



Minutes of Meeting of the Authority of Broadcasting Authority of Ireland

Date 10/09/2015 **Time:** 10.00am **Venue:** 2-5 Warrington Place, Dublin 2

Minutes

Attendance

Authority: Pauric Travers (Chairperson), Alan McDonnell, Grace Smith, Séamus Martin, Seán Ó Mórdha, Denis Wolinski, Rosemary Day, Maeve McDonagh

Apologies: Clare Duignan

Executive: Michael O'Keeffe, Celene Craig, Aoife Clabby (Secretary), Ciarán Kissane, Nuala Dormer (item 2.1), Clare O'Sullivan (items 2.3-3.1), Elizabeth Farrelly (items 2.3-3.1), Declan McLoughlin (items 2.3-2.5), Neil O'Brien (items 2.1 & 2.2), Diarmaid Breathnach (items 2.3 & 2.4), Anne Louise O'Donovan (items 2.5 & 4.2), Stephanie Comey (item 5.1).

1. Minutes of Previous Meeting

Minutes of the previous meeting of the Authority, held on 23rd July, 2015, were approved by the members and signed by the Chairperson.

2. Matters Arising

a. Legal Proceedings

The Authority was advised that a statement of clarification in respect of Mr. Rob Morrison had been posted to the BAI website on 27th August.

b. HACA Declaration

The Authority was advised that correspondence had issued to the Moroccan regulator in respect of its request to sign a Declaration on Freedom of Expression, outlining the BAI's position.

c. Ministerial Attendance at October Meeting

The Chief Executive confirmed that the Minister for Communications, Energy and Natural Resources, Alex White T.D., would attend the October meeting of the Authority and would address the members at the outset of the meeting.

3. Codes & Policy

a. Plurality Policy – Report and Presentation by Communications Chambers

Members were presented with the findings of a report on the ownership and control of media businesses in Ireland, by a representative from Communications Chambers. The report was



commissioned further to the requirements of section 28M(1) of the Competition and Consumer Protection Act 2014, specifically that the BAI prepares a report on the ownership and control structures of media businesses in Ireland; the changes therein over the previous three years; and the impact of such changes of plurality in the media.

The presentation provided contextual information for the definitions contained in the Competition and Consumer Act and the implications for the scope of the report. It addressed trends in media consumption and sources of news, across various platforms, over the period 2012-2014. Finally, the presentation addressed the degree of changes to ownership and control in media businesses in the period.

Following the presentation, there was lengthy and detailed discussion in relation to a range of matters including the research methodology, plurality and multi-sourcing of content, media ownership and editorial independence, impartiality obligations on broadcasters, the percentage control thresholds pertaining to media ownership in regulatory and market contexts and the role of social media in the context of matters of influence and plurality more generally.

It was agreed that the draft report would be further considered by the Authority at the October meeting, prior to a report being submitted to the Minister further to the requirements of the Competition and Consumer Protection Act 2014.

b. PSB: RTÉ Public Service Statement

Members were presented with the RTÉ Public Service Statement (PSS) 2015, together with an executive assessment of the RTÉ PSS, further to the corporation's statutory obligations and its previously published 2010 PSS. It was noted that under section 101 of the Act, it is a matter for the Minister to grant his consent to the PSS of each corporation, having reviewed the document and consulted with the Authority, and to lay each PSS before the houses of the Oireachtas.

Following discussion, the Authority was satisfied that the PSS submitted by RTÉ met the requirement for the corporation to set out the principles to be observed and activities to be undertaken by it in order to fulfil its public service objects. The Authority was further satisfied that the guiding principles and activities contained in the PSS reflected the statutory objects and were consistent with the views of respondents to the public consultation. The Authority concluded that the RTÉ PSS 2015 was a development on the 2010 statement and would be helpful in providing the public with a greater understanding of RTÉ's role as a public service broadcaster, while being grounded in the challenges to be faced by the broadcaster in the changing environment.

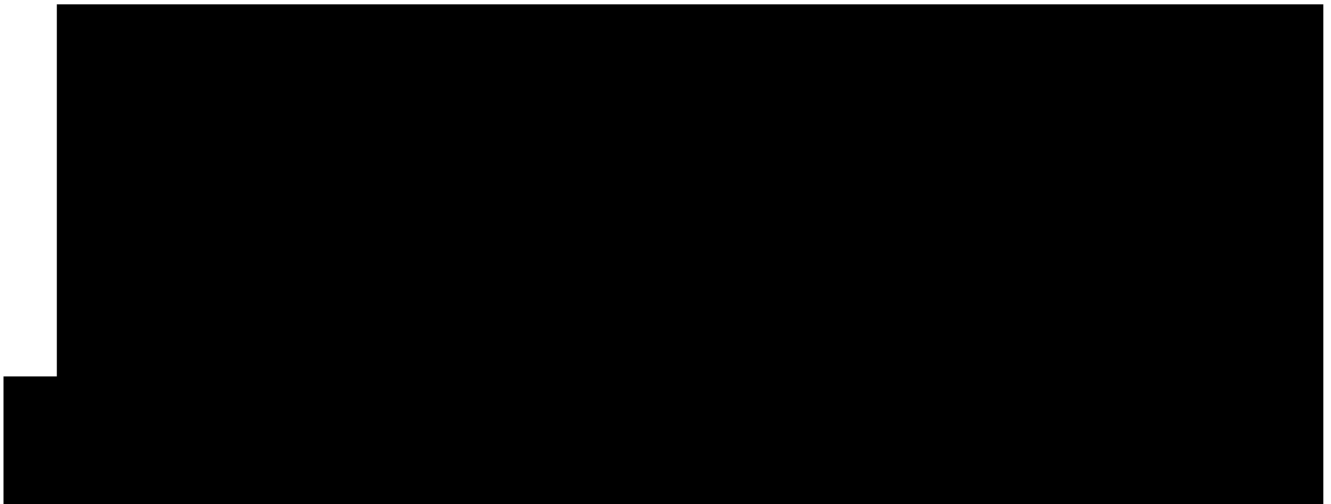
It was agreed that the Authority's findings would be communicated to the Minister at an early date.



c. PSB: Annual Review of Public Funding for Public Service Broadcasters

Members considered the final report, *Public Funding Review of Public Service Broadcasters*, conducted on behalf of the BAI by Oliver & Ohlbaum Associates (O&O), which had been the subject of a presentation and discussion at the July meeting. A brief overview was provided of a small number of changes to the report, arising from the discussions at the July meeting.

Following discussion, the Authority was broadly satisfied that O&O had delivered on the BAI's terms of reference for the review and further, that it was now in a position to submit a report to the Minister, in accordance with section 124(4) of the Broadcasting Act 2009 and to make recommendations in accordance with section 124(5). Having had regard to the report and discussions in respect of same, the Authority agreed the following:



d. PSB: RTÉ Fair Trading Policy

At the outset of the item, the Authority was provided with the background and context to the development, by RTÉ, of its Fair Trading Policy. In particular, the Authority was reminded of the recommendation arising from the Five-Year Review of Public Funding, which found that RTÉ could be more rigorous in ensuring that its market-related activities were consistent with regulatory requirements and good regulatory practice. In responding to this recommendation, the Government determined that the various activities that would be initiated by RTÉ, in response to this recommendation, should be overseen by the BAI. One of these activities included a Fair Trading Policy.

The Authority considered an independent review of the RTÉ Fair Trading Policy and Procedures prepared by consultants, Oliver & Ohlbaum, and discussed a range of recommendations made in respect of further amendments to the policy which would be provided to RTÉ by way of feedback. The Authority requested that RTÉ reflect on the feedback and consider making the appropriate changes.



The Authority considered that there was a degree of urgency in both the completion of the policy as well as in the implementation of its provisions and that both elements of this work should commence without further delay.

Having regard to the entirety of the Government decision of July 2013, the Authority also stressed the importance of particular attention being paid by RTÉ to the requirement to publish formally its policies and procedures on the separation of its public and commercial activities; the methodologies used for the allocation of costs, the commercial arrangements entered into between its commercial and public service activities, and further development of its accounting and financial control mechanisms.

e. Information Note: General Commercial Communications Code: Approach to Revision

The Authority was presented with an information note in respect of the proposed revision of the *BAI General Commercial Communications Code*.

Members were provided with a detailed overview of the issues informing the approach to drafting a revised Code. In particular, the overview addressed the legislative framework underpinning the Code at a national level and informed by European developments; the principles of separation and transparency as key contextual factors informing the development of the existing Code; and implementation and interpretation issues arising, particularly in the areas of sponsorship and product placement. Members also had regard to a number of examples of television sponsorship and product placement.

It was noted that the executive would revert with proposals for revision to the *BAI General Commercial Communications Code* Quarter 4 2015.

4. Broadcasting & Contractual Matters

a. TV3-Proposed change to ownership and control

Members considered a submission received from TV3 Television Network Limited ("the Contractor"), requesting the Authority's approval for a change to its ownership and control structure. The proposed change involved the acquisition by Virgin Media Limited, a wholly owned subsidiary of Liberty Global Plc, of sole control of the contractor.

In considering the request, the Authority had regard to a number of submissions made by the Contractor, an executive note on the last annual review meeting held in January 2015 between the BAI and TV3, and an executive summary and analysis of the submission received, having regard to the assessment criteria outlined in the *BAI Ownership and Control Policy 2012*.

Having considered and discussed in detail the submission received and the executive analysis presented, the Authority was satisfied to conclude that no issues arose, in respect of the submission



received, with regard to the assessment criteria relating to Character, Expertise and Experience or Programming.

In considering the interpretation of the terms 'Control' and 'Substantial Interest', the Authority noted that Mr. John Malone had a 'substantial interest' in Liberty Global. Specifically, it was noted that he was the largest shareholder and, [REDACTED]

[REDACTED] He is also Chairperson on the Board of Directors. Accordingly, the Authority was satisfied that Mr. Malone would be deemed to have a substantial interest in the Contractor if the requested change in its ownership and control was approved.

The Authority also had regard to Liberty Global's 9.9% share in ITV Plc. The Authority noted that this was below the 10% threshold provided by way of guidance in the BAI Ownership and Control Policy in defining a 'large' shareholding. Having regard also to the other factors falling within the definition of substantial interest, as per the *Ownership and Control Policy*, the Authority did not consider the 9.9% interest held by Liberty Global in ITV Plc as constituting a substantial interest at this time.

The Authority then went on to consider the submission under the criterion relating to an Undue Amount of Communications Media in a Specified Area and specifically the interests of Liberty Global and Mr. John Malone. Having regard to the information provided and the assessment undertaken under this criterion, the Authority was satisfied that no issues arose at the current time in respect of the submission received.

Finally, the Authority considered the submission having regard to the criterion relating to the Adequacy of Financial Resources and Business Plan. [REDACTED]

[REDACTED]

Following detailed and lengthy discussion, the Authority was satisfied to approve, in principle, the acquisition of TV3 Network Limited by Virgin Media Limited, a wholly owned subsidiary of Liberty Global. The approval in principle was subject to the provision of further information [REDACTED]

[REDACTED]



b. DCTV-contract extension

Members considered a proposal to extend the contract currently held by Dublin City Community Television Society Limited (DCTV) and scheduled to expire in April 2016. In the context of the proposal to extend the contract, the Authority also had regard to a request received from DCTV to undertake an assessment of the performance of the service, in advance of any re-licensing of the service.

Following discussion, the Authority was satisfied to approve the proposal to grant a contract extension to DCTV for a period of two years to April 2018. The Authority was further satisfied that a review of the service's performance would be conducted in advance of the expiry date.

c. Content Contracts (S71)

Members considered the recommendations of the Contract Awards Committee that the Authority enter into a three year content provision contract with Amazing Media Limited and a ten-year content provision contract in respect of Radio Maria Ireland Limited. It was noted that the service offered by Amazing Media Limited would be broadcast on the ComReg DAB trial, while the Radio Maria Ireland service would be made available on the DAB trial and via the Astra Satellite and the UPC platform.

Following discussion, the Authority was satisfied to enter into a three-year content provision contract with Amazing Media Limited and was further satisfied to grant derogation from the statutory requirement to provide news and current affairs content, having regard to the nature of the service and the derogation provided under the previous contract held by the applicant.

The Authority was satisfied to enter into a ten-year content provision contract with Radio Maria Ireland Limited.

5. Organisational Matters

a. BAI Lease on Marine House Premises

Members considered a proposal in respect of the buyout of a lease on premises at Marine House, Clanwilliam Place.

It was noted that an approach had been received on behalf of the landlord of Marine House to ascertain if the BAI would be interested in surrendering its lease on the premises in the building, subject to a one-off payment, on a phased basis. Members considered the terms of the proposal to buy out the lease and the implications on the organisation's three-year budgetary estimates.

The Authority also had regard to the role of its letting agent, Lisneys in the context of their future role in the sale of the Marine House building. Having considered the documentation submitted, the Authority was satisfied that no conflict of interest existed in relation to the letting agent's role on behalf of the BAI.



Following discussion, the Authority was satisfied to approve the buyout of the Marine House lease, subject to an independent assessment of the proposed terms.

b. Revised BAI Estimates 2016-2018

Having approved the proposed buyout of a lease on the premises at Marine House, Clanwilliam Place the Authority then considered the impact on the organisation's three-year estimates for 2016-2018.

Following discussion, the Authority was satisfied to approve the revised estimates, as presented.

6. Sectoral Learning and Development

a. Funding Request 2016

Members considered a request for funding received from the co-ordinator of *Big Stories for the Small Screen*, a project supported by the BAI through its Sectoral Learning and Development function. The funding request related to a second module of the initiative.

Members had regard to the details of the module, together with a detailed work-plan and budget for the remainder of the initiative. Members also had regard to the timing of the funding request and rationale for the early receipt of same.

The Authority was satisfied to approve the funding, as requested, for the second module of *Big Stories for the Small Screen*.

7. For Information

a. Minutes of Compliance Committee

Minutes of the Compliance Committee meeting, held on 24th June, were circulated to the Authority for information.

b. Minutes of Contract Awards Committee

Minutes of the Contract Awards Committee meeting, held on 7th May 2015, were circulated to the Authority for information.

c. Responses received from PSBs re ASPCs

The Authority was circulated with correspondence received from RTÉ and TG4 in relation to the Annual Statements of Performance Commitments consultation process.

d. BAI Work-plan 2015 – Mid-Year Review

A note from the Chief Executive, detailing progress against the work-plan for the year to date, was circulated to the members. It was agreed that further discussion could be facilitated at the October meeting, if required.



8. Any Other Business

Members were requested to liaise with the executive in respect of requirements for the November meeting of the Authority in Cork.

Members were advised that the PPI Radio Awards would take place in Galway on Friday October 9th and were requested to notify the executive in the event that they wished to attend.

9. Date of Next Meeting

The next meeting of the Authority will be held on Thursday, 8th October, 2015 at 10.45 am in the BAI offices.

**Professor Pauric Travers,
Chairperson**

8th October, 2015