



## GUIDE TO SUBMISSIONS

FOR THE

## TELEVISION PROGRAMME SERVICE CONTRACT

The Broadcasting Authority of Ireland (“the BAI”) reserves the right to correct or clarify any part of this *Guide to Submissions for the Television Programme Service Contract* (“Guide”).

Any such corrections, clarifications or supplementary information will be posted on the BAI’s website, [www.bai.ie](http://www.bai.ie)

All queries regarding this Guide should be emailed to:

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## 1. INTRODUCTION

On the 5<sup>th</sup> of October 2022, the Contract Awards Committee of the Broadcasting Authority of Ireland (“BAI”) invited applications for a Television Programme Service Contract by public notice on its website and in a national newspaper. Section 70 of the Broadcasting Act 2009 (“2009 Act”) provides for the award of a Television Programme Service Contract on the recommendation of the Contract Awards Committee.

This Guide sets out the process that will be followed by the Contract Awards Committee (“Committee”) when considering the applications received by it and provides guidance and information to interested applicants about the statutory and policy framework in which applications will be considered. It also prescribes the application format. The Guide does not purport to be exhaustive, definitive or fully reflective of the requirements of the 2009 Act and potential applicants should have regard to the provisions of the 2009 Act, in particular, to section 66 which sets out the matters to which the Committee will have regard in considering applications and determining the most suitable applicant, if any, for the award of the Television Programme Service Contract, as well as sections 69 and 70 which specifies contractual conditions to be included in the Television Programme Service Contract.

Please note that all valid applications submitted will be made publicly available after the closing date for the submission of applications subject to the provisions of the General Data Protection Regulation and Data Protection Act 2018. Applicants should also refer to sections 2.7 – 2.11 below regarding the submission of confidential and / or commercially sensitive material.

Any queries on the licensing process should be addressed to Jill Caulfield at the following e-mail address:  
[licensing@bai.ie](mailto:licensing@bai.ie)

## 2. PROCEDURES FOR THE SUBMISSION OF AN APPLICATION

All applications submitted for the award of the Television Programme Service Contract must comply with the requirements set out in this Guide. Failure to fully comply with the prescribed requirements will make the application liable to be disqualified and, thereby, to not be further considered by the Committee pursuant to section 66 of the 2009 Act. **Incomplete submissions will not be considered as valid applications.**

- 2.1 *Format:*** The application must comply **strictly** with the application format in Part 4 of this Guide and contain **all** of the information required therein. Sufficient information must be supplied about the applicant and the proposed service to enable the Committee to consider the application in accordance with the statutory criteria for the award of the Television Programme Service Contract.
- 2.2 *Presentation and Submission:*** The application must be typed in letter quality type-face using the appropriate numbering provided in the application format. It must be presented in **A4** format with pages clearly numbered and **15** printed copies of the application should be sent as well as one electronic copy of the same application in PDF format not exceeding **16MB**.<sup>1</sup> All supporting documents as requested in the checklist in Section 8 of the Guide must be supplied in legible form. Printed copies of the application must be bound, by comb or wire, between covers. The application may be submitted in either Irish or English.
- 2.3 *Verification of information:*** All information submitted as part of the application must be true and correct. Applicants are required to provide a declaration, signed by a suitable authorised person, that the information contained in the application and in the additional documentation accompanying the application is true and correct to the best of that person's knowledge and belief. Should any amendments need to be made by any applicant to the application or its accompanying documents, the Committee should be informed immediately. No material alterations will be permitted to the proposals in the application without the consent of the Committee and the Committee will not agree to any such amendments where it considers that it would be unfair to any other applicant for the Television Programme Service Contract to permit such amendments.
- 2.4 *Declaration:*** The Declaration at *Appendix 1* of this Guide must be submitted as part of the application and must be signed and dated. The person who signs and makes the declaration on behalf of the applicant must be:
- A director of the company or the company secretary where the applicant is a company.
  - A designated member where the applicant is a Limited Liability Partnership.
  - A partner, where the applicant is a partnership.
  - A member of the organisation's governing body where the applicant is an unincorporated body or association.
  - The individual who will be the contractor where the applicant is an individual.

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<sup>1</sup> The electronic copy can be submitted in more than one email/ attachment if required.

- 2.5 *Publication:*** Applications will be made available for public inspection at the offices of the BAI and on its website after the closing date for the submission of the applications. Applicants should also refer to sections 2.7 – 2.11 below.
- 2.6 *Closing Date:*** The application and all copies thereof must be submitted to the BAI at its offices at 2-5 Warrington Place, Dublin, D02 XP29 by **12 noon on 4<sup>th</sup> of January 2023.**
- 2.7 *Confidential and Commercially Sensitive Material:*** Information which an applicant considers to be confidential or commercially sensitive must be included in a Confidential Appendix to the application form. The applicant's reasons for believing that the public should not have access to the material in question must be outlined. Where the BAI believes that material that an applicant has placed in the annex should be made available to the public, it will enter into discussions with the applicant with a view to reaching an agreement as to the extent of disclosure.

If an agreement cannot be reached, within a reasonable period having regard to the BAI's timeframe, the BAI will treat the relevant information as having been withdrawn and consider the remainder of the application as being the submission from that applicant. Each applicant shall be responsible for providing the BAI with such authorisations, waivers and/or indemnities as it may reasonably require in connection with the disclosure to members of the public of material contained in his or her application.

- 2.8 *Competition and Consumer Protection Act, 2014:*** Applicants should also be aware that Section 19 of the Competition and Consumer Protection Act, 2014 makes provision for the disclosure of information by the BAI to the Competition and Consumer Protection Commission in certain circumstances.
- 2.9 *Freedom of Information:*** Records may be made available to the public further to requests under the Freedom of Information Act 2014 ("FOI Act"). The FOI Act also exempts certain records from publication. The BAI will consult with the interested party about the request before deciding on any request received.
- 2.10 *Third Party Agreements:*** Any agreements between the BAI and interested parties regarding confidential and/or commercially sensitive information are without prejudice to the BAI's obligations under law, under the Broadcasting Act 2009 and the Freedom of Information Act 2014. The BAI, therefore, cannot warrant that information claimed as confidential or commercially sensitive by an interested party or treated as such might not be disclosed pursuant to law.
- 2.11 *GDPR:*** The BAI shall comply with its obligations under the General Data Protection Regulation ("GDPR"), Data Protection Act 2018 and any other applicable data privacy laws and regulations. The BAI is obligated and committed to protecting all personal data submitted in response to a call for applications. The BAI has an appointed Data Protection Officer who is registered with the Data Protection Commission.

Applicants can find out more on how the BAI processes personal information in the BAI's published policy at: <https://www.bai.ie/en/about-us/data-protection-policy/> and the BAI's terms and conditions at: <https://www.bai.ie/en/about-us/terms-conditions>.

**2.12 Letters of Support:** Applications must not include letters of support.

**2.13** Further to the above: -

- ***The application must strictly comply with the format in Part 4 of this Guide and contain all of the information required therein. Incomplete submissions will not be considered as valid applications.***
- ***Applicants are strongly encouraged to include all the key information in the application and any detailed back-up information and material in appendices. Appendices should be clearly numbered and cross referenced as per the enclosed application format. The printed copies of the application must be bound, by comb or wire, between covers.***
- ***Information which an applicant considers should be treated as confidential should be clearly marked as such and included in a Confidential Appendix.***
- ***The electronic copy of the application can be submitted as one PDF file or comprise separate PDF files of: the main application; the appendices; and the Confidential Appendix.***
- ***The complete application, in electronic format, should not exceed 16MB in size and should include all other appendices.***
- ***The application must be accompanied by a completed and signed Declaration.***
- ***The BAI encourages the submission of applications which are clear, concise and simple in layout and style.***
- ***The BAI discourages the submission of unrequested graphics and insignia. Please do not include any photos, pictures and/or station identity material in the mainstay of the proposal. If such material is considered necessary, it should be submitted in a separate appendix.***
- ***The application should not include any letters of support.***

### 3. INFORMATION FOR APPLICANTS

#### 3.1 Statutory and Policy Framework

Ireland's statutory framework for licensing broadcasting services is set out in the Broadcasting Act 2009 (the "2009 Act", or the "Act"). The BAI is Ireland's regulator for broadcasting services under the Act and has adopted a Broadcasting Service Strategy ("BSS") to underpin how it licenses television and radio broadcasting services pursuant to section 26(1)(a).<sup>2</sup> Through the BSS the BAI seeks to ensure that Irish audiences are served by a diverse range of broadcasting services that are open and pluralistic in nature. Central to the BAI's vision is choice and diversity for audiences and an expectation that all audiences will be served.

The main objectives of the BSS are as follows:

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

Section 70 of the 2009 Act provides for the award of one Television Programme Service Contract. Programming provided under this contract must:

- Be responsive to the interests and concerns of the whole community, be mindful of the need for understanding and peace within the whole island of Ireland, ensure that the programmes reflect the varied elements which make up the culture of the people of the whole island of Ireland, and have special regard for the elements which distinguish that culture and in particular for the Irish language;
- Uphold the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression;
- Have regard to the need for the formation of public awareness and understanding of the values and traditions of countries other than the State, including in particular those of other EU Member States; and
- Include a reasonable proportion of news and current affairs programmes.

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<sup>2</sup> [https://www.bai.ie/en/media/sites/2/dlm\\_uploads/2018/11/20181105\\_BSS\\_En\\_AOB.pdf](https://www.bai.ie/en/media/sites/2/dlm_uploads/2018/11/20181105_BSS_En_AOB.pdf)

The service also has programming requirements concerning European Works and European Works from Independent Producers, as set out in sections 70(4)(a) and 70(4)(b), respectively.

The current Television Programme Service Contract is held by Virgin Media Television Limited. The channels Virgin Media One, Virgin Media One +1 and Virgin Media Two are provided under the Television Programme Service Contract. The Contract will expire on the 19<sup>th</sup> of September 2023. Section 70(1) of the Act requires the Authority, on the recommendation of the Committee, to enter into a contract with a person or persons for the provision of a Television Programme Service. Section 66 of the 2009 Act requires the Committee to consider and to determine the most suitable applicant, if any, in respect of the Television Programme Service Contract in accordance with specified assessment criteria.

Applicants should therefore have particular regard to the relevant assessment criteria set out in section 66(2) and 66(4) and to the duties that will be imposed on successful applicants under the various provisions of the 2009 Act, including, in particular, the programming requirements specified in section 70(2) and 70(4).

Applicants will also be required to demonstrate that all programming will comply with the relevant BAI codes and rules developed pursuant to Part 3 of the Act, including the BAI Commercial Communications Code, the Code of Programme Standards, the Code on Fairness, Objectivity and Impartiality and the Access Rules.

Applicants should also have regard to the relevant BAI policies, including, *inter alia*, the BAI's *Broadcasting Services Strategy*, *Media Plurality Policy*, *Ownership and Control Policy*, and the *Compliance and Enforcement Policy*.

These documents are available on request from the BAI and are available online at [www.bai.ie](http://www.bai.ie).

### **Carriage of the Television Programme Service**

Special carriage arrangements for the Television Programme Service are set out in the 2009 Act.

The service is the only broadcasting service, other than certain services provided by RTÉ, TG4, the Irish Film Board and the Houses of the Oireachtas Service, that enjoys special status as a “must carry” service under section 77 of the Act and which must therefore be made available on “appropriate networks” used for the transmission of broadcasting services to the public.<sup>3</sup> The service is also subject to “must offer” obligations under section 77(11) and (12).

Under section 130(10) of the 2009 Act, carriage for the service may also be secured on the Saorview multiplex operated by RTÉ at the request of the BAI to the Minister, and in consultation with RTÉ.<sup>4</sup> Carriage of the Television Programme Service on the Saorview multiplex will be subject to its regulated cost model.

### **Contractual Requirements**

Section 69 of the 2009 Act provides that every broadcasting contract may contain such terms and conditions as the Authority thinks appropriate and specifies in the contract. The BAI is also required by statute to include specific conditions in the contract. Indicative terms and conditions of the current Television Programme Service

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<sup>3</sup> <https://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/print#sec77>

<sup>4</sup> <https://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/print#sec130>



Contract are available for information. Applicants should note that these are indicative only and not intended to be an exhaustive list of terms and conditions that may be determined by the Authority as appropriate for inclusion in the final Television Programme Service Contract and/or required by the applicable statutory and regulatory framework in force at the time of entry into the contract.

Applicants should note that the programming requirements specified in sections 70(2) and 70(4) of the 2009 Act will be reflected in the contractual conditions for the Television Programme Service with the successful applicant. Applicants should consider their ability to comply with these requirements before making an application.

### **Composition of the Programme Material**

Applicants may propose to include more than one channel in their application for the Television Programme Service Contract. The Committee will consider any proposals in accordance with the relevant assessment criteria specified in section 66 of the Act, as explained and set out in section 3.3 of this Guide.

Section 66(2)(k) enables the Committee to have regard to any matter it considers to be necessary to secure the orderly development of broadcasting services. Further to section 66(2)(k), the Committee will assess how the composition of programme material on all proposed channels (in terms of the type and range of programming proposed, specific commitments to transmission time and scheduling, the placement of particular programmes on a channel or channels etc), meets and promotes the criteria specified in section 70(2) of the 2009 Act. Where multiple channels are proposed, applicants are encouraged to demonstrate the “additionality”<sup>5</sup> provided by using multiple channels to deliver the Television Programme Service. The Committee will assess the composition of programme material on each channel independently and all channels in aggregate. Applicants will be asked to demonstrate how specific programming commitments will be delivered by each of the channels. Different channels may target audiences in different ways, provided the effect of this targeting promotes the underlying objectives of the criteria set out in section 70(2). Any proposal involving multiple channels must be definitive and not conditional or optional on the contract awards decision to be made by the Committee.

Applicants interested in providing more than one television channel should also note that the 2009 Act provides for another type of contract for the provision of television and/or radio services. These contracts are known as ‘content provision contracts’ pursuant to section 71 of the 2009 Act. Further information on content provision contracts is available on the BAI website. Applicants should note that the section 71 contract awards process is a separate non-competitive contract awards process and an application can be made at any time to the BAI. Applicants should refer to the Guide for Section 71 Applications, published by the BAI, which provides information about the contract awards process, criteria, and the conditions that contractors will be subject to.<sup>6</sup>

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<sup>5</sup>The way content is made available on a service increases the aggregate availability or the availability at certain times of programmes that promote the relevant statutory objectives of section 70 (2).

<sup>6</sup> <https://www.bai.ie/en/broadcasting/licensing-2/television/#al-block-3>

## **Online Safety and Media Regulation Bill 2022**

Applicants should be aware that Ireland’s regulatory environment for the different forms of media, including broadcast media, is currently evolving and is expected to undergo significant legislative change in the near future. Specifically, during the licensing process for this contract, it is expected that the Online Safety and Media Regulation (“OSMR”) Bill 2022 will be enacted by the Oireachtas. This Bill transposes the Audiovisual Media Services Directive 2018 into Irish law and will establish Coimisiún na Meán (“an Coimisiún”) as the new regulator for broadcasting services. An Coimisiún is intended to have a significantly expanded regulatory jurisdiction which will encompass the regulation of not only broadcasters but also of on-demand services, video-sharing platform services and certain designated online services.

When the OSMR Bill comes into force, the BAI/Authority and its statutory committees, including the Contract Awards Committee, will be dissolved. The functions of the Authority and its statutory committees under the 2009 Act will be vested in an Coimisiún including the power to award broadcasting contracts under sections 66 and 70 of the 2009 Act and the power to determine the terms and conditions of broadcasting contracts under section 69. An Coimisiún will also be empowered under the OSMR Bill to continue and to complete contract award procedures which have been commenced but remained uncompleted when the OSMR Act comes into force. Further, any existing broadcasting contracts entered into with the Authority prior to the enactment of the OSMR Bill will be deemed to have been made with an Coimisiún and accordingly will have full force and effect after these legislative changes have been made.

Applicants should be aware that the provisions of the OSMR Bill may be subject to change during or as a consequence of consideration by the Oireachtas and important aspects of the current regulatory framework, including in the areas of the broadcasting levy, compliance procedures, broadcasting codes and rules may be the subject of changes in the future which may be reflected in the terms of future broadcasting contracts. Applicants should seek their own legal advice if they have any concerns, questions or require advice in relation to the changes which are expected from the enactment of the OSMR Bill.

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### **3.2 The Specified Area and Target Audience**

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The service will be a national free-to-air<sup>7</sup> service for all audiences on the island of Ireland.

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### **3.3 Evaluation of Applications**

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Section 66, subsections (2) and (4) of the 2009 Act specifies the criteria (“Statutory Criteria”) to which the Contract Awards Committee (“Committee”) shall have regard in determining the most suitable applicant, if any, for the award of the Television Programme Service Contract. Section 66(2)(k) enables the Committee to have regard to other matters, additional to the other section 66(2) criteria, which the Committee considers to be necessary to secure the orderly development of broadcasting services.

As guidance for applicants, the Statutory Criteria have been grouped under four headings: (1) ownership and control; (2) programming; (3) studios and transmission; and (4) market analysis, financial and business plans. The Committee's evaluation of each application will be under these headings with reference to the Statutory Criteria.

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<sup>7</sup> Free-to-air service means a broadcasting service for the reception of which no charge is made by the person providing the service.

### 3.3.1 Ownership and Control

The relevant provisions under Section 66 of the 2009 Act in respect of the ownership and control structure of an applicant are as follows:

- Section 66(2)(a): the character, expertise and experience of the applicant or, if the applicant is a body corporate, the character expertise and experience of the body and its directors, manager, secretary or other similar officer and its members and the persons entitled to the beneficial ownership of its shares,
- Section 66(2)(k): the desirability of allowing any person, or group of persons, to have control of, or substantial interest in, an undue amount of communications media, and
- Section 66(4): the overall quality of performance of the applicant under any previous broadcasting contract held by him or her at, or before, the date of making an application and reports of the Compliance Committee.

These criteria will be applied in assessing the applicant's proposals, *inter alia*, under the following headings:

- (i) the composition of the applicant's Board of Directors,
- (ii) the applicant's proposed shareholding structure,
- (iii) the applicant's proposed senior management structure,
- (iv) the applicant's track record under this heading, including if the applicant is a previous and/or a current holder of a broadcasting contract.

### 3.3.2 Programming

The relevant provisions under Section 66 of the 2009 Act in respect of programming are as follows:

- Sections 66(2)(c) and 66(2)(k): the quality, range and type of the programmes proposed to be provided by the applicant and the extent to which the programming will: (i) be responsive to the interests and concerns of the whole community, and reflect the diversity and varied elements that make up the culture of the people, of the whole island of Ireland; (ii) uphold the democratic values enshrined in the Constitution especially those relating to rightful liberty of expression; (iii) have regard to the formation of public awareness and understanding of the values and traditions of other Member States and countries; and (iv) include a reasonable proportion of news and current affairs programmes,
- Section 66(2)(k): the extent to which the composition of the programme material on the service meets and promotes the objectives of section 70(2) on each channel and in aggregate,
- Section 66(2)(d): the quantity, quality, range and type of programmes in the Irish language and the extent of programmes relating to Irish culture proposed to be provided,
- Section 66(2)(e): the extent to which the applicant will create within the proposed broadcasting service new opportunities for talent in music, drama and entertainment and in particular in respect of Irish culture,
- Section 66(2)(k): the compliance arrangements in place to ensure programming complies with all applicable statutory and contractual obligations,

- Section 66(2)(k): the desirability of having a diversity of services catering for a wide range of tastes including those of minority interests,
- Section 66(2)(j): the extent to which the service proposed – (i) serves recognisably local communities and is supported by the various interests in the community, or (ii) serves communities of interest, and
- Section 66(4): the overall quality of performance of the applicant under any previous broadcasting contract held by him or her at, or before, the date of making an application and reports of the Compliance Committee.

These criteria will be applied in assessing the applicant's proposals, *inter alia*, under the following headings:

- (i) the applicant's programming vision and related strategies,
- (ii) the applicant's programming proposals and commitments,
- (iii) the applicant's illustrative Programme Schedule/s,
- (iv) the applicant's proposed arrangements and procedures to ensure compliance with all statutory and contractual programming requirements,
- (v) the applicant's track record under this heading, if the applicant is a previous and/or a current holder of a broadcasting contract.

### 3.3.3 Studios and Transmission

Section 66 of the 2009 Act does not specify requirements in relation to an applicant's studio and transmission facilities. The Committee considers the development and maintenance of appropriate studio and transmission facilities to be a matter necessary to secure the orderly development of broadcasting services. The relevant provisions under Section 66 of the 2009 Act in respect of studios and transmission are, accordingly, as follows:

- Section 66(2)(k): the suitability of the applicant's (i) studio and office facilities and (ii) transmission proposals, and
- Section 66(4): the overall quality of performance of the applicant under any previous broadcasting contract held by him or her at, or before, the date of making an application and reports of the Compliance Committee.

These criteria will be applied in assessing the applicant's proposals, *inter alia*, under the following headings:

- (i) the suitability of studio and office facilities,
- (ii) transmission, and
- (iii) the applicant's track record under this heading if the applicant is a previous and/or a current holder of a broadcasting contract.

### 3.3.4 Market Analysis, Financial and Business Plans

The relevant provisions under Section 66 of the 2009 Act in respect of market analysis, financial and business plans are as follows:

- Section 66(2)(b) and Section 66(2)(k): the adequacy of financial resources available to the applicant and the extent to which the application accords with good business, economic and environmental sustainability principles and practices,
- Section 66(2)(k): the applicant's proposals in relation to organisational structure, resourcing and staffing matters, and
- Section 66(4): the overall quality of performance of the applicant under any previous broadcasting contract held by him or her at, or before, the date of making an application and reports of the Compliance Committee.

These criteria will be applied in assessing the applicant's proposals, *inter alia*, under the following:

- (i) The applicant's **analysis of the marketplace**, including:
  - (a) the existing commercial marketplace,
  - (b) the demand and potential for the Television Programme Service proposed,
  - (c) the anticipated performance in terms of audience ratings, advertising and/or other revenue of the service proposed, and
  - (d) the strategies to be put in place for achieving the anticipated performance.
- (ii) The applicant's **financial and business plans**, including:
  - (a) overall financial strategy,
  - (b) environmental sustainability plans,
  - (c) investment proposal/s,
  - (d) sources of funding, revenue and expenditure, and
  - (e) financial projections.
- (iii) The applicant's proposals in relation to **organisational structure, resources and staffing matters**, including:
  - (a) the proposed staffing structure in diagrammatic form and staffing details,
  - (b) the applicant's industrial relations policy,
  - (c) any staff remuneration and benefit schemes including pay agreements, pensions, share options etc,
  - (d) the applicant's Equality, Diversity and Inclusion policies and initiatives.
- (iv) The applicant's track record under this heading if the applicant is a previous and/or a current holder of a broadcasting contract.

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### 3.4 Scoring Matrix

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The Committee will assess applications through a scoring matrix that reflects and balances the criteria in section 66 of the 2009 Act in light of relevant legislative and policy objectives. The Committee believes that some criteria are of greater importance to the achievement of the relevant legislative and policy objectives than others and so some criteria will carry more weight than others in the evaluation process. Thus, as can be seen from the table and scoring matrix below, a criterion with a weighting of eight (8) is considered more important than a criterion with a weighting of six (6) which, in turn is considered more important than a criterion with a weighting of four (4) and so forth. **Applicants should note that they must achieve a minimum of fifty percent (50%) of the available score under each applicable criterion,<sup>8</sup> to be eligible for the award of the Television Programme Service Contract.**

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<sup>8</sup> Where an applicant does not currently and has not previously provided a broadcasting service under any broadcasting contract, the “overall quality of performance” or “track-record” criteria under section 66(4) of the 2009 Act will not be assessed by the Committee in respect of that applicant, and the maximum number of marks available to any such applicant under all headings in the scoring matrix will be 360. Where an applicant currently provides or has previously provided a broadcasting service under a broadcasting contract, the “overall quality of performance” or “track-record” criteria will be assessed and scored by the Committee. The marks available to an applicant in respect of track record will vary depending on the kind of broadcasting contract held:

- Where an applicant currently provides or has previously provided a broadcasting service under a “full” or “non-temporary” broadcasting contract, forty marks will be allotted to track record and divided equally across the four main headings. The maximum number of marks available to any such candidate under all headings will be 400.
- Where an applicant is not currently providing or has not previously provided a broadcasting service under a “full” or “non-temporary” broadcasting contract, but currently provides or has previously provided a broadcasting service under a 100-day pilot community sound broadcasting contract, twelve marks will be allotted to track record and divided equally under the Ownership & Control and Programming headings only. The maximum number of marks available to any such applicant under all headings will be 372.
- Where an applicant is not currently providing or has not previously provided a broadcasting service under a “full” or “non-temporary” broadcasting contract or a 100-day pilot community sound broadcasting contract but is providing or has previously provided a broadcasting service under a 30-day temporary sound broadcasting contract, six marks will be allotted to track record and divided equally under the Ownership & Control and Programming headings only. The maximum number of marks available to any such applicant under all headings will be 366.
- Where an applicant currently provides or has previously provided broadcasting services under different kinds of broadcasting contracts or multiple broadcasting services under the same kind of contract, the Committee will consider the applicant’s track record in respect of all such contracts, but the total marks available under the track record criterion shall be determined by the kind of contract held by the applicant with the longest duration, as set out above.

Where a track record assessment is carried out under any or all of the four main headings, a minimum score of 50% of available marks is required in the track record assessment under each main heading for the application to be eligible for the award of the Television Programme Service Contract. The scoring matrix in this Guide reflects the scoring that would be available under track record where an applicant currently provides or has previously provided a broadcasting service under a “full” or “non-temporary” broadcasting contract, such as a section 70 Television Programme Service Contract. Please refer to the definitions of “broadcasting service” and “broadcasting contract” as defined in section 2 of the 2009 Act.

<b>Ownership and Control</b>		<b>Available Score</b>	<b>Weight</b>
66(2)(a)	Character, expertise and experience of the applicant or, if the applicant is a body corporate, the character, expertise and experience of the body and its directors, manager, secretary or other similar officer and its members and the persons entitled to the beneficial ownership of its shares,	30	6
66(2)(k)	The desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue amount of communications media,	20	4
66(4)	Overall quality of the performance of the applicant with respect to the provision by him or her of a broadcasting service under any broadcasting contract held by him or her at, or before, the date of making the application and reports of the Compliance Committee.	10	2
<b>Programming</b>			
66(2)(c) 66(2)(k)	The quality, range and type of programmes proposed to be provided by the applicant and the extent to which the programming will: (i) Be responsive to the interests and concerns of the whole community, and reflect the diversity and varied elements that make up the culture of the people of the whole island of Ireland; (ii) Uphold the democratic values enshrined in the Constitution especially those relating to rightful liberty of expression; (iii) Have regard to the formation of public awareness and understanding of the values and traditions of other Member States and countries; and (iv) Include a reasonable proportion of news and current affairs programmes.	45	9
66(2)(k)	The extent to which the composition of the programme material on the service meets and promotes the objectives of section 70(2) on each channel and in aggregate.	20	4
66(2)(d)	The quantity, quality, range and type of programmes in the Irish language and extent of programmes relating to Irish culture proposed to be provided.	30	6
66(2)(e)	The extent to which the applicant will create within the proposed broadcasting service new opportunities for talent in music, drama and entertainment and in particular in respect of Irish culture.	35	7
66(2)(k)	The desirability of having a diversity of services catering for a wide range of tastes including those of minority interests.	20	4
66(2)(j)	The extent to which the service proposed— (i) serves recognisably local communities and is supported by the various interests in the community, or (ii) serves communities of interest.	20	4
66(2)(k)	The compliance arrangements in place to ensure programming complies with all applicable statutory and contractual obligations.	20	4
66(4)	Overall quality of the performance of the applicant with respect to the provision by him or her of a broadcasting service under any broadcasting contract held by him or her at, or before, the date of making the application and reports of the Compliance Committee.	10	2
<b>Transmission and Studio Proposals</b>			
66(2)(k)	The suitability of the applicant's (i) studio and office facilities and (ii) transmission proposals.	30	6
66(4)	Overall quality of the performance of the applicant with respect to the provision by him or her of a broadcasting service under any broadcasting contract held by him or her at, or before, the date of making the application and reports of the Compliance Committee.	10	2
<b>Market Analysis, Financial and Business Plan</b>			
66(2)(b) 66(2)(k)	Adequacy of the financial resources that will be available to each applicant and the extent to which the application accords with good business, economic and environmental sustainability principles and practices.	50	10
66(2)(k)	The applicant's proposals in relation to organisational structure, resources and staffing matters.	40	8
66(4)	Overall quality of the performance of the applicant with respect to the provision by him or her of a broadcasting service under any broadcasting contract held by him or her at, or before, the date of making the application and reports of the Compliance Committee.	10	2

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## 3.5 Decision Making Process

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All applications submitted for the award of a Television Programme Service Contract must comply with the format and requirements set out in Part 4 of this Guide. Failure to fully comply with the prescribed requirements will make the application liable to be disqualified and thereby to not be further considered by the Committee pursuant to section 66 of the 2009 Act.

The Committee will make its decision under the 2009 Act by following the procedure set out below. This procedure will be followed by the Committee in determining the most suitable applicant, if any, for the award of the Television Programme Service Contract. Applicants should note that, under the provisions of the OSMR Bill, on the establishment day of the new Coimisiún na Meán, the functions of the Authority and its statutory committees under the 2009 Act will be vested in Coimisiún na Meán, including the power to award broadcasting contracts under section 66 and section 70 of the 2009 Act.

- 3.5.1** An initial evaluation will be made of the qualifying applications by the members of the Committee. This will include consideration of the application submitted and an evaluation of the application prepared by the Executive. The Evaluation will be structured using the headings set out in section 3.3 *Evaluation of Applications* of this Guide and will highlight issues of relevance with reference to the Statutory Criteria set out in Section 66.
- 3.5.2** If the Committee members consider that there are any issues requiring clarifications and/or if they require any further information from an applicant, then such information may be sought by either or both:
- **Supplementary Questions:** The applicant/s may be requested to complete a list of supplementary questions by the Committee to address queries or to provide clarification on any aspect(s) of an application. Written responses to any such queries will be publicly available, on the same basis as the written application.
  - **Oral Presentations:** The Committee may request that the applicant/s make an oral presentation of their proposals for the Television Programme Service and these presentations may be made publicly or in private. The purpose of such oral presentations will be to enable applicants to provide further information in respect of the proposals made in the application to assist the Committee in considering the viability and merits of the relevant applications.
- 3.5.3** Following any requested oral presentations and/or responses to supplementary written questions deemed appropriate by the Committee, the members of the Committee, following discussion, will score the application under each of the statutory criteria set out in the Scoring Matrix **at section 3.4 of this Guide**.
- 3.5.4** The Committee's view on an assignment of a score shall be determined by a majority of the votes of the members.
- 3.5.5** If an application does not achieve a qualifying score under each criterion, the Committee shall exclude the application from the application process.



If none of the applications achieves a qualifying score under each of the Statutory Criteria, the Committee shall conclude the licensing process.

**3.5.6** The application that receives a qualifying score under each criterion and the highest overall score will be deemed the most suitable applicant for the award of the Television Programme Service Contract and the Committee may recommend that the Authority enter into a Television Programme Contract with the most suitable Applicant. The Authority will specify such terms and conditions as it thinks appropriate to be included within any such sound broadcasting contract.

**3.5.7** The Committee shall notify an unsuccessful applicant of the reasons for the decision to refuse to recommend the award of Television Programme Service Contract to him or her, the applicant's score and the score of any successful applicant.

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### **3.6 Contract Award**

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The award of the Television Programme Service Contract will be subject to the successful applicant agreeing and signing a contract which contains the terms and conditions as determined by the Authority having regard to, *inter alia*, the statutory provisions in 69 and section 70(2) of the 2009 Act. However, as per Section 3.1, applicants should note that while this contract awards process has commenced under the 2009 Act, the current statutory framework may be replaced by a new statutory and regulatory framework before the contract is awarded. The terms and conditions of the Television Programme Service Contract may therefore change under the new framework.

The terms and conditions of the current Television Programme Service Contract are available on request and open to inspection by members of the public at the offices of the BAI.<sup>9</sup> Applicants should note that the content of the Schedules to the Television Programme Service Contract will be largely determined by the information, commitments and undertakings contained in the successful application. Thus, the details of the ownership and control structure, the programming commitments, illustrative programme schedule and the transmission and studios will ordinarily be transposed from the successful application.

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### **3.7 Duration of Contract**

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The duration of the contract awarded will be for a period of **ten years, with the option of a ten-year extension**. This will be specified in the terms and conditions in the contract.

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### **3.8 Changes in Composition**

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The BAI reserves the right to revoke a contract after it has been awarded or granted if material changes take place which affect the nature or characteristics of the successful applicant or in the persons having control or an interest in the contract, where such changes may have affected the decision to award the Television Programme Service Contract had those changes occurred before the award was made.

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<sup>9</sup> Section 69(5) of the 2009 Act: <https://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/print#sec69>

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### **3.9 Transfer of the Contract**

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The contract can only be transferred from one body to another with the prior consent of the BAI in a manner consistent with the terms of the contract and the BAI's *Ownership and Control Policy*.

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### **3.10 BAI Annual Levy**

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Pursuant to section 33 of the Broadcasting Act 2009, the Broadcasting Authority of Ireland is funded through the charging of a levy on public service broadcasters and certain categories of broadcasting contractors. The Levy Order will be binding on the successful applicant for the term of the broadcasting contract. Further information can be found on the BAI's website.<sup>10</sup>

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<sup>10</sup> <https://www.bai.ie/en/about-us/levy/>

## 4. APPLICATION FORMAT

The application must adhere to the following format and contain all of the information specified hereunder.

The applicant is expected to provide sufficient information in its application to demonstrate how it can satisfy the relevant requirements highlighted in this Guide. The BAI not only invites applicants to commit to meeting minimum requirements but also to commit to exceed them.

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### Section 1 – Index

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Please include an **Index** setting out the content and layout and referencing page numbers.

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### Section 2 – Introduction to the Applicant

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The BAI requires contact information for the applicant to enable it to contact the applicant in relation to this contract awards process. Contact information is also required under the terms of the contract to be awarded to enable the BAI to request information in the form of *inter alia*, documentation, electronic records and recordings and other information as required.

Please provide in relation to the applicant the following information:

- (a) *Applicant's Name and Legal Status* (e.g. a body corporate or a named individual person).
- (b) *Date of Incorporation*. A copy of the applicant's Constitution must be included with the application where the applicant is a body corporate.
- (c) *Applicant's registered office, offices/place of business, place of establishment*.
- (d) *Applicant's financial standing*.
- (e) *Applicant's Nominated Contact Person (name, address, telephone number and email address)*.
- (f) *Applicant's Nominated Contact Person for public and media queries (name, address, telephone number and email address)*.
- (g) *List of Advisers*. Please identify the names and addresses of the applicant's (i) consultants (ii) auditors (iii) solicitors, and (iv) bank.

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## Section 3 – Ownership and Control of the Applicant

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The *BAI Ownership and Control Policy* sets out how the BAI gives effect to its statutory responsibilities relating to the ownership and control of broadcasting services. The policy is published on the BAI's website.<sup>11</sup> The BAI requires applicants to provide information about key personnel, directors, shareholders and beneficial owners of shares to give effect to these responsibilities and to assess the application against the statutory criteria under this heading including, the character, expertise and experience of an applicant.

In this section the following interpretations from the BAI's *Ownership and Control Policy* apply:

**"Control"** – is in a position proprietarily, financially or in terms of voting rights to determine or direct the policy of the company, with regard in particular to programme output, that is, sourcing, production, supply or delivery to the audience.

**"Substantial interests"** – has sufficient proprietary, financial or voting strength within a relevant company or companies to be able to influence directly or indirectly to an appreciable extent the strategic direction or policy (which shall include editorial policy) of the company (companies), with regard and in particular to programme output, that is, sourcing, production, supply or delivery to the audience.

**"Communications Media"** – includes all broadcasting services (including sound broadcasting services) in the State and/or the provision of a broadcasting services platform/s in the State (i.e. the transmitting or re-transmitting of programme material by means of wireless telegraphy, a cable system, an MMD system, a satellite device or any other transmission system) and/or the publication of any newspaper, magazine or journal consisting of news and comment on current affairs.

The interpretations are intended to account for the different factors that can come into play in terms of ownership and control, for example, control of a legal entity can be attained even where the owner does not hold the majority of shares. The interpretations of the terms 'Control' and 'Substantial Interest' also focus primarily on programme output and reflect the BAI's main objectives, in accordance with its statutory remit, which are to regulate content and to promote diversity in voices, viewpoint, outlet and source, thereby providing the public with access to a wide range of quality programmes from a variety of sources.

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<sup>11</sup> [https://www.bai.ie/en/media/sites/2/dlm\\_uploads/2019/06/OCPolicy\\_English\\_vFinal\\_DMCL.pdf](https://www.bai.ie/en/media/sites/2/dlm_uploads/2019/06/OCPolicy_English_vFinal_DMCL.pdf)

### 3.1 *Board of Directors*

- i) Please provide the following details in relation to each Director:
  - (a) Name, home address, age, nationality and current occupation;
  - (b) Background, media and other relevant experience (in the context of the service proposed);
  - (c) Substantial Interests held (directly or indirectly) in relation to any communications media (please refer to interpretation above); or/and
  - (d) Control (held directly or indirectly) of any communications media (please refer to interpretation above);
  - (e) Involvement in any communications media including the name of the service, the nature of involvement (i.e. position/role held) and period of involvement (commencement date and date of departure);
  - (f) Whether the director has been appointed in a representative capacity.
- ii) Please identify (a) independent directors, and (b) the proposed Chairperson.
- iii) Please provide the same information as in i) above for any other individual whom the applicant proposes to appoint a Director.
- iv) Please provided a completed and signed **Character Test** (see section 3.5 below) for each Director appointed or proposed to be appointed.

### 3.2 *Shareholding Structure*

- i) Please detail the existing or proposed shareholding structure of the applicant, specifying the total number of authorised and issued share capital, the class/classes of shares (i.e. voting, non-voting, preference, other etc.);
- ii) Please set out the total value of loan stock;
- iii) Please provide the following information:
  - (a) The names and home addresses of all the shareholders of the applicant;
  - (b) The names and addresses of the beneficial owners, where shareholdings are in the name of a trustee or nominee;
  - (c) The total number of shares (per class where relevant) and the issue price subscribed by each shareholder (including details of any premium paid) and the percentage each shareholding represents of the total issued share capital of the applicant;
  - (d) The percentage of the voting rights attached to each such shareholding as a percentage of all the votes which may be cast by the shareholders of the applicant at general meetings;

- (e) The amount of loan stock subscribed to by each shareholder;
- (f) If the applicant is not yet constituted, please indicate the number, class/classes and price of shares to be issued to each investor, and the amount of loan stock to be subscribed by each investor;
- (g) Complete the following table, expanding it, if necessary, to list all bodies which hold or are beneficially entitled to shares, or who possess voting powers, amounting to more than 10% in the applicant (“participants”).

Full name of >10% participant (existing and proposed)	Number of shares	Total investment (€)	Total investment (%)	% of voting rights

- iv) Where a shareholder of the applicant is a body corporate/entity, please provide the names, addresses and percentage of shares held by the shareholders of that entity.
- v) Please indicate in relation to each of the existing or proposed shareholders of the applicant:
  - (a) Substantial Interests held (directly or indirectly) in relation to any communications media (please refer to interpretation above);
  - (b) Control (held directly or indirectly) of any communications media (please refer to interpretation above);
  - (c) Recent financial history/ current financial status; and
  - (d) Involvement in any communications media including the name of the service, the nature of involvement (i.e. position/role held) and period of involvement (commencement date and date of departure).
- vi) Where there are Shareholders’ or other Agreements in existence or proposed in respect of the applicant, please provide details of the provisions of such agreement relating to the ownership and control of the applicant i.e. Board of Directors, transfer of shares and pre-emption rights, additional rights conferred by share class, envisaged exit mechanisms and conditions etc.
- vii) Please provide a completed and signed **Character Test** for “significant” shareholders. A person will be deemed to be a “significant” shareholder if s/he is the legal or beneficial owner of shares in the applicant to which are attached ten percent (10%) or more of the voting rights exercisable at a general meeting of the applicant.

### 3.3 Management Structure

- i) Please describe the proposed management structure of the applicant.
- ii) Please provide in relation to each of the following individuals, or their equivalents, their full name, home address, age, qualifications and experience to date, in particular that which relates to the broadcast media, regulation and compliance.
  - (a) Chief Executive Officer;
  - (b) Programme Controller;
  - (c) Financial Controller; and
  - (d) Compliance Officer.<sup>12</sup>
- iii) Please specify the applicant's policy in respect of:
  - (a) Management remuneration;
  - (b) Management employment contracts;
  - (c) Management share options, pensions and benefits; and
  - (d) Any other relevant commitments (financial or otherwise).
- (iv) Please provide a completed and signed **Character Test** for the Chief Executive Officer.

### 3.4 Track Record

- i) Has the applicant held a BAI broadcasting contract before?
- ii) Has any Director, Shareholder or Chief Executive Officer involved in the proposed service held a BAI broadcasting contract or had a substantial interest in a broadcasting service provided under a BAI broadcasting contract before?
- iii) If the answer to (i) or (ii) above is yes, please provide the details expanding the table if necessary:

Name of legal entity/ person	Type of broadcasting contract	Name and nature of broadcasting service	Dates of contract

<sup>12</sup> The Applicant must appoint a Compliance Officer. This is the officer the BAI will contact on matters relating to compliance including compliance with statutory and contractual programming requirements, broadcasting codes and rules, complaints by third parties, investigations and enforcement procedures.

### 3.5 Character of the Applicant

The following **Character Test** is attached in word format at *Appendix II* and should be completed by relevant personnel as highlighted in this Guide. Please answer the following questions “yes” or “no”, on behalf of the applicant, to include, if the applicant is a body corporate, its directors, secretary, chief executive or other similar officer and “significant” shareholders. If the answer is “yes” to any of the following questions, please provide full details in the Form.

- (i) Has the applicant ever been convicted of an offence (excluding ‘spent convictions’) relating to any of the following: - fraud or dishonesty; membership of a criminal organisation; corruption; terrorist offences; money laundering; terrorist financing; child labour; human trafficking?
- (ii) Has the applicant ever been restricted or disqualified as a Company Director, or convicted of any offence under the Companies Act 2014 in this jurisdiction or under equivalent legislation in any other jurisdiction?
- (iii) Has the applicant ever been adjudicated bankrupt, become insolvent or entered into a voluntary arrangement with creditors, or had a receiver appointed to any of its assets, in this or any other jurisdiction?
- (iv) Has the applicant ever been a director of a company to which a receiver was appointed, which went into compulsory liquidation, creditors’ voluntary liquidation, examinership or which made any arrangement with its creditors or class of creditors?
- (v) Has the applicant ever been convicted of an offence under any legislation by which Broadcasting and/or Wireless Telegraphy is regulated in this or any other jurisdiction?
- (vi) Has the applicant ever had a licence or contract issued by a broadcasting licensing body or any other statutory body suspended or revoked in this or any other jurisdiction?
- (vii) Has the applicant ever been the subject of any of the following: - adverse findings by a tax authority; adverse findings by a regulatory body in relation to gross professional misconduct; adverse findings by a competition authority in relation to anti-competitive conduct?
- (viii) Is the applicant aware of any reason why it may not be a fit and proper person to be awarded a contract?

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## Section 4 – Programming

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From the perspective of members of the public, programming will often be the defining feature of a service that gives it its character. The Television Programme Service has a specific programming statutory remit. To enable the Committee to assess the application against this remit, this section seeks information about the programme material and the composition of that programme material on the service, and, where applicable, programming commitments for each channel proposed. The programming commitments an applicant makes in their application will serve as a yardstick against which the successful applicant’s future performance will be measured and assessed and, as such, will form part of the Television Programme Service Contract between the BAI and the successful applicant. Applicants will also be required to demonstrate that programming will comply with all relevant BAI codes and rules developed pursuant to Part 3 of the Act, including the BAI



Commercial Communications Code, the Code of Programme Standards, the Code on Fairness, Objectivity and Impartiality and the Access Rules.

- 4.1 Overall Broadcasting Philosophy and Vision.** Please detail in the form of a short statement the applicant's broadcasting philosophy and vision for the Television Programme Service. Please include a short description of the content which will comprise the Television Programme Service and its target audience/s. Where more than one channel is proposed, please provide the name, a brief description of the type and range of programmes proposed and the target audience/s of each channel.
- 4.2 Programming Strategies.** To deliver on the above vision, where relevant, please detail the strategies, proposals and specific commitments which the applicant proposes to implement in relation to:
- 4.2.1** Equality, Diversity and Inclusion (e.g. gender, diversity of content,<sup>13</sup> societal diversity and inclusion, creative diversity, supporting diverse talent etc);
  - 4.2.2** Environmental Sustainability (e.g. on-air sustainable themes, reducing environmental impact in programme production/commissioning, collaborative initiatives, action plans, Albert certification etc); and
  - 4.2.3** Media Literacy (e.g. community educational initiatives, skills development, digital creativity etc).

Please set out the criteria upon which, in the view of the applicant, the success of these programming strategies will be assessed.

- 4.3 Broadcasting day.** For each channel proposed,<sup>14</sup> please indicate:
- 4.3.1** the total number of broadcasting hours per day;
  - 4.3.2** the hours of live programming (start and end) per day;
  - 4.3.3** the hours of repeat programming (start and end) per day (please define 'repeat' programming);
  - 4.3.4** the percentage of broadcasting hours per day dedicated to: news; current affairs; sports; Irish productions; other genres; and advertisements.
- 4.4 Programming Commitments.** The following programming commitments must be set out for **each channel** proposed.
- 4.4.1 News.** Please set out the approach envisaged for news programming on weekdays and weekends, and in particular:

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<sup>13</sup> The *BAI Plurality Policy* defines Diversity of Content as "the extent to which the broad diversity of views (including diversity of views on news and current affairs and diversity of cultural interests prevalent in Irish society) is reflected through the activities of media businesses in the State, including their editorial ethos, content and sources."

<sup>14</sup> Excluding +1 retransmission channels.

- 4.4.1.1 The types of news to be broadcast (local, national, international, etc.) and relevance to the target audience/s;
  - 4.4.1.2 The sourcing of the various types of news; and
  - 4.4.1.3 The number, duration and scheduling of news bulletins and programmes.
- 4.4.2 **Current affairs programming.** Please set out the approach envisaged for current affairs programming on weekdays and weekends, and in particular:
  - 4.4.2.1 The number, format, duration and scheduling of such programmes; and
  - 4.4.2.2 Indicative content and the relevance of these programmes to the target audience/s.
- 4.4.3 **Sport.** Please set out the approach envisaged for sports programming on weekdays and weekends, and in particular:
  - 4.4.3.1 The types of sports to be covered and their relevance to the target audience/s; and
  - 4.4.3.2 The format, duration and scheduling of sports programming.
- 4.4.4 **Irish Language and Irish Culture.** Please set out the approach envisaged for Irish Language programming and programming relating to Irish culture and in particular:
  - 4.4.4.1 The type and range of programmes proposed (i) in the Irish language and (ii) relating to Irish culture and their relevance to the target audience/s; and
  - 4.4.4.2 The percentage of annual programming and average weekly broadcasting hours that will be dedicated to (i) Irish language and (ii) Irish culture programming.
- 4.4.5 **Other Programme Genres.** Please indicate what other programme genres (factual, formats, drama, movies, documentaries, comedy, reality etc.) are proposed to be provided and in particular:
  - 4.4.5.1 The average broadcasting hours per week to be dedicated to each of these genres; and
  - 4.4.5.2 The relevance of such programming to the target audience/s.
- 4.4.6 **Other Programming Proposals.** If relevant, please describe any other programming proposals which are proposed.
- 4.4.7 **Illustrative Programme Schedule.** For each channel proposed, please provide a typical seven-day programme schedule setting out the proposed hours of broadcasting and details of programme content with explanatory notes as to how the programming delivers on the commitments as outlined above.

**4.4.8 Audience Needs and Interests.** Please explain how the programming on the service and the composition of the programming proposed on each channel individually and in aggregate (where applicable) on the service, will:

**4.4.8.1** Be responsive to the interests and concerns of the community of the whole island of Ireland;

**4.4.8.2** Be mindful of the need for understanding and peace within the whole island of Ireland;

**4.4.8.3** Reflect the varied elements that make up the culture of the people of the whole island of Ireland, and have special regard for the elements which distinguish that culture and in particular for the Irish language;

**4.4.8.4** Contribute to the formation of public awareness and understanding of the values and traditions of other Members States and counties; and

**4.4.8.5** Uphold the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression.

**4.4.9 Communities and New Opportunities for Talent.** Please detail how the service will:

**4.4.9.1** Serve recognisably local communities or communities of interest and be supported by the various interests in the community; and

**4.4.9.2** Create new opportunities for talent having regard to music, drama and entertainment and in respect of Irish culture.

**4.4.10 Irish/home Produced Programming.** Please indicate the percentage of annual programming and average weekly broadcasting hours that will be dedicated to Irish produced programming on the service.

**4.4.11 Independent Irish Production.** Please indicate the minimum percentage spend commitment (of the annual total Irish Programme Budget) that will be dedicated to Independent Irish programmes. Independent Programmes will be defined in accordance with Section 116(12) of the Broadcasting Act 2009.

**4.4.12 European Productions.** Please state how the applicant will ensure that the programming on each channel meets the requirements for European Productions (i.e. at least 50% of transmission time devoted to European works and at least 10% of transmission time devoted to European independent productions). Please indicate the percentage of annual transmission time that will be dedicated to:

**4.4.12.1** European originated programming;

**4.4.12.2** European independent production; and

**4.4.12.3** The proportion of such programming that will be recent works i.e. works transmitted within five years of their production.

**4.4.13 *Purchase and Sale of Broadcast Material.*** Please detail any proposed policy on the purchase and sale of broadcast material, both from other broadcast organisations and independent producers.

**4.4.14 *Collaboration/Partnerships.*** Please detail any proposed policy on collaborative opportunities and partnerships with other media groups, broadcast organisations and/or independent producers.

**4.4.15 *Programme Compliance.*** Please detail the arrangements / procedures which the applicant proposes to implement in relation to:

**4.4.15.1** Quality control; and

**4.4.15.2** Compliance with the applicable statutory requirements and contractual obligations regarding programme content.

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## **Section 5 – Studios and Transmission**

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The Committee will assess the applicant’s proposals in relation to studio and transmission facilities to ensure the applicant has access to, or the means of acquiring access to, equipment and facilities that will enable it to comply with all statutory requirements, including accessibility requirements and to deliver on the programming and other commitments made in the application. The applicant must be able to demonstrate that programming on the proposed service can be broadcast safely and securely and that arrangements will be put in place in the event of technical faults or other intervening incidents that may interrupt broadcasts or impact the quality of the service.

### **5.1 Studios**

Please provide a description of the proposed studio and office facilities. Please include the following information: -

**5.1.1** The proposed location of studio(s) and office facilities;

**5.1.2** A description of how the studio and office facilities will be suitable for and will support the provision of the programming envisioned;

**5.1.3** A description of measures taken to ensure studio facilities will be accessible to people with disabilities;

**5.1.4** A description of measures taken to ensure health and safety in the studio facilities;

**5.1.5** A continuity plan that outlines backup and recovery systems, protocols etc. to be used in the event of power-cuts, IT issues or other events that may interrupt broadcasts;

- 5.1.6** Security mechanisms and arrangements to guard against unauthorised access to on-air studio(s).

### **5.2 Transmission Proposal**

Please provide details of transmission proposals to include:

- 5.2.1** Details of how the service will be broadcast as a free-to-air service; and
- 5.2.2** Details of any alternate means through which content supplied on the service will be made available, if any, and how this may support the provision of the service.

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## **Section 6 – Market Analysis, Financial and Business Plans**

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Providing the Television Programme Service for the full term of the proposed contract will require significant investment and strategic planning. The Committee requires information about applicants' market analysis, financial and business plans to assess the application against the Statutory Criteria under this heading. The applicant must demonstrate that it has the financial and other resources to establish and maintain a viable and sustainable service (even where risks or unforeseen events may impact profitability) and deliver on the programming and other commitments provided in the application for the envisaged term of the contract.

**6.1 Analysis of Existing Commercial Marketplace.** Please set out, with supporting documentation and research, the applicant's analysis of the marketplace for the service, including:

- i)** The performance of existing television operators;
- ii)** Audience ratings;
- iii)** Advertising revenue;
- iv)** Market trends (all media) and audience impact analysis; and
- v)** Any other issues which the applicant considers to be relevant to the competitive assessment of the marketplace.

**6.2 Demand and Potential for the Type of Service Proposed.** Please explain, providing supporting documentation and research, the reasons why the applicant considers that there is a demand for the service proposed and how the service will contribute to the diversity of services and programming available to Irish audiences. Reference should be made in particular to the following:

**6.2.1 Anticipated Performance of Service.** Please detail the applicant's strategy to establish and develop the service within the current market, in particular:

- i)** The target audience/s for all elements of the proposed service;
- ii)** Indicate the impact, and set out the measures that will be taken, if market share / audience ratings projections are not achieved;
- iii)** Advertising, sponsorship and other forms of commercial revenue potential e.g. online player/media etc. for the first three years on air.

**6.2.2 Strategies for Achieving Proposed Ratings and Revenue Targets.** Please set out the applicant's sales and marketing-related strategies, including:

- i) Channels of distribution;
- ii) Sales methods and representation;
- iii) Promotion and marketing policy; and
- iv) Collaboration and partnership proposals.

**6.3 Overall Financial Strategy.** Please detail the applicant's financial strategy over the initial five-year period of operation. The strategy must detail how the applicant proposes to meet all pre-operational and subsequent funding requirements and should also contain detail of proposed environmental sustainability plans.

**6.4 Investment Proposal.** Please provide details of the total funding requirements, and how these will be met, completing, where applicable, Tables A and B.

<b>Table A – Funding</b>	<b>€</b>
Share Capital	
Loan Stock	
Medium / Long Term Borrowing	
Leasing/HP Facilities (capital value)	
Bank Overdraft	
Other (please specify)	
<b>TOTAL</b>	

**Table B – Expenditure**

	<b>€</b>
Capital Expenditures (including capital value of leases)	
Other Pre-operational Expenditure	
Working Capital (at on-air date)	
<b>TOTAL</b>	

**6.5 Sources of Funding and Expenditure.** Please detail or provide:

- i) The various sources of funding outlined in Table A above;

Where new borrowings are proposed, the application should include written evidence (letters of intent etc.) that such arrangements are available including the following details: -

- (a) The amount, type and duration of the facility;
- (b) The drawdown schedule;
- (c) Any security or guarantee required in support of the facility;
- (d) Conditions precedent;
- (e) Principal covenants;
- (f) Warranties/undertakings in the event default; and
- (g) The timeframe for putting the facilities in place.

Where the applicant is already a trading corporate body. Please provide:

- 6.5.1** A copy of the most recent fully audited accounts of the applicant (not applicable to newly established entities);
- 6.5.2** A copy of up to date management accounts (i.e. for the period from the date of the audited accounts to the month end (or nearest date) in 2022 prior to the date of this application);
- 6.5.3** Details of all borrowing facilities currently available to the company, or to the parent company in the case of inter-group funding and the extent to which they are currently drawn down (the amount and terms of all borrowings (repayment details, covenants etc.), any security provided and charges against the company's assets for other group company assets and the names and addresses of lenders and guarantors to any of the facilities); and
- 6.5.4** Details of any contingent liabilities and off-balance sheet financing arrangements.

- ii) (Where applicable) the timeframe for capitalisation of the applicant, specifying the amount of funding which will be put in place prior to contract, prior to launch and after the launch of the service.
- iii) Statements of, or copies of agreements, from all proposed investors including details of the timing and amounts of finance to be made available; and
- iv) The proportion of the capital expenditure provision that has been allocated to transmission, studio buildings, studio equipment, office fit out and other costs.

**6.6 Financial Projections.** Please set out:

- i)** Detailed projected profit and loss accounts for the period between the end of the management accounts to the proposed date of the commencement of the service (not applicable to newly established entities);
- ii)** Detailed projected profit and loss accounts for the first three years;
- iii)** Detailed projected income and expenditure accounts by area of activity;<sup>15</sup>
- iv)** Detailed projected balance sheets for the first three years;
- v)** Detailed projected monthly cash-flow statements showing gross inflows and outflows for the first three years;
- vi)** A full listing of the underlying assumptions on which the financial projections are based, relating such assumptions clearly to other sections of the application; and
- vii)** Indicate what measures will be taken if the financial projections are not achieved (for example, commitments from shareholders for additional funds).

**6.7 Organisational Structure, Resources and Staffing Matters.** Please provide details of:

- i)** The proposed staffing structure in diagrammatic form, clearly indicating the number and categories of staff employed, their roles and areas of deployment across the operation of the proposed service, and the basis of their employment (e.g. full-time, part-time, contract) (**Note:** the applicant should ensure this information is consistent with the other sections of the application, for example section 5 -programming);
- ii)** The proposed salary range for each position identified under **i)** above;
- iii)** The applicant's industrial relations policy, including its policy on recognising trade union membership;
- iv)** The applicant's proposed policies in relation to staff remuneration and benefits, including pay agreements, pension and insurance schemes, etc.;
- v)** The applicant's proposed organisational Equality, Diversity and Inclusion policies and initiatives; and
- vi)** Proposals for the involvement of staff in share option schemes.

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<sup>15</sup> Expenditure projections must include the BAI levy. The calculation of this levy is based on the qualifying income of a broadcasting Contractor, the qualifying income of the Industry in addition to the expenditure of the BAI and incorporates different accounting periods. Accordingly, deriving a projected level for the levy fee may be arbitrary for potential applicants.



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## Section 7 – Proposed Commencement of Broadcasting

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**7.1 Readiness Date.** Please indicate the commencement date envisaged for the service.

**7.2 Critical Path Analysis.** Please identify all actions and decisions and their timescale that the applicant must carry out from the time of the award of the sound broadcasting contract to the on-air date.

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## Section 8 – Checklist for Supporting Documentation

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- A copy of the applicant's Constitution where applicable.
- Character Test/s for the CEO, Directors, Board Secretary and significant shareholders.
- An indicative programme schedule for each channel proposed.
- A copy of the most recent audited and management accounts of the applicant where applicable.
- A diagram detailing the applicant's organisational and staffing structure.
- Completed and signed Declaration.
- Confidential Annexes.
- Supporting documentation the applicant has referred to in the application.

**APPENDIX I**

**DECLARATION**

In making this application to the BAI, the applicant is requested to include in the submission the following declaration:

I, \_\_\_\_\_, on behalf of (applicant identified in Part 4, section 2 of this application) (“the Applicant”) hereby declare and verify that to the best of my knowledge all information provided in this application is accurate, complete and correct. I understand and accept that false information could result in rejection of this application.

8.1 Name & Title, Signature and Date:

## APPENDIX II

### OWNERSHIP AND CONTROL POLICY 2019 CHARACTER TEST

Please answer the following questions marking yes or no as appropriate. Where the answer is yes to any question, please provide details in the table below.

- (i) Has the applicant ever been convicted of an offence (excluding 'spent convictions') relating to any of the following: - fraud or dishonesty; membership of a criminal organisation; corruption; terrorist offences; money laundering; terrorist financing; child labour; human trafficking? Yes/No
- (ii) Has the applicant ever been restricted or disqualified as a Company Director, or convicted of any offence under the Companies Act 2014 in this jurisdiction or under equivalent legislation in any other jurisdiction? Yes/No
- (iii) Has the applicant ever been adjudicated bankrupt, become insolvent or entered into a voluntary arrangement with creditors, or had a receiver appointed to any of its assets, in this or any other jurisdiction? Yes/No
- (iv) Has the applicant ever been a director of a company to which a receiver was appointed, which went into compulsory liquidation, creditors voluntary liquidation, examinership or which made any arrangement with its creditors or class of creditors? Yes/No
- (v) Has the applicant ever been convicted of an offence under any legislation by which Broadcasting and/or Wireless Telegraphy is regulated in this or any other jurisdiction? Yes/No
- (vi) Has the applicant ever had a licence or contract issued by a broadcasting licensing body or any other statutory body suspended or revoked in this or any other jurisdiction? Yes/No
- (vii) Has the applicant ever been the subject of any of the following: - adverse findings by a tax authority; adverse findings by a regulatory body in relation to gross professional misconduct; adverse findings by a competition authority in relation to anti-competitive conduct? Yes/No
- (viii) Is the applicant aware of any reason why it may not be a fit and proper person to be awarded a contract? Yes/No

<b>Where the answer is yes to any of the above questions, details must be provided.</b>	
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<b>Name</b>	
<b>Title / Director / Shareholder</b>	
<b>Signature</b> <b>Date</b>	

**The Broadcasting Authority of Ireland**

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