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## **Bauer Media Ireland Response to the Department of Enterprise, Trade and Employment's public consultation on the European Commission's Proposal for a Data Act**

This submission provides comments from Bauer Media Audio Ireland ("Bauer Media"), to the Department of Enterprise, Trade and Employment, on the European Commission's ("Commission") proposal for a Data Act<sup>1</sup>.

Bauer Media is a leading commercial radio broadcaster, reaching 1.73 million weekly listeners. It is home to some of Ireland's best-loved commercial radio stations, including Today FM, Newstalk, SPIN 1038, SPIN South West, and 98FM. Bauer also operates Off the Ball, a multiplatform sports media brand, as well as GoLoud, the one destination app for audio content, and audioXi, Ireland's largest digital audio advertising exchange. Bauer Media supplies a network of news services to the entire independent commercial radio sector reaching 2.4 million people daily, almost double the reach of the state broadcaster RTE. Bauer Media employs over 200 people, and has directly raised over €1 million for charitable causes over the last 3 years on top of supporting many more charities by subsidising advertising campaigns, in the Republic of Ireland.

Bauer Media is a division of Bauer Group, a leading UK and European commercial radio broadcaster and digital audio operator.<sup>2</sup>

Bauer Media looks forward to engaging with the Department of Enterprise, Trade and Employment during the course of the adoption, by the Council of the EU and the European Parliament, of the Commission's Proposal for a Data Act.

On 23 February 2022, the European Commission published its Proposal for a Data Act, laying down harmonised rules on fair access to and use of data. The Data Act constitutes a key pillar of the European Strategy for data, aiming to create a single market for data that will ensure Europe's global competitiveness and data sovereignty.<sup>3</sup> Bauer Media welcomes the European Commission's Data Act Proposal whose

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- 1 Proposal for a Regulation of the European Parliament and of the Council on harmonised rules on fair access to and use of data (Data Act) ("Data Act Proposal"), 23 February 2022, COM(2022) 68 final.
  - 2 Bauer Group's broadcast radio, online services, and podcasts reach over 57 million weekly listeners across eight countries. Our radio brands include KISS, Mix Megapol, Absolute Radio, Radio Norge, Radio Expres, Radio Nova, The Voice and RMF..
  - 3 European Commission, "A European Strategy for data", available at <https://digital->

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purpose is to “maximise the value of data in the economy by ensuring that a wider range of stakeholders gain control over their data and that more data is available for innovative use, while preserving incentives to invest in data generation.” Due to its horizontal nature, this instrument does not primarily concern the radio / audio industry, but it can bring benefits to listeners and, by extension, to radio broadcasters.

### Benefits that the Data Act can deliver to the digital audio ecosystem

#### *Voice assistants rightly fall under the scope of the Data Act*

The Data Act will apply to, among others, providers of voice assistants, smart speaker manufacturers and manufacturers of in-car infotainment systems. Such actors have access to valuable user data, including data about the users’ radio / audio consumption. As regards virtual assistants specifically, the Data Act Proposal correctly recognises that they “play an increasing role in digitising consumer environments and serve as an easy-to-use interface to play content, obtain information, or activate physical objects connected to the Internet of Things.”<sup>4</sup> In fact, the number of voice assistants in use worldwide is expected to reach 8.4 billion units by 2024, thus exceeding the world’s population.<sup>5</sup> In view of the above, the Commission rightly envisages that voice assistants should be covered by the data access right established in the Data Act.<sup>6</sup>

#### *The Data Act can increase transparency and promote competition in data-driven markets*

Bauer Media believes that the rules established in the Data Act will benefit European (including Irish) audiences. The Data Act will impose transparency requirements on manufacturers of Internet of Things (“IoT”) products and related services, which will enable users to be informed about the nature and volume of the data (likely to be) generated from their use of the product or related service, as well as the data-related practices of the manufacturer of the product or the provider of the related service with regards to these data (for example, whether they intend to use the data themselves or allow a third party to use the data, and if so, for which purposes). The Data Act will also give users of IoT products or related services greater control over their data, as it will establish the right to obtain access to such data and to request

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[strategy.ec.europa.eu/en/policies/strategy-data](https://strategy.ec.europa.eu/en/policies/strategy-data).

4 Data Act Proposal, Recital 22.

5 See “Number of Digital Voice Assistants in Use Worldwide”, *Statista*, available at <https://www.statista.com/statistics/973815/worldwide-digital-voice-assistant-in-use/>.

6 See Data Act Proposal, Article 7(2).

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that the data be made available to a third party of their choice. Bauer Media also supports the requirement imposed on data holders to only use any non-personal data generated by the use of their product or service on the basis of a contractual agreement with the user.<sup>7</sup> This obligation enhances the users' data autonomy and is privacy-friendly.

While the Data Act will primarily benefit listeners, this instrument can also indirectly benefit other stakeholders in the radio / audio ecosystem, including radio broadcasters. This is because, under the Data Act, users can request data holders to make the data generated by their use of a product or related service available to a third party. This is expected to promote competition; by facilitating access to valuable data, radio / audio service providers can innovate and serve the needs of their audiences by offering a variety of services tailored to the listeners' preferences. Moving forward, the Data Act should not interfere with the ability of the radio industry to innovate in the advertising space or to make digital audio less attractive to advertisers.

*The Data Act should not undermine the obligations that the Digital Markets Act ("DMA") will impose on gatekeeper platforms*

Bauer Media supports the Commission's decision to exclude undertakings that have been designated as gatekeepers under the European Union's ("EU") Digital Markets Act<sup>8</sup> from the pool of the eligible third parties that may receive data upon a user's request. Gatekeepers already benefit from data-driven advantages. Hence, providing them with access to additional data – especially considering that such gatekeepers may solicit or incentivise users to request a data holder to transmit data to them – would only intensify such data-driven advantages.

Finally, Bauer Media strongly supports the Commission's approach in the Data Act Proposal to ensure that this instrument will not interfere with EU legislation that will have been applicable by the time the Data Act becomes applicable. Particularly with regards to the DMA, Bauer Media agrees with the Commission's stance that provisions included in the Data Act regarding data access, such as the requirement imposed on data holders to give data recipients, upon a user's request, access to data generated by the user's use

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<sup>7</sup> See Data Act Proposal, Article 4(6).

<sup>8</sup> See European Commission, "The Digital Markets Act: ensuring fair and open digital markets", available at [https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en).

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of an IoT product or related service on fair, reasonable and non-discriminatory ("FRAND") terms, will not change the obligations regarding data portability and data access imposed by the DMA on designated gatekeepers (which will be required to grant access to data free of charge).<sup>9</sup>

### The way forward

The Commission's Data Act Proposal will now be debated in the European Parliament and the Council of the EU, before it is adopted and becomes applicable. It is crucial that, during the legislative process, the text of the Data Act is not altered in a way that would water down or in any way conflict with the obligations imposed on (certain) undertakings by other EU regulatory instruments. In particular, it is important that the final text maintains the exclusion of undertakings designated as gatekeepers under the DMA from the scope of the right of users to share data with third parties (Article 5 of the Data Act Proposal).

Overall, access to valuable data is key to ensuring that the digital radio / audio ecosystem will unlock its full potential to the benefit of European (including Irish) audiences – and the Data Act Proposal is moving in the right direction.

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<sup>9</sup> See Data Act Proposal, Article 12(3).

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