



# Submission of Independent News and Media to the Future of Media Commission

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## 1. Introduction

Independent News and Media (INM) is Ireland's largest publisher with leading national and local titles. We employ more than 700 people on the island of Ireland and are a founding member of the Press Council of Ireland.

In 2019, INM was acquired by Belgian company Mediahuis. Mediahuis was founded in 2014 and is one of Europe's most dynamic media companies. It publishes and broadcasts in multiple European languages, including English, Dutch, French, Luxembourgish, Portuguese, German, Frisian and Irish (*Seachtain* is published weekly in the Irish Independent).

INM will shortly change its name to Mediahuis Ireland, although the newspaper titles that have informed and illuminated Irish life for the past 100 years will not change.

INM/Mediahuis believes unconditionally in independent journalism and a strong and relevant media that makes a positive contribution to people and society. We also believe it is up to us to find ways to convince our readers that what we do is worth paying for and worth sustaining.

We are realistic about the challenges facing all media in Ireland, very many of which are the same challenges faced by media across the globe. It would be wholly unrealistic to expect the Commission to solve all of those challenges.

Comprehensive reform of Ireland's defamation laws, for example, is the single most effective way to simultaneously alleviate financial strains faced by Irish media and to enhance their ability to bring matters of public interest to light. We note that many submissions made to date have urged the Commission to take up this issue. A forceful acknowledgment by the Commission that defamation reform will enhance public service content would be welcome, but it is the responsibility of the Department of Justice to complete without any further delay a review that has been outstanding since 2015.

The Commission has been tasked with examining how **public service aims can be delivered and sustainably funded through broadcasting, print and online media** in Ireland over the next decade, while ensuring that **independent editorial oversight is maintained** and Ireland's **creative and cultural sectors are supported**.

INM/Mediahuis wishes the Commission well in this urgent public task. We would like to make a number of points to assist the Commission in assessing what recommendations are necessary to ensure a vibrant future for Irish media.

## **2. Executive Summary**

This submission argues that public service aims are and must continue to be delivered by a combination of public and commercial media.

For this to happen, RTÉ's role in the overall media landscape needs to be carefully defined.

Commercial media, national and regional, need to be supported as they come to terms with the new digital world and the continued dominance of the digital advertising market by Google and Facebook.

Public service aims cannot be secured if the public do not trust the media who are communicating with them. For this reason, we do not believe a direct connection between state funding and the work of our journalists would be appropriate, but arms length financial measures can be provided to support the distribution of physical and digital newspapers. In addition, VAT should finally be reduced to 0% to bring Ireland into line with the long standing state of play in the UK and in recognition of the public benefit of journalism.

## **3. What are public service aims and who can deliver them?**

The Commission's Terms of Reference outline four public services aims delivered by well-functioning media systems:

- To inform, educate and entertain the Irish public with regard to matters of Irish culture, identity, sport, language and other matters inherent to Ireland and the Irish people;
- To ensure that the public has access to high quality, impartial, independent journalism, reporting on matters of local, regional, national, European and international importance in a balanced way and which contributes to democratic discourse;
- To bring the nation and diaspora together at moments of great national importance;
- To ensure that creative Irish talent gets the opportunity to have their work reach audiences in Ireland and, where possible, further afield.

While Irish media do not always get everything right, it is clear from these points that we are fortunate to live in a society where these public service aims are being delivered by a responsible commercial media, and not just by public service broadcasters who enjoy access to public funding.

#### **4. What can public service broadcasting not do?**

One of the four public service aims described in the preamble to the Commission's Terms of Reference, is

*To ensure that the public has access to high quality, **impartial**, independent journalism, reporting on matters of local, regional, national, European and international importance in a balanced way and which contributes to democratic discourse (emphasis added).*

We are all keenly aware of the dangers of toxic tribalism and disinformation and the corrosive effect this can have on public discourse. There can be no equivocation about the need for objectivity and impartiality when it comes to matters of fact.

Nonetheless, it remains a vital matter of public interest that the public have access to an independent media that are willing and able to campaign on issues of public importance in a responsible and ethical manner. Impartiality must not be a pre-requisite of public service content. Some issues demand partiality in the interests of democratic discourse, which can only ever be the free and open debate of different ideologies and opinions.

In accordance with the Broadcasting Act 2009, public service broadcasters (PSBs) cannot adopt a partisan editorial position on matters of news and current affairs. Therefore, it is imperative that the Commission's recommendations do not ensure the sustainable future of PSBs at the expense of commercial broadcasting, print and online media.

#### **5. RTÉ's role in the Irish media landscape**

RTÉ is, rightly, a cherished national institution. It must be supported to continue playing the lead role in the delivery of public service content to Irish audiences.

However, the Commission must consider if it is the duty of a public service broadcaster to be all things to all people. Is content that is interesting to the public necessarily the same thing as public service content?

A clear definition of what is – or perhaps more pertinently what is not – public service content is required before any plans for RTÉ's future can be formulated. Commercial Irish media deliver large amounts of high quality public service content, but to exist as viable businesses they must generate revenue through sales and advertising, both of which are contingent on offering their readers (and viewers and listeners) journalism they are willing to read and pay for.

RTÉ produces exceptional programming and journalism in accordance with its public service remit, but it threatens the future of all other Irish media for it to occupy the entire landscape of the media market, as it does now.

RTÉ has become a vast online publisher of written content, as well as sound and vision broadcasting within its original remit. It goes without saying that public service content should be available online but under the dual funding model, RTÉ has leveraged this content to create a website that competes with commercial Irish media in every way.

By offering content for free and across the full breadth of the market, e.g. lifestyle content, the RTÉ website diminishes the value of paid for content offered by commercial media and dominates digital advertising revenue due the volume of page hits it generates.

In our submission, the delivery of public service aims by Irish media would be best served by a hub and spoke model, with RTÉ acting as an engine for Irish media, rather than leveraging its public service remit to dominate the entire media landscape of both audience and advertisers.

We believe the following measures are required to ensure a sustainable and productive future for RTÉ and commercial media:

1. Public service content must be clearly defined;
2. Public funding should only be used for public service content with clear oversight and auditing;
3. RTÉ's commercial advertising should be limited by content type, for example to movies, sports, acquired drama programming;
4. Alternatively, as with the time restrictions on television and radio advertising, advertising on RTÉ.ie should be limited to a certain number of page impressions and/or content type.
5. As already stated above, RTÉ should act as an engine for the creation of public service content across all media. To this end, the RTÉ Archive scheme needs significant overhaul so that public service content is made available to other media contemporaneously, and with the fewest possible restrictions on time for delivery, rights holdbacks and cost.

In a digital age, news and current affairs audio visual content should be transferable within minutes. For example, RTÉ video footage from the Department of Health press conferences on Covid-19 should be made available to commercial media. Or if a senior government figure gives an interview to the national broadcaster on matters of public interest that should be made available to other media as part of their discussion and analysis of the relevant issues.

These measures may mean that public funding of RTÉ will have to increase. They may also mean that RTÉ may be able to deliver less in terms of non-public service content. However, all commercial media are constrained in what they can do by budgetary limits.

The current state of play whereby RTÉ is increasingly competing with commercial media to subsidise its operations threatens the continued availability and diversity of public service content.

## **6. VAT on print and digital news publications**

A straightforward measure to help sustain publishers who deliver public service content is the abolition of VAT on print and digital sales, which currently stands at 9%. This could be implemented in Budget 2022.

Other European jurisdictions enjoy nil or reduced VAT on media sales. Our nearest English-speaking media market has long enjoyed a 0% rate of VAT on print media in recognition of the public service benefit of the written word. This has recently been extended to digital publications. INM is an all-Ireland company and benefits from the UK's zero VAT rate in Northern Ireland.

To ensure that this measure is targeted at the continued production of public service content by responsible publishers, the Commission could, if it considered it necessary, recommend that to qualify for the nil rate of VAT publishers must produce a minimum quota of public service content (by volume and/or subject matter). It could also recommend that qualifying publishers must be members of the Press Council and subject to its complaints process for breaches of the Code of Standards.

## **7. Public funding for commercial media's role in the delivery of public service content**

The most striking indicator of the current health of commercial Irish media is that what was previously held to be anathema has now become an apparently vital and urgent public interest, namely public funding of private media.

INM/Mediahuis is very conscious that even the appearance of 'he who pays the piper calls the tune' risks opening the door to those who would cynically seek to undermine public trust and confidence in mainstream media for their own ends. If commercial media is to remain a sustainable vehicle for public service content then the public must be able to have faith that the journalism they read, see and hear is fully independent and does not pull its punches for fear of funding consequences, even sub-consciously.

We are not calling for any direct measures to finance the creation of editorial content or the employment of journalists. Our proposal for arm's length assistance is aimed at the distribution channels for print and digital publishers. We know that other submissions to the Commission have also focused on this point and it is commonplace in other European countries.

Ireland already has a Research and Development Tax Credit Scheme administered by the Revenue Commissioners. This Scheme allows for companies engaged in qualifying research and development activities to claim a tax credit of up to 25% of qualifying expenditure. This scheme recognises that there is a public benefit in such work, as there is with ensuring the continued accessibility of public service content.

Modelled on this, we propose a similar scheme for Irish publishers which would:

- require ‘qualifying publishers’ to produce a minimum quota of public service content and meet other criteria such as diversity of subject matter and originality of content<sup>1</sup>;
- define qualifying expenditure. Our proposal is that qualifying expenditure should be limited to the costs incurred in the physical and digital distribution, rather than creation, of content in print and digital format. Such supports already exist in a number of other jurisdictions; and
- allow a % tax credit for qualifying expenditure that could either be used to reduce tax liabilities or to claim a cash rebate in line with the existing R&D scheme.

To avail of the scheme, publishers would first have to commit resources – there would be no free hand out. Publishers would also have to meet qualifying criteria that ensure the continued delivery of public service content as a pre-requisite of qualifying for relief.

The availability of newspapers in homes and retail shops the length and breadth of the country is critical to our continued ability to have informed national conversation about the issues that affect Irish life. We believe the proposed measure would ensure that quality journalism remains accessible to people in all parts of the country, in both print and digital form, without jeopardising trust in editorial independence.

## **8. Regional Newspapers**

Local Ireland has made a detailed and comprehensive submission to the Commission on the measures it believes are necessary to support regional newspapers.

As a publisher of 12 newspapers with regional focus, INM/Mediahuis is acutely aware of the challenges such publications currently face.

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<sup>1</sup> The original proposals of the Report of the Journalism and Written Media Independent Panel of Experts as part of Canadas deliberations on measures to support the media may be useful to the Commission in trying to define ‘qualifying media’ - <https://www.canada.ca/en/canadian-heritage/corporate/transparency/open-government/report-journalism-written-media.html>

The measures already outlined in this document regarding VAT and distribution subsidies would benefit all regional newspapers, and the latter measure would also benefit community freesheet publications that fulfilled the other qualifying criteria.

In addition, INM/Mediahis would propose two other measures in support of regional newspapers:

1. The unique connection between regional newspapers and their audience should be utilised to a much greater extent for public advertising and information messaging. If properly done, this could have a twofold benefit of combatting the online proliferation of both misinformation and disinformation while providing a revenue stream to such newspapers.

In the interests of transparency, it may be appropriate to create a publicly available database with a breakdown of all such public spending on an annual basis.

2. Dedicated technical and financial support, in the form of grant aid, should be made available to regional newspapers to expedite and optimise the process of digital transformation.

## **9. Digital Advertising Market**

The dominance of the digital advertising market by Google and Facebook is well established. The Commission has already been inundated with relevant figures and statistics and there is no need to repeat them here. Whether the current position can be addressed in a manner that benefits public service media in the long run is not a question that Commission can be expected to answer within the short time span of its work.

Nonetheless, the distortion of the digital advertising market clearly does have implications for the Commission's terms of reference. If commercial media continue to haemorrhage digital advertising revenue to the likes of Google and Facebook then the plurality of public service content will inevitably be diminished as more commercial media go out of business. It will also mean that surviving commercial media will have fewer resources to invest in the creation of high quality content that takes time and money to produce.

Many have called for a digital tax on the 'tech giants' to support the media. This may well be a good idea, but it would not address the underlying distortion in the advertising market which is an issue that affects the entire digital economy.

Nobody foresaw the rapid rise of the tech giants that led to the destruction of advertising revenue for traditional media. So it may be somewhat short-sighted to peg a



model for future funding of the media to the fortunes of a market that is less than 20 years old and under increased scrutiny by regulators around the world. What if the revenues these companies account for in Ireland were to go elsewhere over the next five to ten years; where would the proposed digital tax funding for the Irish media come from then?

We do not see how the Commission can be expected to do much more than recommend in the strongest possible terms the urgent need for a full review of the Irish digital advertising market by the Irish Competition authority supported, where appropriate by the departments of Communication, Justice and Media, and the Data Protection Commission. Such a review should be commenced without delay and tasked to complete its work without delay.

It may also be within the scope of the Commission's Terms of Reference to wonder what steps should be required of Google, Facebook and others to minimise the proliferation of misinformation and disinformation.

For example, should the definition of "harmful content" in the Online Safety Media Regulation Bill be expanded to include content that is intended to or likely to have the effect of undermining trust in public health measures without good cause? How else might that legislation be enhanced to protect public service content circulated on social media from being distorted and misrepresented?

## **10. The EU Copyright Directive**

Recent events in Australia mean the debate about the commercial relationship that should exist between media and the so-called 'tech giants' has never been louder.

As with our comments on reform of Ireland's defamation laws and problems in the digital advertising market, this is not an issue the Commission can be expected to solve in the timeframe of its work.

Ireland is due to implement the EU Directive on Copyright in the Digital Single Market by June 2021. This must be done forcefully and without delay so that Irish publishers are empowered to negotiate commercial terms for use of their content.

As both the French and Australian experiences have shown, negotiations between publishers and the tech giants must be backstopped by the willingness of competition authorities to provide publishers with meaningful equality of arms.

We would ask the Commission to urge the Irish Government to ensure that the introduction of copyright legislation is done with real teeth. If a fair equilibrium can be found between those who produce content and those who currently benefit from that content at no cost, then this can only enhance the resources available to sustain the creation and online accessibility of public service content.

## 11. Conclusion

The future of media in Ireland, and indeed across Europe, has reached a critical juncture. The decisions taken on foot of the Commission's final report will have a profound and lasting impact on the type of news and information the public receives and how they receive it.

Fortunately, we also believe that the Commission is well placed to ensure that this impact is a positive one, not just for journalists and publishers but for a well informed and transparent society at large. We hope our contribution will have been of some benefit to the Commission in its work. In summary:

- RTÉ must remain the central player in the delivery of public service content to an Irish audience and it must be put on a sure footing to fulfil this role.
- However, its public service role needs to be carefully defined and its remit circumscribed so that commercial media can also have a sustainable future, through implementation of measurable criteria such as:
  - o Public funding used only for public service content;
  - o Commercial advertising limited by content type (movies, sport, drama);
  - o Online advertising limitations on page impressions and/or content type;
  - o Sharing of public service content across all media contemporaneously.
- Commercial media must be supported, while coming to terms with the new digital world and the dominance of the digital advertising market by Google and Facebook, through measures such as:
  - o Reduction of the VAT rate to 0% to bring Ireland into line with the long standing state of play in the UK and other European jurisdictions;
  - o Introduction of arms length financial measures to support the distribution of physical and digital newspapers;
  - o Recognising the unique contribution of Regional Newspapers to the dissemination of public service content to Irish society.
- The dominance of the tech giants must become the subject of urgent review at Government level both in terms of the distortion of the digital advertising market and the need to empower Irish publishers to negotiate commercial terms for use of their content.

The public interest will be badly served if the plurality of Irish media continues to diminish. Irish media may not be perfect and finding better ways of representing and reaching a broader public audience will take time, but it would be very dangerous to take for granted a national media that does not wilfully seek to misinform or polarise its audience. We believe the measures we have proposed are practical ways, which can be readily implemented, to secure a media landscape that will see both public service broadcasting and a vibrant commercial media delivering quality and trustworthy public service content to Irish audiences into the future.