1. Eircom Ltd trading as eir ("eir") welcomes the opportunity from Coimisiún na Meán ("An Coimisiún") to comment on its proposals for a levy order in respect of the levy period from 1 January 2025 to 31 December 2025.

2. eir is the largest network operator in Ireland providing fixed and mobile electronic communications services. The eir group provides a comprehensive range of advanced voice, data, broadband and TV services to the residential and business markets.

3. eir is a registered media service provider with An Coimisiún pursuant to the Broadcasting Act 2009 (as amended) due to the fact that its eir TV service has an on-demand element. The on-demand element of the eir TV service is currently limited to "catch-up" content. The catch-up content on the eir TV service consists of individual programmes which have previously aired on eir TV's linear broadcast service and which are made available to eir's residential television customers for viewing on an on-demand basis for a limited period not exceeding 30 days following the transmission of the programming on the eir TV linear broadcast service. eir doesn't derive any separate or distinguishable revenue (by way of subscription income, advertising sales or otherwise) from this catch-up content.

4. It is eir's view that media service providers whose on-demand content is presently limited to catch-up content (as described in section 3 above) should be exempt from paying a levy.

5. It should also be noted that as a provider of electronic communications networks and services in Ireland, eir is also regulated by Commission for Communications Regulation. Unlike the majority of the other audiovisual on-demand providers currently listed on An Coimisiún's register of media service providers, eir is already subject to significant levies pursuant to the Communications Regulation Act, 2002 (Section 30) Levy Order, 2003. It is therefore eir's view that it should not be subject to further statutory levies and the risk of effectively being double charged for providing its services.

Re: Technology Ireland submission on Coimisiún na Meán's consultation on proposals for a levy order in respect of the levy period from 1 January 2025 to 31 December 2025

4 October 2024

Dear Coimisiún na Meán,

Technology Ireland would like to share our views with you regarding Coimisiún na Meán's (CnaM) proposals for a levy order in respect of the levy period from 1 January 2025 to 31 December 2025. We welcome and support all efforts of CnaM to engage with stakeholders with regard to prospective levying.

Technology Ireland understands and recognises that CnaM will require levy income to fund the discharge of their functions under the Digital Services Act (Regulation (EU) 2022/2065) (the DSA), the Terrorist Content Online Regulation (TCOR) and the Online Safety and Media Regulation Act 2022 (OSMR). CnaM should more transparently indicate expected total costs and regulatory costs per levy category. Funded by an industry levy, we would be concerned that CnaM is not inhibited by typical budgetary constraints as services continue to be designated and levies recalculated. CnaM's predecessor, the Broadcasting Authority of Ireland (BAI), estimated its 2023 annual costs to regulate television programming and sound broadcasting to be circa €5.6 million. As part of the annual audit, CnaM should assess its operating costs in relation to the precedent set by BAI.

However, below we have shared some concerns we have in advance of the levying period which we welcome your view on.

General comments

- CnaM's approach should be underpinned by a commitment to use funds efficiently and avoid frivolous costs which are not directly related to the regulation of a service category under the DSA, TCOR or the OSMR.
- CnaM's approach should be fully transparent, so that providers have clarity on (i) what CnaM costs have been incurred and how they have been allocated across specific service categories, and (ii) how CnaM has ensured that it is relying on 'like-for-like' inputs such as provider data (eg, their user number or EU-wide revenue) and thereby limiting the risk of unequal treatment.
- CnaM's approach should ensure that no one provider is paying a levy amount that is unfair, unpredictable or puts it at a competitive disadvantage. Several levy categories affect service providers that operate EU wide and CnaM must assess how their respective levy costs compare to other EU jurisdictions. Online markets are highly competitive and regulatory cost has potential to distort the level playing field. CnaM should avoid taking an approach where the

levy is charged on a per-service basis without any regard to the ownership. Given numerous services across VOD, intermediary, and other categories that could be subject to a levy, CnaM should define a 'total fee cap' for entities. At the end of the financial year, entities will assess their overall regulatory fees paid to CnaM, and thus CnaM should limit a significant total cost falling on individual entities as is the case under the DSA supervisory fees. This would work in tandem with a 'Percentage Cap' per service category as detailed in the 'Calculation of Fees' section. Revenue and user base are not commensurate with risk and the regulatory workload of CnaM.

- CnaM should provide clearer timelines for the process and allocation of their various proposed levy calculations. There is a clear need for increased business certainty on levy structures so entities can allocate any necessary costs for their internal budgets. Affected companies cannot make calculations based on an unknown 'X' variable. Similarly, clear timelines and details are needed to outline how any future surpluses would be treated and refunded to providers.
- In the absence of clear guidance on the appropriate methodology for calculating average monthly active recipients under the DSA, it is apparent that DSA online platforms have applied different methodologies in relation to the figures they have published. It is important therefore that the "Average Monthly Active Recipients of service" referenced in the order should in all cases be based on logged-in users only.

Calculation of fees

- The proposed formula for calculation of fees is overly simple and could result in some providers bearing the higher cost of regulating more complex services which are subject to a larger number of DSA rules.
- The calculation of applicable fees should be modified to take into account additional factors, not merely the number of users/the provider's VOD revenue and the overall costs to CnaM of regulating the sector to make the approach fair and proportionate. In particular, the following modifications should be considered to avoid providers' paying fees which are disproportionate to the level of CnaM costs fairly attributable to them:
    - **Percentage Cap**: CnaM must consider a cap on the overall levy payable by any one provider within a service category (eg. no provider can pay more than 'X%' of CnaM's costs). It is inappropriate for any one provider to carry a material proportion of the total cost of regulation where (i) there are multiple providers who are equally responsible for CnaM's basic costs, and (iii) a levy which is high by EU standards is likely to put a provider established in Ireland at a competitive disadvantage in the Single Market.
    - **Banded Approach**: Given that a banded / sliding scale approach to levy calculation is a long-established method of ensuring larger players are treated fairly in Ireland (eg, TV/radio), CnaM ought to explore options for DSA and OSMR VOD levies whereby the amount payable (per unit) decreases gradually across bands (ascending user number / revenue bands). Banding gives rise to a fairer allocation of costs as the cost of regulating any one provider is not

directly related to its EU-wide size, and rather the basic costs of having a regime are equally attributable to all providers. This principle has long since underpinned Irish levy calculations and is especially relevant to the new regimes as user numbers / EU revenue is an even less reliable indicator of the cost of regulating a provider (as compared to the Irish revenue figures etc. which have historically been relied on in setting levies for domestic providers). Thus, it is not clear why CnaM would depart from this principle in the long-term (noting that the non-banded approach in 2024 might have been seen as simpler and thus justifiable for a short term, introductory period).

When the above was suggested in previous submissions, CnaM responded with concern about increasing levies for smaller providers. As a consequence of Ireland's thriving ecosystem of small, medium and large technology companies, smaller providers benefit from larger providers being based in Ireland in the sense that larger providers carry costs which would be incurred by CnaM. In any case, numerous smaller providers are exempt.

- The calculation should take into account the nature of a provider's service and reflect the actual DSA obligations applicable to that service which are supervised by CnaM.
- CnaM should outline how it will prospectively calculate costs for supervision that has yet to start and the appropriateness of applying the same formula to services which may be subject to a different number of DSA rules. CnaM should defer applying a levy to providers in categories where supervision has yet to begin.
- The cost of supervising VLOPs and VLOSEs should be separate and should not be passed on to platforms and search engines outside this category.

Overlap with the Digital Services Act (DSA) supervisory fee

- For those providers also required to pay a supervisory fee to the European Commission, a situation should be avoided where service providers are subject to higher or duplicated levies at a national level by CnaM than, for example, supervisory fees under the DSA. While we respect the competencies of the European Commission and CnaM depend on the circumstances of the particular case, there is a significant risk of 'double charging' of the service providers concerned. Where the European Commission has delegated its supervisory or enforcement competence to CnaM - in whole or in part (e.g. where it seeks assistance from CnaM with investigating the compliance of a VLOP/VLOSE with the DSA) CnaM's discharge of those functions should not be covered by the levy applicable to providers of VLOP and VLOSE services, as such costs are already accounted for under the supervisory fee which VLOPs and VLOSEs are required to pay to the European Commission.

Independent Broadcasters of Ireland Consultation Response

*In relation to the **Consultation on the proposed Levy Order** in respect of the levy period from 1 January 2025 to 31 December 2025, under the Broadcasting and other Media Regulation Acts 2009, 2022 and 2024.*

To: Regulatory Operations, Coimisiún na Meán

Submitted via email to: LevyConsultation@cnam.ie

The Independent Broadcasters of Ireland (IBI) has been grateful to engage with managers and staff in Regulatory Operations and Finance at Coimisiún na Meán. That engagement has assisted us in developing what we believe are fair and proportionate proposals.

Introduction:

IBI believes that the consultation on the Levy needs to be considered by Coimisiún na Meán in a holistic way because it is dealing with a small and economically-pressured sector in independent radio, and one with small management teams and without the funding for voluminous regulatory submissions that larger players have.

We request that our submission is considered in that context and from the perspective that we have 34 Members for whom the Levy is a heavy burden. Our Members are the only historically and stringently-regulated media sector in Ireland, and have significant statutory and licence duties in relation to content verification, protection of listeners, editorial quality and operations which are not shared by other players in the media market (press and social media). Our Members provide valuable services to customers through the provision of output of high quality news, sports, information/documentary, listener-interactive, music of all forms, and entertainment/talk. Our Members' programming clearly includes large amounts of content which is Public Service Media and Broadcasting and our output meets the 'Reithian Principles': *Inform, Educate and Entertain*.

We currently receive zero state funding for our core news and current affairs programming and no such funding is proposed in proposed Schemes. We have separately analysed the proposed Schemes in detail and our Members each individually found them unworkable. We pointed out the flaws for 18 months.

Sustaining public service content is becoming very difficult because of:

- The unfair and uneven playing field in funding vis-a-vis RTE and press publishers. RTE receiving guaranteed support of €225 million a year and press publishers receive a VAT subvention of well over €30 million but are not regulated.

- The upending of the commercial model as social media takes €900 million in advertising out of the Irish market each year.

- Because keeping up our services will always be costly and it is increasingly challenging to retain and attract journalist/editorial/production staff.

News and Current Affairs (and other services such as sports coverage and documentary coverage) continue to be under major threat – there is an economic risk those service will be hollowed-out and will recede in our sector. That opens up the real risk of "news deserts" as has happened in some parts of US and UK, where independent news fell away and people now get all their news from social media which is so dangerous.

Our members are concerned that there is currently a lack of fairness in the way that broadcasting policy operates in Ireland and we believe that cannot be isolated from revenue matters such as this consultation.

This is the background to our proposal that the burden of the Levy be relieved from our sector.

Regulation of our sector, we believe, should have the objective of promoting a sustainable and pluralist media landscape with fair competition and a level-playing field and one in which the role of independent radio in Ireland is recognised and supported.

1. **Key points in relation to this Consultation:**

- We believe there is a need for revising the wide bandings affecting our sector, as O&O recommended. There needs to be a major enlarging of the *de minimus* band and then changes to bands above that so that they are not as wide as at present.
- Given the major financial challenges to our sector, and the lack of a competitive level playing field vis-à-vis RTE, newspapers and social media, we believe the Levy needs to be lifted from our sector's shoulders.

- There is a need for clarity around what the really large entities (tech platforms) are paying as opposed to independent broadcasters. We need to have detail on how many of them are paying the Levy and how much – if they are not all paying that is discriminatory and unfair to our sector. We query if some of them are paying, but not all of them? The amounts our sector pays were made clear in the O&O Report on viability earlier this year. We have also set out comments on the shared costs within An Coimisiún that the social media/web platforms bring about.

- It needs to be established if the announced Exchequer funding for RTE will also be leviable in addition to their TV licence fee funding and commercial revenues. As we know if the TV licence funding for RTE reduces, then the difference will be made up by the Exchequer. We believe the total income should be leviable.

- Need to move from 'regressive' charging mechanism to 'progressive' so that smaller entities in the independent sector do not pay more proportionately with larger de minimus band in recognition of the unique role of independent radio and its high level of compliance.

2. Reducing the regulatory funding burden on our sector

We feel significant changes to the Levy as it affects our sector are needed, to reduce its heavy burden on independent radio in the context of a media landscape whose business model has been disrupted by online and social media platforms. We believe An Coimisiún should engage with the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media to enable the use of Department funding to lift the burden from our sector in light of the holistic points made above, but also to ensure necessary revenue for An Coimisiún. The Department and Minister previously took action to facilitate a reduction/waiving of the Levy and, given the lack of a level-playing field, that could and should happen again.

We point out that web/social media platforms have been unregulated up to recently and were free from any levies up to this year and they are in a process of moving to being more fully regulated.

3. Change needed to how Levy operates

Our Members have been facing major funding and resourcing challenges and we view the Levy as it currently exists as unfair and a burden we should not have bear as heavily as at present. Our call for action on the Levy is made after Government over two years ago acknowledged the challenges faced by the newspaper industry by reducing VAT on

newspapers to 0%, a measure which contributes well over €30 million to the Irish newspaper industry annually. The Levy as it applies to our Members is a financial burden every year on the independent sector and in particular on small stations and we believe that it deserves consideration of change.

We also wish to have noted that we in independent radio have specific and rigorous licence and statutory obligations and are independently regulated by An Coimisiún on fairness, balance, % content, and many other criteria, while other media (newspapers and social media/web) do not have that type of regulation. Those other sectors will however be able to apply for funding under media schemes.

We believe that in the radio broadcasting sector, the de minimus level (0%) of revenue subject to the Levy should be immediately lifted to €3 million with a flat rate after that.

4. Unfairness of the Levy currently as currently structured

Between 2018 and 2022, independent radio paid €1.75 million more as a sector than all of the RTE TV and radio stations combined. This is because the method of calculating the levy is unfair and charges average independent stations more as a percentage than larger entities.

In the background, RTE has not been paying as much as we do, and of course they have €225 million euro of top up funding on the way for one year alone with more to follow for at least two further years. RTE's Exchequer and TV Licence funding is not fully counted in calculating its Levy liability (TV licence funding is included in the levy calculation currently, albeit it is charged at a reduced level in comparison to smaller operators).

The social media giants who take up to €900 million euro out of the market annually in advertising revenue also only started paying this year (query) and it is not clear exactly what they pay. Those companies have no editorial or other similar obligations like independent radio. In addition all of RTE's funding should be covered in leviable income not just commercial income.

In contrast to social media, we in independent radio make a positive contribution to public life and society and that should be supported by the Regulator (eg. provision of impartial local news, current affairs coverage, local sports coverage, election coverage, debates about issues, connecting communities). Protecting the sustainability of independent radio means citizens would continue to have easy access to news and information in an age of disinformation and misinformation so the Levy should not be something that is placing an unreasonable burden on our sector. We are also regulated whereas press (who now have access to funding Schemes) are not.

The Commission's levy model has a regressive sliding scale element. This results in a situation where the levy amount paid (expressed as a percentage of the total qualifying

income) falls as the value of qualifying income rises. This is counter to the vast majority of levies or taxes in Ireland which are progressive and mean the deepest pockets pay more as a proportion of their income or revenue.

5. **International experience:**

Ofcom is our nearest regulatory neighbour and their charges are progressive (deepest pockets pay more proportionately than smaller organisations) and radio station Levy charges in the UK do not appear to have increased over the past three years in their system, even through Ofcom's overall revenue has gone up. https://www.ofcom.org.uk/siteassets/resources/documents/about-ofcom/how-ofcom-is-run/annual-reports/plans-and-financial-reporting/tariff-tables/ofcom-tariff-tables-2024-25.pdf?v=320681

6. **Banding of current Levy:**

The O&O Commercial Viability report released this year said: "With a few exceptions, all commercial radio stations pay up to the €1,000,001 to €10,000,000 levy band. This is a wide band, and there is considerable diversity between the stations in terms of their ownership status, geographic reach, or income levels at station or overall group level. It may be worth considering whether further breaking down or altering the current band ranges would be a feasible and appropriate approach." The report also raised the issue of what income in local radio would be covered by the Levy: "As the new schemes under the Media Fund are established, it may be appropriate to consider if funding or support that stations receive from these schemes should be treated in the same manner."

As stated we believe that the de minimis band should wider and be far larger so that our sector is relieved of the very heavy burden of regulatory financing which in many stations would be the equivalent of two salaries.

7. **Costs covered by Levy:**

IBI believes that An Coimisiún does need funding but believes that independent stations should not be covering or subsidising costs of regulating complex social media giants and RTE or an excessive share of common costs such as:

- Legal/litigation
- Management
- Communications and marketing
- Recruitment

- Operational IT or large projects
- Payroll
- Finance
- Premises/leasing/fitout
- Governance

Given the simplicity of the independent radio model and the very low level of complaints or regulatory issues, there is concern that our levy payments might cover more of the "shared costs" which are primarily caused by the activities of the social media and web giants, whose activities are considered a greater threat to society by policy makers, or of RTE which will be directly regulated for the first time for its new funding and which will be relatively new to an external regulatory framework. The social media companies have only begun paying this year we understand (we wish to query that please and ask how much they are paying and are all paying), so the risk of a mismatch between what they pay for and the costs they bring for An Coimisiún, is significant.

8. **Transparency:** We feel it would be very useful for our sector and for An Coimisiún to have greater transparency of what costs our payments cover. What we do know is that a significant number of extra Coimisiún staff will be required to monitor and regulate the social media giants (and we support the Coimisiún in its need to do that work) and those costs should not be in any way borne by our sector.

9. **De minimus exemptions:** We believe this should be far greater than at present (at least €3 million of revenue) and that above that level there should be either flat rate or a far lower % calculation after that for station in the local, regional, multi-city and national independent sector.

10. **Base Year Qualifying Income Percentage Levy**: We believe that for turnover between a much higher de minimus level and after that for our sector the calculation should be either a flat rate or (C-0.75) %.

[redacted]

Pinterest Response to Consultation on the Proposed 2025 Levy Order
4 October 2024

The following is Pinterest's response to the consultation published by Coimisiún na Meán (CnaM) on 2 September 2024 regarding the proposed Levy Order in respect of the levy period from 1 January 2025 to 31 December 2025, under the Broadcasting and other Media Regulation Acts 2009, 2022 and 2024. We appreciate the opportunity to comment on the proposed Levy Order and set out our observations below, with a particular focus on sections 4.5, 4.6, and 4.7 of the consultation.

For the levies on VSPs, intermediary services under the DSA, and hosting service providers under the TCOR, CnaM proposes to impose a fixed amount for each monthly active user of a service. While we share CnaM's goals of ensuring predictability, simplicity and cost effectiveness in administration, and regulatory continuity; we are of the view that more proportionate approaches are available for calculating these levies.

We note the following statement in section 3 of the consultation: "a profit-based levy approach was ruled out of further consideration for reasons of regulatory continuity, simplicity, administrative cost and predictability." However, we respectfully submit that a profit-based levy approach would be practicable for CnaM and consistent with platforms' experience with regards to other levies. As CnaM is aware, the European Commission has already taken such an approach to calculating its supervisory fees under the DSA (see Commission Delegated Regulation (EU) 2023/1127), and in our experience its approach is simple and predictable, with limited administrative cost. CnaM is similarly positioned to the European Commission in its role as an EU-wide regulator for numerous platforms, some of which are already subject to the EC's supervisory fee. Accordingly, they are familiar with a profit-based levy approach and relevant information on their profits is readily available.

We are of the view that a profit-based approach would be more proportionate, and would aid competition and innovation by smaller, newer market entrants. This we believe would also align with CnaM's obligations under section 21(9) of the Broadcasting Act 2009, being to consider "the financing of a provider" and "the desirability of promoting new or innovative services." We would therefore invite CnaM to reconsider its position on this issue prior to finalising its approach to the levy order.

Regarding the levy on VSPs specifically, an alternative approach would be to focus on the numbers of users that actually engage with video content on each platform. We note that a number of respondents to the original levy consultation raised this same issue (e.g. Technology Ireland, Meta and Tumblr). In its December 2023 response to consultation on the current model, CnaM noted that it "considers that there is some force in the proposal that the metric used to calculate the levy should be based on the number of users engaging with video rather than on total AMARs for the service. However, it would be unlikely that this data could be obtained in a consistent fashion in time for the calculation of the 2024 levy." Yet, the current consultation simply states that CnaM considers "that the reasons for its decision in relation to the 2024 levy remain valid." To our knowledge, data on the number of users engaging with video has not been requested from Pinterest or the other ten designated VSPS. We would therefore encourage CnaM to review such data with a view to augmenting its approach to land on a more proportionate levy model.

We appreciate the opportunity to comment on the proposed levy order and hope that CnaM will give the above comments careful consideration prior to finalising the order. If it would be of assistance, we are more than happy to discuss the above comments further with CnaM.

[Extracted from email dated 4 October 2024]

RTÉ welcomes the opportunity to respond to the Commission's consultation on the Levy Order

RTE notes that going forward Coimisiun na Mean proposes to move from a banded model of charging to a fixed rate model for both TV Broadcasters and for Radio Broadcasters with a separate levy for each.

It is noted that for 2025 only, for the TV Broadcaster Levy, an interim hybrid model would be in effect which would be a stepping stone from the current banded model to the new fixed rate model.

It is also noted that for 2025 it is proposed that the Radio Broadcaster Levy would move directly to a fixed rate model.

Up until this year 2024, RTE paid a single composite Levy on its overall Broadcaster qualifying income, being TV and Radio income .

From a consideration of the Coimisiun na Mean's Levy Proposals for 2025, it is RTE's understanding that the proposed changes in moving from the current banded charging model towards a fixed charging model coupled with the intention to continue with separate TV and Radio Broadcaster levies will result in an overall material increase in the combined TV and Radio Broadcaster levies to be paid by RTE in 2025 than would have been previously payable under the current charging model.

We believe the proposed changes will impact RTÉ disproportionately.

RTE also notes that in respect of Video on Demand Providers for 2025, Coimisiun na Mean proposes that the levy should be a fixed percentage of relevant qualifying income which is a continuation of the charging model in place for the calculation of the 2024 Levy.

RTE notes that Coimisiun na Mean are also requesting responses in respect of the sources of income which constitute qualifying income for VOD Providers.

In this respect of RTÉ notes that the same approach as adopted in 2024 is to be applied in respect of the 2025 levy and for VOD Provider Levy 2025 purposes.

RTÉ wishes to re-iterate its various points of view point in respect of the 2024 levy, concerning each of the stated sources of income and specifically that advertising income remains the sole qualifying income.

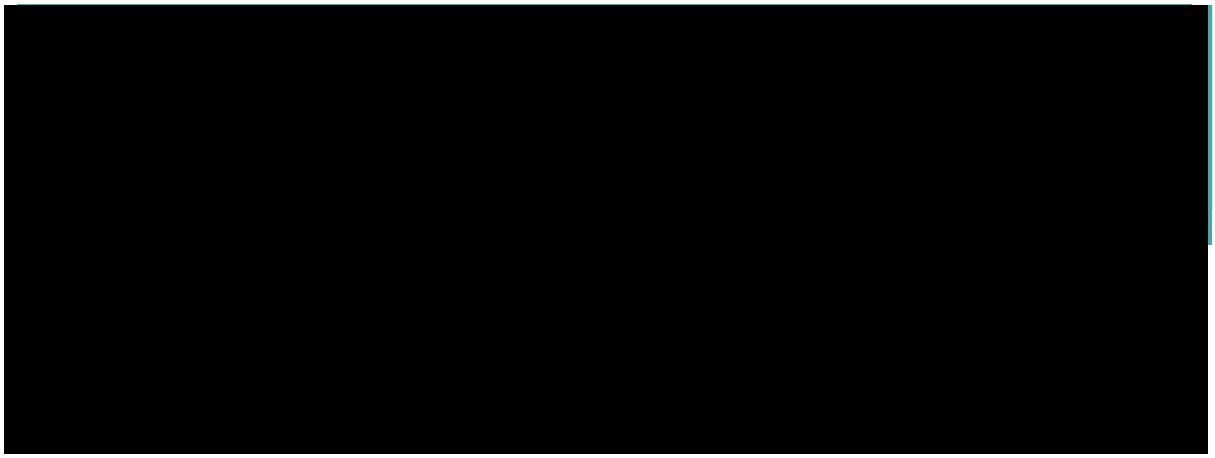
1. Transactional revenue (including pay per view, and the purchase and rental of on demand content)
2. Subscription revenue

3. Advertising revenue (as per “ commercial communication” definition in Act
4. Public funding

If there are any further queries, please contact me I’ll be happy to facilitate contact with colleagues in RTÉ Finance.

Yours Sincerely,

[redacted]



Please consider the environment before printing this email

4 October 2024

[redacted]

[redacted]

Dear Sirs,

Introduction

Meta Platforms Ireland Limited (**MPIL**) welcomes the opportunity to make submissions in response to Coimisiún na Meán's (the **Commission**) consultation on the proposed levy order in respect of the levy period from 1 January 2025 to 31 December 2025, under the Broadcasting and Other Media Regulation Acts 2009 and 2022 (**Act**) (**Proposed Levy Order**).

1. **General concerns with the Proposed Levy Order**

a) <u>Separate levies for different service sectors</u>

MPIL appreciates and in principle agrees with the Commission's general proposal to have separate levy orders addressing specific sectors, i.e., audio-visual services, sound broadcasting services, designated online services, intermediary services and hosting services.

However, MPIL is concerned that applying separate levies to (i) designated online services under the Online Safety and Media Regulation Act (**OSMRA**), (ii) intermediary services under the Digital Services Act (Regulation (EU) 2022/2065) (**DSA**) and (iii) hosting services under the (Regulation (EU) 2021/784) (**TCOR**) may lead to a situation where service providers are subject to higher or duplicated levies at a national level by the Commission. MPIL accordingly asks that the Commission take careful consideration when defining the costs of each regulated sector to account for synergies in joint compliance and enforcement tasks.

There is a significant risk that MPIL's services such as Facebook and Instagram will be at least double charged - and potentially tripled charged - under the current proposal, given that, in addition to being in scope of the supervisory fee due to the European Commission under Art. 43 DSA such services fall in

scope of the levies for designated online services under the OSMRA and intermediary services under the DSA and may also fall in scope of the levy for hosting services under the TCOR.

While the DSA, OSMRA and TCOR are independent and separate regulatory regimes, there are significant elements of overlap between them, both in substance and in terms of their goals and objectives, i.e. addressing illegal and harmful content on digital services. As such, we respectfully suggest that the Commission should consider the synergies of the joint regulatory oversight it enjoys when applying individual levies to such services.

In this context, we note that, whilst acknowledging that services may fall into more than one of the categories of levies, the Commission states the following in its Response to Consultation on the proposed Levy Order in respect of the levy period from 1 January 2024 to 31 December 2024, under the Broadcasting and other Media Regulation Acts 2009 and 2022 (**Response to Consultation on the 2024 Levy Order**)[1]:

> **"***Coimisiún na Meán acknowledges that entities that fall into more than one of the categories of levy payers will need to pay multiple levies, but this merely reflects that their activities may fall within the scope of more than one of Coimisiún na Meán's functions, which are considerably wider than those of its predecessor organisation.* ***Coimisiún na Meán also notes that the definition of qualifying income will involve entities who provide more than one of TV broadcasting, sound broadcasting and VOD services apportioning their income amongst those services, so that no part of their income will be subject to more than one levy. Coimisiún na Meán, therefore, does not consider that its proposals amount to double taxation, and it will not be adjusting the proposals for 2024 to take account of the fact that some entities may be paying multiple levies***" (emphasis added).

The safeguard afforded to entities who provide more than one TV broadcasting, sound broadcasting and VOD services - by applying the definition of qualifying income and, thus, apportioning their income amongst those services, so that no part of their income will be subject to more than one levy - is not afforded to designated online services under the OSMRA, intermediary services under the DSA and hosting services under the TCOR. The Proposed Levy Orders for such sectors do not rely on the qualifying income relevant to the respective levy, but rather on those services' overall average monthly active recipients (**AMARs**) numbers published under the DSA, without any relation to the specific levy or underlying sector. For instance, the Proposed Levy Order for designated online services under the OSMRA is not limited to video-only content; likewise, the Proposed Levy Order for hosting services under the TCOR levy is not limited to terrorist content only, etc.

Accordingly, the risk of double (and even triple) charging is substantial and we urge the Commission to put the necessary safeguards in place.

---

[1] https://www.cnam.ie/wp-content/uploads/2023/12/20231221_Levy-Order-Public-Consultation-Response-Document_vF.pdf

b) General use of AMARs under DSA

Under the Proposed Levy Order, the Commission proposes that the monthly active user metrics be based on the monthly average user numbers published on 17 August 2024 under the DSA.

As the Commission may already be aware, there have been widely diverging approaches to calculating AMARs under the DSA, and the European Commission has yet to publish formal guidance under Article 33(3) DSA. The informal guidance published to date has not provided much additional clarity. This is something the Commission should also bear in mind when considering whether to proceed with the proposed methodology.

Notwithstanding this, in the absence of a delegated act to introduce a new methodology, MPIL agrees that the DSA AMARs should be used, subject to our comments below in relation to those users who actually engage with video content for the purpose of the levy for designated services under OSMRA.

In this regard, however, MPIL would like to note that some very large online platforms and search engines (**VLOPs** and **VLOSEs**) under the DSA, like Facebook and Instagram, have decided to align the reporting cadence of their AMARs under Article 24(2) of the DSA with the publication of their respective DSA Transparency Reports.

c) Transparency and accountability over cost of regulation of each sector

The Proposed Levy Order, like the Digital Services (Levy) Act 2024, does not currently provide for any transparency or accountability safeguards in regard to the amounts that will be charged for each sector.

In this respect, the Commission should consider publishing the estimate of the overall costs to carry out its relevant supervisory and enforcement functions for the year 2025 for each sector before issuing the relevant levy orders.

In addition, MPIL considers that service providers need to be given the opportunity to be heard and make comments on the Proposed Levy Order before it is applied to them.

For this purpose, the Commission could consider following a similar process to that of the DSA supervisory fee, whereby the European Commission communicates to each service provider a provisional determination of the amount of the supervisory fee and allows the service provider to communicate to the Commission any observation on such calculation within a two week time-frame[2].

[2] See Art. 6(3) of the Commission Delegated Regulation (EU) 2023/1127 of 2 March 2023 supplementing Regulation (EU) 2022/2065 of the European Parliament and of the Council with the detailed methodologies and procedures regarding the supervisory fees charged by the Commission on providers of very large online platforms and very large online search engines.

d) Levy to be charged on a per-service basis

Under the Proposed Levy Order, the Commission proposes that the levies be charged on a per-service basis so that each service within a sector attracts the same levy, irrespective of its ownership. In this respect, the Commission states that, for designated service providers, intermediary service providers and hosting service providers, this mirrors the approach taken by the European Commission in calculating the supervisory fee for VLOPs and VLOSEs.

Whilst it is accurate that the European Commission calculates the supervisory fee for VLOPs and VLOSEs on a per-service basis, the DSA includes safeguards for service providers who provide more than one service in scope of the DSA supervisory fee, setting out that the overall amount of the annual supervisory fee charged on a given provider of a VLOP or VLOSE does not, in any case, exceed 0,05 % of its annual net income in the preceding financial year (see DSA Art. 43(5)(c)).

Such an approach ensures that the fee takes into account the economic capacity of the provider of the in scope services[3]. In MPIL's opinion, a similar approach should apply here, with respect to each Proposed Levy Order. However, unlike the approach adopted under the DSA whereby the sum of any residual amounts not charged following the application of the supervisory fee cap are redistributed amongst other providers (which have not reached their cap), resulting in a service provider's supervisory fee being dependant on the profitability of other providers, we respectfully suggest that the Commission should setout how any levy shortfalls will be addressed in a fair and proportionate manner.

e) Levy Reconciliation Assurance Program

Under the Proposed Levy Order, the Commission proposes to introduce a Levy Reconciliation Assurance Work Programme, intended to provide an acceptable level of comfort that each service provider's statement of qualifying income or AMARs numbers (as applicable) have been properly prepared in accordance with the requirements of the Commission and using the basis of calculation of qualifying income and average monthly users as set out in Schedules 6, 7 and 8 of Broadcasting Act 2009 (Section 21) Levy Order 2024 (S.I. No. 175/2024).

Given that the Commission is proposing to rely on the AMARs numbers published on 17 August 2024 under the DSA for the purpose of the Proposed Levy Order in respect of the levy period from 1 January 2025 to 31 December 2025, it is unclear how such a Levy Reconciliation Assurance Program would apply in practice to the services subject to the the levy orders in respect of designated online services, intermediary services and hosting services.

In any case, given that many of the service providers will also be VLOPS and VLOSEs and, thus, are subject to auditing obligations under the DSA, the Commission should consider exempting such services

[3] See Recital 101 of the DSA.

from being subject to the Levy Reconciliation Assurance Program in respect of their AMARs numbers or, at the very least, rely on the same auditor who performed the audit under the DSA.

2. Specific concerns in respect of the Proposed Levy Order for providers of designated online services under the OSMRA

MPIL is concerned that the Commission's Proposed Levy Order in respect of the levy applicable to designated online services under the OSMRA does not take into consideration the different criteria upon which a service can be designated as a video-sharing platform service (**VSPS**), which raises issues of substantive fairness, proportionality and legal certainty.

In particular, by using published DSA AMARs for all VSPSs, the Commission would impose a disproportionate and discriminatory[4] financial burden on those VSPSs designated on the basis of essential functionality (as opposed to principal purpose). This is because, for VSPSs designated on the basis of essential functionality, those published AMARs capture engagement with all content on a platform and not just video content and so (in some cases vastly) overestimates the level of user engagement with video content on the platform, to which the AVMSD applies[5]. This approach, in turn, operates to the detriment of VSPSs designated on the basis of essential functionality by increasing the proportion of the Commission's costs to which they must contribute via the levy.

As the Commission acknowledged in its Response to Consultation on the 2024 Levy Order "*there is some force in the proposal that the metric used to calculate the levy should be based on the number of users engaging with video rather than on total AMARs for the service*".

MPIL maintains that a simple, proportionate and non-discriminatory solution to this issue would be to only include those users who actually engage with video content. These metrics are clearly considered relevant to VSPS categorisation by the Commission, as they were requested in the Statutory Notices issued by the Commission relating to Instagram and Facebook on 15 September 2023 and, thus, should also be relevant to the levy calculation.

3. Specific concerns in respect of the Proposed Levy Order for intermediary services under the DSA

a) Services in scope

[4] Bearing in mind that the EU principle of equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified.

[5] In effect, the Commission would, in practice, be including aspects of a service which it is not entitled to be regulated under the AVMSD. Per Recital 4 of the revised AVMSD, social media services should be regulated only "*to the extent that they meet the definition of a video-sharing platform service*".

MPIL appreciates and agrees with the Commission's preliminary view that the levy applicable to intermediary services under the DSA should only apply to providers of online platforms and online search engines as defined in the DSA, and to exclude mere conduit services, caching services and hosting services that are not online platforms. Without prejudice to the foregoing, it should be noted there is no requirement that online platforms, which have not been designated as VLOPs or VLOSEs, be designated or even registered in advance of the application of a levy. As a result, there is no finite list of services/service providers in scope and so it is not clear how the Commission will be able to ensure that the levies will be imposed fairly and proportionately.

As there is no mandatory scheme to register or designate relevant service providers, it is unclear what services the levies will actually apply to. Without being able to identify each and every service provider falling within the scope of each category, the Commission cannot fairly and proportionately impose levies to cover its respective expenses and working capital requirements in respect of its supervisory and enforcement functions for a particular category.

Failure to identify every relevant service provider within these categories will result in some service providers not paying any levy and others, as a direct consequence, having to pay a greater amount.

Given that the number of relevant service providers which fall within the jurisdiction of Ireland has not been identified or accurately quantified, an attempt to impose a levy on the basis of this categorisation would be unfair and lack legal certainty.

b) Safeguards against double charging

MPIL understands and recognises that, notwithstanding designated VLOPs and VLOSEs having to pay an annual supervisory fee to the European Commission under Art. 43 DSA, the Commission also plays a role in DSA supervision of VLOPs and VLOSEs. However, a situation should be avoided where service providers are subject to higher or duplicated levies at a national level by the Commission than, for example, supervisory fees under the DSA. While MPIL respects that the competencies of the European Commission and the Commission depend on the circumstances of the particular case, every effort should be made to eliminate 'double charging' of service providers. In particular, where the European Commission has delegated its supervisory or enforcement competence to the Commission - in whole or in part (e.g. where it seeks assistance from the Commission with investigating the compliance of a VLOP or VLOSE with the DSA) the Commission's discharge of those functions should not be covered by the levy applicable to providers of VLOP and VLOSE services, as such costs are already accounted for under the supervisory fee which VLOPs and VLOSEs are required to pay to the European Commission.

In calculating the costs of the sector, the Commision should take into account the extent to which a particular VLOP and/or VLOSE falls within the competence of the European Commission and the amount of the supervisory fee it must pay in that regard, and to make proportionate downward adjustments to the amount of any levies it imposes in respect of the same service. As noted above, estimating an exact division of competence between the European Commission and the Commission in respect of VLOP and

VLOSE services is impossible in the abstract and so strict safeguards must be put in place to ensure that providers of such services are not required to pay inflated levy amounts.

In addition, as mentioned above, in certain circumstances, the Commission states that it is mirroring the approach taken by the European Commission in calculating the supervisory fee for VLOPs and VLOSEs. However, that has not been the case with regard to the Proposed Levy Order for intermediary services under the DSA.

Indeed, Art. 43 DSA sets out certain principles which the European Commission must respect when adopting any implementing act establishing the amount of the annual supervisory fee in respect of each provider of VLOP and VLOSE services, which should also be respected by the Commission when calculating its Proposed Levy Order for intermediary services under the DSA.

As such, in calculating the levy applicable to intermediary services, the Commission should:

- apply strict limits on the amounts that can be levied in respect of VLOPs and VLOSEs already subject to the DSA supervisory fee;
- set a clearly defined cap on the total amount of levies imposed on any particular service provider;
- take into account the actual costs incurred in the previous levy period when calculating a levy; and
- keep the relevant levy as low as is reasonably possible.

These principles provide safeguards for providers to ensure that the levies imposed on them are fair and proportionate.

4. Specific concerns in respect of the Proposed Levy Order for hosting services under the TCOR

a) <u>Safeguards to ensure substantive fairness, proportionality and legal certainty</u>

In principle, MPIL agrees with the Commission's view that the TCOR levy should only be applied to hosting services which the Commission has decided are exposed to terrorist content online, pursuant to Article 5(4) of the TCOR. MPIL further agrees with the Commission's view that the proposed approach is based on the fact that much of the supervisory attention under TCOR is likely to be devoted to hosting service providers exposed to terrorist content online, because they have additional obligations to submit specific measures to the Commission for assessment.

However, MPIL has concerns that the Proposed Levy Order for hosting services under the TCOR does not take into consideration the different levels of exposure to terrorist content which may give rise to a designation, which raises issues of substantive fairness, proportionality and legal certainty.

Under the Decision Framework for addressing dissemination of terrorist content online, published in June 2024, when the Commission becomes aware that a provider, which is a hosting service in its

jurisdiction, has received two or more final removal orders in the previous 12 months, the Commission will consider the matter and make a preliminary decision on whether the hosting service is exposed to terrorist content. As such, in theory, the Commission may decide that a hosting service is exposed to terrorist content online due to the mere fact that it received two final removal orders within a period of 12 months.

If a hosting service provider (**HSP**) is found to be exposed to terrorist content, it will be obliged to undertake specific measures, including taking steps to protect its service from being used for the dissemination to the public of terrorist content. The HSP must then report to the Commission on the specific measures that it has taken and intends to take. If, based on the reports provided by the HSP or, where relevant, any other objective factors, the Commission considers that the specific measures taken do not meet the HSP's obligations under Articles 5(2) and (3) of the TCOR, the Commission will address a decision to the HSP requiring that necessary measures be taken to ensure that those obligations are complied with.

The scope of the Commission's regulatory intervention will depend on the risks of each individual HSP and the specific measures it applies. For instance, in the case of MPIL's services, notwithstanding not having been designated as hosting services exposed to terrorist content online, Meta has already implemented measures set out in the TCOR for some of its services, which means that, if and when such services are designated as hosting services exposed to terrorist content online, the Commission's regulatory intervention may be limited.

As such, the Proposed Levy Order for hosting services under the TCOR does not take into account the fact that different hosting services may be subject to different levels of exposure to terrorist content online and, thus, different levels of obligations under the TCOR. The more obligations a particular hosting service is subject to, the greater the amount of supervision and enforcement that the Commission will have responsibility for, and therefore the levy payable by the provider of such service should reflect the costs associated with this higher level of supervision and enforcement.

b) Safeguards against double charging

In addition, it should be noted that many of the specific measures set out in the TCOR are already required under other regulations. For instance, under the OSMRA, VSPSs are required to implement appropriate measures to protect the general public from content the dissemination of which constitutes a criminal offence under EU law, namely public provocation to commit a terrorist offence. Likewise, under the DSA, VLOPs have to assess and mitigate the risk of their services being used for the dissemination of illegal content, which includes terrorist content.

In calculating the costs of the sector, the Commision should take into account the extent to which a particular service falls within the scope of OSMRA and DSA and make proportionate downward adjustments to the amount of any levies it imposes in respect of the same service.

***

We thank the Commission for the opportunity to provide comments on the Proposed Levy Order in respect of the levy period from 1 January 2025 to 31 December 2025, under the Act, and we hope that our comments will assist the Commission in carrying out its regulatory functions. We would be pleased to discuss any aspect of the above with the Commission.

Yours sincerely,

Meta Platforms Ireland Limited

Aighneacht TG4

MAIDIR LE: Consultation on the proposed Levy Order in respect of the levy period from 1 January 2025 to 31 December 2025 under the Broadcasting Act.

Glacann TG4 buíochas leis an Choimisiún as an deis a thabhairt dúinn moltaí a chur ar aghaidh maidir leis an Consultation thuasluaite. Ar mhaithe le héascaíocht don Choimisiún tá moltaí TG4 i mBéarla. Tá TG4 ar fáil chun tuilleadh plé a dhéanamh de réir mar is gá.

Thank you for the opportunity to engage with an Coimisiún on the Consultation on the proposed Levy Order in respect of the levy period from 1 January 2025 to 31 December 2025.

TG4 has the following comments on the Consultation Document. We are available to discuss further as required.

Calculation of the Broadcaster/ video on demand levy

TG4 notes that Section 21(9) of the Act requires that, in making provision of a levy order the method of calculation of a levy and for any exemption or deferral must have regard to the following factors:

- The financing of a provider, including any public funding.
- The desirability of promoting new or innovative services.
- The nature and scale of services provided by a provider.
- Any other factor that may affect the exercise by Coimisiún na Meán of functions in relation to a provider …..

TG4 also notes that an Coimisiún considers that the following factors are relevant when considering a levy order for 2025:

- proportionality to the costs incurred by An Coimisiún in performing its regulatory functions,
- predictability,
- simplicity and cost effectiveness in administration, and
- regulatory continuity.

TG4 notes that an Coimisiún has considered a range of potential options for different levy approaches, including:

- Levies based on qualifying income, including: Fixed percentage of income or a banded approach such as that currently in place for broadcasters.
- A flat levy (fixed amount).
- Different levy amounts depending on size of entity.
- Levies based on user numbers.

TG4 notes that an Coimisiún does not consider that there are strong grounds for maintaining the banded approach. TG4 notes an Coimisiún's statement that moving from a banded model to a flat-rate model would involve a substantial change in levy payments for some broadcasters. TG4 notes that for reasons of regulatory continuity, an Coimisiún envisages a transition to a fixed rate over a two-year period. TG4 notes that it is proposed that the 2025 broadcaster levy should be calculated as the average of the regressive band-based model and the fixed rate model. TG4 notes that it is envisaged that the broadcaster fixed rate levy model will be fully adopted from 2026 onwards, but this will be subject to the further consultation planned in 2025.

TG4 does not agree with an Coimisiún's proposal that the 2025 broadcaster levy should be calculated as the average of the regressive band-based model and the fixed rate model.

TG4 does not agree with an Coimisiún's proposal that the fixed rate broadcaster levy model should be fully adopted for broadcasters from 2026 onwards.

TG4 does not agree with an Coimisiún's proposal that the 2025 video on demand levy should be a fixed percentage of qualifying income.

An Coimisiún acknowledges in the Consultation document that moving from a banded model to a flat-rate model would involve a substantial change in levy payments for some broadcasters.

There is no detail of the amount of the new levy at this point and it is therefore difficult for TG4 to give a view on the amount of the proposed levy however TG4 contends that the amount of the levy should not exceed the amount payable to date.

TG4 would suggest the following approach to the calculation of the broadcaster/ video on demand provider levy:

The levy payable by Broadcasters and Video on Demand providers for 2025 should be a fixed amount for each viewer based on the annual viewership figures of the applicable broadcaster/ video on demand provider. Where a broadcaster also provides a video on demand service, the levy should be apportioned between the broadcaster service and the video on demand service. TG4 is happy to engage with an Coimisiún on the amount of this fixed levy.

TG4's proposal is consistent with the approach which an Coimisiún proposes for designated online services/providers of intermediary services/providers of hosting services. Those services will be subject to a levy calculated by reference to the monthly active users of the service with the effect that those services will pay a fixed amount for each monthly active user.

In 2024 a levy was payable by broadcasters/VOD providers based on a percentage of qualifying income regardless of the size of the audience which each broadcaster/VOD provider secured. The 2024 method of assessing the levy and an Coimisiún's proposed approach for 2025 onwards does not take into account the nature and the scale of the services provided by TG4 as a minority language broadcaster.

In response to TG4's proposal during the 2024 levy consultation that the broadcaster and VOD levy should be based on audience numbers instead of qualifying income, an Coimisiún in the Response to Consultation in December 2023 set out its position as follows:

> *Coimisiún na Meán consideration and final position*
>
> *Coimisiún na Meán considers that while the benefits of regulation primarily accrue to users, every regulated entity in a sector derives benefit from a level regulatory playing field, hence it is equitable to base apportionment on a metric that reflects ability to pay, without attempting to adjust this for differences in the cost of regulatory activities that relate to specific entities.*

In addition, audience numbers are not a particularly good proxy for the cost of regulation of entities – for instance there are different activities that relate to public service broadcasters as compared to licensed broadcasters that are not affected by audience numbers.

Coimisiún na Meán notes that the user numbers were proposed as the metric for designated online services because this was a simple approach where data was readily available and that an approach based on defining and isolating appropriate revenues for video-sharing platforms would be challenging to implement in a short period. However, the metrics used for all levy models will be reassessed for the 2025 levy period and beyond, as more data becomes available.

Coimisiún na Meán has therefore decided to maintain the approach proposed in the consultation of basing the TV broadcasting levy on qualifying income as in previous years. This is based on the rationale that all entities in a regulated sector should contribute towards the overall costs of regulation of that sector and that the cost apportionment should reflect ability to pay.

While TG4 accepts that there are benefits from a level regulatory playing field, it is TG4's position that an Coimisiún must nevertheless take into account "the nature and scale of services provided by a provider " as required by the Act and an Coimisiún has not done so in applying the same criteria to a minority language broadcaster with a limited audience and an English language broadcaster.

An Coimisiún refers in the Response to Consultation to the cost apportionment reflecting the ability to pay. It is not clear to TG4 why ability to pay is used as the method for levy assessment for broadcasters and VOD providers, but on the other hand it is not used as a method to assess the levy for designated online services/providers of intermediary services/providers of hosting services. This seems unfair. The Response to Consultation clarifies that user numbers was selected for designated online services because it is a simple approach. TG4 proposes that audience numbers be used to assess the levy for broadcasters and VOD providers as this would be a simple approach for those levies also because these audience numbers are readily available.

TG4 notes an Coimisiún's response in the Consultation Response that *audience numbers are not a particularly good proxy for the cost of regulation of entities* however TG4 is not contending that low audience numbers equates to a low cost of regulation. TG4 instead highlighted in the 2024 levy consultation and in this current consultation the actual number of complaints by comparison to other broadcasters and factually these numbers are minimal with a resultant lower regulation cost, with no complaint against TG4 in 2022 and one complaint in 2023.

A levy which is calculated by reference to the number of viewers based on the annual viewership figures of the applicable broadcaster/video on demand provider would be consistent with the criteria detailed above which an Coimisiún must have regard to when assessing the levy. The relevant criteria are set out below:

1. s21(9) of the Act requires an Coimisiún to have regard to among other things " the nature and scale of services provided by a provider".
   TG4 is a minority language broadcaster with a limited audience and an Coimisiún must have regard to this under s21(9) of the Act when assessing the levy payable by TG4.

2. S21(9) of the Act requires an Coimisiún to have regard to "Any other factor that may affect the exercise by an Coimisiún of functions in relation to a provider...".

   An Coimisiún has functions and powers in respect of the Irish language under the Act as follows:

   An Coimisiún is empowered to promote and stimulate the development of programmes in the Irish language;

   An Coimisiún is empowered to promote and encourage the use of Irish language in communications media operating in the State;

   In performing its functions an Coimsiún must endeavour to ensure that its policies best serve the interests of the people of the island of Ireland bearing in mind their languages, the experiences of people of Irish ancestry living abroad and their linguistic diversity;

   An Coimisiún is therefore required to have regard to the above functions in respect of the Irish language when assessing the levy. It should take these factors into account when assessing the levy which will be payable by the minority language broadcaster TG4.

3. TG4 also notes that an Coimisiún considers that the following factors are relevant when considering a levy order for 2025:
   Predictability;
   Simplicity and cost effectiveness in administration;
   Proportionality to the costs incurred by an Coimisiún in performing its regulatory functions; and
   Regulatory continuity.

   A levy which is calculated in the manner proposed by TG4 would comply with each of these requirements for the following reasons:

   Predictability: the variation in TG4 audience figures from year to year is minimal and therefore an audience based levy would comply with the requirement for predictability.

   Simplicity and cost effectiveness in administration: The audience figures are published by Nielsens which is an independent third party and using the audience figures instead of qualifying income as a basis for levy calculation allows for simplicity and cost effectiveness in administration.

   Proportionality to the costs incurred by an Coimisiún in performing its regulatory functions: in 2024 the levy paid by TG4 and RTE was calculated with reference to banded income. The approach proposed by an Coimisiún for 2025 is a levy calculated as the average of the regressive band-based model and the fixed rate model. An Coimisiún's proposed approach does not take into account the nature and scale of the services provided by TG4 as a minority language broadcaster or the fact that's its audience is a fraction of the RTE audience.

   It is not reasonable or proportionate that TG4 should pay the 2025 levy based on income levels because this does not take into consideration the nature and scale of the

services provided by TG4 as a minority language broadcaster, the audience of TG4, or the actual costs which were incurred by an Coimisiún and BAI in regulating TG4 In 2023.

In 2023 TG4 had a daily audience reach of 388,800 across its linear schedule and RTE had a daily reach of 1,702,900 across its linear schedules.
These TG4 figures represent 22.83% of the RTE figures.
The audience which TG4 secures in respect of the TG4 player constitutes in the region of 10% of the RTE player audience.

As detailed on the Coimisiún website, over a 13 year period from 2010 to 2023 a total of 8 complaints were made to the BAI in respect of TG4. In the three years from 2020 to 2023, 196 complaints in total were made to BAI and of these 1 complaint was made against TG4. The one complaint made in respect of TG4 over this three year period represents less than 0.5% of the overall complaints made in that 3 year period. Part of the regulatory cost incurred by an Coimisiún in regulating broadcasters is the cost of assessing complaints. Notwithstanding that the sole complaint made against TG4 from 2020-2023 amounted to 0.5 % of the total number of complaints made over this 3 year period, TG4 is required to pay a levy which is calculated on the same basis as the levy which is payable by the other broadcasters against whom complaints were made.

2023 is the reference income year for assessing the 2025 levy. 34 complaints were made to the BAI/an Coimisiún in 2023 and 1 complaint was made against TG4 in that year. While we accept that the regulatory costs of BAI/an Coimisiún in 2023 encompassed more than the cost of dealing with complaints, nevertheless it incurred minimal cost in dealing with regulatory complaints against TG4 in the reference year.

Because the levy is currently assessed based on a percentage of income RTE is paying a larger levy than TG4. However, if both RTE and TG4 had an identical income in 2023, TG4 would be paying an identical levy to RTE for 2025 based on the current calculation, notwithstanding the difference in the nature and scale of services provided by each organisation; the audience which RTE can secure because it broadcasts in the English language relative to the audience which TG4 can secure as a broadcaster in a minority language; and the fact that minimal costs were incurred by the Coimisiún in dealing with complaints against TG4 in 2023 because only 1 complaint was made against TG4 in the reference year.

For the reasons outlined above, the method of calculation of the broadcaster levy/video on demand levy proposed by an Coimisiún which would be payable by TG4 for 2025:

(i) is not proportionate;
(ii) is not cost reflective as it does not reflect the actual cost to an Coimisiún of regulating TG4;
(iii) it does not take account of the statutory obligation on an Coimisiún under s21(9) of the Act which requires an Coimisiún to have regard to among other things " the nature and scale of services provided by a provider"; and
(iv) it does not comply with the requirement to have regard to "Any other factor that may affect the exercise by an Coimisiún of functions in relation to a

provider..." which includes its statutory obligations in relation to the Irish language as detailed above.

Sources of income for VOD providers

TG4 notes that an Coimisiún is also seeking comments *in relation to the sources of income which constitute qualifying income for VOD providers, as set out in section 8 of the 2024 levy order:*

a) Transactional revenue (including pay-per-view revenue, and the purchase and rental of on-demand content), b) Subscription revenue, c) Advertising revenue (as defined under "commercial communication" in the Act), and d) Public funding received from the Government or a public body in the form of a grant.

TG4 has no comment on the sources of income for VOD providers.

Geographical scope of metrics

TG4 agrees with an Coimisiún's view that qualifying income and monthly active user metrics should be EU-wide.

Time period of metrics

TG4 agrees with an Coimisiún's view that metrics should be based on actual amounts known at the beginning of the levy period, rather than on estimates that require a later reconciliation.

TG4 accepts that the levy for 2025 for TV broadcasters and VOD providers should be with reference to 2023, but as stated above it should be calculated with reference to audience figures and not qualifying income.

4 October 2024

Submission of Twitter International Unlimited Company in response to Coimisiún na Meán's Consultation on the proposed Levy Order in respect of the levy period from 1 January 2025 to 31 December 2025, under the Broadcasting and other Media Regulation Acts 2009, 2022, and 2024

Twitter International Unlimited Company ("TIUC"), provider of the X service ("X") in the European Union, welcomes and appreciates the opportunity provided by Coimisiún na Meán ("CnaM") to respond to the consultation on the 2025 Levy Order.

TIUC would like to take this opportunity to request CnaM's clarification of the basis for the calculation of the proposed levy approach for hosting service providers under Regulation (EU) 2021/784 on addressing the dissemination of terrorist content online ("TCOR").

Section 4.7 of CnaM's Consultation Document on the proposed 2025 Levy Order[1] proposes that the TCOR supervisory levy will be "*based on the number of AMARs* [Average Monthly Active Recipients of service] *and that the levy should be a fixed amount for each monthly active user*". However, that section does not not specify how the number of AMARs should be calculated for these purposes.

This is in stark contrast to the methodologies proposed under Section 4.5 (designated online services) and Section 4.6 (intermediary service providers under the DSA). Indeed, in Section 4.5, CnaM proposes that, for the purposes of calculating the levies for designated online services, relevant service providers should continue to provide AMAR numbers exclusively based on the number of logged-in users. This is due to difficulties in identifying and deduplicating logged-out users.

Additionally, in Section 4.6, CnaM proposes to base its levy calculation for intermediary service providers under the DSA on logged-in user numbers for the same reasons.

---

[1] *Consultation on the proposed Levy Order in respect of the levy period from 1 January 2025 to 31 December 2025, under the Broadcasting and other Media Regulation Acts 2009, 2022 and 2024* dated 2 September 2024 (https://www.cnam.ie/wp-content/uploads/2024/09/Levy-2025-Consultation-Paper.pdf).

TIUC endorses CnaM's proposal to continue calculating its fees using AMAR numbers based on logged-in users. TIUC believes that this approach allows for a more accurate and consistent calculation of AMAR numbers across industry. To ensure that this calculation metric is applied consistently, we invite CnaM to confirm in the final version of the Levy Order that this methodology will also apply to the calculation of AMAR numbers for the purposes of determining the TCOR levy.

TIUC thanks Coimisiún na Meán for the opportunity to share our views. We are available for a more detailed discussion.

Consultation Document: Coimisiún na Meán 2025 Levy Order

Version: Non-Confidential

Date: 04/10/24

Introduction

Vodafone Ireland welcomes the opportunity to engage in this important Coimisiún na Meán consultation on the 2025 Levy Order. We remain at your disposal to discuss any aspect of this submission in more detail.

Vodafone Ireland

Vodafone is Ireland's leading total communications provider with 2.4 million customers and employs over 2,000 people directly and indirectly in Ireland.

Vodafone provides a total range of communications solutions including voice, messaging, data, and fixed communications to consumers and to small, medium, and large businesses. Since 2011, Vodafone has expanded its enterprise division, offering integrated next-generation fixed and mobile solutions in addition to cloud-based platforms, machine to machine services and professional ICT support. For more information, please visit www.vodafone.ie.

Response to Consultation

Vodafone Ireland fully understands the need for Coimisiún na Meán to be sufficiently resourced to ensure that it can effectively exercise its functions in relation to audiovisual media services, sound broadcasting services and designated online services.

We also welcome the approach that the levy be predictable, simple, and cost effective as well as proportional. Vodafone looks forward to inputting to any further consultations ahead of the levy order for 2025 and beyond.

With the above in mind, we ask that the following points are considered as Coimisiún na Meán finalises the Levy Order for 2025.

- Vodafone are submitting this response having reviewed the 2025 Consultation Document, in particular Section 4.4 of the document, *'Proposed levy approach for video-on-demand providers.'*
- Vodafone believes that the 7-day catch-up service provided as a feature of the Vodafone TV service is fundamentally different to traditional audiovisual on-demand media services, which, provide for the viewing of programmes at the moment chosen by the user and at the user's request *"on the basis of a catalogue of programmes selected by the provider of the service."*
- The Vodafone 7-day catch-up service is a feature of the Vodafone TV service, which is free for customers. The Vodafone TV service is provided as a bundle with Vodafone broadband services for which a separate levy is payable (on broadband services) to the Commission for Communications Regulation.
- The current Vodafone TV and broadband charges start at €55 per month and vary depending on channels selected. Vodafone does not attract any incremental subscription revenue on any TV bundle as a result of the regulated catch-up service.
- There are no interactive income revenue streams and no transaction charges including pay-per-view, rental or programme purchase nor does Vodafone receive any advertising income. Vodafone does not receive revenue from commercial communications in respect of this service.
- We do incur a cost to provide the Vodafone TV service to customers free of charge, and we are working with our colleagues at Group level to identify exactly what these costs are. Unfortunately, we were unable to extrapolate the exact costs before the 4th October deadline, however, we will have this information in the next 7-10 days and we will share them Coimisiún na Mean as soon as possible.
- With the above in mind and having reviewed Schedule 8 of the Levy Order. Vodafone has formed the view that we do not have any qualifying income as an audio visual on demand media service provider.

Vodafone Ireland is happy to remain engaged with An Coimisiún as part of its consideration of this matter.

ENDS

[Extracted from email from Bauer Media to CnaM, dated 11 October 2024]

Dear [Commission]

I would like to apologise about the delay on this submission something came across my desk on Thursday that side tracked me, and I neglected to respond in a timely manner. I would hope you can consider the below in your consultation process.

On behalf of Bauer Media Audio Ireland and our services, we would like to raise issue with the proposed new levy structure that sees a move from a banded / tiered revenue model to a fixed rate levy.

While the change will likely benefit the majority of operators and those of smaller stations, we believe that the proposed change will negatively impact the two national services Newstalk and Today FM by virtue of their size. Both stations are operated by Bauer and therefore we feel the change unfairly disadvantage one operator

In the Levy Order document you note that "An Coimisiún considers the view that there are economies of scale in relation to larger broadcasters to be fallacious", we agree with this statement that the larger stations are very costly to run and have a lower profit margin than the smaller stations. As such, to move to a fixed rate levy will further impact the profitability of these stations and is targeting our two national stations in particular.

We would like you to review the proposed changes and take this into consideration.

[Signature, etc]