



Minutes of Meeting of the Authority of Broadcasting Authority of Ireland

Date 10/03/2014 Time: 9.30am Venue: 2-5 Warrington Place, Dublin 2

Minutes

Attendance

Authority: Bob Collins, Paula Downey, Colum Kenny, Michelle McShortall, Seamus Martin (items 1-3a, 4), Michael Moriarty, Siobhán Ní Ghadhra (1-3a, 4).

Apologies: Larry Bass, Maria Moloney.

Executive: Michael O'Keeffe, Celene Craig, Diarmaid Breathnach (item 2), Aoife Clabby, Stephanie Comey, Brian Furey (items 1, 2a), Neil O'Brien (items 1, 2a), Anne O'Brien (item 3) Clare O'Sullivan (item 3), Margaret Tumelty.

1. Minutes of Previous Meeting and Matters Arising

Minutes of the meeting of the Authority, held on 3rd February, were considered by the Members. It was requested that the minute relating to the item, 'Section 71 Application', would be amended in order more fully to capture the discussion that took place. It was agreed that the minutes for this meeting would be reviewed for approval at the April meeting of the Authority.

a. BAI Strategy Statement 2014-2016

The Chief Executive informed the Members that the BAI Strategy had been launched by the Minister for Communications, Energy and Natural Resources on February 24th. A brief overview was provided of the content of the Minister's presentation. Members noted that the BAI's 3-year workplan was launched in parallel with the Strategy Statement.

b. Section 71 Content Contract

Members were advised that a content contract, further to section 71 of the Broadcasting Act, had been signed with UTV Ireland Limited.

Members were also informed that a letter had been drafted to the Minister in relation to contracts granted under Section 71 and regulatory issues arising and that this correspondence would be issued to the Minister within the week.

c. Contractual Matters: Phantom 105.2

Members were informed that the Phantom 105.2 service would be re-branded as TXFM and would commence broadcasting as such on March 31st. It was noted that discussions relating to the transition period were still ongoing between the contractor and the BAI Executive.

d. Broadcasting Funding Scheme: Sound & Vision 3 Scheme





e. Authority meeting with RTÉ Board

Members discussed the meeting with the Board of RTÉ, which had taken place on the 3rd of February. Disappointment was expressed with the nature of the exchange and it was agreed that an opportunity to discuss general regulatory matters and to facilitate an exchange of views had been lost. It was agreed that a further opportunity to engage with the RTÉ Board would be welcome while both bodies were still in office, in order to ascertain the Board's views with regard to the regulatory relationship and the media environment more generally. It was agreed that the Executive would explore the possibility of a meeting with the RTÉ Board and that, subject to the meeting taking place, an agenda would be developed.

2. Policy

a. Code of Programme Standards: Draft Code

Members were presented with a draft of the revised Code of Programme Standards for consideration. An overview was provided of the approach to the revision of the Code, the proposed changes made and the rationale for the various amendments. Members had particular regard to the proposed objectives and principles underpinning the Code, in addition to a range of draft rules, drawing on the outcomes of the first two phases of the review of the Code.

Members were broadly satisfied that the objectives and principles proposed were appropriate to a Code addressing programme standards. However, concern was expressed at the provision of detailed rules, which, in the Authority's view, would have the potential effect of narrowing the scope and efficacy of the Code, from the perspective of both broadcasters and citizens. It was noted that the rules proposed related to areas where complaints were likely to arise and to the experience in other jurisdictions. However, Members expressed the view that the draft Code should adhere more closely to the statutory provisions and should be less prescriptive in its approach.

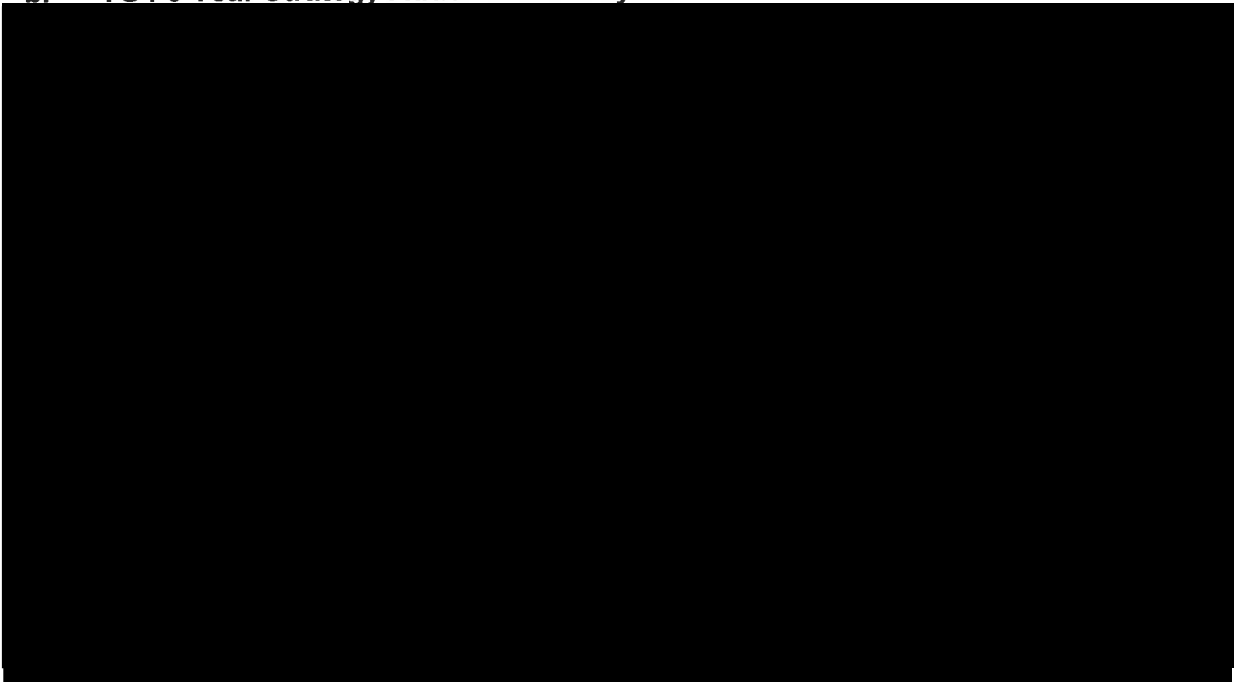
Following detailed and lengthy discussion, it was agreed that the Code of Programme Standards should be a statement of practice, based primarily on a range of principles, which would provide a guide to broadcasters and citizens alike in respect of what the law in the area means and clarity in respect of the nature of harm and offence. It was further agreed that children should be addressed separately in the draft Code, that the relevant statutory provisions would be specifically included in the Code and that some of the terminology used would be further expanded on, as an aid to comprehension.



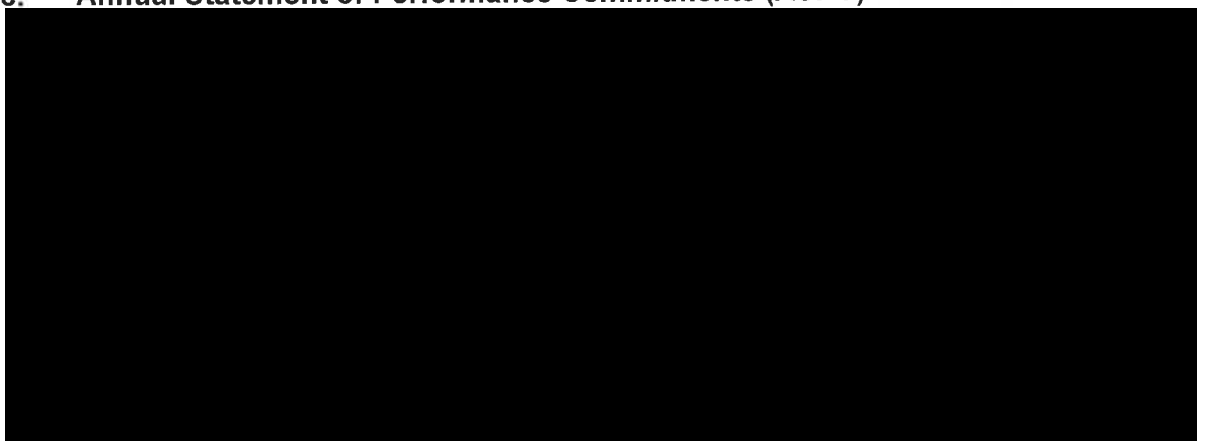
The expectation among stakeholders for a more prescriptive, rules-driven Code was noted by the Members. However, on balance, it was felt that a Code of this nature would benefit from a principles-based approach, facilitating a more comprehensive, encompassing consideration of any complaints received.

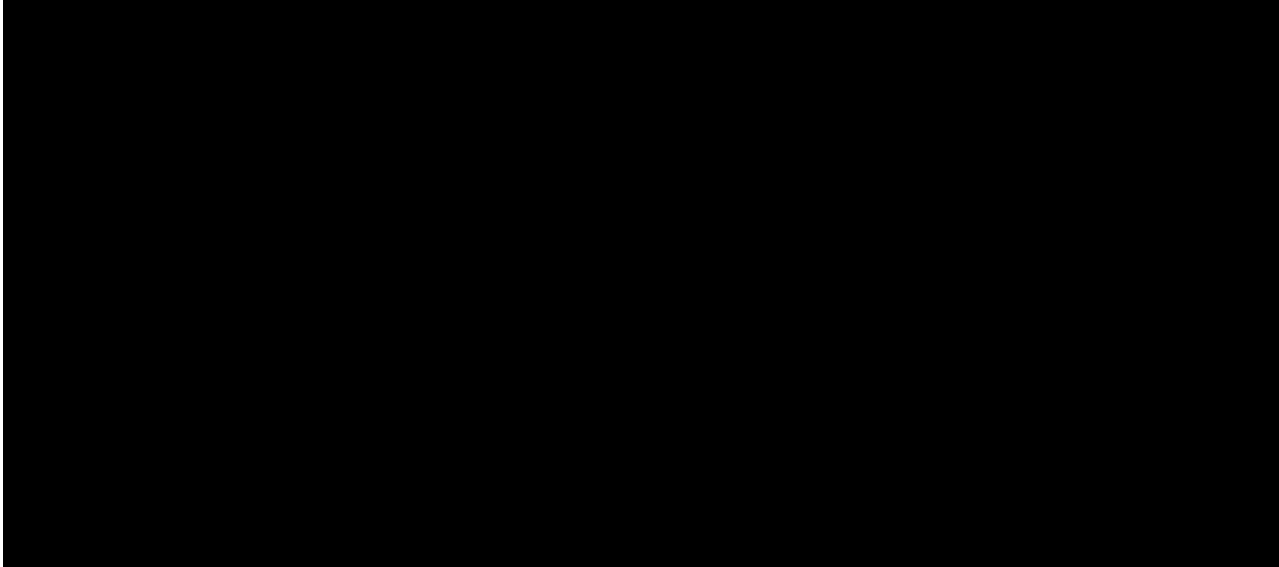
It was agreed that the Executive would undertake a further drafting exercise, having regard to the Authority's feedback, and that a revised draft would be presented at the April meeting of the Authority.

b. TG4 5 Year Strategy Addendum Analysis



c. Annual Statement of Performance Commitments (ASPC) RTÉ & TG4





d. Sectoral Impact Assessment and Public Value Test: RTÉ International

Members considered a sectoral impact assessment (SIA) and public value test (PVT), conducted by Communications Chambers, on behalf of the BAI, regarding the proposal by RTÉ to establish *RTÉ International*, a paid-for Irish video content service for audiences outside of Ireland. Members also had regard to an accompanying Executive note, providing background information and the key issues for decision.

The Authority noted the key points arising from the SIA and PVT specifically, that the impact of the proposal across a range of stakeholders would be limited and generally minimal; that there was a greater risk of negative impact on Irish competitors in respect of sports content; that a potential for implicit cross-subsidy from the licence fee existed; that public value would be created in facilitating the achievement, by RTÉ, of its legislative objectives. The Authority also noted the potential concern expressed that the service could suffer losses, mitigating future potential public value.

The Authority considered a range of recommendations arising from both the SIA and PVT and was satisfied to accept the recommendations outlined. In addition to these recommendations, the Authority also agreed to recommend to the Minister that the service should be reviewed following a period of two years; that it should be accounted for as a separate service in RTÉ's financial statements; and, that the Minister may wish to seek greater clarity from RTÉ on the incremental public value it expects to create, in the context of the provision of sports content.

e. Annual Review of Public Funding: Tender Process Ratification

Members considered an Executive note outlining the outcomes of a tender process to select consultants to conduct the Annual Review of Public Funding in 2014.



The Authority was satisfied to ratify the recommendation of the tender sub-committee to appoint Oliver & Ohlbaum Associates for 2014, with the possibility of extending the contract to 2015, subject to satisfactory performance.

3. Contractual Matters

a. **Licensing: Ratification of Contract Awards Committee Decision: KCLR FM**

In his capacity as a member of the Contract Awards Committee, Séamus Martin declared an interest in the item under discussion and recused himself from the meeting.

Members were presented with the recommendation of the Contract Awards Committee ('the Committee') in respect of CK Broadcasting Limited (t/a KCLR FM Limited) for the local, broad-format, sound broadcasting contract for the Carlow/Kilkenny franchise area. The contractor's application was assessed by the Committee under the statutory, fast-track procedure. The Authority was asked to ratify the recommendations of the Committee, in accordance with section 67(8)(c) of the Broadcasting Act.

The Authority had regard to the evaluation reports in respect of KCLR FM, which detailed the proposed amended terms to the schedules of its contract.

The Authority was satisfied to ratify the Contract Awards Committee's recommendation in respect of KCLR FM.

Consideration of Derogation and Ratification of Contract Awards Committee Recommendations: Beat FM

Members were presented with a recommendation of the Committee to award a sound broadcasting contract, in principle, to WKW Limited (t/a Beat 102-103), for the south-east regional youth music-driven service, under the competitive licensing process.

The Authority noted that, as part of its application, Beat 102-103 had submitted a request for derogation from the 20% requirement for news and current affairs. It was further noted that a derogation of this nature had previously been granted to the contractor under its existing contract, by the Authority, in November 2012. In considering the request for derogation, the Authority had regard to the relevant criteria specified in the Broadcasting Services Strategy. Following discussion, the Authority was satisfied to approve the application for derogation from the 20% news and current affairs requirement to 15% of output for the total broadcast day.

The Authority then considered the assessment by the Committee of the application submitted by Beat 102-103. The Authority was satisfied to accept the recommendation of the Committee that it enter into a contract with WKW Limited, subject to a number of conditions, as set out in the Contract Awards Committee Evaluation Report.



- b. Contractual Variation: iRadio North West and iRadio Northeast & Midlands**
Members considered a contractual variation request received from Wilton Radio Limited (t/a iRadio Northwest and iRadio Northeast & Midlands), seeking approval for the appointment of Mr. Leigh Doyle, as Chief Executive and Programme Controller and the appointment of Mr. Brian Bruton as Financial Controller, for both services.

The proposal received was considered in accordance with the relevant terms of the BAI's *Ownership and Control Policy, 2012*. The Authority was satisfied to approve the request for contractual variation, as submitted.

- c. South East Regional Youth Licence: Correspondence from Power FM**
Members considered draft correspondence to the Power FM Group, in response to correspondence received in December 2013. The Authority was satisfied to approve the correspondence, as drafted, subject to there being no substantive amendment to the document by legal advisers to the BAI. It was requested that a final copy of the correspondence would be circulated to the Members, for information, once it had issued to the Power FM Group.

- d. Section 71 Application: Total Broadcast Consultants Limited**
Members considered a recommendation received from the Contract Awards Committee that the Authority enter into a content provision contract with Total Broadcast Consultants Limited t/a Zenith Classic Rock. As part of its application, the applicant was seeking a full derogation from the statutory 20% news and current affairs requirement.

In considering the request, the Authority had regard to the nature of the service and in particular to the fact that it would be carried solely as part of a DAB trial. The Authority was, therefore, satisfied to grant the derogation request, as submitted. The Authority was further satisfied to enter into a one-year content provision contract with Total Broadcast Consultants Limited, further to section 71 of the Broadcasting Act.

The Authority noted the Executive's inclusion of previous legal advice received in respect of the different functions of the Authority and the Contract Awards Committee under Part 6 of the Broadcasting Act. It was noted that the previous legal view had not extended to include a consideration of section 71 and the functions of the Authority and the Contract Awards Committee respectively. It was agreed that it would be helpful to obtain a clarifying legal view in this regard.

- e. Section 68(1) Application: Contract Awards Committee Recommendation**
The Authority considered and approved a recommendation received from the Committee to enter into a sound broadcasting contract with Underground Cinema Limited (t/a Drive in Cinema) further to section 68(1) of the Broadcasting Act 2009.



4. Organisational Matters

a. One Person One Salary: Legal View

Members considered legal advice received in relation to the capacity of, and obligations on, the BAI to implement the revised One Person One Salary provisions, as set out by the Department for Public Expenditure and Reform. [REDACTED]

[REDACTED] In the light of the legal advice received, the Executive was requested to correspond with the Department of Communications, Energy and Natural Resources on the matter.

b. BAI and BF Draft Financial Statements 2013

Members were presented with the draft unaudited financial statements for the Broadcasting Authority of Ireland and the Broadcasting Fund, for the year ended 31st of December 2013. It was noted that the Finance Audit and Risk Committee had considered the draft statements at its meeting on February 25th. It was further noted that the protocol for decision making between meetings had been invoked and that the statements had been approved by the Chairperson and the CEO, subject to a number of amendments and inclusions and the subsequent formal ratification of the financial statements by the Authority at its next meeting. A number of matters were brought to the Authority's attention in respect of FRS 17 Pension, the BAI Levy and the Broadcasting Fund.

Following discussion, the Authority was satisfied to ratify the draft financial statements, as presented.

5. For Information

a. Minutes of Finance, Audit and Risk Committee: 12th December, 2013

Minutes of the 12th December meeting of the FAR Committee were circulated to the Members for information.

6. Any Other Business

a. Irish Film and Television Awards

Members were advised that the Irish Film and Television Awards were scheduled to take place on Saturday 5th April and that anyone interested in attending should notify the Executive.



b. Review of Authority and Statutory Committees

Members were advised that, as part of the workplan for 2014, a review of the functioning of the Authority and Statutory Committees would be undertaken so as to learn from the experience to date and in order to inform the induction process for new Authority and Committee members. It was noted that a proposal in this regard would be brought to the April meeting.

7. Date of Next Meeting

The next meeting of the Authority will be held on 14th April, at 9.30am in the BAI offices.

A handwritten signature in black ink, appearing to read "Bob Collins", written over a horizontal line.

**Bob Collins,
Chairperson
14th April, 2014**