



TELEVISION

Submission to
**The Future of Media
Commission**

Friday 8th January 2021

Introduction

Virgin Media Television welcomes the establishment of the Future of Media Commission and has long called for a structured conversation on the future of broadcasting. This Commission is that, and more. We welcome the opportunity to make this submission and hope that it will be the premise for deeper engagement with you.

Who we are

Virgin Media Television is Ireland's leading independent, national, commercial public service broadcaster, operating under the provisions of Sections 70 and 71 of the Broadcasting Act, and our revenues and funding are sourced commercially on a competitive market basis.

We are a division of Virgin Media Ireland which employs 1,000 people and is Ireland's leading cable TV provider, the largest national provider of high-speed broadband services and a leading provider of mobile services nationwide.

Virgin Media Television is a major investor in creativity and choice in Ireland. This is characterised through our investment in content and programming and our multi-tiered digital platforms to suit life and living in Ireland today.

In 2020, we invested over €100 million in our content and programming – right across our operations (broadcast/cable), including our channels Virgin Media One, Two and Three, and Virgin Media Sport.

We sponsor the Virgin Media Dublin International Film Festival and also recently announced a national short film competition with a prize fund of €150,000 in conjunction with Screen Ireland.

Virgin Media Television plays a major part of plurality in Irish media, essential for our public conversation – keeping the nation informed through trusted news and current affairs programmes, as well as drama, entertainment and sport.

We have developed a very effective and successful partnership model to support the broader ecosystem that creates, develops, produces and distributes Irish content and in particular, drama. For example, the recent success of Irish productions including *Blood*, *The Deceived*, and real-life documentary *The Guards: Inside the K* which have gone on to be recognised internationally and distributed globally.

Our company

Liberty Global is the overall parent company of Virgin Media Ireland.

In December 2015, Virgin Media acquired TV3 and later, UTV Ireland in December 2016. Since these acquisitions, Virgin Media Television has invested significantly in infrastructure, upgrading our studio facilities and transmission network to full HD, together with new digital technologies and general investment in our overall working and operating environment. Virgin Media Television's financial position has also been stabilised as a lean, well managed and commercially successful operation.

Effects of the Current Pandemic

With regard to the current pandemic, while Virgin Media Television's primary focus is always on the safety of our staff and the communities we serve, we have worked tirelessly to maintain all our local programmes and shows on air, as well as continuing to inform the public and support the Government with coverage of announcements and live press conferences. This in our view is essential public service broadcasting especially in keeping people updated with essential information and also entertained through the current very difficult period.

Indicatively, since the start of the Covid-19 crisis, 3.6 million people have tuned into Virgin Media News and Current Affairs.

Viewing figures for our News at 12.30 are up 41% year on year. News at 5.30 increased its audience by 48% and viewership of our 8pm news bulletin increased by 30%.

Virgin Media Television produced more live Irish content from our studios throughout each day - from Ireland AM, Elaine and The Six O'Clock show to The Tonight Show, which all provide public service content - staying the course through these trying times and supporting communities, charities, businesses and families all across the country.

The Tonight Show continues to bring leading current affairs coverage to our viewers nationwide, in addition to all of our other programming.

The Department of Health's Public Opinion Tracking Research conducted by Amárach Research found in November (2020) that 44% of the population were getting their news and information through Virgin Media Television, while reaching a much younger audience than other broadcasters in Ireland.

Virgin Media Television provides a public service as mandated by our licence and we must do that in the context of managing our business as efficiently as possible. Like many other organisations during the current crisis, we had to re-invent the wheel to ensure continuity and job security, while simultaneously delivering a radical increase in programming and output.

We also set out to support our communities and businesses as much as possible through our €1m #BackingBusiness and #BackingLocal initiatives where we have promoted over 200 Irish SMEs across our platforms in recent months.

The COVID-19 crisis has had a widespread and severe impact on the arts and entertainment sector. In line with the restrictions within the economy to stop the spread of COVID-19, many normally televised public, cultural and sporting events were cancelled. The supply of new TV content was limited, pending the resumption of production across some formats, including soaps, dramas, new TV series, game shows and variety programming.

Market conditions in the media sector deteriorated very considerably throughout 2020, including a major slump in advertising revenues. This impacted severely on the broadcasting sector including Virgin Media Television. However thankfully we are now seeing improvements in this regard.

The generally poor market circumstances also compounded an ongoing negative trend for the Irish media sector where a growing volume of advertising is increasingly being diverted from traditional media towards online platforms including social and sharing media.

With Google and Facebook heading towards a 50% share of the total advertising market in 2021, the sustainability of trusted local indigenous media has never been more under threat. The current joint funding model of advertising and licence fees has contributed significantly to this instability. A transparent funding model - solely aimed at supporting and developing public service content - will be much more effective and focussed. The removal of the conflicts of chasing commercial revenue while trying to fulfil public service content obligations will enable a much more robust and effective model into the future.

Our policy perspective

The Future of Media Commission requested consultees to provide inputs across three broad headings and we provide an overall viewpoint under each heading within our own area of scope:

Overall, Virgin Media Television brings to the Commission two fundamental points:

- 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 so all indigenous media organisations are in a position to understand what the key performance criteria are. There is a robust and sustainable ecosystem that supports the creation and distribution of public service content, this has the chance to flourish and grow under a new funding model.
- Virgin Media Television believes it is essential that public funds should be transparently 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 model that is currently in place only serves to accelerate the loss in focus, creativity and collaboration that will ultimately be required to allow the sector and local content to flourish.

The alternative is a continuing waste of increasingly scarce resources to cross subsidise purely commercial broadcasting, in a way that inflates the cost of production for all, while further diminishing resources that should be focused on the core remit of news, investigative journalism, culture, children and education.

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

The State has a deeply vested interest in 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 under Irish Law.

As a licensed broadcaster, Virgin Media Television is subject to the oversight of the Broadcasting Authority of Ireland (BAI) and the Courts for the content we broadcast. We must meet robust criteria to have and to hold our licence, which is as it should be.

In contrast, free from the cost of producing content, or producing content where there is no obligation to produce public service content, online platforms are asphyxiating print, radio and television in Ireland.

This matters because if, in hindsight, authoritative news and investigative reporting, in all its cadences, carrying in print and on-air our own national conversation, as well as covering our sport and culture, is a 'sunset industry', then the centenary of the State will be marked by the loss of the essential capacity for a functioning democracy.

The seriousness and urgency of the issue is not hyperbole.

Fake news, and social media which simultaneously strip-mines the content of print, radio and television, while subverting their own offering from our cost base, is coarsening and undermining the public conversation. At a basic level, the State has an imperative interest in ensuring authoritative public service broadcasting services that are trusted sources of news and information, that promote investigative journalism and that reflect our culture, and our way of life including the Irish language.

Virgin Media Television welcomes the Taoiseach's recent comments stating he would like to see a ring-fenced fund for investigative journalism as part of the State's plans for providing financial support to the media sector.

Events globally, including in Europe demonstrate this necessity. Ireland is close to a tipping point, after which there will be a real diminishment of public service content, and of print. This will bring real consequences for our capacity and culture as a country.

Within this national context of a global issue, is another specifically Irish issue. It relates to government funds, how those funds are levied and collected, and having been collected how they are disbursed to support public service content in broadcasting, and perhaps in the future, in print too.

What is certain, is that in an ever-changing, diversifying environment, demands to support public service content will always outstrip the supply of available public support.

The architecture of Irish broadcasting currently is mid-twentieth century with add-ons. The arrival of local radio, new national radio stations and ourselves as a national television station created wider choice and greater diversity. A moment of optimum plurality was quickly undermined, however, first by the economic crash of 2008 and simultaneously by a completely transformed media landscape in which global tech companies predatorily undermined the Irish model.

There has never since been a substantive legislative or architectural moving on in terms of public policy, therefore the urgent need for this Future of Media Commission.

Our Irish model is predicated on the single Public Service Media organisation that predated all subsequent developments. There is a disjoint between Public Service Content as defined by the Future of Media Commission, the main Public Service Provider, and the critically important Public, as defined by the Commission. That Public no longer sits together, 1970s style, around physical objects called radios or televisions, to listen communally to what were effectively national broadcasts.

The Public, our citizens (now in a completely different era) choose their Public Service Content, from the provider of their choice, via technology that they also choose. Our inherited legislative framework, and policy architecture is not just oblivious of that choice, it effectively acts against it.

This is why the Taoiseach's views on ring-fenced funds for investigative journalism as part of the State's plans for providing financial support to the media sector are important, but cannot be treated in isolation. Clarity and accountability around what is defined and funded as public service content stretches across a broad range of content genres and media platforms.

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. This is the essential move-on into an era that has already emerged, but which Irish public policy is playing catch-up to accommodate.

The single monolithic model that has existed in State funded Public Service Broadcasting has created a quasi-monopoly in the Irish market. This significant market power across broadcast TV, radio and online has only served to create a bloated and inefficient operating model that is detrimental to the viability of all local indigenous media. That this dominance extends to the distribution platform (Saorview), while a separate issue, highlights the extent of the problem that needs to be addressed, as referenced below.

The Commission may benefit by referring to ComReg's recent report on its Market Review of Broadcasting Transmission Services in Ireland¹ including: *"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 breadth 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."*

**Now is the essential,
and possibly last
chance to reconsider,
and reboot, before
irreparable damage
to the fabric of our
media landscape
becomes permanent.**

2. How should public service media be financed sustainably?

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 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 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 Section 70 broadcaster over others who operate under the same licence and obligations requires review. Any such funding model should establish a level playing field and not promote one S.70 broadcaster over another.

In this context, the definition, funding and expenditures involved in funding public service broadcasting should be explored including what activities and content public monies should, or should not, pay for. There is also currently no definition of what public service broadcasting is and one is required for clarity.

Typically, this definition should cover 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.

¹ ComReg Document 20/31 Market Review: Broadcasting Transmission Services in Ireland
<https://www.comreg.ie/publication-download/broadcasting-transmission-services-in-ireland>.

This list is a useful starting point for a national discourse in coming up with a definition for public service media but a clearer, narrower definition is required for any public service media organisation that is funded by the taxpayer - including mechanisms of budgetary responsibility and accountability.

In Virgin Media's view, public funding has to be spent on content that reflects Ireland's culture and identity. It should also be used to commission content that would otherwise not get an airing. For example, public service media in particular should provide a platform that produces and commissions content that is aimed at, or made by, groups that may be on the margins of Irish society or those that might struggle to have regular representation in broadcasting services.

Public monies 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 public money in acquiring this type of content can have the effect of inflating the cost of these rights for other commercial (PSB) 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 commercial activities it engages in. In February 2019, it 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.

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.

There is the potential to fund public service content from the licence fee, including by 'genre' with specific funding streams made available for bidding from media organisations for the production of news, current affairs, documentaries, culture, public interest events, sports and other media elements. It is the case that niche and local providers are often better than State broadcasters at ensuring the broadcasting of good quality content to meet minority tastes. This overall approach may also extend to the creation of a shared distribution platform for digital content that meets public service criteria including some potential for an element of subscription fees to augment the base licence fee.

The funding model, including the licence fee, needs to be overhauled and a substantial proportion of the licence fee should be used for this aim, for example through a reinstated and expanded version of the Sound & Vision Fund that is then accessible to and funds multiple public service content projects.

In this regard we welcome the proposed new Content Production Fund in the Online Safety and Media Regulation Bill. While the nature and scope of this fund has yet to be defined, we recommend that it should fund as wide a range as possible of designated public service content with a strong focus on the independent sector. There should also be a clear strategic programme to support media literacy understanding and education from primary school levels all the way up to a general public information campaign.

The current Sound & Vision fund is a financial support mechanism for independent production and is designed to support investment in high quality programmes on Irish culture, heritage and experience as well as programmes to improve adult literacy.

It has contributed hugely to ensuring this type of programming content is commissioned and has by extension, facilitated the sustainability of the independent production sector in Ireland. Virgin Media is very supportive of the manner in which the fund is administered because it provides for complete transparency as to the type of content that can apply for funding and also, the destination of any allocated funds.

Virgin Media firmly believes that programming content sponsored by this fund contributes greatly to media plurality and investment in public service programming. However, it is quite arbitrary in its management and awarding and needs some greater accountability and alignment with the overall policy on public service media.

We believe there is scope to increase the value of the fund, however a broader review of all funding that supports local content, including Licence Fee funding, is the first place to start.

There needs to be a holistic understanding of all available funding aligned to key criteria and objectives and how they will be measured. This is distinctly lacking across all current funding models. The new Media Commission (established under the Online Safety and Media Regulation Bill) needs to create a more transparent and strategic operating model that allows for fair competition and accountability against clear deliverables for the privilege of receiving State funds and supporting public service media policy. The ability to support discreet audiences and less popular genres is also a key consideration in the new operating model.

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.

As outlined previously, and as per the ComReg report referred to on page 6, the current Digital Terrestrial Television distribution model (through Saorview) is anti-competitive, inefficient and not fit for purpose. The inclusion of new streaming platforms with obligations to support the discovery and distribution of appropriate indigenous media needs also to be considered by the new Media Commission.

A number of countries in Europe have indicated a move away from the licence fee model where for example, in the UK, the government is considering a significant revision or abolition of the licence fee by the end of the decade.

In Sweden, a supplementary tax is levied on individual adults to fund public service broadcasting, regardless of whether they own a television set, with similar measures being adopted in neighbouring countries. Other countries have chosen to fund their national broadcasters directly, using government funding.

There should be no increase in existing funding levies for the BAI or its successor. There should also be no retrospective imposition of levies for existing “broadcast” services. The current and future regulatory bodies should develop clear budgeted plans, which are then funded by content creating entities on a proportionate basis relative to revenues derived in the State and the volume of viewers, listeners, users they may have, relative to the scale of the entire market. The social platforms and video sharing platforms should also be included in this scheme and levied on the basis of revenue generated from activities within the State.

3. How should media be governed and regulated?

Broadcasting policy and legislation needs to be modernised to underpin the overall viability of public service broadcasting and content in a changed media landscape.

Virgin Media Television welcomes the forthcoming establishment of the new Media Commission (under the Online Safety and Media Regulation Bill).

While we understand that it will be some time before the legislation establishing the Commission is passed into law, it is essential that the work to set up the Commission will get underway in 2021 so that, when the legislation is enacted, the Media Commission will hit the ground running.

Virgin Media believes the new Media Commission should, as part of this establishment process, establish a framework of regular consultation and engagement with industry.

We note that work is now well underway to transpose the Online Safety and Media Regulation Bill into law and this is now before the joint Oireachtas Committee for pre-legislative scrutiny. The draft Scheme itself raises a number of questions, for example:

Head 76 of the Draft Bill provides for a new Content Production Fund while Head 77 of the Bill provides that any funds raised would go into a fund separate to the current Sound and Vision Scheme.

We understand that the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media is open to the type of content that can be funded through this new fund. Virgin Media very much welcomes any conversations that the Commission may have on the funding of content for linear and VOD (Video On Demand) broadcasting purposes. Virgin Media Television has always played a lead role in funding the production of Irish content and believes the Commission should fully engage with industry regarding any funding schemes that will be developed. Clarity on the registration requirements for VOD providers would also be welcomed.

In addition, Virgin Media believes the transposition of the Audiovisual Media Services Directive (AVMSD) presents an ideal opportunity to review sections of the Broadcasting Act 2009 that might benefit from updating and/or amending to ensure that legislation remains fit for purpose for the years ahead.

On a general note, Virgin Media believes the Broadcasting Act 2009 should be revised so that all services that have PSB content obligations are considered 'in the round'. In this regard, there should be a level playing field between State Broadcasters and any other PSB services including those offered by Virgin Media Television. As currently drafted, the Broadcasting Act 2009 affords RTÉ separate protections and/or rights beyond those that are offered to other PSB services.

In summary, there must be clarity, transparency and effective legal definition of what is public service and what is commercial service, and importantly, how each of these activities are funded. Public money for PSB is a scarce resource. Emerging needs to provide strong, credible and relevant PSBs are not best served by dated statutory architecture that continue a status quo, and do not address a completely changed context on-air and online. Legislation must be re-examined imaginatively for the future. A diffusion of public money on output, far beyond even a generous definition of PSB, means the essential public interest in providing that money is being undermined.

The role and contribution of S.70 licensees in overall plurality must be acknowledged and promoted for the future and the duration of S.70 licences should be extended from 5 years to 10 years in order to ensure continuity and to stimulate long term investment.

It should be a requirement that the new Regulator / Commission will carry out regulatory impact assessments prior to any implementations or orders being made. It is also essential that the Regulator must directly oversee the provisions of 'must carry' / 'must offer' in the market (relating to Section 70 licence holders) to prevent the potential for discriminatory practices.

Consideration should be given to crafting legislation to effectively and transparently track and ensure appropriate accounting controls are in place where public money is used by PSBs. This would ensure that the public interest is upheld and that commercial competition between different broadcasters are not cross subsidised unfairly and at a cost to the quality of PSB output.

There must be clarity, transparency and effective legal definition of what is public service and what is commercial service, and importantly, how each of these activities are funded. Public money is a scarce resource. The social, democratic and educational importance to provide strong, credible and relevant public service broadcasting and content are not best served by dated statutory architectures that continue a status quo, and do not address a completely changed context on-air and online. The State spends a lot of money already to support public service content in the absence of any accountability, transparency or clear guidelines. A powerful refocus of investment in public service media and content is both a pressing need, and an exciting opportunity.

Paul Farrell
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Virgin Media Television
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