



Code of Practice for the Placement of Television Services on the Saorview Platform

1. Introduction

This Code sets out the practices to be followed by RTÉ with regard to the placement of television services on the Saorview platform. The BAI has developed this Code at the request of the Minister for Communications, Energy and Natural Resources, pursuant to his powers under Section 139 of the Broadcasting Act 2009 (“the Act”). It is intended that the regulation of the implementation of the Code will be undertaken by the BAI in accordance with additional statutory functions to be conferred on the Authority at a future point in time.

The Code is primarily concerned with the level of prominence to be afforded to certain public service channels and with ensuring fair, reasonable and non-discriminatory treatment for other channels seeking carriage on the Saorview platform.

2. Scope

Section 114 (1) (i) of the Act requires RTÉ to establish, maintain and operate one or more national television multiplexes. In accordance with this section, RTÉ established the Saorview platform. Services that are carried or may be carried include the following:

- Public Service Broadcasting channels (RTÉ One, RTÉ Two and TG4)
- Services provided by the Section 70 contractor (TV3 and 3e)
- Channels established pursuant to statute and operated by RTÉ or TG4, the Houses of the Oireachtas Channel and the Irish Film Channel
- Channels having the character of a public service as may be designated by the Minister by order (pursuant to Section 130(1)(a)(iv) of the Act). This may include channels licensed pursuant to Sections 71 or 72 of the Act, or channels licensed in another jurisdiction of the European Union.
- Channels approved for carriage pursuant to Section 130(1)(e) of the Act. This may include channels licensed pursuant to Sections 71 or 72 of the Act, or channels licensed in another jurisdiction of the European Union.

It is intended that this code be applied to any channel seeking carriage on the Saorview platform.

3. Appropriate Prominence

The Act identifies a range of channels which are either specified as being public service in nature or as having specific public service obligations. These presently consist of RTÉ One and RTÉ Two; TG4; TV3 and 3e. This Code of Practice requires that these channels be given a degree of prominence on Saorview, in the interests of the intended audience and reflecting their public service obligations. At present, this is recognised through the allocation of positions 1-5 to these channels on the Saorview platform.

The principles of the Code acknowledge that "appropriate prominence" permits a measure of discrimination in favour of certain PSB channels. In considering the level of prominence that should be afforded to services other than those listed above, this Code requires RTÉ to comply with the following principles:

- a) RTÉ shall ensure that the approach to be adopted is objectively justifiable. RTÉ, in consultation with the BAI, should draw up and publish a statement setting out its approach in this regard;
- b) RTÉ shall have regard to the interests of citizens and the expectations of consumers in considering whether a particular approach to the listing of channels constitutes appropriate prominence;
- c) RTÉ shall communicate and support any requirement to rescan approved receivers and shall endeavour to minimise such occurrences through appropriate LCN allocation and, where possible, by co-ordinating multiple changes through one rescan event.

4. Fair, Reasonable and Non-Discriminatory Treatment

In order to ensure that RTÉ does not enter into or maintain any arrangements or engage in any practice that could be deemed to be prejudicial to fair and effective competition in the provision of television services, the Code requires that RTÉ shall comply with the following provisions:

- a) To ensure that any agreement reached with a broadcaster is based on fair, reasonable and non-discriminatory terms.
- b) Following consultation with the Broadcasting Authority of Ireland, to draw up, publish and comply with an objectively justifiable method of allocating positions. While subject to the appropriate prominence provisions set out at Section 3 above, different methods are not precluded – for example, objectively justifiable methods could include one or a combination of the following methods "first-come-first-served"; listings by genre; or the use of non sequential LCN allocation to allow for future channels. The BAI will have regard to commonly held industry standards in its assessment of RTÉ's proposals for the development of an objectively justifiable method of allocating positions.

- c) To refrain from giving undue prominence in any listing or display to a channel to which RTÉ is connected, except as required by the appropriate prominence provisions set out at Section 3 above.
- d) To give priority to new or additional channels over +1 channels.
- e) To carry out periodic reviews of their listing policy and of channel listings made in accordance with that policy, in consultation with channel providers.

5. Other Matters

Right of Appeal

If a broadcaster is of the view that a number allocation, to which it is proposed it will be subject, does not meet the principles of this Code, the broadcaster shall have a right to appeal to the Broadcasting Authority of Ireland, whose decision in the matter shall be final.

Code Review

This Code of Practice will be reviewed two years from its introduction and at appropriate intervals thereafter, depending on whether circumstances warrant such a review. Any changes proposed to the Code as a result of such a review shall be subject to prior consultation by the Broadcasting Authority of Ireland.