



An Coimisiún um  
**Rialáil Cumarsáide**  
Commission for  
**Communications Regulation**

## Market Reviews

### Broadcasting Transmission Services

#### Submissions to Consultation

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**2rn response to**  
**Market Review**  
**Broadcasting Transmission Services**  
**11 April 2025**

# Introduction

2rn welcomes the opportunity to respond to ComReg's consultation, *Market Review Broadcasting Transmission Services ComReg 25/08*, the consultation.

2rn are aware that ComReg has defined the relevant Markets as;

**Market A:** This is a wholesale market whereby a Broadcasting Transmission Services (BTS) network provider supplies a distribution and transmission service via its towers/masts and relevant associated facilities including distribution and transmission equipment in order to enable:

- The broadcast of National Terrestrial Radio; and,
- The broadcast by a Multiplex Operator of its digital terrestrial broadcasting signals to end users.

**Market B:** This is a wholesale market, downstream of Market A, for the supply of a managed digital multiplexing service by a DTT Multiplex Operator, using wholesale inputs from Market A, to Retail TV Broadcasters.

ComReg proposes to retain these market definitions for the purposes of this consultation. 2rn concurs with this decision. 2rn operates in Market A only and will direct most of its comments towards issues relating to Market A. However much of 2rn's operations are adjacent to Market B and as such 2rn may comment on certain aspects of Market B.

2rn understands that the time horizon envisaged by this consultation to be five years. 2rn responds to the questions posed in that context. 2rn sees significant potential for changes in the relevant markets particularly in the area of competition over the longer period. As such responses and comments below should be read specifically in the context of a five year horizon.

## ComReg asks

**Q. 1. Do you agree with ComReg's proposed definition of the Relevant Retail TV Broadcast Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

## 2rn response

2rn notes that it does not operate directly in the retail market for television. 2rn however, does have operations which are in the adjacent wholesale market and as such has a practical interest in the Television retail markets.

2rn does not fully agree with the preliminary conclusion of ComReg regarding the definition of the retail television and radio markets. 2rn is of the view that retail substitution, particularly in the television market, is possible and is likely to become more seamless during the period covered by the current review and consultation. 2rn believes that a broader definition of the television retail market is appropriate.

In particular the increase in the take up of high speed fibre broadband in the period since the previous Market review in 2021 is likely to have an impact on the mix of TV viewing over the life of the current review. From Q4 2020 to Q4 2024 the total number of Fixed Retail Broadband subscriptions has increased by 12% to approximately 1.7M subscriptions<sup>12</sup>. Within those figures, and in the same period, the number of Fibre To The Premises (FTTP) subscriptions has increased by 250% to 867K connections. Over the same period the amount of Retail Fixed Broadband Subscriptions with a download speed of 100Mbps or higher has increased from 42.5% to 73.3%.

2rn notes that the TV & Video consumption information contained in Figure 2 (Section 3.21) relates to 2023.

The migration SVOD services from video on demand library services to include TV programming such as live sports either in conjunction with other platforms as is the case with Now TV and Sky Sports or by directly streaming events as Netflix are currently doing means that these providers are transitioning towards a hybrid linear TV /Video on demand service. Over the life of this review it is likely that SVOD will become a viable alternative to linear TV services which consumers could choose to substitute for FTA services.

Currently the only Free To Air (FTA) transmission market is delivered via the 2rn broadcast infrastructure. However other platforms, such as cable and pay satellite, deliver a comparable service which are in competition with the service delivered using the 2rn platform and which consumers could choose to substitute for FTA services.

2rn are of the view that it is an excessively narrow definition of the television transmission market to conclude that all pay services will not constitute an effective substitute for the current FTA offerings during the lifetime of this review.

Consumers wishing to substitute services delivered via the 2rn platform with alternatives, e.g. cable or satellite services, would incur a level of cost which is a point of differentiation but does not necessarily effectively put these pay services in a different market as compared to FTA television.

2rn is aware that there are FTA satellite services providing some of the broadcast services currently available via FTA terrestrial transmission services. The most comparable platform is represented by the services currently carried on Saorsat. 2rn believes that this service, and potentially other similar services, will develop over time and may ultimately become more direct substitutes for terrestrial services. However, in particular, the current limited number of channels available combined with the initial set-up costs which consumers would incur in switching mean that a switch to this technology does bring with it certain challenges such that it may not currently represent an effective substitute. 2rn is of the view that changes sufficient to create an effective substitute to terrestrial broadcasting may not occur over the period covered by this review but that sufficient uncertainty exists such that this should be kept under review.

## ComReg asks

### **Q. 2. Do you agree with ComReg's proposed definition of the Relevant Retail Radio Broadcast Markets? Please explain the reasons for your answer, clearly**

<sup>1</sup> ComReg Quarterly Key Data Report Q4 2020 ([ComReg 21/20](#))

<sup>2</sup> ComReg Quarterly Key Data Report Q4 2024([ComReg 25/13](#))

**indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

**2rn response**

2rn notes that it does not operate directly in the retail market for Radio. 2rn however, does have operations which are in the adjacent wholesale market and as such has a practical interest in the Radio retail markets.

In ComReg's Market Review of Broadcasting Transmission Services in Ireland consultation 2rn notes ComReg's position in the 2021 Decision with respect to the scope of Retail Radio Broadcast Services was that:

*.....at present, retail substitution from the FTA terrestrial radio platform is not likely to be sufficiently effective to warrant the definition of a broader retail radio broadcasting market in this BTS review such that the FTA terrestrial radio platform falls within a distinct relevant market.*

2rn is of the view that the market analysis for retail radio broadcasting, as considered in 2021 remains valid.

The nature of the radio retail broadcasting markets remains stable within Ireland. 2rn acknowledges that radio broadcasting services over cable and satellite platforms are not directly and seamlessly available as substitutes in the same retail market as national terrestrial radio broadcasting and therefore are not likely to lead to perfect retail substitution to warrant a redefining of this broadcast market.

## ComReg asks

**Q. 3. Do you agree with ComReg's product and geographic market assessment for Market A? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

## 2rn response

2rn accepts Comregs market definition for Market A:

*This is a wholesale market whereby a BTS network provider supplies a distribution and transmission service via its towers/masts and relevant associated facilities including distribution and transmission equipment in order to enable:*

- *The broadcast of National Terrestrial Radio; and,*
- *The broadcast by a Multiplex Operator of its digital terrestrial broadcasting signals to end users.*

2rn owns and operates a national terrestrial broadcasting network which provides transmission and distribution services to broadcasters in the national radio retail market and to the DTT multiplex operator.

Referring to paragraph 4.63, 2rn accepts it is the only operator who owns a full national BTS Terrestrial Network, it does not accept that its is the only provider of National BTS nor does it hold 100% of the market. 2rn notes that BMAI, in particular, uses alternative suppliers of towers and masts to provide its broadcast services in a number of locations and in those cases self-supplies transmission antennas and distribution.

## ComReg asks

**Q. 4. Do you agree with ComReg's product and geographic market assessment for Market B? Please explain the reasons for your answer, clearly indicating the**

**relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

**2rn response**

2rn does not provide services to broadcasters who require access to the services provided by the licensed DTT multiplex operator. 2rn, therefore are of the view that a distinct wholesale market arises for these services beyond the scope of 2rn's business, which 2rn notes ComReg has characterised as Market B. Within this market the multiplex operator provides services using wholesale inputs purchased from 2rn in addition to providing certain administrative services itself, as well as allowing access to the DTT multiplexing services which it is licensed to provide.

2rn agrees that is it appropriate to define a separate market for the provision of DTT broadcasting signals to consumers.

**ComReg asks**

**Q. 5. Do you agree with ComReg's 3CT and assessment of SMP on Market A? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

**2rn response**

2rn notes that in the market for the provision of Wholesale Access to National Terrestrial Broadcast Transmission Services, Market A, as defined by ComReg, 2rn is the only supplier of services for national transmission services. However 2rn is aware that the 2020 European Commission Recommendation on relevant product and service markets within the sector susceptible to ex ante regulation does not identify BTS markets as being susceptible to ex ante regulation. 2rn considers this evidence of the reality that the BTS markets in Europe in general but also in Ireland in particular currently operate efficiently and competitively.

2rn considers that in the absence of regulation, Market A would be characterised by non-transitory barriers to entry. 2rn further considers that competition law may not be sufficient to address potential problems arising as a result of this market characteristic.

However 2rn notes that there is not, and has not been, either during the current regulated regime or prior to regulation, any evidence of market failure caused by lack of competition.

The establishment of a national BTS system capable of supporting national DTT Multiplexes or national radio services is a capital intensive project which would take a number of years to complete. It is likely that demands for such services are finite due to technological and commercial developments and possible consequent change in Government policy. The Irish market for such services is relatively small. It is difficult to envisage a situation in which the establishment of an alternative national BTS system capable of supporting national DTT

Multiplexes or a national radio FM network would be an attractive proposition for a commercial investor.

Barriers to entry for other service providers would include:

- Access rights or ownership at mountain top sites to sufficiently replicate national services
- Securing planning permission to build mast and support infrastructure on mountain top sites. This will prove exceptionally difficult, particularly in mountain top areas where they have already been identified as special areas of conservation (mountain top bogs) and areas of outstanding natural beauty.
- Securing the appropriate national and international frequency coordination and licensing.

2rn owns and operates a national BTS network which provides transmission and distribution services to national broadcasters in the national radio retail market and to the DTT multiplex operator.

While 2rn accepts it is the only operator in Market A who owns a full national BTS Terrestrial Network, it does not accept that it is the only provider of BTS nor does it hold 100% of the market.

2rn is of the view that, as outlined above, (response to question 3), competition does currently exist in Market A and therefore is of the view that, while there are barriers to entry to the market, the broader market structure does tend toward competition.

2rn agrees that the first of the three criteria, the *presence of high and non-transitory barriers to entry*, and possibly the second criteria, *the insufficiency of competition law alone to adequately address the market failures concerned*, may be satisfied in Market A.

2rn disputes the conclusion that the third criteria, *a market structure which does not tend towards effective competition within the relevant time horizon*, is satisfied in Market A.

#### ComReg asks

**Q. 6. Do you agree that the competition problems identified are those that could potentially arise in Market A (and related markets)? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

## **2rn response**

While 2rn accepts it is the only operator in Market A who owns a full national BTS Terrestrial Network, it does not accept that it is the only provider of National BTS nor does it hold 100% of the market.

Referring to clause 6.11, there are no circumstances whereby 2rn could withhold investment in a related market to delay or impede the development of competition in these markets.

Referring to clauses 6.12 and 6.13, 2rn has no ability or incentive to engage in inefficiency with respect to the provision of its services to its commercial Access Seekers in Market A. There are no circumstances whereby:

*2rn could cease or slow their investment in this equipment, fail to update the equipment, and/or restrict, or stop, the maintenance of this equipment, in a manner that would result in a lower quality service being provided to BMAI than RTÉ*

There are no 2rn assets that are used exclusively to provide a service to BMAI. For example, where BMAI has access to a 2rn FM Radio antenna to transmit its services, that antenna is also used to transmit RTÉ Radio services and any failure to properly maintain that antenna would have the same impact on RTÉ services as BMAI. Similarly, failure to properly maintain or update any other common asset such as a tower, mast, building, electrical infrastructure, generator etc at a transmission site impacts all Market A customers at that site in the same way. Referring to Clause 6.30, its important to note that RTÉ do not directly own any BTS equipment at any 2rn transmission site. With the exception of the equipment owned directly by BMAI, all National BTS equipment at 2rn transmission sites is owned by 2rn. All DTT multiplex assets are used to provide a service to the DTT Multiplex Operator, all FM Radio assets that are used to provide a service to BMAI are also used to provide a service to RTÉ and all common assets, masts, towers, generators, etc, are used to provide a service to all customers in Market A. Due to the nature of the integrated co-dependencies of 2rns network configuration there are no opportunities for 2rn to uniquely prioritise RTÉ services over others.

2rn believes that competition currently exists for Market A services and therefore does not accept that SMP exists in market A. However should ComReg designate 2rn as having SMP 2rn accepts that such a decision would make it incumbent on ComReg to impose remedies which address potential, although not necessarily actual, abuses materialising from SMP.

As per the above points 2rn disputes ComReg's argument that 2rn is in a position to abuse its position of SMP. However, notwithstanding this, 2rn agrees that some of the theoretical competition problems and the associated impacts on competition and consumers which are identified in this Section are those which could potentially arise in Market A.

## **ComReg asks**

**Q. 7. Do you agree with ComReg's conclusions on remedies in Market A? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views**

## **2rn response**

2rn does not accept that there is SMP in Market A, as such 2rn is of the view that regulation is not appropriate and concurs with the view that the BTS markets should not be identified as being susceptible to ex ante regulation.

Should ComReg designate 2rn with SMP then 2rn acknowledges the requirement placed on ComReg to impose regulation on 2rn as an undertaking which will then have been designated as having SMP in the Market specified under the consultation.

2rn notes that the level of regulatory remedies proposed are broadly in line with those currently in place having been first imposed in 2013 and subsequently in following previous consultations.

2rn wishes to make it clear that it has always been its purpose to provide a comprehensive menu of services up to and including, but not exclusively, a fully managed transmission and distribution service, which is efficiently operated and competitively priced. There is no evidence or suggestion in the past of actual market failure as envisaged in the consultation. However, mindful of the obligations placed on ComReg, 2rn has considered the proposed level of regulation, the remedies to be applied in accordance with ComReg's preliminary findings and the implications and burden which this will place on 2rn.

Notwithstanding the above it is appropriate that the observed operation of the markets both pre and post regulation should be considered when imposing remedies. It should not simply be the case that existing remedies continue to be applied without due consideration. Perceived interdependencies are not sufficient to support otherwise unnecessary remedies. In particular 2rn feels that it is not necessary to apply transparency or access remedies in the BTS Markets. 2rn agrees certain other remedies are interdependent and work in tandem. 2rn believes that ComReg should not apply the remedies of access and transparency as there is no evidence of a necessity for these remedies and other proposed remedies are not undermined by the absence of transparent and access remedies.

2rn notes the contents of paragraph 7.92 and in particular the proposal that 2rn would notify ComReg of any impending changes to its Reference offer including wholesale price changes four months in advance of implementation of any such changes. In order to meet the requirement to implement changes to wholesale prices on July 1<sup>st</sup> as contemplated in paragraph 7.153 this would require 2rn to notify ComReg of any proposed changes to wholesale prices by the 1<sup>st</sup> March instead of 1<sup>st</sup> of April. From a 2rn perspective this schedule is unrealistic given the scale of the effort required to complete the essential inputs required for submission of the tariff model. For instance, the period available to complete the "climb down" inspections for Mast Occupancy under the current schedule is already very limited and vulnerable to weather events - any reduction in this timeline would make this task unachievable. The Mast Occupancy data set is a significant cost allocation driver in 2rns Tariff Model, see paragraphs 7.148 and 7.149. In addition, the January / February period involves significant year end work including preparing for, and dealing with, the annual statutory and regulatory audits.

While not disagreeing with ComReg's proposal to be notified at least four months before proposed changes are implemented, given the constraints outlined above, and in order to facilitate this request, 2rn suggest that the implementation date be amended to 1st August annually.

2rn's preference would be to stay with the current timeframes as outlined in paragraph 7.153 and Annex 1 Decision Instrument: Market A, paragraphs 9.6 and 10.3.

Referring to paragraph 7.155, 2rn doesn't disagree with ComReg's objective of further enhancing Market A customer confidence in the cost-orientation of tariffs, however the proposal that 2rn publish its Tariff Model, albeit a redacted version, creates significant difficulties that are impossible to be resolve in manner that would meet ComReg's objective. The 2rn Tariff Model is a calculation spreadsheet that contains considerable commercially sensitive information, the more significant being 2rns complete company fixed asset register, 2rns complete annual operating budget, details of the occupancy mix(including commercial non-broadcast customers) on all of 2rns structures. In this context a Tariff Model, with commercially sensitive data redacted, could not reproduce the wholesale prices provided by the true Tariff Model as submitted to ComReg. Publishing such a Model would be counterproductive to the ComReg's objective. Alternatively, 2rn would propose to publish an illustrative Tariff Model which would contain a sample of relevant assets, an artificial, but representative operating budget, an artificial set of mast occupancy data and other minor data replacements as required. This would be coupled with a narrative which would explain the principles and method of operation of the Tariff Model.

Referring to paragraph 7.56, 2rn is of the view that the unbundled/unmanaged access obligation is overly broad in its requirements. 2rn is of the view that the obligations to provide telemetry and support services are excessive and these particular services do not meet the 3CT test as individual services, nor do they in anyway contribute to ComReg's assessment of 2rns SMP in Market in Market A. Currently, BMAI are the only unbundled customer in Market A and they successfully self-supply both telemetry and support services.

### **ComReg asks**

**Q. 8. Do you agree with ComReg's 3CT and assessment of SMP on Market B? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

### **2rn response**

As discussed above 2rn does not operate in market B and does not offer an opinion on the 3CT in that market.

**ComReg asks**

**Q. 9. Do you agree that the competition problems identified are those that could potentially arise in Market B (and related markets)? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

**2rn response**

As discussed above 2rn does not operate in market B and does not offer an opinion on the competition problems that could arise in that market.

**ComReg asks**

**Q. 10. Do you agree with ComReg's proposals in respect of remedies in Market B? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

**2rn response**

2rn notes that it does not operate directly in Market B. 2rn however, does have operations which are in the adjacent wholesale Market A and as such has

***Q.2 Do you agree with ComReg's proposed definition of the Relevant Retail Radio Broadcast Markets?***

Yes, Bauer Media Audio Ireland (BMAI) agree with ComReg's proposed definition of the Relevant Retail Radio Broadcast Markets.

We support ComReg's view that the retail market for terrestrial radio broadcasting is appropriately distinguished into national, regional, and local catchment areas, as discussed in paragraphs 3.94 to 3.99. This segmentation reflects the current licensing regime under Coimisiún na Meán, where broadcasters operate within defined geographic and regulatory frameworks that influence their content, commercial strategies, and competitive positioning.

We particularly agree with ComReg's observation in paragraph 3.97 that competitive conditions are sufficiently homogeneous within each catchment area but heterogeneous between them. This reflects the practical reality that each licence type is designed to serve distinct audience and advertiser needs, with different obligations and scopes of service.

Importantly, we also agree with ComReg's view that there have been no significant developments in the market since the 2021 Decision that would undermine the validity of the current market definition. In particular, there has been little change in the substitutability between different types of radio services. FM remains the primary delivery platform, and while streaming services have grown modestly, they have not substantially altered consumption patterns at the retail level or materially impacted the competitive landscape for terrestrial radio.

As such, we believe that ComReg's definition remains both robust and appropriate.

***Q.3 Do you agree with ComReg's product and geographic market assessment for Market A?***

Yes, BMAI agrees with ComReg's assessment of both the product and geographic market for Market A.

We welcome ComReg's decision to maintain the provision of National Terrestrial Broadcasting Transmission Services (National Terrestrial BTS) as the focal product (4.11 - 4.12). This correctly reflects the ongoing reliance of BMAI on 2rn's terrestrial infrastructure to deliver free-to-air broadcast services to audiences across the State.

We fully support the conclusion that the geographic market is national in scope (4.59). BMAI require wide-reaching transmission coverage to support national and quasi-national licences and commercial viability. This cannot be feasibly achieved through fragmented or regional alternatives.

We also agree with ComReg's analysis of the barriers to switching away from National Terrestrial BTS. Commercial broadcasters are subject to licensing obligations, including technical coverage requirements, and any transition away from 2RN infrastructure would risk failing to meet those standards. Furthermore, switching to alternative platforms such as satellite or IP delivery would not be functionally or economically viable, particularly given that many listeners and viewers still rely on traditional free to air FM services.

We would also highlight the significant structural barriers that an alternative transmission provider would face if attempting to enter this market:

- High upfront capital investment in masts, transmission equipment, and backhaul networks;
- Lengthy planning and development processes, including securing multiple site permissions, navigating local authority planning regulations, and acquiring suitable locations;
- Long lead times to build a comparable national network;

2rn operates the only available infrastructure in strategically important areas. As such, the market is effectively closed to new infrastructure-based competitors.

In this context, we strongly agree that National Terrestrial BTS is a distinct and non-substitutable product, and that ComReg's product and geographic definitions remain appropriate and well justified.

#### ***Q.5 Do you agree with ComReg's 3CT and assessment of SMP on Market A?***

We agree with ComReg's application of the Three Criteria Test (3CT) and its conclusion that 2rn holds Significant Market Power (SMP) in Market A. The supporting evidence in Section 5.2 demonstrates that all three criteria are met.

As outlined in paragraphs 5.7 - 5.15 the existence of high and non-transitory barriers to entry is evident. The costs of constructing and operating high-coverage broadcasting transmission infrastructure are substantial, and further compounded by site-specific planning and regulatory challenges (5.12 - 5.13).

We also agree that the market does not tend toward effective competition (5.17 - 5.21). 2rn remains the sole provider of national terrestrial transmission services, and there are no indications of emerging competitors. No feasible alternatives exist that would provide comparable coverage, reliability, or compliance with regulatory obligations.

We agree with ComReg's assessment that general competition law would be insufficient to address the issues in this market (section 5.2.3). The risk of anti-competitive conduct—such as denial of access, discriminatory pricing, or service degradation—is significant. Given the long timescales involved in pursuing legal remedies and the potential for immediate commercial harm, regulatory intervention is clearly required to prevent irreparable disruption to downstream services.

Finally we also agree with ComReg's view in paragraph 5.62, where it concludes that 2rn continues to have Significant Market Power in Market A. The characteristics outlined - namely the absence of competitive pressure, high barriers to entry, and 2rn's ability to act independently of competitors and customers—accurately reflect the market realities. This conclusion underpins the need for continued ex ante regulation.

***Q.6 Do you agree that the competition problems identified are those that could potentially arise in Market A ?***

We agree with ComReg's identification of competition problems that may arise in Market A, as described in Section 6.1 (6.4). These risks are material, and reflect the inherent structural vulnerabilities of a market with a single supplier and no credible alternatives.

ComReg rightly highlights (6.8 - 6.15) the risk that 2rn, as a vertically integrated entity and a subsidiary of RTÉ, could engage in discriminatory behaviour against third-party broadcasters. This includes the potential to favour its own operation through better terms of access, higher service quality, or more favourable pricing. Such behaviour would distort competition and undermine the ability of independent broadcasters to compete effectively in downstream markets.

The risks of excessive pricing and margin squeeze are also appropriately recognised. In a market lacking effective competition or switching opportunities, 2rn could raise prices to levels that distort downstream competition or render services uneconomical for access seekers.

As raised in paragraph 6.37, in the absence regulatory safeguards, increased transmission costs could lead broadcasters to reduce spend on content in order to absorb cost pressures. In a highly competitive advertising and audience landscape, maintaining high-quality programming is essential, yet rising wholesale charges with no offsetting efficiencies would inevitably force difficult trade-offs. Over time, this could erode both listener experience and the broader public value of radio broadcasting, particularly in areas such as news, current affairs, and original Irish content.

We also agree that denial of access or constructive refusal is a significant concern (6.20 - 6.25), BMAI are reliant on transmission from 2RN's high-power core sites. Additionally, the lack of pricing and operational transparency (6.32 - 6.35) can act as a barrier to market entry and reduce access seekers' negotiating ability.

Finally, the limited buyer power and lack of substitutable platforms reinforce the need for regulatory intervention. The cumulative effect of these risks justifies the continuation of ex ante obligations in Market A.

***Q.7 Do you agree with ComReg's conclusions on remedies in Market A ?***

We support ComReg's proposed remedies in Market A, as outlined in Section 7 of the consultation. These measures are appropriate, proportionate, and necessary to address the competition concerns identified in the market analysis.

We agree with the proposed access obligation on 2rn as set out in paragraphs 7.28 - 7.43. In a market where 2rn holds SMP and there are no viable infrastructure alternatives, the ability for broadcasters to obtain access to the national BTS network on reasonable, fair, and timely terms is essential to maintaining service continuity and meeting licence obligations.

The proposed non-discrimination obligation in paragraphs 7.70 - 7.75 is also strongly supported. ComReg's analysis correctly identifies the risks associated with a vertically integrated operator potentially favouring its own or affiliated services. The obligation to provide equivalence of access—on the same terms and conditions—is essential for ensuring that all broadcasters, regardless of ownership structure, can compete on a fair basis.

We agree with the continuation of transparency obligations (paragraphs 7.77 - 7.83). These measures improve predictability, reduce information asymmetries, and support regulatory oversight by ensuring that access seekers have visibility into the terms of service, SLAs, and pricing structures.

We strongly support ComReg's approach to price control and cost accounting, (paragraphs 7.107 - 7.120), we feel it is justified and proportionate. In a market with no competitive pricing constraint, cost-oriented tariffs are essential to prevent excessive charges.

Finally, we support the continued imposition of accounting separation obligations. These obligations ensure transparency in internal cost allocation, particularly in the context of vertical integration. They also enable ComReg to monitor compliance with pricing and non-discrimination requirements effectively.

In conclusion, the full suite of remedies proposed for Market A—access, non-discrimination, transparency, price control, cost accounting, and accounting separation—are justified and essential to promoting competition, fair access, and protecting the long-term interests of broadcasters and end users.

Coimisiún na Meán concurs with ComReg's preliminary conclusions on the retail television and radio market assessment. Coimisiún na Meán agrees that both markets are national in scope and that adequate substitutes on the demand and supply side are unlikely to become available in the timeline under consideration.

The core main transmission sites are essential for distributing and transmitting DTT and national radio coverage. On the supply side, significant barriers to entry exist in terms of replicating a similar or alternative transmission infrastructure.

Coimisiún na Meán notes the legislative requirements for national free-to-air coverage for radio services and content carried on DTT networks. Coimisiún na Meán agrees that pay platforms and OTT complement, but are not a direct substitute for, terrestrial FTA delivery. Saorsat, given its current channel line-up and more complex installation, is also not an effective substitute for terrestrial DTT transmission. Coimisiún na Meán would also note that changes in audience behaviour are not universal across all audience demographics. Terrestrial radio and DTT remain key delivery platforms, particularly for older audiences.

Coimisiún na Meán accepts that the definitions of Market A (**The Market for Wholesale Access to National Terrestrial BTS**) and Market B (**The Market for Wholesale Access to DTT Multiplexing Services**) as defined by ComReg are still applicable. It concurs with ComReg's findings that wholesale access to the national terrestrial BTS platform is of major commercial importance to national analogue radio and national DTT terrestrial broadcasting to such an extent that effective demand-side substitution is unlikely to effectively constrain the price-setting behaviour of a transmission/distribution infrastructure provider.

Coimisiún na Meán agrees that RTÉ is the sole DTT Multiplex Operator in Market B, as there are currently no alternative sources of DTT multiplexing. Coimisiún na Meán is of the view that, having researched the potential for alternative multiplex providers, that this situation is unlikely to change over the lifetime of the current review or any proposed SMP obligation period. ComReg's preliminary view is shared by Coimisiún na Meán - that demand-side substitution to other DTT multiplexing platforms is unlikely to effectively constrain the price-setting behaviour of an HM supplier of a national DTT multiplexing service. Given the coverage requirements for all DTT services, Coimisiún na Meán agrees with ComReg's view that the geographic scope of Market B is national in scope.

Coimisiún na Meán also agrees with ComReg's rationale and conclusions under the sections dealing with the Three Criteria Test and the Competition Analysis and Assessment of SMP. It concurs with the proposed transparency, non-discriminatory access, price control costs accounting, and cost separation remedies for both Market A and Market B. It notes and agrees with the preliminary proposals regarding the RIA regarding the BTS markets.

In summary, Coimisiún na Meán is of the view that the main issues in relation to Market A and Market B remain largely unchanged since the last study and the imposition of SMP and appropriate remedies.

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11<sup>th</sup> April 2025

# RTÉ's submission to ComReg's Market Review of Broadcast Transmission Services

# Introduction

1.1 We welcome the opportunity to respond to ComReg's consultation. While we broadly accept the findings of other areas of the review, RTÉ has significant concerns about ComReg's proposal to add specific requirements to Price Control remedies in Market B, which RTÉ would be required to comply with when setting tariffs. It follows that this consultation response focuses on **Question 10**.

**Q. 10. Do you agree with ComReg's proposals in respect of remedies in Market B? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.**

1.2 In this response, we consider ComReg's policy objectives when carrying out its tasks as regulator and when proposing Price Control remedies. We also consider the wider legal and policy framework for RTÉ, as Public Service Media (PSM). This allows us to ask whether, considering market trends and demand for DTT slots, ComReg's proposed changes to the Price Control implementation are likely to meet these objectives. We conclude on the economic implications of the proposals. Overall, we show how the proposals create the serious risk of regulatory harm and run contrary to the requirements flowing from the ECC Regulations 2022.<sup>1</sup>

## How do ComReg's proposals sit within the policy and legislative context?

1.3 In this part, we consider ComReg's proposals in the light of its policy objectives (stated and implied). We then consider how RTÉ is subject to a wider policy and legislative framework as a PSM, which has implications for its role as MUX operator and as service provider in relation to the free-to-air digital terrestrial television (FTA DTT) platform.

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<sup>1</sup> European Union (Electronic Communications Code) Regulations 2022 SI No. 444 of 2022, which transposes the European Electronic Communications Code Directive 2018

## The operation of the Saorview platform

Saorview was established in October 2012, initially with one multiplex, while a second multiplex was added in 2013. Both multiplexes are licenced to RTÉ and the licences run to December 2031. As the licence holder, RTÉ contracts with 2rn to provide the coding, multiplexing and transmission services operating from 11 main transmitter sites and 55 relay sites operated by 2rn. This is a regulated market, known as Market A. RTÉ sells capacity on the multiplexes to channel providers that want to be on the Saorview platform and services are allocated capacity by RTÉ; this is also a regulated market, known as Market B.

Both multiplexes provide coverage to between 98 and 99 per cent of the population in Ireland. The Saorview signals overspill into Northern Ireland reaching around 56 per cent of the Northern Irish population.

Saorview uses the early generation DVB-T transmission standard and is accessed by connecting an aerial to a compatible TV; virtually every TV set available on the market today can access DTT.

The current line-up of services on Saorview is 15 TV channels and 11 radio stations.

In early 2024, the coding and multiplexing equipment was upgraded to newer generation technology and as a result the individual amount of capacity used by services reduced, releasing capacity for other potential services. Approximately two-thirds of the available capacity across both multiplexes is currently allocated.

## What is ComReg proposing

1.4 ComReg proposes to maintain RTÉ's designation as an undertaking with Significant Market Power (SMP) in Market B, i.e. the wholesale market for access to DTT multiplexing services. It intends to retain the existing remedies from the 2021 review across Access, Transparency, Non-Discrimination, and Accounting Separation. However, ComReg proposes to substantially modify the Price Control remedy.

1.5 Under its consultation proposals, price control would be more closely defined and include specific requirements for RTÉ when setting tariffs. Notably:

- A single tariff per service type would apply, based on average bitrate consumption—regardless of an individual service's actual usage
- Tariffs would be fixed based on the number of services as of 1 April 2024, and apply for the five-year period to 2029—irrespective of future changes in service numbers
- Tariffs would be amended annually, to reflect changes in input costs only

## ComReg's policy objectives

1.6 When pursuing the policy objectives under the European Union (Electronic Communications Code) Regulations 2022 ('ECC Regulations'), ComReg should apply objective, transparent, non-discriminatory, and proportionate regulatory principles (s4(5)). Any access remedies imposed on undertakings with SMP should be: (i) based on the nature of the problem identified in the regulator's market analysis; and (ii) proportionate and justified (s50(5)). Price control obligations may be imposed 'in situations where a market analysis indicates that a lack of effective competition means that the undertaking concerned may sustain prices at an excessively high level' (s56(1)). As ComReg acknowledges in the consultation, any price control obligations should promote efficiency and sustainable competition and maximise sustainable end-user benefits (s56(5)).

1.7 In the consultation, ComReg states that an appropriate cost recovery mechanism should 'ensure an undertaking does not charge, for example, excessive prices'. To date, it has pursued the following objectives:

- Ensuring RTÉ recovers only its efficiently incurred costs

- Providing certainty for buyers by minimising tariff fluctuations

1.8 For access seekers, ComReg considers that its proposed new approach to price control implementation would:

- Improve transparency
- Ensure tariffs do not depend on the commercial decisions of other broadcasters
- Ensure access seekers 'bear a fair, objectively determined share' of the costs of making available and operating the FTA DTT platform

## Performance of the existing model

1.9 ComReg acknowledges that the current smoothed tariff model 'ensured Saorview's costs were recovered in full at a time that the number of services broadcast on the platform increased steadily and spare capacity filled up, to the benefit of end-users' (Consultation paragraph 10.104).

1.10 However, ComReg seems to imply that this implementation approach only meets the applicable legal and policy requirements if tariffs are revised downward as more services are added. If, under the same model, tariffs are revised upward following a reduction in the number of services carried, ComReg appears to suggest the implementation approach would no longer comply. This inconsistency is difficult to justify by reference to applicable regulation and policy objectives, and is not justified by the factual circumstances.

## Why ComReg's proposed approach does not meet the policy objectives

1.11 Under the current pricing arrangement, the model estimates what will be charged by Market A across a 5-year period and access seekers on Market B are charged on that basis. Only a change in the number of services or an upgrade of services will give rise to a change in the price – to date, this has occurred as a result of the addition of Sky Challenge, TG4's upgrade to HD and the upgrade of the encoders. The tariff does not change based on a change to the costs from Market A. ComReg's proposal to switch to a single tariff per service type (consultation paragraph 10.108) does not follow ComReg's Decision D11/12 and Final Decision Instrument – Market B Appendix E of D11/12). By adopting a single tariff and abolishing the existing five-year smoothing mechanism (consultation paragraph 10.112), the proposal does not follow the principles of transparency, consistency, objectivity and causality.

1.12 For example, compared to RTÉ's established approach to implementing the Price Control (as agreed with ComReg since 2013), the proposed changes would:

- **Undermine the incentive for efficiency:** Services would no longer be charged based on actual usage but by service type. Rather than incentivising efficiency, it would create a situation where, within a service type, those that use more, pay less [compared to the position that currently pertains];
- **Prevent cost recovery if a service exits:** The tariff would be fixed based on the number of services in April 2024. If a service left, the remaining services would continue to pay the same tariff, meaning RTÉ would effectively subsidise the shortfall (it would not be using the released capacity). As a dual funded broadcaster, and in accordance with Section 108 of the Broadcasting Act, RTÉ is obliged to ensure that commercial activities undertaken by it are operated in an efficient manner so as to maximise revenues. In this case, it would in effect be utilising public funding to subsidise the cost of the platform. Consultation paragraph 10.110 assumes that only RTÉ's decisions impact service providers and fails to consider scenarios where third parties not subject to must carry/must offer obligations may reduce or withdraw their services. This does not align with the principle of causality and, unlike the current Price Control and tariff approach, creates a situation of inefficient and unfair cost recovery

- **No benefit to others if a new service joins:** Conversely, if an additional service joins or the efficiency of the platform is upgraded, existing services would not benefit from a reduced tariff. RTÉ, would retain the extra revenue, potentially leading to over-recovery of costs, which would be inconsistent with the provisions of Section 108. Again, this would also be contrary to the principle of causality and lead to inefficient and unfair cost recovery
- **Reduced transparency and predictability:** Instead of a smoothed five-year tariff, access seekers would be obliged to commit to a contract with a minimum five-year term commitment (in the context of the terms of the access reference offer) with annual tariff reviews. RTÉ could face delayed cost recovery, while access seekers would be slow to benefit from any reductions. In particular, Market A input costs fluctuate materially year-on-year. Without smoothing, these fluctuations will be passed directly on to users, undermining financial planning
- Consultation paragraph 10.112 suggests that Market B charge a new tariff on the 1<sup>st</sup> of January each year and that this charge is only adjusted for the costs. However, at 1<sup>st</sup> September, Market B will not know how much Market A is going to charge for their services for the following year. The Market A tariff goes from July to June. Unless Market A (which makes up circa 97 per cent of the costs of Market B) publishes its tariff for the full year starting 1<sup>st</sup> January, Market B will be in a position where it is estimating costs for the year ahead. This could potentially give rise to further increases and decreases on a year-to-year basis
- **Increased administrative burden:** At present Market B prepares accounts for ComReg with a deadline of 30th April. If annual reviews were introduced, assuming Market B closes out the accounts by 30th April and begins discussion on a new tariff implementation with ComReg by that date, it would then have to give ComReg one month's notice and the market a further two months' notice of the annual tariff adjustment. The adjusted tariff might then be billed from August
- **Creating commercial risk for third party channels:** ComReg's proposal (consultation paragraph 10.111) to publish the tariff model in full may also raise significant concerns for commercial broadcasters, particularly those not subject to must carry/ must offer obligations. Public disclosure of detailed cost information could affect commercial negotiations with pay TV platforms, such as eir or Sky, where these broadcasters must independently negotiate carriage fees

1.13 We consider the existing implementation approach meets ComReg's stated policy objectives of cost recovery, tariff certainty, and fair burden-sharing. It meets the principles of transparency, consistency, objectivity and causality.

1.14 The proposed changes, by contrast, would undermine transparency, introduce inefficiencies, and result in greater uncertainty. The tariffs paid by access seekers would not reflect a 'fair' or 'objectively determined' share of the costs of making available and operating the FTA DTT platform: if a service departed, RTÉ would be forced to subsidise remaining commercial services and, if a service joined or a technical upgrade was made, existing services would not benefit from a reduced tariff. This breaks with causality and is not consistent. As a result, the proposals are not aligned with ComReg's own stated aims or the requirements under the ECC Regulations.

## Apparent underlying assumptions

1.15 ComReg does not explicitly state its assumptions, but its proposals appear to rest on several internally inconsistent premises, which we address below:

a) ***That RTÉ's decision—outlined in its Strategy Statement<sup>2</sup> —to withdraw RTÉ One +1 and RTÉ2 +1 by 2029 constitutes an abuse of SMP in Market B***

1.16 There is simply no evidence to support ComReg's assertion that RTÉ's decision to withdraw certain channels constitutes an abuse of any market position. To the contrary, RTÉ's strategy aligns with shifting audience behaviour and broader media trends and reflects RTÉ's public service remit and permitted uses of public funds under the Broadcasting Act.

b) ***That if the number of services falls and costs rise, these costs are not efficient and should not be recoverable by RTÉ***

1.17 ComReg considers its proposals mean that 'unless it ensures an efficient use of the DTT platform', RTÉ 'will absorb a greater share of the costs than it has to date' and that 'this is entirely consistent with the principle that not all costs, but only efficient costs, ought to be recovered'. ComReg has the additional policy objective of 'introducing a degree of market risk for RTÉ'. ComReg appears to assume – without evidence – that any decline in the number of services results from RTÉ's market power, rather than external market or policy constraints. In practice, policy and legislative limitations reduce the platform's commercial attractiveness, while demand for DTT slots is declining on the current market access terms. RTÉ is not a 'free agent'.

1.18 ComReg juxtaposes an increase in capacity in Market B and RTÉ's strategy, as PSM, to close four radio stations and two timeshift TV channels (consultation paragraph 10.105). These are completely unrelated. 2rn increased capacity in Market B by upgrading the encoders, which was necessary to accommodate TG4 moving to HD and to carry all of the current services at the correct SD and HD usage rates. The encoders were old and not as efficient from an energy or bandwidth perspective. The upgrade was discussed with ComReg at the time, and it was ComReg that first notified Market B management that the encoders were changing. Secondly, RTÉ's timeshift channels would be closed on the basis that they are no longer financially sustainable. Moreover, other channels on the DTT platform have been benefitting from their presence in the meantime in the form of a reduced tariff.

c) ***That no other services—beyond RTÉ One +1 and RTÉ2 +1—will exit the platform during the next five years***

1.19 If further service reductions occur, the fixed tariff model would result in public subsidy of services with 'must carry' status pursuant to Section 130 of the Broadcasting Act, which includes commercial services, raising potential state aid concerns as it would involve the unlawful use of state resources.

d) ***That the number of services will not increase during the period***

1.20 ComReg implies its proposals would encourage RTÉ to bring more services onto the platform. However, under its proposed mechanism, existing services would not benefit from any resulting tariff reduction, unlike in the current model. However, ComReg has not provided any meaningful evidence to support the assertion that new services are likely to join if the price control is modified, nor is it ComReg's role in any event to devise channel selection for any platform (including one operated by an undertaking with SMP), whether by modifying the underlying economic conditions or otherwise. Such an approach would potentially undermine RTÉ's remit as a PSM and interfere with Coimisiún na Meán's role as the independent media regulator.

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<sup>2</sup> RTÉ Strategy Statement for 2025-2029, 'A New Direction'

1.21 The following parts will demonstrate that ComReg's proposals are not supported by the evidence and would lead to unintended consequences. These consequences would undermine ComReg's own policy objectives and conflict with its legislative responsibilities under the ECC Regulations.

## RTÉ's legal and policy framework: incompatibility with ComReg's proposals

1.22 RTÉ operates within a broader statutory and regulatory framework as Public Service Media (PSM), which ComReg has not adequately considered. ComReg's assumption that RTÉ can act as a free commercial agent in Market B is incorrect and leads to flawed regulatory proposals; the framework imposes constraints that limit RTÉ's ability to operate the DTT multiplex on a fully commercial basis.

1.23 While ComReg summarises RTÉ's obligations under the Broadcasting Act 2009, it does so solely to assess whether the Act addresses potential competition concerns in Market B absent regulation. This narrow assessment overlooks three important points:

- **RTÉ's operations in Market B are constrained by Section 130 of the Broadcasting Act.** For example:
  - Ministerial consent is required for new services to join the platform. However, before new services can be added, the platform is obliged to ensure that space is available for those services with 'must carry' status as follows: -
  - Those services that are designated as public service in character by the Minister by order must be carried on the platform
  - Commercially licensed television services pursuant to Section 70 of the Broadcasting Act must also be carried. A Section 70 television programme service contract includes free to air coverage obligations which can currently only be met by the platform
  - RTÉ must reserve capacity for an Irish Film channel, which also has 'must carry' status
  - The practical impact of 'must carry' obligations on a platform means that space must in effect be "reserved" should additional services of that nature come on stream
  - In addition, the Minister may request the platform to reserve additional capacity for such services in the event that same is requested by a channel provider having 'must carry' status
- Pursuant to the terms of the regulated wholesale access reference offer, access is granted for no less than a minimum of a five-year initial term with the payment of a termination sum in the event that a channel terminates the agreement prior. This reduces commercial flexibility. A channel must also have a licence to transmit in the EU, which may affect channels based in the UK, for example
- **As outlined above, RTÉ is under a statutory obligation to operate its commercial activities in an efficient manner** to maximise revenues. While the establishment and operation of the DTT multiplex is a public service object, the operation of the platform has to be conducted in a commercial manner and cannot subsidise third party customers or channel providers which it is obliged to carry, in light of the 'must carry' status conferred by Section 130
- **RTÉ's use of public funds is strictly limited by law.** Under s123(2) of the Act, public funding—including licence fee revenue—can only be used for pursuing public service objectives and meeting regulatory levies. Using these funds to subsidise commercial broadcasters on the FTA DTT platform would breach this provision. Furthermore, state aid concerns arise if commercial services benefit from such cross-subsidisation, particularly in the event of a service exit under ComReg's fixed tariff model

1.24 The consultation describes the provisions of the Act as ‘more akin to ex post intervention’ – this is patently not accurate. Self-evidently, the requirement for Ministerial approval and the ‘must carry’ obligations are both plainly ex ante in nature. Finally, these funding concerns also extend to TG4, another publicly funded PSM. Under ComReg’s proposed model, TG4 would not benefit from reduced tariffs if a new service joined the platform or upgrades were made to increase efficiency.

### The Report of the Future of Media Commission

1.25 ComReg’s proposals also conflict with current government policy and legislative proposals around the future of PSM provision and funding. The recent findings of the Future of Media Commission (FOMC),<sup>3</sup> accepted by the government, highlighted the changing market context and the implications for regulators and media organisations:

- The coming decade will be highly disruptive for Ireland’s media sector. It presents both exciting opportunities and serious threats to Ireland’s media system
- Technological advances, changing consumer behaviour and social needs challenge media to **develop new business models and new ways to engage with audiences, or risk losing them**
- The media system faces long-term economic challenges. These include a decisive shift in advertising revenues away from media towards the technology firms that dominate the digital advertising market, compounded, ... in the case of Public Service Media, by the increasing **unsustainability of TV Licence fees** as a source of public funding
- The survival of today’s media organisations, and the emergence of new ones, **hinges on their capacity to innovate, adapt to the competitive landscape, and meet the changing needs of audiences**
- Government, **regulators and media organisations need to develop a more strategic, collaborative response to investment, digital transformation, business model evolution...**
- The traditional model of PSM is evolving to recognise and incorporate the greater agency that citizens and consumers expect... This demands that PSM show **greater ambition in engaging with audiences, and greater levels of transparency and public accountability**

1.26 In its response, the government’s Implementation Strategy and Action Plan<sup>4</sup> underlined the importance of RTÉ delivering ‘transparency and value for money’ for the taxpayer, predictability of funding and efficiency. ComReg’s proposals would undermine this, since they would require RTÉ effectively to subsidise commercial services in the event of a service departing and would introduce inefficiencies and an increased administrative burden, as discussed above. (Recommendations 5-3, 5-6).

1.27 The FOMC Implementation Strategy also underlined that RTÉ should achieve targeted savings and long-term efficiencies and re-invest savings in its digital strategy since ‘[m]eeting the changing consumer needs is a key priority for PSMs, and RTÉ in particular’. RTÉ developed its new strategy in this context, proposing to close RTÉ One +1 and RTÉ2 +1 by c2029 to reflect the fact that audiences are increasingly consuming TV and wider video online and on-demand and to enable efficiencies and reinvestment in digital services. RTÉ’s strategy is about delivering PSM that is fit for the digital age, and not in any way connected to RTÉ’s market position in Market B of the FTA DTT platform. (Recommendations 5-7, 5-9).

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<sup>3</sup> Report of the Future of Media Commission, 2022

<sup>4</sup> Future of Media Commission Report Implementation Strategy & Action Plan, 2023

1.28 Under the ECC Regulations, ComReg should not cut across media policy, as applies to RTÉ, but rather contribute to 'policies aimed at the promotion of freedom of expression and information, cultural and linguistic diversity, as well as media pluralism' and consult and cooperate with other relevant authorities, in this case Coimisiún na Meán, which is responsible for overseeing the performance and public funding of RTÉ as Public Service Media.

## The Irish TV landscape

1.29 In this part we set out the state of the broadcast market in Ireland, exploring relevant recent developments and trends in the market, which underline why the proposals made by ComReg and assumptions about RTÉ's incentives don't reflect the market realities.

1.30 We focus on the television and wider audiovisual sector in this part. While ComReg's proposals would also relate to radio stations carried on the FTA DTT platform, the share of total radio listening on all TV sets (including those using other TV platform such as IPTV, cable or satellite) is 2 per cent, compared to 68 per cent for listening on a radio or music system and 30 per cent for a smartphone.<sup>5</sup> Together with ComReg's assumptions around RTÉ's strategy for its own TV channels, which underlie ComReg's proposals, it seemed most relevant to examine and clarify the market context for the FTA DTT platform in relation to television. Our findings are largely in line with those of the Report of the Future of Media Commission, which was accepted by the government.

### Digitalisation has transformed how consumers interact with media

1.31 Ireland's traditional broadcast sector has seen significant change over the past decade, in part due to the digitalisation of the overall audiovisual sector, and these developments have led to a shift in the way Irish consumers access audiovisual content.

### Increasing broadband coverage and speed is enabling increased delivery of TV over the internet

1.32 Average broadband speeds in Ireland have increased significantly since 2013, as shown in Figure 1 below, 92 per cent of Irish households receiving broadband had speeds of more than 100 Mbps in 2023. Total internet coverage reached 94 per cent of all Irish households in 2024, and the National Broadband Plan for Ireland intends to provide access to high-speed connections to every home and business by 2026.<sup>6,7</sup> The continued increase in speeds and coverage will help contribute to Ireland to reaching full capability for delivering live and on-demand TV over IP in the near future.

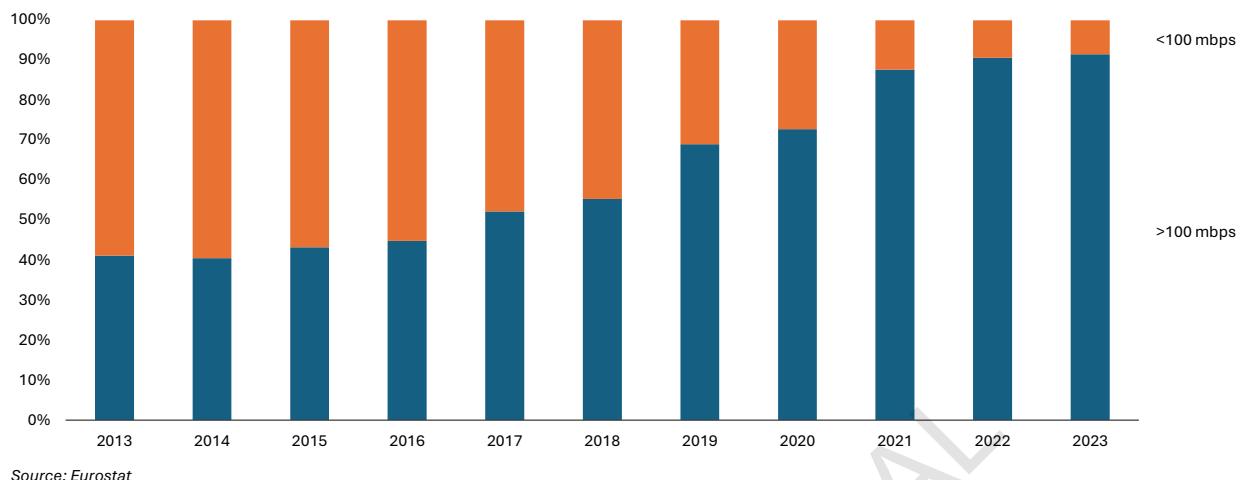
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<sup>5</sup> The 2024 Irish Audio Report, Radiocentre

<sup>6</sup> <https://www.cso.ie/en/releasesandpublications/ep/p-issnict/internetcoverageandusageinireland2024/householdinternetconnectivity/>

<sup>7</sup> <https://digital-strategy.ec.europa.eu/en/policies/digital-connectivity-ireland>

**Figure 1: Broadband penetration by speed, Ireland, 2013-2023 (% households)**



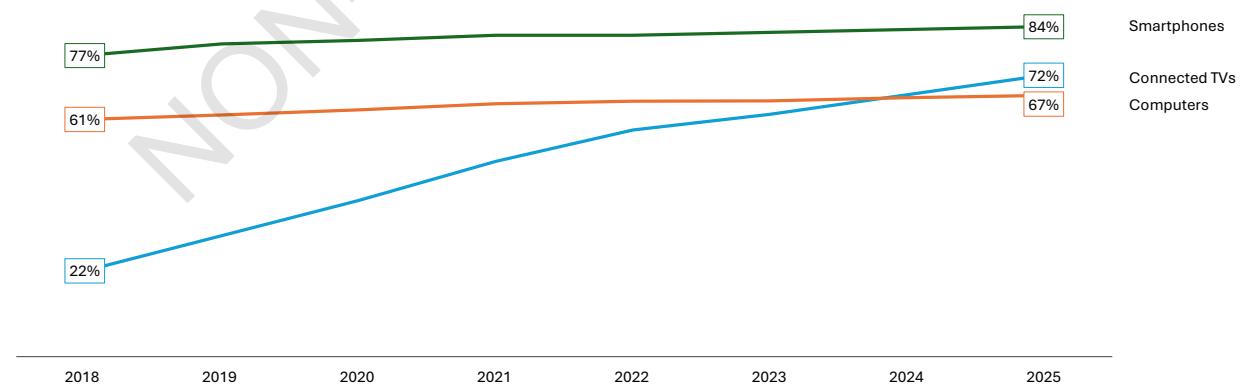
Source: Eurostat

### Uptake of connected devices has risen steadily in recent years

1.33

Improvements in connectivity and technological advancements have underpinned increasing adoption of connected devices among Irish consumers. As demonstrated in Figure 2 below, connected TVs (CTV) have become almost ubiquitous in Ireland, with over 70 per cent of the population having a connected TV in 2025. As CTV penetration rises, a higher proportion of Irish viewers will have access to TV platforms that combine traditional broadcast channels with on-demand services and allow TV channels to be streamed over IP. Meanwhile, uptake of smartphones and computers has risen steadily, allowing consumers to watch TV content delivered over the internet wherever they are in the home or when out and about.

**Figure 2: Connected device penetration, Ireland, 2018-2025 (% of population)**



Source: Dataxis, Omdia, Nielsen, Oliver & Ohlbaum analysis

### Consumers are increasingly accessing TV services over IP

1.34

The recent improvements in technological infrastructure and connectivity in Ireland outlined earlier have provided consumers with new routes to accessing audiovisual content and enabled the successful delivery of TV over IP.

1.35 Irish homes receive TV via a number of different distribution methods and from a range of providers. As shown in Figure 3 below, over the last decade, the proportion of Irish consumers receiving their primary TV service over IP has increased steadily, reaching 17 per cent in 2025, surpassing DTT's share of primary households. These include IPTV services offered by providers such as eir and Vodafone, which account for 8 per cent of homes in 2025, and connected TV proprietary UIs offered by manufacturers such as LG and Samsung, at 9 per cent. In contrast, only 12 per cent of homes rely on DTT as their primary TV platform.

### **This means that content providers have a choice of TV platforms and of service types to reach the same home**

1.36 In Ireland, multihoming, accessing multiple reception platforms (e.g. DTT, IPTV, cable, satellite etc) across different TV sets within a household, is prevalent. As a result, TV channels can effectively reach audiences without needing to be carried on each platform, including DTT. This pattern is already evident, with many channels successfully engaging viewers through a mix of distribution methods and other services, for example, in Ireland, Sky carries over fifty of the FTA channels carried by the UK's DTT platform, Freeview, while both Virgin and eir carry more than 25 each.<sup>8</sup> In addition, there is an issue of signal overspill from UK's Freeview and free-to-air satellite, which enables many channels to access Irish homes without being carried by an Irish TV platform. For example, around half of Saorview homes also access UK channels via Freeview overspill or free-to-air satellite, with a further 15 to 20 per cent of Saorview homes also receiving a pay TV service.<sup>9</sup> ComReg is incorrect to conclude that 'Retail TV Broadcasters continue to make their TV channels available on as many TV platforms as possible', if by that they mean that DTT is a 'must have' platform (consultation paragraph 3.25).

1.37 In its consultation, ComReg argues that multihoming means that, in response to a Small but Significant and Non-transitory Increase in Price (SNNIP), an FTA DTT platform access seeker could remove their channel from the DTT platform, but in most cases 'cannot 'switch' to an alternative platform, given they are already present' (consultation paragraph 4.90). Equally, ComReg also argues that consumers are unlikely to switch as they may choose to have a pay TV platform in addition to FTA DTT in the same home (consultation section 3). ComReg provides no cogent data to show how access seekers might react to price changes, but nonetheless firmly concludes that there is little competitive pressure on RTÉ. In reality, multihoming means that both channels and consumers are able to easily rely on other platforms that already exist in their homes – i.e. the effort of switching is not required – so that RTÉ has reasons to be concerned with the health of the FTA DTT platform and few incentives to take actions (such as excessive pricing) that could drive channels off the platform. As shown in Figure 3, Sky is by far the largest TV platform at 37 per cent.

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<sup>8</sup> O&O analysis of channel listings

<sup>9</sup> Nielsen Establishment Survey January 2025

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**Figure 3: Primary TV reception type, Ireland, 2013-2025 (% TV households)**

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(chart redacted)

1.38 Similarly, content services can choose to reach consumers through a live IP stream, a FAST service and/or a VOD app; they don't need to provide a broadcast channel – and the market will continue to move in this direction.

### **Viewers are gradually moving away from watching traditional live TV**

1.39 As illustrated below in Figure 4, live TV viewing has declined rapidly in recent years, falling on average 4.3 per cent a year between 2013 and 2024 for all individuals, with Irish consumers watching on average just under two hours of live TV each day in 2024. This trend has coincided with the rapid rise in popularity of on-demand video services in Ireland. It is also observed across all age groups; while the sharpest decline is seen among younger viewers who have moved most rapidly to adopting these other forms of video viewing, older age groups are also changing their habits. The overall effect of this trend is that broadcasters, including PSM, must invest in their on-demand services to meet viewer and advertiser needs online.

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**Figure 4: Average daily live TV viewing time, Ireland, 2013-2024 (average minutes per person)**

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(Chart redacted)

### **It follows that viewers are watching a variety of video on the TV set**

1.40 In Ireland, the average time spent per day watching traditional linear TV on the TV set has declined steadily over the past decade. As shown in Figure 5, live viewing accounted for [redacted] per cent of total TV set usage in 2024, with consumers increasingly transitioning their viewing time to on-demand content and services including free ad-supported streaming TV (FAST) channels, broadcaster VOD services (BVOD) such as RTÉ Player and TG4 Player, other VOD services such as Amazon Prime Video, Netflix and Disney+, and video sharing platforms (VSPs) such as YouTube and TikTok.

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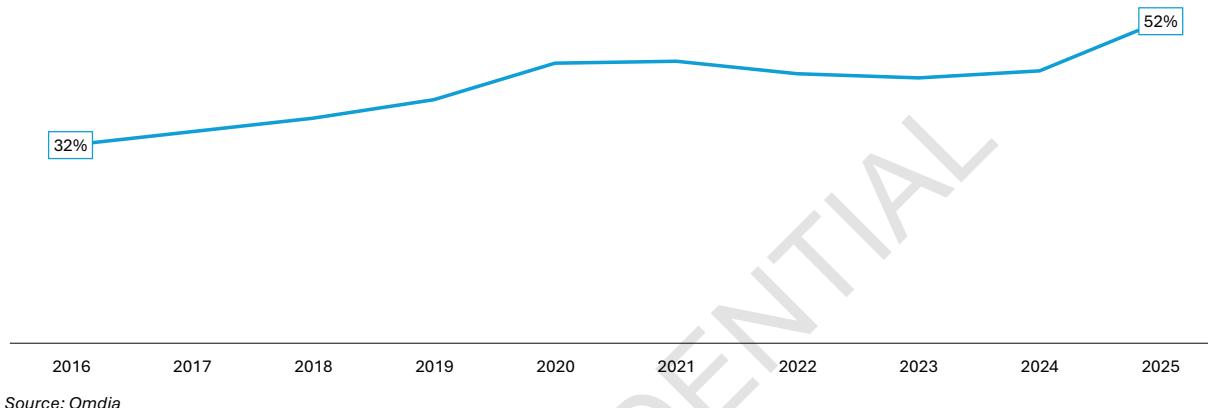
**Figure 5: Total daily TV set viewing by type, Ireland, 2013 – 2024 (Adults 15+, % avg minutes per person)**

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(Chart redacted)

1.41 SVOD penetration has risen rapidly over this period, with subscriptions accelerating notably through 2020 due to significant changes in consumer behaviour brought on by the Covid-19 pandemic. Despite growth slowing after 2021, more than 50 per cent of households now subscribe to an SVOD service in 2025, and these services account for around 10 per cent of average daily video viewing, as shown in Figure 6.

**Figure 6: SVOD penetration, Ireland, 2016-2025 (% households)**



Source: Omdia

1.42 ComReg suggests that 'consumers are unlikely to view SVOD services as an effective substitute for FTA DTT' (consultation paragraph 3.54) and that they do not exert a competitive constraint. ComReg cites differences in pricing, product characteristics and content genres, notably live sport, news and current affairs. Firstly, it is worth noting that SVOD services do carry live sports coverage as part of the package, and that in some cases they are bundled with other services from the same provider (ecosystem effects). Moreover, ComReg does not consider the potential competitive constraint of other types of online and on-demand services, including free-to-access VOD from broadcasters (BVOD), advertising-funded VOD – which is growing, and FAST channels. All of these are growing alternative ways for broadcasters to serve consumers and for consumers to access content, instead of broadcast channels on the FTA DTT platform.

1.43 Rising viewing to BVOD services has helped to sustain total viewing to traditional broadcasters, including PSM, while live TV is gradually reducing. Nonetheless, total daily viewing to broadcasters is declining, indicating that there is more to do in order to continue serving Irish consumers in the way that they expect to watch today (Figure 7).

**Figure 7: Total daily video viewing by type, Ireland, 2023 vs 2024 vs 2025 (Adults 15+, % avg minutes per person)**

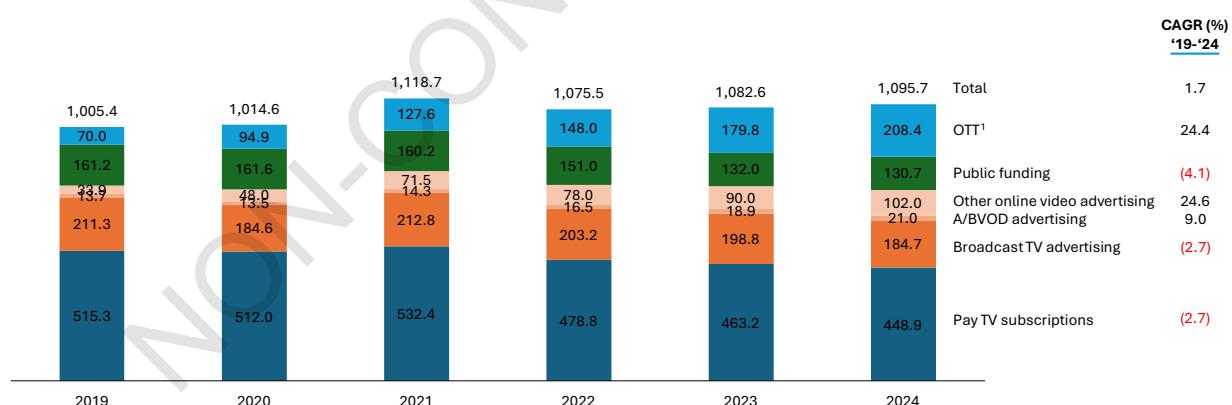
(Chart redacted)

## FTA broadcaster revenues are in decline as advertising money moves increasingly online

1.44

As illustrated in Figure 8, the Irish TV market has experienced steady growth since 2019, reaching €1.1 billion in 2024. Much of this recent growth has been driven by digital media, in particular OTT services including subscriptions to SVODs, and online video advertising. This reflects the ongoing digitalisation of the market over the past decade and reinforces the point that consumer behaviour is shifting towards online services.

Figure 8: TV market revenues, Ireland, 2019-2024 (€m)



Note: <sup>1</sup>OTT includes SVOD and TVOD revenues

Source: PwC Global Entertainment and Media Outlook, Oliver & Ohlbaum analysis

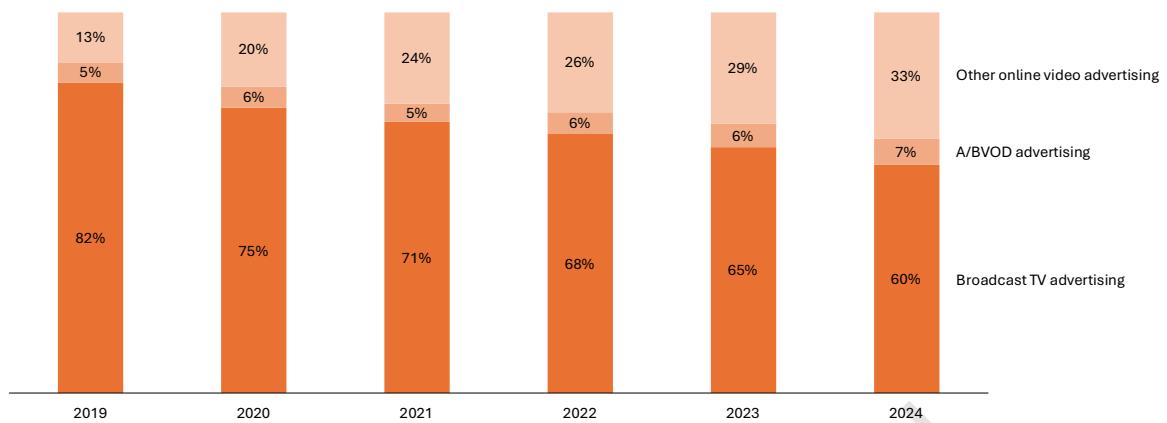
1.45

The rise in digital revenues has come at the expense of traditional broadcaster revenues, which continue to decline. Broadcast TV advertising revenues fell from €211 million to €185 million, representing a decline at an average annual rate of 2.7 per cent a year between 2019 and 2024. (Meanwhile, public funding declined 4.1 per cent over the same period).

1.46

This decline in traditional broadcast TV advertising revenue has altered the makeup of advertising spend in the sector. As shown in Figure 9, broadcast TV advertising's share of TV-related advertising revenues declined from over 80 per cent in 2019 to 60 per cent in 2024, with digital video advertising, both from A/BVOD, and other online video, including VSPs, rising to account for around 40 per cent of spend. Broadcasters therefore need to invest in their online and on-demand services in order to strengthen this advertising revenue stream.

**Figure 9: Mix of broadcast and online video advertising revenue, Ireland, 2019-2024 (% of ad spend)**



Source: PwC Global Entertainment and Media Outlook, Oliver & Ohlbaum analysis

## The impact on demand for DTT slots

1.47 In the context of evolving media consumption habits and broader market trends explored in the previous part, the economic and strategic case for broadcasters to join DTT has become increasingly difficult to justify. Rather than seeking access, broadcasters may now be inclined to prioritise other distribution routes and other types of service such as VOD and FAST channels.

### The economics of DTT delivery are becoming increasingly challenging

1.48 Despite RTÉ's significant efforts to provide an attractive platform given the legal and regulatory framework, the economics of joining the DTT platform have become increasingly unfavourable in recent years and this will likely only continue to worsen in the short to medium term. Broadcasters face significant upfront and ongoing costs associated with joining DTT, including platform access fees and other costs such as music licensing. The initial and renewal terms are for five years, which represents a significant commitment at a time when, as shown, viewing is moving away from live broadcast channels and the future of DTT is being discussed. There are significant early termination fees and the access seeker is required to keep these aside in advance, as security. Overall, the access reference offer is stringent and non-negotiable and while Market B is not advocating deregulation, the terms are a deterrent to potential new channels in the current climate.<sup>10</sup> This is particularly the case when considering that any of the channels outside those with a 'must carry' obligation already pay carriage fees to the market leading pay TV platforms including those operated by Sky, Virgin and eir.

1.49 In a market where digital transformation is accelerating and Irish viewers continue to shift their video consumption to other platforms and other types of service, including VOD and FAST, the long-term value proposition of DTT is increasingly under question. Declining potential for revenue-generation is a major consideration for incumbent and potential new broadcasters to the platform as traditional linear viewing to FTA services continues to fall, perpetuating a decline in advertising revenues to these channels.

### Broadcasters will strategically reassess platform membership moving forward

1.50 Given the increasing pressure to optimise operational efficiency and focus on scalable distribution channels, in the face of a declining traditional FTA ad market, it is to be expected that broadcasters will reassess their DTT commitments at natural decision points, such as contract renewals, strategic reviews, and major industry development milestones. The uncertainty surrounding the long-term future of DTT – exacerbated by global regulatory dynamics such as the anticipated discussion around the use of UHF spectrum at the World Radiocommunication Conference (WRC) in 2031, are likely to further discourage new entrants from joining the platform and may weaken the case for existing members maintaining a presence in the medium term, if not mandated in the context of 'must carry'.

## Declining demand for DTT has been seen elsewhere

1.51 Demand for DTT capacity is already showing signs of decline in other countries, notably the UK, where DTT has declined by some twenty percentage points, falling from c70 per cent in 2014 to approximately 50 per cent in 2024, according to BARB.

1.52 As outlined by Ofcom in its advice to the UK government on the future of TV distribution, 'the way that TV reaches audiences will need to adapt to their changing needs', given the shift in audience behaviour away from live broadcast TV and towards linear and on-demand content and services delivered over IP; and an expectation from a large number of broadcasters that there will be a tipping point at which it is no longer economically viable to support DTT in its current form. Projections cited by Ofcom suggest that the next decade will see significant reductions in the number of UK households reliant on traditional broadcast platforms (primary).

1.53 In particular, Ofcom notes a shift in market dynamics in the UK. The number of platforms that content providers can use to distribute content has expanded to include online-only platforms that audiences use to consume both linear and on-demand TV content. These include services from existing platform providers such as Sky Glass and Sky Stream, native connected TV user interfaces (Amazon Fire) – which are also available in Ireland. Other platforms are hybrid, offering a mix of broadcast and on-demand content and functionality, such as Sky Q and Freeview Play (from the DTT operator, EveryoneTV). Moreover, EveryoneTV has launched an IP-only streaming platform, Freely, which is designed to deliver free-to-air live TV over IP to connected TVs, effectively replicating the Freeview experience without requiring an aerial, and bringing this together with the broadcasters' VOD services.

1.54 While broadcasters are investing in distributing their content over the internet, providing consumers with more content and functionality, UK broadcasters have 'highlighted the financial and strategic challenges of continuing to serve viewers on existing broadcast platforms, while at the same time investing in online distribution and competing to attract online audiences'. This is 'leading some to consider their willingness to continue to pay the costs of being on multiple platforms'. In particular, over time channels may decide that the audiences they reach on DTT will no longer be large or valuable enough to justify the costs of maintaining distribution, especially if they are able to secure their target audiences on other platforms or feel that investment in streaming services is a more effective route to market.(In this regard the UK Department for Culture, Media and Sport has since convened a forum to explore options on the future of TV distribution)

1.55 There have been some examples of PSM and commercial multichannel providers closing channels in the UK in recent years, to drive efficiencies and reinvest in their digital services, including:

1.55.1 **Channel 4** announcing the closure of its Box Plus Network music channels;

1.55.2 **ITV** closing its children's channel CITV, with the content now available on its BVOD service ITVX; children's channel Tiny Pop closed to focus on the Pop Player; and

1.55.3 BBC announcing that BBC Four and CBBC will stop broadcasting and be available on BBC iPlayer only, with the timing to be decided.

1.56 This international example demonstrates how the economic and strategic logic underpinning DTT participation is eroding. It shows that different types of broadcaster are responding to market and technological realities by prioritising IP-based platforms and services over DTT, driven by cost-efficiency, audience preferences, and a need for strategic flexibility in an evolving media landscape. This is the case even in a territory with traditionally high DTT penetration.

1.57 As a result, if Market B is unable to attract new services or to retain existing ones, this reflects market realities as well as the realities of the wider regulatory framework. It is not related to RTÉ's market power or a lack of 'market risk' for RTÉ. It is therefore incorrect to suggest that if costs rise due to a channel departing, these are not 'efficiently incurred' costs.

1.58 To demonstrate this further, we have considered the different types of TV channel that could – in theory – be approached to join or to stay on the FTA DTT platform and reviewed the strategic and economic rationale for doing so. In each case, these are not compelling:

- **New Irish channels:**
  - Overall viewing to DTT is in decline and live viewing is decreasing in importance to consumers
  - Reach of pay services is high in Ireland at >60% of TV homes (IPTV, DCAB and DTH) – so a new channel would likely prioritise these platforms first within the traditional broadcast ecosystem, and may incur carriage fees and other related costs
  - In light of the other platforms taking priority, the tariff and terms to join DTT is unappealing or unviable in an environment where traditional broadcaster margins are squeezed by declining broadcast advertising revenues and rising costs
  - A 5-year initial term to join DTT is likely unappealing at this stage, given international spectrum discussions and rising broadband coverage and capacity
- **UK PSBs:**
  - In addition to the points above, these channels are already carried on high reach pay platforms in Ireland. They are also available through DTT overspill and free-to-air satellite from the UK
  - They are involved in discussions about the future of TV distribution in the UK and, as shareholders in Everyone TV, have launched Freely as the future of free to access television
- **International multichannel or FAST channels:**
  - These channels have tight margins and are likely to see the DTT costs as prohibitive compared to the revenue-generation potential
  - These channels are likely to prioritise IP distribution or high-reach pay platforms, and investing in developing their online services
  - Not all may qualify as being public service in character or have licences to transmit in the EU

Strategic rationale for not joining DTT	Channel types				
	New Irish channels	UK PSBs	UK multichannel	Other international multichannel	FAST channels
Declining DTT and live viewing	✓	✓	✓	✓	✓

<b>Limited advertising revenue generation potential</b>	✓	✓	✓	✓	✓
<b>High reach/share of Irish TV households of pay platforms (e.g. those offered by eir, Sky, Virgin)</b>	✓	✓	✓	✓	✗
<b>Restrictive mandatory minimum requirements for joining DTT platform</b>	✓	✓	✓	✓	✓
<b>Longer-term uncertainty of DTT as a broadcast technology (e.g. influenced by wider industry events - UHF spectrum discussion at WRC 2031)</b>	✓	✓	✓	✓	✓
<b>Other countries transitioning away from FTA DTT platform</b>	✓	✓	✓	✓	✓
<b>Existing channel economics strained</b>	✓	✓	✓	✓	✓

1.59 Recent contacts with Market B from several multichannel broadcasters support this analysis. In summary, the cost, contractual terms including the length of commitment and the fact that the terms are non-negotiable under the reference offer were all unattractive and meant that broadcasters ended discussions. The channels in question were carried on high reach pay platforms in Ireland and/or were available via Freeview overspill and free-to-air satellite from the UK.

1.60 Of the 15 TV channels currently carried on Saorview, six are owned and operated by RTÉ, with the other nine owned by Virgin Media, TG4, Sky, and the Oireachtas. Of these nine channels, the contract renewal date has already lapsed for four, with no current contract in place (although performance has continued); the renewals for the remaining five channels are due between 2026 and 2028. Only three of the non-RTÉ channels have a 'must carry' obligation, whilst the other six have no requirement to remain on the platform after their contracts lapse.

# The economic implications of ComReg's proposals

1.61 There is no need for ComReg to further specify or amend the Price Control Mechanism as the current approach meets the various regulatory and policy objectives and requirements. ComReg has provided no cogent economic evidence to show that it doesn't and the revised approach (which is based on flawed assumptions about current and future market conditions) undermines efficient cost recovery for Market B and is a potentially worse outcome for current and/or new services.

1.62 Furthermore from an economic perspective, ComReg's analysis overstates the incentives for RTÉ to undermine or distort competition in wholesale broadcasting transmission services. This is for two main reasons:

1.63 Firstly, ComReg's analysis suggests that there is little TV platform competition. However, data in Table 1 of the consultation shows that there is considerable evidence to suggest that IPTV has grown in importance. This trend is even more pronounced when considering the penetration of primary TV services (as shown in Figure 6 of our response). These data strongly indicate that RTÉ has reasons to be concerned with the health of the FTA DTT platform and few incentives to take actions (such as excessive pricing) that could drive access seekers off the platform.

1.64 Secondly, in the analysis of countervailing buyer power (CBP) in Market B, in paragraph 8.38 of the consultation, ComReg asserts that Market B Access Seekers could not credibly or effectively exercise CBP. The consultation explains this by saying that firstly any wholesale revenue lost by RTÉ would be likely recovered through gains in advertising in downstream markets. However, that statement rests on an assumption of the responsiveness of prices for ad slots to changes in the quantity of ad slots. Secondly, ComReg asserts that the benefits likely far outweigh the prices set by RTÉ to an access seeker of being present on the DTT platform. However, this claim is debatable given that ComReg's own data shows only 12 per cent of TV viewers rely on FTA DTT as their only TV service (consultation paragraph 3.11), and there is very little evidence to indicate how access seekers might react to price changes. Furthermore, as highlighted above, over the longer term, RTÉ has few incentives to take steps (such as excessive pricing) which could induce access services to cease seeking carriage on the DTT platform.

1.65 To the extent that services choose not to seek access, or decide to withdraw from the FTA DTT platform in the future, this is instead related to the wider digitalisation of the TV sector, requiring all broadcasters to make efficiencies and reinvest in serving audiences and advertisers online and with increased functionality as is available over IP. The market is expected to continue gradually moving in this direction. This comes together with the stringent regulatory requirements for channels to join the FTA DTT platform, in accordance with the Broadcasting Act 2009 and the non-negotiable Market B reference offer, which significantly limit RTÉ's ability to attract services.

## Conclusions

1.66 Throughout this response we have set out how the proposals create the risk of regulatory harm. If we consider the proposals against the requirements flowing from the ECC Regulations 2022,<sup>11</sup> we find that they are not objective, transparent, non-discriminatory or proportionate and appropriate to the circumstances. As such, we are strongly

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<sup>11</sup> European Union (Electronic Communications Code) Regulations 2022 SI No. 444 of 2022, which transposes the European Electronic Communications Code Directive 2018

concerned that they would fail to promote efficiency, sustainable competition or sustainable end-user benefits. In particular:

- The current Price Control Mechanism has served the market well. Comreg's proposed changes outlined in the consultation document do not better meet the policy objectives with regard to the efficient functioning of Market B. In fact, for the reasons outlined above it is submitted that the proposed changes will lead to worse outcomes.
- ComReg's assumption that RTÉ can act as a free commercial agent in Market B is incorrect and leads to flawed regulatory proposals; the framework imposes constraints that limit RTÉ's ability to operate the DTT multiplex on a fully commercial basis. Its proposals also cut across government and regulatory policy in relation to the remit and funding of RTÉ as Public Service Media, overseen by Coimisiún na Meán. In the event of a service leaving the platform, ComReg's proposed approach would effectively require RTÉ to subsidise those channels that have the status of 'must carry' under the broadcasting legislation, some of which are commercially funded channels whose licences include coverage obligations. This would be contrary to RTÉ's permitted uses of public funding by way of the licence fee under the Broadcasting Act 2009, (as amended) ("the Broadcasting Act") and would confer a selective advantage on those services. Ultimately, this would divert public funds from their intended use for the provision of PSM content and services to benefit consumers and citizens. The conferral of such an advantage in the context of State resources/public funding risks distorting competition and arguably constitutes unlawful State Aid
- In the event of a new service joining the platform or if the efficiency of the platform is upgraded, existing services would not benefit from a reduced tariff. RTÉ would retain the extra revenue, potentially leading to over-recovery of costs, which would be inconsistent with the provisions of Section 108. This would also be contrary to the principle of causality and lead to inefficient and unfair cost recovery
- The tariff would no longer be smoothed, reducing predictability and undermining financial planning
- Accordingly, for the reasons outlined above, it is submitted that there should be no change in respect of the remedies in Market B.

-ENDS-

**From:** [REDACTED]  
**Sent:** Friday 11 April 2025 17:40  
**To:** [REDACTED]  
**Subject:** SIRO Response to Market Review - Broadcasting Transmission Services Consultation

**CAUTION:** This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and believe the content is safe.

Dear [REDACTED],

SIRO welcomes the opportunity to provide input on the future of broadcasting infrastructure in Ireland and respectfully submit the following views advocating for a more proactive and forward-looking policy approach toward the decommissioning of Digital Terrestrial Television (DTT).

#### Executive Summary

Digital Terrestrial Television (DTT) has played an important role in the evolution of Ireland's broadcasting landscape. However, in light of significant shifts in consumer behaviour, digital media delivery, and infrastructure investment priorities, it is both timely and necessary for ComReg to initiate a structured pathway to phase out DTT services in favour of more efficient, future-proof solutions.

This submission outlines the rationale for such a policy direction, focusing on:

- Evolving media consumption habits
- Spectrum efficiency and repurposing opportunities
- Cost-benefit considerations for public broadcasters and infrastructure operators
- Alignment with European regulatory and technological trends

#### **1. Media Consumption Trends Demand Modernisation**

Irish consumers are increasingly turning to internet-based platforms for accessing audiovisual content. Recent statistics show:

- A significant increase in streaming service subscriptions across all demographics.
- Mobile and broadband penetration exceeding 90% of households.
- DTT viewership now representing a minority share of total audience consumption.

Continuing to maintain DTT infrastructure for a shrinking user base risks misallocating resources that could be better invested in next-generation connectivity solutions.

#### **2. Opportunity Cost: UHF Spectrum Repurposing**

The UHF band (470–694 MHz), currently used for DTT, is a valuable asset for future mobile broadband expansion and 5G/6G rollouts—particularly in underserved rural areas. Although WRC-23 has protected this band for

broadcasting until 2030, there is no technical or policy barrier to repurposing this spectrum earlier on a national basis, provided a coordinated transition plan is in place.

A proactive policy to sunset DTT by the early 2030s—rather than merely maintaining the status quo until then—will:

- Encourage investment in broadband alternatives, especially fixed wireless access (FWA)
- Improve spectrum efficiency
- Increase flexibility for national broadband planning

### **3. Cost Inefficiency and Redundancy**

Operating a parallel terrestrial infrastructure alongside increasingly dominant online delivery platforms is economically inefficient:

- DTT requires ongoing transmission and maintenance costs borne by RTÉ and funded in part through the licence fee.
- Reducing these costs could free up funding for public service content production or reinvestment in digital access initiatives.

Moreover, maintaining DTT for a small number of viewers (many of whom already have access to internet or satellite alternatives) lacks long-term viability.

### **4. European Trends Support Strategic Transition**

While DTT continues in several EU countries, a growing number of Member States are reevaluating its long-term role:

- Switzerland shut down DTT in 2019.
- France is currently consulting on the future of DTT post-2030.
- The UK has committed to supporting DTT only until 2034, with broadcasters pressing for earlier decommissioning.

Ireland risks lagging behind if a structured DTT exit strategy is not developed within this decade.

### **5. Recommendation: A Proactive, Managed Exit Strategy**

We urge ComReg to adopt a strategic roadmap toward decommissioning DTT services, including:

- A public consultation and impact assessment (2025–2026)
- Incentivisation of migration to IP- and satellite-based platforms
- Protection of vulnerable users through targeted digital inclusion policies
- Spectrum repurposing planning for 2030–2031

This approach would allow for a smooth, equitable, and efficient transition aligned with Ireland's digital ambitions.

### **Conclusion**

It is both technically feasible and strategically prudent for Ireland to begin preparing for the phased withdrawal of DTT. A proactive policy now will help ensure a smoother transition, promote better use of public resources, and position Ireland as a digital leader in Europe.

Thank you for your consideration of this submission.

Sincerely,

[REDACTED]



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## ComReg Market Review 25/08

### Broadcasting Transmission Services – Consultation & Draft Decision

#### TG4 Response

TG4 welcomes the opportunity to input to ComReg's BTS Consultation and Draft Decision. In this response, TG4 focuses primarily on the Market for television distribution and transmission.

As outlined in its original submission, TG4 is disappointed that nothing has changed with respect to the structure and regulatory framework surrounding BTS in the Irish marketplace. RTÉ's wholly-owned subsidiary, 2RN, continues to provide services on the basis of apportioning costs across all users but there is no external control or oversight of input costs. RTÉ can happily pay higher tariffs to its subsidiary safe in the knowledge that it will enjoy higher dividends when the operating profits of 2RN are consolidated into the RTÉ Group accounts. RTÉ staff numbers have decreased significantly over the past number of years including those at 2RN. This reduction in headcount was pursued in order to drive down the underlying cost base. As staff costs have been reduced, including in 2RN, why have these savings not been reflected in a reduction in Market A and Market B tariffs? In the interest of fairness, surely it is time that ComReg insists on the implementation of an "efficiency factor" in the formula for the calculation of tariffs?

By way of follow up to its submission TG4, together with Virgin Media Television Ltd., wrote to ComReg on 16<sup>th</sup> October 2024 setting out its concerns that, while costs incurred by 2rn in providing services are apportioned across all users, there is no oversight by ComReg to ensure that such costs are incurred efficiently. This letter contained a list of questions to be addressed by ComReg, as the regulator. For ease of reference, these questions are appended to this response at Appendix 1 below.

TG4 now responds to the questions raised in the Consultation Document as follows:

#### **Question 1:**

***Do you agree with ComReg's proposed definition of the Relevant Retail TV Broadcast Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.***

TG4 agrees with ComReg's proposed definition of the Retail TV market in Ireland. We would agree that, for the duration of this upcoming review period, DTT FTA services will remain the primary platform for viewers in Ireland.

#### **Question 2:**

***Do you agree with ComReg's proposed definition of the Relevant Retail Radio Broadcast Markets? Please explain the reasons for your answer, clearly***

***indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.***

TG4 agrees with ComReg's proposed definition of the Retail Radio market in Ireland. As noted, there have been no developments in the further development of the Radio market in Ireland since the last consultation so the market definition as set out in 3.5.1 remains valid.

***Question 3:***

***Do you agree with ComReg's product and geographic market assessment for Market A? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.***

As noted in 4.9, ComReg's 2021 assessment remains valid. TG4 agrees with the definitions of Market A as set out in 4.12. There is still a single national transmission provider. Given the insurmountable barriers to entry (site acquisition, international frequency clearance, spectrum limitations, planning laws, environmental impact etc.), and no substitute technologies evident within the timeframe of the review period, there is clearly no likelihood of a new entrant to the marketplace.

***Question 4:***

***Do you agree with ComReg's product and geographic market assessment for Market***

***B? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.***

As noted in 4.9, ComReg's 2021 assessment remains valid. TG4 agrees with the definitions of Market B as set out in 4.12. The market for DTT multiplexing services in Ireland is clearly limited. RTÉ remains the only multiplex licensee. TG4, as a licensed broadcaster, is obliged to procure multiplex capacity from RTÉ through its subsidiary 2rn as noted in 4.73 of the document. In order to meet its statutory obligations, TG4 has no other practical option but to procure multiplexing services from RTÉ via 2rn. In such circumstances, regulation of this market remains imperative, particularly as noted in 4.100, there are no clear supply-side substitutes available.

***Question 5:***

***Do you agree with ComReg's 3CT and assessment of SMP on Market A? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.***

TG4 agrees with ComReg's assessment of SMP. Market A clearly meets the requirements of the three criteria for *ex ante* regulation. There are extremely high

barriers to entry: as noted in 5.6, even if suitable sites could be acquired, planning permission would be extremely unlikely to be granted within the timeframe of the current review period, viewers antennas are aligned with existing sites and would not be able to receive signals from new locations without having their aerials realigned (view switching costs) etc. In addition, as ComReg is no doubt very aware, DTT switch-off is under discussion and it is possible that it may cease as early as 2034. Such a short remaining lifespan will disuade potential new entrants even if all the other very high barriers could somehow be overcome. Competitors are, therefore, precluded from entering the market. TG4 would argue that the position outlined in 5.24 exists in Market A and, as such, competition law alone would not suffice.

**Question 6:**

***Do you agree that the competition problems identified are those that could potentially arise in Market A (and related markets)? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.***

As noted in 6.9, RTÉ buys transmission services from its subsidiary 2rn for use with its multiplexes in Market B for the delivery of its own services, and those of its competitors, to viewers. In theory, absent regulation, RTÉ could indeed pay excessively for transmission services on the basis it could recover excessive profits through the consolidation of 2rn profits in the RTÉ Group accounts to the disadvantage of its broadcasting competitors. We agree with ComReg's conclusion in 6.10 that RTÉ could, absent regulation, engage in excessive pricing.

TG4 does have concerns with 2rn's leveraging of its position as a vertically integrated entity. ComReg raises this in 6.17. TG4 would suggest that ComReg's concerns are well founded. In the past, as the only available provider of such services to Baile na hAbhann, 2rn charged high rates to TG4 for microwave link contribution services. Substitutes are now readily available such that TG4 now procures contribution circuits from non-2rn sources on a more cost-effective basis.

With respect to the denial of access to infrastructure, this is no longer an issue for TG4 as its services are multiplexed with those of RTÉ so direct access by TG4 to 2rn infrastructure is no longer required. We do, however, note that this could be an issue for BMAI.

TG4 does not see the deployment of delaying tactics as a major cause for concern as TG4's services are multiplexed with those of RTÉ.

**Question 7:**

***Do you agree with ComReg's conclusions on remedies in Market A? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.***

In 7.20 (e) ComReg refers to the requirement for 2rn to provide access to the microwave link system. TG4 would suggest that this be changed to access to the “contribution” system as a number of 2rn locations are now served by fibre rather than microwave.

TG4 fully supports ComReg’s analysis in 7.26 of 2rn’s obligations under the criteria listed in Regulation 55 of the ECC Regulations. ComReg’s imposition of obligations pursuant to Regulation 55 as noted in 7.27 is, therefore, fully justified.

The requirement for 2rn to act in good faith with respect to requests for access to its infrastructure is reasonable. TG4 supports ComReg’s inference in 7.35 that such good faith extends to a willingness to conclude fair negotiations and agree contracts and SLAs.

While it is very unlikely that 2rn would rescind already agreed access arrangements, TG4 takes comfort from ComReg’s principle articulated in 7.43 that 2rn must justify any decision to withdraw access already granted.

ComReg’s approach to the treatment of SLAs is, in TG4’s view, proportionate and reasonable. Access to 2rn sites is not an issue for TG4 in Market A but we fully support ComReg’s position as set out in 7.64 and 7.65.

With respect to non-discrimination, it is reasonable for ComReg to impose on 2rn the obligations set out in 7.70 and the position summarised in 7.4.3.

In 7.5 and 7.6, ComReg discusses Transparency and Price Control and Accounting Remedies respectively. While TG4 supports ComReg’s position on these topics, we have concerns regarding the underlying asset base on which tariffs are based. We have previously highlighted our concerns in this regard to ComReg in the October 2024 letter, and specifically the list of questions within the letter which are addended to this response in Appendix A. Our central concern remains that, while costs are apportioned across all users, there is no control of the input costs and we are remain concerned that these have not been efficiently and reasonable incurred.

**Question 8:**

***Do you agree with ComReg’s 3CT and assessment of SMP on Market B? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.***

TG4 agrees with ComReg’s assessment of SMP. Market B clearly meets the requirements of the three criteria for *ex ante* regulation. There are extremely high barriers to entry: as concluded by ComReg in 8.2.4. In addition, as ComReg is no doubt very aware, DTT switch-off is under discussion and it is possible that it may cease as early as 2034.

Such a short remaining lifespan will disuade potential new entrants even if all the other very high barriers could somehow be overcome. Competitors are, therefore, precluded from entering the market. TG4 would argue that the position outlined in

8.4.4 clearly concludes that there will be no new entrants to Market B which means that SMP exists. In these circumstances competition law alone will not suffice.

**Question 9:**

***Do you agree that the competition problems identified are those that could potentially arise in Market B (and related markets)? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.***

TG4 agrees with ComReg's assessment of possible competition problems in Section 9 of the document.

In Section 9.2, ComReg highlights Exploitative Practices and primarily focus on excessive pricing and inefficiency. By its nature, Statistical Multiplexing lends itself to possible exploitation. Services on a multiplex are each given a level of priority and it is possible to allocate bit-rate on a more favourable basis to one client. To mitigate this risk, and provide comfort to all users, TG4 suggests that ComReg oversee bit-rate allocations and audit this on an annual basis. This issue is also relevant with respect to Section 9.3.3.

**Question 10:**

***Do you agree with ComReg's proposals in respect of remedies in Market B? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.***

TG4 agrees with the proposals as set out in Section 10 and makes the following points:

ComReg's proposed treatment of Access Remedies in Section 10.4 are reasonable and proportionate.

With respect to Non-Discrimination Remedies, TG4 would argue that 10.49(b) should be expanded to include non-discrimination in the allocation of bit-rates to each service in each multiplex. TG4 would welcome the introduction of ongoing monitoring and the annual audit of bit-rate allocations across the audit periods. This is also relevant to 10.65 which deals with Transparency.

TG4 welcomes ComReg's decision to specify a minimum threshold number of services on the DTT platform as existing on 1<sup>st</sup> April 2025 as set out in 10.108 – 10.111 inclusive. This will help give some certainty to TG4 in terms of the tariff structure for the duration of the review period and eliminates the likelihood of RTÉ reducing its service offering to reduce its own costs while simultaneously increasing the fees charged to its competitors thereby increasing the RTÉ Group's overall profits.

## Appendix A

### Tariff Questions

The following list of questions below previously listed in the October 2024 letter are a matter for ComReg to address.

1. Overall, what level of return does ComReg permit in the BTS and Multiplexing markets? Does 2RN fully apply this to the charging model?

#### ***Shared Infrastructure***

2. What is 2RN's depreciation policy on buildings?
3. How is the building usage element of the annual charge calculated for each location?
4. How is the building usage charge for national and quasi-national FM services calculated? Are there differences in approach?
5. How is the building usage charge for unregulated broadcasting and telecoms usage calculated?
6. What is the depreciation policy on masts and towers?
7. What are the expected remaining lifetimes of DTT transmission site masts and towers? Are there any planned mast/tower replacements to take place in the period to end 2034?
8. Mast and tower usage – how is this element of the charge calculated for regulated and unregulated usage?
9. How does the DTT antenna charge compare with that of national FM radio antenna systems?
10. How are rent & rates apportioned?
11. What is the basis for generator usage charge on each site? How is this apportioned on each site?

#### ***Transmission Equipment***

12. We understand that all transmission sites had new broadcast antenna systems installed in time for ASO in 2012. The new antenna systems were designed to carry the outputs of six high-powered transmitters and not the current two multiplexes as were subsequently implemented. We would argue that antenna systems specified for six high powered transmitters are very likely to be much more expensive than ones designed for two national multiplexes. Has 2RN/RTÉ fully recovered the capital cost of these over-specified antenna systems at this point? If not, please explain why?
13. It is reasonable to assume that properly maintained DTT antenna systems should last for at least 25 years i.e. until 2037. This is well past 2034 at which point we envisage DTT will be switched off. Can you confirm that there is no plan to undertake any unnecessary capital replacements in the interim?
14. Similarly, properly maintained DTT transmitters should last 25 years. Can you also confirm that there are no plans to replace these before 2034?
15. Channel combiners – please confirm that there are no plans to procure replacements between now and end 2034?
16. In 2011 and 2012 it was envisaged that DTT would become a Pay TV platform in competition with Sky and cable operators. We understand that RTÉ and its

wholly owned subsidiary, RTÉNL (now 2RN) took a risk and undertook a high level of preparatory work and incurred significant capital expenditure in procuring transmitters, combiners and support infrastructure for six multiplexes for the main transmission sites without having a customer to pay for this. As there are now only two multiplexes in operation, what did 2RN do with the superfluous equipment?

17. Are users paying for six channel combiners rather than less expensive two channel units for example?
18. What has 2RN done with the large expensive unused main transmitters? Are they in service elsewhere? If so, how does their use impact on the annual charge?

### ***Multiplexing***

19. What is the lifespan of encoding equipment?
20. Have multiplexing equipment costs been fully recovered? If not, when?
21. Has the encoding equipment been refreshed/replaced? If so, how has this impacted the annual charge?
22. What is the basis for the bit-rate charge associated with multiplexing?
23. How are SD and HD multiplexing charges calculated? What are the underlying assumptions?
24. Are there plans to refresh/renew the microwave link system? Migrate distribution to fibre instead?

### ***Energy costs***

25. How frequently does 2RN review supplier offerings?
26. Are energy savings passed to customers?
27. What margin does 2RN charge on electricity?

### ***2RN Headquarters***

28. Was 2RN's relocation to Cookstown strictly necessary? Our understanding is that this was done to demonstrate an "arm's length" relationship with its parent, RTÉ. Yet there has been no change in the governance structure. It is still a wholly owned subsidiary of RTÉ.
29. What were the moving costs (procurement, fitting out of new offices, relocation of equipment, circuit costs, rent & rates, security etc)?
30. Were moving costs charged to users and applied to the tariff model? If so, why and how?

### ***Capex decisions***

31. Who determines 2RN's annual capital plan? 2RN alone or does RTÉ input to this decision?
32. Investment decisions – what process is in place to determine the appropriateness of new and replacement capital spend? 2RN alone and/or RTÉ?
33. What steps has ComReg taken to ensure that no unnecessary expenditure has been made by 2RN/RTÉ to increase the company's capital base which would consequently affect the tariff model to the detriment of VMTV and TG4?

### ***Opex Costs***

34. RTÉ has reduced staff numbers over the past number of years including some at 2RN. How has this reduction in staff costs been reflected in the tariff model?
35. What other efficiencies have been achieved? Have these been applied to the tariff model?
36. Fibre circuit costs have reduced over the last number of years. Have these reductions been reflected in the annual charge?
37. What is 2RN's labour rate card? How has this been validated by ComReg?
38. How are 2RN staff hours allocated across regulated v unregulated activities?
39. What overhead does RTÉ charge 2RN (management time, HR services, Finance, procurement, insurance, etc?)? Has this been validated by ComReg?
40. Is there an overall RTÉ management charge apportioned against 2RN? If so, what is the basis for this charge?

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**Virgin Media response to:**

**The ComReg Market Review of Broadcasting Transmission Services (Reference ComReg 25/08).**

**Date of submission: 11 April 2025.**  
**This response is Non-confidential.**

## **Executive Summary**

This is the Virgin Media Television Limited (“Virgin Media”) response to ComReg’s market review reference 25/08 into Broadcasting Transmission Services (“BTS”) published on 18 December 2024.<sup>1</sup>

Virgin Media is reliant on 2rn (a wholly owned subsidiary of RTÉ) and RTÉ for the provision of wholesale Broadcasting Transmission Services (“BTS”) and wholesale Digital Terrestrial Television (“DTT”) Multiplexing Services respectively. Furthermore, continued access to those services is an essential input enabling Virgin Media to offer its own broadcast TV services, as contractually obligated in Virgin Media’s licence agreement with Coimisiún na Meán (“CnaM”).<sup>2</sup>

ComReg is right to re-impose Significant Market Power (“SMP”) on 2rn and RTÉ in Markets A and B respectively and having designated SMP, to put in place a comprehensive suite of attendant remedies. If a comprehensive regulatory framework was not put in place, 2rn and RTÉ would have the incentive and ability to foreclose Markets A and B, to the detriment of competition and ultimately Irish consumers.

There is presently no effective competition in either Markets A or B, nor is there a realistic prospect of effective competition emerging on a forward-looking basis during the period covered by the Market Reviews presently under consideration.

Having designated 2rn and RTÉ as having SMP, it is then essential that ComReg imposes an effective and comprehensive suite of SMP remedies on the regulated entities to help replicate the conditions that one would expect to exist in competitive markets. In particular, the regulatory framework should require 2rn and RTÉ to offer access to the products and services

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<sup>1</sup> See [Market-Review-Broadcasting-Transmission-Services.pdf](#)

<sup>2</sup> See relevant extracts from CNM television service contract.

*8.8 Free-to-Air Multiplex. Under Section 114 of the Acts RTÉ is required to establish and maintain one or more National Multiplexes. Under Section 130(10) of the Acts the Minister is, at the request of An Coimisiún and after consultation with RTÉ, to require RTÉ to make provision in a National Multiplex for the Broadcast by digital means of the Television Programme Service. If such a Ministerial Requirement is made, the Contractor shall make to RTÉ such periodic or other payments in respect of any service provided by RTÉ in meeting that requirement as the Minister, after consultation with the Communications Regulator, RTÉ and the Contractor. If the Contractor does not consider the digital capacity employed by RTÉ pursuant to this Requirement to be adequate, the Minister may, at the request of the Contractor and after consultation with An Coimisiún, direct RTÉ to employ a specific amount of digital capacity.*

*8.9 RTÉ Discussions. The Contractor shall enter into discussions with RTÉ with a view to agreeing with RTÉ terms for Multiplex Access including, without limitation, terms as to:- 41 the payment to be made by the Contractor to RTÉ for Multiplex Access; and the digital capacity to be employed by RTÉ in the provision of Multiplex Access.*

needed to support effective competition. This means the regulated entities must provide access to the necessary facilities at the right level of quality and the right price.

While ComReg is right to re-impose SMP in both Markets, Virgin Media remains very concerned that the prices that 2rn and RTÉ are charging in those markets are not at levels one would expect from efficient operators working in competitive conditions. While some steps have been taken to explain some of the regulated prices, there remains a lack of adequate transparency / explanation as to how the regulated prices from 2rn and RTÉ are derived, and Virgin Media remains concerned that it is not paying a fair price for the regulated products that it has no choice but to consume.

Virgin Media notes, for example, that based on 2rn's published financial statements EBITDA profits for the period 2020-2023 all exceed 50%. Profit after tax in the same period ranges between 25% and 30%. These levels are not consistent with what one would expect in a regulated business and suggest that much deeper regulatory scrutiny and action is warranted.<sup>3</sup>

Virgin Media is not, in its view, treated like a valued customer of 2rn or RTÉ and does not presently consider that it has any real agency to obtain adequate insight into how the regulated prices are even derived, let alone influence the levels at which those prices are set.

For example, in a recent communication<sup>4</sup> 2rn and RTÉ set out the prices that would apply for the period 1 April 2025 to 31 March 2029. The prices represented significant increases to prevailing prices, and while some explanatory notes were provided to accompany the communication, Virgin Media does not consider that they were remotely adequate, in of themselves, to clearly explain the basis of the prices or their derivation, let alone give confidence that the prices levied were fair and reasonable.

Further, Virgin Media has been advised of a 44% year on year price increase between 2024 – 25. At time of writing no clarity has been provided as to why prices have increased to such a material degree and Virgin Media does not presently understand the shift in operating costs / revenue to even start to assess if the price hike is merited. Virgin Media also notes that this is happening in the context of relatively static financial performance metrics (such as revenue, operating costs, and profit after tax). Virgin Media is very concerned that the very high 2rn profit margins are not consistent with outcomes that would be expected by an effectively regulated business (and they are certainly significantly higher than those of commercial

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<sup>3</sup> Based on 2rn published Financial Statements.

<sup>4</sup> Wholesale Access Reference Offer dated 28 February 2025.

businesses operating in this sector). Further explanation and scrutiny is needed to build confidence that the regulatory regime is operating effectively.

RTÉ's 5-year strategy stated it was planning to remove the RTÉ +1 channels in 2028. However, at time of writing Virgin Media has no clarity on the precise status of current plans or how they will affect future pricing. Again, this gives Virgin Media no ability to plan, and no confidence that it is being treated as a valued customer.

These examples are unfortunately typical of important aspects of the commercial relationship between Virgin Media and 2rn and RTÉ. Despite being a large consumer of the services from 2rn and RTÉ, Virgin Media does not presently feel like a valued customer – in particular it considers that it lacks adequate insight into how the regulated prices are set, has no ability to influence those prices and in consequence no confidence that the prices being charged are fair or competitive. Virgin Media requests that ComReg engage with and address these concerns via the review presently under consideration.

Further to receipt of the document dated 28/02/25 "*Wholesale Access Reference Offer*" informing Virgin Media of tariff changes but with no clear supporting explanation; there has still not been any meaningful attempt by 2rn or RTÉ to provide an adequate explanation of how the prices are derived, let alone justify why the prices charged are fair. Again, Virgin Media requests that ComReg use this review to address these shortcomings.

A further and important issue that Virgin Media would like to be addressed in this review is the way High Definition ("HD") services are priced. The current prices for HD services are extremely high and presently mean that Virgin Media is unable to offer them to customers. At time of writing only state funded broadcasters (RTÉ & TG4) can afford to purchase HD on the platform; the extremely high costs are simply not manageable for organisations that are dependent on commercial revenues. Due to the exorbitant costs for the 2rn service Virgin Media only broadcasts in SD. End customers increasingly expect HD as part of a "standard" offering particularly in relation to events such as sporting events, and this situation is placing Virgin Media at a competitive disadvantage. Virgin Media urges ComReg to look more closely at how HD channels are presently priced, as we are concerned that they are being priced in manner so as to impede competition in this increasingly vital area (and which end customers increasingly expect to enjoy as part of any standard offering, particularly for certain events such as sport).

As noted, Virgin Media remains unclear as to the future direction of regulated pricing and lacks adequate clarity as to their basis. This is clearly unacceptable and prevents meaningful planning which is a prerequisite for any commercial business. Similarly, Virgin Media has insufficient

insight into whether 2rn and RTÉ have plans to replace the existing infrastructure over which the regulated services will be provided, over what time horizon, and what this would mean for prices and other product and commercial terms going forward. Virgin Media has attempted on several occasions to better understand the methodology used in the regulated prices from the available information but needs more help to get several fundamental questions properly addressed. Virgin Media requests that ComReg bring far greater clarity to proceedings, as the current opacity undermines confidence that the charges being raised for regulated services are fair. In general, Virgin Media wishes to see far greater effort from 2rn and RTÉ in treating us like a valued customer.

In the absence of greater clarity (about current or future plans and prices) or control, Virgin Media is particularly concerned that 2rn and RTÉ will, on a forward-looking basis, be able to charge increasing prices to Virgin Media for platforms that are becoming obsolete, and that Virgin Media will have little agency to influence on a forward-looking basis. Virgin Media is therefore concerned that it faces the prospect of increasing prices on a forward-looking basis, with little ability to understand or control the same. In Virgin Media's view this is not an acceptable or sustainable arrangement and undermines some of the key objectives of the regulated regime. Such a situation would not be sustainable in a competitive market.

Virgin Media and TG4 set out the concerns they both share about the regulated prices they are required to pay in letters to ComReg sent on 16 October 2024. In its brief response to those letters, ComReg indicated that much of the information sought was available via regulated accounts, and that further information would become available during the consultation process. Virgin Media does not consider that, at time of writing, the full transparency as to the regulatory prices offered by 2rn and RTÉ has been forthcoming, and that much more needs to be done to improve matters, in particular (a) the transparency as to how the regulated prices are derived; (b) that the prices are based on efficiently incurred costs; and (c) that there are plans to develop the regulated portfolio going forward that customers will have some agency over. Accordingly Virgin Media seeks assistance again from ComReg in helping us to gain the clarity sought.

Virgin Media supports ComReg's intent to re-impose SMP and a suite of attendant remedies in Markets A and B. That said, and as discussed above, Virgin Media remains concerned that the pricing remedies are not presently fully effective, and that there is a real risk that if this is not addressed, Virgin Media will continue to pay prices the basis for which is not sufficiently clear, and that are not always based on efficiently incurred costs and that it has no real agency to influence on a forward-looking basis. Virgin Media therefore calls on ComReg to understand and address its pricing concerns as part of this review. Such an exercise should be more than a

re-imposition of existing remedies – more needs to be done to give confidence to the market that the forward-looking prices levied are comprehensible, fair and consistent with outcomes one would expect in a competitive market.

Virgin Media would welcome further engagement with ComReg, 2rn, RTÉ and TG4 (and other interested stakeholders) to support delivery of such an outcome. If this concern, which is shared by other players in the market, is not addressed through this process, there is a significant risk that the remedies imposed by ComReg will not be adequate or effective, and so will not properly address the SMP findings that ComReg correctly proposes to re-impose on 2rn and RTÉ in Markets A and B respectively.

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## Response to ComReg's questions

### Question 1

*Do you agree with ComReg's proposed definition of the Relevant Retail TV Broadcast Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.*

### Response

Virgin Media supports the work that ComReg has done in examining the Retail TV Broadcast Markets and agrees with ComReg's proposed definition of the same.

While not formally required under legislation, the analysis conducted by ComReg of the Retail TV Broadcast Markets is a useful exercise since it informs the subsequent analysis of the Relevant Wholesale Markets which are the topic of the review and ComReg's proposed interventions. This thorough approach is welcomed and is likely to lead to a more accurate description and assessment of those Wholesale Markets.

Virgin Media agrees with ComReg that for the duration of the review, pay TV services, subscription-based video-on-demand ("SVOD") services and direct to home free to air ("DTH FTA") satellite TV services are unlikely to be effective demand side substitutes for the focal product (free to air digital terrestrial television or "FTA DTT"). The relative scale of these services combined with the different technical and commercial characteristics (now and into the near future), suggests that this assessment will remain valid for the lifetime of the review currently under consideration.

Virgin Media further supports the geographic assessment of the FTA DTT focal product. The approach taken by ComReg appears to be consistent with the relevant European Union guidance, and RTÉ has 100% share in the market, with no variation in pricing or functionality across the state.

## Question 2

*Do you agree with ComReg's proposed definition of the Relevant Retail Radio Broadcast Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.*

## Response

Virgin Media has no comment to make in response to this question.

## Question 3

*Do you agree with ComReg's product and geographic market assessment for Market A? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.*

## Response

Virgin Media agrees with ComReg's product and geographic market assessment for Market A.

In assessing the product market, ComReg shows that there are no clear demand or supply side substitutes in Market A given the structural characteristics of the market which would make effective market entry extremely challenging. The assessment conducted is aligned with the approach stipulated by the European Commission (EC),<sup>5</sup> and this further supports the conclusions drawn by ComReg.

ComReg further sets out that the extremely high costs that would be entailed in replicating a National Terrestrial Broadcast Transmission Service ("BTS") precludes any realistic prospect of effective competition to 2rn emerging in the period covered by the Market Review under consideration. The extremely high profit margins enjoyed by 2rn are further evidence of a lack of competition in the BTS arena.

The geographic assessment of the market is conducted in line with relevant EC guidance,<sup>6</sup> and the analysis conducted by ComReg shows that competitive conditions across the state are sufficiently homogeneous as to support the finding of a national geographic market.

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<sup>5</sup> See paragraph 4.29.

<sup>6</sup> See paragraphs 4.56 and 4.57.

ComReg sets out that the access seekers in Market A, given the obligation of their licenses, have coverage obligations that mean they require access to BTS on a national or near national basis “*..meaning there are no discernible differences in demand characteristics across the state.*”<sup>7</sup>

ComReg rightly concludes that the conditions are sufficiently homogeneous, which supports the finding of Market A being a national market in terms of its geographic scope.

#### Question 4

*Do you agree with ComReg’s product and geographic market assessment for Market B? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.*

#### Response

Virgin Media agrees with ComReg’s product and geographic market assessment for Market B.

ComReg defines the product market for Market B as being made up solely of DTT Multiplexing services. Virgin Media supports this assessment. In particular, the available evidence shows that there is presently no effective demand side substitute available, nor the realistic prospect (given the prohibitive costs that would be involved) of an effective substitute emerging during the period covered by the market review under consideration.

In the geographic market assessment, ComReg goes on to find that: “*RTÉ is the only provider of DTT Multiplexing Services in the State and is mandated under section 114(1)(i) of the 2009 Act to establish, maintain, and operate one or more national multiplexes*” to facilitate the provision of nationally available FTA DTT. As the only provider of DTT Multiplexing Services, RTÉ has 100% market share.”<sup>8</sup> Virgin Media agrees; this is clearly a market in which RTÉ holds a dominant position, and in which regulatory intervention is needed to address, on an *ex-ante* basis, the significant competition problems arising.

In line with ComReg’s analysis, Virgin Media has no option but to purchase multiplexing services from RTÉ and the services offered by RTÉ are an essential input for Virgin Media.

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<sup>7</sup> See paragraph 4.64.

<sup>8</sup> See paragraph 4.117.

The analysis conducted, and the conditions in the state (now and into the near future) strongly support the validity of ComReg's proposed product and geographic market assessment for the period under consideration.

#### Question 5

*Do you agree with ComReg's 3CT and assessment of SMP on Market A? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.*

#### Response

Virgin Media agrees with ComReg's 3CT along with its assessment of SMP in Market A.

The market under consideration is not listed by the EC as being susceptible by *ex-ante* regulation, and so ComReg is required to conduct a 3CT assessment, and through that analysis find that the 3CT is passed, ahead of conducting a competition assessment. In the Consultation ComReg conducts an objective assessment in line with the requirements of the 3CT and supports its findings with relevant available evidence.

For Criterion 1 ("The presence of high and non-transitory barriers to entry"), ComReg examines the barriers to entry that exist in Market A. Specifically ComReg shows that Market A is characterised by both structural and legal and regulatory barriers to entry.

For the structural barriers to entry, ComReg shows that 2rn is the only operator in the state capable of providing National Terrestrial BTS and that it retains a 100% market share. ComReg notes that this position has remained unchanged since 2013 (i.e. over 10 years), and that the scale of the technical and commercial challenges of becoming a competitor to 2rn in this space are such as to preclude any realistic prospect of effective competition to 2rn emerging during the period covered by the review presently under consideration. In its analysis ComReg examines potential sources of competition to 2rn among existing organisations and rightly concludes that there is no logical prospect of such effective competition emerging, in particular given the prohibitive costs that would be associated with such a scenario.

ComReg goes on to examine the existence of legal and regulatory barriers to entry and shows that the requirements of a terrestrial BTS network that would be able to compete with 2rn would be considerable (arguably insurmountable) – in particular the access rights and planning permissions (which in practice would not always be granted). ComReg summarises how

challenging this area would be, saying: “*ComReg’s view is that achieving this would prove extremely arduous, with a high risk of planning rejection for a potential new entrant. Furthermore, the timeframe and technological expertise required to build an alternative network would likely make it uneconomical to compete with an established operator such as 2rn.*”<sup>9</sup>

Virgin Media agrees with ComReg’s assessment – the market is clearly characterised by significant barriers to entry that are non-transitory in nature, and that will continue to militate against the emergence of effective competition to 2rn within the timeframe covered by the present review. The analysis conducted clearly shows that Criterion 1 is met.

For Criterion 2 (“*A market structure which does not tend towards effective competition within the relevant time horizon*”), as noted by ComReg “*Market A is characterised by a single provider of National Terrestrial BTS, 2rn, with 100% market share. This has remained unchanged since the publication of the 2013 Decision.*”<sup>10</sup> The conditions in the market, including high barriers to entry, are predictive of continued dominance by 2rn on a forward-looking basis, and there is presently no realistic prospect of any organisation challenging 2rn’s position of embedded dominance within the period covered by the market review. The analysis conducted by ComReg clearly shows that Criterion 2 is met.

For Criterion 3 (“*The insufficiency of competition law alone to adequately address the market failure(s) concerned*”), as noted by ComReg, *ex-ante* regulation may be more appropriate to markets that have structural features likely to give rise to ongoing competition problems. Virgin Media considers that Market A, as defined by ComReg, is such a market, and that it can be predicted with a high degree of confidence for Market A that competition problems will continue to persist for the duration of the next control period. Absent effective *ex-ante* regulation, Virgin Media considers that 2rn would have the incentive and ability to harm competition to RTÉ (for example by refusing to offer access to products and services, offering products and services at artificially high prices and low levels of quality etc), to the disbenefit of Irish consumers in the long term. Further, ComReg also shows that Competition Law alone is not likely to be sufficient in Market A. Relying on Competition Law alone would enable 2rn to stifle competition ahead of legal intervention happening to the long-term disbenefit of Irish consumers. Forward-looking (*ex-ante*) regulation is also needed to address competition concerns in a timely and effective manner.

Overall, the analysis conducted clearly shows that Criterion 3 is met.

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<sup>9</sup> See Paragraph 5.12.

<sup>10</sup> See paragraph 5.17.

Having set out clearly and with good supporting evidence that the 3CT is passed, ComReg goes on to propose imposing SMP on 2rn. Virgin Media further supports this proposed designation. In support of its proposals, ComReg sets out clearly that Market A is not effectively competitive, nor is there any realistic prospect that effective competition will emerge during the period covered by the Market Review.

It is also clear that absent *ex-ante* regulation, 2rn would have the ability and incentive to behave, to an appreciable extent, independently of customers and end users (and to their disbenefit thereof). ComReg rightly concludes that countervailing buyer power ("CBP") is weak in this market and would not be sufficient to prevent 2rn from behaving to an appreciable extent, independently of competitors, customers and consumers.

The designation of SMP on 2rn is further supported by, *inter alia*, its market share, its control of infrastructure not easily replicated and its size. Taken overall, the prospect of effective competition to 2rn emerging during the future period covered by the consultation is extremely remote.

Finally, Virgin Media notes that discussions have commenced in relation to DTT switch-off and that it is possible that the platform could be switched off as early as 2034. Virgin Media suggests that such a timescale would further dissuade competition from entering the market soon.

The available evidence strongly supports ComReg's proposed finding of SMP on 2rn in Market A.

## Question 6

*Do you agree that the competition problems identified are those that could potentially arise in Market A (and related markets)? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.*

## Response

Virgin Media agrees with the analysis set out by ComReg regarding the competition problems that could arise in Market A, absent effective regulation.

ComReg sets out the behaviours, including engaging in exploitative practices and leveraging, that 2rn would have the ability and incentive to engage in absent effective *ex-ante* regulation, to the detriment of customers and competition,

Regarding exploitative practices, 2rn would be able, absent effective *ex-ante* regulation, to charge excessive prices to downstream competitors of RTÉ, while offering preferential rates to RTÉ which the latter could take advantage of via internal transfer mechanisms. ComReg notes: *“RTÉ also purchases National Terrestrial BTS from 2rn for the purposes of delivering DTT Multiplexing Services in Market B. Absent regulation, 2rn has the incentive to charge excessive prices which RTÉ could pass on to its Market B Access Seekers through Market B pricing, with whom RTÉ also competes in the Relevant Retail TV Broadcast Market for the provision of FTA DTT. This would, again, result only in an internal transfer within RTÉ, while increasing the costs for Market B Access Seekers.”*<sup>11</sup> Virgin Media agrees – absent effective *ex-ante* regulation, 2rn would clearly have the ability and incentive to engage in such practices, to the detriment of competition and ultimately consumers. Virgin Media further agrees that absent *ex-ante* regulation, 2rn would also have the ability and incentive to minimise investment, to the further detriment of competition (whether emergent or established).

Virgin Media also agrees with ComReg that, absent effective *ex-ante* regulation, 2rn would have the ability and incentive to engage in other anti-competitive behaviours, including delaying tactics, quality discrimination and leveraging. Regarding quality discrimination, for example, 2rn could, absent effective regulation *“..make more cost-efficient Market A products (or associated facilities) available to its own downstream arm, while refusing access (outright or constructively) to, or charging higher prices for, the same products to other access seekers.”*<sup>12</sup>

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<sup>11</sup> See 6.9.

<sup>12</sup> See 6.31.

ComReg is correct, and Virgin Media considers this type of discrimination would occur in the absence of effective *ex-ante* regulation.

ComReg does a thorough job setting out the types of problems that could / would arise in the absence of effective *ex-ante* regulation. As a vertically integrated SMP provider, it is imperative that 2rn is subject to a suite of proportionate and comprehensive remedies to prevent it from exploiting its clear position of dominance, which would be to the detriment of competition and end customers.

### Question 7

*Do you agree with ComReg's conclusions on remedies in Market A? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.*

### Response

Virgin Media supports the imposition of a comprehensive and proportionate suite of remedies in Market A – this is needed to address the significant competition problems identified.

Virgin Media agrees with ComReg that the Broadcasting Act 2009 will not, in of itself, adequately address the competition problems identified, and that it is not an appropriate substitute for a well-specified suite of *ex-ante* SMP remedies. As noted by ComReg "*Unlike the above-referenced provisions of the 2009 Act, ex-ante SMP regulation has the benefit of specifying well defined obligations tailored to target, in advance, potential competition problems in accordance with the regulatory framework and can, by responding to changes in market circumstances, provide regulatory stability and predictability in a market which is characterised by high and non-transitory entry barriers.*"<sup>13</sup>

To address the significant competition problems identified it is imperative that ComReg puts in place a targeted and effective suite of SMP remedies.

Regarding access remedies ComReg is proposing an obligation to meet reasonable requests for access. This is right, as are the principles set out at paragraph 7.29 in the Consultation. i.e. that any refusal should be objectively justified, that negotiations for access should be conducted in good faith and once granted access should not be withdrawn in the absence of ComReg's prior

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<sup>13</sup> See 7.13.

approval. Meeting requests for access should also be time-bound to prevent prevarication, which would undermine the effectiveness of the remedy. ComReg is further correct to stipulate that requests for access should only be refused in circumstances where they are not reasonable, and that in such cases, objective reasons should be given for the refusal.

The obligation to negotiate in good faith will remain necessary since in its absence 2rn would have the ability and incentive to simply refuse to provide access to RTÉ's competitors. This obligation is also essential to address the imbalance in bargaining power that presently exists (and will doubtless continue to exist for the period covered by the market reviews presently under consideration) between 2rn and its customers.

While ComReg is right to try and replicate the conditions that would exist in a more competitive market (in which 2rn would be seeking to win contestable business), it is also important that it carefully and proactively monitors performance and compliance with these obligations in practice, i.e. after the regulation has been put in place.

Virgin Media supports the obligation not to withdraw launched facilities without the consent of ComReg – this is needed to prevent abuse of dominance to the detriment of customers and competition. It is also right for ComReg to ensure fairness, reasonableness and timeliness of access; and to impose service level agreement ("SLA") obligations on 2rn. In relation to SLAs it is also important that in order to be effective incentives, the quantum of service credits, when due, should be set at meaningful levels, and that such credits should be paid proactively and automatically (i.e. they do not need to be claimed by customers). This is needed to ensure that the SLA regime is effective in incentivising 2rn to deliver its services to an appropriate level of quality (which itself is essential to underpinning the effectiveness of the regulatory remedies themselves). The SLA arrangements also need to be applied equally to all 2rn customers, with no differential incentive effect between different 2rn customers, including downstream parts of the wider RTÉ business.

ComReg is further right to impose a suite of specified access remedies in Market A, such as to meet the clear requirements of existing customers, and to note that this does not preclude customers requesting additional forms of access, and for 2rn to be required to consider such requests under the auspices of a transparent and regulated process.

Having established that, absent effective *ex-ante* regulation, 2rn would have the incentive and ability to discriminate in favour of downstream RTÉ, it is imperative that ComReg oversees implementation of an effective non-discrimination obligation and attendant remedies. In particular, 2rn must be required to provide access to regulated facilities, whether to external

customers or to RTÉ, on “..*the same timescales, terms and conditions, including those relating to price and service levels.*”<sup>14</sup>

The transparency obligations proposed are essential to clearly codify the obligations of the regulated entity and give customers of 2rn the information they require in relation to the regulated services offered.

The price control obligation is essential in ensuring that customers of the regulated entity pay a fair price for the services consumed and have clear line of sight as to the methodology for setting those prices.

Virgin Media agrees with ComReg that from the options set out cost orientation is the most appropriate form of price control. The other options discussed (retail minus and reasonable costs) are not appropriate and unlikely to be effective given the market conditions faced.

Having (rightly) decided on cost orientation as the appropriate form of price control, Virgin Media also supports ComReg’s stated intent that the remedy should maximise consumer welfare, ensure that 2rn only recovers its efficiently incurred costs, avoids cost over-recovery, and encourages efficient investment in infrastructure.<sup>15</sup>

In the consultation, ComReg essentially proposes a continuation of the existing arrangements – i.e. that it is right for it to mandate a cost-oriented price control based on historic costs.

#### Concerns in relation to the regulated prices offered by 2rn and RTÉ

Despite what appears on the surface to be a comprehensive set of pricing remedies, Virgin Media remains concerned that in reality, the level of engagement by 2rn and RTÉ remains inadequate, and Virgin Media is not treated like a valued customer, nor is Virgin Media confident that the prices it is paying are fair or competitive.

In particular, Virgin Media is concerned that the manner in which the prices are set for regulated services lacks sufficient clarity and transparency, and risks undermining the effectiveness of the regulation, to the detriment of competition and ultimately consumers

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<sup>14</sup> See 7.72.

<sup>15</sup> See 7.123.

There is presently no adequate opportunity to discuss the prices stipulated in a meaningful way or adequately understand how they are set, and no insight into the future direction of travel for those prices. This undermines confidence in Virgin media that either the prices are fair, that Virgin Media has any agency over them, or that Virgin Media is being treated like a valued customer. Virgin Media considers that this is not ComReg's intent and should not be allowed to persist in the next market review. Virgin Media accordingly calls on ComReg to address the concerns raised by Virgin Media and TG4 in a letter to ComReg dated 16 October 2024, which ComReg responded to on 20 December 2024.

At time of writing Virgin Media considers that the concerns and questions raised in that letter regarding regulated prices have not been adequately addressed. Virgin Media calls on ComReg to engage with us (and other customers) further on this key topic ahead of its Final Statement being published. If not addressed, the serious concern is that a crucial remedy (the price) will not be set at the right level, which would undermine the effectiveness of the whole regime along with stakeholder confidence in the same. Virgin Media is willing to constructively engage with ComReg and other stakeholders on this critical subject and is open to how these concerns are best addressed, but to be effective on a sustainable basis, there needs to be more and better engagement on the questions already raised in the letter to ComReg (as discussed above).

Virgin Media is also concerned that there appears to be little effective incentive on 2rn to improve the efficiency of its operation, and that this has consequences for regulated prices which are in turn borne by customers such as Virgin Media. Virgin Media notes that ComReg's intent is for prices to be based on efficiently incurred costs, but in practice Virgin Media is not confident that this is happening. In particular, the prices levied annually by 2rn lack transparency and can rise with inadequate explanation or justification.

At time of writing, for example, Virgin Media is very concerned that it is paying increasing prices for a regulated asset base that is due to be withdrawn in the relatively near future, with inadequate insight into 2rn's plans on the same / how those plans will affect future pricing or how Virgin Media (as a customer) can influence those plans. In Virgin Media's view this lack of agency is not consistent with ComReg's aims and intentions in imposing forward-looking SMP regulation on 2rn. These concerns, which are not solely held by Virgin Media, must be properly engaged with and addressed through the review process.

## Question 8

*Do you agree with ComReg's 3CT and assessment of SMP on Market B? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.*

## Response

Virgin Media agrees with ComReg's 3CT along with its assessment of SMP in Market B.

The market under consideration is not listed by the EC as being susceptible by *ex-ante* regulation, and so ComReg is required to conduct a 3CT assessment, and through that analysis find that the 3CT is passed, ahead of conducting a competition assessment. In the Consultation ComReg conducts an objective assessment in line with the requirements of the 3CT and supports its findings with evidence, where available.

For Criterion 1 (“*The presence of high and non-transitory barriers to entry*”), ComReg examines the barriers to entry that exist in Market B. Specifically, ComReg shows that the market is characterised by both structural and legal and regulatory barriers to entry.

In terms of structural barriers to entry, ComReg notes that RTÉ’s position of dominance is well established and has never been challenged: “*RTÉ is the national public service broadcaster in Ireland. It is a vertically integrated organisation, operating at each level of the TV broadcast supply chain, and is the sole supplier of DTT Multiplexing Services in Market B, thus retaining a 100% market share. This has remained the case over time, including since the 2013 Decision.*”<sup>16</sup> Virgin Media concurs, and further considers that the conditions that created this position of natural and total dominance continue to prevail. It would therefore be irrational to expect any change in respect of RTÉ’s dominant position in the foreseeable future.

ComReg goes on to show that legal and regulatory barriers to entry also persist. For example, any aspiring competitor would need to obtain a multiplex licence, and ComReg notes that the last time that a tender process was initiated in relation to commercial DTT multiplex licenses “*..was in 2008, however a commercial entrant to Market B failed to materialise. There has been no further interest since that time.*”<sup>17</sup>

The overall picture clearly shows that Criterion 1 is met.

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<sup>16</sup> See 8.6.

<sup>17</sup> See 8.10.

For Criterion 2 (“*A market structure which does not tend towards effective competition within the relevant time horizon*”), the evidence showing that this Criterion is met is clear and unequivocal. In particular, ComReg notes that: “*There has been no entry of commercial DTT Multiplex Operators since, at least, the 2013 Decision and, having regard to the barriers to entry discussed above, ComReg does not consider that future effective commercial DTT Multiplex Operator entry is credible, such that, it is likely to be capable of effectively constraining RTE’s pricing behaviour in Market B within in the timeframe of this review.*”<sup>18</sup>

ComReg is correct to find that Criterion 2 is met – all available evidence supports this as being the only reasonable finding.

For Criterion 3 (“*The insufficiency of competition law alone to adequately address the market failure(s) concerned*”), ComReg rightly finds that competition law alone would not be sufficient to address the market failures identified. This market is characterised by a single, totally dominant operator, by high barriers to entry (financial and legislative), and by no credible prospect of effective competition emerging in the foreseeable future. In such a context, and absent effective regulation, RTE would have the ability and incentive to act in an anti-competitive manner, to the detriment of competition and ultimately Irish consumers. Forward-looking (*ex-ante*) regulation is needed in such a scenario to complement *ex-post* legislation. Only such a legal / regulatory framework would adequately address the competition problems identified.

Having established that the requirements of the 3CT are met, ComReg also correctly designates RTE as having SMP in the market. In making this assessment, ComReg rightly sets out that RTE currently has 100% share in the market and that available evidence (such as the existence of barriers to entry and expansion) also firmly point to a market this is not tending towards effective competition.

ComReg further shows that RTE currently has 100% market share, and that there is little prospect of competition emerging in the foreseeable future to challenge this position (which has persisted since at least 2013). ComReg also notes that there is no effective countervailing buyer power (“CBP”) present given the structure of RTE and the market. ComReg ultimately designates RTE and having SMP in Market B. Virgin Media agrees – this is the only logical and supportable finding given the available evidence.

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<sup>18</sup> See 8.16.

### Question 9

*Do you agree that the competition problems identified are those that could potentially arise in Market B (and related markets)? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.*

### Response

Virgin Media agrees with the analysis set out by ComReg, which unequivocally shows that, absent effective regulation, RTÉ would have the incentive and ability to act in a manner that would negatively impact competition and in consequence end customers.

As noted by ComReg: *“Market B is characterised by a single SMP SP, RTÉ with 100% market share.”*<sup>19</sup> Absent effective regulation, RTÉ would have the ability and incentive to engage in exploitative practices, to the detriment of competition and consumers. RTÉ would be able, for example, to charge excessive prices to customers that are also competitors, in a manner that could harm competition in downstream markets. RTÉ would also lack incentives to improve efficiency – since inefficiently incurred costs could still be recovered via captive wholesale customers / competitors.<sup>20</sup>

As a vertically integrated operator, RTÉ would also have the ability and incentive to engage in vertical leveraging, to the detriment of competition and in consequence end customers. In particular, RTÉ would be able to use its ability to control FTA DTT to harm competition in downstream markets and consumer choice (e.g. through differentiated pricing or quality / functionality offered).

Absent effective *ex-ante* regulation RTÉ could restrict or deny access to competitors of key inputs that would enable them to compete in downstream markets. ComReg rightly identifies other practices that could (and likely would) arise in the absence of effective *ex-ante* regulation, including delaying tactics, quality discrimination (e.g. favouring downstream parts of RTÉ over competitors), and price-based vertical leveraging (i.e. reducing the competitiveness of potential downstream competitors through targeted pricing structures). As rightly noted by ComReg, *“ComReg’s view is that the threat, alone, of RTÉ using vertical leveraging to raise prices for*

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<sup>19</sup> See 9.7.

<sup>20</sup> Please also note, however, as discussed in the responses to questions xx above and 10 below, Virgin media remains concerned that the existing pricing regime is inadverTÉntly allowing 2rn and RTÉ to levy charges that are not reflective of efficient operation.

*Market B inputs would likely disincentivise market entry in the downstream Relevant Retail TV Broadcast Market.”<sup>21</sup>*

The available evidence is compelling – RTÉ clearly has the ability and incentive, absent effective *ex-ante* regulation, to engage in exploitative practices, to the detriment of competition and end customers. It is right in these circumstances that ComReg intervenes on an *ex-ante* basis, in a manner that effectively deals, on a forward-looking basis, with the competition problems identified.

#### Question 10

*Do you agree with ComReg’s proposals in respect of remedies in Market B? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.*

#### Response

Ahead of proposing a detailed suite of SMP remedies, ComReg correctly find that the Broadcasting Act 2009 will not, in of itself, adequately cater for the competition problems that would arise given RTÉ’s position of dominance. Virgin Media agrees with this assessment – a comprehensive suite of *ex-ante* remedies is also needed to address RTÉ’s position of entrenched SMP.

ComReg rightly proposes an obligation to meet reasonable requests for access, and to grant open access to technical interfaces, protocols and other key technologies. These obligations are required such that customers of RTÉ can access the facilities they require, and to constrain RTÉ’s ability to refuse access and exploit information asymmetries.

ComReg further proposes imposition of an obligation to negotiate in good faith. This is an important obligation which aims to incentivise RTÉ to constructively engage with non-RTÉ customers and “*.. seeks to address the technical knowledge imbalances between the respective parties by reducing incentives to unnecessarily prolong product development timelines.*”<sup>22</sup>

ComReg further imposes conditions not to withdraw access without first gaining necessary permission from ComReg and proposes conditions to ensure fairness reasonableness and timeliness of access. These remedies are sensible and are needed to prevent RTÉ from

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<sup>21</sup> See 9.34.

<sup>22</sup> See 10.30.

withdrawing essential facilities and to facilitate provision of appropriately specified access when required. ComReg rightly imposes SLA obligations. Virgin Media supports this provision, but, as with the response to Question 7 above, to be effective the SLAs need to include an obligation for proactive service credits that RTÉ is required to pay without an operator having to first make a claim.

ComReg rightly goes on to impose a detailed suite of non-discrimination remedies in Market B. These are essential to prevent RTÉ (as a vertically integrated business) from favouring its own downstream arm, to the detriment of competition and ultimately end customers.

The transparency remedies proposed (including the reference offer, SLA details and products and services) are essential to set out the basis on which RTÉ engages with its customers. The information also gives customers essential insight into whether RTÉ is meeting its wider obligations in terms of the services offered and the features associated with those services. As discussed further below, however, Virgin Media remains concerned that the basis for some of the RTÉ pricing remains insufficiently clear, and this issue needs to be engaged with, understood and addressed through the current review.

#### Price control remedies

Virgin Media further notes that ComReg is proposing to update the tariff structure for RTÉ as described at paragraph 10.108. Having reviewed ComReg's comments, Virgin Media seeks greater clarity on the proposals, in particular: (i) the differentiation from existing arrangements; and (b) likely impact on future pricing.

The price control obligation is essential in ensuring that customers of the regulated entity pay a fair price for the services consumed and have clear line of sight as to the methodology for setting those prices.

Virgin Media agrees with ComReg that from the options set out cost orientation is the most appropriate form of price control. The other options discussed (retail minus and reasonable costs) are not appropriate and unlikely to be effective in the market conditions faced.

Having (rightly) decided on cost orientation as the appropriate form of price control, Virgin Media also supports ComReg's stated intent that the remedy should maximise consumer

welfare, ensure that 2rn only recovers its efficiently incurred costs, avoids cost over-recovery, and encourages efficient investment in infrastructure.<sup>23</sup>

In the consultation, ComReg essentially proposes a continuation of the existing arrangements – i.e. that it is right for it to mandate a cost-oriented price control based on historic costs.

#### Concerns in relation to regulated prices offered by 2rn and RTÉ

Virgin Media reproduces below comments as set out in the response to question 7 above, which we consider also apply here.

Despite what appears on the surface to be a comprehensive set of pricing remedies, Virgin Media remains concerned that in reality, the level of engagement by 2rn and RTÉ remains inadequate, and Virgin Media is not treated like a valued customer, nor is Virgin Media confident that the prices it is paying are fair or competitive.

In particular, Virgin Media is concerned that the manner in which the prices are set for regulated services lacks sufficient clarity and transparency, and risks undermining the effectiveness of the regulation, to the detriment of competition and ultimately consumers

There is presently no adequate opportunity to discuss those prices in a meaningful way or adequately understand how they are set, and no insight into the future direction of travel for those prices. This undermines confidence in Virgin media that either the prices are fair, that Virgin Media has any agency over them, or that Virgin Media is being treated like a valued customer. Virgin Media considers that this is not ComReg's intent and should not be allowed to persist in the next market review. Virgin Media accordingly calls on ComReg to address the concerns raised by Virgin Media and TG4 in a letter to ComReg dated 16 October 2024, which ComReg responded to on 20 December 2024.

At time of writing Virgin Media considers that the concerns and questions raised in that letter regarding regulated prices have not been adequately addressed. Virgin Media calls on ComReg to engage with us (and other customers) further on this key topic ahead of its Final Statement being published. If not addressed, the serious concern is that a crucial remedy (the price) will not be set at the right level, which would undermine the effectiveness of the whole regime along with stakeholder confidence in the same. Virgin Media is willing to constructively engage with ComReg and other stakeholders on this critical subject and is open to how these concerns

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<sup>23</sup> See 7.123.

are best addressed, but to be effective on a sustainable basis, there needs to be more and better engagement on the questions already raised in the letter to ComReg (as discussed above).

Virgin Media is also concerned that there appears to be little effective incentive on RTÉ to improve the efficiency of its operation, and that this has consequences for regulated prices which are in turn borne by customers such as Virgin Media. Virgin Media notes that ComReg's intent is for prices to be based on efficiently incurred costs, but in practice Virgin Media is not confident that this is happening. In particular, the prices levied annually by RTÉ lack transparency and can rise with inadequate explanation or justification.

At time of writing, for example, Virgin Media is very concerned that it is paying increasing prices for a regulated asset base that is due to be withdrawn in the relatively near future, with inadequate insight into RTÉ's plans on the same / how those plans will affect future pricing or how Virgin Media (as a customer) can influence those plans. In Virgin Media's view this lack of agency is not consistent with ComReg's aims and intentions in imposing forward-looking SMP regulation on RTÉ. These concerns, which are not solely held by Virgin Media, must be properly engaged with and addressed through the review process.