



Copy of Submissions: Consultation on Draft Media Service Codes and Rules

Publication date: December 2024

This document contains copies of submissions received in response to consultation on the following Draft Codes and Rules:

1. General Commercial Communications Code
2. Children's Commercial Communications Code
3. Media Service Code & Media Service Rules (Advertising, Teleshopping, Signal Integrity & Information)
4. Media Service Code and Media Service Rules (Advertising - Radio Broadcasters)
5. Code of Programme Standards
6. Code of Fairness, Objectivity & Impartiality in News and Current Affairs
7. Short News Reporting Code

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ALCOHOL ACTION IRELAND **SUBMISSION**

Coimisiún na Meán consultation on
revised Broadcasting Codes and Rules

October 2024

Alcohol Action Ireland (AAI) was established in 2003 and is the national independent advocate for reducing alcohol harm. We campaign for the burden of alcohol harm to be lifted from the individual, community and State, and have a strong track record in campaigning, advocacy, research and information provision.

Our work involves providing information on alcohol-related issues, creating awareness of alcohol-related harm and offering policy solutions with the potential to reduce that harm, with a particular emphasis on the implementation of the Public Health (Alcohol) Act 2018.

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Summary

For the purposes of this submission Alcohol Action Ireland (AAI) would like to address some pertinent issues in relation to the General Commercial Communications Code (Radio and Television Broadcasters) and the Children's Commercial Communications Code. AAI notes that the proposed Code is very similar to the previous Code in relation to alcohol advertising. However, it is clear from research that Irish children continue to be heavily exposed to alcohol brand marketing, a known risk factor for children starting to drink. To address this our key recommendations are:

1. AAI wish to highlight concerns about the advertising of zero alcohol products using identical branding to the alcohol master brand and the exposure of children to alcohol advertising as a result. AAI recommends that zero alcohol product advertisements which use the branding of alcohol producers should be subject to the same restrictions as alcohol advertisements.
2. Coimisiún na Meán must make clear that alcohol advertising during sporting events e.g. on pitches and hoardings cannot be broadcast prior to the broadcast watershed for alcohol advertising which comes into effect from Jan 2025.
3. AAI have concerns that some elements of the proposed Broadcasting Code are not robust enough to ensure that children are protected from alcohol advertising.
4. Alcohol and zero alcohol product placements in broadcast programmes should be explicitly banned.
5. AAI recommends that regular monitoring of children's exposure to alcohol advertisements should be carried out and published.
6. Any adjudication on advertisements should be solely carried out by Coimisiún na Meán and not outsourced to any self-regulatory body such as the Advertising Standards Authority of Ireland.

Introduction

There is extensive and robust evidence that children who are exposed to alcohol marketing are more likely to start drinking as children and if already drinking, to consume more.[1] While there have been some modest decreases in youth drinking in Ireland, at least 50,000 children start drinking every year.[2] Starting to drink alcohol as a child, which is the norm rather than the exception in Ireland, is more likely to lead to heavy episodic drinking and is a known risk factor for later dependency.

There is overwhelming public support for action on alcohol advertising on television, with an opinion poll from Ireland Thinks putting support for such measures at 70 percent.[3] From 10 January 2025 the advertising restrictions contained within the Public Health (Alcohol) Act 2018 (PHAA) will finally ensure certain advertising restrictions take effect. These restrictions will ensure a daytime broadcasting ban on alcohol advertising. As such, there can be no advertisement for an alcohol product on television from 3am - 9 pm and on radio on a weekday from 3pm - 10am the following morning.

The purpose of this measure is to reduce the exposure of children and young people to advertisements for alcohol products.[4] The reasons for this are straightforward. Alcohol is advertised to us in a variety of ways. Sponsorship at sports and music events, products promoted in our favourite movies and TV shows, and displays in shops to celebrate Valentine's Day, Father's Day, weddings, and birthdays. It is everywhere we look. Big alcohol companies spend millions linking alcohol with the things we love - watching football, GAA, or rugby, going to a gig, sharing a romantic meal. The purpose of this is to normalise alcohol and influence when we start to drink, how much we drink, and how often we drink.[5] The outworking of this is children being exposed to this same advertising.

We have known for some time alcohol advertising seeks to recruit new drinkers and increase sales among existing consumers of alcohol, including those with alcohol use disorder and dependency and young people.[6] It was for this reason that the PHAA aimed to reduce the direct or indirect promotion of alcohol products.

Zero alcohol product advertising

AAI believes that 0.0/alcohol-free products are currently being used to promote alcohol brands and thereby circumvent current broadcasting rules as well as the PHAA. Many leading alcohol producers now have alcohol-free and low-alcohol variants, beverages known in different countries around the world as no, low, zero, alcohol free or non-alcoholic drinks or simply NoLos.[7]

Of significant concern are those products which share similar branding to their regular-strength counterparts, as they further normalise a culture of alcohol consumption and blur potential conflicts of interest in developing public health policies and broadcasting rules. Researchers and public health bodies including the World Health Organisation have been drawing attention to these concerns in recent years.[8]

The PHAA does not ban alcohol sports sponsorship but in November 2021 a modest measure was implemented outlawing alcohol advertisements on the field of play, while still allowing them on hoardings around the pitch. However, 0.0/alcohol-free products are now being used to circumvent these restrictions and have become prevalent in settings where alcohol is not allowed to be marketed e.g. on public transport and on advertisements close to youth-oriented facilities such as schools and public parks.

We are also now seeing alcohol brands being broadcast on TV channels during the day and on the field of play in sports events, this then creates a further issue in terms of broadcasting as alcohol branding emblazoned on playing surfaces is then being carried on television. The increase of 0.0/alcohol-free ads, especially during sports events, using the same logos and branding of full-strength products, risks children being exposed to alcohol brand marketing and the normalisation of alcohol-like products in new settings.

Just as restrictions under the PHAA came into force, big alcohol brands began brand sharing – that is advertising zero alcohol beers using the same parent branding. It is of note that in the outdoor space where most of the PHAA restrictions are in place,

zero alcohol ads made up 25 percent of the spend of alcohol brand advertising in 2022, up 31 percent from 2021, even though these products only make up around 2 percent of the market.[9]

Zero alcohol ads are not being pushed because the alcohol industry wants people to drink less but because of the aforementioned restrictions on where they can advertise their products. Brand sharing means that children who see people drinking what appears to them to be alcohol – because of the same branding – will at a young age be conditioned to think differently about when and where it is appropriate to drink alcohol.

Recent sports events have revealed these practices first hand as big alcohol have sought to put their brand at the centre stage of important sporting events. Guinness displayed their logo and name with an additional, barely visible 0.0, onto the pitch during Six Nations matches earlier this year. Indeed, research from the University of Stirling found that alcohol brand references being shown at a rate of up to one every 13 seconds on the field of play during high profile rugby matches after the PHAA restrictions came into place.[10]

Similarly, during the recent Nations League football match between Ireland v England, Carlsberg displayed their logo behind both goal end lines, again, with a barely visible 0.0 tagged on. While this is hardly in keeping with the intent of the PHAA, it also poses questions regarding broadcasting rules, as on occasions such as those outlined, alcohol advertising is broadcast on television. It is clear that alcohol brands will do everything they can to get around even the most modest of restrictions and Coimisiún na Meán must ensure that their Broadcasting Codes and Rules protect against this.

Contraventions of Section 18 of the General Commercial Communications Code (Radio and Television Broadcasters)

AAI believes section 18, subsection 2, points (a), (b), and (c) and section 18, subsection 5 of the General Commercial Communications Code (Radio and Television Broadcasters) are being contravened. Section 18.2.(a) of the code states that broadcasters shall ensure that commercial communications for alcoholic beverages are cast towards brand selling and identification and do not encourage children or non-drinkers to begin drinking. However, brand sharing, advertising zero alcohol beers using the same parent branding, by its very nature is meant to encourage consumption of the brand advertised, and we know from international research that zero alcohol products are likely exposing children and adolescents to additional alcohol-related stimuli, potentially increasing their risk of underage alcohol consumption.[11]

Association of alcohol with sporting prowess

Similarly, advertising alcohol during sporting events, through broadcasters showing events where alcohol brands have their logos imprinted on the playing field, would appear to be a contravention of S.18.2.(b) as it links sports stars to alcohol and thereby creates a linkage between alcohol and enhanced physical performance.

Furthermore, this would also appear to be a contravention of S.18.3.(c) as broadcasting successful sports stars playing rugby or football on a field emblazoned with alcohol brands creates the impression that the consumption of alcohol contributes towards success or social success. More broadly, these situations could all be considered to breach S.18.5 of the code – “Broadcasters shall ensure that sports programmes and sports bulletins, including competitions within sports programmes produced or commissioned by the broadcaster, do not promote alcohol brands.”.

Broadcast Watershed Alcohol Advertisements

From 10 January 2025 the broadcast watershed on advertising restrictions contained within the Public Health (Alcohol) Act 2018 (PHAA) will come into effect. These restrictions will ensure a daytime

broadcasting ban on alcohol advertising. As such, there can be no advertisement for an alcohol product on television from 3am - 9 pm and on radio on a weekday from 3pm - 10am the following morning. It is essential that Coimisiún na Meán makes clear that the broadcast of alcohol advertising during sporting occasions e.g. on the pitch, on hoardings around the pitch etc., is forbidden before the broadcast watershed.

Audience profile

AAI also have concerns regarding S.18.7.(b), that alcohol beverages shall be broadcast only in or around programmes with an adult audience profile of 75 percent or greater. Children make up 23 percent of the population[12] and it is likely, where it comes to important GAA, rugby, and football events, that they are watching in the same proportion. For example, large sporting events, such as Ireland football and rugby internationals, can attract anywhere between 500,000 and 1,000,000 viewers.

Indeed, the audience for Ireland v England in the Six Nations rugby championship was 1,019,800[13] – 23 percent of that audience is 234,554. This means that a significant number of children could be seeing alcohol advertisements during popular sporting events, and we know from previous figures from the Broadcasting Authority of Ireland that seven out of 10 of the top programmes watched by children are big sporting events.

This situation is further compounded by the fact that in 2021 the Broadcasting Authority of Ireland Statutory Report on the Effect of the BAI Children's Commercial Communications Code found that Diageo, the multinational alcoholic beverage company, was the number four advertiser to children in Ireland.[14] This demonstrates the weakness of the previous code and the need for much more effective practices in relation to alcohol brand marketing.

There is a clear contradiction between S.13.2.(h) of the code which forbids advertisements for alcoholic beverages that are aimed specifically at minors and yet children are clearly being highly exposed to alcohol advertising. AAI recommends that this section of the code should be replaced with a statement that children should not be exposed to alcohol advertising.

Product placement

Alcohol product placement should be explicitly banned. There is considerable evidence from other jurisdictions that this form of alcohol advertising is both significant and increasing. For example, a 2016 study in the USA measured the alcohol-related content, including brand placements, of 10 popular television shows. They found an average of more than two alcohol brand placements per show episode, with some shows featuring more than 13 brand placements per episode.[15]

A later study of reality TV programmes which were broadcast in the UK between 1st August 2019 and 1st August 2020 found that alcohol content was seen in 5,167 intervals (39%) across 258 episodes (98%). Using viewing figures and census data, it was estimated that alcohol content was seen 3.5 billion times by the UK population, including 197.3 million times by children aged under 16.[16]

A 2022 study found that aspirational and usual brand to drink corresponded to television alcohol brand prominence, and television brand exposure was independently associated with drinking initiation and hazardous drinking.[17]

Monitoring and adjudicating of advertising

AAI also recommends that regular monitoring of children's exposure to alcohol advertising should be carried out and published. It is of note that it was only through the Broadcasting Authority of Ireland Statutory Report on the Effect of the BAI Children's Commercial Communications Code that the high level of alcohol advertising to children was exposed. AAI strongly recommends that any monitoring and adjudicating of advertising should be carried out directly by Coimisiún na Meán and not outsourced to other organisations. In particular self-regulatory bodies should not be involved in the regulation of commercial communications.

Currently, the Advertising Standards Authority of Ireland (ASAI) code self-regulates advertising. The ASAI is 100% funded by industry, and therefore has industry interests at its core. It is not a suitable body to provide robust and independent adjudications on advertising carried out by its own members/funders.

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AlcoholAction
Ireland



Association of Advertisers in Ireland. Coimisiún na Meán Consultation Questions.

Draft Media Service Codes and Rules.

Question 5 - While the Code includes guidance for broadcasters on undue offence, it is not defined. What are your views as to whether the Commission should include a definition of undue offence in the code. If you think a definition should be included, what factors or criteria might the Commission use to determine that undue offence has been caused

The AAI believes that a definition (s) of undue offence should be defined and included if at all possible. This should provide some clarity for the Broadcasters and On-Demand providers. Perhaps examples of potential undue offence could be provided to ensure more clarity.

Question 7 - What are your views on the proposal to retain the maximum of 12 minutes of advertising and teleshopping per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?

The AAI strongly recommends the retention of the maximum of 12 minutes of advertising and teleshopping per clock hour. Should these 12 minutes of advertising and teleshopping be reduced, then the potential for increased costs for advertisers due to the demand within a restricted environment will be increased. If the increase in costs are not feasible because of these restrictions, then advertisers may have no choice but to consider other media, eg, online/social/digital, which will have a negative financial impact on Broadcasters and On-Demand providers.

It should be noted that Digital advertising now accounts for circa 58% of all revenue within the advertising market in the Republic of Ireland.

Question 9 - What are your views on the proposal to retain the maximum of 10 minutes of advertising per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?

The AAI strongly recommends the retention of the maximum of 10 minutes of advertising on radio per clock hour. Should these 10 minutes of advertising be reduced, then the potential for increased costs for advertisers due to the demand within a restricted timeframe will be increased. If the increase in costs are not feasible because of these restrictions, then advertisers may have no choice but to consider other media, eg, online/social/digital, which will have a negative financial impact on Radio Broadcasters.

It should be note that Digital advertising now accounts for circa 58% of all revenue within the advertising market in the Republic of Ireland. And the Radio market is not as buoyant as other media such as, Television, Out-of-Home and Digital.

Consultation title	Revision - Codes and Rules (Stage 1 Consultation). Deadline for Response – 3rd October 2024
Organisation name	Bauer Media Audio Ireland

Your response:

Please insert your response under each of the respective questions below.

Question 9: What are your views on the proposal to retain the maximum of 10 minutes of advertising per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?

Bauer Media Audio Ireland and the radio industry welcomed the confirmation in the Online Safety and Media Regulation Act that the 15% advertising limit on radio services would continue, with the removal of the 10-minute-per-hour restriction.

The removal of the ten minute per hour limit allows radio broadcasters the flexibility to deal with content such as sports match commentary and special programming where interruptions are not possible without losing out on advertising and commercial opportunities. The removal of the ten minute limit also allows broadcasters to operate a demand led commercial proposition, allowing more commercial minutage at particular times of the day (peak audience dayparts) or at certain times of the year where demand for advertising is increased.

Bauer proposes that the removal of the ten minute per hour limit in legislation be formally reflected in the code and replaced with a rule that allows up to twelve minutes of ads per hour, within the 15% daily limit. This would align radio with the long-standing advertising practices of commercial television, also regulated by Coimisiún na Meán. This would also help to eliminate some of the unfair advantage conferred on non-broadcast media, which enjoy no capacity limits.

We highlight Section 11 of the Draft Media Service Codes and Rules, which aims to ‘ensure a consistent approach for both radio and television broadcasters and certainty for audiences; in relation to advertising’. We believe that without a change to the ten minute limit on radio services, it would not be a consistent approach and not in keeping with the stated aims.

As an audience focused media operator, Bauer understands the balance between ad volume, audience appeal, and ratings, which drive advertising revenue. Increasing advertising capacity doesn't guarantee it will be fully utilised but offers flexibility for broadcasters to respond to market demand.

Consultation title	Revision - Codes and Rules (Stage 1 Consultation). Deadline for Response – 3rd October 2024
Full name	
Contact phone number	
Representing	Baby Feeding Law Group Ireland
Organisation name	Baby Feeding Law Group Ireland
Email address	



Baby Feeding Law Group Ireland

To Whom it May Concern,

Baby Feeding Law Group Ireland (BFLGI) welcomes the opportunity to make a written submission to Coimisiún na Meán to develop updated Media Services Codes and Rules for Ireland as established by the Online Safety and Media Regulation Act.

BFLGI is an alliance of organisations and individuals working together to advocate for policies which protect the rights to food and health of all infants, young children, mothers, parents, families and caregivers by addressing practices that commercialise infant and young child feeding, threaten breastfeeding, and undermine good health.

BFLGI advocates for implementing and enforcing existing laws relating to infant and young child feeding and health; for the development of robust legislation aligned with the International Code of Marketing of Breastmilk Substitutes¹ and regulations which fulfil Ireland's obligation and commitments to protect an infant's right to good health, and to be breastfed, under the United Nations Convention on the Rights of the Child.

As a WHO member state and signatory to the UN Convention on the Rights of the Child (UNCRC), Ireland has an obligation under international human rights law to embody the International Code of Marketing of Breastmilk Substitutes into domestic law.

BFLGI made a substantial submission to Coimisiún na Meán during the development of the Online Safety Codes about why, and how, Coimisiún na Meán could fulfil the obligations of the Act related to the commercial communications of infant and follow on formulas (CMF - commercial milk formulas) and high fat salt sugar foods (HFSS).

Frustratingly, the publication of the Online Safety Codes included no provision for addressing CMF and HFSS. Coimisiún na Meán indicated that a separate Code would be developed in collaboration with the Department of Health in Q4 of 2024. BFLGI is unaware of any progress on this new Code and requests clarity regarding the timelines for implementing these protective regulations.

¹ WHA International Code of Marketing of Breast-Milk Substitutes (1981) WHA Res 34.22.

Rather than deferring this issue further, the updates to the Broadcasting Codes and Children's Codes present an opportunity to fulfil the Act's remit in the broadcasting sector. BFLGI urges Coimisiún na Méan to cease delaying substantive decisions regarding rules that protect families and children from CMF and HFSS commercial communications. We request that this matter be urgently addressed in the Stage 2 consultation process for updating the Media Codes.

The 2020 WHO UNICEF Lancet Commission report noted that 'commercial marketing of products that are harmful to children represents one of the most underappreciated risks to their health and wellbeing'². The commercial advertising and marketing of several products, services, and brands are associated with poor health. Harmful commodities include but are not limited to unhealthy food and beverages, alcohol, drugs, tobacco, e-cigarettes and breastmilk substitutes.³ CMF marketing has now been recognised by leading academics as an industry with such power that it can influence government policy in ways that seriously undermine breastfeeding, limit the autonomy of infant and young child feeding (IYCF) decision-making, and commodify the feeding of all infants and young children⁴.

Delaying the implementation of new rules benefits the industry while denying children's rights in Ireland. As UNICEF stated earlier this year *"The baby food industry deploys the same interference strategies or corporate playbook every time a country begins the process of developing or amending Code-implementation laws."*⁵

We understand that this consultation aims to update the Broadcasting Codes and Rules per the Online Safety and Media Regulation Act and European Law. Following this, CnaM intends to review and consult further on the media service codes and rules relating to broadcasting.

We write to highlight that these updated regulations remain incomplete and insufficient. The need for stricter regulation of infant and follow-on formulas, as provided for in the OSMR Act, persists. Section 17 "Diet and Nutrition" is currently deficient and requires further revision. We hope the Stage 2 consultation will be a productive and meaningful opportunity.

There is no rationale for excluding updating rules on HFSS or CMFs from the Broadcasting Code or Children's Code.

² Clark MA, Coll-Seck AM, Banerjee A, et al. A future for the world's children? A WHO–UNICEF–Lancet Commission (2020) 395. *The Lancet* 605-58.

³ Lacy-Nichols J, Nandi S, Mialon M et al. Conceptualising commercial entities in public health: beyond unhealthy commodities and transnational corporations (2023) 401 *The Lancet* 1214-28.

⁴ Baker P, Smith JP, Garde A. The political economy of infant and young child feeding: confronting corporate power, overcoming structural barriers, and accelerating progress (2023) 401 *The Lancet* 503-24.

⁵ United Nations Children's Fund (UNICEF), *Countering Industry Arguments against Code Implementation: Evidence and Rights-Based Responses*, 2024

Amendments Required in the Draft Media Service Codes and Children's Code:

13.2 A broadcaster shall ensure that it does not broadcast commercial communications that:

j) are for infant formula for use by infants during the first 6 months of life.

Comment: Extending the timeframe to “the first 36 months of life” would effectively address the core issue of halting the commercial communication of milk formulas and support the International Code of Marketing of Breastmilk Substitutes.

21.10 Broadcasters shall ensure that commercial communications for follow-on infant formula comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by a relevant competent authority.

Comment: If Section 13.2 is amended, Section 21.10 becomes moot. No commercial communications relating to follow-on milk should be permitted.

21.11 Commercial communications for follow-on infant formula shall comply with the following requirements:

a) they shall provide the necessary information about the appropriate use of the products, so as not to discourage breastfeeding and shall not suggest, either directly or by implication, the superiority of this product to breastfeeding.

b) they shall clearly indicate the unsuitability of this product for infants under six months.

c) they shall not use the terms 'humanised', 'maternalised', 'adapted', or terms similar to them.

d) they shall be designed in such a way that it avoids any risk of confusion between infant formula and follow-on formula and enables consumers to make a clear distinction between them, in particular as to the text, images and colours used.

Comment: If Section 13.2 is amended, Section 21.11 also becomes moot. Subsection (d), in particular, is currently particularly problematic, as brands cross-promote infant and follow-on milks using similar branding, making it difficult for parents to distinguish between different product advertising.

In relation to the Children's commercial communications for High Fat Salt Sugar (HFSS) food products and/or Services

17.7 Broadcaster shall ensure that children's commercial communications for HFSS food products and/or services meet the following requirements:

a) Commercial communications for HFSS food products and/or services shall not be permitted in children's programmes.

Comment: This section should include infant and follow-on formulas, in addition to HFSS foods, and should extend to post-watershed times, not just during children's programming.

Conclusion

In a report published by in May 2024 by the WHO Public Health Law and Policies team the OSMR Act has been recognised as an international legislative example of restricting digital marketing in the context of tobacco, alcohol, food and beverages, and breast-milk substitutes⁶. A subsequent webinar⁷ noted that while the legal mechanisms are in place, they have yet to be implemented. It is the role of Coimisiún na Meán to ensure this occurs.

Ireland has a unique opportunity, through the development of the Media Codes and Commercial Communication Codes relating to CMF and HFSS, to meet its obligations under the International Code of Marketing of Breastmilk Substitutes and human rights law. Moreover, Ireland can continue its leadership in public health policymaking by addressing the harm caused to children's health by broadcast and digital CMF marketing.

While introducing robust monitoring and reporting systems may seem daunting, technology-assisted solutions—such as existing AI tools currently monitoring CMF digital marketing⁸—can facilitate compliance monitoring. With a proper compliance system, Ireland can fully implement the Act and protect public health.

BFLGI welcomes further engagement with Coimisiún na Meán to realise these Codes.

Kind regards,

Co-Chairs, BFLGI

⁶ Restricting digital marketing in the context of tobacco, alcohol, food and beverages, and breast-milk substitutes: existing approaches and policy options <https://www.who.int/publications/i/item/97892400772490>

⁷ Designing Digital Marketing Restrictions by Public Health Law and Policies Unit, WHO webinar, <https://www.youtube.com/watch?v=f5a4qUSat-I>

⁸ Backholer K, Nguyen L, Vu D, Ching C, Baker P, Mathisen R. Violations of Vietnamese laws related to the online marketing of breastmilk substitutes: Detections using a virtual violations detector. *Matern Child Nutr.* 2024 Aug 28; e13680. <https://doi.org/10.1111/mcn.13680>

Consultation response form

Consultation title	Revision - Codes and Rules (Stage 1 Consultation). Deadline for Response – 3 rd October 2024
Full name	██████████
Contact phone number	██████████
Representing	Organisation
Organisation name	Dairy Industry Ireland Ibec
Email address	██████████

Dairy Industry Ireland response

Question 2: Do you have any comments on the proposed changes to the General Commercial Communications Code?

Dairy Industry Ireland (DII), the representative body for Irish primary and secondary dairy processors within Ibec, including the infant nutrition sector, welcomes invitation to input to stage 1 of this consultation on draft broadcasting codes and rules for radio and television broadcasters. Commercial communications on infant and follow-on formula are specified in the General Commercial Communication Code and the focus of this input.

Section 13: Prohibited Commercial Communications: DII members support section 13.1 and 13.2(j), which details required compliance of these communications with relevant Irish and European legislation, including the prohibition of commercial communications on infant formula for use by infants during the first 6 months of life. These restrictions meet European regulations and standards.

Section 21: Food, Nutrition and Health (Follow-on Formula): DII members support **Section 21.10** which states that broadcasters shall ensure commercial communications comply with relevant legislation, rules, regulations and codes of practice issued from time to time by a relevant competent authority. DII notes the term ‘*follow-on infant formula*’ is not a term used in existing legislation however and proposes a change to ‘*follow-on formula*’ (*6-12 month product category*) to ensure alignment with Commission Delegated Regulation (EU) 2016/127 of 25 September 2015 supplementing Regulation (EU) No 609/2013. This proposed change also applies to the relevant text in **section 21.11** and **Appendix one Definitions for specific products and services.**

DII members support compliance with the requirements set down in **Section 21.11 provisions a), b), c) and d)**. DII members comply with these requirements set down in Irish and EU law, which are already overseen by a range of Irish regulatory bodies, as well as further supporting regulatory compliance through own company codes and policies. Collectively this has ensured in legislation to date and will continue to ensure through this General Commercial Communications Code text as it stands, that all necessary requirements of both the Online Safety and Media Regulation Act 2022 and EU law for infant and follow on formula are met within Ireland’s media service codes and media service rules relating to broadcasting.

Consultation title	Revision - Codes and Rules (Stage 1 Consultation). Deadline for Response – 3rd October 2024
Organisation name	Dublin Community Television

Your response:

Please insert your response under each of the respective questions below.

Question 1: Do you have any comments on the general amendments that are being proposed to apply to each of the Broadcasting Codes and Rules?

The name change to “Media Services” from “Broadcasting” makes sense given that the codes and rules now govern the standards and practices of radio and television broadcasters AND audiovisual on-demand media services. But most of the draft code documents are particular to Broadcasters (Radio and Television) and not audiovisual on-demand media services.

Question 2: Do you have any comments on the proposed changes to the General Commercial Communications Code?

Section 11: Exclusions, while the “minutage exclusions” are now dealt with in another code, exclusions for public service announcements and charity appeals are still excluded in this code.

Given that they are excluded from minutage elsewhere, could these messages remain under this code to comply with standards like any commercial announcement. To the viewer/listener, a Public Service Announcement could be mistaken for a Government paid commercial and vice versa.

Question 3: Do you have any comments on the proposed changes to the Children’s Commercial Communications Code?

no

Question 4: Do you have any comments on the proposed changes to the Code of Programme Standards?

The addition of 12.6 is a timely reminder to promote 'on air' guidance signposting to helplines etc.

Question 5: While the Code includes guidance for broadcasters on undue offence, it is not defined. What are your views as to whether the Commission should include a definition of undue offence in the code. If you think a definition should be included, what factors or criteria might the Commission use to determine that undue offence has been caused?

A definition would be too vague and broad to cover all circumstances. As the principles and spirit of the codes moves to more rule based, where incidents of possible undue offence are low, it could be captured in the complaints process where context can be included with the broadcast material. This would be somewhat similar to undue offence in a live broadcast being handled with an immediate apology. While 'undue offence' is in Online Safety and Media Regulation Act 2022 46J.1 it is not defined. Context also gives opportunity to the injured party to provide evidence of how a broadcast reasonably caused undue offence.

Question 6: Aside from proposals about hourly limits on advertising and teleshopping, do you have any comments on the Draft Media Service Code and Media Service Rules (Advertising, Teleshopping, Signal Integrity and Information)?

no

Question 7: What are your views on the proposal to retain the maximum of 12 minutes of advertising and teleshopping per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?

Less is better. More minutes per clock hour reduces the value of all spots. As linear competes with on demand where ad insertion is programmatic and plentiful, a less cluttered linear output with less minutes per hour will provide a better offering to compete with on demand. As advertising has shifted to online, perhaps the reality that less is better and funding models that are less reliant on commercial breaks will become more commonplace in the future. Retention of this maximum is a good thing as broadcasters adjust funding options.

Question 8: Aside from proposals about hourly advertising limits, do you have any comments on the Media Service Rules (Advertising – Radio)?

no

Question 9: What are your views on the proposal to retain the maximum of 10 minutes of advertising per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?

n/a to community television

Question 10: Do you have any comments on the changes proposed for the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs?

In 2023 Online News overtook Television News as the primary news source according to the Digital News Report Ireland 2024. Broadcast news is regulated and adheres to these codes. This separates out the broadcast sector as more trusted. But to not apply codes to online news sources would be an opportunity missed.



Question 11: Do you have any comments on the Draft Short News Reporting Code?

From the forerunner to the AVMS directive, Television Without Frontiers directive the 'short news' clips for news was being mentioned. To have a code that allows for this is significant. Olympics 2024 started with blacked out RTÉ News in Northern Ireland due to news clips of the Olympics in Paris. A legal mechanism with a complaints procedure is a logical step to allow for fair use in news without infringement of rights.



FDI response to Coimisiún na Meán consultation on revised Broadcasting Codes and Rules for radio and television broadcasters.

Food Drink Ireland (FDI) response

7 October 2024

Introduction

Food Drink Ireland (FDI) is the business association within Ibec representing homegrown and international manufacturers and suppliers across the food and drink sector. We proudly represent a vibrant community of over 150 companies. On behalf of FDI and our member companies, we welcome the opportunity to respond to stage one of Coimisiún na Meán's consultation on revised Broadcasting Codes and Rules for radio and television broadcasters.

As leading food and beverage companies, FDI members have a key role to play in reconnecting people within the food ecosystem through their brands, in a responsible way. FDI members are committed to marketing their products responsibly, as part of a balanced diet. Many FDI members operate rigorous internal marketing codes, demonstrating leadership within Ireland, and even globally, when it comes to setting standards for responsible marketing. These company-specific initiatives sit alongside a comprehensive set of codes and pledges at international, national, and sectoral levels, including General Commercial Communications Code, Children's Commercial Communications Code, Voluntary Codes of Practice (VCoP) and the EU Pledge.

FDI is committed to working with government and other stakeholders to ensure widespread adherence to existing rules and codes, timely identification of any gaps that need to be addressed and profiling of the Irish approach among EU member states.

Current compliance landscape

- **National Codes**

FDI members act in accordance with several National Codes, including the General Commercial Communications Code and the Children's Commercial Communications Code. These Codes are functioning well and compliance is high.

The Advertising Standards Authority (ASA) code, which has been in place for over 30 years, has kept pace with best practice through its seven editions. The ASA Code contains a specific section for food and non-alcoholic beverages. The ASA conducts a rigorous and transparent monitoring process and provides a robust system for dealing with complaints.

- **Voluntary Codes of Practice**

In the Government's Obesity Policy and Action Plan 2016-2025, action 3.2 was to develop, implement and evaluate a code of practice for food and beverages promotion, marketing, and sponsorship. State agencies, the food industry and advertising organisations were cited as key partners in achieving this. This action led to the establishment of a collaborative working group, including a range of government departments and agencies alongside industry stakeholders, with an independent chairperson. FDI was closely involved in this process, which led to the development of the Voluntary Codes of Practice (VCoP) for Non-Broadcast Media Advertising and Marketing of Food and Non-Alcoholic Beverages, including Sponsorship and Retail Product Placement. The purpose of these codes is to ensure HFSS foods are marketed and advertised in a responsible way, via digital and other non-broadcast media. FDI has long called on the Department of Health to progress the requirements

in section 10.1.4 and 10.1.5 of the VCoP. They are crucial to ensure the work that has been done on the VCoP to date can be brought to completion.

- **EU Pledge**

Many of the leading food brands selling into the Irish market are engaged with initiatives at a European level including the EU Pledge. The EU Pledge is a voluntary initiative by leading food and beverage companies to change the way they advertise to children. This is a response from industry leaders to calls made by the EU institutions for the food industry to use commercial communications to support parents in making the right diet and lifestyle choices for their children.

The EU Pledge was launched in 2007 and several FDI members were involved in the founding of this voluntary initiative. EU Pledge member companies account for over 80% of food and beverage advertising spend in the EU.

Detailed implementation guidance is provided to EU Pledge members. In line with the Terms of Reference of the EU Platform for Action on Diet, Physical Activity and Health, monitoring of and reporting on implementation is required. Independent, third-party compliance monitoring is conducted every year in a representative sample of EU member states.

Response to consultation questions in consultation document

FDI wishes to respond to two questions, in particular, as outlined in the *Consultation Document: Draft Media Service Codes and Rules*. The questions FDI wish to refer to are listed below:

- **Question 2 - Do you have any comments on the proposed changes to the General Commercial Communications Code?**
- **Question 3 - Do you have any comments on the proposed changes to the Children's Commercial Communications Code?**

FDI is broadly satisfied with the proposed changes to both the General Communications Code and Children's Commercial Communications Code, as they have been outlined in the Consultation Document. FDI acknowledges that as detailed in the introduction of the Consultation Document, the primary objective of the proposed changes to the Broadcasting Codes is to give effect to Ireland's obligations as a member of the European Union, in particular, under the Audiovisual Media Services Directive (AVMSD)

FDI does, however, wish to indicate some points of potential concern, on the basis that the changes go beyond what is required under the AVMSD. These issues of potential concern are outlined below.

Comment on the Children's Commercial Communications code

Our members' concern in the children's commercial communications code related to the revised definition of 'children's commercial communications':

“children’s commercial communications” means a commercial communication that promotes products, services, or activities that are deemed to be of direct or indirect interest to children and/or is broadcast in or around children’s programmes.’

The introduction of the terminology ‘direct or indirect’ to the revised definition does not seem to align with the existing definition shown in the BAI ‘children’s commercial communications’ definition, which is as outlined below:

‘Children’s Commercial Communications are commercial communications that promote products, services, or activities that are deemed to be of particular interest to children and/or broadcast during and between children’s programmes.’

The addition of the language ‘direct or indirect’ does not seem to derive from the AVMSD text itself. It is the belief of FDI members that this lends itself to being a very broad definition with many potential interpretations, which introduces uncertainty for advertisers.

Since the term ‘children’s commercial communication’ is mentioned numerous times throughout the Children’s Commercial Communications Code itself and also in others, it means this uncertainty occurs at each time of mention, across the various documents.

FDI’s position is that the definition in the existing Children’s Commercial Communications Code should be retained, in order to provide clarity and certainty to advertisers and media organisations in relation to their compliance requirements.

Comment on the General Commercial Communications code

A potential concern for FDI members in relation to the General Communications Code is that it appears that by opting to prohibit the showing of a sponsorship logo during children’s programmes, Ireland is opting to implement an *additional* possibility provided in the AVMSD:

‘Finally, the General Code also now prohibits the use of sponsor logos in children’s programmes, an option open to the Commission further to Article 10(4) of the AVMS Directive’

The adoption of an additional, optional restriction such as this could have severe, specific implications for our members operating here in Ireland, as distinct from implications that will apply to other EU member states in adoption of the AVMS Directive. FDI’s position is that the restrictions in the existing codes are sufficient and are functioning well, there is no evidence to justify extending the restrictions at this time.

Conclusion

As outlined, FDI is broadly satisfied with the changes that are being consulted on in stage one of this consultation process, with two notable exceptions around the change in definition of ‘children’s commercial communications’ and the additional restrictions around sponsor logos.

We look forward to further contributing the ‘Stage 2 Review Questions’ element of this consultation in advance of the November deadline.

Consultation title	Revision - Codes and Rules (Stage 1 Consultation). Deadline for Response – 3rd October 2024
Organisation name	INDEPENDENT BROADCASTERS OF IRELAND
<p>Your response:</p> <p>Please insert your response under each of the respective questions below.</p> <p>The Independent Broadcasters of Ireland is pleased to respond and thanks the Coimisiún and its staff for the opportunity to make a submission. With the exception of question 3, we have made submissions on all questions. We are available to clarify or amplify in any way which would assist.</p>	

Question 1: Do you have any comments on the general amendments that are being proposed to apply to each of the Broadcasting Codes and Rules?

The Independent Broadcasters of Ireland wish to state that we have general concerns that broadcast is subject to particular restrictions which have the potential to affect the level-playing field in the broadcasting policy/legislation system in Ireland. The does not reflect technological progress and competition in media overall can result in uneven application.

Context:

Radio is a finite medium. This means that advertising spots or time which are not used today cannot be used again, but also that with strict minutage rules, it is not possible to create extra space when there is high demand from a client or at a busy time of the year. For this reason, flexibility is something that is essential in the advertising Codes on the topic of advertising minutage, with the potential of ensuring that flexible pricing can operate, and advertising yield can be protected. It is also worthwhile remembering that the logistics of advertising traffic management on radio are complex and planning ahead has to be facilitated meaning that flexibility on minutage can be important. At the background of all of this is the fact that some points during the year, week, or day have higher demand.

We note that the Coimisiún has stated that the section on advertising minutage is to 'ensure a consistent approach for both radio and television broadcasters and certainty for audiences' and we welcome the recognition that there is currently a disparity in that area, with radio having a 10-minute maximum and TV having a 12-minute maximum. In addition, radio has a 15% minutage average for advertising, while TV has an 18% minutage average in the current Code. We believe these levels should be addressed by moving the radio maximum per hour immediately to 12 minutes, so that the approach is consistent, as there does not appear to us to be a logical rationale for differentiating between radio and TV in this aspect of regulation. We have also stated we feel the 15% for radio should be formally and urgently adopted.

The need for consistency in the setting of advertising minutage Codes between radio and TV is particularly important when one remembers that the largest TV broadcaster in the State already has the clear advantage of guaranteed Exchequer/TV licence funding of plus commercial sponsorship/advertising revenues, dwarfing revenues in other media sectors and in particular those in commercial radio and creating market distortion.

We also note that addressing the matter of setting advertising minutage proposals currently under consideration relates to the making Code changes required in line with the Online Safety and Media Regulation Act 2022. That Act did not include what had previously been a maximum limitation. It specifically excluded that maximum, and the legislation should inform the outcome of this consultation we believe.

The change in the OSMR legislation to remove the hourly maximum followed a legislative response which took place after many years of our sector seeking it, and we submit that the views of legislators as clearly expressed in the OSMR should feed into decisions on the Codes.

The OSMR legislation now allows the potential for flexibility in advertising on the radio and we respectfully believe the Coimisiún can take that opportunity to implement that flexibility. This would in our view be consistent with the legislation, which would appear to us to be the opposite of the proposals in this consultation which would limit flexibility from broadcasters and tighten this aspect of the Codes (wording of hour / clock hour / average in proposed Codes).

Codes dealing with Consumer Issues or Rights:

IBI points to a need for clarity on this issue as the Coimisiún website states that it does not regulate consumer rights and yet a large part of this consultation deals with consumer rights enforcement in advertising Codes.

It is our belief that it would be worthwhile to clarify whether An Coimisiún will regulate consumer rights more generally. Or alternatively whether it would be better to avoid duplication of effort and lack of clarity/potential confusion. If it was decided that consumer rights were not in its ambit, An Coimisiún could logically leave the regulation of advertising and consumer issues in all media to the widely-respected and complied-with Advertising Standards Authority, Ireland and to the statutory Competition and Consumer Protection Commission, both of which have codes and enforcement mechanisms. It is emphasised that this would not reduce consumer rights. The ASA already regulates content of advertising comprehensively.

If the above duplication is not addressed, we submit that it causes confusion for commercial entities and consumers.

Absent a decision on the above point, we submit that the current structures lead to a risk of discriminatory and anti-competitive regulation and would lead to the unintended consequence of hampering the Coimisiún in its overall stated objective of aiming to “ensure and maintain a thriving and diverse media landscape in Ireland that facilitates a mix of voices, opinions and sources of news and current affairs, as well as a safe online environment.”

Question 2: Do you have any comments on the proposed changes to the General Commercial Communications Code?

In relation to the General Code our comments above in relation to Question 1 are relevant and we ask that they are considered.

Financial Advertising Terms and Conditions issue:

We wish to specifically raise the issue of Terms and Conditions mandated by in Ireland for radio advertising of financial services, which we submit do not add meaningful protection according to research (*Wealth Warnings study by Navigator, and research by Lancaster University*), and that those Terms and Conditions pieces at the end of advertisements, do not achieve the objective of comprehensive and attention gathering and can make radio advertising less attractive to those placing it. In contrast, the objective is of providing important information in a usable format for busy consumers and of retaining their attention. There are other ways which can be considered to achieve this.

Applying Codes in this area only to broadcast media leads to uneven application and distortion.

On Section 24 (Financial Services and Products) we feel it would be very helpful if the Central Bank of Ireland and An Coimisiún liaise on this matter.

Other forms of advertising

We believe that sponsorship of programmes and items within programmes on radio should be permitted as long as the identity of the sponsor and their activity are made clear on air.

We believe that Political Advertising, which is permitted in all other Irish media, or on social, web and Out of Home, should be allowed on radio, **only as long as it is specifically identified as such and clearly separated from editorial content**. This would be in the interests of a level playing-field and media plurality and diversity as well as helping out sector to be commercially viable. Currently the large majority of revenue goes to other local media in Ireland or to social media/web or Out of Home (buses, billboards etc).

Question 3: Do you have any comments on the proposed changes to the Children's Commercial Communications Code?

We have no comments on this aspect of the Code.

Question 4: Do you have any comments on the proposed changes to the Code of Programme Standards?

We point out that our sector maintains and meets high standards and that maximum room for innovation and creativity should be granted to stations, with intervention only if there are complaints about non-compliance.

There are protections on radio against harm, and there are stringent restrictions and standards on fairness and diversity, taste, protection of listeners, warning and advice information, and many other programme standards. These do not apply elsewhere in the social/web area.

We submit that the requirement to have balance should not in any circumstances require a broadcaster to give airtime to someone who they have grounds to believe may engage in hate speech or routinely use information which does not have a factual basis. Recognised scientific experts should not need to be always juxtaposed on air with a someone who merely has a different point of view of established facts.

Likewise, where someone has previously made comments which would place listeners' welfare at risk (hate speech or racist expression) or create a risk to the broadcaster of libel or contempt of court, there should be no requirement to give airtime and the decision on how to address balance should be left up to the manager of the station's news output.

Question 5: While the Code includes guidance for broadcasters on undue offence, it is not defined. What are your views as to whether the Commission should include a definition of undue offence in the code. If you think a definition should be included, what factors or criteria might the Commission use to determine that undue offence has been caused?

We believe that the issue of “undue offence” only applies to broadcasters and therefore there is a risk that it may be discriminatory in terms of media overall and does not promote a level-playing field, and media plurality. The term itself is not well-defined and therefore places organisations at compliance risk without any way of being certain, so further work on such a definition is needed. The definition of undue offence should be specific and clear and one capable of being identified by any reasonable person. It should not be subject to short-term trends or campaigning. Merely because someone states their view that they were “offended” should not be enough for this issue to arise.

Question 6: Aside from proposals about hourly limits on advertising and teleshopping, do you have any comments on the Draft Media Service Code and Media Service Rules (Advertising, Teleshopping, Signal Integrity and Information)?

We believe that An Coimisiún should facilitate innovation, subject to transparency and Code compliance, to enable existing independent radio licence holders to use their content or frequency space for audio-visual or other services to maximise listenership, serving consumers and also facilitating promotions which add to revenue. We ask An Coimisiún to encourage stations to come forward with innovations and to ensure the Codes facilitate that.

The period September-December is one when our sector has 40% of its advertising revenue and placements by customers, so it is time of high demand and we believe it is vital that advertising minutage and other Code references allow that period and other periods of high demand (run-up to bank holidays, Return to School time, Easter, St Patrick’s Day etc) have specific latitude to allow for increased advertising during those periods. This would be in the interest of a level-playing field across the media and of allowing independent stations to maximise revenue within the minute per hour maximum we propose.

We believe that Political Advertising, which is permitted elsewhere including on social, web and Out of Home, should be allowed on radio if stations wish to carry it, as long as it is specifically identified as such and separated from editorial. This would be in the interests of a level playing-field and media plurality and diversity as well as enabling media to be commercially viable.

Question 7: What are your views on the proposal to retain the maximum of 12 minutes of advertising and teleshopping per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?

As this question relates to television, our comment is that our view is that the both the TV and Radio maximum minutes of advertising should be the same. Therefore, we believe that if this 12-minute maximum in this question is retained for TV or adapted for that sector, the same approved level should apply to radio.

Question 8: Aside from proposals about hourly advertising limits, do you have any comments on the Media Service Rules (Advertising – Radio)?

Social Media or Video Platform Influencers

The activities of influencers on social media/web are not covered by the Code. So broadcasters are the only ones regulated on fairness, protection of consumers, standards for advertising, cosmetics or health products or services. There is a lacuna where consumers are being provided with one standard of advertising on radio and a different standard on social media or video streaming.

The period September-December is one when our sector has 40% of its advertising revenue and placements by customers, so it is time of high demand and we believe it is vital that advertising minutage and other Code references allow that period and other periods of high demand (run-up to bank holidays, Return to School time, Easter, St Patrick's Day etc) have specific latitude to allow for increased advertising during those periods. This would be in the interest of a level-playing field across the media and of allowing independent stations to maximise revenue within 12 minutes per hour maximum we propose. Averages could operate over the full 24-hour period for the months November and December or for another period that the Coimisiún chose.

Political advertising:

We believe that Political Advertising which is permitted in other media should be permitted on local radio as it is on other media, if stations choose, as long as it is specifically and strictly identified as such and separated from editorial. This would be in the interests of a level playing-field and media plurality and diversity and economic sustainability. Currently, political advertising revenue goes Social Media/Web, or Out of Home (buses, billboards etc).

Other types of advertising:

It would be worthwhile for the Coimisiún to liaise with the Gambling Regulatory Authority and the ASA on the issue of gambling advertising to ensure consistency and informed decisions.

Question 9: What are your views on the proposal to retain the maximum of 10 minutes of advertising per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?

We believe that the maximum of advertising minutes per hour on radio should be formalised in such a way as it allows flexibility over the period 6am-1pm. We do **not** believe that the maximum of 10 minutes should be retained and believe that maximum within a clock hour should instead be increased to 12 minutes and that the 15% average should be adopted and apply over that daily period. We ask that this be formalised urgently by the Coimisiún and provide further detail below.

We point out that hourly maximum minutage limits were specifically removed from legislation indicating that legislators did not believe them necessary. This created a natural perception by regulated entities that it was not intended to reintroduce the minutage/hourly restrictions. Caution and flexibility should be adopted in applying hourly limits to one single sector – broadcasting. This is because it could adversely affect competition and the economic health of the sector.

There is a very significant element of self-regulation which takes place in all markets in relation to advertising. If a media organisation increased the advertising minutage or space radically that would result in listener/reader lack of interest and avoidance, that serves as a clear limitation. In a competitive market like ours, a large increase in advertising would simply result in 'switching the dial' to a competitor station. In addition, advertisers themselves would not wish to be part of very long advertising breaks. Ofcom in the UK is our nearest regulatory neighbour, and they do not have a minutage rule and that has not resulted in negative consequences there, we submit.

We also point out that Ireland is currently not in line in minutage levels in commercial broadcasting rules in European countries like Switzerland, Poland, Romania, Slovakia, Italy and Belgium, where significantly higher limits are applied.

The sector would be open to working the Coimisiún to implement a trial or pilot to measure the effect of allowing broadcasters to operate longer minutage restrictions for a limited period. This would test feasibility and whether regulation is needed in this area or further flexibility could take place.

In the meantime, however the radio sector points out that having restrictions that only apply to broadcasting does not fit with the principle of encouraging a flourishing and thriving and pluralist media, or promoting innovation, or ensuring a level-playing field, so we ask for that to be considered. It is clear that no advertising quantity or % limitations apply to other sectors (social, web).

There are certain times of the day/week/year when listeners gravitate in large numbers to radio and when therefore there is a higher level of interest among advertisings. It would make sense therefore so a certain amount of flex to be granted across the day, while maintaining the 12-minute limit across radio and TV equally. This would help to avoid the loss of business where advertisers sought to place adverts at times of high demand, which were impacted by minutage restrictions.

There are times of the day/week during which sports or entertainment programming may require a lengthy period on radio without any adverts and this needs to be facilitated by the regulations. This requires flexibility for overall percentages to be maintained. For instance, a rugby match or soccer match could easily involve up to 50 minutes per playing-half of sports coverage, and it is problematic to interrupt coverage for advertising, so opportunities lost then must be made up afterwards. This also applies during coverage of, for example the Budget, when stations are not permitted to interrupt coverage under arrangements with the Oireachtas/Department of Finance or of Religious Ceremonies. This means that for some periods, there are no advertising breaks for almost an hour and this needs to be dealt with by flexibility later in the day, to make up revenue.

In general, our view on the current Minutage for commercial radio and the change needed is as follows.

- **Proposal for formal implementation by An Coimisiún immediately in Codes covering commercial minutage:**

We would propose that the 15% average of advertising minutage over the period of 6am-1am be formalised immediately by An Coimisiún with a maximum of 12 minutes per hour (this is to bring the maximum in line with TV and for the other reasons set out in our answer to this question around media plurality and putting in place a level playing-field and maintaining a economically-sustainable radio sector.

Proposal suggested to be piloted:

- We do also propose that consideration be given by An Coimisiún in the medium term to a higher maximum advertising minutage percentage of 18% (to be consistent with TV) on average across the day or a portion of the day which could allow some periods of short and longer ad breaks. This could be piloted for a limited period, we suggest.

The move to 15% daily average / 12 minute per hour minutage maximums would be in the direction of more consistency with the regulation of TV minutage.

It would recognise the fact that radio stations have come under significant economic pressure in recent years (economic crash a decade ago, rapid growth in social media/web advertising-share, pandemic market shock and downturn and slow recovery since then of high street/local retail advertising, and consumer cost of living pressures affecting revenues of businesses placing advertising). Therefore, to ensure that the radio sector is thriving, it needs to be given a chance to moderately increase its ability to meet the demand for advertising at high demand times, therefore compensation for periods of low advertising demand. A change to moderately increase minutage would also move Ireland closer to the status quo in many European markets in this respect.

Our proposal, we submit, fits with the Coimisiún's objective of assisting the creation and maintenance of a thriving media sector. It does not significantly reduce the Code obligations on radio broadcasters. This change would also recognise that while a regulated minutage limit is needed at least in the medium-term for radio and TV, their competitors have zero restrictions on the advertising quantity in time or numbers of ads that they can accept. It should be noted that a small number of web and social companies now have almost €900 million share of Ireland's annual advertising market and that is growing at high rate, while advertising on radio is not growing at the same rate, and in overall size is a small fraction of the above figure. Inevitably if advertisers cannot place their ads on radio due to restricted amount of time available, then they will move to web/social where there are no limits, making the commercial playing-field even more unbalanced. Therefore, there is strong media plurality case for giving some more (regulated) latitude to radio across the day, and across the year.

Period for minutage to be measured

We also suggest that that average advertising minutage be maintained across the entire period 6am-1am daily to facilitate periods with high listenership and then lower advertising in the evenings. This would mean that for example higher advertising could be broadcast at some high demand advertising times but lower levels at night. Not alone would that allow for much-needed revenue from advertising at times of high demand, but also it would enable longer-form documentaries or diverse music programmes at night with fewer advertising breaks, therefore increasing audiences at a time of relatively lower listenership.

We believe that the proportion of advertising spots should meet the average % during a set daily period from 6am-1am, and that within the day there should be a maximum limit. This would mean that only a relatively small number of hours would be at the higher end in terms of minutage. This would give flexibility to the broadcaster to manage how that was maintained.

Addressing issue of peak times of year for advertising:

Consideration could be given to specific exceptions allowing stations to benefit from increased revenue at certain times of the year where advertising is available (e.g. in the run up to Christmas) as all other media are able to do, by allowing minutage to be measured across the full 24-hour day for those periods. Some media can create extra space in that period for advertising, and there is no limitation on social or web advertising). As stated, radio is a finite medium.

Non-advertising announcements/sponsorship

We believe short sponsorship 'stings', or sponsorship content identifying support for a segment or programme or around weather, traffic, energy use, healthy diet or exercise etc (or other areas not part of news and current affairs) should not count towards minutage measurements or limitation. Minutage rules should only apply to advertising breaks.

We believe that sponsorship announcements, public announcements placed by the State, or references to charitable fundraising competitions broadcast by the radio on behalf or in association with a registered charity should be excluded from the advertising minutage measurement and limits.

Our comments on Question 10 are on the next page.

Question 10: Do you have any comments on the changes proposed for the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs?

The requirement to have Fairness, Objectivity & Impartiality in News and Current Affairs should not require a broadcaster to give airtime to someone who they have grounds to believe may engage in hate speech or place a potential defamation or other risk on the broadcaster, or to routinely use information which does not have a factual basis.

Recognised scientific experts should not need to be juxtaposed with a someone who merely has a different point of view, to maintain balance.

In our view, it should be made clear that decisions in respect of editorial coverage rest solely with radio stations and their editors. While we know An Coimisiún is aware of this, we feel making it explicit in the Code would be beneficial.

We believe that the ways balance can be achieved should be set out as including the following:

Selection of programme contributors; the airtime made available to various candidates or points of view; measures to ensure overall coverage will be fair and balanced without in practical terms a requirement that all candidates and views can be included in an individual news bulletin, programme item or show; the scope of on-air discussions and debates; how a station structures election-related programming or coverage of an issue; how presenters handle on-air interviews and discussions; or seeking out a variety of viewpoints on the issues raised by the election or issue in question.

All stations should have the right to decide which items of news and current affairs are live and which are pre-recorded for a variety of reasons, or to invite the submission of a written statement in lieu of a live interview.

The asking of a question or expression/reporting of a view as part of an interview in order to explain/clarify an issue should not be assumed to be the presenter's own point of view.

Stations should be able to reserve the right to pre record or edit interviews, audio or news releases for time, balance or legal reasons.

Question 11: Do you have any comments on the Draft Short News Reporting Code?

We believe that the Draft Short News Reporting Code should favour smaller broadcasters such as our members and have more obligations than large State Broadcasters. Due recognition/citation of the source of any material carried by another broadcaster under the code should be required. This section of the Code should only apply to broadcast media regulated by the Coimisiún. Other media (social/web) should not be able to access the same benefits.



Údarás Náisiúnta Míchumais
National Disability Authority

September 2024

NDA Submission to Coimisiún na Meán concerning the Draft Code of Fairness, Objectivity and Impartiality in News and Current Affairs

Introduction

The National Disability Authority (NDA) is the independent statutory body with a duty to provide information and advice to the Government on policy and practice relevant to the lives of persons with disabilities, and to promote Universal Design. The NDA welcomes the opportunity to input into Coimisiún na Meán's ('the Commission') consultation on the revised Broadcasting Codes and Rules for radio and television broadcasters.

The NDA has primarily focused its comments on the Draft Code of Fairness, Objectivity and Impartiality in News and Current Affairs. However, some of our observations are of wider applicability and will be relevant to the other Broadcasting Codes and Rules undergoing review.

Responses to Stage I Review Consultation Questions

The NDA notes that the Stage I review relates to amendments to the Broadcasting Codes and Rules for radio and television broadcasters which are necessary to give effect to the Audiovisual Media Services Directive and the Online Safety and Media Regulation Act 2022.

Question 10 - Do you have any comments on the changes proposed for the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs?

The Commission has not proposed any significant changes to the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs on the basis that no substantive amendments are necessary to transpose the Audiovisual Media Services Directive. The NDA does not have any comments on the proposed minor language changes to this Draft Code.

Conclusion

The NDA welcomes Coimisiún na Meán’s consultation on the revised Broadcasting Codes and Rules for radio and television broadcasters, in particular the Draft Code of Fairness, Objectivity and Impartiality in News and Current Affairs. Such a review is timely given recent changes in the legislative and regulatory landscape relevant to broadcasting. We would be happy to engage with the Commission on any of the points raised in this submission, including the Stage 2 review planned for early 2025.

Submission compiled by Audrey Kissane (MA Journalism)

October, 2024

A dhuine uaisail,

I welcome the invitation to make a submission in response to the Draft Media Service Code. I make this submission as a citizen who has been studying the news intensely over the past year and as a researcher of media bias. I am concerned that news and current affairs reporting in Ireland has not been providing essential context in their reports. Many Irish citizens, who increasingly consume news through independent journalists online, are turning away from established media broadcasters in favour of reports that provide fuller context.

The Media Services code comes at an inflection point in news media, where growing mistrust of the mainstream media is recognised as a significant challenge. Reuters' Digital News Report in June 2024 addresses the challenges faced by publishers across the globe who continue to struggle to convince much of the public that the news they offer is trustworthy and worth paying attention to.

Against the backdrop of these recognised challenges, The Media Services Code will play a vital role. By ensuring that public broadcasters are guided by strict codes of fairness, impartiality and objectivity in their reporting, they will prove crucial in building and preserving public trust in the media.

I understand that the purpose of the Code is to ensure that broadcasters that are under the jurisdiction of the State comply with the duties set out under Sections 46K and 46L(1) to (3) of the Act. (The Broadcasting Act 2009, as amended by the Online Safety and Media Regulation Act 2022).

This submission relates to sections 46L (1) (a) and (b) of the act.

News and current affairs

46L. (1) A broadcaster, in programmes which he or she broadcasts, and a relevant media service provider, in programmes which he or she makes available in a catalogue of the relevant service, shall ensure—

(a) that news is reported and presented in an objective and impartial manner and without any expression of the broadcaster's or provider's own views, and

(b) that the treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned, and that the matter broadcast or made available is presented in an objective and impartial manner and without any expression of the broadcaster's or provider's own views.

I make the below recommendations based on my intense study of news reports over the last year. Throughout that period, I have observed a lack of essential context in news reporting. Presenting the news in an impartial manner, without bias or omission of important context, is essential to upholding the public's trust in the media. It is on this basis the following recommendations are made.

1. The code should require broadcasters to disclose when news has been censored by a state or military, particularly when there is no independent verification of news that has been subjected to censorship. This suggestion is a response to the Israeli Military Censor's recent orders to Western news outlets since October 2023. Foreign journalists in Israel must obtain GPO (Government Press Office) permission and agree to censorship, undermining

journalistic integrity, objectivity, and impartiality. Including a guideline for broadcasters to disclose when news sources have been subject to censorship would offer richer context to the public and allow them to weigh the credibility of such news for themselves. Not doing so does not give the audience that opportunity.

Censored reports, which by nature lack impartiality, have presented attacks on Gaza refugee camps as targeted attacks against Hamas. In these reports, broadcasters do not provide evidence for these claims. Since the targeting of civilian areas contravenes international law, unproven claims that legitimise illegal targeting should be reported with clear context. It is important for the audience to be informed that disproportionate attacks on densely packed humanitarian safe zones constitute war crimes. News reports that omit important legal context in favour of censored news, risk misleading the public. A simple **disclosure** that reports have been subject to censorship and have not been independently verified would significantly mitigate this risk.

2. The second recommendation is to require the clear identification of known perpetrators of military attacks in news headlines and bulletins. I have observed considerable discrepancy in how the War in Ukraine and the war in Gaza are reported. Russian attacks in Ukraine are rightly attributed to Russia at the top of news reports, while attacks in Gaza often omit Israel as the perpetrator until later in the reports. This pattern lacks impartiality. A code that makes it clear that known perpetrators of military attacks should be identified at the top of reports would ensure impartiality and fairness.

3. The third suggestion concerns the accurate framing of conflicts. Broadcasters in Ireland have been inconsistent in their framing of the wars in Palestine and Ukraine. The media uses the term “Israel-Hamas war” for the former and the “Russia-Ukraine war” for the latter. The erasure of Palestine here is notable. Israel is a country, while Hamas is a military group. Palestine exists beyond the context of Hamas. Reducing it to Hamas lacks fairness and impartiality. Israel's attacks have mostly killed Palestinian civilians, the majority of whom are women and children. The ICJ has ruled Israel's actions in Gaza amount to a plausible genocide and found it guilty of illegal occupation and apartheid. News bulletins that frame the conflict as the “Israel-Hamas War” suppress this wider context.

4. The fourth recommendation calls for consistent reporting of death tolls. While the public is rightly informed about Ukrainian deaths, the same standard is not always applied to Palestinian deaths. This inconsistency lacks impartiality and, at worst, suggests that some lives are more newsworthy than others. Introducing guidelines that ensure that death tolls are reported equally for conflicts around the world would preserve impartiality.

5. The fifth recommendation is to provide the audience with full context when media blackouts are enforced. When independent reporting has been banned, the public should be informed. Israel has denied access to foreign journalists in Gaza. It has also closed media offices such as Al Jazeera in Israel and The West Bank. Further to that, Israel has killed over 100 journalists. The international Federation of Journalists has put the number higher. More journalists have been killed in Gaza than any war in living memory. Given these extraordinary circumstances, broadcasters must be guided by clear reporting codes. When independent verification of claims made by a military imposing a media blackout is not possible, the public should be made aware. Codes to prevent the reporting of

independently unverified claims as trustworthy news would preserve the media's impartiality and independence.

Thank you for taking the time to read these recommendations. I hope you will give them serious consideration and that they prove valuable in the Media Commission's aim to write a Media Service Code that safeguards the principles of impartiality, fairness and objectivity in news and current affairs reporting in Ireland.

Mise le meas,

Audrey Kissane.

Robert Crowley
Assistant Director
Regulatory Policy
Coimisiún na Meán

03 October 2024

Re: RTÉ Responses to Draft Codes

Dear Robert,

Thank you for forwarding all the relevant documentation regarding the Commission's work on updating the various regulatory codes.

RTÉ welcomes the opportunity to contribute to the consultation process, to provide views and offer feedback.

For ease of reference, we are providing RTÉ's response in a single document.

At the outset, RTÉ acknowledges the 'direction of travel' with the revised draft Codes and the requirement for the Commission to transpose the AVMS Directive.

The RTÉ responses set out below are part of the Phase 1 responses.

This document is in two parts – part one dealing with the journalism/content related codes and part two covering the commercial communications codes.

Part 1

Draft Code of Fairness, Objectivity, and Impartiality in News & Current Affairs

There are no issues arising from the Draft Code.

Draft Short News Reporting Code

There are no issues arising from this Draft Code

Draft Code of Programme Standards

There are two main issues RTÉ wishes to address in respect of this Draft Code.

However, before getting into the detail of these issues, RTÉ acknowledges and welcomes the more detailed Guidance Note on Undue Offence and Harm.

There are two areas where RTÉ wishes to address in this draft Code.

Section 12 – Importance of Context

RTÉ has concerns about the wording of Section 12.2 which states:

“Broadcasters shall ensure that they use prior warnings where programme material has the potential (our emphasis) to offend or cause distress to audiences.”

This provision, as worded, could be interpreted by the audience as imposing an obligation on broadcasters to anticipate offence and/or distress in every broadcast.

There are times when a broadcaster can reasonably anticipate that certain content may be offensive or cause distress to audiences.

However, 12.2 is stated as a blanket obligation.

The existing codes, and the updated guidance in the Appendix, recognise that “offence” is subjective and that it varies from person to person.

As worded, Section 12.2 requires a broadcaster to anticipate the potential offence within every broadcast and inevitably this could mean almost every programme would require an advance warning, since the potential sources of offence are open-ended. The system would then become utterly meaningless.

While the Guidance Note in the Appendix does retain the clarifications around the subjectivity of ‘offence’ RTÉ believes the wording in 12.2 is not aligned with the nuanced nature of ‘offence.’

RTÉ would suggest the following wording -

Proposal:

“Broadcasters shall ensure that they use prior warnings where it may be reasonably anticipated that pre-recorded programme material has the potential to offend or cause distress to audiences.”

Section 15 Protection for Children

For context, the current Code states –

“Broadcasters share a responsibility with parent and guardians for what children listen to and watch....”

During the engagement with the expert group Wagner Hatfield on this Code, RTÉ proposed that the current wording was open to an interpretation that the broadcasters and parents/guardians had a ‘co-equal’ responsibility for content that children accessed and/or that it was sometimes seen by the audience that the primary responsibility rested with the broadcaster.

This was often reflected in some programme complaints where a parent/guardian believed, incorrectly, that a greater responsibility rested with the broadcaster.

While RTÉ accepts there are responsibilities for the broadcaster, including those under the AVMS Directive, these can only be applied within the context of the relevant provisions of the Constitution.

Article 42 of the Constitution provides that the State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical, and social education of their children.

On this basis, RTÉ proposed to Wagner Hatfield that any revision of the Code should reflect this fact; namely, that the primary responsibility for content a child accesses rests with the parent/guardian.

This wording is reflected in the draft Children's Commercial Communications Code but is absent from the Draft Code of Programme Standards.

Any parent/guardian reading the Draft Code of Programme Standards – with a view to formulating a complaint – could take the view that the primary responsibility for what children access rests with the broadcaster. This does not hold as a matter of fact or of law.

Proposal:

RTÉ proposes that Section 15.1 is aligned with Section 10.2 of the Draft Children's Commercial Communications Code, namely, that the primary responsibility for content accessed by children rests with parents/guardians.

For ease of reference 10.2 states:

Parents and guardians have primary responsibility for children but those responsible for commercial communications (including broadcasters) should support the parent/guardian relationship with children by scheduling responsibly and by not undermining the authority, responsibility or judgment of parents or guardians in the content of children's commercial communications.

There is a difference between children's commercial communications and mainstream content that a child may access on television or radio.

Therefore, RTÉ would suggest for consideration a wording in the Draft Code of Programme Standards along the lines:

Parental Responsibility

Parents and guardians have primary responsibility for content that children access on television and/or radio and broadcasters can support the parent/guardian relationship with children by scheduling responsibly.

Not only does this reflect the practical reality in an era of content readily available on multiple devices, but it also reflects the constitutional position which specifically states parents have a “*duty*” to provide for the religious, moral, intellectual, physical, and social education of children.

Notwithstanding the provisions of the AVMS Directive and the broadcasting legislation, there is no legal basis to provide that a broadcaster can replace or supplant the parent/guardian as “the primary and natural educator of the child” with responsibility and duty for the religious, moral, intellectual, physical, and social education of a child, as set out in Article 42.

This should be stated in Section 15.1 and the Commission could then address relevant additional contextual factors, if required, in the Appendix dealing with Undue Offence and Harm.

There is a further issue RTÉ wishes to address in respect of the Guidance Note on Undue Offence and Harm.

This concerns the bullet point –

“While the volume of complaints made about programmer material may be a relevant factor when considering whether it has caused widespread offence, this is not likely to be a determinant factor.”

In recent years, RTÉ and indeed the then BAI and now the Commission, has experience where in respect of some broadcasts a campaign is launched, typically online. This takes the form of a prepared ‘copy & paste’ complaint that is widely circulated encouraging individuals to sign the complaint on a personal basis and send it to the broadcaster, regardless of whether the individual has seen or listened to the broadcast.

There are examples of instances where significant volumes of complaints in this format are submitted. While any individual is entitled to make a complaint, it can be reasonably stated that the use of ‘copy & paste’ campaigns is beyond what could be regarded as fair usage of the statutory complaints process.

As a broadcaster is obliged to respond to each complaint, this can cause significant challenges in terms of resources.

In one instance, in respect of which RTÉ provided a report to the BAI, over 1,000 emails were sent to complaints@rte.ie. It was notable that while signed by individuals the emails were not sent from individual accounts but from a single server.

The overwhelming majority were blocked by RTÉ security filters because of the sheer volume of emails coming from one source. RTÉ provided the BAI with a copy of the template email that was used, we also provided the BAI with redacted samples from emails blocked by security filters.

This kind of campaign has become more common, and it is appropriate for the Commission to offer guidance in respect of campaigns of this kind. For instance, the Commission could offer guidance that if the number of identical complaints exceeded a set number, e.g., 10 or 15, the broadcaster would not be required to respond in detail to every complaint after that number. The broadcaster could issue a response explaining that as a number of identical complaints have already been accepted there is no requirement to process additional identical complaints.

Part 2

RTÉ's submission in this section are limited to the *Draft General Commercial Communications Code* and the *Draft Code on Advertising, Teleshopping, Signal Integrity and Information*.

1. General Commercial Communications Code

RTÉ recognises and notes the importance of the Commission's remit in regulating commercial communications for radio and television services and now audio visual on-demand services.

There are a number of points on which RTÉ would welcome clarification and these are outlined below:

Section 17. Abolishment of the differentiation between paid product placement and prop placement.

It appears to RTÉ that if this change is implemented what would previously been regarded as prop placement would not now be considered product placement, if no payment or similar consideration is given.

If RTÉ is correct in this, it would be helpful if this made explicit in the Code.

RTÉ notes that the current €1,000 threshold is removed and while there may be grounds for this, the outworking of this should be considered. In practice, this will likely mean that any usage of products, regardless of value, will have to carry a PP notice.

If this is so, it does raise the very real prospect that incidental usage, requiring extensive PP acknowledgment, could lead viewers to form a view that commercial interests are unduly influencing editorial considerations and decisions, and this would not be the case.

For this reason, if our assessment is correct, RTÉ believes it would be helpful to all stakeholders for the Commission to outline how it envisages this working in practice within the context of a Guidance Note.

13.2 Prohibited Commercial Communications

We note the additional clarity on what are now prohibited Commercial Communications.

We note specifically that a broadcaster shall ensure that it does not broadcast commercial communications that encourages behaviour grossly prejudicial to the protection of the environment.

While RTÉ understands the intent behind this, there are important factors in the context of a new statutory and regulatory framework, that require clarity, particularly for content which may be subject to statutory complaints.

For example, there are those who take a view that not only advertisements or sponsorship by car makers, airlines etc but also interviews (in news and current affairs) with representatives of such companies, constitute the promotion of behaviour that is grossly prejudicial to the protection of the environment.

It is RTÉ view that any product or service that is legally available in the State, and particularly in the transport sector, are legitimate sources of advertising, etc. For instance, in responding to some complaints about such products/services, RTÉ has referenced the Government's climate strategy which outlines a legitimate role for airlines.

To take another example: the sale of diesel and petrol cars remain legal. There are those who would argue that the sale of such vehicles is grossly prejudicial to the protection of the environment.

In circumstances where products/services of this kind are legally permissible, RTÉ believes it is important that the Commission, again by way of a Guidance Note, would

provide more detail and clarity in respect of what it believes may constitute behaviour that is grossly prejudicial to the protection of the environment.

18. Alcohol

RTÉ notes the changes proposed for inclusion in Alcohol legislation with the Public Health (Alcohol) Act and would ask that this be viewed holistically, in tandem with the Draft Codes and Rules for Video-On-Demand Services to avoid confusion.

The delivery of content is now almost universal in terms of broadcast and on-demand. However, the broadcast rules do not appear to be aligned with On Demand and separately the AVMSD advises that :

- Audiovisual commercial communications for alcoholic beverages in on-demand audiovisual media services should comply with the criteria applicable to television advertising and teleshopping for alcoholic beverages laid down in Directive 2010/13/EU.

This in conjunction with the Public Health(Alcohol) Act could inadvertently create an unlevel playing field in that alcohol restrictions for broadcasters are more stringent than those for non-broadcast VOD operators.

- Both in terms of the watershed and
- In terms of alcohol volume (abv)

Additionally, can the Commission clarify if the existing guidance on non-alcohol products still applies?

2. Draft Code on Advertising, Teleshopping Signal Integrity

Exclusions Removal

RTÉ notes two exclusions have been removed concerning information announcements broadcast on RTE services, for RTÉ performing groups and outside broadcast and non-broadcast events (below)

- Information announcements broadcast on RTÉ services for forthcoming concerts, recitals, or performances, whether intended for broadcast or not, given by the National Symphony Orchestra, the RTÉ Concert Orchestra, and other RTÉ performing groups or of any other comparable groups which are employed by or under contract to RTÉ or employed by or under contract to a broadcaster and to which the public are allowed entry

- Announcements of outside broadcasting events or of non-broadcast events organised in whole or in part by the broadcaster if the public are allowed entry free of charge. In the case of announcements of outside broadcasting events and announcements of non-broadcast events linked to a sponsorship arrangement, the broadcaster may credit the sponsor in accordance with the rules in relation to sponsorship in this Code.

RTÉ does not regard these as specific examples but as mintage exclusions.

Taking account of the above, it raises a question whether RTÉ's promotion of the BT Young Scientist Exhibition still falls under a category that is exempt . Up to now, RTÉ would have regarded this promotion as falling under exemption 5 (above) in the current code.

The issue is where would a promotion of kind now fall? Again, this is an area the Commission could address in more detail in a Guidance Note.

We trust the above is a constructive response and RTÉ is happy to engage further with the Commission on these issues.

Kind Regards



Brian Dowling

RTÉ Head of Editorial Standards & Compliance



Conor Mullen

RTÉ Head of Strategy/Commercial Compliance

Shine Submission to the Broadcasting Authority of Ireland on the Code of Programme Standards

October 2, 2024

Headline is Ireland's national programme for the responsible reporting and representation of mental illness. The programme is fully funded under Ireland's National Strategy to Reduce Suicide – Connecting for Life. We are a programme of Shine, a national organisation providing information and support to individuals and family members affected by mental illness. Shine also runs Ireland's National Stigma Reduction Programme, See Change.

Headline has four core functions:

- **Support** Irish media to produce responsible and representative mental health stories through guidance, awards, and peer support.
- **Monitor** Irish news media for potentially harmful content.
- Produce **research** and guidance based on knowledge gaps in the media and mental health sectors.
- Provide workshops to **educate** the current and next generation of media professionals on mental health.

Headline has monitored over 100,00 news articles and broadcast segments related to suicide or mental illness. Our work in media representations of mental illness is informed by that monitoring, as well as the experience of those using Shine's frontline services. There is a long-established connection between the media and its impact on forming societal and individual attitudes. There is also a large body of evidence linking irresponsible media practices of suicide reporting to an increase in suicidal behaviours. Conversely, there is mounting evidence that responsible reporting on suicide can have a positive impact on audience members' suicidal intent and ideation. When monitoring the Irish media, we apply international best practice guidance provided by the World Health Organisation and the Samaritans Suicide Reporting Guidelines. The purpose of these guidelines is to reduce the potential for suicide contagion and reduce harm to audiences when consuming mental health content.

Based on our years of media monitoring analysis, Headline has made the following observations of, and recommended amendments to Coimisiún na Meán's Draft Code of Programme Standards. Recommendations for additional text are [underlined in blue](#).

Appendix 1 on Undue Offense and Harm

We welcome the inclusion of suicide and self-content under the definition of ‘harm’, and the guidance on providing audiences at risk of suicide or mental distress with prior warnings of that content. We also welcome the inclusion of consideration for both individuals and groups which may be harmed by broadcast content. This is particularly relevant to the depiction of those living with mental illness or identify with particular mental health experiences.

We also welcome the adoption of Article 21 of the Charter of Fundamental Rights of the European Union or the Equal Status Act 2000 as the basis for determining serious offense to individuals or groups by means of the language or representations of those individuals or groups. We note this includes those with disabilities which includes people living with psychosocial disabilities, more commonly known as mental illness or mental health challenges.

12.4 Importance of Context

Section 12.4 of the Code outlines the requirements for ‘timely corrective action’ in live programming in the event of unplanned content causing undue offence. We recommend that this is expanded to include content that may cause harm, as outlined in Appendix 1. This is especially of concern in relation to broadcasters whose guest contributors speak about detailed methods of suicide or self-harm. We frequently observe in our media monitoring the unexpected inclusion of these details in caller-driven radio programming. In 2022, we observed that in 66% of radio programmes that aired detailed descriptions of suicide, these details were shared by a contributor. We recommend that in this instance, broadcasters share a helpline and discourage the caller from sharing explicit details of a suicide method so as to prevent harm to audiences at risk of suicide.

Recommendation:

12.4 Broadcasters shall ensure that in live programming they take timely corrective action where unplanned content is reasonably likely to have caused undue offence [or harm](#).

Such action may be to acknowledge, clarify, [provide support](#), and/or apologise for such content.

14. Protection from Harm

We note that 14.1 addresses broadcast programming material containing elements of self-harm or suicide. We recommend that this be expanded to include suicide behaviours which would include attempted suicide. While all attempted suicide can be considered a form of self-harm, not all self-harm is an attempted suicide. This distinction is important and the inclusion of ‘behaviours’ would allow for this.

Recommendation:

14.1 Broadcasters shall ensure that they take due care when broadcasting programme material containing characters, actions and personal circumstances with which audiences may identify and which can cause distress, particularly in relation to content such as sexual violence, self-harm or suicide [behaviours](#), reconstructions of factual events and archive footage. Programme material of this nature shall be accompanied by some form of audience information or guidance, such as prior warnings.

While the above guidance is useful, we believe explicit direction on suicide method content would be helpful for broadcasters.

Recommendation:

[14.X Broadcasters shall not broadcast the method used for self-harm, suicide, or attempted suicide. Depictions and/or descriptions of methods and techniques for suicide behaviours must have strong editorial justification for their inclusion.¹](#)

We note also the new Draft Code Section 14.2 includes a recommendation we previously made regarding the inclusion of telephone numbers to facilitate immediate contact with a helpline. We welcome this move in support of audiences who are distressed by content and who may not be in a position to use a website to find an appropriate or relevant helpline. We believe this is a very positive step toward the Code's inclusivity and the accessibility of preventative measures against harm.

16. Respect for Persons and Groups in Society

We welcome the adoption of Article 21 of the Charter of Fundamental Rights of the European Union or the Equal Status Act 2000 as the basis for Section 16.1 on incitement to violence or hatred directed against groups or individuals. We note also that 16.2 on the justification of emphasis now includes disability. Psychosocial disabilities, or mental health diagnoses, are often used to discriminate against individuals, or described in a derogatory way and out of context. This is a recommendation we previously made to the BAI and we welcome it here in this new Draft Code.

Additional comment on the Draft Code

It is difficult to apply a code to something that does not exist. There is a stark absence of representations of mental illness in Irish broadcasting, outside of the reporting of serious violent crime. This does not reflect the experience of the overwhelming majority of people living with mental illness, and significantly informs audiences' attitudes to and perspectives on mental illness. Over a three-year period in stories related to certain diagnoses of mental illnesses, just 2% included the perspective of a person living with that

experience. It is difficult, therefore, to amend the existing Code to protect against this lack of representation. Programme content should not stigmatise, support, or condone discrimination or hatred against any persons or groups in society, but the absence of more representative experiences of mental illness makes this almost impossible to avoid. We strongly encourage Coimisiún na Meán to consider this in their programme funding and research schemes.

END

Consultation title	Revision - Codes and Rules (Stage 1 Consultation). Deadline for Response – 3rd October 2024
Organisation name	Sunshine 106.8

Your response:

Please insert your response under each of the respective questions below.

Question 1: Do you have any comments on the general amendments that are being proposed to apply to each of the Broadcasting Codes and Rules?

No

Question 2: Do you have any comments on the proposed changes to the General Commercial Communications Code?

No

Question 3: Do you have any comments on the proposed changes to the Children's Commercial Communications Code?

No

Question 4: Do you have any comments on the proposed changes to the Code of Programme Standards?

No

Question 5: While the Code includes guidance for broadcasters on undue offence, it is not defined. What are your views as to whether the Commission should include a definition of undue offence in the code. If you think a definition should be included, what factors or criteria might the Commission use to determine that undue offence has been caused?

No

Question 6: Aside from proposals about hourly limits on advertising and teleshopping, do you have any comments on the Draft Media Service Code and Media Service Rules (Advertising, Teleshopping, Signal Integrity and Information)?

No

Question 7: What are your views on the proposal to retain the maximum of 12 minutes of advertising and teleshopping per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?

None

Question 8: Aside from proposals about hourly advertising limits, do you have any comments on the Media Service Rules (Advertising – Radio)?

No

Question 9: What are your views on the proposal to retain the maximum of 10 minutes of advertising per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?

The requirement that no more than 15% of output is appropriate, however, a limit of no more than 10 minutes per clock hour is unnecessary. Broadcasters should be permitted to have greater flexibility to determine when and where advertisements are best placed. Commercial Radio Broadcasters will always need to balance listenership ratings with commercial revenues.

The commercial radio industry in Ireland is now 35 years in existence and is, as such, a mature industry. There is limited benefit in imposing rules that limit the ability of small broadcasters to maximise revenues to ensure viability and sustainability. Flexibility around minutage and placement could allow stations to place advertising in popular day parts where premium rates can be achieved.

Stations will be anxious and careful not to over burden key listenership slots with inappropriate levels of advertising – doing so would be counterproductive and ultimately would not achieve commercials aims.

We would suggest that the limit on any given clock hour should be no more than 50% above the average ie no more than 22.5% in any clock hour.

Question 10: Do you have any comments on the changes proposed for the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs?

No



Question 11: Do you have any comments on the Draft Short News Reporting Code?

No



1/10/24

Aighneacht: Draft Media Service Codes and Rules Consultation

TG4 welcomes the opportunity to give feedback on the draft Media Service Codes and Rules dated 4 September 2024.

TG4 has the following comments in green:

Stage 1 Consultation questions:

Question 1 - Do you have any comments on the general amendments that are being proposed to apply to each of the Broadcasting Codes and Rules?

Yes, see below in green.

Question 2 - Do you have any comments on the proposed changes to the General Commercial Communications Code?

1. Section 3.1: the stated purpose of the Code is: *to ensure that broadcasters that are under the jurisdiction of the State comply with the requirements of Articles 6(1), 6a(1) to (3), 9, 10, 11, 15 and 22 of the Audiovisual Media Services Directive and the duties set out under the Act (including those under Sections 46J and 46M) relating to the broadcasting of commercial communications on their services.*

Articles 6(1), 6a(1)-(3) and Article 15 of the AVMSD do not relate to commercial communications. The reference to these sections should be removed from s3.1.

2. Throughout the draft Code there's numerous references to broadcasters ensuring that commercial communications comply "*with relevant Irish and European legislation and with the rules, regulations and codes of practice issued from time to time by any relevant competent authority*".

While TG4 notes that the Commission must act in accordance with the Constitution and various pieces of legislation as detailed in section 4.2 of the Code, is it the Commission's function to enforce the unspecified pieces of legislation/regulations which are referred to in the catch all phrases in the Code?

This goes beyond the purposes of the Code as stated in section 3.1 and this form of language should be removed from the Code.

While similar language was included in the previous code, in addition to the fact that this obligation goes beyond what's stated in the Purpose of the Code, the impact of a breach of the new draft code is significantly different and as such it is inappropriate to include catch all phrases like this in the Code. A breach of those other unspecified pieces of Irish and European legislation and rules regulations and codes of relevant competent authorities would amount to a breach of the Code and a breach of s8B of the OSMR Act with a possible significant fine under the OSMR Act. Any breaches of other legislation or European legislation, rules, regulations and codes of practice issued from time to time by any relevant competent authority should be addressed under the applicable Irish legislation/European legislation and such a breach should not constitute a breach of the Code or of s8B of the OSMR Act.

In addition, there's numerous references to broadcasters ensuring that commercial communications comply with specified pieces of legislation e.g. health and gambling legislation. Similar concerns arise in respect of these references.

3. Footnote 1 provides: ¹ *Broadcasters should be aware that other classes of commercial communication are prohibited, limited or otherwise restricted by legislative or regulatory provisions than those set out in this section of the Code.*

See comment at 2.

It is acceptable to state the fact that other requirements apply which are set out in other legislative or regulatory provisions but it is not appropriate for the Code to impose an obligation on broadcasters to comply with those other requirements with a resultant breach of the Code or of s8B of the Act for failure to comply.

4. S6.1 and S6.2 Waiver: The waiver in these sections is inappropriate for a regulatory code. Waiver language is appropriate in a contract between two parties. Waiver language has no place in a Code issued by a Regulator which can result in severe penalties for a media service provider in the event of a breach. Sections 6.1 and 6.2 should be deleted.
5. S7.3: Please add the word "alleged" before the word "failure".
6. Definition of product placement: please clarify how a broadcaster would know if a video included product placement as defined, as it would not know if payment has been made to the user who has generated the video.

7. Section 13.2 prohibits commercial communications which *“are for alcoholic beverages and are aimed specifically at minors or encourage immoderate consumption of such beverages.”*

Should this read *“that are aimed specifically at minors or that encourage...”*?

8. Sections 14.15, 14.16 and 14.17: these sections relate to children - should be removed from this Code and instead included in the Children’s Commercial Communications Code?

9. Section 16:11 provides: *Television broadcasters shall ensure that a sponsorship logo is not shown during children’s programmes, documentaries or religious programmes they provide.*

There is no obligation on the Commission under the relevant article of the AVMSD to prohibit sponsorship of these programmes, the Commission has the discretion to prohibit. TG4 does not agree that sponsorship of these programme should be prohibited and section 16.11 should be removed.

10. Section 17.3 “produce” should read “product”.

11. Section 21.13 this section is more appropriate for the Children’s Commercial Communications Code. Should this section be instead included in the General Commercial Communications Code?

Question 3 - Do you have any comments on the proposed changes to the Children’s Commercial Communications Code?

1. S6.1 and S6.2 Waiver: The waiver in these sections is inappropriate for a regulatory code. Waiver language is appropriate in a contract between two parties. Waiver language has no place in a Code issued by a Regulator which can result in severe penalties for a media service provider in the event of a breach. Sections 6.1 and 6.2 should be deleted.

2. S7.3: Please add the word “alleged” before the word “ failure “.

3. S11.1: this section provides that *All children’s commercial communications shall comply with relevant Irish and European legislation and with the rules, regulations and codes of practice issued from time to time by any relevant competent authority.*

While TG4 notes that the Commission must act in accordance with the Constitution and various pieces of legislation as detailed in section 4.2 of the Code, is it the

Commission's function to enforce the unspecified pieces of legislation/regulations which are referred to in this catch all phrase in s11.1 of the Code?

It is inappropriate to include a catch all phrase like this in the Code. A breach of those other unspecified pieces of Irish and European legislation and rules regulations and codes of relevant competent authorities would amount to a breach of the Code and a breach of s8B of the OSMR Act with a possible significant fine under the OSMR Act. Any breaches of other legislation or European legislation, rules, regulations and codes of practice issued from time to time by any relevant competent authority should be addressed under the applicable Irish legislation/European legislation and such a breach should not constitute a breach of the Code or under s8B of the OSMR Act.

The language in s11.1 goes beyond the purposes of the Code as stated in section 3.1 and it is inappropriate for the reasons outlined. This language should be removed from s11.1 of the Code.

Question 4 - Do you have any comments on the proposed changes to the Code of Programme Standards?

1. With the exception of the scheduling obligations and warning obligations TG4 proposes that the remainder of the Code should apply to programme material produced after the date the Code comes into operation. Programmes are produced and remain in rights for a number of years. It is not reasonable that programmes which were produced in accordance with legislation and codes which were in place at the time of production, cease to be compliant because the rules change between the date of production and the expiry of the rights period. The current language would discourage broadcasters from investing in cost effective programming which has a long shelf life. In the absence of this suggested change, programmes which were produced in good faith in accordance with the laws/code in place at time of production and which continue to be broadcast in accordance with the rights arrangements applicable to the content, might no be longer compliant because of a change in the laws/code.

In the absence of this suggested change the regulatory arrangements of the Commission are not operating fairly as is required by s4.5 of the Code.

Similarly in the absence of this suggested change the Commission is not complying with s7(3) of the OSMR Act which obliges the Commission to: *stimulate the provision of high quality, diverse, and innovative programmes by providers of broadcasting services.*

2. S6.1 and S6.2 Waiver: The waiver in these sections is inappropriate for a regulatory code. Waiver language is appropriate in a contract between two parties. Waiver language has no place in a Code issued by a Regulator which can result in severe penalties for a media service provider in the event of a breach. Sections 6.1 and 6.2 should be deleted.
3. S11.1 the Objectives of the Code should specify the requirement to have due regard to freedom of information as referenced in S4.3 of the Code. TG4 suggests that s11.1 should read as follows (the additional language is underlined): *to promote the responsible provision of broadcasting services which enhance access to information, entertainment and education and a range of views, while avoiding undue offence and harm and having due regard to the right to freedom of expression referenced in s4.3 of this Code*

4. S12.5 provides: *Broadcasters shall ensure that all audience information and guidance mechanisms are provided in a manner which is clearly audible for radio audiences and clearly visible and audible for television audiences.*

Guidance is required on the form of visible warning which a broadcaster must give.

Guidance is required on the weight which will be attached to the warnings which are given by the broadcaster in the event that the Commission determines there is a breach.

5. S12.6: clarity is required on the meaning of the following obligation: *Broadcasters shall ensure that they promote on-air their audience information and guidance mechanisms.*
6. S15.3 in respect of protection for children provides: *Broadcasters shall ensure that they provide sufficient information to audiences about content which may impair the physical, mental or moral development of children. Television broadcasters shall use a system describing the potentially harmful nature of the content on their service/s. Information provided to audiences should be displayed at the beginning of a programme and after a programme returns from a commercial break.*

TG4 suggests that the warning requirement after the commercial break is unnecessary and that this should be removed.

7. S15.5(b) and (c): these refer to age verification tools and encrypting. These are not applicable to linear. The Code does not apply to on-demand.

8. S16.2: the reference to content being justified lacks clarity and it should refer to editorially justified.
9. S16.2 provides: *Broadcasters shall ensure that programme material only emphasises sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation when such references are justified, having regard to the provisions of this Code, in particular, the importance of context.*

The language which we have underlined has the effect that a failure to comply with another aspect of the Code puts the broadcaster in breach of s16.2 also. The language which we have underlined should be deleted.

10. S16.3: There is a prohibition in the OSMR Act on programme material which incites hatred and violence against groups. The OSMR Act also imposes generic obligations not to cause undue offence. There is no obligation in the OSMR Act not to cause offence against the specified groups. This standard in s16.3 imposes a more onerous burden on broadcasters and it goes beyond what is required by the OSMR Act. The word “unduly” should be included before the word “offensive” to align with the OSMR Act.
11. S17.1: The words “reasonably regarded” should be included in this section because this is the language used in clause 46J of the OSMR Act. The language in s17.1 imposes a more onerous burden on broadcasters in the absence of these additional words and it goes beyond what is required by the OSMR Act.
12. S16.2, s18.1, s18.5, 18.6: Again, there is an obligation to have regard to *the provisions of this Code...* and this language should be deleted because it has the effect that a failure to comply fully with other aspects of the Code puts the broadcaster in breach of these sections also. See comment at 9 above.
13. S18.1, 18.2 18.4, 18.5, 18.6, 18.9 and 18.10 are problematic for acquired programming because the broadcaster licenses rights in such programming but this programming is not produced by or on behalf of the broadcaster and as such the broadcaster will not be able to comply with these obligations for acquired programming. The broadcaster will have no involvement in the production process and will not be able to comply with these requirements. The Code should state that these sections only apply to programmes produced by or for a broadcaster for the following reasons:

S18.1 Broadcasters licensing acquired programming are not involved in the production process and they will not know if there has been an unwarranted

encroachment on the privacy of an individual in a programme or the means employed to make a programme.

S18.2: Broadcasters licensing acquired programming are not involved in the production process and they will not know if a participant is aware of the: *subject matter, context and the nature and format of their contribution so that their agreement to participate constitutes informed consent.*

18.4 Broadcasters licensing acquired programming are not involved in the production process and they would not have the knowledge of the participants to be able to comply with these requirements in respect of vulnerable persons or those under 16.

18.5 Broadcasters licensing acquired programming are not involved in the production process and as such they would not be involved in obtaining consent from participants and they would not be able to comply with the requirements in this section in relation to obtaining consent.

18.6 see comment 14 below. In addition, broadcasters licensing acquired programming are not involved in the production process and as such they would not be involved in the consent process for participants and they would not be able to comply with the requirements in relation to withdrawal of consent in this section.

18.9 Broadcasters licensing acquired programming are not involved in the production process and as such they will not be able to comply with the requirement to: *have due regard to the particular considerations that apply when filming in situations of emergency or when filming victims of accidents or those suffering personal tragedy, in order to ensure that the privacy of such persons is not unreasonably encroached upon.*

18.10 Broadcasters licensing acquired programming are not involved in the production process and as such they will not be able to comply with the requirement to: *ensure that surreptitious filming or recording is only used where it is warranted.*

14. S18.6: it is unclear what is meant by “indications of withdrawal of consent”. This differs from a request to withdraw consent. The phrase requests for withdrawal of consent is used in the Code of Fairness Objectivity and Impartiality in News and Current Affairs. It is not clear why s18.6 is included in the Programme Standards Code as it goes beyond what it required by the OSMR Act. S18.6 should be removed because it interferes with the contractual relationship between the broadcaster and participant who has signed a contract consenting to participate or who has otherwise agreed to participate in a programme produced by or on behalf of a broadcaster. The entitlement in the Code to renege on a contractual commitment will interfere with the broadcaster’s ability to conduct its business in accordance with its statutory

obligations. Similarly, a request to withdraw consent should not be included in the Code for the same reasons.

Different issues arise for programming which is acquired by a broadcaster under licence. See comments above.

15. The appendix provides the following guidance:

In assessing whether programme material may reasonably be regarded as causing harm and/or undue offence, broadcasters may have regard to the following non-exhaustive matters: -

- *.....the extent to which the programme material does not comply or adhere to the obligations of this Code.*

This sentence which we have underlined should be deleted. See comment at 9 above.

16. The appendix provides the following guidance:

In assessing whether programme material may reasonably be regarded as causing harm and/or undue offence, broadcasters may have regard to the following non-exhaustive matters: -

In the case of harm

- *the extent to which the programme material has unreasonably encroached upon the privacy of an individual/s.*

This wording suggests that unreasonably encroaching on privacy constitutes harm. This is excessive and the language which we have underlined should be removed.

17. S18.4 provides: *Broadcasters shall have due regard to the particular considerations that apply in the case of a vulnerable person or a child under 16 years of age, to ensure that the privacy of such persons is never unreasonably encroached upon. Vulnerable people are individuals whose personal circumstances or well-being require that extra care be taken.*

Guidance is required on how to identify participants who are *individuals whose personal circumstances or well-being require that extra care be taken.*

Guidance is required on what steps should be taken to ensure that *extra care should be taken.*

Guidance is required on consent and, in particular consent of vulnerable participants.

18. There's many references in the code to editorial justification, clear editorial justification and strong editorial justification. The term editorial justification should be used throughout. The additional words create uncertainty and they should be removed.
19. Clarity is required on how a broadcaster can rely on editorial justification as permitted by the Code for content which the broadcaster has acquired when it has no involvement in the production of the programme or editorial process relating to that programme.

Question 5 - While the Code includes guidance for broadcasters on undue offence, it is not defined. What are your views as to whether the Commission should include a definition of undue offence in the code. If you think a definition should be included, what factors or criteria might the Commission use to determine that undue offence has been caused?

In the Appendix an example of undue offence is described as previous "serious" offence and previous "widespread" offence. Can undue offence be defined as programme material reasonably regarded as causing serious offence or widespread offence? Clarification would be required on the meaning of serious and widespread.

Question 6 – Aside from proposals about hourly limits on advertising and teleshopping, do you have any comments on the Draft Media Service Code and Media Service Rules (Advertising, Teleshopping, Signal Integrity and Information)?

1. S6.1 and S6.2 Waiver: The waiver in these sections is inappropriate for a regulatory code. Waiver language is appropriate in a contract between two parties. Waiver language has no place in a Code issued by a Regulator which can result in severe penalties for a media service provider in the event of a breach. Sections 6.1 and 6.2 should be deleted.
2. S7.3: Please add the word "alleged" before the word "failure".

Question 7 - What are your views on the proposal to retain the maximum of 12 minutes of advertising and teleshopping per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?

Does the Commission anticipate that it will approve alternative time limits for TG4 and RTE?

Question 8 – Aside from proposals about hourly advertising limits, do you have any comments on the Media Service Rules (Advertising – Radio)?

TG4 has no comment on the Media Service Rules (Advertising – Radio) draft Code.

Question 9 - What are your views on the proposal to retain the maximum of 10 minutes of advertising per clock hour? WHAT are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?

TG4 has no comment on the Media Service Rules (Advertising – Radio) draft Code.

Question 10 - Do you have any comments on the changes proposed for the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs

1. The Code should state that it will only apply to content produced by or on behalf of broadcasters.

Broadcasters are not able to comply with any of the terms of the Code in respect of acquired programming which is produced by third parties and licensed to the broadcaster. The broadcaster of acquired programming is not involved in the production process, it does not compile produce or present acquired programming and as such it cannot comply with the Code in respect of acquired programming.

2. S4 Regulatory Principles: specific reference should be made to the Commission having regard to freedom of expression as per the language in the Programme Standards Code.

The following should be included as a new s4.7: *In its interpretation of the Code, the Commission will have due regard to the right to freedom of expression conferred under Article 40.6.1 of the Constitution, Article 11 of the Charter of Fundamental Rights of the European Union, and Article 10 of the European Convention on Human Rights.*

3. S6.1 and S6.2 Waiver: The waiver in these sections is inappropriate for a regulatory code. Waiver language is appropriate in a contract between two parties. Waiver language has no place in a Code issued by a Regulator which can result in severe penalties for a media service provider in the event of a breach. Sections 6.1 and 6.2 should be deleted.

4. S11: the Code Objectives should specify the requirement to have due regard to freedom of information.

TG4 suggests that the following language should be added as an additional bullet point in s11: *to promote the responsible provision of broadcasting services which*

enhance access to news and current affairs content, while having due regard to the right to freedom of expression referenced in s4.7 of this Code.

5. S11 the first bullet point: should this be amended to read “or making available” instead of “availability”?
6. S11 the fifth bullet point lists one of the Codes Objectives as follows: *To ensure news and current affairs content complies with applicable Irish and European legislation and has regard to international conventions.*

Is it the Commission’s function to enforce the unspecified pieces of legislation/conventions which are referred to in this catch all phrase?

This goes beyond the purposes of the Code as stated in section 3.1 and this form of language in the fifth bullet point should be removed from the Code.

A breach of those other unspecified pieces of Irish and European legislation and international conventions would amount to a breach of the Code and a breach of s8B of the Act with a possible significant fine under the OSMR Act. Any breaches of other Irish legislation/European legislation or international conventions should be addressed under the applicable Irish legislation/European legislation/international convention and such a breach should not constitute a breach of the Code or a breach of s8B of the OSMR Act.

7. S12.1: this provides: *In their treatment of news and current affairs content, broadcasters shall comply with section 46L of the Act.*

The provisions of s46L should be reproduced in the body of the Code or in a schedule to the Code in the interests of clarity.

8. S12.1 The Code specifies that broadcasters must comply with s46L of the OSMR Act.
s46L (1) (b) provides as follows: *that the treatment of current affairs, including matters which are either of public controversy or the subject of current public debate is fair to all interests concerned, and that the matter broadcast or made available is presented in an objective and impartial manner and without any expression of the broadcaster’s or provider’s own views.*

TG4 proposes that the Code should specify that the Code will only apply to the content referred to in s46L(1)(b) which has been produced after the coming into effect of the Code.

Programmes are produced and remain in rights for a number of years. Content which comes into this category is often produced and repeated during the course

of the rights period applicable to this content, and a change of the rules after a programme has been produced but while it is still in rights will discourage broadcasters from investing in cost effective current programming which has a long shelf life. It is not reasonable that programmes which were produced in accordance with legislation and codes which were in place at the time of production, cease to be compliant because the rules change between the date of production and the expiry of the rights period.

In the absence of this suggested change the regulatory arrangements of the Commission are not operating fairly as is required by s4.4 of the Code.

Similarly in the absence of this suggested change the Commission is not complying with s7(3) of the OSMR Act which obliges the Commission to: *stimulate the provision of high quality, diverse, and innovative programmes by providers of broadcasting services.*

And which further requires the Commission to: *provide a regulatory environment that will sustain independent and impartial journalism.*

9. Is it intended that s12.1 and s12.2 will also apply to matters “ which are either of public controversy or the subject of current public debate” as mentioned in s46L(1)(b)?
10. S12.6: is the reference to “providers of broadcasters” a typo, and if it is not a typo what is intended by this phrase?
11. S13.3 provides: *Care shall always be taken with the inclusion of interviews with children or vulnerable people in news or current affairs content. In all cases, the over-riding principle must be to avoid the broadcast or availability of material that may be unfair or detrimental to their interest.*

Clarity is required on the meaning of “detrimental to their interest”.

12. S14.2 provides: *Two, or more, related programmes may be considered as a whole if the programmes are transmitted or made available within a reasonable time period and such links are made clear to the audience.*

The words “and such links are made clear to the audience” should be deleted as this requirement appears unnecessary and it is not required by the OSMR Act.

In addition, guidance is required on the meaning of a reasonable time period.

13. S14.5: guidance is required to clarify how a broadcaster can genuinely express its views on broadcasting policy if it's required to remain impartial and objective while expressing its views.
14. S14.7: guidance is required to clarify how a "personal " or "authored" current affairs segment can in fact be personal if it nevertheless has to comply with the *broadcaster's statutory obligations to be impartial, objective and fair to all interests concerned.*
15. S15.1 this should refer to Irish election/Irish referendum.
16. 16.1 provides: *A broadcaster shall adhere to all legislative requirements when sourcing, compiling, producing and presenting news and current affairs content.*

Is it the Commission's function to enforce the unspecified pieces of legislation which are referred to in this catch all phrase?

This goes beyond the purposes of the Code as stated in section 3.1 and the language in s16.1 should be deleted.

A breach of those other unspecified pieces of legislation would amount to a breach of the Code and a breach of s8B of the Act with a possible significant fine under the OSMR Act. Any breaches of other legislation should be addressed under the applicable legislation and such a breach should not constitute a breach of the Code or under s8B of the OSMR Act.

17. S16.2 provides: *A broadcaster shall have due regard to guidance issued by the Commission from time to time in respect of this Code.*

This should be deleted.

This imposes an obligation on the broadcaster to have due regard to guidance and a failure to do so would amount to a breach of the Code and a breach of s8B of the Act with a possible significant fine under the OSMR Act.

S9.1 provides that the Guidance issued by the Commission is not binding however a failure to give due regard to this guidance is nevertheless a breach of the Code which is not reasonable.

Question 11 - Do you have any comments on the Draft Short News Reporting Code?

1. S6.1 and S6.2 Waiver: The waiver in these sections is inappropriate for a regulatory code. Waiver language is appropriate in a contract between two parties. Waiver language has no place in a Code issued by a Regulator which can result in severe

penalties for a media service provider in the event of a breach. Sections 6.1 and 6.2 should be deleted.

2. S11.4 provides:... . *If this is not possible, the extract shall be chosen from the relevant broadcaster established in another EU Member State, in which case the law of the EU Member State where the broadcaster supplying the initial signal (that is, giving access) is established shall apply.*

If the laws of another EU member state will apply as outlined above, the Code should clarify that in those instances the OSMR Act/ Code will not apply to those extracts.



Virgin Media Television response to:

Consultation Document: Draft Media Service Codes and Rules,
Chapter 2 (Phase 1).

Non-Confidential

3 October 2024



Introduction

Virgin Media Television welcomes the opportunity to respond to the consultation on the Draft Media Service Codes and Rules. Please find below Virgin Media Television's response to the questions.

Please do not hesitate to contact us should you require clarification on any of our responses.

Virgin Media Television Response to Consultation on the Draft Media Service Codes and Rules

Q1. Do you have any comments on the general amendments that are being proposed to apply to each of the Broadcasting Codes and Rules?

Virgin Media Television has no further comments on the general amendments proposed to apply to each of the Broadcasting Codes and Rules.

Q2. Do you have any comments on the proposed changes to the General Commercial Communications Code?

Virgin Media Television has some comments proposed changes to the General Commercial Communications Code. We note the upcoming legislative changes; the Public Health Alcohol Act 2018 in January 2025 and Gambling Regulation Act 2024 which is awaiting commencement. Virgin Media Television recognises that this is extremely important legislation, and we are very much in support of it.

Virgin Media Television believes that a wider discussion and review is needed on the pre-watershed period of 5.30am - 9.00pm as it no longer reflects viewing habits in Ireland. For example, live sports events typically commence from 7pm on (e.g., Champions League, international football matches). It makes sense to amend the 9pm watershed to 7.30pm so that it reflects the realities of what viewers want to see from broadcasters. As a public service broadcaster who does not receive licence fee or exchequer funding, the funding of rights can only be met through the sale of sponsorship/advertising.

We firmly believe that there is scope to support the objectives of the legislation, while facilitating much needed revenue streams for sports rights acquisition.

3. Do you have any comments on the proposed changes to the Children's Commercial Communications Code?



Virgin Media Television has no further comment on the proposed changes to the Children's Commercial Communications Code.

Q4. Do you have any comments on the proposed changes to the Code of Programme Standards?

Virgin Media Television does not agree with some of the proposed changes to the Code of Programme Standards. We have concerns in respect of the following proposed changes to the Code of Programme Standards:

- (i) The term "undue offence"
- (ii) the change from the current principle-based approach which has stood the test of time to a rule-based approach.

- (i) The term "undue offence"

Virgin Media Television welcomes the consideration and guidance provided in Appendix 1, on the clear distinction between harm and undue offence with explanation provided on what constitutes serious/widespread undue offence. We note that the guidance acknowledges that there is no guarantee that programmes will be free from material that some audience members may consider to be offensive and that matters which cause offence are largely subjective in their nature.

We note that the Online Safety and Media Regulation Act 2022 includes the term "undue offence" in the context of other serious matters of harm, incitement and authority of State. We agree that the term "offence" in itself is very subjective in nature, and our concern is that this may now be perceived to introduce or establish a lesser standard for broadcasters. There is a vast difference between causing offence/right to freedom of expression and causing serious/widespread undue offence.

We would therefore respectfully suggest that Coimisiún na Meán in addition considers retaining some or similar text that is currently contained the current Code of Programme standards that recognises lack of right not to be offended and the programmer's duty to provide a diverse range of programming. We have highlighted some examples of the current text below that we believe should be retained in the new Code:

- For example, under the Foreword Section (page 01) as follows *"It would be an unconscionable restriction on the freedom of expression and the vitality of broadcasting if nothing likely to offend anybody could ever be broadcast But that is neither what the law requires, nor what this Code prescribes. Not only is there no right not to be offended, but it will also be unavoidable that a programme service that captures the full richness of life and that seeks to address the entire range of topics of concern to the audience will contain material which will be a source of offence to some. There is an obligation on broadcasters to be*



provocative and to contribute to the awareness that a society has of itself, of its dynamic and changing character and of its place in the modern world"

- Under the heading "The distinction of harm and offence" (page 9), For example, the current Code provides "Acknowledging this, there can be no guarantee that programme material will be free from offence. There is no right not to be offended and, for broadcasters, it is to be expected that, in fulfilling their duty to provide a diverse range of programming that caters to a diverse audience, there will be programming that causes offence to some members of the audience."

(ii) Change from a principle based to rule-based approach

Virgin Media Television has been a Public Service Broadcaster for 25 years. In our experience, the principle-based approach set out in the current Code of Programme Standards has proven to work very well and has clearly stood the test of time. We note that the themes identified in the current Standards Code under each of the principles have been retained. A principle based approach allows more scope for future changes. We strongly recommend that the principle-based approach should be maintained.

Q5. While the Code includes guidance for broadcasters on undue offence, it is not defined. What are your views as to whether the Commission should include a definition of undue offence in the code. If you think a definition should be included, what factors or criteria might the Commission use to determine that undue offence has been caused?

Virgin Media Television strongly recommends not including a definition of undue offence. Please also refer to our response to Q4, we believe that is very important to include additional text/retain some of the text of the current Code i.e. clearly distinguish between offence and serious/widespread nature of the meaning of undue offence.

Q6. Aside from proposals about hourly limits on advertising and teleshopping, do you have any comments on the Draft Media Service Code and Media Service Rules (Advertising, Teleshopping, Signal Integrity and Information)?

Virgin Media Television has no further comments on the Draft Media Service Code and Media Service Rules.

Q7. What are your views on the proposal to retain the maximum of 12 minutes of advertising and teleshopping per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?

Virgin Media Television has no further comments on the proposal to retain the maximum of 12 minutes of advertising and teleshopping per hour clock.



8. *Aside from proposals about hourly advertising limits, do you have any comments on the Media Service Rules (Advertising – Radio)?*

Virgin Media Television has no further comments on the Media Service Rules on radio advertising.

Q9. *What are your views on the proposal to retain the maximum of 10 minutes of advertising per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?*

Virgin Media Television has no further comments on the proposal to retain the maximum of 10 minutes of advertising per clock hour.

Q10. *Do you have any comments on the changes proposed for the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs?*

Virgin Media Television has no further comment on the Draft Code of Fairness, Objectivity & Impartiality in New and Current Affairs.

Q11. *Do you have any comments on the Draft Short News Reporting Code?*

Virgin Media Television has no further comment on the Draft Short New Reporting Code.

Consultation title	Revision - Codes and Rules (Stage 1 Consultation). Deadline for Response – 3rd October 2024
Organisation name	Warner Bros. Discovery
Question 1: Do you have any comments on the general amendments that are being proposed to apply to each of the Broadcasting Codes and Rules? No comments. As a general point, our reading is that much of what is being consulted on amounts largely to a series of non-material clarifications and hence our replies are relatively concise.	

Question 2: Do you have any comments on the proposed changes to the General Commercial Communications Code?

Section 14

Warner Bros. Discovery (“WBD”) submits that further clarification is needed in relation to the child protection provisions in the draft General Commercial Communications Code. The type of content which may ‘*impair the physical, mental or moral development of children*’ is left wholly undefined by the draft Code. The scope of content covered by such a phrase may be excessively broad and impose disproportionate costs on broadcasters. Therefore, WBD submits that, the Code should further specify the particular types of content which may ‘impair the physical, mental or moral development of children’.

Section 13

WBD submits that the definition of ‘*surreptitious commercial communications*’ under section 10 should be expressly stated not to include product placements. Section 13.2 prohibits the broadcasting of any surreptitious commercial communications, which are defined as representations of goods / services ‘*intended by the broadcaster to serve as advertising and might mislead the public as to its nature*’. WBD submits that the phrasing of this definition may also encompass inadequately identified product placements. This could potentially result in broadcasters receiving censure from CNAM under two different sections of the Code, for only one infringing act.

Section 18.2

WBD notes that drafting provided in the General Commercial Communications Code around consumption of alcohol is excessively broad and should allow for more flexibility in terms of content. Section 18.2(b) provides that commercial communications shall not create the impression that the consumption of alcohol contributes towards social or sexual success. However, this definition would appear to inadvertently include the portrayal of alcohol consumption within convivial social contexts (i.e. friends gathering for the purposes of celebration or for the purpose of viewing a sporting event). More specific language or drafting to the effect that enhanced social success would exclude the portrayal of social situations but instead concern illusory claims that alcohol consumption would directly benefit the consumer should be inserted. Therefore, WBD submits that Section 18.2.(b) of the Code should expressly clarify that the portrayal of alcohol consumption within convivial social contexts is not equivalent to creating an impression that alcohol consumption contributes to social success.

Section 18.7

WBD submits that clarification is required in Section 18 in relation to the introduction of the broadcast ‘watershed’ under the Public Health (Alcohol) Act 2018 and the effect this will have on the Code. WBD respectfully submits that it should be clarified that when Section 19 of the Public Health (Alcohol) Act 2018 comes into effect, it will replace Section 18.7(c) of the General Commercial Communications Code and that the Code will not itself input any broadcast ‘watershed’.

Question 3: Do you have any comments on the proposed changes to the Children’s Commercial Communications Code?

Section 13

WBD notes that the drafting provided in the Children’s Commercial Communications Code around the purchasing or provision of a product or service for a child, is excessively broad and should allow for more flexibility in terms of content. Section 13.5 provides that children’s commercial communications shall not create the impression that a parent / guardian who purchases or provides a product / service for a child is better, more intelligent or more generous than one who does not. This would appear to include situations where a parent is portrayed as generous for gifting a product or service to their child. WBD submits that more specific language or drafting should be included to the effect that this provision would exclude the portrayal of gift-giving as generous but instead concern illusory claims that a parent is more generous than a parent who does not purchase this product for their child.

Question 4: Do you have any comments on the proposed changes to the Code of Programme Standards?

Section 15

WBD, echoing the concerns in relation the proposed changes to the General Commercial Communications Code, submits that further clarification is needed in relation to child protection provisions in the draft Code of Programme Standards, which appear to go beyond AVMSD and OSMR Act 2022 and be prescriptive. Sections 15.4 and 15.5 of the draft Code of Programme Standards set out requirements for broadcasters to ensure that content which may impair the physical, mental or moral development of children is only available in such a way that children would not normally hear or see them by means of prior content warnings, age verification tools, encryption, scheduling or other measures. Under Section 15.7, broadcasters must apply the strictest measures to content consisting of pornography and gratuitous violence.

Firstly, besides from pornographic and gratuitous violence content, the type of content which may ‘*impair the physical, mental or moral development of children*’ is left wholly undefined by the draft Code of Programme Standards . The scope of content covered by such a phrase may be excessively broad and impose disproportionate costs on media broadcasters. Therefore, WBD submits that the Code of Programme Standards should further specify the particular types of content which may ‘impair the physical, mental or moral development of children’.

Secondly, it is unclear whether age verification tools based solely on self-declaration of age is an effective measure for the purposes of Section 15.5. WBD respectfully submits that age verification tools which do not rely on self-declaration require complex and burdensome technical mechanisms and may have serious implications for the data protection / privacy rights of viewers. Thus, WBD submits that the provision should specifically provide for the use of age verification tools based solely on self-declaration of age by users.

Thirdly, it is not clear whether the Code requires all content which may impair children’s physical, mental or moral development to be subject to the full extent of protection mechanisms referenced in Section 10, or whether the provision of one (or some) of these protection mechanisms is sufficient, depending on the relevant context. WBD welcomes further clarification on this point.

Question 5: While the Code includes guidance for broadcasters on undue offence, it is not defined. What are your views as to whether the Commission should include a definition of undue offence in the code. If you think a definition should be included, what factors or criteria might the Commission use to determine that undue offence has been caused?

WBD respectfully submits that the Commission should include a definition of undue offence in the Code. While WBD accepts that matters which cause offence can be subjective, echoing our concerns regarding harmful content in Question 4, we submit that leaving the phrase wholly undefined means that the scope of content it covers may be excessively broad.

Given the similar concerns WBD has regarding the lack of a definition of both 'undue offence' and of harmful content', more specifically content which may impair the development of children, WBD submits that consideration should be given to further developing common principles between these terms and matters which broadcasters may have regard to.

Question 6: Aside from proposals about hourly limits on advertising and teleshopping, do you have any comments on the Draft Media Service Code and Media Service Rules (Advertising, Teleshopping, Signal Integrity and Information)?

Section 11

WBD submits that further clarification is needed on the transparency and separation provisions. Section 11.1.1 provides that television advertising and teleshopping is to be kept distinct from other parts of the programme 'by optical and/or acoustic and/or spatial means' and such means shall not contain any audiovisual commercial communications, such as a sponsorship announcement. The draft Code, does not specify what other types of optical, acoustic or spatial means would constitute an effective measure to make advertising or teleshopping distinct. Thus, WBD submit that the Code should provide further clarity, by way of examples, on the forms of content separation which are permissible under Section 11.1.

Question 7: What are your views on the proposal to retain the maximum of 12 minutes of advertising and teleshopping per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?

WBD welcomes the approach taken by CNAM that excludes from the daily advertising and teleshopping limits, announcements by broadcasters or other group entities relating to their programmes. This approach gives broadcasters the flexibility needed to advertise their programmes in an effective way without reducing advertising revenue. However, WBD respectfully suggests that CNAM removes this limit for overnight hours, when there is little likelihood of a substantial viewing audience.

Question 8: Aside from proposals about hourly advertising limits, do you have any comments on the Media Service Rules (Advertising – Radio)?

No comments.

Question 9: What are your views on the proposal to retain the maximum of 10 minutes of advertising per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?

No comments.

Question 10: Do you have any comments on the changes proposed for the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs?

No comments.

Question 11: Do you have any comments on the Draft Short News Reporting Code?

No comments. Our understanding is that the Draft Short News Reporting Code does not contain any substantial changes.

Wireless Ireland's response to Coimisiún na Meán's consultation on the Broadcasting Codes and Rules

Executive Summary

- **Wireless Ireland welcomes Coimisiún na Meán's review of the Broadcasting Codes and Rules, particularly the Stage 2 Review.** This is a timely opportunity to ensure the independent commercial radio sector is supported by a modern regulatory framework that strikes the right balance between providing simplified, proportionate guidance that upholds high editorial standards, while enabling the sector to thrive commercially in a complex and competitive media market.
- **We encourage the Coimisiún to make three key changes to the Codes and Rules to achieve this outcome, namely:**
 - To take a more flexible approach to advertising minutage by retaining the limit on total daily broadcasting time, while allowing a higher hourly cap and averaging across the broadcasting day.
 - To allow integrated commercial messaging in live radio broadcasts, accompanied by appropriate transparency requirements.
 - To take a more proportionate approach to commercial sponsorship on radio programmes, reflecting changes in audience expectations.

Introduction

Wireless Ireland welcomes the opportunity to respond to Coimisiún na Meán's public consultation on the Codes and Rules. Wireless Ireland is the largest operator of local radio in the Republic of Ireland, with stations in Dublin (FM104 and Q102), Cork (96FM and C103), Limerick (Live95), and Louth and Meath (LMFM), as well as our sales house urbanmedia. Our radio stations reach 814,000 adults in Ireland every week.¹ Wireless Ireland is wholly owned by News UK & Ireland Ltd.

This submission provides a response to both the Stage One review (revising the Codes and Rules to implement AVMSD) and the Stage Two review. We respond to specific consultation questions in turn below. Our overarching view on the Codes and Rules has not changed significantly since our response to the last consultation on the Codes and Rules conducted by the BAI in November 2022.

We agree with the objectives of the Codes and Rules. It is in our interest for radio to continue to be an attractive medium for advertisers and for audiences to continue to come

¹ JNLR, weekly reach from July 2023 to June 2024.

to radio in high numbers for trusted, informative and entertaining programming. The Codes and Rules play an important role in underpinning high editorial standards across the Irish radio sector and ensuring that radio audiences are protected from harm.

But radio broadcasters are now operating in a more competitive and complicated market than ever before. Over the last fifteen years, there has been ever more competition for audience attention and - consequently - advertising spend. Irish radio broadcasters are no longer merely competing against each other for audience attention and advertising revenues; we compete against technology companies operating at a global scale, including Google (YouTube), Meta (Instagram and Facebook), Spotify, Amazon (Audible and Amazon Music) and TikTok.

At Wireless Ireland, we have responded to these challenges by innovating. We now distribute our content across traditional radio services, online platforms and on smart speakers, so that our content is available wherever our audiences want to enjoy it. We have diversified beyond live radio, creating a suite of digital streams to complement our broadcast assets and producing highly commended podcasts, including *The Kinahans* and *The Stardust Tragedy* in collaboration with The Irish Sun. But to continue to thrive, our sector needs to be supported by a regulatory framework that keeps up with the pace of technological change and with changing audience habits and expectations.

Radio in Ireland is a heavily regulated sector, compared to both comparable jurisdictions (e.g. the UK) and to other means of distribution (e.g. podcasts, social media). It means that radio is an outlier in the wider media market, and it has created a complex compliance burden for radio broadcasters to navigate. Radio broadcasters now distribute the same content across multiple channels (e.g. radio programmes can be distributed live on FM, online as a livestream, and on-demand as a podcast), but different rules apply to each channel.

In our day-to-day application of the Codes and Rules, we see how disproportionate regulation makes the radio sector less attractive to advertisers. For example, advertisers want to run campaigns across multiple platforms (e.g. radio, TV, podcasts, social media) and they want to use approaches on radio that they can use on other mediums (e.g. presenter livereads). The current iteration of the Codes and Rules means that radio is viewed as slow to adapt and inflexible compared to other mediums, creating a disadvantage for commercial radio stations in attracting advertisers. If the current approach is maintained, it is likely to come at a significant commercial cost to the sector in the long-run.

We welcome the Coimisiún na Meán's further review of the media services codes and media services rules relating to broadcasting (the Stage Two review). We see this as an opportunity to transition to a modern regulatory framework that recognises that Irish radio broadcasters are competing with a much wider competitive set than ever before, and that provides

simplified, proportionate guidance that helps to level the playing field between radio broadcasting and other mediums. We want the Irish radio sector to maintain high editorial standards and high levels of audience trust, and to be a dynamic sector that thrives commercially. We look forward to engaging with the Coimisiún as it works through its review.

Stage One Review (AVMSD implementation): Responses to specific consultation questions

Media Service Code and Media Service Rules (Advertising – Radio Broadcasters)

- **Question 9 - What are your views on the proposal to retain the maximum of 10 minutes of advertising per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?**

We support a more proportionate and flexible approach to advertising minutage limits to better fit with the natural flow of radio programming. We favour retaining the 15% total broadcasting time daily limit as a maximum cap, if it is accompanied by an increased maximum hourly limit of 15 minutes per hour and greater flexibility for broadcasters to average minutage across the broadcasting day or a number of hours across the broadcasting day.

This approach would provide radio broadcasters with more flexibility in how they manage their advertising minutage and allow broadcasters to mitigate minor breaches. It would be a more proportionate approach given changes in the wider media and advertising landscape that radio broadcasters now operate in.

In practice, radio broadcasters would be disincentivized from the excessive concentration of advertisements around certain programmes or times of day because of the impact it would have on the listening experience. Audiences would simply change to a different station or switch off if presented with overly frequent or lengthy advertising breaks.

This has been our experience in the UK, where we operate national commercial radio stations.² There is no minutage cap in the UK and commercial radio stations are trusted to manage their advertising minutage. Since the removal of minutage rules, listening to commercial radio stations has only increased, indicating that there has been no audience harm or reduction in the quality of the listening experience. In Q2 2024, commercial radio stations in the UK had over 40 million weekly listeners, and had a record combined listening share of 55% compared to the advertising-free BBC's 42.6% share.³

Shifting towards a more liberal approach to advertising minutage would benefit the commercial radio sector and our advertisers, without resulting in audience harm. We want to see a regulatory approach that reaches a balance in pushing stations to make their programming as attractive and engaging as possible, while supporting sustainable commercial business models.

² Our national stations in the UK are talkSPORT, Times Radio, Talk and Virgin Radio UK.

³ RAJAR, Q2 2024.

- **Question 8 - Aside from proposals about hourly advertising limits, do you have any comments on the Media Service Rules (Advertising - Radio)?**

In our view, the approach to radio advertising should be modernised to reflect changes in both the wider media landscape and in consumer expectations since the Codes and Rules were first introduced. There are two key areas where we would encourage Coimisiún na Meán to amend the current approach.

- 1) **Integrated commercial messaging:** In our view, the Codes and Rules should be amended to permit integrated commercial messaging in editorial content (e.g. presenter live-reads of commercial content). This could be accompanied by transparency requirements (e.g. appropriate signalling requirements). This would bring live radio more in line with online audio content (e.g. podcasts), where presenter livereads are used in a way not currently permitted on live radio and audiences are familiar with the approach.
- 2) **Commercial sponsorship:** The Code should also be amended to introduce a more proportionate approach to commercial sponsorship on radio programming. This includes liberalising restrictions on the proximity between sponsorship messaging and advertising from the same client in an advertising break. This could be accompanied by requirements around transparency and audience signalling. The Code should recognise that today's media literate audiences are capable of distinguishing between sponsorship announcements, advertising for a sponsors' products or services, and editorial content.

Overall, a revised Code should trust audiences to be capable of identifying signalled commercial messaging and place more trust in radio broadcasters - who value their audiences - to appropriately manage commercial messaging. Amending the Code would help to level the regulatory playing field between media platforms, enabling commercial radio stations to better compete for advertising spend, and benefit the sustainability of local commercial radio stations.