



# Broadcasting Authority of Ireland

Section 124, Broadcasting Act 2009

Five-year Review of Public Funding

Authority Recommendations

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## 1. Summary

The statutory requirement on the Broadcasting Authority of Ireland to conduct its first comprehensive review of the public funding of RTÉ and TG4 is a very important element in the broadcasting legislation and comes at a crucial time in the development of the media in Ireland.

Since its establishment in 2009, the Authority has placed considerable emphasis on the role of broadcasting in a modern democratic society. It recognises the fact that all broadcasting serves a public purpose and that broadcasting is central to a community's understanding of itself and of its place in the world. The combination of national, regional, local and community broadcasters, public and commercial, represents a significant part of the media landscape and of community life.

The recognition this democratic, social and universal role of broadcasting has been the basis for consistent public policy support, over half a century, for the provision of public funding to enable the provision of programme services to the Irish people.

Public policy has consistently focussed on the importance of Irish content. The Authority shares and echoes that focus. Presenting schedules that reflect and inform the lives of Irish people requires the strong presence of Irish-made programmes in those schedules. This is true for all broadcasters but there is a particular responsibility in this regard on publicly-funded broadcasters.

The importance of Irish content is reinforced by the fact that we live in changing times. There has been a remarkable increase in the number of television channels from outside Ireland available within the state. The relationship between external content and Irish content continues to alter. New technologies are presenting new choices on a never-ending basis. The pace of change is rapid and its impact deep. Across all age groups, established practices and long-standing expectations are being challenged.



Much of what this change facilitates is to be welcomed. But there are cultural, national, public policy and economic reasons to be concerned. Strong broadcasting organisations offering a range of quality Irish programmes are a vital part of the response to the emerging environment. That truth underlies the Authority's approach to the recommendations it makes in this report. It is emphatic that being ready to embrace the possibilities of the new digital world is of critical concern.

Against this backdrop, the Authority accepts that there should be further investment in RTÉ's programme output. But it identifies a number of key conditions that should apply to an increase in funding:

- It requires that the potential for cost reductions and revenue increases should be fully realised
- It proposes that, to the greatest extent possible, increased funding be deployed through the independent production sector
- It requires that there be clear indication in advance of what the added funding will realise in terms of additional programming.

It also identifies a condition for increased funding that has the potential to make a fundamental change in the approach to funding of broadcasting. It recommends that the Minister identify a point, above current levels of funding, at which any increases in public funding for RTÉ are matched by reductions in commercial revenue achieved by restriction of commercial activities. This re-balancing has far-reaching implications, including facilitating commercial broadcasters to enhance their schedules through access to greater commercial revenue.

In the case of TG4, the Authority recognises the particular circumstances of the channel and the way in which the challenges it faces are different from those facing other broadcasters. It believes, however, that further detailed evaluation of how current public funding might be used differently and of what might be achieved with much lower increases in funding is required before any recommendation is made.

The Authority recommends an urgent change to the legislation that would enable higher commercial minuteage to be available to commercial radio broadcasters. It also sets out a range of recommendations in relation to regulatory matters.



## **1. Introduction**

### *1.1 Background*

The inclusion in the Broadcasting Act 2009 of the requirement that the Authority undertake a substantive review (over and above the annual review that it also carries out) of the adequacy or otherwise of the public funding available to RTÉ and TG4 to meet their public service objects was a key provision in the new legislation. It identified the necessity regularly to take stock and to consider a broad range of issues in addressing this perennially challenging question. To that extent, it reflected the recommendations of the Broadcasting Forum in 2002 and introduced a striking new element in the regulatory environment.

The corpus of broadcasting legislation over the past fifty years has, by its very existence, reflected and asserted the central role that broadcasting plays, and is intended to play, in our modern democracy. All broadcasting in Ireland is socially regulated because all broadcasting serves a public purpose. The way in which a community expresses itself, comes to know itself, has access to information about issues that matter to it and learns about the wider world are the stuff of broadcasting. And it has been the enduring standpoint of public policy and of the law that broadcasting's engagement with these fundamental tasks of citizenship is important, should be supported and should be regulated in the public interest.

### *1.2 Importance of the Audience*

Deriving from this understanding, it has been the Authority's position from its inception that the interests of the audience constitute a core concern. This is more than ever the case when considering the public funding of the public broadcasting corporations. It would be possible for the Authority simply to take account of the submissions made by the two public broadcasters and to make its recommendations to the Minister based on the evaluation of those submissions by the consultants engaged to assist it. But that would, in our view, be an inadequate response for three critical reasons.

In the first instance, the needs, interests and expectations of the audience in the current and emerging environment must weigh in making any judgement in this important question. Secondly, the wider broadcasting environment within which RTÉ and TG4 operate and discharge their responsibilities must be considered. Thirdly, the independent production sector is an important element in the creative capacity, and in the creative economy, of this community, a reality recognised in broadcasting legislation for many years.



### 1.3 *Independence of the Broadcasters*

It is important at this point to register an unambiguous statement of appreciation of and welcome for the independence, within the law, of the two public corporations enshrined in the 2009 Act. Nothing that the Authority or any of its statutory committees does in the course of their work is intended to or is in danger of diluting that independence. But that statutory independence is separate and distinct from proper regulatory expectation.

## 2. **Approach and Context**

### *Role of the Consultants*

In approaching its task in undertaking the review required by Section 124 of the Broadcasting Act, the Authority was conscious of the range of issues that the statute required it to take into account. They set the framework for the work of the consultants engaged to assist it. The Authority also decided that the review would require the two broadcasters to include in their submissions detailed costed plans for the five-year period.

It was entirely understandable that Crowe Horwath, the consultants engaged to assist the Authority with this review, took the view that they could not – and should not – interpose themselves between the broadcasters and the policy framework within which they operate. It was not their role to determine what a preferred perception of the broadcasters might be. Neither did they consider it their entitlement to identify what government policy should be. Their task was to compile a report for the Authority's consideration, including their evaluation of RTÉ and TG4's five-year plans.

### *Authority's Approach*

The Authority has a broader responsibility, however. Any recommendations it makes in respect of public funding for public service broadcasters cannot be divorced from a consideration of their impact on the wider broadcasting and media market. Moreover, there are public policy concerns which may be affected by decisions reached as part of this review process. And the Authority is ever aware of its statutory objectives as set out in Section 25(2) of the Act.

In setting out its evaluation and recommendations, the Authority does not attempt to substitute itself for the Boards of the corporations, but rather to take account of such matters as it considers relevant and allow it to realise the full potential that this five-yearly review is intended to have. This is a particularly valuable opportunity – for broadcasters and the Authority alike – to pause, reflect, consider the possibilities for the future and take account of the wider context.



### *Key Questions*

In this context, there are three key questions that the Authority believes it is important to consider:

1. What is the role and purpose of public service broadcasting in the current and emerging environments?
2. What is the expectation of a contemporary audience in terms of the schedules of public broadcasters?
3. How is the deployment of public funding to be evaluated and justified?

### *The Changing Environment*

These are challenging times. They would be challenging for broadcasters were there never an economic downturn. We are faced by a process of change of extraordinary depth and rapidity. Established patterns of media consumption are being altered, not just by and among the young but in all areas and across the age groups. New approaches to dissemination of and access to information will have decisive impacts.

These changes affect both radio and television but there is an added dimension for television that is not remotely matched in radio. The digital environment has facilitated the rapid growth of channels and this country faces an unprecedented level of externally-based competitive channels. The switch-off of analogue transmission has reinforced that truth. Many of these channels are not simply passively available but are actively seeking to generate advertising income in this state. These channels, regulated in their country of origin, have few of the requirements of Irish services and have no obligations in terms of any contribution to the creation of Irish content. For these reasons, there has been a dramatic shift in the balance between externally- and domestically-produced content available to Irish audiences. This has enormous consequences for broadcasters - especially for those who are wholly commercial in their funding; for audiences - the balance of whose access to domestic and external programme and news sources may be very different in future from what it was or was expected to be; and for public policy as a consequence.

## **2.1 Response to RTÉ submission**

It was, then, a source of disappointment, in the case of RTÉ, that the plans for 2013-2017 did not set out a clear sense of its vision and of its ambition such as might have been hoped for. The RTÉ submission included a Base Case which it identified as the minimum level of funding it requires. It offered a number of scenarios resting on varying assumptions about its public funding and it identified a range of additional, desirable expenditure, without detailing what that might achieve in programme terms or how it might be integrated in its plans. The Authority understands fully the work that has gone into the preparation of its five-year plan, it recognises the need for realism but it was a concern that the thrust of the imagination in the Director-General's foreword was not adequately reflected in the substance of the document.



One of the sources of disappointment was that, while RTÉ undoubtedly recognises and understands the extent of the change that is taking place and is alive to its consequence, there was no clear articulation of the view or vision that the primary national broadcaster has of the implications of these transformative changes; of the resultant needs of an Irish audience in the current and emerging environment; of the cultural consequences of the growing imbalance in the sources of content; of the significance of the new sources of information; and, of central importance, of the level, nature, quality and range of services that are necessary and appropriate for an Irish audience in these times. This is not a requirement that broadcasters be clairvoyant but that, uniquely positioned as they are, that sense of what should constitute a comprehensive broadcasting service in a publicly-funded broadcaster was not fully elaborated.

The Authority was also concerned that the distinction between core and complementary services advanced by RTÉ might be inappropriate. While understanding the difference between services that are directed at the entire audience and those which have a niche focus, there is a danger that the public purpose might be misinterpreted within such a categorisation. There is the distinct possibility (inevitability?) that, however unintended, core and complementary may be perceived as primary and secondary. It was difficult, for example, to see how Irish language content, given the statutory obligations on RTÉ, could lie outside its core services.

And there was the surprise that, sometime after the submission of the five-year plans, RTÉ indicated that it wished to transfer all children's programming from the afternoon schedule on RTÉ2 to RTÉjr, thus identifying the programme service to children as being part of a complementary service and not part of the core responsibility of a publicly funded national broadcaster. The spirit of the intention to establish RTÉjr is appreciated and welcomed. The concern is that the intention to make this change, and in the process to alter substantially the character of RTÉ2, was not part of the five-year plan submitted as part of this review which makes it difficult to discern the precise intention and the potential implications of the core/complementary divide.

#### *Context of RTÉ's Commercial Obligation*

Some of these issues may draw attention to the statutory requirement that RTÉ maximise its commercial revenue. But the Authority notes that this requirement is not an isolated absolute. It is set within RTÉ's character and responsibilities as a publicly-funded broadcaster. RTÉ well understands that options open to a commercial broadcaster are not open to one whose funding is in large measure drawn from the public and that there is a direct relationship between the statutory objectives and the public funding.



## **2.2 Position of Broadcasters Generally**

The Authority cannot, nor should it, put itself in the position of the Board of either RTÉ or TG4 in determining what the schedules should contain over the next five years. But it must have regard to the services that the public funding will realise and it must look to the broader policy issues involved in making its recommendations to the Minister.

This is not in any way to diminish the role that Irish broadcasters play now and will play in the future. The publicly-funded broadcasters, who are the principal focus of this report, have a long and distinguished record of service to Irish audiences. The extent to which RTÉ is an established part of Irish life and engages the interest and attention of the public is a reflection of that. So, too, the appreciation of the contribution that TG4 has made since its introduction in 1996 is clear. To be successful, the Irish broadcasting sector must be effective in all its branches. The achievements of TV3 and of the comprehensive network of radio services are evident. As the Authority has noted elsewhere, it has been noteworthy that all broadcasters have maintained schedules that are as strong and vigorous as they are, despite the ravages of the economic difficulties of recent years.

### *Importance of Irish Content*

A central focus of everyone concerned with broadcasting is the importance of domestic content. That is implicitly and explicitly an important part of the consistent public policy position on broadcasting. As far as television is concerned, and in the light of the change to which reference has already been made, it must be the case that the will and capacity of TV3 to enhance the range and quality of its Irish-made programming is an important public policy issue to be taken into account. The development and success of TV3 are important ingredients in an effective Irish television environment.

### *Importance of Effective Use of Public Money*

Central to any discussion of the adequacy or otherwise of public funding is the efficacy of its deployment. The Authority well understands the extent to which both RTÉ and, to a much lesser extent, TG4 have been affected by the economic downturn. This is a reality that has affected all broadcasters in the state. In any event, public funding cannot be considered as, and the broadcasters do not suggest that it should be seen as, a compensation for lost commercial revenue. It must also be recognised that RTÉ's licence revenue has been reduced by the increased amount allocated to the Sound and Vision Fund, the transfer of funds to TG4 and the limit on the licence payments by the Department of Social Protection. Notwithstanding the transfer it has received from the licence fee revenues, TG4's overall public funding has also decreased.



The review undertaken by Crowe Horwath is clear that the proposals put forward by RTÉ in its five-year plan are coherent, relevant and achievable. But they have identified what they believe to be potential for greater commercial revenue in that period than is estimated by RTÉ. They also suggest that RTÉ has capacity for further reductions in its operating costs while expressing some doubt that the reductions envisaged by RTÉ in the costs associated with certain programme categories are fully achievable. They also question the extent to which adequate provision has been made in respect of capital expenditure for any new developments in the digital environment.

The Authority recognises the expenditure reductions that have already been achieved in RTÉ. But being effective and efficient in the deployment of public moneys is a never-ending, though difficult, obligation. One of the requirements in decision-making on future funding is greater clarity on the extent to which costs can further be reduced in underlying operational activities and in areas of programme production or acquisition. It will also be necessary to evaluate on a continuing basis the extent to which, within the current arrangements, increased commercial revenue can be and is realised. These are areas where a greater degree of certainty is crucially needed and to which further reference will be made.

#### *Preserving Value of Public Money*

The Authority is also conscious of the Minister's intention to introduce a Universal Broadcast Charge to replace the current licence fee. It is not possible for the Authority, in the absence of detail of how the new charge might operate and might more effectively be collected, to evaluate what additional return, if any, might be expected without changing current rates. In addition, the Authority recalls the view of the Forum on Broadcasting in 2002 on the importance of ensuring that the real value of public funding not be diluted by inflationary movements. Unchanged, public funding can progressively lose its capacity to return value to the audience in terms of the range and quality of services provided. This array of considerations underlines the difficulty of determining precisely the level of funding that will be available to RTÉ over the next five years and the extent of possible cost reductions achievable within that period while, at the same time, underlining the importance of the annual reviews carried out by the Authority under section 124(2).

#### *The Digital World and the Dynamics of Change*

Publicly-funded broadcasters must be present in the on-line world and on the increasing range of platforms that new technology offers. These are where audiences increasingly find content. This is not an optional extra. It is a central imperative. The strength of linear channels, even in the increasingly competitive environment, is striking. But there is no room for complacency. Share and reach will be under constant threat. There will be constant changes in technology and in individual behaviour - changes whose full extent cannot be foreseen from this perspective. Patterns evident in how younger age groups choose to have access to programme content are clear indicators of further changes and challenges ahead.





That requires constant vigilance from broadcasters - that the pace of change be fully understood and not under-estimated; that the impact on audience attention and revenue generation be fully appreciated; and that there be a clear strategic focus on how most effectively to be present to the audience in the new future. This is a process that will require investment and that may be slow to yield dividends.

Left to their own devices, the dynamics of the changes currently taking place in the audiovisual environment can lead to decline in the revenues available to broadcasters; in the share and reach that their schedules can command; in the extent and capacity of the independent production sector; and in the creative and expressive capacity of this community. That is not an option that will serve any public policy.

### **3. Authority Recommendations**

#### **3.1. RTÉ**

Taking all these considerations into account – the dramatic changes taking place in the audiovisual sector with particular impact on television, the critical importance of domestically originated content, the role of TV3 and other players such as Setanta Ireland as providers of such content, the potential for further cost reductions in RTÉ, the new universal charge - the Authority recommends a new approach to the allocation of public funding.

##### *Adequacy of RTÉ Base Case*

The starting point is that to build any proposals for the future on the level of output in the Base Case presented by RTÉ will be inadequate. It is clear that it would not represent a satisfactory level of service to meet the projected needs and expectations of the audience in the evolving media landscape. That Base Case made by RTÉ was not the limit of RTÉ's aspiration and a range of outline proposals is included in its submission. However, given the lack of adequate detail associated with these outline proposals, Crowe Horwath confined their recommendations to the adequacy of public funding relative to the Base Case made by the broadcaster.

##### *Need to Increase Irish Content*

Nonetheless and taking into account the outline proposals provided and the broader market and audience research analysis undertaken as part of the review, the Authority accepts that an increase in the range and level of Irish made programming will be necessary to offer attractive and culturally relevant services to the Irish audience and to enable indigenous Irish broadcasters, both PSB and commercial to compete in the current and future media landscape.



That view on the need to increase the range and level of Irish made content derives from a detailed consideration of the increasing range of services available now and in the future to Irish audiences; the growing imbalance between external and Irish-made content; the recognition that the presence of Irish content in the new media is vital, especially so that it is available to younger people; an understanding of the particular needs for children's content with local and cultural relevance; and an appreciation of the significance for public policy development of an Irish presence in the broadcasting environment that is strong, competitive, varied and enduring. That conviction has consequences for funding.

*Public Funding: Proposal and Conditions*

To that extent, and while recognising the context in which it was made, the Authority does not accept that element of Crowe Horwath's recommendation in respect of RTÉ that there should not be any increase in the level of public funding either from an increase in the licence fee or from the universal broadcast charge. The Authority believes that a greater level of public funding should be made available to RTÉ subject to four conditions:

- The full potential of reductions in costs and increases in revenue should be realised
- Any funding above the current level available to it should be deployed to the greatest extent possible through the independent production sector; it would be desirable to identify the minimum percentage so to be deployed. (A further elaboration of the BAI's rationale in this regard is set out in Paragraph 1 of the Appendix to this document.)
- Any additional funding should be made available only in respect of additional programming (or programme-related investment) clearly identified in some detail in advance; the extent to which that programming should be allocated between existing services or on further investment in new digital services is a matter that will require continuing consideration
- The Minister should determine a point above the current level of licence revenue where further public funding will be matched by a reduction in commercial revenue for RTÉ achieved through a restriction on commercial activities by, for example, a reduction in permitted advertising minuteage, or a reduction in sponsorship or a combination of both. This re-balancing between the public and commercial funding of RTÉ could be phased over a number of years and structured so that the restriction in commercial activity would be clearly matched by the increases in public funding. (A further elaboration of the BAI's rationale in this regard is set out in Paragraph 2 of the Appendix to this document.)

This proposal for a re-balancing of RTÉ's funding represents a fundamental reorientation of the approach to the funding of Irish broadcasting and has consequences that are greater than its simple articulation here might suggest. It would serve to enhance the security of RTÉ's revenues, underline the public service character of its role and responsibilities and open the



possibility for commercial broadcasters to enhance their schedules through access to greater commercial revenues. It is possible that some of the commercial revenue “released” from RTÉ might find its way to services based outside Ireland. But the ingenuity of other Irish broadcasters and the operation of the commercial market must be allowed to determine how the greater part of that revenue would continue to serve Irish audiences with relevant content.

*No Immediate Licence Fee Increase: Further Work Required*

Two issues flow directly from these four conditions:

- It will be vitally important to interrogate in detail and with speed the extent to which further cost reductions can be achieved by RTÉ and to examine the possibilities for increased commercial revenue such as the consultants envisaged. It will be necessary to have a well developed presentation of RTÉ’s clear and coherent plans for its digital services and related investment. The Authority suggests that the BAI should immediately begin discussions with RTÉ as to how best this analysis can be undertaken so that the Authority can be satisfied that its proposals in respect of public funding can be based on robust and, as far as can be ascertained, secure foundations.
- The second area where immediate work will be needed is to examine, as the consultants recommend, the real relationship between the costs of in-house and independent production. This, too, is a necessary condition for any additional funding so that the more effective deployment of such funds can be secured. It is not a recommendation for or a prelude to the conversion of RTÉ into a publisher broadcaster but a critical measure for evaluating the effectiveness of the expenditure of public funds. The BAI will take early steps, including discussions with RTÉ, to establish the most effective approach to the independent undertaking of this work.

The Authority’s recommendations on future public funding do not represent a recommendation for an immediate increase in the licence fee. That should be determined when the two key issues noted above have been resolved, any remaining uncertainties have been further clarified, the potential for greater efficiencies in RTÉ have been established and when the potential of the new universal broadcast charge has been calculated.

*Funding of RTÉ Digital Channels*

Future funding of broadcasters’ presence in the digital domain has already been referred to. It will be an important element in determining the correct level of funding and in the annual reviews. The Authority recognises that new channels whose development may be facilitated by the emergence of the new DTT platform will not be confined to that platform and can be available to all. Nevertheless, it believes it wise not to make any long-term decisions on the future funding of digital channels by the public broadcasters until the review that will shortly be



undertaken into the commercial potential of DTT has been completed. This will not restrict any aspirations as the review will be concluded within a relatively short timescale.

### **3.2 TG4**

#### *Context for TG4*

The Authority understands and appreciates the particular statutory role that TG4 plays in the Irish broadcasting context. It appreciates also the complex socio-linguistic environment in which it broadcasts and is aware of the differing expectations that many in the audience will have of its schedules. Its central purpose is to offer a broadly-based service in Irish to those for whom Irish is their home language or their language of preference as well as making that service as accessible as possible to those with varying levels of comprehension and to all others for whom the channel's content will be of interest.

This is a significant challenge, unlike that faced by any other television broadcaster operating in or available to Ireland. There is an inescapable level of cost in providing a schedule but there is a self-defining limit in terms of reach and share that can reasonably be expected to be achieved. As with Raidió na Gaeltachta, there will be a level of cost per unit of audience that will be disproportionately high relative to other broadcasters.

#### *Measuring Audience*

Attempting to reach out to a broad audience has further difficulties in terms of a measure that will capture the complexity of the audience being addressed. A focus on share - or reach, as the consultants would recommend - may not fully reveal the level of engagement by an Irish-language audience. A focus on ways of disclosing more clearly the level of attention from that particular audience may suggest policy options that will not assist in achieving a broader reach.

As has been observed elsewhere in this report, the current and future changes in the media environment will challenge all broadcasters in terms of consolidating, let alone growing, their hold on audiences. The differences between TG4's share in all homes relative to "multi-channel" homes illustrate this point. That position is unlikely to have been improved by analogue switch-off. Notwithstanding the considerable reach of some of its content, notably sport, TG4's audience share could be described as somewhat precarious.

#### *Alternative Possibilities*

All these realities are known to TG4. Its submission properly records the achievements of the channel in the 17 years since it was established. It recognises the particular relationship with its loyal audience. It has, understandably and properly, set out its clear ambitions for the channel and its view of the level of service that it considers to be necessary fully to realise those ambitions. It may require more detailed analysis to be able to share the optimism of the submission as to the increase in share that such schedule developments would achieve. It was



something of a surprise that there was not a more detached evaluation of the impact that the changing environment is likely to have on its existing share. Similarly, it was surprising that the submission did not consider what might be achievable if the eventual Government decision provides less, or much less, by way of additional public funding than TG4 has identified as necessary.

The Authority shares the view of the consultants' review that more detailed analysis of its existing audience is needed as is a more rigorous evaluation of the audience-generating potential of its schedule proposals.

#### *Security of Future Revenue*

TG4 is distinctly different from any other broadcasting service in that such a significant percentage of its revenue is from public sources. The inescapable corollary of this is that whatever increases in reach or share are realised any related increases in commercial revenue will not be material in terms of the overall funding ambitions it has proposed. Any schedule development designed substantially to increase commercial revenue would run the risk of colliding with its statutory obligations and its fundamental founding purpose.

But not all of its public sources of funds are certain. We have seen that, even after transfers from the television licence fee revenue, its direct exchequer funding, and as a consequence its overall funding, has fallen. There can be no guarantee that the present level of support is beyond reach. Its programme provision from RTÉ is provided for in current legislation but access to Sound and Vision funds cannot be relied upon because of the competitive nature of that Scheme. Similarly, the funds available from the Northern Ireland Irish Language Broadcasting Fund may not always be available or may be at a reduced level.

#### *No Increase in Funding*

The Authority accepts the Crowe Horwath analysis that further efficiencies cannot be secured under the current TG4 operational model. Accordingly, the Authority recommends that it would be inappropriate to decrease the level of public funding available to TG4 at this time. However, in these uncertain circumstances the Authority cannot make a firm recommendation on any increase in funding without further consideration. That will, in its turn, require more detailed examination of likely future audience patterns and an exploration by TG4 of what could be achieved in terms of its schedule aspirations by differently deploying existing resources or with a range of increased funds well below the level that is being sought in the submission. The BAI recommends that the Minister give immediate consideration as to how this further work might be undertaken by TG4.



#### *Other Considerations*

Against the very volatile background that confronts TG4, the Authority believes that consultants' proposal that there might be fruitful exploration of structural changes including closer relationships with RTÉ merits attention. The outcome of such exploration might raise matters touching on aspects of public policy that, in turn, would require further consideration by the Minister and Government.

### **3.3. Radio**

The focus of this response has been on television because it is there that the greatest challenge from outside the state arises. It has been a remarkable tribute to all radio broadcasters that their output has evoked such a strong response from the audience. The Authority recognises the particular issues that arise in providing services that are likely to be of interest to limited audiences. RTÉ incurs costs through the provision of Raidió na Gaeltachta and lyricfm that are disproportionate to the costs of its other services but their value is recognised.

#### *Strength of Commercial Radio*

Commercial radio services have been able to establish a very strong position in the attention and affection of the audience over the past twenty years so that they enjoy a share of more than 65% of all listening. They have been able to achieve this despite the recent difficult years and based only on the commercial revenue available to them. The Sound and Vision Fund holds potential for commercial radio stations that may not always be recognised or exploited. The review of the Fund may offer opportunities to make that potential more clearly appreciated.

#### *Proposal for Legislative Change*

There is one area, however, where commercial radio suffers a disadvantage and that is in the capacity to adjust permitted advertising times. There is a distinct anomaly in Ireland's current arrangements in that there are three separate regimes in respect of advertising times. The Minister determines the permitted levels for RTÉ; the Authority for commercial television; the statute for commercial radio. This serves no useful purpose and acts to the disadvantage of the radio sector. The Authority urges that the Minister take the earliest opportunity to amend the legislation so that the responsibility for advertising limits for all broadcasters rest with the Authority with a provision, if considered necessary, that the consent of the Minister be required for any adjustments in the case of RTÉ. This would enable an early consideration by the BAI of whether the time permitted for advertising on commercial radio services should approximate to that available to commercial television channels. Taken with the re-balancing earlier proposed, it would mark a very significant change in the broadcasting landscape.



## 4. Other Regulatory Considerations

### *Annual Reviews*

The Broadcasting Act requires the Authority to review annually the performance of each broadcaster relative to their statement of commitments and to consider the adequacy of the public funding. Over the past three years, the BAI has worked to develop a framework for the review of commitments which respects the independence of the broadcasters but recognises and responds to the statutory role of the Authority. From the outset of this comprehensive review, the Authority saw the potential to use its outcome to refine the framework for the annual reviews. Crowe Horwath have made a number of important, relevant and timely recommendations which, in considerable measure, reflect the approach adopted by the BAI over the past three years. The Authority sees them as being of considerable assistance and will incorporate them in the annual review process. There is a set of indices which the Authority considers to be essential elements in the annual review and there are elements of the recommendations in this report which will require to be revisited each year. Both will form part of the annual engagement with RTÉ and TG4 in the future.

### *Schedule Expectations*

The Authority also recommends that, without restricting the independence of the broadcasters, consideration be given to whether the availability of increased funding requires a clearer statutory or regulatory articulation of what is to be expected from the schedules of a public broadcaster. This is not to diminish the range of programming that such schedules can contain but to reflect the principle that public funding, being contributed by all, should produce content that reflects the full range of interests within the community. Although being broadly-based schedules, the character of the schedules of publicly-funded broadcasters should be distinctly different from those of other broadcasters.

### *Digital Environment*

There is much material for reflection in the consultants' review on the question of the digital environment. Distinction must be drawn between the on-line environment, where it is essential that the public broadcasters are actively engaged, and the emergence of DTT as a platform. The Authority will shortly review the potential for the development of additional, commercial, DTT multiplexes. The outcome of that review will be instructive in terms of how DTT may develop in Ireland and on what opportunities may arise for commercial and public broadcasters.



## **5. Conclusion**

The review undertaken by Crowe Horwath provided the Authority with a comprehensive and robust evaluation of the environment, of the emerging future and of the position and plans of the two broadcasters. The detailed consideration that has been given to their report, together with the Authority's consideration of those issues identified in the statute and those it considered material and relevant, has provided a solid foundation and a clear evidence base for the recommendations contained in this report to the Minister. The Authority, except where otherwise indicated, accepts the broad thrust (in many cases the detail) of these recommendations and incorporates them as recommendations to the Minister alongside the specific recommendations developed by the Authority. The Authority believes that these combined recommendations offer a solid foundation for policy decisions by the Minister and the Government. It also believes that that they will enable sustained and meaningful engagement between the BAI and each broadcaster in future reviews of public funding and that the requisite levels of accountability and transparency, as required by statute, will be ensured.

The Authority would welcome a very early engagement with the Minister and the Department on the range of the recommendations made both here and in the Crowe Horwath report. We have identified a number of matters that require urgent further review and proposals for a new approach to the balance of funding within the television sector require a sense of the Minister's response to the principle so that the approach to the detail needed can be developed.

**Bob Collins**  
**Chairperson**





## Appendix

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## **1. Rationale for Deployment of Additional Funding primarily to Independent Production Sector**

The following points support the Authority's rationale in this regard:

- It is a long-established principle of European and Irish public policy that a strong independent production sector is essential for creativity and innovation in content for audiences. Furthermore, as supported in European and Irish law, the independent production sector makes a significant contribution to the creative and cultural economy of Europe generally and Member States more specifically.
- This public policy objective also contributes to the diversity of voices available to audiences and makes a contribution to plurality in viewpoint, outlet and source. The Authority's approach is consistent with the statute and its own statutory objectives of diversity and plurality, by contributing to the multiplicity of voices and viewpoints creating content for Irish audiences. A depleted independent production sector has negative impacts in each of these regards.
- In many other European states, there is strong evidence of a requirement that PSBs broadcast a more even mix of content produced in-house and that made by independent producers e.g. in the BBC. A firm commitment to a statutory level of investment in independent productions has been a feature of Irish law for over twenty years.
- Due to the economic circumstances, there has been a significant reduction in the level of RTÉ's transactions with the independent production sector over the past five years (although RTÉ has complied with its statutory obligations in this regard). This is not without consequences for the sector and, ultimately, for audiences.
- The BAI's proposals seek to avoid a further deterioration in the position in this regard in order to sustain the independent production sector and the diversity and plurality outcomes that ensue for audiences.
- The BAI's proposals are consistent with the principle established in Irish statute of providing for a structured involvement by the sector in RTÉ's activities and outputs. The BAI's recommendation endorses both the principle and the proven value of such an approach to date and seeks to sustain this position in the future.
- The Authority's position is also consistent with the thrust of the Crowe Horwath report which places emphasis on the significant role which independent producers can play in the broadcasting environment.



## 2. Rationale for “Rebalancing” of RTÉ’s Commercial Revenue and Licence Fee

The following points support the Authority’s rationale in this regard:

- The intention of the statute that this quinquennial review should provide a comprehensive policy framework within which the Authority makes its recommendations and the Minister and the Government make their decisions.
- It is the clear intention that the recommendations should set the framework for at least five years. The depth and rapidity of the change in the media world suggest that some fundamental changes are required, without altering the underlying principles of the current model.
- It was necessary in framing its recommendations that the Authority take account of the broad landscape and not confine its considerations to RTÉ and TG4.
- Central to the Authority’s proposal is the potential to provide stability for RTÉ in its sources of funding so that its services can meet the needs of the times and, as a consequence, stability for programme makers and audiences. The benefits arising from a greater level of certainty in respect of income cannot be underestimated. RTÉ has been engaged in revenue fire-fighting exercises over the past number of years, a reality that runs the risk of a dilution of its core focus on serving audiences, editorial matters more generally and innovating in terms of content, most particularly digital content. A greater degree of certainty in respect of its income stream will facilitate RTÉ in implementing its strategic plan and in particular in concentrating time and effort on digital developments which is required to secure the future of public service content.
- Irish and global trends provide strong evidence of shifts in media consumption patterns. In tandem with this trend, traditional forms of revenue are being diverted away from established broadcasting services to new digital media. The BAI’s research (in line with trends internationally) anticipates the likelihood of such trends continuing. The extent to which television broadcasters will benefit ultimately from new forms of revenue is far from certain and the timeline for the substitution of new income streams for more traditional ones is even less so. The BAI’s proposals provide some safeguards against the further erosion of traditional forms of revenue for RTÉ in the interests of quality, Irish public service content for Irish audiences.
- A significant number of public service broadcasters throughout Europe do not carry any form of commercial communication. In Ireland, public policy has consistently supported the dual funding of public broadcasting, as is the case in comparably-sized European states. But the public service broadcasters themselves have already differentiated between public service and commercial considerations in respect of certain of their activities and have isolated areas of content from



commercial messages e.g. the statutory position supports a reduced level of commercial activity for PSBs; RTÉ has, of its own accord, adopted a commercial-free policy in respect of advertising in children's programming.

- The BAI's proposal in respect of a rebalancing of commercial and public funding for RTÉ facilitates the broadcaster in realising the public service objectives that the statute demands and to which RTÉ is committed, while recognising that their full achievement will not be possible without a level of commercial funding. It provides certainty of public funding; allows a greater concentration on the public purpose and reassures audiences of the future availability of high quality Irish content.
- RTÉ's commercial revenue has been impacted by a range of factors in recent times, including the dilution of the licence fee, the economic downturn and the decision of the Competition Authority. The BAI's proposals moderate the impact of such developments.
- TV3: the BAI understands that its proposals may result in some benefits for TV3 and other Irish broadcasters such as Setanta. In the Authority's view, such an outcome is justified. That is, in part, its intent. The benefit of the rebalancing of the funding arrangements is that the commercial potential of the Irish market might facilitate a greater level of Irish made content. TV3 is the only significant, indigenous, non-public service television broadcaster in the State. Notwithstanding that there are hundreds of other television services available to Irish audiences; the range of Irish content is limited primarily to the two PSBs and the services provided by TV3.

A recent report in the national media suggested that Sky takes approximately €25m per annum in advertising revenue from the Irish economy – almost half the total revenue of TV3. In the event that TV3's position was no longer commercially viable, Ireland would very likely be the only European state without any independent commercial broadcaster.

That there should be such an independent commercial television broadcaster has been an established aspect of Irish broadcasting policy since the late 1980s. TV3 has, through the broadcasting statute, a "favoured" position by way of, for example: access to spectrum; must-carry status and preferential positioning/prominence on EPG listings.

In the past, TV3 has demonstrated commitment to the Irish economy and to Irish audiences e.g. through employment, Irish independent production etc. It continues to do so in an ever-increasing range of ways e.g. by its contribution to the Saorview platform and in its contribution to plurality as a source of news and viewpoint. It is in the national interest that this will continue to be the case.



As its track record demonstrates, as TV3's business has grown over the years, so too did the numbers of staff employed in its operations and the level and range of home-produced content broadcast by the service.

It is consistent with all of the above that, should TV3 derive some benefit from a rebalancing in the sources of funding to RTÉ, the achievement of the wider and longer-term public policy objective of the statute would be supported i.e. that there should exist an alternative voice for Irish television audiences other than that of the PSBs and that there should be sustained access to a variety of Irish voices and sources of content.