From: Mary Brady
Sent: 13 April 2015 17:26
To: FOI UNIT
Subject: FOI Request

Please note: No need to post, print or scan letters to me, you may email your response in your content of the email.

Please process the following FOI.

RTÉjr

Details of contacts made to (NUMBER OF TIMES AND BY WHOM, PROVIDE ALL EMAILS, POST, DETAILS OF PHONE CALLS, MEETINGS ETC)

- Age Action Ireland
- Broadcasting Authority of Ireland
- Consumer Association of Ireland
- Independent Broadcasters Ireland
- Irish National Organisation of the Unemployed
- National Consumer Agency
- National Disability Authority
- National Newspapers of Ireland
- Office of the Minister for Children
- Ombudsman for Children
- RTÉ Audience Council
- Setanta
- TG4
- TV3

Date on which DCERN was informed that RTÉ were withdrawing their proposal.

RTÉ’s notice to withdraw the application and details of the department’s/minister’s response to this withdrawal.

All emails to and from DCERN in relation to the proposal from stakeholders such as TV3, TG4 etc.

Ministerial meetings on the matter, minutes. Broadcasting Division meetings and minutes on the proposed move.
UTV

The meeting with the Minister and UTV on the announcement of UTV Ireland. Who requested the meeting? The minutes of the meeting.

Cost of Perspectives report into the designation of UTV as a Public Service Broadcast. Applications to provide such consolations and country of origin (not nationality).

Cost of Consultation.

All communications between TV3 and DCERN in relation to UTV Ireland.

OTV and IFB

Ministerial communications between CC and Department of Art in relation to the establishment of OTV and IFB Channel.


Digital Switch Over

Cost of Digital Switchover campaign and accounts for Digital Switchover, up to DSO. Total cost.

Meetings of minutes with stakeholders and all Digital Switchover groups set up to oversee DSO, names of members. Number of Meetings.

TG4

Documents relating to the funding of TG4 though the licence fee, since 2009.

Discussions between TG4 and DCERN in relation to the provision of TG4 HD on Saorview.

Kind regards,
17th June 2015

Re: FOI request [FOI/2015/33]

Dear

I refer to the request which you made under the Freedom of Information Act 2014 seeking the following records:

1. Correspondence to a number of bodies concerning RTÉjr.
2. Ministerial communications between the Ceann Comhairle and Department of Arts, Heritage and the Gaeltacht in relation to the establishment of Oireachtas Television and the Irish Film Board Channel.
3. Inter-departmental communications between the Oireachtas, the Department of Arts, Heritage and the Gaeltacht in relation to TV and film.

The purpose of this letter is to explain that decision. This explanation has the following parts:

1. a schedule of all of the records covered by your request;
2. an explanation of the relevant findings concerning the records to which access is denied, and
3. a statement of how you can appeal this decision should you wish to do so.

This letter addresses each of these three parts in turn.

1. Schedule of records

A schedule is enclosed with this letter, it shows the documents that this body considers relevant to your request. It describes each document and refers to the sections of the FOI Act which apply to prevent release. The schedule also refers you to sections of the detailed explanation given under heading 2 below, which are relevant to the document in question. It also gives you a summary and overview of the decision as a whole.

2. Findings, particulars and reasons for decisions to deny access

The sections of the Act which can apply to deny access to documents are known as its exemption provisions.

In relation to part 1 of your request, you have recently been informed that RTÉ are now re-examining the original submission with a view to resubmitting a revised and updated proposal later this year. This Department will recommence its consideration of the proposals once they are re-submitted. I believe the documents 24 and 25 as referred to in the attached schedule concerning RTÉjr remain part of this Department’s deliberative process and are therefore being refused under Section 29. This Section allows refusal where records relate to the deliberative process of the FOI body.
The documents were also refused under Section 36 of the Act which has mandatory protection for trade secrets, financial, commercial, technical or other information which could reasonably be expected to result in a material financial loss or prejudice the commercial position of that person or prejudice the outcome of contractual negotiations.

Each of these Sections requires that a public interest test be undertaken to consider whether these records are released in the public interest. Essentially this means that we need to consider whether the public interest would be better served by the release of this information then the withholding of this information.

My view as demonstrated in the attached schedule is that the public interest would be on balance be better served by refusing these records. I have considered many factors in arriving at this decision.

In relation to part (2) of your request seeking Ministerial communications between the Ceann Comhairle and Department of Arts, Heritage and the Gaeltacht in relation to the establishment of Oireachtas Television and the Irish Film Board Channel, I am sorry to inform you that this Department does not have any records concerning this section of your FOI request and that I must therefore refuse your application. As is explained below, this decision is made under section 15(1)(a) of the Act.

Section 15(1)(a) of the Act states that an FOI request may be refused if:

‘the record concerned does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken,‘

In relation to part (3) of your request for records concerning inter-departmental communications between the Oireachtas, the Department of Arts, Heritage and the Gaeltacht in relation to TV and film, I have refused access under Sections 29 and 36 of the 2014 Act. Inclusion of the Oireachtas Channel on Saorview is subject to ongoing discussions and release of any information concerning those discussions may interfere with that process and therefore remain subject to an ongoing deliberative process and records numbered 1,2,4,5 6 & 7 are therefore being refused under Section 29.

The documents were also refused under Section 36 of the Act which has mandatory protection for trade secrets, financial, commercial, technical or other information which could reasonably be expected to result in a material financial loss or prejudice the commercial position of that person or prejudice the outcome of contractual negotiations.

Each of these Sections requires that a public interest test be undertaken to consider whether these records are released in the public interest. Essentially this means that we need to consider whether the public interest would be better served by the release of this information then the withholding of this information.

My view as demonstrated in the attached schedule is that the public interest would be on balance be better served by refusing these records. I have considered many factors in arriving at this decision.

3. Rights of appeal

In the event that you are unhappy with this decision you may appeal it. In the event that you need to make such an appeal, you can do so by writing to the Freedom of Information Unit, Department of Communications, Energy and Natural Resources, Elm House, Earlsvale Road, Cavan or by e-mail to FOIUNIT@dcenr.gov.ie. You should make your appeal within 4 weeks from the date of this notification, where a day is defined as a working day excluding the weekend and public holidays. However, the making of a late appeal may be permitted in appropriate circumstances. The appeal will involve a complete reconsideration of the matter by a more senior member of the staff of this Department.

Should you have any questions or concerns regarding the above, please contact me by telephone on 01-6782508.

Yours sincerely,

Maria Owens
<table>
<thead>
<tr>
<th>Record No.</th>
<th>Brief Description &amp; Date of Record</th>
<th>File Ref.</th>
<th>No. of Pages</th>
<th>Relevant facts</th>
<th>Findings/ conclusions (Public Interest Considerations, (If applicable))</th>
<th>Grant/refuse/ part-grant</th>
<th>Basis of Refusal: Section of Act</th>
<th>Record edited/Identify deletions</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Letter 21 April 2011 from Seán Barrett T.D. (Ceann Comhairle) to Minister Rabbitte regarding the proposed Oireachtas Television Channel</td>
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<td>refuse</td>
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<td>Section 29 Section 36</td>
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<td>2.</td>
<td>Letter 21 April 2011 from Art O’Leary (Oireachtas) to Minister Rabbitte 2011 further to the Ceann Comhairle’s letter of the same date regarding the proposed Oireachtas Television Channel attached</td>
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<td>Section 29 Section 36</td>
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<td>3.</td>
<td>Acknowledgement letter of 26 April 2011 from Colm Ó Conaill (DCENR) to Seán Barrett T.D. (Ceann Comhairle) on behalf of Minister Rabbitte</td>
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<td>letter of 15 October 2012 from Minister Rabbitte to Seán Barrett T.D. (Ceann Comhairle) regarding the Establishment of the Oireachtas Channel</td>
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<td>Letter of 17 October 2012 from Sean Barrett (Ceann Comhairle) to Minister Rabbitte regarding RTÉ’s proposals</td>
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<td>Section 29 Section 36</td>
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<td>7.</td>
<td>Letter 7 February 2014 from Sean Barrett (Ceann Comhairle) to Minister Rabbitte regarding the carriage of the Oireachtas Channel on Saorview</td>
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<td>8.</td>
<td>Letter of 6 June 2013 from Éanna O’Conghaile (DCENR) to Ann Fitzgerald (National Consumer Agency) regarding S103 PVT consultation</td>
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<td>Letter of 6 June 2013 from Éanna O’Conghaile (DCENR) to David McRedmond (TV3) regarding S103 PVT consultation</td>
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<td>Letter of 6 June 2013 from Éanna O’Conghaile (DCENR) to Dermot Jewell (Consumer’s Association of Ireland Limited) regarding S103 PVT consultation</td>
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<td>11.</td>
<td>Letter of 6 June 2013 from Éanna O’Conghaile (DCENR) to Emily Logan (Ombudsman for Children) regarding S103 PVT consultation</td>
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<td>12.</td>
<td>Letter of 6 June 2013 from Éanna O’Conghaile (DCENR) to Géaróid Ó Tuatháigh (RTÉ) regarding S103 PVT consultation</td>
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<td>Letter of 6 June 2013 from Éanna O’Conghaile (DCENR) to Jim Breslin (Department of Children and Youth Affairs) regarding S103 PVT consultation</td>
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<td>Letter of 6 June 2013 from Éanna O’Conghaile (DCENR) to John Purcell (IBI) regarding S103 PVT</td>
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<td>15.</td>
<td>Letter of 6 June 2013 from Éanna O’Conghaile (DCENR) to John Stewart (Irish National Organisation of the Unemployed) regarding S103 PVT consultation</td>
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<td>16.</td>
<td>Letter of 6 June 2013 from Éanna O’Conghaile (DCENR) to Mary Doyle (Department of Children and Youth Affairs) regarding S103 PVT consultation</td>
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<td>Letter of 6 June 2013 from Éanna O’Conghaile (DCENR) to Michael O’Keeffe (BAI) regarding S103 PVT consultation</td>
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<td>Letter of 6 June 2013 from Éanna O’Conghaile (DCENR) to Paul Cooke (NNI) regarding S103 PVT consultation</td>
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<td>20.</td>
<td>Letter of 6 June 2013 from Éanna O’Conghaile (DCENR) to Pól Ó Gallchóir (TG4) regarding S103 PVT consultation</td>
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<td>Letter of 6 June 2013 from Éanna O’Conghaile (DCENR) to Robin Webster (Age Action Ireland) regarding S103 PVT consultation</td>
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<td>Letter of 6 June 2013 from Éanna O’Conghaile (DCENR) to Siobhan Barron (National Disability Authority) regarding S103 PVT consultation</td>
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<td>23. Email of 21 June 2013 from Ann-Marie Lenihan (NNI) to Mary Dillon (DCENR) regarding S103 response with response attached</td>
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| 24. Email of 21 June 2013 from Pádraic Ó Ciardá (TG4) to Mary Dillon (DCENR) regarding S103 response | 2 |   | refuse | Section 29  
|                                                                                |   |   |   | Section 36 |
| 25. Email of 21 June 2013 from David McMunn (TV3) regarding S103 response with response attached | 9 |   | Refuse | Section 29  
|                                                                                |   |   |   | Section 36 |
26 April 2011

Mr Seán Barrett, T.D.
Ceann Comhairle
Dáil Éireann
Leinster House
Dublin 2

Dear Ceann Comhairle

On behalf of Mr Pat Rabbitte, T.D., Minister for Communications, Energy and Natural Resources I wish to acknowledge receipt of your recent letter, regarding the Oireachtas Television Channel, your letter is currently receiving attention and we will be in contact with you in the near future.

Yours sincerely

[Signature]

Colm Ó Conaill
Private Secretary to the
Minister for Communications, Energy & Natural Resources
June 2013

Ms Ann Fitzgerald
Chief Executive
National Consumer Agency
4 Harcourt Road
Dublin 2

Dear Ann

I write in relation to the requirement under section 103 of the Broadcasting Act 2009 for the Minister for Communications, Energy and Natural Resources to carry out a Public Value Test (PVT) on any new channels and services proposed by the public service broadcasters, RTÉ and TG4, and to consult with key stakeholders in this regard.

RTÉ has indicated that it is proposing to make some changes to the RTÉ Two (HD) daytime schedule and the Minister is now commencing a consultation process in accordance with the legislation.

The views of your organisation would be very welcome as part of this process and, in this regard, I attach a description of the schedule changes proposed and a list of consultation questions.

The closing date for receipt of submissions is Friday, 21 June 2013 and submissions received after this date may not be included.

Your submission should be marked for the attention of -

Ms. Mary Dillon,
Department of Communications, Energy and Natural Resources,
Broadcasting Policy Division,
29-31 Adelaide Road,
Dublin 2.

Submissions may also be emailed to mary.dillon@dcenr.ie.
Should you require any further clarification on this process, the background legislation or the questions being asked, please contact the undersigned at -

Department of Communications, Energy and Natural Resources,
Broadcasting Policy Division,
29-31 Adelaide Road,
Dublin 2.

Email: eanna.oconghaile@dcenr.ie
Ph. 01- 6782167

Yours sincerely,

[Signature]

Eanna Ó Conghaile
Principal Officer
June 2013

Mr David McRedmond
Chief Executive Officer
TV3
Westgate Business Park
Ballymount
Dublin 24

Dear David

I write in relation to the requirement under section 103 of the Broadcasting Act 2009 for the Minister for Communications, Energy and Natural Resources to carry out a Public Value Test (PVT) on any new channels and services proposed by the public service broadcasters, RTÉ and TG4, and to consult with key stakeholders in this regard.

RTÉ has indicated that it is proposing to make some changes to the RTÉ Two (HD) daytime schedule and the Minister is now commencing a consultation process in accordance with the legislation.

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Broadcasting Policy Division,
29-31 Adelaide Road,
Dublin 2.

Email: eanna.oconghaile@dcenr.ie
Ph. 01- 6782167

Yours sincerely,

Éanna Ó Conghaile
Principal Officer
June 2013

Mr Dermot Jewell
Chief Executive
Consumer’s Association of Ireland Ltd.
43-44 Chelmsford Road
Ranelagh
Dublin 6

Dear Dermot

I write in relation to the requirement under section 103 of the Broadcasting Act 2009 for the Minister for Communications, Energy and Natural Resources to carry out a Public Value Test (PVT) on any new channels and services proposed by the public service broadcasters, RTÉ and TG4, and to consult with key stakeholders in this regard.

RTÉ has indicated that it is proposing to make some changes to the RTÉ Two (HD) daytime schedule and the Minister is now commencing a consultation process in accordance with the legislation.

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Department of Communications, Energy and Natural Resources,
Broadcasting Policy Division,
29-31 Adelaide Road,
Dublin 2.

Email: eanna.oconghaille@dcenr.ie
Ph. 01- 6782167

Yours sincerely,

Eanna Ó Conghaile
Principal Officer
June 2013

Ms Emily Logan
Ombudsman for Children
Ombudsman for Children’s Office
Millennium House
52-56 Grand Strand Street
Dublin 1

Dear Emily

I write in relation to the requirement under section 103 of the Broadcasting Act 2009 for the Minister for Communications, Energy and Natural Resources to carry out a Public Value Test (PVT) on any new channels and services proposed by the public service broadcasters, RTÉ and TG4, and to consult with key stakeholders in this regard.

RTÉ has indicated that it is proposing to make some changes to the RTÉ Two (HD) daytime schedule and the Minister is now commencing a consultation process in accordance with the legislation.

The views of your organisation would be very welcome as part of this process and, in this regard, I attach a description of the schedule changes proposed and a list of consultation questions.

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Ms. Mary Dillon,
Department of Communications, Energy and Natural Resources,
Broadcasting Policy Division,
29-31 Adelaide Road,
Dublin 2.

Submissions may also be emailed to mary.dillon@dcenr.ie.
Should you require any further clarification on this process, the background legislation or the questions being asked, please contact the undersigned at -

Department of Communications, Energy and Natural Resources,
Broadcasting Policy Division,
29-31 Adelaide Road,
Dublin 2.

Email: eanna.oconghaille@dcenr.ie
Ph. 01- 6782167

Yours sincerely,

[Signature]
Eanna O Conghallie
Principal Officer
Mr Géaróid Ó Tuathaigh
Chairperson
Audience Council
Donnybrook
Dublin 4

Dear Géaróid

I write in relation to the requirement under section 103 of the Broadcasting Act 2009 for the Minister for Communications, Energy and Natural Resources to carry out a Public Value Test (PVT) on any new channels and services proposed by the public service broadcasters, RTÉ and TG4, and to consult with key stakeholders in this regard.

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Department of Communications, Energy and Natural Resources,
Broadcasting Policy Division,
29-31 Adelaide Road,
Dublin 2.

Email: eanna.oconghaile@dcenr.ie
Ph. 01- 6782167

Yours sincerely,

Eanna O Conghaile
Principal Officer
June 2013

Mr Jim Breslin
Secretary General
Department of Children and Youth Affairs
43 - 49 Mespil Road
Dublin 2

Dear Jim

I write in relation to the requirement under section 103 of the Broadcasting Act 2009 for the Minister for Communications, Energy and Natural Resources to carry out a Public Value Test (PVT) on any new channels and services proposed by the public service broadcasters, RTÉ and TG4, and to consult with key stakeholders in this regard.

RTÉ has indicated that it is proposing to make some changes to the RTÉ Two (HD) daytime schedule and the Minister is now commencing a consultation process in accordance with the legislation.

The views of your organisation would be very welcome as part of this process and, in this regard, I attach a description of the schedule changes proposed and a list of consultation questions.

The closing date for receipt of submissions is Friday, 5 July 2013 and submissions received after this date may not be included.

Your submission should be marked for the attention of:

Ms. Mary Dillon,
Department of Communications, Energy and Natural Resources,
Broadcasting Policy Division,
22-31 Adelaide Road,
Dublin 2.

Submissions may also be emailed to mary.dillon@dcenr.ie.
Should you require any further clarification on this process, the background legislation or the questions being asked, please contact the undersigned at:

Department of Communications, Energy and Natural Resources,
Broadcasting Policy Division,
29-31 Adelaide Road,
Dublin 2.

Email: anna.conagherle@env.ie
Ph. 01-8752167

Yours sincerely,

[Signature]

Anna O'Conagherle
Principal Officer
June 2013

Mr John Purcell
Chairman
Independent Broadcasters of Ireland
Marconi House
Digges Lane
Dublin 2

Dear John

I write in relation to the requirement under section 103 of the Broadcasting Act 2009 for the Minister for Communications, Energy and Natural Resources to carry out a Public Value Test (PVT) on any new channels and services proposed by the public service broadcasters, RTÉ and TG4, and to consult with key stakeholders in this regard.

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Dublin 2.

Email: eanna.oconghaile@dcenr.ie
Ph. 01- 6782167

Yours sincerely,

Eanna O Conghaile
Principal Officer
March 2013

Mr John Stewart
Co-ordinator
The Irish National Organisation
of the Unemployed
Araby House
8 North Richmond Street
Dublin 1

Dear John

I write in relation to the requirement under section 103 of the Broadcasting Act 2009 for the Minister for Communications, Energy and Natural Resources to carry out a Public Value Test (PVT) on any new channels and services proposed by the public service broadcasters, RTÉ and TG4, and to consult with key stakeholders in this regard.

RTÉ has indicated that it is proposing to make some changes to the RTÉ Two (HD) daytime schedule and the Minister is now commencing a consultation process in accordance with the legislation.

The views of your organisation would be very welcome as part of this process and, in this regard, I attach a description of the schedule changes proposed and a list of consultation questions.

The closing date for receipt of submissions is Friday, 21 June 2013 and submissions received after this date may not be included.

Your submission should be marked for the attention of -

Ms. Mary Dillon,
Department of Communications, Energy and Natural Resources,
 Broadcasting Policy Division,
29-31 Adelaide Road,
Dublin 2.

Submissions may also be emailed to mary.dillon@dcenr.ie.
Should you require any further clarification on this process, the background legislation or the questions being asked, please contact the undersigned at -

Department of Communications, Energy and Natural Resources,
Broadcasting Policy Division,
29-31 Adelaide Road,
Dublin 2.

Email: eanna.oconghalle@doenr.ie
Ph. 01- 6782167

Yours sincerely,

[Signature]

Éanna Ó Conghaile
Principal Officer
Ms Mary Doyle  
Director  
Office of the Minister for Children and Youth Affairs  
Hawkins House  
Dublin 2

Dear Mary

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Yours sincerely,

[Signature]

Eanna O Conghaile
Principal Officer
6th June 2013

Mr Michael O’Keeffe
Chief Executive Officer
Broadcasting Authority of Ireland
2-5 Warrington Place
Dublin 2

Dear Michael

I write in relation to the requirement under section 103 of the Broadcasting Act 2009 for the Minister for Communications, Energy and Natural Resources to carry out a Public Value Test (PVT) on any new channels and services proposed by the public service broadcasters, RTÉ and TG4, and to consult with key stakeholders in this regard.

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Ph. 01- 6782167

Yours sincerely,

[Signature]
Eanna Ó Conghaille
Principal Officer
June 2013

Mr Michael O'Rourke
Chief Executive Officer
Setanta
4th Floor
Georges Quay House
43 Townsend Street
Dublin 2

Dear Michael,

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Email: eanna.oconghaile@dcenr.ie  
Ph. 01- 6782167  

Yours sincerely,  

Éanna O Conghaile  
Principal Officer
6th June 2013

Mr Paul Cooke
Chairman
National Newspapers of Ireland
Clyde Lodge
Clyde Road
Ballsbridge
Dublin 4

Dear Paul,

I write in relation to the requirement under section 103 of the Broadcasting Act 2009 for the Minister for Communications, Energy and Natural Resources to carry out a Public Value Test (PVT) on any new channels and services proposed by the public service broadcasters, RTÉ and TG4, and to consult with key stakeholders in this regard.

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Ph. 01- 6782167

Yours sincerely,

Éanna Ó Conghaile
Principal Officer
6 June 2013

Mr Pól Ó Gallchóir
Chief Executive Officer
TG4
Baile na hAbhann
Co Galway

Dear Pól

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29-31 Adelaide Road,
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Email: eanna.oconghalle@dcenr.ie
Ph. 01- 6782167

Yours sincerely,

Eanna O Conghalle
Principal Officer
June 2013

Mr Robin Webster
Chief Executive
Age Action Ireland
30-31 Lower Camden Street
Dublin 1

Dear Robin

I write in relation to the requirement under section 103 of the Broadcasting Act 2009 for the Minister for Communications, Energy and Natural Resources to carry out a Public Value Test (PVT) on any new channels and services proposed by the public service broadcasters, RTÉ and TG4, and to consult with key stakeholders in this regard.

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Email: eanna.oconghaile@dcdnr.ie
Ph. 01- 6782167

Yours sincerely,

[Signature]
Éanna O Conghaile
Principal Officer
June 2013

Ms Siobhan Barron
Director
National Disability Authority
25 Clyde Road
Dublin 4

Dear Siobhan

I write in relation to the requirement under section 103 of the Broadcasting Act 2009 for the Minister for Communications, Energy and Natural Resources to carry out a Public Value Test (PVT) on any new channels and services proposed by the public service broadcasters, RTÉ and TG4, and to consult with key stakeholders in this regard.

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Ph. 01- 5782167

Yours sincerely,

Eanna O Conghalle
Principal Officer
From: Mary Dillon
Sent: 30 July 2013 16:21
To: Susan Fleming
Subject: FW: NNI Response to PVT
Attachments: NNI Response to PVT RTE Two new services
June 13.DOC

Mary Dillon
Broadcasting Policy Division,
Department of Communications,
Energy and Natural Resources,
29-31 Adelaide Road,
Dublin 2
Tel: 016782150
Email: mary.dillon@dcentr.gov.ie

From: Ann-Marie Lenihan [mailto:amlenihan@cullencommunications.ie]
Sent: 21 June 2013 11:07
To: Mary Dillon
Cc: Eanna O'Conghaille; Frank Cullen
Subject: NNI Response to PVT

Dear Mary,

Please find attached the response of National Newspapers of Ireland (NNI) to the Public Value Test on changes proposed by RTE Two to its daytime schedule.

I would be grateful if you could acknowledge receipt.

Many thanks and kind regards
Ann Marie

Ann Marie Lenihan
Communications & Public Affairs Manager
National Newspapers of Ireland (NNI)
Clyde Lodge
15 Clyde Road
Dublin 4
T. +353 1 668 9099
www.nni.ie

This e-mail message has been scanned for Viruses and Content and cleared by MailMarshal
RTÉ Two - Service Changes
Response by National Newspapers of Ireland (NNI) to Consultation by the Department of Communications, Energy and Natural Resources on the application of the Public Value Test

Introduction

National Newspapers of Ireland (NNI) is grateful for the opportunity to comment on the RTÉ proposal to change the off-peak schedule for RTÉ Two.

NNI represents 16 national daily, Sunday and weekly newspapers and 25 local and regional newspapers with a combined weekly circulation of almost 4.8m copies.

This means that almost 250m NNI newspapers are sold annually in Ireland. Their production, distribution and sale accounts for thousands of jobs and millions of euro in direct and indirect tax revenue for the country.

NNI members also operate websites including online news sites as well as other special interest sites like property and recruitment.

According to a recent study undertaken by NNI and others, a total of 4,494 people are employed on a full-time basis in the newspaper industry in Ireland. This include 3,419 people who are employed within publishing houses (of which 2,096 are editorial staff) while a further 1,075 are employed in printing and distribution. Wages across the industry totalled €251.7m in 2011, while freelance journalists and contributors were paid an additional €40m approximately in fees.

The newspaper industry in Ireland generated a total of €829.68m in revenue in 2011, including VAT of €110.79m.

In addition to turnover and employment figures, as an industry, newspaper publishers purchased €272m worth of goods and services in 2011.

Since 2000, the newspaper industry has invested in excess of €250m in capital expenditure on buildings, equipment, staff training, research and innovation.

General

This submission relates to RTÉ’s proposal to change the off-peak schedule for RTÉ Two.

The consultation is designed to assist the Minister in making an assessment under Section 103 of the Broadcasting Act 2009 of the public value of the proposed schedule changes.

The Minister is required, in deciding on the public value of the proposal, to consider a number of matters, including the “contribution of the proposal to media plurality”.
NNI’s response to the consultation is limited to the issue of media plurality, which is addressed in Question 9.

9. **Do you consider that the proposed schedule changes help contribute to media plurality? Why?** The response should make particular reference of the contribution of the proposal to the following aspects of media plurality:

(i) diversity of content, and

(ii) Diversity of ownership.

It should be noted that NNI addressed the issue of media plurality in the Department’s December 2010 Consultation on a “New RTÉ Services Proposal”. In fact, the proposed changes covered in the current consultation are a result of the introduction of RTÉjr, which was one of the new services launched after the previous consultation.

The media plurality issues raised in the current consultation are in many respects similar to those raised in the 2010 exercise. In short, whether in launching new channels, or in varying what is broadcast on existing channels, the Minister should ensure that RTÉ respects the rules on fair competition (including in relation to advertising) with independent broadcasters and other sections of the media including newspapers. NNI makes no apology for raising this issue again. The ability of newspapers to raise advertising revenue is critical to their survival. At a time when several newspapers have been forced to close, and when others may soon follow, it is critical that the publically-funded broadcaster, RTÉ, is not enabled to take an even-bigger slice of the advertising pie.

**Media Plurality**

The NNI maintains that a wider approach needs to be taken to the question of media plurality. RTÉ is a public service broadcaster in receipt of public funds and, in ensuring that funding is compliant with the State aids rules in the Treaty on the Functioning of the European Union, the Minister must pay proper regard to the need to ensure that RTÉ respects the rules on fair competition with independent broadcasters and other sections of the media including newspapers, including in the area of advertising. It is regrettable that, yet again, RTÉ has failed to consider the impact of its proposals on competitors other than other television broadcasters.

In this context, it should be emphasised that the Amsterdam Protocol, which is annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, subjects the right of Member States to fund public service broadcasting to the requirement not to “affect trading conditions and competition in the Union to an extent that would be contrary to the public interest”.

The principle of proportionality has been applied in striking the balance between the need to ensure that the public service objectives are met and the need to ensure effective competition from other players in the market place. That newspapers are part of the competitive framework which public service broadcasters must respect is made
clear in the European Commission’s 2009 Guidelines on the application of State aid rules to public service broadcasting which states the important role played by commercial broadcasters in achieving the objectives of the Amsterdam protocol and continues that “newspaper publishers and other print media are also important guarantors of an objectively informed public and of democracy” (emphasis supplied).

The importance of media plurality in this context was highlighted in the January 2010 Commission decision in relation to introduction of new audio-visual services by Dutch public service broadcasters.1 There was, at the time, no prior assessment of new services in the Netherlands. Together with independent broadcasters, complaints were made by the Dutch Newspaper Publishers Association and the publishing company De Telegraaf. The Commission made it clear that an uncontrolled expansion of the Amsterdam Protocol would seriously harm media pluralism, and that this would be in conflict with the common interest of Europe to maintain a pluralistic media landscape in the fast developing media environment. It explicitly shared the concerns of the complainants, in particular those of the Dutch Newspaper Publishers Association whose members had either to develop an on-line business model or exit the media market.

The Dutch decision was, of course, concerned with the absence of a prior assessment procedure, and clearance was given on the basis that such a procedure would in future be applied. There is, of course, a prior assessment procedure in Ireland, but it is clear from the decision that the media plurality issue covers the question of competition between different media players including newspaper publishers and the extent of the public service remit in particular in relation to the new digital world where broadcasting and publishing converge.

The NNI believes that media plurality concerns would arise where a change in channel content results in an increase in RTÉ’s advertising (and sponsorship) revenues. In this regard, RTÉ has estimated that incremental revenues could be “in the region of €250,000 to €400,000”.

These have been described by RTÉ as “modest additional revenues”. NNI submits that this cannot, in today’s tough commercial environment, be described as “modest”. Given that the amount of spend by advertisers is generally fixed, any incremental increase in revenues by RTÉ will be at the expense of other media.

In this context, NNI has a number of major concerns in relation to RTÉ’s advertising practices. It does not believe that the range of advertising carried, the means of selling advertising, or the relationship between public service and “commercial” activity is consistent with RTÉ’s public service remit or can be justified in light of the need to ensure fair competition whether between print and broadcast media generally or in the new digital space.

Specific concerns include:

- The range of advertising carried on RTÉ's public service broadcasting is already very wide and includes, in addition to periodic advertising breaks, sponsorship of programming, advertising around the programme, audience give-a-ways with significant references to the product/service by the presenter and viewer competitions. This range of advertising, which is not seen in public service broadcasting in other Member States, is not in keeping with RTÉ's public service remit.

*The change to RTÉ Two would give RTÉ even more opportunity to offer this range of advertising.*

- RTÉ offers advertisers a very effective multi-platform advertising service – Cross Media Solutions - which bundles television, radio, on-line and print media. No other operator is able to offer such a package.

*NNI believes that the change to RTÉ's schedule will enable RTÉ to exploit its cross-media offering, giving advertisers "more bang for the buck", even if there is no increase in revenues. Indeed RTÉ seems to have accepted this when it states, at pages 7-8 of its Response, that "RTÉ will not be able to isolate or specifically identify incremental revenues made from opening this time to advertising, as clients buy campaigns across all RTÉ channels, usually based on a target number of ratings to be achieved, and do not buy individual spots".*

- The relationship between RTÉ's public service activity and its commercial activity is not clear to NNI. RTÉ and the Department appear to draw a principled line between the broadcast channels, all of which fall within the public service remit, and RTÉ's on-line and print activities, which are "commercial". All of the proposed new services are said to fall within the public service remit. NNI has expressed concerns that RTÉ is using publically-funded content generated as part of its public service remit inappropriately in its commercial activity. This seems to be the case in relation to the provision of news content to RTÉ.ie, where the cost of the production of the news, as opposed to on-line conversion costs, is not borne by the commercial arm.

Any failure to maintain the required arms' length relationship between the public service and commercial arms of RTÉ would engender serious State aid and competition concerns. The ability of newspaper and other media operators to introduce viable "paid for" digital services on a wide range of fixed and mobile platforms is compromised where the main public service broadcaster is able to offer news and other content "for free" on its commercial web site. As the Commission stated in the Dutch decision, "it is in the public interest to maintain a plurality of balanced public and private media offers in the current dynamic media environment".
The provision of free content to consumers increases traffic to www.RTE.ie which, in turn, increases the appeal to advertisers. By contrast, in countries like Norway, the public service broadcaster agreed last year to cease advertising on its website following a complaint by NNI’s Norwegian equivalent. The BBC website has no advertising when viewed within the UK.

RTÉ also provides free content on mobile apps. For reasons that NNI cannot understand, the launch of RTÉ’s mobile app in early 2010 was not subject to a public value test or any form of consultation. There has been debate on such developments elsewhere. In the UK, the launch of the BBC app was delayed pending examination and consideration by the BBC Trust.

In the context of the change in scheduling of RTÉ Two, NNI believes that media plurality could be further compromised were the relationship between RTÉ’s public service and commercial activities not properly defined and managed. It is more than likely that RTÉ will seek to use the increased commercialisation of RTÉ Two (with the replacement of three hours of under-sevens’ programming by programming for the 15-34s cohort) to strengthen its advertising position in its on-line activities. Indeed, NNI is at a loss to understand why this issue has not been addressed in RTÉ’s Response.

In summary, NNI believes that the proposed change in RTÉ Two’s schedule will provide RTÉ with an enhanced opportunity to attract advertising spend at the expense of other media, including independent broadcasters and the newspapers. If RTÉ continues with its current advertising practices generally in relation to the “opportunity” presented by the proposed change in scheduling, this will have an adverse effect on the ability of newspaper operators to attract advertising for their print editions and to develop viable paid-for digital offerings. If unchecked, this will have serious consequences for media plurality.

The Exercise of Powers under Section 103(9) of the Broadcasting Act 2009

The NNI stresses that it has no objection in principle to RTÉ’s proposed changes. Indeed, it can see the public value of avoiding duplication in children’s broadcasting and of taking steps to cater for the under-served 15-35s cohort. However, it is important that its proposals are seen in the context of the current competitive framework for the media, where RTÉ, as the main public service broadcaster, engages in unfair competition with independent operators, including newspaper publishers in Ireland.

NNI believes that it is clear that the proposed change will have a material impact on newspaper readership and advertising revenues and that media plurality could be compromised if this exacerbates the difficulties faced by newspaper publishers in their traditional print and new digital activities.

Furthermore, the increase in content available to RTÉ from the proposed new services will no doubt be utilized for commercial purposes on www.RTE.ie and mobile apps. In these circumstances, the NNI believes that it would be appropriate for the Minister, assuming that he grants consent to the changes, to attach particular terms or conditions to such consent in order to safeguard media plurality.
NNI would respectfully ask that the Minister considers attaching terms and conditions to any consent along the following lines:

1. That the current limits on advertising time be revised to take account of the fact that advertising is now available over a wide range of channels, and indeed is sold on that basis. A cap should be set which will at the least ensure that RTÉ channels carry no more advertising as a whole after the proposed change than is currently carried by the its channels as a whole.

2. That no advertising, sponsorship and sub-site hosting be allowed on www.RTE.ie when viewed within the jurisdiction.

The NNI also believes that, given the existing threat to media plurality and the additional threat to media plurality posed by the proposed change, the Minister should also address the State aid and fair competition issues arising from RTÉ’s current advertising practices, including the appropriateness of cross-platform bundling and the continued failure to ensure that there is an appropriate transparent arms’ length relationship between RTÉ’s public service and commercial activities.

ends

National Newspapers of Ireland
Clyde Lodge
15 Clyde Road
Ballsbridge
Dublin 4
www.nni.ie

Contact:  Ann Marie Lenihan (01 668 9099)