RTÉ Enhanced Service Proposal

Results of Analysis and Consideration

Date: 22\textsuperscript{nd} December 2018

Contents
1. Introduction

RTÉ, one of Ireland’s two public service broadcasting corporations, has sought the consent of the Minister for an extension of permitted broadcasting hours of RTÉ 1+1 and the introduction of a new service RTÉ 2+1.

Section 103 of the Broadcasting Act 2009 provides the Minister with responsibility to consider requests by RTÉ for new channels and services and to make a determination on whether to consent to these channels or services.

The Minister has assessed the proposal, taking account of the following:

1. Consultation with RTÉ on the proposal;
2. A sectoral impact assessment conducted by the Broadcasting Authority of Ireland (BAI).
3. Consultation with the Broadcasting Authority of Ireland (BAI) on the public value of the proposal; and
4. Consultation with stakeholders on the public value of the proposal.

In accordance with his powers under section 103(4) (b) of the Broadcasting Act 2009, the Minister requested the BAI to conduct a sectoral impact assessment. The aim of the sectoral impact assessment was to assess the impact of the new proposals on the broadcasting sector in Ireland. This was undertaken by the BAI in accordance with the provisions of section 100 of the Act.

To inform his decision on the public value of the proposal, the Minister sought comments from the BAI as well as other broadcasters and public interest groups.

This document summarises the results of the public value consultation and the sectoral impact assessment and details the Minister’s response.
In accordance with the requirements of section 103 of the Broadcasting Act 2009, documents given to the Minister in the course of the consultations undertaken on this issue will be available on the Department’s website as soon as possible after the date of this decision, subject to the redaction of commercially sensitive data.
2. Minister’s Decision

The Minister considers that the RTÉ proposal for an extension of permitted broadcasting hours of RTÉ One+1 and the introduction of a new service, RTÉ2+1, is consistent with RTÉ’s objects under Section 114 of the Broadcasting Act 2009. The Minister is also satisfied that the proposal is compatible with the AVMS Directive and recommendations of the Council of Europe in respect of public service broadcasting.

The Minister considers that the proposed new services being provided to the 188,000 households where Saorview is the only means of receiving television adds considerable public value to the proposal.

The Minister notes the BAI’s support for the proposal and their recommendation that the new services not be used to provide additional content; rather, they must be simulcasts of the parent channels.

The Minister is conscious of concerns expressed by stakeholders around the possible effect of RTÉ’s diversion of resources from objects set out in legislation, that access to the content already exists through the principal channels, additional Saorview distribution charges due to increased bandwidth usage, the blocking of further services being added to Saorview and the proposal is not consistent with RTÉ’s strategic aim of operating in a “Digital First” manner.

In considering these issues, the Minister has consulted with the BAI as to the sectoral impact of the proposal and its public value. The Minister has also taken account of RTÉ’s assurances that the proposal will not impact on the delivery of existing services and will not result in significant additional costs and will even reduce carriage costs for all broadcasters on Saorview. The proposal provides additional viewing options for audience which is a key factor of RTÉ’s 2018-2022 Strategy.

In addition, the Minister has also had regard to the view of the BAI and consultants that the proposal will have a positive impact on audience access to RTE services, particularly younger audiences. In addition, the sectoral impact assessment finding that the proposal could make
a positive contribution to the availability, choice, quality and accessibility of services for audience in Saorview only homes.

Following consideration of the issues outlined above, the Minister has decided to grant approval to RTÉ to proceed with the proposal, subject to the following conditions:

1. RTÉ must ensure that following the decoupling of RTÉ One+1 and RTÉjr, that there is no impact on the provision of the RTÉjr service.

2. In line with the RTÉ proposal, the services must remain as simulcasts of the parent channel and must not be used to provide additional content.
3. Summary of the RTÉ Proposal

RTÉ has submitted a proposal for an extension of permitted broadcasting hours of RTÉ One+1 and the introduction of a new service, RTÉ2+1.

- RTÉ proposes to extend the broadcast hours of the RTÉ One+1 channel up to 24 hours. The minimum broadcast hours will be 06:00 to 02:00 daily, and will be an exact replica of the RTÉ One channel.

- RTÉ One+1 currently shares a broadcast channel slot with RTÉjr on the DTT Multiplex. In order to facilitate the new proposal, RTÉ One+1 will be decoupled from RTÉjr and both channels will be assigned their own 24 hour slot on the Saorview platform. This will have no impact on the RTÉjr service.

- RTÉ proposes to introduce a new RTÉ2+1 which would be an exact replica of the RTÉ2 schedule in peak time (from 18:00). This channel will broadcast from 19:00 to 02:00 Monday to Friday and will initially broadcast from 12pm to 02:00 on Saturday and Sunday.

- RTÉ will retain the flexibility to amend the broadcast hours subject to audience demand and for special events where the schedule requires flexibility such as major sporting events and tournaments.

- The proposed new services will offer greater access and provide more choice to audiences in the 661,000 Irish homes that have Saorview, of which 188,000 are Saorview only homes.

- Additional revenues generated from the new services would deliver added value to licence fee payers through the growth and development of Irish content.
4. Summary of the Sectoral Impact Assessment (SIA)

In general, the BAI is of the view that the sectoral impact of the proposal could make a positive contribution to the availability, choice, quality and accessibility of services for audiences.

The consultant’s Report notes that the launch of the new services will provide increased audience and revenue for RTÉ. However, the 0.6% audience share increase was not deemed to be significant in the context of the SIA criteria in Section 100 of the 2009 Act.

The Report also concludes that if the proposals are implemented, RTÉ could secure an additional €1.7m in annual advertising revenue. From this, projections show that Virgin Media could lose in the region of €700K, other opt-out channels €700K and TG4 €30K. However, the launch of two new channels on Saorview could mitigate this impact to Virgin Media and TG4 by reducing carriage costs on the platform by €0.36m and €0.07m respect.

Each broadcaster on the Saorview platform is charged for carriage on the service. Tariffs for this carriage are set by Comreg and paid to RTÉ Transmissions Network (2rn) who manage and maintain the National Broadcast Network.

In relation to costs, projections indicate that the implementation of these new services would provide a net contribution to RTÉ of €1m in year 1. This projection does not include DTT charges for both channels as these charges do not represent an outflow of funds from the RTÉ Group.
5. Summary of the BAI Response to the Public Value Test

The proposed new services were considered in the context of the criteria set out in section 103(8) of the Broadcasting Act 2009, particularly:

- the importance of the proposal to RTÉ’s public service objects;
- the impact of the proposals on the costs and revenues of RTÉ;
- the contribution of the enhanced services to the democratic, social and other needs of Irish society;
- the extent to which the proposals will enhance the accessibility of services and increase provision for underserviced audiences.

The BAI noted that the consultants Public Value Review highlight the positive impact of the proposals on audience access to RTÉ services and younger audiences in particular.

The BAI concludes that the implantation of the proposal has the potential to create material public value in the context of the statutory criteria.

Overall, the BAI is supportive of the implementation of the proposed new services as presented. However, it was stressed that this was on the condition that both services are simulcasts of the parent channel and not used to provide additional content.
6. Summary of Responses to Stakeholder Consultation

There were 26 organisations consulted in relation to the proposals and responses to the consultation questions were received from ten, as below: As outlined above, this includes the BAI view as to the public value of the proposal.

<table>
<thead>
<tr>
<th>NAME OF ORGANISATION</th>
<th>REPLY RECEIVED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Broadcasting Authority of Ireland</td>
<td>Yes</td>
</tr>
<tr>
<td>Competition and Consumer Protection Commission</td>
<td>Yes</td>
</tr>
<tr>
<td>Press Council of Ireland</td>
<td>Yes</td>
</tr>
<tr>
<td>Age Action</td>
<td>Yes</td>
</tr>
<tr>
<td>National Parents Council – Primary</td>
<td>Yes</td>
</tr>
<tr>
<td>TG4</td>
<td>Yes</td>
</tr>
<tr>
<td>Community Television (CRAOL)</td>
<td>Yes</td>
</tr>
<tr>
<td>Screen Producers Ireland</td>
<td>Yes</td>
</tr>
<tr>
<td>Virgin Media (TV3)</td>
<td>Yes</td>
</tr>
<tr>
<td>Advertising Standards Authority for Ireland (ASAI)</td>
<td>Yes</td>
</tr>
<tr>
<td>The Irish National Organisation of the Unemployed</td>
<td>No</td>
</tr>
<tr>
<td>National Disability Authority</td>
<td>No</td>
</tr>
<tr>
<td>Newsbrands Ireland</td>
<td>No</td>
</tr>
<tr>
<td>Eir</td>
<td>No</td>
</tr>
<tr>
<td>SKY Ireland</td>
<td>No</td>
</tr>
<tr>
<td>Independent Broadcasters of Ireland</td>
<td>No</td>
</tr>
<tr>
<td>Vodafone</td>
<td>No</td>
</tr>
<tr>
<td>Irish Film Institute</td>
<td>No</td>
</tr>
<tr>
<td>Organisation</td>
<td>Response</td>
</tr>
<tr>
<td>--------------------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>Nemeton TV</td>
<td>No</td>
</tr>
<tr>
<td>Magnet</td>
<td>No</td>
</tr>
<tr>
<td>Ombudsman for Children</td>
<td>No</td>
</tr>
<tr>
<td>Irish Society for the Prevention of Cruelty to Children (ISPCC)</td>
<td>No</td>
</tr>
<tr>
<td>National Parents Council – Post Primary</td>
<td>No</td>
</tr>
<tr>
<td>National Youth Council of Ireland</td>
<td>No</td>
</tr>
<tr>
<td>Children’s Rights Alliance</td>
<td>No</td>
</tr>
<tr>
<td>Consumer Association of Ireland</td>
<td>No</td>
</tr>
</tbody>
</table>

The public consultation document was set out in the form of a series of specific questions. The following is a synopsis of the responses received:

1. **Do you agree that the proposed service will provide further value to the Irish public?**

   One respondent believed that the proposal is audience focused and there could be public value in an extended RTÉ One+1 service and in a RTÉ 2+1 service. Another respondent considers it to be a positive move and will provide viewers with a greater opportunity to view content outside of the current RTÉ schedule.

   One respondent did not agree with the proposal and felt that RTÉ were directing resources away from their core purpose as defined in legislation.

2. **Please indicate whether you consider that the proposed schedule changes assist RTÉ in pursuing its public service objects as detailed in Section 114 of the Broadcasting Act 2009.**

   One respondent notes that RTÉ has identified a demonstrable audience need and expectation for the service and provide value to audiences who cannot access online or catch up services, while another respondent commented that as the proposed +1 channels
will be exact replicas of the original channels, the public service obligations met on the original channels would also be subject to and meet these obligations.

One respondent believes that the proposal will have the effect of diverting resources from the objectives set out in Section 114 and in addition, does not fulfil RTÉ’s stated strategic aim of operating in a “Digital First” manner.

3. **Is the new service compatible with the Audiovisual Media Services Directive and recommendations of the Council of Europe in respect of public service broadcasting?**

Two respondents agreed that the proposed services are consistent with both the AVMSD and the recommendations of the Council of Europe in relation to public service broadcasting and are catered for by RTÉ’s existing activities.

4. **Does the proposed service contribute to RTÉ’s position as:**

   i. a reference point for all members of the public, offering universal access;
   ii. a factor for social cohesion and integration of all individuals, groups and communities;
   iii. a source of impartial and independent information and comment, and innovative and varied content which complies with high ethical and quality standards;
   iv. a forum for pluralistic public discussion and a means of promoting broader democratic participation of individuals;
   v. an active contributor to European audiovisual creation and production and greater appreciation and dissemination of the diversity of national and European cultural heritage;
   vi. discharge of the Public Services Broadcasting remit via diverse platforms.

One respondent noted that the proposed services do not impact (either positively or negatively) on RTÉ’s position in relation to the above services.
Another respondent believes that the proposed service does not help contribute to RTÉ’s position in any of these matters. Access to the proposed service already exists through the principal channels and time shifted capability is available through all platforms. They also stated their belief that diversity and impartiality exists within the content provided in the channel’s schedule, not within its distribution method.

5. How and to what extent does the proposed service contribute to meeting the democratic, cultural, linguistic, educational and social needs of Irish society, of individual groups within Irish society, and of Irish communities outside the island of Ireland?

One respondent is supportive of the potential contribution of the service to meeting the needs of Irish society while also noting that it would not meet the needs of those outside Ireland as they will not impact the online and RTÉ Player services. Another respondent felt that the proposed service would in no way meet these needs as they do not enhance content, they just make it available one hour later. Also, the proposed service will not be available outside of the state.

6. To what extent will the proposed service be accessible by the public?

One respondent notes that the proposed service will be offered to all television platforms including Saorview and will therefore be available to all television households on the island of Ireland.

Another respondent stated that new broadcast hours will have the effect of increasing bandwidth usage on the Saorview platform resulting in increased charges for distribution and blocking the opportunity to launch more services.
7. To what extent will the proposed service assist RTÉ in reaching under-served audiences?

One response agrees that RTÉ have identified a demonstrable audience need and expectation for the service, especially strengthening the offer for the 188,000 Saorview only homes. They will also better serve audiences who cannot access online or catch up services, particularly in areas where broadband remains under-developed. RTÉ 2+1 will also better serve younger audiences through time-shifted availability.

Another response states that expansion of RTÉ’s +1 services does not help reach underserved audiences; rather it diverts effort, resources and attention away from their core activities and is not consistent with their stated strategic aims.

Section 100 - Sectoral impact assessments by the Broadcasting Authority of Ireland.

100.—(1) The Authority shall, within 3 months of receiving a written request for advice from the Minister in respect of the sectoral impact of a proposal under this Part, prepare and submit such advice to the Minister.

(2) The Authority, in advising the Minister on the sectoral impact of a proposal under this Part, shall consider the following matters—

(a) the extent to which the proposal impacts on—

(i) the availability, choice, quality and accessibility of services for audiences, and

(ii) existing sectoral services,

(b) the impact of the proposal on sectoral development, innovation and investment,

(c) the impact of the proposal on related markets, and

(d) such matters as the Authority may decide.

(3) In reviewing the sectoral impact of a proposal under this Part, the Authority shall consider such impacts as may arise within a 5 year period of the receipt of a written request for advice from the Minister under subsection (1).

Section 103 - Ministerial consent for new services and variations in channels.

103.—(1) A corporation may, with the consent of the Minister, pursue the objects in paragraphs (g) and (h) of section 114(1) or paragraphs (g) and (h) of section 118(1), as the case may be.

(2) A corporation may, with the consent of the Minister, vary the number of television or sound broadcasting channels it operates.

(3) A corporation may, with the consent of the Minister, undertake ancillary services.
(4) Where the Minister proposes to give his or her consent under this section, the Minister shall—

(a) consult with the corporation concerned and such other persons as he or she considers appropriate,

(b) consult with the Authority as to the sectoral impact of a proposal under this Section,

(c) consider the public value of such proposal, and

(d) publish in such manner as he or she considers appropriate a statement outlining the consultations that have been carried out under paragraphs (a) and (b) and indicate a place at which any document given to the Minister by a person referred to in paragraph (a) or (b) in the course of consultations under those paragraphs may be inspected.

(5) A person referred to in paragraphs (a) or (b) of subsection (4) may, on giving a document to the Minister for the purposes of subsection (4), request the Minister to omit from documents made available for public inspection under paragraph (d) of subsection (4) a document or part of a document which the person regards as commercially sensitive.

(6) The Minister may, if satisfied that the information contained in a document or part of a document is commercially sensitive and that its disclosure is not necessary for the purposes of public understanding of a decision made under subsection (4), omit the document or part of a document from the documents made available for public inspection under paragraph (d) of subsection (4).

(7) For the purposes of this section, information is commercially sensitive if its disclosure could reasonably be expected to—

(a) materially prejudice the commercial interests of the person who provided that information to the Minister, or of a group or class of persons to which that person belongs, or

(b) prejudice the competitive position of a person in the conduct of the person’s business.

(8) The Minister, in deciding on the public value of a proposal under this section shall consider the following matters—

(a) the importance of the proposal in respect of the pursuance of the public service objects of the corporation,

(b) the compatibility of the proposal with the Council Directive and recommendations of the Council of Europe in respect of public service broadcasting,
(c) the costs and revenues associated with the proposal and any impact on existing public service provision,

(d) the extent to which the proposal contributes to meeting the democratic, cultural, linguistic, educational, and social needs of Irish society, of individual groups within Irish society, and of Irish communities outside of the island of Ireland,

(e) the extent to which the proposed service will be accessible by the public,

(f) the extent to which the proposed service will reach underserved audiences,

(g) the contribution of the proposed service or activity to raising the level of familiarity of the general public, or of individual groups within Irish society, with new forms of services and technologies,

(h) the contribution of the proposal to media plurality, and

(i) such matters as the Minister may decide.

(9) The Minister may attach to any consent granted under this section such particular terms or conditions as he or she considers appropriate in the circumstances.

(10) The requirements of subsection (2) shall not apply to the establishment by a corporation of a television or sound broadcasting channel for a period of not more than 30 days (whether consecutive days or otherwise) in any period of 12 months.

(11) In this section “ancillary services” means the provision by a corporation of services, which—

(a) are ancillary to the public service objects of the corporation,

(b) the corporation has not engaged in a significant manner in the previous 5 years,

(c) require expenditure by the corporation in excess of €5 million in each year, and

(d) for which the corporation proposes to use funding received by the corporation under section 123, but does not include the provision by a corporation of a service in pursuance of paragraphs (d), (f) and (i) of section 114(1) and paragraphs (d) and (f) of section 118(1)