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**National Titles:**

Irish Independent  
Irish Examiner  
The Irish Times  
Irish Daily Star  
Evening Herald  
The Sunday Independent  
Sunday World  
The Sunday Business Post  
The Sunday Tribune  
Irish Mail on Sunday  
Irish Daily Star Sunday  
Irish Farmers Journal  
Irish Daily Mail  
Irish Daily Mirror  
Irish Sun  
Irish News of the World  
Irish Sunday Mirror  
The Sunday Times

**Chairman:**

Paul Cooke

**Local & Regional Titles:**

Metro Herald  
Evening Echo  
Western People  
Kildare Nationalist  
Laois Nationalist  
Carlow Nationalist  
Waterford News & Star  
The Kingdom  
Sligo Weekender  
Enniscorthy Echo  
Roscommon Herald  
Wexford Echo  
Gorey Echo  
New Ross Echo  
Lucan Gazette  
Blanchardstown Gazette  
Dundrum Gazette  
Swords Gazette  
Castleknock Gazette  
Malahide Gazette  
Clondalkin Gazette  
Dun Laoghaire Gazette  
Enniscorthy Guardian  
Gorey Guardian  
New Ross Standard  
Drogheda Independent  
Fingal Independent  
Carlow People  
Wicklow People  
The Argus  
Bray People  
The Corkman  
Wexford People  
The Kerryman  
Sligo Champion

**Chairman:**

Dan Linehan

**Co-Ordinating Director:**

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# National Newspapers of Ireland and NNI Local & Regional Newspapers response to the BAI consultation process concerning the draft BAI Rules on Advertising and Teleshopping (Daily and Hourly Limits)

*July 2010*

## Introduction

National Newspapers of Ireland (NNI) and NNI Local and Regional Newspapers represent 18 national daily, Sunday and weekly newspapers and 35 local and regional daily and weekly newspapers with a combined weekly circulation of almost 6.5m copies.

We welcome the opportunity to give our views on the proposal to amend the BAI rules on advertising and teleshopping (daily & hourly limits) as regards independent Irish commercial television channels.

## Media in Ireland

By way of a general observation, we believe that Ireland lacks a coherent media policy embracing all areas of the media. Successive Irish governments have failed to recognise the need to adopt a holistic approach to media in Ireland so that the impact of any legislation or regulatory act in relation to a given sector of the media can be appropriately taken into account and managed. Decisions are very often taken without proper regard to the overall impact and long-term effects.

This proposal to amend the BAI rules on advertising, and increase the time allowed, will, if implemented, directly benefit an important part of the television broadcasting sector – the independent television broadcasters regulated by the BAI – whilst other media competing in the marketplace, including our newspapers, will be likely to suffer adverse consequences. This proposal is a perfect example of the problems that can arise in the absence of a properly-structured national media policy where the knock-on effects of a proposal are not adequately considered.

The BAI has a particular responsibility not to take decisions relating to the Irish broadcasting sector without paying proper regard to the effects on other areas of the media. It does not appear that the BAI has carried out an impact assessment to measure the effect the proposed amendments will have on other media, whether broadcast or print. Nor does the BAI seem to have thought through the implications for other broadcast media, who directly compete with the independent television broadcasters. Is this proposal the thin edge of the wedge that will lead to other broadcasters seeking parity?

Likewise, has the BAI done any analysis of the market size and capacity for broadcast advertising in the Irish market or is it simply applying an EU directive in a market which has very different dynamics to any other given the range of TV advertising inventory available from UK broadcasters?

How do these rules relate to programme sponsorship and in-programme competitions by sponsors? Are the proposed new limits inclusive of these?

## What is your view of the proposal contained in the draft rules to increase the amount of advertising permitted per hour on commercial television broadcasters from the current maximum amount of 10 minutes per hour up to 12 minutes per hour?

Advertising is the life blood of broadcasting and print media alike, as well as of digital media. The advertising market in Ireland is hugely competitive. A relaxation in the rules applying to independent broadcasters could result in advertisers devoting more resources to advertising with them to the detriment of other media. Longer advertising breaks allow for a lowering of rates making that medium more attractive to the large group of advertisers that utilise both television and print, and are able to shift spend from the print media to the independent television broadcasters. It would be inimical to fair competition to introduce changes to facilitate one medium in generating more advertising revenues where other media will suffer directly as a result.

All media should compete on a level playing field and the proper market conditions should exist to facilitate that. This proposal will create further distortions in the market for advertising and will give the independent broadcasters an unfair competitive advantage over newspapers.

It is widely recognised that newspapers and television compete for a pool of through-agency advertising revenue. Although there are some “core” television advertisers – such as global consumer product companies – who use minimal press advertising, there is a significant group of advertisers who have the ability to move some or all of their advertising between printed and broadcast media. This group covers a wide range of sectors, including large nationally-based firms such as banks, large importers/distributors (for foodstuffs, household equipment, vehicles, etc.), and tourism. Indeed, the current economic climate means that such advertisers will be even more critical in deciding where to focus their advertising spend. Maintaining a strong competitive position in relation to this group of advertisers is – as the BAI itself acknowledges – important for the Irish independent commercial television sector. It is also critical for other sectors of the media, including the newspapers, and the BAI seems to have entirely overlooked the implications of its proposals for the indigenous competitors of the independent television broadcasters.

In this regard, we would have expected the BAI to have considered the Irish competitive framework for advertising and to have commissioned an economic review of the issues facing the media in Ireland. All policy changes emanating from the BAI should be strictly evidence based. It is best practice that changes to current policy should always follow on from objective, reasoned and independent analysis. We believe that the current process should be suspended to allow for a period in which the situation can be fully examined, so that the arguments for and against the move can be properly assessed. We believe that the BAI should readily accept that evidence-based policy-making should be the hallmark of how it exercises its functions.

**What is your view of the proposal contained in the draft rules to increase the amount of advertising permitted per day on commercial television broadcasters from the current maximum of 15% per day up to 20% per day.**

The general points above apply to the proposed hourly and daily limits, However, we have particular concerns in relation to the proposed daily limit of 20%. It is important to appreciate the effects that the 33% daily increase would have on the ability of the independent television broadcasters to attract additional advertising.

It would be likely that the availability of 33% extra advertising time on a daily basis would result in demands for deeper discounts by the advertisers. It is thus highly unlikely that the independent television broadcasters would obtain 33% additional revenues. The 33% extra advertising time allowed would nevertheless enable the broadcasters to offer significant discounts – of 25% or more - and still hope to generate additional revenues. In areas where advertisers will consider transferring advertising from the print media to independent television, the only possible response by other media competing for advertising spend will be to cut prices to the same extent. This “race to the bottom” could have catastrophic effects for the newspapers.

It is important that the BAI thinks fully through the implications of this huge daily increase in advertising time. Not only is there a risk of an “advertising war” breaking out between television and print media sectors, with the risk of serious damage to the print media in particular. There is also the significant risk that aggressive competition between the Irish independent television sector and “competitors in the wider European independent television sector” would neutralise the results desired by the BAI.

One way out of this impasse could be to increase the hourly limit to 12 minutes, but to maintain the current daily limit of 15%. This would give the broadcasters the flexibility needed at critical periods, without opening the floodgates that a 20% daily limit would involve.

It should be stressed that there is no necessary correlation between the hourly limit and the daily limit. Several EU Member States – for example, Poland, Denmark and Cyprus – have rules allowing 12 minutes per hour, but limiting the daily maximum to 15%.

## Do you have any views regarding the BAI's rationale for increasing the maximum amount of advertising to be permitted per hour and per day?

It is widely recognised that all media face challenges in the current economic climate. The BAI holds the view that “the proposed increases in advertising limits will help to protect and stimulate Irish employment and sustain Irish programme content in a context where the television sector has suffered a significant decline in commercial revenue.” This rationale has its attractions given the need to reverse the effects of the recent economic crisis. It would, however, be more laudable if the BAI had paid more regard to the effects on other indigenous media, rather than endorse a protectionist agenda. The BAI has not considered the effects this will have on the newspaper industry that has seen advertising revenues decline to levels last seen in 1998.

We accept that sustaining Irish programme content is an important function of the BAI. Likewise, Irish newspapers – national, regional and local – are a major contributor to the cultural, social, economic, intellectual and political life of Ireland, and that must be protected. Newspapers provide the diverse and insightful news and analysis necessary to inform citizens and foster the democratic debate. The importance of maintaining a plurality of balanced public and private media to enrich cultural and political debate is widely recognised. The European Commission, for example, has stated in its 2009 Communication on the application of State aid rules to public service broadcasting that, as well as public service and commercial broadcasters, “newspaper publishers and other print media are also important guarantors of an objectively informed public and of democracy”. Media plurality is an important element in Irish media policy and is a part of the framework within which the BAI acts.

Notwithstanding the economic and democratic considerations addressed above, NNI believes that the BAI seems to have misunderstood the purpose of the limits set in the AVMS Directive and the way in which the provisions of the AVMS Directive are to be reflected in Irish rules. The hourly limit set out in Article 18(1) of the Directive is intended to ensure that the interests of consumers as television viewers are properly protected. Article 18(1) refers to a maximum of 20% within a given clock hour. This suggests that the BAI is not free to set the national ceiling at will up to this maximum. Rather it is required to consider whether any proposed limit properly protects the interests of consumers as television viewers. This consideration is entirely absent from the thinking set out in the Consultation Document (in contrast to the approach that was taken in the December 2009 Consultation Document that at least referred to the issue). It should be added that the fact that the legislature left the responsibility for setting the limit up to the maximum allowed under the Directive to the BAI does not entitle BAI to conclude that the legislature has determined that anything up to the 20% limit properly protects the interests of television viewers.

NNI believes the BAI should not be seeking to raise the limit to the maximum on grounds of protecting the independent commercial television sector in Ireland from competition, in particular from UK channels, or indeed to sustain content (for which other measures would be more appropriate). It is the need to protect the interests of viewers of the independent television broadcasters that the BAI regulates that must underlie any decision to raise the Irish limits.

As stated earlier, it is laudable that the BAI is seeking to protect the independent broadcasters under its aegis from their competitors and to protect and stimulate Irish employment and (in a very broad sense) to sustain Irish programme content. However, no express reference is made to these aims in the provisions of the 2009 Act setting out the BAI's principal or ancillary functions and we would respectfully question whether these aims are to be implied into these functions, including that of "preparing or make broadcasting codes and rules". The NNI believes that it not, and should not, be the role of the BAI to promote the competitive position of the broadcasters it regulates, whether vis-à-vis broadcasters outside the jurisdiction or vis-à-vis other media in Ireland.

### **Are there any other comments you would like to make about this consultation and/or the draft rules?**

Given the observations above, it may be helpful for the BAI better to understand the challenges currently facing the Irish newspaper industry.

Newspapers, like all media substantially dependent on advertising, face huge challenges in coping with the current economic uncertainty. Irish newspaper advertising revenues have steadily declined in recent years and are now back to levels recorded in 1998. Since 2007, a decrease of over 43% in newspaper advertising revenue has been recorded.

Meanwhile, newspaper publishers in Ireland, as elsewhere, have had to adapt as technological developments have fundamentally transformed the media marketplace. Irish newspapers are facing on-going challenges as they adapt to the digital age and address the complex and thorny issue of generating revenue from electronic content. In doing so, they compete for readers and advertising with other media, including broadcasters and aggregators.

Irish newspapers employ over 4000 people with many more part-time and spin-off jobs in related sectors such as advertising, PR, distribution and printing. NNI newspapers alone account for 9700m turnover and annual payments to the exchequer of 600m in taxes. Job losses and pay cuts have been a prominent feature in the newspaper industry in recent years and the industry is working hard to sustain itself and to maintain opportunities for the thousands who rely on it for employment and their livelihood.

The industry makes a valuable contribution to the Irish economy and wishes to continue to do so. It has not sought any subsidies or favours: it simply requests the opportunity to compete in a market that is fair and balanced. The industry already contends with unfair competition from the public service broadcaster and any implementation of this proposal - which will unfairly favour the independent commercial broadcasters (and may be the “thin end of the wedge” as far as other broadcasters are concerned) - will further threaten the Irish newspaper industry’s ability to sustain itself.

## Conclusion

As stated earlier, NNI would have expected the BAI to have considered the Irish competitive framework for advertising and to have commissioned an economic review of the issues facing the media in Ireland.

It is best practice that changes to current policy should always follow on from objective, reasoned and independent analysis so that policy changes are strictly evidence based.

In the light of these factors, we would reiterate our call for this process to be suspended until the BAI has had the opportunity to commission objective, reasoned and independent analysis enabling it to make decisions such as this on a fully-informed basis. This consultation process cannot be treated as a substitute for such an analysis.