



Minutes of Meeting of the Authority of Broadcasting Authority of Ireland

Date 15/07/2013 **Time:** 9.30am **Venue:** 2-5 Warrington Place, Dublin 2

Minutes

Attendance

Authority: Bob Collins, Paula Downey, John Waters (items 1, 2, 4-7), Michael Moriarty, Colum Kenny, Michelle McShortall.

Apologies: Siobhán Ní Ghadhra, Maria Moloney, Larry Bass

Executive: Michael O'Keeffe, Celene Craig (items 1, 2, 4-7), Aoife Clabby, Margaret Tumelty, Stephanie Comey, Freda Comiskey, Andrew Robinson (item 2d), Anne O'Brien (item 3), Clare O'Sullivan (item 3)

1. Minutes of Previous Meeting and Matters Arising

Minutes of the previous meeting of the Authority, held on 10th June 2013, were approved by the Members and signed by the Chairperson.

a. Commercial DTT

Members were advised that work was progressing on the review of Commercial DTT and that a report and findings would be presented at the September meeting of the Authority.

b. PSB: Five Year Review of Public Funding

Members were informed that a memo from the Department of Communications, Energy and Natural Resources (DCENR) regarding the five year review of public funding was scheduled for presentation to Government on July 16th. It was expected that a Ministerial announcement regarding the outcomes of the review and the Government's deliberations would be made on July 17th, after which the BAI would publicise its report and findings.

c. Broadcasting Funding Scheme: Statutory Review of Sound & Vision II

Members noted that there had been a slight delay in relation to finalising the report on the statutory review of Sound & Vision II but that it would be submitted to DCENR before the end of July. It was further noted that, once finalised, the key issues and recommendations arising from the report would contribute to the development of a new draft Scheme, scheduled for consideration at the October meeting.

d. BAI and BFS Financial Statements 2012

Members were informed that the Comptroller and Auditor General had raised a small number of queries in respect of the financial statements 2012 and that that these had been responded to. However, a final sign-off on the accounts was still awaited.



e. **BAI Futures Event**

Members were informed that dates in late October were now being considered for the first 'BAI Futures' event and that a proposal in this regard would be brought to the September meeting of the Authority. Members requested that the Executive would identify and circulate a date for the event at the earliest opportunity.

2. **Policy**

a. **PSB: Sectoral Impact Assessment/Public Value Test**

[REDACTED] changes [REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

b. BAI Strategy

A short note was presented to the Authority outlining activities which had taken place in relation to the development of the new BAI Statement of Strategy. Members were informed that both the Contract Awards and Compliance Committees had expressed their satisfaction with the draft Strategy and that no suggestions for amendment had been made. Members were asked for their views in relation to aspects of the public consultation on the draft strategy, as required under section 29(5) of the Broadcasting Act 2009. The date for the launch of the consultation process was agreed, in addition to the timeframe for receipt of responses. It was noted that a summary of responses would be brought to the November meeting for the Authority's consideration.

c. Code of Programme Standards Review –Proposed Approach

Members considered an executive note setting out the proposed approach to the review of the BAI Code of Programme Standards, as required under section 45(3) of the Act. The Authority had regard to the proposed project scope, approach and timeframe for completion of the work. The proposal to incorporate matters of privacy, incitement to crime and regulations for broadcasting services which promote the interests of an organisation, into the revised Code, were noted.

Members had regard to aspects of the proposed approach, in particular the nature of the proposed engagement with broadcasters and the manner in which public consultation on the draft Code would be undertaken. It was noted that the approach to consultation would seek to maximise public awareness of and input into the development of a revised Code. Arising from the discussions relating to the development of a revised Code, the Authority considered a number of issues more broadly, as follows:

- The degree of engagement by members of the public with issues pertaining to the Code of Programme Standards, specifically via the complaints process;
- The perceived need for enhanced engagement among viewers and listeners with the complaints process;



- The relevance of the contextual factors contained in the current Code and the concept of community standards;
- The role of broadcasters in implementing a Code of this nature and;
- The potential value in having a comprehensive broadcasting Code, incorporating all of the statutory requirements, at some point in the future.

Following lengthy discussion, the Authority was satisfied to approve the proposed approach to the development of the Code. In this regard, it was agreed that the focus of the workshop with broadcasters would be broadened to include discussion in relation to community standards and their application in a broadcasting context. A number of members indicated their interest in attending this workshop. The Authority further approved the inclusion of privacy, incitement to crime and regulations for broadcasting services which promote the interests of an organisation, in the revised Code.

d. Code of Fair Trading Practice: RTÉ

Members considered a note detailing the Executive's review and assessment of RTÉ's draft Code of Fair Trading Practice for Television. The review and assessment were undertaken on foot of a Ministerial request, further to section 112(7) of the Broadcasting Act 2009.

Following a review of the relevant documents, the Authority expressed its satisfaction that:

- (i) the draft Code met the requirements of the 2009 Act, and
- (ii) in broad terms, the draft Code had addressed almost all matters as outlined in the BAI Guidance

However, the Authority agreed to make a number of recommendations to the Minister in respect of the draft Code.

The Authority expressed its disappointment with the manner in which the Code had been drafted, rendering it difficult to comprehend. While recognising the need for appropriate contractual clarity, it was recommended that RTÉ should be encouraged to write the Code in a more readable form, to facilitate ease of use.

In considering the provision relating to exploitation of secondary rights and the concerns of Screen Producers Ireland on the matter, the Authority was satisfied that the provision, as drafted by RTÉ, was reasonable and would not erode the rights of the producer. However, the Authority agreed with the view that the notification of the essential key terms should be for information purposes only and not as a basis for further negotiation between a producer and RTÉ. Accordingly, the Authority was satisfied to approve a recommendation to the Minister that this provision be amended, such that a producer would only be required to



notify RTÉ of the essential key terms on conclusion of a deal with a third party, and not in advance of the deal, as proposed by RTÉ.

In considering the provision relating to the acquisition of secondary rights, the Authority agreed that as drafted, this provision had the potential to preclude a producer from negotiating contracts with third parties on terms that are less favourable than those offered to the producer by RTÉ. It was agreed that the provision was in conflict with the BAI Guidance and that a recommendation should issue to the Minister stating that this provision required amendment, to bring it in line with BAI Guidance.

e. Rule 27: Referenda Guidelines

Members were asked to consider draft Referendum Guidelines in advance of the forthcoming referenda on the proposed abolition of Seanad Éireann and the introduction of a Court of Appeal. The Authority noted that the main change in the Guidelines related to the provision of additional information in respect of the allocation of air-time.

Following a broad-ranging discussion on the Guidelines and their applicability in the context of the forthcoming referenda, it was agreed that the 'General Considerations' section of the Guidance would be expanded, encouraging broadcasters to cover the referendum campaigns as comprehensively as possible and to seek out the widest range of opinions on the proposed constitutional amendments. Furthermore it was agreed that this section should encourage an approach to the debate which would be reflective of the complexity of the constitutional issues under discussion.

3. Contractual Matters

a. Licensing: Ratification of Contract Award Committee's Decisions

In their capacity as members of the Contract Awards Committee, Celene Craig and John Waters declared an interest in the item under discussion and recused themselves from the meeting.

Members were presented with the recommendations of the Contract Awards Committee (CAC) in respect of five radio contractors whose licence applications were assessed through the fast-track process. The Authority was asked to ratify the recommendations of the Committee, in accordance with section 67(8)(c) of the Broadcasting Act.

The Authority ratified the CAC's recommendations in respect of Galway Bay FM, Clare FM, South East Radio and Tipp FM.



In the case of FM104, a concern was raised by the Authority that derogation in respect of news and current affairs had been sought by the contractor and authorised by the CAC. It was the Authority's view that such derogation appeared to require the authorisation of the Authority under section 39(3) of the Broadcasting Act and that the statutory provision could not, in effect, be bypassed through the contract awards process under section 67(8) of the Act.

Following discussion it was agreed that it would be necessary to seek legal clarification on the matter and accordingly, further consideration of the CAC's recommendation in respect of FM104 was deferred. Given the expiry date of FM104's current contract, the Authority approved a contract extension for the service until October 30th to facilitate legal clarification and engagement with the contractor on the matter.

4. Organisational Matters

a. Work Plan 2013: Mid-Year Review

The Chief Executive presented a mid-year update to the Authority on the project and operational plans, priorities and timelines for the BAI Workplan 2013. An overview of the six priority areas of work was provided, together with a progress report on various project and operational areas across the organisation. It was noted that a number of major pieces of work had reached completion and that the organisation was on-track to a greater extent due to improved planning, increased productivity, confirmation of the retention of outsourced positions and the flexibility provided by the matrix organisational structure.

The Authority expressed its satisfaction with progress to date and recorded its thanks to staff members for their efforts.

b. BAI and BF Re-forecasted Budget and 3 Year Estimates 2014-2016

Members were presented with the draft three-year statutory estimates for the BAI and the Broadcast Fund, as considered by the Finance Audit and Risk Committee at their meeting on July 9th. Members were provided with an overview of the budgeting process, which also included a re-forecasting exercise to year end.

It was noted that BAI expenditure was projected to reduce on an annual basis over the estimate period. Levy amounts chargeable to broadcasters were also noted and the Authority welcomed the closer alignment between operational expenditure to date and the amount levied on the industry. A number of minor clarifications were sought and provided in respect of some of the line items in the estimates.



Members then considered the three-year estimates for the Broadcast Fund. Clarification was sought in respect of increased compliance costs and it was noted that additional compliance audits were envisaged over the three-year period.

Following discussion, the Authority was satisfied to approve the three-year estimates as presented. Members were informed that the estimates would be submitted to the Minister, by September 30th.

c. Finance, Audit and Risk Committee: Terms of Reference

Members considered and were satisfied to approve the revised Terms of Reference for the Finance, Audit and Risk Committee.

5. For Information

a. Contractual Variations: Executive Approvals for Quarter 2

In accordance with the approved decision-making framework, the Authority was notified of a total of seven contractual variations which had been approved at Executive level in quarter two.

b. FAR Meeting Minutes

The minutes of the Finance, Audit and Risk Committee for February 19th and April 26th were noted by the Authority.

6. A.O.B.

a. BAI Web-site

Arising from the discussions in relation to the review of the Code of Programme Standards and the workplan 2013 and reflecting points raised at previous meetings, it was agreed that the usability of the BAI web-site from the public's perspective merited review, particularly in the contexts of complaints and how well the web-site portrays the organisation more generally. In that regard it was noted that planning had commenced in relation to re-designing the site and that a tender process was envisaged. It was agreed that the tender document for the re-design of the site would be circulated for members' views. It was further noted that a two-minute animated film, explaining the role and function of the BAI was nearing completion and would be uploaded to the web-site in due course.



b. Consumer and Competition Bill

Members were informed that some aspects of the media mergers provisions of the Consumer and Competition Bill had been the subject of informal engagement between the BAI and DCENR. In particular, the Department had sought the views of the executive concerning the procedural aspects of the arrangements proposed in respect of the BAI's functions pursuant to the draft provisions of the Bill. Furthermore, the executive had been advised that publication of the Bill was expected before year end.

7. Date of Next Meeting

The next meeting of the Authority will be held on 2nd September 2013, at 9.30am in the BAI offices.

**Bob Collins,
Chairperson**

9th September, 2013