

Ms. Niamh Smyth TD
Cathaoirleach,
Joint Committee on Tourism, Culture, Arts, Sport and Media
Leinster House,
Dublin 2
By email: icmedia@oireachtas.ie

20 October 2023

Ref: JCM-I-1524

Dear Cathaoirleach,

Thank you for your letter of 29th September and for affording us the opportunity to provide a written submission to supplement our previous engagements with, and recommendations to, the Committee.

In light of recent events regarding the funding of public service broadcasting, it is now more essential than ever that there is a fully transparent and accountable approach to how public funds are administered and used. There is a broad consensus that the dual-funded model is not fit for purpose and this has been a catalyst for the vast majority of issues that have arisen within RTÉ including its manner of use of public funding. RTÉ obtains very substantial revenues both from the licence fee and from the commercial market, but does not account or report separately for each revenue stream or associated expenditures.

What has also become abundantly clear in recent months is the slow realisation that there are many more sources of public service media and content, who have for the large part gone unsupported and unrecognised in the market-domineering shadow of RTÉ. Virgin Media Television is only one such source, going without any support from the Government for nearly 20 years despite having a Public Service Broadcasting remit. We have done so in spite of the market distorting effects arising from anomalies in the existing model of funding for public service broadcasting.

Yours sincerely,



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Submission to The Joint Committee on Tourism, Culture, Arts, Sport and Media

Executive Summary

Virgin Media Television has for a number of years called for a radical but logical change in how public service content is funded, produced, and distributed. We reiterate the contents of our submission to the Future of Media Commission in 2020 and the Joint Oireachtas Committee on Tourism, Culture, Arts, Sport and Media in January 2023 which made very clear and pertinent points, reproduced below. In light of recent developments over the Summer of 2023, these are now more relevant than ever.

- There must be a levelling of the playing field for those that produce and deliver public service content, with very clear definitions and guidelines to what is public service content and how it should be funded. This definition should also encompass an open and contestable model of funding so all indigenous media organisations are in a position to understand the key performance criteria. There is a robust and sustainable ecosystem in Ireland that supports the creation and distribution of public service content; this has the chance to flourish and grow under a new funding model.
- It is essential that public funds should transparently be used to support public service content **only**, regardless of whether the recipient is a Public Service Media organisation or a Public Service Content Provider. The dual funding model that is currently in place serves only to accelerate the loss in focus, creativity and collaboration required to allow the sector and local content to flourish.

We urge the Committee to seize this opportunity to address the clear and obvious issues that the current dual-funding model has created and to look to radically overhaul how public sector media is funded. We recommend the total separation of any commercial funding from public funding (licence or exchequer), with a fully transparent accounting process to manage and report on same.

We would equally welcome the expansion of contested funds along the current Sound & Vision Fund model to support local content creation and production as part of any funding review. It is now essential to reconsider and reboot the model before the damage taking place in the fabric of our media sector becomes irreparable and permanent.

Accountability and Transparency

The State has a deeply vested interest in ensuring that Ireland has a robust, authoritative and competitive media landscape. It is essential for plurality of conversation, diversity of voices and factual reliability. This is especially so in an age of rapidly multiplying sources of information. In parallel, technology is developing exponentially. Print, radio and television may still be distinct, but there is increasing convergence across all platforms.

What all three media segments above have in common is that they produce content and they are accountable for the accuracy of what they produce. That accountability is real because it is underpinned by Irish law. As a licensed public service broadcaster, Virgin Media Television is subject to the oversight of Coimisiún na Meán for the content we broadcast. We must meet robust criteria to have and to hold our licence, which is as it should be.

NewERA were tasked with supporting RTÉ and the department in delivering significant savings (€60m) in 2019. While this never transpired, there were regular meetings between the three parties and it would be interesting to understand how none of the recent issues at RTÉ came to light as a result of this cost management process and apparent oversight.

It is essential in our view, to ensure effective oversight and that transparent accountability is required as an overriding condition for any State/exchequer or licence fee funding.

We respectfully suggest that a condition for the reappointment of NewERA to fulfil any further similar role should be that this process is managed more tightly and effectively than before, if any progress is to be achieved.

It is our recommendation that the Comptroller & Auditor General should be appointed to examine RTE's accounts annually and report separately. This will ensure independence and effective transparency.

Funding

Scrutiny must be applied as to how Government funds are levied and collected, and having been collected how they are disbursed to support public service content in broadcasting, and across other public service media including radio and print.

The airwaves are a contested space. The contest is for quality of output that attracts the public and serves them - with Public Service Content. Scarce public funds, must themselves be transparently contested among all who are licensed to provide that Public Service Content.

The single, monolithic model that has existed in State funded Public Service Broadcasting has created a quasi-monopoly in the Irish market. The significant market power this has created across broadcast TV, radio and online has served only to create a bloated and inefficient operating model that is detrimental to the viability of all local indigenous media.

It is true that Irish public service broadcasting and public service content production needs more support than ever before. However, the nature of the broadcast and media market has changed to such a degree that public service broadcasting (insofar as it can be defined) can no longer be considered to be predominantly the domain of one single Public Service Media organisation.

The privileges provided to one State-owned public service media organisation under the Broadcasting Act and other legislation should be reviewed and amended to ensure this institution is treated in the same way as all other public service news and media organisations for competition and other purposes.

The funding model for Ireland's State-owned public service media organisation is outdated and does not recognise the world in which we are in today. A licence fee that gives preference to one broadcaster - over others who operate under the same obligations - requires review. Any such funding model should establish a level playing field and not promote one public service broadcaster over another.

Definition of Public Service Broadcasting

Currently there is no definition of what public service broadcasting is and one is required for clarity. It is this lack of clarity and transparency, in our view, that has created many of the issues arising in the last year. This definition should take account of factors including range and variety, contribution to democratic and public engagement, support for local production, investment in local talent and overall contribution to the sector.

It is critically important to note that public service broadcasting is more than just RTÉ and TG4 – it includes Virgin Media Television, radio, newspapers and other outlets covering news and public affairs.

Market Distortion

In Virgin Media's view, State funding should not be used to acquire commercial assets including international formats or international sports rights (which are expensive to acquire and can incur considerable operational costs). In addition, spending State money in acquiring this type of content can have the effect of inflating the cost of these rights for other commercial (Public Service Broadcaster) providers who do not have benefit from accessing the public purse.

Where public service media organisations engage in commercial activities, these activities should be funded by income from commercial means such as advertising, and not from public monies. This distinction is important as otherwise, there can be a distorting and unfair competitive advantage effect obtained versus other players in the market.

For example, in the UK, Ofcom has set out strict requirements that the BBC has to follow in respect of the commercial activities it engages in. In February 2019, Ofcom revised these guidelines and introduced new reporting requirements aimed at providing even greater transparency between income and expenditure associated with the BBC's public and commercial activities. The approach taken by Ofcom may be helpful as a reference point in identifying an appropriate definition of public service and in the regulatory oversight of same. Our recommendation for the future funding model is to fully separate all public and

commercial operations within RTÉ. If in the short term it is not possible to fully remove RTÉ from the commercial marketplace, then a simple interim step is to separate RTÉ broadcasting activities definitively between public service and commercial output.

In its simplest and most effective form, this means that RTÉ One TV and RTÉ Radio 1 are designated as purely Public Service Media and fully funded from whatever mechanism is agreed by the Government.

In the short term all licence fee income should be assigned and spent on the creation and distribution of public service content in a commercial advertising-free environment across RTÉ One TV and RTÉ Radio 1. Commercial output and revenues should be derived and invested specifically for output that is distributed across RTÉ 2 TV and 2FM. There will undoubtedly be a number of areas that will overlap in the initial phase of this separation but that should not detract from proceeding with this model.

Strategic initiatives are required to enhance and develop the public service media ecosystem to develop content, talent, and a world class sector in Ireland. This includes support and incentives for collaboration and partnership between existing public service media organisations and content producers, underpinned by substantial and openly contestable funding to maximise plurality, efficiency, and creativity across the entire country.

The funding model, including the licence fee, must be overhauled and a substantial proportion of the licence fee should be used for the above aims, for example through a reinstated and expanded version of the Sound & Vision Fund that is accessible to, and funds, multiple public service content projects. The administration and operation of the Sound & Vision fund is respected and well regarded and could easily be expanded to support broader funding mechanisms.

Virgin Media firmly believes that programming content sponsored by the Sound & Vision fund contributes greatly to media plurality and investment in public service programming. The 'universal' capacity of public service content to bring together large audiences in one place can be maintained for the benefit of society, democracy and plurality, with multiple operators delivering high quality services either in their own remit or in partnership with other capable operators, supported through an open and contestable funding model.

Video On Demand (VOD) Distribution Platform

We also encourage the Committee to consider the establishment of a working group to explore the feasibility of a shared national Video-on-Demand (VOD) distribution platform to support the delivery of all Irish public service content on a single national platform to meet the changing needs of Irish consumers.

The continued increase of broadband penetration and growth in penetration of Smart TVs will render the SaorView platform redundant in the next three years. It is imperative that the

Government acts now to provide a digital alternative for the future to ensure the sustainability and continued supply of Irish content to the general public. This is already happening in a number of other markets. In Germany, public service broadcasters ARD and ZDF have launched a joint streaming network. In the UK, BBC, ITV and C4 have announced plans to launch a joint streaming app in 2024 as terrestrial broadcasting declines.

As it currently stands, the present Digital Terrestrial Television distribution model (through Saorview) is anti-competitive, inefficient, and not fit for purpose. In establishing the working group, we urge the Committee to avoid issues created around the establishment of Saorview and to ensure it is more equitable and balanced for all Irish public service broadcasters.

We encourage the Committee to consider the inclusion of new streaming platforms with obligations to support the discovery and distribution of appropriate indigenous Irish media.

The Committee may benefit by referring to ComReg's recent report on *Market Review Broadcasting Transmission Services in Ireland*¹ which stated: *"ComReg is of the preliminary view that 2rn and RTÉ has the ability and incentive to engage in exploitative and exclusionary behaviours in Market A and Market B respectively to the detriment of downstream competition and consequently negatively impact the diversity and breath of programme services available to end users in downstream retail markets. These include issues associated with the potential for constructive or actual denial of access, discrimination and pricing concerns"*.

Conclusion

Virgin Media Television has consistently highlighted the lack of accountability and transparency in public service broadcasting over many years. We have on every occasion in our correspondence and engagement with the Department and with the regulator, outlined the damaging and distorting effect these issues present for the market as a whole. The events of recent months have uncovered decades of poor governance and a total absence of any appreciation or understanding of the privilege to be trusted with public funding to provide a service of national importance.

It is imperative that the Government provides the appropriate remedies to ensure we can have a robust, accountable, and functioning public service media. The events of 2023 have demonstrated clearly that Public Service Media does not start and end with RTÉ. Government needs to take a much broader approach to the definition, support and funding of indigenous public service media.

There are two easy steps that can be taken to support this goal;

¹ ComReg20/31 Market Review: Broadcasting Transmission Services in Ireland <https://www.comreg.ie/media/2020/05/ComReg-2031.pdf>

1. Separate RTE into Public (RTE 1 and Radio 1) and Commercial (RTE 2 and 2 FM) and provide clear separation in funding, accounting and governance.
2. Expand the Sound & Vision fund to support a broader range of categories and media while retaining the contestable funding ethos and approach that has worked so well.

Finally, we urge the Government to avoid any further distortion of the broader TV market by continuing to provide additional State funding to RTÉ. This has been one of the most significant factors in creating the culture that led to the problems we have witnessed in recent months.

Ends.