



# Minutes of Meeting of the Authority of Broadcasting Authority of Ireland

**Date** 8/09/2016 **Time:** 2.00pm **Venue:** BAI Offices

## Minutes

### Attendance

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

**Executive:** Michael O'Keeffe, Celene Craig (items 1 &2), Aoife Clabby (Secretary), Stephanie Comey (item 2.2), Diarmaid Breathnach (item 2.1), Nuala Dormer (item 2.1), Clare O'Sullivan (item 3.1), Elizabeth Farrelly (item 3.1), Neil O'Brien (item 4.3)

### 1. Minutes of Previous Meeting and Matters Arising

The minutes of the previous meeting of the Authority, held on 28<sup>th</sup> July, 2016, were approved by the members and signed by the Chairperson. Matters arising were as follows:

#### a. Audience Research: PSB Tracker Survey.

The Authority was advised that a note regarding the publication of the audience tracker research would be brought to the October meeting.

#### b. Stakeholder Meetings

The Chief Executive advised that a schedule of presentations to the Authority, in advance of meetings in October and November, had been agreed with a number of key stakeholders.

#### c. Meeting with the Minister for Communications, Climate Action and Environment

The Chairperson provided the members with a detailed update in relation to a meeting held with the Minister and attended by the Chairperson and Chief Executive.

#### d. Board and Committee Vacancies

The Authority was advised by the Chief Executive that the Chairperson of the Compliance Committee, Mr. Patrick Gageby S.C, had signalled his intention to resign his position, with effect from 1<sup>st</sup> January 2017. It was noted that the number of vacancies at Authority and statutory committee level now totalled four and that the matter of filling vacancies was being pursued as a matter of urgency, by the executive, with the officials in the Department.

### 2. Codes, Rules & Policy

#### 2.1 Public Service Broadcasting: Annual Review of Public Funding: RTÉ & TG4

At the outset of the item, the Authority was circulated with correspondence received from the Minister for Communications, Climate Action and the Environment, detailing his response to the



recommendations made, by the Authority, in relation to the Annual Review of Public Funding 2014, conducted in 2015.

In considering the 2016 annual review of public funding for RTÉ and TG4, members had regard to the draft report prepared by Indecon International Economic Consultants ('Indecon'), which had been the subject of a presentation at the July meeting, together with a short executive note, outlining a number of observations in respect of each broadcaster.

Having regard to its statutory obligations, the terms of reference for the review, the conclusions and recommendations made by Indecon in its report, and noting the Minister's response to the 2015 recommendations, the Authority agreed the following:

- The Authority was satisfied to concur with the findings of Indecon in respect of the performance, by TG4 and RTÉ, against the commitments made in the previous year;
- The Authority was satisfied to endorse the recommendation for an increase in public funding for both public service broadcasters, subject to a number of conditions, as specified in the Indecon report;
- With regard to the observations made in the executive note, the Authority was satisfied that those areas where performance commitments have not been met would continue to be monitored as part of future annual reviews of public funding, as well as in the five-year review of public funding for public service broadcasters.

## **2.2 BAI Media Literacy Policy**

The Authority was presented with a draft Media Literacy Policy for consideration and approval. In considering the draft policy, members had regard to the approach to the development of the policy and related competencies, in addition to a detailed overview of the stakeholder engagement process undertaken and related outcomes. In this regard, it was noted that significant support was expressed by stakeholders, both for the envisaged role of the BAI and the proposed establishment of a National Media Literacy Network.

In considering the proposed implementation process, the Authority discussed the resource implications for the BAI. It was agreed that this should be considered in more detail, in the context of the required resources for the implementation of the new BAI Strategy Statement.

Following discussion, the Authority was satisfied to approve the draft Media Literacy Policy, as submitted. The Authority was further satisfied to approve the implementation stages of the policy development, as proposed.



### 3. Broadcasting and Contractual Matters

#### 3.1 Contractual Variations

##### a. Wireless Media Group Plc

The Authority considered a submission received from Wireless Media Group, seeking prior approval of changes to the status of the following five contractors, following the acquisition of the Group by News Corp UK and Ireland Limited:

- Capital Radio Productions Limited, trading as FM104
- City Broadcasting Limited, trading as Q102
- County Media Limited, trading as Cork's 96FM and C103
- Treaty Radio Limited, trading as Limerick's Live 95FM
- The Independent Broadcasting Corporation Limited, trading as LMFM

In considering the proposed transaction, the Authority had detailed regard to the relevant assessment criteria contained in the BAI Ownership and Control Policy (2012), together with a summary of the submission and an accompanying executive analysis. It noted that consent to the proposed transaction had also been sought from the Competition and Consumer Protection Commission (CPCC) and from the Minister for Communications, Climate Action and the Environment. The Authority was advised that the CPCC had approved the transaction.

Following detailed consideration and discussion of the submission received and the executive analysis undertaken, the Authority was satisfied to conclude the following, further to the assessment criteria contained in the Policy:

- In relation to the interpretation of the terms and on the basis of the information provided, the Authority was satisfied to conclude that the direct and/or indirect interest of the Murdoch Family Trust in 21<sup>st</sup> Century Fox and Sky Plc constituted a substantial interest, further to the BAI Policy provisions;
- In the absence of any changes to the Board of Directors or senior management teams of the Contractors, and, noting the additional media expertise brought by News Corp, the Authority was satisfied that the Contractors had satisfied the character test and experience and expertise criterion;
- Having regard to the financial information provided in respect of News Corporation and on the basis that the Contractors would continue to operate as independent businesses without significant changes to the current business models, the Authority was satisfied that the test in respect of the adequacy of financial resources and business plan had been satisfied;
- Having regard to the proposed transaction, the Authority was satisfied that the change in ownership constituted a 'one in-one out' change and accordingly, no issues arose in respect



of an undue amount of sound broadcasting services overall, as well as in each of the specified areas;

- In considering the criterion relating to an undue amount of communications media in the specified areas, the Authority applied the tests of dominance and substitutability, considered the key contextual factors and was satisfied that the acquisition by News Corp of Wireless Group and its radio assets in the station would not result in the group having more than a reasonable share of communications media, in the relevant areas;
- In the absence of any changes to programming, the Authority was satisfied that no issues arose in relation to the programming criterion;
- Having regard to the criterion in respect of the Competition Act, the Authority noted that the proposed acquisition had been approved by the Competition and Consumer Protection Commission and was being considered by the Minister. It was further noted that the Minister could refer the matter to the Authority for further consideration, pursuant to the Competition Act.

Having concluded that the proposed transaction had satisfied all of the relevant criteria contained in the BAI Ownership and Control Policy 2012, the Authority was satisfied to approve the transaction in full.

**b. UTV Ireland Limited**

The Authority considered a submission received from UTV Ireland Limited, seeking the approval of a change to its ownership and control structure, whereby Virgin Media Limited would acquire 100% of the issued share capital of UTV Limited, the intermediate parent company of the contractor.

In considering the proposed transaction, the Authority had detailed regard to the relevant assessment criteria contained in the BAI Ownership and Control Policy (2012), together with a summary of the submission and an accompanying executive analysis. It also noted that consent to the proposed transaction had also been sought from the Competition and Consumer Protection Commission (CPCC) and from the Minister for Communications, Climate Action and the Environment.

Following detailed consideration and discussion of the submission received and the executive analysis undertaken, the Authority concluded the following, further to the assessment criteria contained in the Policy:

- *Interpretation of terms:* Having regard to the proposals made in the submission and the proposed new Board of the Contractor, the Authority was satisfied that Liberty Global Plc, the ultimate owner of Virgin Media Limited, would have control over the Contractor.



Having regard to Liberty Global's shareholdings in Discovery Communications Incorporated and ITV plc respectively, the Authority was satisfied that Discovery Communications' services required consideration, further to the Policy's communications criterion, while ITV's services did not.

- *Character, Expertise and Experience:* The Authority was satisfied that no issues arose with regard to the character, expertise and experience of the proposed directors, senior managers and significant shareholders, as set out in the submission. However, the Authority requested that further information be sought in relation to the proposal to have a shared board and management team, in particular how the proposed arrangement at management level would work.
- *Adequacy of financial resources and business plan:* It was noted that this criterion did not apply to contracts awarded under section 71 of the Broadcasting Act 2009, but that the Contractor had addressed the matter in its submission. The Authority also noted that the proposed acquisition would have a considerable, positive impact on the continuing viability of the Contractor.
- *An undue amount of Communications Media in a Specified Area:* in assessing the submission under this criterion, the Authority applied the tests of dominance and substitutability, and was satisfied that the acquisition of the Contractor by Liberty Global would not result in the Liberty Global Group having more than a reasonable share of communications media in the State, having regard to the totality of communications media, as defined.
- *Programming:* The Authority had regard to the Contractor's existing programming commitments and schedule requirements, as set out in its contract and considered the amendments proposed in the submission. However, the Authority was not satisfied that it had sufficient information to make a determination under this criterion. Accordingly, the Authority requested that the Contractor would provide further information and clarification on the longer-term proposals for news programming and production, the proposals in respect of counter-scheduling and the submission of indicative programme schedules for TV3 and UTV Ireland services..
- *Competition Act:* The Authority noted that the Competition and Consumer Protection Commission had been notified of the proposed media merger and that the Contractor was awaiting the outcomes of the Commission's deliberative process.

Having considered the submission under the relevant criteria, the Authority was satisfied to approve the proposal for a change in ownership, in principle, subject to the receipt of further information and clarification in respect of the management of, and programming for, the service.

**c. Radio Two Thousand Limited (t/a 98FM)**

The Authority considered and approved a submission received from Radio Two Thousand Limited (t/a 98FM) seeking approval for the appointment of Mr. John Burns as Chief Executive Officer of the Contractor. In approving the submission, the Authority had regard to the relevant criteria contained in the BAI Ownership and Control Policy 2012.



### **3.2 Contract Awards Committee Recommendations**

*Members Grace Smith, Seamus Martin and Celene Craig of the BAI Executive declared an interest in this agenda item by virtue of their membership of the Contract Awards Committee and recused themselves from the discussion and decision in relation to the matters under this item.*

#### **d. Community Radio Service: Lucan and its Environs**

The Authority was presented with the recommendations of the Contract Awards Committee in respect of the award, in principle, of a contract to Liffey Sound Communications Co-Operative Society Limited, for a community sound broadcasting service for Lucan and its Environs.

In accordance with section 64 of the Act, the Authority was satisfied to ratify the decision of the Contract Awards Committee, and to award the contract, in principle, to Liffey Sound Communications Co-Operative Limited, subject to the successful conclusion of contract negotiations and the satisfaction of the conditions specified by the Committee. and to enter into contract negotiations

#### **e. Temporary Sound Broadcasting Services**

The Authority formally considered and approved the recommendations received from the Contract Awards Committee to enter into temporary sound broadcasting contracts with one pilot community temporary service and one temporary service.

## **4. Organisational Matters**

### **4.1 Finance Audit and Risk: Committee Vacancy**

The Chairperson advised that Authority member Denis Wolinski had agreed to serve on the Finance, Audit and Risk Committee, following the resignation of Clare Duignan from the Authority and the consequential vacancy arising on the Committee.

### **4.2 Public Procurement: Public Relations, Public Affairs and Media Relations**

The Authority considered an executive note outlining the proposed approach to the public procurement process for the provision of public relations, public affairs and media relations support to the BAI. It was noted that the existing contract was scheduled to expire in February 2017. The Authority was satisfied to approve the proposed scope of the brief, as detailed in the executive note.

### **4.3 Procurement: tender Ratification**

The Authority approved the award of contract for the rebuild of [www.baionline](http://www.baionline) to Engage ESM Limited, following completion of a public procurement process.



#### **4.4 Code of Practice for the Governance of State Bodies: Information Note**

The Authority was circulated with a short information note, providing an overview of the key changes to the revised and updated Code of Practice for the Governance of State Bodies, which was launched on 17<sup>th</sup> August, effective 1<sup>st</sup> September. Members were advised that state bodies had been given a year to achieve full compliance with the Code and in this regard, the executive would be reviewing its existing governance framework and developing an implementation plan to meet the deadline for compliance of 1<sup>st</sup> September 2017.

### **5. For Information**

#### **5.1 AVMSD Submission to DCCAE**

Members were circulated with the BAI's observations on the proposal of the European Commission to amend a number of key sections of the current Audiovisual Media Service Directive. The observations were submitted to the Department of Communications, Climate Action and Environment, on foot of a request received in July.

#### **5.2 Minutes of Compliance Committee Meeting**

Members were circulated with minutes of the Compliance Committee meeting, which took place on 16<sup>th</sup> June.

#### **5.2 Minutes of Contract Awards Committee Meeting**

Members were circulated with minutes of the Contract Awards Committee meeting, which took place on 28<sup>th</sup> June.

#### **5.4 Minutes of FAR Committee Meeting**

Members were circulated with minutes of the FAR Committee meeting, which took place on 9<sup>th</sup> June.

### **6. Date of Next Meeting**

The next meeting of the Authority will be held on Thursday, 6<sup>th</sup> October at 10.20a.m. in the BAI offices. The meeting will commence with presentations by the Independent Broadcasters of Ireland and the Community Television Association.

A handwritten signature in black ink, appearing to read 'Paucic Travers', is written over a horizontal line.

**Professor Paucic Travers,  
Chairperson.**

**6<sup>th</sup> October, 2016**