

DÁIL ÉIREANN

AN COMHCHOISTE UM CHUMARSÁID, GNÍOMHÚ AR SON NA HAERÁIDE AGUS COMHSHAOL

JOINT COMMITTEE ON COMMUNICATIONS, CLIMATE ACTION AND EN- VIRONMENT

Dé Máirt, 3 Deireadh Fómhair 2017

Tuesday, 3 October 2017

Tháinig an Comhchoiste le chéile ag 5 p.m.

The Joint Committee met at 5 p.m.

Comhaltaí a bhí i láthair / Members present:

| Teachtaí Dála / Deputies | Seanadóirí / Senators |
|--------------------------|-----------------------|
| Timmy Dooley, | Terry Leyden, |
| James Lawless, | Tim Lombard, |
| Michael Lowry, | Michael McDowell, |
| Brian Stanley. | Joe O'Reilly. |

I láthair / In attendance: Senator John Dolan.

Teachta / Deputy Hildegarde Naughton sa Chathaoir / in the Chair.

Pre-Legislative Scrutiny of the General Scheme of the Broadcasting (Amendment) Bill 2017 and Retransmission Fees: Discussion (Resumed)

Chairman: I remind members to either turn off their mobile phones or switch them to flight mode as they interfere with the sound system.

It is proposed that the meeting will follow the following agenda in sessions A and B today. We will hear evidence on the following matters in public session: pre-legislative scrutiny of the general scheme of the Broadcasting (Amendment Bill) 2017 and retransmission fees; and scrutiny of the draft Broadcasting Act 2009 (Designation of Major Events) Order 2017. Session A is with the commercial broadcaster, TV3. The committee will hear a presentation from TV3 Ireland and this will be followed by a question and answer session with the members. Session B is with the platform providers. The committee will hear representations from the following platform providers: Sky Ireland, Virgin Media Ireland, Eir and Vodafone Ireland. The committee will also hear from CIL Management Consultants on behalf of the platform operators. This will be followed by a question and answer session with the members. It will also be followed by a five-minute sos to allow the witnesses to leave the committee room. In session C, we will go into private session. Is that agreed? Agreed.

I welcome the representatives from TV3 Ireland, Mr. Pat Kiely, managing director; Mr. Bill Malone, director of programming; and Ms Áine Ní Chaoindealbháin, director of operations. The opening statements and presentations were circulated to the committee and will be published on its website after the meeting.

I wish to draw the witnesses' attention to the fact that, by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. However, if they are directed by the Chairman to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. The witnesses are directed that only evidence connected with the subject matter of these proceedings is to be given, and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise nor make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Any submissions or opening statements made to this committee will be published on the website after this meeting.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable.

I call Mr. Kiely. He may wish to introduce his colleagues as we go through the questions and answers.

Mr. Pat Kiely: I thank the Chairman and committee members and thank them for inviting me here today and in particular for the committee's interest in the TV3 Group's views on these matters. My name is Pat Kiely and I am the managing director of TV3. I am joined by Áine Ní Chaoindealbháin, director of operations, and Bill Malone, director of programming. I am also joined by some of my colleagues from across the organisation, some of whom will be referenced in my submission.

I want to start with a background to the TV3 story. I will also cover the challenges faced by broadcasters across the board in a rapidly changing media world, the dire need for more lo-

cal efficiencies in this sector and the great potential for a thriving television industry in Ireland. Most importantly, our submission today outlines our belief that the future of public service broadcasting is best served by improving efficiencies in the current model and creating an environment that encourages investment. There is a way to secure a bright future for RTE and the wider broadcasting sector but increasing RTE's funding is not the way.

To begin, let me talk about TV3, Ireland's commercial public service broadcaster. As I have been with the business from start-up in 1998, I am probably best placed to tell the TV3 story. The TV3 story is an important one as within it, we believe, lie lessons which could help inform future broadcasting policy. Over the past 19 years, TV3 has developed an extraordinary ability not only to survive, but to thrive in a more challenging market. Having been written off many times, TV3's resilience is a credit to a hard working, fast moving and efficiently run business. TV3 Group now operates three linear free-to-air channels - TV3, 3e, and be3 - and a digital platform, 3Player. We employ over 300 staff and this year will spend over €60 million, making a marginal profit for the second year in a row, unique among other television broadcasters in Ireland. Like all of our media colleagues, it was a battle for survival through the recession but we cut our cloth, continued to honour our licence commitments, maintained viewership and retained advertising support.

The acquisition of TV3 by Virgin Media in late 2015 ultimately ensured the survival of the group, and Virgin Media's subsequent acquisition of UTV Ireland in 2016 rescued that licence and saved jobs. This new broadcasting group has provided TV3 with a new lease of life and with more economic certainty. This is a topic I am sure will be covered by Tony Hanway, Virgin Media Ireland CEO, when he speaks to the committee later.

TV3's more recent performance, as will have been noted by the committee, has been driven through a growing emphasis on home-produced programming, with more than 50% of the channel's schedule now produced in Ireland. This is double our public service licence requirement of 25% and matches RTE's percentage of home-produced programming, an impressive if unreported fact. Virgin Media and parent Liberty Global have backed this strategy of investment in Irish content and are backing Ireland. They have put their money where their mouth is and, despite market uncertainty, Virgin Media has invested over €5 million in capital expenditure since acquisition to upgrade our studios and infrastructure.

In an increasingly competitive media landscape, I am hugely excited about the growing momentum around our channels and the future potential to build on this as part of Virgin Media. As long as our investors can see that Ireland is a place to do business, I am confident this relationship will drive the sector overall. However, artificially propping up the inefficiencies of the current funding model will scare off all potential inward investment. As part of our Irish content strategy, TV3 has made huge progress in recent years in acting as a counterweight to the dominance of RTE and has become a more significant player in news and current affairs. Without TV3, viewers would be reliant on State-funded television news, which is not ideal for a functioning democracy and a blow to plurality.

We recently launched the 3News Ireland hub, led by our head of news, Mick McCaffrey, who is with us today. 3News is now Ireland's most technologically advanced news studio. TV3 Group's main news bulletins at 12.30 p.m., 5.30 p.m., 7 p.m. and 10 p.m. are offering independent news options while competing impressively against the State broadcaster, both in terms of audience and hours of output. We are also developing new-to-television talent, including TV3's new political correspondent, Gavan Reilly, who, as always, is also onsite today. When we add in TV3 providing Ireland's only breakfast news, seven days a week, and our significantly

growing current affairs output, I believe we have well and truly earned our stripes as a credible alternative voice.

This is how a properly functioning broadcasting environment should work. RTE should not be given more funding to, in effect, ensure its ongoing dominance over commercial competition. TV3's challenge is to complement this key content of news and current affairs with entertainment, documentaries, drama and sport, the staples of a mainstream free-to-air broadcaster. A key point is that our focus in these areas is to provide Irish viewers with unique moments that only an Irish broadcaster can provide. "Red Rock" and our new drama "Darklands" are great examples, as is our "True Lives" documentary strand, "Gogglebox Ireland" and even Al Porter's "Blind Date". Early next year, viewers will see TV3 become the home of the Six Nations and "Ireland's Got Talent". Here is the twist - we will do all of this by increasing investment and profitability. It can be done.

As an almost wholly ad-funded broadcaster, the mix of content is essential for us to appeal to demanding advertisers whose choices are becoming increasingly more global. Google and Facebook took 80% of all the advertising growth in the digital sector in 2016. Netflix and Amazon Prime are now challenging traditional viewing habits. Reassuringly, traditional television is holding its own, and total viewing is down just two minutes in the past ten years. We have done this in Ireland thanks to the great programming being produced by RTE, TV3 and TG4. However, if Irish media is going to continue to compete, we have to be much more open to collaborations and partnerships. Over the past year, Virgin Media has entered into partnerships with Netflix on its television platform and we have entered into a partnership with Sky on advanced advertising. These partnerships will keep us ahead of the curve and relevant to demanding viewers and advertisers.

We would love to extend this partnership philosophy to the television sector in Ireland where the combined strengths and talents of RTE and TV3 could be used to drive efficiencies. Examples of this could be collaboration on production and a shared diaspora channel for Irish communities all over the globe. A more collaborative approach would create long-term sustainability for Irish broadcasting through creativity and innovation. I have raised these opportunities with RTE directly and hope that we could collectively drive new revenue through these ventures. There are also opportunities to work more closely on rights. Arch rivals BBC and ITV lead by example here, where the State and commercial broadcasters have shared rights and studio facilities to save money and to best serve UK viewers. The broadcasting sector faces significant challenges and external pressures, not least Brexit. As TV3 is almost wholly reliant on advertising revenue, Brexit has twice the impact on our business than on that of RTE, where advertising is less than half of their total revenue. TV3 recognises the unique role and function RTE has in a democratic society. Ireland needs a strong indigenous broadcasting sector and RTE has a major role to play in this regard, together with TV3 and TG4. Nevertheless, could RTE get more out of its substantial budget and could it control its costs more efficiently? Through a TV3 lens, the answer is a very firm "Yes" but perhaps that is too easy a prognosis. I have sympathy with RTE being asked to both fulfil its public service remit and maximise commercial revenues. This is the ultimate conflict of interest and results in the issues and structural failure we now see. There is a simple answer, however, which is at the core of TV3's ability to run a profitable business, and that is to cut one's cloth to suit one's measure. TV3 is constrained by a much more limited budget and cannot spend more than it generates in revenue. Fiscal discipline is non-negotiable at TV3. The reality is that RTE continues to have it both ways, enjoying the bulk of the licence fee, as well as close to 50% of the advertising spend. In 2016, the licence fee subsidy alone was almost €180 million. This is the jump start that RTE has over

TV3 every year.

RTE has now requested an increase in funding from the State, as well as other charges, but when I look at RTE's share of the market both in terms of viewers and advertising, it enjoys a more dominant position than any other State broadcaster I can find. In 2016, for example, the year RTE reported a €19.7 million deficit, it proudly boasted that it had 20 of the top 20 programmes on Irish television in that year. In the UK, 13 of the top 20 shows come from the State broadcaster BBC, with the other seven coming from the commercial broadcaster ITV, demonstrating a much greater equilibrium in our closest neighbour.

If I were RTE, I would highlight that this is a sign of a great job. Indeed within this list were some spectacular examples of public service programming we should all admire. At the same time, however, RTE knew it was running a deficit and could have offloaded some of these programmes, particularly those that more fulfil their commercial rather than their public service agenda. Indeed, six of these top 20 programmes were Euro 2016 matches, which TV3 offered to buy as part of a sublicensing deal. My point is that last year there were solutions out there for RTE to share the financial burden of content demands. As history has shown, however, when RTE runs up deficits it typically secures relief from Government. Again, if I were RTE, I would not be inclined to reduce spend if I felt I was always going to get a bailout. This all goes back to the "cutting one's cloth" principle. Last year when TV3 saw a drop in advertising revenue, we took corrective action straight away, including running fewer episodes of big shows like "Red Rock". By being light on our feet, however, we maintained our number two position in the market, kept advertisers on side and turned a profit. I honestly think RTE could have delivered the same result.

In summary, an increase in funding for RTE would be detrimental to the sector and most likely would damage other media, including local radio and Irish newspapers. It is surely time for RTE to focus on its core objective, which is to provide quality public service broadcasting. There is a lack of clear definition, however, as to what constitutes a public service. Is it providing dozens of different services? Are they all really necessary? Do they provide value for money? This lack of clear definition and purpose must frustrate RTE as much as it does TV3. Rather than continuing RTE's open-ended commercial remit, let us make sure that all RTE commercial activities are appropriate and cost-effective. Industry competition is always vital and the TV3 story is a great testament to how competition makes you stronger. RTE has been artificially insulated from this competitive tension and to exacerbate this situation by increasing its licence fee funding or introducing new charges would serve nobody, least of all RTE. With six deficits in seven years, it is no longer appropriate for the State broadcaster to be given a blank cheque when it comes to competing against the commercial sector. Indeed, the commercial sector should be recognised for its contribution to public service broadcasting in Ireland.

I hope I have given members some food for thought in the context of the TV3 story. In turn, I ask this joint committee to reassess TV3's contribution to public service broadcasting and revisit RTE's purpose. By doing so, we can find a remedy that does not draw on the public purse or the already hard-pressed taxpayer. Instead let us re-imagine Ireland as a world-class player operating on the global content stage, creating inward investment, jobs and a whole new export pipeline. TV3 really looks forward to playing our part in this ongoing dialogue but in the meantime I am happy to answer any questions the committee may have.

Chairman: I will start with a question of my own, followed by one each from Deputy Dooley and one further member. I will take these three questions in a row. If Mr. Kiely could bank these I will come back to him to answer them. With regard to the must-carry, must-offer

obligations, does Mr. Kiely feel that the current arrangement is more beneficial to RTE than to other broadcasters and providers? Does he believe that TV3's partnership with Virgin Media has allowed the station to provide greater content for the public, thus enabling it to compete on a level playing field with the other providers? I will now bring in Deputy Dooley, followed by Deputy Stanley.

Deputy Timmy Dooley: I appreciate Mr. Kiely's presentation. He signalled a strong recognition of the importance of public service broadcasting, which I share, namely, the importance of protecting our local news and current affairs output, in which TV3 very much participates, as well as the importance of the preservation and protection of our culture, language, music and indigenous production sector. This is all very important. I might correct Mr. Kiely on the distinction between a public service broadcaster and a State broadcaster. I see RTE as a public service broadcaster but certainly not as a State broadcaster. It does not necessarily represent the Government; it certainly did not do so when my party was in government and I am sure members from the other parties would say the same. Mr Kiely's presentation was good in setting out a framework but I probably counted as many references to RTE in it as I did to TV3. While he has told us what we should not do for RTE, he has not really told us what we should be doing for TV3. Perhaps Mr. Kiely believes that keeping RTE at a level of control would allow TV3 to flourish. He might enlighten us on that.

TV3 plays a very significant role in adding to the preservation and protection of our culture, language, music, and current affairs and news output. I would be interested to hear if there is anything more that we can do to protect that. There was a time when the debate was a matter of TV3 versus RTE. I do not see this any more and nor do I see it as a matter of TV3 and RTE versus Sky or Virgin. What I see is all of these broadcasters versus Google and Facebook and that poses a very significant threat to the indigenous content in respect of news, current affairs, culture, music and so on. I consider that to be under enormous threat and I would prefer to see TV3 and RTE more closely aligned in recognising that threat, as opposed to necessarily taking pops at each other. If RTE were in here with us they would probably say much the same against TV3 as Mr. Kiely has said against them. I do not think that this helps the debate when it comes to what members are trying to do, which is to deal with what I perceive as a threat to our local sector from Google, Facebook and others. From Mr. Kiely's perspective, is there anything this committee can do to assist TV3 in continuing to flourish? He indicated that the emergence of Virgin as a partner and operator has been very positive in setting TV3 on a firm path. Mr. Kiely rightly identified the station's role here in Leinster House and what it has done for current affairs broadcasting. Many of us who have had to encounter Vincent Browne will see his retirement from TV3 as a very significant loss - one might not have done as one was leaving the studio - in terms of his contribution to democracy in Ireland with that particular programme. The role undertaken by TV3 with its programming in the last election put RTE under pressure, particularly with regard to how it reached regions and communities. It did a really good job. TV3 has had a very positive role and I recognise that. Maybe the situation has changed since Mr. David McRedmond was at TV3, and I believe Mr. Kiely was around in those days also. Mr. McRedmond had a particular view about retransmission fees and I think he was in favour of the capacity to negotiate at the time. Has TV3's view on that changed with the emergence of Virgin Media, or should I direct that question to Virgin Media representatives when we see them later?

Chairman: I will bring in Deputy Stanley before I go back to the witnesses from TV3.

Deputy Brian Stanley: I thank Mr. Kiely for his presentation. It was informative but I read in it that he did lean heavily on RTE. Some of the points he made are very valid.

I have a concern around not having a public sector broadcaster operating in the media landscape. TV3 has provided a good service and as well as being a viewer I have been on some of the “Tonight with Vincent Browne” shows. I found it in the main to be very fair. My concern is around a solely corporate sector in this arena and the influence it would have. I will give an example of the newspaper media. I am not arguing for a State newspaper or a publicly funded newspaper but newspapers are solely commercial. Four years ago I raised an issue in the Dáil Chamber during a debate with a Minister. The next day one of the newspapers, which could be counted as one of the more credible newspapers, carried a story on the debate. The newspaper printed a substantial article that noted the fact that the issue had been raised and what had transpired in the Dáil Chamber. While Deputies are not in the Chamber all the time, the article quoted a Fianna Fáil source who was not in the Chamber for the debate. It quoted a Green Party person who was not elected to the Dáil or to the Seanad but there was no mention of a Sinn Féin representative. I met the journalist a day or two later and I explained that while I was happy to see the issue being covered - obviously that is important - the article had quoted two parties who had not been in the Chamber and had not mentioned the party that had brought the topic forward. I asked what had happened. The journalist told me that it must have hit the editor’s floor. That newspaper, which is the one I buy the most, would pride itself on being a newspaper of record, I am told.

I have searched through the daily newspapers and one can find a political thread running through them and a particular political lean and slant in them. I am concerned that we would wind up with a broadcasting industry the same. TV3 has produced good programmes. Some people may have found Vincent Browne combative and quite argumentative but he certainly opened up much debate in Ireland about important issues. This is a concern of many Deputies and much of the public.

I have my criticisms of RTE. I heard some serious criticisms of RTE here last Wednesday, especially around the content of some of its weekend programmes and the issue of the usual suspects being on air every week. In the context of protecting the public interest, how does Mr. Kiely see this panning out? Throughout my lifetime I have not found any place where he who pays the piper does not call the tune to some extent. I am not saying that advertisers would stand over the broadcasters’ shoulder breathing down their necks or holding the editor’s pen. Inevitably, if a broadcaster or publication is solely dependent on major advertisers it presents the advertisers with significant power. It has the potential to put the station, or any station solely dependent on that revenue, in to a compromising situation where balanced content may not be the main issue or it may not come through.

Chairman: I thank the Deputy. I will bring in the TV3 representatives now. If Mr. Malone or Ms Ní Chaoidealbháin wish to come back in on any of the issues raised they can feel free to do so.

Mr. Pat Kiely: There is quite a lot to cover so we might work back. As the person most mentioned in the last contribution I will speak of my references to RTE. There were probably as many references to Vincent Browne in that set of questions. Vincent Browne’s contribution to TV3 has been extraordinary and really gave us the foundation that we are now building on. In many ways, he will still be part of it. As the committee is probably aware, he is working on a documentary series for us. I will bring to the members’ attention one of his closing statements on his last show. In crediting and thanking the quite considerable number of people who helped to make that show what it was, he acknowledged that in the ten years he worked on the show the TV3 management never interfered editorially. I would let Vincent Browne be the testimonial

to TV3's reputation editorially.

I will speak about the partnership with Virgin Media and how it has helped. I reiterate what I have already said in my statement. Virgin Media saved TV3 from obscurity. We were holding on through the recession and the investment that Virgin Media has put into the business says it all. I will come back to that point later.

With regard to what TV3 has been doing around news and current affairs, our coverage is truly independent. It is an extraordinary testament to the talent within TV3. Previously, TV3 news and current affairs talent ended up in Donnybrook. Members would know this. Much of the talent would work its way through only to be taken away. We have changed that and we have become a great ground for new talent in front of and behind the cameras. Mick McCaffrey who runs our newsroom and Aoife Stokes who runs our factual division are both here. Bill Malone, who joined us last year as our director of programming, might like to come in at this point to speak about TV3's strategy around content overall.

Mr. Bill Malone: If we look at the amount of TV3 current affairs output it is actually quite impressive. "The Tonight Show" is on at 11 p.m. We will have new shows coming up with David McWilliams and Sarah McInerney and we will also have a true lives documentary strand. The strategy now is to invest in Irish home-produced content. Today there will be nine and a half hours of home-produced content on TV3. We have some great international acquisitions but we are leveraging the big ratings they bring in order to drive viewers to Irish produced programming. Programming produced in Ireland is our unique selling point, USP. It is what makes us unique. It rates the most and is of huge importance to us. The strategy is to develop quality, home produced programming, new talent, new voices, Irish stories, Irish voices and Irish produced content. This is key to what we do, as seen in the successful last 12 months, and into the future.

Mr. Pat Kiely: I will ask Ms Áine Ní Chaoindealbháin, who is our director of operations, to come in at this point. Ms Ní Chaoindealbháin previously held the post of general manager at UTV Ireland. She is unique in Irish broadcasting because she has worked in every single licence that has ever been in Ireland, including the old Sky News Ireland business, UTV Ireland, TG4 and RTE. We are delighted to have her at TV3. Áine now runs our operations area and has been responsible for investing the €5 million that Virgin Media has put into our infrastructure.

Ms Áine Ní Chaoindealbháin: As Mr. Kiely mentioned, Virgin Media came in and brought TV3 from a difficult situation. There had been no capital expenditure for quite a period of time before that. The strategy we took was how could we best develop TV3, how could we future-proof TV3 and given that it is such a multi-skilled environment, how could we develop and expand on that by bringing in new talent through graduates by upskilling our staff. As a result, we have an entirely new production infrastructure. We have a new studio in which we have the largest ultra high definition screen in Europe. It has the highest resolution possible. With all our capital expenditure it is not about the here and now, it is about how it will last us for the next couple of years.

We have also changed our newsroom infrastructure quite significantly. Now a journalist has much more capability to shoot for themselves, to produce content for social media, to edit and turn around a package for delivery on air or our social media outlets. On top of that, we are continuing to develop studio 2, which is in our second building, unit 7, to ensure that we future-proof any infrastructural spend that we make.

Chairman: Does Mr. Kiely want to come back in before I bring in other members?

Mr. Pat Kiely: I will cover one other point. Deputy Dooley referred to it as taking pops at RTE. I do not see this as a pop at RTE. In fact, if Dee Forbes was here I would imagine she would agree with a lot of what I have said. What I am calling for is greater efficiencies within RTE and Dee herself has called for that.

Deputy Timmy Dooley: I have no issue with Mr. Kiely taking a pop at anybody, but has he looked at such synergy? Are they in any kind of discussion? That is what I was getting at, and on the transmission piece as well.

Mr. Pat Kiely: I have spoken to Ms Forbes directly about some of her ideas. I talked about what we have already done with Sky and Netflix, and Dee and some of her team are aware. We have already started discussions and I am looking forward to RTE working with us on some of these plans.

One example of that is the diaspora channel, which has been looked at previously. Now we have a real opportunity, particularly with Virgin Media as owners of TV3. Virgin Media can open up 4 million homes in the UK overnight through its network in the UK and there is a great opportunity. Previous manifestations were, as is previous on this topic, RTE-focused. Now there is an opportunity to bring RTE's content and TV3's content together.

That brings me to the point that I wanted to make. The Deputy asked what the committee could do for us. The ask on our part is to allow us to compete. The committee has seen what happens when TV3 is asked to compete - it drives efficiencies.

The other ask is to recognise us as a public service broadcaster. We had to ask to be included in a number of debates over the past number of years. We are not viewed as a public service broadcaster and therefore we ourselves have to ask. I believe we need to earn the right to be at that table but what I presented today is, hopefully, evidence that we are putting our money where our mouth is. If we want to play a part and share rights with RTE we need to demonstrate, which we have been, particularly more recently, that the viewer will be as well served with content, such as sport, news and current affairs, being broadcast on TV3 as on RTE.

Chairman: I will bring in Senator McDowell and then Deputy Lowry. If any other member is offering, I might take a third member after that - Senator Lombard.

Senator Michael McDowell: I welcome Mr. Kiely, Mr. Malone and Ms Áine Ní Chaoín-dealbháin here today, and Mr. McCaffrey as well.

On the question of advertising a number of issues arise. Sky is doing a lot of Irish advertising. Will the witnesses elaborate to the committee on the effect of Sky being able to use Irish advertising in the context of non-Irish channels, some of which, as far as I can see, have nothing to do with Ireland, although they are very enjoyable. In saying that I am not casting aspersions. That capacity must have some significant effect on the available revenue pool from Ireland. Could the witnesses say something about what the competitive rates for advertising, as between, say, themselves and Sky and themselves and RTE and TG4, would be because it seems if it is to be the alternate source to public funding we should be conscious that there is a leak in the bucket going to broadcasters with no public service obligations of any kind and no licence obligations of any significance in Ireland.

Mention was made in Mr. Kiely's presentation of the possibility of RTE getting more. The

Chairman was unavoidably absent, but I understood that when the Minister addressed us on the last occasion he made it clear that as far as he was concerned, there would be no increase in the licence fee for RTE.

Listening, as one must do, to RTE radio a lot, I am struck by the advertising slots, almost 50% of which seem to be State, semi-State or governmental agencies advertising. Whether it is the Road Safety Authority, the vaccination programmes and so on, the amount of State or quasi-State advertising is significant on RTE radio. Does TV3 believe it is getting its fair share of Government advertising or semi-State advertising? Is there a special rate for Government advertising? Is there some commercial underpinning to where a vaccination programme advertises, whether it goes to TV3 or somebody else?

Deputy Michael Lowry: I thank the TV3 representatives for the informative contribution that they have made to today's meeting. I admire the success of TV3. I would compare TV3 to any business. Every business in the past eight to ten years has struggled and it is a credit to TV3 that it has managed to survive in a difficult market. Since the investment of Virgin Media, it is clear that there is an improvement in the content, range and quality of programming on TV3. It is nice to see that progression. In particular, I can see an improvement in the presentation of TV3's programme. I suppose that comes from the philosophy of paying for what one can afford. Clearly TV3 would not be able to compete in the marketplace, in terms of professionals and personnel, unless they were being adequately recompensed.

I always had a difficulty with RTE in terms of public service. Some people think that they have a job for life and should have a life, and all that one gets when one reprogrammes is a change in the deck chairs. There have been constraints on TV3 because of the commercial nature of the business and because it must work to survive and there is no lifeboat if it is not economically viable. All I would suggest is that in its recent presentations, TV3 should allow a bit of slack in the wardrobe allowance because I was looking at Ivan Yates recently and I have to say he needs some assistance in that area.

Could Mr. Kiely be more specific in what he means when he asked the committee to reassess TV3's contribution to public service broadcasting? He mentioned that there should be more collaboration between RTE and TV3 on production. In particular, Mr. Kiely mentioned the shared diaspora channel. What did Mr. Kiely mean, in layman's language, when he referred to those two items?

Senator McDowell referred to advertising. What is the criteria at work? Who makes the decision or what protection has TV3 against RTE in terms of how that money is distributed for advertising? Who is the regulator in that regard? Who makes the decisions on what proportion of what goes where?

Brexit was mentioned and it was pointed out it will impact on TV3's advertising. In what way will it impact and how severe will it be?

Chairman: Following Senator Lombard, I will go back to TV3.

Senator Tim Lombard: I thank TV3 for its presentation. I am sorry I missed a part of it. I had to step out for a moment.

I ask of TV3's commitment to the so-called "regions". There is a view that it is a Dublin-based organisation and has Dublin-based content. That would be fair enough to a degree when one sees the studios and everything else that is based in Dublin. In coverage of the regions, in

particular, Cork, or even Munster, does TV3 find it hard to compete? Is the TV3 platform, to have one main reporter based in the south, becoming an issue in getting the spread required to increase viewership? There is the view that if one were to watch TV3 current affairs, it would be a Dublin-centric view rather than the broader view of the regions. The witnesses might answer that if they could.

Deputy Timmy Dooley: I am sorry to keep pushing the point on retransmission but it is part of the document, or the heads of the Bill. That is really the purpose of our discussion today.

Mr. Pat Kiely: I was coming to it. My old boss, David McRedmond, has another job now. What I describe is part of our solution in terms of the role of An Post in licence fee collection. That is a topic covered in terms of the potential closure of some of the deficit through collection. TV3 is a business that has been saved by Virgin Media. I have covered that already. We are very clear on our position that any new charge should not be directed at RTE to recover in respect of an inefficiency. That is a starting point. With regard to the transmission fee as a broader issue, we are clear on our position that it would be another form of taxation. It is most likely that all the platforms would pass it on and that it would become another cost to the consumer. From TV3's point of view as a broadcaster, considering that we are an independent business and make our own independent decisions, there is no doubt that, in seeking the investment I seek from the group, it would be absolutely impacted upon if transmission fees were to be passed on to the platform. We have already declared the investment that Virgin Media is putting into TV3. I would seriously worry about that investment and my ability to continue to secure it if our parent was impacted with significant costs in the form of transmission fees.

Chairman: Could we get a response to the questions on advertising, how TV3 could collaborate with RTE and Brexit?

Mr. Pat Kiely: On Brexit, probably anything up to 50% of the advertising investment in the Republic of Ireland comes from UK call centres and UK decision-making. It is being impacted on two fronts. The first is the lack of confidence. The advertising market is down in the United Kingdom, meaning investment is much more short term. The second concerns the foreign exchange. The sterling investments are showing up in Ireland. They are 15% to 20% lower than they would have been prior to the hit.

On advertising pricing, Deputy Lowry asked who polices advertising decision-making. In effect, it is self-policed because the advertisers go for value. It is typically managed by advertising agencies. Therein lies one of our issues with RTE's ability to dominate through State funding and then play in the advertising market. I have referred to RTE having 20 of the top 20 shows. The impact of that on the advertising market is that RTE has an ability to charge between 30% and 40% more than TV3, not because of poor salesmanship - some of the staff who do that job are present - and not because RTE is better at selling airtime but because it has 20 of the top 20 shows. How advertisers buy advertising across a range of broadcasters is actually quite scientific and sophisticated. The options have opened up. I was previously the commercial director and advertising sales was one of my responsibilities. Therefore, I can talk about it. When TV3 was launched, it was one of four channels that could offer Irish companies advertising on television. Now there are over 50. Senator McDowell should note that many have come through Sky's "opt-outs", as we call them. In many ways, Sky's opening up of the opt-out channels helped to grow the market. It goes back to the point I made about competition. We are not afraid of competition. We support a free market but it does get affected. I was asked specifically about pricing. RTE's prices are 30% to 40% more than those of TV3. Sky's pricing, because it has quite low-rating programming, is lower than that of TV3. That is the

hierarchy but it is artificially affected by RTE's ability to command the top content.

On the question on regions, we would like to have more regional offices. There is no doubt about that. Under Virgin Media we opened up our mid-west office with Eric Clarke. We have Paul Byrne in Cork and Eric Clarke in Limerick, covering the mid-west. Ms Áine Ní Chaoindealbháin oversaw the expansion of the offices in Cork and Limerick.

Ms Áine Ní Chaoindealbháin: Again, the link with Virgin Media came into play for the Limerick viewer because we were able to utilise the existing site. We have invested in technology that allows us to travel around the country very quickly and broadcast live. We do not need the satellite trucks; it is mobile based. That has given us the flexibility to be able to get into the car. The advantage of being in Ballymount and on the M50 is that one can get around the country very quickly. We feel we have sufficient cover at present to get around the place with the infrastructure we have put in.

Senator Terry Leyden: I welcome the representatives of TV3. Are TV3 and 3e separate platforms? There are two stations.

Mr. Pat Kiely: We have three now, including be3. We have TV3 and 3e, and we rebranded the old UTV Ireland licence as be3.

Senator Terry Leyden: So TV3 has the UTV licence also. Therefore, there are three stations, which is quite a few. I am sure "Emmerdale" and "Coronation Street" must be TV3's saviours at this time, considering that it bought into them again. Let us be honest: they have very big viewerships in Ireland. They are well-established programmes, as one knows, and they are quite enjoyable.

TV3 does not seem to have any Oireachtas report. It does not have any slot for this, even late at night at 11.30 p.m. or 12 midnight. It does not show coverage of the Dáil, Seanad and committees. I do not see any reason it could not do so. RTE does show coverage but it does not have a monopoly on controlling the output from these Houses. It would be very worthwhile, in a democracy and in very challenging times, if TV3 could fit in coverage somewhere, even if only once per week. It could do a round-up of the events in the Dáil, Seanad and committees. It would be of interest to some of TV3's viewers and result in some competition. There is no competition with "Oireachtas Report" on RTE. It is hit and miss as to who gets on that programme.

I agree with Senator Lombard on regional input and I accept it is expensive. There is no regional input from the west. There is nobody covering anything down there. I regard TV3 as a Dublin-oriented station. It should and could consider utilising the excellent broadcasters in local radio through Skype and all the modern technology. One could slot them in without any real costs. Those concerned are all linked to the Internet. There would be some costs involved but there are some terrific broadcasters in every county who could have a great input. Could TV3 examine that as a possibility for a programme called "Regional Round-up" or some such title? "Nationwide", presented by Mary Kennedy, is an excellent programme. It is a programme of record for the future. What it is filming now in rural areas will be of archival interest in 100 years.

The witnesses will recall the company called Irish TV. It is gone, unfortunately. It tried very hard to become a regional, rural station. Could TV3 investigate whether it could secure its footage and records? I have checked this with RTE and it said the company is in liquidation or otherwise. The records are very valuable and it would be a shame if they were lost for all time.

Film footage is so valuable and very good for records. TV3 should keep up its good work.

My final question is for Mr. Pat Kiely in his capacity as a former advertising man. How will the banning of all alcohol advertising on television affect TV3?

Senator Joe O'Reilly: I apologise for not being here to hear the entire debate. I was caught in the Chamber and am at a disadvantage.

On a slightly lighter note, I note that on the bottom of page 3 of the statement received, it is stated that without TV3, viewers would be reliant on State-funded television news, which is not ideal for a functioning democracy and a blow to plurality. It is not the view of most Members of the Oireachtas and, I suspect, members of the last Government that RTE is being partial towards them in the presentation of news. In fact, the contrary might be the case. That is just an amusing aside. The witnesses might comment. There might be all-party agreement on that.

Chairman: Thank you, Senator.

Senator Joe O'Reilly: That is not my question. I have just begun to read the written copy of the presentation and Mr. Kiely might elaborate on the point - which seems to make sense to a layperson - that there should be a certain rationalisation and collaboration between RTE and TV3 in certain areas to deal with competition and minimise costs. The presentation cited the fact that this has happened with ITV and the BBC in the UK.

Is it implicit in what is being stated here that RTE is resisting this? It was stated that overtures have been made to RTE in this regard. What precisely is TV3 proposing? Is it experiencing unreasonable resistance? Is there a lack of willingness to engage with TV3?

In the context of Brexit and everything else, it would make sense, in so far as it could be achieved, to cut costs without compromising independence in broadcasting or editorial terms. If costs could be cut through the use of physical facilities, that would seem logical.

Chairman: I ask Senator Dolan to stick to questions because we have another session immediately after this one.

Senator John Dolan: I have learned from earlier interventions. My entire interest is access to public services for people with disabilities. I will get to the point quickly in that regard.

What percentage of programming has audio description, Irish Sign Language and subtitles? What percentage of staff comprises people with disabilities? In terms of developing home-grown programming, are there plans to develop programmes that address issues ordinarily encountered by people with disabilities and their families? What are the future intentions of TV3 in respect of those questions?

Chairman: I appreciate the Senator's brevity.

Mr. Pat Kiely: I will try to get through all of the questions, with the help of my colleagues, because I want to answer them. In regard to the comment on State news, it is not about State-funded news but rather the fact that there would be one single source of news. We want to make the point that one single source for news would be unheard of in the Western world in terms of television services.

Senator Leyden referred to the alcohol Bill. It will affect TV3 in terms of advertising. The evidence I have seen is that in other markets where similar measures were introduced, they

have not been effective. The unintended consequence is that it significantly damages a very small percentage of the platforms that carry alcohol advertising. One concern is the impact it would have on a very small subset of the overall communications in existence, and we have documented our position on that.

I refer to content. Perhaps we could connect the question of how we use some content like “Coronation Street” and “Emmerdale” and access.

Mr. Bill Malone: Senator Leyden referred to “Emmerdale” and Coronation Street”. They are two very powerful audience draws for TV3. We have used them to maximise Irish content. Shows like “Gogglebox Ireland”, “The Pat Kenny Show” and “Red Rock” are aired directly after those shows. We have large audiences for those programmes and follow them with Irish content. We use the best of international content to drive Irish viewers to the best of Irish content.

We have really upped our game in terms of quality output and, in particular, current affairs. The comings and goings of the Oireachtas, for example, are covered extensively in our current programming. We have exceeded targets for current affairs and have very ambitious plans to grow current affairs further. We are a commercial broadcaster. If there is an appetite for it, there will be one in TV3 as well.

Senator Dolan referred to audio description and sign language. Targets are set by the BAI and TV3 exceeds them. In terms of the coverage of disability, we operate an inclusive policy. Last week, for example, a significant portion of “The Pat Kenny Show” was given over to disability issues. Rather than have programmes which are specifically about disability, disability pops up regularly in throughout our shows and on current affairs shows in particular.

Chairman: There was a question on collaboration between RTE and TV3.

Mr. Pat Kiely: I covered resistance in my presentation. There would be an understandable reluctance on the part of RTE to share rights if it felt it did not have to do that. If RTE did not have the option of running up a deficit last year it would have had to sell more rights, such as the Euro 2016 example I gave. We offered to take half or more of those rights but ended up doing a smaller deal. We publically complimented RTE on the decision to sublicense those rights. We thought it was the beginning, but unfortunately it was not a great experience in the end because the games RTE sub-licensed were typically the smaller, less popular games or games which were up against all-Ireland championships. It was evidence of RTE’s embarrassment of riches in terms of sport that it had such schedule clashes.

Growing up I cannot remember a football tournament that was not shared straight down the middle between BBC and ITV. We have never had that. We have offered to share rights with RTE. RTE referred to the burden of content in terms of FIFA World Cups and UEFA European Championships it has to broadcast. We will share that burden.

Studios is another example. The committee might be familiar with two of the major shows in the UK “The Graham Norton Show” and “The Jonathan Ross Show” on the BBC and ITV. Both are recorded in the same studio one night after each other. Studio infrastructure is shared by two arch rivals for the purposes of efficiency.

I have covered the diaspora channel. Imagine a schedule where one goes from “3News at 5.30” to “Six One News”, “Red Rock”, “Fair City”, “RTE News: Nine O’Clock” and “The Tonight Show”. We could have those programmes in one schedule and, through all of the various

technological options, distribute the channel around the world, not least in the UK where Virgin Media UK would be only too happy to distribute the channel.

Chairman: I thank the witnesses for coming before the committee. The opening statements and submissions will be published on our website. Is that agreed? Agreed. We will suspend for five minutes to allow the session B witnesses to take their seats.

Sitting suspended at 6.08 p.m. and resumed at 6.18 p.m.

Chairman: I welcome the witnesses from the following organisations who are appearing on behalf of the platform providers; Sky Ireland, Virgin Media Ireland, Eir, Vodafone Ireland and CIL Management Consultants. Sky Ireland is represented by Mr. J.D. Buckley, managing director, and Mr. David Wheeldon, group director policy and public affairs. Mr. Tony Hanway, chief executive officer, and Ms Kate O'Sullivan, vice president of corporate affairs are representing Virgin Media Ireland. From Eir we have Mr. Richard Moat, chief executive officer, and Mr. Glen Killane, managing director of Eir TV and sports. Vodafone Ireland is represented by Mr. Liam O'Brien, director of strategy and external affairs, and Mr. Andrew Walsh, senior consumer content manager. From CIL Management Consultants we have Ms Tabitha Elwes, head of media, and Mr. Jon Zeff, director of media. The witnesses' opening statements and presentations have been circulated to the committee and will be published on the committee's website. I will go through some formal notices before we begin.

I draw the attention of witnesses to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, they are protected by absolute privilege in respect of their evidence to this committee. However, if they are directed by the Chairman to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. I also advise them that any submissions or opening statements which they have made will be published on the committee's website after this meeting.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable.

I will call on the first witnesses from each organisation. I am conscious that we are tight on time and that we have already received many of the written submissions, so I ask the witnesses to make their main points only and then we will open discussion up to members of the committee. We will start with Mr. J.D. Buckley from Sky Ireland.

Mr. J.D. Buckley: On behalf of Sky I would like to thank the committee for the opportunity to appear today as part of the pre-legislative scrutiny of the general scheme of the Broadcasting (Amendment) Bill 2017. I am managing director of Sky Ireland, a position I have held since 2012. I am joined here today by Mr. David Wheeldon, Sky's group director of policy and public affairs. Along with representatives from Eir, Virgin and Vodafone, we are also joined by Ms Tabitha Elwes and Jon Zeff of CIL Management who are both experts in this particular area.

I would like to start by outlining the important role that Sky plays in the Irish broadcasting sector and our strong commitment to the Irish market. Sky has been offering television

services in Ireland since 1990. In 2013, we significantly expanded our presence in Ireland and announced a €1 billion investment plan over five years which we are currently progressing in a number of ways. These included sustained investment in customer service for our Irish customers, new products such as broadband as well as investment in content, marketing and corporate social responsibility initiatives. We are the number one television platform in Ireland. We are present in more than 40% of Irish homes, watched by over 2 million viewers and we deliver over 500 channels, including the Irish public service channels, to our customer base. We also operate 26 wholly owned channels across general entertainment, news, sport and film. We currently employ almost 1,000 people in Ireland and in our last financial year our contribution to the Exchequer in terms of corporation tax, VAT and employer PRSI was in excess of €150 million. During the same period, Sky's activities in Ireland supported a total contribution to GDP in excess of €650 million.

Sky is also a major investor in home-grown programming across the UK and Ireland. We recently announced a €2 million fund for an original Irish entertainment production which will be commissioned for Sky One in this financial year. This is a crucial step that will allow us to build on previous successful Irish commissions such as the Emmy award winners "Moone Boy" and "50 Ways to Kill your Mammy" as well as previous productions filmed here such as "Treasure Island", "MoonFleet" and "Penny Dreadful". As many committee members will know, we have also just opened a new Sky News Dublin bureau. This initiative will allow us to cover Irish news stories as they happen and in depth. Both of these moves demonstrate our sustained commitment to content production in Ireland.

In addition to all of this, we also collaborate closely with, and provide significant value to, Irish public service broadcasters, including RTE. We currently beam RTE's channels into over 40% of Irish homes and place them in the most prominent positions on our electronic programme guide, that is channel 101, 102 and so on. This ensures that RTE's public service broadcasting reaches the widest possible audience, thereby helping it to achieve its public service objectives. It also enables RTE to drive high viewing figures and earn significant advertising revenues in the process. We estimate that around €32 million of RTE's advertising income is derived from viewing on the Sky platform alone. Beyond this, our current commercial agreement with RTE means we provide specific financial contributions and benefits in kind to RTE in return for certain services.

I hope this makes clear the significant contribution Sky makes, both to the Irish broadcasting sector and to the economy as a whole. It also highlights the very real stake we have in policy decisions taken around public service broadcasting. In that context, it is worth emphasising that we are very supportive of the Bill as drafted. In particular, we are encouraged by the proposals aimed at tackling the difficulties associated with the current television licence system. Licence fee evasion is estimated to reach €40 million this year and it is clear that measures need to be taken to reduce this level of evasion.

Mr. David Wheeldon: I thank Mr. Buckley. I am now going to address the issue at the heart of this session, namely retransmission fees. RTE has argued that it should be permitted to drop its obligation - known as 'must offer' - to distribute its channels as widely as possible at no cost to consumers. I would like to consider the obverse of that obligation. What RTE is requesting is the right to restrict the availability of its publicly funded channels and to, in effect, charge consumers. We are of the view that allowing RTE to do this would negatively affect all parties, including, most importantly, Irish citizens accessing programmes they have already paid for via a licence fee. To be clear, we do not believe that 'must offer' can be tweaked, as RTE

put it, without fundamentally altering its intent. Either RTE has to make its channels available without payment or it has the ability to restrict availability, which can in no way be described as ‘must offer’. The reason ‘must offer’ exists is twofold. Licence fee payers have a reasonable expectation to watch publicly funded channels on whatever platform they mainly chose to watch television and they also, quite reasonably, do not expect to be charged twice for it through both the licence fee and additional charges.

By way of background, Sky’s business model is quite straightforward. In all six of the European markets in which we operate we only charge customers for channels that we actually sell to them. We only sell channels that cannot be obtained for free elsewhere and, it goes without saying, we do not pay for channels we do not sell. Since we do not and cannot sell RTE channels to our customers we are not in a position to pay for them. To be clear, Sky would not pay RTE for its public service channels should RTE no longer be obliged to provide them for free. Of course, in such a scenario RTE might decide voluntarily to withdraw from the main television platform in over 40% of Irish homes, in which case there can only be losers. If RTE removes its channels those Irish licence fee payers who use Sky to watch television would obviously be inconvenienced, as would Sky. We make no pretence about that but we have means of mitigating the impact which I shall come to later. The main loser will be RTE itself which stands to lose €83 million in advertising revenue over five years, according to its own research. RTE could, after a period, choose to return to our platform but I must make the committee aware that in its absence, there may well have been changes made to our programme guide and we may not be in a position to guarantee that RTE would return to its current position. I do not say that as any kind of threat but commitments may have been made to other channels that we may not be able to undo.

I mentioned that we would seek to mitigate the impact on Sky’s customers of RTE leaving the platform. Fortunately we have some experience of this. In Italy, which is one of our other major markets in Europe, we developed a free-to-air USB dongle which plugged into the Sky box and allowed customers to toggle between Sky and the Italian equivalent of Saorview when the public broadcaster Rai left our platform under what I would term political pressure, Italy being a market that is subject to quite a bit of that. It is worth noting that Rai is now back on Sky’s platform in Italy, without payment. Sky’s market share remained steady during the entire time Rai was off our platform. Clearly, this is not our desired outcome as it will divert money away from productive and useful investment in our Irish business, which as Mr. Buckley said, we have an ambition to continue. Nevertheless, it does demonstrate the mitigation measures available to us.

In the context of our multinational operations, it is worth saying that this matter has been looked at in other jurisdictions. In the UK, for example, the Department of Culture, Media and Sport carried out an extensive consultation on the issue, lasting two years, and concluded that the prevailing zero fees and ‘must offer/must carry’ regime resulted in the best outcome for citizens. That is still its policy. It is also worth noting in this context that the BBC did not seek any change in the UK legislation as it did not wish to endanger the principle of universal availability of public service broadcasting services or call into question the legitimacy of a universal licence fee.

I would also like to briefly touch upon the situation in the US, which has been frequently cited by RTE and its advisors, Mediatique, as an example of a successful retransmission fees regime. The truth is that the European and US markets are so different that comparisons are of little value. Most importantly, the US does not have a universal licence fee. Beyond that, the

availability of any free-to-air terrestrial television is extremely limited. Where it is available, it is often underpowered, meaning that signal and picture quality is poor, and far poorer than it is in the majority of Europe. As a result, pay television has, at more than 80%, a higher market share than it does in most of Europe. Pay television packages are the only way that most viewers can access local broadcasters. Retransmission fees in this market are a different proposition.

It is worth taking note of the knock-on effect of the negotiations on retransmission fees in America. There have been substantial increases in consumer prices, which are often broken out as a “broadcast fee” in customers’ bills, and a large number of channel blackouts. In 2015, almost 200 channels were made temporarily unavailable, with the longest dispute lasting more than six months.

The US example has led RTE down a blind alley. It is evident from the Mediatique analysis that it has selectively failed to recognise the differences between the US and European markets, in particular the widespread availability of public broadcasters in every home free to air in Europe. This has led RTE to assume incorrectly that pay television platforms would suffer disproportionately if PSB channels came off them and ceased to be available. In fact, these broadcasters would still be available through other means. RTE has got its sums wrong.

Universal availability, free of additional charges beyond the licence fee, is widely recognised as a key tenet of any public service broadcasting regime. Such obligations go hand in hand with the benefits that PSBs receive. If RTE is asking to remove the obligations that it faces, it stands to reason that the significant benefits it receives should no longer be made available to it. Should the committee and Government wish to consider such a deregulated approach and remove not just the restrictions that RTE feels are imposed on it, but also withdraw all of the benefits, including the universal licence fee and other forms of State funding, we would be happy to enter into commercial negotiations with it in the same way that we do with any other commercial channel that seeks access to our platform and wishes to be retailed. However, it is unlikely that RTE would favour such an approach in the absence of such two-sided deregulation. Therefore, and sitting where we are, it appears that RTE wishes to have its cake and eat it as well.

We do not pay for PSBs to be available on our satellite platform in any of our European markets. This is a crucial and consistent premise of Sky’s operating model. Regardless of any legislative change or the value that RTE does or does not deliver to our platform, there are no circumstances in which we would change our approach and begin to make payments for a free-to-air channel in any of our markets simply because of the precedent that it would set for us elsewhere. Put frankly, this issue has far wider ramifications for us than our Irish business and we would be incentivised to stick to the line here to avoid risks elsewhere.

Chairman: Does Mr. Buckley wish to speak again briefly?

Mr. J.D. Buckley: Yes. On a more positive note, I wish to stress that RTE is a very-----

Deputy Timmy Dooley: Good cop, bad cop.

Mr. J.D. Buckley: -----important partner for us. That is why we signed a long-term agreement with RTE in 2015. That agreement increased the number of channels and ways in which RTE’s content could be accessed on Sky’s services in Ireland, including the availability of the RTE Player via our on-demand services. We will also launch later this year the RTE Player on our over-the-top service, called Now TV, which we launched recently, and are actively explor-

ing a number of other revenue opportunities with RTE, including using the Sky platform to target advertising more effectively. It is through growing this commercial partnership further within the existing legislative framework that RTE and public service broadcasting more generally will be best served. By contrast, a legislative change in this regard would not only hinder further productive developments, but put existing benefits at risk, harming the entire broadcasting ecosystem in the process.

Chairman: I call Mr. Hanway of Virgin Media.

Mr. Tony Hanway: I thank the committee for inviting me to address members on the broadcasting (amendment) Bill 2017 and retransmission fees and for its interest in this matter important matter. To support Virgin Media's contribution today, I am accompanied by Ms Kate O'Sullivan, vice-president of corporate affairs at Virgin Media Ireland.

By way of introduction, Virgin Media is part of the Liberty Global family, which is the world's largest international TV and broadband company. We employ over 1,800 people in Ireland and offer 1 million services to more than 500,000 Irish customers. We have invested more than €1 billion in building Ireland's fastest connected entertainment network, which means that we are now home to the fastest, most widely available broadband speeds for homes and businesses.

Last year, we launched Project Lightning, a digital infrastructure investment programme that will extend the reach of our cable footprint from today's 49% to 60% of all homes by 2020. Our network expansion programme has been possible because of Liberty Global's continued commitment to the Irish business. As with any international organisation, however, Virgin Media must compete for investment capital with sister companies within the group. Inward investment programmes are always dependent on a clearly defined business case with a solid return on investment. That is why today's topic of conversation is so relevant - it touches on proposed changes, both real and suggested, that will have a real impact on our commercial operations in Ireland.

I will turn briefly to our involvement in the broadcasting sector in Ireland. As a platform provider, Virgin Media has built strong partnerships with Irish free-to-air broadcasters, including RTE, TG4, TV3 and Irish production companies. In 2011, we were the first to launch Oireachtas TV and have continued to do so at no charge to the Exchequer. We were also the first to launch the Irish players from each of the free-to-air channels on our Horizon TV platform, which extended the reach of these channels to Irish audiences and provided those broadcasters with opportunities to generate new advertising revenue streams. From a community standpoint, we carry the Dublin and Cork community channels free of charge and with pride.

As the committee heard from Mr. Kiely, managing director of the TV3 Group, the TV3 Group has expanded from two to three channels since its acquisition by Virgin Media - TV3, 3e and be3, the new name for UTV Ireland. By undertaking the TV3 Group acquisition, Virgin Media ensured continued diversity of media plurality in the State.

I wish to discuss the draft heads of the Bill and, in particular, the proposed amendment to repeal section 103 of the Copyright and Related Rights Act 2000. The proposed repeal is a significant issue for Virgin Media. Our position is that we do not accept RTE's rationale for its proposal to repeal section 103 in its entirety. The case law that RTE seeks to rely on is specific to the facts of that individual case. At the July hearing this year, the Government indicated that it intended to repeal the section because there is no longer a public policy objective served in

maintaining this exception.

It is Virgin Media's position that repealing this provision, or at the very least without qualification, will put Virgin Media at a serious disadvantage versus RTE and, separately, our competitors in the pay television market for the following reasons. First, Virgin Media is the only television platform provider whose technical infrastructure means that we receive and then convert the broadcast signal from PSBs. Second, it will grant RTE the opportunity to pursue Virgin Media for fees that none of our competitors pays today nor will ever have to pay. This means that there is a real risk that Virgin Media will be discriminated against by RTE. Third, and more fundamentally, the repealing of this provision without qualification introduces a credible threat to Virgin Media that RTE will use the repeal of this provision as a Trojan horse to introduce retransmission fees through the back door.

The committee will note I have continually emphasised that Virgin Media does not support the repeal of section 103 or, at the very least, does not support the repeal without qualification. With this in mind, I refer members to the ongoing debates in the UK where section 73 of the Copyright, Designs and Patents Act 1988, which is equivalent to our section 103, has been repealed and used as the basis for ITV to make public statements that it intends to seek carriage fees from pay TV platforms. If we are to avoid the same situation happening in Ireland, we will respectfully make a number of suggestions. First, we ask that Virgin Media, the only cable network of scale in Ireland, is treated the same as all other television platform providers and that provisions in the Bill are clarified to ensure a level playing field for all. Second, there should be a separate review and consultation on the impact of any potential repeal of section 103. Third, we advocate that a dispute resolution process be provided for in the current Broadcasting Act or the proposed new Bill.

I will briefly discuss section 101 of the Copyright and Related Rights Act by focusing on two matters that were raised by RTE at the committee's July hearing. The first pertains to a written submission by RTE to amend section 101. In the interests of time, I do not propose to speak to this point, save to say that we strongly oppose the proposal by RTE. My written submission to the committee will set out our detailed reasons for this.

Chairman: I thank Mr. Hanway.

Mr. Tony Hanway: The second point relates to RTE's call for an amendment to section 77 to be added to the draft heads of the Bill, which would allow RTE to charge platform providers for the privilege of including its content in our pay television packages. Virgin Media and its parent company, Liberty Global, have always held the view that every society needs a strong, financially independent state broadcaster that offers public services within a clearly defined public service remit. However, a harsh light needs to be shone on why RTE is pushing so hard to be allowed to charge TV operators for content. Unfortunately, the answer lies in the fact that RTE mistakenly believes this will produce a large financial windfall that can solve its budgetary challenges while avoiding the hard decisions that would otherwise be required to manage costs. We believe it is not in the interests of the public to throw money at the problem so as to shield RTE from these financial realities. RTE needs instead to confront cost inflation and reform itself in order to deliver on its public service mandate effectively and efficiently, both now and in the future.

Let us consider RTE's specific request because it is important we have a clear understanding of what is at play here. In its own words, RTE is seeking a simple change to section 77(11) and the insertion of two seemingly innocuous words, "and payment", to the "must offer" provision

which is a requirement on RTE to give its content to platform providers. RTE has claimed this is a simple request because retransmission fees exist elsewhere. However, in all other instances, in all other markets, retransmission fees mean something very different from what RTE is proposing for Ireland. Indeed, there is no like-for-like in any other market comparable to the Irish situation. In no other market where our parent company has business operations is there a case whereby the local state broadcaster is allowed to levy a fee on platform providers for content that it “must offer” to platform providers.

Virgin Media strongly disagrees with the introduction of any amendment that will give RTE an unfettered right to demand payment from pay-TV operators for a whole host of reasons underpinned by data and rigorous research, which is presented in the Communications Chambers report which has been provided to the committee. I do not propose to address that report today.

When RTE’s consultancy firm, Mediatique, appeared before the committee some months ago, it presented a seemingly convincing case in setting out the amounts of money it believed would flow in the direction of RTE. However, despite what Mediatique’s crystal ball is telling its consultants, RTE will not get the financial windfall it is expecting. In particular, Mediatique has overstated the importance to our customers of having RTE within their Virgin Media bundle. Mediatique is operating under a misconception that RTE is uniquely important to our overall service offering. Most of our TV customers take their TV service in a bundle with a range of services, including our market-leading high-speed broadband service. These customers are not going to walk away from all of that value, when all that would be required to watch a show on RTE is for them to tune into the RTE player online from time to time, or switch over to Saorview. Most of the predictions made by RTE’s consultants regarding our willingness to pay for carriage of RTE channels do not make sense in reality, nor do they correspond with our first-hand knowledge of our customers.

In response to Mediatique’s report, Virgin Media has commissioned its own study by Amárach Research to simulate a negotiation between TV platform providers and RTE. The results were then used to replicate Mediatique’s analysis and, in particular, adapted to correct for the flaws in Mediatique’s research. One stand-out finding was that Irish households are not in favour of extra funding for RTE. While RTE is important to our customers, TV viewing is spread across many channels. We also found that 30% of our customers would watch RTE less, or would stop watching RTE altogether, if it was lower down on our electronic programme guide, EPG.

In the research, we explored the ways in which consumers would be impacted by the introduction of retransmission fees. If we assume for a moment that pay-TV platforms agreed to pay retransmission fees and then passed this cost of doing business on to customers, consumers will be faced with three options: to pay more to retain RTE channels in their pay-TV package; to drop RTE channels from their pack and find a less convenient alternative way to watch RTE; and-or watch RTE less often. One interesting and notable result of our research is that if it becomes more expensive or less convenient for customers to watch RTE, they will watch it less.

Even Mediatique has acknowledged that RTE would suffer from reductions in viewership, and therefore advertising revenue, if pay-TV platforms were no longer carrying RTE’s content. In fact, platform providers represent 52% of RTE’s commercial viewership currently. This means that, in effect, our customers account for 52% of RTE’s advertising revenue, not to mention the impact on sponsorship revenue.

All of the foregoing leads me to believe that the narrative on this debate must change and

reflect the real issues at stake here. It is crucial that RTE has an incentive to make better use of its State funding, otherwise no amount of supplementary funding will ever eliminate the potential or inevitability of a recurring deficit. As long as RTE is allowed to run deficits and not to configure itself into a modern broadcaster, it will keep losing money which is to the overall detriment of the sector. Retransmission fees will not satisfy RTE's appetite for spending, nor will they inhibit RTE's practice of inflating the price of content as per comments from Pat Kiely to the committee earlier today. Virgin Media would contend that there are many ways for RTE to improve its finances. As a key partner to RTE, we invested approximately €2 million in developing a technical solution that allows broadcasters like RTE to insert adverts dynamically into their on-demand TV content on the Virgin Media platform. TV3 embraced this technology many years ago to great effect. In contrast, RTE has yet to use it.

The RTE Player, too, is in our view under-utilised. The player is available across 11 different platforms, but the reality is that not all platforms are equal, and RTE holds back certain programming from platforms including Virgin Media. For example, in January 2017, 30% of the top performing content on the RTE Player was not available to our customers who, by the way, have already paid their TV licence fee and as such are entitled to access this content.

The reach of our fibre broadband network means that we offer the highest broadband speeds to the largest number of homes in the State. If ever there was a platform provider to help RTE better monetise its player content, Virgin Media is that provider.

In summary, there is no cause or justification to amend section 77(11) and doing so would lead to the enforcement of a tax by RTE on pay-TV platform providers. In respect of proposed changes to the CRRRA, we respectfully request the separation of the repeal of section 103 from the draft heads of Bill and to undertake no changes to this section in the absence of a full and thorough regulatory impact assessment.

I look forward to listening to members' views and responding to their questions on these matters later in the session.

Chairman: I thank Mr. Hanway. We will move on to Eir. I invite its CEO, Mr. Richard Moat, to make his opening statement.

Mr. Richard Moat: I thank the Chair and the committee members for inviting us. With me is my colleague, Mr. Glen Killane, managing director of Eir TV and Eir Sport.

Eir is Ireland's largest telecommunications provider, offering broadband, mobile, voice and TV services. We have invested €1.6 billion in the past five years and, specifically, we have invested over €600 million in upgrading our fibre network in recent years. This investment underpins our television and content platform, which we launched in 2013. To enhance this platform, we acquired Setanta Sports and offer the full suite of BT sports channels. We re-branded Setanta Sport as Eir Sport last year. We have acquired further exclusive content and now provide over seven different channels. Today, we have almost 75,000 subscribers to our television service and 220,000 subscribers to our Eir Sport service.

We are here to convey our concerns regarding the potential introduction of retransmission fees, which would fundamentally alter the current must carry-must offer framework and, in our opinion, would have a significantly detrimental impact on the broadcasting ecosystem in Ireland. It is our view that the current framework governing this area is fit for purpose. There is a symbiotic relationship between RTE and platform providers such as Eir. RTE's content

provides value to TV platforms like Eir, and there is also substantial value that flows in the other direction to RTE. Platform operators provide valuable distribution for the broadcaster, which increases audience reach, and operators ensure prominent placement on the electronic programme guide, EPG, which allows the broadcaster to maximise advertising revenues and fulfil its mandate for universal access as a publicly funded broadcaster.

In our view, the proposed change to the must carry-must offer provisions has very little international precedent. It would in effect introduce double taxation for over a million households with pay-TV subscriptions, according to the latest TAM Ireland figures, which are already paying the licence fee.

Practically speaking, the implementation of retransmission fees would be drawn out and complex and would impose a significant burden on the State's regulatory agencies, which already have a full agenda. As detailed in the Communications Chambers report, as circulated to the committee, there is very little international precedent for retransmission fees, especially in jurisdictions where those broadcasters are already funded by a public licence fee. The United States has retransmission fees, however the broadcasters that receive them do not benefit from licence fees, so it is not a valid comparison. Closer to home, the UK's Department for Digital, Culture, Media and Sport, DCMS, considered retransmission fees in 2015 but, for reasons laid out in the Communications Chambers report, did not proceed with introducing them. The DCMS review only addressed the case for retransmission fees for commercial terrestrial channels ITV and Channel 4, as retransmission fees for the BBC were not sought by the BBC as it is funded by the licence fee. It is important to note that unlike the BBC, RTE already has a dual stream of income with public licence fees and commercial advertising. What is being sought is effectively a third, additional new subsidy.

We also take the view that the implementation of retransmission fees would likely be complex and drawn out and it would be several years before any funds would flow to RTE. There is no solid precedent for a standard economic methodology to set retransmission fees. There is no mechanism or body for determining appropriate rates. Based on what has happened elsewhere it is unclear how disputes between the broadcasters and pay TV platforms over the appropriate level of fees would be resolved. The changes mooted to the current framework could end up requiring serious time and resources from the BAI which is the obvious dispute resolution body. Undoubtedly this change would end up consuming scarce resources with the platform operators such as ourselves, which could otherwise be put to good use to produce either more Irish content or greater product innovation for Irish consumers.

We would like to frame the debate from a different perspective, one that better reflects the rapidly changing global media landscape. Consumers are shifting away from traditional broadcast TV to view content through alternative methods provided via global internet brands such as Google, Apple, Microsoft, Amazon and Facebook. Increasingly, viewers are watching content delivered over the internet at the time they want it and on the device they want to watch it on. Eir and other service providers are investing significantly to provide the connectivity consumers need to access this world of content. Eir and the other Irish pay-TV platforms continue to place the RTE brand front and centre of our respective entertainment propositions and we invest heavily in product innovations that help keep RTE relevant. The introduction of retransmission fees would significantly damage the dynamic between platform providers and the broadcasters and over time could undermine the place of RTE in over 1 million homes served by the platforms. We suggest the focus should be on fostering even greater levels of partnership between the companies. We look forward to continuing to explore ways to work together to meet the

evolving needs of Irish viewers in a global entertainment market.

Chairman: We will now hear from Vodafone and a presentation from Mr. Liam O'Brien.

Mr. Liam O'Brien: I thank the committee for the opportunity to engage with it in this important legislative process. I am joined by my colleague, Mr. Andrew Walsh. I hope the committee will bear with me if I repeat or reiterate any of the points that have already been raised by my colleagues from the industry.

I will start by providing the members with a brief overview of Vodafone in Ireland as a total communications provider and more specifically our role as the newest entrant to the Irish TV market. Vodafone provides communications services to 2.3 million customers across the country and employs over 2,000 people directly and indirectly in Ireland. Since entering the market 15 years ago, Vodafone has been the single biggest investor in new technology in the Irish telecoms industry, with over €2 billion invested to date. Over the coming years, we have committed to investing €500 million in Ireland across mobile, broadband, fibre to the home, network infrastructure and enhanced customer care systems. More specifically, turning to the broadcasting sector and the reason we are with the committee today, Vodafone TV launched in the Irish market in January 2016. We have invested heavily to deliver an end-to-end IPTV infrastructure and compelling TV solution that caters for the ways in which Irish consumers want to access content today. Vodafone is growing fast in what is a very competitive TV marketplace, but our share currently only represents a fraction - less than 2% - of the wider pay market in Ireland.

For all the reasons already outlined today, Vodafone believes public service broadcasting in Ireland via RTE and TG4 plays a hugely important role in society. Public service broadcasting encourages standards, more indigenous programming and, importantly, local content production. Public service broadcasting brings us together and continues to have an important role across Irish society and daily life. We do not wish to lose sight of this. Under the obligations set out in the Broadcasting Act we provide users with access to RTE on Vodafone TV. At our discretion and as part of our integrated strategy, we have provided RTE with top positioning within our electronic programming guides which as outlined already has a positive impact on RTE's ability to drive high viewing figures and significant advertising revenues across all pay TV platforms in Ireland. Availability and ease of access is central in delivering RTE's own public service obligations. Without repeating what has been said verbatim, we broadly support and echo the arguments put forward by the independent experts, CIL Management and Communications Chambers and the operators present here today.

A central component of this discussion and any policy options under consideration is to ensure an understanding of the evolving nature of the viewing habits of consumers here in Ireland. Specifically, pay TV is not just about linear feeds or free-to-air TV services such as RTE, TG4 and TV3. It is about delivering innovative solutions that allow users to pause and rewind live TV and to record and access content at their own convenience when and where it suits them. Platforms and technology have continually evolved to provide access to what users are looking for in entertainment services, content and product features on multiple devices such as multi-room set-top boxes and mobile and tablet access in and out of the home.

In order to address this evolving demand, Vodafone was the first in the market to offer Netflix as part of an integrated package. It was a bold move. Many in the industry might argue it is a Trojan horse for broadcasting but we cannot ignore how consumers wish to use and access media today and the product features they demand.

Central to our launch strategy last year was to ensure we provided new innovative features such as on-demand, catch-up and restart TV across multiple channels. In the current TV market in Ireland, Vodafone now offers on-demand content across more than 50 channels. This is not to say that linear TV feeds do not continue to play an important role and fulfil an important requirement and offering but considerable time is now spent by consumers accessing content on demand at a time that suits them, whether it is on-demand via Netflix or through the catch-up services offered on our platform. These features and additional services outside of traditional linear TV are required to entice customers actually to pay for TV services. We do not believe the importance of these features and additional services have been properly considered. They are central in our ability at Vodafone and also among the other operators here today to recruit paying TV customers.

We would also like to highlight that we view RTE as an important partner. There are many touch points between our organisations. As a result of a commercial agreement with RTE, Vodafone offers RTE on-demand TV across our services platform. Some previous public commentary has implied that existing operators do not pay anything to RTE, which is not the case. This partnership, in addition to the advertising by Vodafone across RTE's platforms, sees Vodafone making a significant financial contribution that supports RTE's ongoing operations.

As the proponents of retransmission fees, RTE is seeking the amendment of section 77 of the 2009 Act to allow broadcasters the right to negotiate commercial terms. The amendment in its current form has been presented by RTE as a straightforward change that would simply provide for an entitlement for RTE to be paid. It is our clear position that the introduction of these potential retransmission fees would be fundamentally at odds with the current legislative and operational framework that supports and underpins public service broadcasting in Ireland. This proposal does not consider the complexities involved in governing a negotiation process for public service broadcasting. More specifically, for example there is no mention of how any fees if determined payable should be calculated, the dispute resolution mechanisms that would be required, the regulatory bodies required to mediate and the required determination of fees payable if the parties cannot agree.

Vodafone represents a fraction of the overall pay TV market at less than 2%. How would Vodafone be treated when compared with other established operators in this regard? The proposal to amend the legislation does not consider the complexities involved. Any proposed changes or amendments to the existing legislation involving the introduction of retransmission fees would in our opinion be highly complex and could not be done without undertaking a complete review of all broadcasting legislation including the current licence fee regime. Currently, legislation prohibits charges for must-carry and must-offer channels. These enshrined principles require that pay TV platforms carry RTE, TG4 and TV3. The current legislation makes sense in the context of zero transmission fees but does not if there are charges.

I hope the committee has an appreciation of the position of Vodafone and of the impacts which would be felt following the introduction of any form of retransmission fees. As outlined, we have an existing commercial partnership with RTE and other public service broadcasters, as do many of the operators here today, which we look forward to building upon in the coming years. The current legislative framework is beneficial for both parties, the public service broadcasters and the TV platform providers, in allowing for further commercial arrangements to be developed. Any introduction of retransmission fees will reduce the benefits enjoyed by all parties, in particular the licence-fee-paying public.

Chairman: Does the representative from CIL Management wish to make a statement or

will Ms Elwes contribute during the questions afterwards? I do not know how long her contribution is but I am conscious of the time.

Ms Tabitha Elwes: I can take the committee through our submission in a summary form, if that is helpful. I think all members have a copy so hopefully they have had a chance to look at it. I will highlight some issues. We carried out an independent review. It is obviously a complex issue but we identified four buckets of issues or concerns we think the committee should focus on. The first is that the introduction of retransmission fees could pose significant risk to what the consumer receives, to the cost base for the consumer and potentially to public service broadcasters. The second area to think about is that the size and direction of the payments resulting from retransmission fee negotiations are highly unpredictable. They could deliver little or no value to PSBs and it is conceivable that the value could flow the other way. The third point is that a new retransmission fee regime could be difficult, if not impossible, to implement effectively. Retransmission fees could undermine the fundamental principles of public service broadcasting in Ireland.

Does the Chairman want me to go through the presentation in more detail?

Chairman: No. We will take questions and, if there are any gaps, Ms Elwes can indicate and I will call on her to speak.

Deputy Timmy Dooley: I thank everybody for their presentations and thoughts at this late hour. My party is here because we see a significant threat to public service broadcasting. There is a multiplicity of reasons for it, of which the witnesses are well aware. We have concerns that the growth of the likes of Facebook, Google, Amazon and Netflix poses a real and significant threat to our capacity as a nation to preserve and protect local news and current affairs, to the programming that has developed around our culture, language and music and to our indigenous production sector. We heard from TV3 before the present delegations had arrived. Its representatives believe RTE should not receive any more funding from licence fees and the present delegation suggests our public service broadcaster should receive no funds from retransmission. The BAI is the competent authority and has indicated, on more than one occasion, that it believes the public service broadcaster will be compromised in terms of reaching its legislative remit as a public service broadcaster unless it gets additional funding.

I accept that RTE has a long way to go to trim its sails and focus its attention on the future so that it is an organisation that is fit for purpose. When RTE was before us, I was very direct with the director general, DG, and said that before we would consider addressing its financial shortfall it would have to put in place a plan with which we were comfortable and which demonstrated to us that it was willing to take up the challenge. In follow-up conversations with the DG and others, it is my view that it is serious about this but, despite that, there remains a crisis. It is not just the demise of RTE or a public service broadcaster, it is a threat to democracy as we know it. Once one moves away from recognised, branded news and current affairs and moves into the world of Google, Facebook and social media platforms, the connection between the origin of news and its authenticity and verification can be seriously compromised. A lot of talk, time and effort has been put into following whether or not Russia had an input into the outcome of the most recent US presidential election. It is not such a far-fetched step to believe that, where a public service broadcaster diminishes and there is a failure to protect and preserve the ethics of journalism then, over time, there is a tendency to white out content that is properly curated, properly verified editorially and comes from an authentic source, all of which has a potential impact on democracies. The witnesses before us and the public service broadcaster share the same space and one or other spoke of the necessity to develop a closer partnership to

work against the threat of the likes of Google, Facebook and others which do not see themselves as publishers or broadcasters but merely in terms of access to information.

The debate needs to move on. If one believes in public service broadcasting one must be prepared to follow it through and be prepared to pay for it. The viewer pays at the moment and we can have arguments about double taxation or where something is already paid for but, if the public service cannot do what it is required to do and what we, in a functioning democracy, want it to do, there is a problem. If we need a vibrant, diversified broadcasting market we have to look seriously at how we address it and that means looking at a proper funding model. In the context of retransmission, all we are asking for, and what we have been asked for by the Minister following the heads of the Bill, is to get out of the way to give the witnesses and RTE the capacity to negotiate. The witnesses have set out their stall, as has RTE, and I do not see us getting into the negotiations as it is not our role. It is a matter of removing the provision from the legislation and allowing a sensible dialogue also involving, if necessary, the BAI.

I went through the submissions and have some questions. My first is to the platform operators. A lot has been made of the delicate broadcasting ecology of channel providers, platforms, must-offer or must-carry rules, the threat that charging for content could pose and electronic programming guide prominence and I accept the point that anything that interfered with them could be damaging to all parties. To which operators are these rules applicable? The Vodafone representative, Mr. O'Brien, said, "At our discretion and as part of our integrated strategy, we have provided RTE with top positioning within our electronic programming guides". This appears to be a commercial decision and not one imposed by the legislation. Can the witnesses clarify that? Virgin appeared to be of the same view. Does the prominence requirements for public service channels not apply, so that it is at their discretion too? Are the requirements of section 77 regarding prominence applicable to Sky? I know it gives RTE very significant prominence but is it required to do that? The must-carry rule does not apply to Sky, as I understand it, and it seems the negotiation with RTE is a little one-way in Sky's favour. There is no electronic programming guide prominence requirement, no must-carry requirement but a must-offer requirement on RTE. If prominence has been accorded to the commercial negotiations in which they were involved, why would facilitating RTE in negotiating its channels not be part of them? It seems sensible to me. I get the fact that there are issues that need to be addressed but all it would do is free up the capacity for both sides to negotiate.

I have some sympathy with Mr. Wheeldon, who had to play the bad cop to some extent. He delivered a rather strong message and he has to do that on behalf of his company. He said, "Regardless of any legislative change or the value that RTE does or does not deliver to our platform, there are no circumstances in which we would change our approach and begin to make payments for a free-to-air channel in any of our markets simply because of the precedent that it would set for us elsewhere." It does not sit well with me as a legislator to be told that by Sky. I will let other people work out what I mean. I respect the fact that he is representing his company but I do not take it too well. We have a job to do and I have outlined from the start what that job is. At its core, it is about the preservation and protection of our identity as an independent country. It is about our culture, our music, our news, our current affairs and wanting to protect democracy. I do not believe that is the best way to go. That might be better for the arguments with RTE, but not here.

Deputy James Lawless: I realise we are under pressure for time. I wish to make a number of points. Some of them may be related and some may not, but I will try to cover them as quickly as possible. The scenario today reminds me a little of a court, when the prosecution

has made its case over the course of the day. The pendulum swings and there is another day for the defence. We have had that. It is in reverse order on this occasion. RTE appears to be in the dock somehow in the submissions made, but that is to be expected given the nature of the hearing today. It is one-sided.

In terms of content, there have been references to public service broadcasting and having to carry it. I understand that they must carry it and offer terms and concepts, but it can work the other way as well. Recently, I was in the market for my home TV package. I rang around and talked to different providers. I cannot remember whom I was talking to on one call, and it is probably just as well, but the person mentioned that certain channels would not be available if I was on another package or went with another platform. One of the channels I was going to lose was Sky Atlantic, which was a source of concern because it is a good channel. The predominant programme at the time was "Game of Thrones", but the call centre adviser helpfully pointed out that the series was about to come to an end. It was happy days because I could move off the platform, lose the programme and by the time two years went by and a new series was made, move back again. It can work both ways. It is not just RTE that is trying to get the number one spot, Sky Atlantic can be in the mix as well fighting for coverage. It can dictate a viewer's choice of platform.

Another point was mentioned by Deputy Dooley, and Mr. Moat talked about it as well. I wonder if we could be missing a trick in this debate. One of the issues that comes up is predominance and Mr. Wheeldon - I will return to his other comments shortly - spoke about the priority in terms of programming on the schedule. RTE One is number one at present. Could it be number 501 if it does not play ball, dirties its bib or things do not work out so well commercially? What implications will there be and what dire consequences will that have for the company?

If I talk to my teenage children about the broadcasting schedule and ask them if they want to look at the TV guide when I buy the newspaper at the weekend, they look at me as if I have two heads. They do not understand the concept of a TV scheduling guide or how that works. They are buried in their iPhones, iPads or other electronic devices consuming media. Some of those have been mentioned, such as Netflix, and are well understood, but there is also YouTube and a variety of other platforms that I will not try to name. That is relevant today and tomorrow and probably will be ten years hence. As the discussion on our consumption patterns moves on I wonder how relevant the schedule will be. We might be getting tied in knots about something that might not be as relevant a couple of years from now.

Mr. Wheeldon spoke on behalf of Sky international, I presume. It was not Sky Ireland in any event. He made a number of comments and I agree with what Deputy Dooley said. He seems to be teeing up a David and Goliath battle between RTE, the State broadcaster in Ireland, and Sky international and the great power that colossus could bring to the table. That is not a great way to approach a legislative assembly. As Deputy Dooley said, if we were to take that speech verbatim we might as well shut up shop here, fold the tent, walk out the door and give up on the whole thing. It was a draconian spectacle. It reminds me of advice I got when I first got involved in politics - when one is having a debate or interaction with somebody who is in a position of influence, one is there to win the vote not the argument. That might be a good point for everybody to take away from this meeting.

On content, we touched on the idea of whether it is public service broadcasting or public service content. However, there is also content which the public service broadcaster offers and which might not necessarily fit strictly within the definition of public service broadcasting. It

could be quality, sought-after content of a different nature. I note the submission from Screen Producers Ireland, which has a number of concerns about the proposed approach. If I understand matters correctly, its members would be in favour retransmission fees. They refer to things such as the cable copyright exemption and the fact that much of the content its members produce is made available through national stations. They would lose out on that revenue or funding income were it not to come to pass.

That brings me to my final question. There is an intuitive attractive argument that if one pays to create something, be it a manuscript, TV programme or piece of music, it is a fundamental concept that one owns that or some right to royalties from it and that if one lets somebody else produce it, be it on a stage, play it at a concert or reproduce it on a TV platform, they should pay for it. That appears to be intuitive. I am not saying that I am taking a position on the Bill, but it appears to be an intuitive argument. To follow through on that, and perhaps I am asking the wrong people and the question should be directed to RTE, where does the money go? If retransmission fees kick in and if we go along with this argument, and there is an instinctive intuitive rationale to that argument, they should carry through to the content creators and producers and the continuation of that indigenous resourcing. Perhaps, in fairness, that is not a question for the witnesses but for the other side of the table, but I have voiced it in any event.

Senator Michael McDowell: I find myself at variance with Deputy Dooley. I am on the opposite side of this. RTE has financial problems and they must be solved. The idea that one part of the resolution is for RTE to tap into the pay TV platforms in Ireland and get an extra bite at the cherry, after receiving over €160 from every taxpayer in the country, is completely unacceptable. It is a question of double payment. We pay RTE €160 per household. For most taxpayers in Ireland it means one has to earn €320 in gross income to pay RTE €160, with the Government taking the other €160 of that €320 to start with. The question of how licence fees are paid or not paid is something we discussed last week and I do not intend to return to it. However, the idea that services such as Sky and the other services represented here should be required to pay RTE for the privilege of carrying its channel on the basis on which they do so at present appears to be completely inconsistent. It is an effort to extract more money from the same product, instead of querying whether the product is viable in its current financial form. Like Deputy Dooley, I support the idea of public service broadcasting but I know, because I have been to TV3's studios as well as those of RTE, that there is a huge job to be done in RTE, which is not to be assisted by throwing lifebelts of a source of funding here or there. It is doing well from the Irish taxpayer.

I pay for the Sky package. I apologise to the other representatives as I do not pay for theirs. Having had three young gentlemen in my house I pay for the full package and get everything. In addition, I am in the happy position that I am also paying the subscription for the old cable TV coming into the house. ITV is on that cable, but it is not on Sky. It is not watched in our house. Nobody even goes hunting for it. The availability of channels, be it on fibre or otherwise, has dramatically improved the TV service to ordinary Irish households. The increase in choice ranging from National Geographic Channel to foreign news channels to arts and culture programmes is hugely beneficial to Irish households. There should be no doubt about that. The viewer's experience is hugely enhanced by TV platforms above the Saorview package, if I may use that term. We cannot be troglodytes - the word "cave" has been used in this context by the former Minister, former Deputy Pat Rabbitte - about this. The world is changing and information is transmitted in very different ways.

When the Minister sent this Bill to the committee for pre-legislative scrutiny, he said that

this is a matter on which there are two sides. I want to make it very clear I am utterly opposed to giving in to RTE in these circumstances. It is a man claiming to be drowning and demanding immediate help when he will not actually swim. I know that is probably politically unwise of me to say, given the dominance of RTE in Irish broadcasting, but I really believe there is nothing to be lost and everything to be gained by a partnership approach to this. I do not believe RTE needs to get into the negotiations in question and I do not in any sense resent somebody telling me that they may play hardball in those negotiations. I know it is not meant as a threat to us.

We can vote whatever way we like in these Houses and do whatever we want. I do not resent it at all. I believe RTE has to be told the blunt truth that it may end up as ITV is in my house - off the screen completely. It may then come whingeing that it needs more money because its advertising has collapsed even further. We will then say it did not make that case a few years ago and that it told us this was easy money and an easy way to keep it solvent. It is not. I am very much of the view that we are failing to grasp the RTE nettle. It is hugely overly costly as a service. It needs to stop looking around for different ways whereby ordinary Irish viewers have to subsidise it and instead get its act together about the €160 and about the €180 million it is getting every year. I will not put it any further. I do not really require any response. I am just saying I am on the side of the witnesses.

Chairman: I invite Mr. Wheeldon to respond. We will wrap up shortly.

Mr. David Wheeldon: I am conscious that my remarks got some attention, and I thank Deputies Dooley and Lawless for that. To be honest, I do not think we are that far apart. I wholly agree with the Deputies' analysis of the issue on the provision of news. We operate a loss-making television news service. We have just invested in a new correspondent in Dublin despite the fact it is a loss-making television news service. We find it very hard to monetise that, especially with the encroachment of the digital platforms, such as Google, Facebook and the others. It is a massive challenge and I wholly understand that. We believe, though, that we are a really strong partner for the Irish public service broadcaster. We also support public service broadcasting in all the markets we are in. We believe in linear television and it is at the heart of our service. We believe in local television, that is, local to the markets and reflecting the culture and the news of those markets. That is what our proposition is built upon. That is what differentiates us from Facebook, Google, Netflix, Amazon and all the rest. We are absolutely there. That is the reason we voluntarily comply with all of the Broadcasting Authority of Ireland, BAI, rules. We have chosen to do that because we recognise it is really important for the consumers in the market we are in.

On a little technical detail, although we do not have quite the same rules around must-carry, we are an open platform. Under European rules, if a broadcaster wants to broadcast on our platform, we have to provide it with the technical services that enable it to do that. That is the point about our platform, which is different from any others in that we are required to be open. I understand the committee members felt that what I was saying was an implicit threat. I apologise. It was not meant as that. I thought they would appreciate some honesty.

The honest truth is we are a pay TV platform. When a customer sits in a Saorview home and decides they want to pay to watch pay TV and they buy Sky, they do not buy Sky to buy RTE. They buy Sky to buy the pay channels. The reality is that if Ireland decides to go down this route, it is setting up a negotiation, as the committee members suggested, between us and RTE, and it has to know what we as a pay operator would do in those circumstances. We cannot pay for something that our customers do not value getting from us and can get for free elsewhere. It

would undermine our fundamental model, not just in this market but in all of our markets. This was not meant as an idea that we were trying to use our power in other markets to influence this committee, merely that, as a pay operator, in any of our markets, whether in the UK, Ireland or Italy, if we paid for free things, we would very quickly end up in the same place as many others, even maybe in RTE's place, and we would be saying this is not sustainable. We have to be honest with the committee.

I genuinely believe that all of us around this table believe in public broadcasting and believe that we can be good partners to RTE. We have put things and want to put more things on the table that will help to address some of the issues committee members are concerned about, but going down this legislative route is preventing us at the moment from proceeding with those negotiations and could end up making the situation worse.

Chairman: I will bring in Mr. Zeff and will then go back to members.

Mr. Jon Zeff: From our point of view, this is not a question around the importance of public service broadcasting. Indeed, I have spent many years of my career thinking about questions in the UK Government around how to ensure the sustainability of public service broadcasting. What we did in our analysis was to look at the practical consequences and risks around the introduction of retransmission fees. We have seen there are a number of quite significant risks around it. In particular, the international experience where retransmission fees exist, particularly from the US but also from markets like that of Italy, is that there are a lot of commercial disputes. In fact, in the US, blackouts of channels from pay platforms are very common as a result, with some 800 blackouts since 2010. Many of the pay platforms in the US, when they pay retransmission fees, add an explicit charge onto their bills for consumers. Members will see on page 5 of our submission that we have pulled out an example of that. We think there is a particular risk that this will be seen, by most consumers, as a double charge for channels they have already paid for. This risks undermining support for the licence fee and the public service broadcasting system it is supposed to support.

Modelling of the outcome is almost impossible to do. In fact, Mathew Horsman of Mediatique said very clearly when he was before this committee earlier in the year that it is impossible in practice to predict the outcome of the commercial negotiations. When the Department for Culture, Media and Sport looked at this in the UK and looked at the modelling of potential outcomes of commercial negotiations around retransmission fees, it came up with a very wide range of possible results, including substantial payments to the broadcasters, but also including the possibility that it would end up with substantial payments from the broadcasters to the platforms. The other point to make is that retransmission fees, as we know, are incompatible with the current must-carry framework, which means they put at risk the universal availability of public service platforms, which I would see as one of the key fundamental principles that underpins public service broadcasting.

Those are essentially the reasons the UK Government rejected the introduction of retransmission fees, having considered this over a two-year process through consultation, consideration and independent analysis. It felt it would not be a practical way of supporting the future of public service broadcasting.

Deputy Timmy Dooley: I thank Mr. Zeff. That clarity is helpful. I think there is a willingness, and I would like to see, a greater partnership approach. On a slight reference to what Senator McDowell has indicated, as a society and as a Legislature, we need to define what it is we want our public service broadcaster to be. While I do not disagree with everything Senator

McDowell has said, RTE carries two orchestras and TG4 is run separately. It has given us the explanation behind this, although I still think it has a long way to go to get a model. We have taken its representatives through those issues, we have roasted them and we will continue to do that to get them focused. However, there is the elasticity argument that if one is trying to extract more and still expect the public service broadcaster to do it at the same cost, then at some point it snaps. That is where we have a fundamental problem. It is not all about getting more money to keep doing the same thing. RTE has to change and we need to see that. That will be probably be part of our dialogue with it during our next engagement. To the greatest extent possible, we also have to try to understand where there is potential for increased moneys to support public service broadcasting in a very changed environment. I am not guided by anything that RTE has said, but by what the BAI has said. I put a lot of stock in what the BAI has said through the various different reports which it has commissioned and the presentations it has made to the committee.

Deputy James Lawless: I thank all the witnesses. It has been a very useful session and we have had a very useful dialogue. I particularly thank Mr. Wheeldon for his reply to the points which I raised. That was important. Mr. Hanway mentioned Oireachtas TV, which Virgin Media must take credit for. I commend that. We often get feedback that people watch it at all kinds of different hours of the day, but it is available to them. I am not sure how much money in transmission fees could be gained from it were that to be attempted, if any. Indeed we might have to pay people to watch it.

Mr. Tony Hanway: I am sure ratings are rising as we speak.

Deputy James Lawless: It is a good service and I thank Mr. Hanway for that.

Deputy Timmy Dooley: Perhaps they are watching in Mr. Hanway's head office.

Senator Michael McDowell: I think we have to take on board the last point which was made. There is an obligation to carry channels and an entitlement to pay, but there is no resolution system provided by statute. We forget that under copyright law in respect of recorded music, for instance, there is a system of working out what royalties are payable. There is a mandatory system whereby one can use recorded music and receive what is effectively a compulsory licence on the basis that somebody arbitrates the amount. I do not see such a system being put before us here. The two principles, that one must do something and that one must come to an agreement with somebody to pay for it, are inconsistent. We must make a choice. If there were to be such a system, there would have to be a mandatory arbitration system. Who will decide this? Will it be the Broadcasting Authority of Ireland, some Minister or some tribunal? I do not see it being a good idea.

Deputy Timmy Dooley: Just to get clarity from each of the platform providers, as I understand it, the legislation in respect of RTE talks about "must offer" and "must carry". There are certain opt-outs there. Can somebody on behalf of each group say whether they have to carry?

Chairman: I will bring in the witnesses after. Will the Deputy hold on to that question for a moment? If I may ask one question myself, there is an argument put out that if there were transmission fees, the market would not allow the providers to increase their-----

Senator Michael McDowell: Elasticity is one of the requirements.

Chairman: For a consumer that is the argument. The marketplace will not let the providers increase the price charged to consumers for the packages. The witnesses made reference to

Italy, where that is bypassed. The representatives from Sky said that it is possible to mitigate the impact of the transmission fees by putting in a Saorview equivalent box. Will the witnesses respond to the argument that the market would not let them increase prices and then to the last points raised by the members? I believe Mr. Buckley wanted to come in.

Mr. J.D. Buckley: Will I come in now?

Chairman: Yes. Mr. Buckley can speak on any or all of those. We will wrap up after this.

Mr. J.D. Buckley: To respond to Deputy Dooley, we are all in agreement - certainly we in Sky are - that we need a healthy public service broadcasting ecosystem. That is our belief right around the group. To respond to Deputy Lawless, I hope we will be able to win him back as a customer. I thank Senator McDowell for his custom. It is appreciated. It is illustrative of the fact that, as a pay television provider, we fight for customers every day of the week. There are wins and there are losses, but every customer chooses to buy a television package for a reason. He or she spends hard-earned money to buy a television package because he or she wants more than what is freely available. The likes of YouTube, Facebook and Amazon were mentioned during the session. They are all operating in this market. I do not know, but I cannot imagine they are beating a path to Montrose to do deals. I do not know if they are, but everybody on this side of the table has made commercial-free contracts with RTE. We have its channels on all the Sky platforms and are trying to get them on our newly launched Now TV platform. Everybody here wants RTE, TV3 and TG4 to be part of a vibrant ecosystem, which I do not think those tech giants will provide.

As we mentioned at the beginning, we would like to work on a partnership basis with RTE. We have met with RTE to discuss various things, including helping it to target advertising more effectively through our AdSmart system, making RTE Player available on the Now TV platform, and putting RTE box sets in the Sky Store where they can be monetised. We have also had discussions about commissioning productions together. There are many opportunities to work together, but as we have referenced, going down this route would not be helpful for the overall relationship.

Deputy Timmy Dooley: However, the providers must carry RTE channels.

Mr. David Wheeldon: We are an open platform. Anyone who wants to broadcast on our platform can do so. In effect we have a must-carry provision. It is not a specific must-carry, but because-----

Deputy Timmy Dooley: It is in a negotiation environment.

Mr. David Wheeldon: Under EU law, we cannot throw a channel off our platform. We cannot prevent a channel from using Sky to access our customers.

Mr. Glen Killane: I will clarify the must-carry situation, but first, without wanting to rain on Mr. Hanway's parade, Oireachtas TV is also available on Eir. I am sorry.

Mr. Tony Hanway: However, nobody is watching that.

Mr. Glen Killane: It is the fastest growing provider. One should never miss an opportunity when it presents itself. I would like to support some of the comments from my colleagues in the sector, in particular the comment on news coverage and the dangers of fake news. I am in a relatively unique position in having worked for RTE for the guts of the past 20 years. I am a

very passionate supporter of public service media, as can be imagined. However, I feel that this measure would be hugely detrimental to RTE at this time. It would be hugely difficult to implement. One of the core concepts which was mentioned by our colleagues is universality. If that is called into question, the whole premise of public service media is called into question. If it is not universally available, it would be hugely detrimental to RTE and to the media landscape in Ireland. That core concept of universality needs to be borne in mind. We all want to work with RTE. It is a given. It is a hugely important broadcaster in this territory. We want to support RTE but we feel fundamentally that this is the wrong approach to take. I will leave it at that.

Chairman: I thank Tabitha Elwes and Jon Zeff from CIL Management Consultants, who have to leave us, as does Mr. Wheeldon. I thank them for joining us this evening.

Deputy Timmy Dooley: I hope they are not travelling with Ryanair, speaking of the must-carry option.

Mr. Liam O'Brien: To reiterate, Vodafone is a strong supporter of public service broadcasting. Like all of our partners in the industry who are here today, we firmly believe in the value of public service broadcasting. To answer Deputy Dooley's question about must-carry, we have a must-carry obligation. To return to his previous question in respect of prominence and our discretion, the legislation requires that we display the channels with prominence. At our discretion we display it at 101, so it is actually top of the list. That is where the discretion comes in, in case there was a question on that.

I am reliably informed by my colleague that we not only carry Oireachtas TV but also the committee rooms, so there is more value in our bundles. As the newest entrant to the market, we would welcome the members' business. Joking aside, we have already mentioned that we have many existing partnerships with RTE which generate commercial value for RTE.

Senator Michael McDowell: I have a question for Mr. O'Brien. Does he believe that UTV Ireland suffered from being down that pecking order?

Mr. Liam O'Brien: I am not sure whether we have any statistics.

Senator Michael McDowell: I believe it did. It was not top of the charts.

Mr. Liam O'Brien: Finally, there are many commercial opportunities for us to generate value for the industry, for ourselves and for the public service providers. The industry is evolving, as one of the Deputies mentioned. We are all required to innovate and to find new ways of satisfying customer demand.

Chairman: I thank the witnesses, both for waiting for the first session and for attending and giving us their time. It was very useful engagement for the members. I propose that the committee publish the opening statements and the submissions received in respect of this meeting. Is that agreed? Agreed. The meeting is suspended for five minutes and then we will resume in private session.

Sitting suspended at 7.39 p.m. and resumed in private session at 7.44 p.m.

The joint committee adjourned at 8 p.m. until 10 a.m. on Thursday, 5 October 2017.