



Minutes of Meeting of the Authority of Broadcasting Authority of Ireland

Date 14/10/2013 **Time:** 9.30am **Venue:** 2-5 Warrington Place, Dublin 2

Minutes

Attendance

Authority: Bob Collins (items 1-4c; 5-8), Larry Bass, Paula Downey, Colum Kenny, Michelle McShortall, Maria Moloney, John Waters (items 1-2; 4-8).

Apologies: Siobhán Ní Ghadhra, Michael Moriarty.

Executive: Michael O'Keeffe, Celene Craig (items 1-2; 4-8), Aoife Clabby, Diarmaid Breathnach, Margaret Tumelty, Neil O'Brien, Ciarán Kissane, Anne O'Brien (item 4d), Ann Travers (item 4d), Andrew Robinson (items 2c and 4).

1. Minutes of Previous Meeting and Matters Arising

Minutes of the previous meeting of the Authority, held on 9th September 2013, were approved by the Members and signed by the Chairperson.

a. Joint Oireachtas Committee on Transport and Communications

Members were informed that a letter of invitation had been received from the Joint Oireachtas Committee on Transport and Communications for representatives of the BAI to present to the Committee on the outcomes of the BAI's five-year review of public funding for public service broadcasters. It was noted that the Chairman, CEO and Deputy CEO would appear before the Committee on 13th November.

b. Financial Statements

It was noted that the BAI and Broadcasting Fund Financial Statements 2012 had been approved by the Comptroller and Auditor General and that a final audit cert in respect of both statements was awaited.

c. Sectoral Impact Assessment

Members were informed that no update had been received from the Department of Communications, Energy and Natural Resources (DCENR) in respect of the Sectoral Impact Assessment conducted by the BAI on proposed changes to RTÉ 2's schedule.

d. Three-year estimates

Members noted that the organisation's 3-Year Estimates had been submitted to DCENR, in accordance with section 37(1) of the Broadcasting Act.

e. Contract Awards

Members were informed that four contracts for ten-year sound broadcasting services had been signed in the previous month and that a further contract signing was anticipated in the week subsequent to the Authority meeting.



f. Broadcasting Funding Scheme: Statutory Review

Members were informed that the Statutory Review of the Broadcasting Funding Scheme, which had been submitted to the Minister for Communications, Energy and Natural Resources at the end of July, had not yet been laid before the Houses of the Oireachtas.

2. Policy

a. Review of Commercial DTT

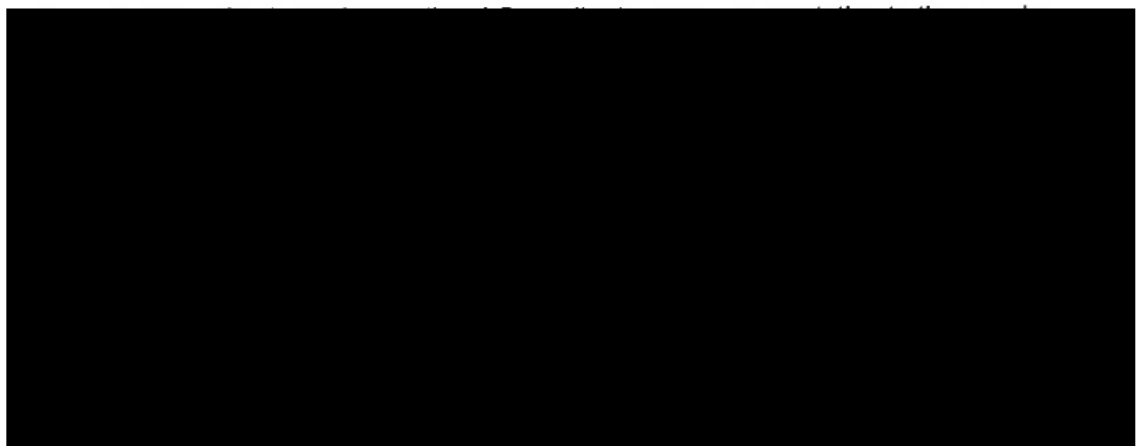
Having given initial consideration, at its September meeting, to the report on the Review of Commercial DTT, undertaken by Oliver & Ohlbaum Associates Limited (O&O), the Authority was given a detailed presentation on the outcomes of the review by representatives of O&O.

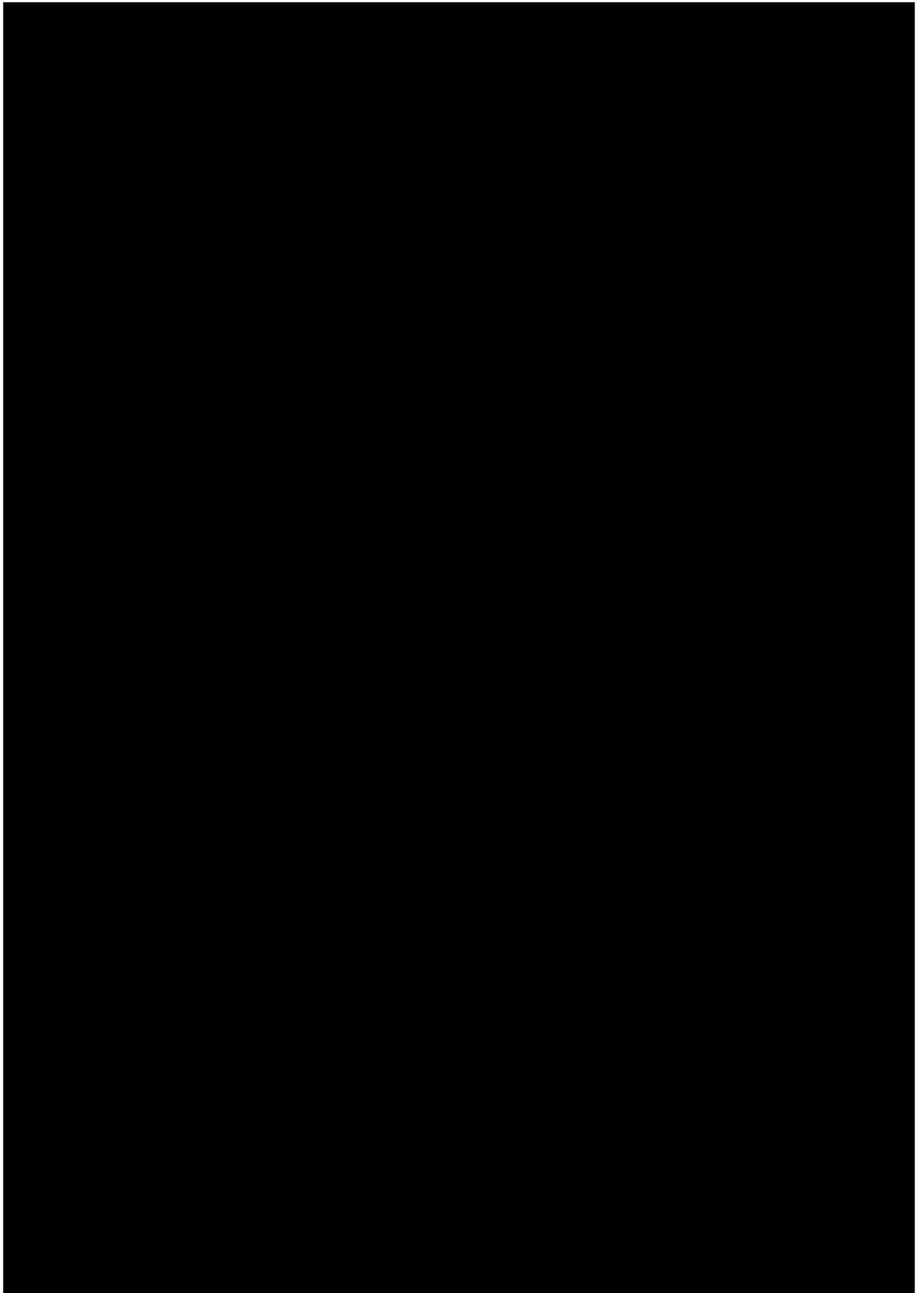
As part of their presentation, O&O set out a range of contextual factors which formed the basis for modelling a number of possible scenarios in respect of commercial DTT. The findings in respect of each possible scenario and the related impacts and implications were presented to the members. In addition, a range of other concerns relating to the wider broadcasting landscape, transmission, funding and policy issues were outlined.

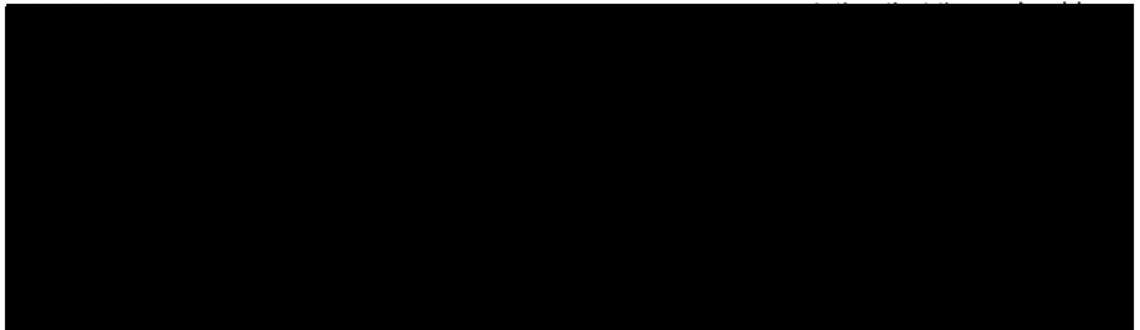
Members of the Authority sought clarification and further elaboration on a number of items highlighted in the report. Following detailed and lengthy discussion, the Authority was satisfied to concur with the findings and recommendations of the report prepared by O&O.

Being mindful of the Authority's role in advising the Minister in respect of commercial DTT, it was agreed that, in order to assist with further consideration of policy concerns arising from the report, a paper would be drafted by the Executive, drawing together the range of issues discussed. It was agreed that this paper would be prepared for discussion by the members at their November meeting.

b. PSB: Annual Review of Public Funding-RTÉ and TG4







c. Compliance and Enforcement Processes and Procedures

Members were presented with the final Compliance and Enforcement Policy for ratification; process maps governing the statutory processes by which investigations are undertaken; and draft Rules for the Conduct of Hearings by the Authority, further to sections 51(5) and 54(8) of the Broadcasting Act, for consideration and approval.

With regard to the Compliance and Enforcement Policy, members noted that a number of minor revisions had been made to the sections concerning findings of a 'breach' and 'non-compliance' and mandatory disclosure of non-compliance, on foot of advice received. It was suggested by the members that the policy should be reviewed again to ensure consistency in the use of the terms 'BAI' and 'the Authority', acknowledging the specific roles and functions contained in the policy for the Authority and the BAI as a corporate body. Members also discussed matters concerning the mandatory disclosure of non-compliance and the advice received in applying the terms 'breach' and 'non-compliance'. The existing statutory framework in this regard was discussed and it was agreed that the executive would identify how the statutory provisions might be amended to ensure a more appropriate approach to compliance and enforcement.

Following discussion, the Authority was satisfied to ratify the Compliance and Enforcement Policy, as presented, subject to a review and revision, where appropriate to the terms 'BAI' and 'Authority'. The Authority was also satisfied to approve those elements of the process maps, as they apply to the Authority's functions, subject to refinement and further simplification, if possible.

The Authority then considered the draft Rules for the Conduct of a Hearing. The relative advantages and disadvantages of constituting a hearing panel were discussed by the members. While the principle of providing flexibility was acknowledged, it was felt that, on balance, it would be preferable that the functions of a hearing panel, as set out in the draft Rules, should be conducted by the Authority. It was therefore agreed that the reference to the hearing panel would be replaced with a reference to the Authority.

Subject to this revision, the Authority was satisfied to approve the draft Rules, further to sections 51(5) and 54(8), as set out in the executive note. It was agreed that the revised



rules would be circulated to the members. The next steps in the process, including a broadcaster workshop before year end, were noted.

- d. General Commercial Communications Code: Proposed Approach to Review**
Members considered an executive note proposing an approach to the statutory review of the General Commercial Communications Code. It was noted that section 45 of the Broadcasting Act requires that relevant Codes are reviewed once every four years in order to consider the effect of the Code over the duration.

Members had regard to the proposed phased approach to the review including an initial review of quantitative data in respect of compliance with the Code's provisions; jurisdictional review and analysis; and targeted consultation with stakeholders prior to the development of a draft Code and public consultation process. Members noted the timeframe for the review of the Code and briefly discussed the types of issues which were likely to arise in the context of the stakeholder consultation process.

Following discussion, the Authority was satisfied to approve the proposed approach, budget and timeframe for the review, as set out in the Executive note.

3. Contractual Matters

- a. Licensing: Ratification of Contract Award Committee's Recommendations**
In his capacity as a member of the Contract Awards Committee, John Waters declared an interest in the item under discussion and recused himself from the meeting.

Members were presented with the recommendations of the Contract Awards Committee (CAC) in respect of three radio contractors for four services; Shannonside FM/Northern Sound, Kfm and Spin 103.8. The contractors' licence applications were assessed by the CAC through the fast-track application process. The Authority was asked to ratify the recommendations of the CAC, in accordance with section 67(8)(c) of the Broadcasting Act.

The Authority had regard to the evaluation reports in respect of each Incumbent, which detailed the proposed amended terms to the schedules of their respective contracts.

The Authority was satisfied to ratify the CAC's recommendations in respect of Shannonside FM/Northern Sound, Kfm and Spin 103.8.



4. Broadcasting Fund

- a. **Broadcasting Funding Scheme: Development of a new Programming Scheme**
Members considered a note concerned with the development of a new programming funding scheme to replace Sound & Vision II. A new draft Scheme was circulated to the members for consideration and discussion. The key provisions and scope of Sound & Vision 3 were outlined to the members and it was noted that revisions to the Scheme had drawn on the outcomes of the statutory review process, which had highlighted the importance of flexibility in the planning and operation of any new Scheme. It was further noted that, while seeking to provide such flexibility, Sound & Vision 3 would also have to adhere to the statutory provisions and comply with EU requirements in respect of state aid, a Communication in respect of which is expected to be adopted in the first half of 2014.

Members sought clarification on a range of issues pertaining to the draft Scheme and had regard to the next steps in the process, including plans for a public consultation process and a facilitated engagement with key stakeholders.

Following discussion, the Authority was satisfied to approve the draft Scheme, as proposed.

It was noted that the timeframe for submission of the final proposed Scheme to the Minister for Communications, Energy and Natural Resources was Quarter 1, 2014.

- b. **Sound & Vision: Proposal from the Irish Film Board**
Members considered a proposal received from the Irish Film Board (IFB) requesting derogation from the requirement to submit a broadcaster's letter for film projects and that a broadcaster's letter would be replaced by a letter from the IFB. The rationale for the proposal was considered by the members, specifically the particular difficulties outlined by the IFB in respect of film projects relative to the specific structure of the Sound & Vision Scheme.

Members had regard to the likely challenges that the provision of such derogation could present, in light of the statutory provisions and particularly the competitive nature of the Scheme. It was noted that the proposed Sound & Vision 3 Scheme would introduce increased levels of flexibility in respect of the requirement to submit a broadcaster letter with an application for funding, but that the earliest that this provision could be introduced would be 2015.

Following discussion, the Authority was favourably disposed to recognising the particular issues involved in film funding and to being as flexible as possible in this regard but it determined that it was statutorily precluded from granting the derogation requested and was therefore unable to accede to the request made by the Irish Film Board



c. Sound & Vision II: Proposed Operational Plan 2014

Members considered an executive note proposing funding round structures for 2014. In considering the structure proposed, the Authority had regard to the available funds for the year; the experience of operating three open round structures of Sound & Vision II in 2013; and the likely impact of the decision of the Comptroller and Auditor General in relation to the applicability of VAT to grants awarded through the Scheme.

Following discussion, the Authority was satisfied to approve a round structure for 2014 involving two open funding rounds, operating in the first nine months of 2012, with an indicative allocation of €4.75m per round and a final targeted round, focussing on the formats of animation and education, with an indicative allocation of €1m.

It was agreed that the decision in respect of the approach to the rounds in 2014 would be communicated to key stakeholders prior to its public announcement.

d. Archiving Scheme: Proposals for Funding

The Chairperson declared an interest in the item under discussion and recused himself from the meeting. In accordance with the statutory provisions regarding meetings of the Authority, the members chose Maria Moloney to act as Chairperson for the item.

Members considered a note presenting the outcomes of the assessment process for Round 1 of the Archiving Scheme and the related recommendations of the assessment panel. In addition to an overview of the recommendations made, the note also provided members with details of the applications received and an overview of the assessment process. Members noted the assessment panel's satisfaction that each project recommended for funding met the standard objectives of the Scheme in particular there was a noteworthy level of broadcast material which would be safeguarded by the Scheme that could otherwise be lost.

Following discussion the Authority was satisfied to approve a package of recommendations providing funding of €1.5m to seven projects submitted through the round.

The executive provided members with an overview of the next steps in the process. It was also noted that a further round of the Archiving Scheme would be opened before the end of the year.



5. Organisational Matters

a. BAI Public Conversations

A note setting out some detail regarding the first BAI Public Conversation Event, to be held in early December, was circulated to members for information. It was noted that the event would focus on the topic of programme standards and would coincide with the completion of the BAI National Attitudinal Survey on matters of harm and offence in broadcasting content.

6. For Information

a. Contractual Variations: Executive Approvals for Quarter 3

In accordance with the approved decision-making framework, the Authority was notified of approvals for contractual variations which had been made at executive level during the third quarter of 2013.

b. One Person One Salary (OPOS)

Members were circulated with a copy of correspondence received from DCENR in respect of the One Person One Salary Policy, issued by the Department of Public Expenditure and Reform (DPER) in November 2011. Members noted that a legal view would now be sought, as to the capacity of, and obligations on, the BAI to implement the revised OPOS provisions as set out by DPER.

c. Communicorp Annual Meeting-Report

A report on the annual review meeting held between BAI executive staff and Communicorp representatives was circulated to members.

d. Correspondence from DCENR-5 year PSB Funding Review

A copy of correspondence received from DCENR was circulated to the Authority. Members noted the Department's request, on behalf of the Minister, that the BAI would engage with TG4 with a review to reviewing and commenting on TG4's revised 5-year strategic plan.

e. Protocol for the Use of the Seal-Final version

Members were reminded that in March 2013, on foot of recommendations emanating from an internal audit report, the Authority had approved changes to the protocol for the use of the seal in respect of funding contracts. The revised Protocol for the Use of the BAI Seal, was circulated to members for information.



7. Any Other Business

a. Media Research Funding Scheme

Members were advised that an application to the Media Research Funding Scheme had been received from DCU and consequently Colum Kenny would not be in a position to participate on the adjudication panel for the scheme. John Waters indicated his willingness to replace Professor Kenny on the panel.

8. Date of Next Meeting

The next meeting of the Authority will be held on 18th November 2013, at 9.30am in the BAI offices.

**Bob Collins,
Chairperson**

18th November, 2013