

Ownership and Control Policy

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INTRODUCTION

The **Broadcasting and Other Media Regulation Acts 2009 to 2022** (“the 2022 Acts”) provide the statutory framework for the licensing and regulation of broadcasting and multiplex services. The 2022 Acts established Coimisiún na Meán (“the Commission”) to, *inter alia*, regulate content across all Irish broadcasting and audiovisual media. It sets out a range of general and specific objectives for the Commission including ensuring the provision of open, inclusive and pluralistic broadcasting and audiovisual media sectors. The 2022 Acts also identify the range of broadcasting and content provision contracts that the Commission can enter into and provides the regulatory framework in which these contracts are awarded and operate. These include contracts awarded under:

- **Section 63 and Section 64** (Sound Broadcasting Contracts);
- **Section 70** (the national Television Programme Service Contract);
- **Section 71** (Content Provision Contracts),
- **Section 72** (Community Content Provision Contracts),
- and **Section 131** (Multiplex Contracts).

The Commission’s **Ownership and Control Policy** (“the Policy”) will be used by the Commission to assess the ownership and control element of applications for broadcasting contracts and to assess relevant requests for variations to contracts as well as any compliance issues that may arise subsequently in respect of such contracts. The Commission endeavours to ensure that its regulatory arrangements operate proportionately, fairly and consistently. In this regard, the Policy provides clarity and certainty in respect of the regulatory approach to be adopted and the rules that will apply.

The Policy has been designed to facilitate the continued development of viable, sustainable broadcasting and audiovisual media sectors that are open, inclusive and pluralistic while also ensuring diversity and transparency in the ownership and control of communications media operating in the State.

The Policy is divided into a number of sections:

Section 2 provides a summary of the **legislative and policy background** that informs the provisions of the Policy;

Section 3 outlines the **objectives** of the Policy;

Section 4 details the **key definitions and terms** used in the application of the Policy; and

Section 5 contains the detailed **Policy provisions** that the Commission will apply when considering matters pertaining to ownership and control.

2. LEGISLATIVE AND POLICY BACKGROUND

The key legislative and policy provisions that provide the framework for the Policy are the 2022 Acts, the Competition and Consumer Protection Act 2014 and the Commission's Broadcasting Services Strategy.

i. **Broadcasting and Other Media Regulation Acts 2009 to 2022 ("2022 Acts")**

The 2022 Acts set out the Commission's functions and powers in relation to the promotion of diversity and plurality in the audio and audiovisual sectors and these functions are given effect through the Commission's policies, codes, rules, procedures and activities that promote and support plurality in terms of voices, viewpoints, outlets and sources.

Section 7(2) of the 2022 Acts provides that, in performing its functions the Commission shall endeavour to ensure, *inter alia*,—:

that the broadcasting services and audiovisual media services available in the State are open, inclusive and pluralistic, and that the Commission's policies in relation to those services best serve the needs of the people of the island of Ireland, bearing in mind—

- (i) their languages and traditions,
- (ii) their experiences, and the experiences of people of Irish ancestry living abroad,
- (iii) their diversity, including religious, ethical, cultural, linguistic, socioeconomic, and gender diversity,
- (iv) their levels of participation in those services and their levels of representation in programmes on those services, and
- (v) as regards people with disabilities, their requirements for accessibility to those services, and

And that the Commission shall—

- (a) stimulate the provision of high quality, diverse, and innovative programmes by providers of broadcasting services and audiovisual on-demand media services,
- (b) endeavour to ensure diversity and transparency in the control of communications media operating in the State,
- (c) promote and encourage the use of the Irish language by communications media operating in the State,
- (d) provide a regulatory environment that will sustain independent and impartial journalism,

The Commission's Ownership and Control Policy is a key statement in the realisation of these objectives.

The 2022 Acts also identify the range of broadcasting contracts that the Commission can enter into and provides the regulatory framework in which these contracts are awarded and operate.

ii. **The Competition and Consumer Protection Act 2014**

The Competition and Consumer Protection Act 2014 contains statutory provisions for the control of media mergers by the Competition and Consumer Protection Commission and the Minister for Tourism, Culture, Arts, Gaeltacht, Sports and Media.

The 2014 Act imposes a number of functions and obligations on the Commission¹ including, amongst other matters, providing advice to the Minister as requested on the impact of a proposed media merger on plurality in the State; undertaking retrospective reviews on the impact of ownership changes on plurality every three years, over the prior three year period, and providing a report to the Minister in this regard; and, commissioning of and/or carrying out other plurality-related research activities. In addition, in considering a request for a media merger, the Minister will have regard to any relevant decisions made under the Commission's Ownership and Control Policy.

The role of the Commission in respect of media mergers is set out in detail in Part 4 of the Competition and Consumer Protection Act 2014.²

iii. **Broadcasting Services Strategy**

The Commission expects to undertake a review of its Broadcasting Services Strategy in 2024. This review will include a public consultation.

This Strategy guides the Commission's Licensing Plans and regulatory frameworks and details the intention to facilitate the long-term sustainability of the independent broadcasting and audiovisual media sectors, to support and foster plurality and diversity of content for Irish audiences including in the Irish language, and to support innovation and development, now and into the future.

Alongside these aims, the Strategy is intended to facilitate a mix of voices, opinions and sources of news and current affairs and to stimulate the provision of high quality, diverse and innovative news and current affairs in the broadcasting and audiovisual media sectors. The Strategy sits alongside the Ownership and Control Policy as a key means for achieving diversity and plurality in Irish media.

¹ The Commission subsumes the role of the Broadcasting Authority of Ireland which is referenced in the Competition and Consumer Protection Act 2014.

² A copy of the Act is available at: <http://www.irishstatutebook.ie/eli/2014/act/29/enacted/en/html>. Part 4 of the Act deals with media mergers and the role of the Commission. Additional information is available on the website of the Department of Tourism, Culture, Arts, Gaeltacht, Sports and Media: <https://www.gov.ie/en/organisation/department-of-tourism-culture-arts-gaeltacht-sport-and-media/>

3. POLICY OBJECTIVES

Eight policy objectives have been identified as relevant to this Policy informed by the legislative and policy background. These objectives provide the overall context for the development and implementation of the Policy as well as the assessment of ownership and control proposals. The objectives also provide a framework to assist the Commission in responding to new issues emerging in licensing processes and ownership and control developments in the broadcasting and audiovisual media sectors.

The Policy objectives are as follows:

- i. To ensure that the ethos of a broadcasting service is such that it will best serve the needs of the audience it is licensed to serve;
- ii. To contribute to the upholding of the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression;
- iii. To promote open, inclusive and pluralistic broadcasting and audiovisual media services, with particular reference to radio and television services;
- iv. To contribute to the achievement of a regulatory environment that will sustain independent and impartial journalism;
- v. To promote diversity in voices, viewpoints, outlets and sources, that is, diversity in the opinions expressed, in programming delivery and content, in ownership and in the sources of information available to the public;
- vi. To support the viability of the broadcasting and audiovisual media sectors and promote the sustainability of the sectors as a whole;
- vii. To ensure diversity and transparency in the control of broadcasting and audiovisual media services;
- viii. To ensure that broadcasting and multiplex contracts are held by persons who are of suitable character, and who have available to them adequate expertise, experience and financial resources.



4. STATUTORY DEFINITIONS & INTERPRETATIONS OF KEY TERMS

4.1 Statutory Definitions and Interpretations

The 2022 Acts include a number of statutory definitions that are of relevance to the Policy and these are provided at **Appendix 2**.

Separately, and in order to meet its statutory obligations, the Commission must interpret the relevant terms used in the 2022 Acts which are not statutorily defined. In this regard, the manner in which the Commission will interpret references in the legislation to 'Control' and 'Substantial Interest' is set out below.

The interpretations are intended to account for the different factors that can come into play in terms of ownership and control, for example, control of a legal entity can be attained even where the owner does not hold the majority of shares. The interpretations of the terms 'Control' and 'Substantial Interest' also focus primarily on the content output and reflect the Commission's main objectives, in accordance with its statutory remit, which are to regulate content and to promote diversity in voices, viewpoint, outlet and source, thereby providing the public with access to a wide range of quality content from a variety of sources.

“Control” refers to an individual or legal entity that is in a position proprietarily, financially or in terms of voting rights to determine or direct the policy of the company, with regard in particular to programme output that is, sourcing, production, supply or delivery to the audience.

“Substantial Interest” refers to an individual or legal entity that has sufficient proprietary, financial or voting strength within a relevant company or companies to be able to influence directly or indirectly to an appreciable extent the strategic direction or policy (which shall include editorial policy) of the company (companies), with regard in particular to programme output, that is, sourcing, production, supply or delivery to the audience.

The Commission takes the view generally that a “small shareholding” does not generally constitute a substantial interest. A small shareholding is one to which both of the following criteria apply:-

- i. The votes which the holder may exercise at a general meeting of the company do not exceed 10% of the total votes which may be cast at that meeting; and
- ii. The nominal value of the shareholding does not exceed 10% of the nominal value of the entire issued share capital of the company.³

³ Where shares are convertible, the criteria will be applied on the basis that conversion has not taken place and on the basis of notional conversion.

A shareholding which does not meet the above criteria i.e. “a large shareholding” may be deemed by the Commission to constitute a substantial interest. A determination as to whether a large shareholding is deemed to be a substantial interest will be made by the Commission on a case-by-case basis with reference to the overall shareholding structure of the relevant company.

5. POLICY PROVISIONS

The Policy details are divided into eight sections as follows: -

- 5.1 - Character, Expertise and Experience;
- 5.2 - Financial Resources;
- 5.3 - Viability and Sectoral Sustainability;
- 5.4 - An “undue number of sound broadcasting services”;
- 5.5 - An “undue number of sound broadcasting services in a specified area”;
- 5.6 - An “undue amount of communications media in a specified area”;
- 5.7 - Programming;
- 5.8 - Non-EU Entities.

These policy provisions will be used by the Commission to assess the ownership and control element of applications for broadcasting contracts and to assess relevant requests for subsequent contractual variations and any compliance issues that may arise subsequently in respect of such contracts.

5.1 Character, Expertise and Experience

The 2022 Acts require the Commission, when awarding broadcasting contracts or multiplex contracts, to have regard to:

“the character, expertise and experience of an applicant or, if the applicant is a body corporate, the character, expertise and experience of the body and its directors, manager, secretary or other similar officer and its members and the persons entitled to the beneficial ownership of its shares.”⁴

⁴ Sections 66(2)(a) and 137(2)(a) of the 2022 Acts. A specific provision in relation to character, expertise or experience of content provision contract holders is not set out in the 2022 Acts. However, the Commission, as a matter of Policy, will continue to consider the character of an applicant when considering applications for section 71 and 72 content provision contracts.

5.1.1 Assessments of Character

In assessing character, the Commission will apply the ordinary meaning of the word and will consider, in particular, if the applicant, as set out above, is a fit and proper person to hold a broadcasting, content provision or multiplex contract (as appropriate) with reference to the provisions of sections 66 or 137 of the 2022 Acts (as appropriate) and in the context of its compliance with other relevant statutory and regulatory provisions.

In addition to these character tests being applied at application stage, the Commission shall also apply these to broadcasting contractors as a matter of policy during compliance reviews and when considering proposals for changes to the ownership and control of the contractors. The tests shall apply in general to the following positions approved by the Commission:-

- Directors;
- Chief Executive Officer;
- Secretary;
- Shareholders whose shareholding constitutes a substantial interest, or control.

The Commission retains the right to apply character tests to other positions having regard to the particulars of an application or in the context of a change in ownership and/or control of a relevant entity.

Tests to be applied by the Commission in respect of “Character”

In relation to “character”, the Commission will apply the following eight tests:-

- i. Has the applicant ever been convicted of an offence (excluding ‘spent convictions’) relating to any of the following:- fraud or dishonesty; membership of a criminal organisation; corruption; terrorist offences; money laundering; terrorist financing; child labour; human trafficking?
- ii. Has the applicant ever been restricted or disqualified as a Company Director, or convicted of any offence under the Companies Act 2014 in this jurisdiction or under equivalent legislation in any other jurisdiction?
- iii. Has the applicant ever been adjudicated bankrupt, become insolvent or entered into a voluntary arrangement with creditors, or had a receiver appointed to any of its assets, in this or any other jurisdiction?
- iv. Has the applicant ever been a director of a company to which a receiver was appointed, which went into compulsory liquidation, creditors’ voluntary liquidation, examinership or which made any arrangement with its creditors or class of creditors?
- v. Has the applicant ever been convicted of an offence under any legislation by which broadcasting, audiovisual media and/or wireless telegraphy is regulated in this or any other jurisdiction?
- vi. Has the applicant ever had a licence or contract issued by a broadcasting licensing body or any other statutory body suspended or revoked in this or any other jurisdiction?

- vii. Has the applicant ever been the subject of any of the following:- adverse findings by a tax authority; adverse findings by a regulatory body in relation to gross professional misconduct; adverse findings by a competition authority in relation to anti-competitive conduct?
- viii. Is the applicant aware of any reason why it may not be a fit and proper person to be awarded a contract?

Individuals, contractors and other relevant parties should note that failure to pass any of the tests set out above may or may not automatically disqualify an applicant or a request for a change of ownership and control. The Commission will have regard to all of the relevant information provided and subsequent clarifications provided, as deemed necessary.

5.1.2 Assessment of “Experience and Expertise”

In addition to assessing character, the Commission will also apply tests in respect of the experience and expertise of applicants. In addition to these tests being applied at application stage, the Commission shall also apply these to broadcasting and multiplex contractors as a matter of policy during compliance reviews and when considering proposals for changes to the ownership and control of the contractors.

Tests applied by the Commission in respect of Experience and Expertise

In relation to experience and expertise, the Commission will apply the following two tests:-

- i. Does the Board of Directors of the applicant include sufficient personnel with the necessary experience, expertise and knowledge having regard to the nature of the contract proposed?
- ii. Is the management structure of the applicant appropriate and does the membership and make-up of the management team have sufficient experience and expertise having regard to the nature of the contract proposed?

In applying these tests, the Commission shall examine the proposed membership and structure in the collective and in terms of the relevant individuals within the structure, (e.g. does the composition of the Board include independent directors? Is there an over-reliance on one individual in the corporate and/or management structure?).

The Commission believes that structures which reflect best practice in terms of corporate governance are key components in ensuring the delivery of quality services for audiences.

In assessing these matters the Commission shall also take into account the specific nature of the service involved, e.g. local, community, multiplex etc. In the case of community services, the Commission requires that the ownership and management structures facilitate and support active participation by the community served at all levels within the service.

In relation to the composition and structure of an entity, the Commission does not differentiate between either a natural person or persons or the corporate status of the applicant i.e. type of legal entity.

5.2 Financial Resources, Good Business and Economic Principles

In considering applications for the award of broadcasting and multiplex contracts, further to the provisions of Section 66(2) and Section 137(2) of the 2022 Acts, the Commission is required, *inter alia*, to have regard to:

“the adequacy of the financial resources that will be available to each applicant and the extent to which the application accords with good business and economic principles.”

In the case of community sound broadcasting contracts pursuant to section 64 and community content provision contracts pursuant to section 72 of the 2022 Acts, the Commission must also be satisfied that the contractor has the sole objective of achieving a monetary reward of no greater amount than is reasonably necessary to defray the expense that is incurred in providing the service.

5.2.1 Commercial Broadcasting Services (including the contract provided for under section 70)

In implementing the above provisions, the Commission shall have regard, *inter alia*, to the following:-

- Does the applicant have available to it adequate financial resources and does its approach accord with good business and economic principles, having regard to the nature of the service proposed?

5.2.2 Community Broadcasting Services

In the case of community sound broadcasting and community content contracts the Commission shall also have regard to the following:-

- The extent to which the service is being operated on a not-for-profit basis and is maintaining its independence by attracting funding from a variety of sources. In this context, community services are required to ensure that advertising and sponsorship together do not account for more than 50% of all income annually.

5.2.3 Services licensed further to Section 71 of the 2022 Acts.

This section does not apply to contracts awarded under Section 71 of the 2022 Acts.

5.3 Viability and Sectoral Sustainability

In the context of considering proposed changes to the ownership and control of broadcasting services, the Commission shall have regard to the following:-

- The extent to which any proposal to vary the ownership or control of the contract will support the viability of the contractor?

- The extent to which any proposal to vary the ownership or control of the contract will support the sustainability of the broadcasting and audiovisual media services' sector as a whole?
- The suitability of any proposal in the context of the Commission's statutory functions and objectives and the Broadcasting Services Strategy.

5.4 An undue number of sound broadcasting services

In the award of broadcasting contracts, section 66(2)(g) of the 2022 Acts requires the Commission to have regard to:

“the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue number of sound broadcasting services in respect of which a sound broadcasting contract has been awarded under this Part”.

In order to provide guidance and a degree of certainty for entities, the Commission will continue to provide minimum and maximum thresholds in respect of what it considers an “undue number”. These are designed to ensure diversity in the ownership of sound broadcasting service and that a reasonable range and number of different voices are available to the public.

5.4.1 Thresholds applied by the Commission in respect of an “Undue Number”

The Commission shall operate three thresholds in respect of what it considers an “undue number”. They are as follows:-

- A number equivalent to 20% or less** of the total number of commercial sound broadcasting services licensed under the 2022 Acts is considered an acceptable level for any one entity.
- A number equivalent to between 20-25%** of the total number of commercial sound broadcasting services licensed under the 2022 Acts requires additional consideration by the Commission as to whether it is an acceptable level for any one entity.

The Commission shall make such a consideration with reference to a Compliance Audit, submitted by the entity, in respect of all of its sound broadcasting services over a two-year period. This period shall commence twelve months in advance of the date on which the application is received. The Compliance Audit shall set out the relevant contractor's compliance with regard to all of the statutory, policy and contractual provisions. Guidelines for the submission of a Compliance Audit are available from the Commission.

- A number equivalent to over 25%** of the total number of commercial sound broadcasting services licensed under the 2022 Acts would be unacceptable; regardless of whether an entity has control of, or substantial interests in, the relevant services.

In applying these thresholds, the Commission shall *not* differentiate between whether an individual or entity has ‘control’ or ‘substantial interests’ in a service when making a determination with regard to the number of sound broadcasting services held by that individual or entity.

5.5 An undue number of sound broadcasting services in a specified area

Section 66(2)(h) of the 2022 Acts requires the Commission to have regard to:

“the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue number of sound broadcasting services” [in the area specified in the notice].

In applying its Ownership and Control Policy under the 2022 Acts, as set out above, the Commission gives effect to the term “**undue number**” as meaning “more than a reasonable share of the range of sound broadcasting services available in the specified area”. The Commission will assess this requirement with respect to geographic areas.

The Commission takes the view that there is no obvious practical matrix for determining what constitutes a “reasonable share of the range of sound broadcasting services” in all cases. Therefore, the Commission will consider the context in which each application is made, on a case-by-case basis, examining:-

- i. the total number of the sound broadcasting services in the relevant geographical area;
- ii. the share of the total audience⁵ of the various sound broadcasting services in the relevant geographical area (the “audience share” model).

5.5.1 Tests applied by the Commission in respect of ‘a reasonable number’ of Sound Broadcasting Services in a Specified Area

The Commission shall apply two tests in order to determine if an individual or entity has more than a reasonable share of the sound broadcasting services in a specified geographical area:-

- i. A test of **substitutability** i.e. in assessing the extent to which one sound broadcasting service may be deemed to be a substitute for another;
- ii. Regarding an applicant’s ability to influence opinion-forming power, a test of **dominance**, applying the applicant’s audience share of the sound broadcasting services (in which it holds a substantial or controlling interest) in the relevant geographical area.

In applying these tests, the Commission shall differentiate between whether an entity has “control of” or “substantial interests in” a sound broadcasting service.⁶ It shall also have regard to the different

⁵ In the case of radio, “audience” refers to listeners.

⁶ **Control:** refers to an individual or legal entity that is in a position proprietarily, financially or in terms of voting rights to determine or direct the policy of the company, with regard in particular to programme output that is, sourcing, production, supply or delivery to the audience. **Substantial Interest:** refers to an individual or legal entity that has sufficient proprietary, financial or voting strength within a relevant company or companies to be able to influence directly or indirectly to an appreciable extent the strategic direction or policy (which shall include editorial policy) of the company (companies), with regard in particular to programme output, that is, sourcing, production, supply or delivery to the audience.

characteristics of the sound broadcasting service in question e.g. format and content; delivery mechanism/platform; the nature of the service (national, local, regional) and the target audience.

In cases where two sound broadcasting services are operated under one sound broadcasting contract and the services: are of the same type (i.e. broad-format etc.); provide identical content across the relevant franchise area/s; and are branded as a single service, the services shall constitute one service for the propose of the Commission’s assessment under section 66(2)(g) and section 66(2)(h) of the 2022 Acts.

5.6 An undue amount of communications media in a specified area

Sections 66(2)(i) and 137(2)(i) of the 2022 Acts require the Commission to 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 communications media” [in area specified in the notice].

Section 71 of the 2022 Acts does not include a specific provision in relation to media concentration in respect of applicants for other content contracts under that Section. However, the Commission, as a matter of policy, applies this test when considering applications for all Content Provision Contracts.

In applying its Ownership and Control Policy under the 2022 Acts, as set out above, the Commission gives effect to the term “**undue amount**” as meaning “more than a reasonable share of the range of communications media, as defined in the 2022 Acts, available in the geographical area covered by the relevant contract”. The Commission takes the view that there is no obvious practical matrix for determining what constitutes a “reasonable share” of the communications media in all cases.

Therefore, the Commission will consider the context in which each licence application or an application for a contract variation is made, on a case-by-case basis, examining:-

- i. the totality of the communications media in the relevant geographical area;
- ii. the share of the total audience⁷ and other available metrics relating to the audience reach and consumption of the various communications media in the relevant geographical area.

5.6.1 Tests applied by the Commission in respect of ‘a reasonable share’ of Communications Media

The Commission shall apply two tests in order to determine if an individual or entity has more than a reasonable share of the communications media:-

⁷ In the case of radio, “audience” refers to listeners; in the case of television, “audience” refers to viewers; in the case of audiovisual on-demand services, “audience” refers to viewers and subscribers, in the case of print media, “audience” refers to readers; in the case of online services, “audience” refers to users.

- i. A test of **substitutability** i.e. in assessing the extent to which one communication media may be deemed to be a substitute for another;
- ii. Regarding an applicant's ability to influence opinion-forming power, a test of **dominance**, applying user and audience consumption, share and/or reach of the communications media in which it holds a substantial or controlling interest) in the relevant area.

In applying these tests, the Commission shall differentiate between whether an entity has “control of” or “substantial interests in” a communications media.⁸ It will also have regard to the different characteristics of the communications media in question e.g. type, size and reach, cost to the user, size and nature of the audience etc. An applicant shall be required to justify its proposals in the context of the above.

5.7 Programming

The statutory framework of the 2022 Acts requires the Commission to have regard to the quality, range and type of programming proposed by applicants. The Commission believes that it is important, when considering applications for contracts, and proposals that involve changes at the level of “substantial interests” or “control”, to ask the applicant to set out its proposals in relation to the programming remit of the service.

The Commission shall consider these proposals with reference to the following four criteria:-

- i. Is the general quality and/or range, type and schedule of programming to be provided appropriate with regard to the audience to be served?
- ii. In the context of broadcasting services licensed under Sections 63, 64 and 70, does the Programme Policy Statement of the service reflect sufficient commitment to:-
 - Serving audiences in the relevant franchise area?
 - The creation of new opportunities for Irish talent in music, drama and entertainment?
 - Programmes relating to Irish language and culture?
 - Programmes relating to climate change and environmental sustainability ?
- iii. Whether, in the context of news and current affairs programming proposals and/or practices, there is a sufficient and demonstrable commitment to:
 - achieving and sustaining impartial, credible and independent journalism; and

⁸ **“Control”**: refers to an individual or legal entity that is in a position proprietarily, financially or in terms of voting rights to determine or direct the policy of the company, with regard in particular to programme output that is, sourcing, production, supply or delivery to the audience. **“Substantial Interest”**: refers to an individual or legal entity that has sufficient proprietary, financial or voting strength within a relevant company or companies to be able to influence directly or indirectly to an appreciable extent the strategic direction or policy (which shall include editorial policy) of the company (companies), with regard in particular to programme output, that is, sourcing, production, supply or delivery to the audience.

- stimulating the provision of high quality, diverse and innovative news and comment on current affairs.
- iv. In the context of community services licensed under section 64, does the Programme Policy Statement of the service:-
 - have the sole objective of specifically addressing the interests of and seeking to provide a social benefit to, the community concerned?
 - facilitate and support active participation in all aspects of programming by the community concerned.

5.8 Non-EU Entities

In considering ownership and/or control proposals, the Commission requires that non-EU entities shall have established a registered office within the EU. The Commission shall also have regard to the extent to which reciprocal arrangements for investment and licensing are in place with the relevant non-EU state. Relevant provisions of the Audio-Visual Media Services Directive will be applied as required.



APPENDIX 1 – LEGISLATIVE PROVISIONS

The 2022 Acts provide the statutory framework for the licensing and regulation of broadcasting, on-demand audiovisual media and multiplex services in Ireland.

[The Broadcasting and Other Media Regulation Acts 2009 – 2022](#)⁹

(i) Introduction

7. (1) The Commission shall have all such powers as are necessary or expedient for the performance of its functions and shall ensure that its functions are performed effectively and efficiently.
- (2) In performing its functions the Commission shall endeavour to ensure—
- (a) that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld,
- (b) that the interests of the public, including the interests of children, are protected, with particular commitment to the safety of children,
- (c) that the broadcasting services and audiovisual on-demand media services available in the State are open, inclusive and pluralistic, and that the Commission's policies in relation to those services best serve the needs of the people of the island of Ireland, bearing in mind—
- (i) their languages and traditions,
 - (ii) their experiences, and the experiences of people of Irish ancestry living abroad,
 - (iii) their diversity, including religious, ethical, cultural, linguistic, socio-economic, and gender diversity,
 - (iv) their levels of participation in those services and their levels of representation in programmes on those services, and
 - (v) as regards people with disabilities, their requirements for accessibility to those services,
- and

⁹ Available at: [Online Safety and Media Regulation Act 2022 \(irishstatutebook.ie\)](#)

(d) that regulatory arrangements—

- (i) address programme material, user-generated content, and other content, which are harmful or illegal,
- (ii) take account of technological and societal change, and
- (iii) operate proportionately, consistently and fairly.

(3) Without prejudice to the generality of subsection (2), the Commission shall—

- (a) stimulate the provision of high quality, diverse, and innovative programmes by providers of broadcasting services and audiovisual on-demand media services,
- (b) endeavour to ensure diversity and transparency in the control of communications media operating in the State,
- (c) promote and encourage the use of the Irish language by communications media operating in the State,
- (d) provide a regulatory environment that will sustain independent and impartial journalism,
- (e) promote and stimulate the development of—
 - (i) programmes in the Irish language, and
 - (ii) programmes relating to climate change and environmental sustainability,

(ii) **Overview of the range of Contracts provided for in the 2022 Acts and covered by the Policy**

- **Sound Broadcasting Contracts (Section 63)**

The Commission shall enter into sound broadcasting contracts with persons to provide sound broadcasting services in areas specified by the Commission. Sections 65, 66 and 67 deal with the application and decision making processes for sound broadcasting contracts.

- **Community Sound Broadcasting Contracts (Section 64)**

The Commission shall enter into a community sound broadcasting contract with 2 or more members of a local community or community of interest if it is satisfied that these people are representative of the community concerned. The Contract Awards Committee must also be satisfied that the broadcasting service will specifically address the interest of the relevant community and seek to provide a social benefit. Finally, the Committee must be satisfied that the service will be viable and will be run on a not-for-profit basis. Sections 65, 66 and 67 deal with the application and decision making processes for sound broadcasting contracts.

- **The Television Programme Service Contract (Section 70)**

The Commission shall enter into a television programme service contract with a person or persons to provide a television programme service as a free-to-air service. This is currently held by Virgin Media Television Limited. Section 66 deals with the decision making processes for this contract.

- **Content Provision Contracts (Section 71)**

The Commission may enter into a content provision contract with a person whereby that person may supply a compilation of programme material for the purposes of its inclusion as part of a multiplex; or, its being transmitted in the State, part of the State or elsewhere by means of an electronic communications network.

An electronic communications network could be a satellite network; a fixed or mobile terrestrial network; a cable television network; or, an internet protocol television network.

- **Community Content Provision Contracts (Section 72)**

The Commission shall enter into a community content provision contract with 2 or more members of a local community or community of interest if it is satisfied that these people are representative of the community concerned. The Commission must also be satisfied that the broadcasting service will specifically address the interest of the relevant community and seek to provide a social benefit. Finally, the Commission must be satisfied that the service will be viable and will be run on a not-for-profit basis.

- **Multiplex Contracts (Section 131)**

Further to the provisions of Section 131 and 136 of the 2022 Acts, it is the function of the Commission to arrange for the establishment, maintenance and operation of television and sound multiplexes, including national multiplexes, in addition to any multiplexes established, maintained and operated by RTÉ. Sections 134, 135, 136 and 67 deal with the application and decision making processes for multiplex contracts.

(iii) **Section 66(2) – Criteria to be applied by the Commission in considering applications for sound broadcasting contracts or for a television programme service contract;**

Section 66(2) requires the Commission, in determining the most suitable applicant for the award of a contract, to have regard, inter alia, to:

- (a) the character, expertise and experience of the applicant or, if the applicant is a body corporate, the character, expertise and experience of the body and its directors, manager, secretary or other similar officer and its members and the persons entitled to the beneficial ownership of its shares;
- (b) the adequacy of the financial resources that will be available to each applicant and the extent to which the application accords with good business and economic principles;



- (g) the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue number of sound broadcasting services in respect of which a sound broadcasting contract has been awarded under Part 6 of the 2022 Acts¹⁰;
- (h) the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue number of sound broadcasting services in the area specified in the notice;
- (i) the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue amount of the communications media in the area specified in a notice.
- (k) any other matters which the Contract Awards Committee considers to be necessary to secure the orderly development of broadcasting services.

(iv) Section 137(2) Criteria to be applied by the Commission in considering applications for multiplex contracts.

Section 137(2) requires the Commission, in determining the most suitable applicant for the award of a contract, to have regard, inter alia, to:

- (a) the character, expertise and experience of the applicant or, if the applicant is a body corporate, the character, expertise and experience of the body and its directors, manager, secretary or other similar officer and its members and the persons entitled to the beneficial ownership of its shares;
- (b) the adequacy of the financial resources that will be available to each applicant and the extent to which the application accords with good business and economic principles;
- (h) any other matters which the Commission considers to be necessary to secure the orderly establishment, maintenance and operation of multiplexes;
- (i) the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue amount of the communications media in the area specified in a notice under Section 136(3).

(v) Section 66 (3)

In considering the suitability of any applicant for the award of a sound broadcasting contract to provide a sound broadcasting service in respect of an area which includes a Gaeltacht area, the Commission shall have particular regard to the continuance and advancement as a spoken language of the Irish language.

(vi) Section 66(4)

In considering the suitability of an applicant for the award of a broadcasting contract, the Commission shall have regard to-

- (a) The overall quality of the performance of the applicant with respect to the provision by him or her of a broadcasting service under any broadcasting contract held by him or her at, or before, the date of the making of the application, and

¹⁰ Sections 63, 64, 68, 71

(b) Reports of the Commission.

In this context, the Commission shall examine what it describes as “the track record” of the applicant or, if the applicant is a body corporate, the track record of its directors, manager, secretary or other similar officers and its members and the persons entitled to the beneficial ownership of shares, with reference to the criteria in Section 66(2) of the Act. Section 66(5) requires the Commission to give reasons for its decision, to an applicant, where it decides to refuse to award a broadcasting contract.

(vii) Section 69 and Section 138 – Assignment or change of ownership

Sections 69 and 138 concern the terms and conditions of broadcasting and multiplex contracts respectively, including the assignment of a contract or any interest therein. In essence, it empowers the Commission to prohibit the assignment of a contract or any material change in the ownership of a company, either by specifying a condition in the contract itself, or by making the assignment subject to the previous consent in writing of the Commission. In the latter case the Commission shall have regard to the criteria set out in Section 66(2) as and, where applicable, Section 66(4) in the case of broadcasting contracts; and Section 137(2) in the case of multiplex contracts.

APPENDIX 2 – STATUTORY DEFINITIONS

In this Policy, the following definitions apply:

“the 2022 Acts”	means the Broadcasting and Other Media Regulation Acts 2009 – 2022
“audiovisual broadcasting service”	means an audiovisual media service provided for simultaneous or near-simultaneous viewing of audiovisual programmes on the basis of a programme schedule.
“audiovisual media service”	means a service, within the meaning of Articles 56 and 57 of the Treaty on the Functioning of the European Union, where — (a) the principal purpose of the service is devoted to, or (b) the principal purpose of a dissociable section of the service is devoted to, providing audiovisual programmes, by electronic communications networks, to the general public, under the editorial responsibility of the provider of the service, in order to inform, entertain or educate.
“audiovisual media service activity”	means an activity relating to the audiovisual media service concerned.
“audiovisual on-demand media service”	means an audiovisual media service provided for the viewing of programmes at the moment chosen by the user and at the user’s request on the basis of a catalogue of programmes selected by the provider of the service.
“Commission”	means Coimisiún na Meán
“Broadcasting Contract”	means a Contract entered into under section 63, 64, 68 or 70 of the Act.
“Broadcasting Service”	means a service which comprises of a compilation of programme material of any description and which is

transmitted, relayed or distributed by means of an electronic communications network, directly or indirectly for simultaneous or near-simultaneous reception by the general public, whether that material is actually received or not, and where the programmes are provided in a pre-scheduled and linear order, but does not include:

A service provided in a non-linear manner where each user of the service chooses a programme from a catalogue of programmes, or

any other service which is provided by way of the internet, if the service does not provide audiovisual programmes;

“Communications Media”

Means –

- Broadcasting services,
- Audiovisual on-demand media services,
- Designated online services, or
- Newspapers or periodicals consisting substantially of news and comment on current affairs.

“Content Provision Contract”

(Section 71) means a contract between the Commission and a person whereby that person may supply a compilation of programme material for the purposes of its:

- Inclusion as part of a multiplex;
- The purpose of its being transmitted as a broadcasting service in the State, part of the State or elsewhere by means of an electronic communications network including a satellite network, a fixed or mobile terrestrial network, a cable television network, an internet protocol television network or any other form of electric communications network.

“Designated Online Services”

means an online service designated under section 139E of the 2022 Acts and includes video sharing platforms services¹¹.

¹¹ <https://www.cnam.ie/designation-notices/>

“Electronic Communications Network”

means transmission systems including, where applicable –

- Switching equipment,
- Routing equipment, or
- Other resources.

Which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, and such conveyance includes the use of –

- Satellite networks;
- Electricity cable systems, to the extent that they are used for the purposes of transmitting signals;
- Fixed terrestrial networks (both circuit-switched and packet-switched, including the Internet);
- Mobile terrestrial networks;
- Networks used for either or both sound and television broadcasting, and;
- Cable television and internet protocol television networks
- Irrespective of the type of information conveyed.

“Multiplex”

means an electronic system which combines programme material and related and other data in a digital form and the transmission of that material and data so combined by means of wireless telegraphy directly or indirectly for reception by the general public. (Section 129)

“Multiplex Contractor”

means the holder of a contract entered into under section 131.

“Sound Broadcasting Service”

means a broadcasting service which transmits, relays or distributes, by wireless telegraphy, communications, sounds, signs or signals intended for direct reception by the general public whether such communications, sounds, signs or signals are actually received or not

“Wireless Telegraphy”

has the same meaning as in the Wireless Telegraphy Act of 1926 which is: “wireless telegraphy means and includes any system of communicating messages, spoken words, music, images, pictures, prints, or other communications, sounds, signs, or signals by means of radiated electro-magnetic waves originating in an apparatus or device constructed for the purpose of originating such communications, sounds, signs, or signals.

