those under its remit. The broadcasters already collect most of this data, but it should be available for academic research and public scrutiny without financial barrier.

Section 5. media literacy is noble, but I have never seen or hear it in practice. Is there a compulsory, daily, prime time, public service announcement on media literacy by each broadcaster with a curriculum as prescribed by BAI? Or even a website?

I recommend BAI working with <http://www.ucd.ie/geary/research/behaviouralscience/> to provide research on the gap between the assumption of media plurality, the actual lack of media plurality and methods to educate the audience to be active citizens engaging with broadcasters to bridge that gap in the field of '**media consumers decision making and action taking skills**'.

10. 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?

Expansion of the media literacy remit into all hosters/producers of media content by companies listed in Ireland classed as medium or bigger in size by the companies registration office.

11. Do you have any additional comments on the Policy as a whole?

BAI was quite quiet on this consultation. Why, as part of licensing compliance, was every programme not compelled to inform their audience of this consultation. How can passively absorbing media recipients become active citizens if they do not know that there is a consultation on

**Subject:**

FW: New Consultation Submission

**From:** BAI [mailto:noreply@bai.ie]

**Sent:** Tuesday 29 January 2019 13:45

**To:** Consultations Distribution Group <consultations@bai.ie>;

**Subject:** New Consultation Submission

Thank you for your submission. Here is a summary of your response.

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- **Appendix 3 Answer 3 :**
  - "Minority viewpoints" should be expanded to specify that this means the viewpoints voiced by people who are members of minority communities (for example migrants, ethnic minority populations, disabled people, LGBTQ people, members of minority religious congregations etc.).
- **Appendix 3 Question 4 :**
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- **Appendix 4 Answer 2 :**
  - This should be expanded to mention that another reason why it is important to actively include people from minority backgrounds is that they historically have been underrepresented in traditional media. Migrants, Travellers, disabled people, transgender people and people from working class backgrounds continue to be severely underrepresented in media and political comment, and this has knock-on effects on public discourse and policy decisions.
- **Appendix 5 Question 1 :**
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- **Appendix 5 Answer 1 :**
  - Irish Sign Language is also an official language of the country and should be included in the policy objectives. It would also be suitable to include objectives relating to other languages widely spoken in Ireland, e.g. Polish. It should be noted that "trusted and credible voices" is a circular concept in media. When a person is regularly given a platform to speak on an issue this history becomes evidence of their credibility, regardless of their actual experience of the issue in real life. When media businesses assess the trust or credibility of a commentator they should consider their real life experience and/or qualifications. Someone with personal experience on an issue should be considered more credible than a person with a lot of experience of being in the media who does not have personal experience in that area. For example a refugee can speak to the refugee crisis or the asylum seeking process with more authority than media personality who has never been an asylum seeker.
- **Appendix 5 Question 2 :**
  - 8. 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?
- **Appendix 5 Answer 2 :**
  - More Irish sign language and other non-English content. More representation of minority communities and people from disadvantaged backgrounds. Current affairs programmes should have an obligation to ensure they do not create false dichotomies for the sake of entertainment rather than presenting the facts.
- **Appendix 6 Question 1 :**
  - 9. 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.
- **Appendix 6 Answer 1 :**

- As above re definition of "trusted and credible people", this should promote people with real life experiences over people who are simply well-known. Standards should specify that "balance" on controversial topics should be informed by facts, experts and real stories, not necessarily just a fifty:fifty split of coverage to issues which are never really black and white. In addition balanced coverage should not require debates to be the only format of news or current affairs coverage.

- **Appendix 6 Question 2 :**

- 10. 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?

- **Appendix 6 Answer 2 :**

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- **Appendix 6 Question 3 :**

- 11. Do you have any additional comments on the Policy as a whole?

- **Appendix 6 Answer 3 :**

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- **Full Name :**

- [REDACTED]

- **Email :**

- **Phone Number :**

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