BAI Media Plurality Policy

2019

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1.   Introduction

The Broadcasting Authority of Ireland ("BAI) is an independent statutory organisation responsible for a number of key areas of activity with regard to media services in Ireland. In performing its statutory functions, the BAI is charged with, amongst other things, endeavouring to ensure the provision of pluralistic broadcasting services. The BAI endorses the statutory premise that a free and pluralistic media is an essential component of a modern representative democracy and it has developed the BAI Media Plurality Policy in order to promote and support media plurality in Ireland.

The BAI's role in promoting and supporting media plurality is undertaken in the context of the provisions of the Broadcasting Act 2009 and the Competition and Consumer Protection Act 2014. Our role sits alongside and supports media plurality activities undertaken by the Minister for Communications, Climate Action and Environment and the Competition and Consumer Protection Commission (CCPC). Under the Competition and Consumer Protection Act 2014, both the Minister and the CCPC have key powers in respect of maintaining plurality. In this regard, it is the role of the CCPC to review media merger proposals over a certain financial threshold to ensure that they will not substantially lessen competition. It is the role of the Minister to make a determination on whether a proposed media merger will be contrary to the public interest in protecting plurality of media in the State.

The BAI has a statutory role under the Competition and Consumer Protection Act 2014 which includes providing advice to the Minister on media mergers and conducting plurality focused research on a regular basis. However, while it has a role in respect of determinations on media merger proposals, its statutory and policy role in respect of media plurality is wide ranging. This is reflected in a key component of the BAI's mission, as set out in the BAI Strategy Statement 2017-2019, which is 'to promote a plurality of voices, viewpoints, outlets and sources in Irish media'. The BAI's role is also situated in a European context, in particular, the Council of Europe's 2018 Recommendations on Media Pluralism and Transparency of Media Ownership and the European Convention on Human Rights. These key documents also inform the BAI's approach to media plurality.

This Policy articulates how the BAI, within the framework legislation and the BAI's Strategy Statement 2017-2019, understands media plurality and how it will frame the wide range of activities that the BAI undertakes and will continue to undertake in order to promote and support media plurality in Ireland.

2.   Media Plurality Definition

In considering matters of media plurality, the BAI will do so with reference to the definition of media plurality set out in the Competition and Consumer Protection Act 2014. This defines media plurality with reference to both the content and ownership of media in the following manner:-

- **Diversity of Content** means the extent to which the broad diversity of views (including diversity of views on news and current affairs and diversity of cultural interests prevalent in Irish society) is reflected through the activities of media businesses in the State, including their editorial ethos, content and sources.

- **Diversity of Ownership** means the spread of ownership and control of media businesses in the State linked to the market share of those media businesses as measured by listenership, readership, reach or other appropriate measures.

This two-fold conception addresses both external and internal plurality. External plurality deals with the spread of ownership and control of media businesses. Internal plurality deals with the nature of particular media content, both political and cultural, and the sourcing methods of media organisations. As such, media plurality can be measured in a number of ways that are not mutually exclusive and these measures are generally complementary to one another.[1]

In practical terms, a diversity of ownership does not automatically guarantee a diversity of content, neither is diversity of content automatically lessened by a media merger. Rather, a healthy diversity of content and ownership can be reflected in traditional, new and emerging Irish media in a wide range of ways. Drawing on the indicators of plurality developed to date,[2] these may include the following:-

- The existence and sustainability of media outlets and platforms owned, or controlled by a plurality of independent and autonomous actors (i.e. a variety of media sources, outlets, suppliers and distribution platforms) and which have different levels of influence in terms of their opinion forming power. This includes public, commercial, community and other types of media business models and services;

- The range, mix of media types and genres that co-exist with different mandates, and sources of financing within and across media sectors as well as diversity of media functions, including providing information, education and entertainment;

- The existence in the media of fair and diverse representation of, and expression by, the various cultural and social groups in society, including the Irish language community, local and regional communities as well as minority social, linguistic and cultural communities;

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[1] Media Merger Guidelines (2015). Department of Communications, Climate Action and Environment

[2] K.U. Leuven, ICRI/ Central European University, CMCS/ Jönköping International Business School, MMTC/ Ernst & Young Consultancy Belgium(2009): Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach.

- The existence in the media of fair and diverse representation of, and expression by, various political, religious and ideological groups, including minority viewpoints.

For the purposes of this Policy, the BAI will apply the definition of 'media business' which is included in the Competition and Consumer Protection Act 2014. This has a focus on businesses that have a significant level of activity in the Irish State and those which provide news, current affairs and cultural content. The BAI notes that the definition of 'communications media' in the Broadcasting Act 2009 is, in effect, a sub-set of the 2014 definition.[3] Taken together, and for the purposes of this Policy and the BAI's overall approach to media plurality, media businesses cover print publishing, broadcasting (including broadcasting platforms) and certain internet media (including on demand audiovisual media services and websites of print media or online only news websites).

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[3] Communications Media as defined in the 2009 Act include broadcasting services, broadcasting platforms and newspapers or periodicals consisting substantially of news and comment on current affairs.

3. Why Media Plurality is Important

The media enjoy a position of special rights and responsibilities and are an important conduit for the exercise of freedom of expression, the development of civic discourse and the proper and adequate representation of the diversity that exists in our society.[4] In this context, media pluralism makes an important contribution to a well-functioning democratic society through informed citizens with Irish public, commercial and community media services especially important in this regard. Where media plurality is healthy, it ensures citizen access to a variety of information sources, opinions and voices and reduces the undue influence of media and other political, social and commercial organisations or individuals in the formation of public views and/or the wielding of undue influence over the political process. This freedom of, and access to, information contributes to citizens' effective participation in the democratic process.

More broadly, the importance of media plurality must necessarily be considered in the context of a rapidly evolving, highly innovative and converging media environment. This environment is characterised by ever increasing volumes and sources of content, which gives audiences access to quality national and international content and which presents both opportunities and challenges for those concerned with ensuring media plurality.

The challenges include:-

- Significant changes in the consumption of different media with, for example, a move away from traditional media to internet media, including social media as a primary source of news with potential consequences for the reliability and trustworthiness of news content;

- The related and evolving concern regarding issues of misinformation, disinformation, and malinformation on political, social and cultural matters which is evident via discussions on fake news in the social media sphere and elsewhere;

- The aggregation of personal data by media businesses, in particular social media businesses, and its use in ways that are neither transparent nor ethical;

- The impact of news filters, intermediaries (such as web browsers) and algorithms (in internet and on-demand audio visual content) that can lead to polarisation and to a limitation of exposure to a diversity of viewpoints;

- Threats to the sustainability and quality of news and cultural production due to the loss of income from the decline in payments for news content and from shifts in advertising spend towards internet media.

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[4] Guidelines on Media Mergers (2015).

The BAI has developed this Policy in this environment, which is one where traditional regulation that seeks to address plurality simply by increasing the number and mix of services available to audiences or which regulates media sectors in isolation is no longer sufficient on its own. While increasing access to trusted and valued content remains an important element of regulation, it must be supplemented with measures to empower citizens to be informed and to make informed choices about their media consumption. The legislative framework must also be updated to meet these challenges.

4. Objectives of the BAI Media Plurality Policy

In furtherance of its statutory obligations and in the context of the commitment contained in the BAI Strategy Statement 2017-19 '*to promote a plurality of voices, viewpoints, outlets and sources in Irish media'*, the BAI has developed this Policy with a view to:-

- Encouraging and facilitating a plurality of high quality media outlets and their ownership;

- Fostering a media landscape that is representative of, and accessible to, the diversity of Irish society;

- Increasing the production, availability and prominence of culturally relevant audio-visual content for Irish audiences, including quality programming in the Irish Language; and

- Facilitating a mix of trusted and credible voices, opinions and sources of news and current affairs in audio-visual media which enhances active citizenship in Ireland, democratic debate and which supports the integrity of the democratic process.

5.   How the BAI will support and promote Media Plurality

The BAI will continue to undertake a range of measures with a view to meeting its statutory, strategic and policy obligations and commitments in respect of media plurality. The following measures and the means by which the BAI will support and promote media plurality are now detailed.

i.   Licensing:

The principal mechanism by which the BAI supports and promotes media pluralism is via its licensing activities. The Broadcasting Act 2009 provides for the licensing of a range of radio and television services. This includes independent commercial and community radio and television services as well as temporary and institutional radio services. The licensing process is intended to complement and enhance existing and developing public service broadcasting services provided by RTÉ, TG4 and the Houses of the Oireachtas channel.

The licensing process is intended to promote diversity of content by seeking applications for programme services that will add to the range of media services currently available in the Irish State. Diversity of ownership is achieved by the licensing process via media ownership and control provisions set out in the Broadcasting Act 2009 and supplemented by the BAI Ownership and Control Policy.

The legislative framework, the BAI's Ownership and Control Policy and the BAI's contracting processes facilitate and maintain the inclusion of obligations with regard to diverse political and cultural programme content, proportions of news and current affairs required and also local, national and European content to be broadcast. They also support fair and diverse representation of, and expression by, local and regional communities as well as minority social, linguistic and cultural communities.

Furthermore, the licensing process facilitates transparency in respect of media ownership and control in that information regarding shareholders, directors and membership of broadcast services (in the case of community media services) is publicly available.

The licensing approach of the BAI is centrally informed by the BAI Broadcasting Services Strategy. This Strategy is important in that it provides the framework for the formulation of licensing plans and associated activities of the BAI. A key objective of the Strategy is to support and foster plurality and diversity of content for Irish audiences via licensing and the Broadcasting Services Strategy sets out how the BAI will support and shape the development of the broadcasting sector.

ii.   BAI Ownership and Control Policy:

The BAI has in place a policy in respect of the ownership and control of licensed broadcasting services. This policy has been developed to give practical effect to the specific provisions of the Broadcasting Act 2009[5] which require the BAI to have regard to, as part of its licensing process, the ownership and control of applicants when determining the most suitable applicant for the award of a broadcasting contract. In addition, the BAI also applies the provisions of the policy in assessing ownership and control elements of applications for content provision and multiplex contracts and to assess requests for variations of ownership and control.

In the case of broadcasting services, the BAI will have regard to:-

- the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue amount of the Sound Broadcasting Services, in total or in a specified geographical area, and

- the desirability of allowing any person, or group of persons, to have control of, or substantial interests in the 'communications media' in a specified geographical area.

While the media market is indeed evolving, traditional broadcast media services remain essential for the protection of pluralism in the Irish State and the BAI's Ownership and Control Policy is therefore a core mechanism for supporting and promoting media pluralism. Notwithstanding this, updates in legislation are necessary to ensure that assessments by the BAI of changes in ownership and control of broadcasting services can have full regard to the media market as a whole, including internet media. This will support the sustainability of media services, a diversity of content and media ownership.

iii.   BAI's Obligations under Media Mergers Legislation:

The Competition and Consumer Protection Act 2014 expanded the BAI's plurality related role beyond the licensing and ownership and control measures set out above. The Competition and Consumer Protection Act 2014 is concerned with ensuring that proposed media mergers that are notifiable to the Minister for Communications, Climate Action and Environment are approved only in instances where they will not be detrimental to media plurality.

Ensuring diversity of content and diversity of ownership are key considerations in a determination in this regard and the Competition and Consumer Protection Act 2014 includes additional functions and obligations on the BAI which are intended to support the Minister's determination on a proposed merger. The key role is to provide, if requested, a report to the Minister setting out the BAI's view as to whether a media merger is likely to be contrary to the public interest in protecting plurality of the media in the State.

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[5] Part 6 of the Broadcasting Act 2009

iv.   **Research:**

In the context of the BAI's obligations under the Competition and Consumer Protection Act 2014, the BAI produces a number of reports on a periodic basis which are intended to inform the Authority, broadcasters, the public, the Minister for Communications, Climate Action and Environment (as well as other relevant stakeholders) about media plurality in the State.

To this end, the BAI provides reports to the Minister every three years reviewing:-

- the impact of ownership changes on plurality: describing the ownership and control arrangements of media businesses;

- describing the changes to ownership; and

- analysing the effects of such changes on plurality of media in the State.[6]

The first report was published by the BAI in 2015 and the second was completed in the final quarter of 2018. The reports and corresponding database of ownership are intended to improve transparency in respect of the Irish media market.

A second key report on plurality supported by the BAI is the Reuters Institute Digital News Report (Ireland). The report is intended to support informed debate and evidence-based decision-making via the production of credible relevant data in respect of the consumption and impact of news and current affairs services in Ireland. This report is particularly important given the central role that a broad diversity of views on news and current affairs is as an indicator and support for media plurality.

In the context of the BAI's wider remit, market analysis research is regularly undertaken with a view to supporting its regulatory approaches and with a view to informing the public and other stakeholders about the market and market dynamics, including where the BAI undertakes consultations on its regulatory proposals. This research provides essential background information for the BAI's consideration of plurality.

Further to the objectives of this Policy, from 2020 onwards the BAI will undertake additional research to enhance public, industry and wider stakeholder awareness of media plurality.

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[6] The Competition and Consumer Protection Act 2014 -
http://www.irishstatutebook.ie/eli/2014/act/29/enacted/en/print#sec74

v.   **Media Literacy:**

The 2009 Act mandates the BAI to undertake, encourage and foster research, measures and activities which are directed towards the promotion of media literacy.

In order to further this mandate, the BAI Media Literacy Policy has been developed. This policy includes three core media literacy competencies and a set of associated skills and success indicators intended to assist organisations to shape media literacy activities, in line with their own strategic and business objectives. In particular, attaining the competencies will allow citizens to understand and critically evaluate broadcast, internet and other media content and services, in order to make informed choices and best manage media use. The competencies will also support citizens to create and participate, via media, in a responsible, ethical and effective manner, in the creative, cultural and democratic aspects of society.

Media literacy, and ongoing support for media literacy activities, is therefore key to empowering citizens with the skills and knowledge to critically understand how media work in a rapidly changing media environment, to interrogate the accuracy of information provided to audiences (in particular news and current affairs), to counter unfair and inaccurate representations, to challenge extremist views and, ultimately, to help citizens make better informed media choices.

vi.   **BAI Code of Fairness, Objectivity and Impartiality in News & Current Affairs:**

The extent to which diverse views on news and current affairs are available is a key factor enabling a media environment that is pluralistic. Studies on sources of news and current affairs indicate that the traditional media system still has a significant role to play in the provision of news and current affairs. In an Irish context, citizens have relatively high levels of trust in Irish media sources with traditional news and current affairs sources more trusted than social media.[7]

In terms of the BAI's role, it has developed and applies its Code of Fairness, Objectivity and Impartiality in News and Current Affairs. This sets out the standards that must be applied when broadcasters air this type of content and is a further tool that the BAI uses to promote and support media plurality.

This is achieved by ensuring that minimum standards are in place to promote independent and impartial journalism that protects the interests of citizens in their right to have access to trusted and credible information. The Code sits alongside the regulation of newspapers (print and online), magazines and online-only news publications overseen by the Press Council of Ireland and the Office of the Press Ombudsman.

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[7] Reuters Institute (2018)

The Code will continue to play an important role in facilitating a mix of trusted and credible voices, opinions and sources of news and current affairs which enhance active citizenship and democratic debate and promote the fair and diverse representation of, and expression by, various political, religious and ideological groups, including minority viewpoints. This is particularly true in the current context where unregulated news content has created an environment for the distribution of misinformation, disinformation and malinformation.

vii.   **Broadcasting Funding Scheme, including Sound and Vision and the BAI Archiving Policy:**

The objectives of the BAI's Sound and Vision Scheme include the development of high quality programming based on Irish culture, heritage and experience, including in the Irish language. A further objective is to develop programmes that represent the diversity of Irish culture and heritage, that facilitate the capturing of oral Irish heritage and aspects of Irish heritage which are disappearing or under threat.

The BAI's Archiving Scheme provides funding with the objective of supporting the development of an archiving culture in the Irish broadcasting sector which will contribute to the preservation of Ireland's broadcasting heritage.

Taken together, the schemes support internal plurality by increasing the diversity of culturally relevant content available to Irish audiences and preserving cultural heritage in a way that is accessible on an ongoing basis to citizens. The Schemes give effect in particular to one of the four strategic objectives set out in the BAI's Strategy Statement 2017-2019 in respect of promoting plurality. Specifically, the objective which commits the BAI 'to increase the production and availability of culturally relevant audio-visual content for Irish audiences.'

viii.   **Irish Language Action Plan:**

Fostering and promoting quality programming in the Irish language has been identified as an important objective for the BAI in the context of its Strategy Statement 2017-2019. This is appropriate given the key role that the language plays in the expression of Irish cultural identity and its centrality in ensuring the diverse representation of, and expression by, the various cultural and social groups in society.

This strategic objective is given effect by the BAI via its Irish Language Action Plan and the Broadcasting Funding Scheme, both of which support a broad diversity of cultural views and voices.

ix.   **Dialogue with Stakeholders:**

The BAI is committed in its current Strategy Statement to engaging with stakeholders with a view to promoting public debate and informing policy, including in the area of media plurality. The objective of this engagement is to facilitate a vibrant, dynamic media landscape.

In practice, the BAI engages on matters of media plurality on an ongoing basis at a national and European level. In an Irish context, this engagement involves the public, commercial and community radio and television services that the BAI regulates, the Department of Communications, Climate Action and Environment, the Competition and Consumer Protection Commission and the Commission for Communications Regulation

Centrally, the BAI also engages with the Irish public, their political representatives and social and civil society in the form of regular consultations on areas relating to media plurality and through the dissemination of its media plurality research outcomes.

At a European level, the BAI participates in EPRA, the Europe-wide association of audiovisual media service regulators and in ERGA (European Regulators Group for Audiovisual Media Services), which has been established by the European Commission and has a formal advisory role in the preparation for the transposition of the recently updated Audiovisual Media Services Directive, as well as its implementation. This directive will extend audiovisual regulation to include on-demand and video sharing platforms.

Furthermore, the BAI engages with broadcasters, civil society and education groups and with social media platforms and services via its development and facilitation of Media Literacy Ireland, the Irish media literacy network.

Dialogue with all of these stakeholders is considered by the BAI as a vital way for it to be both informed of, and to inform, public debate and policy on media plurality in Ireland.

The BAI will continue to undertake each of the above set of activities on a periodic basis. In addition, the BAI will retain an ongoing openness to undertaking additional measures to promote and support media plurality. This may include the production, on a more frequent basis, of reports detailing the ownership and control of media in Ireland as well as support for, and/or the development of, policy and other measures intended to enhance media plurality, in particular in terms of news, current affairs and cultural content.

Appendix 1

Broadcasting Act 2009 and BAI Strategy Statement 2017-2019

The legislative framing provisions for the BAI's regulatory role in ensuring media plurality are set out in the Broadcasting Act, 2009 ("2009 Act") and the BAI Statement of Strategy 2017-2019.[8]

Broadcasting Act 2009

Section 25 of the 2009 Act provides that the Authority shall endeavour to, *inter alia:*

- ensure that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression are upheld;

- ensure the provision of open and pluralistic broadcasting services;

- promote diversity in control of the more influential commercial and community broadcasting services;

- provide a regulatory environment that will sustain independent and impartial journalism.

There are also specific provisions, particularly in Part 6 of the 2009 Act, which require the Contract Awards Committee to have regard to the ownership and control of applicants when making decisions about the award of contracts.

BAI Strategy Statement 2017-2019

A key component of the BAI's mission in its current Statement is 'to promote a plurality of voices, viewpoints, outlets and sources in Irish media'. In order to achieve this mission, the BAI has identified four strategic objectives and they are as follows:-

- Strategic Objective 1 – Facilitate a mix of voices, opinions and sources of news and current affairs in audio-visual media which enhances democratic debate and active citizenship in Ireland;

- Strategic Objective 2 – Increase the production and availability of culturally relevant audio-visual content for Irish audiences;

- Strategic Objective 3 – Foster and promote quality programming in the Irish Language; and

- Strategic Objective 4 – Foster a media landscape that is representative of, and accessible to, the diversity of Irish society.

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[8] The BAI's plurality role is further supplemented by the provisions of the Competition and Consumer Protection Act 2014 (Part 4): http://www.irishstatutebook.ie/eli/2014/act/29/enacted/en/html