

News Ireland and Wireless Ireland: Submission to the Future of Media Commission Phase I Consultation

About us

As a significant media owner in the Republic of Ireland, and as part of a global business, News Corp UK and Ireland Limited (**'News UK and Ireland'**) is well placed to assist the Future of the Media Commission (**'the Commission'**) as it considers questions about the role and funding of public service media. Given the significant changes in how the public consume and engage with media the Commission's call for views is timely.

News UK and Ireland is the owner of publishing business News Ireland, whose titles are *The Irish Sun* and *The Times Ireland*, *The Sunday Times Ireland*, as well as Wireless, which is the largest operator of local radio in Ireland. The combined audience of our titles and stations is over 1.6m listeners and readers¹ in the Republic of Ireland. We operate with offices in Dublin, Drogheda, Limerick and Cork. At the time of writing, we employ 358 members of staff who work across these offices, though in normal times we would work with a larger number of freelancers and casuals. In addition, News UK and Ireland operates in Northern Ireland, however while we recognise that this consultation seeks views on the island of Ireland, for the purposes of responding to this consultation we have limited our responses to the Republic of Ireland, though we draw on our experience of the UK market.

We are grateful that the Government has recognised the role of commercial media in producing public service content, alongside that produced by publicly-funded public service media. We believe this Commission should therefore be cognisant of the need for a policy and regulatory environment which supports a sustainable, plural and diverse media beyond public service media as it develops its proposals. This is, after all, a challenging time for the sector as all media business models face significant disruption in the face of technological developments, substantial changes in consumer media consumption habits and in media buying by advertisers.

A policy and regulatory environment should support news media to invest and to innovate. There are a number of reforms which could support a vibrant media:

- **Reform of Defamation Laws**

Ireland's defamation laws are prohibitive in allowing newspaper publishers to hold the powerful and the wealthy to account and are having a chilling effect on the

¹ Source: TGI ROI 2020

free press. The Government has stated that they will reform these laws, but this needs to be prioritised. Reform should include a payment cap to be established, as currently juries are given significant discretion to decide on the level of payments. Instead this should be determined by a judge, who will take into consideration other factors, including existing case law and precedents for payments.

- **Zero rate VAT on print and digital newspapers**

News publishers provide a public good and therefore their physical and digital products should be exempt from VAT. The cost of VAT is an unfair tax on reading, which places constraints on news publisher businesses to innovate and develop digital products and services. As consumers spend more time online, it is vital the industry is able to adapt accordingly. The Government should be able to reform the treatment of digital publications, now that European law regarding VAT has been reformed. Many other European Member States have reformed VAT. Most recently the UK Government zero-rated VAT for e-publications, to give parity in treatment with physical editions before leaving the EU.

- **Revamp of commercial communications codes to re-balance current prohibitive policies when compared with other media as is currently the case**

Regulatory change is required to permit editorially justified promotional or non-promotional references to products, services and brands, provided that they are transparently presented and do not undermine editorial integrity. This change in approach would also align commercial radio regulation in Ireland with neighbouring markets. The European Unfair Commercial Practices Directive prohibits the inclusion of *'editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).'* However, there is no prohibition on either promotional or non-promotional references appearing in editorial, whether paid-for or not, providing a pathway to implementing our suggested approach under European law.

In response to the specific questions put forward by the Commission, we provide the following comments. We would welcome the opportunity to further engage with and assist the Commission as it continues its programme of work through 2021.

Question 1. How should the Government develop and support the concept and role of public service media and what should its role be in relation to public service content in the wider media be?

Publicly funded media represents a significant market intervention. This is especially true in Ireland where RTÉ is both the recipient of public funds - which provides it with a degree of business certainty - while also competing with other players in the market for advertising revenue. There has often been a strong argument that public service media should be compelled to focus its activities in areas where the commercial sector would struggle, to mitigate its impact on the market and not crowd out competition. This is often misconstrued as an argument for public service media to be based on market

failure, which is an unrealistic prospect for the sustainability of public service media in the long term. Rather, a clearer set of distinctive and defined services would have the benefit of pushing the industry ahead, with a laser-like focus on delivering for Irish audiences. Put another way, public service media should be charged with the task of making the good popular and the popular good. Its incentives should be based around meeting the needs of Irish public, rather than competing directly with the commercial sector.

We suggest the Commission considers the model which underpins how the BBC is regulated in the UK, and to learn from the best of this model. As the recipient of public money the BBC is responsible for meeting a set of public purposes which are set out in the BBC's Charter. These purposes were consulted on extensively as part of the Charter Review by the BBC and by the UK Government, to ensure that all stakeholders - including importantly the UK public - had a say on what they wanted the BBC to deliver for them. These purposes, which last for the duration of the Charter period, are designed to direct the BBC towards serving its audiences appropriately in the use of the licence fee. Ofcom oversees the BBC's operating licence, which sets out how the BBC must deliver against those purposes for each channel or service in further granular detail.² Under the previous regulatory structure - where the BBC was governed by the BBC Trust - each channel was underpinned by a service licence which set out the scope of the channel. By adopting a similar approach in Ireland, RTÉ's services would each have a clearer defined place in the media, with a new regulatory body holding its feet to the fire. At present RTÉ in effect has a blank piece of paper to make its decisions which means that it can and does change direction frequently. A system with clearer operating or service licences would have the advantage of supporting an ecosystem in Ireland where commercial players are given room to maneuver, ultimately benefiting the public with a rich and diverse media.

RTÉ should have greater regard for its market impact. It should not have an unfettered ability to set up or redesign its services, and there should be checks in place to prohibit this from happening. We believe there is a strong case for a regulatory structure - as between the BBC and Ofcom in the UK - which considers market impact from proposed service changes, and encourages greater distinctiveness of RTÉ.

Question 2. How should public service media be financed sustainably?

The Sound & Vision scheme was originally established to support additionality of Public Service content available on all broadcast services but has become bureaucratic and ineffective in its delivery of this, especially for Radio services. Reform or replacement of this scheme is long overdue.

Question 3. How should media be governed and regulated?

² https://www.ofcom.org.uk/_data/assets/pdf_file/0017/107072/bbc-operating-licence.pdf

Over the last decade, the pace of technological change and media consumption habits of Irish audiences has been significant. A converged media regulator would have the benefit of ensuring a degree of equivalence of standards across all regulated media, while also developing deep knowledge and understanding of the challenges the sector faces.

Wireless recently submitted a response to the BAI strategy consultation which asked about the future regulatory structures for regulating broadcast media. As we explained in that response, our experience is that changing regulatory structures can be harmful if there is not a clear plan on what the revised regulatory framework is supposed to deliver, in terms of policy outcomes. Any new regulator or revised regulator needs to be properly resourced, with appropriate powers and remit to effect change. Overall, in the UK, having a converged communications regulator in Ofcom has been positive for the radio market, enabling a progressive regulatory environment. Ofcom has sensibly deregulated without the sky falling in for listeners, and Ofcom has largely retained sufficient subject matter experts to ensure that radio is not neglected amidst other priorities. Crucially, the cost of regulation has also come down in that time, with lower licence fees for broadcasters. The strength of our Broadcast services and their recognition as a trusted source of information contributes significantly to Irish society, yet we operate time limited licences, with requirements for stringent adherence to legislation, codes and performance policies with unnecessary restrictions placed on ownership & control. Wireless therefore is optimistic about the move to the new Media Commission and looks forward to playing its part in ensuring the transition is a positive transformation.

Our current concerns with the regulatory framework in Ireland are that policy decisions are taken at a regulatory level, rather than in direction from law, which means that decisions can change with some frequency. In addition, such infrequent changes to existing legislation, such as the application of the Broadcasting Act 2009 only serves to undermine the stability of the sector it strives to regulate, with outdated and irrelevant terminology which has not kept pace with the significant changes experienced by the sector since its adoption.

Both the ASAI and the Press Council of Ireland should retain their remits and their independence under any reform of media regulation.

January 2021

For any queries related to this submission, please contact Alex Stepney, Head of Policy and Public Affairs: [REDACTED]